

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER KEITH HALL,

Defendant-Appellant.

UNPUBLISHED

September 29, 2009

No. 287862

Iosco Circuit Court

LC No. 07-003825-FH

Before: Murray, P.J., and Markey and Borrello, JJ.

MEMORANDUM.

Defendant pleaded guilty to a charge of fraudulent use of a building contract fund. MCL 570.152. He was sentenced to eleven months in jail and was ordered to pay restitution in the amount of \$327,127. This Court granted defendant's delayed application for leave to appeal, which raised an issue about part of the interest contained in the restitution order. We vacate in part and remand for further proceedings.

Defendant misappropriated monies given to him to build an enclosed pool for complainant. Defendant completed approximately 25 percent of the project, necessitating that complainant secure a loan to finish it. At the plea hearing, defendant agreed to pay *a minimum* of \$193,459.92 in restitution. At sentencing, complainant sought an additional \$22,068.00 for attorney fees, \$11,600.00 for lost work, and "bank interest" that "was going to be an extra \$100,000." The sentencing court awarded these additional expenses for a total restitution amount of \$327,127.

Defendant argues that \$100,000 was improperly awarded as interest because it included not only interest incurred to the date of sentencing, but future interest.¹ In *People v Law*, 459 Mich 419, 424; 591 NW2d 20 (1999), our Supreme Court held that, "because a monetary loss includes the use value of money, i.e., interest, [MCL 780.767(1)'s] focus on 'the loss sustained by any victim' indicates that interest is a legitimate element of monetary restitution under the [Crime Victim's Rights Act, MCL 780.751 *et seq* ("CVRA")]." However, the *Law* Court subsequently clarified:

¹ Defendant does not contest the inclusion of attorney fees and lost work in the restitution amount.

Having determined that interest is allowed under the CVRA, the question becomes how to properly calculate the restitution amount to include the appropriate amount of interest. To be clear, *it must be understood that under the approach we have just discussed and adopted foregone interest is one aspect of the victim's actual loss* and the court must first determine it and add it to the underlying amount to establish the corpus, or principal, of the restitution. [*Id.* at 428 (emphasis supplied).]

We also note that the statute speaks of “the loss *sustained* by any victim” MCL 780.767(1). Having used the past tense, the statute allows only for losses sustained up to the time when restitution is ordered.

We conclude that the trial court erred in prematurely awarding future interest where this loss had not yet been sustained. However, MCL 780.766(22) provides that a court can amend a restitution order based on new information pertaining to, *inter alia*, loss. Thus, we remand for a determination of the amount of interest that complainant has paid to date and direct that only this amount be included in the restitution order without prejudice to complainant returning at a later date to request restitution for additional losses.

We vacate that portion of the judgment awarding future interest, and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Christopher M. Murray

/s/ Jane E. Markey

/s/ Stephen L. Borrello