

SUPREME COURT OF OHIO

State v. Smith

131 Ohio St. 3d 297, 2012-Ohio-781 (Ohio 2012) · No. 2011-0811 · Decided March 1, 2012

SUMMARY

The Ohio Supreme Court held that a sentencing court’s failure to notify an offender that community service may be imposed for failure to pay court costs under R.C. 2947.23(A)(1) is ripe for appellate review even before the offender fails to pay or community service is imposed. The court reversed the relevant portion of the court of appeals’ judgment and remanded for consideration of the defendant’s assignment of error.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Lundberg Stratton, J.; O'Connor, C.J.; Pfeifer, J.; O'Donnell, J.; Lanzinger, J.; Cupp, J.; McGee Brown, J.
JURISDICTION	Ohio
DECIDED	March 1, 2012
DOCKET	2011-0811
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Ohio accepted a certified conflict from the Twelfth District Court of Appeals concerning whether a sentencing court's failure to provide the community-service notification required by R.C. 2947.23(A)(1) presents a ripe issue for appellate review before the defendant fails to pay court costs or community service is imposed.
STANDARD OF REVIEW	The court reviewed the certified legal question de novo, applying principles of statutory interpretation and ripeness.
PRECEDENTIAL VALUE	Published, precedential opinion of the Supreme Court of Ohio
PARTIES	Timothy Smith v. The State of Ohio

TOPICS

- ripeness
- sentencing
- criminal procedure
- appellate procedure
- statutory interpretation

PRACTICE AREAS

Criminal law

Criminal procedure

Appellate procedure

Statutory interpretation

QUESTIONS PRESENTED

1. Whether a sentencing court's failure to notify an offender under R.C. 2947.23(A)(1) that community service may be imposed for failure to pay prosecution or court costs is ripe for appellate review before the offender fails to pay or community service is imposed.
2. Whether the time to appeal the failure to provide the notice required by R.C. 2947.23(A)(1) begins to run from the date of the sentencing entry.

HOLDINGS

1. A sentencing court's failure to inform an offender, as required by R.C. 2947.23(A)(1), that community service could be imposed if the offender fails to pay prosecution or court costs presents an issue ripe for review even when the offender has not failed to pay and the court has not ordered community service.
2. Because the required notification must be provided at sentencing, the time to appeal the failure to provide it begins to run from the date of the trial court's sentencing entry.

KEY QUOTATIONS

“Accordingly, we answer the certified question in the affirmative and hold that a sentencing court’s failure to inform an offender, as required by R.C. 2947.23(A)(1), that community service could be imposed if the offender fails to pay the costs of prosecution or court costs presents an issue ripe for review even though the record does not show that the offender has failed to pay such costs or that the trial court has ordered the offender to perform community service as a result of failure to pay.” (¶ 10)

“Judgment reversed in part, and cause remanded.” (¶ 11)

FACTUAL BACKGROUND

Timothy Smith pleaded guilty to forgery under R.C. 2913.31(A)(3), a fifth-degree felony. The trial court sentenced him to five years of community control, ordered him to pay court costs and the fee for appointed counsel, and imposed \$4,857 in restitution. At sentencing, the court did not notify Smith that it could require community service if he failed to pay court costs, and the record did not show that he had failed to pay or that community service had been ordered.

PROCEDURAL HISTORY

Smith pleaded guilty to fifth-degree-felony forgery and was sentenced to community control, payment of court costs and appointed-counsel fees, and restitution. The trial court failed to notify him that community service could be imposed for failure to pay court costs. The Twelfth District declined to reach that assignment of error as unripe, although it reversed and remanded on a separate issue concerning allegedly impermissible costs. The appellate court certified a conflict, and the Supreme Court of Ohio accepted the certified question.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The court of appeals was directed to consider Smith's second assignment of error concerning the trial court's failure to provide the R.C. 2947.23(A)(1) community-service notification, in accordance with the Supreme Court's opinion.

CASES CITED

- State v. Smith, 12th Dist. No. CA2010-06-057, 2011-Ohio-1188, 2011 WL 882182
- State v. Moss, 186 Ohio App. 3d 787, 2010-Ohio-1135, 930 N.E.2d 838 (4th Dist.)
- State v. Dansby, 5th Dist. No. 08 AP 06 0047, 2009-Ohio-2975
- State v. Cardamone, 8th Dist. No. 94405, 2011-Ohio-818, 2011 WL 676080
- State v. Lowe, 112 Ohio St. 3d 507, 2007-Ohio-606, 861 N.E.2d 512
- Ohio Civ. Rights Comm. v. Countrywide Home Loans, Inc., 99 Ohio St. 3d 522, 2003-Ohio-4358, 794 N.E.2d 56
- Dorrian v. Scioto Conservancy Dist., 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971)
- State v. Threatt, 108 Ohio St. 3d 277, 2006-Ohio-905, 843 N.E.2d 164