SUMMARY
March 18, 2025

2025COA33

No. 24CA0675, *People v. Cichuniec* — Criminal Law — Sentencing — Judgment of Costs and Fines — Costs of Prosecution; Appeals — Final Appealable Order; Criminal Procedure — Sentence and Judgment

A division of the court of appeals holds, for the first time in a published order, that an order resolving a request for costs of prosecution is a separate appealable order and does not delay finality of the criminal conviction. Therefore, the trial court retains jurisdiction to rule on a costs request, even if an appeal is pending.

COLORADO COURT OF APPEALS **2025COA33**

Court of Appeals No. 24CA0675
Adams County District Court No. 21CR2806
Honorable Mark D. Warner, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Peter Cichuniec,

Defendant-Appellant.

MOTION DENIED

Division A
Order by JUDGE TOW
Dunn and Welling, JJ., concur

Announced March 18, 2025

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¶ 1 The People have moved for a limited remand to enable the district court to address costs of prosecution under section 18-1.3-701, C.R.S. 2024 (the costs statute). As explained more fully below, the motion is denied as unnecessary because the filing of a valid direct criminal appeal does not divest the district court of jurisdiction to assess costs against a defendant. Nor must this court await disposition on the motion for costs of prosecution before we acquire jurisdiction over the direct appeal.

I. Factual Background

¶ 2 On December 22, 2023, a jury convicted defendant, Peter Cichuniec, of criminally negligent homicide and second degree assault. Before Cichuniec's sentencing hearing, the People filed a motion for costs of prosecution under the costs statute.[1] On March 1, 2024, when the district court issued its mittimus reflecting Cichuniec's convictions and sentences, the court assessed some statutory court costs against Cichuniec. But the court did not rule

[1] The costs statute reads, in relevant part, that when a defendant is convicted of a criminal offense, "the court shall give judgment in favor of the state of Colorado, the appropriate prosecuting attorney, or the appropriate law enforcement agency and against the offender for the amount of the costs of prosecution, the amount of the cost of care, and any fine imposed." § 18-1.3-701, C.R.S. 2024.

on the People's motion for costs of prosecution, which sought an award of more than fifty thousand dollars. Instead, the court granted Cichuniec time to respond to the People's motion.

¶ 3 Cichuniec objected to the People's motion. Before the court ruled, however, Cichuniec filed the notice of appeal in this case. With this appeal pending, the district court has not ruled on the motion for costs of prosecution. The People contend that a limited remand from this court is necessary for the district court to be able to rule on the motion for costs of prosecution. Alternatively, the People contend that an unresolved motion for costs of prosecution delays finality such that this court lacks jurisdiction over this appeal.

II. Analysis

¶ 4 To address the issues raised by the People's motion for limited remand, we must resolve two questions:

1. Does this court have jurisdiction over this appeal?
2. If so, is a limited remand necessary for the district court to rule on costs of prosecution, or does that court retain jurisdiction to do so?

¶ 5 The answer to the first question is yes. This court has jurisdiction over this appeal because a final, appealable judgment has been entered.

¶ 6 As to the second question, the answer is no. A limited remand is not necessary for the district court to rule on costs of prosecution because that court retains jurisdiction to do so while this appeal is pending.

A. Our Jurisdiction Over a Direct Appeal When a Motion for Costs of Prosecution Remains Pending

¶ 7 This court has jurisdiction over appeals from final judgments of the district courts under section 13-4-102(1), C.R.S. 2024. *See also* C.A.R. 1(a)(1).

¶ 8 This court has jurisdiction over this appeal because Cichuniec timely filed a notice of appeal from the district court's March 1, 2024, mittimus reflecting his convictions and sentences, and that judgment was final and appealable when entered. *See People v. Ong*, 2021 COA 113, ¶ 16 ("A judgment or order in a criminal case is final when . . . 'the defendant is convicted and sentence is imposed.'" (quoting *People v. Guatney*, 214 P.3d 1049, 1051 (Colo. 2009))).

¶ 9 The People suggest that finality must await resolution of a motion for costs of prosecution because Colorado Rule of Criminal Procedure 32(b)(3)(I) provides that "[a] judgment of conviction shall consist of," among other things, "costs, *if any are assessed* against the defendant." (Emphasis added.) But this language does not mandate that costs be fully determined before a judgment of conviction may enter. Rather, by its terms, it merely requires that any costs that have been ordered at that time must be included in the judgment of conviction.

¶ 10 This is different from the obligation (or lack thereof) to pay restitution. Section 18-1.3-603(1), C.R.S. 2024, provides that every order of conviction "shall include consideration of restitution," meaning it must include specific language that the defendant does or does not owe restitution. In *Sanoff v. People*, 187 P.3d 576, 577-78 (Colo. 2008), our supreme court observed that such an order assigning liability for restitution is a necessary component of a defendant's sentence; so failure to enter such an order leaves unresolved some portion of the defendant's sentence and thus precludes its finality. *Id.* In contrast, however, an order establishing the *amount* of restitution is not a required component

of the defendant's sentence. *Id.* at 578. Accordingly, the fact that the amount of restitution has not been determined does not prevent the judgment of conviction from being final and appealable.

¶ 11 Because no statute mandates the resolution of a motion for costs of prosecution at sentencing, they are akin to the *amount* of restitution.

¶ 12 Indeed, costs are even less integral to the sentence than is restitution. In *People v. Howell*, a division of this court observed that the costs statute "intends a sanction that is essentially civil" and "that is not part of a criminal sentence." 64 P.3d 894, 899-900 (Colo. App. 2002). "When a court imposes court costs in a criminal matter, it renders a civil judgment in favor of the state or the state agency that has incurred the cost." *Id.* at 899. Accordingly, the *Howell* division held that the assessment of costs against a defendant did not violate the Double Jeopardy Clause — even though those costs were assessed after the court pronounced the defendant's sentence — because their assessment serves "remedial" purposes "unrelated to punishment." *Id.* at 899-901.

¶ 13 Because costs are not punitive, and thus do not constitute part of the sentence, they do not need to be imposed before a defendant may file a direct criminal appeal.

¶ 14 Although "the better practice is to impose the specific amount of the costs on the date of sentencing," *People v. Fisher*, 539 P.2d 1258, 1259 (Colo. 1975), we do not agree with the People that the defendant must wait until *all* costs have been "finally determined" before filing a direct criminal appeal. Rather, finality of the judgment of conviction requires the inclusion of such costs *only* to the extent they have been assessed at the time that judgment of conviction enters. Crim. P. 32(b)(3)(I).

¶ 15 There are several problems with the People's finality argument. First, a division of this court has previously observed that there is no time limit for the People to request costs, only the doctrine of laches to deny relief where there has been unconscionable delay in seeking costs. *People v. Scoggins*, 240 P.3d 331, 333-34 (Colo. App. 2009) (affirming assessment of costs of prosecution against defendant for his extradition from Texas prior to guilty plea, even though costs were not sought until five months after plea; concluding the "absence of a time limit" in Colorado law permitted

the People to seek costs subject only to the doctrine of laches), *aff'd by an equally divided court*, 2012 CO 16; *cf. People v. Weeks*, 2021 CO 75, ¶ 45 (holding trial court lacked authority to order defendant to pay specific amount of restitution after the statutory ninety-one-day deadline). So making a defendant wait to file a direct criminal appeal until all costs have been assessed could require a very long — indeed, possibly endless — wait.

¶ 16 Second, Colorado law does not foist such uncertainty or delay upon defendants or courts in determining the proper time to file a direct criminal appeal. On the contrary, Colorado courts have "consistently held [in criminal cases] that a judgment comes when . . . 'the defendant is convicted and sentence is imposed.'" *People v. Gabriesheski*, 262 P.3d 653, 657 (Colo. 2011) (quoting *Guatney*, 214 P.3d at 1051).

¶ 17 The principle is firmly embedded in Colorado law that the imposition of a sentence, not something else, controls when a defendant can — and indeed, must — file a direct criminal appeal. *See, e.g., Sanoff*, 187 P.3d at 579 (identifying issuance of mittimus with complete sentence as moment when final, appealable judgment entered); *cf.* Crim. P. 32(c)(1), (2) (stating that it is specifically "after

passing sentence" that a trial or plea court is charged with "inform[ing] the defendant of" any applicable right to appellate review); Crim. P. 44(e)(1)(III) (stating that unless otherwise directed or extended, "counsel's representation of a defendant, whether retained or appointed, shall terminate when . . . restitution, if applicable, is finally determined and at the point in time . . . *[a]fter a sentence to incarceration is imposed upon conviction* when no motion has been timely filed pursuant to Crim. P. 35(b) or such motion so filed is ruled on") (emphasis added).

¶ 18 Third, to depart from this principle would make Cichuniec hostage to the People's decision to seek costs additional to any that were imposed on the date the court entered the mittimus.

¶ 19 Although a ruling on costs of prosecution, when it does occur, may resolve all requests for costs in this matter, one implication of *Scoggins* is that the People would not necessarily be precluded from seeking additional costs on an unspecified future date. A rule that the notice of appeal from a defendant's convictions and sentences should be filed only after all nonfrivolous requests for costs have been ruled on — charging the defense with anticipating whether additional costs might be sought — is simply unworkable.

¶ 20 Finally, to their credit, the People do not argue that Cichuniec should be forced to wait because it makes the most sense to do so. The People seek only to "ensure finality, preserve judicial resources, and protect Defendant Cichuniec's right to a timely appeal."

¶ 21 The rules of criminal procedure are to be "construed to secure simplicity in procedure, fairness in administration, and the elimination of unjustifiable expense and delay." Crim. P. 2.

¶ 22 In view of this interpretive standard, Crim. P. 32(b)(3)(I) does not purport to bar a defendant's appeal of their convictions and sentences until after the court has imposed all costs the People might ever seek for those convictions pursuant to section 18-1.3-701.

¶ 23 We reject the People's reliance on *Hellman v. Rhodes*, 741 P.2d 1258 (Colo. 1987). While the supreme court said there that finality of a judgment of conviction does not occur "until the last step has been completed, whether it be sentencing or the imposition of costs," *id.* at 1259, that case had nothing to do with the distinction between imposition of the sentence and the assessment of costs. Rather, the dispute revolved around whether a defendant whose convictions occurred a year before the sentencing was required to

appeal any trial-related issues impacting his conviction before his sentence was imposed. *Id.* at 1258-59. In other words, the supreme court reiterated the established rule that a defendant's time to appeal begins once the judgment of conviction enters. *Id.* at 1260. The passing reference to the imposition of costs was not necessary to the resolution of that dispute and, thus, was dictum.

¶ 24 Indeed, there will almost always be some costs entered on the mittimus, such as docket fees and other fees imposed automatically upon conviction. But waiting for a ruling on additional costs such as costs of prosecution, in every case, until no more requests remain, would depart from the purposes of the rules of criminal procedure and present potentially intractable problems for this court and the Colorado Supreme Court in determining finality.

¶ 25 In sum, this court has jurisdiction over this appeal because a final, appealable judgment was entered on March 1, 2024, when the court issued the mittimus.

B. The District Court's Jurisdiction

¶ 26 Turning to the merits of the motion for limited remand, the filing of Cichuniec's direct criminal appeal does not deprive the

district court of jurisdiction to resolve the People's still-outstanding request for costs of prosecution.

¶ 27 The filing of a valid notice of appeal "does not automatically strip the trial court of jurisdiction to take any further action in a criminal case." *Sanoff*, 187 P.3d at 578. As our supreme court has explained, the doctrine of divestment of jurisdiction is narrower in scope. Specifically, the doctrine "is intended to serve the interests of judicial efficiency, by preventing consideration of the same issue in different courts at the same time, and therefore it has never applied to more than trial court rulings affecting the judgment subject to appeal." *Id.*; *People v. Stewart*, 55 P.3d 107, 126 (Colo. 2002) ("[N]o limited remand was necessary for the trial court to consider [the defendant's] application for an appeal bond after he filed a direct appeal" because "[a] trial court retains jurisdiction to act on matters that are not relative to and do not affect the judgment on appeal.").

¶ 28 In *Sanoff*, 187 P.3d at 578-79, the supreme court concluded that filing a notice of appeal did not strip the trial court of jurisdiction to determine the amount of restitution because although it might appear that determining restitution would directly

affect the defendant's sentence — which she had appealed — that was no longer true. An amendment to section 18-1.3-603(1) "severed" assessment of the particular amount of restitution from the meaning of the term "sentence," at least for purposes of determining finality of the sentence and separate appealability of the order determining the amount of restitution. *Sanoff*, 187 P.3d at 578.[2]

¶ 29 The costs at issue here dictate an even simpler application of that proposition than the court faced in *Sanoff*. Because costs have never constituted part of the sentence, the post-sentencing matter addressed here does not affect the sentence. Whether costs are denied or granted, no matter the amount, they will not alter Cichuniec's convictions or sentences — i.e., they will play no role in the determination of guilt or of punishment.

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[2] We acknowledge that the court's authority to impose restitution after sentencing was clarified in *People v. Weeks*, 2021 CO 75. However, nothing in *Weeks* alters the supreme court's distinction between an order establishing liability for restitution (being a necessary component of the judgment of conviction) and a subsequent order establishing the amount of restitution.

¶ 30 Accordingly, the district court has not been divested of jurisdiction to resolve the motion for costs of prosecution, and no limited remand is necessary.

III. Conclusion

¶ 31 For the reasons set forth above, the People's motion for limited remand is denied.

JUDGE DUNN and JUDGE WELLING concur.