

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)
)
 Respondent,) No. 65574-4-1
)
 v.) DIVISION ONE
)
 GREGORY PATRICK RYAN,) UNPUBLISHED OPINION
)
 Appellant.) FILED: August 1, 2011

Grosse, J. — The trial court has authority to impose restitution for offenses which are not prosecuted pursuant to a plea agreement when the defendant specifically agrees to do so. Here, the defendant agreed at sentencing to accept the prosecutor’s recommendation for a plea agreement that encompassed restitution for both certifications of probable cause that formed the factual basis of his plea. Moreover, the plea agreement itself specifically set forth the two incidents for which the defendant agreed to pay restitution. The trial court’s order imposing restitution is affirmed.

FACTS

The King County Prosecuting Attorney’s Office charged Gregory Ryan by information with one count of residential burglary on March 29, 2009, at the home of Rebecca Thatcher. The information was based on two certifications for determination of probable cause: one (incident No. 09-073668) for the burglary at the Thatcher house and the other (incident No. 09-029014) for a residential burglary of Christine Gregory’s home. On February 5, 2009, the Gregory home was broken into and several rooms were ransacked. Electronics, jewelry, sterling silverware, and a Chihuly blown glass art

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bowl were among the items stolen. The police arrested an individual who had used a credit card taken from the Gregory home. From that person, the police discovered that three individuals were involved, one of whom was Gregory Ryan. Ryan's DNA (deoxyribonucleic acid) was also found on a cigarette at the scene.

Ryan pleaded guilty to a reduced charge of second degree theft at the Gregory home for the taking of silverware and one count of second degree malicious mischief at the Thatcher home. The plea agreement encompassed the facts set forth in the certifications for probable cause and specified:

RESTITUTION: Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and for incident #09-029014 & 09-073668.

At Ryan's guilty plea hearing, the trial court reviewed the defendant's statement on plea of guilty and read him the following sentencing recommendation:

An agreed 12 months confinement in the King County Jail. The State will not file additional charges arising out of King County Sheriff's Case No. 09029014 or 09073668. \$500 Victim Penalty Assessment, DNA fee of \$100, Court costs, restitution to be determined for both incidents of the numbers above.

Ryan informed the court that he understood the sentencing recommendation. Ryan was sentenced to 12 months confinement for the reduced charge and a restitution hearing was set. At the restitution hearing, the prosecutor presented information from Gregory, her insurance company, and a restitution investigator, and set restitution at \$47,839.96. Ryan's attorney objected to the court's imposition of restitution for anything other than the cleaning of the house and the theft of the silverware that formed the basis of the second degree theft in the guilty plea. The trial court disagreed and imposed restitution for all losses incurred in the residential burglary of the Gregory

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home. Ryan appeals.

ANALYSIS

Ryan challenges the restitution order entered after his plea of guilty to second degree theft and second degree malicious mischief. He claims that the trial court exceeded its statutory authority by imposing restitution for damages caused by the uncharged offense of residential burglary. “A sentencing court’s power to impose restitution is statutory.”¹ RCW 9.94A.753(5) provides in pertinent part:

[R]estitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor’s recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

Here, Ryan agreed with the sentencing recommendation that he would be responsible for restitution for both incidents. Moreover, the plea agreement provided that Ryan agreed to pay restitution “in full to the victim(s) on charged counts and for incident #09-029014 & 09-073668.” Restitution is not necessarily limited by the definition of the crime of conviction.²

Citing State v. Hartwell,³ State v. Woods,⁴ State v. Dauenhauer,⁵ and State v.

¹ State v. Burns, 159 Wn. App. 74, 78, 244 P.3d 988 (2010) (citing RCW 9.94A.753).

² State v. Taylor, 86 Wn. App. 442, 444, 936 P.2d 1218 (1997) (noting that restitution is not limited by the definition of the crime), overruled on other grounds by State v. Enstone, 137 Wn.2d 675, 974 P.2d 828 (1999).

³ 38 Wn. App. 135, 140, 684 P.2d 778 (1984) (reversing restitution imposed for leaving the scene of the accident because “[t]he victims’ injuries . . . were not *caused* by ‘the precise event that is the basis for the charge.’ The injuries occurred in the accident which happened before . . . the offense with which [Hartwell] was charged.”) (quoting State v. Bedker, 35 Wn. App. 490, 493, 667 P.2d 1113 (1983)), overruled on other grounds by State v. Krall, 125 Wn.2d 146, 881 P.2d 1040 (1994).

⁴ 90 Wn. App. 904, 909-11, 953 P.2d 834 (1998) (reversing restitution ordered for personal property taken from a stolen vehicle when defendant was charged with possessing the stolen vehicle because possessory crimes are neither sufficiently nor necessarily related to the lost personal property).

⁵ 103 Wn. App. 373, 379-80, 12 P.3d 661 (2000) (vacating restitution order for

Miszak,⁶ Ryan argues that his agreement did not amount to an agreement to pay for uncharged counts, but only the charged counts for his crimes. But none of the cases cited by Ryan dictate a different result. These cases stand for the proposition that a sentencing court is precluded from imposing restitution for the defendant's general scheme or separate acts merely "connected with" the crime charged.⁷ In other words, a sentencing court errs when imposing restitution for damages arising from acts separate from the one underpinning the defendant's criminal conviction unless the defendant, as here, pleads guilty and agrees to pay restitution. The stipulated facts described in the probable cause certificate are the basis for the restitution, which Ryan agreed to both in his sentencing hearing and in his plea agreement.

Ryan next argues that even if this court determines that the plea agreement is read to include the uncharged crimes, it is ambiguous and thus must be interpreted in his favor. Ryan cites State v Oliva⁸ for support of his position that the agreement is "defined by what the defendant understood [it] to be when he or she entered into the plea agreement." A plea agreement is a contract between the defendant and the State.⁹ As a contract, the court's objective is to ascertain and give effect to the intent of the parties, and to do so we look at the language of the plea agreement.¹⁰ There is no

damages caused to perimeter fence and automobile because the facts underlying the charge of burglary in the second degree was causally unconnected from the events underlying these later incurred damages).

⁶ 69 Wn. App. 426, 427-28, 848 P.2d 1329 (1993) (holding that it was improper to order restitution for 13 items of jewelry allegedly stolen "systematically" over a period of "months" when the defendant pleaded guilty to taking only "an article of jewelry" on a specified day).

⁷ Miszak, 69 Wn. App. at 428.

⁸ 117 Wn. App. 773, 779, 73 P.3d 1016 (2003).

⁹ In re Lord, 152 Wn.2d 182, 188, 94 P.3d 952 (2004).

¹⁰ Oliva, 117 Wn. App. at 779.

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ambiguity here. Ryan specifically agreed in court to the judge's explanation of the plea agreement acknowledging that he understood that in return for the State not filing additional charges, restitution would be "determined for both incidents."

The trial court properly imposed restitution for both incidents. The trial court is affirmed.

Grosse, J.

WE CONCUR:

Spencer, J.

Schweitzer, J.