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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1135**

State of Minnesota,
Respondent,

vs.

Jeffery Robert Kampsula,
Appellant.

**Filed March 30, 2020
Affirmed in part, reversed in part, and remanded
Bryan, Judge**

Otter Tail County District Court
File No. 56-CR-15-2464

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

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Reyes, Presiding Judge; Bratvold, Judge; and Bryan,
Judge.

UNPUBLISHED OPINION

BRYAN, Judge

Appellant argues that the district court erred by increasing his fines after remand and by ordering restitution. First, we conclude that the district court erred by increasing the fine originally imposed. We reverse this part of the district court's decision. Second,

we affirm the district court's restitution decision because the district court did not clearly err in finding that the loss directly resulted from the conduct underlying the convictions for theft by swindle and aggravated forgery.

FACTS

Appellant Jeffery Kampsula and his girlfriend were renting a farmhouse in Otter Tail County when their landlord died in January 2015. Gary Wendorf, the landlord's brother, visited the farm to inventory the equipment belonging to the estate. Wendorf could not locate a Big Tex dump trailer that he expected to find. After an investigation, respondent State of Minnesota charged Kampsula with one count of theft, one count of theft by swindle, one count of aggravated forgery, and one count of receiving stolen property. The district court dismissed the charge of receiving stolen property and Kampsula proceeded to trial on the three remaining counts.

At trial, Gary Albertson testified that he purchased the dump trailer from Kampsula. Albertson explained that in March 2015, Kampsula came to Albertson's place of business, the Weetown Outpost, and offered to sell Albertson a dump trailer. Albertson was interested and asked to look at the trailer. A few days later, Kampsula took the dump trailer to Albertson. Albertson asked if Kampsula had a title for it. Kampsula represented that he did and gave Albertson an unsigned title. Albertson told Kampsula that he could not buy the trailer because the title was in someone else's name and did not include a signature conveying ownership to Kampsula. Kampsula left. He returned with the signed title, and Albertson purchased the dump trailer for \$2,000 in cash and a car worth \$2,895. In addition

to Albertson's testimony, the district court admitted documentary evidence of the transaction and the signed title.

The jury found Kampsula guilty on all three counts. The district court sentenced him to serve three concurrent, 19-month prison terms, pay \$35,100 in restitution, and pay three separate \$50 fines (one for each count of conviction). Kampsula contested the restitution amount, and the district court held a restitution hearing. At the hearing, Wendorf testified that the estate of his brother suffered an economic loss regarding the dump trailer. He estimated that the value of the trailer was \$6,000. After consideration of this testimony and based on the evidence at trial, the district court reduced the restitution amount to \$16,000, including \$4,000 for the dump trailer. In its restitution order, the district court found that restitution for the dump trailer was justified because the loss resulted from the conduct underlying Kampsula's convictions for theft by swindle and aggravated forgery:

For similar reasoning, restitution in the amount of \$4,000 is appropriate for the dump trailer. The jury's findings of guilty for both Theft by Swindle and Aggravated Forgery support a finding that Defendant was responsible for the theft and disposition of the trailer by forging the trailer's registration and selling the trailer to the Weetown Outpost. Mr. Wendorf testified during the criminal trial that the trailer was worth approximately \$4,000 or \$5,000 based on what the Weetown Outpost sold it for after it was stolen. He testified during the restitution hearing, however, that a comparable trailer was available on the MachineTrader.com website for \$6,000. He did not testify that he or anyone else actually purchased the trailer for \$6,000. Therefore, this amount does not represent a purchase price actually paid by the Wendorf estate in a completed transaction, and is not an appropriate measure of the Estate's loss. It is appropriate to award only \$4,000, the value of the trailer Defendant stole.

In the original warrant of commitment, the district court included the restitution amount as part of the disposition for the theft conviction and not as part of the disposition for either of the other two convictions. Kampsula appealed his convictions, and this court affirmed the theft-by-swindle and aggravated forgery convictions, but reversed the theft conviction and remanded the case for a new trial on that offense. *State v. Kampsula*, No. A17-0990, 2018 WL 6273078, *1 (Minn. App. Dec. 3, 2018), *review denied* (Minn. Feb. 27, 2019).

On remand, the state dismissed the theft charge, and the case was assigned to a different district court judge than the one who handled the original sentencing. The district court resentenced¹ Kampsula on the remaining two convictions. The district court stayed execution of two, concurrent, 17-month terms of imprisonment for both convictions and ordered Kampsula to pay a reduced total of \$4,000 restitution and a fine of \$1,000 relating to the theft-by-swindle offense. At the resentencing hearing, the district court again tied the restitution amount to both the theft-by-swindle conviction and the aggravated forgery conviction. In the amended warrant of commitment, the district court included the restitution amount as part of the disposition for the theft-by-swindle conviction and not as part of the disposition for the aggravated forgery conviction.

Kampsula challenges the imposition of the \$1,000 fine on remand and the restitution award of \$4,000.

¹ The district court held a resentencing hearing after remand because it had previously used the theft conviction as a basis to determine the criminal history score applicable to the convictions for theft by swindle and aggravated forgery.

DECISION

I. Imposition of Increased Fine

Kampsula argues that the district court erred by increasing the fine relating to his theft-by-swindle conviction from \$50 to \$1,000. We agree. After a criminal defendant's appeal and remand, the district court may not increase the fine that it originally imposed.

Whether a sentence conforms to the law or the requirements of a statute is a question of law that we review de novo. *See State v. Gilbert*, 634 N.W.2d 439, 441 (Minn. App. 2001), *review denied* (Minn. Dec. 11, 2001). In *State v. Holmes*, the Minnesota Supreme Court held that a defendant whose conviction has been reversed on appeal cannot receive a sentence “more onerous than the one he initially received” after retrial. 161 N.W.2d 650, 652 (Minn. 1968). In *State v. Prudhomme*, the Minnesota Supreme Court extended this rule to resentencing on remand after an appeal. 228 N.W.2d 243, 246 (Minn. 1975). This court previously applied the reasoning in *Holmes* and *Prudhomme* to the imposition of a fine in *State v. Sheppheard*. 407 N.W.2d 477, 478 (Minn. App. 1987). We held that the district court could not impose an additional fine of \$5,000 after the defendant moved to vacate his probationary sentence and to execute the original terms of imprisonment. *Id.* We reasoned that “[a] defendant should not be discouraged from exercising his legal rights by the threat of receiving increased punishment if he does so.” *Id.* (citing *Prudhomme*, 228 N.W.2d at 246, and *Holmes*, 161 N.W.2d at 653).²

² This court previously reached a similar conclusion in an unpublished case. *State v. Barnard*, No. A18-1084, 2019 WL 272910, at *1 (Minn. App. Jan. 22, 2019).

In this case, the district court initially imposed a \$50 fine for each of the three convictions. After the theft conviction was reversed, and the theft charge was dismissed, the district court increased the theft-by-swindle fine to \$1,000. The new \$1,000 fine is more onerous than the initial \$50 fine amount. Because it would discourage a convicted defendant from exercising his legal rights, the imposition of the new \$1,000 fine is contrary to *Holmes*, *Prudhomme*, and *Sheppheard*. We reverse the fine imposed at resentencing and remand the case for the district court to impose the \$50 fine.

II. Order of Restitution

Kampsula argues that the district court erred in finding that the loss resulted from the conduct underlying Kampsula's convictions for theft by swindle and aggravated forgery. We conclude that the district court did not make erroneous findings.

Victims of criminal acts have the right to restitution. Minn. Stat. § 611A.04, subd. 1(a) (2018). "The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." *State v. Palubicki*, 727 N.W.2d 662, 666 (Minn. 2007). For the purposes of awarding restitution, a "victim" is "a natural person who incurs loss or harm as a result of a crime, including a good faith effort to prevent a crime." Minn. Stat. § 611A.01(b) (2018). "The term 'victim' includes the family members, guardian, or custodian of a minor, incompetent, incapacitated, or deceased person." *Id.* "When the crime victim is deceased, the victim's surviving spouse or next of kin may receive restitution." *Palubicki*, 727 N.W.2d at 665.

"[A] district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant's crime." *State v. Boettcher*, 931

N.W.2d 376, 381 (Minn. 2019) (footnote omitted). A district court “has broad discretion to award restitution,” and “[t]he district court’s factual findings will not be disturbed unless they are clearly erroneous.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). We review de novo questions concerning statutory interpretation, *see, e.g., State v. Riggs*, 865 N.W.2d 679, 682 (Minn. 2015), and concerning the authority of the district court to order restitution, *see, e.g., Anderson*, 871 N.W.2d at 913.

In this case, Kampsula challenges the restitution order on factual grounds, arguing that the loss resulted from the conduct underlying the now-dismissed theft charge, not from the conduct underlying the convictions for theft by swindle or aggravated forgery.³ We review the district court’s factual findings for clear error.

In support of his argument, Kampsula correctly notes that the initial warrant of commitment included the total restitution amount as part of the disposition relating to the theft conviction and only the theft conviction (count one). We review the district court’s findings not just the warrant of commitment. The district court’s findings are clear both before and after remand. The district court found that the estate’s financial loss resulted directly from the conduct underlying the theft-by-swindle (count two) and the aggravated forgery (count three) convictions. In its original restitution order, the district court concluded that “[t]he jury’s findings of guilty for both Theft by Swindle and Aggravated

³ In addition, Kampsula argues that the Wendorf estate is not a victim of the theft-by-swindle or aggravated forgery offenses. Kampsula argues that only Albertson is a victim because Albertson was the person whom Kampsula deceived. We cannot agree because the statutory definition of “victim” includes any “natural person who incurs loss or harm as a result of a crime.” Minn. Stat. § 611A.01(b). We decline to hold that only swindled persons are victims of theft-by-swindle crimes.

Forgery support a finding that Defendant was responsible for the theft and disposition of the trailer by forging the trailer's registration and selling the trailer to the Weetown Outpost." On resentencing, the district court read this very passage into the record and again concluded that the conduct underlying the theft-by-swindle and the aggravated forgery convictions compelled the restitution order. The dismissal of the theft charge did not preclude restitution relating to the offenses of theft by swindle or aggravated forgery.

The record supports these findings. Albertson testified that he specifically required a signed title from the listed owner of the trailer before he would agree to any transaction. Kampsula at first could not present a title document signed to him when Albertson asked for it. He left Albertson's place of business and returned on a different day with the signed title. The title was admitted into evidence, and the jury found Kampsula guilty of theft by swindle and aggravated forgery. The evidence at trial established that Kampsula forged his deceased landlord's signature on the title, and then used that forged document to deceive Albertson and sell the dump trailer. Therefore, the district court did not clearly err when it found that this conduct directly resulted in a loss to the Wendorf estate of \$4,000. Because the record supports the district court's findings, we affirm the restitution order.

Affirmed in part, reversed in part, and remanded.