

**IN THE COURT OF APPEALS OF IOWA**

No. 1-865 / 11-0484  
Filed November 23, 2011

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

**vs.**

**GREGORY ALLEN SHARKEY,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Dubuque County, Randal J. Nigg,  
District Associate Judge.

Appeal from the district court's order concerning delaying installment  
payments on the money judgment portion of a sentence. **APPEAL DISMISSED.**

Mark C. Smith, State Appellate Defender, and Martha J. Lucey, Assistant  
Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant  
Attorney General, Ralph Potter, County Attorney, and Robert Richter, Assistant  
County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

**SACKETT, C.J.**

Gregory Sharkey appeals from the district court's denial of his pro se motion to delay monthly payments due on the money judgment portion of his sentence until his release from jail. He contends the court erred in determining the Iowa Code did not permit it to delay the first installment payment more than thirty days from the date of judgment. We dismiss the appeal as moot.

Sharkey pleaded guilty to harassment in the first and third degrees and assault causing bodily injury. On February 11, 2011, the court sentenced Sharkey to a term in jail and imposed a money judgment payable in monthly installments to begin on March 11, 2011. On March 14, Sharkey filed a pro se motion for "amendment of sentencing order." He asked the court to reschedule the beginning of his monthly payments until after he was released from jail—a delay of about three months. The motion expressed concern Sharkey would face contempt for being four months behind on payments upon his release.

The district court denied the motion, stating: "Unfortunately, the Iowa Code does not permit the Court to delay the first payment on an installment plan longer than 30 days from the date of judgment."

Review of restitution orders is for correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). "When reviewing a restitution order, 'we determine whether the court's findings lack substantial evidentiary support, or whether the court has not properly applied the law.'" *Id.* (quoting *State v. Bonstetter*, 637 N.W.2d 161, 165 (Iowa 2001)).

Sharkey contends the district court abused its discretion in denying his request to delay installation payments until after he was released from jail. The State argues the issue is moot because Sharkey has served his jail time and has been released. Sharkey argues the appeal is not moot because he still is required to pay the money judgment. He seeks relief in modification of the restitution plan of payment and rescission of any determination he is delinquent in payments.

Apparently based on Iowa Code section 909.3 (2011), which allows the court to order a fine paid in installments, the first of which “shall be made within thirty days of the fine being imposed,” the court concluded it could not delay the first payment. Section 910.7, however, provides the court “may modify the plan of restitution or the restitution plan of payment, or both, and may extend the period of time for completion of restitution.” The court had discretion to modify the payment plan “any time prior to the expiration of the offender’s sentence.” Iowa Code § 910.7. Because Sharkey has served his sentence, the contested issue is academic and no longer involves a justiciable controversy. See *Baker v. City of Iowa City*, 750 N.W.2d 93, 97 (Iowa 2008). Accordingly, we dismiss the appeal as moot. See *In re M.T.*, 625 N.W.2d 702, 704 (Iowa 2001).

**APPEAL DISMISSED.**