

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2020-303

DECEMBER TERM, 2020

State of Vermont v. Scott Sheltra*	}	APPEALED FROM:
	}	
	}	Superior Court, Franklin Unit,
	}	Criminal Division
	}	
	}	DOCKET NO. 1353-11-20 Frcr

In the above-entitled cause, the Clerk will enter:

Defendant Scott Sheltra appeals the trial court’s denial of his application for public defender services. We conclude that the trial court improperly considered only defendant’s ability to pay for public defender services in determining whether he was a “needy person” under 13 V.S.A. § 5231. We accordingly remand for the trial court to conduct a hearing and make additional findings as to defendant’s need based on the factors outlined in § 5236(b).

The record indicates the following. On November 16, 2020, defendant was arraigned on one count of operating a motor vehicle under the influence of alcohol, in violation of 23 V.S.A. § 1201, and one count of operating a motor vehicle with a suspended license, in violation of 23 V.S.A. § 674(b). That same day, defendant filed an application for public defender services. On his application, defendant reported a monthly income of \$3360, which amounts to just over \$40,000 annually, and \$2419 in monthly expenses. Based upon this information, the trial court denied defendant’s request for public-defender services, concluding that defendant was not a needy person because, based on the payment scheme outlined in 13 V.S.A. § 5236, he would be required to reimburse the state for the entire cost of any public-defender services that were provided. Defendant appealed.

13 V.S.A. § 5236(c) provides that an applicant for public-defender services may appeal a determination of need to a single Justice of the Supreme Court. “We typically review a trial court’s decision on whether an applicant qualifies for public defender services for abuse of discretion.” State v. Kittredge, 2018 VT 6, ¶ 4, 206 Vt. 661, 182 A.3d 63 (mem.). “A showing of an abuse of discretion requires establishing the court either totally withheld its discretion or exercised it on clearly untenable or unreasonable grounds.” Brown v. State, 2018 VT 1, ¶ 38, 206 Vt. 394, 182 A.3d 597.

Here, the trial court abused its discretion because its decision to deny public-defender services was based on an incorrect understanding of the law. See Vt. Nat’l Tel. Co. v. Dep’t of Taxes, 2020 VT 83, ¶ 61, \_\_ Vt. \_\_, \_\_ A.3d \_\_ (recognizing that “an abuse of discretion occurs when a decision is based on an incorrect interpretation of the law”). An applicant is entitled to representation by a public defender if he or she is a “needy person” charged with a serious crime. 13 V.S.A. § 5231(a); State v. Higginbotham, 174 Vt. 640, 641, 816 A.2d 547, 549 (2002) (mem.). “The public defender statute creates a three-step procedure for consideration of the applicant’s financial circumstances.” State v. Morgan, 173 Vt. 533, 533, 789 A.2d 928, 929 (2001) (mem.).

First, a court must consider whether an applicant is “needy,” which is defined as a person who “is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of representation or who is otherwise unable to employ an

attorney.” 13 V.S.A. § 5201(3); A.O. 4, § 5. In making this determination, “the court may consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents.” 13 V.S.A. § 5236(b). An applicant will be presumed needy if they receive any kind of welfare that “constitutes a major portion of subsistence” or if their income is at or below poverty income guidelines for nonfarm families. A.O. 4, § 5(c). “In cases in which an individual does not qualify for either presumption, a judicial officer must still make a determination as to whether the individual qualifies as a needy person.” Kittredge, 2018 VT 6, ¶ 8. “If the applicant is determined to be needy and is charged with a serious offense, then the court will assign counsel.” Morgan, 173 Vt. at 533, 789 A.2d at 929.

If a court determines an applicant is needy, it then considers “ability to pay for all or part of the defender services.” Id. Ability to pay is based upon the federal poverty guidelines. 13 V.S.A. § 5238(b). For example, applicants with incomes 125% above the guidelines are only required to reimburse the state for a part of the average cost of public-defender services, 25%. Applicants with incomes over 200% above the guidelines, however, are required to reimburse the state for the entire cost. Id.; Higginbotham, 174 Vt. at 641, 816 A.2d at 549-50. Finally, “[i]n the third step, the court designates the repayment amount as a co-payment, which must be paid prior to the assignment of counsel.” Morgan, 173 Vt. at 534, 789 A.2d at 929.

Here, the trial court improperly considered defendant’s ability to pay in determining whether he was a needy person. It concluded that defendant was not needy because his annual income of \$40,000 was 200% over the federal poverty guidelines, and he would therefore be required to reimburse the state for the entire cost of defender services. See Annual Update of the HHS Poverty Guidelines, 85 Fed. Reg. 3060, 3060 (Jan. 17, 2020) (listing the poverty guideline for a single-family household at \$12,760). Under the public-defender statutory scheme, however, access to public-defender services is based on need, not on the applicant’s ability to pay. Ability to pay is only relevant if a court first concludes that an applicant is needy, which is not determined by reference to income alone. 13 V.S.A. § 5236(b) (explaining that in making the needy-person determination, “the court may consider such factors as income, property owned, outstanding obligations, and the number and ages of dependents”). The statutory scheme clearly indicates that an applicant with an income 200% over the federal poverty guidelines, and who is required to reimburse the state for the entire cost of the defense, can nevertheless qualify as a needy person under § 5236.

In sum, the trial court improperly considered defendant’s ability to pay in determining need. The matter is accordingly remanded for the trial court to conduct a hearing and make findings as to whether defendant is a needy person based on the factors outlined in § 5236(b). Although income is a relevant factor in considering need, it is not conclusive.

Remanded for the trial court to conduct a hearing and make findings as to whether defendant is a needy person.

FOR THE COURT:

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Karen R. Carroll, Associate Justice