

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellant

v.

DIANA G. VANCAMP

Appellee

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 714 MDA 2012

Appeal from the Judgment of Sentence March 16, 2012
In the Court of Common Pleas of Berks County
Criminal Division at No(s): CP-06-CR-0002877-2010

BEFORE: PANELLA, J., OTT, J., and STRASSBURGER, J.*

MEMORANDUM BY OTT, J.

Filed: February 22, 2013

The Commonwealth appeals from the restitution order entered against Diana G. Vancamp on March 16, 2012. Following a bench trial Vancamp was convicted of driving under the influence of alcohol ("DUI") and causing an accident involving damage to an unattended vehicle.¹ At sentencing the Commonwealth sought restitution of \$10,634.06 for the damages caused to the parked car of victim, Joshua Sattazhan. The restitution was broken down into \$987.89 for Sattazhan's out of pocket costs and \$9,646.17 for reimbursement to his insurer, Allstate. The sentencing court ordered Vancamp to pay \$ 987.89 in restitution. The Commonwealth appealed.

* Retired Senior Judge assigned to the Superior Court.

¹ 75 Pa.C.S. §§ 3802(a)(1), and 3745(a).

After review of the record, submissions of the parties, and the applicable law, we affirm in part and remand.

On appeal, the Commonwealth argues the sentencing court imposed an illegal sentence when it did not direct Vancamp to pay mandatory restitution to the victim's insurer pursuant to 18 Pa.C.S. § 1106(c).

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. The determination as to whether the 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, 1182-83 (Pa. Super. 2010)(citations and quotations omitted).

Restitution, by definition, as it relates to property damage, can be made by either the return of the original property or the payment of money necessary to replace, or to repair the damage to, the property. Although restitution is penal in nature, it is "highly favored in the law" and is encouraged "so that the defendant will understand the egregiousness of his conduct, be deterred from repeating this conduct, and be encouraged to live in a responsible way."

Commonwealth v. Genovese, 675 A.2d 331, 333 (Pa. Super. 1996)(internal quotations and citations omitted).

(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.

. . .

(c) Mandatory restitution.--

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

18 Pa.C.S. § 1106.

Section 1106 applies to convictions for violations of the motor vehicle code. ***See Commonwealth v. Genovese***, 675 A.2d 331 (Pa. Super. 1996) and ***Commonwealth v. Fuqua***, 407 A.2d 24 (Pa. Super. 1979). Both cases affirm the appropriateness of the use of Section 1106 restitution in cases involving violation of the Motor Vehicle Code. ***Genovese***, like Vancamp was convicted of driving while under the influence.

Section 1106 does not permit the sentencing court discretion over the total amount of restitution. Rather it only allows the sentencing court flexibility in determining the schedule of repayment. The Commonwealth

entered evidence that the total amount of damages to the victim's truck was \$10,634.06. Vancamp does not dispute the figure. However, the sentencing court imposed only \$987.89 for restitution. The sentencing court erred as a matter of law in not directing Vancamp to pay restitution in the full amount of \$10,634.06. Accordingly, we remand for the court to impose a schedule of reimbursement payments to Allstate for \$9,646.17.

Order affirmed in part, remand for action consistent with this decision.
Jurisdiction relinquished.