

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LYNN GATEHOUSE,

Defendant-Appellant.

UNPUBLISHED

December 19, 2000

No. 220083

Isabella Circuit Court

LC No. 98-008672-FH

Before: Bandstra, C.J., and Fitzgerald and D.B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right from his sentence for probation violation following his plea-based conviction of attempted malicious destruction of property over \$100, MCL 750.377a; MSA 28.609(1) (the pre-1999 version); MSA 750.92; MSA 28.287. We vacate those portions of the judgment requiring defendant to pay costs and a fine.

Following his plea, defendant was sentenced to two years' probation, and ordered to pay costs, restitution, and a fine. Subsequently, the trial court revoked defendant's probation and sentenced him to serve one year in the county jail, with credit for sixty days. The court ordered that defendant remain liable for the costs, restitution, and fine.

While defendant does not challenge his continuing liability for restitution, he argues that the trial court erred by ordering that he remain liable for the costs and fine imposed as a condition of probation. We agree that the trial court erred, and vacate those portions of the judgment of sentence requiring payment of costs and a fine. A trial court that revokes probation may proceed to sentence the defendant as if the term of probation had never been imposed. However, the court may not order payment of costs unless the underlying statute expressly provides for them. *People v Krieger*, 202 Mich App 245, 247; 507 NW2d 749 (1993). Defendant was convicted of attempted malicious destruction of property over \$100, a high court misdemeanor. MCL 750.92(3); MSA 28.287(3) provides that such an offense is punishable by a term of incarceration or by a fine not to exceed \$1,000. The statute does not provide for the imposition of costs; therefore, when the trial court sentenced defendant after revoking probation it lacked the authority to order that he remain liable for costs. *Id.* at 248. Furthermore, because MCL

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

750.92(3); MSA 28.287(3) provides for either a term of incarceration or a fine, the trial court was not authorized to impose both penalties when it sentenced defendant. That portion of the judgment ordering payment of a fine must be vacated.

We vacate those portions of the judgment of sentence ordering payment of costs and a fine. The remaining portions of the judgment are affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber