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

**FIRST JUDICIAL DISTRICT OF PENNSYLVANIA**

**TRIAL DIVISION—CRIMINAL**

**COMMONWEALTH OF PENNSYLVANIA :**

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**:**

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

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**:**

**JOHN DOE :**

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**POST-SENTENCE MOTION TO IMPOSE AN AFFORDABLE FINE**

Defendant John Doe, through counsel, hereby moves this Honorable Court to impose an affordable fine pursuant to 42 Pa.C.S. § 9726(c) and (d), and as grounds thereof avers as follows:

1. **Background**
2. [Background on case and details of sentence]
3. [Background on defendant’s financial situation]

**This Court cannot impose a discretionary fine without considering Mr. Doe’s ability to pay that fine.**

Pennsylvania law requires that this Court consider Mr. Doe’s ability to pay a fine prior to imposing one, and it prohibits the Court from imposing a fine that Mr. Doe is or will be unable to pay. 42 Pa.C.S. § 9730 provides:

(c) Exception.--The court shall not sentence a defendant to pay a fine unless it appears of record that:

(1) the defendant is or will be able to pay the fine; and

(2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.

(d) Financial resources.--In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

This statute has two key requirements: subsection (c) prohibits imposing *any* fine on a defendant who cannot afford one, and subsection (d) limits the dollar amount of a fine to what the record shows that the defendant can afford. The Pennsylvania Supreme Court has explained that this statute puts an obligation on the sentencing court to determine on the record whether the defendant will be able to pay a fine: “Subsection 9726(c) does not put the burden on defendants to inform the court that they might have trouble paying a fine. Instead, it instructs sentencing courts not to impose a fine absent record evidence of the defendant’s ability to pay.” *Commonwealth v. Ford*, 217 A.3d 824, 829 (Pa. 2019). *See also Commonwealth v. Fusco*, 594 A.2d 373, 375 (Pa. Super. Ct. 1991) (vacating a fine and remanding where the trial court failed to make a record of the defendant’s ability to pay before imposing a fine). As in the *Ford* case, this obligation applies even if a defendant pleads guilty and agrees to pay a specific fine. *Ford*, 217 A.3d at 829. This Court must then make findings on the record about what fine, if any, Mr. Doe can afford. *See*, *e.g.*, *Commonwealth v. Allshouse*, 924 A.2d 1215, 1228 (Pa. Super. Ct. 2007) (“[A] trial court must enter specific findings that would allow it to determine whether a defendant could pay a specific amount in fines.”).

The Superior Court has repeatedly ruled that the record must include evidence showing that the defendant is or will be able to afford to pay a fine. For example, it has ruled a $25 fine illegal when “there was no evidence presented in the trial court of [the defendant’s] present or future ability to pay the $25 fine” even though “the court fulfilled its duty to inquire,” because the evidence that inquiry produced simply did not show any ability to pay. *Commonwealth v. Strunk*, 1072 EDA 2020, 2021 WL 1986580 at \*2 and n.9 (Pa. Super. Ct. May 18, 2021). *Commonwealth v. Beatty*, 1328 MDA 2021, 2022 WL 3582460 at \*5 (Pa. Super. Ct. Aug. 22, 2022) (unpublished) (invalidating a fine where “the evidence the resentencing court identified does not support a finding that Beatty has the present or future ability to pay the fine the court imposed”).

**This Court should not impose a fine on Mr. Doe due to his indigence.**

1. As described above—and as will be presented at a hearing on this Motion—Mr. Doe is indigent and will remain unable to pay after serving his sentence. Mr. Doe [facts about receiving SSI, has not been able to afford to live on his own, etc; recite some of the key facts to show that even before this case he couldn’t afford to live on his own.] Moreover, Mr. Doe received food stamps and Medicaid, and he currently receives the services of the public defender, facts that “invite the presumption of indigence.” *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999). No facts rebut this presumption—and indeed the facts show that Mr. Doe is and will be unable to afford to pay a fine. *Commonwealth v. Gaskin*, 472 A.2d 1154, 1157–58 (Pa. Super. Ct. 1984) (finding no evidence of a defendant’s ability to pay a fine where defendant has no “financial assets [or] liabilities” and has been “living from hand to mouth”); *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc) (dispositive question is whether a person “is in poverty. If they are in poverty, it follows that they are unable to pay the costs, and their petition should be granted.”); *Schoepple v. Schoepple*, 361 A.2d 665, 667 (Pa. Super Ct. 1976) (en banc) (“[O]ne in poverty will not be able to pay costs.”).[[1]](#footnote-1)

The risk of imposing a fine on Mr. Doe is that he will be unable to afford to pay it. As the Superior Court has explained, determining “defendant's ability to pay a fine will result in far more rational sentencing” as it will save this Court from having to hold a contempt hearing down the road when he is unable to pay the fine. *Commonwealth v. Schwartz*, 418 A.2d 637, 639 (Pa. Super. Ct. 1980). “Thus, 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.” *Id*. at 639-40. In light of his indigence and inability to pay any fine, this Court should not impose a fine on Mr. Doe.

WHEREFORE, Defendant Doe requests that this Court not impose a fine in this matter due to his indigence.

[SIGNATURE BLOCK]

1. While *Gerlitzki* and *Schoepple* are *in forma pauperis* case, the Superior Court has instructed that trial courts should look to the “established processes for assessing indigency” through the in forma pauperis (“IFP”) standards when determining whether certain costs should be waived in criminal cases. *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008) (using the IFP standards and the appointment of counsel standards to determine whether to waive the cost of an expert in a criminal case, although the defendant failed to provide evidence of indigency)*; see also Commonwealth v. Mead*, 446 A.2d 971, 974 (Pa. Super. Ct. 1982) (reviewing IFP application and petition for appointment of counsel to help determine financial status when setting a fine). This is because of the “dearth of case law” in criminal cases, compared with the “well-established principles governing indigency in civil cases.” *Commonwealth v. Lepre*, 18 A.3d 1225, 1226 (Pa. Super. Ct. 2011) (applying IFP standards to waive appeal costs). These same principles should be used to determine whether a defendant is able to pay a fine under § 9726, as indigence is indigence. [↑](#footnote-ref-1)