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2015 IL App (3d) 121065-U

Order filed February 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

THE PEOPLE OF THE STATE OF	)	Appeal from the Circuit Court
ILLINOIS,	)	of the 14th Judicial Circuit,
	)	Henry County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-1065
v.	)	Circuit No. 11-CF-401
	)	
DAKOTAH J. HAMILTON,	)	
	)	Honorable Ted J. Hamer,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Lytton concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court erred in ordering defendant to pay a \$1,000 public defender fee without first holding a hearing to determine defendant's ability to pay.

¶ 2 Following a jury trial, defendant, Dakotah J. Hamilton, was found guilty of two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2010)) and two counts of criminal sexual abuse (720 ILCS 5/11-1.50(c) (West 2010)). Defendant was sentenced to 48 months of probation on the two counts of aggravated criminal sexual abuse and 24 months of probation on the two counts of criminal sexual abuse, all which were to be served concurrently.

Defendant's probation was subject to various terms and conditions, including the condition that defendant pay a public defender fee.

¶ 3 On appeal, defendant argues that the trial court erred in ordering him to pay a public defender fee without first conducting a hearing to determine his ability to pay such fee. We affirm in part, vacate in part, and remand with directions.

¶ 4 FACTS

¶ 5 Defendant was found guilty of two counts of aggravated criminal sexual abuse and two counts of criminal sexual abuse. Following the jury trial, defendant filed a motion for new trial. Defendant argued that the State failed to prove him guilty beyond a reasonable doubt and the trial court erred in instructing the jury. The circuit court denied defendant's motion for new trial. The case proceeded to a sentencing hearing.

¶ 6 At the sentencing hearing, the prosecutor stated:

"The State would recommend that [defendant] pay a \$1,000 Rule 18 fee. I believe Mr. Cosby is a public defender appointed in this case, and he does have \$5,000 bond posted. That there's a statutory \$200 sexual assault fine, a statutory \$500 sex offender fine."

In response, defendant's counsel indicated that the fines and costs the State laid out, including the "\$1,000 Rule 18 fee," were appropriate. He requested that a portion of the fee be placed into his transcripts account because he spent \$849.75 to have transcripts produced.

¶ 7 The trial court sentenced defendant to concurrent terms of probation. The conditions of defendant's probation required, *inter alia*, that he serve 120 days in jail and pay "a \$1,000.00 fee pursuant to Supreme Court Rule 18, of which \$849.75 [was] to reimburse the Public Defender for transcripts." Defendant appealed.

¶ 8

## ANALYSIS

¶ 9

On appeal, defendant argues that the trial court erred in ordering him to pay a public defender fee because the trial court did not conduct a hearing to determine his ability to pay the fee, as required by statute. The State argues that defendant waived this issue by his "affirmative acquiescence" because his counsel agreed the fee was appropriate. Defendant responds that even if he waived the issue, the trial court's failure to conduct the statutorily mandated hearing should be considered under the plain error rule. The State contends that because defendant agreed to pay the \$1,000 fee as a condition of probation a plain-error review is not applicable.

¶ 10

Initially, we note that defendant was ordered to pay "a \$1,000.00 fee pursuant to Supreme Court Rule 18, of which \$849.75 [was] to reimburse the Public Defender for transcripts." Illinois Supreme Court Rule 18 (eff. Sept. 1, 2006) pertains to procedures that are to take place when a trial court finds a statute, ordinance, regulation or other law to be unconstitutional. There is no authority under Supreme Court Rule 18 for the imposition of a public defender reimbursement fee. We recognize that Part 18 of the circuit court rules for the Fourteenth Judicial Circuit of Illinois provides, the "Circuit [shall] seek reimbursement from defendants in criminal cases for the legal services provided by public defenders and other Court-appointed attorneys" pursuant to section 113-3 of the Code of Criminal Procedure of 1963 (Code). 14th Judicial Cir. Ct. Part 18(a) (July 1, 1996).

¶ 11

Under section 113-3 of the Code, if the trial court determines that a defendant is indigent and desires counsel, then an attorney must be appointed to represent the defendant. 725 ILCS 5/113-3(b) (West 2010). Section 113-3.1(a) of the Code authorizes the trial court to order a criminal defendant who receives the services of appointed counsel to reimburse the county or state for such services. 725 ILCS 5/113-3.1(a) (West 2010). Section 113-3.1(a) mandates that

the trial court conduct a hearing into the defendant's financial resources as a precondition to ordering reimbursement. *Id.*; *People v. Love*, 177 Ill. 2d 550 (1997). Such a hearing shall be conducted, either on the court's own motion or on motion of the prosecutor, within 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).

¶ 12 The hearing required by section 113-3.1 insures that a reimbursement order meets the constitutional mandate that criminal defendants who cannot afford a lawyer be provided with appointed counsel. *Love*, 177 Ill. 2d at 564. The constitutionality of a public defender reimbursement statute depends upon the statute providing for inquiry into the defendant's ability to pay the reimbursement fee. *Id.* at 558 (citing *People v. Cook*, 81 Ill. 2d 176, 184 (1980)). Therefore, due process requires a hearing into a defendant's ability to pay the reimbursement as a precondition to ordering a reimbursement of public defender fees, as is mandated under section 113-3.1 of the Code. *Love*, 177 Ill. 2d at 559. The hearing must provide defendant with: (1) notice that the trial court is considering the imposition of a public defender fee; and (2) the opportunity to present evidence or argument regarding his ability to pay and other relevant circumstances. *People v. Somers*, 2012 IL App (4th) 110180, ¶ 27.

¶ 13 Here, a hearing on defendant's ability to pay the reimbursement fee did not take place. Instead, the \$1,000 reimbursement was ordered at the State's request at the sentencing hearing, without objection from defendant. Where the trial court wholly ignores the statutory procedure mandated for ordering public defender reimbursement under section 113-3.1 and, instead, orders reimbursement without any warning to defendant, fairness dictates that waiver should not be applied. *Love*, 177 Ill. 2d at 564. Accordingly, we vacate the \$1,000 public defender fee and remand for the circuit court to conduct the mandated hearing into defendant's ability to pay prior

to ordering any public defender reimbursement fee.

¶ 14

## CONCLUSION

¶ 15

For the foregoing reasons, we vacate the \$1,000 public defender fee and remand with directions.

¶ 16

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