

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORNELOUS O'BRIAN JONES,

Defendant-Appellant.

UNPUBLISHED

May 24, 1996

No. 181978

LC No. 94-001156-FH

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant pleaded guilty of felonious assault, MCL 750.82; MSA 28.277, and was sentenced to three years' probation and ordered to pay court costs, attorney fees and restitution. Defendant appeals as of right. We affirm defendant's conviction but remand for modification of the order of probation and correction of the presentence report. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant's first argues that the order of restitution improperly assesses the entire amount of restitution on this defendant instead of sharing it with a co-defendant. The body of defendant's brief, however, argues that the trial court was without authority to order payment of both costs and attorney fees. We find no merit in this first assignment of error since the sentencing court expressly stated that the defendant's liability for restitution was "joint and several."

Defendant next argues that the trial court was without authority to order the payment of costs and attorney fees. We agree. MCL 771.3(4); MSA 28.1133(4) provides:

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

If the court requires the probationer to pay costs, the costs shall be limited to expenses specifically incurred in prosecuting the defendant or providing legal assistance to the defendant and supervising the probationer.

Because the statute uses a combination of “or” and “and,” it appears the court can choose prosecution costs or defense costs, and then it can add on supervision costs. Plaintiff’s reliance on *People v Kramer*, 137 Mich App 324; 358 NW2d 10 (1984), is misplaced because that case does not address defendant’s argument. We remand the matter for modification of the probation order to assess court costs or attorney fees, but not both.

Because defendant did not assert an inability to pay restitution below, he was not entitled to a hearing on that claim. *People v Music*, 428 Mich 356; 408 NW2d 795 (1987); *People v Grant*, 210 Mich App 467, 471; 534 NW2d 149 (1995).

Finally, the presentence report inaccurately stated that the defendant was on probation when this offense was committed. Both parties agree the matter should be remanded so the court can strike the inaccurate information from the report. See MCR 6.425(D)(3).

Defendant’s conviction is affirmed but the matter is remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.