

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).

2019 IL App (4th) 170014-U

NO. 4-17-0014

FILED
May 21, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
Plaintiff-Appellee,)	Circuit Court of
v.)	Vermilion County
WENDY BROWN,)	No. 15CF552
Defendant-Appellant.)	
)	Honorable
)	Nancy S. Fahey,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holder White and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held:* The public defender reimbursement fee is vacated and the cause remanded for a new hearing. This court declines to address defendant’s claims regarding the *per diem* monetary credit against fines.

¶ 2 In September 2016, a jury found defendant, Wendy Brown, guilty of methamphetamine possession (720 ILCS 646/60(b)(1) (West 2014)). The trial court sentenced her to four years in prison and assessed various fines and fees. Defendant appeals, arguing that (1) the trial court erred in ordering her to reimburse the public defender without holding an adequate hearing and (2) she is entitled to *per diem* monetary credit against court-assessed fines.

We affirm in part, vacate in part, and remand with directions.

¶ 3

I. BACKGROUND

¶ 4 In September 2015, the State charged defendant by information with methamphetamine possession (720 ILCS 646/60(b)(1) (West 2014)).

¶ 5 At defendant's jury trial, the State presented the testimony of multiple witnesses, including Danville police officer Kyle Harrold, who testified that defendant first came to his attention when he noticed defendant retrieving an item from a dumpster located behind a local business. After defendant consented to a search, Officer Harrold discovered a plastic bag with several coffee filters that later tested positive for methamphetamine. Defendant presented the testimony of one witness, Sadie Walls, a friend who claimed that she had hidden the coffee filters in defendant's pocket. The jury ultimately found defendant guilty of methamphetamine possession.

¶ 6 In October 2016, the trial court sentenced defendant to four years in prison and awarded 52 days of presentence custody credit. The court further ordered defendant to pay a \$100 crime lab fee, a \$500 "drug assessment fine," and court costs. The court made no reference to the application of *per diem* monetary credit. At the State's recommendation, the court ordered defendant "to reimburse the office of the public defender for 20 hours at the rate of \$80/hour." The State based its recommendation for reimbursement partly on defendant's testimony at the sentencing hearing that she had recently received a large sum of money from an insurance claim.

¶ 7 In November 2016, defendant filed a motion to reconsider her sentence, arguing that her sentence was excessive. The court denied the motion.

¶ 8 This appeal followed.

¶ 9 II. ANALYSIS

¶ 10 Defendant argues on appeal that (1) the trial court erred in ordering her to

reimburse the public defender without holding an adequate hearing and (2) she is entitled to *per diem* monetary credit against court-assessed fines. The State concedes both issues, challenging only the requested relief regarding the public defender fee. Although the State acknowledges that the court did not conduct an adequate hearing on the public defender fee and defendant was not provided with the required notice, the State contends the proper remedy is to remand the matter to the trial court for a new hearing. Defendant maintains that the public defender fee should be vacated without a remand.

¶ 11 As for the first issue, we accept the State's concession regarding the inadequacy of the public defender fee reimbursement hearing.

¶ 12 Pursuant to section 113-3.1(a) of the Code of Criminal Procedure of 1963, a trial court may order the defendant to reimburse the county for his or her representation by the public defender. 725 ILCS 5/113-3.1(a) (West 2014). Section 113-3.1(a) requires that a trial court first conduct an adequate hearing that considers the defendant's financial ability to pay the fee before the fee may be awarded. *People v. Hardman*, 2017 IL 121453, ¶ 47, 104 N.E.3d 372. "[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." *People v. Somers*, 2013 IL 114054, ¶ 14, 984 N.E.2d 471.

¶ 13 Here, it is clear that the trial court's assessment of the public defender fee did not comply with the requirements of section 113-3.1. Defendant was not provided notice that the court was considering imposing the fee. Nor was defendant given the opportunity to present evidence. However, an issue remains as to the proper remedy. Defendant requests that the public defender assessment be vacated outright while the State suggests a remand for a new hearing is

appropriate.

¶ 14 The supreme court has held that where a trial court has failed to comply with section 113-3.1, but it conducted “some sort of hearing” relating to a public defender assessment, a remand for a proper hearing is appropriate. *Hardman*, 2017 IL 121453, ¶ 66, 104 N.E.3d 372. In *Hardman*, the court stated that where “[a] judicial session occurred, and the issue of whether [the defendant] should be assessed a public defender fee was considered,” the court session constituted “some sort of hearing” such that a remand for a proper hearing was appropriate. *Id.*

¶ 15 We find the circumstances here are similar to those in *Hardman*. In this case, the prosecutor raised the issue of a public defender assessment during defendant’s sentencing hearing. Given the circumstances, we find “some sort of hearing” occurred and the appropriate remedy is to remand for a proper hearing pursuant to section 113-3.1.

¶ 16 Next, we consider defendant’s argument that she is entitled to *per diem* credit against her fines. As stated above, the State concedes the issue.

¶ 17 Recently, the Illinois Supreme Court promulgated Rule 472, which provides for the correction of certain sentencing errors. Ill. S. Ct. R. 472 (eff. Mar. 1, 2019). In pertinent part, Rule 472 provides that the trial court retains jurisdiction to correct sentencing errors “at any time[,] *** including during the pendency of an appeal ***.” Ill. S. Ct. R. 472(a) (eff. Mar.1, 2019). This includes “[e]rrors in the imposition or calculation of fines, fees, assessments, or costs” and errors “in the application of *per diem* credit against fines[.]” Ill. S. Ct. R. 472(a)(1), (2) (eff. Mar. 1, 2019). Rule 472 further provides that no appeal may be taken based on such an error “unless [the] error has first been raised in the [trial] court.” Ill. S. Ct. R. 472(c) (eff. Mar. 1, 2019).

¶ 18 Here, we find that the trial court retains jurisdiction to correct any error relating to defendant's entitlement to *per diem* credit. Accordingly, we decline to address the alleged error. See *People v. Sturgeon*, 2019 IL App (4th) 170035, ¶ 120 (“[W]e decline to address this matter because the trial court still has jurisdiction to correct the error.”).

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we vacate the public defender assessment and remand for a proper hearing pursuant to section 113-3.1. We otherwise affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002(a) (West 2016).

¶ 21 Affirmed in part, vacated in part, and remanded with directions.