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**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-1764**

State of Minnesota,
Appellant,

vs.

Kha Xiong Jakel,
Respondent.

**Filed April 30, 2018
Reversed and remanded
Reyes, Judge**

Scott County District Court
File No. 70-CR-16-3977

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

Ronald Hocesvar, Scott County Attorney, Todd P. Zettler, Assistant County Attorney,
Shakopee, Minnesota (for appellant)

Richard L. Swanson, Chaska, Minnesota (for respondent)

Considered and decided by Reyes, Presiding Judge; Schellhas, Judge; and Jesson,
Judge.

UNPUBLISHED OPINION

REYES, Judge

In this sentencing appeal, appellant State of Minnesota argues that the district court
abused its discretion by refusing to order restitution, one of the agreed-upon terms of

respondent's plea agreement, because the victim had already recovered in a civil judgment against respondent. We reverse and remand.

FACTS

Respondent Kha Xiong Jakel stole \$91,072.54 from her employer over a nine-month period from October 2014 to June 2015. The employer sued and recovered in a civil lawsuit against respondent, and respondent has made payments toward the civil judgment since 2015.

In February 2016, the state charged respondent with two counts of felony theft by swindle and offered a plea agreement that included the state amending count one to simple theft and dismissing the other charge. In exchange, respondent agreed to pay restitution of the original amount in the civil suit, among other terms. Respondent completed a plea petition incorporating the terms of this agreement and pleaded guilty to the amended charge on June 27, 2016.

During sentencing, the district court declined to order restitution pursuant to the plea agreement over the objections of the state and the victim. The district court accepted the other terms of the plea agreement. The state appeals.

DECISION

The state first argues that the district court abused its discretion by refusing to order restitution because the victim had already obtained a civil judgment against respondent. We agree.

“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.” *State v. Anderson*, 871 N.W.2d 910, 913 (Minn. 2015).

A victim has a statutory right to restitution from an offender upon conviction. Minn. Stat. § 611A.04, subd. 1(a) (2016). In addition, “An actual or prospective civil action involving the alleged crime shall not be used by the court as a basis to deny a victim’s right to obtain court-ordered restitution under this section.” *Id.* The statutory word “shall” is mandatory. *State v. Humes*, 581 N.W.2d 317, 319 (Minn. 1998); see Minn. Stat. § 645.44, subd. 16 (2016) (“‘shall’ is mandatory.”) When statutory language is clear and unambiguous, we give effect to the plain meaning of that language. *State v. Al-Naseer*, 734 N.W.2d 679, 683 (Minn. 2007). In *State v. Pflepsen*, 590 N.W.2d 759 (Minn. 1999), the supreme court emphasized the importance of adhering to section 611A.04, subdivision 1(a), noting that the district court’s decision not to impose restitution in view of a pending civil lawsuit was “inconsistent with the law and policy governing restitution.” *Id.* at 768.

Here, the record shows that the district court declined to award restitution because of the civil judgment against respondent and therefore abused its discretion. The district court characterized the civil judgment amount as “highway robbery” and noted that it would not be the civil court’s collection agency for such an “astronomical” amount. The district court made it clear that the civil judgment was the paramount reason for declining to impose restitution by stating, “If we didn’t have that civil part out there, I would be inclined to do what [the state is] asking.”

The state also argues that the district court abused its discretion by declining to enforce the restitution term, which was a material part of a negotiated plea agreement. This argument has merit.

Minn. R. Crim. P. 15.04, subd. 3(1), requires the district court to “reject or accept the plea of guilty *on the terms of the plea agreement.*” (Emphasis added). Because a plea agreement is considered analogous to a contract between the state and a defendant, alteration of one term may alter the nature of the entire agreement. *State v. Mередyk*, 754 N.W.2d 596, 603 (Minn. App. 2008) (quotation omitted). Accordingly, this severely limits the district court’s otherwise broad discretion to modify restitution after the district court accepts a plea agreement that expressly calls for a specific, bargained-for restitution amount. *Id.*

Restitution of the original amount from the civil suit’s judgment was a term of the plea agreement, which even respondent twice highlighted during the sentencing hearing. By refusing to enforce the agreed-upon restitution amount, the district court failed to accept the guilty plea “on the terms of the plea agreement.” Minn. R. Crim. P. 15.04, subd. 3(1).

This case is analogous to *Mередyk*. There, the district court modified the defendant’s restitution obligation agreed upon in the plea agreement by allowing her to pay less than the full amount. *Mередyk*, 754 N.W.2d at 599. This court reversed, finding that “a district court generally should not alter the terms of a restitution obligation negotiated as part of a plea agreement if it materially changes the expectations of the parties to the bargain.” *Id.* at 604. This court also focused on the state’s objection to the modification of the restitution amount because “[b]y ordering the modification, the district court in effect

forced the state to incorporate terms into the plea agreement to which it never consented and with which it does not agree.” *Id.*

In this case, the state required that restitution be one of the key terms of the plea agreement. It was “not merely an ancillary aspect of the plea agreement[,]” but a material term of the agreement. *See id.* at 603-04. And, as in *Meredyk*, the state objected to the district court’s denial of restitution to the victim. Therefore, the district court abused its discretion when it refused to enforce the restitution term of the plea agreement agreed upon by the parties.

Reversed and remanded.