261 P.3d 569, 2011 WL 4906846 (Kan.App.)
(Table, Text in WESTLAW), Unpublished Disposition
(Cite as: 261 P.3d 569, 2011 WL 4906846 (Kan.App.))

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(Pursuant to Kansas Supreme Court Rule 7.04(f), unpublished opinions are not precedential and are not favored for citation. They may be cited for persuasive authority on a material issue not addressed by a published Kansas appellate court opinion.)

Court of Appeals of Kansas.
Steven C. VAN ROSS, Appellant,
v.
STATE of Kansas, Appellee.

No. 105,031.
Oct. 14, 2011.
Review Denied May 4, 2012.

Appeal from Wyandotte District Court; J. Dexter Burdette, Judge.
Craig A. Lubow, of Kansas City, for appellant, and Steven Van Ross, appellant pro se.

Jerome A. Gorman, district attorney, and Derek Schmidt, attorney general, for appellee.

Before LEBEN, P.J., PIERRON and ATCHESON, JJ.

MEMORANDUM OPINION

LEBEN, J.

*1 Steven Van Ross appeals the district court's summary dismissal of his motion for postconviction relief, which contended that the document stating the charges against him had been defective. But Van Ross didn't raise this objection until he had already pled guilty and been sentenced, so we apply a rule under which technical defects in a charging document don't matter unless they caused some harm to the defendant; no such harm has been shown here. We therefore affirm the summary dismissal of Van Ross' challenge to his conviction and prison sentence.

Van Ross separately challenged the district court's decision, made at sentencing, to delegate to the Department of Corrections the task of determining the amount and manner of payment for the reimbursement of attorney fees paid by the county on Van Ross' behalf due to his lack of ability to pay. The district court also summarily dismissed Van Ross' motion for postconviction relief on that issue. The State concedes—and we agree—that the district court cannot delegate its responsibility to make these decisions to the Department of Corrections. We therefore reverse the summary dismissal of that issue and remand for the district court to carry out its responsibilities on the assessment of such fees.

Van Ross' conviction for aggravated robbery came after he took a purse from a woman outside a store and injured her hands in 2004. An aggravated robbery is "a robbery ... committed by a person who is armed with a dangerous weapon or who inflicts bodily harm upon any person in the course of such robbery." K.S.A. 21–3427. And a robbery "is the taking of property from the person or presence of another by force or by threat of bodily harm to any person." K.S.A. 21–3426. (We have cited the statutes in existence in 2004; the Kansas criminal statutes have been recodified effective July 1, 2011, although no substantive change has been made to the elements of aggravated robbery. See L.2010, ch. 136, Sec. 55.)

The charging document against Van Ross alleged that he had taken "a purse from another person." He contends that the charging document should have added "or [from the] presence of another [person]" to mirror the statutory language defining the crime. In support, he cites *State v. Robinson,* 27 Kan.App.2d 724, 725–26, 728–29, 8 P.3d 51 (2000), in which a conviction for aggravated robbery was reversed because "or presence of another" was omitted from the charging document and from the jury instructions. But in *Robinson,* the property taken wasn't being held by its owner when it was taken; the defendant in *Robinson* stole the

victim's car while he was standing outside the car talking to someone. Therefore, in Robinson, no reasonable person could have concluded that the car was taken from the victim's person, as alleged, and the conviction was reversed. 27 Kan.App.2d at 729. In Van Ross' case, the purse was being held by the victim when Van Ross took it—and property taken "from a position in contact with a victim's body" is taken from the victim's person. *Robinson,* 27 Kan.App.2d 724, Syl. ¶ 8.

***2** Van Ross did not raise any objection to the charging document in the district court before he pled guilty and was sentenced. When a charging-document challenge is raised for the first time on appeal or in a post-conviction collateral attack, an appellate court applies a common-sense rule under which the charging document is sufficient if it would be fair to require the defendant to defend the case on the stated charge, even if an essential element is missing from the document. *Ferguson v. State,* 276 Kan. 428, 444, 78 P.3d 40 (2003); *State v. Edwards,* 39 Kan.App.2d 300, Syl. ¶ 5, 179 P.3d 472, rev. denied, 286 Kan. 1181 (2008). Under that rule, "[n]o harm will be found from a technical defect in the charging document unless it prejudiced the defendant's ability to prepare a defense, impaired the defendant's ability to plead the conviction in some later proceeding, or limited the defendant's substantial rights to a fair trial." 39 Kan.App.2d 300, Syl. ¶ 5.

Here, Van Ross has shown neither error nor harm. The purse was taken from the victim's person, which was properly alleged in the charging document. Van Ross admitted during the plea hearing that the victim was wearing the purse when he took it from her, and the State offered evidence that she attempted to hold on to it as he took it from her. We therefore find no error in the charging document. Moreover, even if there had been a technical defect, it caused no harm to Van Ross because it was fair to require him to defend the case based on the charge of having taken the purse "from another person." The omission of "or presence of another" did not in any way impair his ability to defend the case or to evaluate a plea agreement.

An evidentiary hearing is required on a K.S.A. 60–1507 motion unless the files and records of the case conclusively show that the movant is not entitled to relief. K.S.A. 60–1507(b); Supreme Court Rule 183(f), (j) (2010 Kan. Ct. R. Annot. 255). Because the district court denied Van Ross' K.S.A. 60–1507 motion summarily and without a hearing, we review the matter independently to determine whether the motion and case records conclusively establish that Jackson is not entitled to any relief. See *Wimbley v. State,* 292 Kan. 796, 257 P.3d 328, 335 (2011). Van Ross is not entitled to a hearing on his claim that the charging document against him was defective.

The assessment of attorney fees against Van Ross is another matter. At sentencing the district court didn't assess specific attorney fees against Van Ross to repay the State for his court-appointed counsel. Instead, the court attempted to delegate its authority to assess the fees to the Department of Corrections: "I think I'm gonna let the Department of [C]orrections determine the amount and the manner of payment of attorney's fees."

The district court is required to order a defendant to reimburse the county for expenses provided for his defense, K.S.A. 21–4603d(i), and the district court is required to do so at sentencing. *State v. Winston,* No. 91,925, 2005 WL 1089040, at *2 (Kan.App.2005) (unpublished opinion), *rev. denied* 280 Kan. 991 (2005); see K.S.A. 21–4603d(d). In addition, as the Kansas Supreme Court held in *State v. Robinson,* 281 Kan. 538, 546, 132 P.3d 934 (2006), the district court must take into account the financial resources of the defendant and the nature of the burden that repayment of fees will impose on the defendant, and it must make express findings about these factors on the record at sentencing. See K.S.A. 22–4513(b).

***3** The district court summarily dismissed Van Ross' claim on the attorney-fee issue because it said

that our court had already denied this claim on direct appeal. We did not. In that appeal, the attorney-fee issue was raised through Van Ross' motion to correct an illegal sentence. We simply noted that an improper assessment of the attorney fees would not make the sentence illegal, and we therefore dismissed the challenge to the delegation of attorney-fee assessment to the Department of Corrections for lack of jurisdiction. We did not decide the issue on its merits. See *State v. VanRoss,* No. 96,557, 2007 WL 4105254, at *1 (Kan.App.2007) (unpublished opinion), *rev. denied* 286 Kan. 1185 (2008).

The State concedes in its appellate brief that we must remand the attorney-fee issue to the district court. We do so with the direction that it grant Van Ross' motion in part by vacating the prior delegation of the attorney-fee issue to the Department of Corrections. The district court should then reconsider the attorney-fee issue under its statutory authority to do so.

The judgment of the district court is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

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END OF DOCUMENT

Other Orders/Judgments

5:12-cv-03143-SAC Van Ross v. Shelton et al

U.S. District Court

DISTRICT OF KANSAS

Notice of Electronic Filing

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Case Name: Van Ross v. Shelton et al
Case Number: 5:12-cv-03143-SAC
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Docket Text:
MEMORANDUM AND ORDER ENTERED: This matter is dismissed and all relief is denied. Plaintiff's motion [3] for leave to proceed in forma pauperis is granted. Signed by Senior District Judge Sam A. Crow on 8/8/2012. (Mailed to pro se party Steven Craig Van Ross by regular mail.) (Attachments: #(1) Unpublished Order) (smnd)

5:12-cv-03143-SAC Notice has been electronically mailed to:

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Steven Craig Van Ross
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