

This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2018).

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1178**

State of Minnesota,
Respondent,

vs.

Curtis Lee Miles,
Appellant.

**Filed June 15, 2020
Affirmed
Bryan, Judge**

Blue Earth County District Court
File No. 07-CR-18-5177

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Patrick R. McDermott, Blue Earth County Attorney, Susan B. DeVos, Assistant County Attorney, Mankato, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Veronica M. Surges, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan, Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellant argues that the district court exceeded its legal authority in ordering restitution for a loss that did not directly result from appellant's criminal conduct. We

conclude that because appellant failed to raise this challenge in district court, he forfeited his right to challenge restitution on appeal. We affirm the district court decision.

FACTS

On December 13, 2018, D.R. was present at appellant Curtis Lee Miles's apartment when an altercation occurred between Miles, Miles's girlfriend, and the girlfriend's son. The son wanted to fight Miles, and the girlfriend held her son back. Miles grabbed a kitchen knife, intending to scare those present and threatening to commit a crime of violence. Miles was arrested, and respondent State of Minnesota charged Miles with three counts of second-degree assault with a dangerous weapon and three counts of threats of violence.

D.R. filed an affidavit for restitution, claiming that she was involved in a scuffle and that her \$198 gold chain broke during this scuffle. In response, Miles filed correspondence with the district court denying any physical altercation or scuffle involving D.R. Ultimately, however, Miles pleaded guilty to one count of a threat of violence towards D.R. in exchange for dismissal of all other counts. This agreement did not include an agreement as to restitution, and Miles indicated on the plea petition that he was contesting restitution. In addition, when the district court asked if there was going to be a contested restitution hearing, Miles's counsel responded in the affirmative. When the district court asked if anything relating to the restitution issue needed to be included in the factual basis, the state replied "we have a restitution affidavit that we will file and if [Miles] wishes to challenge that he can."

At the sentencing hearing, Miles agreed to the recommendations in the presentence investigation report (PSI), which included recommending Miles pay any and all restitution in this file. The district court then asked Miles if there was anything else he wanted the district court to know. Miles said “no.” The district court then adopted the recommendations, stating that “the recommendations here appear appropriate and I will follow them as everyone is in agreement.” The district court sentenced Miles to 12 months and one day in prison, stayed for three years of supervised probation, and ordered Miles to pay D.R. \$198 in restitution. Miles did not object. Miles never filed a written request for a restitution hearing. This appeal follows.

D E C I S I O N

Miles argues that the district court erred in ordering restitution because he claims he did not directly cause the loss to D.R. Because Miles failed to properly raise this challenge in district court, he has forfeited his right to challenge restitution on appeal.

As part of a felony sentence, the district court may order an offender to pay restitution to a crime victim. Minn. Stat. § 609.10, subd. 2 (2018). Generally, an offender may challenge restitution, but must do so by requesting a hearing within 30 days of sentencing and cannot challenge restitution after the 30-day time period has passed. Minn. Stat. § 611A.045, subd. 3(b) (2018); *State v. Palubicki*, 727 N.W.2d 662, 665 (Minn. 2007). However, the 30-day time limit does not apply under the “narrow circumstances” where the “only challenge is to the legal authority of the court to order restitution and that challenge was raised in the district court.” *State v. Gaiovnik*, 794 N.W.2d 643, 648 (Minn. 2011). Appellate courts generally will not consider restitution arguments not raised below.

State v. Johnson, 851 N.W.2d 60, 64 (Minn. 2014) (declining to consider a restitution argument raised for the first time on appeal); *State v. Thole*, 614 N.W.2d 231, 236 (Minn. App. 2000) (declining to create an exception that would permit an offender to circumvent his own failure to comply with the mandatory procedural requirements for challenging restitution).

On appeal, Miles argues that the district court erred in ordering restitution because he had previously indicated his intent to contest restitution. We disagree for two related reasons. First, Miles agreed with the PSI recommendations at the time of sentencing, which included a recommendation to pay restitution. While Miles may have indicated an intent to challenge restitution before his plea hearing (by correspondence) and at his plea hearing (both in writing on the plea petition and during the plea colloquy), he still needed to actually challenge restitution at the time of sentencing. Miles cannot now contest the PSI and the district court's restitution order for the first time on appeal. *See State v. Henderson*, 706 N.W.2d 758, 759–60 (Minn. 2005); *State v. Anderson*, 507 N.W.2d 245, 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993).

Second, following sentencing, Miles failed to file with the district court a request for a hearing within 30 days as required by statute. Minn. Stat. § 611A.045, subd. 3(b). Miles does not raise the type of challenge contemplated in *Gaiovnik*, which permits challenges to a district court's legal authority to award restitution even in the absence of a timely, written challenge filed with the district court. 794 N.W.2d at 645 (allowing challenge to district court's legal authority when the district court imposed restitution even though "there was no restitution request from a victim"). In this case, D.R. filed a

restitution request, and Miles asserts that his conduct did not directly cause the identified \$198 loss. This raises a factual challenge, not a legal one.¹ Because *Gaiovnik* does not apply, Miles's failure to timely request a hearing before the district court bars relief on appeal.

Affirmed.

¹ Were this court to conclude otherwise, every challenge could be considered a legal challenge. We decline to extend *Gaiovnik* to the factual challenge presented here.