

**IN THE COURT OF APPEALS OF IOWA**

No. 1-061 / 10-1249  
Filed March 7, 2011

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

**vs.**

**GERALD W. ZICKEFOOSE,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp, District Associate Judge.

A defendant contends the district court erred in entering a restitution order without affording him the opportunity to challenge the restitution claim.

**REVERSED AND REMANDED.**

James T. Peters, Independence, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Paul L. Martin, County Attorney, and Steve D. Tynan, Assistant County Attorney, for appellee State.

Considered by Vaitheswaran, P.J., and Eisenhauer and Danilson, JJ.  
Tabor, J., takes no part.

**VAITHESWARAN, P.J.**

Gerald Zickefoose appeals a \$600 criminal restitution order filed shortly after the district court entered judgment and sentence against him for eluding. Zickefoose contends "the district court erred in entering an order for restitution without affording [him] an opportunity to challenge the restitution claim."

In *State v. Jenkins*, 788 N.W.2d 640 (Iowa 2010), the Iowa Supreme Court stated, "procedural due process in the context of criminal restitution orders requires some kind of notice and an opportunity to be heard." *Jenkins*, 788 N.W.2d at 646. The court also stated that a post-deprivation hearing was insufficient. *Id.* at 646–47. As there is no indication in the record that the defendant was afforded a hearing prior to the district court's entry of an order unexpectedly adding restitution to the judgment and sentence, we reverse the restitution order and remand for a restitution hearing.

**REVERSED AND REMANDED.**