

IN THE COURT OF APPEALS OF IOWA

No. 3-821 / 12-0856
Filed October 2, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

RICHARD JOHN SIEMER JR.,
Defendant-Appellant.

Appeal from the Iowa District Court for Pottawattamie County, James M. Richardson, Judge.

Siemer appeals from the district court order requiring him to reimburse the county sheriff for room and board expenses incurred while in jail. **REVERSED.**

Sara E. Benson of Rouwenhorst & Rouwenhorst, P.C., Council Bluffs, for appellant.

Richard Siemer Jr., Fort Dodge, appellant pro se.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Matthew D. Wilber, County Attorney, and Dan McGinn, Assistant County Attorney, for appellee.

Considered by Mullins, P.J., Bower, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

PER CURIAM.

After receiving a letter from the Pottawattamie County Sheriff claiming he owed \$2150 in room and board fees from his jail stay, Richard Siemer Jr. asked the district court to “dismiss” the charges—even though neither the county sheriff nor the county attorney had filed a reimbursement claim with the clerk of court as provided in Iowa Code section 356.7(2) (2011). The district court overruled the motion and ordered Siemer to reimburse the county sheriff \$2150 for room and board. Siemer challenges the order on appeal.

Because there was no reimbursement claim submitted to the clerk of court, both Siemer’s motion and the court’s ruling on the motion were premature. Accordingly, we reverse the order requiring Siemer to reimburse the county sheriff for his room and board.

I. Background Facts and Proceedings.

In 2011, Siemer was arrested and charged with various offenses. He pleaded guilty to a class “C” felony, a class “D” felony, and an aggravated misdemeanor, and was sentenced in July 2011. It is undisputed he spent time in the Pottawattamie County jail before pleading guilty and being sentenced.

The sentencing order imposes incarceration and orders Siemer to pay court costs and his court-appointed-attorney fees. It also requires Siemer “to enter into a plan of restitution for the victim of this offense as substantiated.” The order does not include a plan of restitution.¹

¹ See Iowa Code § 910.3 (defining court orders setting out amounts of restitution and the persons to whom it must be paid as a “plan of restitution” that is to be included in sentencing orders).

While serving his prison sentence, Siemer purportedly received a letter from the Pottawattamie County jail informing him he owed \$2150 for room and board. There is nothing in the record to indicate the Pottawattamie County Sheriff or Pottawattamie County Attorney ever filed a restitution claim with the clerk of court seeking reimbursement for the room and board charges. Nevertheless, Siemer filed a “Motion to Dismiss Room and Board Charges From Pottawattamie County Jail” challenging the county sheriff’s right to reimbursement for room and board. The record does not contain a written resistance.

Following a hearing, the district court entered an order overruling Siemer’s motion, finding the county sheriff could be reimbursed for room and board expenses. It then ordered Siemer to reimburse the county sheriff \$2150 for room and board. Siemer filed a timely notice of appeal.

II. Standard of Review.

We review restitution orders for correction of errors at law. *State v. Jenkins*, 788 N.W.2d 640, 642 (Iowa 2010). We determine whether substantial evidence supports the court’s fact findings and whether the court has properly applied the law. *Id.*

III. Analysis.

Our state legislature has provided a means for county sheriffs to recover room and board expenses from those who have been convicted of a criminal offense. Iowa Code § 356.7(1) (stating a county sheriff may charge a prisoner convicted of a criminal offense for room and board while in custody). Either the

county sheriff or county attorney—on behalf of the county sheriff—may file a reimbursement claim with the clerk of court. *Id.* § 356.7(2). The Iowa Code sets forth a list of information that must be included in the claim, if known, including: the name, date of birth, and social security number of the person who is the subject of the claim; the address of the person named in the claim; the criminal proceeding for which the claim is filed; the name and office of the person filing the claim; a statement that notice is being filed; and the amount of room and board charges owed. *Id.* Once the reimbursement claim has been received, section 356.7 provides “the court shall approve the claim in favor of the sheriff . . . for the amount owed by the prisoner as identified in the claim and any fees or charges associated with the filing or processing of the claim with the court.” *Id.* § 356.7(3).

Siemer contends the district court erred in ordering him to reimburse the county sheriff for room and board fees. He argues neither the county sheriff nor county attorney filed a claim with the clerk of court or followed the requirements set forth in section 356.7. The State admits neither the county sheriff nor county attorney filed a claim with the clerk of court, but argues this does not preclude the court from ordering reimbursement under the facts of this case, where the defendant brought the reimbursement claim to the court’s attention.

We find the district court acted prematurely in ruling on Siemer’s motion. When Siemer filed his motion to dismiss, neither the county attorney nor county sheriff had filed a reimbursement claim with the clerk of court. Nor did the county attorney file a reimbursement claim after Siemer filed the motion. Without the

county sheriff or county attorney making a reimbursement claim, there was nothing for the court to act on. Both Siemer's motion and the court's order were premature. Accordingly, we reverse the order requiring Siemer to reimburse the county sheriff \$2150 for room and board expenses.²

REVERSED.

² We do not address the question of whether room and board reimbursement is available here. If the county sheriff or county attorney files a reimbursement claim with the clerk of court, Siemer may request a hearing to determine whether room and board reimbursement is payable.