

IN THE COURT OF APPEALS OF IOWA

No. 1-504 / 10-2017
Filed July 13, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES EDWARD ROSS,
Defendant-Appellant.

Appeal from the Iowa District Court for Dallas County, Thomas A. Renda,
Judge.

Defendant appeals claiming he should not be required to pay restitution
after his underlying sentence has been discharged. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, David Arthur Adams, Assistant
Appellate Defender, and Nnawuihe Ukabiala, Student Intern, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney
General, Wayne Reisetter, County Attorney, and Sean Wieser, Assistant County
Attorney, for appellee.

Considered by Vogel, P.J., Vaitheswaran, J., and Miller, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

MILLER, S.J.**I. Background Facts & Proceedings**

Charles Ross entered a guilty plea to the offenses of theft in the third degree and criminal trespass. On November 3, 2000, he was sentenced to terms of imprisonment of not more than two years on the theft charge and 365 days on the criminal trespass charge, to be served concurrently.¹ Ross was ordered to pay restitution in an amount “to be determined.” The sentencing order provided, “Department of Corrections to arrange payment plan.”

On December 15, 2000, the State filed a statement of pecuniary damages to the victim, showing a total of \$1158.68. The court entered a plan of restitution as a supplemental order on January 4, 2001, ordering Ross to make restitution of \$1158.68 in pecuniary damages, \$325 in fine and surcharge, \$30 in court costs, and \$473.29 in attorney fees, for a total of \$1986.97.

On January 22, 2001, the Iowa Department of Corrections (IDOC) filed a January 10, 2001 restitution plan of payment showing Ross was required to pay the sum of \$1986.97 by periodic payments of twenty percent of all credits to his institutional account. A subsequent restitution plan of payment, dated August 23, 2002 and filed by the IDOC, August 26, 2002, showed Ross owed a total of \$2016.49.² A third restitution plan of payment, dated August 31, 2005, and filed

¹ Defendant’s sentences in the present case were also made concurrent to his sentence in another case that is not the subject of this appeal.

² On January 23, 2001, the Dallas County Sheriff had filed a statement that eighty-eight dollars had been spent on behalf of Ross to serve a copy of an order to transport. In the August 26, 2002 document, the amount purportedly due had been increased by eighty-eight dollars and decreased by the amount he had already paid.

by the IDOC on September 14, 2005, showed Ross owed a total of \$1995.56.³ Similarly to the first restitution plan of payment, the second and third ones provided for periodic payments of twenty percent of all credits to Ross's institutional account.

On February 22, 2006, Ross filed a request for a restitution hearing pursuant to Iowa Code section 910.7 (2005), claiming he had discharged his underlying sentences, and the IDOC did not have the ability to collect further restitution payments. On March 30, 2006, the district court ordered, "The Court finds that there is no basis for review alleged on the face of the complaint; same is hereby dismissed." Ross filed another request for a restitution hearing on May 1, 2006, raising similar claims. The court entered an order on May 2, 2006, finding "Defendant is not entitled to another hearing on the same issue."

Ross filed a third request for a restitution hearing on September 22, 2010, claiming the "restitution plan was not properly computed by the State and the total amounts due and owing are inaccurate and not justified; concerning judgments no court action has been made to extend the time frame for continued collection of said restitution." The State resisted the motion, asserting the issues of restitution had already been determined by the court. The district court denied Ross's motion, finding "restitution has previously been determined." The court concluded it was unwilling to alter the previous order. Ross appealed this order of the court.

³ The amount shown due in the September 14, 2005 document also included the eighty-eight dollars discussed above, and had been decreased by additional payments made by Ross.

II. Standard of Review

We review restitution orders for the correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). We determine whether the court's findings of fact are supported by substantial evidence and whether the court properly applied the law. *State v. Paxton*, 674 N.W.2d 106, 108 (Iowa 2004).

III. Merits

A. Ross claims a plan of restitution authorized as a criminal sanction cannot be modified after a defendant has discharged his sentence. He states that he discharged his sentence in January 2002.⁴ The second and third restitution plans of payment were filed on August 26, 2002, and on September 14, 2005, respectively, after that date. These documents purported to show that Ross owed an additional eighty-eight dollars beyond the amount ordered by the district court. Ross claims the IDOC could not increase the amount of restitution he was required to pay after he discharged his sentence.

There is only one plan of restitution in the record, filed on January 4, 2001, and ordering Ross to pay \$1986.97. This plan of restitution has never been modified. Furthermore, the plan of restitution was entered before Ross discharged either of his sentences. The record does not support a contention that the plan of restitution was modified after Ross discharged either of his sentences.

⁴ Ross discharged his sentence for criminal trespass on January 13, 2001. There is no specific evidence in the record showing when Ross discharged his sentence for third-degree theft. Since he was sentenced to a term of not more than two years on November 3, 2000, and the presentencing order gave credit for 113 days already served, his sentence would have been completed, at the latest, by July 13, 2002.

The IDOC filed revised restitution plans of payment on August 26, 2002, and September 14, 2005. The district court did not act on any change in the *amount* of restitution suggested by these plans of payment. Relevant statutes provide that the court sets and modifies the *amount* of restitution. See Iowa Code § 910.2 (2009) (“In all criminal cases . . . the sentencing court shall order that restitution be made”); *id.* § 910.3 (“[T]he court shall set out the amount of restitution”).

After a petition has been filed, the court, at any time prior to the expiration of the offender’s sentence, . . . may modify the *plan of restitution* or the restitution plan of payment, or both, and may extend the period of time for the completion of restitution.

Id. § 910.7(2) (emphasis added).

Thus, it is clear a modification to increase the *amount* of restitution ordered in a plan of restitution, or provided for in a resulting restitution plan of payment, must be made by the court.⁵ Iowa Code § 910.7(2). Because the district court has never modified the amount of restitution ordered in its plan of restitution, any increase in amount suggested by subsequent restitution plans of payment filed by the IDOC was without effect. The facts do not support Ross’s assertion, implicit in the issue he states, that the amount of restitution ordered by the district court’s plan of restitution was modified after he discharged any underlying sentences. In fact, the record does not reflect any modification in the

⁵ We note that section 910.5(1)(d) provides that the director of the IDOC, or a designee, “shall prepare a *restitution plan of payment* or modify any existing *plan of payment*.” (Emphasis added.) These modifications, however, concern “the offender’s income, physical and mental health, education, employment, and family circumstances.” Iowa Code § 910.5(1)(d)(1). Thus, this statute permits modification of a *restitution plan of payment* based on a defendant’s ability to pay. *Id.*

amount of restitution ordered by the district court, whether before or after any discharge of Ross's sentences.

B. Ross also claims that restitution ordered as a criminal sanction cannot be collected by the IDOC after a defendant has discharged the sentence that includes the order for restitution. He contends the IDOC does not have the ability to collect restitution, even if he remains incarcerated for a different offense, and complains that payments continue to be deducted from his institutional account. Ross asserts that after he discharged his sentences for criminal trespass and theft the restitution order was enforceable only through civil proceedings or contempt proceedings.

Ross relies upon *State v. Chase*, 451 N.W.2d 493, 495 (Iowa 1990), which stated, "We conclude that the legislature intended for restitution, as a criminal sanction, to occur only during authorized maximum probation. After that the obligations between the criminal and the victim are left for resolution by the civil courts." See also *Speer v. Blumer*, 483 N.W.2d 599, 601 (Iowa 1992) (citing *Chase*, 451 N.W.2d at 495) (noting that when a defendant was discharged from probation, the restitution order for that offense was no longer effective).

In 1992, after *Chase* was decided, the legislature amended chapter 910 to create section 910.7A. See 1992 Iowa Acts ch. 1242, § 37. Section 910.7A provides:

1. An order requiring an offender to pay restitution constitutes a judgment and lien against all property of a liable defendant for the amount the defendant is obligated to pay under the order and may be recorded in any office for the filing of liens against real or personal property.

2. A judgment of restitution may be enforced by the state, a victim entitled under the order to receive restitution, a deceased victim's estate, or any other beneficiary of the judgment in the same manner as a civil judgment.

Under this amendment, the restitution order became a judgment which the State may enforce after a defendant's sentence is discharged "in the same manner as a civil judgment." Iowa Code § 910.7A. We conclude that due to the passage of section 910.7A, *Chase* is not applicable in this case.

More recently, the Iowa Supreme Court has stated, "section 910.5 neither directly, indirectly or by implication suggests that restitution can only be enforced when an offender is serving the sentence on convictions for which restitution was ordered."⁶ *State v. Ashburn*, 534 N.W.2d 106, 108 (Iowa 1995). The court also stated, "Nothing in the language of this section or any other section in chapter 910 connects the obligation to pay restitution to the sentence being served." *Id.* It is clear the IDOC may collect restitution from Ross even though he is no longer serving the sentence for which restitution was ordered.

After considering the claims raised by Ross, we affirm the decision of the district court.

AFFIRMED.

⁶ As noted above, section 910.5(1) provides the director of the IDOC, or a designee, "shall prepare a restitution plan of payment or modify any existing plan of payment."