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NO. COA10-1174
NORTH CAROLINA COURT OF APPEALS

Filed: 5 July 2011

STATE OF NORTH CAROLINA

v. Polk County
Nos. 07 CRS 51042
TERRY ALLEN SHEHAN 09 CRS 116-19
10 CRS 104

Appeal by defendant from judgments entered 25 February 2010 by Judge Mark E. Powell in Polk County Superior Court. Heard in the Court of Appeals 20 June 2011.

Attorney General Roy Cooper, by Assistant Attorney General David D. Lennon, for the State.

Diepenbrock Law Office, P.A., by J. Thomas Diepenbrock, for defendant-appellant.

STEELMAN, Judge.

Where there was competent evidence presented to the trial court at defendant's sentencing hearing supporting the amounts of restitution ordered, the trial court's awards of restitution are affirmed.

I. Factual and Procedural Background

On 31 December 2007, Terry Allen Shehan (defendant) was charged with misdemeanor failure to work after being paid (case 07 CRS 051042). On 9 March 2009, defendant was indicted on four counts of obtaining property by false pretenses (cases 09 CRS 116-119). On 25 February 2010, a bill of information was entered charging defendant with a fifth count of obtaining property by false pretenses (case 10 CRS 104). Defendant and his counsel waived the return of a bill of indictment and agreed to be tried upon the bill of information.

On 25 February 2010, defendant entered pleas of guilty to each of the six charges. The plea agreement provided that defendant would be placed on probation upon terms and conditions to be determined by the trial court.

Defendant was sentenced to 45 days on the misdemeanor charge, and to five consecutive sentences of 10 to 12 months on the obtaining property by false pretenses charges. Each sentence was suspended and defendant was placed on supervised probation for 60 months. Defendant was ordered to pay restitution as follows: (1) case 07 CRS 51042, \$4,700.00; (2) case 09 CRS 116, \$14,000.00; (3) case 09 CRS 119, \$3,750.00; and (4) case 10 CRS 104, \$60,000.00.

On 8 March 2010, defendant filed notice of appeal as to each of these cases.

II. Amount of Restitution

In his only argument, defendant contends that the evidence submitted at his sentencing hearing was not sufficient to support the amount of restitution ordered by the trial court. We disagree.

A. Cases 09 CRS 117 and 118

Because no restitution was ordered in these cases, and defendant's argument is limited to the amount of restitution awarded, defendant has abandoned his appeal of these two cases, and they are dismissed. N.C.R. App. P. 28(b)(6).

B. Standard of Review

Restitution may be ordered by the trial court to pay the victim "for any injuries or damages arising directly and proximately out of the offense committed by the defendant." N.C. Gen. Stat. § 15A-1340.34(b) (2009). Any restitution awarded "by the trial court must be supported by evidence adduced at trial or at sentencing." *State v. Shelton*, 167 N.C. App. 225, 233, 605 S.E.2d 228, 233 (2004) (quotation omitted). Where "there is some evidence as to the appropriate amount of restitution, the recommendation will not be overruled on appeal." *State v. Hunt*, 80 N.C. App. 190, 195, 341 S.E.2d 350, 354 (1986).

C. Case 07 CRS 51042

With regard to case 07 CRS 51042, defendant contends that the trial court failed to give him credit for any of the

material or labor he supplied. However, evidence was presented that the homeowners paid \$4,700.00 to defendant for exterior and interior work that was never completed. The only work performed by defendant was removal of the shingles and reinstallation of tarpaper, which the homeowner testified was original to the house. The interior work was left unfinished. The homeowners had to finish the work themselves at an undetermined additional cost. They testified that the only material defendant left behind was the original tarpaper. We hold there was sufficient evidence to support the trial court's determination that defendant must pay restitution in the amount of \$4,700.00 to the homeowners.

D. Case 09 CRS 116

With regard to case 09 CRS 116, defendant contends that the trial court erred in ordering him to pay \$14,000.00 in restitution because he and his workers completed the projects agreed upon, including fixing a floor, putting concrete in the basement; installing an addition, windows, siding, and gutters; and doing some electrical work. Defendant further contends that the evidence did not show what was completed or repaired after he left the job site or what it cost.

The homeowner testified that \$14,000.00 represented the amount needed to hire someone else to complete work left undone by defendant. After defendant left, they had to hire someone to

finish the siding and to shingle the roof. Interior work was left undone as well. We hold that the evidence presented was sufficient to support the trial court's award of \$14,000.00.

E. Case 09 CRS 119

With regard to case 09 CRS 119, defendant contends that the amount of restitution was not supported by the evidence where evidence showed he installed a dehumidifier as well as some plywood and boards pursuant to the agreement he made with the homeowner. Evidence was presented that the homeowners paid a total of \$4,100.00 to defendant to do various projects, including to install a dehumidifier and to do some roof repairs. The homeowner testified that after the final payment to defendant, defendant did not return to finish the job. The trial court determined the restitution amount of \$3,750.00 by taking the amount paid to defendant, \$4,100.00, and subtracting \$350.00, the value of the dehumidifier. We hold that because defendant left work unfinished and the trial court credited defendant in the appropriate amount, that there was sufficient evidence to support restitution in the amount \$3,750.00.

F. Case 10 CRS 104

With regard to case 10 CRS 104, defendant contends that the award of \$60,000.00 was not supported by the evidence because the trial court failed to give him credit for the eight weeks of work that he and his workers put in on the remodeling project

which had a total cost of \$120,000.00. Defendant argues the court should not have ordered restitution in the full amount sought by the homeowners.

The homeowners testified that they paid \$60,000.00 to defendant towards the renovation project. Defendant failed to provide receipts, failed to complete work which he indicated had been done, took numerous items from the house, and left the house in a complete state of disrepair. The only material that he purchased for the site was a small pile of 2 x 4 boards. The one wall he installed had to be removed because it did not conform to the building code. We hold that there was sufficient evidence presented to support the trial court's award of \$60,000.00 in restitution.

III. Conclusion

We hold that there was sufficient evidence presented at defendant's sentencing hearing to support the restitution awards totaling \$82,450.00.

Cases 09 CRS 117 and 118 are DISMISSED.

Cases 07 CRS 51042, 09 CRS 116, 09 CRS 119, and 10 CRS 104 are AFFIRMED.

Judges CALABRIA and STROUD concur.

Report per Rule 30(e).