

**IN THE COUNTY COURT, FIFTH JUDICIAL CIRCUIT,
IN AND FOR MARION COUNTY, FLORIDA**

STATE OF FLORIDA

vs.

ANTHONY CUMMINGS

Defendant.

**Case No.: 2012-MO-0374
2016-MO-2150
2016-MO-4116**

ORDER GRANTING DEFENDANT'S MOTIONS TO CORRECT SENTENCE

THIS CAUSE came before the Court on Defendant Anthony Cummings's ("Cummings") Motions to Correct this Court's Order Assessing Costs and for Order Reinstating Driver's License in three cases (Case No. 2012-MO-0374; 2016-MO-2150; 2016-MO-4116) (such motions hereinafter collectively referred to as the "Motions," and the related Judgment and Sentences hereinafter collectively referred to as the "Judgments"). The Court set an en banc hearing held on July 29, 2019 in the interests of resolving the issues of public importance that were presented by Defendant's motions. County Court Judges McCune, Ritterhoff Williams, and Landt reviewed the Motions, the Responses filed by the Clerk of Court for Marion County, Florida ("Clerk"), and heard oral argument from counsel appearing on behalf of the Defendant, Clerk, and the State. While the City of the Ocala ("City") was not required to attend as the requested relief did not pertain to it, counsel for the City also did attend and participate. Being fully advised, the Court makes the following findings:

1. The Motions were brought pursuant to Fla. R. Crim. P. 3.800(a) to correct what Cummings alleged were illegal sentences contained in the Judgments which were apparent "on

their face.” Given that the Rule provides that “[a] court may at any time correct an illegal sentence” the Motions were timely and could have been brought at any time.

2. In the Judgments, the Court previously suspended Cummings’s driver’s license for failure to pay court costs and fines assessed for municipal ordinance violations. Cummings argued, and the Clerk agreed, that there was no legal authority for this Court to suspend his driver’s license for court costs and fines assessed for violations of municipal ordinances under Florida Statute section 322.245, and that the Clerk, on behalf of the Court, is only authorized to notify the Florida Department of Highway Safety & Motor Vehicles (DHSMV) to suspend a driver’s license for a person who has failed to pay financial obligations for criminal, traffic, and/or child-support cases. Cummings argued that a municipal ordinance violation is not a “crime” under Florida law, *see* § 775.08, Fla. Stat.; and financial obligations assessed for municipal ordinance violations are not “financial obligations for [a] criminal offense,” *see* § 322.245(5), Fla. Stat.

3. The State and the City did not object to Cummings’s argument discussed in paragraph 2 above.

4. After reviewing the arguments filed by Cummings and the Clerk, the Court finds that the Court’s suspension of Cummings’s driver’s license for failure to pay financial obligations for municipal ordinance violations was in error, not authorized by Florida law, and should be stricken from the Judgments.

5. Consistent with the Court’s finding the Clerk, on behalf of the Court, agreed to notify the DHSMV of this order and that the suspensions imposed in the Judgments were in error. The Clerk further agreed that it would work with the DHSMV to correct similar errors which may have been entered related to other municipal ordinance violations. The Clerk also

agreed to, in the future, no longer notify the DHSMV for a D6 or administrative suspension for failure to pay court costs and fines assessed for violations of municipal ordinances.

6. Cummings further argued, and the Clerk agreed, that the imposition of costs related to \$20 court cost set forth in section 938.06 of the Florida Statutes for funding the Crime Stoppers Program; \$65 court cost set forth in section 939.185 of the Florida Statutes; and 5% surcharge set forth in section 938.04 of the Florida Statutes were illegally entered in the Judgments as there is no legal authority to assess these costs for violations of municipal ordinances because such violations are not considered “crimes” or a “misdemeanors” under Florida law. § 775.08, Fla. Stat. (2018).

7. The State and the City did not object to Cummings’s argument discussed in paragraph 6 above.

8. After reviewing the arguments filed by Cummings and the Clerk, the Court finds the Court’s imposition of costs discussed in paragraph 6 above was in error, not authorized by Florida law, and should be stricken from the Judgments.

9. Cummings further argued, and the State agreed, that the imposition of costs of prosecution under Florida statute section 938.27 was illegally entered in the Judgments as there is no legal authority to assess these costs for violations of municipal ordinances because such violations are not considered “crimes” or a “misdemeanors” under Florida law. § 775.08, Fla. Stat. (2018).

10. The Clerk and the City did not object to Cummings's argument discussed in paragraph 9 above.

11. Given the foregoing, the Court finds that the Court's imposition of costs of prosecution were erroneously included in the Judgments, were not authorized by Florida law, and should be stricken from the Judgments.

12. This Court did not consider and therefore issues no opinion as to whether the costs of incarceration were properly assessed for a municipal ordinance case because Cummings did not challenge those costs in his motion or at the hearing.

13. Cummings did not dispute that the following costs may be assessed in municipal ordinance cases including in the three cases at issue here:

- a. \$3 Additional Court Cost Clearing Trust Fund set forth in section 938.01(1) of the Florida Statutes;
- b. \$2 court cost for criminal justice education for local government set forth in section 938.15 of the Florida Statutes;
- c. \$3 court cost for teen courts set forth in section 938.19(2) of the Florida Statutes;
- d. \$10 court cost for the municipality's filing fee assessed against non-prevailing party pursuant to section 34.045(1)(c) of the Florida Statutes.

14. At the hearing, the Court heard argument about three court costs assessed in the Judgments:

- a. \$20 court cost set forth in section 775.083(2) of the Florida Statutes;
- b. \$50 court cost for the Crimes Compensation Trust Fund set forth in section 938.03(1) of the Florida Statutes;
- c. \$60 court cost set forth in section 938.05(1)(b) of the Florida Statutes.

15. These statutory provisions provide that these costs may be imposed only if a municipal ordinance “adopts by reference a misdemeanor under state law” or one that constitutes a “misdemeanor under state law.”

16. In the cases at issue, Cummings was convicted of violations of Section 42-10 of the City Codes of Ordinances. The Court reviewed three different versions of this ordinance: Ordinance No. 5117, adopted in December 2002; Ordinance No. 2013-5, adopted in November 2012; and Ordinance No. 2016-5, adopted in November 2015. After review, the Court finds that these versions of Section 42-10 do not describe with sufficient particularity an offense that constitutes a misdemeanor under state law so that a person of ordinary intelligence would understand that costs imposed for violations of a state misdemeanor would also be imposed for violations of this ordinance. *See SE Aluminum Supply Corp. v. Metropolitan Dade Cnty.*, 533 So.2d 777, 778 (Fla. 3d DCA 1988) (an ordinance that incorporates a statute by reference must describe the incorporated offense “with some reasonable particularity so that a person of ordinary intelligence is properly advised what conduct is commanded or proscribed.”)

17. To the extent that the Court heard argument from the parties regarding the adoption of the misdemeanor of “trespass” from Chapter 810 of the Florida Statutes into City Code section 42-10 “Trespass and Unlawful Lodging,” the Court finds that Section 42-10 of the City Code of Ordinances does not sufficiently incorporate the legal elements of Chapter 810 to put persons who violate Section 42-10 on notice that they are also responsible for court costs for offenses that are misdemeanors under Chapter 810. The Court further finds there is a factual and therefore a legal distinction of what constitutes a “trespass” offense under Florida law and what constitutes a “lodging” offense under the City ordinance. The language in Section 42-10 is too dissimilar to language in the state trespass statutes in Chapter 810. For example, Section 42-10

describes prohibited conduct in terms of resting while awake or sleeping, having a sleeping bag, being near a campfire, and relating he or she is homeless. Someone engaged in this conduct would not be charged with trespass under Chapter 810 of the Florida statutes. Based on that, imposition of court costs under the disputed statutes would be inappropriate.

18. Given the foregoing, the Court finds that the Court's imposition of the discussed in paragraph 14 was in error, were not authorized by Florida law, and should be stricken from the Judgments.

WHEREFORE, this Court hereby **ORDERS** and **ADJUDGES** as follows:

A. The Court **STRIKES** from the Judgments:

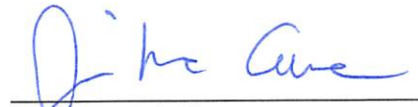
- i. The driver's license suspension from the Judgments along with the \$7 fee assessed for D6 suspensions as discussed in paragraph 2 above.
- ii. The \$20 court cost set forth in Florida Statutes section 938.06 for funding the Crime Stoppers Program;
- iii. The \$65 court cost set forth in Florida Statutes section 939.185;
- iv. The 5% surcharge set forth in Florida Statutes section 938.04;
- v. The cost of prosecution set forth in Florida statute section 938.27;
- vi. The \$20 court cost set forth in section Florida Statutes 775.083(2);
- vii. The \$50 court cost for the Crimes Compensation Trust Fund set forth in Florida Statutes section 938.03(1);
- viii. The \$60 court cost set forth in of the Florida Statutes section 938.05(1)(b).

B. The Clerk shall prepare amended Judgments for Cummings consistent with the Court's order.

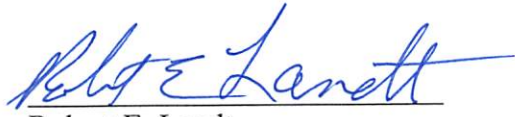
C. The Clerk shall immediately notify the DHSMV of the Court's error that it had no lawful authority to suspend Cummings's driver's license for failure to pay court costs and fines in municipal ordinance cases and shall work with the DHSMV to correct this error in Cummings's cases and in other municipal ordinance cases.

D. In addition, the Clerk shall no longer notify the DHSMV of driver's license suspensions (either a D6 or administrative suspension) for failure to pay court costs and fines assessed for violations of municipal ordinances.

DONE AND ORDERED in Chambers at Ocala, Marion County, Florida on this 9th day of August 2019.



R. James McCune
County Court Judge



Robert E. Landt
County Court Judge



Sarah Ritterhoff Williams
County Court Judge