

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

THE PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff,

vs.

Case No. 2016-001926-FC

Hon. Michael E. Servitto

TONEY M. WILLIAMS,

Defendant.

OPINION AND ORDER

Defendant Toney M. Williams (“Defendant”) has filed a motion on remand to correct the Judgment of Sentence entered on June 27, 2017.

Factual and Procedural History

Defendant appeared before this Court on a charge of assault with intent to commit murder. On January 27, 2017, the first trial ended in a mistrial due to the prosecution inadvertently playing a portion of a police interview for the jury, which was to be redacted. Following the mistrial, on March 7, 2017, trial counsel submitted an interim billing for the mistrial in the amount of \$2,700.00. The retrial ended on May 12, 2017 and Defendant was found guilty of assault with intent to commit great bodily harm. On May 15, 2017, trial counsel submitted an additional billing prior to sentencing in the amount of \$2,325.00. On June 27, 2017, Defendant was sentenced and the Judgment of Sentence was entered which ordered Defendant to pay, inter alia, \$5,075.00 in defense costs.

On July 10, 2017, Defendant filed a claim of appeal. On December 6, 2017, Defendant filed a motion to remand to correct the Judgment of Sentence with the Court of Appeals, which was granted on January 2, 2018. On January 8, 2018, Defendant filed this instant motion on

remand to correct the Judgment of Sentence. On January 29, 2018, the Court held a hearing in connection with the motion and took the matter under advisement.

Issue on Remand from the Michigan Court of Appeals

As stated in Defendant's motion, the issue on remand is limited to the following:

Appointed trial counsel is entitled to compensation when the prosecution causes a mistrial. However, the indigent defendant should not be assessed those fees. Doing so penalizes defendant for exercising his due process right to a re-trial. This is an issue of first impression in Michigan.

Law and Analysis

Defendant contends that the Judgment of Sentence should be corrected to exclude any defense costs that were necessitated by or derive from the mistrial. "The right of the court to impose costs in a criminal case is statutory. This, courts may impose costs in criminal cases only where such costs are authorized by statute." *People v Cunningham*, 496 Mich 145, 149; 852 NW2d 118 (2014), superseded by statute on other grounds as stated in *People v Konopka*, 309 Mich App 345; 869 NW2d 651 (2015).

In reviewing questions of statutory construction, the Court's purpose is to discern and give effect to the Legislature's intent. *People v Morey*, 461 Mich 325, 329-330; 603 NW2d 250 (1999). The Court begins by examining the plain language of the statute; where that language is unambiguous, we presume that the Legislature intended the meaning clearly expressed and enforce that statute as written. *Id.* The Court must give the words of a statute their plain and ordinary meaning, and only where the statutory language is ambiguous may it look outside the statute to ascertain legislative intent. *Id.* at 330.

The statutory provision addressing Defendant's order pay defense costs is MCL 769.1k, which provides:

If a defendant enters a plea of guilty or nolo contendere or if the court determines after a hearing or trial that the defendant is guilty, both of the following apply at the time of the sentencing or at the time entry of judgment of guilt is deferred by statute or sentencing is delayed by statute:

- (a) The court shall impose the minimum state costs as set forth in section 1j of this chapter.
- (b) The court may impose any or all of the following:
 - ...
 - (iv) The expenses of providing legal assistance to the defendant.
 - ...

Relevant to this case, the plain language of the statute states that the defendant must be found guilty following a hearing or trial to be ordered to pay the expenses of his legal assistance. MCL 769.1k. Nothing in the statute permits the Court to order Defendant to pay attorney costs as the result of a mistrial, in which the trial is never resolved and the defendant is not found guilty. Therefore, this Court finds that in the absence of statutory authorization permitting the Defendant to be ordered to pay attorney costs as a result of a mistrial, the Judgment of Sentence must be modified.

Conclusion

For the reasons stated above, Defendant's motion on remand to correct the Judgment of Sentence is GRANTED. The "Additional Defense Costs" section of the Judgment of Sentence is hereby modified to include only defense costs incurred as a result of re-trial and sentencing in the amount of \$2,375.00.

IT IS SO ORDERED.

Dated: 2/9/18

MES/AEE

cc: Michael Faraone, Esq.
Prosecutor's Office



Hon. Michael E. Servitto, Circuit Judge

A TRUE COPY
BY _____ COUNTY CLERK
DEPUTY CLERK