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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 14 CR 8309
)	
MICHAEL NEAL,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's \$200 dollar public defender reimbursement fee is vacated, and the cause remanded for a hearing to determine defendant's ability to pay such a fee.
- ¶ 2 Following a bench trial, defendant Michael Neal was convicted of possession of a controlled substance and sentenced to 21 months' probation, 138 days' confinement, time considered served, and various fines, fees, and costs, including a \$200 payment for court-appointed counsel. On appeal, defendant contends that this court should vacate this \$200

payment as the trial court failed to conduct a hearing to determine his ability to pay for court appointed counsel. For reasons set forth herein, we vacate defendant's \$200 public defender reimbursement fee and remand this cause for a proper hearing pursuant to 725 ILCS 5/113-3.1.

¶ 3 Defendant was charged with possession of a controlled substance with intent to deliver (720 ILCS 570/401(d) (West 2014)). On May 28, 2014, the office of the Cook County public defender was appointed to represent defendant. The evidence at defendant's bench trial established that, on April 18 2014, defendant engaged in two hand to hand transactions. During each transaction, officers observed defendant retrieve an item from a stairwell located in a gangway. After officers detained defendant, they found a bag containing 9 smaller bags of suspect cocaine in the stairwell. Chemical tests revealed that the bags contained less than .1 grams of cocaine. The trial court found defendant guilty of possession of a controlled substance with intent to deliver (720 ILCS 570/401(d) (West 2014)). Defendant filed a motion for a new trial, arguing that the State failed to prove that he had the intent to deliver. The trial court agreed and reduced defendant's conviction to the lesser included offense of possession of a controlled substance (720 ILCS 570/402(c) (West 2014)).

¶ 4 On February 26, 2015, the trial court sentenced defendant to 21 months' probation, 138 days' confinement in Cook County jail, time considered served. After admonishing defendant on his right to appeal, the following colloquy occurred:

"THE COURT: The State has filed a motion for reimbursement. Bond had been posted in the amount of \$2,000. Either side have anything that they wish to offer as far as the motion for reimbursement or I guess the position of your office is, [Assistant Public Defender (APD)], you don't get involved in this?"

APD: Yes, Judge, I don't have no [sic] position on that. Thank you.

THE COURT: State (ASA), anything that you wish to offer?

ASA: Yes, Judge. My position is that the People were – or the State, Judge, has fees to be recuperated. Thank you.

THE COURT: I will allow the State's motion for reimbursement in the amount of \$200.

Anything further by either side?

APD: No, Judge.

ASA: No.”

The court ordered that the reimbursement fee be deducted from defendant's posted bond money. Defendant did not challenge the court's assessment of the public defender reimbursement fee in the trial court.

¶ 5 On appeal, defendant contends that we should vacate his \$200 public defender reimbursement fee as the trial court failed to conduct a hearing to determine his ability to pay for court appointed counsel, as required by the statute authorizing the fee. 725 ILCS 5/113-3.1 (West 2014). The State concedes that the trial court did not “sufficiently comply” with the hearing requirements imposed by section 113-3.1, but argues that the appropriate remedy is to remand for a new evidentiary hearing.

¶ 6 Initially, we note that defendant failed to raise this claim of error in the trial court. However, we will not apply the forfeiture rule where a trial court imposes a fee without following the proper procedural requirements. *People v. Moore*, 2015 IL App (1st) 141451, ¶ 31. Whether the trial court complied with section 113-3.1 presents a question of law, which we review *de novo*. *Id.*

¶ 7 Section 113-3.1(a) of the Code of Criminal Procedure states that:

“Whenever * * *the court appoints counsel to represent a defendant, the court may order the defendant to pay to the Clerk of the Circuit Court a reasonable sum to reimburse either the county or the State for such representation. In a hearing to determine the amount of the payment, the court shall consider the affidavit prepared by the defendant under Section 113-3 of this Code and any other information pertaining to the defendant's financial circumstances which may be submitted by the parties. Such hearing shall be conducted on the court's own motion or on motion of the State's Attorney at any time after the appointment of counsel but no later than 90 days after the entry of a final order disposing of the case at the trial level.”

725 ILCS 5/113-3.1 (West 2014).

¶ 8 “To comply with the statute, the court may not simply impose the fee in a perfunctory manner.” *People v. Somers*, 2013 IL 114054, ¶ 14. Rather, the court must inform the defendant that the fee is under consideration and it must give the defendant “the opportunity to present evidence regarding his or her ability to pay and any other relevant circumstances.” *Id.* The court’s focus in the hearing should be on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay. *Id.* Although the court may, as here, order that the reimbursement fee be paid from a bail bond (725 ILCS 5/113-3.1 (West 2014)), the hearing is still required. *People v. Love*, 177 Ill. 2d 550, 563 (1997).

¶ 9 Here, it is undisputed that the trial court imposed the \$200 public defender reimbursement fee without holding a sufficient hearing to determine defendant’s financial circumstances and his ability to pay. However, the parties disagree as to the appropriate remedy.

¶ 10 Defendant argues that the colloquy concerning the public defender reimbursement fee did not constitute a hearing at all. He argues that, because section 133-3.1 requires a trial court to conduct a hearing within 90 days of sentencing, and there was no hearing here, the fee should be vacated without remand. The State contends that the colloquy was a hearing, albeit abbreviated, and, therefore, remand for a more adequate hearing is the appropriate remedy.

¶ 11 In *People v. Somers*, a trial court imposed a \$200 public defender reimbursement fee after asking the defendant a few questions about whether he planned to find a job and if he planned to use the money he earned to pay back his fines, fees, and costs. *Somers*, 2013 IL 114054 at ¶ 4. On appeal, the defendant contended that the trial court's questions did not amount to a proper hearing pursuant to section 113-3.1. *Id.* at ¶ 6. The appellate court agreed that the trial court's questions were not sufficient to comply with section 113-3.1 and remanded the case for a proper hearing. *Id.* The defendant filed a petition for rehearing, arguing that remand was inappropriate as more than 90 days had passed since the trial court's final judgment. *Id.* The appellate court denied the petition, and the defendant appealed to the Illinois supreme court. *Id.*

¶ 12 Our supreme court held that remand was an appropriate remedy. *Id.* at ¶ 21. First, the court acknowledged that the trial court did not fully comply with section 113-3.1. *Id.* at ¶ 15. However, the court noted that the trial court's questions to defendant did amount to "some sort of a hearing" regarding the defendant's public defender reimbursement fee. *Id.* As the trial court did hold "some sort of hearing" on the day of defendant's guilty plea, the 90 day statutory requirement was not violated and the case could be remanded for a proper hearing focusing on defendant's financial circumstances and ability to pay. *Id.* at ¶ 17.

¶ 13 Following *Somers*, this court has held that remand is the appropriate remedy when “some sort of hearing” is held, even though the trial court did not directly inquire into a defendant’s ability to pay the fee. *People v. Adams*, 2016 IL App (1st) 141135, ¶ 26 (finding that trial court’s questions after a sentencing hearing regarding how many times defense counsel appeared in the case constituted “some kind sort of a hearing” and remanding for proper hearing); *People v. Rankin*, 2015 IL App (1st) 133409, ¶ 21 (finding that similar questions by trial court constituted “an abbreviated hearing” and remanding for proper hearing); *But see Moore*, 2015 IL App (1st) 141451, ¶¶ 38-41.

¶ 14 Here, after sentencing, the trial court addressed the State’s motion for reimbursement. The court gave both sides an opportunity to speak on the issue. The court then, without inquiring into defendant’s financial circumstances or ability to pay, granted the State’s motion and assessed a \$200 public defender reimbursement fee. As noted above, this colloquy did not comply with the requirements of section 113-3.1. However, following the reasoning in *Somers*, *Rankin*, and *Adams*, we believe that this colloquy did amount to “some kind of hearing.” As this hearing was held within 90 days after the trial court’s final order, we remand this cause to the trial court with instructions to hold a hearing regarding defendant’s financial circumstances and his ability to pay the public defender reimbursement fee in compliance with section 113-3.1. *Rankin*, 2015 IL App (1st) 133409 at ¶ 21.

¶ 15 For the forgoing reasons, we vacate defendant’s \$200 public defender reimbursement fee and remand the case for a hearing in compliance with section 113-3.1.

¶ 16 Vacated in part and remanded with instructions.