

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2016-CA-000232-MR

SIRIS QUARLES

APPELLANT

v. APPEAL FROM CHRISTIAN CIRCUIT COURT  
HONORABLE JOHN L. ATKINS, JUDGE  
ACTION NO. 13-CR-00086

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION  
VACATING AND REMANDING

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BEFORE: KRAMER, CHIEF JUDGE; ACREE AND JONES, JUDGES.

JONES, JUDGE: The Appellant, Siris Quarles, seeks review of the Christian Circuit Court's judgment on his plea of guilty. Quarles asserts that the circuit court erred when it ordered a restitution amount above what Quarles agreed to pay as part of his plea agreement with the Commonwealth. The Commonwealth agrees with Quarles as to the restitution amount ordered by the circuit court. Accordingly,

we vacate and remand for entry of a restitution amount in conformity with the parties' plea agreement.

Quarles stabbed his nephew Terence causing him serious physical injuries. As a result, he was indicted for first-degree assault. On May 9, 2014, the Commonwealth made Quarles an offer on a plea of guilty. In exchange for his plea of guilty, the Commonwealth agreed to amend the charges to assault under extreme emotional disturbance and to recommend a one-year sentence. As part of the agreement, Quarles also agreed to pay \$16,919 in restitution to Terence, to be offset by any amount paid by the Crime Victim's Compensation Board. Quarles accepted the Commonwealth's offer. Following a hearing, the circuit court accepted Quarles's plea.

On August 12, 2014, Quarles appeared in court at which time he objected to the portion of the plea concerning restitution. Specifically, Quarles stated that he was concerned that Terence would not put forth a good faith effort with the Board to obtain compensation. The Commonwealth responded that Terence had applied with the Board, but had not yet received a decision on his claim. The circuit court postponed final sentencing.

On August 27, 2014, Quarles appeared for final sentencing. There, the Commonwealth informed the circuit court that since Quarles's plea, Terence had incurred additional medical expenses, which now totaled \$31,000. Quarles asked that "he be held to the balance stated in the plea agreement." Without conducting any additional hearing, the circuit court ordered Quarles to pay

restitution in the amount of \$31,000, almost twice what Quarles had agreed to as part of the plea agreement. This appeal followed.

If restitution is ordered in a criminal matter, the test on appeal is abuse of discretion. *Fields v. Commonwealth*, 123 S.W.3d 914, 917 (Ky. App. 2003). An abuse of discretion occurs when the circuit court's decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999).

The circuit court abused its discretion when it ordered Quarles to pay restitution greater than the specific dollar amount he agreed to as part of his plea agreement. *See Commonwealth v. Morseman*, 379 S.W.3d 144, 152 (Ky. 2012). While the circuit court had discretion to reject the plea agreement, it did not have the discretion to impose restitution greater than the specific amount agreed to by Quarles in the plea agreement. Moreover, in the absence of an agreement for a specific amount of restitution, due process requires a hearing, which clearly did not take place here. *See Wiley v. Commonwealth*, 348 S.W.3d 570, 575 (Ky. 2010); *see also Rollins v. Commonwealth*, 294 S.W.3d 463, 467 (Ky. App. 2009) (reversing restitution award because “the judge . . . mistakenly believed that the court could order restitution . . . and that such amount could be supplemented at any point in the future . . .”).

Accordingly, we vacate the judgment of the Christian Circuit Court and remand this matter for entry of order in conformity with the parties' plea agreement as to restitution.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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