

IN THE SUPREME COURT OF OHIO

MICHAEL A. LINGO, ET AL.,	:	
	:	Case No. 2012-1774
Plaintiffs-Appellants,	:	
	:	On Appeal from the
vs.	:	Cuyahoga County Court of Appeals
	:	Eighth Appellate District
STATE OF OHIO, ET AL.,	:	
	:	C.A. Case No. CA-11-097537
Defendants-Appellees.	:	C.P. Case No. CV-05-564761

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IN SUPPORT OF APPELLANT MICHAEL A. LINGO**

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TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES..... ii

STATEMENT OF THE CASE AND FACTS.....1

STATEMENT OF INTEREST OF AMICUS CURIAE OFFICE OF THE
OHIO PUBLIC DEFENDER1

ARGUMENT.....1

APPELLANT’S PROPOSITION OF LAW I:.....1

 A void order is a legal nullity and may be disregarded by any
 court.....1

APPELLANT’S PROPOSITION OF LAW II:.....1

 Any attempt by a municipal court to impose additional court
 costs beyond that which is authorized by statute is void and not
 merely voidable.....1

CONCLUSION.....4

CERTIFICATE OF SERVICE.....5

STATEMENT OF THE CASE AND FACTS

Amicus adopts by reference the statement of the case and facts set forth by Appellants Michael A. Lingo, et al.

STATEMENT OF INTEREST OF AMICUS CURIAE OFFICE OF THE OHIO PUBLIC DEFENDER

The Office of the Ohio Public Defender (OPD) is a state agency designed to represent indigent criminal defendants, coordinate criminal defense efforts throughout Ohio, promote the proper administration of criminal justice, ensure equal treatment under the law, and protect the individual rights guaranteed by the state and federal constitutions. Accordingly, the OPD has an interest in ensuring the fair, just, and correct application of Ohio's statutes governing court costs assessed against criminal defendants, particularly those who are indigent.

ARGUMENT

APPELLANT'S PROPOSITIONS OF LAW

Proposition I: A void order is a legal nullity and may be disregarded by any court.

Proposition II: Any attempt by a municipal court to impose additional court costs beyond that which is authorized by statute is void and not merely voidable.

The decision below—holding that the assessment of court costs for misdemeanor offenses must be challenged through a direct appeal—has a disproportionate, adverse impact upon Ohio's indigent community. *See Lingo v. State*, 8th Dist. No. CA-11-097537, 2012-Ohio-2391, ¶ 18. That community is significant. Ohio's population is more than 11,500,000, and 14.8% of that population lives below the poverty level, which amounts

to more than 1,700,000 Ohio residents. United States Census Bureau, *Ohio Quick Facts*, <http://quickfacts.census.gov/qfd/states/39000.html> (accessed April 2, 2013).

It is obvious that indigent defendants have fewer resources to absorb improperly assessed court costs. But the Ohio Attorney General is helping counties to collect court costs that have been assessed—properly or improperly—but not paid. See Ohio Attorney General New Release, *Attorney General DeWine Announces Debt Collection Program for Local Governments* (Jan. 24, 2012), <http://www.ohioattorneygeneral.gov/Media/News-Releases/January-2012/Attorney-General-DeWine-Announces-Debt-Collection> (accessed April 2, 2013). The disparate impact of the decision below on Ohio's indigent community is clear.

Assessing court costs is a ministerial task that has no impact upon the finality of a sentencing entry as to those costs. *State v. Threatt*, 108 Ohio St.3d 277, 2006-Ohio-905, 843 N.E.2d 164, ¶ 21. Thus, the amount of court costs owed is often unknown when the notice of appeal is due. And while an indigent defendant can move the court to waive costs, it must be done at the time of sentencing or costs are res judicata, even on appeal. *Id.* at paragraph two of the syllabus, ¶ 23.

Further, appointed counsel is required for indigent defendants only when the defendant is actually imprisoned. Crim.R. 44(B); see also *Alabama v. Shelton*, 535 U.S. 654, 661, 122 S.Ct. 1764, 152 L.Ed.2d 888 (2002); *Scott v. Illinois*, 440 U.S. 367, 373-374, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979); *Argersinger v. Hamlin*, 407 U.S. 25, 33, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). Thus, the misdemeanor offenses at issue usually do not result in appointed counsel for indigent offenders, at trial and on appeal, because they do not

end with actual incarceration. See *Lingo* at ¶ 2; see also Crim.R. 44(B); R.C. 2743.70(A); R.C. 2949.091(A); R.C. 1901.26(B)(1).

Public defender offices do not have the resources to handle misdemeanor appeals simply to prevent the improper assessment of court costs. See generally John Fuddy, *Providing poor with defense lawyer varies by county*, Columbus Dispatch (March 23, 2013), <http://www.dispatch.com/content/stories/local/2013/03/23/providing-poor-with-defense-lawyer-varies-by-county.html> (accessed April 2, 2013). Consequently, if the decision below stands, indigent defendants, without counsel, must navigate complicated litigation techniques to prevent the improper assessment of court costs against them.

First, the indigent defendant, without counsel, must know that he or she must move the court at the time of sentencing to have any chance to get his or her court costs waived. *Threatt* at ¶ 23. Second, the indigent defendant, without counsel, must know that he or she must appeal his or her conviction within 30 days of being sentenced just in case the clerk of courts inaccurately assesses his or her costs.

But appellate litigation is complex and multifaceted. It is axiomatic that “[e]ven the intelligent and educated layman has small and sometimes no skill in the science of the law.” *Powell v. Alabama*, 287 U.S. 45, 68-69, 53 S.Ct. 55, 77 L.Ed. 158 (1932). For that reason, “[t]hat which is simple, orderly, and necessary to the lawyer, to the untrained layman may appear intricate, complex, and mysterious.” *Johnson v. Zerbst*, 304 U.S. 458, 462-463, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938).

Accordingly, the decision below grants county clerks license to assess costs

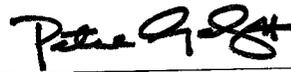
against indigent defendants with impunity. And that result is not compatible with a just criminal justice system.

CONCLUSION

The decision below enables county clerks to improperly assess court costs against indigent defendants under circumstances that eliminate such defendants' opportunity to correct those errors. Accordingly, its disparate impact on Ohio's significant indigent population warrants reversal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing **Merit Brief of Amicus Curiae Office of the Ohio Public**

Defender in Support of Appellant Michael A. Lingo was forwarded by regular U.S.

Mail, postage prepaid to the attorneys listed below on this 11th day of April, 2013.

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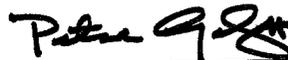
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