IN THE COURT OF APPEALS OF IOWA

No. 1-655 / 10-0790
Filed September 21, 2011

STATE OF IOWA,
Plaintiff-Appellee,

vs.

BRIAN EDWARD REYNOLDS,
Defendant-Appellant.

Appeal from the Iowa District Court for Muscatine County, Paul Macek (order denying hearing) and Nancy S. Tabor (ruling on restitution motion), Judges.

Brian Reynolds appeals from the ruling on his motion concerning restitution. **AFFIRMED.**

Lori J. Kieffer-Garrison, Rock Island, Illinois, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout and Susan Krisko, Assistant Attorneys General, and Alan Ostergren, County Attorney, for appellant.

Considered by Sackett, C.J., and Vaitheswaran and Doyle, JJ. Tabor, J., takes no part.

SACKETT, C.J.

Brian Reynolds appeals from the district court ruling on his "motion to stay/suspend and challenge restitution." He contends the court "erred in ordering restitution without a full hearing." We affirm.

Background. After a jury trial, Brian Reynolds was convicted of theft and four counts of forgery in January of 2009. The last page of the presentence investigation discussed restitution. At sentencing in March, the court ordered restitution "for the monies that you stole, and for court-appointed attorney fees and the costs of this matter." The "restitution plan and order," including $16,450 to the victim bank, was filed the same day as the calendar entry from the sentencing. Reynolds appealed his convictions, but did not appeal from the order for restitution. In September, while the appeal was pending, Reynolds filed a pro se "motion to stay restitution and request for hearing to challenge amount." The court denied the motion "without prejudice" in an order dated October 8, but filed in early December. The court, citing Iowa Code section 910.7(1) (2009), stated, "On the face of this petition there is no specification of any kind as to why the petition would warrant a hearing." Reynolds did not appeal from that ruling.

On December 28, Reynolds filed a pro se "motion to stay/suspend and challenge restitution." He also filed a separate motion for bond review. At a February 2, 2010 hearing on the motions, Reynolds requested an attorney. The court continued the hearing and appointed an attorney to represent Reynolds. In March, this court upheld Reynolds's convictions. *See State v. Reynolds*, No. 09-0416 (Iowa Ct. App. Mar. 10, 2010). He sought further review. On April 7 the

attorney appointed for Reynolds filed a "motion to set for hearing" seeking a hearing on the two pending motions. That same day the district court set the motions for hearing on April 21. On April 21 the district court, following "contested oral argument," granted the motion to reduce Reynolds's appeal bond and stayed the restitution plan pending resolution of the appeal. On May 11, the supreme court denied further review of this court's decision. That same day, Reynolds filed this appeal "from the ruling on motion to reduce bond and stay restitution plan."

Scope and Standards of Review. We review district court rulings on restitution orders for correction of errors at law. *State v. Klawonn*, 688 N.W.2d 271, 274 (Iowa 2004). Iowa Code section 910.7 grants the district court discretion in determining whether a hearing on a restitution challenge should be held, so our review is for an abuse of discretion. *State v. Blank*, 570 N.W.2d 924, 926 (Iowa 1997).

Merits. The April 21, 2010 "ruling on motion to reduce bond and stay restitution plan" relates to his pro se motion "to stay/suspend and challenge restitution," and his separate motion to reduce bond. In his motion concerning restitution, Reynolds claimed the court should suspend restitution pending the appeal process because he would be wrongfully deprived of funds if the convictions were reversed. He also claimed,

> the total amount of restitution is incorrect as the vehicle that was paid off to Central State Bank was taken back and sold by the bank to a citizen and the money from that should have been applied to the restitution.

He asked the court (1) to set a hearing, (2) to suspend restitution pending the appeal, and (3) to "order adjustment of the total amount to reflect the amount obtained for resale of the vehicle."

Although Reynolds argues he "has had no opportunity to contest this plan of restitution," the record before us shows the court set his motions for hearing and that his motions came on for contested oral arguments on April 21.[1] The district court's ruling briefly recites what the defendant and the State argued at the hearing. The court's recitation of the parties' arguments relates solely to the bond review issue. There is no mention of any argument concerning modifying the amount of restitution ordered. The court ordered the appeal bond reduced from $20,000 to $15,000. It further ordered "that the implementation of the restitution plan is stayed pending the outcome of the Iowa Supreme Court decision in this matter." The district court did not address Reynolds's request to adjust the amount of restitution "to reflect the amount obtained for resale of the vehicle." We conclude the issue of the amount of restitution is not preserved for our review. To the extent the court granted the relief Reynolds requested in his motions, there is no adverse ruling from which to appeal. *See* Iowa Code § 814.6.

AFFIRMED.

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[1] The docket does not show the April 21 hearing was reported and there is no transcript of the hearing in the file. Reynolds has not filed a "statement of the evidence or proceedings" approved by the district court. *See* Iowa R. App. P. 6.806 (setting forth procedures when proceedings are not reported or a transcript is unavailable). Where there is not a proper record on appeal, there is nothing for us to review. *Alvarez v. IBP, Inc.*, 696 N.W.2d 1, 3 (Iowa 2005). In this situation we must affirm. *Id.* at 4.