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Minn. Stat. § 480A.08, subd. 3 (2018).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0815**

State of Minnesota,
Respondent,

vs.

Berry Alan Willis,
Appellant.

**Filed January 21, 2020
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-14-6683

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

Michael O. Freeman, Hennepin County Attorney, John Patrick Monnens, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Andrea Barts, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Connolly, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court erred by ordering him to pay \$5,732 in restitution without considering his ability to pay. We affirm.

FACTS

The underlying facts giving rise to appellant Berry Alan Willis's conviction and restitution order, which relate to the filing of a forged quitclaim deed for a property he lost in foreclosure, are set forth in prior appellate decisions. See *State v. Willis*, 883 N.W.2d 838 (Minn. App. 2016), *rev'd*, 898 N.W.2d 642 (Minn. 2017).

Relevant to this matter, on February 17, 2015, the district court imposed a year-and-a-day prison sentence, stayed for three years. In November 2015, the district court ordered Willis to pay \$10,742 in restitution,¹ comprised of \$2,000 in legal fees, \$6,000 in loan interest, \$1,392 in property taxes, \$600 in utility costs, and \$900 in insurance payments. In light of Willis's strained financial circumstances, the district court ordered that he could "make installment payments in any amount so long as he makes regular and substantial payments and so long as restitution is paid in full through the remaining portions of his three years of probation."

Willis appealed. This court was not persuaded by his argument that the rules of evidence should apply to a restitution hearing and affirmed the legal-fee portion of the order, even though it was substantiated by hearsay testimony. *Id.* at 842. However, this court determined that the district court abused its discretion by ordering Willis to pay restitution for damages the victim suffered before the forgery, and remanded to the district court to reduce restitution accordingly. *Id.* The supreme court reversed this court's

¹ The district court ordered restitution in the amount of \$10,742 even though the subcategories identified by the district court total \$10,892.

decision as to the legal-fee portion of the order, holding that the rules of evidence apply to restitution hearings, and remanded to the district court. *Willis*, 898 N.W.2d at 648-49.

Willis's sentence was not stayed during the appellate process,² and Willis was discharged from probation on February 26, 2018. The district court judge who presided over Willis's case was not informed of the request to discharge him from probation, and was not the judge who signed the discharge order.

On remand, Willis moved to dismiss the restitution hearing, arguing that the district court lacked jurisdiction to order restitution because he had been discharged from probation. On February 27, 2019, following a hearing, the district court granted Willis's motion to dismiss the restitution hearing. But, the district court "clarif[ied]" the portions of the original restitution order, totaling \$5,732, that it determined remained unaffected by the appellate opinions, which could be docketed as a civil judgment.³ This appeal followed.

² Willis also filed a petition for postconviction relief, the denial of which this court affirmed, and the supreme court denied further review.

³ Because Willis does not argue on appeal that the district court erred either by granting his motion to dismiss or "clarifying" the remaining portions of the original restitution order that remained docketable as a civil judgment, the propriety of the district court's so-called "clarification" is not before us. We note, however, that "Minnesota courts have consistently recognized that statutory requirements limiting a court's jurisdiction are threshold requirements that must be complied with before a court can exercise jurisdiction." *State v. Rojas*, 569 N.W.2d 418, 420 (Minn. App. 1997); *see also* Minn. R. Civ. P. 12.08(c) ("Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.").

DECISION

Willis argues that, in ordering restitution, the district court erred by failing to consider his ability to pay. A district court's restitution award will not be reversed absent an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). "The district court's factual findings will not be disturbed unless they are clearly erroneous. But questions concerning the authority of the district court to order restitution are questions of law subject to de novo review." *Id.* (citations omitted).

When determining whether to order restitution, the district court is required to consider "the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045, subd. 1(a)(2) (2012). Willis asserts that the district court failed to comply with this statutory requirement in its February 2019 order, which he characterizes as the district court's "most recent restitution order." Willis, however, misstates the record. The district court did not order any restitution in its February 2019 order, and in fact granted Willis's motion to dismiss the restitution hearing due to a lack of jurisdiction. Because the district court did not order restitution in the February 2019 order, it did not fail to comply with section 611A.045, subdivision 1(a)(2).

The district court incorporated its November 2015 restitution order into its February 2019 order to dismiss, in which it appropriately considered Willis's ability to pay restitution. In the November 2015 order, the district court considered Willis's strained financial circumstances and allowed him to make monthly payments. Therefore, the district court did not err by failing to consider Willis's ability to pay.

Affirmed.