IN THE COURT OF APPEALS OF IOWA

No. 7-310 / 96-1531

000709

FILED
JUL 30 1997
CLERK SUPREME COURT

STATE OF IOWA,
Plaintiff-Appellee,

vs.

DEBORAH CARLBERG OLSON,
Defendant-Appellant.

Appeal from the Iowa District Court for Johnson County, Patrick R. Grady, Judge.

Deborah Olson appeals from the restitution provisions of an order deferring judgment following her guilty plea to third-degree theft in violation of Iowa Code sections 714.1(3) and 714.2(3) (1995). **APPEAL DISMISSED.**

Linda Del Gallo, State Appellate Defender, and Christopher Cooklin, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, J. Patrick White, County Attorney, and David V. Tiffany, Assistant County Attorney, for appellee.

Considered by Sackett, P.J., Huitink and Vogel, JJ.

HUITINK, J.

Deborah Calberg Olson appeals the restitution provisions of the district court's order deferring judgment following her guilty plea to third-degree theft. We dismiss her appeal.

There is no appeal of right from an order deferring judgment in a criminal case. *State v. Stessman*, 460 N.W.2d 461, 463 (Iowa 1990). The restitution provisions of such an order however are subject to discretionary review. *Id.*

In this case, Olson proceeds as though final judgment has been entered and her appeal is a matter of right. There is nothing in the record indicating she has requested or that discretionary review has been granted. The matter is further complicated by the State's failure to address this jurisdictional issue by appropriate motion. Although the issue has not been raised by the parties, we will nevertheless consider it because Olson's failure to seek discretionary review implicates our appellate jurisdiction. *See Hogan v. Christianson*, 279 N.W.2d 12, 13 (Iowa 1979).

If a defendant in a criminal case fails to file for discretionary review, we are nevertheless required to proceed as though an application for discretionary review has been filed. Iowa R. App. P. 304. Discretionary review may be granted in the following cases:

a. An order suppressing or admitting evidence;
b. An order granting or denying a motion for a change of venue;
c. An order denying probation;

d. Single misdemeanor and ordinance violators;
e. An order raising a question of law important to the judiciary and the profession.

Iowa Code § 814.6(2). Subsection (e) appears to be the only applicable provision. We must therefore determine whether the restitution order entered in this case falls within its purview.

In *State v. Stessman*, the Supreme Court stated:

> Because appellate review of restitution orders issued as part of or following a deferred judgment is discretionary, it follows that not every application for discretionary review will be granted.

State v. Stessman, 460 N.W.2d at 464. Our review of the record indicates the only issue raised concerns the amount of Olson's restitution obligation. Although we do not wish to minimize the significance of Olson's contentions, the legal issue presented does not rise to the level contemplated by Iowa Code section 814.6(2)(e). Accordingly, we decline to grant discretionary review in this case and dismiss Olson's appeal. Costs are assessed to Olson.

APPEAL DISMISSED.