



COMMONWEALTH OF KENTUCKY
SUPREME COURT OF KENTUCKY
2010-SC-000681-DG

DESEAN MAYNES

APPELLANT

v.

Court of Appeals
No. 2009-CA-002274-MR
Appeal from Jefferson Circuit Court
Action No. 09-CR-2518
Hon. Audra J. Eckerle, Judge

COMMONWEALTH OF KENTUCKY

APPELLEE

REPLY BRIEF FOR APPELLANT, DESEAN MAYNES

Submitted by:

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Certificate of Service

This is to certify that a copy of this brief was mailed, first class postage prepaid, to Hon. Audra Eckerle, Judge, Jefferson Circuit Court, Division 7, Jefferson County Judicial Center, 700 West Jefferson Street, Louisville, KY 40202, and to Hon. J. Hays Lawson, Assistant Attorney General, Office of the Attorney General, Office of Criminal Appeals, 1024 Capital Center Drive, Frankfort, KY 40601, and sent electronically to Hon. Samuel Floyd, Jr., Assistant Commonwealth's Attorney, 514 West Liberty Street, Louisville, KY, 40202, on July 21, 2011. I further certify that the record on appeal was not removed from the office of the Clerk


BRUCE P. HACKETT

Purpose of the brief

This brief is filed in order to point out that the Commonwealth's brief supports the position that the "court costs" referred to in KRS Chapter 31 are not "court costs" imposed under KRS 23A.205. This brief is also filed to respond to the argument that legislative enactments in 2002 were meant to reverse this Court's decision in *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987). Finally, the brief will explain that the analysis offered by the Commonwealth and the Court of Appeals leaves the applicable statutes irreconcilably in conflict.

Argument

The Trial Court Erred by Assessing Court Costs on Desean Maynes Despite Finding Him to be Indigent.

In his initial brief filed in this Court, Mr. Maynes pointed out the conflicts in the statutes that address the collection and distribution of monies paid as mandatory court costs (KRS 23A.205 and KRS 42.320) and the statutes that address the imposition of costs and the distribution of monies collected under KRS Chapter 31. The Commonwealth says that "under the plain terms of KRS 42.320, 'court costs' collected under KRS 23A.205(1) are part of the 'court cost distribution fund' set forth in KRS 42.320." (Brief for Commonwealth, p. 14). But this observation does not resolve the crucial question, which is whether "court costs" under KRS Chapter 31 are the "court costs" that are the subject of KRS 23A.205.

As to the problem created by the conflicting language of KRS 31.110(1)(b) ("The courts in which the defendant is tried shall waive all costs.") and that of KRS 31.211(1) ("At arraignment, the court shall conduct a nonadversarial hearing to determine whether a

person who has requested a public defender is able to pay a partial fee for legal representation, the other necessary services and facilities of representation, and court costs.”), the Commonwealth adopts the Court of Appeals reasoning that “costs” under KRS 31.110 does not mean “court costs” under KRS 31.211. The Court of Appeals says that the “costs” under KRS 31.110 that a court is required to waive are “the costs of preparing and maintaining a defense for the needy person, not court costs being imposed after conviction.” Court of Appeals Opinion, p. 8; Appendix to the Brief for Appellant, p. A8. The flaw in this reasoning is that KRS 31.211 not only refers to “court costs,” but also refers to “the other necessary services and facilities of representation.” As described by the Court of Appeals, “the costs of preparing and maintaining a defense for the needy person” must be the same as the costs of “the other necessary services and facilities of representation.” Thus, the Court of Appeals view resolves nothing because according to that view KRS 31.110 requires a court to waive the very same “costs” that the court is authorized to collect, fully or partially, under KRS 31.211. The Court of Appeals reasoning does nothing to resolve the conflicts between KRS 31.110 and KRS 31.211.

Both the Commonwealth and the Court of Appeals say that this Court’s decision in *Edmonson v. Commonwealth*, 725 S.W.2d 595 (Ky. 1987), is no longer controlling law or that the opinion has been superseded by the enactment of KRS 31.211. But *Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky. 2010), and *Ladriere v. Commonwealth*, 329 S.W.3d 278, 283 (Ky. 2010), say otherwise. Finally, equally flawed is the Commonwealth’s argument that “[i]t is clear that the General Assembly intended to change this Court’s interpretation of the statute in *Edmonson* [KRS 31.110] when it amended KRS 23A.205 in 2002.” (Brief for Commonwealth, p. 11). The way to “change

this Court's interpretation" of KRS 31.110 would be to actually amend KRS 31.110. As noted in Mr. Maynes's original brief, when the General Assembly enacted KRS 31.211 in 2002, it also amended KRS 31.110, but only to make specific references to juveniles. (House Bill 487, 2002 c 283, § 11, eff. 7-15-02). The General Assembly left intact the mandate that courts "shall waive all costs" for indigent defendants. Thus, in 2002 the General Assembly did nothing to alter this Court's *Edmonson* opinion.

Conclusion

For the foregoing reasons, Desean Maynes respectfully requests that the Court of Appeals opinion be reversed and that the portion of the circuit court order that assesses court costs be vacated.



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