DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

VICKI DIANA HICKS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

No. 2D21-3503

November 30, 2022

Appeal pursuant to Fla. R. App. P. 9.140(b)(1)(D) from the Circuit Court for Highlands County; Peter F. Estrada, Judge.

Vicki Diana Hicks, pro se.

Ashley Moody, Attorney General, Tallahassee, and Christopher A. Phillips, Assistant Attorney General, Tampa, for Appellee.

LaROSE, Judge.

Vicki Diana Hicks challenges the postconviction court's "Order Granting Motion for Disbursement of Funds" entered in her four criminal cases. The order directed the attorney for Ms. Hicks'

former husband to disburse Ms. Hicks' dissolution award—held in the attorney's trust account—to one of Ms. Hicks' crime victims, the personal representative of the estate of her late father, Philip Powell, as partial payment of restitution ordered as a condition of probation. The order, motion, and limited record fail to articulate clearly the postconviction court's authority to enter such an order. Consequently, we vacate the order and remand for further proceedings.

For background, the trial court ordered Ms. Hicks to pay restitution to multiple victims. It ordered her to pay a $50 minimum monthly payment to Mr. Powell, the City of Sebring, a yet-to-be-identified victim from lower court case number 16-000390-CF-MA, and Blue Streaks Wrestling, all starting within six months of her release from prison. After Mr. Powell died, his estate was entitled to his restitution payments. *See* § 775.089(1)(c)1, Fla. Stat. (2021); *Wanner v. State*, 746 So. 2d 478, 480 (Fla. 2d DCA 1999) ("The mere modification of the restitution payees does not impose any new obligation upon Ms. Wanner. The trial court properly exercised its authority under section 948.03(6)[, Florida Statutes (1993)]."); *Walker v. State*, 919 So. 2d 501, 502-03 (Fla. 3d

DCA 2005) (explaining that changing the payee from the victim to the victim's insurance company was ministerial and did "not alter appellant's probation conditions [or obligation] in any way" because the insurance company was subrogated to the victim's rights).

Thereafter, the personal representative of Mr. Powell's estate filed the motion for disbursement of funds. The postconviction court granted the motion and entered an order directing the distribution of the funds, citing section 775.089. Ms. Hicks appeals.

Initially, we note that we "have jurisdiction to determine the issue of [our] own jurisdiction." *Lackner v. Cent. Fla. Invs., Inc.*, 14 So. 3d 1050, 1055 (Fla. 5th DCA 2009). The order before us is a final postjudgment order that determined the right to the immediate possession of property by a nonparty. Thus, we treat this appeal as a postconviction appeal under Florida Rule of Appellate Procedure 9.140(b)(1)(D). *See also* Fla. R. App. P. 9.030(b)(1)(A) (permitting review of a final order of a circuit court); *cf. Kern v. State*, 706 So. 2d 1366, 1368 (Fla. 5th DCA 1998) (recognizing that courts have treated criminal appeals of orders releasing evidence to the State as final postjudgment orders and processed them like postconviction

appeals); *cf., e.g.*, *Butler v. State*, 613 So. 2d 1348, 1350 (Fla. 2d DCA 1993) (concluding that the criminal court's postjudgment order denying the defendant's motion for return of property was a final order that should be processed much like a postconviction appeal). With our jurisdiction assured, we now address the merits.

The State concedes that it is aware of no Florida authority permitting the postconviction court to disburse funds in the manner it did. Despite our dissenting colleague's thoughtful analysis, we, too, struggle to discover a basis for the postconviction court's ruling.

Ms. Hicks believes that the postconviction court erroneously modified her probation after the sixty-day period for such a modification had expired. *See* Fla. R. Crim. P. 3.800(c) ("A court may reduce or modify to include any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it, sua sponte, or upon motion filed, within 60 days after the imposition . . . ."); *see also Garvison v. State*, 775 So. 2d 340, 341 (Fla. 2d DCA 2000) (citing *Casterline v. State*, 703 So. 2d 1071, 1072-73 (Fla. 2d DCA 1997), for "holding that although the court has [the] right to rescind or modify terms and conditions of probation at any time, absent

proof of violation, the court cannot change the order of probation by enhancing its terms and double jeopardy includes protection against enhancements or extensions of conditions of probation"). We cannot agree.

Rule 3.800(c) plays no role here. Neither the personal representative nor the postconviction court mentioned rule 3.800(c). Moreover, the postconviction court did not change the restitution amount or otherwise enhance Ms. Hicks' probationary sentence. *Cf. J.C. v. State*, 632 So. 2d 1092, 1093 (Fla. 2d DCA 1994) (holding that the trial court acted without jurisdiction when it amended its restitution order from $0 to $,1790 more than sixty days after the original order); *United States v. Kyles*, 601 F.3d 78, 83 (2d Cir. 2010) (explaining that permitting restitution payment installments was "an application of equity to performance of the pronounced sentence" and modifying the installment payments was only a refinement of "this application of equity" and did not change the sentence).

Our dissenting colleague posits that the postconviction court modified probation under section 948.03(2), Florida Statutes (2021). *See generally* § 948.03(2) ("The court may rescind or modify at any

time the terms and conditions theretofore imposed by it upon the probationer."). We are not so certain.

The postconviction court could have modified Ms. Hicks' probation and ordered her to make a single, lump-sum payment if there was a change in her circumstances. *See id.*; *cf. Jordan v. State*, 610 So. 2d 616, 618 (Fla. 1st DCA 1992) (holding that the "probation officer exceeded his authority by substantially increasing the monthly amount Jordan was required to pay" where the *court* had the power to modify the probationary conditions under section 948.03); *Kyles*, 601 F.3d at 84 ("Inherent in equitable authority is the power to adjust [restitution] orders when the circumstances informing them change."). Certainly, the personal representative asked the postconviction court to "modify the terms of the restitution and require that the funds being held in [the attorney's trust] account be paid over."[1] The postconviction court did not explicitly do so.

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[1] To our knowledge, it is unusual for a nonparty in a criminal case to seek modification of a defendant's probation. *See Wanner*, 746 So. 2d at 479 (recognizing "the unusual circumstances presented" where "SouthTrust moved to intervene in the criminal case as a victim for purposes of restitution, seeking reimbursement

Consequently, we cannot agree with our dissenting colleague's facile contention that the postconviction court modified Ms. Hicks' probation. The postconviction court has yet to amend the probation order to reflect any modified terms regarding restitution.[2] The restitution amounts and payment schedule remain the same. The amount disbursed to the personal representative is set off against the total restitution owed to Mr. Powell. Indeed, the postconviction court directed that the trust monies "be dispersed and paid over to the personal representative *as partial payment of any restitution ordered by this Court*." (Emphasis added).

We can only surmise from this record that the postconviction court attempted to *enforce* the restitution order and collect a partial payment for one victim after learning of Ms. Hicks' financial windfall. *See generally Duby v. State*, 651 So. 2d 800, 801-02 (Fla. 1st DCA 1995) (explaining "that after an assessment is made of the

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for the money it had paid to the condominium associations due to Ms. Wanner's criminal conduct").

[2] If the postconviction court intended to modify probation, it should have entered an amended probation order. *See, e.g.*, *Hart v. State*, 325 So. 3d 305, 306 (Fla. 2d DCA 2021) ("[W]e remand for the trial court to enter an amended sentence and order of probation incorporating the rulings made in its previous orders.").

statutory factors, the right to *order* a defendant to pay restitution is an issue separate from the right to *enforce* such order and to collect the amount from a defendant"); *cf. Ex parte Reno*, No. CR-20-0512, 2022 WL 420022, at *2 (Ala. Crim. App. Feb. 11, 2022) (concluding that the trial court was enforcing, not modifying, the restitution order when it directed that the defendant's economic impact payments be sent to the clerk to satisfy the defendant's restitution balance). More to the point, however, the postconviction court acceded to the wishes of a nonparty in a criminal case. In doing so, it honored an apparent agreement between the personal representative and the attorney for Ms. Hicks' former husband as to the disbursement of trust funds. The estate reaped a windfall without, so far as our record reflects, any consideration of the other victims entitled to restitution.

To the extent it sought to enforce Ms. Hicks' restitution obligations, the postconviction court relied on section 775.089. Section 775.089 allows the trial court to use "any means authorized by law for enforcement of a judgment" to collect "[a]ny *default* in payment of restitution." § 775.089(10)(a) (emphasis added); *see also Kirby v. State*, 863 So. 2d 238, 244 (Fla. 2003) ("[T]he award of

restitution can include installment payments enforceable as a condition of probation—a remedy not available in a civil lawsuit."); *Helfant v. State*, 630 So. 2d 672, 673 (Fla. 4th DCA 1994) (explaining how section 775.089 permits the revocation of probation to enforce restitution payments, "hold[ing] incarceration over the head of the defendant like a sword of Damocles to enforce payment in a way that civil judgments cannot"). The trial court may order the clerk of the court or Department of Corrections to collect restitution payments. § 775.089(11). The trial court may also enforce a restitution order by issuing an income deduction order, § 775.089(12), or the State or victim may enforce the restitution order "in the same manner as a judgment in a civil action," § 775.089(5); *see also* §§ 55.03, .10, Fla. Stat. (2021). *See Anton v. State*, 92 So. 3d 876, 877 (Fla. 4th DCA 2012) (explaining that a trial court has "the authority to enter the income deduction orders and the civil liens"). Another statute, section 960.292, Florida Statutes (2021), authorizes the trial court to enter civil restitution lien orders for victims. *See also* § 960.29(1)(b) (providing that "[t]o prevent convicted offenders from increasing their assets after conviction, while their crime victims . . . remain uncompensated for their

damages and losses[,] . . . . the civil restitution lien shall attach not only to the offender's current assets but also, should these assets fail to satisfy the lien, to any future assets or 'windfall' proceeds which may accrue to the defendant, up to the full amount of the lien").

Notably, Ms. Hicks was not in default. Nor did the postconviction court direct the clerk of the court or the Department of Corrections to collect restitution payments. Further, the postconviction court is not enforcing installment payments as a condition of Ms. Hicks' probation; the State has not alleged a probation violation. *See Kirby*, 863 So. 2d at 244. On our limited record, we cannot say that the order is an income deduction order or civil restitution lien order. In fact, our record does not reflect that the postconviction court, any party, or nonparty took steps to obtain such orders. *See* §§ 775.089(5), (12); 960.292, .294.

Neither section 775.089 nor section 960.292 authorizes the postconviction court to enforce the restitution order as it did here. The postconviction court and parties on appeal failed to cite any applicable statute or other legal authority that allowed the

disbursement of the trust funds.[3] Under these circumstances, we must vacate the order and remand for further proceedings consistent with this opinion. *Cf. Wilcox v. State*, 79 So. 3d 878, 879 (Fla. 5th DCA 2012) (vacating and reversing an order imposing a lien where there was no statutory basis to impose the lien).

Vacated and remanded with directions.

NORTHCUTT, J., Concurs.
BLACK, J., Dissents with opinion.

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[3] We also highlight that the funds at issue are not held in custodia legis in the criminal court, which would give the postconviction court inherent jurisdiction over the matter. *See generally Garmire v. Red Lake*, 265 So. 2d 2, 5 (Fla. 1972) ("This does not mean that persons claiming money or other things of value held in custodia legis in a criminal court for evidentiary or other purposes should be without remedy. It simply means that the criminal courts have inherent jurisdiction on proper application of claimants for such items and *upon due notice to the state and others of interest* to determine questions concerning the ownership as well as the appropriate time to release such items held in custodia legis by the criminal courts." (emphasis added)).

BLACK, Judge, Dissenting.

I would affirm the lower court's "Order Granting Motion for Disbursement of Funds" entered in Hicks' four criminal cases because Hicks has failed to demonstrate that the lower court reversibly erred in granting the motion. The lower court had the authority under section 948.03(2), Florida Statutes (2021), to modify Hicks' probation so long as it did not add new conditions or otherwise enhance her probation. The order on review merely modified an existing condition of probation—the payment of restitution to Hicks' father—by requiring that Hicks' dissolution award be distributed to the estate of her late father as partial payment of the restitution previously ordered.

In 2017, Hicks entered a no contest plea to several offenses in four criminal cases and was sentenced to twelve years' imprisonment followed by eight years' probation. As a condition of her probation, Hicks was ordered to pay restitution to her father and several other victims in each case; Hicks was ordered to pay significantly more restitution to her father as compared to the other victims. While incarcerated, Hicks was awarded half of the

proceeds of the sale of the marital home in her dissolution case. At the time the order on review was entered, the funds were being held in the trust account of the attorney for Hicks' former husband. The estate of Hicks' late father filed a motion in her four criminal cases requesting that the lower court order the former husband's attorney to disburse the funds from the sale of the marital home to the estate as a partial payment of the restitution. Hicks opposed the motion, arguing in part that the lower court could not modify her probation as to do so would violate the prohibition against double jeopardy.

The estate, counsel for the former husband, Hicks, and the State were present at the hearing on the motion for disbursement of funds. During the hearing, the estate expressly stated that it was "simply asking for The Court . . . to modify the terms of the restitution and require that the funds being held in [the trust] account be paid . . . to the estate . . . and that Ms. Hicks[']' obligation to pay restitution be—the princi[pal] be reduced accordingly." In so arguing, the estate pointed out that the probation order contains a provision notifying Hicks that the court

could modify the conditions of probation at any time. The estate's motion was granted, and this appeal followed.

I agree with the majority that this appeal should be treated as an appeal of a final order entered after final judgment. *See* Fla. R. App. P. 9.140(b)(1)(D); *cf. Walker v. State*, 919 So. 2d 501, 502-03 (Fla. 3d DCA 2005); *Zepeda v. State*, 658 So. 2d 1201, 1201 (Fla. 5th DCA 1995); *Gladfelter v. State*, 604 So. 2d 929, 930 (Fla. 4th DCA 1992), *approved by* 618 So. 2d 1364 (Fla. 1993). I likewise agree with the majority that in light of the father's passing, the estate is now entitled to the restitution. However, it is clear to me that the lower court did modify Hicks' probation and that the lower court had the authority to do so pursuant to section 948.03(2). Moreover, Hicks has not met her burden on appeal of establishing "that a prejudicial error occurred" in the lower court. *See* § 924.051(7), Fla. Stat. (2021).

Pursuant to section 948.03(2), "[t]he court may rescind or modify at any time the terms and conditions theretofore imposed by it upon the probationer." *Accord Wanner v. State*, 746 So. 2d 478, 480 (Fla. 2d DCA 1999) ("[S]ection 948.03(6) allows the trial court to modify probation conditions it has previously imposed at any time,

as long it does not enhance the penalty or add new conditions."); *see also Clark v. State*, 579 So. 2d 109, 110 n.3 (Fla. 1991) ("We recognize that section 948.03(7), Florida Statutes (1987), permits the court to 'rescind or modify at any time the terms and conditions theretofore imposed by it upon the probationer or offender in community control.' "); *Woods v. Angel*, 556 So. 2d 820, 821 (Fla. 5th DCA 1990) ("Clearly, Section 948.03(7) Fla. Stat. (1987) grants the court the authority to modify during the term of probation any condition 'theretofore imposed.' ").[4] Hicks' probation order expressly provided, in conformity with section 948.03, "that the court may at any time rescind or modify any of the conditions of [Hicks'] probation."

Understanding the distinction between a mere modification, as contemplated by section 948.03(2), and an enhancement is important. A mere modification to the conditions of probation may be made at any time pursuant to the statute; but "[b]efore probation may be enhanced, a violation of probation must be formally charged and the probationer must be brought before the court and advised

[4] Section 948.03(6) and section 948.03(7) have since been renumbered as section 948.03(2).

of the charge." *Lippman v. State*, 633 So. 2d 1061, 1064 (Fla. 1994) (first citing *Clark*, 579 So. 2d at 110-11; and then citing § 948.06(1), Fla. Stat. (1987)). "Absent proof of a violation, the court cannot change an order of probation by enhancing the terms," as to do so would be violative of the prohibition against double jeopardy. *Id.* (citing *Clark*, 579 So. 2d at 111). "The test, according to *Lippman*, as to whether a modification is really an enhancement, turns on whether the change is more restrictive than the original condition." *Gerber v. State*, 856 So. 2d 1113, 1115 (Fla. 4th DCA 2003) (quoting *Waldon v. State*, 670 So. 2d 1155, 1159 (Fla. 4th DCA 1996)). *Lippman* further provides that a change to the conditions of probation constitutes an enhancement where the change creates "an additional hardship." 633 So. 2d at 1064.

The payment of restitution to Hicks' father was included as a condition of Hicks' probation, as was the amount of restitution to be paid. By ordering the disbursement of the dissolution award, the court did not add a condition to Hicks' probation; Hicks' obligation to pay each victim restitution remains the same. *Cf. Clark*, 579 So. 2d at 110 n.3 (noting that while the trial court may rescind or modify at any time terms and conditions of probation previously

imposed pursuant to section 948.03, that statute is inapplicable where the trial court did not modify the defendant's probation but added an entirely new condition); *Brenatelli v. State*, 555 So. 2d 1315, 1316 (Fla. 5th DCA 1990) ("Although Section 948.03(7), Florida Statutes (1987) permits the trial court to add additional conditions to those enumerated in the statute at the time of the original sentence, it may only subsequently modify those conditions 'theretofore imposed.' Since the trial court elected not to impose any limitation on the contact between appellant and his wife at the time of the original sentence, it now lacks authority to do so."); *Carmo v. State*, 378 So. 2d 850, 850-51 (Fla. 4th DCA 1979) (holding that while section 948.03 authorizes a trial court to modify the conditions of probation theretofore imposed, the trial court lacked statutory authority to add a condition requiring the payment of restitution where no such condition had been initially imposed). The lower court did not enhance the terms of Hicks' probation in any respect; the court's order did not place any additional hardship on Hicks, nor did it make the terms of her probation more restrictive. Hicks simply has the ability to, in effect, make a partial lump sum payment to her father's estate and as such the court

ordered the disbursement of funds from the trust account. Hicks has presented no persuasive argument, much less any authority, to suggest otherwise. And this court cannot grant relief to Hicks in this appeal where she has failed to establish error on the part of the lower court.

In *Gladfelter*, the defendant was ordered to pay restitution to the victim as a condition of her probation, but the amount had not been specified in the original order. 618 So. 2d at 1364. Over one year after the probation order had been rendered, the trial court finally established the amount of restitution. *Id.* The defendant appealed, arguing that the court could not set the amount of restitution more than sixty days after the sentence had been imposed. *Id.*; *see* Fla. R. Crim. P. 3.800(c) (providing that a court may reduce or modify a sentence within sixty days of its imposition).[5] The Fourth District affirmed the trial court's order to the extent it modified the defendant's probation, and the supreme

[5] At the time *Gladfelter* issued, the sixty-day restriction set forth in rule 3.800 was found in subsection (b) rather than subsection (c).

court approved the decision of the Fourth District, holding as follows:

> Because restitution was made an original condition of the probation, the court could properly determine the amount of restitution at a later date. We do not construe rule 3.800 as requiring this to be done within sixty days. Section 948.03(8), Florida Statutes (1989), authorizes the modification of the terms and conditions of probation at any time.[6] This is not a case in which a new condition of probation was added.

Id. at 1365.[7]

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[6] Section 948.03(8) has since been renumbered as section 948.03(2).

[7] I agree with the majority that that the lower court did not modify Hicks' probation pursuant to rule 3.800(c). Rule 3.800(c) provides in part that "[a] court may reduce or *modify to include* any of the provisions of chapter 948, Florida Statutes, a legal sentence imposed by it, sua sponte, or upon motion filed, *within 60 days after the imposition*." (Emphasis added.) Without question, the lower court was well outside of the sixty-day time limit to modify Hicks' probation under rule 3.800(c). Moreover, rule 3.800(c) contemplates the addition of a provision to an existing sentence—"modified to include"—whereas section 948.03(2) contemplates amendment of a previously imposed condition of probation without creating an additional hardship on the probationer—"modify . . . conditions theretofore imposed." The supreme court in *Gladfelter* recognized this distinction in holding that rule 3.800 does not prohibit a court from modifying an existing condition of probation more than sixty days after the sentence is imposed so long as the modification does not constitute an enhancement. *See* 618 So. 2d at 1365.

If setting the amount of restitution qualifies as a mere modification under section 948.03, then certainly so must any change to the manner in which restitution is to be paid once an amount has already been set. *See also Zepeda*, 658 So. 2d at 1201 (holding that the trial court had the authority pursuant to section 948.03 to modify defendant's probation by changing the counseling condition from family counseling to anger management but that the trial court's addition of a no contact condition—which was not originally included as a condition of probation—constituted an improper enhancement of defendant's probationary sentence).

Despite Hicks' argument otherwise, the majority concludes that the lower court did not modify Hicks' probation—or at least that it is not "certain" whether the lower court modified Hicks' probation—because there had been no change in circumstances justifying such a modification and because the lower court did not explicitly state that it was modifying Hicks' probation. But there is no requirement that a change in circumstances be shown for a court to modify probation pursuant to section 948.03(2).[8] And

[8] Disregarding Hicks' argument on appeal that the lower court did modify her probation order, the majority further concludes that

while the lower court did not explicitly state that by granting the motion for disbursement of funds it was modifying Hicks' probation, at the hearing on the motion the estate requested that Hicks' probation be modified and pointed out that the probation order contains a provision indicating that the court could modify the conditions of probation at any time.[9]

The majority holds that this court must reverse because "[t]he order, motion, and limited record fail to articulate clearly the

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it is apparent that Hicks' probation had not been modified by the lower court because there is no modified or amended probation order in our record. But the absence of an amended order of probation does not deprive us of jurisdiction, *see* Fla. R. App. P. 9.140(b)(1)(D) ("A defendant may appeal . . . orders entered after final judgment . . . ."), nor is it determinative of the result where, as here, the order on review is in the record and the transcript plainly establishes the effect of the order on appeal. The lower court stated that Hicks' "final obligation" would be reduced because "she gets credit" for the payment. Whether the lower court expressly called this a modification of probation or not does not determine whether it is, in fact, a modification.

[9] The majority further surmises that by granting the estate's motion it effectively "honored an apparent agreement between the personal representative and the attorney for Ms. Hicks' former husband as to the disbursement of trust funds." There is no

postconviction court's authority to enter such an order."[10] But Hicks does not challenge the court's authority except as it would be constrained by rule 3.800(c)—which is clearly not at issue—and as it relates to section 944.512(3), Florida Statutes—a statute not referenced by the majority. And I fail to see what additional record documents might be necessary to demonstrate that the court had authority under section 948.03(2) to modify Hicks' probation. The

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indication in the record that the lower court was doing any such thing. Though the purported agreement entered into in the probate case was discussed during the hearing, the lower court made it clear that the estate's motion was not one seeking to modify that agreement to allow for the disbursement of funds. Rather, the lower court perceived the estate's motion as seeking a partial payment of the restitution previously ordered by the court since Hicks had the financial means to do so.

[10] Addressing an issue not raised by Hicks, the majority points out that in the order the lower court cited section 775.089, Florida Statutes, as authority for granting the motion to disburse funds. The majority goes on to address several subsections of that statute and concludes that section 775.089 does not authorize the lower court to have granted the motion. It is apparent to me that the lower court cited section 775.089 as support for the determination that the estate is now entitled to the restitution at issue. The statute was addressed in detail at the hearing; the lower court referenced section 775.089(1)(c), explaining that the term "victim" includes the victim's estate. The lower court also cited *Koile v. State*, 934 So. 2d 1226, 1231 (Fla. 2006), in which the supreme court explained that a victim for purposes of section 775.089(1)(c) "includes not only the person injured by the defendant but also the person's estate if he or she is deceased."

majority states that it "struggle[d] to discover a basis for the postconviction court's ruling" and ultimately holds that Hicks must be granted relief on appeal because "[t]he *postconviction court and parties on appeal* failed to cite any applicable statute or other legal authority that allowed the disbursement of the trust funds." (Emphasis added.) But the lower court's failure to cite section 948.03 does not impact its authority to have acted under that statute, and as the appellant, Hicks bears the burden on appeal of establishing entitlement to relief. *See* § 924.051(7) ("In a direct appeal or a collateral proceeding, the party challenging the judgment or order of the trial court has the burden of demonstrating that a prejudicial error occurred in the trial court.").[11]

Because Hicks failed—in the issues she raised and argued—to meet her burden of demonstrating that the lower court reversibly erred in granting the estate's motion to disburse funds—which, in

[11] To the extent the majority is concerned that "[t]he estate reaped a windfall without, so far as our record reflects, any consideration of the other victims entitled to restitution," we note that Hicks lacks standing to raise arguments on behalf of the victims.

effect, modified Hicks' probation under the authority of section 948.03(2)—I would affirm the order on appeal.

Opinion subject to revision prior to official publication.