

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTURO P. VASQUEZ,

Defendant-Appellant.

UNPUBLISHED

January 12, 2010

No. 291589

Ingham Circuit Court

LC No. 08-001347-FH

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

PER CURIAM.

Defendant, Arturo Vasquez, appeals by delayed leave granted a portion of the sentence imposed on his plea-based convictions of two counts of aggravated stalking.¹ We affirm. We decide this appeal without oral argument.²

I. Court-Ordered Attorney Fees

A. Standard Of Review

Vasquez argues that the trial court erred when it ordered him to pay \$500 in court-ordered attorney fees without making a proper determination on the record regarding his ability to pay court costs and attorney fees as required by *People v Dunbar*.³ Because there was no objection to the trial court's attorney fee order, we review this issue for plain error affecting Vasquez's substantial rights.⁴

¹ MCL 750.411i (following a probation violation).

² MCR 7.214(E).

³ *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), rev'd in *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009).

⁴ *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

B. *People v Jackson*

In *People v Jackson*,⁵ the Michigan Supreme Court overruled *Dunbar*'s requirement that a trial court perform an assessment of a defendant's ability to pay before sentencing. The *Jackson* Court specifically ruled that a "defendant is not entitled to an ability-to-pay assessment until the imposition of the fee is enforced."⁶ The Court reasoned that the relevant United States Supreme Court decisions "do not require a presentence ability-to-pay assessment[.]" that "*Dunbar*'s ability-to-pay rule frustrates the Legislature's legitimate interest in recouping fees for court-appointed attorneys from defendants who eventually gain the ability to pay those fees[.]" and that *Dunbar* conflicts with state statutes (MCL 769.1k and MCL 769.1l) which allow the trial court to impose a fee for a court-appointed attorney and operate irrespective of a defendant's ability to pay.⁷ The Court also held that, "there is a substantive difference between the imposition of a fee and the enforcement of that fee" and stated that trial courts should not entertain a defendant's ability-to-pay-based challenge to the imposition of fees until enforcement of that imposition has begun.⁸ The *Jackson* Court also held that, "remittance orders of prisoner funds, under MCL 769.1l, generally obviate the need for an ability-to-pay assessment with relation to defendants sentenced to a term of imprisonment because the statute is structured to only take monies from prisoners who are presumed to be nonindigent."⁹

C. Applying *Jackson*

Here, although the trial court found that *Dunbar* applied, it did not determine that Vasquez had a present ability to pay his attorney fees. Instead, it found that Vasquez will have, or could have, an ability to pay his attorney fees in the future and noted that some of the money could be taken from Vasquez's prisoner account while leaving him enough for his personal needs. This was appropriate under *Jackson*. While Vasquez is incarcerated, MCL 769.1l governs whether he will be required to pay reimbursement. Once enforcement is undertaken after Vasquez's release, he can make a timely objection based on his claimed inability to pay. At that time, he will be entitled to an evaluation by the trial court to determine whether he "is indigent and unable to pay *at that time* or whether forced payment would work a manifest hardship on the defendant *at that time*."¹⁰

II. Court Costs

Vasquez also challenges the trial court's imposition of \$500 in court costs, again citing his inability to pay due to indigency. Vasquez provides nothing to support his claim of error

⁵ *Jackson*, 483 Mich 271.

⁶ *Id.* at 292.

⁷ *Id.* at 275, 289-290.

⁸ *Id.* at 290.

⁹ *Id.* at 274.

¹⁰ *Id.* at 293 (emphasis in original).

concerning the imposition of costs and fees other than attorney fees. A trial court may require a convicted defendant to pay costs where such a requirement is expressly authorized by statute.¹¹ The plain language of MCL 769.1k both authorizes the imposition of these costs and does not require the trial court to consider a defendant's ability to pay them. In addition, the imposition of costs and fees other than attorney fees does not raise the same Sixth Amendment implications as the imposition of attorney fees.¹² Thus, Vasquez has not shown that the trial court erred in ordering him to pay the additional costs here.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Joel P. Hoekstra
/s/ William C. Whitbeck

¹¹ *People v Nance*, 214 Mich App 257, 258-259; 542 NW2d 358 (1995).

¹² *Jackson*, 483 Mich at 277, 285.