

No. 1-14-3143

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|---------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 14 CR 6446 |
| |) | |
| ELIJAH LOZADA, |) | Honorable |
| |) | Vincent M. Gaughan, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE PIERCE delivered the judgment of the court.
Presiding Justice Hyman and Justice Neville concurred in the judgment.

O R D E R

- ¶ 1 *Held:* Public defender reimbursement fee vacated where trial court failed to conduct the requisite hearing.
- ¶ 2 Following a bench trial, defendant Elijah Lozada was found guilty of aggravated unlawful use of a weapon for possessing a firearm without a Firearm Owner Identification card and sentenced to 14 months' imprisonment. The court ordered defendant to pay various fines and fees, including a \$250 fee to reimburse Cook County for the services of the public defender. On appeal, defendant maintains that the trial court imposed the public defender fee without

conducting a hearing as required by statute. Defendant also contends that this court should vacate the fee outright, rather than remand the case for a hearing. For the following reasons, we vacate the \$250 public defender fee outright.

¶ 3 Prior to trial, the State filed a motion pursuant to section 113-3.1(a) of the Code of Civil Procedure of 1963 (725 ILCS 5/113-3.1(a) (West 2014)), seeking reimbursement for county funds expended for the cost of defendant's court-appointed attorney. Defendant's case proceeded to a bench trial. He was found guilty and his motion for a new trial was denied. After sentencing defendant on September 2, 2014, the court denied his motion to reconsider sentence and then addressed attorney fees. The court asked defense counsel, "On attorney's fees [sic] how many times did you appear on this, Mr. Douglass?" After defense counsel responded that he appeared five times, the court ordered attorney fees in the amount of \$250.

¶ 4 In this appeal, defendant argues, the State concedes, and we agree, that the trial court did not comply with section 113-3.1, which requires a hearing to determine defendant's ability to pay before imposing the public defender fee. Defendant argues that the court failed to conduct a hearing of any kind and maintains that the proper remedy for this error is to vacate the \$250 public defender reimbursement fee without remand. The State maintains that remand for a hearing is the appropriate remedy in the instant case. We agree with defendant.

¶ 5 Initially, we note that defendant did not preserve his objection to the public defender fee for review because he raises the issue for the first time in this appeal. See *People v. Hillier*, 237 Ill. 2d 539, 544 (2010). However, the State does not argue that defendant failed to preserve the issue for appeal and therefore has waived the forfeiture argument. *People v. De La Paz*, 204 Ill. 2d 426, 433 (2003). Forfeiture is an admonition to the parties and not an impediment to the

jurisdiction of the reviewing court, thus we may review defendant's claim on the merits. *People v. McCarty*, 223 Ill. 2d 109, 142 (2006). Whether the trial court complied with section 113-3.1(a) in imposing the public defender fee presents a question of law, which we review *de novo*. *People v. Gutierrez*, 2012 IL 111590, ¶ 16.

¶ 6 The trial court may order a defendant to pay a "reasonable sum" to reimburse the county or the State for court-appointed representation. 725 ILCS 5/113-3.1(a) (West 2014). However, the trial court must not impose this public defender fee in a perfunctory manner. *People v. Somers*, 2013 IL 114054, ¶ 14. Rather, before imposing the fee, the trial court must conduct a hearing, no later than 90 days after the entry of a final order disposing of the case, to determine the reasonable sum. *Id.* As our supreme court has explained, "[T]he court must give the defendant notice that it is considering imposing the fee, and the defendant must be given the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances." *Id.* The hearing must focus on the costs of representation, the defendant's financial circumstances, and his foreseeable ability to pay. *Id.*

¶ 7 Where the trial court imposes the public defender fee without conducting a hearing within 90 days of the entry of the final order, courts have vacated the fee outright. *Gutierrez*, 2012 IL 111590, ¶ 21; *People v. Daniels*, 2015 IL App (2d) 130517, ¶ 24; *People v. Moore*, 2015 IL App (1st) 141451, ¶ 41. Where a trial court holds "some sort of a hearing" within the 90-day limitation period but does not fully comply with section 113-3.1(a), remand for a hearing may be an appropriate remedy. See *Somers*, 2013 IL 114054, ¶¶ 15, 20 (remanding for a "proper" hearing where the trial court's limited inquiry into the defendant's ability within the 90-day period was deficient under section 113-3.1(a) but nevertheless constituted "some sort of a

hearing" within the required limitation period); see also *People v. Adams*, 2016 IL App (1st) 141135, ¶ 26; *People v. McClinton*, 2015 IL App (3d) 130109, ¶ 18; *People v. Williams*, 2013 IL App (2d) 120094, ¶¶ 20, 22.

¶ 8 Therefore, we must determine whether, before the end of the required 90-day limitation period, the trial court held "some sort of a hearing." We follow *Gutierrez*, *Daniels*, and *Moore*, and find that the trial court imposed the fee without "some sort of a hearing" within the 90-day period and therefore vacate the fee outright.

¶ 9 This court reached the same conclusion in *Moore* based on nearly identical facts. In *Moore*, the State filed a motion informing the court that it was asking for reimbursement of county funds. *Moore*, 2015 IL App (1st) 141451, ¶ 30. After sentencing defendant, the trial court inquired into the number of times defense counsel appeared. *Id.* When defense counsel responded that he had appeared seven times, the trial court determined \$150 should be appropriate. *Id.* The trial court posed no questions to the "defendant regarding his financial status, his employment, his ability to work, or his ability to pay." *Id.* ¶ 39. On appeal, we noted that "some sort of hearing requires more than the mere imposition of the public defender fee by way of a pronouncement in open court while the defendant is present." *Id.* ¶ 40. Absent even the slightest inquiry into the issue of the defendant's ability to pay, the trial court's single question did not constitute "*some sort of a hearing within the statutory time period*" under *Somers*. (Emphasis added in *Moore*.) *Id.* ¶¶ 35, 41 (quoting *Somers*, 2013 IL 114054, ¶ 15). Therefore, we found that there was no sort of hearing within the 90-day required period, and vacated the fee outright. *Id.* ¶¶ 41, 45.

¶ 10 Moreover, in *Moore* we considered what remand would entail and determined that it would be a remedy with no practical purpose. We explained:

"[T]he cost of transporting the defendant from a Department of Corrections institution to the Cook County jail while accompanied by security officers would be significant. After a hearing is scheduled and other pending matters are delayed, presumably the defendant would again be provided a public defender and the trial court, the prosecutor(s), a court reporter, and deputy sheriff's would be required to attend the hearing. After a hearing, consistent with the requirements of *Somers*, defendant would be transported back to Cook County jail and later transported to some facility within the Department of Corrections."

Moore, 2015 IL App (1st) 141451, ¶ 42.

Thus, considering the monetary costs to the taxpayers during a period of severe budgetary stress and the usually stressed court docket, we found that remand for a new hearing would not serve "the interests of the taxpayers or considerations of judicial economy." *Id.*

¶ 11 Here, as in *Moore*, the State filed a motion seeking reimbursement for the cost of court-appointed counsel. The proceeding on the public defender fee likewise occurred at the end of defendant's sentencing hearing. In *Moore* and the instant case, before determining the amount and imposing the public defender fee, the trial court's sole inquiry was into the number of times defense counsel appeared. Here, when counsel replied that he had appeared five times, the trial court ordered defendant to pay the \$250 public defender fee.

¶ 12 Following *Moore*, we conclude that this interaction in no way constitutes "*some sort of a hearing within the statutory time period*" under *Somers*. (Emphasis added in *Moore*.) See *id.* ¶¶

35, 41 (quoting *Somers*, 2013 IL 114054, ¶ 15); see also *Daniels*, 2015 IL App (2d) 130517, ¶ 29 (vacating the public defender fee outright where the trial court imposed the fee on the same date as the defendant's sentencing hearing, but there was no evidence of a hearing on the issue of the fee); but see *Adams*, 2016 IL App (1st) 141135, ¶ 26 (finding that the trial court conducted "some sort of a hearing" when its sole inquiry before imposing the public defender fee was to ask defense counsel how many times he appeared). Here, the final order was entered on September 2, 2014. As no hearing was held within the required 90-day period under section 113-3.1(a), we vacate the \$250 public defender reimbursement fee.

¶ 13 In addition, as we explained in *Moore*, "[W]e do not believe that the interests of the taxpayers or considerations of judicial economy are served by remanding this matter for a hearing on whether defendant should reimburse the county or that State [\$250]." See *Moore*, 2015 IL App (1st) 141451, ¶ 42.

¶ 14 For the reasons stated, the \$250 public defender reimbursement fee ordered by the circuit court of Cook County is vacated.

¶ 15 Judgment affirmed and public defender fee vacated.