

DA 22-0165

IN THE SUPREME COURT OF THE STATE OF MONTANA

2024 MT 59

STATE OF MONTANA,

Plaintiff and Appellee,

v.

BRUCE SCHRODER,

Defendant and Appellant.

APPEAL FROM: District Court of the Eighteenth Judicial District,
In and For the County of Gallatin, Cause No. DC-20-340A
Honorable Peter Ohman, Presiding Judge

COUNSEL OF RECORD:

For Appellant:

James M. Siegman, Attorney at Law, Jackson, Mississippi

For Appellee:

Austin Knudsen, Montana Attorney General, Roy Brown, Assistant
Attorney General, Helena, Montana

Audrey Cromwell, Gallatin County Attorney, Bozeman, Montana

Submitted on Briefs: January 10, 2024

Decided: March 19, 2024

Filed:


Clerk

Justice Ingrid Gustafson delivered the Opinion of the Court.

¶1 Bruce Schroder (Schroder) appeals from the February 15, 2022, Sentencing Order issued by the Eighteenth Judicial District Court, Gallatin County, imposing a six-month deferred sentence and payment of \$2,039.20 in restitution to be paid in monthly payments of \$340 for criminal mischief, a misdemeanor, in violation of § 45-6-101(1)(a), MCA. We affirm.

¶2 We restate the issue on appeal as follows:

Did the District Court err in imposing restitution against Schroder without fully considering his ability to pay the restitution?

FACTUAL AND PROCEDURAL BACKGROUND

¶3 On November 23, 2019, Schroder, a seventy-two-year-old Vietnam veteran, requested an Uber ride from Jamie Hauge (Hauge). As Schroder was about to get into the vehicle, several younger women offered Hauge cash for the ride and pushed Schroder out of the way. Upset by the women usurping his ride, Schroder removed a magnetic Uber sign from the side of Hauge's car and pounded on the outside of the car.

¶4 Police officer Sergeant Vandersloot responded to the scene and found Schroder holding the magnetic Uber sign. Schroder offered to pay for the sign after he explained to Sergeant Vandersloot that he had hired Hauge as his driver but was cheated out of his ride. Sergeant Vandersloot did not observe any obvious damage to Hauge's car, but noted that it was too dark out to see well. Sergeant Vandersloot instructed Hauge to call the Bozeman police office in the next couple of days if there was any damage. On November 25, 2019,

Hauge reported there was damage to her car in the form of scratches on her front passenger door and rear lift-gate.

¶5 Schroder was subsequently charged with criminal mischief, a felony, in violation of § 45-6-101(1)(a), MCA. On November 9, 2021, Schroder's charge was reduced to criminal mischief, a misdemeanor, in violation of § 45-6-101(1)(a), MCA, in exchange for his guilty plea. Schroder signed a plea agreement in which he acknowledged he was "agreeing to pay restitution in any amount determined by the Court, up to the \$4,930.07 as requested by Jaimie Hauge." Schroder also signed an acknowledgement and waiver of rights where he acknowledged he "may be required to pay restitution and court costs." At Schroder's change of plea hearing, the court acknowledged that it was only accepting the guilty plea for removing the Uber sign and the scratches caused from that, but not for the additional scratches and damage to the vehicle.

¶6 At the sentencing hearing, the court heard testimony from Hauge and Schroder and calculated the restitution to impose against Schroder. Schroder testified his monthly income was \$837 from Social Security and \$560 from veteran disability benefits. The court took into consideration the cost to fix the scratches caused from removing the Uber sign and the cost of a rental car for Hauge to use while her vehicle was repaired. The court issued a 6-month deferred sentence and imposed a total of \$2,039.20 in restitution and fees to be paid in monthly installments of \$340. Additional facts will be discussed below as necessary.

STANDARD OF REVIEW

¶7 “The appropriate measure of restitution is a question of law, which we review for correctness.” *State v. Johnson*, 2011 MT 116, ¶ 13, 360 Mont. 443, 254 P.3d 578. “In reviewing a district court’s findings of fact as to the amount of restitution, our standard of review is whether those findings are clearly erroneous.” *Johnson*, ¶ 13.

DISCUSSION

¶8 *Did the District Court err in imposing restitution against Schroder without fully considering his ability to pay the restitution?*

¶9 The State argues the District Court properly imposed restitution. According to the State, Schroder agreed to the amount of restitution to be paid in the plea agreement. Additionally, the State claims the District Court did consider Schroder’s ability to pay when it considered his monthly income and “crafted a reasonable payment plan of \$340 per month.” Contrarily, Schroder argues the District Court improperly imposed restitution because it did not have a list of his assets at the sentencing, and did not take into consideration his ability to pay the restitution.

¶10 Criminal mischief occurs when a person “knowingly or purposely injures, damages, or destroys any property of another or public property without consent.” Section 45-6-101(1)(a), MCA. The criminal mischief statute also has a provision for imposing restitution that states “[a] person convicted of criminal mischief must be ordered to make restitution in an amount and manner to be set by the court. The court shall determine the manner and amount of restitution after full consideration of the convicted person’s ability to pay the restitution.” Section 45-6-101(2), MCA.

¶11 Here, there was a plea agreement in place where Schroder agreed to pay restitution in any amount up to \$4,930.07 as determined by the court. “A plea agreement is a contract between the State and a defendant and thus subject to contract law standards.” *State v. Newbary*, 2020 MT 148, ¶ 18, 400 Mont. 210, 464 P.3d 999. Contract law principles mandate that where the contractual language is clear and unambiguous on its face, it is a court’s duty to enforce the contract as drafted and executed by the parties. *State v. Lewis*, 2012 MT 157, ¶ 16, 365 Mont. 431, 282 P.3d 679. By signing the plea agreement and agreeing to pay restitution in any amount up to \$4,930.07 as determined by the court, Schroder affirmatively represented to the court he had the ability to pay that amount. We recognize there may be times where the leverage of a plea agreement such as this one—the offer to reduce the charge from a felony to a misdemeanor upon the condition of paying restitution the defendant knows he cannot financially afford and/or at a greater amount than the statutory limitation of a misdemeanor—weighs against imposing a waiver of further financial ability to pay consideration. *See State v. Jones*, 2008 MT 440, ¶¶ 24-26, 347 Mont. 512, 199 P.3d 216. At sentencing, however, Schroder made no claim of duress or undue pressure in entering the plea agreement which would require the court to not accept the implied assertion he made by signing the plea agreement that he had the financial ability to pay the agreed restitution. Further, although Schroder’s counsel referred to *State v. Lodahl*, 2021 MT 156, ¶ 23, 404 Mont. 362, 491 P.3d 661,¹ in the end he agreed to the

¹ We find it necessary to briefly discuss the holding in *Lodahl* as both parties mischaracterize its meaning and application. In *Lodahl*, we held “a court must impose the full restitution at sentencing, but it is not precluded from waiving said restitution in the same order,” if the defendant raises the issue and provides sufficient evidence the restitution would be unjust. *Lodahl*, ¶ 28.

restitution and monthly payment amount ordered by the court and acknowledged they were consistent with the joint recommendation provided for in the plea agreement. At sentencing, Schoder's counsel advised the court that if "\$5,000 were ordered" in restitution, it would require Schroder pay approximately \$830 per month. The court then determined the restitution to be \$1,854.20 along with the additional ten percent restitution fee of \$185, for a monthly payment of \$340 paid over the six-month deferral period. The court specifically precluded the restitution from being paid from Schroder's Social Security or Veteran's benefits. The State then requested Schroder "pay the restitution that the Court has just determined, and . . . [i]f he pays the restitution in full before the six-month sentence runs, the State will not object to early termination of the deferred sentence" to which Schoder's counsel stated, "Your Honor, we would agree with that recommendation. That was the joint recommendation in the plea agreement." Under these circumstances—Schroder affirmatively represented by signing the plea agreement that he had the financial ability to pay the restitution and then agreed at sentencing the amount and manner of payment ordered were consistent with the joint recommendation of the plea agreement. While the better practice for a district court is to thoroughly analyze a defendant's ability

Essentially, when a sentencing judge determines and orders restitution under the general restitution statutes, the defendant may, in the same hearing, request the court to modify or waive it based on financial inability to pay. *Lodahl* is not directly applicable to the present case because the specific restitution provision of the criminal mischief statute, § 45-6-101, MCA, applies here, rather than the more general restitution statutes found at § 46-18-241, MCA, through § 46-18-249, MCA. Further, *Lodahl* did not involve the situation present here where the defendant entered into a plea agreement providing for a specific restitution amount and thereby indicated his ability to pay the agreed restitution.

to pay restitution, fines, and fees at sentencing, under these circumstances, we cannot fault the District Court for not making a more thorough inquiry into Schroder's financial ability to pay.

CONCLUSION

¶12 Affirmed.

/S/ INGRID GUSTAFSON

We concur:

/S/ JAMES JEREMIAH SHEA

/S/ LAURIE McKINNON

/S/ BETH BAKER

/S/ JIM RICE