

No. 1-13-1364

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).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 CR 14771
)	
MICHAEL WOODS,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Presiding Justice HOFFMAN and Justice LAMPKIN concurred in the judgment.

O R D E R

¶ 1 *Held:* Where the trial court assessed a public defender fee without holding an adequate hearing concerning defendant's ability to pay that fee, we vacated the fee and remanded for a new hearing on defendant's ability to pay.

¶ 2 Following a bench trial, defendant Michael Woods was convicted of possession of cannabis with intent to deliver and sentenced to one year of conditional discharge. The trial court also ordered that defendant's \$500 cash bond be used to reimburse the public defender's office.

On appeal, defendant contends that the trial court improperly assessed the \$500 public defender

fee without holding a hearing on his ability to pay. As relief, defendant requests that we vacate the \$500 fee, or, alternatively, remand for an appropriate hearing.

¶ 3 The evidence at trial revealed that at about 5:50 p.m. on August 15, 2011, police saw defendant driving the wrong way down a one-way street. The officers pulled defendant over and arrested him because he did not have valid proof of insurance, had an open bottle of beer in the car, and was not wearing a seatbelt. Defendant consented to a search of his vehicle, which revealed cannabis, a scale, narcotics packaging, a gun, and ammunition. Defendant admitted to police that he had been selling marijuana out of his car. The trial court found defendant guilty of possession of cannabis with intent to deliver, and acquitted him of unlawful use of a weapon based on its finding that defendant was an Ohio resident and thus not subject to Illinois' FOID requirement.

¶ 4 Prior to sentencing, the trial court ordered a presentence investigative report (PSI), which disclosed that defendant worked part time as a medical assistant and factory worker. He earned a monthly income of \$1,000, and his monthly expenses averaged \$1,000. Defendant had one child with his former girlfriend and stated that he "share[d] in the responsibilities of raising him." Defendant was a high school graduate, earned some college credit, and had no criminal background.

¶ 5 On April 19, 2013, the day of sentencing, the State filed a motion to reimburse the public defender pursuant to section 113-3.1 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1 (West 2012)), requesting the court to conduct a hearing to determine whether the county should be reimbursed for funds expended to retain the public defender as defense counsel. In the motion, the State specifically indicated that because defendant posted cash for his

bail bond, a question existed whether he had the resources to partially or fully reimburse the county.

¶ 6 At the sentencing hearing, defense counsel argued in mitigation that defendant had been working as a medical assistant and factory worker. After defense counsel finished his arguments, the trial court asked if defendant was working full time, and defense counsel responded that defendant "[was] working part time at two different jobs, so full time together." The trial court then sentenced defendant to one year of conditional discharge and granted the State's motion to reimburse the public defender. The court noted that defendant had posted a \$500 bond and stated, "[t]hat's a reasonable amount to reimburse the Public Defender's Office."

¶ 7 On appeal, defendant asserts, and the State agrees, that the trial court did not comply with the hearing requirements of section 113-3.1(a) to assess a public defender fee. The parties disagree as to the proper remedy. In his opening brief, defendant asks this court to vacate the fee outright or, in the alternative, remand the cause for a hearing on his ability to pay it.

¶ 8 The State maintains that the proper remedy is to remand for a hearing to determine defendant's ability to pay the public defender fee. However, defendant counters that the statutory 90-day deadline (725 ILCS 5/113-3.1 (West 2012)) for holding a hearing on his reimbursement of the public defender fee had expired.

¶ 9 We initially note that defendant maintains the alleged error was not forfeited because the trial court ignored the statutory procedures mandated by section 113-3.1 of the Code. We agree because forfeiture is not appropriate where the trial court assesses a public defender fee without following procedural requirements. *People v. Carreon*, 2011 IL App (2d) 100391, ¶ 11; see also *People v. Hanna*, 296 Ill. App. 3d 116, 126 (1998) (rejecting the State's argument that the defendant waived objection to the reimbursement order).

¶ 10 Turning to the merits, section 113-3.1(a) of the Code provides for reimbursement to the county or the State for court-appointed counsel as follows:

"Whenever under either Section 113-3 of the Code or Rule 607 of the Illinois Supreme Court 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 Section 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 2012).

¶ 11 Here, as both parties correctly agree, the trial court did not comply with the requirements of section 113-3.1(a) in assessing the public defender fee. The same day the State filed a motion under section 113-3.1 to reimburse the public defender, defendant's sentencing hearing was held. The trial court heard arguments in aggravation and mitigation, including that defendant had two part-time jobs, and sentenced defendant to one year of conditional discharge. Immediately after the court imposed defendant's sentence, it asked defendant if he had posted bond, to which defendant responded that he had posted \$500. The court indicated that was a reasonable amount to reimburse the public defender's office and granted the State's motion. The court then admonished defendant of his right to appeal. The trial court never considered a financial affidavit

from defendant, or any other information pertaining to his financial circumstances as required by statute.

¶ 12 The case at bar is similar to *People v. Somers*, 2013 IL 114054, and we find it instructive in determining the proper remedy for the trial court's error. In *Somers*, the trial court failed to comply with the above requirements of section 133-3.1(a). Specifically, the court imposed a public defender fee after asking the defendant a few financial questions. *Id.*, ¶ 4. As a remedy for the trial court's noncompliance with section 133-3.1(a), the defendant maintained that the fee had to be vacated outright because no section 113-3.1(a) hearing was held within the 90-day statutory time period, and thus remandment to the trial court for a late hearing would be impermissible. The State responded that the timing issue was a red herring because the problem was not that no hearing was held within the statutory time limit, but that the hearing which the trial court did hold was insufficient to satisfy section 113-3.1(a)'s requirements. *Id.*, ¶¶ 12-13. Our supreme court agreed with the State and held that:

"Clearly, then, the trial court did not fully comply with the statute, and defendant is entitled a new hearing. Just as clearly, though, the trial court did have some sort of a hearing within the statutory time period. The trial court inquired of defendant whether he thought he could get a job when he was released from jail, whether he planned on using his future income to pay his fines and costs, and whether there was any physical reason why he could not work. Only after hearing defendant's answers to these questions did the court impose the fee. Thus, we agree with the State's contention that the problem here is not that the trial court did not hold a hearing within 90 days, but that the hearing that the court did hold was insufficient to comply with the statute." *Id.*, ¶ 15.

Based on the above analysis, the supreme court remanded the cause for a proper hearing under section 113-3.1(a). *Id.*, ¶ 18. Following *Somers*, we must also remand the matter to the trial court for an adequate hearing on the State's motion to reimburse the public defender's office. *Id.*, ¶ 20; compare with *People v. Gutierrez*, 2012 IL 111590, ¶¶ 21, 24 (vacating the public defender fee outright where the circuit court clerk imposed the fee on its own).

¶ 13 In so finding, we reject defendant's argument that his public defender fee should be vacated outright. Defendant maintains that because the exchange between him and the trial court did not involve his ability to pay the fee, no hearing was held within 90 days of the entry of judgment as required by statute. However, the fact that the trial court did not ask defendant questions about his ability to pay the public defender fee does not demonstrate that a hearing did not take place at all. See *People v. Guajardo*, 262 Ill. App. 3d 747, 757 (1994) (stating that the term "hearing" is generally understood to mean a judicial examination of the issues between the parties, whether of law or of fact). Instead, the trial court's failure to comply with section 113-3.1(a) only shows that the hearing which was held was inadequate. Moreover, as we found in *People v. Williams*, 2013 IL App (2d) 120094, ¶ 20, *Somers* required only that the trial court hold some sort of a hearing within the statutory time period, and our supreme court's statement in *Somers* that a hearing "clearly" took place in that case implied that less would also suffice to constitute a "hearing." Here, as shown above, the hearing on the State's motion to reimburse the public defender's office occurred simultaneously with the sentencing hearing. To the extent that defendant asserts that a separate hearing on the public defender fee is required in order to meet the definition of a hearing under section 113-3.1(a), we find no authority to support this proposition. Instead, this is yet another example of a defendant being denied a proper hearing before public defender fees are imposed. See *Gutierrez*, 2012 IL 111590, ¶ 25 (expressing

1-13-1364

disappointment that defendants are still being routinely denied proper hearings before the imposition of the public defender fee).

¶ 14 For the foregoing reasons, we vacate the \$500 public defender fee and remand for a hearing in compliance with section 113-3.1(a) of the Code (725 ILCS 5/113-3.1(a) (West 2012)).

We affirm the judgment of the circuit court in all other respects.

¶ 15 Affirmed in part, vacated in part and remanded with directions.