SUPREME COURT NO. 1031165

NO. 86174-3-I

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

B.J.,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR CLARK COUNTY

The Honorable Nancy Retsinas, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHERS

A. IDENTITY OF PETITIONER

Petitioner B.J. asks this Court to review the court of appeals decision referred to in section B.

B. COURT OF APPEALS DECISION

Petitioner seeks review of State v. B.J., COA No. 86174-3-I, filed on April 29, 2024, attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the court acted outside its authority when it continued the restitution hearing beyond the 180-day deadline over appellant's objection because it took the victim "a while" to get the restitution estimate together?

2. Whether the trial court's finding of "good cause" – which was not based on any external impediment – conflicts with established precedent in State v. Reed, 103 Wash. App. 261, 265, 12 P.3d 151, 152

(2000), and State v. Tomal, 133 Wash.2d 985, 989, 948 P.2d 833 (1997), meriting review? RAP 13.4(b)(1).

3. Whether the restitution order was entered in violation of B.J.'s due process rights where it was not based on easily ascertainable damages and the amount was based on a written estimate that was internally inconsistent and offered B.J. no opportunity for rebuttal?

4. Should this Court accept review of this significant question of law under the state and federal constitutions? RAP 13.4(b)(3).

D. STATEMENT OF THE CASE

On January 5, 2022, B.J. and another youth pled guilty to reckless burning for an accidental fire they started with fireworks early in the morning on July 5, 2021. CP 2, 4-14. Unfortunately, their actions led to the burning down of the Old Cherry Grove Church in Battleground, Washington. Collectively, the Cherry Grove Church property consists of an old church, a house and

several outbuildings all owned by Steven Slocum, who liked to collect unusual items. CP 2; RP (1/5/22) 22; see infra. Sadly, the property was a total loss. CP 2; RP (1/5/22) 15-16, 20.

At the plea and disposition hearing on January 5, 2022, the prosecutor explained the state would be seeking restitution for Slocum for whatever was not covered by insurance:

> . . . And that the restitution to be set, we're looking at -- I believe, the check from the insurance that he is still negotiating is around $500,000. A little over $500,000. Correct.
>
> MR. SLOCUM: Yes.
>
> MS. ARNAUD: So, we're looking at the unpaid amount by the insurance is going to be close to 500,000 or more on this case. And that's just the cost to repair the buildings. That doesn't include all of the items that were lost. That doesn't include the cars that were damaged. It doesn't include the trailer. So, we're looking at well over $500,000 in restitution in this case. And that would be split between the two of them.

RP (1/5/22) 23.[1]

Since disposition was entered on January 5, 2022, the last allowable date for restitution to be imposed was July 4, 2022. RCW 9.94A.753(1),[2] RCW 13.40.150(3)(f).[3]

---

[1] At the restitution hearing that was ultimately held (over defense objection) on September 28, 2022, the state submitted Exhibit 21 as evidence of Slocum's losses. Exhibit 21 is a numerous page document prepared by State Farm Insurance on 10/22/2021. Exhibit 21. Every page of the document lists a date of 10/22/2021 at the bottom. Accordingly, it was prepared before the date of the plea and disposition hearing.

[2] "When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within 180 days except as provided in subsection (7) of this section." Subsection (7) has to do with benefits paid under the crime victim's compensation act.

[3] At the disposition hearing, the court must:

> (f) Determine the amount of restitution owing to the victim, if any, or set a hearing for a later date not to exceed one hundred eighty days from the date of the disposition hearing to determine the amount, except that the court may continue the hearing beyond the one hundred eighty days for good cause[.]

However, since July 4 was a holiday, July 5th became the last date. CR 6(a).

On July 1, 2022, the state filed a motion to extend the deadline. CP 43-44. In the declaration, the prosecutor averred:

> 4. The State received documentation from the victim, Steven Slocum, of the restitution request on July 1, 2022. This documentation has been provided to Defense. Additional supplemental documentation will need to be prepared, provided and reviewed.

Id. The state also moved for an order to shorten time. CP 45-46. The court noted a hearing for July 5, 2022. CP 47.

At the hearing, the prosecutor argued there was "good cause" to continue the deadline because Slocum just sent his restitution estimate and that it took him "a while" to compile:

> MS. ARNAUD: . . . We are at the 180 deadline for restitution today. The victim provided estimates on Friday morning, I believe around 4:30 in the morning. So, we

had cited this on with a motion and order shorten time to get a 30 day extension in the restitution window to set a hearing date. So, that's the purpose of today's motion is just to -- to request an extension of the restitution deadline. I can state that as far as victim impact, I have been in contact multiple times since the cases pended requesting restitution. It took quite a while for him to compile the information, because it is a fairly substantial restitution request in this case. It's an arson. It started as an arson one, they pled to reckless burning. The victim's house burnt down, as well as several cars and vehicles. So, So, the restitution information took a while to compile.

RP (7/5/22) 4.

Defense counsel objected the circumstances did not constitute good cause because they were self-created:

MS. BOBECK: Your Honor, Ms. Bobeck for [B.J.]. We would oppose the motion. The statute is, you know, mandatory. There is the ability of the Court to grant for good cause. Good cause requires a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with the statute. It's, you know, unfortunate that Mr. Slocum took until the eleventh hour to get this set. Calculating the 180th day was actually yesterday, the 4th. This motion could have brought -- been brought well before within the timeline. This is

not at any fault of the respondents. This also doesn't preclude any civil remedies. So, we would oppose this motion.

RP (7/5/22) 6-7.

In reply, the prosecutor added that the situation had been emotionally difficult for Slocum:

MS. ARNAUD: And so, we provided notice as soon as we had notice from the victim, which is unfortunately the situation they're in, both counsel are correct. None was provided from the victim prior to the State but it did require quite a bit of emotional and just emotional work from him. He was emotional at the hearing discussing the loss of his property was very difficult for him. He also indicated it just took a lot of time to get these. Unfortunately, we're here at the last moment. The Court can continue the time period for good cause.

RP (7/5/22) 7-8.

The court granted the state's motion to continue:

When I'm looking at good cause, I'm looking at the date of the offense, the timing of when folks came in, the resolution of the matter, which was just about 180 days ago, as well as the complexity with which to determine the restitution. In situations where we're involving insured structures, there -- I think

> that takes additional time. Also, with real estate and other items, it appears that there was a complete loss potentially. A complete loss of property. That also takes some time. I do also find that a victim's emotional state and concern and I do have concerns about that also taking some time. That said, I appreciate counsel, Ms. Arnaud's, request for no more than a 30 day extension, cause I do think that it is time to round this up. And so, 30 days max would be the extension time this Court would order.

RP (7/5/22) 10-11.

At the next hearing scheduled for restitution, the parties agreed to continue without waiving their prior objection to the court's continuance on July 5. RP (8/3/22) 47-49; RP (9/28/22) 52.

At the hearing held on September 28, 2021, Slocum testified he bought the Old Cherry Grove Church property in 2014. RP 58. The church was built in 1910; the house was built in the late 1940s. There is also a garage and other outbuildings. RP 57-58. Slocum needed a lot of space for his numerous collections. RP 58.

Slocum collected mannequins, and stored items such as phonographs, player pianos, slot machines, organs, miniature televisions, radios, antique medical equipment and gumball machines throughout the buildings on the property. RP 61-110.

Slocum estimated the contents of the house were worth approximately $1,000,000.00. RP 110. Slocum testified his contents were insured for $165,000.00, but that he was grossly underinsured. RP 110, 120.

In the fire, Slocum also lost his truck, for which Geico reimbursed him $7,700.00. He also lost a Teardrop trailer that was not insured. RP 91. Slocum provided a "for sale" ad of a similar trailer priced at $2,500.00. RP 95-96. Slocum also lost a 1983 Honda motorcycle, which he estimated would cost $3,500.00 to replace. RP 100.

The state also presented exhibit 21, a 100-page document prepared on October 22, 2021, by State Farm

estimating Slocum's structural damage for the buildings on the property. Exhibit 21. The defense objected to the foundation for the document because the state had no witness to explain how it was produced. RP 91-92. The court overruled the objection on grounds the rules of evidence are relaxed at restitution hearings and the document bore sufficient indicia of reliability. RP 93.

Slocum testified one of State Farm's insurance adjusters came out about a week after the fire to work out an estimate for the buildings. RP 90-91. Slocum testified the company estimated the cost of replacement to be $987,000.00. RP 90. Slocum testified the company paid him $569,000.00. RP 91, 110. The last page of Exhibit 21 is not numbered but titled "claim status page." It indicates State Farm issued Slocum a check on October 22, 2021, for 569,255.85. Exhibit 21.

On cross-examination, Defense counsel also asked how Slocum arrived at $995,000.00 as a total

replacement cost in his own estimate admitted as exhibit 1. RP 119. Slocum responded the amount might not be precise, but it was taken from exhibit 21. RP 119.

Page 89 of exhibit 21 lists various "totals." Under the column marked "RPL. Cost Total" is listed "$999,354.74." Exhibit 21.

But on page 6 of exhibit 21 is also an "Explanation of Building Replacement Cost Benefits." The fifth paragraph provides:

> The estimate to repair or replace your damaged property is $626,185.64. The enclosed claim payment to you of $349,831.85 is for the actual cash value of the damaged property at the time of loss, less any deductible that may apply. We determined the actual cash value by deducting depreciation from the estimated repair or replacement cost. Our estimate details the depreciation applied to your loss. Based on our estimate, the additional amount available to you for replacement cost benefits (recoverable depreciation) is $46,485.15.

Exhibit 21.

Based on this evidence, the court awarded the full amount listed on page 89 of the exhibit:

> Exhibit 21 is the State Farm structural damage claim policy. It establishes that the replacement cost of the structures on the property is $999,354.74. I am awarding that amount in restitution as to the structural damages. The Court is not limited in awarding -- in an award to an amount that an insurance company pays. The Court is looking to the loss that is suffered by the victim.

RP 164.

In the restitution order, the court broke down the amount into: an award to Slocum for $430,098.89 (the purported total minus the amount paid by State Farm); and an award to State Farm for $569,255.85 (the amount it reportedly paid out). CP 38-39. The court also awarded Slocum $165,000.00 (representing the policy limit for contents), $3,500.00 for the motorcycle and $2,500 for the teardrop trailer. CP 38-39. Geico also received an award of $7,700.00. B.J. and M.W. are liable

for a total of $1,178,054.74, jointly and severally. CP 38-39.

On appeal, B.J. argued the trial court acted outside its authority in imposing restitution beyond the 180-day deadline in the absence of good cause. Brief of Appellant (BOA) at 17-31. B.J. argued the court erred in finding "good cause" because Slocum had the estimate from the insurance company since October 2021, and emotional discomfort at estimating the value of his collectibles did not constitute an external impediment preventing him from complying with statutory requirements. BOA at 18-19.

The court of appeals disagreed:

> While B.J. argues good cause did not exist because Slocum had an estimate from his insurance company as early as October 2021, that alone is not determinative. See Tetreault, 99 Wn. App. at 438.[4] While Slocum may have had evidence at that time showing his insurance policy for $165,000 coverage on his

[4] State v. Tetreault, 99 Wn. App. 435, 438, 998 P.2d 330 (2000).

> personal property that was destroyed, Slocum explained that he was "grossly underinsured" and ultimately sought $900,000 in restitution for the contents of the church, home, and additional structures.
>
> Contrary to B.J.'s contention, this was not "a self-created hardship" that precludes a finding of good cause. Rather, the evidence shows that B.J. and M.W. caused the destruction of an *extraordinary* amount of property (nearly an acre of land, multiple buildings, vehicles, and various collections of antiques, instruments, photographs, and family belongings) by their actions, and, though Slocum attempted to ascertain the value of the numerous items he had collected throughout his life, he was unable to provide evidence of that within the 180-day window. There is no question that this impediment was external. Reed, 103 Wn. App. at 265 n.4.

Appendix at 7-8.

Alternatively, B.J. argued the restitution amount was not proven and entered in violation of B.J.'s right to due process. BOA at 21-27. B.J. argued the amount was not based on easily ascertainable damages because Ex 21 was internally inconsistent. RP 164; Ex 21, page 6; BOA at 22. Moreover, restitution was entered in violation of

B.J.'s due process rights because it was based on Ex 21 which B.J. had no opportunity to cross examine. BOA at 23-27 (citing State v. Kisor, 68 Wn. App. 610, 620, 844 P.2d 1038 (1993)).

The court of appeals found exhibit 21 was not internally inconsistent and based on easily ascertainable damages:

> According to B.J., "the document is internally inconsistent" and thus the "restitution amount was not based on easily ascertainable damages." This bare assertion is meritless and contradicted by the record. The insurance document provides that the total replacement values for the "Dwelling" and "Dwelling Extension" were $373,169.10 and $626,185.64, respectively, for a total of $999,354.74. In accordance with the document, the trial court awarded $999,354.74 in replacement costs. Because the document is neither inconsistent nor based on "mere speculation or conjecture" and it gives a reasonable basis to estimate the damages to Slocum's property, the evidence is sufficient.

Appendix at 9.

The court disposed of B.J.'s due process claim in a footnote. Appendix at 9, note 3.

E. REASONS WHY REVIEW SHOULD BE ACCEPTED AND ARGUMENT

1. THIS COURT SHOULD ACCEPT REVIEW BECAUSE THE COURT OF APPEALS DECISION CONFLICTS WITH ESTABLISHED PRECEDENT.

The fire occurred July 5, and Slocum had an insurance estimate in October. By the time of the 180-day mark from disposition, Slocum had had approximately a year to estimate his losses outside of what insurance covered. His failure to do so was because it was emotionally taxing. Whether that is understandable, it is not "good cause" because it is not an *external* impediment. The court of appeals opinion conflicts with this Court's precedence clearly delineating "good cause" cannot be the result of self-created hardship. This Court should accept review. RAP 13.4(b)(1).

This Court has held good cause requires a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with statutory requirements. Inadvertence or attorney oversight is not good cause. State v. Tomal, 133 Wash.2d at 989; see also State v. Reed, 103 Wash. App. at 265.

The court erred in finding "good cause" to extend the restitution deadline beyond the 180-day deadline. Slocum had the estimate from the insurance company since October 2021. He was able to obtain value estimates of his motorcycle and teardrop trailer from looking at similar items for sale on the internet. As a collector, he had been buying the various collections of mannequins et cetera for most of his life and could have arrived at an estimate for those items within the 180-day time limit. Regardless, he had proof of value in that he had a policy of $165,000 for the contents of the property.

Granted, a person who lost his home would be emotional about the loss. But that does not equate with an "external impediment" preventing him from obtaining value estimates for his lost property.

In keeping with this Court's precedeny, Division Three has considered the meaning of "good cause" and its requirement of "external impediment" in the context of a second personal restraint petition. State v. Fletcher, 19 Wn. App.2d 566, 497 P.3d 886 (2021). Under RCW 10.73.140, the petitioner must show "good cause" for why an issue was not raised in the first personal restraint petition. The court held Mr. Fletcher did not show "good cause" for his second petition:

> Applying the definition of good cause in this case, we find that Mr. Fletcher's reasons for not including his offender score issue in his first petition are not convincing and are self-created. Mr. Fletcher's argument was legally and factually available to him when he filed his first petition. His plea statement identified his offender score as 8 and 5, and also indicated that a copy of his criminal history was

> attached. Significantly, Mr. Fletcher received a copy of his judgment in July or August 2016 as part of the State's response to his first petition. If access to the judgment was the issue, Mr. Fletcher could have amended his first petition after obtaining a copy. RAP 16.8(e); In re Pers. Restraint of Meredith, 191 Wash.2d 300, 422 P.3d 458 (2018). Instead, he waited almost three years after receiving a copy of the judgment before filing a second motion for relief. While we decline at this time to incorporate a requirement of due diligence into the definition of good cause, we agree that the considerable lapse in time discredits Mr. Fletcher's purported reason.

Fletcher, 19 Wash. App. 2d at 580–81.

The same is true here. The evidence relied upon was already available. In fact, it was discussed at the disposition hearing in January that the insurance company was paying approximately $500,000.00. Thus, it was obvious the insurance company had already completed its estimate. As for the contents, Slocum had another six months to figure that out. He just failed to do so. Nothing prevented him externally. This was a self-

created hardship. This Court should accept review. RAP 13.4(b)(1).

2. THIS COURT SHOULD ACCEPT REVIEW BECAUSE THIS CASE INVOLVES A SIGNIFICANT QUESTION OF LAW UNDER THE STATE AND FEDERAL CONSTITUTIONS.

The court of appeals found "The insurance document provides that the total replacement values for the "Dwelling" and Dwelling Extension" were $373,169.10 and $626,185.64, respectively, for a total of $999,354.74." Appendix at 9. It is unclear from where exactly the court is relying in Exhibit 21 for this proposition. Whether that is one way of looking at the document, it is not necessarily the only way because page 6 says something completely different:

> The estimate to repair or replace your damaged property is $626,185.64. The enclosed claim payment to you of $349,831.85 is for the actual cash value of the damaged property at the time of loss, less any deductible that may apply. We determined the actual cash value by deducting depreciation from the estimated repair or

> replacement cost. Our estimate details the depreciation applied to your loss. Based on our estimate, the additional amount available to you for replacement cost benefits (recoverable depreciation) is $46,485.15.

The insurance company insured all the buildings on the "property," meaning the structural damage was only worth $349,831.85, taking into account depreciation and costs of repair. That makes sense because the property was somewhat dilapidated.

This interpretation is at least as valid as the appellate court's, hence why it was so important for the state to call the insurance agent. Significantly, defense counsel objected to the admission of Exhibit 21 without someone present to explain it. In overruling counsel's objection and admitting the document, the court violated B.J.'s due process rights and opportunity to rebut the amount requested by the state. This Court should accept review of this significant constitutional issue. RAP 13.4(b)(3).

"Evidence presented at restitution hearings ... must meet due process requirements, such as providing the defendant with an opportunity to refute the evidence presented, and being reasonably reliable." State v. Kisor, 68 Wn. App. at 620 (citing State v. Pollard, 66 Wash.App. 779, 784–85, 834 P.2d 51 (1992)). "While the claimed loss 'need not be established with specific accuracy,' it must be supported by 'substantial credible evidence.'" State v. Griffith, 164 Wash.2d 960, 965, 195 P.3d 506 (2008) (quoting State v. Fleming, 75 Wash.App. 270, 274–75, 877 P.2d 243 (1994)); see also State v. Deskins, 180 Wn.2d 68, 85, 322 P.3d 780 (2014) (Gordon McCloud, J., concurring and dissenting).

Contrary to the appellate court's decision (appendix at 9-10 note 3), the court's opinion in State v. Kisor is directly on point. The trial court in Kisor ordered $17,380 in restitution after the defendant killed a police dog. Id. at 613–14, 844 P.2d 1038. At sentencing, the trial court

considered only affidavits, and the State produced an itemized affidavit of the costs of replacing the dog. Id. The affidavit included estimates for room and board during the dog's training. Id. at 614 n. 2, 844 P.2d 1038.

The court reversed the restitution order, based on lack of proof and due process:

> Although the setting of restitution is an integral part of sentencing, the rules of evidence do not apply at restitution hearings. State v. Pollard, 66 Wash.App. at 779, 784, 834 P.2d 51 (1992). Evidence presented at restitution hearings, however, must meet due process requirements, such as providing the defendant with an opportunity to refute the evidence presented, and being reasonably reliable. Pollard, 66 Wash.App. 784-85, 834 P.2d 51 (citing State v. Strauss, 119 Wash.2d 401, 418, 832 P.2d 78 (1992)). In other words, the amount of restitution must be established with "substantial credible evidence" which "does not subject the trier of fact to mere speculation or conjecture." (Citations omitted.) State v. Fambrough, 66 Wash.App. 223, 225, 831 P.2d 789 (1992). When the evidence is comprised of hearsay statements, the degree of corroboration required by due process is not proof of the truth of the hearsay statements "beyond a reasonable doubt", but rather, proof which gives the defendant a

> sufficient basis for rebuttal. State v. S.S., 67 Wash.App. 800, 807-808, 840 P.2d 891 (1992).
>
> Here, the restitution award was based upon the State's affidavit, which contained the hearsay declarations of Aadne Benestad. The affidavit appears to us to be nothing more than a rough estimate of the costs associated with purchasing a new animal and training it. Other than Benestad's statement, that she "checked" with the Tacoma police and the Spokane Canine Training Unit, there is no indication of where Benestad obtained the figures as to the cost of purchasing the animal and training it and the dog's handler. Although Benestad referenced an advertisement from the West Virginia Canine College, there is nothing in that advertisement that supports the figures advanced by Benestad. In short, Benestad's affidavit is not substantial credible evidence of the restitution figure set by the court. Due process was offended by the trial court's reliance upon the State's affidavit and we thus reverse the restitution order and remand for a new restitution hearing.

State v. Kisor, 68 Wn. App. at 620–21.

The same is true here. The court's restitution amount was based on a written estimate was confusing and internally inconsistent. B.J. had no opportunity to

cross-examine the document regarding the inconsistency. The court's order granting restitution was entered without providing B.J. a sufficient basis for rebuttal. Due process was offended. The due process clause of the Fourteenth Amendment provides that no state may "deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1. This Court should accept review. RAP 13.4(b)(3).

F. CONCLUSION

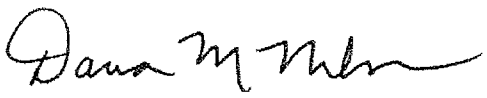
For the reasons stated above, this Court should accept review. RAP 13.4(b)(1), (b)(3).

This document contains 4,006 words in 14-point font, excluding the parts of the document exempted from the word count by RAP 18.17.

Dated this 25th day of May, 2024.

Respectfully submitted,

NIELSEN KOCH & GRANNIS, PLLC



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APPENDIX

FILED
4/29/2024
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. B.J., Appellant.	No. 86174-3-I DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, A.C.J. — B.J. appeals an order of restitution imposed after he entered a plea of guilty to one count of reckless burning in the first degree. He challenges the trial court's finding of good cause to continue the date of the restitution hearing, as well as the evidence supporting the amount of restitution. Because B.J. shows no error in the trial court's imposition of restitution, we affirm the award. However, we remand for the trial court to strike the DNA[1] collection fee from B.J.'s disposition and to consider whether to impose interest on restitution pursuant to RCW 10.82.090(2).

FACTS

On September 27, 2021, the State charged B.J. with one count of arson in the first degree based on his involvement in a fire that burned down an old church structure known as "Old Cherry Grove Church," two dwellings, and a storage structure in Battle Ground, Washington. Pursuant to a plea agreement, the State

[1] Deoxyribonucleic acid.

filed an amended information and B.J. entered a guilty plea to a reduced charge of reckless burning in the first degree. According to B.J.'s written statement on plea of guilty, on July 5, 2021, he drove his friends to the property, which was owned by Steven Slocum, where B.J.'s friend, M.W., lit a firework and threw it onto the property. B.J. admitted to recklessly causing the fire and driving away. The trial court accepted B.J.'s guilty plea to one count of reckless burning in the first degree.

On January 5, 2022, the court sentenced both B.J. and M.W. Slocum addressed the court and described his losses resulting from the fire, which included not only the buildings themselves, but also furniture, vehicles, antiques, and various items he had collected throughout his life. The trial court imposed identical sentences on both B.J. and M.W. which consisted of 12 months of probation and 24 hours of community service. Additionally, the court ruled that restitution would be set at a future date and explained that B.J. and M.W. would "be jointly and severally liable for it." The court also imposed the $100 DNA collection fee which was mandatory at the time of sentencing.

On July 1, 2022, the State moved for an order to continue the restitution hearing beyond July 5, which was the 180-day statutory deadline. RCW 9.94A.753(1). The State argued there was good cause to continue because additional documentation "need[ed] to be prepared, provided, and reviewed." On July 5, after a hearing on the matter in which both B.J. and M.W. objected, the trial court found good cause to extend the restitution deadline to August 4, 2022.

On August 3, the parties agreed to have the restitution hearing extended again. B.J. and M.W. requested an extension of "at least 60 days" to continue investigating and reviewing "the complex insurance information and documents that ha[d] been provided." B.J. expressly waived his right to a speedy hearing in favor of the 60-day extension and the trial court continued the restitution hearing to September 28, 2022.

On September 28, before the evidentiary hearing on restitution began, the State circulated the waiver and extension orders, which the court signed. Defense counsel noted they were not waiving their original objection to the first extension. Following the State's opening, Slocum testified at length to the property that he lost due to the fire. Slocum purchased the property in 2014 and it was "just shy of an acre." According to Slocum, he was "kind of a hoarder" and chose the property because "it had lots of storage space." Multiple structures were on the property: the church with "a house attached to it and garage and three classroom buildings and various carports," all of which were destroyed. Everything within the buildings was lost as well, which included Slocum's extensive collection of antiques, family heirlooms, and vintage memorabilia. The fire also consumed several vehicles.

On October 7, 2022, the trial court provided its oral ruling on the restitution award. The court found that B.J. and M.W.'s actions caused the damages and that the damages were a foreseeable consequence of their actions. Looking to the amount of the award, the court cited the State Farm structural damage claim policy, which "establishe[d] that the replacement cost of the structures on the property is $999,354.74." The court awarded that amount in restitution as to the

structural damage. Regarding Slocum's vehicles, the court awarded $7,700 for his truck, $3,500 for his motorcycle, $2,500 for his Teardrop trailer. Turning to Slocum's other personal items, the court noted that Slocum requested $900,000 for the contents within the church, home, and additional structures. The court found his testimony "too speculative" to award such an amount. However, the court awarded $165,000 as that was the limit of his State Farm insurance policy on those items. The total amount of the restitution award was $1,178,054.74.

B.J. timely appealed.

ANALYSIS

I. Restitution Award

A. Good Cause

B.J. assigns error to the trial court's entry of an award of restitution beyond the 180-day statutory deadline. He avers the court erred in finding good cause to extend the restitution deadline from July 5 to August 3, 2022. We disagree.

"A sentencing court's restitution order will not be disturbed on appeal absent an abuse of discretion." *State v. Morgan*, 28 Wn. App. 2d 701, 703, 538 P.3d 648 (2023). "An abuse of discretion occurs if the court's decision is manifestly unreasonable or rests on untenable grounds." *State v. Griffin*, 173 Wn.2d 467, 473, 268 P.3d 924 (2012).

The sentencing court must determine the amount of restitution "at the sentencing hearing or within 180 days of sentencing unless the court extends this period for good cause." *State v. Dennis*, 101 Wn. App. 223, 229, 6 P.3d 1173 (2000); RCW 9.94A.753(1). The same is true for courts imposing restitution on

juveniles following their disposition. RCW 13.40.150(3)(f). Because the 180-day time limit is mandatory, any motion to extend it must be made within that time period. *State v. Grantham*, 174 Wn. App. 399, 403, 299 P.3d 21 (2013); *State v. Prado*, 144 Wn. App. 227, 249, 181 P.3d 901 (2008). Here, the trial court sentenced B.J. and entered the disposition on January 5, 2022. As the 180-day deadline fell on a holiday, July 4, the final date for determining restitution became July 5, 2022. CR 6(a). On July 1, 2022, the State moved to extend the restitution hearing date, and, on July 5, after a hearing on the matter, the trial court found good cause for the continuance, granted the motion, and extended the restitution deadline to August 4, 2022.

"Good cause requires a showing of some external impediment that did not result from a self-created hardship that would prevent a party from complying with statutory requirements." *State v. Reed*, 103 Wn. App. 261, 265 n.4, 12 P.3d 151 (2000). "Inadvertence or attorney oversight is not 'good cause.'" *State v. Johnson*, 96 Wn. App. 813, 817, 981 P.2d 25 (1999). In determining whether good cause exists, courts consider "the State's diligence in procuring the necessary evidence" as well as "(1) the length of the delay, (2) the reason for delay, (3) the defendant's assertion of [their] right to speedy sentencing, and (4) the extent of prejudice to the defendant." *State v. Tetreault*, 99 Wn. App. 435, 438, 998 P.2d 330 (2000).

The State sought a 30-day extension to the restitution deadline and averred there was good cause under the circumstances. The State explained that it received the loss estimates from Slocum around 4:30 a.m. on July 1, which were shared with the defense that day, and the State noted that additional

documentation needed to be "prepared, provided, and reviewed." At the hearing on the matter, the prosecutor further described the situation as follows:

> I can state that as far as victim impact, I have been in contact multiple times since the cases pended requesting restitution. It took quite a while for him to compile the information, because it is a fairly substantial restitution request in this case. It's an arson. It started as an arson one, they pled to reckless burning. The victim's house burnt down, as well as several cars and vehicles. So, the restitution information took a while to compile.

B.J. opposed the extension of time to set restitution and stated "[t]his motion could have . . . been brought well . . . within the timeline. This is not the fault of the respondents." In response, the prosecutor stated "we provided notice as soon as we had notice from the victim," and "it did require quite a bit of . . . emotional work from him. [Slocum] was emotional at the hearing[,] discussing the loss of his property was very difficult for him." Further, the prosecutor noted, "[Slocum] also indicated it just took a lot of time to get these."

After hearing from the parties, the court ruled as follows:

> This is certainly a difficult situation when we do have a statute that provides for timeliness in determining kind of the factual basis for restitution hearing. There are good reasons for that statute. The statute provides some certainty to individuals who have been convicted and/or found to have committed offenses as juveniles. That said, we also have competing interests. And in this case, I think there is good cause to continue the hearing.
>
> When I'm looking at good cause, I'm looking at the date of the offense, the timing of when folks came in, the resolution of the matter, which was just about 180 days ago, as well as the complexity with which to determine the restitution.
>
> In situations where we're involving insured structures, there—I think that takes additional time. Also, with real estate and other items, it appears that there was a complete loss potentially. A complete loss of property. That also takes some time.
>
> I do also find that a victim's emotional state and concern and I do have concerns about that also taking some time. That said, I appreciate counsel['s] . . . request for no more than a 30[-]day

> extension, [be]cause I do think that it is time to round this up. And so, 30 days max would be the extension time this [c]ourt would order.

This was not an abuse of discretion. First, as B.J. concedes in briefing, the trial court had authority to extend this restitution date because the State's motion was timely. Second, the record plainly reflects tenable grounds to support the court's finding of good cause. This was not a case of inadvertence or attorney oversight; rather, the evidence shows that the State attempted to obtain the materials from Slocum, but due to the severity of the damages, the numerous personal belongings lost, and the unsurprising emotional toll, Slocum did not provide the necessary documents to the State until just before the restitution deadline. While B.J. argues good cause did not exist because Slocum had an estimate from his insurance company as early as October 2021, that alone is not determinative. *See Tetreault*, 99 Wn. App. at 438. While Slocum may have had evidence at that time showing his insurance policy for $165,000 coverage on his personal property that was destroyed, Slocum explained that he was "grossly underinsured" and ultimately sought $900,000 in restitution for the contents of the church, home, and additional structures.

Contrary to B.J.'s contention, this was not "a self-created hardship" that precludes a finding of good cause. Rather, the evidence shows that B.J. and M.W. caused the destruction of an *extraordinary* amount of property (nearly an acre of land, multiple buildings, vehicles, and various collections of antiques, instruments, photographs, and family belongings) by their actions, and, though Slocum attempted to ascertain the value of the numerous items he had collected throughout his life, he was unable to provide evidence of that within the 180-day

window. There is no question that this impediment was external. *Reed*, 103 Wn. App. at 265 n.4. Furthermore, considering that the delay was for only 30 days, the specific property at issue was vast and its true value was nearly immeasurable, and prejudice, if any, suffered by B.J. was minimal, the court did not err in finding good cause to extend the restitution deadline beyond the statutory 180 days.[2] *See Tetreault*, 99 Wn. App. at 438.

B. Easily Ascertainable Damages

B.J. next avers the restitution award was erroneous because the "amount was not based on easily ascertainable damages." Specifically, he contends the insurance appraisal report showing the value of the structures destroyed in the fire was "internally inconsistent." The record establishes otherwise.

Trial courts have discretion to determine the amount of restitution awarded. *State v. Kisor*, 68 Wn. App. 610, 619, 844 P.2d 1038 (1993). RCW 9.94A.753(3) provides that the amount of restitution "shall be based on easily ascertainable damages for injury to or loss of property." However, that "does not mean that restitution can be awarded only under simple calculations." *State v. Kinneman*, 155 Wn.2d 272, 285, 119 P.3d 350 (2005).

When a defendant disputes the amount, "the facts supporting a restitution award must be proved by a preponderance of the evidence." *State v. Deskins*,

[2] The State also notes that B.J. subsequently waived his right to a timely restitution hearing by requesting a 60-day extension after the trial court found good cause to extend the initial hearing to August 3, 2022. While defense counsel for the two juveniles clearly stated that they were not waiving their objection to the initial extension, B.J. did waive his right to a timely hearing thereafter. While this waiver was not necessarily inconsistent with the earlier objection, it does weigh in favor of the trial court's finding of good cause to grant the 30-day extension under the circumstances.

180 Wn.2d 68, 82, 322 P.3d 780 (2014). "Evidence is sufficient if it affords a reasonable basis to estimate the loss and does not depend on 'mere speculation or conjecture.'" *State v. Velezmoro*, 196 Wn. App. 552, 564, 384 P.3d 613 (2016) (internal quotation marks omitted) (quoting *State v. Griffith*, 164 Wn.2d 960, 965, 195 P.3d 506 (2008)). "Courts may rely on a broad range of evidence—including hearsay—because the rules of evidence do not apply to sentencing hearings." *Deskins*, 180 Wn.2d at 83.

Slocum provided his State Farm structural damage claim policy, filed in the court as exhibit 21, which was a nearly 100-page insurance appraisal that showed the value of and damage to the multiple structures on his property. According to B.J., "the document is internally inconsistent" and thus the "restitution amount was not based on easily ascertainable damages." This bare assertion is meritless and contradicted by the record. The insurance document provides that the total replacement values for the "Dwelling" and "Dwelling Extension" were $373,169.10 and $626,185.64, respectively, for a total of $999,354.74. In accordance with the document, the trial court awarded $999,354.74 in replacement costs. Because the document is neither inconsistent nor based on "mere speculation or conjecture" and it gives a reasonable basis to estimate the damages to Slocum's property, the evidence is sufficient.[3] *Velezmoro*, 196 Wn. App. at 564.

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[3] B.J. also contends that the restitution award violated his "due process rights because B.J. was afforded no opportunity to rebut the evidence or cross-examine its internal inconsistency." B.J. cites to one page of the document that provides estimates for a portion of the structural repair and replacement costs, but that amount does not, as B.J. contends, represent the entire amount of losses from the multiple structures that were destroyed. Again, the State Farm insurance estimate addressed both the "Dwelling" and "Dwelling Extension" and the total replacement value provided was based on the aggregate of those two. There is no internal inconsistency.

Second, B.J. relies on a distinguishable case for his bald "due process" claim, *State v. Kisor*. In *Kisor*, the defendant challenged the amount of the restitution award because it was "based

C. Interest on Restitution

B.J. also contends the court erred in not exercising discretion to waive interest on the restitution award.

In 2022, the legislature amended the statute governing interest on restitution and added subsection RCW 10.82.090(2), which gives trial courts discretion to waive interest on restitution. *State v. Ellis*, 27 Wn. App. 2d 1, 15, 530 P.3d 1048 (2023). Though this provision took effect after B.J. was sentenced, it applies now as his case is on direct appeal. *Id.* at 16. Accordingly, we remand for the trial court to determine whether to waive interest on the restitution award after considering the relevant factors included in RCW 10.82.090(2). *See State v. Reed*, 28 Wn. App. 2d 779, 781, 538 P.3d 946 (2023).

II. DNA Collection Fee

Finally, B.J. asks that we remand his case with an order to strike the DNA collection fee from his disposition. The State concedes this is appropriate.

After B.J. was sentenced, the legislature eliminated the mandatory DNA collection fee. *Ellis*, 27 Wn. App. 2d at 17. While this amendment took effect subsequent to B.J.'s sentencing, it applies to cases on direct appeal. *Id.* Thus, we remand for the trial court to strike the DNA collection fee from B.J.'s disposition.

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solely upon the State's affidavit," which reflected one witness's statement as to the cost of purchasing and training a new dog and "there was no indication of where [that witness] obtained the figures as to the cost of purchasing the animal and training it." 68 Wn. App. at 620. Accordingly, the court found that the affidavit was not substantial credible evidence of restitution and held that violated due process. *Id.*

Here, however, there is an extensive report presented by the State in which State Farm provided a detailed analysis of the property value and damage resulting from the fire. Because substantial credible evidence supported the award of restitution, B.J.'s due process argument fails.

Affirmed in part, but remanded for further proceedings consistent with this opinion.

Hayes, ACJ

WE CONCUR:

Cox, J.

Bird, J.

NIELSEN KOCH & GRANNIS P.L.L.C.

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