IN THE COURT OF APPEALS OF IOWA

No. 1999-53 (9-208) / 98-1350
Filed April 30, 1999

STATE OF IOWA,

Plaintiff-Appellee,

vs.

JEFFREY BLANK,

Defendant-Appellant.

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge.

Defendant appeals from an action to modify his restitution obligations in two criminal proceedings. **AFFIRMED.**

John C. Nelson of Molstad & Thomas, Sioux City, for appellant.

Thomas J. Miller, Attorney General, William A. Hill, Assistant Attorney General, Thomas S. Mullin, County Attorney, and Mark Campbell, Assistant County Attorney, for appellee.

Considered by Sackett, C.J., and Vogel and Mahan, JJ.

MAHAN, J.

Jeffrey Blank appeals from an action to modify his restitution obligations in two criminal proceedings. Blank contends the district court erred in not determining the reasonableness of the restitution ordered and his ability to pay, in not appointing counsel, and in not considering modification of the restitution in both cases. He also maintains he was denied due process. We affirm.

Blank was convicted on a second-degree theft charge and sentenced on August 1, 1995, to an indeterminate term not to exceed fifteen years ("Blank I"). On January 11, 1996, the sentencing order was supplemented to require Blank to pay restitution of $843.09 for court costs and $1822.50 for attorney fees. Seven months later, on August 29, 1996, Blank requested a hearing on the reasonableness of the restitution and requested court-appointed counsel. The district court denied both requests and was affirmed on appeal. *State v. Blank*, 570 N.W.2d 924 (Iowa 1997). On May 11, 1998, Blank again requested a hearing on restitution in this case and once again requested court-appointed counsel. A hearing was scheduled but his request for appointment of an attorney was denied. Following the hearing, Blank's request for relief was denied and he appealed.

Blank was later convicted on a forgery charge and sentenced on January 25, 1996, to an indeterminate term not to exceed five years ("Blank II"). On May 28, 1996, the sentencing order was supplemented to require Blank to pay restitution of $156.65 for court costs and $45 for attorney fees. Blank did not seek review of this

restitution order until May 11, 1998, when he sought a modification and requested court-appointed counsel. The request for counsel was denied. Following hearing, the district court granted Blank the relief he sought and provided that of the twenty percent withheld from his prison account, five percent would be applied toward restitution and the other fifteen percent would be used to pay transportation costs of family visits. Blank appealed.

I. REASONABLENESS AND ABILITY TO PAY. We review for abuse of discretion the district court's determination of the amount of restitution and the inmate's ability to pay. *State v. Storrs*, 351 N.W.2d 520, 522 (Iowa 1984); *State v. Ihde*, 532 N.W.2d 827, 829 (Iowa App. 1995).

The district court is considered an expert on the issue of the reasonableness of costs and attorney fees ordered for restitution. *Blank*, 570 N.W.2d at 927. The reasonableness of the restitution ordered in Blank I has already been determined by our supreme court. *Id.* In Blank II, the district court assessed the reasonableness of the restitution and Blank's ability to pay. The district court considered the monthly deductions from his prison account, his reported hygiene expenses, and the requirement in his dissolution decree that he send his ex-wife forty dollars each time he wants his children to visit him. The district court then proceeded to grant him the relief he had requested. We find the district court did not abuse its discretion. We affirm on this issue.

II. APPOINTMENT OF COUNSEL. Blank is not entitled to court-appointed counsel because his petitions challenging the restitution orders were not timely filed. *Blank*, 570 N.W.2d at 926. The challenges to the restitution orders in these two cases were not filed within thirty days after the orders were entered. The modifications sought are governed by the civil remedies afforded under Iowa Code section 910.7. *Id.* We affirm on this issue.

III. DUE PROCESS. Our review of any alleged constitutional violation is de novo. *State v. Rains*, 574 N.W.2d 904, 912 (Iowa 1998); *State v. Stanford*, 474 N.W.2d 573, 575 (Iowa 1991). Blank alleges he was denied due process in the collection of his restitution. However, he failed to raise this issue in the district court. Issues not raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal. *Connor v. State*, 362 N.W.2d 449, 457 (Iowa 1985); *State v. Lyon*, 223 N.W.2d 193, 194 (Iowa 1974). We conclude Blank failed to preserve error on this issue.

We have carefully reviewed the issues presented on appeal. We affirm the decision of the district court.

AFFIRMED.

No. 98-1350. [1999-53 (9-208)] STATE v. BLANK

Appeal from the Iowa District Court for Woodbury County, John D. Ackerman, Judge. **AFFIRMED.** Considered by Sackett, C.J., and Vogel and Mahan, JJ. Opinion by Mahan, J. (4 pages $1.60)

Jeffrey Blank appeals from an action to modify his restitution obligations in two criminal proceedings. **OPINION HOLDS: I.** ***Reasonableness and Ability to Pay.*** The reasonableness of the restitution ordered in the first criminal proceeding has already been determined by our supreme court. In the second proceeding, the district court assessed the reasonableness of the restitution and Blank's ability to pay, then proceeded to grant the relief he requested. We find the district court did not abuse its discretion. **II.** ***Appointment of Counsel.*** Blank is not entitled to court-appointed counsel because his petitions challenging the restitution orders were not timely filed within thirty days after the orders were entered. **III.** ***Due Process.*** We conclude Blank failed to preserve error on this issue because he did not raise it in the district court.