

IN THE COURT OF APPEALS OF IOWA

No. 3-462 / 11-0914
Filed August 21, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHRISTOPHER MICHAEL MARTIN,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Robert B. Hanson,
Judge.

The defendant appeals the order dismissing his challenge to a restitution
plan. **ORDER VACATED AND CASE REMANDED FOR FURTHER
PROCEEDINGS.**

Mark C. Smith, State Appellate Defender, and Vidhya K. Reddy, Assistant
Appellate Defender, for appellant.

Christopher M. Martin, Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, John Sarcone, County Attorney, and Stephanie Cox, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., and Vaitheswaran and Bower, JJ.

BOWER, J.

Christopher Martin pleaded guilty to conspiracy to manufacture methamphetamine. The court was unable to determine the amount of restitution at the time of sentencing and left the issue for a supplemental restitution order. Before an order was issued, Martin filed a pro se motion challenging the Iowa Department of Corrections (DOC) restitution plan, which the district court denied.

On appeal, Martin contends his due process rights were violated when the district court failed to inquire into whether he understood his right to counsel and the dangers of self-representation. He also contends transportation costs incurred by the sheriff cannot be included in his restitution. We find, because no restitution order is yet in place, Martin's challenge is premature. We vacate the district court order denying Martin's motion and remand to the district court for entry of a supplemental restitution order.

I. Background Facts and Proceedings.

On October 15, 2009, the State filed an eight-count trial information charging Martin with crimes relating to the manufacture and possession of methamphetamine. Martin entered into a plea agreement with the State and agreed to plead guilty to conspiracy to manufacture methamphetamine, in violation of Iowa Code section 124.401(1)(b)(7) (2009), in exchange for dismissal of the remaining counts. Pursuant to the plea agreement, the parties jointly recommended Martin be sentenced to twenty-five years in prison with a one-third reduction of the mandatory minimum sentence.

At the March 8, 2010 plea hearing, the court informed Martin he would be required to make restitution.¹ Martin then requested immediate sentencing and was sentenced pursuant to the terms of the plea agreement. The court ordered Martin to make restitution “[a]s soon as the amount of restitution becomes available to the court,” stating it would “enter a supplemental order and send you a copy so you know how much you have to pay.”² Finally, Martin was informed he would have to pay his court-appointed attorney fees to the extent he is able.

A written sentencing order was filed that same day. The order states: “The defendant is ordered to make restitution. The amounts of restitution are not available at this time. At such time as the amounts are available, a supplemental order will follow.” The order reiterates that Martin “must pay restitution for [court-appointed] attorney fees, to the extent defendant is reasonably able to do so.”

No supplemental restitution order was ever filed. On November 9, 2010, Martin, acting pro se, wrote the clerk of court to request “a copy of [his] restitution plan and break down of what is owed.” One month later, on December 16, 2010,

¹ Restitution is mandatory under Iowa law. *State v. Jenkins*, 788 N.W.2d 640, 644 (Iowa 2010); see also Iowa Code § 910.2 (“In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender . . .”).

² Iowa Code section 910.3 provides that the court shall set out the amount of restitution a defendant is to pay “[a]t the time of sentencing or at a later date to be determined by the court.”

If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for restitution identified up to that time. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution.
Iowa Code § 910.3.

the DOC filed a restitution plan; the plan included sheriff's fees that were not assessed in the original sentencing order.

Martin again wrote the clerk of court on December 22, 2010, stating he had requested a restitution hearing more than thirty days earlier and asking about the "status" of his case. He then filed a pro se motion requesting a restitution hearing. The motion states the balance due in the restitution plan "is very unclear as to what it is owed for or if it could actually even be assessed."

Prior to a hearing on the matter, the court-appointed attorney who represented Martin through sentencing withdrew from further representation as the State Public Defender had informed him he would no longer be compensated because "the case was completed upon the Defendant being sentenced." Martin continued to represent himself throughout the proceedings, which included several hearings and supplemental filings.

Ultimately, Martin's claims were narrowed to whether the sheriff can be reimbursed for room-and-board and transportation expenses in a restitution order. On May 24, 2011, the court entered an order finding the sheriff was "allowed to seek reimbursement" for these expenses and denied Martin's motion. Martin filed a timely notice of appeal.

II. Scope and Standard of Review.

Challenges to restitution orders are reviewed for errors at law. *Jenkins*, 788 N.W.2d at 642. To the extent Martin's appeal raises constitutional issues, our review is de novo. *State v. Brooks*, 760 N.W.2d 197, 204 (Iowa 2009).

III. Analysis.

On appeal, Martin contends his due process rights were violated because the district court failed to inquire into whether he understood his right to counsel and the dangers of representing himself. He also contends the transportation costs cannot be included in his restitution. Because we find Martin's action was premature, we need not address either issue.

The purpose of Martin's motion was to challenge the categories and amounts in the restitution plan submitted by the DOC. Over the course of various filings and hearings, Martin narrowed his claim to challenge only the sheriff's request for reimbursement for the following: (1) room and board, (2) transporting Martin from the jail to Iowa Medical and Classification Center, and (3) transporting Martin from Johnson County to the Polk County Jail. However, there is no order requiring Martin to pay these costs.³ The sentencing order states that the amounts of restitution "are not available at this time" and "a supplemental order will follow." A supplemental order has never been filed; therefore, no restitution has been ordered. Accordingly, there is nothing for Martin to challenge.

³ While the sheriff's office submitted the claims for these expenses with the clerk of the district court, a court order is required before any claims may be paid. See *State v. Abrahamson*, 696 N.W.2d 589, 593 (Iowa 2005) (holding the language of Iowa Code section 356.7 that the district court "shall approve" a claim simply means that the court shall approve it before it may be paid, and the court has discretion in resolving the merits of the claim).

We vacate the district court's order and remand to the district court for entry of a supplemental restitution order. Once a restitution order has been entered, Martin may appeal the order or move to amend it.⁴

ORDER VACATED AND CASE REMANDED FOR FURTHER PROCEEDINGS.

⁴ Whether Martin will be entitled to representation if he chooses to challenge the supplemental restitution order will depend upon the manner in which he challenges it. *See State v. Alspach*, 554 N.W.2d 882, 884 (Iowa 1996) (holding a defendant has a right to counsel when challenging restitution imposed as part of a supplemental restitution order under section 910.3, but noting a later action under section 910.7 to modify a restitution plan is civil in nature and therefore an offender would ordinarily have no right to appointed counsel).