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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 1-608 / 91-160

STATE OF IOWA,

Appellee,

vs.

449

RONALD ARTHUR MAHERS,

Appellant.

Appeal from the Iowa District Court for Lee County, R. David Fahey, Judge.

Mahers appeals the restitution requirement imposed by the district court following his guilty plea conviction and sentence for assault causing bodily injury. **AFFIRMED.**

Douglas H. Napier of Napier, Wright & Wolf, Fort Madison, for appellant.

Bonnie J. Campbell, Attorney General, Ann E. Brenden, Assistant Attorney General, Michael P. Short, County Attorney, and Gordon Liles, Assistant County Attorney, for appellee.

Considered by Donielson, P.J., and Schlegel and Sackett, JJ.

SCHLEGEL, J.

Ronald Mahers was charged with intent to cause bodily injury, assault causing bodily injury, and escape, all arising from the same incident. Pursuant to a plea bargain in which the aggravated assault and escape charges were to be dismissed, Mahers pleaded guilty to serious assault. After entering his plea but before sentencing, Mahers testified at the trial of his two alleged compatriots. Mahers there testified he not only struck the victim, but that he intended to kill him, and his codefendants had stopped the beating.

In response to Mahers' judicial admissions, the State filed a new trial information against Mahers based on the same occurrence and charged him with attempted murder. In addition, the State wanted Mahers' prior guilty plea set aside. The State viewed the discrepancy between Mahers' guilty plea testimony and his testimony at trial of his alleged cohorts to have constituted a fraud upon the court, justifying the State's withdrawal from the plea bargain.

The district court declined to set aside the guilty plea and refused to let the State file a new information charging the crime of attempted murder. Mahers was later convicted and sentenced, pursuant to his guilty plea, for assault causing bodily injury. His sentence included a restitution order directing him to pay court costs of $100 and attorney's fees of $1220.60. No victim restitution was ordered. Mahers appeals his conviction and sentence, challenging only the restitution requirement.

Mahers raises two issues on appeal. First, he argues all costs incurred as a result of the State's motion to set aside the guilty plea, in which he prevailed, cannot be included in the amount he is required to pay. Mahers' attorney testified that at the time of entry of the plea his fees totaled $1090.60; after the subsequent hearing on the State's motion, his bill was $1220.60. Mahers believes the court should not have ordered restitution for the full amount.

Our standard of review in determining the propriety of a restitution award is for abuse of discretion. State v. Kaelin, 362 N.W.2d 526, 528 (Iowa 1985) (citation omitted). We believe the trial court did not abuse its discretion in ordering Mahers to pay this $130 of the attorney fee award ($1220 minus $1090).

When determining whether a valid restitutionary award has been ordered in favor of the victim of a crime, the appellate courts require the order rest on "a causal connection between the established criminal act and the injuries to the victim." State v. Holmberg, 449 N.W.2d 376, 377 (Iowa 1989). We believe a similar causal connection exists when assessing attorney fees. Because the fee involved here was incurred in representing Mahers in the underlying criminal action, it is assessable as restitution. See State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991).

Mahers had a very serious interest in contesting the State's motion. In addition, the State's action was caused

by its valid belief Mahers perpetrated a fraud on the court. We determine Mahers has failed to establish the district court abused its discretion. See State v. Storrs, 351 N.W.2d 520, 522 (Iowa 1984) (defendant has burden to demonstrate an abuse of discretion). Mahers was properly required to pay the additional $130 in attorney's fees incurred in defending against the State's motion to withdraw from the plea bargain.

Second, Mahers claims the court abused its discretion in ordering restitution without a showing in the record that he is reasonably able to pay the restitution. Iowa Code section 910.2 states the "sentencing court shall order that restitution be made by each offender to the victims of the offender's activities and, if the court so orders and to the extent that the offender is reasonably able to do so, for crime victim assistance reimbursement, court costs, court-appointed attorney's fees or the expense of a public defender when applicable" (emphasis added).

The court determined from Mahers that Mahers is incarcerated for twenty years and currently unemployed at the penitentiary. Mahers feels the court failed to exercise its discretion by not making further inquiry into his ability to pay. The restitution order does not contain the court's findings that Mahers is reasonably able to make restitution. This failure, however, does not invalidate a restitution order. Kaelin, 362 N.W.2d at 528.

The record reveals support for the court's ultimate determination that Mahers is able to make restitution for court costs and attorney fees. Mahers' financial statement indicates he is a certified paralegal. After his incarceration, Mahers should be capable of making payment on this award. See State v. Van Hoff, 415 N.W.2d 647, 649 (Iowa 1987). We determine the restitution order does not represent an abuse of discretion.

We affirm the restitution requirement of the district court.

AFFIRMED.