

NO. 66959 - 1 - I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

RONNIE SEYMOUR, JR.,

Appellant.

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HEAVEY

**BRIEF OF RESPONDENT**

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**A. ISSUE PRESENTED**

Washington law permits a sentencing court to award restitution for losses suffered by crime victims, even where those losses are not causally connected to a defendant's crimes of conviction, if the defendant pled guilty to fewer or lesser offenses and agreed to restitution for the uncharged crimes. Here, pursuant to a plea agreement, Seymour pled guilty to three counts of Trafficking in Stolen Property in the First Degree and one count of Possession of Stolen Property in the Third Degree; the State dismissed two additional counts and agreed to file no additional charges out of the investigation. Seymour agreed to pay restitution for all of his conduct. Did the sentencing court err in imposing restitution for losses suffered by victims that were not causally connected to Seymour's crimes of conviction, but which Seymour agreed to pay pursuant to the plea agreement?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS**

On August 4, 2010, Ronnie Seymour was charged by Information with five counts of Trafficking in Stolen Property in the First Degree (counts I, II, III, VII, and IX) and one count of

Possession of Stolen Property in the Third Degree (count VI). CP 1-4. He was also charged in a separate cause number with one count of Attempted Residential Burglary. CP 40, 42.

On October 27, 2010, Seymour pled guilty to three counts of Trafficking in Stolen Property in the First Degree (counts I, II, and III), one count of Possession of Stolen Property in the Third Degree (count VI), and the Attempted Residential Burglary charged in the companion case. CP 11-30, 40-41. Pursuant to a plea agreement, the State dismissed two counts of Trafficking in Stolen Property in the First Degree (counts VII and IX) and agreed to file no additional charges stemming from the police investigation. CP 40. The plea agreement also addressed restitution. Specifically, it read:

**“RESTITUTION:** Pursuant to RCW 9.94A.753, the defendant shall pay restitution in full to the victim(s) on charged counts and agrees to pay restitution all losses for all charged cts, inc. VII & IX, & all conduct in Cert.” CP 40. On November 15, 2010, Seymour was sentenced to 16.5 months in prison on the trafficking counts; restitution was reserved to another date. CP 45-49.

In March, in advance of a restitution hearing scheduled for March 22, 2011, Seymour filed an objection to the State’s request for restitution. CP 56-61. The objection quibbled with some of the

calculations of loss and also complained that an order of restitution for a number of burglaries was inappropriate because there was no causal connection between the burglaries and the trafficking for which Seymour was convicted. The State filed a response in which it conceded some errors regarding the loss calculation, but held fast to its request for restitution for the burglaries as this restitution was agreed to pursuant to the plea agreement. CP 65-67. The sentencing court agreed with the State's position, and entered a restitution order that included losses suffered by the burglary victims. CP 62-64; March 22, 2011 RP 17-18. This appeal timely followed. CP 68-69.

## **2. SUBSTANTIVE FACTS**

Seymour and his co-defendant, Kenneth Austin, were arrested for a series of eleven pattern burglaries that occurred in August 2009. CP 6. The burglaries were similar in that they occurred in the same West Seattle area during the same time of day, involved entry through a side window that was either left open by the homeowner or broken by the burglars, and the property taken included flat screen televisions, home computers, game consoles, jewelry, and guns. CP 6. Seymour ultimately was convicted, as a juvenile, of two of these burglaries. CP 43.

In June 2010, a similar pattern of burglaries emerged in the same West Seattle area, again involving the same time of day, mode of entry, and type of property stolen. CP 6. These burglaries included the following:

On June 8, 2010, the home of victim Baharloo was burglarized and jewelry, DVDs, and a Wii game console and controller were stolen. CP 6. On June 8, 9, and 13, 2010, Seymour pawned some of Baharloo's stolen jewelry at Pawn Pros. CP 9. On June 14, 2010, Seymour pawned Baharloo's stolen Wii and controller at Pawn Pros. CP 6.

On June 16, 2010, victim John Rodie's home was burglarized and an iPod, iHome clock radio, and Garmin GPS were stolen. CP 7. On June 19, 2010, Seymour pawned Rodie's stolen iHome and stolen iPod at Pawn Pros. CP 7.

On June 18, 2010, victims Maegan and Jacob Elam's home was burglarized and a diamond bracelet, a diamond ring, and cash were stolen. CP 7. On the same date, co-defendant Austin pawned the Elams' bracelet and necklace at Pawn Pros. CP 7-8.

On June 21, 2010, victim Klyn's home was burglarized and a flat screen television, DVD player, DVDs, and other property were stolen. CP 8. On the same date, Seymour pawned nine of Klyn's

DVDs at Pawn Pros. CP 8. On July 19, 2010, a search warrant was served on Seymour's home and Klyn's stolen DVD player was recovered from Seymour's bedroom. CP 8.

On June 23, 2010, victims Donald and Lee Ann Rohweder's home was burglarized and jewelry was stolen. CP 9. On the same date, Seymour pawned the Rohweders' jewelry at Pawn Pros. CP 9.

On June 24, 2010, victim Mark Wessels's home was burglarized and televisions, jewelry, iPods, DVDs, and other property were stolen. CP 7. On June 24, 2010, Seymour pawned 32 DVD movies, 24 of which belonged to Wessels, and Wessels's iPod docking station at Pawn Pros. CP 7-8. Austin pawned the stolen iPod three days later, on June 27, 2010. CP 7.

On June 30, 2010, victim Alison Morton's home was burglarized, and jewelry and an iMac computer were stolen. CP 8-9. On the same date, Austin pawned the jewelry at Pawn Pros. CP 8-9.

On June 30, 2010, Seymour attempted to burglarize another home in the West Seattle area. CP 6. The homeowner was present in the house and called the police, who arrived and arrested Seymour at the scene. CP 6. Seymour was charged with

this offense and pled guilty to it under a different cause number.

CP 40, 42, 46.

C. **ARGUMENT**

Seymour claims that the sentencing court should not have included in its restitution order restitution for burglaries of which he was not convicted. Specifically, he complains that the losses from the burglaries were not causally connected to the crimes of trafficking for which he was convicted. But Seymour ignores the fact that, pursuant to the plea agreement entered in this case, he agreed to pay restitution for crimes beyond those for which he was convicted, including the contested burglaries. Seymour's argument that the sentencing court erred in ordering restitution to which he agreed should be rejected.

A court does not have inherent authority to impose restitution; rather, its authority is derived from statute. State v. Enstone, 137 Wn.2d 675, 682, 974 P.2d 828, 831 (1999) (citations omitted). Ordinarily, that authority is limited to imposing restitution for those losses that are causally connected to a defendant's crimes of conviction. State v. Acevedo, 159 Wn. App. 221, 229, 248 P.3d 526, 529 (2010) (citing State v. Griffith, 164 Wn.2d 960,

965–66, 195 P.3d 506 (2008)). This rule derives from the restitution statute itself, which reads: “Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property . . . .” RCW 9.94A.753(5).

To determine whether there is a causal connection between the loss and the defendant’s crime, courts look at the underlying facts of the crime. Acevedo, 159 Wn. App. at 230 (citation omitted). “Losses are causally connected if the victim would not have incurred the loss but for the crime. . . . There is no causal connection if the loss or damage occurred before the act constituting the crime.” Id. (citing Griffith, 164 Wn.2d at 966, and State v. Woods, 90 Wn. App. 904, 909, 953 P.2d 834 (1998)). “Restitution cannot be imposed based on the defendant’s ‘general scheme’ or acts ‘connected with’ the crime charged, when those acts are not part of the charge.” Woods, 90 Wn. App. at 907-08 (citation omitted).

To this limited extent, Seymour is correct. The residential burglaries during which the property was stolen that Seymour later possessed or pawned are not causally connected to Seymour’s crimes of conviction: Trafficking in Stolen Property in the First

Degree and Possession of Stolen Property in the Third Degree.

The burglaries, and the losses therefrom, preceded the possession and trafficking. Had this been the only information before the sentencing court, an award for restitution for the burglaries would indeed have been erroneous.

The situation before this Court, however, is not the ordinary case. To the contrary, in entering his plea agreement, Seymour specifically agreed to pay restitution for losses beyond the crimes of conviction. In the very same statute authorizing restitution any time a defendant's offense results in injury, the legislature granted courts authority to impose restitution awards for crimes other than the crimes of conviction when specific circumstances are met.

Specifically, the remainder of the authorizing statute reads:

In addition, restitution 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). It is this portion of the statute that governs Seymour's case.

As described above, Seymour was originally charged with five counts of Trafficking in Stolen Property in the First Degree and

one count of Possession of Stolen Property in the Third Degree. CP 1-4. Pursuant to the Plea Agreement, he pled guilty to three of the Trafficking counts, the count of Possession of Stolen Property in the Third Degree, and charges in a separate cause number. CP 40-41. The State then agreed to dismiss the remaining two counts of Trafficking. CP 40. The State further agreed “to file no further charges” arising out of the investigation. CP 40. The parties also agreed that Seymour would “pay restitution in full to the victim(s) on charged counts and . . . pay restitution [for] all losses for all charged [counts], [including] VII [and] IX, [and] all conduct in Cert[ification].” In other words, “the offender,” Seymour, pled guilty “to fewer offenses,” and agreed with the State that he “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). Accordingly, pursuant to this statute, the sentencing court had full authority to order restitution for all losses for all conduct described in the Certification, even though those crimes were not prosecuted.

Despite the plain language of the statute, and its obvious application to the situation at bar, Seymour fails to acknowledge the governing law. Rather, he continues to complain that the losses stemming from the burglaries were not causally connected to the

trafficking for which he was convicted. But the portion of the statute relevant here does not require a causal connection between the loss and the crime of conviction; indeed, the statutory language quoted above would be superfluous if such a causal connection were required under these circumstances. Griffith, 164 Wn.2d at 965-66 (“[R]estitution is allowed only for losses that are ‘causally connected’ to the crimes charged . . . unless the defendant expressly agrees to pay restitution for crimes for which [she] was not convicted.” (citations and internal quotations omitted; emphasis added)); see also Woods, 90 Wn. App. at 907-08; State v. Miszak, 69 Wn. App. 426, 428, 848 P.2d 1329 (1993); State v. Johnson, 69 Wn. App. 189, 191, 847 P.2d 960 (1993). Accordingly, the sentencing court did not err in awarding restitution for the burglaries despite a lack of causal connection between Seymour’s crimes of conviction and the victims’ losses. Indeed, pursuant to the plain language of the statute (“restitution shall be ordered”) and the plea agreement, the sentencing court could not have done anything else.

Once a sentencing court has authority to impose a particular type of restitution, the amount of restitution actually awarded is reviewable only for abuse of discretion. State v. Oakley, 158 Wn.

App. 544, 552, 242 P.3d 886, 890 (2010) (citation omitted). A sentencing court abuses its discretion “only where its exercise is manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” State v. Pollard, 66 Wn. App. 779, 785, 834 P.2d 51, 54 (1992) (citation and internal quotations omitted).

Here, Seymour does not complain that the sentencing court miscalculated the amount of loss attributable to the burglaries, or that the State did not carry its burden of proof in establishing the losses suffered by the burglary victims.<sup>1</sup> Similarly, he does not assign error to the sentencing court’s reading of the term “all conduct” in the plea agreement to include the burglaries described in the Certification. Indeed, it is unclear what “all conduct” could possibly have been referring to other than the burglaries, as the Certification described the trafficking with which Seymour was charged and the underlying burglaries.<sup>2</sup>

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<sup>1</sup> If he were, he would have been required to designate the State’s proffered documentation as part of the record on appeal. He has not done so.

<sup>2</sup> Even had Seymour complained of the sentencing court’s rulings regarding the calculation of the restitution award, the amount of proof, or the interpretation of the Plea Agreement, his arguments would have been unavailing. “When interpreting Washington’s restitution statutes, we recognize that they were intended to require the defendant to face the consequences of his or her criminal conduct. . . . We do not engage in overly technical construction that would permit the defendant to escape from just punishment. . . . The legislature intended ‘to grant broad powers of restitution’ to the trial court.” State v. Tobin, 161 Wn.2d 517, 524, 166 P.3d 1167, 1170 (2007) (citations omitted).

In other words, Seymour does not claim that the sentencing court committed an abuse of discretion in any way; rather, he limits his argument to the claim that the trial court did not have authority to impose restitution for the burglaries because the losses from the burglaries were not causally connected to his convictions for trafficking and possession of stolen property. The State has already conceded as much, but as Seymour agreed to pay restitution for conduct beyond his crimes of conviction, as specifically permitted by statute, his argument is irrelevant.

**D. CONCLUSION**

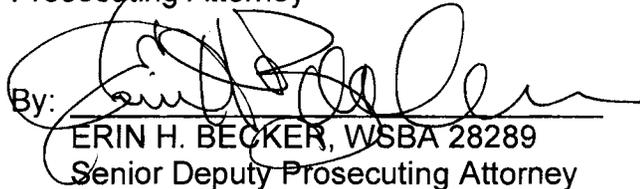
A sentencing court is empowered -- indeed, required -- to impose restitution for losses suffered by victims if a defendant pleads guilty to fewer crimes than his conduct encompasses and agrees to restitution for unprosecuted offenses. Here, the State dismissed two counts against Seymour and agreed not to file others. Seymour agreed to pay restitution for all of his conduct. The sentencing court then ordered Seymour to pay restitution to the victims of the burglaries whose property he pawned, even though there was no causal connection between the burglaries and Seymour's crimes of conviction. In other words, the lower court

held Seymour to his bargain. In so doing, the sentencing court fulfilled its legislative mandate; it did not err. The Order Setting Restitution should be affirmed.

DATED this 13 day of February, 2012.

RESPECTFULLY submitted,

DANIEL T. SATTERBERG  
Prosecuting Attorney

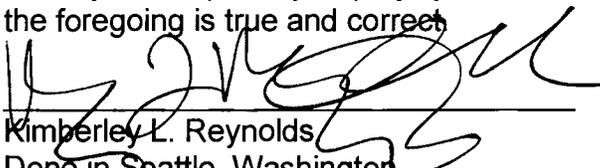
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to JAN TRASEN, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. RONNIE SEYMOUR, JR., Cause No. 66959-1-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

  
\_\_\_\_\_  
Kimberley L. Reynolds  
Done in Seattle, Washington

2/13/12  
Date