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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz.R.Sup.Ct. 111(c); ARCAP 28(c);
Ariz.R.Crim.P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 02/28/2012
RUTH A. WILLINGHAM,
CLERK
BY: DLL

IN RE: DANIEL C.) No. 1 CA-JV 11-0157
)
) DEPARTMENT C
)
) **MEMORANDUM DECISION**
)
) (Not for Publication -
) Ariz. R.P. Juv. Ct. 103(G);
) ARCAP 28)
)

Appeal from the Superior Court in Yuma County

Cause No. S1400JV20110043

The Honorable Denise D. Gaumont, Judge *Pro Tempore*

RESTITUTION AWARD VACATED

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T I M M E R, Judge

¶1 Daniel C. appeals the juvenile court's order requiring him to pay \$176.33 in restitution. For the following reasons,

we decide the court lacked authority to enter the award, and we vacate it.

BACKGROUND

¶2 On March 9, 2011, Daniel pled delinquent to facilitation to commit burglary in the first degree. The juvenile court accepted the plea and, among other things, imposed a term of six months' probation and an award of restitution capped at \$400, subject to submission of proof of the restitution amount by the victim within thirty days (April 8). The court ordered the restitution paid jointly and severally with two other juveniles, Juan and Aril, who were involved in the burglary at issue, assuming they would be adjudicated delinquent. The victim did not attend the hearing.

¶3 The victim filed a restitution statement on April 13, five days after the deadline. No action was taken, and the next mention of restitution was in a May 10 hearing held in Juan's case. At that hearing, the prosecutor incorrectly informed the court that, according to a probation officer, restitution had been left open against Daniel and Aril pending resolution of Juan's case; the prosecutor stated he would confirm the accuracy of the probation officer's belief and, if true, contact counsel for Daniel and Aril to ensure the boys would be represented at a future restitution hearing.

¶4 At an adjudication hearing held in Juan's case on June

2, Daniel testified his case had concluded without a restitution order and he was then on probation. The court reappointed prior counsel to represent Daniel because restitution had not been finalized. After accepting Juan's plea to delinquency at the continued adjudication hearing on June 28, the court set a restitution hearing for July 28 to determine the amount of restitution to be paid by Daniel, Juan, and Aril. At the restitution hearing, and over Daniel's objection, the court ordered him to pay \$176.33 to the victim. This timely appeal followed.

DISCUSSION

¶5 The sole issue on appeal is whether the juvenile court erred in ordering Daniel to pay restitution in light of the expiration of the thirty-day time frame in which to determine the amount of restitution owed. Daniel argues the court erred because the disposition order became final on April 8, 2011, without an award of restitution. The State counters the court acted within its discretion because the belated entry of the restitution order was not the victim's fault but occurred as a result of improper handling by a probation officer. We review the juvenile court's restitution order for an abuse of discretion. *In re Richard B.*, 216 Ariz. 127, 130, ¶ 12, 163 P.3d 1077, 1080 (App. 2007).

¶6 Our resolution of this appeal is governed by the

supreme court's decision in *In re Alton D.*, 196 Ariz. 195, 994 P.2d 402 (2000). The juvenile in that case pled delinquent and agreed to pay up to \$3,000 in restitution. *Id.* at 196, ¶ 2, 994 P.2d at 403. At the disposition hearing, the juvenile court imposed probation and left restitution open for approximately thirty days to permit the victim to substantiate a claim. *Id.* The court ordered the state to inform the victim of the need to substantiate his claim by the deadline or the matter would be closed. *Id.* The state appealed, arguing a restitution deadline conflicts with the victim's right to compensation. *Id.* at ¶ 3.

¶7 In resolving the appeal, the supreme court initially noted that a victim's right to compensation must be balanced against the juvenile's constitutional right to a speedy disposition of the case. *Id.* at 197, ¶ 7, 994 P.2d at 404. That balance is achieved, according to the supreme court, by permitting the juvenile court to set a deadline for filing restitution claims so that a final, appealable order can be timely entered. *Id.* at ¶¶ 9-10. The court rejected the state's argument that the juvenile court should be permitted to consider restitution claims submitted after entry of the final order. *Id.* at ¶ 11. The court pointed out that a contrary decision could create piecemeal appeals and may inequitably extend a juvenile's probation term. *Id.* at 198, ¶¶ 14-15, 994 P.2d at 405. The court therefore held that when the juvenile court sets

"a reasonable deadline by which victims must present their restitution claims and supporting evidence, any victim who fails to comply is barred from recovery." *Id.* at 200, ¶ 19, 994 P.2d at 407; see also *In re Kevin A.*, 201 Ariz. 161, 162, ¶¶ 1-2, 32 P.3d 1088, 1089 (App. 2001) (relying on *Alton D.* to vacate a restitution order entered after the juvenile court reopened a final disposition to grant a belated restitution request because the court lacked jurisdiction).

¶8 As in *Alton D.*, the juvenile court in this case ordered that restitution be left open for a period of thirty days. The State does not challenge the reasonableness of this deadline and does not contend it failed to notify the victim of this deadline despite not receiving a court directive to make this notification. See Ariz. Rev. Stat. ("A.R.S.") § 8-391(B) (2012)¹ (setting forth prosecutor's obligation to notify victim of certain matters, including matters related to restitution and disposition). When the thirty-day deadline passed without a submission by the victim, the disposition order became final and

¹ Absent material revisions after the date of an alleged offense, we cite to a statute's current Westlaw version.

appealable without further action by the court.² *Alton D.*, 196 Ariz. at 197, ¶ 10, 994 P.2d at 404 ("Requiring victims to file their claims for restitution within a reasonable deadline, after which the order of disposition becomes final and subject to appeal, thus directly furthers the significant interest in reaching a prompt, final resolution of juvenile actions."); *Kevin A.*, 201 Ariz. at 162, ¶ 2, 32 P.3d at 1089 ("When the time [for submitting a restitution claim] expired with no claim having been filed, the prior disposition became final."). The court therefore lacked authority to enter a restitution order more than three months later. See *In re Michelle G.*, 217 Ariz. 340, 344, ¶ 14, 173 P.3d 1041, 1045 (App. 2008) (holding juvenile court lacked authority to reopen final order to enter a belated restitution order even though juvenile agreed to pay restitution in plea agreement); *Kevin A.*, 201 Ariz. at 162, ¶ 1, 32 P.3d at 1089 (same).

¶9 The State relies on *Richard B.*, 216 Ariz. 127, 163 P.3d 1077, to argue that the juvenile court acted appropriately

² In compliance with Arizona Rule of Juvenile Procedure 30(B)(4), the court explained to Daniel at the disposition hearing his right to appeal within fifteen days. Although the court did not specify when this period would commence, the court gave no indication it would start months later on a yet-to-be determined date. Nor could this occur in light of Daniel's speedy appeal rights. *Alton D.*, 196 Ariz. at 197, ¶ 10, 994 P.2d at 404. In this case, the fifteen days began to run on April 8, 2011, when the disposition order became final due to lack of a restitution submission by the victim.

because the victim was not at fault for the late filing. We reject this argument for two reasons. First, unlike the prosecutor in *Richard B.*, the prosecutor in this case never demonstrated the victim was blameless for the late filing. *Id.* at 129, ¶¶ 7-8, 163 P.3d at 1079. The State cites an anonymous comment made by "voice" at the July 28 restitution hearing that the victim timely provided her statement to the probation office and the department held the statement until completion of Juan's case. Putting aside the obvious lack of foundation for this statement, it conflicts with the record, which shows the victim's statement was not held pending Juan's case; it was filed on April 13 - five days after the deadline.

¶10 Second, *Richard B.* is distinguishable. The juvenile in that case pled guilty to DUI and agreed to pay up to \$3,000 in restitution. 216 Ariz. at 128, ¶ 3, 163 P.3d at 1078. The victim appeared at the disposition hearing on January 12, 2007, and told the court she could gather the necessary documentation for a restitution claim within "24 to 48 hours." *Id.* at 129, ¶ 4, 163 P.3d at 1079. Because the juvenile was turning eighteen the next month, the court ordered that restitution be left open for only seven days. *Id.* The victim faxed supporting documents to the prosecutor on time, but the state failed to file a victim statement with the court until several days after the deadline. *Id.* at ¶¶ 5, 7.

¶11 On February 2, the state requested a restitution hearing. *Id.* at ¶ 5. Over the juvenile's objection that the claim was barred by *Alton D.*, the court held a hearing on February 6 and ordered the juvenile the next day to pay \$147.69 in restitution. *Id.* at ¶¶ 6-8. The juvenile court found good cause to extend the deadline because of the "unusual circumstances" of the case: The seven-day period was very short; the juvenile was close to turning eighteen; the victim filed some information about her claim before the deadline; and although the victim's statement was unverified, she was unaware of that requirement and submitted a verified statement the same day she found out. *Id.* at ¶ 8.

¶12 This court affirmed because there was reasonable evidence to support the juvenile court's findings of good cause to extend the restitution deadline. *Id.* at 131, ¶ 20, 163 P.3d at 1081. We noted the disposition order stated only that restitution would be left open for seven days, not that it would be closed thereafter. *Id.* at ¶ 17. We further noted that many of the concerns in *Alton D.* and *Kevin A.* were not present in that case because the juvenile court would automatically lose jurisdiction when the juvenile turned eighteen the next month. *Id.* at ¶ 18. Therefore, there was no threat of indefinite or undue delay. *Id.*

¶13 Even assuming a procedural vehicle existed for the

State to reopen the disposition order in this case to consider the victim's untimely filed restitution statement, unlike the prosecutor in *Richard B.*, the prosecutor in this case never made that attempt. And the court never extended the thirty-day deadline for "good cause." By the time the court entered a restitution order more than four months after accepting Daniel's plea and placing him on probation, and long after Daniel's appeal rights had expired, it clearly lacked authority to impose a restitution order.

¶14 While we acknowledge the potential unfairness of denying restitution to the victim if she timely submitted her restitution statement to the probation office and it mishandled the matter, as the State asserts, any other result would vitiate Daniel's rights to a speedy disposition and contradict our supreme court's holding in *Alton D.* The juvenile court was not empowered to fix any mistake by the probation department at the expense of Daniel's rights. *Michelle G.*, 217 Ariz. at 344, ¶ 15, 173 P.3d at 1045 (noting "the courts cannot save the victim from the county attorney's negligence" in failing to timely assert a victim's restitution claim). The victim may be eligible to recover damages for any negligence. *Id.*; A.R.S. § 8-416(B).

CONCLUSION

¶15 For the foregoing reasons, we vacate the court's order

entered July 29, 2011, to the extent it awards restitution against Daniel.

/s/

Ann A. Scott Timmer, Judge

CONCURRING:

/s/

Patricia K. Norris, Presiding Judge

/s/

Margaret H. Downie, Judge