

DA 16-0628

IN THE SUPREME COURT OF THE STATE OF MONTANA

2018 MT 132N

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STATE OF MONTANA,

Plaintiff and Appellee,

v.

STAN EARL TURNIDGE,

Defendant and Appellant.

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APPEAL FROM: District Court of the Eleventh Judicial District,  
In and For the County of Flathead, Cause No. DC-15-239D  
Honorable David M. Ortley, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

Chad Wright, Appellate Defender, Helena, Montana

For Appellee:

Timothy C. Fox, Montana Attorney General, Madison L. Mattioli,  
Assistant Attorney General, Helena, Montana

Ed Corrigan, Flathead County Attorney, Kalispell, Montana

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Submitted on Briefs: April 25, 2018

Decided: May 29, 2018

Filed:



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Clerk

Justice Beth Baker delivered the Opinion of the Court.

¶1 Pursuant to Section I, Paragraph 3(c), Montana Supreme Court Internal Operating Rules, this case is decided by memorandum opinion and shall not be cited and does not serve as precedent. Its case title, cause number, and disposition shall be included in this Court's quarterly list of noncitable cases published in the Pacific Reporter and Montana Reports.

¶2 In June 2015, Robyn Clark contacted the Flathead County Sheriff's Office to report that Stan Earl Turnidge had held a knife to her throat and threatened to kill her. Pursuant to a plea agreement, Turnidge pled no contest to felony assault with a weapon in violation of § 45-5-213, MCA. The Eleventh Judicial District Court sentenced Turnidge to the Department of Corrections for fifteen years with ten suspended. In addition, the District Court ordered Turnidge to pay restitution to Clark for medical and mental health expenses and lost wages. Turnidge appeals the District Court's award of restitution for lost wages. We affirm.

¶3 The District Court ordered Turnidge to pay restitution to Clark in the amount of \$14,261.70. The total amount of restitution comprised \$6,637.70 for Clark's past medical expenses; \$6,024 for her mental health and counseling expenses; and \$1,600 for her lost wages. Turnidge argues that the award of \$1,600 for lost wages was unsupported by the evidence, speculative, and should be reversed.

¶4 We review findings of fact regarding restitution for clear error. *State v. Dodson*, 2011 MT 302, ¶ 8, 363 Mont. 63, 265 P.3d 1254. A finding is in clear error if it is not

supported by substantial evidence. *Dodson*, ¶ 8. We will reverse an order of restitution if the order is based on “purely speculative calculations.” *State v. Coluccio*, 2009 MT 273, ¶ 45, 352 Mont. 122, 214 P.3d 1282.

¶5 Section 46-18-241(1), MCA, states that a sentencing court shall “require an offender to make full restitution to any victim who has sustained pecuniary loss, including a person suffering an economic loss.” Section 46-18-243(1)(a), MCA, defines pecuniary loss as what “a person could recover against the offender in a civil action arising out of the facts or events constituting the offender’s criminal activities . . . including loss of income.”

¶6 In support of her request for restitution for lost wages, Clark provided both a letter for the Pre-Sentence Investigation Report and testimony at the sentencing hearing. In the letter, she claimed lost wages because she quit her job in September 2015, in part due to “exhaustion from night terrors and constant medication changes, [and] emotional distress” from the assault. She stated that she feared for the lives of her children, as well as her own, and was still experiencing emotional distress. At the sentencing hearing, she testified that she had started a bookkeeping job in July 2015 after Turnidge went to jail. She testified that she had earned \$15 per hour and had worked four hours per day, five days per week until September 2015 (when Turnidge was released from jail). She testified that her hypervigilance, lack of sleep, and medication changes made it very difficult for her to do her job or to get to a “steady everyday job.” She claimed lost wages in the amount of \$3,600 from the time she quit her bookkeeping job until she could establish her own business restoring and customizing pedal bikes.

¶7 At the hearing, Turnidge’s counsel objected to Clark’s claim for lost wages on the basis that she got the bookkeeping job after the assault, that Clark’s calculation about her lost wages included only an estimation of the time she might have worked, and that the amount of wages she might have made was not definite. Turnidge did not present any evidence regarding Clark’s claim for restitution. The District Court noted Turnidge’s objections and indicated that, regarding the claim for wages, Clark’s testimony was the only credible testimony before it.

¶8 Clark’s letter and testimony substantiated her request for lost wages. Her claims were not speculative. She provided evidence for the amount she requested, and her testimony substantiated its relationship to the offense. Substantial evidence supports the District Court’s decision to impose restitution for lost wages. Notwithstanding Clark’s request for a larger amount, Turnidge has not established clear error in the District Court’s decision to award \$1,600.

¶9 We have determined to decide this case pursuant to Section I, Paragraph 3(c) of our Internal Operating Rules, which provides for memorandum opinions. In the opinion of the Court, the case presents a question controlled by settled law or by the clear application of applicable standards of review. The District Court’s judgment is affirmed.

/S/ BETH BAKER

We Concur:

/S/ MIKE McGRATH  
/S/ JAMES JEREMIAH SHEA  
/S/ LAURIE McKINNON  
/S/ JIM RICE

