

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28145-1-III

Respondent,

)

)

) **Division Three**

v.

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)

ANTHONY B. HUBER,

) **UNPUBLISHED OPINION**

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Appellant.

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)

Kulik, C.J. — A jury found Anthony Huber guilty of first degree arson. He agreed to the restitution amounts and waived a restitution hearing. But Mr. Huber now appeals the restitution amounts. Because Mr. Huber agreed to the court's amount of restitution and waived his right to a restitution hearing, we conclude that the trial court's order was not an abuse of discretion. Accordingly, we affirm.

FACTS

On May 14, 2009, a jury found Mr. Huber guilty of first degree arson by setting fire to the house he was renting. At the sentencing hearing, the court informed Mr. Huber that the State would have six months to determine the amount of restitution sought and

that, if Mr. Huber disagreed with the amount, he was entitled to a hearing.

Three months later, Mr. Huber filed a letter with the court waiving his right to a restitution hearing. In the letter, he stated that he reviewed the restitution packet provided to him, understood all of the financial charges requested, and would pay whatever the court considered to be fair in restitution. Mr. Huber stated that the reasons for waiving his right to a restitution hearing were (1) he did not want to take time away from the programs he enrolled in at the prison, and (2) he did not have the will or money to continue fighting the charges. In light of Mr. Huber's letter, the court did not hold a restitution hearing. Mr. Huber did not object to the restitution amount.

The court entered a restitution order awarding \$22,245.21 to Patrick Rickman, \$9,455.22 to USAA, \$6,261.42 to Kittitas Valley Fire and Rescue (KVFR), and \$123,838.83 to Safeco Insurance Company. The prosecuting attorney, Mr. Huber's attorney, and Mr. Huber signed the restitution order. Mr. Huber appeals each of the restitution amounts.

ANALYSIS

The court's authority to order restitution is created by statute. *State v. Davison*, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). Courts have broad discretion when determining the amount of restitution. *State v. Kinneman*, 155 Wn.2d 272, 282, 119 P.3d

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350 (2005). Restitution orders are reviewed for an abuse of that discretion. *Davison*, 116 Wn.2d at 919. A court abuses its discretion when the restitution order is manifestly unreasonable, exercised on untenable grounds, or for untenable reasons. *State v. Enstone*, 137 Wn.2d 675, 679-80, 974 P.2d 828 (1999) (internal quotation marks omitted) (quoting *State v. Cunningham*, 96 Wn.2d 31, 34, 633 P.2d 886 (1981)).

Generally, an issue not raised in the trial court cannot be raised on appeal.

RAP 2.5(a). But when the trial court acts beyond its statutory sentencing authority, the issue can be heard for the first time on appeal. *State v. Moen*, 129 Wn.2d 535, 545-46, 919 P.2d 69 (1996). Here, if a restitution amount was issued outside the trial court's statutory authority, it can be challenged for the first time on appeal. *Id.*

A trial court is required to “determine the amount of restitution due at the sentencing hearing or within one hundred eighty days” unless good cause is shown for continuing beyond the 180-day time period or the crime victims' compensation act applies. RCW 9.94A.753(1), (7). For a criminal conviction, the trial court is authorized to award restitution

based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

RCW 9.94A.753(3).

To receive restitution, a person must be a victim of the crime. *State v. Kisor*, 82 Wn. App. 175, 183, 916 P.2d 978 (1996), *overruled on other grounds by Enstone*, 137 Wn.2d 675. A "victim" is defined as "any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged." RCW 9.94A.030(53). There is no foreseeability requirement regarding a victim's damages, but there must be a causal connection between the victim's damages and the crime committed. *Enstone*, 137 Wn.2d at 682. "[F]unds expended by a victim as a direct result of the crime (whether or not the victim is an 'immediate' victim of the offense) can be a loss of property on which restitution is based." *Kinneman*, 155 Wn.2d at 287.

The essence of Mr. Huber's contention is that KVFR is not a "victim" entitled to restitution under the statute. However, the term "victim" is interpreted broadly to include

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nonimmediate victims like cities, state agencies, and public and private entities. *Davison*, 116 Wn.2d at 920-21.

KVFR put out the fire and investigated the cause of the fire, establishing a causal connection between the crime and KVFR's costs or damages it incurred. Deputy Fire Chief Richard Elliott advised the court that KVFR and associated agencies expended 300 staff hours in the investigation and suppression efforts. And Mr. Huber agreed to the amounts listed in the restitution order, waived his right to a restitution hearing, and did not object to the amount awarded to KVFR in a timely manner.

If the defendant acknowledges or agrees to the amount of restitution, an evidentiary restitution hearing is not required. *State v. Pockert*, 53 Wn. App. 491, 498, 768 P.2d 504 (1989). If the defendant objects to the restitution amount, the State must prove the amount by a preponderance of the evidence at an evidentiary restitution hearing. *Kinneman*, 155 Wn.2d at 285. Failure to object to the restitution amount constitutes acknowledgment or agreement to the amount. *State v. Ryan*, 78 Wn. App. 758, 762, 899 P.2d 825 (1995).

Such is the case here. The trial court informed Mr. Huber at sentencing that if he did not agree to the amount of restitution proposed by the State, a restitution hearing would be held. Mr. Huber's August 26 letter to the court stated that he waived his right

to a restitution hearing. Mr. Huber did not object to or dispute the amount of restitution. On September 4, a restitution order was presented to the court, signed by the prosecuting attorney, Mr. Huber's attorney, and Mr. Huber.

Mr. Huber was aware that he was entitled to a restitution hearing if he objected to the restitution amount. But he waived that right in his August 26 letter in which he stated that he did not want to take time away from the programs he was enrolled in at the prison, and he did not have the will or money to fight the charges. He agreed that, "[w]hatever [the court] deem[s] to be fair in the restitution is what I will go with. If you believe \$163,000 is fair I trust your judgement." Clerk's Papers at 52. The letter did not dispute or object to the restitution amount. Mr. Huber's arguments on appeal fail to acknowledge the letter and the restitution order bearing his signature that were filed with the court.

This case is similar to *State v. Branch*, 129 Wn.2d 635, 919 P.2d 1228 (1996). James Branch was prohibited from arguing "the sufficiency of the record on appeal" because he agreed to pay the restitution amount and did not raise the issue at the trial court. *Id.* at 651. At his plea hearing, Mr. Branch agreed to the restitution amount and orally waived his right to a restitution hearing. *Id.* He did not raise any issue as to the amount of the restitution during the plea hearing, the sentencing hearing, or at a later reconsideration hearing. *Id.* Because Mr. Branch agreed to pay the restitution amount

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and failed to challenge the amount awarded by the trial court, the court concluded that Mr. Branch “waive[d] his right to argue the sufficiency of the record on appeal,” and the restitution amount was affirmed. *Id.*

As in *Branch*, Mr. Huber waived any challenge to the restitution awards. We affirm the trial court’s restitution order.

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

Kulik, C.J.

WE CONCUR:

Brown, J.

Siddoway, J.