

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VITO JAMES BELLISSIMO,

Defendant-Appellant.

---

UNPUBLISHED

October 11, 2007

No. 272242

Wayne Circuit Court

LC No. 05-012167-01

Before: Markey, P.J., and Saad and Wilder, JJ.

MEMORANDUM.

Defendant appeals by right from a judgment of sentence imposed on a conviction of third-degree fleeing and eluding, MCL 257.602a(3). We vacate in part and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

As part of defendant's sentence, the court ordered defendant to pay \$600 in attorney fees. Defendant contends that the court improperly assessed attorney fees because it did not first determine whether he had the ability to pay them and because counsel was retained. Defendant did not raise this issue below and thus the issue is reviewed for plain error affecting defendant's rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A defendant has a general obligation to reimburse the public cost of appointed counsel. See MCR 6.005(C); *People v Nowicki*, 213 Mich App 383; 539 NW2d 590 (1995). Because the obligation to reimburse the county for legal fees is independent of the sentence, payment of attorney fees cannot be imposed as part of the sentence. It must be set forth in a separate order. *Id.* at 386; *People v Dunbar*, 264 Mich App 240, 256 n 15; 690 NW2d 476 (2004). Therefore, that aspect of the judgment of sentence that ordered defendant to pay attorney fees is vacated. If the court orders reimbursement of attorney fees, it need not make a specific finding regarding defendant's ability to pay in the absence of a specific objection to reimbursement. But the court "does need to provide some indication of consideration, such as noting that it reviewed the financial and employment sections of the defendant's presentence investigation report or, even more generally, a statement that it considered the defendant's ability to pay." *Id.* at 254-255. If the record does not show that the court considered the defendant's ability to pay, remand is required so the court may "reconsider its reimbursement order in light of defendant's current and future financial circumstances." *Id.* at 255.

Further, it is not clear from the record in this case whether the county incurred any fees for defendant's legal representation. Although the district court appointed counsel for defendant following his arraignment, retained counsel represented defendant at the waiver of the preliminary examination and at all proceedings in circuit court. Therefore, on remand, the court shall determine whether there are any court-appointed attorney fees to be reimbursed and, if so, the court shall reconsider its reimbursement order in light of defendant's financial circumstances.

We vacate in part and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ Henry William Saad  
/s/ Kurtis T. Wilder