

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONNA FERN HEILIG,

Defendant-Appellant.

UNPUBLISHED
November 1, 2007

No. 271127
Iosco Circuit Court
LC No. 05-002385-FH

Before: Markey, P.J., and Saad and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from that portion of the judgment of sentence requiring her to reimburse the county \$600 in appointed counsel costs. We vacate that portion of the judgment and remand for reconsideration of defendant's ability to make such payment. The judgment is affirmed in all other respects. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of negligent homicide, MCL 750.324. The trial court sentenced defendant to serve a term of two years' probation, with the first year in jail, to pay costs and fees in the amount of \$920, and to pay \$600 in appointed counsel costs.

A person who was afforded appointed counsel might be ordered to reimburse the county for the costs of that representation, if such reimbursement can be made without substantial hardship. A court need not make specific findings on the record regarding the defendant's ability to pay, but must provide some indication that it considered the defendant's financial situation prior to ordering reimbursement. The amount ordered to be reimbursed must be related to the defendant's foreseeable ability to pay. A court must afford the defendant notice and an opportunity to be heard prior to ordering repayment for appointed counsel expenses. *People v Dunbar*, 264 Mich App 240, 251-255; 690 NW2d 476 (2004); see also MCR 6.005(B).

Defendant argues that the trial court denied her due process when it ordered her to reimburse the county \$600 for appointed counsel costs without first considering her ability to pay. We agree.

We vacate that portion of the judgment of sentence requiring defendant to reimburse the county \$600 for appointed counsel costs, and remand this matter with instructions that the trial court consider defendant's ability to pay and, if appropriate, enter a separate order directing

defendant to reimburse the county.¹ Defendant failed to object to the order requiring her to pay \$600 in appointed counsel costs; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A review of the sentencing transcript shows that the trial court gave no indication that it considered defendant's ability to pay prior to ordering reimbursement. A remand for further proceedings is necessary. *Dunbar, supra* at 251-255.

That portion of the judgment of sentence requiring defendant to pay the county \$600 for the cost of her appointed counsel is vacated, and this matter is remanded to the trial court for reconsideration of defendant's ability to reimburse the county for the cost of her appointed counsel. The judgment of sentence is affirmed in all other respects. We do not retain jurisdiction.

/s/ Jane E. Markey
/s/ Henry William Saad
/s/ Kurtis T. Wilder

¹ In *People v Arnone*, Monroe Circuit Court Docket No. 05-034540-FH, the trial court ordered the defendant to reimburse the county for appointed counsel costs. This Court denied the defendant's delayed application for leave to appeal (Docket No. 271028). The defendant sought leave to appeal to our Supreme Court. Our Supreme Court ordered the Monroe County Prosecuting Attorney to answer the application and to address, inter alia, whether *Dunbar, supra*, and *People v Nowicki*, 213 Mich App 383, 386-388; 539 NW2d 590 (1995) (in which this Court held that a defendant's obligation to reimburse the county for appointed counsel expenses is independent of the sentence imposed in a criminal case) were correctly decided. Thereafter, our Supreme Court, in lieu of granting leave to appeal, vacated that portion of the judgment of sentence ordering the defendant to reimburse the county for attorney fees, and remanded the case to the trial court for a decision on the issue that considered the defendant's ability to pay. Our Supreme Court directed that if the trial court concluded that the defendant had the ability to make payment, reimbursement was to be mandated in a separate order, and not in the judgment of sentence. *People v Arnone*, 478 Mich 908; 732 NW2d 537 (2007).