

**IN THE COURT OF APPEALS OF IOWA**

No. 18-1548  
Filed December 18, 2019

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**DEIRDRE LAINE WITHAM,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Cerro Gordo County, Adam D. Sauer, District Associate Judge.

Deirdre Laine Witham appeals her sentence following a guilty plea to operating a motor vehicle while intoxicated, third offense. **JUDGMENT OF CONVICTION AFFIRMED; SENTENCE AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**

Denise M. Gonyea of McKelvie Law Office, Grinnell, for appellant.

Thomas J. Miller, Attorney General, and Linda J. Hines, Assistant Attorney General, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Mullins, JJ.

**VAITHESWARAN, Presiding Judge.**

Deirdre Laine Witham pled guilty to operating a motor vehicle while intoxicated, third offense, and the district court imposed judgment and sentence. See Iowa Code § 321J.2 (2018). The sentencing order stated Witham had “the reasonable ability to pay” certain financial obligations, including “court costs.”

On appeal, Witham contends “the total amount of restitution was not presented to the court at the time of sentencing,” rendering “the plan of restitution . . . legally deficient.” See *State v. Albright*, 925 N.W.2d 144, 162 (Iowa 2019) (“Courts must wait to enter a final order of restitution until all items of restitution are before the court. Once the court has all the items of restitution before it, then and only then shall the court make an assessment as to the offender’s reasonable ability to pay.”). The State responds that we should consider dismissing the appeal. Alternatively, the State agrees “the district court erred in determining Witham’s reasonable ability to pay prior to ‘knowing the amount of each item of restitution,’” citing *Albright*, 925 N.W.2d at 162.

Based on *Albright*, “we vacate the restitution part of the sentencing order and remand the case to the district court to order restitution in a manner consistent with” *Albright*. See *id.* at 162–63.

**JUDGMENT OF CONVICTION AFFIRMED; SENTENCE AFFIRMED IN PART, VACATED IN PART, AND REMANDED.**