

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-864-2007
 :
 vs. :
 : CRIMINAL
 KEVIN GRIFFITH, :
 Defendant : Motion for Reconsideration

ORDER

AND NOW, this ____ day of August 2008, the Court DENIES Defendant's motion for reconsideration which seeks to vacate the sentencing order's requirement that he pay restitution for funeral expenses in the amount of \$4811.80, because his insurance company made payment to the victim's family at the policy limits and Defendant believed that one of the damages covered by the payment was funeral expenses. The Commonwealth presented evidence in the form of a letter from the insurance company that funeral bills or expenses were not part of the civil settlement. See Commonwealth's Exhibit #2. Even if the payment by the insurance company included funeral expenses, Defendant would not be entitled to the relief requested. In Appeal of B.T.C., 868 A.2d 1203, 1205-06 (Pa.Super. 2005), the Superior Court found a claim that the order of restitution was unlawful because it was duplicative of monies already paid to the victims' family through a civil settlement lacked merit and, quoting Commonwealth v. Kerr, 298 Pa. Super. 257, 444 A.2d 758, 760 (Pa. Super. 1982), stated:

as a sentence, or a condition of sentence, imposed following a criminal conviction, an order of restitution is not an award of damages. While the order aids the victim, its *true purpose*, and the *reason* for its imposition, is the rehabilitative goal it serves by impressing upon the offender the loss he has caused and his responsibility to repair the loss as far as it is possible to do so.

The Superior Court also noted that the insurance company's right of subrogation has no bearing on the validity of the restitution order. 848 A.2d at 1206. Therefore, even if the settlement included payment for funeral expenses, the insurance company might have a subrogation claim, but Defendant would not be entitled to relief from the order to pay restitution for those expenses. Furthermore, given Defendant's lack of remorse and minimization of his actions expressed in the pre-sentence investigation, the Court finds the payment of the funeral expenses would serve the rehabilitative goals of the imposition of restitution.

By The Court,

Kenneth D. Brown, P.J.

cc: Mary Kilgus, Esquire (ADA)
George Lepley, Esquire
James Protasio, Esquire
Gary Weber, Esquire (Lycoming Reporter)
Work File