

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALAN EUGENE RHEA,

Defendant-Appellant.

UNPUBLISHED

November 10, 2009

No. 285730

Macomb Circuit Court

LC No. 2000-003516-FH;
2001-001413-FH

Before: Stephens, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from circuit court orders confirming the validity of previously entered orders to remit prisoner funds. We affirm but remand for correction of the judgment of sentence in LC No. 2000-003516-FH. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

In LC No. 2000-003516-FH, a jury convicted defendant of first-degree home invasion and felonious assault. In LC No. 2001-001413-FH, defendant pled guilty to second-degree home invasion. In imposing sentence, the court, over defendant's objections of indigency, ordered reimbursement of expenses for court-appointed counsel. In April 2006, the court entered orders to remit prisoner funds in both cases, finding that defendant owed \$5,867.80, and authorizing the Department of Corrections to make withdrawals from defendant's prisoner account. On appeal, this Court vacated "that portion of defendant's judgment of sentence assessing attorney fees" in both cases, finding that the trial court "erred by issuing the April 7, 2006 orders to remit prisoner funds for fines, costs, and assessments without first assessing his ability to pay" and remanded for the court to "address defendant's current and future financial circumstances and foreseeable ability to reimburse the county for court costs and legal fees before determining whether he should pay those costs and fees." *People v Rhea*, unpublished order of the Court of Appeals, entered August 1, 2007 (Docket No. 275703). After receiving a submission from defendant regarding his financial circumstances, the trial court determined that defendant did have the ability to pay for court-appointed counsel and confirmed the prior orders.

Defendant again appeals, contending that the trial court should not have entered the orders to remit funds because he is indigent. We review preserved sentencing issues for an abuse of discretion. *People v Conley*, 270 Mich App 301, 312; 715 NW2d 377 (2006). An abuse of discretion occurs if the court's decision falls outside the range of principled outcomes, *People v*

Babcock, 469 Mich 247, 269; 666 NW2d 231 (2003), or if the court makes an error of law. *People v Giovannini*, 271 Mich App 409, 417; 722 NW2d 237 (2006).

A criminal defendant may be required to reimburse the county for the cost of his court-appointed attorney. *People v Dunbar*, 264 Mich App 240, 251; 690 NW2d 476 (2004), overruled in part on other grounds by *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009). The *Dunbar* Court held that before a court orders a defendant to pay the cost of court-appointed counsel, it must consider whether the defendant has the ability to pay. *Dunbar, supra* at 254-255. If the record shows that the court failed to consider the defendant's ability to pay, a remand for further proceedings is required. *Id.* at 255. However, the Supreme Court recently held that the trial court is not obligated to consider a defendant's ability to pay at the time it imposes a fee for court-appointed counsel. Rather, "[t]he ability-to-pay assessment is only necessary when that imposition is enforced and the defendant contests his ability to pay." *Jackson, supra* at 275, 298. At that time, "the court must consider whether the defendant remains indigent and whether repayment would cause manifest hardship." *Id.* at 275. Nevertheless, orders to remit funds, such as those entered in this case, "make[] a legitimate presumption that the prisoner is not indigent," given that he "is being provided all significant life necessities by the state," and the defendant must rebut the presumption of nonindigency with evidence showing that "enforcement would work a manifest hardship on the prisoner or his immediate family." *Id.* at 295-297.

In this case, the trial court obtained updated financial information from defendant and determined that defendant was not indigent and had the ability to pay. Further, apart from showing that he has minimal funds in his prisoner account, defendant has not shown that his individual financial circumstances are so unique as to overcome the presumption of nonindigency. Accordingly, we affirm the trial court's ruling. However, we remand for the ministerial task of correcting the amended judgment of sentence in LC No. 2000-003516-FH, which erroneously orders restitution in the amount of \$260; restitution was ordered in LC No. 2001-001413-FH only.

Affirmed, but remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Cynthia Diane Stephens

/s/ Mark J. Cavanagh

/s/ Donald S. Owens