

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2018-001

JANUARY TERM, 2018

State of Vermont v. Jennifer Cote*	}	APPEALED FROM:
	}	
	}	Superior Court, Washington Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1210-11-17 Wncr

In the above-entitled cause, the Clerk will enter:

Defendant Jennifer Cote appeals from the denial of appointed counsel in the court below. Because the court erroneously considered the income of a cohabitant in determining defendant’s eligibility for appointed counsel, and because defendant is indeed needy and eligible for appointed counsel, the court’s decision is reversed and remanded for determination of defendant’s required co-pay, if any.

On November 16, 2017, defendant was arraigned and pled not to guilty to three counts of neglect of a vulnerable adult resulting in bodily injury, in violation of 13 V.S.A. § 1378(b); one count of manslaughter, in violation of 13 V.S.A. § 2304; and one count of welfare fraud, in violation of 33 V.S.A § 141(d). Defendant was given an unsecured appearance bond in the form of \$25,000 cash bail as well as other conditions of release.

Docket entries reflect that the trial court denied defendant’s initial request for a public defender at her November arraignment. Defendant re-submitted her application, which the court denied because her “household income exceeds guidelines.” Defendant moved to re-consider. In December 2017, the court denied this motion because defendant’s “co-habitant’s income and family size disqualify her from receiving a public defender.” This appeal followed.

In filings to the court below, and to this Court on appeal, defendant represents that she has no monthly income, and that she has had no income for the previous twelve months. In addition, defendant represents that she has no cash assets, nor assets of any other kind. Defendant discloses that her household income—derived from a cohabitating fiancé—is \$4,130 per month, and \$49,560 for the previous twelve months.

This Court reviews a trial court’s decision on whether an applicant qualifies for public defender services for abuse of discretion. State v. Higginbotham, 174 Vt. 640, 640 (2002). However, this case examines whether the trial court conducted the proper analysis in determining whether to appoint counsel, which is a legal question reviewed without direction. Id.

The public defender statute outlines a two-step process for assessing an applicant’s eligibility for public defender services. To begin, the court must decipher whether the applicant is needy. 13 V.S.A. § 5236. Under this step, the court should consider such factors as the applicant’s income, property owned, outstanding obligations, and the number and ages of dependents. Id.; see also A.O. 4, § 5. The court should examine the income and assets of the applicant only, which does not include the income and assets of the applicant’s cohabitants. State v. Bailey, 165 Vt. 579, 579 (1996) (mem.). If the applicant is needy and eligible for appointed counsel, the court must

then determine any potential co-pay and reimbursement. 13 V.S.A. § 5238. It is at this second step that the court may consider the income of cohabitating family members. Id. § 5238(b).

In this case, the trial court erroneously considered the income of defendant's cohabitant in determining whether defendant was needy and eligible for appointed counsel. As noted above, cohabitant income is relevant only in determining a co-pay or reimbursement. Defendant's income and assets demonstrate that she is indeed needy and eligible for appointed counsel. See A.O. 4, § 5(c)(2) ("Any person whose gross income is at or below poverty income guidelines . . . is presumed to be a needy person."). The court's decision is therefore reversed and remanded to determine defendant's potential co-pay and reimbursement pursuant to 13 V.S.A. § 5238.

Reversed and remanded.

FOR THE COURT:

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Beth Robinson, Associate Justice