

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 17-0270
)
 TYSON JAMES RUTH,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR GREENE COUNTY
HONORABLE ADRIA A.D. KESTER, JUDGE

APPELLANT'S BRIEF AND ARGUMENT

MARK C. SMITH
State Appellate Defender

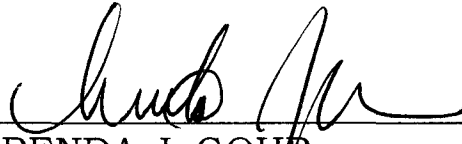
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CERTIFICATE OF SERVICE

On August 11, 2017, 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 Tyson J. Ruth, No. 6851729, Iowa Medical and Classification Center, 2700 Coral Ridge Ave., Coralville, IA 52241.

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

WHETHER THE DISTRICT COURT ERRED IN ASSESSING COSTS TO MR. RUTH FOR THE DISMISSED COUNTS AS THERE WAS NO INDICATION IN THE RECORD THAT PAYMENT FOR THE DISMISSED CHARGES WERE PART OF THE PLEA AGREEMENT?

Authorities

State v. Sisk, 577 N.W.2d 414, 416 (Iowa 1998)

State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010)

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ROUTING STATEMENT

This case should be transferred to the Court of Appeals because the issues raised involve applying existing legal principles. Iowa R. App. P. 6.903(2)(d) and 6.1101(3)(a).

STATEMENT OF THE CASE

Nature of the Case: Appellant Tyson Ruth appeals following his guilty plea and sentence for: Theft in the Second Degree, a Class D felony, in violation of sections 714.1 and 714.2(2) of the Iowa Code.

Course of Proceedings and Facts: On June 9, 2016, Ruth was charged with the following: Ongoing Criminal Conduct, a class B felony, in violation of section 706A.4 of the Iowa Code (Count I); Burglary in the Third Degree, an aggravated misdemeanor, in violation of sections 713.1 and 713.6A(2) of the Iowa Code (Count II); Burglary in the Third Degree, a class D felony, in violation of sections 713.1 and 713.6A(1) of the Iowa Code (Count III); Theft in the Second Degree, a class D felony, in violation of sections 714.1 and 714.2(2) of the Iowa Code (Count IV); Possession of

Methamphetamine, a serious misdemeanor, in violation of section 124.401(5) of the Iowa Code (Count V); Possession of Marijuana, a serious misdemeanor, in violation of section 124.401(5) of the Iowa Code; Theft in the Second Degree, a class D felony, in violation of sections 714.1 and 714.2(2) of the Iowa Code (Count VII); and Possession of Methamphetamine, a serious misdemeanor, in violation of section 124.401(5) of the Iowa Code (Count VIII). (Trial Information)(App. pp. 4-9).

On December 9, 2016, a hearing was held to allow Ruth to plead guilty to Count VII as part of an agreement with the State. (GP Tr. p. 1 L9-12; p. 10 L1-11). The plea agreement, as articulated by Ruth's trial counsel was:

In exchange for a guilty plea to Count VII of the Trial Information, the County Attorney has agreed to recommend to dismiss all other pending charges. There would only be restitution regarding Count VII. And that at the time set for sentencing, the State has agreed to recommend the suspended sentence with the understanding that the Defendant will be requesting deferred judgment.

(GP Tr. p. 10 L1-8). The court confirmed with the State that

that was the agreement reached between the parties. (GP Tr. p. 11 L5-8). The Court accepted the plea. (GP Tr. p. 19 L17-21).

On January 27, 2017, a sentencing hearing was held. (Sent. Tr. p. 1 L8-11). The court asked for a statement of the plea agreement from the State, who indicated:

In exchange for the Defendant's plea of guilty to the present charge, Theft, Second Degree, D Felony, I agree to dismiss the other charges pending against him at that time, as well as certain new charges, and I don't have the number but I do have the dismissal prepared to file.

Additionally, I have agreed to recommend a suspended sentence and am doing so at this time. The Defendant is free to request a deferred judgment, however, I am resisting any application that the Defendant might make for a deferred judgment.

I am recommending suspension of the minimum fine. I will be asking that he be ordered to pay victim restitution. I have already filed a Statement of Restitution with regard to this particular count.

Finally, I'll be asking that he be ordered to pay court costs and attorney fees.

(Sent. Tr. p. 5 L13-p. 6 L4.) Defense counsel concurred that the State had complied with the terms of the

agreement. (Sent. Tr. p. 6 L7-16).

On-the-record the court sentenced Ruth to five years' confinement, a fine of \$750 with a 35% surcharge, a \$125 Law Enforcement Initiative Surcharge, court costs and attorney fees, and restitution. The Court suspended the fine and surcharge. (Sent. Tr. p. 19 L3-22).

In the written order, the Court determined that Ruth was unable to pay the court-appointed attorney fees. (Order of Disposition)(App. pp. 12-15). The Court also assessed Ruth with the court costs associated with the dismissed charges. (Order of Disposition)(App. pp. 12-15).

Notice of Appeal was filed on February 17, 2017. (Notice of Appeal)(App. p. 16).

Other relevant facts will be discussed below.

ARGUMENT

THE DISTRICT COURT ERRED IN ASSESSING COSTS TO MR. RUTH FOR THE DISMISSED COUNTS AS THERE WAS NO INDICATION IN THE RECORD THAT PAYMENT FOR THE DISMISSED CHARGES WERE PART OF THE PLEA AGREEMENT.

Preservation of Error: Challenges to the legality of a sentence are reviewed for errors at law. State v. Sisk, 577 N.W.2d 414, 416 (Iowa 1998).

Standard of Review: Void, illegal, or procedurally defective sentences may be corrected on appeal even absent an objection before the trial court. State v. Lathrop, 781 N.W.2d 288, 292-93 (Iowa 2010). (see State v. Cooley, 587 N.W.2d 752, 754 (Iowa 1998)).

Discussion: The record does not reflect any agreement between the parties to the court costs associated with the dismissed charges to Mr. Ruth.

The district court's sentencing order assessing all court costs to Mr. Ruth, rather than only the costs associated with the count of which he was convicted, amounted to a

statutorily unauthorized, and therefore illegal, sentence. (Order of Disposition) (App. pp. 12-15).

Court costs “are taxable only to the extent provided by statute.” City of Cedar Rapids v. Linn County, 267 N.W.2d 673, 673 (Iowa 1978). See also City of Des Moines v. State ex rel. Clerk of Court, 449 N.W.2d 363, 364 (Iowa 1989) (similarly stating). “In the absence of such statutory authorization, a court has no power to award costs against a defendant...” Woodbury County v. Anderson, 164 N.W.2d 129, 133 (Iowa 1969) (quoting 20 Am.Jur.2d, Costs, section 100). See also State v. Poyner, No. 06-1100, 2007 WL 4322193, at *2 (Iowa Ct. App. Dec. 12, 2007) (holding defendant “did not receive an illegal sentence” because taxation of costs to him was authorized by statute).

Under the Iowa Code, a court may make a defendant responsible for court costs associated with a particular charge only when the defendant pleads or is found guilty on such charge. No statutory provision authorizes making a defendant responsible for court costs associated with a charge that is

ultimately dismissed by the State. See Iowa Code § 815.13 (2017) (stating prosecution “fees and costs are recoverable by the [prosecuting] county... from the defendant unless the defendant is found not guilty or *the action is dismissed...*”) (emphasis added); Iowa Code § 910.2 (2017) (“In all criminal cases *in which there is a plea [or] verdict of guilty...*, the sentencing court shall order that restitution be made by each offender... to the clerk of court for... court costs....”) (emphasis added).

“... Iowa Code section 815.13 and section 910.2 clearly require... that only such... costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan” and “costs not clearly associated with any single charge should only be assessed proportionally against the defendant.” State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991) (holding restitution order should have been limited to requiring Defendant to pay court costs associated with charge on which he was convicted and should not have included costs relating to charges dismissed pursuant to plea

agreement that was silent on payment of fees and costs). See also State v. Dudley, 766 N.W.2d 606, 624 (Iowa 2009) (“...[I]t is elementary that a winning party does not pay court costs.”); State v. Hill, No. 03-0560, 2004 WL 433844, at *2 (Iowa Ct. App. March 10, 2004) (district court erred in ordering defendant to pay total court costs from mistrial, as defendant was required to pay restitution only for court costs associated with the charge to which he ultimately pled guilty, and court costs not clearly associated with the charge to which he pled guilty should be assessed against defendant at a rate of one-half); State v. Wheeler, No. 11-0827, 2012 WL 3026274, at *1-2 (Iowa Ct. App. July 25, 2013) (Defendant should not have been taxed court costs on charge that was dismissed by the State).

While parties to a plea agreement are free to “mak[e] a provision covering the payment of costs” even in the absence of independent statutory authorization, no such plea provision was included in the present case. See Petrie, 478 N.W.2d at 622 (holding it was error to require the defendant to pay court

costs attributable to dismissed charges where order for payment of costs was not authorized by statute and plea agreement was silent on payment of costs).

Because defendant's ordered payment of court costs associated with the dismissed charges are neither authorized by statute, nor required under the plea agreement in the present case, the court entered an illegal sentence in assessing to Mr. Ruth the costs of the entire action rather than only assessing to him the costs associated with the charge of which he was convicted. The court's order taxing costs to Mr. Ruth should be vacated, and this matter should be remanded to the district court with instructions to limit assessment of costs owed by him to those associated with the charges on which he was convicted. See Petrie, 478 N.W.2d at 622 ("... only such... costs attributable to the charge on which a criminal defendant is convicted should be recoverable under a restitution plan" and "costs not clearly associated with any single charge should only be assessed proportionally against the defendant.").

This matter should be reversed and remanded for correction of the sentencing order and abrogating the portion of the order compelling him to pay costs for the dismissed charges.

CONCLUSION

WHEREFORE, Tyson Ruth respectfully requests that this matter be reversed and remanded for correction of the sentencing order to relieve him of the obligation to pay costs for the dismissed charges.

NONORAL SUBMISSION

Oral submission is not requested.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$ 1.89, and that amount has been paid in full by the Office of the Appellate Defender.

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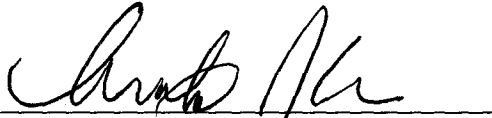
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**CERTIFICATE OF COMPLIANCE WITH TYPEFACE
REQUIREMENTS AND TYPE-VOLUME LIMITATION FOR
BRIEFS**

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 1,614 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).



Dated: 8 August 2017

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