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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
The Honorable Letitia H. Verdin, Circuit Court Judge (Plea Hearing)
The Honorable Edward W. Miller, Circuit Court Judge (Restitution Hearing)

Appellate Case No. 2020-001070

THE STATE,

Respondent,

v.

DAVID DWYER COCKRELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STANDARD OF REVIEW3

ARGUMENT4

 I. The circuit court judge did not err in ordering Appellant to pay restitution
 for back rent owed because it was within the discretion of the judge4

CONCLUSION.....7

TABLE OF AUTHORITIES

Cases

<u>Harris v. State</u> , 542 So.2d 1312(Ala. Crim. App. 1989).....	5, 6
<u>In re M.B.H.</u> , 387 S.C. 323, 692 S.E.2d 541 (2010).....	3
<u>Kirby v. State</u> , 863 So.2d 238 (Fla. 2003)	5
<u>State v. Belfry</u> , 416 N.W.2d 811 (Minn Ct. App. 1987).....	6
<u>State v. Cox</u> , 326 S.C. 440, 484 S.E.2d 108 (Ct. App. 1997).....	3
<u>State v. Gulledege</u> , 326 S.C. 220, 487 S.E.2d 590 (1997).....	3
<u>State v. Morgan</u> , 417 S.C. 338, 790 S.E.2d 27 (2016).....	5
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	3

Statutes

S.C. Code Ann. 16-3-1515(B)	6
S.C. Code Ann. § 16-3-1110(A)(11)	5
S.C. Code Ann. § 17-25-322(A)	4
S.C. Code Ann. § 17-25-322(B)	5
S.C. CONST. art. I, §24(A)(9).....	4

STATEMENT OF ISSUE ON APPEAL

The circuit court judge did not err in ordering Appellant to pay restitution for back rent owed because it was within the discretion of the judge.

STATEMENT OF THE CASE

Appellant pled guilty to two counts of uttering a fraudulent check during the April 2020 term of the Greenville County General Sessions Court before the Honorable Letitia H. Verdin. Appellant was sentenced to imprisonment for a period of two years, suspended upon sixteen days' time served and three years' probation. Probation was to be terminated upon payment of the restitution. A restitution hearing was held on July 23, 2020, at the Greenville County General Sessions Court before the Honorable Edward W. Miller. Appellant was ordered to pay \$10,060.00 in restitution. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, the appellate court sits to review errors of law only.” State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). In State v. Gulledge, our Supreme Court held that a restitution hearing is part of the sentencing proceeding. State v. Gulledge, 326 S.C. 220, 487 S.E.2d 590 (1997). A sentence will not be overturned absent an abuse of discretion; an abuse of discretion occurs “when the ruling is based on an error of law or a factual conclusion without evidentiary support.” In re M.B.H., 387 S.C. 323, 326, 692 S.E.2d 541, 542 (2010). “A trial judge has broad discretion in sentencing within statutory limits.” Id. “The trial judge has broad discretion in determining the manner, method, and amount of restitution.” State v. Cox, 326 S.C. 440, 442, 484 S.E.2d 108, 109 (Ct. App. 1997).

ARGUMENT

The circuit court judge did not err in ordering Appellant to pay restitution for back rent owed because it was within the discretion of the judge.

Appellant wrote two separate checks in the amount of \$5,000.00 each for rent. Both checks were returned for insufficient funds with an accompanying charge of \$60.00. (R. pp. 3-8). During the sentencing hearing, the trial judge sentenced Appellant to two years' suspended upon 16 days' of time served with probation for three years to terminate upon payment of restitution. (R. p. 8). During the restitution hearing, the trial judge ordered Appellant to pay the landlord \$10,060.00. (R. p. 13). Appellant contends that the trial judge erred in ordering Appellant to pay \$10,000.00 in restitution. Specifically, Appellant argues the \$10,000.00 is not part of the restitution because it was not the result of the crime. However, the trial judge did not abuse his discretion in ordering the \$10,000.00 in restitution.

S.C. CONST. art. I, §24(A)(9) states "victims of crime have the right to receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders." S.C. Code Ann. § 17-25-322(A) states "When a defendant is convicted of a crime which has resulted in pecuniary damages or loss to a victim, the court must hold a hearing to determine the amount of restitution due the victim of the defendant's criminal acts." S.C. Code Ann. § 17-25-322(A). In determining the manner, method, or amount of restitution to be ordered, the court may take into consideration the following:

- (1) The financial resources of the defendant and the victim and the burden that the manner or method of restitution will impose upon the victim or the defendant;
- (2) The ability of the defendant to pay restitution on an installment basis or on other conditions to be fixed by the court;
- (3) The anticipated rehabilitative effect on the defendant regarding the manner of restitution or the method of payment;

(4) Any burden or hardship upon the victim as a direct or indirect result of the defendant's criminal acts;

(5) The mental, physical, and financial well-being of the victim.

S.C. Code Ann. § 17-25-322(B) (emphasis added). “Restitution” is defined in S.C. Code Ann. § 16-3-1110(A)(11) as “payment for all injuries, specific losses, as expenses sustained by a crime victim resulting from an offender’s criminal conduct. It includes, but is not limited to:

(a) medical and psychological counseling expenses;

(b) specific damages and economic losses;

(c) funeral expenses and related costs;

(d) vehicle impoundment fees;

(e) child care costs; and

(f) transportation related to a victim’s participation in the criminal justice process.

S.C. Code Ann. § 16-3-1110(A)(11) (emphasis added). Victim suffered \$10,060.00 in economic loss because he could have had another tenant in the apartment and been receiving the rent. Further, he relied on the fraudulent checks written by Appellant and allowed him to remain in the apartment.

Appellant points to State v. Morgan, where the court held that civil damages were separate and distinct from restitution and the execution of a civil settlement and covenant to execute in the case between the victim and defendant prior to sentencing did not preclude an award of restitution. State v. Morgan, 417 S.C. 338, 790 S.E.2d 27 (2016). Appellant argues that this case differs from State v. Morgan because this case is a landlord and tenant issue and that the landlord had remedies in magistrate’s court to recoup his back rent losses. “The Florida supreme court discussed the purpose of restitution in the criminal context, explaining, ‘Unlike a civil claim for damages, the purpose of restitution is twofold: (1) to compensate the victim and (2) to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system.’” Id. at 341, 790 S.E.2d at 29 (citing Kirby v. State, 863 So.2d 238, 240 (Fla. 2003)). The court held in Harris v. State, that a victim for purposes of restitution was defined as “any person whom the court determines has suffered a direct

or indirect pecuniary damage as a result of the defendant's criminal activities." Harris v. State, 542 So.2d 1312, 1313(Ala. Crim. App. 1989). A victim of a crime should not have to go to another court to be "made whole" when the purpose of restitution in the criminal court is partly deterrence and partly to make the victim whole. Further, the court in State v. Belfry, held that the state is not barred from seeking, or the court imposing reasonable restitution even though the victims in that case received a settlement. State v. Belfry, 416 N.W.2d 811, 813 (Minn Ct. App. 1987). Appellant bases his argument on the issue that the judge erred in issuing restitution because the landlord had remedies in magistrate's court, but in State v. Belfry, restitution was ordered even after the Victim had received a settlement.

S.C. Code Ann. 16-3-1515(B) in listing what a Victim must provide to the prosecuting agency in order to receive restitution along with others includes: income lost as a result of the offense, out of pocket expenses incurred as a result of the offense and any other financial losses that may have been incurred. In this case the victim has \$10,000.00 that hasn't been paid as a direct result of the defendant's criminal act of paying rent with a fraudulent check. Had the checks not been fraudulent, Victim would have received \$10,000.00, and due to the fact that the checks were fraudulent, there is a \$10,000.00 financial burden on Victim. Further, due to Victim believing that the checks were sufficiently funded, Appellant was able to continue living in the apartment therefore depriving Victim of a paying tenant in the apartment resulting in loss of income as well as a financial loss in general.

Based on the fact that a restitution hearing is part of a sentencing hearing and within the discretion of the judge, the trial court did not err in ordering Appellant to pay restitution for back rent. This Court should affirm.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL


The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled “Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings.”

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