

**NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37**

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

KAHLILE BURTON,

APPEAL OF: CITY OF PHILADELPHIA,  
DEPARTMENT OF HUMAN SERVICES,

Appellant

IN THE SUPERIOR COURT OF  
PENNSYLVANIA

No. 2501 EDA 2012

Appeal from the Order Entered July 25, 2012  
In the Court of Common Pleas of Philadelphia County  
Criminal Division at No(s): CP-51-CR-0005483-2012

BEFORE: BOWES, DONOHUE, and OTT, JJ.

MEMORANDUM BY BOWES, J.:

**FILED DECEMBER 10, 2013**

City of Philadelphia, Department of Human Services, appeals from the July 25, 2012 order requiring it to pay or collect the restitution, penalties, costs and fees entered against the defendant Kahlile Burton ("the defendant"), in this criminal matter. Those items were imposed as a condition for his admittance into the Accelerated Rehabilitative Disposition program ("ARD"). We vacate the portion of the July 25, 2012 order that required Appellant to satisfy or collect the restitution, fines and costs imposed upon the defendant.

On April 24, 2012, the defendant was charged as an adult with criminal trespass and criminal mischief. The charges were premised upon allegations that on the outlined date, the defendant, without being licensed

or privileged to do so, broke the window of 4641 East Roosevelt Boulevard, which belonged to Carol Delgado, and entered that premises. On July 11, 2012, the defendant received approval for admission into ARD. On July 25, 2012, the trial court entered an order that imposed restitution of \$600 and fines and costs of \$415 against the defendant, and, in that order, the court stated, "The Defendant being a Dependent of DHS, The Department of Human Services is Responsible/Ordered to see that these monies are Paid in Full." Order, 7/25/12, at 1.

Appellant thereafter filed a motion for modification and averred the following. It was not a party to any proceedings herein and was not present when the restitution, costs, and fees were imposed against it. The defendant was "19 years old at the time the July 25, 2012 order was entered." Motion for Modification, 8/15/12, at ¶ 5. Appellant maintained that it was not legally responsible for restitution, fines and costs imposed on individuals in its custody and noted that it was not defendant's legal parent. It argued that there was no legal authority to compel it to pay or collect restitution, fines, and costs properly imposed on a defendant in a criminal action. Appellant moved that the portion of the July 25, 2012 order imposing the defendant's monetary obligations upon it be struck. The Commonwealth did not oppose the motion, which the trial court did not resolve before Appellant filed the present, timely appeal. It raises the following issue herein:

1. Did the trial court lack statutory authority to order the Department of Human Services responsible for payment in full of restitution penalties and court costs/ fees entered against defendant Kahlile Burton as a condition of his admittance into the Accelerated Rehabilitative Disposition (ARD) program on charges of criminal trespass and criminal mischief and therefore err as a matter of law?

Appellant's brief at 4. The Commonwealth notified this Court that it does not intend to file a brief in the present matter.

Appellant argues that the trial court lacked the statutory authority to impose restitution, costs, and fines against it as it was not the criminal offender in this matter, and that it similarly lacked the statutory authority to require it to collect those amounts from the defendant. We agree with Appellant's averments and reverse the portion of the order contested on appeal. The present matter involves the interpretation of the provisions governing the imposition of restitution, fines, and costs in an adult criminal proceeding involving entry into the ARD program. The issues involve a matter of interpretation of the rules of criminal procedure governing ARD, as well as statutory enactments relating to restitution and the collection of fines, costs, and restitution. When we "interpret a [criminal] procedural rule, our standard of review is *de novo* and our scope of review is plenary." ***Commonwealth v. Noel***, 53 A.3d 848, 851 (Pa.Super. 2012). Similarly, matters of statutory construction "pose questions of law, over which our review is plenary." ***Commonwealth v. Hall***, 2013 WL 5827232, 6 (Pa. 2013).

“The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly. Every statute shall be construed, if possible, to give effect to all its provisions.” **Id.** (quoting 1 Pa.C.S. § 1921(a)). “The plain language of the statute is generally the best indicator of legislative intent, and the words of a statute “shall be construed according to rules of grammar and according to their common and approved usage.” **Id.** (partially quoting 1 Pa.C.S. § 1903(a)). The courts “generally will look beyond the plain language of the statute only when words are unclear or ambiguous, or the plain meaning would lead to a result that is absurd, impossible of execution or unreasonable.” **Id.** (partially quoting 1 Pa.C.S. § 1922(1)). Additionally, “the Statutory Construction Act requires penal provisions of statutes to be strictly construed, 1 Pa.C.S. § 1928(b)(1)[.]” **Id.** at 7. Statutory provisions providing for payment of monetary sums as the result of criminal convictions are penal in nature. **Id.**

In this case, the defendant was admitted into ARD.<sup>1</sup> Chapter three of the Rules of Criminal Procedure governs the procedures for ARD. Explanatory Comment to Chapter 3. “The primary purpose of [the ARD] program is the rehabilitation of the offender[.]” **Id.** Pa.R.Crim.P. 316 pertains to the conditions of the ARD program and provides:

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<sup>1</sup> While Appellant delineates why it is not responsible for restitution as authorized in juvenile proceedings, we need not analyze those enactments since this matter pertains to an adult and was instituted in adult court.

(A) The conditions of the program may be such as may be imposed with respect to probation after conviction of a crime, including restitution, except that a fine<sup>[2]</sup> may not be imposed. In addition, the conditions of the program may include the imposition of costs, the imposition of a reasonable charge relating to the expense of administering the program, and such other conditions as may be agreed to by the parties.

(B) The period of such program for any defendant shall not exceed two years.

The comment to paragraph (A) (emphasis added) indicates that the provision “makes it clear that reasonable charges for the expense of administering the program may be imposed on **defendants**.” It also reports that the “practice has been to permit qualified individuals who are indigent to participate in the ARD program without payment of costs or charges,” and that a 1983 amendment to the program was “not intended to change this practice; rather, it is intended that such practice will continue.”

This rule clearly and unequivocally permits the imposition of costs solely upon the defendant, upon whom the conditions for participation in the program are placed. It contains no language authorizing the trial court to render another person or entity other than the participant in the program liable for the costs associated with the program. Indeed, it would be counterproductive to the primary purpose for ARD, the rehabilitation of the defendant, to place responsibility for the payment of costs on anyone other

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<sup>[2]</sup> We are aware that the order in question imposed a fine upon the defendant, but he is not an appellant herein and Appellant does not rely upon this language in raising its arguments on appeal.

than that party. As there is no provision in the rules governing ARD authorizing the court to impose costs or fines upon Appellant, whether or not it is the defendant's legal guardian, the portion of the order relating to costs and fines against Appellant must be stricken.

In connection with the imposition of restitution, Pa.R.Crim.P. 316(A) indicates that it may be imposed as permitted by the provisions governing conditions of probation.<sup>3</sup> Section 9754 of Title 42 governs orders of probation. It provides, in pertinent part, as follows:

(a) General Rule.—In imposing an order of probation the court shall specify at the time of sentencing the length of any term during which the defendant is to be supervised, which term may not exceed the maximum term for which the defendant could be confined, and the authority that shall conduct the supervision.

(b) Conditions generally.—The court shall attach such of the reasonable conditions authorized by subsection (c) of this section as it deems necessary to insure or assist **the defendant** in leading a law-abiding life.

(c) Specific conditions.—The court may as a condition of its order require **the defendant**:

. . . .

(8) To make restitution of the fruits of his crime or to make reparations, in an amount he can afford to pay, for the loss or damage caused thereby.

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<sup>3</sup> We note that restitution can be imposed as either a direct sentence under 18 Pa.C.S. § 1106(a) or as a condition of probation as outlined in 42 Pa.C.S. § 9754. *In re M.W.*, 725 A.2d 729 (Pa. 1999). Since Pa.R.Crim.P. 316 directs that the conditions of ARD may be imposed with respect to probation after the conviction of a crime, we must analyze herein the statute applicable to restitution imposed as a condition of probation.

42 Pa.C.S. § 9754 (emphasis added).

It is established that “an order of restitution must be based upon statutory authority.” ***In re M.W.***, 725 A.2d 729, 731 (Pa. 1999). Additionally, “if a court does not have statutory authority to order a particular act, the order must be vacated.” ***Commonwealth v. Williams***, 871 A.2d 254, 266 (Pa.Super. 2005). As outlined by the express language of § 9754, in connection with the imposition of restitution as a condition of probation, the court has the authority to impose that monetary obligation only upon the defendant. There is no provision whatsoever for requiring a party other than upon the guilty one, regardless of whether that party is a parent or guardian, to pay restitution to the injured party. Hence, the portion of the order in question mandating that Appellant pay restitution must be vacated.

We now address the aspect of the order in question that required Appellant to collect restitution, fines, and costs from the defendant on behalf of the court. The comment to Pa.R.Crim.P. 316 sets forth, “Concerning restitution, see 42 Pa.C.S. § 9728 (Collection of restitution, reparation, fees, costs, fines, and penalties).” Section 9728 firmly delegates collection of all the monetary penalties imposed herein to the jurisdiction of the county probation department, another agency specifically designated to conduct that action by the county, or to a private collection agency.

(1) Except as provided in subsection (b)(5), all restitution, reparation, fees, costs, fines and penalties shall be collected by

the county probation department or other agent designated by the county commissioners of the county with the approval of the president judge of the county for that purpose in any manner provided by law. . . . .

(2) In accordance with section 9730.1 (relating to collection of court costs, restitution and fines by private collection agency), the collection of restitution, reparation, fees, costs, fines and penalties under this section may be referred to a private collection agency. . . .

42 Pa.C.S. § 9728. Subsection (b)(5) provides, “The county correctional facility to which the offender has been sentenced or the Department of Corrections shall be authorized to make monetary deductions from inmate personal accounts for the purpose of collecting restitution or any other court-ordered obligation or costs imposed under section 9721(c.1).”

Thus, Appellant, which is the Department of Human Services of the City of Philadelphia, is not one of the entities upon which the obligation to collect restitution, fines, and costs is placed. Therefore, the trial court lacked the authority to require that agency to collect those monies.

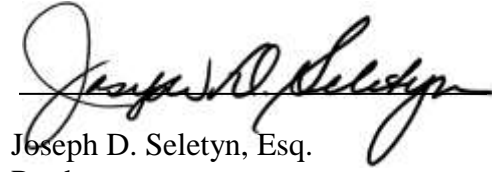
In this case, the trial court asks that this matter be remanded for a hearing and suggests that the record is not sufficiently developed to address Appellant’s claims. We disagree. The applicable facts are uncontested, and this matter involves purely a matter of statutory interpretation.

Order vacated in part. The following language is stricken from the July 25, 2012 order: “The Defendant being a Dependent of DHS, the Department of Human Services is Responsible/Ordered to see that these monies are Paid in Full.” Case remanded. Jurisdiction relinquished.



J-A26001-13

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.  
Prothonotary

Date: 12/10/2013