

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANCES CAROL SIRACKI,

Defendant-Appellant.

UNPUBLISHED

October 19, 2010

No. 293204

Oakland Circuit Court

LC No. 08-224142-FH

Before: FORT HOOD, P.J., and JANSEN and WHITBECK, JJ.

PER CURIAM.

Defendant Frances Siracki appeals by leave granted the validity and terms of a plea agreement made with the prosecution. Pursuant to this agreement, she pleaded guilty to the charge of failure to return rental property with a value greater than \$1,000 but less than \$20,000.¹ The trial court delayed Siracki's sentence for eleven months and directed her to comply with certain conditions, including the payment of \$4,522.45 in restitution. We affirm. We have decided this appeal without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS

Siracki failed to return a rental vehicle to Alamo/National Car Rental by the January 17, 2008 due date. The police arrested her on November 18, 2008, and she was ultimately charged with failure to return rental property valued at greater than \$1,000 but less than \$20,000.²

Siracki accepted a plea agreement from the prosecutor. The agreement provided that she would plead guilty to the charged offense but that sentencing would be delayed for eleven months. During the interim period, Siracki was to pay \$3,615.73 in restitution and otherwise comply with probation requirements. The \$3,615.73 amount reflected the lost rental value of the vehicle during the time that Siracki possessed it. According to the agreement, if she fulfilled the conditions, the prosecution would allow her to withdraw her plea to the original charge. Her

¹ MCL 750.362a(3)(a).

² MCL 750.362a(3)(a).

charge would then be lowered to a misdemeanor charge of failure to return rental property with a value greater than \$200 but less than \$1,000.³

At the pretrial hearing, all parties agreed to the terms of the plea agreement. Siracki stated that she fully understood the terms of the agreement. However, at sentencing, she objected when the trial court set the amount of restitution at \$4,522.45. This higher amount reflected an additional \$906.72 for the cost of damages and repairs to the vehicle. Siracki objected, requesting that restitution be set at the \$3,615.73 value placed on the record at her plea hearing. She argued that the prosecution had represented the \$3,615.73 amount as the entire amount of restitution. The prosecutor asserted that there was no promise or representation that \$3,615.73 would be the full and total amount of restitution. The prosecutor explained that \$3,615.73 was merely for the lost rental value of the vehicle. He emphasized that the additional \$906.72 was for damage and repairs to the vehicle. The prosecutor therefore requested that restitution be set at the greater amount of \$4,522.45. However, he noted that, as agreed, the felony charge would be reduced to the misdemeanor offense when Siracki paid the \$3,615.73.

The trial court determined that the restitution amount had been properly verified at \$4,522.45. The trial court placed Siracki on a delayed sentence in accordance with the plea agreement and ordered her to pay \$4,522.45 in restitution. Siracki now appeals.

II. CHALLENGE TO PLEA AGREEMENT

A. STANDARD OF REVIEW

Siracki contends that the trial court's order requiring her to pay \$4,522.45 in restitution is contrary to the plea agreement, entitling her to withdraw her plea. Alternatively, Siracki requests that this Court amend the judgment of her sentence to lower the required payment to \$3,615.73 in restitution.

This Court generally reviews an order of restitution for an abuse of discretion.⁴ However, while Siracki objected to the \$4,522.45 amount, she did not move to withdraw her plea in the trial court. A defendant who makes a plea agreement may not raise an issue on appeal for withdrawal of the plea if he or she did not make a motion to withdraw at the trial court.⁵ Therefore, to the extent that Siracki argues that she is entitled to withdraw her plea, she has waived appellate review of this issue.⁶ Accordingly, we limit our analysis to consideration of Siracki's argument that the restitution amount should be amended.

³ MCL 750.362a(4)(a).

⁴ *People v Dimoski*, 286 Mich App 474, 476; 780 NW2d 896 (2009), citing *People v Cross*, 281 Mich App 737, 739; 760 NW2d 314 (2008).

⁵ MCR 6.310(D); *People v Kaczorowski*, 190 Mich App 165, 172-173; 475 NW2d 861 (1991).

⁶ *Kaczorowski*, 190 Mich App at 173.

B. ANALYSIS

We deny Siracki's request to lower the amount of restitution to \$3,615.73. Section 16 of the Crime Victim's Rights Act (CVRA) governs the imposition of restitution on criminal defendants.⁷ The CVRA states, "Victims are entitled to full restitution for their losses."⁸ The CVRA also instructs that if a court imposes only partial restitution, it must state the reasons for doing so on the record.⁹ Moreover, a trial court has the discretion to change the sentence to what appears appropriate for the charge.¹⁰ Here, the prosecution promised Siracki that the felony offense would be replaced with a misdemeanor charge upon payment of \$3,615.73. At no point did the prosecution promise that the full amount of restitution would be limited to that amount. Therefore, the amount that the trial court ordered Siracki to pay was not inconsistent with the plea agreement placed on the record. Indeed, it was consistent with the intent of the CVRA because it amounted to Alamo/National Car Rental's entire loss suffered. Accordingly, we conclude that the trial court did not abuse its discretion in ordering Siracki to pay \$4,522.45 as restitution.

Affirmed.

/s/ Karen Fort Hood
/s/ Kathleen Jansen
/s/ William C. Whitbeck

⁷ MCL 780.766.

⁸ *People v Grant*, 455 Mich 221, 240; 565 NW2d 389 (1997).

⁹ *Id.*

¹⁰ *People v Cobbs*, 443 Mich 276, 283; 505 NW2d 208 (1993).