

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LUIS ENRIQUE PADILLA,

Defendant-Appellant.

UNPUBLISHED
September 8, 2009

No. 283751
Wayne Circuit Court
LC No. 95-002656-FH

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of possession of a controlled substance less than 50 grams, MCL 333.7403(2)(a)(iv), and placed on probation. Approximately 13 years later, defendant pleaded guilty to violating his probation and was given a 12-month jail sentence and assessed various fees and costs. Defendant appeals as of right from that portion of the judgment of sentence requiring him to reimburse the county for the cost of his court-appointed counsel. We affirm.

Defendant argues that the trial court erred by ordering him to pay \$400 for the cost of his court-appointed attorney without first inquiring into his ability to pay. We disagree.

Defendant failed to preserve his claim of error in the trial court; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

The United States and Michigan Constitutions guarantee an indigent criminal defendant the right to the assistance of counsel at the public's expense. US Const, Am VI; Const 1963, art 1, § 20. At the same time, a defendant who was afforded appointed counsel can be ordered to reimburse the county for the cost of that representation. MCL 769.1k(1)(b)(iii). In *People v Jackson*, 483 Mich 271; 769 NW2d 630 (Docket No. 135888, decided July 10, 2009), our Supreme Court held that the issue of a defendant's ability to reimburse the county for the cost of representation arises not at the time of sentencing, but rather at the time the reimbursement order begins. *Id.*, slip op at 1. A remittance order of funds in an inmate's prison account obviates the need for an assessment of the inmate's ability to pay because MCL 769.11, the operative statute, is structured to collect funds only from prisoners who are assumed not to be indigent. *Id.*, slip op at 2.

Defendant has not established that enforcement of that portion of the judgment of sentence requiring him to reimburse the county for the cost of representation has begun. Therefore, we conclude that that portion of the judgment of sentence is valid, and that a remand is not required.

Affirmed.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra