**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-**

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 **:**

**JOHN DOE :**

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

**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:

1. **Background**
2. 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.
3. 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.
4. 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.
5. **This Court must consider whether to reduce or waive Mr. Doe’s court costs in light of his inability to pay.**
6. 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.”). This authority comes from Rule 706(C), which provides that a court “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 . . .” Pa.R.Crim.P. 706(C) (emphasis added). The legislature has further provided 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).” 42 Pa.C.S. § 9728(b.2).
7. Interpreting these provisions, the Supreme Court of Pennsylvania has explained that although courts are not required to consider a defendant’s ability to pay costs at *sentencing*, Rule 706(C) nevertheless imposes a “duty” to determine the “amount” of costs “post-sentence upon the defendant's default and a finding of his inability to pay.” *Commonwealth v. Lopez*, --A.3d--, 2022 WL 3363051 at \*9 (Pa. 2022). It is upon default that the Court must consider the defendant’s financial resources and consider whether to “modif[y] or waive[]” those costs accordingly. *Id*. at \*7.
8. In the *Lopez* decision, the Court differentiated between Rule 706(B), governing payment plans, and 706(C). While “Section (B) concerns payments in installments . . . Section (C) pertains to the amount and method of payment.” 2022 WL 3363051 at \*5. Rule 706(C) has nothing to do with installment payments and instead provides “for the post-sentence modification or waiver of costs upon a proper showing of insufficient financial means.” 2022 WL 3363051 at \*7. Thus, this Court is not limited to placing Mr. Doe on a payment plan, but instead has the “duty” to consider whether the total amount is unaffordable and must be modified in light of his financial circumstances.
9. The triggering event under *Lopez* is default, as the Court held that “Rule 706 does not apply unless and until there has been a default in the payment of fines or costs. We do not hold that the threat of incarceration is the triggering event for applying Sections 9721(c.1) or 9728(b.2).” *Lopez*, 2022 WL 3363051 at \*13. Mr. Doe has defaulted on payment of court costs because of his inability to pay, and in accordance with the Supreme Court’s instructions, the Court therefore must consider whether to reduce or waive Mr. Doe’s court costs in light of his inability to pay.
10. Finally, although it was mandatory that certain costs be imposed, no costs are mandatory when a defendant cannot afford to pay them. The Supreme Court and Superior Court have both made that point, with the Supreme Court explaining in *Lopez* that although only “mandatory court costs” were imposed on that defendant, Rule 706(C) and Section 9278 allow a “post-sentence determination of the amount and method of payment” of costs—including “modification or waiver of costs upon a proper showing of insufficient financial means.” *Lopez*, 2022 WL 3363051 at \*5, 7. In other words, the only costs at issue in *Lopez* were mandatory, and the Court made clear that a court can “modif[y] or waive[]” those mandatory costs. *Id*. at \*7.
11. **Due to his poverty, Mr. Doe** **lacks the ability to pay court costs.**
12. Whether a defendant can afford to pay court costs is defined by whether that person is able to afford to meet his basic life needs. *See Stein Enterprises, Inc. v. Golla*, 426 A.2d 1129, 1132 (Pa. 1981) (“[I]f the individual can afford to pay court costs only by sacrificing some of the items and services which are necessary for his day-to-day existence, he may not be forced to prepay costs in order to gain access to the courts, despite the fact that he may have some ‘excess’ income or unencumbered assets.”).[[1]](#footnote-1) Individuals like Mr. Doe, who are indigent and impoverished, are by definition unable to pay: if they are “in poverty, it follows that they are unable to pay the costs, and their petition should be granted.” *Gerlitzki v. Feldser*, 307 A.2d 307, 308 (Pa. Super. Ct. 1973) (en banc). In other words, an indigent individual is—as a matter of law—*unable* to pay. *See 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.”).
13. Those *in forma pauperis* indigence standards dovetail with standards the Superior Court has set forth in criminal cases. As that court has explained, the Constitution requires that there be a “duty of paying costs ‘only against those who actually become able to meet it without hardship.’” *Commonwealth v. Hernandez*, 917 A.2d 332, 337 (Pa. Super. Ct. 2007) (quoting *Fuller v. Oregon*, 417 U.S. 40, 54 (1974)). In making this ruling, the *Hernandez* court cited with approval *Alexander v. Johnson*, 742 F.2d 117, 124 (4th Cir. 1984), which held that a court must consider “the other demands on [the defendant’s] own and family’s finances, and the hardships he or his family will endure if repayment is required. The purpose of this inquiry is to assure repayment is not required as long as he remains indigent.”
14. When considering whether a defendant is able to pay, this Court can consider only the defendant’s finances, not those of friends or family, as the obligation to pay is the defendant’s alone. *See Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. Ct. June 21, 2018) (“Although Appellant indicated that he could potentially borrow money from a sibling, the court failed to find—as our law requires—that he alone had the financial ability to pay the outstanding fines and costs such that imprisonment was warranted.”).
15. Given Mr. Doe’s lack of financial resources, he cannot afford to pay without significant hardship. *See Commonwealth v. Gaskin*, 472 A.2d 1154, 1157-58 (Pa. Super. Ct. 1984) (when a defendant has no “financial assets [or] liabilities” and has been “living from hand to mouth,” a court imposing a fine lacks any evidence supporting a finding of ability to pay the fine); *Commonwealth v. Eggers*, 742 A.2d 174, 176 n.1 (Pa. Super. Ct. 1999) (receiving public assistance (such as food stamps or Medicaid) and the service of the public defender “invite the presumption of indigence” since these are clear indicia that the defendant cannot afford to pay). [brief summary of financial hardship] He therefore has no ability to pay the costs in this matter.

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**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.

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1. These standards come from the civil *in forma pauperis* case law, which the Superior Court has repeatedly incorporated into the criminal case law as the “established processes for assessing indigency,” *Commonwealth v. Cannon*, 954 A.2d 1222, 1226 (Pa. Super. Ct. 2008), 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).

Pennsylvania courts use “poverty” and “indigent” interchangeably, and there is no legal distinction between the two terms. *See*, *e.g.*, *Commonwealth v. Hernandez*, 917 A.2d 332 (Pa. Super. Ct. 2007); *Crosby Square Apartments v. Henson*, 666 A.2d 737 (Pa. Super. Ct. 1995); *Commonwealth v. Regan*, 359 A.2d 403 (Pa. Super. Ct. 1976). Accordingly, cases that set forth standards for determining whether an individual is in poverty are equally applicable to the inquiry under Rule 706 of whether a defendant is indigent. [↑](#footnote-ref-1)