

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

Appellee

v.

WILLIAM A. GREEN

Appellant

No. 1718 MDA 2012

Appeal from the Judgment of Sentence June 20, 2012  
In the Court of Common Pleas of Luzerne County  
Criminal Division at No(s): CP-40-CR-0001770-2011

BEFORE: SHOGAN, J., MUNDY, J., and COLVILLE, J.\*

MEMORANDUM BY MUNDY, J.:

**FILED MAY 30, 2013**

Appellant, William A. Green, appeals from the June 20, 2012 judgment of sentence of 11 to 23 months' imprisonment, plus restitution in the amount of \$450.00, imposed after he was found guilty of criminal trespass and possessing an instrument of crime.<sup>1</sup> After careful review, we affirm the judgment of sentence.

The relevant facts and procedural history of this case may be summarized as follows. On May 27, 2011, officers responded to a reported break-in at an unoccupied building. When officers arrived, they discovered

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\* Retired Senior Judge assigned to the Superior Court.

<sup>1</sup> 18 Pa.C.S.A §§ 3502(a)(1)(i), and 907(a), respectively.

Appellant inside the building, and he was arrested without incident. Officers did not find anyone else inside the building. On August 8, 2011, Appellant was charged with criminal trespass, possessing an instrument of crime, criminal mischief, and public drunkenness in connection with the break-in.<sup>2</sup>

Following a one-day jury trial on May 15, 2012, Appellant was found guilty of criminal trespass and possessing an instrument of crime.<sup>3</sup> The charges of criminal mischief and public drunkenness were withdrawn prior to jury deliberations.

A pre-sentence report [PSI] was ordered by the [trial c]ourt and sentencing was set for June 20, 2012.

[Appellant] was sentenced on June 20, 2012 ... to a minimum of 11 months and a maximum of 23 months['] imprisonment] on both ... counts, to be served concurrently .... Moreover, [Appellant] was given credit for 350 days of incarceration prior to sentenc[ing.] Accordingly, with the [trial c]ourt finding credit for time served and [Appellant] having met his minimum sentence, the [trial c]ourt ordered Appellant's immediate parole .... Special terms and conditions of the parole included [Appellant] paying restitution in the amount of \$450.00 for damages done to the property involved in Appellant's criminal trespass episode.

Trial Court Opinion, 11/19/12, at 1-2. At sentencing, Appellant objected to the imposition of restitution arguing that there was no damage and that he

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<sup>2</sup> 18 Pa.C.S.A §§ 3502(a)(1)(ii), 907(a), 3304(a)(2), and 5505, respectively.

<sup>3</sup> The record reflects that the Commonwealth amended the criminal trespass charge from 18 Pa.C.S.A §§ 3502(a)(1)(ii) to 18 Pa.C.S.A §§ 3502(a)(1)(i).

was not convicted of a crime involving damage. N.T., 10/23/12, at 5. Subsequently, on July 2, 2012, Appellant filed a timely post-sentence motion for sentence modification arguing that the trial court improperly imposed restitution.<sup>4</sup> A hearing on the motion was held on September 5, 2012. The trial court denied said motion that same day, and this timely appeal followed.<sup>5</sup>

On appeal, Appellant raises the following issue for our review.

1. Did the [t]rial [c]ourt err and impose an illegal sentence when it ordered [Appellant] to pay restitution in the amount of \$450.00 for damages that he did not cause, nor was he charged with, nor was he convicted for that specific criminal act?

Appellant's Brief at 5.

We begin by noting our standard of review.

In the context of criminal proceedings, an order of restitution is not simply an award of damages, but, rather, a sentence. An appeal from an order of restitution based upon a claim that a restitution order is unsupported by the record challenges the legality, rather than the discretionary aspects, of sentencing. [T]he determination as to whether the

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<sup>4</sup> We note that Appellant had 10 days within which to file post-sentence motions, or by June 30, 2012. However, June 30, 2012 was a Saturday. Therefore, Appellant's July 2, 2012 post-sentence motion was timely filed. **See** 1 Pa.C.S.A. § 1908 (providing that when the last day of a calculated period of time falls on a Saturday or Sunday, such day shall be omitted from the computation).

<sup>5</sup> Appellant and the trial court have complied with Pa.R.A.P. 1925.

trial court imposed an illegal sentence is a question of law; our standard of review in cases dealing with questions of law is plenary.

**Commonwealth v. Atanasio**, 997 A.2d 1181, 1182-1183 (Pa. Super. 2010) (internal quotation marks and citations omitted).

We further note that restitution may be imposed either as a direct sentence, or as a condition of probation or intermediate punishment. **See** 204 Pa.Code § 303.14(c)(2). It is well established that, when restitution is imposed as a direct sentence, the injury to property or person for which restitution is ordered must directly result from the crime for which the defendant was convicted. **In re M.W.**, 725 A.2d 729, 731-732 (Pa. 1999). Additionally, "the amount ordered must be supported by the record; it may not be speculative or excessive." **Commonwealth v. Pappas**, 845 A.2d 829, 842 (Pa. Super. 2004) (citations omitted), *appeal denied*, 862 A.2d 1254 (Pa. 2004).

In the instant matter, the trial court did not impose restitution as a condition of probation or intermediate punishment. N.T., 6/20/12, at 4-5. Thus, under Pennsylvania law the trial court's order is considered an imposition of restitution pursuant to section 1106(a). **See Commonwealth v. Popow**, 844 A.2d 13, 19 (Pa. Super. 2004) (explaining that a restitution order which is not imposed as a condition of probation or intermediate punishment is considered a sentence pursuant to section 1106(a)).

Section 1106 provides for restitution as follows.

**§ 1106. Restitution for injuries to person or property**

**(a) General rule.**— Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

18 Pa.C.S.A. § 1106(a). Accordingly, the injury addressed by the order must be a direct result of the crime for which Appellant was convicted.

18 Pa.C.S.A. § 1106(a); *M.W., supra*.

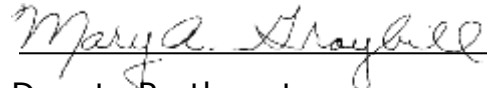
Herein, Appellant was convicted of criminal trespass. The evidence at trial established that the building's owner was at the premises shortly before the break-in, at which time the door was undamaged. N.T., 5/15/12, at 71. Following the break-in, officers discovered the door with signs of recent damage and discovered Appellant unlawfully within the building. *Id.* at 31-33. Further, the Commonwealth presented evidence that the broken door resulted in damages of \$450.00. N.T., 6/20/12, at 4-5. Accordingly, we conclude that the trial court did not err or abuse its discretion in imposing restitution pursuant to section 1106(a) for damages that resulted from Appellant's criminal trespass onto the premises. **See** Pa.R.A.P. 1106(a); ***Commonwealth v. Keenan***, 853 A.2d 381, 383 (Pa. Super. 2004) (stating "[t]he imposition of restitution is within the sound discretion of the sentencing court and must be supported by the record[]").

J-S25026-13

Based on the foregoing, we affirm Appellant's June 20, 2012 judgment of sentence.

Judgment of sentence affirmed.

Judgment Entered.

  
Deputy Prothonotary

Date: 5/30/2013