

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2008

C.Y., a child,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D07-3608

July 9, 2008

PER CURIAM.

C.Y. appeals from a restitution order. The record reflects that C.Y. did not receive notice of the restitution hearing. We, therefore, reverse and remand for a new restitution hearing.

“A juvenile has a constitutional right to be present at hearings to determine the imposition and amount of restitution absent a voluntary and intelligent waiver of that right.” *I.M. v. State*, 955 So. 2d 1163, 1164 (Fla. 1st DCA 2007) (citing *M.W.G. v. State*, 945 So. 2d 597, 600 (Fla. 2d DCA 2006); *T.A.S. v. State*, 892 So. 2d 1233, 1234-35 (Fla. 2d DCA 2005); *J.B. v. State*, 646 So. 2d 808 (Fla. 1st DCA 1994)). There is no basis in the record for concluding that C.Y.’s absence from the restitution hearing constituted a waiver of his right to be present. In order for a defendant to voluntarily absent himself from a hearing, a defendant must have had notice of the hearing. . . .” *Baker v. State*, 979 So. 2d 453, 455 (Fla. 2d DCA 2008) (citing *Capuzzo v. State*, 596 So. 2d 438, 440 (Fla. 1992)).

We also note the absence of findings concerning the juvenile’s ability to earn and to pay. Section 985.437(2), Florida Statutes, provides that the amount of restitution in a juvenile case “may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make.” *K.M.T. v. State*, 969 So. 2d 542, 543 (Fla. 2d DCA 2007); *see also J.K. v. State*, 695 So. 2d 868, 870 (Fla. 4th DCA 1997) (citing the predecessor statute).

STONE, FARMER AND KLEIN, JJ., CONCUR.

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Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Steven J. Levin, Judge; L.T. Case No. 432007CJ000086A.

Carey Haughwout, Public Defender, and Elisabeth Porter, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Mark J. Hamel, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.