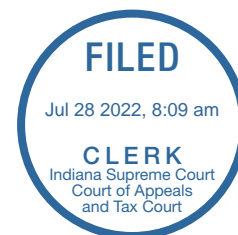


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Lloyd Charles Rowilson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 28, 2022

Court of Appeals Case No.
22A-CR-273

Appeal from the LaGrange Circuit
Court

The Honorable G. David Laur,
Senior Judge

Trial Court Cause No.
44C01-1907-F6-190

Weissmann, Judge.

- [1] Convicted offenders typically bear responsibility for any financial harm their misconduct causes. But when the State fails to connect financial harm to the offender's crime, and the offender does not agree to pay those damages, restitution is improper.
- [2] Rowlison pleaded guilty to misdemeanor theft of two of Perry Troyer's toolboxes. Though the State claimed the toolboxes were inside Troyer's trailer when it too was stolen and burned, the State failed to link the toolbox theft to the trailer's burning. As Rowlison did not agree to pay for the trailer damage, the restitution order requiring Troyer to pay more than \$5,000 in restitution for the burned trailer was improper.

Facts

- [3] Rowlison pleaded guilty to Class A misdemeanor theft for knowingly or intentionally exerting unauthorized control over Troyer's two toolboxes, worth less than \$750, with the intent to deprive Troyer of their value or use. *See* Ind. Code § 35-43-4-2(a). Under Rowlison's plea agreement, he would be sentenced to one year imprisonment, fully suspended, and pay restitution in an amount to be fixed at a later hearing. The trial court sentenced Rowlison in accordance with his plea agreement.
- [4] At the restitution hearing, the State requested Rowlison pay \$5,366.07 in restitution. Troyer testified that figure was the difference between his insurance proceeds and the total damages from replacing the burned trailer and its contents. Tr. Vol. II, p. 30. Troyer also testified that the two toolboxes found at

Rowlison's home originally had been stored on a shelf in the trailer before it was stolen. *Id.* at 32. The stolen trailer was found burned beyond repair near a state highway, according to Troyer. *Id.* at 29, 32.

[5] Rowlison objected, contending he was not responsible for those losses because he pleaded guilty only to theft of the two toolboxes, which police returned to Troyer. Rowlison noted that only the toolboxes were found in his possession.

[6] When ordering the \$5,366.07 in restitution, the trial court focused on Troyer's testimony that the toolboxes found in Rowlison's garage had been stored in Troyer's trailer. Tr. Vol. II, p. 35. The court found that the State had proven by a preponderance of the evidence that Troyer incurred at least \$5,366.07 of out-of-pocket expenses as a result of Rowlison's conduct and that those expenses were "Rowlison's responsibility pursuant to the actions he took." *Id.* at 36. Rowlison appeals the restitution order.

Discussion and Decision

I. Restitution

[7] Restitution is among the sanctions that a trial court may impose when sentencing an offender. Absent exceptions inapplicable here, Indiana Code § 35-50-5-3(a) (restitution statute) specifies that "the court may, as a condition of probation or without placing the person on probation, order the person to make restitution to the victim of the crime." Restitution may be based, among other things, on "property damages of the victim incurred as a result of the crime" or

“earnings lost by the victim (before the date of sentencing) as a result of the crime.” I.C. § 35-50-5-3(a)(1), (4).

- [8] A trial court has discretion to enter a restitution order and will be reversed only upon an abuse of that discretion. *Dull v. State*, 44 N.E.3d 823, 829 (Ind. Ct. App. 2015). A court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances or when the trial court has misinterpreted the law. *Id.*

II. Insufficient Nexus

- [9] Rowlison claims the restitution order is improper because the State, during the restitution hearing, never linked him to the trailer burning and he never agreed to pay for its damage. The State disputes both claims.
- [10] Without the defendant’s assent, a trial court cannot order restitution for crimes to which the defendant has not pleaded guilty or for which the defendant has not been convicted. *Id.* at 831. We find no link between Rowlison’s theft conviction and the trailer offense, as well as no agreement by Rowlison to pay the trailer damages.

A. No Agreement

- [11] The plea agreement reflected that “the State will recommend the following sentence: . . . Pay Restitution to the Victim ~~in the amount of \$5,366.07 or~~ to be determined after Restitution hearing.” App. Vol. II, p. 61. Rowlison contends the stricken language in the plea agreement establishes that he never agreed to

pay the \$5,366.07 in restitution and, in fact, affirmatively objected to it. The State claims Rowlison implicitly agreed to pay restitution beyond that associated with the two toolboxes because he knew those toolboxes had been returned to Troyer and that any restitution necessarily would have to be based on other losses.

[12] We find nothing in the record to support a finding that Rowlison agreed to pay for the trailer damages. He only agreed to pay an unspecified amount of restitution to be proven at a hearing.

[13] And we reject the notion that Rowlison, by signing the plea agreement, implicitly agreed to damages beyond that associated with his theft conviction. Contrary to the State's stance, the return of the toolboxes to Troyer did not bar a claim for restitution arising from their theft. For instance, Troyer could have sought restitution for any damage to the boxes or for items missing from them if such losses occurred. *See* I.C. § 35-50-5-3(a)(1). Troyer also could have requested restitution for any lost earnings caused by the theft. I.C. § 35-50-5-3(a)(4).

[14] Given that Rowlison did not agree to pay restitution for the trailer-related losses, we proceed to determine under the restitution statute whether the \$5,366.07 in damages was "incurred as a result of the crime" for which Rowlison was convicted. *See* I.C. § 35-50-5-3(a)(1); *Dull*, 44 N.E.3d at 831.

B. No Link to Theft

[15] Rowlison claims the trailer damages were not incurred as a result of his theft of the toolboxes and, thus, the restitution order is not authorized by the restitution statute. Relying mainly on *Archer v. State*, 81 N.E.3d 212 (Ind. 2017), the State responds by claiming that the restitution order was proper because the damage to the trailer “facilitated” or “resulted” from the theft of the toolboxes.

Appellee’s Br., p. 8.

[16] But *Archer* involved restitution in an auto theft prosecution in which the defendant was found driving the vehicle five hours after it was taken. *Id.* at 216-17. While the car was missing, it had been spraypainted extensively to obscure the VIN number. *Id.* Affirming the trial court’s restitution order, our Supreme Court determined that Archer “stole the vehicle and is responsible for the damage done to it while it was in her custody and control, including the spray-painting.” *Id.* at 217.

[17] *Archer* does not steer this case. Archer’s restitution directly related to the property she was convicted of stealing. Rowlison’s restitution stems from a crime only tenuously connected to the theft he committed. Most importantly, the record does not reveal any direct or indirect contact by Rowlison with the burned trailer.

[18] As the State presented no evidence linking Rowlison to the burned trailer and Rowlison pleaded guilty to and was convicted of a different crime, the trial court abused its discretion in ordering Rowlison to pay \$5,366.07 in restitution

for the trailer damages. *See, e.g., Linville v. State*, 120 N.E.3d 648, 660 (Ind. Ct. App. 2019) (finding abuse of discretion where the defendant was ordered to pay for losses incurred in thefts for which he was not convicted). We reverse and remand for the trial court to vacate the restitution order.

Pyle, J., concurs.

Robb, J., dissents with a separate opinion.

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Robb, Judge, dissenting.

[19] I acknowledge everything the majority says, and I also acknowledge the language of the restitution statute. Yet, parties can agree to things the trial court could not do on its own, and here, Rowlison agreed to pay restitution as part of his plea agreement. Because the majority opinion results in there being no restitution to pay, and thereby nullifies part of the plea agreement, I respectfully dissent.

[20] Rowlison was charged with knowingly or intentionally exerting unauthorized control over two Craftsman toolboxes with multiple tools inside each, valued at

less than \$750.00. The toolboxes had been in a construction trailer when the trailer was stolen and were later found in Rowlison's possession and returned to their owner. The trailer and the rest of its contents were burned and unrecoverable. Rowlison agreed to plead guilty to theft of the toolboxes *and* to pay restitution to the victim in an amount to be determined after a restitution hearing.

[21] “The trial court cannot order a defendant to pay restitution for crimes to which he did not plead guilty, has not been convicted, or did not agree to pay as restitution.” *Dull v. State*, 44 N.E.3d 823, 831 (Ind. Ct. App. 2015). Although Rowlison pleaded guilty in this case only to the theft of two toolboxes, he agreed to pay restitution despite knowing the toolboxes had been returned to Troyer. A reasonable inference can be made that in entering that agreement, Rowlison assumed responsibility for the greater damages suffered by Troyer. If not that, then Rowlison was making an empty promise. The question for the restitution hearing was not *whether* he should pay restitution but *how much*, a question left by the plea agreement to the trial court. Because the trial court's decision gives effect to all provisions of the plea agreement and the amount is supported by the evidence, I would affirm the trial court.