DA 20-0119

IN THE SUPREME COURT OF THE STATE OF MONTANA

2021 MT 321

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN LEO STEGER,

Defendant and Appellant.

APPEAL FROM: District Court of the Fourth Judicial District,
In and For the County of Mineral, Cause No. DC 2018-24
Honorable Leslie Halligan, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Moses Okeyo, Assistant Appellate Defender, Helena, Montana

For Appellee:

Austin Knudsen, Montana Attorney General, Michael P. Dougherty, Assistant Attorney General, Helena, Montana

Ellen Donohue, Mineral County Attorney, Superior, Montana

Submitted on Briefs: October 20, 2021

Decided: December 21, 2021

Filed:

Clerk

Chief Justice Mike McGrath delivered the Opinion of the Court.

¶1 John Steger appeals a November 18, 2019 judgment and sentence from the Fourth Judicial District Court in Mineral County. A Mineral County jury found Steger guilty of felony driving under the influence (DUI). Steger appeals one of the financial penalties the District Court imposed at sentencing.

¶2 We restate the issue on appeal as follows:

Did Steger sufficiently object regarding his inability to pay the statutory surcharge?

¶3 We reverse with instructions to strike that surcharge or to conduct the required inquiry into Steger's ability to pay it.

FACTUAL AND PROCEDURAL BACKGROUND

¶4 At Steger's sentencing hearing, the District Court commented to the parties that it would impose "all of the financial obligations" listed in Steger's presentence investigation report (PSI). A PSI is a document prepared by a probationary officer to collect information on a defendant and recommend conditions for sentencing. One of the obligations listed in Steger's PSI was fees for the costs of public defenders, and the District Court began a conversation with Steger about whether he would likely be able to afford those costs:

> THE COURT: [A]re you able-bodied and able to work?
>
> [STEGER]: No; I'm disabled. But I—yeah.
>
> [STEGER'S COUNSEL]: So he worked a long time at the mill in various, different jobs. He's on SSI now. He's got a bad leg. I don't know if you noticed.
>
> [STEGER]: On my left side.

> [STEGER'S COUNSEL]: So I think he will have problems paying that when we factor in the $4,600 fine he's got to deal with.
>
> THE COURT: Right. Given your disability status, I will waive the $800 public defender fee.

¶5 The District Court moved on to discuss Steger's custody and then concluded the hearing. In its judgment, the District Court ordered Steger to pay a $5000 mandatory fine for a felony DUI (with credit for $400 for pretrial incarceration). The District Court also ordered Steger to pay $660 in fees and other costs: a $500 surcharge,[1] a $50 witness fee,[2] a $100 prosecution fee,[3] and a $10 court technology fee.[4]

¶6 Steger appeals on the grounds that the District Court should have waived the $500 surcharge for the same inability-to-pay reasons that it waived the public defender fee.

STANDARD OF REVIEW

¶7 This Court reviews sentencing conditions, fines, and fees "first for legality, then for abuse of discretion as to the condition's reasonableness under the facts of the case." *State v. Ingram*, 2020 MT 327, ¶ 8, 402 Mont. 374, 478 P.3d 799 (citing *State v. Daricek*, 2018 MT 31, ¶ 7, 390 Mont. 273, 412 P.3d 1044). We determine legality by considering only "whether the sentence falls within the statutory parameters, whether the district court had statutory authority to impose the sentence, and whether the district court followed the

[1] Under § 46-18-236(1)(b), MCA.

[2] Under § 46-18-236(1)(c), MCA.

[3] Under § 46-18-232(1), MCA.

[4] Under § 3-1-317, MCA.

affirmative mandates of the applicable sentencing statutes." *Ingram*, ¶ 8 (citing *State v. Himes*, 2015 MT 91, ¶ 22, 378 Mont. 419, 345 P.3d 297).

DISCUSSION

¶8 *Did Steger sufficiently object regarding his inability to pay the statutory surcharge?*

¶9 Steger's felony DUI conviction comes with mandatory fines under § 61-8-731(1), MCA. The District Court imposed on Steger the statutory minimum $5000 fine (with $400 credited for his days in custody). Other laws require various costs for administrative purposes. Steger's $500 surcharge, for example, is from a provision requiring courts to impose "the greater of $20 or 10% of the fine levied for each felony charge." Section 46-18-236(1)(b), MCA.

¶10 Importantly, the statute requiring the surcharge also requires courts to waive the surcharge if a defendant is unable to pay it. Section 46-18-236(2), MCA. This provision refers convicting courts to § 46-18-232, MCA, which states in part as follows:

> The court may not sentence a defendant to pay costs unless the defendant is or will be able to pay them. In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant, the future ability of the defendant to pay costs, and the nature of the burden that payment of costs will impose.

¶11 We have interpreted this language to require of district courts a "serious inquiry or separate determination" about a defendant's ability to pay the costs. *State v. McLeod*, 2002 MT 348, ¶ 34, 313 Mont. 358, 61 P.3d 126; *Ingram*, ¶ 16. However, we also treat a failure to inquire into affordability as something that creates an "objectionable sentence, not an illegal sentence." *State v. Kotwicki*, 2007 MT 17, ¶ 21, 335 Mont. 344, 151 P.3d 892.

Thus, we cannot reverse the District Court's imposition of the surcharge unless Steger actually objected to it on these grounds.

¶12 The State argues that the colloquy between Steger's attorney and the District Court, quoted above, was too nonspecific to count as an objection to the surcharge. According to the State, Steger should have objected to this cost in particular, and the focus on Steger's disability and the public defender fees rendered the exchange insufficient as an objection regarding the surcharge.

¶13 We disagree. We view the attorney's objection as sufficient to invoke the protection of § 46-18-232, MCA. An objection is sufficient if it "specifies the reason for disagreement," and here, Steger articulated the reason he objected to the costs. *Pumphrey v. Empire Lath & Plaster*, 2006 MT 99, ¶ 30, 332 Mont. 116, 135 P.3d 797. Steger may not have cited each specific cost and statute when explaining his affordability problem, but we can interpret objections in this context similarly to under evidentiary rules, where an objection can be sufficient if the "specific ground is apparent from the context." *State v. Yeaton*, 2021 MT 312, ¶ 16, 406 Mont. 465, ___ P.3d ___ (citing *State v. Castle*, 1999 MT 141, ¶ 11, 295 Mont. 1, 982 P.2d 1035). Recently, for example, we discerned a sufficient objection to costs when the attorney raised general affordability concerns at sentencing, stating that "one of the things that [the defendant] struggles with is obviously paying for things . . . so, obviously, all of the fines and fees I am asking to be waived . . . he gets social security and he cannot afford those." *Yeaton*, ¶ 16; *see also State v. Reynolds*, 2017 MT 317, ¶¶ 12, 29, 390 Mont. 58, 408 P.3d 503 (noting that after counsel "made it

clear" fees would cause financial hardship, the District Court conducted the scrupulous adjustment of costs required).

¶14 Here, Steger's attorney's objection was similar, and we view it as sufficient to notify the District Court that the required ability-to-pay inquiry was at play. Steger's attorney said, regarding the first fee, "I think he will have problems paying that," and the attorney and Steger raised for the District Court Steger's disability and likely inability to work. The District Court clearly recognized the affordability issue when it waived the public defender fee, and the District Court should also have known that other costs, like the $500 surcharge, are subject to the same statutory limitations. Nonetheless, the District Court imposed those costs against a contrary indication upon questioning. *See State v. Madplume*, 2017 MT 40, ¶ 40, 386 Mont. 368, 390 P.3d 142 (requiring "particularized, nonspeculative facts" in the record to justify costs as affordable, or else a record upon questioning that demonstrates affordability). A variety of statutory provisions govern a variety of fees and costs that courts may impose on defendants at sentencing, and there is no need to require that defendants repeat their objections to reference each particular provision and each individual potentially unaffordable cost. A general objection regarding a defendant's inability to pay invokes a defendant's rights under statutes like § 46-18-232, MCA, where applicable, and raises for the District Court the inquiry required.

CONCLUSION

¶15 We reverse in part the District Court's November 18, 2019 judgment, and we remand with instructions to strike the $500 surcharge or otherwise to conduct the ability-to-pay inquiry required by § 48-18-232, MCA.

/S/ MIKE McGRATH

We Concur:

/S/ JAMES JEREMIAH SHEA
/S/ LAURIE McKINNON
/S/ INGRID GUSTAFSON
/S/ DIRK M. SANDEFUR
/S/ JIM RICE

Justice Beth Baker, dissenting.

¶16 I would affirm Steger's sentence because he did not preserve his objection to the $500 surcharge.

¶17 The District Court opened Steger's sentencing hearing by asking if the parties had received and reviewed the presentence investigation report. Steger and his counsel both said they had, and defense counsel advised the court they had no additions or corrections. Steger confirmed that he had a chance to go over the proposed conditions of supervision the report listed and understood all of them. The court then asked defense counsel, "are there objections to any of them?" Counsel replied, "There are not." Counsel for both parties gave the court their sentencing recommendations; defense counsel said nothing about any of the conditions or financial obligations in the presentence investigation report. Steger answered, "No, sir," when the court asked if had anything to say. The District Court pronounced its sentence and said it was imposing the enumerated conditions, including "all of the financial obligations listed in the report," along with the mandatory $5,000 fine, and would give him credit toward the fine for four days' time served. Then the court inquired

specifically about the public defender fee, which—as the Court notes—counsel said Steger would "have problems paying." The court agreed to waive that fee, explained its reason for the sentence, and asked Steger, "do you agree with what I've done here today?" Steger responded, "Yes, I do, sir."

¶18 In my view, neither *Yeaton* nor *Reynolds* supports the Court's ruling here, because in both cases defense counsel plainly objected to all fines, fees, and court costs. *See Reynolds*, ¶ 9; *Yeaton*, ¶ 16. In contrast, we refused last year in *Ingram* to consider the defendant's argument that imposition of a $100 fine was "illegal because the District Court failed to appraise his financial resources" when Ingram had not objected at sentencing. *Ingram*, ¶¶ 16-18. We did consider Ingram's challenge to the $500 surcharge—the same surcharge Steger challenges here—because "[t]his error was properly objected to during the sentencing hearing and the issue has been conceded by the State." *Ingram*, ¶ 20. We did not conclude that counsel's objection to the $500 surcharge automatically preserved an objection to every other financial condition of the sentence. And in *Yeaton*, we declined to consider for the first time on appeal the defendant's argument that the fine the sentencing court assessed was discretionary and not mandatory, as the district court had assumed, when defense counsel had agreed at sentencing that the fine was mandatory. *Yeaton*, ¶ 15 n.6. I am unable to distinguish these recent decisions.

¶19 It imposes no great or onerous burden on defense counsel at sentencing to say, "The defendant is not and will not be able to pay fines, fees, and costs, and I object to all financial conditions that the court has discretion to impose." This would draw the sentencing court's attention to the particulars and ensure the requisite inquiry where appropriate. It would not

require counsel to "cite[] each specific cost and statute," Opinion, ¶ 13, and we have never held that. But we have held consistently that the defendant must object to financial conditions of a sentence.

¶20 Because Steger did not do that and his sentence "does not fall outside statutory parameters," I would affirm. *See Kotwicki*, ¶ 21.

/S/ BETH BAKER