

IN THE UTAH COURT OF APPEALS

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State of Utah,)	MEMORANDUM DECISION
)	(Not For Official Publication)
Plaintiff and Appellee,)	
)	Case No. 20050154-CA
v.)	
)	
Christi Evette Keele,)	F I L E D
)	(March 23, 2006)
)	
Defendant and Appellant.)	<u>2006 UT App 119</u>

Third District, Salt Lake Department, 951901411
The Honorable John Paul Kennedy

Attorneys: Ralph Dellapiana and John Pace, Salt Lake City, for Appellant
Mark L. Shurtleff and Jeanne B. Inouye, Salt Lake City, for Appellee

Before Judges Bench, Greenwood, and Billings.

GREENWOOD, Associate Presiding Judge:

Defendant Christi Evette Keele appeals the trial court's denial of her amended motion to terminate restitution. We affirm.

"Under usual circumstances, '[a]n appellate court will not disturb a trial court's restitution order unless it exceeds that prescribed by law or otherwise abused its discretion.'" State v. Mast, 2001 UT App 402, ¶7, 40 P.3d 1143 (alteration in original) (quoting State v. Breeze, 2001 UT App 200, ¶5, 29 P.3d 19). "However, '[t]he proper interpretation of a statute is a question of law.'" Id. (alteration in original) (citation omitted). Therefore, we review a trial court's interpretation of a statute for correctness, according no deference to the court's legal conclusions. See id.

Defendant first alleges that the 1995 trial court's failure to calculate court-ordered restitution at the same time as sentencing violated Utah Code section 76-3-201. See Utah Code Ann. § 76-3-201(4)(a)(i) (1995) (mandating that when a court convicts a defendant of a crime that results in pecuniary loss, the court shall order the defendant to make restitution to

victims of the crime, or to victims of criminal conduct the defendant agreed to make restitution to as part of plea agreement). Defendant also argues that having been deprived of the opportunity to object to court-ordered restitution at sentencing, she was denied the opportunity for a full hearing, in violation of Utah Code section 76-3-201(4)(e). See id. § 76-3-201(4)(e) (stating that if a defendant objects to restitution, "the court shall at the time of sentencing allow [her] a full restitution hearing on the issue").¹

Contrary to Defendant's claim, nothing in section 76-3-201(4)(a)(i) requires that restitution be ordered at the time of sentencing. See id. § 76-3-201 (4)(a)(i). Moreover, the record in the instant case indicates that Defendant was informed by Adult Probation and Parole (AP&P) in October 1996 that the losses she caused Smith's by passing forged checks were calculated at \$17,319.44. When Defendant stated that the figure was excessive, AP&P advised her to "contact her attorney and attempt to settle the amount through a hearing." Hence, even if Defendant had previously been unaware of her right to appeal a restitution award or had no "good cause," State v. Weeks, 2000 UT App 273, ¶10, 12 P.3d 110, to challenge the award at sentencing because AP&P had not yet calculated restitution, AP&P's statement constituted sufficient notice that Defendant should contact her attorney to contest the award.

It is unclear from the record whether Defendant contacted her attorney when she was advised to do so by AP&P. Nonetheless, the record reflects that when AP&P informed Defendant of Smith's calculations, she "lodged no objection to the imposition, amount, or distribution of the restitution ordered. Nor did [she] request a hearing on the issue." State v. Snyder, 747 P.2d 417, 421 (Utah 1987). Furthermore, at a subsequent probation review hearing, Defendant's counsel did not raise any questions about the restitution order. As a result, Defendant "waived the right [she] had to challenge the order of restitution." Id.; see also Weeks, 2000 UT App 273 at ¶18 ("By not objecting to the restitution amount and requesting a hearing thereon . . . , defendant waived his right to a full restitution hearing

¹Utah Code sections 76-3-201(4)(a)(i) and 76-3-201(4)(e) were renumbered after Defendant's sentencing in 1995. Because the relevant restitution requirements are unchanged and because both parties agree that the 1995 statutes govern in the instant case, we cite to the sections as they were numbered in 1995. Section 76-3-201(4)(a)(i) is now found at section 77-38a-302(1). See Utah Code Ann. § 77-38a-302(1) (Supp. 2005). Section 76-3-201(4)(e) is now found at section 77-38a-302(4). See Utah Code Ann. § 77-38a-302(4).

. . . ."); James v. Galetka, 965 P.2d 567, 574 (Utah Ct. App. 1998) (concluding that defendant who failed to challenge alleged error in restitution award during sentencing, did not appeal the award, and did not allege unusual circumstances justifying his failure to do so was barred from challenging order).

In summary, the trial court's allocation of restitution to AP&P in 1995 did not violate Utah Code section 76-3-201. Moreover, Defendant waived her right to a restitution hearing by waiting almost eight years to object to the amount and calculation of the restitution award. See Utah Code Ann. 76-3-201(4)(e); see also Weeks, 2000 UT App 273 at ¶18. As a result, Defendant's arguments on this issue fail.

Defendant additionally claims that the trial court in 2005 abused its discretion when it denied her motion to terminate restitution. At the very least, Defendant urges that Smith's inability to produce documentation supporting the restitution claim required the trial court to recalculate restitution.

"[T]he exercise of discretion . . . necessarily reflects the personal judgment of the court and the appellate court can properly find abuse only if . . . no reasonable [person] would take the view adopted by the trial court." State v. Butterfield, 2001 UT 59, ¶28, 27 P.3d 1133 (alterations in original) (quotations and citation omitted).

To the extent original records are no longer available to explain the details of the 1995-1996 restitution order, Defendant must bear the risk for her delay in challenging restitution. See State v. Verikokides, 925 P.2d 1255, 1257 (Utah 1996) (determining that where records were lost during defendant's seven-year flight following conviction, his "lengthy absence greatly increased the risk and indeed the likelihood that records would be lost or destroyed."); Emig v. Hayward, 703 P.2d 1043, 1049 (Utah 1985) (explaining that appellant "must take responsibility for any difficulties arising from reconstruction of the record more than a year and a half after it was originally made."); State v. Morello, 927 P.2d 646, 648 (Utah Ct. App. 1996) (stating that defendant bore risk of loss where he waited twelve years to file a motion and court reporter's notes were lost between initial hearing and the time motion was filed).

The trial court in 2005 took testimony, reviewed records, and heard arguments. Based on this evidence, the court found that as of February 1999, Defendant owed \$16,014.14 in restitution, but credited her with \$4630 for amounts paid, leaving a balance owing of \$11,384.14. The court ordered Defendant to pay that amount, but struck her outstanding \$5000 fine. Furthermore, the court ruled that Defendant need not pay

interest if she paid at least \$100 per month toward her restitution, but that she would be required to pay interest if she paid less than that amount. Far from abusing its discretion, the trial court actually afforded Defendant a measure of relief by reducing the amount of restitution she owed.

We affirm.

Pamela T. Greenwood,
Associate Presiding Judge

WE CONCUR:

Russell W. Bench,
Presiding Judge

Judith M. Billings, Judge