

FILED: November 2, 2011

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

CLAYTON FREDRICK LANDRETH,
Defendant-Appellant.

Malheur County Circuit Court
09032079C

A143055

J. Burdette Pratt, Judge.

Submitted on May 25, 2011.

Peter Gartlan, Chief Defender, and Elizabeth Corbridge Ranweiler, Deputy Public Defender, Office of Public Defense Services, filed the brief for appellant.

John R. Kroger, Attorney General, Mary H. Williams, Solicitor General, and Jamie K. Contreras, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Rosenblum, Senior Judge.

ROSENBLUM, S. J.

Affirmed.

1 ROSENBLUM, S. J.

2 Defendant was convicted of unauthorized use of a vehicle, ORS 164.135,
3 and, as part of his sentence, was required to pay \$1,196.49 in restitution. On appeal,
4 defendant asserts that the trial court erred in imposing restitution because, pursuant to
5 ORS 137.106(1)(b), the court was required to determine restitution within 90 days of
6 entry of the judgment of conviction and lacked "good cause" to extend the time beyond
7 90 days. In this case, the court held the restitution hearing 98 days after the entry of the
8 judgment of conviction. Defendant also makes several other arguments concerning the
9 imposition of restitution; we reject those arguments without discussion. As explained
10 below, we conclude that the trial court properly extended the time beyond 90 days for
11 "good cause." Consequently, we affirm.

12 The pertinent facts are procedural and not in dispute. Defendant pleaded
13 guilty to the charge, and a judgment of conviction was entered on April 20, 2009. At that
14 time, the parties and the court discussed the fact that, although the parties had attempted
15 to reach an agreement on the amount of restitution, they had not, and a restitution hearing
16 would be needed. The court indicated that it would be set within 90 days. On July 8,
17 2009, the prosecutor filed a motion for an amended judgment imposing restitution,
18 indicating that the victim would testify to the amount of economic damages incurred.
19 The trial court held a hearing on the motion on July 27, which was continued to August
20 3.¹ After the hearing was completed, the court entered the amended judgment imposing

¹ Defendant's challenge is to the date on which the hearing began. He does not argue that the court's continuation of the hearing until August 3 (to give defendant time to

1 restitution.

2 At the beginning of the hearing on July 27, defendant argued that, because
3 the hearing was on the 98th day after judgment had been entered, no restitution should be
4 imposed. The prosecutor responded that the court had authority to extend the 90-day
5 timeline set forth in ORS 137.106(1)(b) for "good cause," and further stated that the
6 motion had not been filed earlier because the victim had been recently diagnosed with
7 Parkinson's Disease, had been undergoing treatment, and had been hospitalized, and that
8 the motion for the amended judgment had been filed in July because "it was just a matter
9 of getting together with [the victim] and completing this restitution investigation." The
10 court concluded that "good cause" had been shown for determining restitution beyond the
11 90th day, noted that the hearing had been set for July 27 "because of scheduling with the
12 court," and proceeded to take evidence on the matter.

13 On appeal, defendant makes what we understand to be two arguments
14 relating to ORS 137.106(1). First, defendant appears to be asserting that, under the
15 statute, the court had no authority to even consider the matter of restitution after the 90th
16 day beyond the date of the judgment because the court had not, at that point, made a
17 determination of "good cause" to permit the issue to be decided after 90 days. We find
18 no support for defendant's argument in the text of the statute.

19 We review the trial court's determination of "good cause" for errors of law.
20 [*State v. Biscotti*](#), 219 Or App 296, 299, 182 P3d 269 (2008). ORS 137.106(1) provides,

subpoena witnesses) was impermissible under the statute.

1 in part:

2 "When a person is convicted of a crime * * * that has resulted in
3 economic damages, the district attorney shall investigate and present to the
4 court, prior to the time of sentencing, evidence of the nature and amount of
5 the damages. If the court finds from the evidence presented that a victim
6 suffered economic damages, in addition to any other sanction it may
7 impose, the court shall include one of the following in the judgment:

8 * * * * *

9 "(b) A requirement that the defendant pay the victim restitution, and
10 that the specific amount of restitution will be established by a supplemental
11 judgment based upon a determination made by the court within 90 days of
12 entry of the judgment. In the supplemental judgment, the court shall
13 establish a specific amount of restitution that equals the full amount of the
14 victim's economic damages as determined by the court. The court may
15 extend the time within which the determination and supplemental judgment
16 may be completed for good cause."

17 Defendant suggests that the prosecutor was required to file a written motion
18 seeking a "good cause" determination, or that the court was required to make such a
19 determination, within 90 days of entry of the judgment of conviction. Nothing in the text
20 or context of the statute imposes either such requirement. *See* ORS 174.010 (in
21 construing a statute, the court is not to insert what has been omitted).

22 Defendant next argues that the record does not support the court's
23 determination that there was "good cause" for extending beyond 90 days the time for
24 imposing restitution. Defendant posits that delay due to "scheduling with the court" does
25 not constitute "good cause," citing as persuasive authority cases construing other statutes
26 that contain "good cause" requirements for extending deadlines. We do not reach that
27 argument because we do not understand the court in this case to have based its good
28 cause determination on its own scheduling needs. Rather, immediately after the

1 prosecutor described the victim's illness, the trial court stated, "Okay, I'm going to find
2 that there's a good cause to extend the time." The court subsequently remarked that the
3 prosecutor's motion was filed within the 90 days and that the hearing was set when it was
4 due to "scheduling with the court." In context, we understand the court's statements to
5 mean that the prosecutor had "good cause" to file the motion in early July--more than two
6 months into the 90-day period--due to the victim's illness and that, in that circumstance,
7 there was good cause to hold the restitution hearing outside of the 90-day period.²

8 Defendant makes several arguments in support of his position that the delay
9 in this case was due to "prosecutorial inadvertence or neglect." *Biscotti*, 219 Or App at
10 301. First, defendant notes that the amount requested by the prosecutor in the July
11 motion was, in fact, the same amount that the prosecutor had stated would be sought at
12 the April hearing. From that, we understand defendant to be suggesting that the
13 prosecutor did not need any time after the April hearing to determine the proper amount
14 of restitution. Knowing the amount of restitution that the victim wants, however, is not
15 the same as having the proof necessary to establish that the victim is entitled to that
16 amount in economic damages. As noted above, we understand the prosecutor's
17 statements on that matter to indicate that further investigation of the amount of economic
18 damages was required, and that there were some difficulties in concluding that
19 investigation because the victim was in poor health. Particularly in light of the fact that
20 the investigation was completed before the 90-day deadline, we conclude that the timing

² In support of this conclusion, we note, in particular, that the time between when the prosecutor filed the motion and the court held a hearing on it was not unusually long.

1 of the prosecutor's motion was not due to "inadvertence or neglect."

2 Defendant further asserts that the prosecutor was inattentive to the
3 approaching 90-day deadline and that "inattentiveness" is not good cause. In making that
4 assertion, defendant relies on *Biscotti* and on our decision in [State v. Murrell](#), 242 Or App
5 178, 255 P3d 574 (2011). In *Biscotti*, however, the 90-day deadline was not met because
6 the prosecutor "lost track of the file," and "the case did not get placed in the 'pile of
7 pending matters' and ended up being ignored" until well past the 90-day deadline. 219 Or
8 App at 298. Similarly, in *Murrell*, shortly after the judgment of conviction was entered,
9 the prosecutor who had handled the case left the district attorney's office, and the case
10 was ignored until the 90th day, when a staff member "happened to notice the file on a
11 coworker's desk," and, as a result, a motion for a supplemental judgment was sought on
12 the 90th day. 242 Or App at 180-81. There, the state conceded that the case had "fall[en]
13 through the cracks," because the prosecutor who had been handling it had left the office.
14 *Id.* at 181. In those circumstances, we concluded that the prosecutorial inattentiveness
15 did not constitute "good cause" for extending the 90-day deadline.

16 Here, by contrast, there is no suggestion that the case was inadvertently
17 neglected by the prosecutor handling it. Rather, the motion was filed more toward the
18 end of the 90-day period due to the victim's circumstances. Unlike *Murrell*, the motion
19 was not filed at the very last minute or, indeed, after the 90 days had passed, as was the
20 case in *Biscotti*. Rather, the motion was filed slightly more than two-thirds of the way
21 through the period, and the hearing was held a few days after the 90-day deadline had
22 passed. In these circumstances, and in light of the prosecutor's explanation of the victim's

1 illness, we conclude that the trial court correctly concluded that there was "good cause" to
2 determine restitution past the 90th day.

3 Affirmed.