

**IN THE COURT OF APPEALS OF IOWA**

No. 9-891 / 08-0888  
Filed February 10, 2010

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

**vs.**

**JOLENE LOUISE GRAY,**  
Defendant-Appellant.

---

Appeal from the Iowa District Court for Pottawattamie County, Mark J. Eveloff, District Associate Judge.

Jolene Gray appeals from her conviction and sentence for false report of an indictable offense to law enforcement in violation of Iowa Code section 718.6(1) (2007). **AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

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

Considered by Vogel, P.J., and Eisenhauer and Doyle, JJ.

**VOGEL, P.J.**

Jolene Gray appeals from the district court's imposition of a fine and restitution following her conviction for false report of an indictable offense to law enforcement in violation of Iowa Code section 718.6(1) (2007). The State concedes the restitution was in error. As such, we reverse that portion of Gray's sentence.

We review the imposition of a fine for correction of errors at law. Iowa R. App. P. 6.907 (2009); *State v. Formaro*, 638 N.W.2d 720, 724 (Iowa 2002). A sentence, including the imposition of a fine, will not be disturbed on appeal unless the defendant shows an abuse of discretion or a defect in the sentencing procedure. *State v. Kramer*, 773 N.W.2d 897, 898 (Iowa Ct. App. 2009). At the sentencing hearing, the prosecutor stated:

[The trial relative to which Gray was convicted of providing false information to law enforcement] was put on hold for a half a day, and they were being paid by the Court \$50.00 a day per juror. There was at least one alternate, so half of their daily pay would be \$25.00 times a half a day times 13 jurors, that is a total of \$325.00 and we're asking for that amount as a fine for this offense.

The court then sentenced Gray, part of which included the imposition of a fine in the amount of \$325. Gray essentially argues that the fine was actually restitution to recover the cost of jury expenses. We disagree. As the State points out, the imposed fine falls within the statutory range for minimum and maximum fines for a serious misdemeanor. Iowa Code §§ 718.6(1) (defining crime to be a serious misdemeanor); 903.1(1)(b) (“[The] fine shall not be suspended by the court . . . . For a serious misdemeanor, there shall be a fine of at least three hundred fifteen dollars but not to exceed one thousand eight hundred seventy-five dollars.”) The

district court made no statement as to its reason for choosing the particular amount of fine. See *Formaro*, 638 N.W.2d at 725 (“We will not draw an inference of improper sentencing considerations [that] are not apparent from the record.”). Further, as the State points out, when the fine is paid it is deposited in the general fund of the State of Iowa and would not be used to recoup jury expenses. See Iowa Code § 666.3. We find no abuse of the district court’s discretion in imposing the \$325 fine.

Gray also asserts on appeal that the jury verdict was not supported by substantial evidence. The district court found the evidence to be “overwhelming” as to Gray’s guilt. On our review of the record, we agree.<sup>1</sup>

Additionally, Gray raises some issues pro se. However, those issues were not raised below nor properly presented on appeal. See Iowa R. App. P. 6.903(2)(g)(1), (3); *State v. McCright*, 569 N.W.2d 605, 607 (Iowa 1997). As a result, these claims of error are not preserved for our review.

We affirm Gray’s conviction and affirm Gray’s sentence in part. We reverse as to the imposition of restitution and remand.

**AFFIRMED IN PART, REVERSED IN PART AND REMANDED.**

---

<sup>1</sup> Furthermore, on February 12, 2009, our Supreme Court filed an order in response to appellate counsel’s motion to withdraw pursuant to Iowa Rule of Appellate Procedure 6.104. The court stated, “The court agrees with Gray’s appellate counsel that there is no merit in this appeal with respect to the conviction itself.” However, the court ordered the State to “file a statement as to whether it confesses error on the sentencing issue.” On June 12, 2009, the Court concluded “there are nonfrivolous issues for appeal, including but not limited to [the fine and restitution] imposed.”