

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

THE STATE OF WASHINGTON,)	No. 79935-5-I
)	
Respondent,)	
)	
v.)	UNPUBLISHED OPINION
)	
NICHOLAS ADAM ZYLSTRA,)	
)	
Appellant.)	

BOWMAN, J. — Nicholas Adam Zylstra argues that the court did not timely enter the restitution order in his case. But the restitution statute of limitations requires only that the court determine the amount of restitution within 180 days of sentencing. Because Zylstra agreed to the amount of restitution in open court within 180 days of his sentencing, the restitution order complies with the time limitations of RCW 9.94A.753(1). We affirm.

FACTS

A jury convicted Zylstra of second degree manslaughter. The court sentenced Zylstra on February 2, 2017. Zylstra’s judgment and sentence provided that a restitution amount “may be set by later order of the court” and “[a]n agreed restitution order may be entered.”

On June 1, 2017, the State provided Zylstra with “what [it] believed to be an agreed order setting restitution.” The State requested restitution in the amount of \$7,083.82 as reimbursement to the victim’s parents and the Crime Victims Compensation Program for funeral services. Zylstra did not respond to the proposed order so the State requested a restitution hearing.

The court held a restitution hearing on June 29, 2017. At the hearing, Zylstra agreed to the amount of restitution requested by the State. But he disputed whether the court had jurisdiction to enter the restitution order. Zylstra argued that the Court of Appeals had exclusive jurisdiction over his case because he filed an appeal of his conviction.

Additionally, defense counsel told the court that he was concerned about “the impact of a restitution order being entered today.” Defense counsel explained that Zylstra was concerned that either the State or the other parties receiving restitution “can enforce a restitution judgment” while his appeal was pending. He argued that entering an order on June 29 would not be “appropriate” because Zylstra was “obviously in no position to be able to defend . . . against a civil action of the judgment and has no monetary assets to be able to satisfy a judgment.”

The State did not object to Zylstra’s request to enter the restitution order after he resolved his appeal. But the parties disagreed about the need for a waiver of the requirement to determine restitution within 180 days of sentencing. Zylstra asserted that no waiver was necessary because the court lost jurisdiction

to enter an order when he filed his appeal. The State told the court it wanted to “cover our bases with a waiver.”

The court decided that the law was unclear as to whether it had jurisdiction and told the parties, “I’ll sign an order that just waives speedy at this point and reserves entering the restitution order.” Zylstra responded that he assumed “all parties here agree that that would be interest-free, that there’s no detriment to Mr. Zylstra by delay.” The State and the court agreed.

Defense counsel drafted an order waiving the 180-day statute of limitations. The order stated, “Speedy restitution is waive[d] for the period to 30 day[s] past mandate from the Court of Appeals.” The State signed and the court entered the order on June 29, 2017.

The Court of Appeals affirmed Zylstra’s conviction on November 26, 2018 and the superior court set a restitution hearing for January 24, 2019. Zylstra moved to continue the hearing. He informed the court that he was seeking review from the state Supreme Court and requested that the hearing “be stricken and rescheduled, if appropriate, within 30 days of the Mandate being issued.” The court granted Zylstra’s motion and rescheduled the restitution hearing for February 6, 2019. The court struck that date as well.

The Supreme Court denied Zylstra’s petition for review and the Court of Appeals issued a mandate terminating Zylstra’s appeal on March 29, 2019. The State received a copy of the mandate shortly thereafter.

Zylstra’s restitution hearing was set for April 23, 2019. For reasons not apparent in the record before us, the court continued the hearing to May 6, 2019.

At the May 6 hearing, Zylstra did not object “to the amounts claimed” but objected to the timeliness of entering the restitution order. Defense counsel argued:

We specifically waived speedy restitution to 30 days past the mandate. The mandate was entered in this case on March 29, and that’s more than 30 days ago. And so we would be objecting to the entry of this as being not timely.

. . . .
With regards to the figures involved, I don’t object to the amounts claimed, but I do object to the Court order being entered based on timeliness.

The trial court overruled defense counsel’s objection. It determined that the mandate was filed in the superior court on April 15, 2019 and that the “filing date controls when the Court has the ability to act.” It concluded that the May 6 hearing was timely because it occurred within 30 days of the filing of the mandate.

Zylstra appeals.

ANALYSIS

Zylstra argues that the trial court erred because it entered the order of restitution beyond the time limit he agreed to in his waiver of the statute of limitations. The State contends that the order of restitution is valid because Zylstra agreed to the amount of restitution within 180 days of his sentencing hearing so no waiver was necessary. We agree with the State.

We review the court’s entry of a restitution order for abuse of discretion. State v. Grantham, 174 Wn. App. 399, 403, 299 P.3d 21 (2013). A trial court abuses its discretion when it exercises it on untenable grounds or for untenable reasons. State v. Lomor, 172 Wn.2d 85, 94, 257 P.3d 624 (2011). We can

affirm a trial court's rulings on any grounds supported by the record and the law. State v. Costich, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

A trial court's authority to impose restitution is statutory. State v. Deskins, 180 Wn.2d 68, 81, 322 P.3d 780 (2014). The court must determine the amount of restitution owed "at the sentencing hearing or within one hundred eighty days." RCW 9.94A.753(1). The 180-day time period operates like an ordinary statute of limitations. State v. Duvall, 86 Wn. App. 871, 874-75, 940 P.2d 671 (1997). The failure to comply with statutory provisions authorizing restitution voids a restitution order. State v. Chipman, 176 Wn. App. 615, 618, 309 P.3d 669 (2013).

Zylstra argues that the restitution order issued in his case is void because it was not entered prior to the date by which he agreed to extend the statute of limitations—within 30 days after a court-issued mandate. But the restitution statute of limitations does not compel a trial court to enter an order of restitution within a proscribed time frame. Rather, RCW 9.94A.753 mandates that the court "determine the amount of restitution" within the statutory time period. State v. Hunsicker, 129 Wn.2d 554, 561-62, 919 P.2d 79 (1996). To determine the amount of restitution, either the court may rely on a defendant's admission or acknowledgment of the amount or it may determine the amount by a preponderance of evidence at a hearing. Hunsicker, 129 Wn.2d at 558-59.

In Hunsicker, the defendant agreed to pay a specific amount of restitution in his plea agreement. Hunsicker, 120 Wn.2d at 556. But the court entered the restitution order after the statutory time limit expired. Hunsicker, 120 Wn.2d at

557. Our Supreme Court concluded that the restitution order was timely because the amount of restitution was determined before the statutory time limit expired. Hunsicker, 120 Wn.2d at 559. The court explained that the statute of limitations “does not preclude the parties from making an agreement as to the amount of restitution, and thus determining the amount within the meaning of the statute,” particularly when the agreement is subject to the approval of the court. Hunsicker, 120 Wn.2d at 559.

Here, Zylstra concedes that the parties agreed to “the amount of restitution” at the first restitution hearing on June 29, 2017. And his acknowledgement was made in open court. The prosecutor told the court that the State “had sent [defense counsel] what we believed to be an agreed order setting restitution with no response.” Defense counsel responded that “if Your Honor feels like you do have jurisdiction, and/or can take jurisdiction back from the Court of [A]ppeals for this hearing, [the prosecutor] and I do agree.”

The record also shows that the sole purpose of continuing the restitution hearing was to delay entry of a restitution order, not to determine the amount of restitution. When Zylstra moved to continue the hearing, he told the court that his “concern, other than legal authority to enter a restitution order today, is the impact of a restitution order being entered today.” He explained that he was concerned about exposure to civil liability. The judge agreed to continue the hearing and said the court would “sign an order that just waives speedy at this point and reserves entering the restitution order.” Zylstra was also concerned that he not be charged interest on the amount of restitution. Defense counsel

confirmed with “all parties” that the amount in the restitution order would remain “interest-free” pending entry of the order so there would be no detriment to Zylstra by the delay.

And Zylstra confirmed at the May 6, 2019 hearing that the amount of restitution was never in dispute. His sole objection was to the timeliness of the “order being entered.”

Because Zylstra agreed to the amount of restitution in open court within 180 days of his sentencing, the time limitations of RCW 9.94A.753(1) were met. We affirm the order of restitution.



WE CONCUR:




