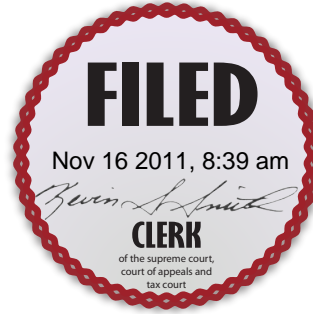


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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M.J., )  
 )  
Appellant- Respondent, )  
 )  
vs. ) No. 49A02-1103-JV-329  
 )  
STATE OF INDIANA, )  
 )  
Appellee- Plaintiff, )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Geoffrey Gaither, Magistrate  
Cause No. 49D09-1010-JD-002761

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**November 16, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

### Case Summary and Issues

The trial court found M.J. to be a juvenile delinquent and placed him on probation. A condition of his probation was to pay restitution to the victim of his theft in the amount of \$1,889. M.J. raises three issues for our review, which we restate as 1) whether the trial court abused its discretion by failing to inquire into M.J.'s ability to pay the restitution; 2) whether insufficient evidence supported the amount of restitution ordered to be paid; and 3) whether the trial court incorrectly measured the victim's damages. The State also raises an issue, which we find dispositive: whether M.J.'s claims are moot because he has completed probation. Concluding the issues raised by M.J. are moot because his probation expired on June 3, 2011, we affirm the trial court's dispositional order.

### Facts and Procedural History

Angel Gray returned home late one evening and discovered her interior chain lock was latched. She walked to the side of her apartment and saw that the screens on one of her apartment's bedroom windows had been cut out. Gray called the police, and Officer Eldridge responded to the scene. Officer Eldridge kicked open the front door, walked through the residence, and determined no one was present in the apartment. Gray discovered that her forty-six-inch flat screen television, some loose change, and various food items were missing and her son's bedroom was "trashed." Transcript at 6.

Fingerprints from window sills at Gray's apartment matched M.J., a juvenile. M.J. is friends with Gray's son and had previously been inside the apartment as a guest. The State filed a petition alleging M.J. committed delinquent acts of burglary and theft. The juvenile court held a denial hearing and made true findings as to both allegations. M.J.

was placed on probation. The last condition of his probation was to “pay restitution in the amount of \$1,889.00 to the Clerks [sic] Office, payable to Angel Gray . . . .” Appellants [sic] Appendix at 64. M.J.’s probation terminated on June 3, 2011, pursuant to his probation order. M.J. now appeals the restitution condition of his probation.

### Discussion and Decision

M.J. argues the trial court abused its discretion by failing to properly evaluate his ability to pay the restitution amount ordered. Indiana Code section 31-37-19-5(b)(4) provides that a juvenile court may order a delinquent child “to pay restitution if the victim provides reasonable evidence of the victim’s loss, which the child may challenge at the dispositional hearing.” Unlike the statute allowing courts to make restitution conditions for adult probation, which states that the amount ordered may not exceed what the adult can or will be able to pay,<sup>1</sup> Indiana Code section 31-37-19-5(b)(4) contains no such requirement. However, our court has previously held that the textual distinction is irrelevant and we require the same evaluation of a juvenile delinquent’s ability to pay before restitution can be a condition of his or her probation. M.L. v. State, 838 N.E.2d 525, 529 (Ind. Ct. App. 2005), trans. denied.

The adult restitution provision’s rationale is an equal protection concern of preventing indigent defendants from being imprisoned due to their inability to pay, and the same equal protection concern applies to juveniles. Id. at 528-29. Thus, we held in M.L. that “equal protection and fundamental fairness concerns require that a juvenile court must inquire into a juvenile’s ability to pay before the court can order restitution as a condition of probation.” Id. at 529. We went on to distinguish restitution as a condition

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<sup>1</sup> See Ind. Code § 35-38-2-2.3.

of probation from restitution as an element of a sentence. “On the other hand, when restitution is not a condition of probation, but rather a part of an executed sentence, an inquiry into the defendant’s ability to pay is not required. In such a situation, restitution is merely a money judgment, and a defendant cannot be imprisoned for non-payment.” Id. (citations omitted). Here, the trial court’s restitution order was expressly a condition of probation, necessitating an inquiry into M.J.’s ability to pay the amount.

The trial court failed to properly inquire into M.J.’s ability to pay. M.J.’s counsel asked the trial court “to find [M.J.] . . . unable to reasonably pay the [restitution] amount.” Tr. at 48. He then went on to add that M.J., a high school student, was unemployed and did not have any job prospects. The trial court did not inquire deeper into M.J.’s ability to pay, but instead asked his mother about her job and income. She stated she is a single mother of four who receives no child support or other assistance, and that her monthly income is approximately \$2,200. The trial court then proceeded to recite the conditions of M.J.’s probation, including restitution in the amount of \$1,889.

The only evidence presented to the trial court regarding M.J.’s ability to pay the restitution amount suggests he is unable to pay. M.J. stated he was currently enrolled in high school, and his counsel told the trial court M.J. was unemployed and had no job prospects. Although the trial court did at least minimally inquire into M.J.’s ability to pay, the evidence wholly suggests he is unable. Under these circumstances, the trial court should have inquired further or should have determined M.J. was unable to pay and not ordered restitution. If a trial court is allowed to ignore the findings of its inquiry into a juvenile’s ability to pay restitution, the inquiry would serve no purpose.

Despite this error by the trial court, M.J.'s arguments are moot. His probation expired on June 3, 2011. See Tharp v. State, 942 N.E.2d 814, 816 n.1 (Ind. 2011) (stating the probation issue raised was moot where Tharp already completed probation). There was no petition to revoke probation or petition for modification of the court's dispositional decree filed, nor was there an order or petition for an order reducing the restitution to a civil judgment.<sup>2</sup> When we are unable to provide effective relief upon an issue, the issue is deemed moot, and we will not reverse a trial court's determination where absolutely no change in the status quo will result. Jones v. State, 847 N.E.2d 190, 200 (Ind. Ct. App. 2006), trans. denied. Thus, despite the veracity of M.J.'s argument, we decline to reverse the trial court's determination.<sup>3</sup>

#### Conclusion

Although the trial court erred in its inquiry into M.J.'s ability to pay the restitution ordered, the issues raised by M.J. are moot because his probation expired on June 3, 2011, pursuant to the dispositional order. Since we are unable to provide effective relief, we affirm the trial court's order.

Affirmed.

BARNES, J., and BRADFORD, J., concur.

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<sup>2</sup> We leave for another day the issue of whether a restitution condition of probation for a juvenile, if not paid, can be turned into a civil judgment. See D.H. v. State, 950 N.E.2d 36, \*1 (Ind. Ct. App. 2011) (May, J., dissenting).

<sup>3</sup> M.J. also argues the evidence did not support the specific amount of restitution ordered and the wrong measure of damages was invoked. Concluding these issues are also moot, we need not address them.