

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HOWARD RUSSELL KENYON,

Defendant-Appellant.

UNPUBLISHED

February 19, 1999

No. 199561

Shiawassee Circuit Court

LC No. 93-006916 FH

Before: Gribbs, P.J., and Saad and P. H. Chamberlain,* JJ.

MEMORANDUM.

In late 1993, defendant pleaded guilty to delivery of marijuana, MCL 333.7401(2)(c); MSA 14.15(7401)(2)(c). On March 18, 1994, he was sentenced to 133 days in jail and was placed on two years' probation. At that time defendant was also ordered to pay \$500 in restitution to the Michigan State Police, in monthly installments, in addition to other fees. In 1996, defendant pleaded guilty to violating the terms of his probation by failing to report and failing to pay court assessments. The trial court revoked defendant's probation and sentenced him to 32 to 48 months' imprisonment. Defendant was also ordered to pay \$300 in court costs, and to pay \$500 in restitution to the Michigan State Police, as originally ordered in 1994. Defendant now appeals as of right. We vacate the trial court's assessment of \$300 in court costs, but affirm the 1996 judgment of sentence in all other respects.

This appeal is limited to the probation violation proceedings in 1996. *People v Pickett*, 391 Mich 305, 316; 215 NW2d 695 (1974). Accordingly, defendant's challenge to the authority of the trial court to order restitution to the Michigan State Police on March 18, 1994, prior to amendments to MCL 780.766; MSA 28.1287(766) effective May 1, 1994, is beyond the scope of this appeal. Moreover, the issue is now moot because the original restitution order in 1994 has been superseded by the judgment of sentence entered in 1996. Defendant does not argue that the trial court lacked authority to order the restitution in the 1996 probation violation proceeding. We reject defendant's contention that the trial court merely restated previous restitution requirement but did not actually sentence defendant to pay the restitution as part of the probation violation sentencing in 1996.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant's challenge to the trial court's assessment of \$300 in court costs as part of the probation violation sentencing in 1996 is properly raised in this appeal. We reject plaintiff's contention that the issue was waived by defendant's failure to appeal his original conviction and sentence in 1994, since the \$300 assessment for court costs had not yet been imposed at that time. As plaintiff concedes in its appellee brief, the trial court's assessment of court costs is unauthorized by the underlying statute for which defendant was convicted and therefore should be vacated. See, e.g., *People v Krieger*, 202 Mich App 245, 247-248; 507 NW2d 749 (1993) *People v Jones*, 182 Mich App 125; 451 NW2d 525 (1989).

That portion of the September 23, 1996 judgment of sentence in this cause which requires defendant to pay \$300 in court costs is vacated, but in all other respects the judgment of sentence is affirmed. We do not retain jurisdiction.

/s/ Roman S. Gibbs
/s/ Henry William Saad
/s/ Paul H. Chamberlain