IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,	No. 50337-9-II
Respondent,	
v.	
ADONIS LYNNARD BROWN,	UNPUBLISHED OPINION
Appellant.	

MAXA, C.J. – Adonis Brown appeals the trial court's restitution order awarding the

Department of Labor and Industries (DLI) reimbursement for benefits paid under the crime

victims' compensation program under RCW 9.94A.753(7). Brown claims that the restitution

order must be stricken because the terms of his plea agreement and his judgment and sentence

misled him into believing that only the prosecutor and not DLI could request restitution.

We decline to consider Brown's argument because he did not make it in the trial court

and Brown cannot show a manifest error. Accordingly, we affirm the trial court's restitution

order.

FACTS

On February 26, 2016, Brown pleaded guilty to second degree manslaughter with a

firearm enhancement and first degree unlawful possession of a firearm. His plea agreement

provided the following regarding restitution:

> If this crime resulted in injury to any person or damage to or loss of property, the judge will order me to make restitution, unless extraordinary circumstances exist which make restitution inappropriate. The amount of restitution may be up to double my gain or double the victim's loss.

Clerk's Papers (CP) at 47. In addition, the agreement provided that the prosecuting attorney would recommend "[r]estitution if any by later order o[f] the court." CP at 49.

The trial court accepted the plea agreement and entered a judgment and sentence, which stated: "The above total does not include all restitution which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.753. A restitution hearing: shall be set by the prosecutor." CP at 64. Brown waived his right to be present at the restitution hearing.

The prosecutor scheduled a restitution hearing for January 9, 2017. But because restitution was not determined within 180 days after the sentencing hearing as required in RCW 9.94A.753(1), the trial court denied the requested restitution.

On February 10, 2017, DLI petitioned under RCW 9.94A.753(7) for an order of restitution in the amount of $5,750, the amount of benefits it had paid from the crime victims' compensation fund for the victim's burial expenses. Brown objected to this restitution request on two grounds. He argued that (1) DLI needed to file its petition under a new cause number; and (2) the trial court could not impose restitution under *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015), because Brown was unable to pay it due to indigency. Brown did not argue in the trial court that the terms of his plea agreement and his judgment and sentence misled him into believing that only the prosecutor could request restitution and that DLI could not request restitution.

The trial court granted DLI's request and entered an order of restitution in the amount of $5,750. Brown appeals the restitution order.

ANALYSIS

A.   LEGAL PRINCIPLES

We review a sentencing court's restitution order for an abuse of discretion. *State v. Tobin*, 161 Wn.2d 517, 523, 166 P.3d 1167 (2007). A trial court abuses its discretion where its decision is manifestly unreasonable or based on untenable grounds or reasons. *State v. Garcia*, 179 Wn.2d 828, 846, 318 P.3d 266 (2014). It is also an abuse of discretion to apply an incorrect legal analysis or make other errors of law. *Tobin*, 161 Wn.2d at 523.

Generally, the State must request a restitution order within 180 days of sentencing. Former RCW 9.94A.753(1) (2003). The sentencing court may extend this period for good cause, former RCW 9.94A.753(1), if the request is made before the 180-day period has elapsed. *State v. Grantham*, 174 Wn. App. 399, 403, 299 P.3d 21 (2013). A trial court generally has no authority to enter an order determining restitution more than 180 days after sentencing. *State v. Chipman*, 176 Wn. App. 615, 619, 309 P.3d 669 (2013). A restitution order that does not comply with RCW 9.94A.753(1) is void. *Id*. at 618.

However, RCW 9.94A.753(7) provides an exception to the 180-day time limit. DLI may petition the trial court for entry of a restitution order if the victim of the crime has been determined to be entitled to benefits under the crime victim's compensation program. RCW 9.94A.753(7). The deadline for DLI's petition is one year after entry of the judgment and sentence. RCW 9.94A.753(7).

B.   CHALLENGE TO RESTITUTION ORDER

Brown argues that the restitution order is invalid because his guilty plea agreement and the judgment and sentence affirmatively misled him into believing that restitution could not be

ordered under RCW 9.94A.753(7). We decline to consider this argument because Brown did not raise it at the restitution hearing and it does not involve a manifest error.

1. Failure to Make Argument in Trial Court

Under RAP 2.5(a), we generally will not review claims raised for the first time on appeal, unless the party claiming the error can show the presence of an exception to that rule. *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011). RAP 2.5(a)(3) permits a party to raise such a claim if it amounts to a "manifest error affecting a constitutional right." To determine whether this court should consider an unpreserved error under RAP 2.5(a)(3), we inquire whether (1) the error is truly of a constitutional magnitude, and (2) the error is manifest. *State v. Kalebaugh*, 183 Wn.2d 578, 583, 355 P.3d 253 (2015).

Here, Brown's claim that the trial court misled him regarding the basis for assessing restitution arguably raises an issue of constitutional magnitude because the claim implicates his due process rights. *State v. Minor*, 162 Wn.2d 796, 805, 174 P.3d 1162 (2008) (Madsen, J., concurring).

An error is manifest if the appellant shows actual prejudice. *State v. O'Hara*, 167 Wn.2d 91, 99, 217 P.3d 756 (2009). The appellant must make a plausible showing that the asserted error had practical and identifiable consequences in the trial of the appellant's case. *Id.* The focus is on whether the error is "so obvious on the record that the error warrants appellate review." *Id.* at 100.

2. Plea Agreement

Brown argues that the plea agreement led him to understand that only the prosecutor would seek restitution and therefore that restitution could not be ordered under RCW 9.94A.753(7).

First, Brown relies on the plea agreement's reference to "extraordinary circumstances," a term used in RCW 9.94A.753(3), and "doubl[ing]," a term used in RCW 9.94A.753(5). CP at 47. He claims that these references led him to believe that restitution would be awarded only under RCW 9.94A.753(3) and (5), not under RCW 9.94A.753(7). But the plea agreement did not state or even imply that restitution could be awarded *only* under RCW 9.94A.753(3) and (5).

Second, Brown relies on the plea agreement provision that the prosecutor would recommend restitution. He claims that because the prosecutor is involved only in RCW 9.94A.753(1)-(6), this provision led him to believe that restitution would be awarded only under those subsections and not under RCW 9.94A.753(7). But the plea agreement did not state or even imply that *only* the prosecutor could request restitution or that restitution could be awarded *only* under RCW 9.94A.753(1)-(6).

Third, Brown argues that the plea agreement did not specifically state or provide any notice that DLI could file a motion for restitution, and did not specifically reference RCW 9.94A.753(7). But RCW 9.94A.753(7) authorizes DLI to petition for restitution. Brown cites no authority for the proposition that a plea agreement must expressly reference that subsection to preserve DLI's ability to seek restitution.

Fourth, Brown argues that subsequent acts of the prosecutor were consistent with his interpretation in that the prosecutor later set a date for a restitution hearing. But the prosecutor's conduct also was not inconsistent with DLI petitioning for restitution once the trial court denied the prosecutor's request.

Nothing in the plea agreement precluded DLI from requesting restitution to obtain reimbursement of crime victim benefits under RCW 9.94A.753(7). We hold that the language of the plea agreement does not provide a basis for invalidating the restitution order.

3.   Judgment and Sentence

Brown argues that his judgment and sentence also misled him into believing that only the

prosecutor would seek restitution. He relies on language stating that "[a]n agreed restitution

order may be entered" and that a "restitution hearing: shall be set by the prosecutor." CP at 64.

But nothing in the judgment and sentence precluded DLI from seeking restitution. The

judgment and sentence's inclusion of language that an agreed order might be entered is irrelevant

because there was no agreed order. The judgment and sentence did not state that restitution

could be awarded *only* through an agreed order. Further, the judgment and sentence did not state

that *only* the prosecutor could set a hearing date or request restitution.

Brown relies on *Minor,* in which the court reversed a defendant's conviction of first

degree unlawful possession of a firearm because the sentencing court for a prior conviction

misled the defendant by affirmatively representing that paragraphs prohibiting the possession of

a firearm did not apply to him. 162 Wn.2d at 804. But *Minor* is inapplicable here because the

trial court did not affirmatively represent that DLI would not request restitution.

Nothing in the judgment and sentence precluded DLI from requesting restitution to obtain

reimbursement of crime victim benefits under RCW 9.94A.753(7). We hold that the language of

the judgment and sentence does not provide a basis for invalidating the restitution order.

4.   Rules of Interpretation

Brown argues that certain rules of construction require that the plea agreement and

judgment and sentence be construed in his favor. First, he claims that there is a constitutional

requirement that ambiguities be construed in his favor because he was a juvenile, citing *In re*

Gault, 387 U.S. 1, 39 n.65, 87 S. Ct. 1428, 18 L. Ed 2d 527 (1967). But *Gault* does not support

that argument.

Second, Brown argues that the parol evidence rule somehow requires that the plea agreement and judgment and sentence be interpreted to preclude DLI's restitution claim. But the parol evidence rule does not involve the interpretation of documents; it precludes the admission of extrinsic evidence to show the parties' intent to add to the terms of an integrated contract. *See RSD AAP, LLC v. Alyeska Ocean, Inc.* 190 Wn. App. 305, 315-16, 358 P.3d 483 (2015). Allowing DLI to request restitution does not require the admission of parol evidence.

Third, Brown argues that the maxim ejusdem generis requires that unlisted items in the plea agreement and judgment and sentence be excluded. Under this principle of contract interpretation, "a general term used in conjunction with specific terms will be deemed to include only those things that are in the same class or nature as the specific ones." *Viking Bank v. Firgrove Commons 3, LLC*, 183 Wn. App. 706, 716, 334 P.3d 116 (2014). But neither the plea agreement nor the judgment and sentence uses general terms in conjunction with a list of specific terms.

5.   Summary

Brown cannot show that the trial court's restitution order reflects a manifest error. Therefore, he cannot raise the argument that the restitution order is invalid because of the language of his plea agreement and his judgment and sentence for the first time on appeal.
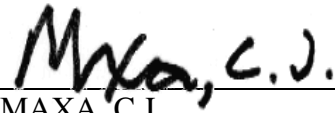
C.   APPELLATE COSTS

The State requests an award of appellate costs incurred in defending the court's restitution order. RCW 10.73.160(1). A commissioner of this court will consider any request for costs under RAP 14.1.

CONCLUSION

We affirm the trial court's restitution order.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.
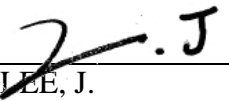
MAXA, C.J.

We concur:

WORSWICK, J.

LEE, J.