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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2017-2018

CR-17-0348

Timothy Wayne Weakley

v.

State of Alabama

Appeal from Lauderdale Circuit Court
(CC-16-579.60)

WINDOM, Presiding Judge.

AFFIRMED BY UNPUBLISHED MEMORANDUM.

Kellum and Joiner, JJ., concur. Burke, J., concurs in part; dissents in part, with opinion. Welch, J., joins in dissent.

BURKE, Judge, concurring in part, dissenting in part.

Timothy Wayne Weakley pleaded guilty to third-degree theft of property, see § 13A-8-4.1, Ala. Code 1975, and was sentenced to 12 months' imprisonment. That sentence was suspended, and Weakley was ordered to pay attorney fees, court costs, a \$25 assessment to the Victims Compensation Fund, and restitution in the amount of \$2,778.56. Weakley did not reserve any issues for appeal, nor did he seek to withdraw his guilty plea. Weakley did not appeal. On November 17, 2017, Weakley filed a petition for postconviction relief pursuant to Rule 32, Ala. R. Crim. P. The circuit court summarily denied that petition.

The record reveals that Weakley was originally charged with first-degree theft of property, see § 13A-8-3, Ala. Code 1975, arising out of a series of transactions with the victim, Bank Independent. According to Weakley's petition, he was due to receive a settlement check from his insurance company related to an automobile accident. Weakley claimed that when the check did not arrive when expected, he notified the insurance company, and it agreed to send a replacement check. However, Weakley ultimately received two checks for identical

amounts from the insurance company and he deposited both into his account at Bank Independent. Three days after depositing both checks, Weakley made a withdrawal for the amount of both checks. Bank Independent subsequently learned that the insurance company had stopped payment on one of the checks, thus causing Weakley's account to be overdrawn. Weakley repaid a portion of the amount he owed to the bank, but ultimately left an amount owing of \$2,778.56. That unpaid amount resulted in the criminal charge to which Weakley pleaded guilty.

The record also indicates that, prior to entering his guilty plea, Weakley filed for Chapter 13 bankruptcy. According to his petition, Bank Independent was included as an unsecured creditor in his bankruptcy proceedings. As noted, Weakley was ordered to pay court costs, attorney fees, and restitution. At his sentencing hearing, the trial court ordered Weakley to pay his court costs and attorney fees to the court in \$50 monthly installments. However, as to the restitution to Bank Independent, the trial court ordered that "[t]he restitution will be paid through the defendant's bankruptcy in Case Number 1682685." (R. 15.) In his

petition, Weakley contended that the circuit court was not authorized to order him to pay restitution through his bankruptcy proceeding. Additionally, Weakley alleged that his trial attorney had rendered ineffective assistance of counsel. The circuit court summarily denied Weakley's petition and did not conduct an evidentiary hearing.

I agree with Part II of the unpublished memorandum issued today in which this Court addresses the circuit court's summary dismissal of Weakley's ineffective-assistance-of-counsel claims and holds that the court did not err in dismissing Weakley's Rule 32 petition on that basis. However, I respectfully dissent from the majority's holding that Weakley failed to adequately plead his claim that the trial court exceeded its discretion when it ordered that he pay restitution through a bankruptcy proceeding.

In its unpublished memorandum, the majority states that "based on the pleadings and the record before this Court, it is not clear that the trial court did anything other than acknowledge the presence of Weakley's debt to Bank Independent in Weakley's bankruptcy estate." I respectfully disagree. At Weakley's sentencing hearing, the trial court ordered Weakley

to pay his court costs and attorney fees to the court in \$50 monthly installments. However, as to the restitution the trial court ordered Weakley to pay to Bank Independent, the trial court's sentencing order provided that restitution "shall be paid through bankruptcy case #16-82685." (Cl. 6) (emphasis added).¹ Similarly, the trial court stated at Weakley's sentencing hearing that "[t]he restitution will be paid through the defendant's bankruptcy in Case Number 1682685." (R. 15) (emphasis added). Weakley's plea agreement also provided that "restitution will be paid through [the defendant's] bankruptcy." (Cl. 3) (emphasis added). Thus, the record reveals that the trial court used mandatory language to specifically order that Weakley pay restitution resulting from a state criminal proceeding through a federal bankruptcy proceeding. I do not believe that a state trial court has that authority.

By ordering that restitution from a state criminal case be paid through a federal bankruptcy case, the trial court is, at the very least, conflating the purposes of bankruptcy and restitution. As the majority notes in its unpublished

¹"Cl" denotes the supplemental record on appeal.

memorandum, a discharge in bankruptcy is a "'release of a debtor from personal liability from prebankruptcy debts.'" (quoting Black's Law Dictionary (10th ed. 2014)). However, restitution, although not intended to be punitive, is designed to compensate a victim from harm caused by a defendant's criminal acts. See Williams v. State, 624 So. 2d 661, 663 (Ala. Crim. App. 1993) ("It is clear that the purpose of a restitution hearing is to arrive at a precise amount of restitution due a victim because of a defendant's acts, so that the victim may be fully compensated."). The trial court was well within its rights to order Weakley to pay restitution to Bank Independent. What effects, if any, that order would have on Weakley's bankruptcy proceedings are a separate matter that state courts have no authority to determine.

It is entirely possible that the trial court's intent was to merely acknowledge that Weakley owed a debt to Bank Independent and that the debt was to be satisfied through Weakley's bankruptcy proceeding. However, by using the term "restitution," which has a specific meaning under Alabama law, see § 15-18-66, Ala. Code 1975, coupled with the mandatory language that the restitution "shall be paid through

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[Weakley's] bankruptcy case #16-82685," the trial court's sentencing order, as written, is not authorized by law. See Moore v. State, 706 So. 2d 265, 273 (Ala. Crim. App. 1996), citing Kelly v. Robinson, 479 U.S. 36, 47-53, 107 S.Ct. 353, 360-363 (1986) ("the payment of restitution is not dischargeable in bankruptcy proceedings.")

At the very least, I would remand this case to the trial court with instructions that it clarify its intentions regarding how Weakley's restitution is to be paid. The trial court could, if it chooses, enter a new restitution order in compliance with § 15-18-65 et. seq., Ala. Code 1975, without regard to Weakley's bankruptcy case.

Welch, J., concurs.