

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

**BRUCE WHITE,
Defendant**

:

: No. CR-1397-2016

:

:

: Motion to Amend Restitution

OPINION AND ORDER

On August 22, 2016, following a hearing, the Court accepted as knowing, intelligent and voluntary Defendant's plea of guilty to Count 1, theft by deception, a misdemeanor one offense.

Defendant had a gambling problem and was going through large amounts of money. He had been working earning an income, but had been advising the Bureau of Unemployment Compensation that he was not working, thus improperly receiving unemployment compensation benefits over a substantial period of time.

The sentence of the Court pursuant to the plea agreement was that Defendant be placed on probation for a period of five years. As a condition of supervision, Defendant was directed to pay restitution in the amount of \$86,524.00.

Defendant subsequently filed a Motion to Amend Restitution asserting that the proper amount of restitution was \$49,584.94 and not the \$86,524.00 that was ordered.

A hearing and argument on Defendant's Motion was held on November 15, 2016.

At the hearing, the Commonwealth called Maria Rex as its witness. Ms. Rex is employed by the Commonwealth of Pennsylvania, Department of Labor and Industry, Bureau of Unemployment Compensation benefits as an Operations Manager. She testified that over the period of time at issue, Defendant received three types of unemployment benefits. The first

type of benefits were those paid directly by the Commonwealth of Pennsylvania. The second type of benefits were those subsidized by federal government extension of benefits. The third type of benefits were those that were provided pursuant to a federal stimulus plan.

With respect to the benefits paid directly by the Commonwealth, Defendant was overpaid a principle amount of \$49,584.94. The interest accrued was 9% per month or \$6,391.07 while the penalty incurred was \$1,022.40. The amount subsidized by the federal government was \$27,456.00. The amount paid as part of the federal stimulus was \$1,725.00. This amounts to \$86,179.41.

All of the amounts claimed as restitution were supported by unemployment compensation notices of overpayment that were previously provided to Defendant. He was given an opportunity to appeal these notices but chose not to do so.

Defendant first argued that restitution should be limited only to the amount claimed by the Commonwealth in connection with Defendant's Chapter 13 bankruptcy. That amount totaled \$56,331.25. Defendant further argued that neither interest nor penalties were allowable. Alternatively, Defendant claimed that the Commonwealth was only entitled to \$49,584.94, the principal amount of the claim. Finally, Defendant argued that he has entered into a repayment agreement with the Department of Labor and Industry in the amount of \$265.00 per month and that the Commonwealth is bound by this.

In describing why the federal monies were not requested through the Chapter 13 bankruptcy, Ms. Rex could not explain such other than that the Chapter 13 bankruptcy involved those amounts directly paid out of the Commonwealth coffers and not subsidized through the federal government.

An Order of restitution is not an award of damages as contended by Defendant. *Commonwealth v. Kerr*, 444 A.2d 758, 760 (Pa. Super. 1982). The 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. *Id.*

In the context of a criminal case, restitution may be imposed either as a direct sentence or as a condition of probation. 18 Pa.C.S.A. §1106; 42 Pa.C.S.A. §9754(c)(8). When restitution is ordered as a condition of probation, the sentencing court is accorded the latitude to fashion probationary conditions designed to rehabilitate the defendant to provide some measure of redress to the victim. *Commonwealth v. Popow*, 844 A.2d 13, 19 (Pa. Super. 2004).

When imposed as a condition of probation, there must be at least an indirect connection between the criminal activity and the loss. *Commonwealth v. Harriott*, 919 A.2d 234, 238 (Pa. Super. 2007). Where a sentencing court imposes restitution as a probationary condition, there should be both proof of the damages suffered, a determination of what loss or damage has been caused and what amount of restitution the defendant can afford to pay. *Commonwealth v. Kinnan*, 71 A.3d 983, 987 (Pa. Super. 2013); *Commonwealth v. Hall*, 994 A.2d 1141, 1145 n.3 (Pa. Super. 2010) (en banc).

In this particular case, there is a direct connection between Defendant's criminal activity and the \$86,179.41 loss. There is certainly proof with respect to the damages suffered and a connection between those damages and Defendant's conduct.

Nevertheless, the Court has two concerns. First, the Commonwealth Department of Labor and Industry has clearly represented through the Bankruptcy proceedings that its loss is \$56,331.25 (Defense Exhibit 1). The Department described this figure as the

“overpaid unemployment compensation benefits.” The Department certified that this figure was true and correct, but most importantly, agreed that Defendant’s debt would be discharged upon payment of a specified lesser amount through the Chapter 13 reorganization.

Secondly, the statute requires the Court to order restitution in an amount Defendant can afford to pay. The Chapter 13 confirmed monthly amount for all creditors was \$265.00 per month. This is what Defendant can pay.

The amount per month involves approximately 18 different creditors (Defendant’s Exhibit 1). This amounts to approximately \$15.00 per creditor per month. The Department’s claim, however, is far more significant than most of the others. It represents approximately 33% of the total claims. Accordingly, restitution shall be ordered in the amount of \$88.00 per month.

ORDER

AND NOW, this ____ day of November 2016, following a hearing and for the reasons set forth in this Opinion, the Court **GRANTS** Defendant’s Motion to Amend Restitution. Restitution is ordered in the amount of \$56,331.25 to be paid in the amount of no less than \$88.00 per month. The total restitution amount shall be reduced by any monies paid through the Chapter 13 reorganization.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: District Attorney
Robert Cronin, Esquire
Cost Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work File