

*This opinion will be unpublished and
may not be cited except as provided by
Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0739**

State of Minnesota,
Respondent,

vs.

Christopher John Clark,
Appellant.

**Filed February 25, 2019
Reversed and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-17-26481

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Johnson, Presiding Judge; Ross, Judge; and Smith, Tracy M., Judge.

UNPUBLISHED OPINION

ROSS, Judge

Christopher Clark pleaded guilty to assault, and the district court ordered him to complete a one-year residential treatment program and to pay restitution within one year.

The district court's order prevents us from reviewing whether it acted within its discretion to order restitution because the order leaves unclear how Clark, who is unemployed and homeless, can pay restitution within a deadline that coincides with the end of his residential treatment. We therefore reverse and remand for additional findings.

FACTS

Brooklyn Center police responded to a disturbance call and found a man and woman arguing in a motel room. The woman had a lump on her head and blood in her nose. The state charged the man, Christopher Clark, with third-degree assault. Clark pleaded guilty.

The presentence report informed the district court that Clark had arranged for placement in a one-year residential treatment program and that the victim incurred about \$16,000 in medical costs. The court ordered Clark to probation for two years, ordered him to complete the residential treatment program at Minnesota Adult and Teen Challenge, and ordered him to pay \$1,063.25 in restitution, affording him "up to a full year to pay."

D E C I S I O N

Clark says the district court failed to consider his circumstances when ordering restitution. The district court has broad discretion to order restitution. *State v. Anderson*, 871 N.W.2d 910, 913 (Minn. 2015). In doing so, it must consider "the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a)(2) (2018).

The state contends that Clark is able to pay despite his circumstances. It is true that the district court need not consider ability to pay in any specific manner, and it is not required to issue specific findings about a defendant's ability to pay. *State v. Alexander*, 855 N.W.2d 340, 344 (Minn. App. 2014). But the record does not expressly or implicitly

inform us that the district court considered its one-year deadline in relation to Clark's one-year residential program. The record indicates that, at the time of the order, Clark was homeless and unemployed and lacked the resources to meet the obligation. One must infer that the district court assumed that Clark could become employed and meet the payment deadline based on Clark's education. But nothing we see in the district court's findings or the record indicates that employment is allowable during Clark's residential treatment.

This case is unlike others upholding restitution orders. In *Alexander*, for example, we upheld an order for restitution when the defendant testified that he was interviewing for jobs. 855 N.W.2d at 344. And in *State v. Lindsey*, the supreme court affirmed the district court's decision to order restitution because, although Lindsey was going to prison, the district court had considered his ability to pay restitution with prison earnings. 632 N.W.2d 652, 664 (Minn. 2001). By contrast, here the record informs us that Clark had no resources or job prospects, and he was suffering from substance addiction at the time of his hearing. And unlike prison where inmates can be expected to earn money, the record does not indicate that residential treatment allows a similar opportunity. This case is akin to *State v. Miller*, where we reversed a restitution order in part because "[t]he record [did] not provide any apparent basis for us to infer [Miller's] ability to pay in the limited timeframe." 842 N.W.2d 474, 479 (Minn. App. 2014). Our record requires the same result.

We reverse and remand for the district court to adjust the payment deadline to remove any conflict between its restitution order and its treatment order or make findings illuminating its consideration of Clark's financial circumstances related to restitution.

Reversed and remanded.