

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

JOHNATHAN APONTE-VELEZ,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D18-4499

Opinion filed October 28, 2020.

Appeal from the Circuit Court for Polk
County; Neil A. Roddenbery, Judge.

Howard L. Dimmig, II, Public Defender,
and Matthew J. Salvia, Assistant Public
Defender, Bartow, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, for Appellee.

CASANUEVA, Judge.

Mr. Johnathan Aponte-Velez appeals his judgments and sentences for possession of cocaine, possession of drug paraphernalia, and resisting an officer without violence. We affirm his judgments and sentences, but we reverse the \$100 public defender fee and remand for it to be stricken because the record shows that the

trial court did not give Mr. Aponte-Velez notice of his right to a hearing to contest this fee.

While this appeal was pending, Mr. Aponte-Velez filed a motion to correct sentencing error pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). He argued that, pursuant to Newton v. State, 262 So. 3d 849 (Fla. 2d DCA 2018), the trial court erred in imposing a \$100 public defender fee without offering him an opportunity to object to the fee or to request a hearing. After the time limit for judicial action on the rule 3.800(b)(2) motion had expired, the motion was deemed denied.

Mr. Aponte-Velez is correct that Newton, 262 So. 3d at 849-50, held that the trial court erred in imposing a \$100 fee for the services of court-appointed conflict counsel where the court failed to notify the appellant of his right to a hearing to contest the fee when pronouncing its imposition at sentencing. In Newton, 262 So. 3d at 850, this court certified conflict with the First District's decision in Mills v. State, 177 So. 3d 984, 987 (Fla. 1st DCA 2015), which held that the \$100 fee is the minimum amount mandated by section 938.29(1)(a), Florida Statutes (2018), and therefore, it is "binding on the court and the defendant alike, [and] no hearing is necessary or appropriate." Cf. Alexis v. State, 211 So. 3d 81, 82 (Fla. 4th DCA 2017) (holding that "[b]ecause these fees are statutorily mandated, notice and a hearing are not required before imposition of the minimum amount," but such are required if the amount of the fee exceeds the statutory minimum).

In accordance with Newton, we reverse the \$100 public defender fee and remand for it to be stricken because the record shows that the trial court did not give Mr. Aponte-Velez notice of his right to a hearing to contest this fee. As this court did in

Newton, 262 So. 3d at 850, we certify conflict with the First District's decision in Mills.

We also certify conflict with Alexis, 211 So. 3d 81.

Judgments and sentences affirmed; case remanded to strike public defender fee; conflict certified.

SILBERMAN and LUCAS, JJ., Concur.