

NOTICE: NOT FOR PUBLICATION.  
UNDER ARIZ. R. SUP. CT. 111(c), THIS DECISION DOES NOT CREATE LEGAL PRECEDENT  
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

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STATE OF ARIZONA, *Appellee*,

*v.*

DONALD VINEYARD, *Appellant*.

No. 1 CA-CR 13-0086

FILED 12-19-2013

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Appeal from the Superior Court in Maricopa County

No. CR 2011-008284-001

The Honorable Dawn M. Bergin, Judge

**AFFIRMED**

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COUNSEL

Arizona Attorney General's Office, Phoenix

By Joseph T. Maziarz

*Counsel for Appellee*

Maricopa County Legal Defender's Office, Phoenix

By Cynthia D. Beck

*Counsel for Appellant*

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**MEMORANDUM DECISION**

Judge Margaret H. Downie delivered the decision of the Court, in which Presiding Judge Lawrence F. Winthrop and Judge Jon W. Thompson joined.

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**D O W N I E**, Judge:

¶1 Donald Vineyard timely appeals from a restitution order issued by the superior court. Defense counsel has searched the record, found no arguable question of law, and asked that we review the record for reversible error. *See State v. Richardson*, 175 Ariz. 336, 339, 857 P.2d 388, 391 (App. 1993). Vineyard was granted leave to file a supplemental brief *in propria persona*, but he has not done so. Finding no error, we affirm.

**FACTS AND PROCEDURAL HISTORY**

¶2 Vineyard was convicted of burglary in the third degree, a class 4 felony, and possession of burglary tools, a class 6 felony. The superior court placed him on three years' probation for each count, to be served concurrently. As a condition of probation, Vineyard was sentenced to three months in jail.

¶3 In Vineyard's first appeal, counsel filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). We affirmed Vineyard's convictions and sentences. While the first appeal was pending, the superior court issued the restitution order at issue in this appeal.

¶4 At the restitution hearing, the State introduced evidence that victim S.P. required therapy as a result of the burglary. S.P.'s therapist diagnosed her with post-traumatic stress disorder caused by the incident. Victim T.P. also attended therapy. The State introduced evidence of the distance traveled by the victims to attend therapy, and Vineyard did not contest the mileage rate used to calculate their travel expenses. Additionally, T.P. testified that they incurred child care expenses while attending therapy. T.P. also missed 72 hours of work due to the burglary. Because he used personal time off ("PTO"), T.P. was compensated for the time missed. However, he lost a corresponding amount of PTO as a result.

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¶5 The superior court awarded the victims restitution totaling \$10,861.98. The restitution order included the cost of therapy, travel to therapy, child care, and T.P.'s PTO.

¶6 We have jurisdiction over this appeal pursuant to Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, -4033(A)(3), and *State v. Fancher*, 169 Ariz. 266, 266 n.1, 818 P.2d 251, 251 n.1 (App. 1991) ("[T]he order of restitution is a separately appealable order.").

DISCUSSION

¶7 We review the superior court's restitution award for an abuse of discretion. *State v. Slover*, 220 Ariz. 239, 242, ¶ 4, 204 P.3d 1088, 1091 (App. 2009) (citation omitted). The superior court abuses its discretion when it predicates its decision on incorrect legal principles or otherwise misapplies the law. *State v. Lewis*, 222 Ariz. 321, 324, ¶ 5, 214 P.3d 409, 412 (App. 2009) (citation omitted).

¶8 A restitution award must bear a reasonable relationship to a victim's losses. *State v. Madrid*, 207 Ariz. 296, 298, ¶ 5, 85 P.3d 1054, 1056 (App. 2004) (citation omitted). Restitution is appropriate for losses that (1) are economic in nature, (2) were incurred by a victim as a direct result of the commission of the offense, and (3) would not have been incurred had the offense not occurred. *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7, 39 P.3d 1131, 1133 (2002). Our restitution statutes authorize restitution for a wide variety of expenses. *See State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (App. 1992). The State must prove a victim's losses by a preponderance of the evidence. *Lewis*, 222 Ariz. at 324, ¶ 7, 214 P.3d at 412.

¶9 The superior court did not abuse its discretion by awarding restitution for the victims' therapy expenses. *See State v. Wideman*, 165 Ariz. 364, 369, 798 P.2d 1373, 1378 (App. 1990) (affirming restitution award for mental health counseling expenses). The restitution order reimbursed the victims for their exact economic outlay. The victims had not undergone therapy prior to Vineyard's criminal conduct, and the evidence established that his conduct caused them to seek therapy.

¶10 Nor did the superior court abuse its discretion by awarding restitution for the victims' travel expenses. *Cf. Baltzell*, 175 Ariz. at 439, 857 P.2d at 1293 (affirming restitution award for travel expenses necessitated by defendant's criminal conduct). Those expenses are economic in nature and, like the cost of therapy, were the direct result of

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Vineyard's criminal conduct. The travel expenses were calculated using standardized rates, and the State introduced maps detailing the route traveled. *See Madrid*, 207 Ariz. at 298, ¶ 5, 85 P.3d at 1056 (trial court has "substantial discretion" in determining amount of economic loss).

¶11 The court was similarly within its discretion in awarding restitution for child care expenses. Those expenses are economic and were incurred as a result of Vineyard's criminal conduct. They were substantiated by T.P.'s testimony, which the superior court found to be credible.

¶12 The superior court also did not err by awarding restitution based on T.P.'s PTO. T.P. was forced to use PTO to attend court hearings and to care for his wife, who was suffering from post-traumatic stress disorder. *See Madrid*, 207 Ariz. at 300, ¶ 10, 85 P.3d at 1058 (affirming restitution award for expenses incurred to attend court hearings); *Baltzell*, 175 Ariz. at 439, 857 P.2d at 1293 (affirming restitution award for lost wages); *cf. In re Ryan A.*, 202 Ariz. 19, 25-26, ¶¶ 29-32, 39 P.3d 543, 549-50 (App. 2002) (loss of compensable leave time recoverable under juvenile restitution statute). T.P.'s PTO was quantifiable and economic, and his loss arose as a direct result of Vineyard's criminal conduct.

¶13 We have reviewed the record for reversible error and find none. *See State v. Leon*, 104 Ariz. 297, 300, 451 P.2d 878, 881 (1969). The restitution order is reasonable in light of Vineyard's crime and comports with the purpose of restitution. *Cf. State v. Zaputil*, 220 Ariz. 425, 428, ¶ 12, 207 P.3d 678, 681 (App. 2008) (Restitution is a remedial measure that forces defendants to recognize the consequences of and accept responsibility for their criminal activity.). The restitution proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Appellant was represented by counsel at the restitution hearing and waived his presence therein. The evidence presented at the hearing supports the superior court's order.

### CONCLUSION

¶14 We affirm the superior court's restitution order. Counsel's obligations pertaining to Vineyard's representation in this appeal have ended. Counsel need do nothing more than inform Vineyard of the status of the appeal and his future options, unless counsel's review reveals an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 584-85, 684 P.2d 154, 156-57 (1984). On the court's own motion, Vineyard shall have 30 days

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from the date of this decision to proceed, if he desires, with an *in propria persona* motion for reconsideration or petition for review.



Ruth A. Willingham · Clerk of the Court  
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