

NO: _____

IN THE
SUPREME COURT OF THE UNITED STATES

DARLENE KAY HERRAN- PETITIONER

v.

STATE OF INDIANA - RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE INDIANA COURT OF APPEALS

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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Table of Contents

Page

<i>Herran v. State</i> 129 N.E. 3d (Ind. App. 2019) Unpublished Opinion – 6/27/19	1
Denial of Petition to Transfer to Indiana Supreme Court 3-2 Split.....	5(a)
ORDER granted to Proceed <i>In Forma Pauperis</i> (Ind. Ct. App).....	6
Pro-se letter to trial court – 12/7/18	7
Motion to Allow Defendant to Live with Spouse – 12/18/18	9
HCCC Home Detention Order – 11/29/19	11
Excerpt from Trial Court's CCS	13
Showing Indigency Status on 2/23/19	
Motion to Correct Errors – 1/31/19	15
Notice of Appeal – 12/31/18	17
Order to Pay Transcription Costs	20
Invoice for Transcript – 1/8/19	21



Neutral

As of: December 9, 2019 4:16 PM Z

Herran v. State

Court of Appeals of Indiana

June 27, 2019, Decided; June 27, 2019, Filed

Court of Appeals Case No. 18A-CR-3131

Reporter

2019 Ind. App. Unpub. LEXIS 815 *; 129 N.E.3d 836; 2019 WL 2621707

Darlene Kay Herran, Appellant-Defendant, v. State of Indiana, Appellee-Plaintiff.

ATTORNEYS FOR APPELLEE: Curtis T. Hill, Jr., Attorney General of Indiana; Ian McLean, Deputy Attorney General, Indianapolis, Indiana.

Notice: PURSUANT TO INDIANA APPELLATE RULE 65(D), THIS MEMORANDUM DECISION SHALL NOT BE REGARDED AS PRECEDENT OR CITED BEFORE ANY COURT EXCEPT FOR THE PURPOSE OF ESTABLISHING THE DEFENSE OF RES JUDICATA, COLLATERAL ESTOPPEL, OR THE LAW OF THE CASE.

Judges: Riley, Judge. Bailey, J. and Pyle, J. concur.

Opinion by: Riley

PUBLISHED IN TABLE FORMAT IN THE NORTH EASTERN REPORTER.

Opinion

Subsequent History: Transfer denied by Herran v. State, 2019 Ind. LEXIS 717 (Ind., Sept. 12, 2019)

MEMORANDUM DECISION

Riley, Judge.

Prior History: [*1] Appeal from the Henry Circuit Court. The Honorable Kit C. Dean Crane, Judge. Trial Court Cause No. 33C02-1802-F5-9.

STATEMENT OF THE CASE

P1 Appellant-Defendant, Darlene Herran (Herran), appeals the trial court's Home Detention Order and Agreement and its Order to Pay Transcription Costs following her guilty plea to operating a motor vehicle after forfeiture for life, a Level 5 felony, Ind. Code § 9-30-10-17(a)(1).

P2 We affirm.

ISSUES

P3 Herran presents three issues on appeal, which we restate as:

(1) Whether the trial court improperly ordered that it

Core Terms

home detention, trial court, plea agreement, conditions, sentence, notice, Costs, preparation, felon, terms, electronic monitoring, modification, conditions of probation, standard condition, probation, punitive, assess, spouse, ripe

Counsel: ATTORNEY FOR APPELLANT: Dale W. Arnett, Winchester, Indiana.

may assess the cost of the preparation of the transcript to Appellate Counsel;

(2) Whether the trial court's Home Detention Order and Agreement is subject to reversal for failing to comply with statutory notice requirements set out for electronic monitoring devices; and

(3) Whether the trial court abused its discretion when it imposed a condition of Herran's home detention that effectively prohibited [*2] her from living with her husband.

FACTS AND PROCEDURAL HISTORY

P4 On February 22, 2018, Herran was observed driving north on 18th Street in New Castle, Indiana, by an officer of the New Castle Police Department who recognized her as a lifetime habitual traffic offender. After confirming that Herran's driver's license was subject to an indefinite suspension, the officer performed a traffic stop and subsequently arrested Herran. On February 23, 2018, the State filed an Information, charging Herran with operating a motor vehicle after forfeiture for life, a Level 5 felony. On February 23, 2018, the trial court found Herran to be indigent and appointed a public defender to represent her.

P5 On November 29, 2018, pursuant to a plea agreement with the State, Herran pleaded guilty to Level 5 felony operating a motor vehicle after forfeiture for life. According to the terms of the plea agreement, Herran would receive a sentence of five years, with three years to be executed on home detention and two years suspended to probation. A pending charge of conversion in another criminal matter was also dismissed. The plea agreement further provided that Herran could seek a modification of her placement [*3] after completing one and one-half years of her home detention. Prior to the entry of her guilty plea, the trial court reviewed Herran's constitutional trial rights, which the trial court found she understood and waived voluntarily. Herran affirmed to the trial court that she had read the terms of her plea agreement, discussed it with her attorney, signed it, and understood that she could not request any modification of placement on home detention for 401 days. The trial court found that Herran knowingly and voluntarily pleaded guilty and that it should accept the plea agreement and be bound by its terms. The trial court accepted the plea agreement and sentenced Herran according to its terms. In its written sentencing order, the trial court granted the withdrawal

of Herran's public defender.

P6 On November 29, 2018, the trial court also entered its Home Detention Order and Agreement which enumerated the conditions of Herran's home detention. The written standard conditions of Herran's home detention provided that "[n]o person convicted of a felony will be allowed to live at or visit your residence." (Appellant's App. Vol. II, p. 47). Directly above the signature line of the Home Detention [*4] Order and Agreement was the following averment:

I have read the above terms and conditions of home detention and had those terms and conditions fully explained to me. I have received a copy of said terms. I agree to comply with all terms and conditions specified.

(Appellant's App. Vol. II, p. 49). On November 29, 2018, Herran and Herran's public defender signed the Home Detention Order and Agreement. Home detention was scheduled to commence on or before December 3, 2018. The trial court's Probation Order and Agreement, which Herran also executed on November 29, 2018, did not contain any prohibition on her living with a felon.

P7 On December 7, 2018, Herran filed an unverified *pro se* motion with the trial court seeking reconsideration of the conditions of her home detention to allow her to live with her husband, who she stated had been on parole since July 2018. On December 18, 2018, the trial court denied Herran's motion. On December 18, 2018, Appellate Counsel filed his appearance along with Herran's unverified motion seeking to allow her to live with her husband while on home detention. Herran claimed that the condition of her home detention prohibiting her from living with a felon [*5] constituted an infringement upon her right to "society" with her husband and was an undue economic hardship. (Appellant's App. Vol. II, p. 10). On December 20, 2018, the trial court denied Herran's second motion without a hearing and without entering any findings of fact or conclusions of law.

P8 Herran filed a notice of appeal on December 31, 2018, in which Appellate Counsel was identified as "*pro bono*" counsel. (Appellant's App. Vol. II, p. 57). In her notice of appeal, Herran requested that the Henry Circuit Court 2 Reporter prepare a transcript of the November 29, 2018, sentencing hearing and furnish it to Appellate Counsel. Herran attached to her notice of appeal a copy of the chronological case summary entry dated February 27, 2018, noting that the trial court had found her indigent and had appointed her a public

defender for purposes of addressing the operating while forfeited for life charge.

P9 On January 11, 2019, we granted a motion by Herran to proceed *in forma pauperis* and expressly relieved her of the obligation to pay the filing fee for her appeal. On January 24, 2019, the Clerk of the Henry Circuit Court 2 filed a notice indicating that the transcript had not yet been [*6] completed.¹ On January 25, 2019, the trial court entered its Order to Pay Transcription Costs as follows:

[Appellate Counsel] contacted court staff to request the preparation of a transcript. Until just recently and after the transcript had already been completed, [Appellate Counsel] did not advise the [c]ourt that he expected that the transcript be prepared at no cost to Herran. In fact, the [c]ourt has never received any pleading from [Appellate Counsel] requesting such a finding, nor have there been any pleadings filed asserting indigency. Due to high volume, the [c]ourt uses outside services to prepare transcripts. Accordingly, the [c]ourt FINDS and ORDERS as follows:

The Henry County Auditor shall pay . . . the sum of \$94.50 as costs of transcript service to [the] Court Reporter . . . [Appellate Counsel] however, is put on notice that the [c]ourt may assess such costs against [Appellate Counsel].

(Appellant's App. Vol. II, p. 61). On January 31, 2019, Herran filed a motion to correct error requesting that the trial court not assess the cost of the transcript preparation to Appellate Counsel. The trial court did not rule on the motion.

P10 Herran now appeals. Additional facts will [*7] be provided as necessary.

DISCUSSION AND DECISION

I. Costs of Transcript

P11 Herran first contends that the trial court erroneously ordered that Appellate Counsel may be assessed the costs of the preparation of the transcript. The State counters that the issue is not ripe for appeal because the trial court's Order to Pay Transcription

¹An invoice included in the Appendix indicates that the transcript was delivered by the court reporter on January 8, 2019.

Costs did not, in fact, assess those costs to Appellate Counsel and merely warned that it may do so. The concept of ripeness refers to the degree that the defined issues in a case are based on actual facts, not abstract possibilities, and are capable of being decided on an adequately developed record. Buck v. Grube, 833 N.E.2d 110, 118 n.7 (Ind. Ct. App. 2005). In ruling on ripeness, we consider the fitness of the issue for judicial decision as well as the hardship to the parties of withholding a decision on the merits. *Id.*

P12 We agree with the State that this issue is not ripe for appeal. The transcript was paid for with public funds, and this appeal has proceeded in due course. The trial court did not yet order Appellate Counsel to pay the costs of the preparation of the transcript. Neither Herran nor Appellate Counsel have sustained any injury, and, therefore, we decline to address the issue.²

II. Notice Requirement for Electronic Surveillance

P13 Herran next briefly argues that the trial court failed to adequately notify her of the use of an electronic monitoring device as part of her home detention. She therefore asks us to determine "that any conditions of electronic monitoring in this matter be declared null and void." (Appellant's Br. p. 9). The terms of Herran's home detention order and agreement provided that she "shall ensure compliance with this [c]ourt's order on home detention by wearing an electronic non-removable anklet twenty-four (24) hours a day during the period of detention[.]" (Appellant's App. Vol. II, p. 47).

²We note that a party who was permitted to proceed in the trial court *in forma pauperis* [*8] may proceed in like manner on appeal without prior authorization from the trial court or the appellate court. Ind. Appellate Rule 40(A)(1). If a party is granted *in forma pauperis* status by this court, the effect is that the party "is relieved of the obligation to prepay filing fees or costs in either the trial court or the Court on Appeal or to give security therefor[.]" App. R. 40(D)(1) (emphasis added). Costs are defined, in relevant part, in the Appellate Rules as "the cost of preparing the Record on Appeal, including the Transcript[.]" App. R. 67(B)(2). Thus, a defendant who has been determined to be indigent is entitled to a transcript on appeal at public expense. See I.C. § 33-40-8-5; see also Hollowell v. State, 19 N.E.3d 263, 266-67 (Ind. 2014) (noting that, after the Court of Appeals had granted him *in forma pauperis* status, Hollowell was entitled to a transcript of his post-conviction relief hearing at public expense); Wright v. State, 772 N.E.2d 449, 461 (Ind. Ct. App. 2002) ("[C]riminal defendants in Indiana who cannot afford to pay for a transcript are still entitled to one if they are found to be indigent.").

P14 Herran directs us to Indiana Code section 35-38-2.5-11, which provides that

[b]efore entering an order for home detention that requires the use of a monitoring device described in section 3(3) of this chapter the court shall inform the offender and other persons residing in the home of the nature and extent of electronic surveillance provided by the monitoring device in the home.

Assuming, without deciding, that she preserved this claim, section 35-38-2.5-11 applies to Herran's electronic monitoring device, and the trial court failed to provide adequate notice, [*9] we conclude that, on the record before us, Herran is unable to demonstrate that she has suffered any prejudice. We will not reverse any order or action by a trial court unless it impacts the defendant's substantial rights. See App. Rule 66(A). Herran alleges a lack of notice, and her claim of prejudice is that "electronic monitoring should be disallowed because more expansive terms of that condition may be applied than were noticed to the probationer." Our review of the conditions of the home detention order and agreement leads us to conclude that Herran was put on notice that her presence and absence from her home would be monitored by the anklet. Without any evidence that some other form of monitoring was imposed in this case, we cannot conclude that Herran's substantial rights have been impacted by any error on the part of the trial court. See *id.*

III. Prohibition on Living or Visiting with Felons in Home

P15 Herran's final contention on appeal is that the condition of her home detention prohibiting her from cohabitating or visiting with felons in her home infringes upon her constitutionally-protected, fundamental right to marriage. Herran essentially argues that the condition is unconstitutional [*10] as it applies to her because its effect is to prevent her from living with her spouse, who she represents is a convicted felon. Thus, Herran requests that we invalidate this condition of her home detention.

P16 The State counters with a number of arguments as to why we should not address the merits of Herran's arguments, including that Herran has waived her argument by failing to raise these issues below. Our review of the record indicates that the Home Detention Order and Agreement was executed after the conclusion of the sentencing hearing, and, therefore, Herran had no opportunity to object at the trial level apart from raising the issue in her subsequent motions.

Although her argument was not as well developed below as on appeal, we find it was sufficiently raised in her motions to preserve it for our review. In addition, contrary to the State's assertion that Herran invited any error when she entered into her plea agreement and signed the Home Detention Order and Agreement, we note that even when a defendant enters into an agreement enumerating conditions as part of her conditional freedom, we will review the propriety of those agreed-upon conditions. See, e.g., Green v. State, 719 N.E.2d 426, 430 (Ind. Ct. App. 1999) (finding the condition [*11] of work release agreement that Green had signed obligating him to waive his 4th Amendment rights as to any law enforcement officer to be overly broad).

P17 The State also argues that we should not address Herran's claim because she waived her right to seek any modification of her placement when she entered into the fixed-term plea agreement and the Home Detention Order and Agreement. The General Assembly has recently amended the sentence modification statute, Indiana Code section 35-38-1-17 (2018). As of the writing of this opinion, the effect of these amendments on the ability of a defendant to seek modification of a sentence imposed pursuant to a fixed-term plea agreement is being reviewed by our supreme court. See State v. Stafford, 117 N.E.3d 621 (Ind. Ct. App. 2018), trans. granted; Rodriguez v. State, 116 N.E.3d 515 (Ind. Ct. App. 2018), trans. granted. However, we need not resolve the issue because we conclude that, even if Herran had the ability to seek modification of her sentence, she is not entitled to relief on the merits of her claim.

P18 It is well-established that, once a trial court accepts a plea agreement, it is bound by its terms. I.C. § 35-35-3-3(a); State v. Smith, 71 N.E.3d 368, 370 (Ind. 2017). Our supreme court has held that if a plea agreement is silent as to the conditions of probation and does not reserve to the trial court the discretion to impose probation conditions, [*12] the trial court may impose only those conditions that do not "materially add to the punitive obligation" provided for by the plea agreement. Freije v. State, 709 N.E.2d 323, 324-25 (Ind. 1999). For example, even if not specifically provided for in the plea agreement, a trial court may impose certain administrative or ministerial conditions, such as reporting requirements, providing notification of changes in employment or address, and remaining within the jurisdiction of the court. *Id.* at 325. These are the sort of conditions that are regularly imposed upon a defendant subject to probation, and a defendant who enters into a

plea agreement that calls for a sentence to be served on probation should reasonably expect that the county's standard conditions may apply. *Id.* However, if a condition materially adds to the punitive obligation of a sentence, it may not be imposed in absence of a provision in the plea agreement providing the trial court with discretion to set the conditions of probation. *Id.*

P19 Freije involved conditions of probation, as opposed to the conditions of home detention at issue here. However, we have analogized home detention to probation. Although different statutory schemes are involved in these two forms of alternative commitment, [*13] we see no reason why Freije would not apply equally to home detention conditions. See, e.g., Rodriguez v. State, 714 N.E.2d 667, 670 (holding that the same standard of review applies to home detention conditions and conditions of probation).

P20 Here, Herran's plea agreement did not specifically provide for the conditions of home detention, and it did not reserve to the trial court the discretion to impose those conditions. Thus, the discretion of the trial court to impose conditions of home detention was limited to those which did not materially add to the punitive obligations of the sentence. See Freije, 709 N.E.2d at 325. The condition at issue here was entered as part of the standard conditions of the home detention order and agreement, which is the type of ministerial or administrative condition which could be imposed without being expressly provided for in the plea agreement. *Id.*

P21 Herran argues that the challenged condition unduly infringes upon her fundamental right to be married. It has been recognized that citizens have a fundamental right to enter into and maintain a marriage relationship. See, e.g., Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L. Ed. 1655 (1942) ("Marriage and procreation are fundamental to the very existence and survival of the race."). However, the condition of Herran's home [*14] detention prohibiting her from living with a felon or having a felon visit her home did not implicate Herran's ability to remain legally married to her spouse, nor did it materially add to the punitive obligations of her sentence. It does not require her to divorce her husband, legally separate from him, or to alter her legal status as to her spouse in any way. This was not a 'no-contact' order prohibiting Herran from having any contact with her spouse. Because this standard condition of home detention did not materially add to the punitive obligation of Herran's sentence, we conclude that the trial court did not abuse its discretion when it

entered its Home Detention Order and Agreement. See Freije, 709 N.E.2d at 325.

CONCLUSION

P22 Based on the foregoing, we conclude that the issue of whether the trial court could assess the cost of the transcript to *pro bono* Appellate Counsel is not ripe for our consideration and that Herran has not demonstrated that she was prejudiced by any failure on the part of the trial court to provide additional notice to her regarding the electronic monitoring of her home detention. We also conclude that the standard condition of the Home Detention Order and Agreement having the effect [*15] of precluding Herran from living with her spouse was not an abuse of the trial court's discretion.

P23 Affirmed.

P24 Bailey, J. and Pyle, J. concur

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In the
Indiana Supreme Court

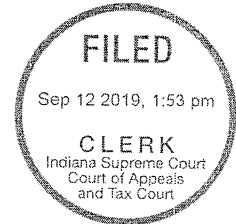
Darlene Kay Herran,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
18A-CR-03131

Trial Court Case No.
33C02-1802-F5-9



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 9/12/2019.

FOR THE COURT

A handwritten signature in black ink, appearing to read "Loretta H. Rush".

Loretta H. Rush

Chief Justice of Indiana

All Justices concur, except Rush, C.J., and Goff, J., who vote to grant the petition to transfer.

5 a.

IN THE
COURT OF APPEALS OF INDIANA

Darlene K. Herran,

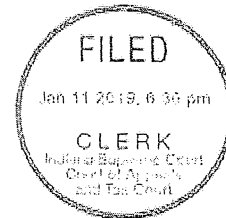
Appellant,

v.

State of Indiana,

Appellee.

Court of Appeals Cause No.
18A-CR-3131



Order

- [1] Appellant, by counsel, has filed a Motion to Proceed on Appeal in Forma Pauperis.
- [2] Having reviewed the matter, the Court finds and orders as follows:

Appellant's Motion to Proceed on Appeal in Forma Pauperis is granted.
Pursuant to Appellate Rule 40, Appellant is relieved of the obligation to pay the filing fee.

- [3] Ordered 1/11/2019

Bradford, J., Barteau, Darden, Sr.JJ., concur.

For the Court,

Norray Harris Vaidik

Chief Judge

12-6-2018

HONORABLE JUDGE
KIT C. DEAN CRANE
CIRCUIT COURT 2

FILED

DEC 07 2018

THOMAS G. WALKER
CLERK OF COURT

CASE #33C02-1802-F5

000009

DARLENE K. HERRAN
304 N. 12TH STREET
NEW CASTLE, IN. 47362

DENIED

December 18, 2018

ON 11/29/18 I SIGNED A PLEE AGREEMENT TO BE PLACED ON HOME DETENTION FOR 812 ACTUAL DAYS. I UNDERSTAND THAT HOME DETENTION IS A CONVENIENCE OFFERED TO ME IN PLACE OF PRISON. WHAT I DID NOT UNDERSTAND, HOWEVER, WAS THAT I WOULD BE UNABLE TO LIVE WITH MY HUSBAND WHO IS ALSO A CONVICTED FELON. WE BOTH ARE HABITUAL TRAFFIC VIOLATORS... I HAVE ATTEMPTED TO CONTACT MY PUBLIC DEFENDER AND HAVE BEEN INFORMED THAT HE IS NO LONGER MY ATTORNEY SINCE IVE BEEN SENTENCED. I ALSO CONTACTED THE ADULT PROBATION DEPT. AS I AM TO BE PLACED ON 2 YRS. PROBATION AFTER MY HOUSE ARREST & WAS TOLD I NEEDED TO CONTACT AN ATTY. ALL OF WHICH I CAN NOT AFFORD... YOUR HONOR, IF MY HUSBAND HAS TO MAINTAIN ANOTHER RESIDENCE, I WONT BE ABLE TO AFFORD A MORTGAGE PLUS HOME DETENTION, AS MY HUSBAND WILL NOT BE ABLE TO HELP ME, IF HE TOO HAS TO PAY RENT ON ANOTHER RESIDENCE... I AM HUMBLY & RESPECTFULLY BEGGING YOU TO RECONSIDER THIS CONDITION OF MY HOUSE ARREST.

HE IS CURRENTLY ON PAROLE & HAS BEEN SINCE JULY., HIS P.O. STATED THAT SHE DIDN'T HAVE A PROBLEM WITH US RESIDING TOGETHER & SUGGESTED I WRITE THIS LETTER.

WOULD YOU CONSIDER HEARING OUR CASE, AS THE FINANCIAL HARSHIP WOULD RUIN ANY CHANCE OF US MAINTAINING A LIFE & KEEPING OUR HOME, WHICH I INHERITED AFTER MY FATHER & MOTHERS PASSING.

I REALIZE THAT IGNORANCE IS NO DEFENSE, BUT I HONESTLY DIDN'T DREAM THAT MY HUSBAND WOULD NOT BE PERMITTED TO RESIDE WITH ME.

AGAIN, I RESPECTFULLY & HUMBLBY BEG YOU TO RECONSIDER & PERMIT MY HUSBAND RESIDENCE WITH ME.

SINCERELY

DARLENE HERRAN

Darlene Herran

STATE OF INDIANA)
) SS:
COUNTY OF HENRY)

IN THE HENRY CIRCUIT COURT 2

STATE OF INDIANA)

CAUSE NO.: 33CO2-1802-F5-000009

v.
DARLENE KAY HERRAN)
Defendant.)

DENIED

December 20, 2018
KC

Motion to Allow Defendant to Live with Spouse

Comes now Defendant, Darlene Kay Herran and hereby moves this court to allow her husband, Phillip Martin, to reside in the residence with her.

Ms. Herran pled guilty to Operating a Motor Vehicle after Forfeiture of License for Life, a Level 5 Felony on November 29th, 2018. She was sentenced to the IDOC for 5 years with two years suspended to probation. The 3 year executed portion of her sentence was to be served as a direct commitment to the Henry County Community Corrections with placement on home detention and electronic monitoring.

In The Home Detention Order and Agreement the second sentence paragraph 3 of section (d) reads as follows:

“[N]o person convicted of a felony will be allowed to live at your residence.”

Even though Mrs. Herran signed the agreement, in the instant matter, this clause infringes on Ms. Herran and her husband's rights to society with each other as well as working an extreme hardship on the couple. Ms. Herran and Mr. Martin are legally married. (Ex A.) Ms. Herran owns the home but has a mortgage on the property. The house payment is \$452. Mr. Martin is the breadwinner in the family. They have a home improvement company in which Ms. Herran has a vital part as bookkeeper and laborer. (Attached is a copy of their business card and a copy of

their marriage certificate). Living apart will cause extreme financial hardship on Mr. Marin and Ms. Herran.

After research by Mr. Arnett, it appears other jurisdictions allow exceptions to the living with a felon in the case of a marriage.

Wherefore Ms. Herran asks this court for a hearing and asks this court to order that the couple be allowed an exception to the rigid rule of the Henry County Community of not allowing the couple to live together.

Respectfully Submitted,

/s/Dale W. Arnett
Dale W. Arnett #13919-68
102 Hospital Drive
Winchester, IN 47394
Phone 765-584-2507
Fax 765-584-2068
Email: larnett1@frontier.com

CERTIFICATE OF SERVICE

I certify that on December 18, 2018, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on December 18, 2018, the foregoing document was served upon the following person(s) via IEFS.

/s/ Dale W. Arnett
Dale W. Arnett
Attorney at Law

Joseph John Bergacs
Attorney for State Plaintiff State of Indiana

Jeremy Scott Bell
Lead attorney for State Plaintiff State of Indiana

HOME DETENTION ORDER AND AGREEMENT

STATE OF INDIANA
COUNTY OF HENRY
STATE OF INDIANA
VS

FILED

NOV 29 2018

HENRY CIRCUIT COURT 2

Darlene K. Herran Dora G. Walker CASE NO.: 33C02-1802-F5-000009
ADDRESS: 304 N. 12th St. CLERK HENRY CIRCUIT COURT NO. 2 TELEPHONE: 765-524-3642
New Castle, IN 47362
ATTORNEY: Sean Row
OFFENSE: Operating a Vehicle after Forfeiture of License for Life, Level 5 Felony

DURATION OF HOME DETENTION: 812 actual days days, which shall commence on or before 12/3/18 @ 3:00pm
20 on

An intake appointment must be made to be hooked up and can be done so by calling 765-593-0425, extension 228. The defendant will be hooked up through Henry County Community Corrections (HCCC) located at 1001 Van Nuys Road, New Castle, Indiana.

The defendant (select one)

- ☐ Shall be placed on formal probation subject to terms of a separate order of Probation entered herewith and that one of the conditions of probation shall be that the Defendant shall be placed in the Henry County Community Corrections Home Detention Program under the conditions shown herein below; or
- ☐ Shall be placed directly in the Henry County Community Corrections Home Detention Program, without being placed on formal probation, under the conditions shown herein below.

STANDARD CONDITIONS

- 1 You shall ensure compliance with this Court's order on home detention by wearing an electronic non-removable anklet twenty-four (24) hours a day, during the period of detention and in compliance with a written schedule approved by HCCC specifically identifying times you may be absent from your home and locations approved to be during scheduled absences.
- 2 You understand that removal of or tampering with equipment and/or the relocating of such equipment to another residence will result in a revocation of your participation in the Home Detention program and may be deemed by the Court as a violation of your conditions of probation or other sentencing order and result in your being charged with Escape under I.C. 35-44-3.5
- 3 During the period of home detention, you shall be at no place other than:
 - a. your home, currently located at: 304 N. 12th St., New Castle
 - b. your place of employment _____ located at: _____ Phone: _____
 - c. undergoing medical, psychiatric, mental health treatment, counseling or other treatment programs approved by the Court or HCCC. Any change of address must be approved by HCCC prior to moving and will be charged a \$75.00 moving fee.
 - d. in the event you are unemployed, you shall seek, obtain and maintain gainful employment or pursue a course of study that would equip you for such employment as directed by HCCC.
- 4 You must provide a working telephone number to maintain communication while on home detention. Upon being called by HCCC staff, you have 15 minutes to return said phone call. You shall permit voice and text responses to calls to be recorded as a permanent record for use of any subsequent court proceedings.
- 5 You must provide a list of all persons residing at the residence. No person convicted of a felony will be allowed to live at or visit your residence. No person may move into the residence during your time on home detention without prior approval from HCCC. All persons living in the home are subject to the same terms as you regarding searches, drugs/alcohol/CBD and visitors.
- 6 You must immediately notify your case manager of any change in employment status, employer, work location, immediate supervisor, days worked, hours worked and work telephone number. In addition, you agree to submit a copy of your pay stub at the end of each pay period.
- 7 Your locations and movement will be electronically monitored at all times by means of a non-removable transmitter worn on the ankle and/or a receiver installed in your residence connected to the telephone line and by any other monitoring equipment utilized by HCCC.
- 8 During the period of detention, you shall permit HCCC field officers to visit with you at your home or place of employment. In addition, you shall waive your right to search and seizure and allow HCCC or any law enforcement officer acting on behalf of the HCCC to search the household/property in which you reside, vehicle, any vehicle you may occupy and job site area to insure compliance with supervision. Your refusal to allow access to may result in a violation of the program rules and termination from the program.
- 9 You are not, under any circumstances, to purchase, possess, consume, or use any alcoholic beverage, intoxicating liquor, marijuana, drug or controlled substance of any kind unless legally prescribed for you by a licensed physician. You shall not purchase, possess or consume Cannibidol (CBD) products while on home detention. You shall take all medications as prescribed and provide all medications for a court upon request of HCCC.
- 10 You shall submit to alcohol and drug testing when requested by HCCC, Probation officer or any Law Enforcement Officer. Costs of said tests are the responsibility of the client.
 - a. Upon notification of HCCC staff, you have one hour to report to a place so ordered by said staff to submit yourself to any intoxilyzer or chemical test.

- b. Failure to provide an adequate sample within one (1) hour after being requested to do so shall result in the defendant being considered to have given a refusal.
 - c. Providing a dilute or adulterated specimen may be considered a violation
 - d. The Court shall presume that the written results of a drug test performed on the client by a certified laboratory are admissible without the necessity of calling a representative of the testing laboratory in a home detention revocation hearing. This presumption is rebuttable. However, it shall be the duty of, and at the expense of, the party challenging the test results to produce evidence to attempt to rebut the presumption.
 - e. The defendant shall provide to HCCC a list of currently legally prescribed medications validated by a doctor's prescription upon intake. The defendant is required to take prescribed medications as noted on the prescription. Any new prescriptions will be submitted to HCCC within 24 hours. Failure to submit prescribed medications does not negate a positive screen.
1. You shall agree to report to HCCC office or designated as directed to participate in case management meetings, programs, appointments, assessments, or evaluations.
 2. You shall not have access to or possess any dangerous or deadly weapons, such as firearms, aerosol repellent, knives of unreasonable length, throwing stars, switchblades, butterfly knives, boot knives, pellet/bb guns, etc.
 3. No more than two adults are permitted to visit the residence at any time. You are responsible for any individual's actions at your residence.
 4. You shall not violate any town, city, county, state or federal laws and ordinances. You will notify HCCC immediately of any contact with law enforcement of a new arrest.
 5. You shall not leave the state of Indiana without first applying for and receiving a written travel permit from HCCC.

SPECIAL CONDITIONS

You are responsible for signing any releases of information required by any service provider. You are to provide verification to Henry County Community Corrections that you are in compliance with your required special conditions.

6. [] Obtain a substance abuse evaluation, *at the discretion of your HCCC case manager*, from a certified treatment provider within 30 days and follow all recommendations. Any form of Medication Assisted Treatment (MAT) must be approved by HCCC and/or the Court following the receipt of a valid prescription provided by a certified provider. If MAT is approved, a medication count must be provided to HCCC upon request. Proof of full compliance with all therapy required by the approved MAT plan must be provided to HCCC.
7. [] Submit to psychological, anger management, and/or domestic violence assessment/evaluation, at the discretion of your HCCC case manager, from a certified treatment provider and follow all recommendations.
8. [] Home detention may be transferred to _____ if approved by both sending and receiving agencies/states.
9. [] You shall comply with the following special terms or conditions: _____

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17 / 60

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Herran, Darlene K.

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Henry Circuit Court 2

33C02-1802-F5-000009

State of Indiana v. Darlene K Herran

(ELECTRONIC FILE ONLY)

File date: 02/23/2018 Disposition Date: 12/20/2018

Information current as of 12/9/19, 9:34 AM EST

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Parties Involved

Attorneys:	Parties:
<p>Bell, Jeremy Scott [Attorney] Address: Henry County Prosecutor's Office 1215 Race St Suite 250 New Castle , IN 47362</p> <p>Phone: Work (Phone): 765-529-2066</p> <p>State Bar ID: 2455933</p> <p>Bergacs, Joseph John [Attorney] Address: Henry County Prosecuting Attorney 1215 Race St Suite 250 New Castle , IN 47362-0000</p> <p>Phones: Unknown (Fax): 765-521-7029 Work (Phone): 765-529-4614</p> <p>State Bar ID: 2350349</p>	<p>State of Indiana [State Plaintiff]</p> <p>Herran, Darlene K [Defendant] Address: c/o Henry County Jail 127 N 12th Street New Castle , IN 47362</p> <p>DOB: 05/26/1966</p> <p>Henry County Probation Dept - Adult [Probation Department] Address: Adult</p>

Charge Records

Count , Number 1 : ()

Charge:

Plea:

Not guilty pleas entered. Omnibus date set for 03/22/2018, Pretrial Conference set for 04/26/2018 at 10:15 a.m. and Jury Trial set for 06/11/2018 at 9:00 a.m.
Hearing Date: 02/23/2018

Minute Date: **2/27/2018**

Input Date: **Unavailable**

Type: **Indigent Counsel Appointed at County Expense**

Henry County Public Defender's Office appointed.

Minute Date: **2/27/2018**

Input Date: **Unavailable**

Type: **Order on Initial Hearing**

(Judicial Officer: Crane, Kit C. Dean)
Order Signed: 02/23/2018

Minute Date: **2/24/2018**

Input Date: **Unavailable**

Type: **Automated Paper Notice Issued to Parties**

Hearing Scheduling Activity ---- 2/23/2018 : Darlene K Herran Probable Cause Found: Order Issued ---- 2/23/2018 : Darlene K Herran

Minute Date: **2/24/2018**

Input Date: **Unavailable**

Type: **Automated ENotice Issued to Parties**

Hearing Scheduling Activity ---- 2/23/2018 : Henry County Probation Dept - Adult; Joseph John Bergacs; Jeremy Scott Bell Probable Cause Found: Order Issued ---- 2/23/2018 : Henry County Probation Dept - Adult; Joseph John Bergacs; Jeremy Scott Bell

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Case Opened as a New Filing**

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Appearance Filed**

APPEARANCE

For Party: State of Indiana
Attorney: Bell, Jeremy Scott
Attorney: Bergacs, Joseph John
File Stamp: 02/23/2018

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Information Filed**

Filed By: State of Indiana
File Stamp: 02/23/2018

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Probable Cause Affidavit Filed**

File Stamp: 02/23/2018

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Initial Hearing**

(2:30 PM) (Judicial officer: Crane, Kit C. Dean)
Result: Commenced and concluded

Minute Date: **2/23/2018**

Input Date: **Unavailable**

Type: **Hearing Scheduling Activity**

Initial Hearing scheduled for 02/23/2018 at 2:30 PM.

STATE OF INDIANA)	IN THE HENRY CIRCUIT COURT 2
) SS:	
COUNTY OF HENRY)	
STATE OF INDIANA)	CAUSE NO.: 33CO2-1802-F5-000009
)	
v.)	
)	
DARLENE KAY HERRAN)	
Defendant.)	

MOTION TO CORRECT ERRORS

Comes now Defendant, Darlene Kay Herran by Counsel, Dale W. Arnett *pro bono* and hereby moves this to correct errors specifically: On 1-25-19 this Court ordered that Counsel maybe charged for the requested transcript. In it's ORDER the trial court stated there were no pleadings filed to assert indigence and that the court reporter may assess costs against Appellate Counsel. On 2-27-18 this Court found the Defendant indigent at the trial level and appointed her counsel. There has been no finding to the contrary.

If Appellate Counsel had been appointed, such appointment would be at public expense as well as costs of transcripts.

Further, the Notice of Appeal filed with the Indiana Court of Appeals was also served on the trial court and the cover page listed counsel as *pro-bono*.

On 1-11-19 Defendant was granted permission to proceed *in forma pauperis* with the Indiana Court of Appeals. (See Ex. A).

There are a number of United States Supreme Court cases which require that indigent defendants be furnished transcripts at public expense. *Griffin v. Illinois* 351 U.S. 12, 19 (1956) held that Due Process and Equal Protection require that "destitute defendants must be afforded as adequate appellate review as defendants who have enough money to buy transcripts."

Long v. District Court of Iowa 3854 U.S. 192, 194 (1966) held that “to interpose any financial consideration between an indigent prisoner of a state right to sue for his liberty was to deny that prisoner the equal protection of the laws.” *Gardner v. California* 392, U.S. 367 (1969) stated that it would be impermissible discrimination to deny an indigent a transcript because they couldn’t afford it.

A few years ago, our State Supreme Court encouraged attorneys to perform *pro-bono* work for indigent clients. It would seem implausible that our Indiana Supreme Court would expect that a *pro-bono* attorney should have to pay expenses for an indigent client as such would chill incentives to perform *pro-bono* work.

Respectfully Submitted,

/s/Dale W. Arnett *pro-bono*
Dale W. Arnett #13919-68
102 Hospital Drive
Winchester, IN 47394
Phone (765) 584-2507
Fax (765) 584-2068
Email: larnett1@frontier.com

CERTIFICATE OF SERVICE

I certify that on January 31, 2019, I electronically filed the foregoing document using the Indiana E-Filing System (IEFS).

I also certify that on January 31, 2019, the foregoing document was served upon the following person(s) via IEFS

Jeremy Scott Bell
Henry County Prosecutor
1215 Race St.
Suite 250
New Castle, IN 47362

IN THE INDIANA COURT OF APPEALS
CASE NO. 18A CR 3131



NOTICE OF APPEAL

Comes now, Defendant Darlene K. Herran, by Counsel, Dale W. Arnett and, hereby files
her Notice of Appeal.

1. *Party Information.*

a) Appellant:

Darlene K. Herran
304 N. 12th St.
New Castle, IN 47362

Appellee:

State of Indiana

b) Attorney for Appellant:

Dale W. Arnett # 13919-68 *pro-bono*
Attorney for Appellant
102 Hospital Drive
Winchester, IN 47394
Phone (765) 584-2507
Fax: (765) 584-2068
Email: larnett1@frontier.com

2. *Trial Information*

a) Title of case; State of Indiana v. Darlene K. Herran

b) Names of all parties; Jeremy Scott Bell Henry County Prosecutor, Joseph John Bergacs Henry County Prosecutor and Dale W. Arnett attorney for Defendant Darlene K. Herran

c) Trial court or Administrative Agency; Henry Circuit Court 2.

d) Case number; 33CO2-1802-F5-000009

e) Name of trial judge; Honorable Kit C. Dean Crane

3. *Designation of Appealed Order or Judgment.*

a) The date and title of the judgment or order appealed.

- 1) Judgment of Conviction and Sentencing Order, filed on 11/29/18
- 2) Motion to Allow Defendant to Live with Spouse, denied on 12/20/18
- 3) CCS entry finding defendant indigent and appointing counsel on 2/27/18.

- b) basis for Appellate jurisdiction-final judgment.
- c) This appeal is to the Indiana Court of Appeals.

4. *Direction for Assembly of Clerk's Record.*

- a) Defendant requests the Clerk of the Henry Circuit Court 2 to prepare the Clerk's Record and to furnish a copy to the Appellant's Counsel.

5. *Request for Transcript.*

- a) Defendant requests the Henry Circuit Court 2 Reporter to prepare the transcript of 11-29-18 and to furnish a copy to the Appellant's Counsel.

6. *Public Access Information.*

- a) No portions of the Court's records were sealed or excluded from public access by the court order.

7. *Appellate Alternative Dispute Resolution Information.*

- a) Appellant is not willing to participate in Alternative Dispute Resolution.

8. *Attachments.*

- a) Judgment of Conviction and Sentencing Order, filed on 11/29/18
- b) Motion to Allow Defendant to Live with Spouse, denied on 12/20/18
- c) CCS entry finding defendant indigent and appointing counsel on 2/27/18.

9. *Certification.*

I hereby certify that this case does not involve issues of child custody, support, visitation, adoption, and paternity, determination that a child is in need of services, termination of parental rights, or any other appeal entitled to priority by rule or statute. I further certify that I have reviewed and complied with and will continue to comply with the requirements of Rule 9 (J) and administrative Rule 9 (G) (4) to the extent they apply to this appeal, and further that I will make satisfactory payment arrangements for any transcripts as required by Rule 9 (H). However Appellant is proceeding *in forma pauperis* pursuant to A.R. 40 A. (1)

CERTIFICATE OF SERVICE

I hereby certify the Notice of Appeal was filed with the Clerk of the Indiana Court of Appeals on this 31st day of December, 2018, by mailing certified mail and mailed by regular first class mail to the following:

Judge:

Kit C. Dean Crane
1215 Race St.
Suite 320
New Castle, IN 47362

Court Reporter:

Henry County Circuit Court 2
1215 Race St.
Suite 320
New Castle, IN 47362

Clerk:

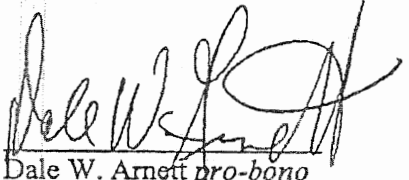
Henry County Courthouse
1215 Race St.
Suite 120
New Castle, IN 47362

Henry County Prosecutor

1215 Race St.
Suite 250
New Castle, IN 47362

Attorney General

Office of the Attorney General
302 West Washington Street
IGCS Fifth Floor
Indianapolis, IN 46204



Dale W. Arnett *pro-bono*
Attorney at Law

STATE OF INDIANA

) IN THE HENRY CIRCUIT COURT 2

COUNTY OF HENRY

) CASE NO: 33C02-1802-F5-000009

STATE OF INDIANA

FILED

January 25, 2019

CLERK HENRY CIRCUIT COURT NO 2
KC

V.

DARLENE K HERRAN

ORDER TO PAY TRANSCRIPTION COSTS

Appellant Counsel contacted court staff to request the preparation of a transcript. Until just recently and after the transcript had already been completed, Appellant Counsel did not advise the Court that he expected that the transcript be prepared at no cost to Defendant. In fact, the Court has never received any pleading from Appellant Counsel requesting such a finding, nor have there been any pleadings filed asserting indigency. Due to high volume, the Court uses outside services to prepare transcripts. Accordingly, the Court FINDS and ORDERS as follows:

The Henry County Auditor shall pay, out of Account #2506-999-9090.01, the sum of \$94.50 as costs of transcription service to Court Reporter Mark A. Stamper, 1213 Woodlawn Drive, New Castle, IN 47362. Appellant Counsel; however, is put on notice that the Court may assess such costs against Appellant Counsel.

So ordered on this the 25th day of January, 2019.



KC

Kit C. Dean Crane, Judge
Henry Circuit Court 2

Distribution: Jeremy Scott Bell

Dale W Arnett

Court Reporter Mark A. Stamper
1213 Woodlawn Drive
New Castle, IN 47362

INVOICE

Transcript Delivered on January 8, 2019

<u>FROM:</u> Mark A. Stamper 1213 Woodlawn Dr New Castle, IN 47362 markstamperonline@gmail.com	<u>SERVICE FOR & BILL TO:</u> Dale W. Arnett Attorney at Law 102 Hospital Drive Winchester, IN 47394 larnett1@frontier.com
--	---

GRAND TOTAL: \$94.50

CASE INFORMATION:

DARLENE K. HERRAN vs. STATE OF INDIANA
Court Case No.: 33C02-1802-F5-000009
Appellate Case No.: 18A-CR-3131

ATTORNEY FOR APPELLANT:

Dale W. Arnett
Attorney at Law
102 Hospital Drive
Winchester, IN 47394
larnett1@frontier.com

TRANSCRIPTS

Sentencing Hearing - November 29, 2018

TOTAL TRANSCRIPT PAGES:

21

PRICE PER PAGE:

\$4.50

TOTAL PRICE:

\$94.50