

FILED: May 21, 2014

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

VANELLI CALLENTANO,
Defendant-Appellant.

Marion County Circuit Court
12C46454

A152811

Albin W. Norblad, Judge.

Submitted on April 30, 2014.

Peter Gartlan, Chief Defender, and Mary M. Reese, Senior Deputy Public Defender,
Office of Public Defense Services, filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and Paul L.
Smith, Attorney-in-Charge, filed the brief for respondent.

Before Duncan, Presiding Judge, and Haselton, Chief Judge.

PER CURIAM

Portion of judgment requiring defendant to pay attorney fees reversed; otherwise
affirmed.

1 PER CURIAM

2 Defendant was convicted of first-degree robbery, sentenced to 90 months in
3 prison, and ordered to pay a \$200 fine and \$2,500 in court-appointed attorney fees. On
4 appeal, defendant contends that the trial court erred in ordering him to pay the attorney
5 fees when the record is silent as to whether he "is or may be able" to pay those costs of
6 his defense. *See* ORS 151.505(3) ("The court may not require a person to pay costs
7 under this section unless the person is or may be able to pay the costs."); ORS 161.665(4)
8 ("The court may not sentence a defendant to pay costs under this section unless the
9 defendant is or may be able to pay them."). He acknowledges that he did not preserve
10 that claim of error but urges us to review and correct the error as an "error of law
11 apparent on the record." ORAP 5.45(1).

12 We agree with defendant that the trial court plainly erred in imposing court-
13 appointed attorney fees on this record. *See State v. Chavez*, ___ Or App ___, ___, ___
14 P3d ___ (May 21, 2014) (holding that a trial court commits plain error by imposing
15 court-appointed attorney fees where the record is silent as to the defendant's ability to pay
16 the fees ordered) (slip op at 1); *State v. Coverstone*, 260 Or App 714, 716, 320 P3d 670
17 (2014) (same). We further conclude that, for reasons similar to those expressed in
18 *Chavez* and *Coverstone*, it is appropriate to exercise our discretion to correct the error.
19 The error is grave, requiring defendant to pay a substantial sum of \$2,500; this is not a
20 case in which the trial court could have made the necessary finding regarding ability to
21 pay if the issue had been brought to its attention, because the record contains no evidence

1 of defendant's financial resources; and defendant was sentenced to a lengthy prison term
2 of 90 months, making it more speculative that defendant would have the funds to pay the
3 fees or acquire them in the future. *See Chavez*, ___ Or App at ___ (exercising discretion
4 to correct a similar error under similar circumstances) (slip op at 2); *Coverstone*, 260 Or
5 App at 716-17 (same); *cf. State v. Baco*, 262 Or App 169, 171, ___ P3d ___ (2014)
6 (declining to exercise discretion to correct a plain error in imposing court-appointed
7 attorney fees where the "error is not grave because \$510 is not a substantial amount given
8 that defendant's probationary sentence does not prevent him from working and that
9 defendant agreed to the state's recommendation of attorney fees in the same amount for
10 another charge sentenced at the same time").

11 Portion of judgment requiring defendant to pay attorney fees reversed;
12 otherwise affirmed.