

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 19, 2015

v

DEON RAY SCOTT,

No. 320290
Washtenaw Circuit Court
LC No. 13-000296-FH

Defendant-Appellant.

Before: BOONSTRA, P.J., and SAAD and MURRAY, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of resisting and obstructing a police officer, MCL 750.81d(1), and possession of marijuana, second or subsequent offense, MCL 333.7403(2)(d). Defendant was sentenced as a fourth-offense habitual offender, MCL 769.12, to concurrent terms of 30 months to 15 years' imprisonment for the resisting and obstructing conviction and one year in jail for the possession conviction, with 221 days' jail credit awarded on the latter. He was also ordered to pay \$136 in state minimum costs, a \$130 crime victim assessment, \$1,611 in court costs, and \$650 in attorney fees. We affirm in part, vacate in part, and remand.

Defendant first argues that the due process clause of the 14th Amendment to the United States Constitution requires that jail credit be awarded on his felony conviction where there was a failure to exercise due diligence in prosecuting him. However, defendant, through counsel, indicated at sentencing that he had no objection to the trial court not granting jail credit on the felony resisting and obstructing charge, thereby waiving the issue. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000). In any event, as his counsel recognized at sentencing, jail credit cannot be awarded on defendant's felony conviction. Defendant was on parole at the time he committed felony resisting and obstructing, and pursuant to *People v Idziak*, 484 Mich 549, 562; 763 NW2d 616 (2009), he was not entitled to jail credit against his new sentence; the time served was credited to the sentence from which parole was granted. Defendant acknowledges *Idziak*, but nonetheless contends that his case involved a significant delay in prosecution created by a lack of due diligence by the police, the prosecution, and the Department of Corrections, which resulted in additional time in custody prior to arrest and sentencing. However, *Idziak* said quite plainly that "a sentencing court lacks common law discretion to grant credit against a parolee's new minimum sentence in contravention of the statutory scheme." *Id.* at 552. The Court then reiterated, "[w]e also reject defendant's argument that a sentencing court

retains discretion to grant credit regardless of the applicability of the jail credit statute.” *Id.* at 568. Thus, the trial court could not grant any sentence credit on defendant’s new sentence.

Defendant next argues that the trial court did not have the statutory authority to assess court costs and that the state minimum costs awarded were erroneous. Defendant did not raise this issue at sentencing or in his motion for remand, rendering it unpreserved. See *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). This Court reviews unpreserved issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

In criminal cases, the court may only impose costs that are authorized by statute. *People v Cunningham*, 496 Mich 145, 149; 852 NW2d 118 (2014). *Cunningham* held that MCL 769.1k(1)(b)(ii) provided “courts with the authority to impose only those costs that the Legislature has separately authorized by statute” and was not a general grant of independent authority. *Id.* at 147. Neither statute underlying defendant’s convictions authorizes the imposition of court costs. See MCL 333.7403; MCL 750.81d.

In response to *Cunningham*, the Legislature amended MCL 769.1k with an effective date of October 17, 2014. See 2014 PA 352; *People v Konopka*, ___ Mich App ___, ___; ___ NW2d ___ (2015); slip op at 5. The amended statute provides in part as follows:

Until 36 months after the date the amendatory act that added subsection (7)^[1] is enacted into law, any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case, including, but not limited to, the following:

- (A) Salaries and benefits for relevant court personnel.
- (B) Goods and services necessary for the operation of the court.
- (C) Necessary expenses for the operation and maintenance of court buildings and facilities. [MCL 769.1k(1)(b)(iii).]

This Court recently determined that, as amended, this section “provides for an award of certain costs that are *not* independently authorized by the statute for the sentencing offense” *Konopka*, ___ Mich App at ___; slip op at 6 (emphasis in original).

¹ Subsection 1k(7) provides:

Beginning January 1, 2015, the court shall make available to a defendant information about any fine, cost, or assessment imposed under subsection (1), including information about any cost imposed under subsection (1)(b)(iii). However, the information is not required to include the calculation of the costs involved in a particular case.

Defendant was before the sentencing court on November 18, 2013, his judgment of sentence was entered November 22, 2013, and an amended judgment was entered on January 21, 2014. The amendments to MCL 769.1k, by their own terms, apply to all costs ordered or assessed under MCL 769.1k before June 18, 2014. *Konopka*, ___ Mich App at ___; slip op at 10. Defendant was sentenced before June 18, 2014. Accordingly, the court did not commit plain error. *Konopka*, ___ Mich App at ___; slip op at 7.

However, the amended act also requires that the costs be “reasonably related to the actual costs incurred by the trial court.” MCL 769.1k(1)(b)(iii). Here, the sentencing court summarily ordered the fees without establishing a factual basis showing the relationship between the fees and the actual costs incurred by the court. We remand for the sentencing court to establish the factual basis for the costs imposed.

Next defendant argues that the court erred in assessing \$68 for the possession conviction, which is a misdemeanor. MCL 333.7403(2)(d). MCL 769.1j(1) states, in pertinent part as follows:

[I]f the court orders a person convicted of an offense to pay any combination of a fine, costs, or applicable assessments, the court shall order that the person pay costs of not less than the following amount, as applicable:

(a) \$68.00, if the defendant is convicted of a felony.

(b) \$50.00, if the defendant is convicted of a misdemeanor or ordinance violation.

When imposing sentence on the possession conviction, the court stated that defendant “must pay \$68 state costs on that count, as well.” However, because the state minimum cost for conviction of a misdemeanor is \$50, it was plainly erroneous for the court to assess \$68 in costs. The court should have imposed one \$68 amount and one \$50 amount, totaling \$118 in state minimum costs. We therefore vacate the \$68.00 assessment and remand for the trial court to assess \$50.00 for the misdemeanor possession conviction.

Affirmed in part, vacated in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Henry William Saad
/s/ Christopher M. Murray