

2019 IL App (1st) 170126-U

No. 1-17-0126

Order filed August 8, 2019

Fourth Division

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 18294
	)	
ANDREA COLEMAN,	)	Honorable
	)	Angela Munari Petrone,
Defendant-Appellant.	)	Judge, presiding.

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JUSTICE BURKE delivered the judgment of the court.  
Justices Gordon and Reyes concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's order reimbursing the Cook County Public Defender's office with defendant's bond is vacated, where the trial court did not conduct a proper hearing. Pursuant to Illinois Supreme Court Rule 472, we decline to reach defendant's challenge to the \$25 electronic citation fee and \$5 court system fee.

¶ 2 Following a jury trial, defendant Andrea Coleman was convicted of two counts of aggravated battery and sentenced to 30 months' probation, with the first 6 months to be served in prison. On appeal, defendant argues that (1) the trial court erred by reimbursing the Cook County

Public Defender's office with defendant's bond without conducting a hearing pursuant to section 113-3.1(a) of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/113-3.1(a) (West 2016)), and (2) she was wrongfully assessed a \$25 electronic citation fee and \$5 court system fee. We affirm in part, vacate in part, and remand.

¶ 3 Defendant was charged by information with three counts of aggravated battery causing great bodily harm (720 ILCS 5/12-3.05(a)(1) (West 2014)) and one count of aggravated battery using a deadly weapon (720 ILCS 5/12-3.05(f)(1) (West 2014)), arising from an incident in Chicago on October 1, 2014. Prior to trial, defendant's mother posted a \$1000 bond.

¶ 4 The evidence at trial established that defendant was involved in an altercation with several people in a stairway of an apartment building. After the altercation, Danielle Hardy exited an apartment and saw multiple people, including defendant and Tara Green, holding weapons on the floor above her. Hardy testified that defendant struck her right eye using a pole with "a little nail on the end of it," causing Hardy to permanently lose vision in that eye. Later, in the presence of an assistant state's attorney and two detectives, defendant signed a statement confessing that she threw the pole that hit Hardy's eye. Defendant testified that Green, her girlfriend at the time, threw a curtain rod at Hardy and asked defendant to confess to the offense because Green was on parole.

¶ 5 The jury found defendant guilty of one count of aggravated battery causing great bodily harm and one count of aggravated battery using a deadly weapon.

¶ 6 At the sentencing hearing, the trial court merged the counts and sentenced defendant to 30 months' probation, with the first 6 months to be served in prison. Then, the court stated:

“I also notice that it looks like your mother posted a bond for you, \$1,000. And I am taking that bond money to reimburse the Public Defender’s Office for their services. No, strike that. One second.

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\*\*\* The fines—I will take that money to reimburse the Public Defender’s Office for your services. I think your attorney gave you an excellent jury trial that certainly would have cost way more than a thousand dollars in real life.”

¶ 7 On appeal, defendant argues that the trial court erred in reimbursing the Cook County Public Defender’s office with her bond without conducting a hearing pursuant to section 113-3.1(a) of the Code. Therefore, defendant requests that we vacate the order reassigning the bond to the Cook County Public Defender’s office and remand the case for a proper hearing regarding her ability to reimburse the public defender.

¶ 8 Section 113-3.1(a) of the Code provides:

“Whenever under either Section 113-3 of this Code or Rule 607 of the Illinois Supreme Court 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 2016).

¶ 9 This provision addresses the constitutional concern raised by the Illinois Supreme Court that “[a] summary decision which orders reimbursement without affording a hearing with opportunity to present evidence and be heard acts to violate an indigent defendant’s right to procedural due process.” *People v. Hardman*, 2017 IL 121453, ¶ 47 (quoting *People v. Cook*, 81 Ill. 2d 176, 186 (1980)). To comply with section 113-3.1(a) of the Code, “the court may not simply impose the fee in a perfunctory manner,” but rather “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. Where a trial court violated section 113-3.1(a) but held “some sort of a hearing,” the proper remedy is to remand the case for a new hearing that complies with the statute. (Internal quotation marks omitted.) *Hardman*, 2017 IL 121453, ¶ 66. A court proceeding will constitute “some sort of a hearing” where there is a “judicial session usu[ally] open to the public, held for the purpose of deciding issues of fact or of law, sometimes with witnesses testifying.” (Internal quotation marks omitted.) *Id.* ¶¶ 64, 66.

¶ 10 Here, the trial court conducted “some sort of a hearing,” as it considered imposing reimbursement for the Cook County Public Defender’s office during defendant’s sentencing hearing, a judicial session that was held for the purpose of deciding issues of fact or of law. However, the hearing was insufficient under section 113-3.1(a) of the Code, since defendant did not have an opportunity to present any evidence regarding her ability to pay, and the record does not show that she received notice that the court would impose the assessment. *Somers*, 2013 IL

114054, ¶ 14. Therefore, because the court conducted an insufficient hearing when reimbursing the Cook County Public Defender's office with defendant's bond, we vacate the court's order regarding the reimbursement and remand the case for a proper section 113-3.1(a) hearing. *Hardman*, 2017 IL 121453, ¶ 73.

¶ 11 Next, defendant contends that she was wrongfully assessed a \$25 electronic citation fee (705 ILCS 105/27.3e (West 2016)) and a \$5 court system fee (55 ILCS 5/5-1101(a) (West 2016)).

¶ 12 On February 26, 2019, while this appeal was pending, our supreme court adopted new Illinois Supreme Court Rule 472, which sets forth the procedure in criminal cases for correcting sentencing errors in, as relevant here, the "imposition or calculation of fines, fees, and assessments or costs." Ill. S. Ct. R. 472(a)(1) (eff. Mar. 1, 2019). On May 17, 2019, Rule 472 was amended to provide that "[i]n all criminal cases pending on appeal as of March 1, 2019, or appeals filed thereafter in which a party has attempted to raise sentencing errors covered by this rule for the first time on appeal, the reviewing court shall remand to the circuit court to allow the party to file a motion pursuant to this rule." Ill. S. Ct. R. 472(e) (eff. May 17, 2019). "No appeal may be taken" on the ground of any of the sentencing errors enumerated in the rule unless that alleged error "has first been raised in the circuit court." Ill. S. Ct. R. 472(c) (eff. May 17, 2019). Therefore, pursuant to Rule 472, we "remand to the circuit court to allow [defendant] to file a motion pursuant to this rule," raising the alleged errors regarding fines and fees. Ill. S. Ct. R. 472(e) (eff. May 17, 2019).

¶ 13 For the foregoing reasons, we vacate the trial court's order applying defendant's bond to reimburse the Cook County Public Defender's office, remand for a proper hearing pursuant to

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section 113-3.1 of the Code and pursuant to Illinois Supreme Court Rule 472 (eff. Mar. 1, 2019), and affirm the trial court's judgment in all other respects.

¶ 14 Affirmed in part, vacated in part, and remanded.