

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin R. Lock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 23, 2023

Court of Appeals Case No.
23A-CR-912

Appeal from the Noble Superior
Court

The Honorable Steven T. Clouse,
Judge

Trial Court Cause No.
57D01-2203-F6-100

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

- [1] Justin Lock appeals a \$662.95 restitution order to compensate a car wash business for cash he stole and damage he caused to their vending machines. Though sworn affidavits justified the restitution amount, Lock now claims the order is unsupported by sufficient evidence. We disagree and affirm.

Facts

- [2] After a crime spree at several businesses, Lock faced a litany of theft charges. But he negotiated a plea agreement with the State whereby he would admit to three of the charges and pay restitution.
- [3] A presentence investigation report (PSI) was filed two weeks before Lock's sentencing hearing. Attached to the PSI was a sworn "Victim Impact Statement and Restitution Form" signed and returned by the Soap and Suds Car Wash. App. Vol. II, p. 92. The form listed the "total claim for restitution" as \$662.95, which was itemized as \$400 in property stolen and \$262.95 in property repair costs, none of which was reimbursed by insurance. *Id.*
- [4] At the start of the sentencing hearing, Lock affirmed that he had received and reviewed the PSI. Lock offered no corrections or changes to the restitution amount specified in the PSI, although he requested changes to other parts of that report. The trial court imposed an aggregate sentence of nine years, with two years suspended to probation and ordered Lock to pay \$662.95 in restitution to Soap and Suds.

Discussion and Decision

- [5] On appeal, Lock challenges the sufficiency of the evidence underlying the restitution order. In response, the State argues first that Lock waived this argument by failing to raise it before the trial court but alternatively contends that sufficient evidence supports the restitution order.
- [6] Restitution falls within the trial court’s sentencing discretion and is reviewed only for an abuse of that discretion. *Bell v. State*, 59 N.E.3d 959, 962 (Ind. 2016). “An abuse of discretion occurs when the trial court's decision is against the logic and effect of the facts and circumstances before it.” *Garcia v. State*, 47 N.E.3d 1249, 1252 (Ind. Ct. App. 2015).
- [7] Before turning to the sufficiency of the restitution order, we note as a threshold matter that Lock has not waived his argument by failing to offer a contemporaneous objection to the trial court. As explained by our Supreme Court,

Although there have been cases in which appeals on restitution were waived due to the failure to make an objection at trial, the vast weight of the recent case law in this state indicates that appellate courts will review a trial court's restitution order even when the defendant did not object based on the rationale that a restitution order is part of the sentence, and it is the duty of the appellate courts to bring illegal sentences into compliance.

Bell v. State, 59 N.E.3d 959, 962 (Ind. 2016) (internal quotation omitted). Thus, we turn to the merits of Lock’s argument.

I. Restitution

- [8] The State introduced sufficient evidence to justify the restitution order. “A restitution order must be supported by sufficient evidence of actual loss sustained by the victim of a crime.” *Garcia v. State*, 47 N.E.3d 1249, 1252 (Ind. Ct. App. 2015). “Evidence supporting a restitution order is sufficient if it affords a reasonable basis for estimating loss and does not subject the trier of fact to mere speculation or conjecture.” *J.H. v. State*, 950 N.E.2d 731, 734 (Ind. Ct. App. 2011).
- [9] Lock concedes that the restitution order is based on valid damages. Ind. Code 35-50-5-3(a)(1) (requiring restitution orders be based on the “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)”). But he alleges that the State did not properly introduce evidence justifying the amount of restitution imposed. Indeed, according to Lock, “the amount of restitution ordered by the trial court is not supported by any evidence” at all. Appellant’s Br. p. 8. We disagree.
- [10] Attached to the presentence investigation report was a signed “Victim Impact Statement and Restitution Information” form filled out by the victim. The form specifically alleges \$400 in damages from “property stolen” and \$262.95 in “property damaged,” for a grand total of \$662.95. App. Vol. II, p. 92. And part IV of the form contains the victim’s pledge that “the above statement is a true and accurate accounting of my loss and-or damages resulting from the offense identified herein.” *Id.* This was sufficient evidence for the trial court to rest its restitution order on.

II. Scrivener's Error

However, the parties agree, the order mistakenly lists the restitution as attached to Count II, rather than Count III. We remand for the trial court to correct this scrivener's error in Lock's sentencing order.

[11] In conclusion, because sufficient evidence exists in the record to support its decision, the trial court did not abuse its discretion in ordering Lock to pay restitution.

[12] Affirmed and remanded.

Altice, C.J., and Kenworthy, J., concur.