



Michigan Supreme Court

State Court Administrative Office

Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner
Director

MEMORANDUM

DATE: July 17, 2017
TO: Circuit, Family, District, and Municipal Judges
Court Administrators
FROM: Julia Norton, Collections Management Analyst
RE: Refunding of Assessments if Conviction Invalidated

The recent decision in *Nelson v Colorado*, 581 US ____ (2017), presented the question, “[w]hen a criminal conviction is invalidated by a reviewing court and no retrial will occur, is the State obliged to refund fees, court costs, and restitution exacted from the defendant upon, and as a consequence of, the conviction?” The United States Supreme court answered yes. *Id.* at ____.

Fines, Fees, and Costs

Though a Colorado law was at issue in the *Nelson* case, this decision serves as a reminder of the Michigan case, *People v Nance*, 214 Mich App 257 (1995), where the defendant’s conviction was reversed and the defendant requested reimbursement of the money he paid as a result of his conviction. The *Nance* court determined that “[b]ecause defendant’s conviction was reversed, there no longer is express provision for these fines or costs in the underlying statute.” *Id.* at 259. *Nance* further provided that “[a] request for reimbursement does not require the bringing of a separate action. Just as the imposition of a fine is an incident of a criminal conviction, so is the direction for repayment an incident to the vacating and setting aside of the conviction.” *Id.* (citation omitted).

To refund assessments other than restitution, a court would void the receipt(s), short the appropriate accounts on the local and state transmittals, and then issue a refund check to the defendant.

Restitution

Restitution poses a different situation because the monies paid in and disbursed to a victim are not returnable by the same methods used to refund other assessments, with perhaps the exception for unclaimed restitution payment(s) forwarded to the state.

When faced with the return of restitution money, courts should be aware of both the *Nelson* case and *People v Diermier*, 209 Mich App 449 (1995). As noted above, *Nelson* provides that “the State” is obliged to refund such monies; the case does not elaborate on the specifics of the refund process. In *Diermier*, the defendant’s restitution order was vacated, but the conviction was not. The defendant sought reimbursement of restitution that had been paid pursuant to the invalidated order. The *Diermier* court indicated, “[w]e agree with the trial court that it would be unreasonable to require the county to reimburse defendant for monies it paid which the county simply channeled to the victim. The statutes upon which defendant relies cannot reasonably be interpreted to require this result.” Please note that *Nelson* and *Diermier* deal with different factual backgrounds, notably *Diermier* did not involve an overturned conviction rather a vacated restitution order. Courts will need to use judicial discretion to determine how to treat the refund of restitution that has been paid and disbursed to a victim.

If you have general questions, please contact Julia Norton at 517-373-8995 or trialcourtservices@courts.mi.gov.

If your questions pertain to the specific process of refunding assessments other than restitution, please contact Finance at 517-373-4689.