

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

JACOB C. KLEINTANK,

Appellant,

v.

Case No. 5D14-2221

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed October 2, 2015

Appeal from the Circuit Court
for Citrus County,
Richard A. Howard, Judge.

Matthew R. McLain, of Brownstone, P.A.,
Winter Park, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Kaylee D. Tatman,
Assistant Attorney General, Daytona
Beach, for Appellee.

ORFINGER, J.

Jacob C. Kleintank appeals his sentence following no contest pleas to burglary of a structure with a battery, attempted robbery with a deadly weapon, and two counts of aggravated battery with a deadly weapon. We affirm without comment, except as to two matters. As a condition of probation following Kleintank's release from prison, the trial court required Kleintank to pay the cost of his incarceration. The State properly concedes

that pursuant to section 960.292, Florida Statutes (2014), the proper remedy is a civil restitution lien. On remand, the trial court shall strike this as a condition of probation, but may enter a civil restitution lien as authorized by statute. See Harris v. State, 157 So. 3d 345, 346 n.1 (Fla. 5th DCA 2015). The State also concedes that the trial court erred by entering a restitution order when it did not have jurisdiction to do so. Once a notice of appeal has been filed, the trial court lacks jurisdiction to enter a restitution order. See Farley v. State, 55 So. 3d 721, 721-22 (Fla. 5th DCA 2011). Accordingly, we strike the restitution order. On remand, the trial court may conduct a restitution hearing with Kleintank present. See Williams v. State, 76 So. 3d 410 (Fla. 1st DCA 2012) (holding defendant has constitutional right to be present at restitution hearing unless defendant knowingly, intelligently, and voluntarily waives that right).

AFFIRMED in part; REVERSED in part; and REMANDED.

PALMER, J., and TURNER, T. W., Associate Judge, concur.