

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20060605-CA
v.)	
)	F I L E D
Martin Lynn Gotell,)	(September 27, 2007)
)	
Defendant and Appellant.)	2007 UT App 314

Fifth District, St. George Department, 061500216
The Honorable G. Rand Beacham

Attorneys: Margaret P. Lindsay, Orem, for Appellant
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,
for Appellee

Before Judges Greenwood, Billings, and Davis.

PER CURIAM:

Appellant Marvin Lynn Gotell appeals his sentence following a guilty plea. He contends that the district court erred in requiring him to pay an additional \$459 in restitution beyond the restitution amount listed in the plea agreement without making additional findings or hearing additional evidence. Because this claim was not preserved in the district court, Gotell relies upon a claim of plain error.

Utah Code section 76-3-201(4)(a) provides:

When a person is convicted of criminal activity that has resulted in pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as a part of a plea agreement.

Utah Code Ann. § 76-3-201(4)(a) (Supp. 2007). Gotell asserts that "it was obvious and harmful error for the trial court to exceed the agreed upon amount of restitution without taking

additional evidence, or making additional findings that his conduct caused additional damages."

Under the Utah Code, a court can order a defendant to pay restitution "for conduct for which the defendant has agreed to make restitution as part of a plea agreement." Utah Code Ann. § 76-3-201(4)(a)(I). This restitution includes "any criminal conduct admitted to by the defendant . . . or to which the defendant agrees to pay restitution." Utah Code Ann. § 76-3-201(8)(a). According to the plain language of the statute, restitution can include payment for crimes not listed in the information so long as a defendant admits responsibility or agrees to pay restitution. See id. However, a defendant cannot be ordered to pay restitution for criminal activities for which the defendant did not admit responsibility, was not convicted, or did not agree to pay restitution. See Utah Code Ann. § 76-3-201.

State v. Brickley, 2002 UT App 342, ¶9, 60 P.3d 582. In Brickley, we held that the trial court erred "in requiring Defendant to pay restitution for arrearages outside the time period alleged in the Amended Information." Id. at ¶12.

In contrast, Gotell agreed to pay restitution "to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement." The plea agreement stated the amount as \$14,150. However, the Presentence Investigation Report (PSI) specifically explained that the State had erred in computing the amount of restitution due to the victims and therefore understated the amount by \$459 in the plea agreement. At sentencing, the district court confirmed that Gotell and his counsel had the opportunity to review the PSI and asked if any corrections were needed. Defense counsel confirmed that no corrections were requested and asked the court to "follow the recommendations of the PSI and the plea agreement." Immediately after this exchange, counsel for the State stated that "apparently we did make a mistake as to the amount of restitution and would ask the Court to impose the amount indicated in the PSI, which is slightly higher than the amount that we had come up with." Defense counsel did not object to the requested correction. Finally, in announcing the sentence, the district court ordered Gotell to pay restitution of \$14,609 through Adult Probation and Parole and entered judgment for that amount. At no time did Gotell or his trial counsel

object to the revised amount or question the computations contained in the PSI.

Contrary to Gotell's suggestion, the disputed amount was not attributable to Lucy Keisel, a victim to whom Gotell claimed he did not owe restitution. In addition, the statement in the PSI regarding the need for clarification by the district court referred to the \$459 discrepancy between the restitution amount in the plea agreement and the amount in the PSI. Because Gotell did not challenge the corrected amount, the court was not called upon to resolve any discrepancy.

Under the circumstances of this case, including the facts that Gotell failed to challenge the correction to the amount of restitution contained in the PSI or object to the restitution amount at sentencing, the district court did not plainly err in entering the restitution award in the amount of \$14,609. We affirm.

Pamela T. Greenwood,
Associate Presiding Judge

Judith M. Billings, Judge

James Z. Davis, Judge