

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN EARL EASLEY,

Defendant-Appellant.

UNPUBLISHED

July 17, 2008

No. 278832

Jackson Circuit Court

LC No. 06-004281-FH

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Defendant appeals that portion of the judgment of sentence requiring him to pay court costs of \$100 and appointed counsel costs of \$472. We affirm in part, vacate in part, and remand for further proceedings. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted by a jury of resisting and obstructing a police officer, MCL 750.81d(1). The trial court sentenced defendant to 365 days in jail, with credit for 70 days served,¹ and to pay \$100 in court costs and \$472 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).

In 316 PA 2005, the Legislature enacted MCL 769.1k, which became effective on January 1, 2006, and which provides in pertinent part:

¹ The trial court later granted defendant's motion to amend the judgment of sentence to reflect that defendant received credit for 145 days served in jail.

(1) If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine.

(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

(iii) The expenses of providing legal assistance to the defendant.

(iv) Any assessment authorized by law.

(v) Reimbursement under section 1f of this chapter.

Prior to the enactment of MCL 769.1k, a trial court could require a convicted defendant to pay court costs only if such a requirement was expressly authorized by statute. *People v Antolovich*, 207 Mich App 714, 716; 525 NW2d 513 (1994); *People v Jones*, 182 Mich App 125, 126; 451 NW2d 525 (1989).

We affirm that portion of the judgment that requires defendant to pay costs in the amount of \$100. Defendant failed to object to the order requiring him to pay court costs; therefore, our review is for plain error. Reversal is warranted only when a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). MCL 769.1k(1)(b)(ii) expressly authorizes the imposition of court costs in a case such as this one.

We vacate that portion of the judgment that requires defendant to reimburse the county \$472 for appointed counsel costs, and remand this matter with instructions that the trial court consider defendant's ability to pay.² Defendant failed to object to the order requiring him to pay appointed counsel costs; therefore, our review is for plain error. *Carines, supra*. 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.

² MCL 769.1k(b)(iii) does not eliminate the *Dunbar* requirement that a trial court consider a defendant's ability to pay prior to ordering reimbursement. See *People v Arnone*, 478 Mich 908; 732 NW2d 537 (2007).

Plaintiff notes that the presentence investigation report indicates that defendant receives disability benefits of \$589 per month, and once received a settlement in the amount of \$100,000 for injuries sustained on the job. The report also indicates that the probation department could not verify that defendant received the settlement; moreover, a portion of defendant's monthly disability benefit is garnished for payment of child support. The trial court gave no indication that it considered any of this information when ordering defendant to reimburse the county for the cost of appointed counsel. A remand for further proceedings is necessary. *Dunbar, supra* at 251-255.

We affirm that portion of the judgment of sentence requiring defendant to pay court costs in the amount of \$100, vacate that portion of the judgment of sentence requiring defendant to pay the county \$472 for the cost of his appointed counsel, and remand this matter to the trial court for reconsideration of defendant's ability to reimburse the county for the cost of his appointed counsel.³ We affirm the judgment in all other respects. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello

³ An evidentiary hearing is not required on remand. The trial court may rely on an updated report from the probation department. See *Dunbar, supra* at 255 n 14.