

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL VINCENT MEYERS, a/k/a JOHN  
EUGENE LIVINGSTON,

Defendant-Appellant.

---

UNPUBLISHED

December 23, 2008

No. 281349

Calhoun Circuit Court

LC No. 07-001840-FC

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

PER CURIAM.

Defendant pleaded *nolo contendere* to one count of assault with intent to commit criminal sexual conduct in the second degree, MCL 750.520g(2), and was sentenced to serve five years' probation, with the first year in jail, and to pay a fine of \$100, state minimum costs of \$50, other costs of \$1,000, and attorney fees in the amount of \$425. Defendant appeals by delayed leave granted, challenging the assessment of costs and attorney fees on the ground that the trial court failed to make a determination of defendant's ability to pay them. We vacate the assessment of costs of \$1000 and attorney fees of \$425, and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant failed to object to the order requiring him to pay costs and to reimburse the county for appointed counsel expenses. Therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 7630764; 597 NW2d 130 (1999).

Defendant used the services of a court-appointed attorney, at public expense, on the ground of indigence. See MCR 6.005(A) and (D). However, "If a defendant is able to pay part of the cost of a lawyer, the court may require contribution to the cost of providing a lawyer and may establish a plan for collecting the contribution." MCR 6.005(C). See also MCL 769.1k(1)(b)(iii).

A trial court making a determination of a defendant's ability to afford counsel is normally obliged to consider the factors set forth in MCR 6.005(B). But where, as in this case, a defendant fails to object to a reimbursement amount at the time it is ordered, the trial court need not make a finding on the record concerning the defendant's ability to pay. *People v Dunbar*, 264 Mich App 240, 254; 690 NW2d 476 (2004). "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." *Id.* at 254-255.

Similarly, MCL 771.3(6)(a) provides that a court may not impose costs as a condition of probation "unless the probationer is or will be able to pay them during the term of probation," and that in determining such costs, "the court shall take into account the probationer's financial resources and the nature of the burden that payment of costs will impose, with due regard to his or her other obligations." See also *People v Brown*, 279 Mich App 116, 139-140; 755 NW2d 664 (2008).

In this case, the record is devoid of any indication that the trial court took defendant's ability to pay costs or fees into account when assessing them. Plaintiff points out that the court noted defendant's age, and suggests that in light of his brief term of incarceration the trial court should be deemed to have considered the likelihood that defendant would pursue gainful employment upon being released from jail. But we cannot deem such generalities as satisfying the requirement that there be some meaningful judicial inquiry into ability to pay costs and fees. We therefore vacate the assessments of \$1,000 in costs and \$425 in attorney fees, and remand this case to the trial court for a determination of defendant's ability to pay as required.

An evidentiary hearing is not required on remand. The trial court may obtain and rely on an updated report from the probation department. *Dunbar, supra* at 255 n 14. If the trial court concludes that it should eliminate or modify the requirement that defendant pay costs and appointed counsel fees, it should enter an amended judgment of sentence to that effect. MCL 769.1k authorized entry of an order requiring payment of costs and repayment of attorney fees; thus, such an order may be made part of the judgment of sentence, if appropriate. *People v Trapp (On Remand)*, 280 Mich App 598, 601-602; NW2d \_\_\_\_ (2008).

Assessments of costs and attorney fees vacated, and remanded for determination of defendant's ability to pay. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Kurtis T. Wilder