

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-180273, 274
	:	TRIAL NOS. B-1705975B
Plaintiff-Appellee,	:	B-180006
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
RYAN KINNARD,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

On appeal, defendant Ryan Kinnard does not contest his convictions, but instead challenges the trial court's finding that he was not indigent, and therefore not entitled to a waiver of the mandatory fine that accompanied his convictions. In support of his indigency affidavit, Mr. Kinnard presented his own testimony, noting his lack of assets, outstanding student loans, and lapsed truck-driving license (relevant to his trade). Despite this information, the trial court held that Mr. Kinnard was not indigent, observing his lack of physical or mental limitations, his ability to return to the truck-driving trade once he reapplies for his license, and his partially completed college education. Based on this finding, the trial court imposed the \$10,000 mandatory fine and sentenced him to 18 months in prison (with credit for time served). Accordingly, Mr. Kinnard appeals the trial court's decision to impose the mandatory fine.

Importantly, R.C. 2953.08(G)(2) governs this court’s review, allowing us to “modify or vacate a felony sentence only if we clearly and convincingly find that the record does not support the trial court’s findings under relevant statutes or that the sentence is otherwise contrary to law.” *State v. Owens*, 1st Dist. Hamilton No. C-170413, 2018-Ohio-1853, ¶ 5, citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 1.

The relevant statute for our purposes is R.C. 2929.18(B)(1), which requires the trial court to impose the provided fine upon a defendant convicted of committing a drug-related felony under R.C. Chapter 2925. Yet, if the defendant files an indigency affidavit with the court prior to sentencing (and the court subsequently finds the defendant indigent), then the court need not impose the mandatory fine. R.C. 2929.18(B)(1); *Owens* at ¶ 6. In making this determination, the trial court must consider the defendant’s “present and future ability to pay the amount of the sanction or fine.” R.C. 2929.19(B)(5); *State v. Freeman*, 1st Dist. Hamilton No. C-180090, 2018-Ohio-4973, ¶ 8. Our review is constrained because “[a]s long as the record contains some indication that the trial court considered the offender’s present and future ability to pay the fine, the court’s imposition of a financial sanction is not contrary to law.” *State v. Stidhum*, 1st Dist. Hamilton No. C-170319, 2018-Ohio-4616, ¶ 69, citing *State v. Collier*, 184 Ohio App.3d 247, 2009-Ohio-4652, 920 N.E.2d 416, ¶ 11 (10th Dist.).

In this case, the trial court was required to impose the mandatory fine for Mr. Kinnard’s drug-related felonies. R.C. 2929.18(B)(1). While Mr. Kinnard filed the appropriate indigency affidavit and supported his affidavit with his own testimony, the record contains at least “some indication” that the trial court considered both Mr. Kinnard’s present and future ability to pay the fine. The trial court heard testimony

from Mr. Kinnard recognizing his capability to obtain future employment, his current trade skills, and the ability for him to reacquire his truck-driver's license. Additionally, the trial court noted his education level, his lack of physical or mental limitations, and his "jobs in the past that would enable him to pay this fine." Accordingly, since the record in front of us contains "some indication" that the trial court considered Mr. Kinnard's present and future ability to pay the fine, we cannot say that the court's imposition of the mandatory fine is contrary to law. *Stidhum* at ¶ 69.

Finally, Mr. Kinnard argues that the trial court, contrary to both *State v. Pendleton*, 104 Ohio App.3d 785, 663 N.E.2d 395 (1st Dist.1995) and *Owens*, focused on tax-return evidence as a prerequisite for finding indigency and waiving the mandatory fine. In *Owens*, this court overturned the trial court's imposition of the mandatory fine because it "required as a prerequisite to a finding of indigency the submission of five years of tax returns." *Owens*, 1st Dist. Hamilton No. C-170413, 2018-Ohio-1853, at ¶ 13. Yet, in Mr. Kinnard's case, the court mandated no such prerequisite. Mr. Kinnard highlights a particular statement the trial judge made at the plea hearing—"I just need you to bring me some documentation to give me a reason – meaning your last three years tax returns – give me a reason to not impose the \$10,000 fine that is mandatory"—to support that, like *Owens*, the trial court required tax returns as a prerequisite for it to find Mr. Kinnard indigent. However, the record shows that the trial court did not require the tax returns before it would consider Mr. Kinnard's ability to pay. In fact, the trial court never mentioned the tax returns during the subsequent indigency evaluation, but instead recognized Mr. Kinnard's testimony as an acceptable means of proof.

Additionally, *Pendleton* is not comparable to Mr. Kinnard's case, as the trial court here did not base its indigency decision exclusively on Mr. Kinnard's ability to hire his own attorney. *See Pendleton* at 788 (overturning the trial court's decision to impose the mandatory fine because of its method of finding indigency—"[w]hen attorneys are retained, I impose the fine. If it's a public defender case I don't.").

We accordingly hold that the trial court's decision to impose the mandatory fine was not contrary to law. Consequently, we overrule Mr. Kinnard's sole assignment of error and thereby affirm the trial court's judgments.

Further, a certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

ZAYAS, P.J., BERGERON and WINKLER, JJ.

To the clerk:

Enter upon the journal of the court on July 10, 2019

per order of the court _____.
Presiding Judge