FILED IN COURT OF CRIMINAL APPEALS STATE OF OKLAHOMA

AUG 2 1 2000

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

ATE OF OKLAHOMA

JAMES W. PATTERSON

CLERK

BILLY MICHAEL VINSON,)
Appellant,) NOT FOR PUBLICATION
v.) Case No. F-98 - 934
THE STATE OF OKLAHOMA,)
Appellee.) }

SUMMARY OPINION

LILE, JUDGE:

Appellant, Billy Michael Vinson, was convicted at Jury Trial of Reckless Conduct with a Firearm, in violation of 21 O.S.1991, § 1289.11, in Case No. CF-98-60 and Assault with Intent to Commit a Felony - Kidnapping in violation of 21 O.S.1991, § 681, in Case No. CF-98-61 in the District Court of Johnston County. The Honorable John A. Skaggs, District Judge, followed the jury's verdict and sentenced Appellant to one (1) year imprisonment and a \$500 fine in Case No. CF-98-60 and six (6) months imprisonment and a \$500 fine in Case No. CF-98-61, sentences to be served consecutively. In Addition, the Honorable John A. Skaggs ordered Appellant to pay \$26,984.42, restitution for medical expenses and reimbursement for incarceration costs. Appellant has perfected his appeal to this Court.

Appellant raises the following proposition of error:

I) The trial court had no authority to order Appellant to pay restitution of medical bills because the medical bills were not

subject to restitution, and the court erred in imposing costs of incarceration without first inquiring whether doing so would impose an undue hardship on Appellant.

After a thorough consideration of this proposition and the entire record before us, including the original record, transcripts and briefs of the parties, we have determined that reversal (of the restitution order) is required under the facts and the law.

We find that 22 O.S.Supp.1998, § 991a(A)(1)(a) does not authorize a restitution order compelling Appellant to pay his own medical expenses in the absence of evidence that they were a charge against the county.

We find that assessment of incarceration costs are provided for in 22 O.S.Supp.1996, § 979a and any inability to pay incarceration costs may be addressed as and at the same time as any inability to pay restitution. Honeycutt v. State, 1992 OK CR 36, 834 P.2d 993; Rule 8.3, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch. 18, App. (1999).

<u>DECISION</u>

This case is **REMANDED** for a hearing and proper order concerning restitution and incarceration costs.

ATTORNEYS AT TRIAL

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ATTORNEYS ON APPEAL

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OPINION BY: LILE, J.

STRUBHAR, P.J.: CONCURS

LUMPKIN, V.P.J.: CONCURS IN RESULTS

JOHNSON, J.: CONCURS CHAPEL, J.: CONCURS

RB