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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
THIRD APPELLATE DISTRICT  
(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

DARNELL RAYNARD LOUDD,

Defendant and Appellant.

C070661

(Super. Ct. No. 11F04071)

A jury found defendant Darnell Raynard Loudd guilty of evading a pursuing police officer and misdemeanor driving on a suspended license. The trial court suspended imposition of sentence and placed defendant on five years' formal probation on various terms and conditions, including that he serve 270 days in jail. Because defendant had been represented by the public defender, the trial court also made the following statement regarding attorney fees at the sentencing hearing: "I'm required to order the defendant to pay an attorney fee, if he has the ability to pay. He must cooperate with the Department of Revenue Recovery in the determination of his ability to pay. Felony case through trial, the fee is set at \$3,175."

On appeal, defendant contends that the court erred in ordering him to pay \$3,175 in attorney fees because: (1) the court did not give him an opportunity to challenge the amount of the fee reimbursement the court ordered; (2) there was insufficient evidence in the record supporting that amount; and (3) the court erroneously believed it was *required* to order fee reimbursement. Defendant also contends there was substantial evidence in the record that he did not have the present or future ability to pay the attorney fees the court ordered, and he further contends that the trial court improperly delegated its authority to make a determination of his ability to pay to the Department of Revenue Recovery (the department).

We conclude that all of defendant's arguments are without merit primarily because, contrary to defendant's foundational premise, the trial court did not actually order him to pay *any* amount in attorney fees. Instead, consistent with the governing statute, the court simply referred the matter to the department to inquire into defendant's ability to pay, prefatory to a further determination by the court of whether defendant had the ability to pay for any or all of the cost of his legal representation. There was no error.

As applicable here, subdivision (b) of Penal Code section 987.8 provides as follows: "In any case in which a defendant is provided legal assistance . . . through the public defender . . . , upon conclusion of the criminal proceedings in the trial court . . . 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 thereof. . . . The court may, in its discretion, order the defendant to appear before a county officer designated by the court to make an inquiry into the ability of the defendant to pay all or a portion of the legal assistance provided." Subdivision (e) of the statute further provides that "[i]f the court determines that the defendant has the present ability to pay all or a part of the cost, the court shall set the amount to be reimbursed and order the defendant to pay the sum to the county in the manner in which the court believes reasonable and compatible with the defendant's financial ability."

As the trial court here properly recognized, under the foregoing statute the court *must* order a defendant to pay attorney fees for being represented by the public defender *if* the court determines that the defendant has the ability to pay. The statute also allows the court to order the defendant to appear before a county officer to make an inquiry into the defendant's ability to pay. That is all the trial court did here by ordering that defendant "must cooperate with the Department of Revenue Recovery in the determination of his ability to pay." There is nothing in the record that supports reading this order as a delegation to the department of the power to *determine* if defendant has the ability to pay, nor is there anything in the record that supports reading the court's statement as an actual *order* that defendant pay. Instead, the court's statement is properly understood as simply a referral of the matter to the department to make an inquiry into defendant's ability to pay.

Defendant complains that "[n]o provision was made for the Department of Revenue [Recovery] to report back to the court prior to a final determination of the issue, and the court did not set a further hearing on [defendant]'s ability to pay." Even so, that does not mean further proceedings were not contemplated in the event the department's inquiry found an ability to pay on the part of defendant. Presumably the matter could have been calendared for a further hearing following the department's inquiry into the matter. Simply put, the fact that no further hearing was set when the court referred the matter to the department does not support defendant's argument that the court improperly delegated its power to determine defendant's ability to pay to the department.

Because the trial court has not yet ordered defendant to pay *any* amount in attorney fees, there is nothing here for defendant to challenge. If the trial court ultimately does determine that defendant has the ability to pay fees and orders defendant to do so, we presume the trial court will make that determination and that order consistently with the requirements of the law, and defendant will be able to challenge the order at that time

if he thinks the court has not done so. For now, there has been no fee order and therefore there is no error to correct.

DISPOSITION

The judgment (order granting probation) is affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

DUARTE, J.