

IN THE COURT OF APPEALS OF IOWA

No. 2-763 / 10-1652
Filed September 19, 2012

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY L. LEMON,
Defendant-Appellant.

Appeal from the Iowa District Court for Henry County, Cynthia H. Danielson, Judge.

Jeffrey Lemon appeals the district court's denial of his motion for a nunc pro tunc order seeking to correct an order for room and board reimbursement.

AFFIRMED.

Jeffrey L. Lemon, Clarinda, appellant pro se.

Thomas J. Miller, Attorney General, Kevin Cmelick, Assistant Attorney General, William A. Hill, Assistant Attorney General Special Litigation Division, and Darin Stater, County Attorney, for appellee.

Considered by Eisenhauer, C.J., and Doyle and Tabor, JJ.

DOYLE, J.

Jeffrey Lemon was charged with three counts of sexual abuse in the third degree, and he was held in the Henry County Jail from June 22, 2008 through December 10, 2008, a total of 171 days. Lemon ultimately pled guilty to the charges, and he was sentenced to a term of ten years imprisonment on each offense, to run consecutively. Although the judgment entry also ordered Lemon to pay restitution for his attorney fees pursuant to Iowa Code section 815.9 (2007), as well as the costs of the prosecution, the order made no reference to payment of restitution for charges for costs of room and board pursuant to section 356.7. Lemon did not appeal these sentences.¹

After Lemon was sentenced, the Henry County Sheriff made a claim against Lemon for room and board reimbursement in the amount of \$5119.26 related to the 171 days Lemon spent in the Henry County Jail. See Iowa Code § 356.7(2); see also *State v. Jackson*, 601 N.W.2d 354, 356 (Iowa 1999) (holding defendants may be charged for room and board incurred prior to either their guilty plea or their conviction). On February 2, 2009, the district court approved the claim.

Over nineteen months later, on September 27, 2010, Lemon filed a pro se motion for a nunc pro tunc order. His argument appears to be that since he had not been sentenced to serve any time in jail, and that reimbursement for jail room and board was not mentioned at sentencing, the claim for reimbursement for jail

¹ Lemon did file a motion to correct an illegal sentence on grounds not related to this appeal, which was denied by the district court and affirmed by this court. See *State v. Lemon*, No. 10-1769, 2012 WL 3590749, at *1 (Iowa Ct. App. Aug. 22, 2012).

room and board was unjust. He asked the court to correct an unidentified scrivener's error and to remand the reimbursement order.

The day after Lemon filed his motion, the district court entered its order, noting Lemon was given credit against the sentence imposed for the 171 days that he was held in the jail prior to his sentencing. Pursuant to Iowa Code sections 356.7 and 910.2, the district court found the Henry County Sheriff was entitled to reimbursement for the actual costs of room and board provided to Lemon while he was in custody. Finding no scrivener's error and that "the original order approving the room and board reimbursement claim of the Henry County Sheriff was correct," the court denied Lemon's motion for a nunc pro tunc order.

Lemon appeals, challenging the district court's denial of his motion for an order nunc pro tunc.² We review the court's ruling concerning nunc pro tunc orders for corrections at law. See *State v. Johnson*, 744 N.W.2d 646, 648 (Iowa 2008).

Although we have serious concerns about the procedural legitimacy of Lemon's challenge to the order approving room and board reimbursement, we nevertheless address the merits of his motion as presented to and considered by the district court. First, we, like the district court, find no scrivener's error in either the original judgment entry or the order approving reimbursement. Second, the district court did not err in approving reimbursement. Iowa Code section 356.7

² Later, Lemon filed an amendment to notice of appeal asserting claims not raised in his motion for a nunc pro tunc order. We will not consider issues not raised or decided by the district court. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Accordingly, we do not address these claims.

authorizes reimbursement “for room and board provided to the prisoner while in custody of the county sheriff.” Our supreme court has made it crystal clear that defendants may be charged for room and board incurred prior to either their guilty plea or their conviction; it is not necessary that defendants be sentenced to jail before reimbursement is authorized. *Jackson*, 601 N.W.2d at 356. Because the district court did not err in approving the claim for room and board reimbursement for the costs of Lemon’s stay in the Henry County Jail, we accordingly affirm the district court’s order denying Lemon’s motion for a nunc pro tunc order.

AFFIRMED.