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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MELVIN MEJIA,

Defendant and Appellant.

2d Crim. No. B235087
(Super. Ct. No. BA381863)
(Los Angeles County)

Melvin Mejia appeals the sentence following his plea of no contest to one count of lewd conduct upon a child. (Pen. Code, § 288, subd. (a).)¹ He contends the trial court improperly ordered him to pay \$402.34 in attorney fees pursuant to section 987.8. We agree. Because Mejia was not afforded a hearing regarding the imposition of attorney fees, we will strike the order for payment of the fee. Otherwise, we affirm.

FACTS AND PROCEDURAL HISTORY

Based on the probation report, Mejia was alone with six-year-old P.P. He led P.P. into his bedroom and onto his bed, pulled her pants down, and placed his tongue on her vagina. After his plea, Mejia was sentenced to three years in state prison and ordered to pay approximately \$1,100 in various assessments and fines, including \$402.34 in attorney fees. (§ 987.8.) He appeals the order imposing the \$402.34 in attorney fees

¹ All statutory references are to the Penal Code.

as a sentencing matter not covered in his plea agreement and which would not affect the validity of his plea. (Cal. Rules of Court, rule 8.304(b)(4).)

DISCUSSION

Mejia contends the trial court erred by ordering him to pay attorney fees to the public defender's office without conducting a hearing as required by section 987.8. We agree.

Section 987.8, subdivision (b) provides that "the court may, after notice and a hearing, make a determination of the present ability of the defendant to pay all or a portion of the cost" of legal assistance provided through the public defender or appointed counsel. At the hearing, the defendant is entitled to be heard, to present evidence, to cross-examine adverse witnesses, and to receive a written statement of the reasons for the findings of the trial court. (*Id.* subd. (e).) A defendant sentenced to state prison is presumed not to have the ability to pay, and the presumption may be overcome only by an express finding of unusual circumstances. (*Id.* subd. (g)(2)(B); *People v. Lopez* (2005) 129 Cal.App.4th 1508, 1537.)

Mejia was not given the notice or a hearing required by the statute. The trial court ordered Mejia to pay the attorney fees during his sentencing hearing without explanation, any reference to the reasonableness of the amount or Mejia's ability to pay, and without providing Mejia any opportunity to be heard on the matter. A trial court's finding of ability to pay may be implied rather than express, but must be supported by substantial evidence. (*People v. Pacheco* (2010) 187 Cal.App.4th 1392, 1398.) The record here is devoid of any evidence which would support the required findings.

Respondent argues that Mejia forfeited his right to challenge the lack of notice or hearing by failing to object to the trial court's order during the sentencing hearing. Judicial authority is to the contrary. (*People v. Pacheco, supra*, 187 Cal.App.4th at p. 1397; *People v. Viray* (2005) 134 Cal.App.4th 1186, 1215; *People v. Lopez, supra*, 129 Cal.App.4th at pp. 1536–1537.)

The order compelling appellant to reimburse the county for the costs of his defense under section 987.8 is reversed and stricken. We decline to remand for further

proceedings which would require the unnecessary expenditure of further costs by the state or county. Otherwise, the judgment is affirmed.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Terry A. Bork, Judge
Superior Court County of Los Angeles

California Appellate Project, Jonathan B. Steiner, Executive Director, Suzan E. Hier, Staff Attorney, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, Peggy Z. Huang, Deputy Attorney General, for Plaintiff and Respondent.