

IN THE COURT OF APPEALS OF IOWA

No. 7-952 / 07-0306
Filed January 16, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CHARLES EDWARD GRAHAM,
Defendant-Appellant.

Appeal from the Iowa District Court for Polk County, Eliza J. Ovrom,
Judge.

Charles Graham appeals the district court's order requiring him to pay
restitution to the West Des Moines Police Department. **AFFIRMED.**

Cathleen J. Siebrecht of Siebrecht Law Firm, Des Moines, for appellant.

Thomas J. Miller, Attorney General, Elisabeth S. Reynoldson, Assistant
Attorney General, John P. Sarcone, County Attorney, and Steve Foritano,
Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Miller and Eisenhauer, JJ.

EISENHAUER, J.

Charles Graham stole money from the West Des Moines Police Department evidence room and in January 2006, he pled guilty to theft in the first degree in violation of Iowa Code sections 714.1 and 714.2(1) (2005). At his March 2006 sentencing, Graham was ordered to meet with representatives of the West Des Moines police department through Polk County's Victim Offender Reconciliation Program (VORP) for the purpose of establishing the amount of restitution. The VORP session, with a mediator present, took place on April 5, 2006, and resulted in a handwritten victim-defendant agreement signed by both Graham and two West Des Moines police officers stating in part: "[Graham] agrees to make restitution for the cost of the audit and investigation (\$96,404.37). [Graham] would like an opportunity to review the records before agreeing to the \$49,089.43 property loss." The agreement was also signed by a witness and an assistant Polk County attorney.

On April 13, 2006, the county attorney filed a motion to amend sentence to include restitution with an amended and substituted VORP report stating Graham "DID complete a successful VORP session and an agreement and/or restitution plan was reached. Restitution \$96,404.37. The defendant DID attend a VORP session but was UNABLE to successfully complete the process. Restitution \$48,913.07." On the same day, the State's motion was granted and the court entered orders requiring Graham to pay \$96,404.37 and \$48,913.07. One month later, Graham disputed the amount of restitution and requested a hearing, which was held on January 17, 2007.

On January 18, 2007, the court ruled “the VORP agreement was a voluntary settlement agreement, and is enforceable. The State has met its burden of proof concerning the restitution order for \$96,404.37.” Because the police department had received an insurance payment covering the property loss, the court removed the property-loss restitution of \$48,913.07. See Iowa Code § 910.1(3) (insurance offset).

Graham appeals arguing the district court erred in allowing the victim-defendant agreement into evidence at the restitution hearing over his hearsay objection. The standard of review for the admission of hearsay testimony is for errors of law. *State v. Long*, 628 N.W.2d 440, 447 (Iowa 2001). Graham’s argument is without merit, however, because the Iowa Rules of Evidence are inapplicable to criminal sentencing proceedings. See Iowa R. Evid. 5.1101(c)(4). The court did not err in considering the evidence.

Graham also argues the trial court erred in enforcing the victim-defender agreement because (1) he was under duress and not represented by counsel at the mediation session; and (2) the amount was unreasonable and was not causally connected to his criminal act.

Settlement agreements are essentially contracts. *Rick v. Sprague*, 706 N.W.2d 717, 723 (Iowa 2005). Therefore, approval of a settlement agreement is a law action and our standard of review is for errors at law. Iowa R. App. P. 6.4. We note Graham was present at the hearing on his motion contesting the restitution order, but offered no evidence the agreement was entered into involuntarily or as a result of duress. Although Graham’s attorney argued the agreement should not be enforced because Graham did not have an attorney at

the mediation session, the court rejected this claim: “[T]here was no evidence or suggestion that he was coerced into signing the agreement to repay \$96,404. In fact, he refused to pay a separate disputed amount of damages.” We find no error and agree with the district court’s analysis.

Courts have the authority to enforce settlement agreements when the facts are not in dispute. *Wende v. Orv Rocker Ford Lincoln Mercury, Inc.*, 530 N.W.2d 92, 94 (Iowa Ct. App. 1995). It is undisputed Graham agreed to pay \$96,404 in restitution. The trial court found he voluntarily agreed to the amount and this finding is supported by substantial evidence. Because Graham voluntarily signed the victim-defendant agreement, we will not consider Graham’s collateral claim the amount was unreasonable and not causally connected to his criminal act. We conclude the trial court correctly enforced Graham’s settlement agreement and we find no error in the restitution order.

AFFIRMED.