

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

YVONNE BETH HALL,

Defendant-Appellant.

UNPUBLISHED

November 28, 2006

No. 263962

Schoolcraft Circuit Court

LC No. 04-006400-FH

Before: White, P.J. and Zahra and Kelly, JJ.

PER CURIAM.

Defendant claims an appeal from those portions of her order of probation requiring her to pay \$1,600 in appointed representation costs and \$100 to a victims' restitution fund. We vacate that portion of the order requiring defendant to pay \$1,600 in representation costs, and remand this matter to the trial court for reconsideration of defendant's ability to make such restitution. We affirm the order of probation in all other respects.

The trial court conducted a bench trial and found defendant guilty of three counts of delivery of a controlled substance, MCL 333.7401(2). The presentence investigation report recommended that defendant be placed on probation, and be ordered to pay various costs and fees, including attorney fees of \$1,600 and a Victims Restitution Fund fee of \$100. The trial court sentenced defendant to serve a term of 18 months' probation, with nine months in jail, and ordered her to pay \$3,360 in fees and costs as outlined in the order of probation.¹

A person who was afforded appointed counsel might be ordered to reimburse the county for the costs of that representation, if such reimbursement can be made without substantial hardship. A court need not make a specific finding on the record regarding the defendant's ability to pay, but must provide some indication that it considered the defendant's financial situation prior to ordering reimbursement. The amount ordered to be reimbursed must be related to the defendant's foreseeable ability to pay. A court must afford the defendant notice and an opportunity to be heard prior to ordering repayment for appointed counsel expenses. *People v Dunbar*, 264 Mich App 240, 251-255; 690 NW2d 476 (2004); see also MCR 6.005(B).

¹ The order of probation provided that defendant was to pay \$1,600 in attorney fees and \$100 to the Victims Restitution Fund.

Defendant argues that the trial court denied her due process when it ordered her to reimburse the county \$1,600 for appointed counsel costs without first considering her ability to pay. Defendant failed to object to this requirement below; therefore, our review is for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

We vacate that portion of the probation order requiring defendant to reimburse the county \$1,600 for appointed counsel costs, and remand this matter with instructions that the trial court consider defendant's ability to pay and, if appropriate, enter an order for reimbursement commensurate with defendant's ability to pay. *Dunbar, supra* at 256. The parties agree that the trial court gave no indication that it considered defendant's ability to pay prior to ordering her to reimburse the county for the cost of her appointed counsel. Under the circumstances, a remand for further proceedings is necessary and plaintiff does not object to such a remand. *Id.*

A governmental entity is entitled to restitution if it suffered "direct physical or financial harm as a result of a crime." MCL 780.766(1). The general cost of investigating and prosecuting criminal activity does not constitute direct financial harm. *People v Newton*, 257 Mich App 61, 68-69; 665 NW2d 504 (2003).

Defendant argues that the trial court erred by ordering her to pay \$100 in restitution to the county. She contends that the county suffered no direct financial harm as a result of her activities, and that no authority allowed the trial court to require her to contribute to a fund that provides restitution for other person's crimes.

We disagree. Defendant did not object on this ground below; therefore, our review is for plain error. *Carines, supra*. The trial court ordered defendant to pay \$100 to the Victims Restitution Fund, a fund which provides restitution to crime victims who cannot collect from indigent defendants. A trial court may order a defendant to pay "any assessment" as a condition of probation. MCL 771.3(2)(f). Thus, we conclude that the trial court's order requiring defendant to pay \$100 to the restitution fund was authorized by statute, and was proper.

We vacate that portion of the order of probation requiring defendant to pay the county \$1,600 for the cost of her appointed counsel, and remand this matter to the trial court for reconsideration of defendant's ability to reimburse the county for the cost of her appointed counsel. The order of probation is affirmed in all other respects. We do not retain jurisdiction.

/s/ Helene N. White
/s/ Brian K. Zahra
/s/ Kirsten Frank Kelly