

IN THE COURT OF APPEALS OF IOWA

No. 2-1088 / 12-0731
Filed January 9, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

EDDIE JAMAAL MIXON,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Stephen C. Gerard II, District Associate Judge.

A defendant challenges the portions of a sentencing order requiring him to submit to a substance abuse evaluation and to pay restitution of his appointed attorney fees. **SENTENCE VACATED, CASE REMANDED FOR RESENTENCING.**

Lars G. Anderson of Holland & Anderson, L.L.P., Iowa City, for appellant.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Janet M. Lyness, County Attorney, and Rachel Zimmerman, Assistant County Attorney, for appellee.

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

VAITHESWARAN, J.

Police officers executing a search warrant at a North Liberty apartment discovered “a marijuana joint” inside. Eddie Mixon admitted the joint was his.

Mixon pled guilty to possession of a controlled substance (marijuana). See Iowa Code § 124.401(5) (2009). The district court sentenced him to four days in jail, with credit for time served; ordered him to undergo a substance abuse evaluation and complete any recommended treatment; and ordered him to pay \$100 in restitution for court-appointed attorney fees.

On appeal, Mixon challenges the court’s authority to (1) require a substance abuse evaluation and (2) order restitution beyond the amount of his actual attorney fees.

1. Substance abuse evaluations are authorized by Iowa Code section 901.4A, which states:

Upon a plea of guilty, a verdict of guilty, or a special verdict upon which a judgment of conviction may be rendered, the court may order the defendant to submit to and complete a substance abuse evaluation, *if the court determines that there is reason to believe that the defendant regularly abuses alcohol or other controlled substances and may be in need of treatment.* An order made pursuant to this section may be made in addition to any other sentence or order of the court.

(Emphasis added.) Mixon contends the court was not statutorily authorized to order a substance abuse evaluation because nothing in the record gave the court “reason to believe” he “regularly abuses alcohol or other controlled substances.” The State concedes the absence of evidence on this point but argues the court could use “common sense” to presume that this was not the first time Mixon used marijuana.

The State's argument runs counter to the plain language of section 901.4A. As Mixon points out, "[i]f the legislature had wished to adopt the State's argued position, [it] could have provided for mandatory substance abuse evaluations for everyone convicted of controlled substance violations." The legislature did not go this far.

Because there is no evidence to support a reasonable belief that Mixon "regularly abuses" substances, we conclude the district court erred in ordering Mixon to undergo a substance abuse evaluation. We strike that portion of the court's sentencing order and remand for entry of a sentencing order that does not contain this requirement.

2. Iowa Code section 815.9(3) pertinently provides: "If a person is granted an appointed attorney, the person shall be required to reimburse the state for the total cost of legal assistance provided to the person."

The written plea document states Mixon expended \$30, rather than \$100 in attorney fees, as set forth in the sentencing order. The State concedes error on this point. Accordingly, we strike the \$100 restitution figure and remand for imposition of a sentence requiring \$30 in restitution for court-appointed attorney fees.

SENTENCE VACATED, CASE REMANDED FOR RESENTENCING.