

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Victoria Bailey Casanova  
Casanova Legal Services  
Indianapolis, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Indiana Attorney General  
Indianapolis, Indiana  
  
Robert M. Yoke  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Jessica M. Renkenberger,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 29, 2023

Court of Appeals Case No.  
23A-CR-751

Appeal from the Adams Circuit  
Court

The Honorable  
Chad E. Kukelhan, Judge

Trial Court Cause No.  
01C01-2203-F5-7

**Memorandum Decision by Judge May**  
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

[1] Jessica M. Renkenberger appeals the trial court’s order to pay restitution of \$21,425.14 following her conviction of Level 6 felony theft.<sup>1</sup> She argues the trial court abused its discretion when it ordered her to pay that amount because some of the monies were not permitted in a restitution order under Indiana Code section 35-50-5-3(a). The State agrees with Renkenberger. We affirm in part and reverse and remand in part.

## Facts and Procedural History

[2] Between May 2020 and January 2021, Renkenberger and William Kahn agreed to complete home improvement projects for Brian Houts, Kay Jauregui, and Brandon and Emilie Dailey (“the Daileys”).<sup>2</sup> Renkenberger and Kahn received down payments from each client but did not complete the work. Based thereon, on March 11, 2022, the State charged Renkenberger with Level 5 felony corrupt business influence.<sup>3</sup> On December 28, 2022, the State filed an amended charging information, adding a charge of Level 6 felony theft.

[3] On December 28, 2022, the parties filed a plea agreement with the trial court in which Renkenberger would plead guilty to Level 6 felony theft and the State would dismiss the remaining charge. Additionally, Renkenberger agreed to be

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<sup>1</sup> Ind. Code § 35-43-4-2(1).

<sup>2</sup> The last name “Dailey” is spelled “Daily[,]” (*see* App. Vol. II at 114), and “Dailey[,]” (*see* Ex. Vol. II at 3), in various parts of the record. However, in Defendant’s Exhibit A, Emilie signed her name “Dailey” and thus we will use that spelling. (*Id.*)

<sup>3</sup> Ind. Code § 35-45-6-2.

sentenced at the trial court's discretion and pay "restitution in an amount determined by the court. However, she agrees she will be liable for restitution for Mr. & Mrs. Houts, Ms. Jauregui, and Mr. and Mrs. Dailey." (App. Vol. II at 93.)

[4] On March 10, 2023, the trial court held a combined sentencing and restitution hearing. During the sentencing and restitution hearing, as is relevant to this appeal,<sup>4</sup> the Daileys requested restitution for the \$9,000.00 they paid upfront to Renkenberger, the approximately \$8,000.00 they incurred for materials to complete the work that was never completed, and undetermined amounts for lost wages and pain and suffering.<sup>5</sup> The Daileys also requested reimbursement for the \$1,124.00 in attorney's fees they expended to pursue a small claims case against Renkenberger.<sup>6</sup>

[5] At the conclusion of the hearing, the trial court sentenced Renkenberger to a term of two and one-half years incarcerated. Regarding restitution, the trial court ordered:

The Court enters a judgment against the defendant in the amount of \$61,425.14 for restitution. Said amount is jointly and severable liable with co-defendant, William Kahn (01C01-2202-

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<sup>4</sup> Houts and Jauregui were also awarded restitution. Renkenberger does not challenge the amounts she was ordered to pay Houts and Jauregui.

<sup>5</sup> The itemized list of these expenses, which is referenced in the transcript, is not in the record presented to us and does not appear to have been admitted into evidence.

<sup>6</sup> Emilie Dailey testified the Daileys received a judgment of \$8,000.00 in their small claims action against Renkenberger.

F5-0008), if found guilty. Restitution is to be divided as follows: \$24,000.00 to Kay Jauregui; \$21,425.14 to Brandon Daily [sic]; and \$16,000.00 to Brian Houts.

(*Id.* at 114.)

## Discussion and Decision

[6] “Generally, an order of restitution is within the trial court’s discretion, and it will be reversed only upon a finding of an abuse of that discretion. An abuse of discretion occurs when the trial court misinterprets or misapplies the law.”

*Green v. State*, 811 N.E.2d 874, 877 (Ind. Ct. App. 2004). Indiana Code section 35-50-5-3(a) governs restitution, and states in relevant part:

The court shall base its restitution order upon a consideration of:

(1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);

(2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;

(3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;

(4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and

(5) funeral, burial, or cremation costs incurred by the family or estate of a homicide victim as a result of the crime.

“Because restitution is penal in nature, the statute providing for restitution must be strictly construed against the State to avoid enlarging it beyond the fair meaning of the language used.” *Morgan v. State*, 49 N.E.3d 1091, 1094 (Ind. 2016).

[7] Renkenberger argues the trial court abused its discretion when it ordered her to pay \$21,425.14 in restitution to the Daileys because the amount included attorney’s fees, pain and suffering, and lost wages not associated with the investigation and trial of this cause. The State agrees. Because none of the statutory restitution categories in Indiana Code section 35-50-5-3(a) authorize payment for these types of requests, we conclude the trial court abused its discretion when it ordered Renkenberger to pay the Daileys \$21,425.14 in restitution. *See, e.g., Springer v. State*, 798 N.E.2d 431, 436 (Ind. 2003) (restitution orders cannot include amounts for requests not included within one of the statutory categories found in Indiana Code section 35-50-5-3(a)); *and see Person v. State*, 93 N.E.3d 1126, 1127 (Ind. Ct. App. 2018) (trial court cannot order restitution for pain and suffering). Accordingly, we reverse that portion of the trial court’s sentencing order and remand for reconsideration of the restitution amount due the Daileys in accordance with this opinion.

## Conclusion

[8] We hold the trial court abused its discretion when it ordered Renkenberger to pay the Daileys \$21,425.14 in restitution because that amount included expenses not permitted by Indiana Code section 35-50-5-3(a). Therefore, we affirm Renkenberger's conviction and all other portions of her sentencing order, but we reverse the order of restitution as to the Daileys and remand for the trial court to recalculate the restitution Renkenberger must pay to the Daileys.

[9] Affirmed in part; reversed and remanded in part.

Altice, C.J., and Foley, J., concur.