

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-09-0976

Order Filed 3/30/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	McLean County
CRAIG SINGLETON,)	No. 07CF1171
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court. Justices Turner and Steigmann concurred in the judgment.

ORDER

Held: The trial court improperly imposed a \$200 public-defender-reimbursement fee without prior notice to defendant of his right to present evidence on his ability to pay. Accordingly, the court's order was vacated and remanded to the trial court for a hearing on defendant's ability to pay for counsel's services.

Following an August 2009 bench trial, the trial court found defendant, Craig Singleton, guilty of unlawful possession of a controlled substance (720 ILCS 570/402(c) (West 2006)), a Class 4 felony. In December 2009, the court sentenced defendant to an extended-term sentence of five years' imprisonment.

On appeal, defendant argues the trial court erred when it imposed a \$200 fee for a public defender before any services were rendered and without prior notice of defendant's right to present evidence on his ability to pay. Defendant argues the

court's order for reimbursement of this fee should be vacated. The State concedes error. However, we find both counsel have misread the record as to when the public defender fees were assessed. Because prior notice and a hearing were not afforded defendant with respect to the fee issue, we vacate the fee assessment and remand for further proceedings.

I. BACKGROUND

On November 2, 2007, the State charged defendant by information with unlawful possession of a controlled substance. Also on November 2, 2007, defendant filed an affidavit of assets and liabilities. On November 16, 2007, the court entered an order temporarily appointing the public defender as defendant's counsel and requiring defendant to report to the court screening officer and provide all requested information and documentation. On December 14, 2007, defendant filed a second affidavit of assets and liabilities, stating his assets and income were zero and his liabilities were \$695. Over the pendency of the case, defendant posted a \$2,000 cash bond, and Larry Singleton and Zandra Wakefield posted a \$3,000 and \$2,000 cash bond respectively on defendant's behalf. The original bond, posted by defendant, was forfeited when defendant failed to appear on a scheduled court date. This left \$5,000 cash pending with the circuit clerk at sentencing. The \$5,000 cash was the total of the two bonds posted by Larry and Zandra.

Following an August 2009 bench trial, the trial court found defendant guilty of unlawful possession of a controlled substance. In December 2009, the court sentenced defendant to an extended-term sentence of five years' imprisonment and ordered defendant to reimburse the county for public defender fees in an amount of \$200.

This appeal followed.

II. ANALYSIS

On appeal, defendant argues the trial court's order requiring him to pay \$200 for reimbursement for the public defender must be vacated because it was entered without notice and without any hearing to determine his ability to pay. In addition, defendant argues the reimbursement fee was assessed before any services were rendered in the case. The State concedes defendant's arguments. However, counsel are incorrect as to the timing of the fee assessment.

The parties' confusion stems from the preprinted listing of fees on the first page of the docket sheet. The amounts of the mandatory fees are also preprinted. However, amounts of discretionary fees, such as the public defender fee, are handwritten, presumably at the time the fee is assessed. While the list of fees and potential fees is displayed in the first entry on the docket sheet, dated November 2, 2007, when the discretionary fees are assessed by handwritten entry, the date of

assessment of that additional amount is not noted in the docket entry. In addition, there is no date noted for the "pd" marking, showing when the fees were actually paid. However, in reviewing the entire record, it is clear the \$100 clerk's fee, \$30 state's attorney fee, and \$200 bond fee were paid from the defendant's forfeited \$2,000 bond. The balance of that bond, \$1,670, was forfeited on August 18, 2008. Later, the additional bonds totaling \$5,000 were posted. Fees, fines, and assessments after sentencing totaled \$2,052.50. This figure includes the \$200 public defender fee. These amounts were paid from the posted bonds, and \$1,147.50 was refunded to Larry and \$1,800 was refunded to Zandra. The \$200 public defender fee was paid out of the money posted by Larry, as the bond fee of \$200 was the only assessment against the \$2,000 bond posted by Zandra.

Larry signed a "Notice to Person Providing Bail Money Other Than Defendant." That notice stated, in part, the following.

"I understand that even if the defendant follows all court orders, that this money may be ordered by the Judge to pay for the defendant's attorney fees, court costs, fines, fees and/or restitution to the victim, and that I may lose all or part of my money."

Section 113-3.1 of the Code of Criminal Procedure of

1963 (Code) (725 ILCS 5/113-3.1 (West 2006)) allows a trial court to order a defendant to pay a reasonable sum to reimburse the county for representation by court-appointed counsel. However, before a court can order a defendant to pay reimbursement, section 113-3.1(a) requires the court to hold a hearing into the defendant's financial circumstances and find an ability to pay. 725 ILCS 5/113-3.1(a) (West 2006); *People v. Love*, 177 Ill. 2d 550, 559, 687 N.E.2d 32, 36 (1997). In addition, a defendant must be given an opportunity to present evidence regarding his ability to pay and other relevant circumstances. *People v. Johnson*, 297 Ill. App. 3d 163, 164-65, 696 N.E.2d 1269, 1270 (1998). At this hearing, the court may give special consideration to the interests of relatives or other third parties who may have posted a money bond on behalf of a defendant to secure his release. 725 ILCS 5/113-3.1(c) (West 2006). Absent consent or a hearing, an order for reimbursement must be vacated and remanded for a section 113-3.1 hearing. See *People v. Bass*, 351 Ill. App. 3d 1064, 1070, 815 N.E.2d 462, 468 (2004).

This hearing, or at least the opportunity for a hearing, is required even where cash bond is available to pay the fees and even where the bond has been posted by a third party. *People v. Maxon*, 318 Ill. App. 3d 1209, 1214, 744 N.E.2d 339, 342-43 (2001), citing *Love*, 177 Ill. 2d at 560-64, 687 N.E.2d at 37-38. However, even if the defendant is found indigent, the

trial court may nevertheless use the cash bond for payment of attorney fees.

We recognize the reasonableness of the amount of fees assessed, and we recognize the significant amount of cash bond available at sentencing. Nevertheless, we are constrained to follow the cases cited above and thus must remand this case for the trial court to satisfy the requirements of section 113-3.1 of the Code (725 ILCS 5/113-3.1 (West 2006)).

Here, the record does not show defendant was given the opportunity to present evidence or be heard regarding the imposition of the \$200 reimbursement fee. Therefore, the court erred when it assessed the reimbursement fee without notice and without any hearing to determine defendant's ability to pay.

Further, although defendant failed to object to the reimbursement fee in the trial court, waiver does not apply when the record shows the court ordered defendant to pay reimbursement, *sua sponte*, without any warning. *People v. Roberson*, 335 Ill. App. 3d 798, 804, 780 N.E.2d 1144, 1149 (2002).

III. CONCLUSION

For the reasons stated, we vacate the order requiring defendant to pay \$200 for the services of his court-appointed counsel and remand for a hearing on defendant's ability to pay for such services pursuant to section 113-3.1 of the Code. In all other respects, we affirm the judgment of the circuit court

of McLean County.

Affirmed in part and vacated in part; cause remanded with directions.