

IN THE SUPREME COURT OF PENNSYLVANIA

No. 27 EAP 2021

COMMONWEALTH OF PENNSYLVANIA,

Appellee,

v.

ALEXIS LOPEZ,

Appellant.

**BRIEF OF *AMICUS CURIAE* OF THE OFFICE OF THE
CONTROLLER OF ALLEGHENY COUNTY IN SUPPORT OF
APPELLANT ALEXIS LOPEZ**

On Appeal from the Reported Opinion of the Superior Court issued March 23, 2021, at Superior Court Docket Number 1313 EDA 2018, affirming the judgment of sentence imposed in the Court of Common Pleas of Philadelphia County Criminal Division at No. CP-51-CR-0004377-2015.

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STATEMENT OF INTEREST OF AMICUS CURIAE

The Office of the Controller of Allegheny County (the “Controller”) is an independent, elected row office within Allegheny County. The Controller is charged with carrying out the duties and obligations set forth in the Pennsylvania Second Class County Code, 16 Pa. C.S. § 601, *et seq.* These duties include conducting audits over government monies and functions and supervising the County’s fiscal affairs. Pursuant to 16 P.S. § 4901, the Controller has “general supervision and control of the fiscal affairs of the County and of the accounts and official acts of all officers or other officials who collect, receive, or distribute the public money of the County.”

Each year the Controller compiles and publishes the Comprehensive Annual Financial Report (“CAFR”), which is filed with the Court of Common Pleas. The CAFR contains a detailed financial accounting of the County’s revenues and expenditures during the prior fiscal year. In preparing the annual CAFR, the Controller audits the fiduciary funds of the Department of Court Records — the department charged with the responsibility of assessing, tracking and collecting outstanding fines and costs. Any uncollected fines and costs are recorded as outstanding accounts receivable. Finally, within the division of financial management systems, the Controller maintains the County’s accounting and fiscal management software and supports its own Enterprise Content Management (ECM)

systems, all of which are used in accounting for the fines and costs the County assesses and tries to collect.

Through these various functions, the Controller is keenly aware of the impact that the collection of criminal fines and court costs have — or do not have — on the County's fiscal health. And through those functions, the Controller also is acutely familiar with the burdens that these collection efforts place on indigent individuals, as well as on the County and its residents. This brief is intended to apprise this Court of the collateral effects that follow from sentencing decisions compelling indigent defendants to pay court costs.

SUMMARY OF ARGUMENT

Experience establishes that the majority of court costs imposed on indigent defendants in Allegheny County are never collected and do not contribute meaningfully to the County's revenue. Given the hardship that follows from the imposition of court costs and the wasted resources invested in trying to collect them, the Controller strongly believes that consideration of the defendant's ability to pay at the time of sentencing is a far more favorable legal construct for the individual, the County, and the County's residents.

Allegheny County, through its Controller's office, was one of the jurisdictions from across the country selected to participate in a reform initiative directed to rethink the imposition of fines and costs as part of the criminal justice process. That

participation followed from a grant proposal, where the County revealed, among other things, the amount of unpaid court debt dating back to the 1970s and the severe implications of non-payment.¹

From the Controller’s perspective, evaluations of indigence made at the time of sentencing will lead to better outcomes and greater efficiencies. In that circumstance, court cost awards will most likely be imposed only when the defendant has the ability to pay and indigent individuals will be far less likely to have an unpayable debt hanging over their heads — one that inevitably impedes efforts at rehabilitation and integration into society and creates unnecessary burdens for the County and its residents.

Any legal construct that can help prevent individuals from becoming needlessly enmeshed in the criminal justice system and likewise help avoid an unproductive drain on County resources is a preferred one, particularly from a fiscal oversight standpoint.

¹ This information became part of a report issued by, among others, the Fines and Fees Justice Center, an organization dedicated to rectify injustices caused by the imposition of fines and fees on low income individuals. The Center serves as a hub, working with impacted communities, researchers, advocates and legislators across the United States. Other partners in the report included the San Francisco Financial Justice Project, an organization dedicated to the elimination or reduction of fines and fees afflicting low income individuals, and PolicyLink, a national research and action institute advancing racial and economic equality. Cities & Counties for Fine and Fee Justice, “Messaging Guidance” (March 2021).

ARGUMENT

The Controller’s position here starts with Allegheny County’s first-hand experience. That experience reflects that when court costs are imposed on indigent defendants, the majority of those costs are not collected despite years of effort. As the Controller recently noted, the numbers are stark: Allegheny County has at least \$350 million in uncollected court debt, or \$340 per adult county resident.² Uncollectibility is true for Pennsylvania as well.

The Administrative Office of Pennsylvania Courts findings reflect as much as noted below:

Collection Rate of Court-Ordered Payments by Year:³

	2011	2012	2013	2014	2015
Total Court-Ordered Payments	\$399,302,906	\$430,579,191	\$445,034,747	\$449,362,621	\$425,987,224
Payments Made	\$189,101,438	\$194,562,259	\$195,526,636	\$190,747,071	\$179,616,738
Payments Owed	\$210,201,468	\$236,016,932	\$249,508,112	\$258,615,549	\$246,370,486
Payment Percentage	47.36%	45.19%	43.94%	42.45%	42.16%

² Analysis of the Collection of Court Costs, Fines, and Restitution Allegheny County Court of Common Pleas, Criminal Division and the Department of Court Records (Non-Audit Service), October 26, 2021.

³ *Collection Rates Over Time*, AOPC, <http://www.pacourts.us/news-and-statistics/researchandstatistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts> (this chart represents costs paid in Pennsylvania).

	2016	2017	2018	2019	2020
Total Court-Ordered Payments	\$420,320,846	\$412,811,098	\$395,635,458	\$392,718,570	\$265,079,027
Payments Made	\$178,760,680	\$163,711,033	\$151,555,682	\$125,304,687	\$76,254,940
Payments Owed	\$241,560,167	\$249,100,065	\$244,079,776	\$267,413,882	\$188,824,087
Payment Percentage	42.53%	39.66%	38.31%	31.91%	28.77%

While the above represents the statewide collection rate, Allegheny County's numbers are similar.

Collection Rate of Court-Ordered Payments in Allegheny County:⁴

**Allegheny County Court Records Criminal Division
2019 Accounts Receivables Summary for ALL Dockets
By Docket Type
(Includes Restitution)**

	Criminal	Juvenile	Miscellaneous	Summary Appeal	TOTAL
Total Due	\$540,493,537	\$1,649,146	\$ 13,499,624	\$12,752,730	\$568,395,037

⁴ Analysis of the Collection of Court Costs, Fines, and Restitution Allegheny County Court of Common Pleas, Criminal Division and the Department of Court Records (Non-Audit Service), October 26, 2021 (these charts represent the amount of unpaid costs in Allegheny County).

Paid to Date	(\$36,676,674)	(\$217,898)	(\$ 227,651)	(\$1,017,996)	(\$38,140,219)
Adjustment	(\$50,450,472)	(\$374,698)	(\$ 167,497)	(\$5,496,132)	(\$56,488,799)
Balance Due	\$453,366,391	\$1,056,550	\$ 13,104,476	\$ 6,238,602	\$473,766,019
	95.7%	0.2%	2.8%	1.3%	

**Allegheny County Court Records Criminal Division
2020 Accounts Receivables Summary for ALL Dockets
By Docket Type
(Includes Restitution)**

	Criminal	Juvenile	Miscellaneous	Summary Appeal	TOTAL
Total Due	\$546,504,208	\$1,681,544	\$14,345,027	\$12,727,481	\$575,258,260
Paid to Date	(\$38,899,827)	(\$217,921)	(\$249,929)	(\$1,054,071)	(\$40,421,748)
Adjustment	(\$51,345,867)	(\$377,644)	(\$171,502)	(\$5,264,649)	(\$57,159,662)
Balance Due	\$456,258,514	\$1,085,979	\$ 13,923,596	\$ 6,408,761	\$477,676,850
	95.5%	.2%	2.9%	1.4%	

The reason for this pervasive lack of collectability is no surprise. In Pennsylvania, indigent defendants lack the ability to pay in the first instance and their ability to pay does not improve over time.⁵ Indigent individuals who owe court cost awards frequently are unemployed, under-employed or on public assistance.

⁵ See Ward et al., *Imposition and Collection of Fines, Cost and Restitution in Pennsylvania Criminal Courts: Research in Brief*, ACLU PENNSYLVANIA (Dec. 2020); *Collection Rates Over Time*, AOPC, <http://www.pacourts.us/news-and-statistics/researchandstatistics/dashboard-table-of-contents/collection-rate-of-payments-ordered-by-common-pleas-courts>.

And for those indigent individuals further burdened with a criminal record that includes an unpaid cost award, the prospects for a change in these circumstances is the exception, not the rule. Employment difficulties routinely follow indigent defendants and the result is that court costs, after imposition, remain uncollectible.⁶

While uncollectibility is self-evident and well-documented, what is less apparent and not as well-documented are the direct burdens that fall on the County in administering the collection of court cost awards. What looks like a revenue source becomes, in practice, a revenue drain.

To begin with, there are the recordkeeping burdens associated with booking the cost awards and carrying them on the books for years on end. Then, there are the burdens placed on the staff in trying to collect the awards, including in many instances, by diverting law enforcement resources.

For example, when a party does not make costs or fine payments, the non-payment will result in a hearing being scheduled. This hearing requires a warrant to be issued and served on the proper parties. Once these resources are expended, there is no guarantee the party will attend the hearing. Even if the party appears, that typically does not change the calculus. An indigent individual cannot pay the cost

⁶ The County's experience reflects what commentators have documented. Sohol, *Charging the Poor: Criminal Justice Debt & Modern-Day Debtors' Prisons*, 75 MD. L. REV. 486, 517-18 (2016); Sandberg, *Ex-Offenders Face Big Debt Challenges After Prison*, Council of State Governments Justice Center, Repaying Debts 11 (2012); First District Criminal Courts Commonwealth of Pennsylvania, The Reform Initiative, Interim Report 38 (July 2011); Bannon, et al., *Criminal Justice Debt: A Barrier to Reentry*, BRENNAN CENTER FOR JUSTICE 1, 13 (2010); Pager, et al., *Sequencing Disadvantage: Barriers to Employment Facing Young Black and White Men with Criminal Records*, 623 Annals Am. Acad. 195, 199 (2009).

award. This pattern typically continues and the County receives no benefit, just an outlay of costs. And, this unproductive investment of resources comes at the expense of other services the County could provide.

Beyond that, the County experiences other collateral consequences that ripple into its criminal justice system and impact its residents. Indigent individuals who cannot clear their court debts not only face difficult job prospects but also reduced access to educational opportunities and housing. And, in the County's experience, these economic difficulties and reduced opportunities can lead to failures to meet essential obligations like rent payments, child support, electric and heating bills, or putting food on the table. Thus, for those County residents who experience the difficulties described, there are no positive economic impacts, there is increased reliance on public assistance, and greater County resource investment as opposed to revenue generation.

Experience also teaches the hard lesson that efforts to rehabilitate or integrate the indigent individuals are materially impeded when uncollected costs awards hang over their heads. With that, the likelihood of further involvement in the criminal justice system is enhanced. County expenditures also must be made in response and there is no perceptible benefit in the end. For example, in 2020, the County's operating budget was \$959.8 million, with court costs having no perceptible impact on that budget number. The County has \$50.5 million in

unassigned reserves and no program or service is in jeopardy over unpaid court costs. As for the public safety side, however, those expenses have continually increased, reaching \$183 million in 2020, approximately 15 percent of the County's property tax revenues. Of that \$183 million, \$86 million was spent exclusively on the County jail. As the numbers of detainees increases, this expenditure increases as well.

The reality is that Allegheny County does not need the revenue that ultimately might be collected from court costs and it can create other dedicated sources of revenue that are less costly and more reliable. Simply put, chasing money that is unlikely to be paid under any circumstance is neither efficient nor sound public policy.⁷

Finally, when the adverse consequences to the individuals and the community are factored in, there is no case to be made for imposing court costs on indigent defendants without regard for their ability to pay. It would help end the burdens that accompany a failed attempt to generate revenue and ameliorate the administrative and societal burdens that go with it. A legal construct that compels consideration of the ability to pay at the time of sentencing can better achieve the goals that the Controller would favor and seek to further.

⁷ See Mender, et al., *The Steep Costs of Criminal Justice Fees and Fines*, BRENNAN CENTER FOR JUSTICE, NYU Law School (2019).

CONCLUSION

The Controller strongly believes that the current system of imposing court costs and the associated wasted resources in attempting to collect them is not fiscally responsible, and therefore, the County should focus the efforts to collect from people who have already been determined to have the capacity to do so at the time of their sentencing. From the Controller's perspective, this will lead to a more favorable legal result for all parties involved, while preserving financial resources the County can put to good use elsewhere.

Date: November 3, 2021

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CERTIFICATE OF COMPLIANCE WITH WORD LIMIT

I certify pursuant to Pa. R.A.P. 531 and 2135 that this brief does not exceed 4,500 words.

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.

Dated: November 3, 2021

/s/ James C. Martin
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