

IN THE SUPREME COURT OF IOWA
Supreme Court No. 18-0690

STATE OF IOWA,
Plaintiff-Appellee,

vs.

LARRY GROSS,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
THE HONORABLE SCOTT D. ROSENBERG, JUDGE

APPELLEE'S BRIEF

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**STATEMENT OF THE ISSUE PRESENTED FOR
REVIEW**

I. Gross Did Not Preserve Error on His Challenge to the Order Approving Room and Board Reimbursement and the District Court Did Not Abuse Its Discretion.

State v. Abrahamson, 696 N.W.2d 589 (Iowa 2005)

Meier v. Senecaut, 641 N.W.2d 532 (Iowa 2002)

State v. Quijas, No. 17-1043, 2018 WL 3654845

(Iowa Ct. App. Aug. 1, 2018)

Iowa Code § 356.7(2)(i)

Iowa Code § 356.7

Iowa R. Civ. P. 1.904(2)

ROUTING STATEMENT

This case can be decided based on existing legal principles.

Transfer to the Court of Appeals would be appropriate. Iowa R. App.

P. 6.1101(3).

STATEMENT OF THE CASE

Nature of the Case

Larry Gross appeals from an order approving \$11,415 as reimbursement for room and board costs to the Polk County Sheriff pursuant to Iowa Code section 356.7. He argues that the district court abused its discretion when it did not consider his reasonable ability to pay.

Course of Proceedings

As relevant to this proceeding, Gross pleaded guilty to second degree arson in October 2017. Order to Accept Plea 10/19/17; App. 6-8. He was sentenced on January 5, 2018. Order of Disposition 01/5/18; App. 9-12. A notice of appeal was filed on January 8. Notice of Appeal 01/08/18; App. 14. On January 11, Gross was released from the Polk County Jail. He had spent 197 days there. Jail Credit Certificate 01/17/18; App. 13. On the day of his release, the Polk County Sheriff notified Gross of the sheriff's intention to seek reimbursement of room and board costs pursuant to Iowa Code section 356.7. Claim for Reimbursement 04/06/18; App. 15. Gross refused to sign the acknowledgment. Claim for Reimbursement 04/06/18; App. 15.

The sheriff and the county attorney filed a reimbursement claim on April 6, 2018. Application for Room and Board Fees 04/06/18; App. 16; Claim for Reimbursement 04/06/18; App. 15. The district court approved the claim on April 9. Order for Room and Board Fees 04/09/18; App. 17-18. The order stated that Gross had fifteen days to seek reconsideration of the order, citing Iowa Rule of Civil Procedure 1.1007. Order for Room and Board Fees 04/09/18; App. 17-18.

Gross did not seek reconsideration, but filed a pro se notice of appeal on April 18. Notice of Appeal 04/18/18; App. 32-33.

Facts

On June 29, 2017, Gross was living with his wife, Megan Gross, and a roommate, Geoffrey Hansen, in a house that Gross owned.

Minutes of Testimony at 1; Conf. App. 4; Minutes of Testimony, Incident/Investigation Report at 6; Conf. App. 11. Gross and Megan began fighting about money Megan was missing, which led to Gross locking himself in their bedroom, “breaking things and [becoming] clearly agitated.” Minutes of Testimony at 1; Conf. App. 4; Minutes of Testimony, Incident/Investigation Report at 2 & 5-6; Conf. App. 7, 10-11.

After some time, Gross left his room and told Megan and Hansen, both of whom were inside the house at the time and had personal property inside, that they had “better grab anything they care about” because he had just lit the house on fire. Minutes of Testimony at 1; Conf. App. 4. Seeing that there was, in fact, a fire burning behind Gross’s bedroom door, Hansen immediately called 911. Minutes of Testimony, Incident/Investigation Report at 2; Conf. App. 7.

When officers arrived, they saw smoke filling Gross's home. Minutes of Testimony, Incident/Investigation Report at 2 & 5; Conf. App. 7, 10. The fire investigator concluded that the fire had been intentionally set. Minutes of Testimony, Incident/Investigation Report at 5; Conf. App. 10. The fire resulted in damage to the bedroom floor, wall, and door. Minutes of Testimony, Incident/Investigation Report at 5; Conf. App. 10.

Gross was charged by trial information with one count of arson in the first degree, in violation of Iowa Code sections 712.1(1) and 712.2, a class B felony. Trial Information; App. 4-5. The trial information charged that Gross "caused a fire in a home with the intent to destroy or damage the property, or with the knowledge that property would be destroyed or damaged in which the presence of one or more persons could be reasonably anticipated and in so doing unreasonably endangered the life or property of those persons." Trial Information; App. 4-5.

ARGUMENT

I. **Gross Did Not Preserve Error on His Challenge to the Order Approving Room and Board Reimbursement and the District Court Did Not Abuse Its Discretion.**

Preservation of Error

Gross argues that he was not required to preserve error on his claim that the district court abused its discretion when it approved the room and board reimbursement for two reasons. First, because he did not have an “opportunity” to object and second, because the rules of error preservation do not apply to illegal sentences. Neither suffices to save his claim.

Gross was required to seek reconsideration as set forth in the order or file a motion under rule 1.904(2) seeking to enlarge the district court’s findings to preserve his claim that it failed to find him reasonably able to pay. *See Meier v. Senecaut*, 641 N.W.2d 532, 539 (Iowa 2002) (Rule 1.904(2) motion is necessary to preserve error when district court fails to resolve an issue). He claims that the order was mailed to an address in Des Moines rather than given to him at the jail, but he filed a pro se notice of appeal within the 15-day period during which he needed to seek reconsideration. Because he did not give the district court the opportunity to make a finding, error is not preserved for appeal. *Meier*, 641 N.W.2d at 539.

The illegal sentence exception to the rules of error preservation does not apply to the district court's order. The order approving the room and board claim is a collateral civil judgment, not part of Gross's sentence. *See State v. Quijas*, No. 17-1043, 2018 WL 3654845, at *2 (Iowa Ct. App. Aug. 1, 2018).

Standard of Review

In *State v. Abrahamson*, this Court interpreted the "shall approve" language in Iowa Code section 356.7 as a "grant of authority to resolve the merits of the claim-not a mandate that [the district court] simply sign the order as a ministerial function." 696 N.W.2d 589, 593 (Iowa 2005). In other words, the district court must exercise its "sound judgment, practical sagacity, and wise discretion" in determining whether to approve the claim. *Id.* Such decisions are reviewed for abuse of that discretion.

Merits

Iowa Code section 356.7 permits the county sheriff to file a reimbursement claim with the clerk of the district court for room and board and other costs while a defendant convicted of a criminal offense was in custody with the county. A claim under that provision can be enforced either as a civil judgment under chapter 626, or as a

part of the restitution order. On appeal, Gross treats the room and board claim as a part of his restitution. It is not.

If the sheriff wants to enforce a judgment under chapter 910, section 356.7(2)(i) requires the sheriff or the county attorney to explicitly request that the room and board claim be included in the order of payment of restitution. If they do not, they “elect” to enforce the claim as a civil judgment under chapter 626. *See Abrahamson*, 696 N.W.2d at 592 (“Because the sheriff did not elect to collect the claim for room and board under the chapter 626 alternative, but rather treated them as claims for restitution under chapter 910 and the defendants received a full hearing on the restitution claim, it is not necessary for us to consider the argument that the ‘shall approve’ language of the statute renders it invalid. Nevertheless, we do so to provide guidance in those cases in which a sheriff requests court approval of a claim as a condition precedent to collection of it under the regular judgment collection provisions of chapter 626, rather than through restitution.”).

Because neither the sheriff nor the county attorney requested that the \$11,415 in room and board fees be included in the restitution plan, the district court’s order approving the claim is a civil judgment

enforceable under chapter 626, not restitution.¹ The order itself refers to the fifteen-day period for reconsideration provided by the civil rules. As a result, the district court was not required to determine Gross's reasonable ability to pay pursuant to section 910.2(1). Rather, *Abrahamson* requires only that the district court resolve the merits of the claim rather than rubber-stamping the application. 696 N.W.2d at 593. This Court can presume that the district court was aware of its duty under *Abrahamson*. Because nothing in the record suggests that the district court did not exercise its discretion when it approved the claim and Gross did not request a hearing, the order should be affirmed.

CONCLUSION

For the foregoing reasons, the order approving room and board fees should be affirmed.

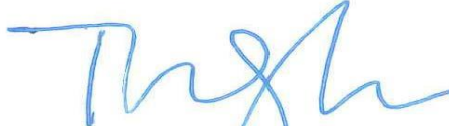
¹ A reimbursement claim under section 356.7 could be filed as a separate civil action, even where the sheriff elects to enforce the claim as restitution. Experience suggests that these claims are commonly filed in the criminal case, as was the instant claim. The State believes that the best practice—and one that would lead to significantly less confusion about the district court's duty—would be to file reimbursement claims as separate civil actions regardless whether the sheriff elects to enforce the judgment under chapter 626 or as restitution.

REQUEST FOR NONORAL SUBMISSION

Nonoral submission is appropriate for this case.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa



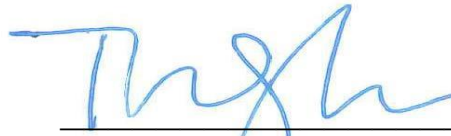
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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) or (2) because:

- This brief has been prepared in a proportionally spaced typeface using Georgia in size 14 and contains **1,496** words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

Dated: December 20, 2018



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