

FILED
SUPREME COURT
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SUPREME COURT NO. 102077-5
COURT OF APPEALS NO. 84169-6-I
(consolidated with No. 84248-0-I)

IN THE SUPREME COURT OF THE
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAZANE BROWN,

Petitioner.

**ANSWER TO PETITION FOR REVIEW
AND CROSS-PETITION**

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A. IDENTITY OF RESPONDENT

The State of Washington is the Respondent in this case.

B. COURT OF APPEALS DECISION

The Court of Appeals decision at issue is State v. Brown, No. 84169-6-I, 2023 WL 3302011 (2023) (unpublished).

C. ISSUES PRESENTED FOR REVIEW

Petitioner Brown seeks review of the Court of Appeals' decision rejecting his legal challenge to the trial court's authority to order the restitution amount, and excessive fines challenges to the restitution order, interest on restitution, and the Victim Penalty Assessment imposed at sentencing.

The State believes that review is not warranted in this case. But if this Court grants review, the State seeks cross-review of the following issue, which was not reached by the Court, as alternative grounds on which to affirm Brown's restitution obligation and the victim penalty assessment:

Brown's plea agreement to pay restitution to the victim "in full" and the victim penalty assessment makes his various challenges to restitution and the victim penalty assessment a breach of the plea agreement for which the State is entitled to specific performance.

D. STATEMENT OF THE CASE

BROWN AND HIS CO-DEFENDANT WERE ORDERED TO PAY RESTITUTION FOR ITEMS THEY STOLE ON THREE SEPARATE OCCASIONS.

On July 10, 2019, Jazane Brown and Monique Duncan entered a Home Depot store, removed merchandise valued at \$4,416.20 from shelves and placed them in a shopping cart, then left the store without paying for the items. CP 36. On August 2, 2019, they went back to the same Home Depot and stole merchandise valued at \$7,363.95. CP 38. Immediately following the theft, loss prevention officer Ramon Sturdivant, who recognized Brown and Duncan from the prior theft, approached them in the parking lot to request they come back

inside the store. Id. They refused and fled the area with the store's merchandise. Id.

On September 9, 2019, Brown and Duncan again entered the same Home Depot and stole merchandise valuing \$6,864.37. CP 42. Immediately following this theft, loss prevention officer Sturdivant attempted to stop Brown and Duncan from fleeing the parking lot with the items by grabbing the shopping cart they had filled with merchandise. Id. When Brown postured by balling his fists and threatening to "woop [Sturdivant's] ass," Sturdivant retreated, and Brown and Duncan again fled with the store's merchandise. Id.

The State charged Brown with first-degree organized retail theft and Assault in the Fourth Degree. CP 9. Brown pled guilty to the amended charges of three counts of Theft in the Third Degree with agreed sentencing recommendations. CP 29-

30, 44-46.¹ In the plea agreement, Brown agreed to pay restitution to the victim “in full” in an amount “TBD” (to be determined) and pay the victim penalty assessment (VPA). CP 44-46.² Brown stipulated to the facts contained in the probable cause certification which outlined the full extent of the merchandise stolen in the three incidents. CP 35-43.

The trial court followed the agreed recommendation and imposed a suspended sentence and 24 months of unsupervised probation with no additional jail time. CP 49-52. The trial court also imposed the mandatory VPA which was uncontested. Id.

At a restitution hearing, the State submitted additional documents supporting the restitution outlined in the probable cause certification. CP 53-96, 98-131. Brown’s counsel argued that the materials were insufficient to prove the amount of

¹ Duncan accepted the same deal as Brown and received an identical sentence and was ordered to pay identical legal financial obligations by a separate trial judge.

² As the plea agreement notes, the sentencing recommendation was an agreed one.

restitution, but the trial court disagreed and imposed the requested joint and several restitution obligation of \$18,644.52. RP 42-60. The trial court *sua sponte* questioned whether it could impose more than \$750 in restitution on each count. RP 53-54. The prosecutor explained that restitution was only limited by the facts themselves, not based on the level of crime to which the defendant pled. RP 54. Defense counsel admitted she was aware of no contrary authority. Id. The trial court invited Brown's counsel to submit a motion for reconsideration if she could find legal authority holding that the trial court could impose no more than \$750 on each count. RP 59. No motion to reconsider was filed by Brown's counsel.

Brown appealed raising the same issues raised in his petition as well as two additional issues he does not raise here (challenge to the causal connection of the restitution amount and substantive due process/equal protection challenge to interest on restitution).

The Court of Appeals affirmed in all respects but did not rule on the State's assertion of a plea agreement breach and request for specific performance, instead finding that Brown had failed to preserve certain challenges below and finding against his legal challenge to the restitution amount on its merits.

E. REVIEW SHOULD BE DENIED, BUT IF REVIEW IS GRANTED, THIS COURT SHOULD ALSO REVIEW THE STATE'S ASSERTION THAT BROWN'S CHALLENGES TO RESTITUTION AND VICTIM PENALTY ASSESSMENT ARE BARRED PER THE TERMS OF THE PLEA AGREEMENT

Brown claims that the trial court did not have authority to order the joint and several \$18,644.52 in restitution or that it should have reduced or waived restitution and the victim penalty assessment based on Brown's alleged lack of ability to pay. The Court of Appeals did not erect barriers to Brown, it simply applied the law. Moreover, he is now eligible to seek waiver of the interest on his restitution obligation in the trial

court, thus potentially significantly reducing his legal financial obligations.

Brown's arguments also plainly breach the plea agreement and must be barred. Brown agreed to pay restitution in full (in an amount to be determined by the trial court) by the terms of his plea agreement. While Brown was entitled to argue over the amount proven and determined by the trial court based on the requirement that the State prove the causal connection between the crime and the losses, he was not entitled to ask to pay less than the victim's full losses as outlined in the probable cause certification. As such, the State requested the Court of Appeals dispose of all of Brown's claims contesting restitution (other than the causal connection claim)³ and the victim penalty assessment by enforcing specific performance of the plea agreement. See State v. Wiatt, 11 Wn. App. 2d 107, 111, 455 P.3d 1176 (2019) (affirming trial court's ruling applying

³ Brown has abandoned this claim in his Petition for Review.

specific performance to bar the defendant's attempt to vacate antiharassment orders in violation of the terms of his plea agreement). As noted below, Brown got a significant bargain by the State's agreement to reduce and dismiss charges and a recommendation for no further jail time with conditions including that he pay restitution in full. Brown should not be permitted to flout the terms of his plea agreement by contesting the very terms to which he agreed.

In the event this Court grants Brown's petition for review in whole or in part, this Court should also review the State's argument regarding specific performance of the plea agreement made in briefing and at oral argument below.

F. CONCLUSION


For the foregoing reasons, the petition for review should be denied. However, if review is granted, in the interests of justice this Court should also grant review of the issue raised in this Answer and Cross-Petition.

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of the document exempted from the word count by RAP 18.17.

DATED this 7th day of July, 2023.

Respectfully submitted,

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