

NOTICE
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2012 IL App (4th) 110433-U

Filed 8/14/12

NO. 4-11-0433

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
MARK K. SHARP,)	No. 08CF1383
Defendant-Appellant.)	
)	Honorable
)	Charles G. Reynard,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices Appleton and McCullough concurred in the judgment.

ORDER

- ¶ 1 *Held:* Appellate court lacked jurisdiction to address whether the trial court properly imposed a \$200 public-defender reimbursement fee.
- ¶ 2 On February 26, 2009, defendant, Mark Sharp, pled guilty to unlawful delivery of a controlled substance, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2010)). That same day, the trial court sentenced defendant to 36 months' probation, including the condition of 120 days in jail. The court also ordered defendant to pay \$200 to reimburse the public defender. On September 11, 2009, defendant was charged with disorderly conduct, public intoxication, and possession of open alcohol in public. Subsequently, on February 2, 2010, the State filed a petition to revoke defendant's probation. On August 25, 2010, the court revoked defendant's probation and resentenced him to five years in prison.
- ¶ 3 On appeal, defendant argues that the trial court's order requiring him to reimburse

the public defender must be vacated, because the court failed to conduct a hearing, prior to the entry of the order, to determine his ability to pay. The State concedes that the court failed to conduct a hearing to determine defendant's ability to pay the public-defender fee, but argues that the court lacked jurisdiction to consider defendant's claim. We affirm.

¶ 4

I. BACKGROUND

¶ 5 On December 12, 2008, a police informant placed an order with defendant for 1.4 grams of cocaine. Defendant and a codefendant arranged for the delivery of the cocaine to the informant. The codefendant brought the cocaine to a designated apartment building where it was purchased by the informant. Shortly after the transaction occurred, police officers arrested defendant and found him in possession of \$20 of the buy money. At the time of his arrest, defendant admitted using drugs and acting as a "middle man" for the transaction at issue.

¶ 6 On February 26, 2009, defendant pled guilty to unlawful delivery of a controlled substance, a Class 1 felony (720 ILCS 570/401(c)(2) (West 2010)). After a hearing, the trial court sentenced defendant to 36 months' probation with 120 days in jail. The court also imposed a \$200 street-value fine, \$1,000 drug-treatment assessment, \$100 drug-trauma-fund fine, \$100 Illinois State Police lab fee, and \$200 DNA-analysis fee. The court further ordered defendant to pay \$200 to reimburse the public defender. At trial, the following exchange occurred regarding the public-defender fee:

"[TRIAL COURT]: Public Defender reimbursement?

[DEFENSE COUNSEL]: Yes, your Honor, please.

[TRIAL COURT]: Two hundred."

Before imposing the fee, the court inquired as to whether defendant would be able to pay the total

amount of fines and fees it imposed within two years. However, the court did not specifically inquire as to defendant's ability to pay the public-defender fee. Defendant stated that he could pay the total amount imposed within the two-year period.

¶ 7 Defendant did not file a posttrial motion or appeal related to those proceedings.

¶ 8 On September 11, 2009, defendant was charged with disorderly conduct, public intoxication, and possession of open alcohol in public. Defendant also provided urine samples that tested positive for cocaine on four different occasions from June 19, 2009, to October 16, 2009. As a result, on February 2, 2010, the State filed a petition to revoke defendant's probation.

¶ 9 On August 25, 2010, the court revoked defendant's probation and resentedenced him to five years in prison. At that time, no mention was made of any fines or fees. However, in a supplemental sentencing order, issued on February 28, 2011, the court indicated that defendant's financial obligations were "ordered as previously referenced."

¶ 10 On March 8, 2011, defendant filed a motion to reconsider. The motion did not address the propriety of the order to reimburse the public defender. During the hearing on the motion, defendant did not raise the issue.

¶ 11 This appeal followed.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that the trial court's order requiring him to reimburse the public defender must be vacated, because the court failed to conduct a hearing to determine his ability to pay the public-defender fee as required under section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2010)). Section 113-3.1(a) provides, in relevant part, the following:

“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. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level.” 725 ILCS 5/113-3.1(a) (West 2010).

¶ 14 Section 113-3.1 of the Code requires that the trial court conduct a hearing into a defendant's financial circumstances and find an ability to pay before ordering defendant to pay reimbursement for his or her appointed counsel. *People v. Love*, 177 Ill. 2d 550, 555-56, 687 N.E.2d 32, 35 (1997). “[T]he defendant must (1) have notice that 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).

¶ 15 The State argues that this court lacks jurisdiction to address defendant's claim because the public-defender fee was imposed as part of defendant's original sentence of

probation, and defendant did not appeal his original sentence, but the sentence he received after his probation was revoked.

¶ 16 Illinois Supreme Court Rule 604(b) (eff. July 1, 2006) authorizes a defendant sentenced to probation to appeal the judgment of conviction, the conditions of the sentence, or both. Illinois Supreme Court Rule 606 (eff. Mar. 20, 2009) provides that a notice of appeal is jurisdictional and must be filed within 30 days after the entry of the final judgment appealed. *People v. Somers*, 2012 IL App (4th) 110180, ¶ 31, 2012, 970 NE.2d 606, 611-12.

¶ 17 According to the record, defendant did not appeal his original sentence of probation imposed on February 26, 2009. Instead, defendant appealed the August 25, 2010, sentence he received on resentencing following the revocation of his probation. In the supplemental order issued on February 28, 2011, the court indicated that defendant's financial obligations were "ordered as previously referenced."

¶ 18 In *People v. Bell*, 296 Ill. App. 3d 146, 694 N.E.2d 673 (1998), this court addressed whether the trial court's imposition of a public-defender fee was proper. In that case, the court sentenced the defendant to probation and ordered him to pay a \$100 public-defender fee. *Bell*, 296 Ill. App. 3d at 147, 694 N.E.2d at 676. Subsequently, the court revoked the defendant's probation. *Bell*, 296 Ill. App. 3d at 148, 694 N.E.2d at 676. The court then resentenced the defendant to probation and ordered him to pay a \$100 public-defender fee. *Bell*, 296 Ill. App. 3d at 148, 694 N.E.2d at 676. However, the court failed to hold a hearing as to the defendant's ability to pay before imposing the public-defender fee. *Bell*, 296 Ill. App. 3d at 148, 694 N.E.2d at 676. On appeal, the defendant argued that the court erred in imposing the public-defender fee without holding a hearing as required under section 113-3.1. *Bell*, 296 Ill. App. 3d

at 153, 694 N.E.2d at 680. In contrast, the State argued that the issue was forfeited because the defendant failed to appeal his original conviction and sentence. *Bell*, 296 Ill. App. 3d at 154, 694 N.E.2d at 680. We accepted the defendant's argument and remanded the case for a hearing on defendant's ability to pay the fee. *Bell*, 296 Ill. App. 3d at 155, 694 N.E.2d at 681. In making our decision, we considered that "[t]his was a new sentence of probation and new monetary assessments were made. The trial court did not say defendant would be paying \$100 previously due in public[-]defender fees; it assessed a new fee of \$100." *Bell*, 296 Ill. App. 3d at 154, 694 N.E.2d at 680.

¶ 19 In this case, unlike *Bell*, the trial court did not impose a new public-defender fee following the revocation of defendant's probation. In the supplemental sentencing order issued on February 28, 2011, the court specifically noted that defendant's financial obligations were "ordered as previously referenced." After reviewing the record, we find that "previously referenced" refers to the \$200 public-defender fee imposed on February 26, 2009, because that was the only time court-appointed legal fees were mentioned. Defendant failed to appeal the public-defender fee imposed in February 2009 and remains responsible for its payment. Accordingly, we are without jurisdiction to address the propriety of the trial court's imposition of the \$200 public-defender fee.

¶ 20 III. CONCLUSION

¶ 21 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 22 Affirmed.