

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,)
)
 Plaintiff-Appellee,)
)
 v.) S.CT. NO. 18-0690
)
 LARRY GROSS,)
)
 Defendant-Appellant.)

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE SCOTT ROSENBERG, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 13th day of December, 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 Larry Gross, No. 0207647, Mt. Pleasant Correctional Facility, 1200 East Washington St., Mt. Pleasant, IA 52641.

APPELLATE DEFENDER'S OFFICE



Maria Ruhtenberg
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MR/sm/12/18

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

**DID THE TRIAL COURT ERR BY ORDERING THE
DEFENDANT TO PAY ROOM AND BOARD FOR TIME SPENT
IN JAIL WITHOUT FINDING THAT HE HAD THE
REASONABLE ABILITY TO PAY?**

Authorities

Iowa R. Civ. P. 1.301

Iowa R. Civ. P. 1.302

Iowa R. Civ. P. 1.303

State v. Iowa District Court for Polk County, No. 17-0616, 2018
WL 739323 (Iowa Ct. App. Feb. 7, 2018)

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 plaintiff-appellee's brief.

THE TRIAL COURT ERRED BY ORDERING THE DEFENDANT TO PAY ROOM AND BOARD FOR TIME SPENT IN JAIL WITHOUT FINDING THAT HE HAD THE REASONABLE ABILITY TO PAY.

Preservation of Error: The State asserts that error was not preserved in this case because the defendant did not file a motion under Iowa Rule of Civil Procedure 1.904(2), which allows a defendant to challenge a judgment by filing a motion to reconsider or enlarge or amend a judgment.¹ (State's Br. p. 8). As argued below, this Rule does not apply because this case involves a restitution matter in a criminal case, not a judgment

¹ This rule allows a post-judgment motion challenging a court's ruling; however, the Rules of Civil Procedure also contemplate that a person who seeks a judgment must file a petition and have that petition and original notice served on the respondent, giving him or her a chance to answer the allegation and be heard in court. See Iowa R. Civ. P. 1.301, 1.302, 1.303. In this case, no such proceeding was followed. The State appears to suggest that Iowa Code section 356.7 allows the Sheriff to obtain judgment without following these procedures.

in a civil case. This court is not precluded from reviewing this issue.

Discussion: The State's argument is that the room and board was ordered as a civil judgment rather than restitution because the application for reimbursement did not specifically request the request the reimbursement as restitution. (State's Br. pp. 9-10). However, because the room and board reimbursement claim was filed in the criminal case, it is a restitution order and not a civil judgment. The State's argument was rejected by the Iowa Court of Appeals in State v. Iowa District Court for Polk County, No. 17-0616, 2018 WL 739323 (Iowa Ct. App. Feb. 7, 2018). In that case the court stated:

On a theoretical basis, the State presents a persuasive argument that when a sheriff opts to enforce its room-and-board judgment under chapter 626, the restitution provisions in chapter 910 do not apply. But on a practical basis, it does not appear the Polk County sheriff actually chose to execute its room-and-board judgment using chapter 626. *Cf. State v. Letscher*, 888 N.W.2d 880, 887 (Iowa 2016) (noting in bail forfeiture case that sentencing court "followed none of the ordinary procedures for attachment and execution"). Instead, the assistant Polk County Attorney presented an exhibit showing the room-and-board fees stood as a financial obligation owed by [the defendant] in his criminal case, not as a separate civil judgment.

Id. at *4. In this case the Sheriff did not file a separate civil action and chose to request reimbursement through the criminal case. The amount of room and board is restitution. The court was therefore required to determine the defendant's reasonable ability to pay.

CONCLUSION

For the foregoing reasons and the reasons set out in the Brief, the Appellant requests the Court reverse the restitution order and remand for a hearing on the defendant's reasonable ability to pay the entire amount of the room and board reimbursement.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$ 1.00, and that amount has been paid in full by the Office of the Appellate Defender.

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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME
LIMITATIONS, TYPEFACE REQUIREMENTS AND
TYPE-STYLE REQUIREMENTS**

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



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