

COMMONWEALTH OF PENNSYLVANIA : NO. CR – 1980 - 2006  
 :  
 vs. : CRIMINAL DIVISION  
 :  
 HAROLD R. CRESSMAN, :  
 Defendant : Motion to Modify Sentence

**OPINION AND ORDER**

Before the Court is Defendant’s Motion to Modify Sentence, filed September 13, 2007. Argument on the motion was held October 16, 2007.

Defendant pled guilty to four summary Vehicle Code violations and was sentenced to pay a \$25.00 fine for each offense in connection with a motorcycle accident. He was also directed to pay restitution of \$12,057.10 to Gladys Westbrook, for expenses she incurred in relation to personal injuries of the victim, Chester Westbrook, who died as a result of the crash. In the instant motion, Defendant contends he should not be held accountable for the restitution ordered as his insurance company paid Ms. Westbrook as a result of a settlement reached between the parties, and Ms. Westbrook signed a release forever discharging Defendant from any further liability. The Commonwealth argues that according to 18 Pa.C.S. Section 1106, a restitution award may not be reduced by any amount the victim has received from an insurance company, and further argues that the Court should order the restitution payable to the insurance company, also in accordance with Section 1106. While the Court is constrained to agree with the Commonwealth that payments by Defendant’s insurance company are encompassed in the purview of the statute, *See Commonwealth v. Pleger*, 2007 Pa. Super. LEXIS 3121 (October 9, 2007), it nevertheless appears that an award of restitution to Ms. Westbrook is an illegal sentence in the first instance.<sup>1</sup>

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<sup>1</sup> While Defendant has not raised the issue of whether Ms. Westbrook is a proper recipient of a restitution award, questions regarding the court's authority with respect to ordering restitution implicate the legality of a sentence, *See Commonwealth v. Pleger*, 2007 Pa. Super. LEXIS 3121 (October 9, 2007), and the legality of a sentence may be raised by the Court *sua sponte*. *See Commonwealth v. Pastorkovic*, 657 A.2d 1089 (Pa. Super. 1989).

Section 1106 provides, in pertinent part, as follows:

**§ 1106. Restitution for injuries to person or property**

(a) **General rule.**—Upon conviction for any crime wherein ...the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

....

18 Pa.C.S. Section 1106. This statute has been interpreted by the Superior Court to require that a victim's loss be caused directly by a defendant's criminal conduct rather than a loss consequential to such conduct, Commonwealth v. Langston, 904 A.2d 917 (Pa. Super. 2006), and applied by that Court to invalidate a restitution award to the child of a parent killed by the defendant's criminal conduct. The Court noted the child would be considered a "victim" under the Crime Victim's Act, and thus eligible to make a claim with the Crime Victim's Compensation Board, but held that the mandatory payment of restitution pursuant to Section 1106 of the Crimes Code is limited to the direct victim and not to third parties, including family members. Id.

While this Court readily agrees with other courts addressing the issue that the recipient of the restitution as awarded was, in fact, victimized by Defendant's conduct,<sup>2</sup> the Court is also constrained to follow the Superior Court's holding in Langston, which dictates a finding that Ms. Westbrook is not a victim for restitution purposes as provided by statute. Therefore, since the payments made by Defendant's insurance company were not to a "victim" as defined by the restitution statute, Defendant cannot be ordered to pay restitution to the insurance company.

**ORDER**

AND NOW, this 18<sup>th</sup> day of October 2007, for the foregoing reasons, Defendant's Motion to Modify Sentence is hereby GRANTED. The Order of September 5, 2007 is hereby

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<sup>2</sup> See, e.g., Commonwealth v. Opperman, 780 A.2d 714 (Pa. Super. 2001), and Commonwealth v. Langston, 904 A.2d 917 (Pa. Super. 2006).

MODIFIED to eliminate the restitution payable to Gladys Westbrook. As modified herein, the Order of September 5, 2007 shall continue in full force and effect.

BY THE COURT,

Dudley N. Anderson, Judge

cc: DA  
Michael Morrone, Esq.  
Cost Clerk  
Gary Weber, Esq.  
Hon. Dudley Anderson