District Court for Worcester County
Case No.: D-024-CR-23-002114

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 2398

September Term, 2023

JON WESTMAN, ET AL.

v.

KEVIN MICHAEL MCKNIGHT, ET AL.

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: October 3, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

The District Court for Worcester County, on a plea of not guilty on an agreed statement of facts, found Kevin McKnight guilty of working as a home improvement contractor without a license to do so.[1] Proceeding directly to sentencing, the court struck the finding of guilt, entered an order of probation before judgment, and placed the defendant on two years of supervised probation. As a condition of probation, Mr. McKnight was ordered to pay Erin Westman, on whose home he had worked, $2,000 in restitution. Ms. Westman, who had not been consulted by the prosecutor about restitution or the prosecutor's request for $2,000, spoke generally to the court about her difficulties working with Mr. McKnight with no reference to restitution. A different Assistant State's Attorney, on behalf of the victim, filed a motion to reconsider the restitution judgment and to schedule a restitution hearing. The District Court denied the motion, and both Jon and Erin Westman, now represented by counsel, noted an appeal as crime victims.[2]

[1] On appeal, Mr. McKnight contends that he entered a guilty plea. The State and the Westmans maintain that he entered a plea of not guilty on an agreed statement of facts, which is not the functional equivalent of a guilty plea. A plea of not guilty on an agreed statement of facts is not the functional equivalent of a guilty plea. *Jones v. State*, 77 Md. App. 193, 196 (1988). The record indicates that the plea was "not guilty on an agreed statement of facts."

[2] The State would nominally be an appellee in a case in which it was a party but did not file the appeal. Here, however, it is more aligned with the Westmans and supports a reversal of the judgment. *Antoine v. State*, 245 Md. App. 521 (2020), was a similar case. There, commenting that parties "cannot properly cast themselves as appellees if they are supporting the position of [the] appellant[,]" this Court, based on principles of fairness, considered the State to be amicus curiae supporting the appellant. *Id*. at 538 n.4 (quotation marks and citation omitted). We explained that, under the Rules, both the State's brief and the true appellee's brief would be due on the same date and that there was no provision for the true appellee to respond to the State's brief. In addition, because appellees are expected to share oral argument time, some of the true appellees' time would be used by the State to

(continued…)

On appeal, the Westmans[3] presented one question which we have rephrased as follows: Did the District Court err or abuse its discretion in denying the State's motion to reconsider the restitution judgment where a victim, Erin Westman, who was present at the hearing when restitution was discussed and imposed, had neither been informed nor consulted by the prosecutor about the restitution?[4] For the reasons that follow, we will vacate the judgment of restitution and remand for further proceedings consistent with this opinion.

support the appellant's position. *Id*. On the other hand, the Rules would permit a response to an amicus curiae brief. *Id*.; Md. Rule 8-511(f).

The State raised similar concerns prior to oral argument in this case, and, as we did in *Antoine*, we accepted the State's brief as an amicus curiae brief. Nevertheless, the State expressed an ongoing concern about the amicus curiae designation in cases such as this because it is not a comfortable fit with its usual role in a criminal prosecution. In particular, it pointed out that such a brief is limited to 3,900 words under Md. Rule 8-503(d)(4)(A), which, it contends, is too short to explain its legal position in cases such as this. For those reasons, it contends that the designation issue in cases like this should be considered by the Rules Committee as the issue may arise more frequently with the strengthening of the restitution rights of victims. It noted that both panels of this Court with similar cases on the day of oral argument had adopted the *Antoine* approach.

[3] Although Jon Westman, presumably Ms. Westman's husband and co-owner of the home at issue, are named parties in the appeal, the previous record in this case refers only to Erin Westman. Because no one has argued that Mr. Westman does not qualify as a victim and party in this appeal, we shall refer to them as the Westmans.

[4] The Westmans phrase their question on appeal as follows: "Whether a prosecutor's unauthorized and arbitrary restitution agreement can forfeit a victim's statutory rights to restitution in CP § 11-601, *et seq*., thereby obligating a victim to file a separate 'lengthy' civil suit?"

FACTUAL AND PROCEDURAL BACKGROUND

On March 1, 2022, Erin Westman entered into a contract with Kevin McKnight for improvements to her home.[5] Mr. McKnight was paid almost $58,000, but the work was not completed. When Ms. Westman contacted the Maryland Home Improvement Commission, she learned that Mr. McKnight was not a licensed contractor. The State, through the Worcester County State's Attorney ("the prosecutor"), subsequently charged Mr. McKnight with: (1) acting as a contractor without a license; (2) selling home improvements without a license; and (3) providing plumbing services without a license. *See* Md. Code Ann., Business Regulation Art. § 8-601(a), (b), and Md. Code Ann., Business Occupations and Professions Art. § 12-601, respectively.

At the criminal trial on June 23, 2023, the prosecutor, Mr. McKnight, his counsel, and Ms. Westman, who did not have counsel, were present. Prior to trial, the prosecutor and Mr. McKnight had agreed that if Mr. McKnight would plead guilty to count 1 and pay $2,000 in restitution, the State would not proceed on counts 2 and 3, and would defer to the court as to punishment. As previously noted, Mr. McKnight entered a plea of not guilty on an agreed statement of facts as to count 1 and, after the State read the statement of facts into the record, the court found Mr. McKnight guilty on that count.

Proceeding directly to sentencing, the prosecutor advised the court that a civil case for damages was likely, and that "there's been an agreement" for Mr. McKnight to pay

[5] The contract was not entered in the record.

$2,000 in restitution.[6] The prosecutor then turned to Ms. Westman and told her that she has the "right" to address the court and state "how this has affected you and what you think should happen basically." In response, she stated:

> [W]e hired Mr. McKnight to come into our home [to do the] renovation. I didn't know that he wasn't a Maryland licensed contractor. We trusted him with our home. We had to move out of our home and rent a house in Berlin. We have two children. We have two dogs. We work from home full-time. And he did not complete the renovations. And a lot of the work that he did do has to be replaced.

Mr. McKnight's defense counsel also indicated to the court that the damages would need to be resolved in a civil case because Ms. Westman and Mr. McKnight did not agree on the amount of damages.

The court, after stating "this is probably going to end up in civil court[,]" imposed its sentence. It struck the finding of guilt on count 1, entered an order of probation before judgment, and placed Mr. McKnight on two years of supervised probation. As a condition of probation, the court ordered Mr. McKnight to pay $2,000 in restitution through the Office of the State's Attorney within ninety days. The State nol prossed the remaining two counts.

On July 21, 2023, a different Assistant State's Attorney filed a motion to rescind the judgment of restitution and to schedule a restitution hearing. According to that motion: (1) the $2,000 restitution amount was not discussed with or agreed to by the victim ahead of the trial date; (2) the victim sought not $2,000 but the amount she had paid Mr. McKnight,

[6] The prosecutor had previously told the court that Ms. Westman had already paid Mr. McKnight "just shy of $58,000[.]"

which was almost $58,000; and (3) the State was seeking to rescind only the judgment of restitution and not the plea agreement or sentence. In response, Mr. McKnight filed a motion "to enforce [the] plea agreement" because changing his sentence would violate his due process rights. In addition, he stated that Ms. Westman was in the courtroom when the $2,000 restitution agreement was placed on the record, and that she raised no objection to the clearly stated restitution amount of $2,000, which had since been satisfied.

The District Court held a hearing on these motions on January 24, 2024. Defense counsel argued that Mr. McKnight had a constitutional right to have the plea agreement honored, and that the Westmans' restitution rights had been honored by Ms. Westman's presence at the hearing when the restitution was ordered. Defense counsel added that *Lafontant v. State,* 197 Md. App. 217 (2011) and *Lindsey v. State,* 218 Md. App. 512, 537 (2014), *rev'd on other grounds sub nom*., *Griffin v. Lindsey*, 444 Md. 278 (2015), cases cited by the State, only permitted revisiting a restitution award when the plea agreement had been silent as to restitution.

The State, in its response, candidly acknowledged that the $2,000 figure "came out of thin air from [the original prosecutor] himself" and that Ms. Westman was not aware of the $2,000 restitution agreement between the State and Mr. McKnight and had no input in it. It argued that Md. Code Ann., Criminal Procedure Art. ("CP"), § 11-603, provided crime victims an independent right to restitution, and that they are entitled to file a motion for relief within thirty days if that right had not been properly considered, as was done in this case.

The District Court concluded that the equities in "balanc[ing] the rights of the victims against the right of the defendant to due process in a finality of a judgment" favored Mr. McKnight and that Ms. Westman had impliedly waived her right to restitution by her silence at the trial proceedings. The court granted Mr. McKnight's motion to enforce the plea agreement and denied the State's motion to rescind the judgment of restitution.

The Westmans filed this timely appeal. *See* CP § 11-103(b). As previously discussed, the State's brief supports the Westmans.

Standard of Review

Because this case concerns a crime victim's statutory right in regard to restitution, our review is de novo, without deference to the trial court's ruling. *Uzoukwu v. State*, 252 Md. App. 271, 276 (2021). *See also Walter v. Gunter*, 367 Md. 386, 392 (2002) ("[W]here the order involves an interpretation and application of Maryland statutory and case law, [we] must determine whether the [trial] court's conclusions are 'legally correct' under a *de novo* standard of review.").

DISCUSSION

The Westmans contend, and the State agrees, that the District Court erred in denying the State's motion to rescind the restitution judgment because their right to restitution was not considered properly. Mr. McKnight contends the Westmans were granted all their statutory rights regarding restitution and that the District Court did not err when it denied the motion to rescind the judgment of restitution because doing so would violate his due process rights.

A. Restitution Law

CP § 11-603 governs awards of restitution. CP § 11-603(a) authorizes an award of restitution to a victim of a crime if, as a direct result of the crime: (1) "property of the victim was stolen, damaged, destroyed, converted, or unlawfully obtained, or its value substantially decreased;" or (2) "the victim suffered: (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (ii) direct out-of-pocket losses; (iii) loss of earnings; or (iv) expenses incurred with rehabilitation[.]" Under CP § 11-603(b)(1) and (2), a crime victim is "presumed to have a right to restitution" when "the victim or the State requests restitution" and presents competent evidence of compensable injuries. We have held that restitution is "a right held by victims and, in a criminal proceeding, can be requested by either the victim or the State[.]" *Lafontant*, 197 Md. App. at 226. Moreover, it is a right that the State does not have a power to waive. *Lindsey*, 218 Md. App. at 537.

Under the statute, there are two situations when a court "need not issue a judgment of restitution": (1) the defendant does not have the ability to pay, or (2) when there are "extenuating circumstances that make a judgment of restitution inappropriate." CP § 11-605(a). A judgment of restitution may be imposed as part of the sentence where there is a conviction or as a "condition of probation" before judgment under CP § 6-220. CP § 11-607(a)(1)(i)-(iii).

State's Attorneys and the courts must protect that right. For example, CP § 11-614(a) provides: "If practicable, the State's Attorney should: (1) notify an eligible victim of the victim's right to request restitution; and (2) help the victim to prepare the request and advise the victim as to the steps for collecting restitution that is awarded." In addition,

CP § 11-1002(b)(1), (12), tracking language in Article 47(a) of the Maryland Declaration of Rights,[7] provides:

> A victim of a crime . . . (1) should be treated with dignity, respect, courtesy, and sensitivity[, and] . . . (12) should be told, in appropriate cases, by the State's Attorney of the right to request restitution and, on request, should be helped to prepare the request and should be given advice as to the collection of the payment of any restitution awarded[.]

Courts have a corresponding obligation to ensure a victim's rights to restitution are being honored. CP § 11-103(e) provides:

> (1) In any court proceeding involving a crime against a victim, the court shall ensure that the victim is in fact afforded the rights provided to victims by law.
>
> (2) If a court finds that a victim's right was not considered or was denied, the court may grant the victim relief provided the remedy does not violate the constitutional right of a defendant . . . to be free from double jeopardy.
>
> (3) A court may not provide a remedy that modifies a sentence of incarceration of a defendant . . . unless the victim requests relief from a violation of the victim's right within 30 days of the alleged violation.
>
> (4) (i) A victim who alleges that the victim's right to restitution under § 11-603 of this title was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider.
>
> (ii) If the court finds that the victim's right to restitution under § 11-603 of this title was not considered or was improperly denied, the court may enter a judgment of restitution.

As we said in *Antoine*, the first three subsections of CP § 11-103(e) require a court to ensure: (1) that a victim's statutory rights are protected; (2) authorize a court to provide

[7] The Maryland Declaration of Rights, as amended in 1994, mandates that all crime victims "be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process." Md. Decl. of Rts., art. 47(a).

a remedy if it finds that those rights have not been protected; and (3) expressly contemplates that such a remedy might include the modification/alteration of a sentence. *Antoine v. State*, 245 Md. App. 521, 533-34 (2020) (citing CP § 11-103(e)(1)-(3)). CP § 11-103(e)(4) provides that a sentence where a victim's rights to restitution "was not considered or was improperly denied" lacks finality until the thirty-day period has run. In addition, CP § 11-103(b) permits a crime victim to "appeal to [this Court] from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section[.]"

B. Analysis

Here, the prosecutor failed to "notify" the Westmans in regard to their restitution rights or help them "prepare the request and advise [them] as to the steps for collecting restitution" in violation of CP § 11-614(a). *See also* CP § 11-1002(b)(1), (12). We recognize that these obligations are mandated only when "practicable," but, as stated in the State's brief, Ms. Westman had spoken with both the State's Attorney's victim coordinator and the original prosecutor prior to trial. There is nothing in the record indicating that restitution was discussed when she spoke to either of them or why it would have been impracticable to do so.

It appears that the prosecutor arrived at the $2,000 figure without any discussion with Ms. Westman about her restitution rights under CP § 11-603(b), including how or on what the $2,000 figure was based. Nor did the District Court make any inquiry of the prosecutor or Ms. Westman to ensure that she had been afforded her rights under CP § 11-103(e)(1).

To support his contention that we should affirm the judgment of the District Court based on "the standard of fair play and equity under the facts and circumstances[,]" Mr. McKnight seeks to distinguish *Lafontant*, 197 Md. App. 217, on the grounds that restitution had not been addressed in the plea agreement. For that reason, he asserts that Mr. Lafontant should have known that restitution could be imposed as a condition of probation. As he sees it, to come back and challenge the restitution award that was part of the plea agreement is "antithetical to 'fair play and equity[.]'" He asserts that CP § 11-603 does not confer on a victim the right to agree on the restitution amount.

At the hearing on the timely filed motion to reconsider restitution, the court concluded that it could not revise the restitution award because it was a condition of probation that had been reduced to judgment, and Mr. McKnight had relied on it in deciding to waive his right to an evidentiary jury trial. According to the court, revising the judgment amount would violate Mr. McKnight's due process rights.

CP § 11-103(e)(4)(i), however, provides victims thirty days to seek consideration of a restitution judgment, which delays a legitimate expectation of finality in the restitution component of a sentence until expiration of that time. *See Antoine*, 245 Md. App. at 561 (vacating the sentence to remedy the violation of the victim's rights to restitution does not violate the defendant's "constitutional right to be free from double jeopardy" (cleaned up)); *Lindsey*, 218 Md. App. at 549 n.18 ("[U]ntil the 30-day period for moving to reconsider the request for restitution has expired, the defendant cannot have a reasonable expectation that a restitution denial will hold firm and that restitution will not be ordered."). In the

absence of a legitimate expectation of finality in the restitution amount, Mr. McKnight's due process rights were not violated.

Mr. McKnight also asserts that the Westmans were granted all the rights to which they were entitled. He notes several statutory sections that speak of a victim's right to restitution, but he does not address CP § 11-614(a) and CP § 11-1002(b)(12), which clearly were not satisfied. In addition, any argument that Ms. Westman's presence at sentencing without expressly challenging the prosecutor's unexplained restitution agreement waived her right to further restitution is not persuasive. As previously stated, the State cannot waive a victim's presumptive and independent right to seek restitution. *Lindsey*, 218 Md. App. at 537. Based on the circumstances, her mere silence at the sentencing hearing cannot be construed as an implied or implicit waiver of that right.

CONCLUSION

For the reasons above, we shall vacate the restitution judgment but not the probation before judgment determination and remand for further proceedings consistent with this opinion. In doing so, we express no opinion on the appropriate amount of restitution. In the absence of an agreement by the parties as to the amount, that will need to be determined after a proper restitution hearing. At that hearing, the Westmans will be able to present evidence to support their request, and Mr. McKnight can argue for relief under CP § 11-605(a). Should the restitution amount exceed the $2,000 that he agreed to pay, Mr.

McKnight will have the option to withdraw his plea of not guilty on an agreed statement of facts and enter a plea of not guilty.

THE JUDGMENT OF RESTITUTION VACATED AND CASE REMANDED TO THE DISTRICT COURT FOR WORCESTER COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE SHARED 50% BY APPELLEE AND 50% BY THE COUNTY COMMISSIONERS OF WORCESTER COUNTY.