

**IN THE SUPERIOR COURT OF PENNSYLVANIA
MIDDLE DISTRICT**

No. 76 MDA 2018

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

SCOTT CHARLES DAVIS,

Appellant.

**MOTION OF THE AMERICAN CIVIL LIBERTIES UNION OF
PENNSYLVANIA, THE JUVENILE LAW CENTER, THE YOUTH
SENTENCING & REENTRY PROJECT, THE ATLANTIC CENTER FOR
CAPITAL REPRESENTATION, THE DEFENDER ASSOCIATION OF
PHILADELPHIA, THE MONTGOMERY COUNTY PUBLIC
DEFENDER'S OFFICE, AND THE YORK COUNTY PUBLIC
DEFENDER'S OFFICE FOR LEAVE TO FILE AMICUS CURIAE BRIEF
IN SUPPORT OF REQUEST FOR PUBLICATION**

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Prospective Amicus Curiae American Civil Liberties Union of Pennsylvania, the Juvenile Law Center, the Youth Sentencing & Reentry Project, the Atlantic Center for Capital Representation, the Defender Association of Philadelphia, the Montgomery County Public Defender’s Office, and the York County Public Defender’s Office, through counsel and pursuant to Pa.R.A.P. 123 and 531(a)(b)(1)(iii), respectfully request leave to file a brief in support of Scott Davis’s Request for Publication. Rule 531 permits an interested non-party to file non-merits briefs “by leave of court.” As is explained in the proposed Amicus Curiae Brief attached hereto, amici have a keen interest in and expertise with respect to the imposition and collection of court costs. The Court’s unpublished decision addresses—for the first time—an important issue regarding the imposition of court costs associated with sentencings, and the proposed Amicus Curiae Brief puts the impact of the ruling beyond Mr. Davis’s case in a broader, statewide context.

WHEREFORE, prospective Amicus Curiae request that this Court grant leave to file a brief in support of Mr. Davis’s Request for Publication.

Respectfully Submitted,

/s/ Andrew Christy

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Dated: January 9, 2019

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Statement of Interest of Amicus Curiae

The **American Civil Liberties Union** (“ACLU”) is a nationwide, nonprofit nonpartisan organization of over 1.75 million members. Since its founding in 1920, the ACLU has been dedicated to preserving and defending the principles of individual liberty and equality embodied in the United States Constitution and civil rights laws. The ACLU of Pennsylvania is one of its state affiliates, with over 30,000 members throughout Pennsylvania. The ACLU and ACLU of Pennsylvania have appeared many times as amicus curiae in federal and state courts at all levels, including in both civil and criminal proceedings, in cases in which government action threatened civil rights or constitutional rights.

The ACLU of Pennsylvania seeks to appear as amicus curiae in this matter to bring the Court’s attention to the substantial and disproportionate impact that court costs can impose on indigent defendants. Since 2016, the ACLU of Pennsylvania has focused significant resources on the issue of modern-day “debtors’ prisons” in Pennsylvania—courts that routinely send poor people to jail because of, and despite, clear evidence that they cannot afford to pay court-imposed criminal and traffic fines and costs. Last year, in cases brought by the ACLU of Pennsylvania, this Court invalidated such trial court practices in three published opinions: *Commonwealth v. Mauk*, 185 A.3d 406 (Pa. Super. Ct. 2018), *Commonwealth v. Diaz*, 191 A.3d 850 (Pa. Super. Ct. 2018), and *Commonwealth*

v. Smetana, 191 A.3d 867 (Pa. Super. Ct. 2018). The ACLU of Pennsylvania also serves as amicus curiae in *Commonwealth v. Lopez*, 1313 EDA 2018, which asks this Court to provide guidance to trial courts on their obligation to tailor court costs to the defendant's ability to pay those costs.

The **Juvenile Law Center** advocates for rights, dignity, equity and opportunity for youth in the child welfare and justice systems through litigation, appellate advocacy and submission of amicus briefs, policy reform, public education, training, consulting, and strategic communications. Founded in 1975, the Juvenile Law Center is the first non-profit public interest law firm for children in the country. The Juvenile Law Center strives to ensure that laws, policies, and practices affecting youth advance racial and economic equity and are rooted in research, consistent with children's unique developmental characteristics, and reflective of international human rights values.

The **Youth Sentencing & Reentry Project** ("YSRP") is a nonprofit organization based in Philadelphia that uses direct service and policy advocacy to transform the experiences of children prosecuted in the adult criminal justice system, and to ensure fair and thoughtful resentencing and reentry for individuals who were sentenced to life without parole as children ("juvenile lifers"). YSRP partners with court-involved youth and juvenile lifers, their families, and lawyers to develop holistic, humanizing narratives that mitigate the facts of each case; get

cases transferred to the juvenile system or resentenced; and make crucial connections to community resources providing education, healthcare, housing, and employment. YSRP also provides trainings on mitigation, and recruits, trains and supervises students and other volunteers to assist in this work. YSRP's ultimate goals are to keep children out of adult jails and prisons and to enhance the quality of representation juvenile lifers receive at resentencing, and as they prepare to reenter the community. YSRP is particularly interested in the issue of costs and fees imposed on people who come in contact with the justice system as this is an issue that it has addressed in Philadelphia.

The **Atlantic Center for Capital Representation** ("ACCR") is a non-profit death penalty and juvenile life without parole ("JLWOP") resource center serving Pennsylvania. ACCR works to ensure that indigent defendants facing the most severe punishments in the criminal justice system are provided a constitutionally sound defense. ACCR works to achieve this goal of a level playing field by providing case specific consultation and trainings to defense teams handling death penalty and JLWOP resentencings. Additionally, ACCR engages in advocacy, systemic litigation, policy reform, and strategic communications around issues of equal justice and fairness in the administration of the death penalty and juvenile life without parole.

The **Defender Association of Philadelphia** is a private, non-profit

corporation that represents a substantial percentage of the criminal defendants in Philadelphia County at trial and on appeal. The Association attempts to ensure a high standard of representation and to prevent abridgement of the constitutional and other legal rights of the citizens of Philadelphia and Pennsylvania. The Association has previously participated as amicus curiae in numerous cases before this Court, as well as before other courts.

The **Montgomery County Public Defender's Office** is responsible for the representation of indigent clients at all stages of criminal proceedings including trial and appeals. In accordance with the Office's stated goals of applying a holistic model to the defense of our clients, we seek to help clients not just with their criminal charges, but also with the collateral consequences of those charges. Court costs can create an extreme burden for indigent clients. As such, the Office has an interest in this matter, and all matters that impact the constitutionally protected rights of indigent criminal defendants.

The **York County Public Defender's Office** represents indigent criminal defendants at all stages of criminal proceedings. Our clients face not only potential incarceration, but also the onerous effects of fines, costs, and fees that tend to accompany criminal charges. These effects often last years after conviction, and undermine our clients' rehabilitative potential. The York County Public Defender's Office therefore has a substantial interest in this matter, as the law

concerning imposition and collection of fines, costs, and fees directly affects our clients.

Argument

In its December 26, 2018 memorandum opinion, this Court ruled that Mr. Davis was not liable for the costs associated with his resentencing because the relevant statute, 16 P.S. § 1403, applies only to the costs of trial and conviction, not *sentencing*. *Commonwealth v. Davis*, 76 MDA 2018, 2018 WL 6786849 at *3 (Pa. Super. Ct. Dec. 26, 2018). As the Court explained, the definition of “prosecution” is “synonymous with conviction,” and § 1403 “makes no mention of sentencing or sentencing costs.” *Id.* (citations and quotation marks omitted). Instead, the costs accrued pursuant to § 1403 “end[] with the conviction or acquittal of the defendant.” *Id.*

This ruling constitutes “a question of substance not previously determined by the Superior Court or the Supreme Court.” Pa.R.A.P. 3519(a). It is a matter of first impression. While the Court’s conclusion is unquestionably correct as a matter of statutory interpretation, its bright-line ruling that § 1403 does not apply to costs associated with sentencing has not been addressed by any other Pennsylvania appellate court. As a result, it should be published so that the issue need not be unnecessarily re-litigated in the future.

As the Court is aware, approximately one week after this Court released its

memorandum opinion, a different Superior Court panel issued a related published opinion in *Commonwealth v. Lehman*, 1556 MDA 2017, 2019 PA Super 2, 2019 WL 100374 (Pa. Super. Ct. Jan 4, 2019). *Lehman* reached the same basic outcome: a defendant who is resentenced due to an unconstitutional sentence cannot be billed for the costs of that resentencing. *Id.* But *Lehman* contains a substantially different statutory analysis of 16 P.S. § 4403,¹ focusing only on what constitutes a “necessary expense,” rather than which parts of a criminal proceeding fall under the costs of “prosecution.” *Lehman* simply does not address the substantive legal question answered by this Court’s memorandum opinion in *Davis*. Only this Court’s memorandum opinion in *Davis* offers a definitive ruling about which parts of a criminal proceeding are taxed under §§ 1403 and 4403.

In addition, this Court’s memorandum opinion also involves an “an issue of substantial public importance.” Pa.R.A.P. 3519(a). Pennsylvania has approximately 521 “juvenile lifers,” who like Mr. Davis, became eligible to be resentenced following the United States Supreme Court’s decisions in *Miller v. Alabama*, 567 U.S. 460 (2012) and *Montgomery v. Louisiana*, 136 S. Ct. 718 (2016). Since that time, approximately 168 of those individuals have been released, having served an average sentence of 31.5 years. Serving so many years in jail

¹ The difference between 16 P.S. §§ 1403 and 1443 is that § 1443 applies to counties of the second class, while § 1403 applies to counties that are not of the first or second class. Otherwise, they are substantially similar for the purposes of this Amicus Curiae brief.

causes many defendants to struggle to earn an income necessary to meet their basic life needs upon release. Defendants need to be able to focus on paying for rent, food, medical care, and transportation so that they can become self-sufficient without the need for public assistance. Forcing them to pay thousands of dollars in court debt due to resentencing only burdens their ability to reenter society.

This Court’s analysis of the scope of § 1403 goes beyond even this substantial body of defendants—it effects every defendant who will be sentenced in any misdemeanor or felony case. While each of those defendants may be responsible to pay certain *other* costs not addressed by the Court’s reasoning, no defendant is liable for the costs of sentencing under § 1403. This is a substantially important issue that will be put to rest if this Court publishes its opinion. Otherwise, defendants will have to continue to litigate this issue without citation to this Court’s accurate legal analysis.

Finally, there is also a bigger picture of downstream consequences implicated by the Court’s ruling. Saddled with unaffordable court costs, indigent Pennsylvanians are incarcerated, ineligible for probation or parole, denied access to Accelerated Rehabilitative Disposition, or kept on probation until they pay all of their court costs.² Many Pennsylvania trial courts struggle to balance their duty to

² “Ending Debtors’ Prisons in Pennsylvania: Current Issues in Bail and Legal Financial Obligations: A Practical Guide for Reform,” The Pennsylvania Interbranch Commission for Gender, Racial, and Ethnic Fairness (July 10, 2017), available at http://www.pa-interbranchcommission.com/commit_criminal-justice.php .

collect fines and costs with the reality that many people who appear before them are too poor to pay their own bills regularly, much less the money they owe on past criminal cases. As this Court has previously noted, “rather than waiting until the defendant is brought before the court for not paying a fine, it is far more rational to determine the defendant's ability to pay at the time the fine is imposed.”

Commonwealth v. Schwartz, 418 A.2d 637, 639-40 (Pa. Super. Ct. 1980). That same logic applies to court costs, and it makes far more sense to avoid downstream consequences by not overly burdening defendants with amounts that they cannot hope to pay.

Indeed, data from the Administrative Office of Pennsylvania Courts shows that only 62% of the total court costs assessed *in 2008* have been collected in the intervening decade.³ This squares with findings by the ACLU of Pennsylvania that in the past decade, for every extra \$100 in court costs assessed against a defendant represented by the public defender, \$47 goes unpaid because defendants simply lack the ability to pay.⁴ As a result, this Court’s memorandum opinion is important not only because it directly protects defendants from having to pay for

³ “Collection Rates Over Time,” Administrative Office of Pennsylvania Courts, available at <http://www.pacourts.us/news-and-statistics/research-and-statistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts> (select criminal cases from the drop-down menu).

⁴ See Colin Sharpe, et al., “Imposition and Collection of Court Costs in Pennsylvania Criminal Cases: Preliminary Results from an Analysis of 10 Years of Court Data,” ACLU of Pennsylvania, at 4 (Nov. 13, 2018), available at www.aclupa.org/finesandcosts/research.

resentencings that are no fault of their own, but also because it will help avoid unaffordable financial obligations that serve as a weight around defendants' necks for years and decades.

Conclusion

For the reasons explained above, Amicus Curiae respectfully request that this Court grant Mr. Davis's request for publication.

Respectfully Submitted,

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Dated: January 9, 2019

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the parties at the addresses and in the manner listed below:

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Date: January 9, 2019