

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).

2018 IL App (4th) 160396-U

NO. 4-16-0396

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

August 3, 2018
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Ford County
MICHAEL S. VANGILDER,)	No. 15CF13
Defendant-Appellant.)	
)	Honorable
)	Matthew J. Fitton,
)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court vacated the public-defender-reimbursement fee, finding the trial court failed to conduct a hearing to determine the reasonableness of the fee.

¶ 2 In September 2015, the trial court found defendant, Michael S. Vangilder, guilty of aggravated criminal sexual abuse. The court sentenced him to six years in prison and ordered him to pay \$300 to reimburse the public defender.

¶ 3 On appeal, defendant argues the \$300 public-defender-reimbursement fee should be vacated because the trial court failed to conduct a hearing to determine the reasonableness of the fee. We vacate the court’s order pertaining to the public-defender-reimbursement fee.

¶ 4 **I. BACKGROUND**

¶ 5 In January 2015, the State charged defendant by information with one count of aggravated criminal sexual abuse, a Class 2 felony (720 ILCS 5/11-1.60(c)(1)(i), (g) (West

2014)), alleging he, who was 17 years of age or older, committed an act of sexual conduct with J.S., who was under 13 years of age when the act was committed, in that he knowingly rubbed his penis on or about her body.

¶ 6 Following a bench trial, the trial court found defendant guilty. In December 2015, the court sentenced him to six years in prison. The court’s supplemental sentencing order included a \$300 fee to reimburse the public defender pursuant to section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/113-3.1(a) (West 2014)). Defendant filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 7 II. ANALYSIS

¶ 8 Defendant argues the \$300 public-defender-reimbursement fee should be vacated because the trial court failed to conduct “some sort of hearing” to determine the reasonableness of the fee. The State concedes, and we agree.

¶ 9 Initially, we note defendant failed to challenge the imposition of the public-defender-reimbursement fee by objecting at sentencing or including the issue in his posttrial motion. However, because the procedural safeguards of section 113-3.1(a) of the Procedure Code were not followed, finding forfeiture of the issue would be inappropriate. *People v. Hardman*, 2017 IL 121453, ¶ 49; *People v. Aguirre-Alarcon*, 2016 IL App (4th) 140455, ¶ 10, 59 N.E.3d 229.

¶ 10 Section 113-3.1(a) of the Procedure Code provides, in part, as follows:

“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(a) (West 2014).

¶ 11 Section 113-3.1 requires the trial court to conduct a hearing into a defendant's financial circumstances and find an ability to pay before ordering him to pay reimbursement for his appointed counsel. *People v. Love*, 177 Ill. 2d 550, 555-56, 687 N.E.2d 32, 35 (1997).

"To comply with the statute, the court may not simply impose the fee in a perfunctory manner. [Citation.] Rather, the 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. [Citation.] The hearing must focus on the costs of representation, the defendant's financial circumstances, and the foreseeable ability of the defendant to pay. [Citation.] The trial court must consider, among other evidence, the defendant's financial affidavit. [Citations.]" *People v. Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471.

¶ 12 In the case *sub judice*, the record is devoid of any indication the trial court conducted a hearing or gave defendant notice as required under section 113-3.1(a). Instead, it appears the court, *sua sponte*, included the fee in the supplemental sentencing order. Given defendant was deprived of notice and the opportunity to be heard and present evidence regarding his foreseeable ability to pay, the fee must be vacated. Thus, we accept the State's concession and vacate the public-defender-reimbursement fee outright. See *Aguirre-Alarcon*, 2016 IL App (4th) 140455, ¶ 17, 59 N.E.3d 229 (vacating the public-defender-reimbursement fee outright where the trial court did not hold a hearing on the defendant's ability to pay and the statutorily required 90-day time period within which to hold a hearing had passed).

¶ 13 III. CONCLUSION

¶ 14 For the reasons stated, we vacate outright the trial court's imposition of the public-defender-reimbursement fee. We otherwise affirm.

¶ 15 Affirmed in part and vacated in part.