

IN THE COURT OF APPEALS OF IOWA

No. 6-750 / 06-0265
Filed October 11 ,2006

STATE OF IOWA,
Plaintiff-Appellee,

vs.

JERRY WAYNE CUNNINGHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Hamilton County, Steve J. Oeth,
District Associate Judge.

Jerry Wayne Cunningham appeals from the district court's restitution
order. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Dennis Hendrickson,
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha Boesen, Assistant Attorney
General, and Patrick Chambers, County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Zimmer, JJ.

HUITINK, P.J.

On January 12, 2005, the trial court accepted Cunningham's guilty plea to one count of attempted burglary. Cunningham waived his right to file a motion in arrest of judgment, and the court immediately sentenced him to a two-year term of confinement and fined him \$500 plus applicable surcharge and court costs. The State filed a statement of the victim's pecuniary damages on December 20, 2005. On February 7, 2006, the trial court entered a ruling rejecting Cunningham's challenge to the amount of restitution claimed and ordered Cunningham to pay \$7175.50 restitution.

On appeal, Cunningham argues:

I. The trial court erred in imposing \$7175.50 in restitution more than one year following the criminal judgment based upon a statement of pecuniary damages filed more than eleven months following the judgment.

We review the trial court's restitution order for errors of law. *State v. Bradley*, 637 N.W.2d 206, 210 (Iowa Ct. App. 2001).

Iowa Code section 910.3 provides:

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time of the clerk of court. The statement shall be provided no later than thirty days after sentencing.

"If the victim's damages continue to accrue at the time of sentencing, the court may defer the determination of a victim's total entitlement until a later date." *Id.*

"The main objective of the restitution statute is two-fold: to protect the public and to rehabilitate the defendant." *State v. Blakely*, 534 N.W.2d 645, 648 (Iowa 1995). The State's failure to comply with the thirty-day requirement does not bar

restitution. See *id.*; *State v. Blakely*, 555 N.W.2d 221, 222 (Iowa 1996). The State is nevertheless obliged “to promptly furnish the court, and the defendant, a statement of pecuniary damages” *Blakely*, 555 N.W.2d at 222.

We must weigh the prejudice suffered by the defendant when the State does not comply with the thirty-day deadline. *Id.* Cunningham makes no claim that he was prejudiced by the State’s delayed filing of the statement of victim damages. In the absence of any proof Cunningham was prejudiced, his challenge to the trial court’s restitution order fails. Cunningham’s belated challenge to the trial court’s authority to enter a restitution order after the discharge of his sentence also fails, because that argument was not raised until he filed a reply brief on appeal. See *Sun Valley Iowa Lakes Ass’n v. Anderson*, 551 N.W.2d 621, 642 (Iowa 1996).

AFFIRMED.