

69761-7

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NO. 69761-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

NOE FUENTES,

Appellant.

APPELLANT'S BRIEF
NO. 69761-7-I
STATE OF WASHINGTON
COURT OF APPEALS
DIVISION I
11/12/20

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

1. Juvenile offenders are required to pay restitution to the victims of their crime. However, a dispositional court has discretion to not order restitution to a victim insurance provider if the court finds the juvenile does not have the means to pay restitution and could not reasonably acquire the means to pay restitution over a ten-year period. Here, the dispositional court denied Fuentes' request and ordered him to pay restitution to the victim insurance company where Fuentes and his mother presented evidence addressing Fuentes' past and current financial status but did not establish that he would be unable to make any restitution payments over the ten-year period. Has Fuentes failed to show that the court abused its discretion?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Fifteen-year-old Noe Fuentes was charged with third degree malicious mischief for throwing a rock through a vehicle window. State v. Fuentes, 170 Wn. App. 1006, at *1 (August 13, 2012).¹

¹ This Court stated the facts of this case and established the law of this case in its unpublished opinion.

Fuentes pleaded guilty as charged and agreed to pay restitution “*in full to all victims on charged counts....*” Id.

At the restitution hearing, the State requested \$500 restitution to the vehicle owner and \$1,639.22 to her insurer, American Family Insurance. Id. Defense counsel handed the court a financial declaration signed by Fuentes under penalty of perjury that “provides information as to [Fuentes’s] current financial status.” Id. In the preprinted declaration, Fuentes indicated he had no assets, no income, no dependents, no debts or expenses, and was “not old enough to get a job.” Id. In refusing to order restitution to the victim insurance company, the court stated:

[I]t is my practice and I will in this case order the \$500 as being the amount of restitution, and I’ll leave it to the insurance carrier, as capable as they are, if they wish to seek restitution, it wouldn’t be very difficult for them to get an order in that amount. So the amount of restitution ordered in this matter by the court will be \$500, though the court does recognize there’s additional insurance loss.

Id.

The State attempted to clarify the court’s ruling and asked whether the court was making a finding based on the financial ability of the defendant. Id. at *1-2. The court interrupted the prosecutor and responded, “I appreciate that and I think I would

make that finding.” Id. at *2. The court concluded the restitution hearing by stating:

Well, again, on the balance of things, again, my general feeling is that I'm primarily concerned with the, if there's going to be any emphasis that this court is going to place on where money goes and where it's paid, it's to the person who's had the out-of-pocket loss. I believe insurance carriers are more than capable, and it would be of no effort whatsoever if they decided to do it, to get a judgment against Mr. Fuentes for whatever amount is owed for that.

So I'll, having worked for insurance companies in the past, I will trust their ability to be made whole if they decide that it's worth doing that. So I think the Record's been made, my decision's been made and we'll go on.

Id. The written order of the court provided restitution to the vehicle owner but not to the owner's insurance provider. Id.

In its unpublished opinion, this Court found that the disposition court failed to exercise its discretion where “[t]he record leaves no doubt the court denied restitution to the insurance provider here based on its general practice that restitution should not be ordered to an insurance provider.” Id. at *4. This court also rejected Fuentes' argument that the disposition court made the necessary relevant findings, that the respondent reasonably satisfied the court that he does not have the means to make full or partial restitution and could not reasonably acquire the means to

pay restitution within the ten-year period, to satisfy the statutory requirement of RCW 13.40.190(1)(g), “[w]e are unpersuaded that counsels’ joint effort to prompt the court to make the necessary relevant findings was successful as this record plainly demonstrates.” Id. This Court further noted that “[e]ven if we considered... statements by the court as a finding rather than a ‘comment,’ a ‘guess,’ or an ‘opinion,’ any such finding is directed only to Fuentes’s present ability to pay” not at Fuentes’ ability to make full or partial payments over the ten-year period. Id. at *5.

This Court reversed the dispositional court and remanded for proceedings consistent with the opinion. Id. Before the restitution hearing on remand, Fuentes provided the court with a brief requesting that the court deny the State’s request to impose restitution to the insurance company. CP 4-10. In support of the brief, Fuentes attached financial declarations signed by him and his mother, Martha Fuentes. CP 11-16. The declarations outline Fuentes’ past and current financial situation as of December 2012. CP 11-16. Fuentes attested that he lived with his mother, was not currently in school, was not employed, had been unable to obtain employment in the previous year, had criminal history, and had no plans to return to school. CP 14-16.

At the restitution hearing held on December 7, 2012, the court acknowledged he had read Fuentes' brief and that he was familiar with the case and the State's position. RP 3. After hearing argument in support of Fuentes' motion, the court ordered Fuentes to pay restitution to the victim insurance company. RP 3-5. When asked by Fuentes' counsel if the court was applying the statute, the court confirmed that it was applying the statute to the facts of the case, "I've reviewed the law, I've reviewed the case and I have had a chance to read your brief and I was aware of the law, and that's going to be my decision, to award the restitution." RP 5.

The court imposed restitution payments at the amount requested by Fuentes of \$5 per month. RP 6. The State requested the higher monthly rate of \$13, which would allow Fuentes to fulfill the restitution amount within the ten-year repayment period. RP 6. The court stated that the rate was "a realistic assessment" of what Fuentes could likely repay given the circumstances and further noted that ultimately, "it's up to the respondent in this particular case to have it all paid off in time." RP 6.

C. ARGUMENT

1. THE COURT DID NOT ABUSE ITS DISCRETION BY ORDERING FUENTES TO PAY RESTITUTION TO THE VICTIM INSURANCE COMPANY.

Fuentes contends that the dispositional court abused its discretion through an “unreasonable ruling” that ordered Fuentes to pay \$1639 in restitution to an insurance company over a ten-year period in payments of \$5 per month. This argument should be rejected. Juvenile offenders are required to pay restitution to their victims. However, courts have discretion to limit restitution payments to a victim insurance company when reasonably satisfied that the juvenile is currently unable to pay and will be unable to acquire the means to pay the restitution over a ten-year period. The court did not abuse its discretion in ordering Fuentes to pay restitution where the evidence addressed Fuentes’ present financial status but failed to establish that he would be unable to acquire the means to make payments over the ten-year period.

Two purposes of the Juvenile Justice Act are to “[m]ake the juvenile offender accountable for his or her criminal behavior” and to “[p]rovide for restitution to victims of crime.” RCW 13.40.010(c) and (h). In the realm of juvenile justice, restitution is a means to hold the juvenile offender responsible in a manner that makes

apparent his impact on the victim and to provide restitution to his victim. Id.

Juveniles who are found guilty are required to pay restitution to victims of their crime pursuant to statute. In its dispositional order, the court shall require the respondent to make restitution to any persons who have suffered loss or damage as a result of the offense committed by the respondent. RCW 13.40.190(1)(a) (emphasis added). A juvenile has up to ten years to pay restitution and the court may extend the payment period for an additional ten years. RCW 13.40.190(1)(d). Insurers are victims under the statute and are entitled to restitution. State v. A.M.R., 147 Wn.2d 91, 97, 1 P.3d 790 (2002); State v. Sanchez, 73 Wn. App. 486, 488-90, 869 P.2d 1133 (1994).

However the dispositional court may exercise discretion not to order restitution to a victim insurance provider based on the juvenile's inability to pay over a ten-year period:

At any time, the court may determine that the respondent is not required to pay, or may relieve the respondent of the requirement to pay, full or partial restitution to any insurance provider authorized under Title 48 RCW if the respondent reasonably satisfies the court that he or she does not have the means to make full or partial restitution to the insurance provider and could not reasonably acquire the means

to pay the insurance provider the restitution over a ten-year period.

RCW 13.40.190(1)(g) (emphasis added).

A dispositional court's authority to impose restitution in a juvenile case is purely statutory. State v. Keigan C., 120 Wn. App. 604, 607, 86 P.3d 798 (2004). The imposition of restitution generally lies within the court's discretion. State v. C.A.E., 148 Wn. App. 720, 724, 201 P.3d 361, review denied, 166 Wn.2d 1013 (2009). A court's restitution order will not be disturbed absent an abuse of discretion. State v. Griffith, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). An abuse of discretion occurs when the order is "manifestly unreasonable or exercised on untenable grounds, or for untenable reasons." State v. Bennett, 63 Wn. App. 530, 533, 821 P.2d 499 (1991).

Here, there is nothing in the record to demonstrate that the court abused its discretion in ordering Fuentes to pay restitution to an insurance company to reimburse it for losses incurred as a result of the crime he pleaded guilty to. The record also fails to show, as Fuentes claims, that the court ruled without considering Fuentes' situation. Indeed, the record shows the opposite occurred. Before ordering restitution, the court was familiar with the

case, reviewed the governing statute and the opinion of this Court, read Fuentes' brief and attached declarations, and heard oral argument on Fuentes' behalf. RP 3-5.

Fuentes' claims that the court's ruling was unreasonable and made for reasons unrelated to Fuentes' situation are based on mischaracterizations of the record and from unfounded speculation. See Brief of Appellant at 11-12. Fuentes' declarations to the court addressed only his past and present financial status. CP 11-16. While the declarations asserted that he was presently unemployed and unable to make payments, they did not prove, nor did the court find, a reasonable likelihood that Fuentes was not employable in the next ten years.

Notably, there was no evidence presented that Fuentes had a physical, cognitive, or behavioral difficulty that would prevent or limit his present or future employment. Instead, Fuentes relied on assertions that he was unemployed, not in school, had been unable to find employment in a year of searching (efforts of which were not detailed or described), had a criminal record, and did not intend to return to school. Many juvenile offenders will fit this profile. It does not mean that it is reasonable to conclude that they cannot pay a reasonable sum towards restitution in the next ten years.

Moreover, if the court had made a contrary finding, based on these facts, it would likely have been contrary to the statute's requirements. Indeed, it is hard to imagine how a court could find that it is reasonable that a seventeen-year-old juvenile respondent, who indicated he was unable to find employment in only one year of attempting to do so, that in the next ten years of his life, up until he is 27 years-old, would not be able to gain employment and make restitution payments at any time during that ten-year-period. Here, the court, in rejecting Fuentes' request to not order restitution, did not abuse its discretion.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Fuentes' Additional Order Setting Restitution.

DATED this 8 day of August, 2013.

Respectfully submitted,

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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 Nancy P. Collins, 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. NOE FUENTES, Cause No. 69761-7 - 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.

Dated this 8 day of August, 2013

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

Name
Done in Seattle, Washington