

Circuit Court for Carroll County  
Case No. 06-K-13-043854

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 324

September Term, 2017

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WILLIAM JOSEPH COOK

v.

STATE OF MARYLAND

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Woodward C.J.,  
Beachley,  
Moylan, Charles E., Jr.  
(Senior Judge, Specially Assigned)

JJ.

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PER CURIAM

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Filed: March 13, 2018

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On September 17, 2013, appellant, William Joseph Cook, was convicted of embezzlement – fraudulent misappropriation by fiduciaries by the Circuit Court of Carroll County, and a week later, was sentenced to three years of incarceration, all of which was suspended. The court ordered that he serve a five-year term of supervised probation, during which time he was to pay \$8,989.50 in restitution to Pamela Rhodes on a monthly installment basis. Rhodes subsequently died, and thereafter the court ordered that the balance of the restitution be paid to her daughter, Gina Cook. Appellant appeals from this order. We shall vacate the restitution order and remand to the circuit court for further proceedings.

### **BACKGROUND**

Appellant’s child is disabled and receives social security disability payments which were made payable to appellant, as he had been his child’s caregiver at some point in time. In February 2011, Rhodes, appellant’s mother-in-law, became the child’s caregiver when she was granted temporary custody. Appellant continued to receive his child’s social security disability payments through July 2012, but did not inform the social security administration that he no longer had custody of his child, as required. Between February 2011 and July 2012 appellant received \$11,800 in social security disability payments intended to benefit his child. Appellant did not contribute to his child’s care during this time. He was then charged and convicted of embezzlement – fraudulent misappropriation by fiduciaries, as noted above. The parties settled on a restitution amount of \$8,989.50 after appellant paid Rhodes a portion of the embezzled funds upfront.

Rhodes died on August 28, 2016, and several weeks later, the Division of Parole and Probation requested guidance from the court regarding the restitution payments. At a hearing held on March 21, 2017, the court heard from Gina Cook. Cook is Rhodes’s daughter, appellant’s ex-wife, and the mother of appellant’s child. Appellant and Cook are no longer married and they have shared custody of the child since Rhodes’s death. After finding that no estate had been set up for Rhodes, the court ordered that the remainder of the restitution be paid to Cook. The court explained that it did “not feel that it would be appropriate just to relieve [appellant] of this obligation as a result of the victim’s – the grandmother’s death,” and that its intent in redirecting payment of restitution to Cook was to benefit the child.

Accordingly, the court modified the restitution order and made the balance of the restitution payable to Cook. The court also extended appellant’s probation for three years, to give him time to pay the remaining restitution. Appellant appeals, and argues that the court imposed an “illegal sentence when it ordered [him] to pay restitution to Gina Cook.”

### **DISCUSSION**

Appellant argues that, “[b]ecause Ms. Cook was not a victim of the crime for which [he] was convicted, the court’s order amounted to an illegal sentence which must be vacated by this Court.” The State agrees that the court erred in awarding Cook the outstanding restitution, as Cook did not suffer any loss as the direct result of appellant’s crimes. The State maintains, however, that the case should be remanded “so that the court can correct its error by (1) vacating its order awarding restitution to [appellant’s] ex-wife and (2) ordering that restitution be redirected to Rhodes’s estate.” Further, the State

suggests that, “[t]o the extent that no estate currently exists, [appellant’s] restitution payments would be paid into the courts [sic] registry until such time as an estate could in fact be established.”

We generally review an order for restitution for abuse of discretion, but “if an order of restitution is illegal in any respect, we review it as a matter of law.” *McCrimmon v. State*, 225 Md. App. 301, 306 (2015). “A sentence is ‘illegal’ if it is beyond the statutory power of the court to impose.” *Breakfield v. State*, 195 Md. App. 377, 396 (2010). Where restitution has been awarded to a payee not authorized to receive it, the appellate court may remand so that the trial court may order restitution be paid to a proper payee. *McCrimmon*, 225 Md. App. at 312-13.

Section 11-606(a) of the Criminal Procedure Article identifies a number of categories of persons to whom the court may order restitution. As the State concedes, the “only category of relevance to this case, however, is ‘victim.’” Section 11-601(j) defines a “victim” as follows:

- (1) a person who suffers death, personal injury, or property damage or loss as a direct result of a crime or delinquent act; or
- (2) if the person is deceased, the personal representative of the estate of the person.

Here, the court awarded Cook the outstanding restitution upon the death of Rhodes. Cook, however, did not suffer a “loss as a direct result of [appellant’s] crime.” As a result, she does not qualify as a victim pursuant to the statute. Therefore, the court erred in awarding Cook the remaining restitution, and the order must be vacated. Upon remand, however, the court could order appellant to pay the remainder of the restitution to the

personal representative of Rhodes’s estate. Appellant argues that because an estate has not yet been opened, the restitution should be merely vacated. He contends that ordering restitution to be paid to Rhodes’s estate “would be tantamount to an order directing Ms. Rhodes’s family to open an estate, which is an avenue that they may not be interested in pursuing.” We disagree. Ms. Rhodes’s family is not under an obligation to open an estate. At the time the court learned of Rhodes’s death, the court directed the restitution payments be paid into the Registry of the Court. We see no reason why this should not continue until such time as an estate is opened, if and when that occurs.

**ORDER OF RESTITUTION VACATED.  
CASE REMANDED TO THE CIRCUIT  
COURT FOR CARROLL COUNTY FOR  
FURTHER PROCEEDINGS CONSISTENT  
WITH THIS OPINION. COSTS TO BE  
PAID BY CARROLL COUNTY.**