

IN THE COURT OF APPEALS OF IOWA

No. 18-2079
Filed January 23, 2020

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JEFFREY RAY NAGEL,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Heather L. Lauber,
Judge.

Jeffrey Nagel appeals his sentence following his guilty plea to assault with
intent to commit sexual abuse. **SENTENCE VACATED IN PART AND
REMANDED.**

Mark C. Smith, State Appellate Defender, (until withdrawal) and Bradley M.
Bender, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, and Thomas E. Bakke, Assistant
Attorney General, for appellee.

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

VAITHESWARAN, Presiding Judge.

Jeffrey Nagel pled guilty to assault with intent to commit sexual abuse. The district court accepted his plea and imposed sentence. The order of disposition included a provision requiring Nagel to make restitution in an amount to be determined. The order further stated, “[I]f the amounts of restitution are not available at the time of sentencing, a supplemental order will follow.”

On appeal, Nagel contends the district court “did not evaluate [his] reasonable ability to pay” victim restitution and court costs before ordering restitution for those items, as required by *State v. Albright*, 925 N.W.2d 144, 162 (Iowa 2019). See also *State v. Gross*, 935 N.W.2d 695, 702 (Iowa 2019) (“*Albright* makes clear that with respect to restitution, no award of reasonable-ability-to-pay items . . . may occur until all such items are before the court and the court has then made a reasonable-ability-to-pay determination.”). He argues we must vacate the sentencing order and remand for further proceedings consistent with the opinion. See *Albright*, 925 N.W.2d at 162.

We agree *Albright* is controlling. In accordance with the opinion, we vacate the provision of the order of disposition that requires Nagel to make restitution and remand for further proceedings. See, e.g., *State v. Ackiss*, No. 18-1787, 2019 WL 4678184, at *3 (Iowa Ct. App. Sept. 25, 2019); *State v. Garvin*, No. 18-1258, 2019 WL 2871423, at *2 (Iowa Ct. App. July 3, 2019); *State v. Lester*, No. 18-0524, 2019 WL 2872322, at *3 (Iowa Ct. App. July 3, 2019); *State v. Northern*, No. 18-1634, 2019 WL 2144773, at *2 (Iowa Ct. App. May 15, 2019.)

SENTENCE VACATED IN PART AND REMANDED.