

67647-4

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NO. 67647-4-1

ORIGINAL

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TERRY FLETCHER,

Appellant.

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FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE SUSAN CRAIGHEAD

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

I. DID THE TRIAL COURT ERR BY ORDERING \$149,502.35 IN RESTITUTION?

B. STATEMENT OF THE CASE

On June 30, 2010, Appellant Terry Fletcher pled guilty to two counts of Theft in the First Degree. CP 9-31. In his plea statement, he admitted that "between 6/30/07 and 8/30/08," in King County, WA I did take property from the Southside Church of Christ by color and aid of deception with the intent to deprive them (sic) of their property. The property was worth over \$1500.00." CP 18. As part of his plea agreement, Appellant Terry Fletcher agreed to pay restitution in full to the victim(s) on the charged counts and to pay restitution to "Southside Church of Christ for all losses related to unfinished + inadequate construction work." CP 27.

As part of his plea agreement, Appellant stipulated that the facts set forth in the certification for determination of probable cause were real and material facts for the purposes of this sentencing. CR 27. According to the certification for determination of probable cause, Terry Joe Fletcher had presented himself as the registered owner and general contractor for Northwest Construction and HVAC Co. and entered into a contract for work with Southside Church of Christ for HVAC and gas piping work. CP 22. According

to the certification for determination of probable cause, Southside Church of Christ paid Northwest Construction & HVAC Co. through checks in the amount \$197,183.26 and also wrote joint checks to Northwest Construction & HVAC Co. and various suppliers in the amount of \$201,739.58. CP 23. According to the Certification, Herman Snoddy, an Elder of the Southside Church of Christ, told Special Agent Frank Fulton that Fletcher did poor quality of work or did complete the work he was paid. CP 23. Merit Mechanical indicated they received \$138,000.20 as payment for completing the work started by Mr. Fletcher. 4RP 3-4, 6RP 16. Southside Church of Christ indicated they paid Merit Mechanical \$185,446.86. The court ordered \$138,000 for the amount paid to Merit Mechanical. 6RP 21. The court also ordered restitution for the "amounts claimed for vendors where there is actual documentation." 6RP 22. Counsel for the State and for the defense provided an agreed total amount to the court of \$149,502.35, with the exact dollar figure supplied by counsel for Mr. Fletcher on the record. 6 RP 23. The court entered an order for that amount. 6 RP 23.

C. ARGUMENT

THERE WAS NO ABUSE OF DISCRETION BY THE TRIAL COURT IN ORDERING FLETCHER TO PAY \$149,502.35 IN RESTITUTION.

An appellate court will not disturb a sentencing court's restitution award absent an abuse of discretion. State v. Enstone, 137 Wn. 2d 675, 679, 974 P. 2d 828 (1999). The exercise of a sentencing court's discretion to determine the amount of restitution is reversible only where it is manifestly unreasonable, or exercised on untenable grounds or for untenable reasons. State v. Dedonado, 99 Wn. App. 251, 256, 991 P. 2d 1216 (2000). In determining any sentence, including restitution, the sentencing court may rely on no more information than is admitted by the plea agreement, or admitted, acknowledged, or proved in a trial or at the time of sentencing. State v. Dedonado, 99 Wn. App. at 256. The language of the restitution statutes indicates the Legislature's intent to grant broad discretion to sentencing courts in awarding restitution. State v. Kinneman, 122 Wn. App 850, 857, 95 P.3d 1277 (2004), quoting State v. Ewing, 102 Wn. App 349, 352, & P.3d 835 (2000).

A trial court need only find that a victim's injuries were causally connected to the defendant's crime before ordering

restitution. Enstone, 137 Wn. 2d at 682. The State has the burden of establishing the causal connection by a preponderance of the evidence. Kinneman, 122 Wn. App at 860. While restitution must be based on "easily ascertainable damages," a victim's loss need not be established with specific accuracy. Id. at 160.

Here, Fletcher argues that there was an insufficient causal connection established between the crime and the injuries for which compensation was sought. However, the appellant admitted theft by deception as part of his plea. CP 18. He stipulated to the facts in the certification for determination of probable cause, and he agreed to pay restitution in full to the victims and agreed explicitly to pay restitution to "Southside Church of Christ for all losses related to unfinished + inadequate construction work." CP 27 As part of his plea, he certainly provided a factual basis for the court to find a causal connection between subsequent monies paid out by Southside Church of Christ as a result of the crime he committed. In addition, the court also properly considered documentation from Southside Church of Christ, Merit Mechanical, and various vendors.

The court's restitution order was supported by the defendant's agreement and by documentation from Merit Mechanical and from various vendors. See 6 RP 23. In fact, the

court declined to order any amounts requested by Southside Church of Christ that was not documented or supported from independent sources.

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this court to affirm the trial court's restitution order.

DATED this 7th day of May, 2012.

Respectfully submitted,

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