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65874-4

2000 P.S. 01-03-04

NO. 65574-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,  
Respondent,  
v.  
GREGORY RYAN,  
Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY  
THE HONORABLE RICHARD EADIE

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**BRIEF OF RESPONDENT**

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DAVID L. RYAN  
Senior Deputy Prosecuting Attorney  
Attorneys for Respondent  
  
King County Prosecuting Attorney  
W554 King County Courthouse  
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**A. ISSUES PRESENTED**

The defendant agreed to pay restitution for an entire incident of Residential Burglary in a plea agreement to reduce the charge. Was it proper for the court to order the restitution in the plea agreement?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

The defendant received a substantial benefit in exchange for his agreed plea of guilty to a reduced charge. He was facing a 43-57 month standard range sentence if convicted for the originally charged Residential Burglary plus an additional pending Residential Burglary case included in the plea agreement. CP 1-8, 32. Instead, he proceeded to sentencing with a 4-12 month standard range for one count of Second Degree Theft and one count of Second Degree Malicious Mischief. CP 9-10. His plea agreement specifies:

**REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES:** In accordance with RCW 9.94.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

The facts set forth in the certifications(s) for determination of probable cause and prosecutor's summary.

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

09-073668.

CP 32 (Attached as Appendix A)

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

An agreed 12 month 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 or \$100, Court costs, restitution to be determined for both incidents of the numbers above. No contact...

1RP<sup>1</sup> 6.

When asked by the judge if he understood the above sentencing recommendation, the defendant replied, "Yes, ma'am."

1RP 6.

The defendant received a sentence of 12 months confinement for the reduced charges based on the plea agreement (CP 37-42) and a restitution hearing was set. 2RP 1-7. The prosecutor presented information from the burglary victim, her insurance company, and a restitution investigator. The defendant waived his presence for the restitution hearing where his attorney

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<sup>1</sup> 1RP refers to the verbatim report of guilty plea hearing proceedings for October 30, 2009. 2RP is the sentencing hearing on for November 20, 2009. 3RP is the restitution hearing on May 19, 2010.

conceded the restitution responsibility and valuation for the missing silver described in the reduced charge. 3RP 7.

However, contrary to the plea agreement, the defendant's attorney argued that he should not have to pay restitution for anything else stolen or damaged in the burglary from which his charge was reduced. 3RP 8-9. The prosecutor pointed out that the defendant had agreed to have the sentencing court assign restitution for the entire incident. The court agreed and ordered full restitution. 3RP 10-11; CP 48-49.

## **2. SUBSTANTIVE FACTS**

The following facts are summarized from the certification of probable cause (CP 25-28, 31) which the defendant accepted in his plea agreement as the basis for sentencing. CP 32; 1RP 6:

Burglary victim Christine Gregory was not home on February 5, 2009. A landscaping crew discovered the smashed sliding glass door on the back of her house and called police. Investigating officers checked inside and concluded that every room was ransacked. Wires stuck out of the empty space on an entertainment center shelf where a TV should have been. An empty, felt lined tableware case lay discarded on the floor.

Investigators smelled some cigarette smoke inside the house and found a fresh cigarette butt outside. It was collected in evidence and Ms. Gregory later confirmed that she does not smoke.

A neighbor phoned Ms. Gregory, who returned home with her daughter. She discovered the following losses and damage:

- Heirloom Sterling silver tableware;
- 52" TV missing from entertainment center shelf;
- \$2000 cash missing from box in bedroom;
- Master Card missing from bedroom nightstand;
- Large glass bowl blown by the artist Dale Chihuly;
- 2006 VW Beetle missing from garage;
- Wedding band of Ms. Gregory's deceased husband;
- Smashed sliding glass door; and
- Substantial professional cleaning necessary as a result of AFIS finger print technicians dusting powder all over the house.

The stolen Master Card was later used at a Fred Meyer store and police had the store video broadcast on the Western Washington Most Wanted show. As a result, the person in the video was arrested and he named the defendant as an accomplice. When the defendant was later arrested in Snohomish County for another burglary, his DNA sample matched the cigarette butt found at Ms. Gregory's home. CP 25-28. After sentencing, the defendant was ordered to pay restitution totaling \$47,839.96. CP 48-49.

C. **ARGUMENT**

The defendant claims that the trial court abused its discretion by ordering restitution for the entire residential burglary. Instead, he argues that he should only be responsible for the silverware specified in the negotiated charge reduction (Brief of Appellant). This claim contradicts his own plea agreement. CP 32 (attached as Appendix A).

Restitution decisions are reviewed for an abuse of discretion. State v. Tobin, 161 Wn.2d 517, 166 P.3d 1167 (2007). Courts have the statutory authority to sentence defendants to pay restitution for loss or damages beyond the scope of the conviction when the defendant expressly agrees to such restitution in the plea agreement. RCW 9.94A.753 (5) provides:

[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.

RCW 9.94A.753 (5).

Thus, the trial court properly required the defendant to pay the restitution he previously agreed to in exchange for his reduced charge and sentence.

**D. CONCLUSION**

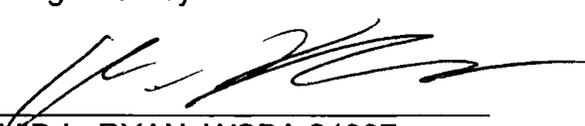
The defendant pled guilty to a lesser offense and entered a plea agreement requiring restitution for the greater offense. The trial court has the statutory authority to order such restitution. Therefore, the order for full restitution was within the court's sound discretion.

DATED this 15<sup>th</sup> day of December, 2010.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

By: \_\_\_\_\_

  
DAVID L. RYAN, WSBA 21997  
Senior Deputy Prosecuting Attorney  
Attorneys for the Respondent  
WSBA Office #91002

# **APPENDIX A**

FELONY PLEA AGREEMENT

Date of Crime: 2/5/09 & 3/29/09

Date: 10/30/09

Defendant: Gregory P. Ryan

Cause No: 09-1-04834-3 SCA ~~SEVENTH~~

The State of Washington and the defendant enter into this PLEA AGREEMENT which is accepted only by a guilty plea. This agreement may be withdrawn at any time prior to entry of the guilty plea. The PLEA AGREEMENT is as follows:

On Plea To: As charged in Count(s) I, II of the  original  SI amended information.  
 With Special Finding(s):  deadly weapon - firearm, RCW 9.94A.510(3);  deadly weapon other than firearm, RCW 9.94A.510(4);  sexual motivation, RCW 9.94A.835;  protected zone, RCW 69.50.435;  domestic violence, RCW 10.99.020;  other \_\_\_\_\_; for count(s): \_\_\_\_\_

This is part of an indivisible agreement that includes cause number(s): \_\_\_\_\_.

DISMISS: Upon disposition of Count(s) \_\_\_\_\_, the State moves to dismiss: \_\_\_\_\_.

REAL FACTS OF HIGHER/MORE SERIOUS AND/OR ADDITIONAL CRIMES: In accordance with RCW 9.94A.530, the parties have stipulated that the following are real and material facts for purposes of this sentencing:

- The facts set forth in the certification(s) for determination of probable cause and prosecutor's summary.
- The facts set forth in  Appendix C;  \_\_\_\_\_.

The defendant acknowledges and waives any right to have a jury determine these facts by proof beyond a reasonable doubt.

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

- agrees to pay restitution in the specific amount of \$ \_\_\_\_\_.
- agrees to pay restitution \_\_\_\_\_.

OTHER: Agreed recommendation

CRIMINAL HISTORY AND OFFENDER SCORE:

a.  The defendant agrees to this Plea Agreement and that the attached sentencing guidelines scoring form(s) (Appendix A), offender score, and the attached Prosecutor's Understanding of Defendant's Criminal History (Appendix B) are accurate and complete and that the defendant was represented by counsel or waived counsel at the time of prior conviction(s). The State makes the sentencing recommendation set forth in the State's sentence recommendation. An essential term of this agreement is the parties' understanding of the standard sentencing range(s); if the parties are mistaken as to the offender score on any count, neither party is bound by any term of this agreement.

b.  The defendant disputes the Prosecutor's Statement of the Defendant's Criminal History, as follows:

- (1) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_
- (2) Conviction: \_\_\_\_\_ Basis: \_\_\_\_\_

c. The parties agree that neither party will seek an exceptional sentence.

Maximum on Count(s) I, II is not more than 5 years each and \$ 10,000 fine each.

Maximum on Count(s) \_\_\_\_\_ is not more than \_\_\_\_\_ years each and \$ \_\_\_\_\_ fine each.

Mandatory Minimum Term(s) pursuant to RCW 9.94A.540 only: \_\_\_\_\_

Mandatory weapon sentence enhancement for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each; for Count(s) \_\_\_\_\_ is \_\_\_\_\_ months each. This/these additional term(s) must be served consecutively to each other and to any other term and without any earned early release.

The State's recommendation will increase in severity if additional criminal convictions are found or if the defendant commits any new charged or uncharged crimes, fails to appear for sentencing or violates the conditions of release.

Gregory P. Ryan  
Defendant

[Signature]  
Deputy Prosecuting Attorney 31057

[Signature] 35317  
Attorney for Defendant

[Signature]  
Judge, King County Superior Court

Appendix A

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to David Koch, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. GREGORY RYAN, Cause No. 65574-4-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

W Brame  
Name  
Done in Seattle, Washington

12/16/10  
Date 12/16/10