

RENDERED: JULY 12, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2017-CA-000183-MR

BOBBY JOE WILLIAMS

APPELLANT

v. APPEAL FROM FULTON CIRCUIT COURT
HONORABLE TIMOTHY A. LANGFORD, JUDGE
ACTION NO. 14-CR-00070

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * **

BEFORE: GOODWINE, SPALDING, AND L. THOMPSON, JUDGES.

SPALDING, JUDGE: Bobby Joe Williams appeals the January 15, 2015, judgment and sentence on a plea of guilty of the Fulton Circuit Court by which he was convicted of first-degree wanton endangerment and first-degree assault and sentenced to fifteen years' imprisonment, to pay fifteen thousand dollars in

restitution, and to pay one hundred sixty dollars in court costs. After careful review, we affirm.

In November 2014, Williams was indicted by a Fulton County grand jury on one count each of criminal attempt to commit murder, first-degree burglary, first-degree assault, first-degree wanton endangerment, and being a persistent felony offender in the first degree. Williams pled guilty to first-degree assault and first-degree wanton endangerment.

On January 14, 2016, Williams was sentenced to fifteen years' imprisonment. At sentencing, upon questioning by the trial court, Williams admitted he had funds in his commissary account and did not suffer any disability. Based upon this information, the trial court found Williams able to pay court costs and assessed them in the amount of one hundred sixty dollars against him. The trial court deferred review of payment of these costs until February 11, 2021.

The trial court then inquired as to whether the Commonwealth was seeking restitution. The Commonwealth stated restitution was being sought but an amount had not been calculated. Upon the trial court's request for an estimate of the victim's expenses, the Commonwealth stated forty thousand dollars. Williams did not agree to this amount. The Commonwealth was unable at that time to provide any documentation supporting this amount.

The trial court then questioned the victim directly regarding her medical expenses from her injuries from this crime. The victim was uncertain of her medical expenses and what amount was covered by her health insurance. She stated she kept her hospital bills but did not bring them with her to Williams's sentencing. Upon further questioning by the trial court, despite her prior uncertainty, the victim estimated her expenses totaled fifteen thousand dollars. Williams again did not agree to the amount. The trial court set restitution in the amount of fifteen thousand dollars "subject to review and motion for review." The trial court then set a hearing regarding the amount of restitution for February 8, 2016, without objection from either party.

On February 8, 2016, the victim was not present. The Commonwealth had not subpoenaed her and the trial court was uncertain as to whether she was informed her presence would be required when she was last in court. The Commonwealth attempted to proceed without the victim by presenting documents filed by the hospital in a separate civil action against the victim to recover unpaid expenses which allegedly documented expenses incurred by the victim for treatment of injuries caused by Williams. However, the trial court determined the heavily redacted documents were insufficient for purposes of determining restitution. Without objection from either party, the trial court continued the restitution hearing to March 10, 2016.

The victim was present at the hearing on March 10, 2016. The Commonwealth again attempted to use the redacted documents from the hospital's lawsuit to prove the amount of restitution. The victim testified she was unsure of what expenses were covered by her insurance and that, at the time of the injury, she owed money to the hospital for prior services unrelated to this incident. Again, the trial court found these documents to be insufficient for purposes of setting restitution and continued the hearing without objection to April 28, 2016.

At the hearing on April 28, 2016, the Commonwealth presented an unredacted hospital bill. The victim testified that all expenses included in the bill related to treatment of injuries to her eye and nose caused by Williams. The bill indicates cost for treatment totaled \$18,279.94. The victim testified her insurance provider paid \$1,947.87 toward the total amount owed, which is reflected on the bill, making the victim responsible for \$16,322.07. Williams presented no evidence, witnesses, or argument contesting the hospital bill or the victim's testimony. At the close of evidence, the trial court declined to alter the amount of restitution ordered in the final judgment, as reflected in its May 11, 2016, order.

On January 31, 2017, Williams sought a belated appeal of his sentence. This Court remanded the case to the trial court for an evidentiary hearing to determine whether Williams implicitly or explicitly waived his right to appeal. After a hearing, the trial court found Williams explicitly waived his right to appeal.

Despite this finding, this Court then granted Williams’s motion for a belated appeal on May 1, 2018. Williams raises three arguments on appeal. First, he alleges the trial court improperly imposed restitution at sentencing. Second, he claims the trial court failed to comply with KRS¹ 431.200. Third, he argues the trial court erred in deferring payment of court costs in excess of one year in violation of KRS 23A.205.

“We review a trial court’s findings with regard to restitution for an abuse of discretion.” *Bentley v. Commonwealth*, 497 S.W.3d 253, 255 (Ky. App. 2016) (citation omitted). “The test for abuse of discretion is whether the trial judge’s decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles.” *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999) (citations omitted).

First, Williams claims the trial court improperly imposed restitution on him at sentencing. Restitution is mandatory in cases with a named victim, KRS 532.032, and is defined as “compensation paid by a convicted person to a victim for counseling, medical expenses, lost wages due to injury, or property damage and other expenses suffered by a victim because of a criminal act.” KRS 532.350(1)(a). “Ideally, a trial court should delay entering a final judgment until it decides the restitution question so that matter could be included in the final

¹ Kentucky Revised Statutes.

judgment.” *Commonwealth v. Steadman*, 411 S.W.3d 717, 725 (Ky. 2013).

However, inclusion of restitution in the same order as the punitive sentence is not mandatory. *Id.*

Although not explicitly raised by Williams on appeal, we must first address the trial court’s jurisdiction over this matter. The Kentucky Supreme Court has repeatedly held “a trial court *loses jurisdiction* of a case ten days after entry of a final order or judgment.” *Id.* at 721 (emphasis in original) (citations omitted). “A court’s power to affect its own judgment within ten days of entry” is properly categorized as particular case jurisdiction, which is subject to waiver. *Id.* at 722, 724.

In the case at hand, the trial court entered its final judgment, including an amount of restitution based upon an estimate given by the victim on January 15, 2016. The trial court then immediately set a hearing to review restitution for February 8, 2016, which was subsequently continued twice before a hearing was finally held on April 28, 2016. At the hearing, the Commonwealth presented evidence the trial court found sufficient to support the amount of restitution ordered more than three months prior. At no point subsequent to entry of the final judgment did Williams raise the trial court’s jurisdiction over this particular case as an issue. Therefore, similar to the facts in *Steadman*, Williams effectively

consented to the restitution hearing and waived the issue of particular case jurisdiction. *Id.* at 726.

Based upon Williams's waiver of jurisdiction as an issue, we are left only to consider whether the trial court abused its discretion in ordering restitution in the amount of fifteen thousand dollars. Williams is correct that due process requires "sentences not be imposed on the basis of material misinformation, and that facts relied on by the sentencing court have some minimal indicium of reliability beyond mere allegation." *Fields v. Commonwealth*, 123 S.W.3d 914, 917 (Ky. App. 2003) (citations and internal quotation marks omitted). In this matter, although restitution was initially set based upon the victim's uncorroborated estimate of her medical expenses, the trial court found this amount to be supported by an unredacted hospital bill provided by the Commonwealth at the April 28, 2016, hearing. The bill showed the victim as the patient treated, the dates of treatment corresponding to the date of Williams's assault, and descriptions of the treatments administered to the victim. Additionally, the bill indicates the amount of restitution assessed against Williams to be less than the amount actually incurred by the victim to treat her injuries.

The trial court's imposition of restitution in the amount of fifteen thousand dollars was not an abuse of discretion. The defendant was entitled to reasonable notice of a hearing to determine the amount of restitution before an

impartial judge with the opportunity to have counsel and to present his case, while the Commonwealth's claims must be established by substantial evidence. *Jones v. Commonwealth*, 382 S.W.3d 22, 32 (Ky. 2011). The defendant received such a hearing, and there was no error.

Next, Williams argues the trial court erred in failing to comply with KRS 431.200 in imposing restitution. KRS 431.200 relates only to the criminal taking, injuring, or destroying of property. It does not apply to the medical bills incurred in this matter. "KRS 532.032 governs criminal restitution imposed at sentencing, while KRS 431.200, an older statute, governs another sort of post-sentencing restitution proceeding that contemplates the possibility of empaneling a jury to decide disputed restitution." *Brown v. Commonwealth*, 540 S.W.3d 374, 376 (Ky. 2018). KRS 532.032 mandates restitution be considered during sentencing when appropriate and "Kentucky law now imposes no requirement of a separate jury trial to determine criminal restitution." *Id.* at 376-77. Herein, although the court continued the restitution hearing beyond final sentencing, restitution was addressed at sentencing and included in the final judgment pursuant to KRS 532.032.

Finally, Williams contends the trial court violated KRS 23A.205 by deferring his court costs more than one year. He relies upon the holding in *Travis v. Commonwealth*, 327 S.W.3d 456, 459 (Ky. 2010), in arguing this issue cannot

be waived despite his failure to object to court costs at sentencing. However, *Travis* is inapplicable here. It is true that “an appellate court may reverse court costs on appeal to rectify an illegal sentence.” *Spicer v. Commonwealth*, 442 S.W.3d 26, 35 (Ky. 2014). However, “[t]he assessment of court costs in a judgment fixing sentencing is illegal *only* if it orders a person adjudged to be ‘poor’ to pay costs.” *Id.* (emphasis in original). Here, Williams was not adjudged to be a “poor person” within the definition in KRS 23A.205 and so the assessment of court costs against him does not constitute an illegal sentence. That the court gave him more time to pay did not make it so. Williams admits he did not object to the imposition of court costs at sentencing or review being set in 2021. Because the issue was not raised before the trial court, it was not preserved for review by this Court. *Roe v. Commonwealth*, 493 S.W.3d 814, 830 (Ky. 2015). Therefore, this claim will not be reviewed on appeal.

For the foregoing reasons, we affirm the judgment of the Fulton Circuit Court.

ALL CONCUR.

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