

DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

B.P.,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-3074

November 16, 2022

Appeal from the Circuit Court for Hillsborough County;
Lawrence M. Lefler, Judge.

Howard L. Dimmig, II, Public Defender, and Stephania A.
Valantasis, Assistant Public Defender, Bartow, for Appellant.

Ashley Moody, Attorney General, Tallahassee, and Lindsay D.
Turner, Assistant Attorney General, Tampa; and Taylor A. Schell,
Assistant Attorney General, Tampa (substituted as counsel of
record), for Appellee.

PER CURIAM.

B.P. appeals an order adjudicating him delinquent and placing him on juvenile probation. The trial court also ordered him to pay restitution. We affirm the adjudication and placement without comment. However, we reverse the restitution order.

In entering the disposition and restitution order, the trial court relied solely on the evidence introduced during the adjudicatory hearing. Although B.P. had requested a separate restitution hearing, the trial court did not conduct such a hearing before entering the restitution order, despite B.P.'s objection that he had no notice that the amount of restitution would be determined solely on the evidence from the adjudicatory hearing.

While this appeal was pending, B.P. filed a motion pursuant to Florida Rule of Juvenile Procedure 8.135(b)(2) requesting a restitution hearing. Although the trial court held a hearing, the motion was deemed denied because the trial court did not timely rule on the motion. Fla. R. Juv. P. 8.135(b)(1)(B), (b)(2)(B); *T.C. v. State*, 292 So. 3d 1273, 1274 (Fla. 2d DCA 2020).

"When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make."

§ 985.437(2)(c), Fla. Stat. (2021). "Although a child need not have a present ability to pay restitution, the court must make a finding as to the juvenile's expected earning capacity prior to setting an amount for restitution." *A.C. v. State*, 324 So. 3d 546, 546 (Fla. 2d DCA 2020) (quoting *S.S. v. State*, 122 So. 3d 499, 503 (Fla. 4th DCA 2013)), *rev'd State v. A.C.*, SC20-1831 (Fla. Aug. 6, 2021). Further, if the court intends on ordering restitution based solely on evidence adduced at the adjudicatory hearing, the child must be given notice. *J.G. v. State*, 978 So. 2d 270, 272 (Fla. 4th DCA 2008); *L.S. v. State*, 975 So. 2d 554, 555 (Fla. 4th DCA 2008).

The State concedes error; the trial court failed to make the necessary findings and did not provide the requisite notice to B.P. We agree.

Accordingly, we reverse the restitution order and remand for entry of a new order consistent with this opinion. The trial court may hold a new hearing, if necessary.

Affirmed in part; reversed in part; remanded.

NORTHCUTT, LaROSE, and LABRIT, JJ., Concur.

Opinion subject to revision prior to official publication.