

**Court of Appeals, State of Michigan**

**ORDER**

People of MI v Dennis Linc Holbrook

Docket No. 319565

LC No. 2011-005465-FH

Michael J. Riordan  
Presiding Judge

William B. Murphy

Mark T. Boonstra  
Judges

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The Court orders that the prosecutor's confession of error is APPROVED. MCR 7.211(C)(7). That portion of defendant's sentence that imposed a \$750 fine is VACATED and the trial court is directed to amend its previously issued Order to Remit Prisoner Funds by the same amount.

The imposition of the \$750 fine in this case constituted a plain error because MCL 769.1k(1)(b)(i) and MCL 769.34(6) do not provide independent authority to impose a fine. See *People v Cunningham*, 496 Mich 145, 157-158 & n 11 (2014). Further, MCL 769.1k(1)(b)(i), as amended retroactively by 2014 PA 352, allows a trial court to impose a fine that is authorized by the statute for a violation of which the defendant pleaded guilty or nolo contendere or the court determined that the defendant was guilty. The statute for the offense to which defendant pleaded guilty, MCL 750.110, does not authorize the imposition of a fine. Finally, the unauthorized imposition of this fine affected defendant's substantial rights, see *In re Contempt of Henry*, 282 Mich App 656, 684 (2009), and seriously affected the fairness of the proceedings, see *People v Hegwood*, 465 Mich 432, 436 (2001) ("[T]he ultimate authority to provide for penalties for criminal offenses is constitutionally vested in the Legislature."). Accordingly, vacation of the \$750 fine is warranted under the plain error test set forth in *People v Carines*, 460 Mich 750, 763 (1999).

This appeal being thus resolved, the matter is ADJOURNED from the February 2014 session calendar.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

**JAN 16 2015**

Date

Chief Clerk