

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

ARCHER H. HONNEN, JR.,

Appellant.

Consol. Nos. 41089-3-II
41092-3-II

UNPUBLISHED OPINION

Hunt, J. — Archer H. Honnen, Jr. appeals the trial court’s imposition of \$945.46 in restitution for damages caused to a residence he had invaded and which resulted in his pleading guilty to first degree criminal trespass. He argues that the trial court erred in imposing \$945.46 in restitution and that he received ineffective assistance of counsel. We affirm.

FACTS

Archer Honnen and William Hedrich unlawfully entered and damaged Joseph Bourgault’s residence. The State charged them both with residential burglary, a felony. Honnen and the State entered into a plea agreement in which Honnen would plead guilty to first degree criminal trespass, a gross misdemeanor. Honnen’s statement on plea of guilty provided that the State would be requesting “restitution, joint & several with codefendant, Hedrich.” Clerk’s Papers (CP) at 21. Bourgault had submitted a restitution estimate of \$945.46, detailed as follows:

New standing jewelry box—\$225.46. Resorting containers that were dumped and

repacking, 24 hrs @ \$20.00 per [hour]—\$400.00. Cut wires on alarm system, resetting alarm system, repair, checking window backs, putting plywood back on, \$20.00 per [hour], \$40.00. They left a terrible mess. My mom[']s [doilies] a sentimental value at \$200.00.

CP at 26-27.

During Honnen’s change of plea hearing, the trial court confirmed that he understood that he would be required to pay restitution of “approximately \$900.00,” jointly and severally with Hedrich. Report of Proceedings (RP) at 3. At sentencing, the State told the court that there was an “agreement to restitution jointly and severally with his codefendant, Mr. Hedrich, in the amount of \$945.46.” RP at 27. Neither Honnen nor his counsel corrected the prosecutor about the agreement or objected to imposing this restitution. Accordingly, the trial court imposed the requested amount of restitution, \$945.46. Honen appeals.¹

ANALYSIS

I. Restitution

Honnen argues that (1) the restitution ordered for damages to Bourgault’s residence goes beyond the crime of first degree criminal trespass; and (2) he had no express agreement with the State to pay restitution. This argument fails.

A. Waiver

At sentencing, Honnen neither objected to the \$945.46 amount of requested restitution nor argued the lack of causal relationship between his crime and the damages for which he had agreed to compensate the victim.² Thus, he waived “his right to argue sufficiency of the record

¹ A commissioner of this court initially considered Honnen’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

[to determine the amount of restitution] on appeal.” See *State v. Branch*, 129 Wn.2d 635, 651, 919 P.2d 1228 (1996) (bracketed language added). Although we need not consider his substantive arguments, we address them in part.

B. Express Agreement to Restitution Amount

Where the defendant has pled guilty and entered into an express agreement to pay a certain amount of restitution, the trial court may impose restitution “beyond the crime charged or for other uncharged offenses.” See *State v. Dauenhauer*, 103 Wn. App. 373, 378, 12 P.3d 661 (2000), *review denied*, 143 Wn.2d 1011 (2001).³ As part of his plea agreement with the State for reducing his charge from a felony burglary to a gross misdemeanor, first degree criminal trespass, Honnen agreed to pay restitution of “approximately \$900” for the damage caused to and in Bourgault’s residence.⁴ See RP at 3, Statement of Defendant on Plea of Guilty, CP at 21. Thus, Honnen’s attempt to challenge the amount of restitution⁵ and the causal relationship between his

² Honnen’s Statement of Defendant on Plea of Guilty and acquiescence to restitution during both his change of plea and his sentencing hearings demonstrate that, as part of his plea bargain with the State, Honnen expressly agreed to pay “approximately \$900” in restitution for the damage caused to and in Bourgault’s residence.

³ In the absence of an express agreement, the trial court may not impose restitution beyond the crime for which the defendant was convicted. *Dauenhauer*, 103 Wn. App. at 378.

⁴ In reviewing Honnen’s Statement of Defendant on Plea of Guilty, the trial court explained that (1) the plea agreement required joint and several payment of “approximately \$900” in restitution; and (2) if the other defendant failed to pay any restitution, Honnen could be required to pay all of it, to which Honnen responded, “Okay.” RP at 3-4.

⁵ Accordingly, we do not consider Honnen’s related argument that the restitution amount was based on Bourgault’s estimates, not on evidence. We do note, however, that at sentencing, Honnen did not challenge Bourgault’s declaration of the amount of damages, on which the sentencing court based its restitution amount order.

criminal trespass guilty plea conviction and the damages compensated by restitution,⁶ for the first time on appeal, fails.

II. Effective Assistance of Counsel

Finally, Honnen argues that his trial counsel rendered ineffective assistance in failing to object to the order of restitution or its amount. This argument also fails.

To prevail on a claim of ineffective assistance, Honnen must show that: (1) his trial counsel's performance was deficient in that it fell below an objective standard of reasonableness based on all the circumstances; and (2) the deficient performance prejudiced him because, had the errors not occurred, the result probably would have been different. *See Strickland v. Washington*, 466 U.S. 668, 689-92, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); *State v. McFarland*, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995) (citing *State v. Thomas*, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987)). A valid tactical decision cannot, however, form the basis of an ineffective assistance of counsel claim. *State v. Israel*, 113 Wn. App. 243, 270, 54 P.3d 1218 (2002), *review denied*, 149 Wn.2d 1013 (2003).

Because of the presumption in favor of effective representation, Honnen must show there was no legitimate strategic or tactical reason for the challenged conduct. *See McFarland*, 127 Wn.2d at 366; *State v. Grier*, 171 Wn.2d 17, 33, 246 P.3d 1260 (2011). This Honnen fails to do. His trial counsel could have had legitimate strategic or tactical reasons for not objecting to the requested restitution. Indeed, Honnen's agreement to pay restitution to the victim was part of the

⁶ We note that there is no requirement for a causal relationship between a conviction and the damages compensated by restitution where, as here, the defendant has expressly agreed to pay restitution as part of his plea agreement. *Dauenhauer*, 103 Wn. App. at 378.

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agreement under which the State reduced the charge from a felony to a gross misdemeanor.

Accordingly, Honnen fails to show that he was denied effective assistance of counsel.

We affirm the order of restitution.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Hunt, J.

We concur:

Van Deren, J.

Worswick, A.C.J.