

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NIGEL RICHARD PATTON,

Defendant-Appellant.

UNPUBLISHED

August 21, 2008

No. 278827

Wayne Circuit Court

LC No. 07-003644-01

Before: Cavanagh, P.J., and Jansen and Kelly, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of filing a false police report of a felony, MCL 750.411a(1)(b). He was sentenced to a one-year term of probation and ordered to pay, among other things, \$600.00 in court costs and \$400.00 in appointed counsel fees. Defendant appeals as of right, challenging only the order to pay costs and appointed counsel fees. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Relying on *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), defendant asserts that the trial court erred by ordering him to pay court costs and appointed counsel fees without first assessing his current and future financial circumstances and his ability to pay. Defendant failed to object at sentencing. Accordingly, review is waived with respect to the issue of court costs. See *People v Music*, 428 Mich 356, 363; 408 NW2d 795 (1987). However, with respect to the issue of appointed counsel fees, review is for plain error affecting defendant's substantial rights. *Dunbar*, *supra* at 251.

In *Dunbar*, *supra* at 254-255, this Court addressed an order for payment of appointed counsel fees, stating:

The crux of defendant's claim appears to be that the trial court should have made a specific finding on the record regarding his ability to pay. We do not believe that requiring a court to consider a defendant's financial situation necessitates such a formality, unless the defendant specifically objects to the reimbursement amount at the time it is ordered, although such a finding would provide a definitive record of the court's consideration. However, *the court does need to provide some indication of consideration, such as noting that it reviewed the financial and employment sections of the defendant's presentence investigation report or, even more generally, a statement that it considered the*

defendant's ability to pay. See *People v Grant*, 455 Mich 221, 242, 243 n 30; 565 NW2d 389 (1997). The amount ordered to be reimbursed for court-appointed attorney fees should bear a relation to the defendant's foreseeable ability to pay. A defendant's apparent inability to pay at the time of sentencing is not necessarily indicative of the propriety of requiring reimbursement because a defendant's capacity for future earnings may also be considered. [Emphasis added].

At sentencing, the court stated that defendant was to be placed with an alternative workforce program unless he secured and maintained other employment. The judge's remarks indicate that the court considered defendant's ability to pay—indeed, the court considered defendant's age, his current work status, and his prospects for future employment. Since all that is needed under *Dunbar* is “*some indication of consideration*,” we conclude that the trial court satisfied the necessary requirement.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly