

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA,

v.

**MARCUS JOSEPH-LE MILLER,
Defendant**

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CR: 1271-2017

**MOTION FOR MODIFICATION
OF SENTENCE**

OPINION AND ORDER

On January 16, 2018, Marcus Joseph-Le Miller (Defendant) was sentenced by this court for committing the offense of Theft by Unlawful Taking, a misdemeanor of the first degree.¹ On the evening of July 19, 2017, Defendant took money and marijuana from Christopher Shaffer; he also threatened Shaffer with bodily harm. Defendant took the items from Shaffer when he came to the Defendant's apartment sometime that night. At that time, Defendant was living at the Brighton Apartment Complex on the north side of Mill Lane in Old Lycoming Township, Lycoming County. Mill Lane Properties owned the complex.

As part of the sentence imposed by the Court on that date, Defendant was ordered to pay restitution as follows: \$1000 to Mill Lane Properties, \$600 to Christopher Shaffer, and \$7634.75 to Wilbur and Associates. The payment to Mill Lane Properties and Wilbur and Associates was for the deductible and

¹ 18 Pa.C.S.A. § 3921(a)

reimbursement for the damage caused by the police the night that the property was searched and Defendant was arrested.

Hearing was held on March 1, 2018 on the Defendant's timely Motion to Modify Sentence. Defendant submits that the order of restitution to 2000 Mill Lane Properties and its insurance carrier constitutes an illegal sentence. In support of his claim, Defendant states that the order of restitution is not authorized by Section 1106 of the Pennsylvania Crimes Code.

18 Pa.C.S. §1106(a) states as follows:

- (a) **General rule.** – – Upon conviction for any crime where in property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or where in the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefore.

In ***Commonwealth v. Zrncic***, 167 A.3d 149, (Pa. Super.2017) Defendant was arrested for the charge Unlawful Contact with a Minor and other related offenses; a laptop was seized from an alleged victim as part of the criminal investigation. Ultimately the defendant pled guilty to another offense which had been charged, an aggravated indecent assault. The mother of the victim purchased a new laptop to replace the one that was seized as evidence. Restitution was not discussed as part of the plea agreement. At sentencing, the court ordered that defendant be responsible for the replacement of the laptop. The issue on appeal before the Superior Court was

whether the trial court may properly impose restitution for the laptop where the loss claimed flows from crimes other than the crime to which the [Defendant] pled guilty.

“Any restitution ordered must flow from only those crimes for which a defendant is convicted, and not any underlying, unproven conduct. ***Commonwealth v. Barger***, 956 A.2d 458, 459 (Pa. Super 2000) (en banc). Section 1106 requires a “direct nexus” between the loss claimed and the crime “**for which the defendant was convicted.**” ***Id.*** at 465.

The trial court in ***Zrncic*** believed that there was a causal connection between the loss of the laptop and the defendant’s charges since he had been originally charged with the Unlawful Contact with a Minor offense which required the seizure of the laptop. The Superior Court found that merely being faced with the charge was insufficient to justify an award of restitution. ***Zrncic***, 167 A.2d at 153.

It is clear from the facts of this case that the Defendant shall be responsible for the money taken from the victim; he has acknowledged the theft of the money. However, Defendant was never charged by the police for any damage to the property caused during the execution of the search warrant. Therefore he could never be convicted of a charge related to that damage. Both the owner of the Defendant’s residence and its insurer are not victims of the charge for which the Defendant was convicted, and cannot benefit from the award of restitution in this case. The Court finds that there is neither a condition of the plea agreement which requires Defendant to be accountable nor a theory in law which supports the claim.

ORDER

AND NOW, this 20th day of March, 2018 after hearing and consideration of the Defendant's Motion for Modification of Sentence, the same is hereby **GRANTED**.

It is **ORDERED AND DIRECTED** that the restitution amounts ordered by this Court on January 16, 2018 shall consist of the following: \$600.00 to Christopher Shaffer. All other amounts shall be **VACATED**.

In all other respects, this Court's sentencing order shall remain in full force and effect.

BY THE COURT,

Nancy L. Butts, President Judge

cc: DA
Peter T. Campana, Esq.
APO
Cost Clerk's Office