Circuit Court for Montgomery County
Case No. 06-J-16-050036

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1877

September Term, 2016

IN RE: F.F.

Nazarian,
Arthur,
Friedman,

JJ.

Opinion by Friedman, J.

Filed: August 14, 2017

At a September 13, 2016 adjudicatory hearing, the Circuit Court for Montgomery County, sitting as a juvenile court, found 18-year-old F.F., appellant, involved in what would constitute the crime of conspiracy to commit robbery if committed by an adult.[1] At an October 12, 2016 restitution hearing, the juvenile court ordered F.F. to pay restitution to the victim in the amount of $25.

F.F. noted a timely appeal of the juvenile court's restitution order, raising the following questions for our consideration:

1. Did the trial judge err in imposing a judgment of restitution in the absence of reasonable notice and opportunity to respond?

2. Did the trial judge err in ordering restitution where there was no competent evidence?

3. Did the trial judge err in imposing a judgment of restitution against the juvenile absent evidence or inquiry as to an ability to pay?

For the reasons that follow, we shall dismiss F.F.'s appeal as moot.

FACTS AND LEGAL PROCEEDINGS

At a September 13, 2016 adjudicatory hearing, F.F. entered a plea of involvement to the charge of conspiracy to commit robbery, with the remaining counts in the delinquency petition to be dismissed, per the plea agreement.[2] The proffered statement of facts established that several men approached a Domino's Pizza delivery driver,

[1] The State's delinquency petition alleged that F.F. committed acts that if, committed by an adult, would comprise the offenses of robbery, conspiracy to commit robbery, second-degree assault, conspiracy to commit second-degree assault, theft under $1000, and conspiracy to commit theft under $1000.

[2] Although not part of the plea agreement, the State made clear that it would also seek restitution for the victim.

72-year-old Mahmoud Rahimi, on January 10, 2016, and one man asked him for change for a $100 bill. Rahimi produced $50 to $60 and advised the men he did not have enough cash to change the $100 bill. A second man punched Rahimi, and the first men grabbed the money and four pizzas from the driver.

Police investigation revealed that the phone from which the pizza delivery order had been placed belonged to Joshua Waye. When presented with a photo of Waye, Rahimi identified him as one of the men involved in the robbery.

Fingerprints obtained from Rahimi's vehicle belonged to Clifford Massoquoi. Massoquoi told the police that he, Waye, and two other men ordered pizza on January 10, 2016. When the driver arrived, Waye punched the driver, and Massoquoi took the pizzas, after which the men split up and fled.

In recorded jailhouse calls, Waye implicated himself, Massoquoi, F.F., and another man in the robbery. In one call, police heard F.F. ask Waye if Waye had given F.F.'s name to the police as someone involved in "the pizza robbery." Based on that information, F.F. was arrested.

Upon interview by the police following his arrest, F.F. admitted to being present when the pizzas were ordered and to knowing that the men did not have enough money to pay for them. It was Waye's or Massoquoi's suggestion, he said, that they just take the pizzas.

F.F. also admitted to being aware of the plan to steal the pizzas and to being outside when the driver arrived, although he denied going near Rahimi's car; instead, he said, he hid so he would not be seen. After the robbery, he met up with Waye and Massoquoi, ate

some of the stolen pizza, and asked for some of the money that had been taken. He did not receive any money, as Waye kept it all for himself.

Based on the proffered statement of facts, the juvenile court found F.F. involved in the delinquent act of conspiracy to commit robbery and found him to be a delinquent child in need of services. F.F. was committed to the supervision of the Department of Juvenile Services ("DJS") for placement in a "hardware secure non-community residential program."

At an October 12, 2016 restitution hearing, the State informed the court that F.F. had pled involved to a charge of conspiracy to rob Rahimi of "$50 in U.S. currency and four boxes of medium pizza, having a value of less than $1,000." F.F.'s attorney argued that, although she had expected the State to follow up with a petition for restitution following the adjudicatory hearing, it had not done so. Moreover, the victim had not provided an affidavit or other evidence of the amount stolen, nor appeared in court to testify as to the amount of his loss. Therefore, the court had no competent evidence as to the appropriate amount of restitution. The State responded that F.F. had not objected to the amount taken, which had been placed on the record during the recitation of the proffered statement of facts at the adjudicatory hearing.

After listening to the recording of the State's proffer of facts, the court ruled that the proffer made clear that F.F. had entered a plea on the charge of conspiracy to rob the victim of pizza and money in the amount of $50 to $60, which, while not "completely exact," permitted the court to "err on the side of the lower number." Moreover, the court continued, the delinquency petition alleged the offenses and contained a request for restitution.

The court found F.F. liable for restitution and ordered him to pay $25 to Rahimi. F.F.'s attorney objected to the order, for the record. On November 10, 2016, the Montgomery County Restitution Coordinator notified the court that the $25 restitution had been paid in full.

DISCUSSION

F.F. argues that the juvenile court erred by: (1) imposing the restitution order in the absence of reasonable notice to F.F. and an opportunity for him to respond; (2) ordering restitution in the absence of competent evidence of the amount of the victim's loss; and (3) imposing a restitution order without inquiring as to his ability to pay. The State counters that all of F.F.'s challenges to the juvenile court's restitution order are moot, as he paid the restitution in full less than one month after the restitution hearing, and there is thus no remedy that this Court can provide.

If addressed, the State continues, the juvenile court provided F.F. fair notice of the amount of restitution sought and an opportunity to defend against the claim for restitution, and the State presented sufficient evidence to support the claim of $25 restitution. Finally, the State concludes, F.F. did not preserve the issue of whether the juvenile court erred in failing to inquire whether he had the ability to pay the amount of the ordered restitution because he did not object on that ground during the restitution hearing. And, even if that issue were preserved, the court had ample evidence before it that F.F. or his parents had an ability to pay the minimal amount of restitution ordered.

We agree with the State that F.F.'s challenges to the juvenile court's restitution order are moot. "A question is moot if, at the time it is before the court, there is no longer an

existing controversy between the parties, so that there is no longer any effective remedy which the court can provide." *Att'y Gen. v. Anne Arundel Cnty. Sch. Bus Contractors Ass'n., Inc.*, 286 Md. 324, 327 (1979) (citations omitted). In general, courts "should decline to address the merits of a moot case." *In re: W.Y.*, 228 Md. App. 596, 609 (2016) (citation omitted).

For an appeal to be cognizable, it is "indispensable" that the alleged error prejudice the appellant, and the burden is on the appellant to show that prejudice. *Yonga v. State*, 221 Md. App. 45, 80-82 (2015), *aff'd*, 446 Md. 183 (2016). If there is no prejudice, the question is moot, and an appellate court may, on a motion or on its own initiative, dismiss the appeal. Maryland Rule 8-602(a)(10); *see also Suter v. Stuckey*, 402 Md. 211, 219 (2007) ("A case is moot when there is no longer an existing controversy when the case comes before the Court[,] or when there is no longer an effective remedy [that] the Court could grant.") (citations omitted).

Less than one month following the restitution hearing in which the juvenile court ordered F.F. to pay restitution in the amount of $25 to the victim of his crimes, the Montgomery County Restitution Coordinator notified the court that F.F. had paid the restitution in full. As such, the judgment has been satisfied, and there is no remedy this Court can provide F.F.[3] We therefore dismiss his appeal on the ground of mootness.

[3] Although the Court of Appeals, in *Adkins v. State*, 324 Md. 641, 654 (1991), determined that an appeal of an adult violation of probation finding is not moot when the probationer has already served his sentence, its rationale was that the collateral consequence—that the violation of probation finding could be "considered in connection with sentencing for a subsequent conviction"—made the appeal of the probation violation

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, SITTING AS A JUVENILE COURT, DISMISSED AS MOOT. COSTS TO BE PAID BY APPELLANT.

finding not moot. In a juvenile matter, however, the collateral consequences are not the same. Juvenile records "are confidential and shall not be open to inspection except by order of the court or as otherwise expressly provided by law." Md. Rule 11-121(a). In addition, the Rule provides for the sealing of juvenile records upon the termination of the court's juvenile jurisdiction. *Id.* As such, the potential use of F.F.'s juvenile restitution order in a subsequent adult criminal conviction is so extremely unlikely that we have no trouble ruling that he will not suffer from any collateral consequence that would render his appeal of that order ripe for consideration.