

IN THE COURT OF APPEALS OF IOWA

No. 7-892 / 06-1102
Filed February 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN JAMES WARD,
Defendant-Appellant.

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

Defendant appeals the portion of the sentencing order that requires him to reimburse the State for his court-appointed attorney fees. **AFFIRMED.**

DeShawn L. Bird-Sell of Deshawn L. Bird-Sell, P.L.C., Glenwood, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen and Mary Tabor, Assistant Attorneys General, and Margaret Askew Gregory, County Attorney, for appellee.

Heard by Eisenhauer, P.J., and Baker, J., and Nelson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 902.9206 (2007).

NELSON, S.J.**I. Background Facts & Proceedings**

On April 13, 2006, Brian Ward was charged with accessory after the fact, in violation of Iowa Code section 703.3 (2005). The State alleged Ward harbored, aided, or concealed a person who had committed arson with the intent to prevent her apprehension. On the same day Ward signed an application for the appointment of counsel. The application included the statement:

I understand that I may be required to repay the State for all or part of my attorney fees and costs, I may be required to sign a wage assignment, and I must report any changes in financial status. I certify under penalty of perjury that the statements I make in this application are true and that I am financially unable to employ an attorney to represent me.

The court appointed attorney Chad Primmer to represent Ward.

On April 13, 2006, Ward filed a written guilty plea to accessory after the fact. After a hearing the district court accepted the plea of guilty. Sentencing was scheduled for a later time.

In the meantime, on May 16, 2006, Ward was charged with domestic abuse assault. The State alleged Ward struck his mother on the forehead with his fist. Primmer represented Ward on this charge as well. In a plea agreement the State amended the charge to simple assault, in violation of sections 708.1 and 708.2(6), and Ward entered a plea of guilty.

A sentencing hearing on both charges was held on June 19, 2006. On the charge of accessory after the fact, Ward was sentenced to a term of imprisonment not to exceed two years. This period of incarceration was suspended and Ward was placed on probation. On the assault charge Ward was

sentenced to twenty-four hours in the county jail. On both charges Ward was taxed with costs, including court-appointed attorney fees. Primmer filed a claim for \$694.43 on the charge of accessory after the fact, and \$310.78 on the assault charge. Thus, Ward was required to pay a total amount of \$1005.21 for his court-appointed attorney.

Ward filed a pro se appeal in each case, stating he was a full-time student in tenth grade. He stated he should not be required to pay for the costs of representation by Primmer because he was appointed by the court. Ward requested another attorney to represent him on appeal, and his present counsel was appointed.

II. Standard of Review

We review restitution orders for the correction of errors at law. Iowa R. App. P. 6.4; *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991).

III. Merits

On appeal, Ward asserts he was a minor at the time of the crimes, and furthermore, he did not have the mental capacity to enter into a contract to pay for attorney fees. Ward points out that a child found to have committed a delinquent act is permitted to complete a public work assignment to compensate the State for the cost of legal representation. See Iowa Code § 232.52(2)(a)(3). Ward asks to have this alternative made available to him.

Ward's age and mental competency were not issues during the guilty plea or sentencing hearings, and there is no testimony in the record to support Ward's claims. Documents in the record, however, show his date of birth as December

4, 1987. At the time of the events in this case he would have been eighteen years old. Under section 232.2(5), the term “child” means a person under eighteen years of age. The juvenile delinquency provisions of chapter 232 would not apply to Ward because he was no longer a child under the terms of that chapter. See Iowa Code § 232.8 (“The juvenile court has exclusive original jurisdiction in proceedings concerning a child”). We conclude the disposition provisions of section 232.52 could not be applied in this case.

Furthermore, Ward’s obligation to pay attorney fees is statutory, not contractual. Section 815.9 applies when a defendant is granted a court-appointed attorney. *State v. Basinger*, 721 N.W.2d 783, 787 (Iowa 2006). The applicable provisions of section 815.9 provide:

3. 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. “*Legal assistance*” as used in this section shall include not only an appointed attorney, but also transcripts, witness fees, expenses, and any other goods or services required by law to be provided to an indigent person entitled to an appointed attorney.

4. If the case is a criminal case, all costs and fees incurred for legal assistance shall become due and payable to the clerk of the district court by the person receiving the legal assistance not later than the date of sentencing, or if the person is acquitted or the charges are dismissed, within thirty days of the acquittal or dismissal.

Court-appointed attorney fees are included in restitution orders under section 910.2. *State v. Bonstetter*, 637 N.W.2d 161, 166 (Iowa 2001). To the extent a defendant is reasonably able to pay, a district court shall order restitution for court-appointed attorney fees. Iowa Code § 910.2; *State v. Mai*, 572 N.W.2d 168, 172 (Iowa Ct. App. 1997). A defendant’s ability to pay, however, is an issue

apart from the amount of restitution; it is not an order incorporated in the sentence, and is not directly appealable. *State v. Jose*, 636 N.W.2d 38, 45 (Iowa 2001). A challenge to a restitution plan may be made by a petition for hearing under section 910.7. See *State v. Swartz*, 601 N.W.2d 348, 354 (Iowa 1999).

We conclude the district court did not err in assessing the costs of Ward's court-appointed counsel as part of the restitution ordered in this case.

AFFIRMED.