

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Sup. Ct. 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 8/1/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,) 1 CA-CR 12-0711
)
Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
VINCENT BENNY GARZA VENACIO,) Rule 111, Rules of the
) Arizona Supreme Court)
Appellee.)
)
_____)

Appeal from the Superior Court in Maricopa County

Cause No. CR2011-113540-001

The Honorable John R Ditsworth, Judge

AFFIRMED

William G. Montgomery, Maricopa County Attorney Phoenix
By Keli B. Luther, Deputy County Attorney
Attorneys for Appellant

James J. Haas, Maricopa County Public Defender Phoenix
By Terry Reid, Deputy Public Defender
Attorneys for Appellee

O R O Z C O, Judge

¶1 Appellant State of Arizona (the State) appeals the trial court's order denying the State's Request for Restitution Order (RRO). For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Vincent Benny Garza Venacio (Defendant) was indicted for one count of burglary in the third degree and one count of possession of burglary tools. Defendant signed a plea agreement in which he agreed to plead guilty to one count of burglary in the third degree, a class four felony. As part of the agreement, Defendant also agreed to pay restitution to the victim in an amount not to exceed \$25,000.

¶3 On August 30, 2011, Defendant was sentenced to 2.5 years' imprisonment. In the minute entry, the trial court noted that it would retain jurisdiction over the issue of restitution for a period of one year from the date of sentencing. The State received the necessary information to seek restitution for the victim within the one-year period but did not file the RRO until September 7, 2012. In the RRO, the State asked the trial court to order restitution in the amount of \$750 to the victim and \$1125.81 to her insurance company.

¶4 The trial court held a restitution hearing on October 23, 2012. At the hearing, the State repeatedly referred to the one-year "deadline" set by the sentencing court and admitted that it "missed that deadline." However, the State argued that the "jurisdictional mandate over restitution is statutory as enacted by our Legislature, and the [trial court] simply does not have authority under the Separation of Powers Doctrine to

say [it is] going to limit [its] own jurisdiction over the issue of restitution." The trial court denied the State's RRO, pointing out that the State had ample opportunity to set up a restitution hearing before the expiration of the one-year deadline.

¶5 The State timely appealed. We have jurisdiction pursuant to Arizona Revised Statutes (A.R.S.) sections 12-120.21.A.1 (2003), 13-4031 (2010), and -4032.4 (2010).

DISCUSSION

¶6 On appeal, we review a restitution order for an abuse of discretion. *State v. Lewis*, 222 Ariz. 321, 323, ¶ 5, 214 P.3d 409, 411 (App. 2009). Abuse of discretion occurs when "the reasons given by the court for its action are clearly untenable, legally incorrect, or amount to a denial of justice." *State v. Chapple*, 135 Ariz. 281, 297 n.18, 660 P.2d 1208, 1224 n.18 (1983). We view the facts and evidence in the light most favorable to upholding the trial court's restitution order. See *In re Andrew A.*, 203 Ariz. 585, 586, ¶ 5, 58 P.3d 527, 528 (App. 2002).

¶7 The State argues that the trial court committed error when it "set an arbitrary 'jurisdictional' deadline that violated the crime victim's right to obtain restitution." The trial court's jurisdiction over restitution is set by statute. Pursuant to A.R.S. § 13-603.C (2010), "[i]f a person is

convicted of an offense, the court shall require the convicted person to make restitution to the person who is the victim of the crime . . . in the full amount of the economic loss as determined by the court." The trial court retains jurisdiction "for purposes of modifying the manner in which court-ordered payments are made *until paid in full or until the defendant's sentence expires.*" A.R.S. § 13-805.A (2010) (emphasis added). Thus, because Defendant was sentenced to 2.5 years' imprisonment, the trial court's statement that it would retain jurisdiction for only one year was incorrect.

¶8 Even so, the trial court may set and enforce deadlines for filing restitution claims. Our supreme court has held that "a trial court may impose a reasonable deadline within which restitution claims must be filed." *In re Alton D.*, 196 Ariz. 195, 196, ¶ 6, 994 P.2d 402, 403 (2000). "[W]hen . . . the court sets a reasonable deadline by which victims must present their restitution claims and supporting evidence, any victim who fails to comply is barred from recovery." *Id.* at 200, ¶ 19, 994 P.2d at 407.

¶9 This court recently explained that, with respect to restitution claims, timeliness and jurisdiction are distinct issues. *State v. Nuckols*, 229 Ariz. 266, 269, ¶ 8, 274 P.3d 536, 539 (App. 2012). In *Nuckols*, the defendant accepted a plea that required him to pay restitution to the victim in an amount

not to exceed \$10,000. *Id.* at 267, ¶ 2, 274 P.3d at 537. The trial court sentenced the defendant to a term of imprisonment and ordered that "the issue of restitution . . . remain open for 30 days." *Id.* at ¶ 3. The State filed the restitution claim over two months later, and the trial court ultimately denied restitution. *Id.* at 267-68, ¶ 3, 274 P.3d at 537-38. On appeal, this court affirmed the trial court's ruling, holding that "the untimeliness of the request waived the restitution to which [the victim] otherwise was constitutionally and statutorily entitled." *Id.* at 268, ¶ 6, 274 P.3d at 538. Although the State argued that the trial court retained jurisdiction to order restitution past the thirty-day deadline, this court did not decide the issue because the untimeliness of the State's request provided a sufficient basis to uphold the trial court's ruling. *Id.* at 268-269, ¶ 7, 274 P.3d at 538-539. However, this court did note that "a request for restitution is not timely simply because the superior court retains jurisdiction to order it." *Id.* at 269, ¶ 8, 274 P.3d at 539.

¶10 The State contends that this case is distinguishable from *Nuckols* because the trial court in *Nuckols* imposed a deadline limiting the filing of the restitution claim, whereas in this case, the minute entry suggests that the trial court imposed a deadline limiting its jurisdiction over restitution. We disagree. As indicated above, the minute entry did not limit

the jurisdiction of the trial court. However, the minute entry clearly stated that the State had one year to file a request for restitution, which is more time than the thirty days granted in *Nuckols*. Moreover, the record demonstrates the State recognized that the court had set a "deadline" with respect to restitution. Therefore, despite the State's arguments, we find that the reasoning of *Nuckols* controls in the present case. A trial court may impose reasonable deadlines on restitution claims, regardless of its retention of jurisdiction in the matter.

¶11 Thus, the trial court did not abuse its discretion by imposing a one-year deadline for the State to file a restitution claim. Therefore, the State's untimely RRO waives the victim's otherwise constitutional and statutory right to restitution. See *id.* at 268, ¶ 6, 274 P.3d at 538.

CONCLUSION

¶12 For the foregoing reasons, we affirm the trial court's order denying restitution.

/S/

PATRICIA A. OROZCO, Judge

CONCURRING:

/S/

JOHN C. GEMMILL, Presiding Judge

/S/

PATRICIA K. NORRIS, Judge