NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA, Appellee v. SHANNON TEADA, Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No. 1519 EDA 2012

Appeal from the Judgment of Sentence of April 19, 2012,
in the Court of Common Pleas of Monroe County,
Criminal Division at No. CP-45-CR-0002590-2010

BEFORE: OLSON, WECHT and COLVILLE*, JJ.

MEMORANDUM BY COLVILLE, J.: Filed: March 12, 2013

This case is a direct appeal from judgment of sentence. The issue is whether the restitution imposed as part of Appellant's sentence is illegal. We affirm the judgment of sentence.

Appellant was convicted of simple assault, recklessly endangering another person and driving under the influence of alcohol. The charges arose in connection with an automobile accident in April 2010 in which Appellant was the driver. As part of Appellant's sentence, the court ordered her to pay restitution to Audrey Dintinger who was injured as a result of the accident. The restitution order included payment of Dintinger's lost wages.

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* Retired Senior Judge assigned to the Superior Court.

Appellant first argues her sentence is illegal because 18 Pa.C.S.A. § 1106, the restitution statute at issue, simply does not authorize lost wages as part of a restitutive order. This claim is meritless.

Because Appellant's argument challenges the court's authority to award restitution, her claim does, in fact, implicate the legality of her sentence. ***Commonwealth v. Pleger***, 934 A.2d 715, 719 (Pa. Super. 2007). As such, our role is to determine if the court committed an error of law in applying the statute in question. ***Id.***

As to the substance of Appellant's argument, she is wrong. Lost wages resulting directly from a defendant's criminal conduct are a legal aspect of restitution under 18 Pa.C.S.A. § 1106. ***Commonwealth v. Burwell***, 2012 WL 5941979, 2 (Pa. filed November 28, 2012). Thus, Appellant's first argument fails.

Appellant also argues her sentence is illegal because the record does not show that her criminal conduct directly caused Dintinger to be incapable of working, directly caused her to lose wages or directly caused the amount of wage loss ordered by the court. We note Appellant does not dispute that her actions resulted in Dintinger's physical injuries discussed *infra*. Instead, Appellant contends the record does not demonstrate that the wage loss included in the court's order was a direct product of the offenses.

The question of whether a defendant's conduct caused certain losses is a matter involving the legality of the order that directs repayment of those losses.[1] ***See Commonwealth v. Atanasio***, 997 A.2d 1181, 1183-84 (Pa. Super. 2010). Accordingly, we will review the court's decision to determine if the court erred legally. ***Pleger***, 934 A.2d at 719.

Dintinger's personal injuries caused by the accident included, *inter alia*, shattered teeth, multiple infections, loss of her gall bladder, loss of her spleen, and damage to her liver. She underwent multiple surgeries. It appears that, at some point after the accident, Dintinger entered school to be trained as a phlebotomist but she could not continue her education because of health problems stemming from the accident.

The following exchange occurred when the court took testimony regarding restitution:

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[1] By contrast, if Appellant claimed not that the record lacked evidence of causation but, instead, that the court otherwise chose an amount of restitution that was merely excessive, her claim would implicate the discretionary aspects of sentencing. ***In the Interest of M.W.***, 725 A.2d 729, 731 n.4 (Pa. 1999). Arguably, Appellant's attack on the amount of lost wages ordered herein comes close to being a discretionary challenge rather than one involving legality. Nevertheless, on balance, it appears she is fundamentally claiming the order involving wage loss was not made pursuant to the restitution statute because the facts of record do not demonstrate a causal link between the offenses and the loss. As such, we will consider her claim as a legality-of-sentence question. ***See Atanasio***, 997 A.2d at 1183-84.

Commonwealth:	Now, because of this accident were you able to work after the accident?
Dintinger:	No.

N.T., 04/16/12, at 9.

Dintinger also testified that she was working prior to the accident in April 2010 but, at least as of the date of her testimony in April 2012, she had not worked after the accident. She further explained that, due to the accident and her inability to work, she lost wages. She testified that she lost $49,260.00.

The sentencing court reasoned that, because of the accident that was caused by Appellant's conduct, Dintinger sustained injuries that directly prevented her from being employed gainfully. In light of the substantial physical injuries that Appellant caused Dintinger to suffer, we find no error in the sentencing court's determination that those physical injuries, in turn, prevented Dintinger from working and, therefore, caused her to lose wages. Appellant's theory that the record does not show direct causation between her offenses and Dintinger's loss of wages due to an inability to work is meritless.

As to Dintinger's theory that the record does not support an order of $49,260.00 in restitution, it likewise fails. Dintinger testified she lost $49,260.00. Thus, the record does contain evidence supporting that particular amount as an award of restitution. Appellant points out that

Dintinger calculated her total loss by claiming a biweekly wage loss of $975.00 and by indicating she lost those wages over two years. Appellant observes that a loss of $49,260.00 divided by a biweekly pay of $975.00, the amount Dintinger claimed, would yield 50.52 biweekly pay periods rather than 52 biweekly periods over two years as one might expect a person to receive. Appellant maintains that, with 52 pay periods over two years, a biweekly pay of $975.00 would result in $50,700.00 lost, slightly more than Dintinger claimed. We decline to find this potential difference or lack of exactitude concerning the total loss renders the record and the causal link between the crimes and the amount of wage loss so speculative, as Appellant claims, that the restitution award is legally erroneous.[2]

There is an additional point Appellant raises as part of her challenge to the order directing her to pay wage loss. She notes Dintinger apparently received an insurance settlement of $78,000.00 in connection with this case. Appellant suggests the court erred by not deciding whether that amount "had to be considered in any way." Appellant's Brief at 14. Along these same lines, she asserts the Commonwealth did not present documentation regarding the insurance settlement in order to clarify the losses that the

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[2] We note Appellant does not point to any place in the testimony where Dintinger claimed she would have been paid for 52 full pay periods in the course of two years. It appears Dintinger merely stated what was her usual biweekly pay and she then explained how much she lost in the period of her unemployment. In any event, Appellant has simply not convinced us the record fails to support the court's order so as to make the restitution illegal.

settlement compensated. Appellant apparently believes her assertions render the wage-loss restitution unlawful. She is incorrect.

Dintinger testified that the $78,000.00 covered medical bills, not wage loss. She explained that she did not claim lost wages when dealing with the insurance company from which she received the aforesaid settlement. Appellant fails to persuade us the court erred in awarding the wage loss without some further evidence or inquiry regarding the $78,000.00.

Based on our foregoing discussion, we affirm the judgment of sentence.

Judgment of sentence affirmed.

Judge Olson concurs in the result.