

THORP THOMAS ET AL *v.* STATE OF ARKANSAS

5266 through 5273

418 S. W. 2d 792

Opinion delivered October 2, 1967

1. COSTS—CRIMINAL LAW, ASSESSMENT UPON DISMISSAL OF CHARGE.—Order dismissing indictments against defendants by withholding their discharge upon payment of costs held void.
2. CRIMINAL LAW—APPEAL & ERROR—OBJECTIONS & EXCEPTIONS.—No objection is necessary for review of a void order assessing court costs against a discharged defendant.

Appeal from Conway Circuit Court, *Russell Roberts*, Judge; reversed.

*Alston Jennings*, for appellants.

*Joe Purcell*, Attorney General; *Don Langston*, Asst. Atty. Gen., for appellee.

CONLEY BYRD, Justice. The appellants, Thorp Thomas, Chester Boyer, Leon Brents, Charles F. Wells, Everett Hamm Jr., and Gene Wirges, bring their separate appeals, consolidated here, challenging the authority of the trial court to assess court costs against them upon dismissal of criminal charges against them.

Except for the insertion of the individual names of appellants, the orders entered by the trial court read, ". . . it is by the Court . . . ordered . . . that the indictment against the said Thorp Thomas be dismissed and that Thorp Thomas be discharged, upon payment of costs."

The order assessing court costs against the defendant upon dismissal of the indictment is void and of no effect, *Melton v. State*, (Ala. Ct. of App.) 1 So. 2d 920 (1941), and is a violation of due process of law, *Giaccio v. Pennsylvania*, 382 U. S. 399 (1966). Nor was any objection necessary since the court exceeded its authority, *Sibley v. Leek*, 45 Ark. 346 (1885).

Reversed and dismissed.