

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

ANTHONY O. NELSON,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
 _____)

Case No. 2D04-2541

Opinion filed November 16, 2005.

Appeal from the Circuit Court for Pinellas
County; Raymond O. Gross and Lauren C.
Laughlin, Judges.

James Marion Moorman, Public Defender,
and Alisa Smith, Assistant Public Defender,
Bartow, for Appellant.

Charles J. Crist, Jr., Attorney General,
Tallahassee, and John M. Klawikofsky,
Assistant Attorney General, Tampa, for
Appellee.

SALCINES, Judge.

In this appeal filed pursuant to Anders v. California, 386 U.S. 738
(1967), Anthony O. Nelson asserts that the trial court erred when it denied his

motion to suppress and when it partially denied his motion filed pursuant to Florida Rule of Criminal Procedure 3.800(b)(2) seeking to correct sentencing errors. We affirm in part and reverse in part.

Nelson was charged with possession of cocaine and felony habitual driving with a revoked or suspended license. The offenses allegedly occurred on July 11, 2003. Nelson entered a plea of no contest to the charges and reserved the right to appeal the denial of his motion to suppress. We affirm the denial of the motion to suppress without further discussion.

Nelson filed a timely rule 3.800(b)(2) motion in which he challenged several costs imposed by the trial court. The motion was granted in part, but the trial court denied the claim wherein Nelson asserted that it was error to impose a \$150 court facilities fee pursuant to section 939.18(1), Florida Statutes (2003), without conducting an inquiry regarding his ability to pay.

Section 938.18(1)(b)¹ expressly required the trial court to make a finding that Nelson had the ability to pay the assessment and that it would not prevent him from making restitution or other compensation to victims and that it would not prevent him from paying child support. Because the trial court did not do so, we strike this cost. On remand, if the trial court conducts the necessary hearing, and makes the statutorily required findings, it may reimpose this cost.

See Waller v. State, 911 So. 2d 226 (Fla. 2d DCA 2005) (en banc).

¹ As noted in Waller v. State, 911 So. 2d 226 (Fla. 2d DCA 2005) (en banc), this statute was repealed in 2004 and was apparently replaced by section 939.185, Florida Statutes (2004). The holding in this case does not apply to costs imposed pursuant to section 939.185 for offenses committed after July 1, 2004.

Affirmed in part, reversed in part, and remanded for further proceedings.

NORTHCUTT, J., and DANAHY, PAUL W., SENIOR JUDGE, Concur.