

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

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

G.D.,)
)
 Appellant,)
)
 v.)
)
 STATE OF FLORIDA,)
)
 Appellee.)
_____)

Case No. 2D08-2691

Opinion filed May 28, 2010.

Appeal from the Circuit Court for Polk
County; Ernest McClain Jones, Jr., Judge.

James Marion Moorman, Public Defender,
and Robert F. Moeller, Assistant Public
Defender, Bartow, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Richard M. Fishkin,
Assistant Attorney General, Tampa, for
Appellee.

WHATLEY, Judge.

This is an appeal pursuant to Anders v. California, 386 U.S. 738 (1967), of
G.D.'s adjudication of delinquency for possession of cannabis and paraphernalia.
Appellate counsel has raised the issue of the sufficiency of the evidence to support
G.D.'s adjudication, but we find no merit to that issue. Also, counsel has argued that the

trial court erred in assessing a public defender fee against G.D. without notice and an opportunity to object.¹ We find merit in this issue and reverse the public defender fee.

Section 938.29, Florida Statutes (2008), authorizes the assessment of a public defender fee and grants the state a lien to secure its payment. Although imposition of the fee is mandatory, see Cook v. State, 896 So. 2d 870 (Fla. 2d DCA 2005), the statute requires the trial court to give the defendant notice and an opportunity to object to the amount. See § 938.29(5). In addition, Florida Rule of Criminal Procedure 3.720(d)(1) provides that at sentencing, a defendant must be given notice of the right to a hearing to contest the amount of the lien. Here, the trial court failed to provide G.D. notice and an opportunity to contest the public defender fee.

Accordingly, we strike the public defender fee. G.D. shall be given thirty days from our mandate to file a written objection to the amount assessed for the public defender's fee. If he files an objection, the trial court shall hold a hearing. If he fails to timely file an objection, the court may reimpose the fee without a hearing. See McGee v. State, 963 So. 2d 931, 932 (Fla. 2d DCA 2007) (citing Miller v. State, 912 So. 2d 1282 (Fla. 2d DCA 2005)).

Affirmed in part, reversed in part, and remanded with directions.

SILBERMAN and CRENSHAW, JJ., Concur.

¹G.D. preserved this issue by filing a motion to correct sentence pursuant to Florida Rule of Criminal Procedure 3.800(b)(2). His motion was deemed denied when the trial court took no action on it within sixty days.