

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FELICIA LENETTE HILL,

Defendant-Appellant.

UNPUBLISHED

July 8, 2008

No. 273910

Macomb Circuit Court

LC No. 2006-000015-FH

Before: Saad, C.J., and Borrello and Gleicher, JJ.

GLEICHER, J. (*concurring in part and dissenting in part*).

I agree that constitutional double jeopardy principles do not bar punishment for defendant's convictions of both failure to pay wages, MCL 408.485, and larceny by false pretenses, MCL 750.218. However, I respectfully disagree with the majority's determination that defendant's challenge to the trial court's restitution order is not ripe for review. In my view, the trial court improperly ordered defendant to reimburse Raul Parmo-Leon, and this portion of the court's sentence should be vacated.

The jury found defendant not guilty of failing to pay wages to Parmo-Leon. At her sentencing hearing, defendant objected to the probation department's recommendation that she pay restitution to Parmo-Leon in the amount of \$3,750. The trial court effectively overruled defendant's objection by instead referring the issue to a dispute resolution center, stating,

I ... think that for the benefit of all the victims in this case that the—what the Court is going to do is I'm going to refer the issue of restitution to the Resolution Center with the expectation that a resolution can be made and this Court will stand by an agreement made with the assistance of the resolution center with all three complainants; namely Maria Alfaro, Raul Leon and Maria Cruz, and if a settlement cannot be reached then I'm going to go with the figures as recommended by both probation departments

The trial court's September 18, 2006 order of sentence disposition provides in relevant part as follows:

Restitution will be \$17,255 or figure arrived at by Resolution Center *for all three complainants*. Probation will be terminated upon payment of restitution

of \$17,255 or figure agreed to by parties from Resolution Center. (Emphasis supplied).

In my view, the trial court erred by requiring defendant to either negotiate reimbursement to Parmo-Leon, or to pay him the full \$3750 recommended if negotiations proved unsuccessful. Because the jury acquitted defendant of failing to pay wages to Parmo-Leon, defendant should not have to make any restitution to him. In *People v Winquest*, 115 Mich App 215, 222; 320 NW2d 346 (1982), this Court held “improper” an order of probation requiring the defendant to make restitution because “a defendant may not be required to make restitution for damages arising out of a crime for which he was tried and acquitted; under such circumstances the parties must be left to their civil remedies.”¹

I also believe that this issue qualifies as ripe for review because the trial court in its final order of sentence disposition limited defendant’s options to either paying Parmo-Leon \$3,750, the entire sum recommended by the probation department, or paying him some negotiated portion of this amount. Both of these choices qualify as unlawful given defendant’s acquittal of the charge involving Parmo-Leon. Because both options lack legal justification, enforcement of the order of sentence disposition will cause defendant to suffer a certain, nonspeculative injury.² Furthermore, because the trial court already has imposed a legally invalid sentence in this regard, this issue is now justiciable, and further factual development will not sharpen the parties’ positions. Defendant “has sustained or is immediately in danger of sustaining some direct injury” as a result of the trial court’s order, and defendant’s future financial injury is by no means “conjectural” or “hypothetical.” *City of Los Angeles v Lyons*, 461 US 95, 102; 103 S Ct 1660; 75 L Ed 2d 675 (1983) (internal quotation omitted). I would reverse the trial court’s order requiring defendant to negotiate with or pay Parmo-Leon.

/s/ Elizabeth L. Gleicher

¹ The instant case is readily distinguishable from *People v Gahan*, 456 Mich 264, 272; 571 NW2d 503 (1997), because the defendant in *Gahan* was never *acquitted* of defrauding any of the additional victims of his criminal enterprise. In the instant case, a jury decided that Parmo-Leon was not a victim of defendant’s misconduct, and therefore no factual basis exists for determining any financial harm that Parmo-Leon sustained.

² It is fanciful to believe that Parmo-Leon will accept no restitution, given that the trial court has promised him \$3,750 for merely participating in the Resolution Center exercise.