

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
November 29, 2012

v

MICHAEL DAVID VANCE,  
  
Defendant-Appellant.

No. 303481  
Oakland Circuit Court  
LC Nos. 2003-192752-FH;  
2003-193604-FC

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Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Defendant appeals by leave granted two amended orders to remit prisoner funds for fines, costs, and assessments. We affirm.

This appeal arises out of two lower court cases. In 2004, jury trials were held in both cases, and defendant was convicted of seven counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and four counts of second-degree criminal sexual conduct, MCL 750.510c(1)(a). Defendant was sentenced to 15 to 50 years' imprisonment for each first-degree criminal sexual conduct conviction and to 4 to 15 years' imprisonment for each second-degree criminal sexual conduct conviction. Immediately after defendant's sentencing, the trial court entered orders to remit prisoner funds for fines, costs, and assessments in both cases. These orders reflected the amounts owed by defendant for the crime victim's rights fund and state minimum costs ordered at sentencing. On April 12, 2010, almost six years later, the trial court entered amended orders to remit prisoner funds for fines, costs, and assessments. The amended orders to remit prisoner funds added the cost of attorney fees to the balance owed by defendant. Defendant filed a motion in the trial court objecting to the amended orders to remit prisoner funds, which was denied.

Defendant argues that the trial court did not have the legal authority to enter the amended orders to remit prisoner funds and that the trial court violated defendant's right to due process when it did not provide defendant with an opportunity to be heard regarding his ability to pay fees for his court-appointed attorney. We disagree.

We review legal issues and constitutional issues de novo. *People v Aspy*, 292 Mich App 36, 40; 808 NW2d 569 (2011); *People v Brown*, 294 Mich App 377, 389; 811 NW2d 531 (2011).

A criminal defendant who was afforded appointed counsel may be required to reimburse the county for the costs of the representation if the defendant can pay the costs without substantial hardship. *People v Dunbar*, 264 Mich App 240, 251; 690 NW2d 476 (2004), overruled on other grounds *People v Jackson*, 483 Mich 271; 769 NW2d 630 (2009), citing *People v Nowicki*, 213 Mich App 383, 388; 539 NW2d 590 (1995). Before 2006, an order requiring reimbursement of the costs of appointed representation could not be imposed as part of the sentence, and had to be embodied in an order separate from the judgment of sentence. *Dunbar*, 264 Mich App at 256. In 2006, the Legislature enacted MCL 769.1k(1), which provides:

If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred pursuant to statute or sentencing is delayed pursuant to statute:

(a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.

(b) The court may impose any or all of the following:

(i) Any fine.

(ii) Any cost in addition to the minimum state cost set forth in subdivision (a).

(iii) The expenses of providing legal assistance to the defendant.

(iv) Any assessment authorized by law.

(v) Reimbursement under section 1f of this chapter. [MCL 769.1k(1).]<sup>1</sup>

MCL 769.1k(1) codified the proposition that a criminal defendant could be ordered to reimburse the county for fees for a court-appointed attorney and also allowed the trial court to impose the fee as part of defendant's sentence. *Jackson*, 483 Mich at 283. While MCL 769.1k allows a trial court to impose attorney fees at sentencing, the statute does not impose time restrictions on a trial court's ability to impose attorney fees. See MCL 769.1k. MCL 769.1l was also enacted in 2006 and allowed for the imposition of fees for a court-appointed attorney to be enforced against an imprisoned defendant. *Jackson*, 483 Mich at 284. MCL 769.1l provides:

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<sup>1</sup> Defendant argues that application of MCL 769.1k(1) violates ex post facto laws. However, the rule allowing a trial court to order a criminal defendant to reimburse the county for attorney fees was established by case law prior to defendant's sentencing. *Dunbar*, 264 Mich App at 251; *Nowicki*, 213 Mich App at 388. Therefore, defendant's argument in regard to MCL 769.1k(1) fails.

If a prisoner under the jurisdiction of the department of corrections has been ordered to pay any sum of money as described in section 1k and the department of corrections receives an order from the court on a form prescribed by the state court administrative office, the department of corrections shall deduct 50% of the funds received by the prisoner in a month over \$50.00 and promptly forward a payment to the court as provided in the order when the amount exceeds \$100.00, or the entire amount if the prisoner is paroled, is transferred to community programs, or is discharged on the maximum sentence. The department of corrections shall give an order of restitution under section 20h of the corrections code of 1953, 1953 PA 232, MCL 791.220h, or the crime victim's rights act, 1985 PA 87, MCL 780.751 to 780.834, priority over an order received under this section. [MCL 769.1l.]

In *Jackson*, the Michigan Supreme Court explained the proper procedures for determining a defendant's ability to pay fees for a court-appointed attorney. The Court held that an ability to pay assessment was not necessary at the time that the fee or cost was imposed, but was only required when the obligation was enforced and payment was required. *Jackson*, 483 Mich at 291-292. The Court further held that orders to remit prisoner funds under MCL 769.1l do not necessitate an assessment of a defendant's ability to pay because the statute was structured to consider a defendant's ability to pay. *Id.* at 295. The statute creates a presumption of nonindigency because it only allows the garnishment of a prisoner's account if the balance exceeds \$50. *Id.* at 295. Nonetheless, if an imprisoned defendant believes that his unique individual financial circumstances rebut the statutory presumption of nonindigency, "he may petition the court to reduce or eliminate the amount that the remittance order requires him to pay." *Id.* at 296. To prevail, a defendant must show manifest hardship, and the Court cautioned that because a prisoner is being provided all significant life necessities by the state, an imprisoned defendant bears a heavy burden of establishing extraordinary financial circumstances. *Id.*

*Jackson* also included a discussion regarding the intention behind the law on reimbursement of fees for court-appointed attorneys. The Court explained that the Legislature, in enacting MCL 769.1k and MCL 769.1l, had a "legitimate interest in recouping fees for court-appointed attorneys from defendants who eventually gain the ability to pay those fees." *Id.* at 289. The Court stated that, "despite pretrial indigency, a criminal defendant is not forever immune from being required to pay the state for the cost of his court-appointed attorney, assuming he eventually gains the ability to pay." *Id.* "[T]he state should not be forever precluded from seeking repayment from a defendant who has later gained the ability to pay, simply because at the time of sentencing it wrongly concluded that the defendant would never rise above indigency." *Id.* at 290.

The trial court had the authority to enforce defendant's obligation to pay for fees for his court-appointed attorney. On October 10, 2003, the trial court ordered a court-appointed attorney for defendant, and defendant signed the order, which made defendant responsible for any fees associated with a court-appointed attorney. While the trial court did wait nearly six years to enforce that order, there is no law that places a time limitation on the court's ability to collect costs for a court-appointed attorney. In fact, according to *Jackson*, the state's interest in reimbursement for attorney fees continues indefinitely. *Id.* at 289-290.

Additionally, based on MCL 769.11, no hearing was necessary to determine defendant's ability to pay because the statute necessarily considers an imprisoned defendant's level of indigency. *Id.* at 295. Defendant argues that MCL 769.11 should not be applied to him because MCL 769.11 was enacted after defendant was sentenced; and therefore, application of the statute to defendant violates ex post facto laws. However, *Jackson* stated that a defendant's ability to pay is properly considered at the time an obligation is enforced, not the time when the obligation is imposed. *Id.* at 291-292. Because the order to remit prisoner funds to include attorney fees was not enforced until after MCL 769.11 was enacted, the statute properly applies to defendant.

Furthermore, even assuming MCL 769.11 was applied to defendant retroactively, it would not qualify as a violation of ex post facto laws. "The Ex Post Facto Clauses of both the state and federal constitutions prohibit inflicting a greater punishment for a crime committed before the law's effective date." *People v Earl*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 302945, issued June 19, 2012) (slip op at 4). "A statute violates ex post facto principles if it (1) makes punishable that which was not, (2) makes an act a more serious criminal offense, (3) increases the punishment, or (4) allows the prosecution to convict on less evidence." *Id.* at 4. "Generally, statutes are presumed to operate prospectively unless the contrary intent is clearly manifested." *Id.* at 5 (citation and internal quotation marks omitted). However, statutes which operate in furtherance of a remedy or mode of procedure and which neither create new rights nor destroy, enlarge, or diminish existing rights are generally held to operate retrospectively absent a contrary legislative intent. *Id.* at 5 (citation omitted). MCL 769.11 facilitates the collection of previously imposed fees. Therefore, the application of the statute does not increase defendant's punishment, and ex post facto laws are not violated.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Patrick M. Meter