STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1108

State of Minnesota,
Appellant,

vs.

Dejonte Antwon Davis,
Respondent.

Filed January 16, 2018
Reversed and remanded
Jesson, Judge

Hennepin County District Court
File No. 27-CR-15-6646

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Jonathan P. Schmidt, Assistant County Attorney, Minneapolis, Minnesota (for appellant)

Cathryn Middlebrook, Chief Appellate Public Defender, Erik I. Withall, Assistant Public Defender, St. Paul, Minnesota (for respondent)

Considered and decided by Connolly, Presiding Judge; Jesson, Judge; and Florey, Judge.

S Y L L A B U S

A district court cannot require a victim to forgo reasonable restitution for out-of-pocket losses incurred as a result of a crime only because the defendant is in prison and does not have the ability to pay.

O P I N I O N

JESSON, Judge

In a second-degree-murder case, the district court denied all restitution for the victim, the decedent's spouse, finding that respondent Dejonte Antwon Davis would be unable to pay the $7,710.11 for the funeral expenses and the spouse's lost wages and still afford necessities while incarcerated. Because the district court's denial of restitution failed to provide for the victim's right to restitution, we reverse and remand.

FACTS

Respondent Davis was convicted of second-degree murder following a jury trial. He was sentenced to 366 months in prison. At the sentencing hearing, the district court kept the issue of restitution open for 60 days. The court then issued a restitution order requiring Davis to pay $7,710.11 in restitution to the decedent's spouse. The amount of restitution was based on the decedent's funeral and cremation costs and the victim's lost wages, all payable to the Crime Victims Reparations Board.[1] Because the restitution amount exceeded $2,500, Davis was provided the duration of his sentence to pay the full amount.

Davis objected to the restitution order and demanded a hearing. He submitted an affidavit, claiming the expenses were too high and that he will not have the resources to

[1] At the time of the restitution hearing, the Crime Victims Reparations Board had already reimbursed the victim for the listed expenses. This board is empowered to seek restitution on behalf of victims. *Evans v. State*, 880 N.W.2d 357, 360 (Minn. 2016). When it does so, it "steps into the shoes of the victim." *Id.* at 361.

pay restitution while in the custody of the Department of Corrections until approximately 2036.

At the restitution hearing, Davis reiterated his assertion that the claimed restitution expenses were too high, but focused his testimony on his inability to pay. In answering questions from the court, Davis explained that he did not have financial resources going into prison. While working in prison, Davis makes $0.25 per hour. Davis informed the court that the most he could make would be $1.00 an hour, but no matter what he makes, he "only see[s] half of" those prison wages. The state argued the expenses requested were reasonable restitution and presented documentation for the expenses claimed.

After the hearing, the district court granted Davis's challenge and revoked its previous restitution order in full. The court found that the expenses sought were all appropriate for restitution, the costs were reasonable, and the victim was deserving. But the court also found Davis's argument about his inability to pay persuasive. The court stated, "it would appear that Mr. Davis's potential earning capacity in prison will not enable him to make payments against the restitution while also affording other necessities in prison." The restitution decision, the district court explained, was "to restrict the garnishing of Mr. Davis's prison wages so that he can purchase the basic essentials of life."

The state appeals.

ISSUE

Did the district court abuse its discretion by failing to provide any restitution to a victim with demonstrated economic loss?

ANALYSIS

The state contends that the denial of all restitution based upon a defendant's inability to pay—while working in prison—violates a victim's right to restitution. This question requires us to address the scope of a victim's right to restitution, which is a matter of statutory interpretation. We review matters of statutory interpretation de novo. *State v. Williams*, 842 N.W.2d 308, 311 (Minn. 2014). To undertake this analysis, we first review the background and history of restitution in Minnesota. We then turn to the issue at hand: what does it mean that a "victim of a crime has the right to receive restitution?" Minn. Stat. § 611A.04, subd. 1(a) (2016). Finally, we apply the victim's right to receive restitution to the facts before us, reviewing the district court order for an abuse of discretion. *See State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015) ("A district court has broad discretion to award restitution, and the district court's order will not be reversed absent an abuse of that discretion.").[2]

Restitution History and Background

Restitution is an age-old concept, stretching back to ancient societies where offenders were required to reimburse victims or their families for losses sustained from an

[2] In addition to its right-to-restitution argument, the state argues that the district court's decision that Davis would not be able to afford "the basic essentials of life" while in prison is not supported by a sufficient factual basis. On appeal—but not before the district court—both parties request that we take judicial notice of documents to bolster their arguments on this point. The state requests judicial notice of Minnesota Department of Corrections policies, which detail what is available to indigent inmates, free of charge, and how restitution is deducted from prison wages. Davis seeks judicial notice of a Minnesota government report on prison visitation and recidivism, a news article on prison phone-call costs and the Jpay website (relating to inmate email services). Because we reverse on the

offense. *Victim Restitution in the Criminal Process: A Procedural Analysis*, 97 Harv. L. Rev. 931, 933 (1984). Such reimbursement provided the means by which an offender could "buy back the peace he had broken." *Id*. But a focus on the victim in such situations did not remain constant. As states began to formalize legal systems, the emphasis of criminal law shifted from the victim to the government, and its consequences were replaced by imprisonment and payment of fines. Ryan Anderson, *Criminal Law: The System Is Rigged: Criminal Restitution Is Blind to the Victim's Fault -- State v. Riggs*, 43 Mitchell Hamline L. Rev. 140, 146 (2017). Restitution to victims became solely a civil remedy. *Id*.

But in the United States, from the 1960s to the 1980s, a more victim-focused public policy emerged. *Id*. at 146-47. During these decades, states began to create programs to assist and compensate crime victims. *Id*. at 147. By 1995, 29 states had enacted restitution statutes. *Id*. at 148. Today, all states have restitution statutes. *Id*.

The Minnesota legislature established its first statutory provision for restitution in 1983. 1983 Minn. Laws, ch. 262, art 1, § 4, at 1125, 1127 (codified at Minn. Stat. § 611A.04 (1984)). That statute provided for a victim's "right to request that restitution be considered as part of the disposition of a criminal charge." Minn. Stat § 611A.04, subd. 1 (1984). It required the court to grant or deny the restitution and then "state on the record its reasons for its decision." *Id*. The statute identified no factors for the district court to

---

ground that the district court did not accord appropriate weight to the victim's right to restitution, we do not reach the issue of whether judicial notice is appropriate here.

consider when determining whether restitution was appropriate or how much restitution to order in any specific case. *Id.*[3]

In 1985, the restitution statute was expanded to include a single factor for courts to consider when determining restitution—"the amount of the economic loss sustained by the victim as a result of the offense." 1985 Minn. Laws ch. 110, § 2 at 305-06 (codified at Minn. Stat. § 611A.045, subd. 1 (1986)). Four years later, the legislature added a second factor—"the income, resources, and obligations of the defendant." 1989 Minn. Laws ch. 21, § 7, at 38, 42 (codified at Minn. Stat. § 611A.045, subd. 1 (1990)). These two factors remain today. *See* Minn. Stat. § 611A.045, subd. 1. While the statute does not prescribe how to balance these two factors, the factors are exclusive—a court cannot consider anything else. *State v. Riggs*, 865 N.W.2d 679, 685 (Minn. 2015).

In 1992, the legislature took the victim's right to restitution a significant step further. Instead of the right to *request* that a court consider restitution, the amended statute said that a "victim of a crime has the right to *receive* restitution as part of the disposition of a criminal charge . . . if the offender is convicted." 1992 Minn. Laws ch. 571, art. 5, § 6, at 2021, 2024 (codified as Minn. Stat. § 611A.04, subd. 1 (1992) (emphasis added)).[4] It is this right to receive restitution that is central to the case before us.

---

[3] In *State v. Fader*, the Minnesota Supreme Court applied that statute and interpreted the word "restitution" to mean "restoring or compensating the victim for his loss." 358 N.W.2d 42, 48 (1984).

[4] While Minnesota Statutes section 611A.04 (2016) continues to apply generally to criminal offenses, the legislature recently adopted specific restitution procedures for certain criminal offenses. These include statutory provisions that either bypass the procedure to determine restitution above, or create an alternative procedure for such calculation. *See, e.g.*, Minn. Stat. §§ 609.527, subd. 4(b) (2016) (requiring those convicted of identity theft

Statutory Interpretation of the Right to Restitution

Having traced the history of Minnesota's restitution statute, we turn to the pivotal question of statutory interpretation. The goal of statutory interpretation is to ascertain and effectuate the intent of the legislature. Minn. Stat. § 645.16 (2016). To do so, we begin with the statute's plain language. *State v. R.H.B.*, 821 N.W.2d 817, 820 (Minn. 2012). But we interpret a statute as a whole and consider each section in light of the surrounding sections to avoid conflicting interpretations. *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000).

The issue before us is whether a victim's right to restitution requires an award where, as here, there is an appropriate victim and valid expenses, and the district court held the amount of restitution was "reasonable." To address this question we must interpret the restitution statutory provisions, Minnesota Statutes sections 611A.04 and .045 (2016).

Under the first of these provisions, a crime victim "has the right to receive restitution" after an offender is convicted. Minn. Stat. § 611A.04. And the statutory provision, which sets out the procedure for this restitution award, directs that "in determining whether to order restitution and the amount of the restitution," the court

---

"to pay restitution of not less than $1,000 to each direct victim of the offense"), .505, subd. 2(b) (2016) (requiring those convicted of making a false report of police misconduct "to make full restitution of all reasonable expenses incurred in the investigation of the false allegation unless the court makes a specific written finding that restitution would be inappropriate under the circumstances," and capping restitution at $3,000). The Minnesota Supreme Court also recently held in *State v. Rey*, __ N.W.2d ___, ___, No. A16-0198, slip op. at 1-2 (Minn. Jan. 3, 2018) that the imposition of mandatory minimum restitution for identity theft did not violate the defendant's procedural or substantive due process rights, nor did that mandatory restitution constitute an unconstitutional fine.

consider the amount of loss to the victim and the offender's ability to pay. Minn. Stat. § 611A.045, subd. 1. The state focuses on section 611A.04, which prescribes the right to restitution, arguing that this "right" makes restitution mandatory.[5] At oral argument, Davis argued that this provision only confers standing to receive restitution and that we cannot view it in isolation, since other parts of the restitution statute confer on the district court the discretion *whether* to award it. *See* Minn. Stat. § 611A.045, subd. 1(a). And a "statute should be interpreted, whenever possible, to give effect to all of its provisions; 'no word, phrase, or sentence should be deemed superfluous, void, or insignificant.'" *Am. Family Ins. Grp.*, 616 N.W.2d at 277 (quoting *Amaral v. St. Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)). Plain meaning also assumes the ordinary usage of words that are not statutorily defined. *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *review denied* (Minn. May 28, 2002).

The language in the statute is plain. We conclude that when the legislature stated that a victim "has the right to receive restitution," it meant just that: restitution is a right. And if a statute's meaning is plain, on its face, the statute is unambiguous and judicial construction is neither necessary nor proper. *Id.* A right is "[s]omething that is due to a person by just claim, legal guarantee, or moral principle." *Black's Law Dictionary* 1517 (10th ed. 2014). Here the item due is restitution.

[5] Minnesota Statutes section 611A.04, subdivision 1(c) (2016), further directs the court to "grant or deny restitution or partial restitution" and it requires the court to "state on the record its reasons for its decision on restitution if information relating to restitution has been presented."

This does not mean that district courts lose all discretion in the matter. As Davis points out, the statutory language providing courts the ability to determine *whether* to award restitution is also important. But from our reading of this statute, the term *whether* does not allow a court to deny all restitution when there is economic loss to a victim. Rather, it permits courts to deny restitution when no such economic loss is proven and to determine the amount of restitution. This reading of the *procedure* for awarding restitution, in light of that plain statutory *right* to restitution, is consistent with a reading of the statute as a whole, an important tool in statutory interpretation. *See Am. Family Ins. Grp.*, 616 N.W.2d at 277 (requiring that a statute be interpreted to give effect to all of its provisions).

But even if the right-to-restitution language were ambiguous, our reading also comports with both legislative history and legislative intent, as described by previous caselaw addressing restitution.

With regard to legislative history, the legislature explicitly changed the statutory language from merely a right to request restitution, to a right to receive restitution. 1992 Minn. Laws ch. 571, art. 5, § 6, at 2024 (codified at Minn. Stat. § 611A.04 (1992)). This change contradicts Davis's argument that the right to restitution merely provides standing. And this change to an explicit right came after the two factors, a victim's need and an offender's ability to pay, were established, as well as the adoption of Minnesota Statutes section 609.10, subdivision 1(a)(5) (2016), establishing a court may impose restitution upon a felony conviction. This right to restitution is not a right of standing, but a right to receive.

Caselaw further demonstrates that this interpretation fulfills the purposes of the restitution statute. Since the statute's change from a "right to request" to a "right to receive," courts have described this right as a victim's *entitlement*. *State v. Lindsey*, 632 N.W.2d 652, 664 (Minn. 2001); *State v. Miller*, 842 N.W.2d 474, 477 (Minn. App. 2014), *review denied* (Minn. Apr. 15, 2014). And when describing the goals of restitution, caselaw reminds us that they include both victim compensation and offender rehabilitation, which is one reason that an inability to pay restitution cannot extinguish a victim's right to compensation. *See Maidi*, 537 N.W.2d at 286 (stating that legislative history of Minnesota Statutes section 611A.045 indicates the restitution statute was intended primarily to compensate victims); *Fader*, 358 N.W.2d at 48 (indicating the primary purpose of restitution is to compensate the victim). Indeed, because the restitution right is so strong, driven by these two goals, a district court can order restitution, even when the victim does not request it. *Miller*, 842 N.W.2d at 479.[6]

As we explained in *State v. Miller*, the restitution proceeding is unique. *Id*. The victim, typically unrepresented, has "rights and interests aligned with but independent of the state's interests." *Id*. And it is the "court's duty to vindicate a victim's statutory right to restitution." *Id*. Part of that duty, as mandated by the clear meaning of the statute, and in light of the legislative history and overall purpose of restitution, is to award some amount of restitution when there is economic loss to a victim.

[6] We further note that Minnesota district courts have generally used their discretion in ordering restitution to expand, and not to reduce, restitution awards. *See, e.g.*, *State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999); *Maidi*, 537 N.W.2d at 285.

Applying the Victim's Right to Restitution in this Case

Looking first at the statutory requirements for who is an appropriate "victim" to receive restitution, and second at the type of expenses that can be reimbursed, the decedent's spouse, funeral expenses, and lost wages clearly qualify. Minnesota Statutes section 611A.01(b) (2016) defines a victim as "a natural person who incurs loss or harm as a result of a crime." The term includes family members of a deceased person. *Id.* The decedent's spouse incurred loss related to decedent's death at the hands of Davis, in the form of funeral expenses and lost wages. These expenses are appropriate for reimbursement since restitution can cover "any out-of-pocket losses resulting from the crime, including . . . funeral expenses" and caselaw demonstrates that lost wages are also appropriate. Minn. Stat. § 611A.04, subd. 1; *State v. Palubicki*, 727 N.W.2d 662, 667 (Minn. 2007) (holding that a restitution order that included reimbursement to the murder victim's adult children for lost wages was appropriate).

The district court here abused its discretion by failing to consider the victim's appropriately asserted amount of economic loss when revoking its entire restitution order. We conclude that, on this record, denial of all restitution is contrary to a victim's right to restitution as set out in Minnesota Statutes section 611A.04. *See State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002) ("A court abuses its discretion when it acts . . . in contravention of the law."), *review denied* (Minn. Aug. 20, 2002). We reach this conclusion for two reasons. First, the court applied only one of the two required factors—the offender's ability to pay—in its ultimate order. Second, its findings regarding the offender's ability to pay were based on assumptions unsupported by the record and cannot extinguish all restitution for a victim who sustained economic loss.

A court must consider two factors in determining restitution—a victim's economic loss and an offender's ability to pay. Minn. Stat. § 611A.045, subds. 1(a)(1), 1(a)(2). Here, the court found there was economic loss and the type of expenses and restitution amount were reasonable, yet it revoked the entire restitution order, providing no funds to compensate the victim. In doing so, the district court failed to consider the first and primary factor: a victim's economic loss.

In addition, the court's findings on the second factor are unsupported on this record. The district court's findings on Davis's ability to pay restitution were based on assumptions about how funds are deducted from prison wages, what kind of necessities are provided to inmates, and what inmates must pay for. While a district court generally is not required to issue specific findings on ability to pay, *Miller*, 842 N.W.2d at 479, some basis in the record is necessary. The record here supports the facts that Davis makes only $0.25 per hour working while incarcerated, that he could only make up to $1.00 an hour, and that he went into prison with no financial resources. But there were no facts in the record to support the district court's conclusion that he could not afford to pay *any* restitution and still pay for "necessities" while incarcerated. Nothing was presented at the restitution hearing to demonstrate how restitution would be deducted from his wages. Nor was there any evidence of what necessities would be provided to Davis in prison free of charge or what exact additional necessities he would need. Additionally, no presentence investigation detailed Davis's financial situation. *See State v. Alexander*, 855 N.W.2d 340, 344-45

(Minn. App. 2014) (concluding that the district court's consideration of a presentence investigation that addressed the defendant's financial situation was adequate to demonstrate the court considered the defendant's ability to pay restitution). This is in stark contrast to the victim's economic loss, which was fully substantiated with receipts for funeral expenses and documentation for missed work. The court's assumptions as to Davis's inability to pay do not support the court's decision to deny all restitution to the victim.

Davis contends that the district court appropriately revoked its restitution order because Davis is unable to pay due to his lack of financial resources going into prison and his low earning potential while incarcerated. But caselaw establishes that courts can order restitution even when offenders are unable to pay. *See State v. Lindsey*, 632 N.W.2d 652, 657, 663-64 (Minn. 2001) (affirming an order for more than $30,000 in restitution when the defendant was indigent and faced consecutive life sentences).

Davis further argues that the sentencing guidelines never recommend restitution for lengthy prison sentences. *See* Minn. Sent. Guidelines 3.A.2(3) (2016) (the commission "urges courts to make expanded use of restitution . . . as [a] condition[] of a stayed sentence"). But both the Minnesota legislature and courts have permitted deductions from prison wages to pay restitution, again suggesting that the fact an offender is or will be incarcerated for a long period of time is not a sufficient basis to revoke all restitution. Minnesota Statutes section 243.23, subdivision 3(5) (2016), allows for deductions from prison compensation for "payment of court-ordered restitution." And in *Lindsey*, the Minnesota Supreme Court affirmed a district court's restitution order, to be paid from the defendant's prison wages, even though the defendant faced consecutive life sentences. 632 N.W.2d at 657, 663-64. Both statutory language and caselaw provide for deductions from prison wages, even though those wages may be minimal. Davis's incarceration, in and of itself, is an insufficient basis to deny restitution to the victim.

Our decision does not leave district courts without tools to address the concern of an incarcerated offender's ability to pay. A court may order appropriate monthly payment installment schedules, as well as longer time frames to complete payments. *See Maidi*, 537 N.W.2d at 285-86 (holding restitution in $200 monthly payments was reasonable for the defendant earning $6.50 per hour); *Cf. Miller*, 842 N.W.2d at 479-80 (holding restitution was unreasonable when required in limited timeframe). These measures may be implemented even when their application would make it mathematically impossible to pay the restitution in full. *See Maidi*, 537 N.W.2d at 285 (affirming restitution when the required monthly installments could not mathematically pay off the full $147,251.27 order). We further note that as an offender's financial situation may change, courts can adjust restitution orders at a later time to address those circumstances. *State v. Jola*, 409 N.W.2d 17, 20 (Minn. App. 1987). But while these tools provide discretion to district courts in the award of restitution, that discretion does not encompass a denial of all restitution in a case such as this one.

In summary, while an offender's ability to pay is relevant and appropriate for a court's consideration when ordering restitution, an offender's inability to pay cannot extinguish a victim's right to restitution when that victim has experienced economic loss from that offender's crime.

D E C I S I O N

The decedent's surviving spouse sustained loss that is appropriate for reimbursement under the restitution statute. As a result, she has a right to restitution. The district court should have considered this right, in addition to Davis's inability to pay, when ordering restitution in this case. We conclude that the district court's decision to deny all restitution was an abuse of discretion and we remand, with directions to reconsider the matter in light of the victim's right to restitution.

Reversed and remanded.