

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH

vs.

**CHICANE K. BARKHOLZ,
Defendant**

:

: No. CR-1917-2014

:

:

: Motion to Modify Restitution

OPINION AND ORDER

On January 8, 2015, Defendant was sentenced to, among other things, three (3) years of intermediate punishment for Count 2, theft by unlawful taking, a felony of the third degree. Defendant had previously been hired by Triple Crown Remodeling, Inc. to paint the home of Lorraine and Ken Flood. The Floods had hired Triple Crown to perform certain construction services at their home. While allegedly painting the home, however, Defendant took numerous items of jewelry and cash from the Floods. Accordingly, Defendant's Sentencing Order included as a condition of supervision that Defendant pay restitution in the amount of \$19,255.00 to the Floods at the rate of \$40.00 per month.

On February 10, 2016, Defendant filed a motion to amend restitution requesting that the Court adopt the terms of a civil settlement agreement (hereinafter "Agreement") reached between the parties as a modified restitution order. The hearing was held on February 22, 2016. Following the hearing at which the Floods were not present, the Court granted the Defendant's motion.

On March 15, 2016, the Commonwealth filed a motion to reconsider in which it asserted that the Floods did not agree with the February 22, 2016 order. The Court's February 22, 2016 Order specified that the Commonwealth would be given an opportunity to request reconsideration after discussions with the Floods. On April 27, 2016, the court held a hearing on the Commonwealth's motion.

The Floods were present and testified. They understood that when they signed the Agreement with Defendant and Triple Crown on October 6, 2015, that they would cap their restitution claim at \$9,000.00. Defendant and Triple Crown would pay the Floods this amount in monthly installments of \$511.96 until the \$9,000.00 was paid in full. The Floods would release Defendant and Triple Crown from all civil actions related to their losses. Finally, any claim for restitution as set forth in the sentencing order would be assigned to Triple Crown to collect directly from Defendant.

Since the date of the Agreement, however, the Floods have only been paid \$1,000.00. In fact, one additional check for \$500.00 was sent to them but returned for insufficient funds. Through April of 2016, pursuant to the Agreement, Defendant should have paid the Floods \$3,583.72. Clearly, Defendant and Triple Crown are in breach of the Agreement.

Testimony was also taken from Defendant. Defendant conceded that he signed the Agreement and that he understood it in the same manner as the Floods. His required monthly payments pursuant to the Agreement were not paid because Triple Crown was not deducting the proper amounts from his check or he wasn't working.

Unfortunately, defense counsel argued inconsistent positions on behalf of Defendant. In his motion to modify, Defendant requested that the Agreement be made part of the restitution order. The Court agreed to do so in its February 22, 2016 Order. During the reconsideration hearing, however, defense counsel argued that the Agreement could be enforced through civil remedies and not contempt powers. Further, defense counsel argued that the restitution figure against Defendant must be limited to \$9,000.00 even though Defendant agreed that he owed all of it to be proportionally split with \$9,000.00 going to the Floods and

the remaining amount being owed to Triple Crown through the assignment provisions of the Agreement.

Of significance as well was the fact that some of the jewelry was located and was ordered by the Court to be immediately returned to Mrs. Flood. The restitution figure was accordingly decreased to \$12,844.20.

Contrary to what Defendant argues, when restitution is imposed as a condition of supervision, the Court is accorded the opportunity and latitude to fashion it so it is designed to rehabilitate the defendant and provide some measure of redress to the victim.

Commonwealth v. Popow, 844 A.2d 13, 19 (Pa. Super. 2004). Yet, while the nexus between the defendant's criminal conduct and the victim's loss is relaxed, there must be proof of damages suffered. *Commonwealth v. Hall*, 994 A.2d 1141, 1145 n.3 (Pa. Super. 2010) (en banc); *Commonwealth v. Harriott*, 919 A.2d 234, 238 (Pa. Super. 2007).

The true purpose in ordering restitution 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." *Commonwealth v. Kerr*, 444 A.2d 758, 760 (Pa. Super. 1982)(citations omitted).

Considering all of the circumstances, the Court will further modify the restitution Order previously entered in this matter to reflect the intention of the parties, to rehabilitate Defendant by impressing upon him the loss he has caused, to repair the loss to the Floods and to compel Defendant to be responsible for the losses he caused via the power of a restitution order and not simply the Agreement.

ORDER

AND NOW, this 17th day of May 2016, the Court **GRANTS** in part the Commonwealth's motion to modify restitution. The restitution figure owed by Defendant is \$12,844.20.

\$9,000.00 of this amount is owed to Kenneth and Lorraine Flood. It must be paid in the amount of no less than \$511.96 per month to the Cost Clerk of Lycoming County. All of this amount shall be allocated fully to restitution until the \$9,000.00 is paid in full. The first payment is due no later than the last day of May 2016 and each subsequent payment is due no later than the last day of each month thereafter. If payments are not timely made, Defendant may be held in contempt. The Court notes that \$1,000.00 has previously been paid against the \$9,000.00.

The remaining \$3,844.20 shall be paid directly to Triple Crown Remodeling, Inc. Triple Crown may waive its right to collect this amount by submitting to the Adult Probation Office a written waiver.

BY THE COURT,

Marc F. Lovecchio, Judge

cc: Martin Wade, Esquire (ADA)
Josh Bower, Esquire (APD)
Cost Clerk
Gary Weber, Esquire (Lycoming Reporter)
Work File