

No. 32167-3

FILED
March 24, 2014
Court of Appeals
Division III
State of Washington

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

State of Washington, Respondent

v.

Santiago Vasquez, Appellant

BRIEF OF RESPONDENT

GRANT COUNTY PROSECUTOR'S OFFICE
P.O. BOX 37
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(509) 754-2011

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I. STATEMENT OF THE ISSUES

- A. Did the court abuse its discretion in ordering restitution when (1) the amount of restitution was agreed to as part of the parties' plea deal and (2) detailed documentation was submitted proving the amount of restitution?

II. STATEMENT OF THE CASE

On October 19, 2011, the State charged Mr. Vasquez with one count of Assault in the Second Degree and one count of Escape from Community Custody. CP 1. Specifically in the Information, the State alleged that the assault occurred around the 30th or 31st of July, 2011, against Elias Ibarra. CP 1. On August 26, 2013, the Information was amended and Mr. Vasquez pled guilty to one count of Riot with a Deadly Weapon and one count of Escape from Community Custody; this was pursuant to a plea agreement. CP 16. The guilty plea contained the following language under paragraph 6(b):

The prosecuting attorney will make the following recommendation to the judge: three months incarceration to run concurrently with Yakima County charges which the defendant is currently serving through the Department of Corrections; agree to pay restitution to Crime Victims Compensation in the amount of \$1,284.22. No contact with Elias Ibarra.

CP 16. In addition to specifically agreeing to pay the restitution in the guilty plea, the defense orally confirmed with the court that the parties' agreement included restitution in the amount of approximately \$1,284.00 at the sentencing hearing on September 4, 2011:

Mr. Valaas: The parties have also agreed to approximately \$1,284.00 in restitution.

The Court: Thank you. That's correct isn't it Mr. Bustamante?

Mr. Bustamante: Yes.

RP 14-15.

On September 6, 2013, the State filed a motion for restitution in the amount of \$1,284.22. CP 42. On December 3, 2013, a restitution hearing was held. CP 50. The State submitted various documents including an affidavit in support of its motion for restitution. CP 44-49. The affidavit stated, inter alia, that all services authorized "were related to the injuries inflicted as a result of the criminal act of July 31, 2011." CP 45-46.

In a perplexing violation of the parties' agreement, defense counsel during the restitution hearing objected to the motion for restitution and claimed it was never agreed to:

Mr. Bustamante: Well, as I mentioned, this morning, the other objection is that it wasn't part of the plea agreement so I think that the State should be stopped from requesting restitution when that wasn't anything that Mr. Vasquez agreed to.

RP 28.

After reviewing the evidence submitted by the State, the judge entered a restitution order against Mr. Vasquez in the amount of \$1,284.22. CP 50. This appeal followed. CP 52.

III. ARGUMENT

The court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. RCW 9.94A.753(7). A trial court may determine the amount of restitution "by either (1) the defendant's admission or acknowledgment or (2) a preponderance of the evidence." *State v. Hahn*, 100 Wn. App. 391, 398, 996 P.2d 1125 (2000). Restitution orders are reviewed under the abuse of discretion standard. *Id.*

A. It was unnecessary for the State to present evidence as to the restitution because it was expressly agreed to by Mr. Vasquez as part of his plea deal.

A plea bargain is a binding agreement between the defendant and the State which is subject to the approval of the court. *State v. Hunsicker*, 129 Wn.2d 554, 559, 919 P.2d 79 (1996). RCW 9.94A.753 does not preclude the parties from agreeing to restitution as part of the plea agreement. *Id.*

In the present case, Mr. Vasquez's guilty plea includes the language, "agree to pay restitution to Crime Victims Compensation in the amount of \$1,284.22." CP 16. This statement can logically only refer to Mr.

Vasquez. Additionally, the defense attorney expressly agreed with the court that the parties' agreement included restitution in the amount of \$1,284.22. RP 14-15.

B. Even if the court finds that the restitution amount was not part of the plea agreement, the trial court did not abuse its discretion by ordering the restitution based on the supporting documentation submitted by the State.

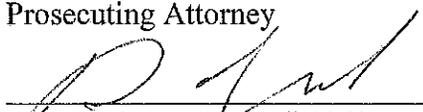
The trial court did not abuse its discretion in ordering restitution against Mr. Vasquez because the submitted documentation provided sufficient evidence for ordering the restitution. CP 44-49. Not only did the documentation provide a detailed breakdown showing how the restitution total was reached, but it also connected these costs to Mr. Vasquez's criminal act against the victim on July 31, 2011: "All payments were made for authorized services under chapter 7.68 WAC. All services were related to the injuries inflicted as a result of the criminal act of July 31, 2011." CP 45-47.

IV. CONCLUSION

Based on the foregoing analysis, the court should affirm the trial court's restitution order.

DATED: March 21, 2014

Respectfully submitted:
D. ANGUS LEE,
Prosecuting Attorney



Ryan Valaas, WSBA # 40695
Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32167-3
)	
vs.)	
)	
SANTIAGO VASQUEZ,)	DECLARATION OF SERVICE
)	
Appellant.)	
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Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

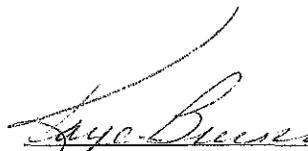
That on this day I served a copy of the Brief of Respondent in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

Dennis W. Morgan
nodblspk@rcabletv.com

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Brief of Respondent in the above-entitled matter:

Santiago Vasquez - #722269
Airway Heights Correction Center
PO Box 2049, RA50
Airway Heights WA 99001

Dated: March 24, 2014.



Kaye Burns