

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 21, 2016

Diane M. Fremgen
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. 2015AP893-CR

Cir. Ct. No. 2012CF624

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON D. JAMES,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dane County: WILLIAM E. HANRAHAN, Judge. *Affirmed.*

Before Lundsten, Sherman, and Blanchard, JJ.

¶1 PER CURIAM. Jason James appeals the circuit court's judgment of restitution and an order denying his postconviction motion for relief, both entered following James' conviction on three counts of manufacture or delivery of heroin. James argues that, for various reasons, the circuit court lacked authority to

order that James pay restitution to the mother of the person who fatally overdosed on heroin that James delivered to an individual who delivered the heroin to the deceased. James also argues that he is entitled to a new sentencing hearing. For the reasons that follow, we affirm.

BACKGROUND

¶2 The State charged James with one count of first degree reckless homicide as a repeater, four counts of manufacture or delivery of heroin, second or subsequent offense, and one count of possession of a narcotic drug, second or subsequent offense. In the same information, the State charged Adam Kruchten with one count of first degree reckless homicide.

¶3 All of these charges stemmed from an incident in which James delivered heroin to Kruchten, who later on the same day delivered some of the heroin to Darrell Thurow. Subsequently, on the same day as the deliveries, Thurow injected the heroin and died shortly thereafter of a heroin overdose. Kruchten cooperated in the investigation of Thurow's death by helping police to identify James as the heroin supplier and by setting up "controlled buy" heroin transactions between police officers and James. Kruchten later pled guilty to delivery of heroin to Thurow.

¶4 James ultimately pled guilty to two counts of delivery of heroin related to the controlled buys set up during the investigation of Thurow's death. The count for possession of a narcotic drug and one of the counts for delivery of heroin were dismissed and read in. James proceeded to a jury trial on the first degree reckless homicide and the delivery of heroin to Kruchten. The jury found James not guilty of first degree reckless homicide and guilty of delivery of heroin.

¶5 Following a restitution hearing, the circuit court ordered restitution as part of the sentence. More specifically, over James’ objection, the court ordered James to pay restitution in the amount of \$5,000 to Thurow’s mother to cover all or some portion of Thurow’s funeral expenses. James subsequently filed a postconviction motion seeking, among other relief, a resentencing, which the circuit court denied. James appeals the restitution judgment and the order denying his postconviction motion.¹

DISCUSSION

¶6 On appeal, James argues that the circuit court erroneously ordered him to pay restitution to Thurow’s mother because (1) Thurow’s mother is not a “victim” of the crime for which James was convicted, and (2) there is not a causal nexus sufficient to justify restitution between James’ criminal conduct and Thurow’s death. For the reasons that follow, we reject James’ arguments.

¶7 “Restitution is governed by WIS. STAT. § 973.20 [2013-14].”² *State v. Hoseman*, 2011 WI App 88, ¶14, 334 Wis. 2d 415, 799 N.W.2d 479. There is no dispute between the parties in this appeal about the following basic features of § 973.20. The circuit court “shall order the defendant to make full or partial restitution ... to any victim of a crime considered at sentencing,” and the phrase “a

¹ In his principal brief, James argues that he is entitled to resentencing because the court did not have “a meaningful appreciation of ... James as a person” at the time of the sentencing. However, James concedes that “there is no apparent present precedential support” for the relief he seeks. In addition, James confines the arguments in his reply brief to those related to restitution and does not respond to the State’s arguments regarding James’ entitlement to resentencing, thereby effectively abandoning his sentencing arguments. For these reasons, we decline to address James’ sentencing arguments.

² All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

crime considered at sentencing” is defined as “any crime for which the defendant was convicted and any read-in crime.” *See* § 973.20(1r), (1g)(a).

¶8 “[T]he restitution statute does not define the term ‘victim.’” *See Hoseman*, 334 Wis. 2d 415, ¶15. However, a related statute addressing the rights of crime victims, WIS. STAT. § 950.02(4)(a)1., provides that “victim” means “[a] person against whom a crime has been committed.” *Id.*, ¶15. Section 950.02(4)(a)4. further provides that if the victim as defined in subdivision 1. is deceased, then the term “victim” includes “[a] family member of the person who is deceased.” That is, when a crime victim dies the law includes a transitive feature under which family members effectively stand in the shoes of the deceased for purposes that include restitution.

¶9 A circuit court’s “assessment of restitution is within its discretion; whether a restitution order comports with the statute, however, is subject to our *de novo* review.” *State v. Rash*, 2003 WI App 32, ¶5, 260 Wis. 2d 369, 659 N.W.2d 189 (emphasis in original) (citations omitted). James challenges the circuit court’s authority under the pertinent statutes to order that he make restitution to Thurow’s mother. Therefore, we review this case *de novo*.

¶10 In determining whether the circuit court here had the authority to order restitution, we apply a two-part test. *See Hoseman*, 334 Wis. 2d 415, ¶16. Under the first part of the test, the person for whom restitution is sought must be a victim of the crime. *Id.* Under the second part, there must be a causal nexus between the defendant’s conduct and the harm suffered by the victim to which the restitution is addressed. *See id.*

¶11 In applying the two-part test, we bear in mind that the primary purpose of restitution is to compensate the victim, and accordingly construe the

restitution statute “broadly and liberally in order to allow victims to recover their losses as a result of a defendant’s criminal conduct.” *State v. Canady*, 2000 WI App 87, ¶8, 234 Wis. 2d 261, 610 N.W.2d 147.

¶12 James makes two arguments in support of his position that restitution is not appropriate in this case. James argues that: (1) Thurow’s mother is not a victim of a crime for which the defendant was convicted; and (2) there is no causal nexus between the crimes for which James was convicted and the harm suffered by the victim, “at least not for the purpose of ordering restitution.” We address each argument in turn.

¶13 James’ first argument, namely that Thurow’s mother is not a victim of any crime considered at sentencing, is without merit. James was convicted of delivery of heroin to Kruchten, who on the same day delivered at least some of it to Thurow, who promptly used it and died as a result. James makes little headway in developing a clear argument that Thurow’s mother is not a victim, and effectively concedes the point in his principal brief. He states that his crime in delivering heroin to Kruchten “on or about the same date on which [Thurow] died” is “arguably ... related to” Thurow’s mother. As we observed above, under the definition in WIS. STAT. § 950.02(4)(a)1., Thurow was a “victim” of the crime of delivery of heroin. And, because Thurow is deceased, the statute provides that his mother is a victim who is entitled to restitution. *See* WIS. STAT. §§ 950.02(4)(a)4.; 950.04(1v)(q). Based on an uncomplicated application of the statutory language, we reject James’ argument that Thurow’s mother is not a victim for purposes of potential restitution.

¶14 For the following reasons we also reject James’ second argument, namely that there was no causal nexus, “at least not for the purpose of ordering

restitution[,]” between the crimes considered at sentencing and the harm suffered by the victim.

¶15 As stated above, before a court can order restitution under WIS. STAT. § 973.20, “there must be ‘a causal nexus’ between the ‘crime considered at sentencing’ and the damage.” See *Rash*, 260 Wis. 2d 369, ¶6 (quoting *Canady*, 234 Wis. 2d 261, ¶9). In order for there to be a causal nexus, the defendant’s criminal activity must have been a “substantial factor” in causing the harm that the restitution is aimed at addressing, which means that “the defendant’s criminal act set into motion events that resulted in the damage or injury.” *Hoseman*, 334 Wis. 2d 415, ¶26 (quoted source omitted).

¶16 In *Rash*, defendant Rash and others abducted a person who had just unlocked his car, and an individual who had no apparent connection with Rash or his criminal associates then took the victim’s unlocked vehicle without consent, damaged the vehicle, and stole items from it. *Rash*, 260 Wis. 2d 369, ¶¶2-3. Rash argued that his abduction conduct was not a “cause” for purposes of considering restitution for damage or property loss related to the victim’s vehicle. *Id.*, ¶1. We rejected this argument, and upheld the circuit court’s restitution order based on the conclusion that there was a causal nexus, warranting restitution. *Id.*, ¶8. Restitution to cover the damages for the stolen vehicle was appropriate because “Rash’s abduction of [the victim] left [the victim’s] car vulnerable to theft and damage” and the “damage was thus ‘a clear consequence’ of what Rash had done.” *Id.*, ¶3 (quoted source omitted). Similarly, in *Canady*, we held that restitution was appropriate even though a police officer’s actions, rather than the defendant’s actions, were “the immediate or direct cause” of the damage and the defendant’s activity was “one step removed in the chain of causation.” *Canady*, 234 Wis. 2d 261, ¶12. In upholding the circuit court’s restitution award, we

concluded that “Canady’s criminal actions were not too remote to constitute a substantial factor in causing the property damage.” *See id.*

¶17 The causal nexus here between the heroin delivery and the victim’s death and funeral expenses for the victim’s mother is no less direct than the conduct-result circumstances in *Rash* and *Canady*. As the State correctly observes, James’ crime was “a substantial factor” in Thurow’s death by overdose of heroin and a clear “consequence of James’ crime of sale of heroin to Kruchten.”

¶18 James argues that restitution for Thurow’s funeral expenses is not proper because the jury did not convict James of Thurow’s homicide, but only of delivery of heroin. This argument overlooks the goal of restitution, which is to compensate victims for harm caused by a defendant’s actions. It is also contrary to the common-sense approach that Wisconsin courts have taken in considering restitution orders.

¶19 For example, in *Hoseman*, this court upheld the circuit court’s order requiring that Hoseman, who was convicted of conspiracy to manufacture marijuana, pay restitution for damages to a home that was used in the marijuana manufacturing operation. *Hoseman*, 334 Wis. 2d 415, ¶3. Hoseman had not been convicted of criminal damage to property or any related statute, and argued that his drug conviction represented a “victimless” crime and that the homeowners were not “victims” of his crime. *Id.*, ¶11. We rejected these arguments, concluding that the homeowners were victims of Hoseman’s criminal conduct of manufacturing marijuana and that there was a “causal connection” between the marijuana manufacturing and the damage to the home, such that it “was the substantial factor in causing the damages” to the home. *Id.*, ¶28.

¶20 James fails to distinguish this case law from the facts here. Just as Hoseman could properly be ordered to make restitution to the owners of the home, even though he was not convicted of an offense explicitly involving property destruction, we similarly conclude that it is appropriate for James to make restitution to Thurow's mother here for funeral expenses related to the delivery of heroin, even though James was not convicted of an offense explicitly involving homicide.

¶21 For all of these reasons, we conclude that the circuit court properly ordered James to make restitution to Thurow's mother for Thurow's funeral expenses and that James is not entitled to relief from the sentence imposed by the court.

CONCLUSION

¶22 For the reasons stated above, we affirm the circuit court.

By the Court.—Judgment and order affirmed.

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

