

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MATTHEW ALLEN SIRONEN,

Defendant-Appellant.

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UNPUBLISHED

July 31, 2007

No. 267820

Muskegon Circuit Court

LC No. 05-051805-FC

Before: Meter, P.J., and Kelly and Fort Hood, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and sentenced to concurrent terms of 17 to 35 years' imprisonment. Defendant appeals as of right, challenging only the additional portion of his sentences imposing state costs of \$180 and court costs of \$450. We vacate the imposition of costs and remand for entry of a judgment omitting the unlawful imposition of costs.

Because defendant failed to preserve his appellate contention that the trial court lacked statutory authority to require that he pay costs to the court and the state, we review this issue to determine whether any plain error affected defendant's substantial rights. *People v Kimble*, 470 Mich 305, 312; 684 NW2d 669 (2004).

"A trial court may only require a convicted defendant to pay costs where such a requirement is expressly authorized by statute." *People v Jones*, 182 Mich App 125, 126; 451 NW2d 525 (1989). The parties do not appear to dispute that both at the time defendant committed the offenses and at the time of sentencing, no statutory authority existed to support the imposition of court and state costs on a defendant convicted of first-degree criminal sexual conduct. Instead, the parties' arguments focus on MCL 769.1k, which plainly authorizes the trial court's imposition of costs, but which did not become effective until January 1, 2006, after defendant's conviction and sentence.

"Under Michigan law, a new or amended statute generally applies prospectively unless the Legislature has expressly or impliedly indicated its intention to give the statute retrospective effect. However, an exception to the general rule is recognized where a statute is remedial or procedural in nature." *People v Link*, 225 Mich App 211, 214; 570 NW2d 297 (1997). In light of the legislative history characterizing House Bill 5023, later enacted in MCL 769.1k, as "technical" and advanced to address statutory loopholes in a manner that should generate more

funds for the public good, we find that it may be characterized as remedial in nature, and thus potentially applicable in a retroactive fashion. See, generally, *Link, supra* at 216-217, and *Tobin v Providence Hosp*, 244 Mich App 626, 665; 624 NW2d 548 (2001).

However, notwithstanding the remedial nature of MCL 769.1k, the statute may not apply retroactively if retroactive application would violate the constitutional Ex Post Facto Clauses, US Const, art I, § 10; Const 1963, art 1, § 10, as defendant alleges.

The test for determining whether a criminal law violates the Ex Post Facto Clause . . . involves two elements: (1) whether the law is retrospective, i.e., whether it applies to events that occurred before its enactment, and (2) whether it disadvantages the offender . . . . A statute disadvantages an offender if (1) it makes punishable that which was not, (2) it makes an act a more serious offense, (3) *it increases a punishment*, or (4) it allows the prosecutor to convict on less evidence. . . . [T]he Ex Post Facto Clause does not apply to legislative control of remedies and modes of procedure that do not affect matters of substance. [*People v Slocum*, 213 Mich App 239, 243; 539 NW2d 572 (1995) (emphasis added).]

The question in this case thus becomes whether retroactive imposition of costs pursuant to MCL 769.1k increases defendant's punishment.

In *Slocum, supra* at 243, this Court rejected the prosecutor's contention "that [a] recently amended restitution statute provide[d] the [trial] court with the authority to order [the] defendant to pay for [extradition] costs." This Court reasoned that applying the recently enacted restitution statute to the defendant would violate the Ex Post Facto Clause because "it is clear that the amendment would make the statute apply to [the] defendant's extradition, and that action occurred before the amendment of the statute," and because applying the statute imposing the extradition costs to the defendant would increase his punishment. *Id.* at 243-244.

Consistent with the reasoning in *Slocum* and the authority discussed in *People v Moon*, 125 Mich App 773, 777-778; 337 NW2d 293 (1983), we conclude that retroactive application of MCL 769.1k, which undisputedly enhances the amount of costs recoverable from defendant by the \$450 court costs and the \$180 state costs, would violate constitutional ex post facto prohibitions by increasing the level of punishment applicable when defendant committed his crimes and when his trial and sentencing occurred.

Because costs were imposed without statutory authority and because MCL 769.1k may not be applied retroactively to validate the trial court's imposition of costs, the unauthorized imposition of costs constituted a plain error that affected defendant's substantial right not to have his punishment increased beyond that applicable when defendant committed his crimes and was tried and sentenced. *Kimble, supra* at 312; *Slocum, supra* at 243-244. Accordingly, we vacate the unlawful portions of the judgment of sentence, MCL 769.24, and remand for entry of a judgment omitting the unlawful imposition of costs.

Vacated in part and remanded. We do not retain jurisdiction.

/s/ Patrick M. Meter

/s/ Kirsten Frank Kelly

/s/ Karen M. Fort Hood