

NOTICE
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2012 IL App (4th) 100797-U

Filed 1/5/12

NO. 4-10-0797

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
DAVID J. TODD,)	No. 08TR2896
Defendant-Appellant.)	
)	Honorable
)	Mark A. Fellheimer,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Appleton and Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* Where the trial court failed to give defendant notice and an opportunity to present evidence on the issue of the public-defender reimbursement fee, the \$100 charge must be vacated and the cause remanded for a new hearing.
- ¶ 2 In October 2009, the trial court found defendant, David J. Todd, guilty of driving while license suspended (625 ILCS 5/6-303(a) (West 2008)). In July 2010, the court sentenced him to two years' conditional discharge, two days in the Livingston County jail, and gave him credit for one day previously served. The court ordered him to pay a \$350 fine plus court costs and assessments, including a \$100 public-defender reimbursement fee.
- ¶ 3 Defendant appeals, arguing the trial court erred in ordering him to reimburse the public defender without notice and an opportunity to present evidence. Specifically, defendant contends the court failed to comply with section 113-3.1(a) of the Code of Criminal Procedure of

1963 (Code) (725 ILCS 5/113-3.1(a) (West 2008)) before imposing the \$100 public-defender reimbursement fee and requests remand for a hearing on public-defender fees pursuant to *People v. Love*, 177 Ill. 2d 550, 687 N.E.2d 32 (1997). The State concedes, and we accept the State's concession.

¶ 4

I. BACKGROUND

¶ 5 In May 2008, defendant received a traffic citation for driving while license suspended (625 ILCS 5/6-303(a) (West 2008)). In October 2009, the trial court found defendant guilty of driving while license suspended. In July 2010, the court sentenced him to two years' conditional discharge and two days in the Livingston County jail. Additionally, the court gave him credit for one day previously served and ordered him to pay a \$350 fine plus court costs and assessments, which included a \$100 public-defender reimbursement fee.

¶ 6 In August 2010, defendant filed a *pro se* motion to vacate sentence, requesting the trial court reduce his sentence from "conditional discharge to court supervision." Thereafter in August 2010, defendant's appointed counsel filed an amended motion to reconsider sentence, arguing the sentence imposed was excessive because the trial court (1) failed to sentence defendant with the objective of restoring him to useful citizenship and (2) failed to consider the following factors in mitigation: (a) defendant's criminal conduct neither caused nor threatened serious physical harm to another; (b) he did not contemplate his criminal conduct would cause or threaten serious physical harm to another; (c) he was under strong provocation as his vehicle was required to maintain his employment; (d) his criminal conduct was the result of circumstances unlikely to reoccur; (e) his character and attitude indicated he was unlikely to commit another crime; and (f) he was particularly likely to comply with the terms of a period of probation.

¶ 7 In October 2010, the trial court denied defendant's amended motion to reconsider sentence.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues the trial court erred in ordering him to pay \$100 to reimburse the public defender without notice and without giving him the opportunity to present evidence of his ability to pay. We agree, and the State concedes.

¶ 11 Section 113-3.1(a) of the Code (725 ILCS 5/113-3.1(a) (West 2010)) outlines the procedure the trial court must undertake when assessing payment for public-defender reimbursement fees, as follows:

"Whenever *** the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under [s]ection 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties."

Section 113-3.1 requires the trial court to conduct a hearing into a defendant's financial circumstances and find an ability to pay before ordering him to pay reimbursement for his appointed counsel. *People v. Love*, 177 Ill. 2d 550, 555, 687 N.E.2d 32, 35 (1997). "[T]he defendant must (1) have notice *** the trial court is considering imposing a payment order under section 113-3.1

of the Code and (2) be given the opportunity to present evidence or argument regarding his ability to pay and other relevant circumstances." *People v. Barbosa*, 365 Ill. App. 3d 297, 301, 849 N.E.2d 152, 154 (2006).

¶ 12 In this case, the record contains no evidence defendant was given notice and an opportunity to present evidence on his ability to pay the public-defender reimbursement fee. The parties' bystander's report for the sentencing hearing does not indicate the trial court satisfied the requirements of section 113-3.1 of the Code before it assessed the public-defender reimbursement fee. (The trial and sentencing proceedings held in this case were not recorded and the parties presented this court with an agreed statement of facts for both proceedings.) Instead, the agreed statement of facts indicate the court announced defendant's sentence and, immediately thereafter, assessed the \$100 reimbursement fee. The court's failure to follow the procedures required by section 113-3.1 requires us to vacate the reimbursement order and remand for a hearing on the matter. See *Barbosa*, 365 Ill. App. 3d at 302, 849 N.E.2d at 155.

¶ 13 Further, defendant's failure to object to the reimbursement order in the trial court does not result in forfeiture of this issue on appeal. See *Love*, 177 Ill. 2d at 564, 687 N.E.2d at 39 ("Where *** the trial court wholly ignored the statutory procedures mandated for a reimbursement order under section 113-3.1, and instead ordered reimbursement *sua sponte* without any warning to the defendant, fairness dictates that waiver should not be applied.").

¶ 14 III. CONCLUSION

¶ 15 For the reasons stated, we affirm defendant's conviction and sentence, vacate the portion of the trial court's sentencing order imposing the \$100 public-defender fee, and remand for a hearing in conformity with section 113-3.1 of the Code.

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