

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT BROWN, a/k/a LAMONDO BROWN,

Defendant-Appellant.

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UNPUBLISHED

November 13, 2008

No. 280079

Wayne Circuit Court

LC No. 05-010707-01

Before: O’Connell, P.J., and Smolenski and Gleicher, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v). The trial court sentenced defendant to five years’ probation, with the first 250 days to be served in jail, and ordered him to pay costs and attorney fees. Defendant appeals as of right. We affirm defendant’s conviction and probationary sentence, but vacate the order for reimbursement of attorney fees and remand for further proceedings.

Defendant contends on appeal solely that the trial court erred in assessing court costs and attorney fees without first determining that he had the ability to pay in accordance with *People v Dunbar*, 264 Mich App 240, 251-256; 690 NW2d 476 (2004). Because defendant failed to preserve this issue by raising it at the time of his sentencing, we review his argument only for any plain error affecting his substantial rights.<sup>1</sup> *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

The trial court has express authority to assess any costs at sentencing pursuant to MCL 769.1k(1)(b)(ii). A defendant’s ability to pay, however, only becomes a consideration when the court “impos[es] a reimbursement requirement, *unlike fines and costs*.” *Dunbar*, *supra* at 255 (emphasis added). Consequently, defendant has failed to establish plain error with respect to the trial court’s assessment of court costs.

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<sup>1</sup> We reject plaintiff’s argument that defendant waived review of this issue because his signature on the order of probation constituted his acknowledgement that he received a copy of the order and that he understood and agreed to comply with the order. Defendant’s acknowledgement that he understood the order of probation and agreed to comply with it does not necessarily signify that he approved or agreed with all the conditions or terms contained therein.

A defendant generally has an obligation to reimburse the public cost of appointed counsel. MCR 6.005(C); *People v Nowicki*, 213 Mich App 383, 387-388; 539 NW2d 590 (1995). Furthermore, MCL 769.1k(1)(b)(iii) vests the trial court with authority to assess the cost of court-appointed counsel to the defendant. Although the court need not make a specific finding regarding the defendant's ability to pay absent a specific objection to reimbursement, the court "does need to provide some indication of consideration, such as noting that it reviewed the financial and employment sections of the defendant's presentence investigation report or, even more generally, a statement that it considered the defendant's ability to pay." *Dunbar, supra* at 254-255. Where, as here, the record does not reflect "that the court recognized that defendant's ability to pay needed to be considered when imposing a reimbursement requirement," remand is required so the court may "reconsider its reimbursement order in light of defendant's current and future financial circumstances." *Id.* at 255.

In summary, we affirm the trial court's imposition of court costs, but vacate the court's order for reimbursement of attorney fees, and remand for reconsideration of that issue in light of defendant's current and future financial circumstances and the relevant principles set forth in *Dunbar*.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell  
/s/ Michael R. Smolenski  
/s/ Elizabeth L. Gleicher