

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

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



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FILED: 02/17/11  
RUTH WILLINGHAM,  
ACTING CLERK  
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STATE OF ARIZONA, )  
)  
) Appellee, ) No. 1 CA-CR 10-0158  
)  
) DEPARTMENT E  
v. )  
) **MEMORANDUM DECISION**  
GARY J. KARPIN, )  
)  
) Appellant. ) (Not for Publication -  
) Rule 111, Rules of the  
) Arizona Supreme Court)  
)  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CR2006-031057-001 SE

The Honorable Warren J. Granville, Judge

**AFFIRMED**

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Thomas C. Horne, Attorney General Phoenix  
by Kent E. Cattani, Chief Counsel,  
Criminal Appeals/Capital Litigation Section  
Attorneys for Appellee

Janelle A. McEachern Chandler  
Attorney for Appellant

Gary J. Karpin, Sr. Kingman  
*In propria persona*

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H A L L, Judge

¶1 Defendant, Gary J. Karpin, appeals from the trial court's restitution order. For the reasons set forth below, we affirm.

¶2 Defendant's appellate counsel filed a brief in accordance with *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969), advising that, after a diligent search of the record, she was unable to find any arguable grounds for reversal. This court granted defendant an opportunity to file a supplemental brief, which he has done. See *State v. Clark*, 196 Ariz. 530, 537, ¶ 30, 2 P.3d 89, 96 (App. 1999).

¶3 We review for fundamental error, which is "error going to the foundation of the case, error that takes from the defendant a right essential to his defense, and error of such magnitude that the defendant could not possibly have received a fair trial." *State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (quotation omitted). We view the evidence presented in a light most favorable to sustaining the verdict. *State v. Cropper*, 205 Ariz. 181, 182, ¶ 2, 68 P.3d 407, 408 (2003). Finding no reversible error, we affirm.

¶4 After moving to Arizona in 1996, defendant began a private mediation practice. *State v. Karpin*, 1 CA-CR 08-1047, 2, ¶ 4 (Ariz. App. Oct. 12, 2010) (mem. decision). Defendant

had previously been licensed to practice law in Maine and Vermont, but his license was suspended in Maine, and he was disbarred in Vermont. *Id.* at 2, ¶ 3. Defendant never applied to practice law in Arizona. *Id.*

¶15 The State Bar of Arizona (SBA) mailed defendant several letters requesting that he stop using labels, such as "J.D.," "Esq.," and "law office," in a manner that implied that he was authorized to practice law in Arizona. *Id.* at 3, ¶ 6. Defendant refused to comply and, in 2004, the SBA filed a civil lawsuit against defendant seeking an injunction against his practice of law and requested restitution for clients who had paid him for legal services. *Id.* at 4, ¶ 7.

¶16 In October 2006, the State charged defendant with twenty-five counts of theft by means of material misrepresentation and one count of fraudulent schemes and artifices. *Id.* at 5-6, ¶¶ 11-13. All twenty-six counts related to the services defendant provided the victims in divorce proceedings. On November 21, 2008, after a lengthy trial, the jury found defendant guilty of twenty-three counts of theft by means of material misrepresentation as well as the one count of fraudulent schemes and artifices. *Id.* at 6-7, ¶¶ 13-14.

¶7 Defendant was effectively sentenced to 15.75 years imprisonment<sup>1</sup> for the counts of theft by means of material misrepresentation and to 5 years of probation for the count of fraudulent schemes and artifices. Defendant then filed an appeal with this court arguing, *inter alia*, that insufficient evidence supported the verdicts. *Karpin*, 1 CA-CR 08-1047 at 7, 11, ¶¶ 16, 25. We affirmed. *Id.* at 13, ¶ 30.

¶8 At a management hearing held on September 25, 2009, the trial court outlined the structure it would follow at the restitution hearing. Noting that all of the victims previously testified at trial as to the amounts they paid defendant, the court limited the scope of the hearing to the value of the services defendant rendered on behalf of the victims. See *Town of Gilbert Prosecutor's Office v. Downie*, 218 Ariz. 466, 470, ¶ 18, 189 P.3d 393, 397 (2008) (holding that courts should consider any "value conferred on the victim" when determining the amount of a restitution award). In doing so, the trial court cited Arizona Rule of Criminal Procedure 26.7(b), allowing the court to consider reliable hearsay evidence, and expressly admonished defendant that he carried the burden of proving the benefit, if any, he provided the victims.

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<sup>1</sup> Defendant was ordered to serve 9.25 years imprisonment for Count 7. The trial court also ordered that the sentences for Counts 1-6, 8-10, 12-14, and 16-25 run concurrently, with the highest sentence amounting to 6.5 years imprisonment.

¶9 At the November 13, 2009 restitution hearing, the State presented evidence of the highest rates charged by local document preparers for the types of services defendant provided the victims. Defendant, on the other hand, failed to present any evidence of the value of his services. The trial court ordered defendant to pay restitution to the victims in the amount of \$240,448.99.

¶10 Defendant raises several challenges to the trial court's restitution order, arguing that the court erred by: (1) denying his request to call expert witnesses; (2) denying him a civil jury trial; and (3) finding that the victims sustained losses that qualify for restitution. We address each argument in turn.

¶11 In determining the amount of restitution to awarded, the trial court may consider "evidence or information introduced or submitted to the court before sentencing or any evidence previously heard by the judge during the proceedings." Ariz. Rev. Stat. § 13-804(I) (2010). The trial court has "substantial discretion" in determining the amount of restitution to be awarded, and "[w]e will uphold a restitution award if it bears a reasonable relationship to the victim's loss." *State v. Madrid*, 207 Ariz. 296, 298, ¶ 5, 85 P.3d 1054, 1056 (App. 2004).

¶12 Defendant first contends that the trial court erred by not permitting him to call experts to testify regarding the

victims' economic losses and the fair market value of his services.

¶13 Expert witnesses are permitted to testify regarding matters outside the fact-finder's knowledge. See Ariz. R. Evid. 702 ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." "It is well settled that the admission of expert testimony is a question within the sound discretion of the trial court and will not be altered absent a showing of prejudicial abuse of that discretion." *State v. Kevil*, 111 Ariz. 240, 246, 527 P.2d 285, 291 (1974).

¶14 Here, expert testimony was unnecessary because the topic at issue, the value of legal services, was one in which the trial judge, as fact-finder, possessed sufficient knowledge. See *id.* Indeed, applying its own knowledge and expertise, as well as the information provided by the State, the trial court assessed the value of the services defendant rendered to each individual victim in an extensive, detailed minute entry ruling. Therefore, defendant has failed to demonstrate that the trial

court abused its discretion or that he suffered any resulting prejudice.<sup>2</sup>

¶15 Defendant next argues that the "trial court's method of ordering restitution prejudice[d] [Defendant's] rights to a civil jury trial preserved by Article II, section 23 of the Arizona Constitution."

¶16 Arizona law requires that the sentencing court order the defendant to pay restitution to the victims of his crime, "in the full amount of the economic loss as determined by the court and in the manner as determined by the court . . . ." Ariz. Rev. Stat. § 13-603(C). It is well established that civil settlements do not necessarily affect a criminal restitution award:

Restitution and civil damages are independent under Arizona law, and the state's power to order restitution does not bar a victim from seeking damages in a civil action. We believe the converse is also often true. Because restitution also promotes the rehabilitative purpose of the criminal law . . . restitution is not a claim which belongs to the victim, but a remedial measure that the court is statutorily obligated to employ.

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<sup>2</sup> To the extent defendant also argues that the trial court erred by not permitting him to call as witnesses the former spouses of the victims who testified at trial, who allegedly would have testified that they, not the testifying spouses at trial, actually paid defendant for his services, we note that any potential disputes between former spouses regarding to whom the restitution monies are owed is irrelevant to our review of the propriety of the court's restitution order.

*State v. Iniguez*, 169 Ariz. 533, 536, 821 P.2d 194, 197 (App. 1991).

¶17 Defendant claims that he was prejudiced because he was precluded from presenting civil defenses such as "contributory negligence, assumption of risk, and statute of frauds." These defenses are not available to reduce or negate restitution awards. If any of the victims in the present case bring a civil lawsuit, then defendant may assert those defenses. We find no reversible error and affirm the trial court.

¶18 Finally, defendant challenges, more generally, the trial court's award of restitution by arguing the State failed to produce evidence of financial deprivation or that the victims would have obtained either a better divorce or less expensive divorce in the absence of his fraud scheme. We apply a three-prong test to determine whether losses qualify for restitution. *State v. Wilkinson*, 202 Ariz. 27, 29, 39 P.3d 1131, 1133 (2002). First, the loss must be economic. *Id.* Second, the loss must be one that the victim would not have incurred but for the defendant's criminal offense. *Id.* Finally, the criminal conduct must directly cause the economic loss. *Id.*

¶19 Defendant's argument hinges on the second prong. He claims that the victims would have paid the same amount to a licensed attorney if the victims had not utilized his services. During trial, each victim testified that he or she would not



have hired defendant had they known he was not a licensed attorney.

¶120 In claiming that the victims were not deprived of anything of value, defendant ignores that the victims did not receive what they paid for, namely, the services of a licensed attorney. Instead, they received the services of a legal document preparer. Therefore, we find no reversible error in the trial court's award of restitution. Moreover, the trial court credited defendant with the reasonable amount of the services he did provide as a document preparer.

¶121 We have read and considered defendant's brief and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. All of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was given an opportunity to speak before sentencing, and the sentence imposed was within the statutory limits.

¶122 Defendant has thirty days from the date of this decision to proceed, if he desires, with a pro per motion for reconsideration or petition for review. Accordingly, the trial court's order for restitution is affirmed.

**CONCLUSION**

¶23 For the foregoing reasons, we affirm the trial court's award of restitution.

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PHILIP HALL, Judge

CONCURRING:

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SHELDON H. WEISBERG, Presiding Judge

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PETER B. SWANN, Judge