**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

**TRIAL DIVISION—CRIMINAL**

**COMMONWEALTH OF PENNSYLVANIA :**

**:**

**:**

**v. : No. CP-51-CR-**

**:**

**:**

**JOHN DOE :**

**:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:**

**MOTION TO WAIVE COURT COSTS**

Pursuant to 42 Pa.C.S. §§ 9728(b.2) and Pa.R.Crim.P. 706(C), Defendant John Doe, through counsel, respectfully requests that this Court waive his outstanding court costs due to his indigence and inability to pay said costs. In support thereof, Mr. Doe avers as follows:

**Background**

1. Background on the defendant’s case, how much is owed, what if any has been paid, what the defendant’s financial status is and whether it is likely to change in the future. Be sure to talk about any public assistance that the defendant receives and whether he, for example, is unable to work due to disabilities.
2. If applicable, talk about the defendant’s eligibility and need for Clean Slate sealing. Be sure to note if defendant still owes fines or restitution, which the court cannot waive, and explain how the defendant will pay those off in order to qualify for Clean Slate. If the defendant also owes fines or restitution, consider whether friends or family are willing to pay *those* amounts but cannot help with the costs—just be careful not to suggest that the court should consider such persons’ finances when determining what the defendant can afford to pay.
3. If applicable, explain hardship that the defendant has suffered because of court’s collection efforts, including difficulty making past payment plans. Also note if defendant cannot qualify for public benefits because of outstanding court debt, or any other ongoing harm to the defendant because he owes these costs.

**This Court is permitted to waive Mr. Doe’s court costs.**

1. While court costs in Pennsylvania are ordinarily assessed automatically upon conviction, trial courts have the authority to reduce or waive them. *See Commonwealth v. Mulkin*, 228 A.3d 913 (Pa. Super. Ct. 2020) (“The trial court may also provide that a defendant shall not be liable for costs under Rule 706.”). As the Superior Court has explained, trial courts retain discretion to reduce or waive court costs at any time, whether that is at sentencing or at a later time, such as when a defendant has defaulted on payment and faces punishment. *See Commonwealth v. Lopez*, --A.3d--, 2021 PA Super 51, 2021 WL 1096376 at \*5 (Pa. Super. Ct. March 23, 2021) (en banc).
2. 42 Pa.C.S. § 9728(b.2) provides that defendants are “liable for costs, as provided in section 9721(c.1), unless the court determines otherwise pursuant to Pa.R.Crim.P. No. 706(C).” Rule 706(C), in turn, provides that “in determining the amount and method of payment of a fine or costs shall, insofar as is just and practicable, consider the burden upon the defendant by reason of the defendant’s financial means . . .” [[1]](#footnote-1) Rule 706(C), as explained by the Superior Court in *Mulkin* and *Lopez*, thus gives courts authority to tailor the total amount of costs based on the defendant’s financial resources.
3. The legislative history of § 9728(b.2) confirms that it was intended to allow the “sentencing court” to “retain all discretion to *modify or even waive costs* in an appropriate case.” Pennsylvania House of Representatives Judiciary Committee, SB 1169 Bill Analysis (Sept. 15, 2010) PN 2181 (emphasis added).

WHEREFORE, for the reasons stated above, Mr. Doe respectfully requests that this Court grant his motion and waive all outstanding court costs.

Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Signature block]

**VERIFICATION**

I verify that the statements made in the foregoing Motion are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY**

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

**TRIAL DIVISION—CRIMINAL**

**COMMONWEALTH OF PENNSYLVANIA :**

**:**

**:**

**v. : No. CP-51-CR-**

**:**

**:**

**JOHN DOE :**

**:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_:**

**ORDER WAIVING COSTS**

Upon consideration of the Defendant’s Motion in the above-captioned case, and upon consideration of the record, it is on this \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2019 ORDERED that:

1. All outstanding court costs in this matter are WAIVED, and the Clerk of Courts is hereby ORDERED to adjust the accounting in the case accordingly.

BY THE COURT:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Judge, Court of Common Pleas

**CERTIFICATE OF SERVICE**

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

**Via USPS:**

District Attorney

**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.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. The phrase “in determining the amount and method of payment of a” fine or cost is a term of art that refers to determining the *total amount* that the defendant owes. The same language is in 42 Pa.C.S. § 9726(d) (addressing fines), and case law is clear that it refers to the total amount that is owed, not the payment plan requiring specific monthly installments. *See*, *e.g.*, *Commonwealth v. Croll*, 480 A.2d 266, 275-76 (Pa. Super. Ct. 1984) (§ 9726(c) and (d) require that a court consider the defendant’s ability to pay the entire fine). By contrast, Rule 706(B) governs payment plans. [↑](#footnote-ref-1)