

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

FOR PUBLICATION
May 28, 2013

v

FREDERICK LAWRENCE CUNNINGHAM,

Defendant-Appellant.

No. 309277
Allegan Circuit Court
LC No. 11-017200-FH

Advance Sheets Version

Before: FITZGERALD, P.J., and O’CONNELL and SHAPIRO, JJ.

SHAPIRO, J. (*dissenting*).

The majority follows *People v Sanders*, 296 Mich App 710; 825 NW2d 87 (2012). I would instead follow *People v Dilworth*, 291 Mich App 399; 804 NW2d 788 (2011), a case that had previously decided this question, but which *Sanders* failed to follow.

In *People v Dilworth*, our Court considered whether “overhead” charges, i.e., the costs of operating a court system regardless of the filing of the single case at issue, could be assessed as court costs incurred in prosecuting the defendant. We held that such an assessment was improper:

When authorized, the costs of prosecution imposed “must bear some reasonable relation to the expenses actually incurred in the prosecution.” *People v Wallace*, 245 Mich 310, 314; 222 NW 698 (1929). Furthermore, *these costs may not include “expenditures in connection with the maintenance and functioning of governmental agencies that must be borne by the public, irrespective of specific violations of the law.”* *People v Teasdale*, 335 Mich 1, 6; 55 NW2d 149 (1952). (some emphasis added). [*Dilworth*, 291 Mich App at 401].

Dilworth went on to distinguish between “appropriate charges, such as expert witness fees” which are incurred on a case-by-case basis as opposed to “impermissible charges, such as . . . wages, which were set by a board of supervisors pursuant to a statute and independent of any particular defendant’s case”

In *Sanders*, this Court addressed the same question under MCL 769.1k, which allows, but does not require, a sentencing court to assess “[a]ny cost in addition to the minimum state cost” of \$68.00 if the defendant is convicted of a felony. Directly contrary to *Dilworth*, *Sanders* held

that “overhead” costs may be imposed as long as they bear a “reasonable relationship between the costs imposed and the actual costs incurred by the trial court.” *Sanders*, 296 Mich App at 714. The *Sanders* Court remanded the case to the trial court, which calculated the overall expenses incurred by the county in operating the circuit court, reduced it by the percentage of civil cases, and then assessed an amount equivalent to the remaining overall expenses divided by the number of criminal dispositions annually. The trial court assessed costs against the defendant on the basis of funds allocated by the county for building use, maintenance and insurance, salaries and fringe benefits of court employees, phones, copying, mailing, and the courthouse gym. After remand, the *Sanders* panel approved this approach. *People v Sanders (After Remand)*, 298 Mich App 105; 825 NW2d 376 (2012).

Sanders essentially ignored the holding in *Dilworth* by which it was bound. Both cases allowed for the assessment of the costs of prosecuting a convicted criminal defendant. *Dilworth* held that such costs are limited to those specifically incurred because of the individual case, not a “share” of the overall cost of having courts and prosecutors. *Sanders* concluded that costs of the court may include the general costs of maintaining the judicial branch of government.

The *Sanders* panel also rejected a holding of the Michigan Supreme Court. It concluded that it need not follow *Teasdale*, 335 Mich at 6, which held that an assessment of costs against a convicted defendant “excludes expenditures in connection with the maintenance and functioning of governmental agencies that must be borne by the public irrespective of specific violations of the law.”¹ *Sanders* sidestepped *Teasdale* in two ways. First, *Sanders* noted that *Teasdale* could be ignored because it was decided “decades” ago although there has been no intervening decision overruling or even criticizing *Teasdale*. Second, *Sanders* suggested that *Teasdale* rested its conclusion on statutory language that barred an assessment of such maintenance costs. This assertion is simply not true. The statute considered in *Teasdale* did not contain any language excluding maintenance or overhead costs. In fact, the language of the statute applicable in *Teasdale* was extraordinarily broad, providing that in imposing costs, the court

shall not be confined to or governed by the laws or rules governing the taxation of costs in ordinary criminal procedure, but may summarily tax and determine such costs without regard to the items ordinarily included in taxing costs in criminal cases and may include therein *all such expenses, direct and indirect*, as the public has been or may be put to in connection with the apprehension, examination, trial and probationary oversight [1931 PA 308, § 17373(3); 1948 CL 771.3(3) (emphasis added)].

Thus, *Teasdale*’s bar against costs for the overall operation of the courts was set out in the context of a statute that was far more consistent with such assessments than were the later amendments, which now control and which were likely a codification of the *Teasdale* holding.

¹ The *Sanders* panel also failed to address other cases predating *Dilworth*, but consistent with it. See, e.g., *People v Newton*, 257 Mich App 61, 68-69; 665 NW2d 504 (2003); *People v Crigler*, 244 Mich App 420, 427; 625 NW2d 424 (2001); *People of Ypsilanti v Kircher*, 429 Mich 876 (1987).

Convicted felons have committed crimes and we punish them for doing so. They may be fined, incarcerated, or placed under other forms of supervision and restrictions upon their conduct. However, they remain citizens of our state. Whatever their conduct, they do not constitute a special class upon whom the courts may assess higher taxes or fees to pay for the expense necessary to maintain the constitutionally required operations of government. As held in *Dilworth* and *Teasdale*, if a particular case requires a court to incur specific costs, then those costs may be assessed. However, the costs of operating the government itself is borne by all Michigan residents not merely or particularly by those that run afoul of the law.

/s/ Douglas B. Shapiro