

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 1, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2007AP2661-CR

Cir. Ct. No. 2005CF393

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JON P. GOULET,

DEFENDANT-APPELLANT.

APPEAL from judgments and an order of the circuit court for Eau Claire County: WILLIAM M. GABLER, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jon Goulet appeals judgments of conviction and an order denying his postconviction motion. He argues the court erred in ordering him to pay restitution to the State for amounts paid by medical assistance as a

result of his theft of his mother's funds. We disagree and affirm the judgments and order.

BACKGROUND

¶2 In July 2006, Goulet entered an *Alford*¹ plea to two charges: felony theft in a business setting of over \$10,000, and misdemeanor negligent abuse of a vulnerable adult.² See WIS. STAT. §§ 943.20(1)(b), 940.285(2)(a)2.³ The charges were based on allegations that Goulet failed to properly care for his elderly mother, Maxine Goulet, and used funds belonging to her and her trust for his personal benefit.

¶3 A restitution hearing was held in October 2006. At the hearing, the State offered testimony from Judy Doud, a financial planner for the Eau Claire County Department of Human Services. Doud testified that between December 1, 2003 through November 30, 2004, the State⁴ paid for Maxine's nursing home care through medical assistance. She testified Maxine was actually ineligible for medical assistance during that time because Goulet transferred assets to himself that should have been used for her care. Goulet stipulated the State's medical

¹ See *North Carolina v. Alford*, 400 U.S. 25 (1970).

² The plea agreement also involved other charges not relevant here.

³ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

⁴ It is unclear from the record which government entity made the medical assistance payments. Goulet was ordered to make restitution to the Wisconsin Department of Health and Family Services Estate Recovery Program. We therefore refer to the payor as the State.

assistance payments during the relevant time period were \$27,840.25, but argued he did not have the ability to pay restitution.⁵

¶4 At the close of the hearing, the court found Goulet had the ability to pay \$6,200 per year for four years, and ordered him to pay \$24,800 in restitution. Goulet’s postconviction motion challenging the restitution award was denied.

DISCUSSION

¶5 In this appeal, Goulet argues the restitution statute, WIS. STAT. § 973.20, does not allow the State to receive restitution in this case. Specifically, Goulet argues the State is not entitled to restitution because it is neither a victim of his crime nor a subrogated insurer. Whether the court has authority to order restitution on a given set of facts is a question of law reviewed without deference. *State v. Haase*, 2006 WI App 86, ¶5, 293 Wis. 2d 322, 716 N.W.2d 526.

¶6 We conclude the State is entitled to restitution as a victim of Goulet’s theft.⁶ The court has authority to order restitution to “any victim of a crime considered at sentencing.” WIS. STAT. § 973.20(1r). Restitution statutes are construed “broadly and liberally in order to allow victims to recover their losses as a result of a defendant’s criminal conduct.” *State v. Madlock*, 230 Wis. 2d 324, 332, 602 N.W.2d 104 (Ct. App. 1999).

⁵ The restitution figure of \$27,840.25 reflects adjustments to the medical assistance payments and an added amount for the medical assistance death benefit. The precise formula used is not relevant here.

⁶ Because we conclude the State is entitled to restitution as a victim, we need not decide whether it is entitled to restitution as an insurer. See *Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed).

¶7 A governmental entity may be a crime victim in some circumstances. *State v. Ortiz*, 2001 WI App 215, ¶20, 247 Wis. 2d 836, 634 N.W.2d 860. The government is entitled to restitution for “losses incurred when it is a victim as a direct result of criminal conduct, but not for collateral expenses incurred in the normal course of law enforcement.” *State v. Storlie*, 2002 WI App 163, ¶10, 256 Wis. 2d 500, 647 N.W.2d 926. So, for example, the government may not recover the cost of stop sticks used in a high speed chase or overtime expenses resulting from a police standoff. *See id.*, ¶15 (stop sticks); *Ortiz*, 247 Wis. 2d 836, ¶¶21-23 (overtime). However, the government may recover damages caused by vandalism to government property. *State v. Howard-Hastings*, 218 Wis. 2d 152, 154, 579 N.W.2d 290 (Ct. App. 1998). Whether restitution is available is determined by considering the defendant’s “entire course of conduct” related to the crime, “not just those facts necessary to support the elements of the specific charge of which the defendant was convicted.” *State v. Rodriguez*, 205 Wis. 2d 620, 627, 556 N.W.2d 140 (Ct. App. 1996); *Madlock*, 230 Wis. 2d at 333.

¶8 Here, Goulet’s crime consisted of a course of conduct in which he diverted funds from his mother’s trust fund and his mother’s personal funds to himself through a power of attorney—funds that would otherwise have been used for his mother’s care. We agree with the State that this course of conduct “directly victimized the State by unlawfully putting the cost of Maxine’s necessary health care services on the State rather than upon the liable trust fund that [Goulet] managed.”

¶9 Goulet argues because the property was stolen from Maxine, not the State, Maxine is the only victim in this case. However, this argument incorrectly focuses on the elements of theft rather than Goulet’s entire criminal course of conduct. *See Rodriguez*, 205 Wis. 2d at 627. While the stolen property belonged

to Maxine, the circumstances under which the thefts took place show the State has borne the brunt of Goulet's crime. As a practical matter, Goulet diverted money that should have gone to Maxine's nursing home care to his personal expenses. Regardless of where her trust money went, Maxine would have exhausted the trust and would have received essentially the same care. It is the State—which has paid expenses that rightfully should have been paid by the trust—that has been placed in a worse position as a result of Goulet's thefts.

¶10 Goulet also argues no restitution to the State may be ordered because Goulet was not charged with medical assistance fraud under WIS. STAT. § 49.95. This argument also incorrectly focuses on the elements of the crime rather than Goulet's course of conduct. *See Rodriguez*, 205 Wis. 2d at 627. While the elements of medical assistance fraud hew more closely to the State's restitution theory than the elements of theft, it is the underlying criminal conduct, not the elements of the crime considered at sentencing, that determine whether the State is a victim. *Id.* As explained above, Goulet's criminal course of conduct directly victimized the State.

¶11 Finally, Goulet argues the evidence linking him to the State's losses is too speculative to support the restitution award. He argues there is insufficient evidence that his thefts actually caused additional expense to the State.⁷

⁷ Goulet also argues there is insufficient evidence to show that losses to the State were foreseeable to him. Goulet does not cite any authority showing restitution awards are limited to foreseeable damages. We do not consider arguments unsupported by citation to authority. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992). We note, however, that Goulet diverted Maxine's funds at a time when she was in poor health and suffering from dementia. A reasonable person in Goulet's position would foresee that Maxine would likely need medical care in the future, and without assets of her own the State would likely foot the bill for her care.

¶12 Legal cause exists when a defendant's conduct is a "substantial factor in producing" the specified result. *State v. Serebin*, 119 Wis. 2d 837, 846-47, 350 N.W.2d 65 (1984) (citation omitted). Here, the State produced testimony at the restitution hearing that under medical assistance guidelines, Maxine should have become eligible for medical assistance in December 2004. That date was based on how long the funds Goulet diverted to his own use would have paid for Maxine's care. Medical assistance paid over \$27,000 for Maxine's care prior to December 2004. It is a reasonable inference from these facts that but for the theft, Maxine's care prior to December 2004 would have been paid for by the trust rather than medical assistance. Goulet does not explain why this evidence is insufficient to support the restitution award, and we conclude it is more than adequate to show the theft was a substantial factor in producing the medical assistance overpayments by the State.

By the Court.—Judgments and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

