

No. 67717-9-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

JONATHAN GRANTHAM,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON, FOR KING COUNTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court erred in imposing restitution.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

A trial court's authority to impose restitution is limited by statute.

The restitution statute generally limits restitution to damages causally related to the crime of conviction. However, in limited circumstances, restitution may be imposed for additional crimes if the defendant expressly agrees to pay restitution for damages from crimes which were reduced or dismissed as a result of a plea agreement, or for crimes not charged as a part of a plea agreement. Did the trial court exceed its authority when it imposed restitution for an offense that was not charged and could not have been charged?

C. STATEMENT OF THE CASE

Mr. Grantham pleaded guilty to a single count of taking a motor vehicle committed in Snohomish County. CP 97. As part of his plea, Mr. Grantham agreed to pay restitution for his offense to the extent provided by statute. CP 109.

Mr. Grantham had previously been convicted in Clallam County Superior Court of several offenses including hit and run. CP 48-49. The hit and run involved the vehicle which was the subject of the Snohomish County charge.

The state's restitution request in Snohomish County included the property damaged in the course of the hit and run in Clallam County. CP 48-49.

Mr. Grantham objected arguing he had not agreed to pay restitution for the Clallam County damages. CP 28; 8/23/11 RP The court determined Mr. Grantham's plea agreement included the Clallam County damages as well. CP 44-46; 8/23/11 RP 5.

D. ARGUMENT

The trial court exceeded its statutory authority in imposing restitution in this case.

1. Restitution is a strictly statutory remedy authorized only for damages causally connected to the crime of conviction. "The authority to impose restitution is not an inherent power of the court, but is derived from statutes." State v. Davison, 116 Wn.2d 917, 919, 809 P.2d 1374 (1991). A restitution order is void when the trial court deviates from the parameters of the restitution statute. State v. Dauenhauer, 103 Wn.App. 373, 378, 12 P.3d 661 (2000); State v. Hefa, 73 Wn.App. 865, 866-67, 871 P.2d 1093 (1994).

RCW 9.94A.753(3) provides, in pertinent part, restitution:

shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury.

Restitution is generally permitted only for loss that is causally connected to the offense of conviction. State v. Kinneman, 155 Wn.2d 272, 286, 119 P.3d 350 (2005); State v. Woods, 90 Wn.App. 904, 907, 953 P.2d 835 (1998). Restitution may not be imposed for a “‘general scheme,’ or acts, ‘connected with’ the crime charged, or uncharged crimes unless the defendant enters into an express agreement.” Kinneman, 155 Wn.2d at 286 (quoting Woods, 90 Wn.App. at 907-08).

2. The court exceeded its statutory authority when it imposed restitution for an offense which resulted in a conviction in another county. Here, the trial court ordered Mr. Grantham to pay restitution for the Clallam County offense because the court found Mr. Grantham had agreed to pay restitution for that offense in his plea agreement. 8/23/11 RP 5 But the court’s conclusion is wrong in several respects.

a. Mr. Grantham did not agree to pay restitution for an offense which resulted in a conviction in a separate prosecution. At the at the restitution hearing, defense counsel made clear that it was never Mr. Grantham’s intent to agree to pay for property damage occurring in Clallam County. 8/23/11 RP 2-3. Second, the plea agreement itself is at best ambiguous regarding Mr. Grantham’s supposed agreement.

The plea agreement provides that Mr. Grantham agreed with the State’s sentencing recommendation except for “legal financial

obligations.” CP 62. That agreement lists restitution as a legal financial obligation. CP 63. Thus, by noting his objection to the state’s recommendation regarding legal financial obligations, Mr. Grantham noted his objection to restitution.¹

Admittedly the plea agreement also provides, “Pursuant to statute, the defendant agrees to pay restitution in full as follows . . . Uncharged crimes, RCW 9.94A.573(5).” CP 63. But in light of his objection noted in the plea agreement to legal financial obligations, including restitution, as well as his objection at the restitution hearing, this language at best creates ambiguity regarding whether an agreement had been made. That ambiguity falls short of an explicit agreement to pay restitution. Thus the restitution order is improper. Kinneman, 155 Wn.2d at 286.

b. Even assuming Mr. Grantham did agree to pay restitution on an unrelated conviction, that agreement was insufficient to permit an award of restitution. Even ignoring the ambiguity in the plea agreement noted above, the plea agreement does not authorize the restitution imposed. The plea agreement stated, “Pursuant to statute, the defendant agrees to pay restitution in full as follows . . . Uncharged crimes, RCW 9.94A.573(5).” Because Mr. Grantham’s purported

¹ Mr. Grantham did not object to any other legal financial obligation imposed as a part of his sentence. This provides a clearer indication that his objection to legal financial obligations was directed at restitution alone.

agreement is expressly limited by the language “pursuant to statute” as well as the specific statutory cite, the determination of the scope of his agreement must begin with the statutory language.

The relevant statute provides:

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 or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. 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.

(Emphasis added.) RCW 9.94A.753(5). The portion of this statute concerning a defendant's agreement is quite narrow in its scope. By its plain language that portion only applies in two scenarios.

First, the statute authorizes restitution, with the defendant's agreement, for offenses which were charged and either reduced or dropped as a result of a plea agreement. The Clallam County offense was not originally charged in this case and was not dismissed as a result of the plea agreement. Thus, this first scenario is not present.

Second, the statute permits restitution, again with the defendant's agreement, for offenses which were not prosecuted as a condition of the

plea agreement. Here, the plea agreement does not contain an agreement not to prosecute the Clallam County matter. There is no indication in the record that the Snohomish County prosecutor ever contemplated charging that matter. Indeed, given Mr. Grantham's right to be tried in the county in which the offense occurred Snohomish County could not have done so without his waiver of that right. See, Const Art. I, § 22. ("In criminal prosecutions the accused shall have the right to . . . a speedy public trial by an impartial jury of the county in which the offense is charged to have been . . ."). Thus, the second scenario outlined in the RCW 9.94A.753(5) does not apply.

Moreover, it appears that offense was actually charged and prosecuted in Clallam County. 8/23/11 RP 3; CP 51. And, following Mr. Grantham's conviction, the Clallam County Superior Court denied a motion to impose restitution in that case. 8/23/11 RP 3. Nothing in RCW 9.94A.753(5) permits imposition of a restitution award in that scenario regardless of a defendant's agreement.

In its brief to the trial court the State contended that "RCW 9.94A.753(5), allows an 'express agreement; between the parties to require the defendant pay restitution on uncharged crimes unrelated to the charge the defendant pleaded guilty [sic]" CP 50. But as is clear, there is no such authorization in the statute. Instead by its plain terms the statute

limits the reach of a defendant's agreement to situations in which the uncharged offenses were either charged and dropped as part of the plea agreement or were never charged as a part of the plea agreement. Nothing in RCW 9.94A.753(5) authorizes restitution for an offense which could not have been prosecuted, which was prosecuted in a different jurisdiction, which was otherwise not the subject of the plea agreement, or as the State contended below is "unrelated to the charge."

Even ignoring the ambiguity in the plea agreement, the provision in the plea agreement stating "Pursuant to statute, the defendant agrees to pay restitution in full as follows . . . Uncharged crimes, RCW 9.94A.753(5)" does not support the imposition of restitution for the Clallam County offense. The court's authority to impose restitution is derived entirely from the restitution statute. Davison, 116 Wn.2d at 919; Dauenhauer, 103 Wn.App. at 378. There is no statute which authorizes restitution whenever a defendant agrees. Instead, RCW 9.94A.753(5) authorizes restitution based upon a defendant's agreement in two circumstances, neither one of which is present here. Because the statute does not authorize the sort of broad agreement the prosecutor imagined, the court trial lacked authority to rely on the agreement to impose restitution. In re the Personal Restraint Petition of Goodwin, 146 Wash.2d 861, 872, 50 P.3d 618 (2002) (because sentencing authority is purely

statutory, an agreement of the parties cannot vest sentencing court with authority which statute does not provide).

c. There was no causal connection between the crime of conviction and the restitution imposed. Even assuming an agreement was in fact made, that agreement was nonetheless insufficient to permit the award of restitution in this case. Instead, to impose restitution the court was required to find the damages were causally related to crime charged. Kinneman, 155 Wn.2d at 286. The trial court did not make such a finding. In fact, the trial court agreed that the damages in Clallam County were not related to this offense. The trial court stated:

I wouldn't have any question . . . that [defense counsel's] argument's well-founded with respect to the hit and run. But here part of the agreement for both concurrent sentences as well as the plea to this charge was an express agreement to pay restitution for both charged and uncharged crimes.

8/23/11 RP 5. Thus, the court found the damages were not causally related to the crime of conviction and but for the supposed agreement would not have imposed restitution.

E. CONCLUSION

Because the restitution imposed in this case is not causally related to the offense nor was there an explicit agreement to pay restitution for

offenses which were dismissed or not charged pursuant to a plea agreement, the Court must strike the restitution award in this case.

Respectfully submitted this 22nd day of December, 2011.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', is written over a horizontal line.

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STATE OF WASHINGTON,)	
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Respondent,)	
)	NO. 67717-9-I
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JONATHAN GRANTHAM,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF DECEMBER, 2011, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON, THIS 22ND DAY OF DECEMBER, 2011.

X _____ *[Signature]*