

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 17-1727
)
 RONALD SKYLER STEENHOEK,))
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR BOONE COUNTY
HONORABLE TIMOTHY J. FINN AND
HONORABLE MICHAEL J. MOON, JUDGES

APPELLANT'S REPLY BRIEF AND ARGUMENT

MARK C. SMITH
State Appellate Defender

BRENDA J. GOHR
Assistant Appellate Defender
bgohr@spd.state.ia.us
appellatedefender@spd.state.ia.us

STATE APPELLATE DEFENDER'S OFFICE
Fourth Floor Lucas Building
Des Moines, Iowa 50319
(515) 281-8841 / (515) 281-7281 FAX

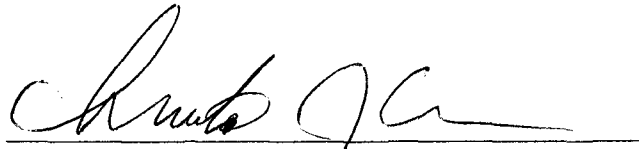
ATTORNEYS FOR DEFENDANT-APPELLANT

FINAL

CERTIFICATE OF SERVICE

On the 17th day of May, 2018, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Ronald S. Steenhoek, 1322 Mamie Eisenhower, Boone, IA 50036.

APPELLATE DEFENDER'S OFFICE

A handwritten signature in cursive script, appearing to read "Brenda J. Goehr", written over a horizontal line.

BRENDA J. GOHR

Assistant Appellate Defender

BJG/lr/05/18

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. DID THE DISTRICT COURT ERR IN ASSESSING FINANCIAL OBLIGATIONS TO STEENHOEK WITHOUT FIRST MAKING A CONSTITUTIONALLY MANDATED DETERMINATION OF HIS REASONABLE ABILITY TO PAY?

Authorities

Goodrich v. State, 608 N.W.2d 774, 776 (Iowa 2000)

State v. Coleman, 907 N.W.2d 124, 149 (Iowa 2018)

State v. Jackson, 601 N.W.2d 354, 357 (Iowa 1999)

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State v. Campbell, No. 15-1181, 2016 WL 4543763, at *2-3 (Iowa Ct. App. Aug. 31, 2016)

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Iowa Code § 910.2 (2017)

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State v. Kaelin, 362 N.W.2d 526, 528 (Iowa 1985)

State v. Van Hoff, 415 N.W.2d 647, 649 (Iowa 1987)

State v. Jenkins, 788 N.W.2d 640, 646-47 (Iowa 2010)

State v. Martin, No. 11-0914, 2013 WL 4506163, at *2 & n.3 (Iowa Ct. App. Aug. 21, 2013)

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(Last visited 5/10/2018)

Iowa Code § 602.8107(2)(d) (2017)

Bader v. State, 559 N.W.2d 1, 4 (Iowa 1997)

State v. Harrison, 351 N.W.2d 526, 529 (Iowa 1984)

**II. DID THE COURT ABUSE ITS DISCRETION WHEN IT
SENTENCED STEENHOEK TO FIVE YEARS CONFINEMENT?**

This issue is not addressed in this reply brief.

STATEMENT OF THE CASE

COMES NOW the Defendant-Appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the State's proof brief filed on or about May 2, 2018. While the defendant's brief adequately addresses the issues presented for review, a short reply is necessary to address certain contentions raised by the State.

ARGUMENT

I. THE DISTRICT COURT ERRED IN ASSESSING FINANCIAL OBLIGATIONS TO STEENHOEK WITHOUT FIRST MAKING A CONSTITUTIONALLY MANDATED DETERMINATION OF HIS REASONABLE ABILITY TO PAY.

The current state of the law regarding restitution is confusing and needs to be addressed by the Supreme Court to clarify the numerous interpretations issued by the Court of Appeals and the Supreme Court.

A. To comply with the Iowa Code, the sentencing court must order a temporary restitution plan at the time of sentencing, and in doing so must make a determination as to the defendant's reasonable ability to pay prior to issuing said order. As a result, this Court must overturn Jackson and Swartz.

The Iowa Supreme Court has repeatedly held that the

reasonable ability to pay determination must be made prior to the court issuing any orders imposing restitution on a defendant. See Goodrich v. State, 608 N.W.2d 774, 776 (Iowa 2000); State v. Coleman, 907 N.W.2d 124, 149 (Iowa 2018) (The Court declined to directly address the question; however, held that “when the district court assess any future attorney fees on Coleman’s case, it must follow the law and determine the defendant’s reasonable ability to pay the attorney fees without requiring him to affirmatively request a hearing on his ability to pay.”).

The Iowa Supreme Court has also held that the reasonable ability to pay cannot be determined until the plan of restitution has been properly ordered by the sentencing court. See State v. Jackson, 601 N.W.2d 354, 357 (Iowa 1999); State v. Swartz, 601 N.W.2d 348, 354 (Iowa 1999). The Jackson court indicated that the determination cannot be made until the plan of restitution is *complete*. Id. While the court did not define what it means for the plan of restitution to be complete, based

on the facts of the case in Jackson¹, it appears that the court considers the plan of restitution to be complete when *all restitution amounts* are known.

The Iowa Legislature has mandated that sentencing courts issue, at the very least, a temporary plan of restitution *at the time of sentencing*. See Iowa Code § 910.3 (2017) (“If the full amount of restitution cannot be determined at the time of sentencing, the court **shall** issue a temporary order determining a reasonable amount for restitution identified up to that time.”) (emphasis added). The temporary plan of restitution is then to be followed up with permanent supplemental orders when the amounts become known. Id.

It is impossible for the sentencing courts to comply with the current state of the law, and this case is a perfect example of why the law needs to change. If the sentencing court were to comply with the Iowa Code and issue a temporary plan of restitution at sentencing because the restitution amounts were

¹ At the time of sentencing, the only amounts known were court costs and court-appointed attorney’s fees; listed as unavailable were pecuniary damages and jail room and board fees. Jackson, 601 N.W.2d at 357.

unknown at the time of sentencing, then the reasonable ability to pay determination should have been made prior to issuing that temporary order.² However, the Iowa Court of Appeals has weighed in on this option, albeit in unpublished and non-binding cases, and found that it is an abuse of discretion for the court to make that determination on an unknown amount. See State v. Campbell, No. 15-1181, 2016 WL 4543763, at *2-3 (Iowa Ct. App. Aug. 31, 2016); State v. Pace, No. 16-1785, 2018 WL 1629894, at *3 (Iowa Ct. App. Apr. 2, 2018).

The other option the sentencing court has is to follow the precedent set forth in Jackson and Swartz, issue a temporary restitution plan or no restitution plan, and not make the reasonable ability to pay determination because the restitution

² Steenhoek contends that the order at sentencing that he was required to reimburse the State for the court costs and attorney's fees is a sufficient temporary order. (Order of Disposition) (App. pp. 14-16). If, however, this Court agrees with the State's position that this did not qualify as a temporary order as contemplated by Iowa Code 910.3, then Steenhoek requests this Court find that the District Court erred by failing to comply with the statutory requirements of section 910.3 by creating a temporary restitution plan and remand and reverse his case. (State's Brief pp. 15, 18, 26).

plan is not complete. This option leaves the sentencing court in direct violation of the Iowa Code and the Iowa Constitution.

The solution, as proposed in Steenhoek's original brief, is for the sentencing court to make the reasonable ability to pay determination at the time of sentencing, utilizing the appropriate factors set forth in Kaelin, Storrs, and Van Hoff, set a temporary restitution plan at the time of sentencing, and amend that determination before supplemental orders are issued after allowing the defendant notice and an opportunity for a hearing. See Iowa Code §§ 910.2, 910.3 (2017); State v. Storrs, 351 N.W.2d 520, 522 (Iowa 1984); State v. Kaelin, 362 N.W.2d 526, 528 (Iowa 1985); State v. Van Hoff, 415 N.W.2d 647, 649 (Iowa 1987); State v. Jenkins, 788 N.W.2d 640, 646-47 (Iowa 2010). In doing so, this Court should overrule Jackson and Swartz and their proposition that the reasonable ability to pay determination cannot be made until all restitution amounts are known.

B. In practice, supplemental orders are not typically issued before certain costs are assessed by the Clerk of Courts.

The State argues that the costs assessed to Steenhoek, in the amount of \$2969.50, are not a part of the plan of restitution and not challengeable because the sentencing court has not issued a supplemental order imposing those charges. (State's brief p. 27-30). In support of this position the State cites to an unpublished Court of Appeals opinion, State v. Martin, No. 11-0914, 2013 WL 4506163, at *2 & n.3 (Iowa Ct. App. Aug. 21, 2013).

In theory, the State's premise is correct-that restitution amounts should not be assessed to the Defendant until a reasonable ability to pay determination has been made by the court and then a supplemental order is issued. In practice, however, that is not what happens. As in this case, the sentencing court ordered at sentencing that Steenhoek would be responsible for court costs and attorney's fees. (Order of Disposition) (App. pp. 14-16). This is clearly documented on Iowa Courts Online under the Criminal Charges/Disposition

and Judgment/Liens tabs. See Iowa Courts Online-case number FECR111198, <https://www.iowacourts.state.ia.us> (last visited 5/10/2018).

A review of the Financial tab, shows that Steenhoek was assessed \$2535.00 for “Indigent Defense-Felony-Reimburse State”, \$66.50 for “Indigent Defense-Misc-Reimburse State, and \$168.00 for “Indigent Defense-Misc-Reimburse State.” Steenhoek was also assessed \$20.00 for “Sheriffs Fees-Local”, \$100.00 for “Filing and Docketing Fees Criminal”, and two separate charges of \$40.00 for “Court Reporter Services.” Id. These amounts total up to the \$2969.50 that appear as COSTS on the Financial summary.

The Filings listed under the “Filings” tab on Iowa Courts Online provide a little more explanation as to the expenses listed, indicating that on December 13, 2017, there was a claim for attorney’s fees filed, along with a claim for expense total, and on December 27, 2017, Expense Total. Id. These filings are also noted on EDMS, however, they are only listed as “Other Event” filed by the Court and are not accessible to Counsel.

See Iowa Judicial Branch-Electronic Filing, Case Number FECR111189,

<https://www.iowacourts.state.ia.us/Efile/reg?pageAction>

(Last visited 5/10/2018).

While the sentencing court has not issued a supplemental order imposing these costs, the costs have been assessed to Steenhoek as reflected on Iowa Courts Online. Consequently, Steenhoek had 30-days from the date they were assessed, which is unclear, to make payment otherwise the costs would become delinquent. See Iowa Code § 602.8107(2)(d) (2017). Once the payments become delinquent other sanctions may be taken against Steenhoek including, but not limited to, imposing interest on the amounts owed.

Applying the State's logic, Steenhoek has no ability to challenge the \$2969.50 that has been assessed to him by the Clerk of Courts, but will likely still incur potential sanctions because his account is delinquent because the fees have been assessed against him. At the very least, this Court should reverse and remand Steenhoek's case for establishment of a

restitution plan, including a hearing to determine the extent to which Steenhoek is able to make payments. See Bader v. State, 559 N.W.2d 1, 4 (Iowa 1997) (citing State v. Harrison, 351 N.W.2d 526, 529 (Iowa 1984)).

CONCLUSION

For the reasons argued in this reply brief and in Defendant-Appellant's opening brief, Steenhoek respectfully requests this Court reverse and remand his case to the District Court for a restitution hearing.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$ 180, and that amount has been paid in full by the Office of the Appellate Defender.

MARK C. SMITH
State Appellate Defender

BRENDA J. GOHR
Assistant Appellate Defender

**CERTIFICATE OF COMPLIANCE WITH
TYPEFACE REQUIREMENTS AND
TYPE-VOLUME LIMITATION FOR BRIEFS**

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,497 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 17 May 2018

BRENDA J. GOHR
Assistant Appellate Defender
Appellate Defender Office
Lucas Bldg., 4th Floor
321 E. 12th Street
Des Moines, IA 50319
(515) 281-8841
bgohr@spd.state.ia.us
appellatedefender@spd.state.ia.us