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

**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2050**

State of Minnesota,
Appellant,

vs.

Danielle Judith Taylor,
Respondent.

**Filed June 15, 2020
Reversed and remanded
Schellhas, Judge***

Ramsey County District Court
File No. 62-CR-18-2845

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

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney,
St. Paul, Minnesota (for appellant)

Danielle Judith Taylor, Apple Valley, Minnesota (pro se respondent)

Considered and decided by Reilly, Presiding Judge; Smith, Tracy M., Judge; and
Schellhas, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant challenges a sentencing order that amended a restitution award, arguing that the district court erred by denying restitution to an insurance company on the grounds that (1) as a matter of law, a restitution award to the insurance company would constitute “unjust enrichment” and (2) respondent would suffer undue hardship if ordered to pay restitution to the insurance company. Because we conclude that the district court’s denial of restitution was based on an erroneous view of the law and is not supported by the evidence, we reverse and remand.

FACTS

Respondent Danielle Judith Taylor admitted to aiding and abetting a scheme to make unauthorized personal purchases on a credit card issued to her employer, 180 Degrees, a nonprofit organization. Taylor pleaded guilty, and the district court convicted her of aiding and abetting theft by swindle. At sentencing, the district court ordered Taylor to pay restitution in an amount to be determined at a later date. Appellant State of Minnesota later asked the district court to order Taylor to pay \$19,987.20 in restitution to 180 Degrees and \$9,106.85 to Philadelphia Insurance Companies, as reimbursement for the amount that it paid 180 Degrees for insured losses caused by Taylor. Taylor objected to the amount of restitution sought and requested a hearing.

At the restitution hearing, Taylor argued that she had accepted a settlement offer made to her by 180 Degrees to compensate it for its losses, and that 180 Degrees was bound by that offer even though it ultimately withdrew it. Taylor also argued that some of the

losses claimed were not sufficiently proved. She did not argue that she was unable to pay the amount of restitution requested.

In an amended sentencing order, the district court found that Philadelphia Insurance paid 180 Degrees \$9,106.85 to cover the losses that Taylor caused, leaving 180 Degrees with total out-of-pocket loss caused by Taylor's crime of \$19,987.20. The court amended its sentencing order to require Taylor to pay restitution of \$19,987.20 to 180 Degrees but awarded no restitution to Philadelphia Insurance. The district court reasoned that Philadelphia Insurance was not entitled to restitution because its risk of loss was factored into the amount of its insurance premiums and, therefore, a restitution award to Philadelphia Insurance would unjustly enrich it, i.e., "double tap" in its favor. The court also denied restitution to Philadelphia Insurance "in consideration of [Taylor's] inability to make restitution and/or the hardship which payment of restitution would cause[.]"

This appeal follows.

D E C I S I O N

In determining whether to order restitution and the amount of restitution, the district court must consider "(1) the amount of economic loss sustained by the victim as a result of the offense; and (2) the income, resources, and obligations of the defendant." Minn. Stat. § 611A.045 (2018). "The 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. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019). "A court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record." *Riley v. State*, 792 N.W.2d 831, 833 (Minn. 2011). But "whether an item meets

the statutory requirements for restitution” is a question of law that is “fully reviewable by the appellate court.” *State v. Nelson*, 796 N.W.2d 343, 346-47 (Minn. App. 2011).

The district court denied restitution to Philadelphia Insurance because it concluded that a restitution award would unjustly enrich Philadelphia Insurance because it had charged 180 Degrees insurance premiums “that are determined in contemplation of the risk [it] assume[s] when [it] agrees[s] to provide protection to insured parties.” We addressed this proposition in *State v. Jola*, 409 N.W.2d 17, 19 (Minn. App. 1987), and rejected it as “[i]ngenious but specious.” Here, as in *Jola*, Philadelphia Insurance sustained an economic loss when it paid 180 Degrees for the loss that it sustained as a result of Taylor’s offense. We conclude that the court’s denial of restitution to Philadelphia Insurance, based on the legal theory that we rejected in *Jola*, was based on an “erroneous view of the law.” See *Riley*, 792 N.W.2d at 833.

The district court also denied restitution to Philadelphia Insurance based on its finding that Taylor would be unable to make the restitution payments or would suffer hardship if ordered to pay. But the presentence investigation report states that Taylor “reported that she has a consistent employment history,” and that she “does not yet know her net income for this year, but disclosed that her gross earnings are in the six figures.” Taylor did not argue to the district court that she was unable to pay restitution to Philadelphia Insurance, and the record contains no evidence to support the district court’s finding that Taylor would suffer any hardship. We therefore conclude that the court’s denial of restitution to Philadelphia Insurance on this basis was an abuse of discretion.

Because the district court denied restitution to Philadelphia Insurance on the basis of an erroneous view of the law and findings not supported by the record, we reverse and remand for the district court to modify its order in a manner consistent with this opinion.

Reversed and remanded.