

No. 45237-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Joanne Simmons,

Appellant.

Lewis County Superior Court Cause No. 12-1-00676-2

The Honorable Judge Nelson E. Hunt

Appellant's Opening Brief

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ISSUE AND ASSIGNMENTS OF ERROR

1. The trial court erred by imposing restitution in excess of that authorized by law.
2. The trial court erred by imposing restitution for damages that were not causally related to the offense of conviction.
3. The trial court erred by imposing restitution for various charges that did not result in conviction, in the absence of an agreement to take responsibility for such restitution.
4. The trial court erred by imposing restitution for certain acts, in the absence of any evidence linking Ms. Simmons to those acts.
5. The trial court erred by ordering Ms. Simmons to pay restitution of \$20,589.42.

ISSUE: A sentencing court may only impose restitution for damages causally connected to the offense of conviction. Here, Ms. Simmons pled guilty to two counts of animal cruelty relating to two specific horses; she did not agree to pay restitution relating to other horses. Did the sentencing court exceed its statutory authority by ordering Ms. Simmons to pay restitution in the amount of \$20,589.42 for losses relating to additional horses, not causally related to the offense of conviction?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

Joanne and Terry Simmons were charged with multiple counts of animal cruelty related to their care of several horses. RP 2; CP 38-43. They received an offer from the state to plead to some of the charges, but pay restitution for all. RP 20. They rejected that offer and the case was set for trial. RP 2, 20-22.

On the morning of trial, the state made a new offer. RP 2-4. This was based at least in part on the government attorney's conclusion that both Simmons were negligent in their care but that they did not harm the animals intentionally. RP 3. The prosecutor offered to let both co-defendants plead guilty to misdemeanor offenses regarding horses numbered 704 and 706. CP 42-43; RP 2-11.

The state further agreed to recommend a suspended sentence without any incarceration and "cost of care/boarding of animals and vet expenses tbd". CP 45. This statement regarding the restitution amount was written by the prosecutor. RP 23; CP 45.

The court set a restitution hearing. At that hearing, the state requested payment for the care of all of the horses that had been at the Simmons', for a total of \$20,589.42. RP 17-23. The defense responded that the defendants did not agree to pay for all the horses, but only the

ones covered by their pleas. RP 17-28. The care for horses 704 and 706 was \$3211.18. RP 18; Ex. 1-6.

The trial judge awarded restitution of \$20,589.42, the entire amount requested by the state. CP 51-52. The court explained his ruling:

These individuals, I don't know them, I don't know what happened here, they caused the damage. Somebody is paying for it, and it won't be the people that take these damaged animals in. And I get there from saying, look, this may be ambiguous, but there is little question in my mind that what was meant was restitution for all of them, and I just can't get by that. And also the overlay of reading restitution statutes liberally in favor of the victims -- that's an unfortunate term here -- is what I'm supposed to do, and that's what I'm going to do.
RP 28-29.

Ms. Simmons timely appealed. CP 53.

ARGUMENT

THE TRIAL COURT ERRED BY ORDERING MS. SIMMONS TO PAY \$20,589.42 IN RESTITUTION FOR DAMAGES UNRELATED TO THE OFFENSE OF CONVICTION.

A. Standard of Review

A restitution order is reviewed for an abuse of discretion. *State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008). A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. *State v. Depaz*, 165 Wn.2d 842, 858, 204 P.3d 217 (2009).

B. The court ordered restitution in excess of the amount causally connected to the offense of conviction.

A trial court's authority to impose restitution is derived from statute. *Griffith*, 164 Wn.2d at 965. The amount of restitution must be based on easily ascertainable damages, established by substantial credible evidence, without resort to speculation or conjecture. *Id.* Restitution is allowed only for losses that are causally connected to the crime charged. *Id.* A loss is causally connected "if, but for the charged crime, the victim would not have incurred the loss." *Id.*, at 966.

In this case, Ms. Simmons pled guilty to two counts of animal cruelty for her treatment of horses 704 and 706. There was no additional agreement regarding restitution for the other animals. RP 2-4, 17-28; CP 42-47, 49. In her plea statement, her attorney wrote: "On 9-24-12 in Lewis County I neglected some of my horses which caused unnecessary physical pain." CP 47.

At a restitution hearing, the parties did not dispute the amount of restitution relating to the two horses that were the subject of her pleas. RP 2-4, 17-28. This amount totaled \$3211.18. RP 18; Ex. 1-6.

Despite this, the court imposed restitution for \$20,589.42, ordering Ms. Simmons to pay for all of the alleged damage and care of all of the horses. CP 51-52.

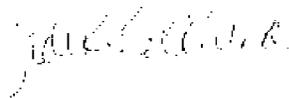
Because Ms. Simmons pled guilty only to cruelty regarding two horses, and did not agree to additional restitution, the court exceeded its statutory authority by imposing restitution in excess of the amount contemplated by the plea agreement. *Griffith*, 164 Wn.2d at 965. The restitution order must be vacated and the case remanded for entry of an order consistent with the value of the care for the two neglected horses. *Griffith*, 164 Wn.2d at 965-968.

CONCLUSION

The trial court exceeded its authority in setting restitution for damages that were not the subject of a plea nor part of any plea agreement. The restitution order must be reversed.

Respectfully submitted on November 26, 2013,

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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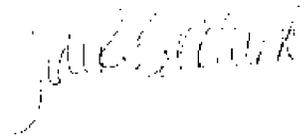
and to

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on November 26, 2013.



Jodi R. Backlund, WSBA No. 22917
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BACKLUND & MISTRY

November 26, 2013 - 1:38 PM

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