

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

MARVIN A. GUNN, JR.,

Defendant-Appellant.

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UNPUBLISHED

April 26, 2002

No. 235462

Allegan Circuit Court

LC No. 98-010841-FH

Before: Gage, P.J., and Griffin and Buth\*, JJ.

MEMORANDUM.

Defendant appeals by delayed leave granted his sentence for violating probation. We reverse in part.

Defendant pleaded guilty to unlawful driving away of a motor vehicle, MCL 750.413. He was sentenced to sixty months' probation, and ordered to pay restitution and costs of \$1,000. Defendant pleaded guilty to violating probation, and he was sentenced to three to five years' imprisonment, and ordered to pay remaining court costs of \$887.50 and restitution of \$20,024.01. On appeal, he argues that the assessment of costs was not authorized. He does not challenge the award of restitution.

A trial court may only require a convicted defendant to pay costs where such a requirement is expressly authorized by statute. *People v Jones*, 182 Mich App 125, 126; 451 NW2d 525 (1989). There is no express provision for assessment of costs in MCL 750.413. The probation revocation statute does not expressly grant the trial court authority to retain previously assessed costs and fines once probation is revoked. *People v Krieger*, 202 Mich App 245, 248; 507 NW2d 749 (1993). Here, the trial court did not assess costs under the probation statute, MCL 771.3, but preserved costs that were previously awarded. The trial court lacked authority to do so. *Id.*

We vacate the portion of the judgment of sentence imposing costs. The remainder of defendant's sentence is affirmed.

/s/ Hilda R. Gage  
/s/ Richard Allen Griffin  
/s/ George S. Buth

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