

IN THE COURT OF APPEALS OF IOWA

No. 7-136 / 06-0468
Filed April 25, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ANTHONY LAMONT JOHNSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Scott County, David E. Schoenthaler, Judge.

Anthony Johnson appeals from the entry of a district court order on restitution. **AFFIRMED.**

Anthony Lamont Johnson, Anamosa, Pro Se.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney General, and William E. Davis, County Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

In 1989, a jury convicted Anthony Johnson of one count of first-degree burglary, one count of second-degree sexual abuse, and two counts of first-degree robbery. The court sentenced him to a total of seventy-five years of imprisonment and ordered him to pay court costs and attorney fees. The court stated:

The court also orders that the defendant make restitution to the State of Iowa for court costs as taxed by the Clerk of this Court and for court appointed attorney's fees as approved by the court for \$212 to the victim, Penny Schryver, and \$200 to the victim, Laura Peden

Nothing else occurred in this case until 1994, when Johnson requested a hearing to challenge the forfeiture of funds from his prison account. Although the record provided to this court seems incomplete, it appears that no hearing was held on this motion despite the fact that one was originally scheduled. In a March 5, 1998 order the court stated, "If a telephone hearing is not held within 60 days [regarding restitution], it is the ORDER of the court that the Defendant shall not be responsible for restitution"

On July 21, 1998, the court entered a "Supplemental Order on Restitution" in which it determined that because no hearing was held "the Defendant is not responsible for any restitution in this matter." It ordered that any funds withheld from Johnson "for restitution purposes" shall be returned to his account. In response to Johnson's subsequent application to show cause, the State related that the Iowa Department of Corrections (DOC) had already returned all money

to Johnson that had been held by the DOC, and that any money previously held had been remitted to the Clerk of Court for Scott County.

In June of 2005, the DOC filed a restitution plan in which it noted a balance of \$2985.69 owing for attorney fees. Then in July and September of that year, Johnson filed motions to compel the Clerk of Court to return \$714.12 that the DOC had withheld from him. Johnson later filed a motion for an order nunc pro tunc requesting that the funds be returned with interest. The court subsequently entered an order concluding the DOC had appropriately withheld the funds for the payment of court costs and attorney fees, rather than for “victim restitution.” Johnson appeals from this ruling, which we review for the correction of errors at law. See *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001).

Johnson now argues the “district court erred by re-visiting the July 21, 1998 Supplemental Order on Restitution.” In particular, he asserts that because in the earlier July 21, 1998 order the district court determined he was not responsible for restitution, the court could not impose restitution for court costs and attorney fees. We disagree. The district court, in its nunc pro tunc order, appropriately determined that the 1998 order only referred to “victim restitution” and not to court costs and attorney fees incurred by Johnson. Those fees and costs were not referenced in the July 1998 supplemental order as the DOC had yet to file a restitution plan. A careful reading of the 1989 sentencing order makes clear that the restitution ordered to be paid at that time was for the court costs and attorneys fees incurred by the *victims*. It was not until June 16, 2005 that the DOC filed a restitution plan for Johnson to repay his own attorney fees

and court costs. Therefore, the district court was correct in determining such costs as were detailed in the 2005 restitution plan were still owed by Johnson.

AFFIRMED.