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**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0015**

In the Matter of the Welfare of: K. D. M., Child.

**Filed August 24, 2020
Affirmed
Johnson, Judge**

Ramsey County District Court
File No. 62-JV-18-2188

Hennepin County District Court
File No. 27-JV-18-5459

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

John Choi, Ramsey County Attorney, Alexandra Meyer, Assistant County Attorney, St. Paul, Minnesota; and

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

Cathryn Middlebrook, Chief Appellate Public Defender, Leslie J. Rosenberg, Assistant Public Defender, St. Paul, Minnesota (for appellant K.D.M.)

Considered and decided by Bryan, Presiding Judge; Johnson, Judge; and Cochran, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

K.D.M. pleaded guilty to third-degree burglary. The juvenile court ordered him to pay \$6,000 in restitution. We conclude that the juvenile court did not lack authority to

order restitution on the ground that K.D.M. had been discharged from probation. We also conclude that the juvenile court did not err by finding that K.D.M. is able to pay the amount of restitution ordered. Therefore, we affirm.

FACTS

In December 2018, three boys drove a sport-utility vehicle into the front of a gun store in New Brighton and threw bricks at a window. Some of the boys entered the store. After an alarm was activated, police officers saw the vehicle leaving the area and began a high-speed chase. Officers eventually stopped the vehicle and arrested K.D.M., who then was 16 years old, and two other boys.

The next day, the state filed a juvenile-delinquency petition in the Ramsey County District Court, charging K.D.M. with four offenses, including third-degree burglary, in violation of Minn. Stat. § 609.582, subd. 3 (2018). K.D.M. agreed to plead guilty to third-degree burglary and to pay “reasonable restitution” for property damage in exchange for the state’s agreement to dismiss the remaining three charges and to not pursue a pending theft count in a different case. Two days later, the Ramsey County District Court found a factual basis for K.D.M.’s plea, dismissed the other charges, and transferred the case to the Hennepin County District Court for disposition.

In the Hennepin County District Court, K.D.M.’s burglary case was consolidated with other pending cases for which he was on probation. In January 2019, a juvenile court referee adjudicated K.D.M. delinquent of third-degree burglary, placed him on probation for one year, stayed placement in a residential treatment facility, ordered a restitution study,

and scheduled a review hearing for February 2019. Before the review hearing, the consolidated cases were reassigned to a different referee.

At the scheduled review hearing in February 2019, the state requested that the stay of placement be revoked. K.D.M. opposed the state's request and requested that any unpaid restitution be docketed and that K.D.M. be discharged from probation. Later that day, the referee filed an order stating that K.D.M. "shall be discharged from probation" and that the remaining amount of restitution would be docketed as a civil judgment. The caption of the order bears the case numbers of two pending cases but not the burglary case.

In April 2019, a probation officer completed the restitution study. The probation officer's report states that the gun store sustained damages to inventory of \$1,000 and that the damage to the building would require repairs costing \$14,000. A juvenile court judge filed an order in the burglary case requiring K.D.M. to pay restitution in the amount of \$15,000.

In May 2019, K.D.M.'s probation officer recommended that the juvenile court docket K.D.M.'s restitution obligation, discharge him from probation, and terminate the court's jurisdiction over the case. The juvenile court judge did not adopt the recommendation but, rather, scheduled a hearing to discuss continuing probation. Due to an apparent clerical error, the register of actions erroneously indicated that the juvenile court had discharged K.D.M. from probation in the burglary case. K.D.M.'s attorney later filed a written objection to restitution on the ground that the juvenile court did not have authority to order restitution in the burglary case because he had been discharged from probation in that case as well as the other cases.

In June 2019, the juvenile court judge conducted a hearing. The juvenile court began by reviewing the procedural history of the case. The court noted K.D.M.'s position that the order filed after the February 2019 review hearing encompassed the burglary case and terminated the court's jurisdiction in that case as well as the other cases. The court noted, however, that the February 2019 order did not bear the case number assigned to the burglary case. The court and counsel agreed that a hearing should be scheduled to address K.D.M.'s objection to the restitution order.

The juvenile court judge conducted a restitution hearing on three days in July and August of 2019. On the first day, K.D.M. appeared, and the state presented the testimony of three witnesses but did not complete its case. At the conclusion of the first day, the court continued the hearing to early August 2019 and addressed K.D.M. directly by saying, "You're ordered to return to Court on the date that we selected."

On the second day, K.D.M. did not appear, but his attorney asked the juvenile court to proceed in his absence. The court stated that K.D.M. had signed a hearing notice and knew that he was required to be present in court that day and, thus, waived his right to be present. The court noted that, in light of K.D.M.'s absence and failure to file an affidavit, there would be no evidence concerning his ability or inability to pay restitution. The state presented the testimony of two additional witnesses and rested its case. At the conclusion of the second day, K.D.M.'s attorney requested that the hearing be continued so that K.D.M. could testify. The court granted the request.

On the third day of the hearing, K.D.M. again did not appear. The prosecutor noted that K.D.M. had not introduced any evidence concerning his ability or inability to pay

restitution and further noted that the record included only evidence of a rehabilitative program that would allow him to earn money by performing work. The court requested post-hearing memoranda from the parties.

In December 2019, the juvenile court filed an amended restitution order. The court first determined that it had authority to order restitution because K.D.M. had not been discharged from probation. The court then considered the victims' losses and K.D.M.'s ability to pay restitution. The court found that the victims' losses should be limited to the amounts of their insurance deductibles. The court also stated that K.D.M. did not file an affidavit concerning his ability to pay restitution and did not testify. The court found that K.D.M. could earn \$60 per day on weekends while on probation. Accordingly, the court ordered K.D.M. to pay \$6,000 in restitution. K.D.M. appeals.

D E C I S I O N

I. Authority to Order Restitution

K.D.M. first argues that the juvenile court did not have jurisdiction or authority to order restitution on the ground that K.D.M. was discharged from probation in the burglary case in February 2019.

As a general rule, “the juvenile court has original and exclusive jurisdiction in proceedings concerning any child who is alleged to be delinquent . . . and in proceedings concerning any minor alleged to have been a delinquent . . . prior to having become 18 years of age.” Minn. Stat. § 260B.101, subd. 1 (2018). “Unless terminated by the court, . . . the jurisdiction of the court shall continue until the individual becomes 19 years of age

if the court determines it is in the best interest of the individual to do so.” Minn. Stat. § 260B.193, subd. 5(a) (2018).

If a juvenile court finds that a child is delinquent, “it shall enter an order making any of [twelve specified] dispositions of the case which are deemed necessary to the rehabilitation of the child.” Minn. Stat. § 260B.198, subd. 1(a) (2018). If a child’s offense “resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage.” *Id.*, subd. 1(a)(5). A juvenile court may order restitution after a dispositional hearing if the juvenile is on probation. *See In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009) (quoting Minn. Stat. § 611A.04, subd. 1(b) (2008)). This court applies a *de novo* standard of review to a juvenile court’s ruling concerning its authority to order restitution. *In re Welfare of I.N.A.*, 902 N.W.2d 635, 640 (Minn. App. 2017), *review denied* (Minn. Nov. 28, 2017).

In this case, the juvenile court considered K.D.M.’s objection to restitution on the ground that he had been discharged from probation in February 2019. The juvenile court did so both at the June 2019 hearing and in the December 2019 amended restitution order. During the June 2019 hearing, the juvenile court noted that the order following the February 2019 hearing was not filed in the burglary case but, rather, was filed only in two other cases, which had different case numbers. In the amended restitution order, the juvenile court acknowledged that, if K.D.M. was discharged from probation in February 2019, the juvenile court would not have authority to order restitution. *See H.A.D.*, 764 N.W.2d at 67. But the juvenile court reasoned that K.D.M. had *not* been discharged from probation in February 2019 because the order filed following the review hearing was

filed only in two other cases but not in the burglary case. The juvenile court declined to speculate as to whether the referee who presided over that hearing and filed the subsequent order intended to discharge K.D.M. from probation in all pending cases.

On appeal, K.D.M. renews the argument he made to the juvenile court. He points out that his probation officer testified at the July 2019 hearing that she understood that the referee presiding over the case in February 2019 intended to discharge K.D.M. from probation in all pending cases. He also describes various other ways in which the juvenile-court record is ambiguous as to whether the burglary case was at issue during the February 2019 hearing. But K.D.M. does not cite any legal authority that would allow this court to conclude that the juvenile court erred by construing the record as it did and by relying on the case numbers on the caption of the February 2019 order.

As a general rule, “We defer to a district court’s interpretation of its own order.” *LaChapelle v. Mitten*, 607 N.W.2d 151, 162 (Minn. App. 2000), *review denied* (Minn. May 16, 2000). This is true even if one judge interprets an order filed by a different judge or judicial officer. *Johnson v. Johnson*, 627 N.W.2d 359, 363 (Minn. App. 2001), *review denied* (Minn. Aug. 15, 2001). Although the record is somewhat unclear, there are multiple ways in which the record supports the juvenile court’s ruling. For example, the burglary case was not called at the outset of the February 2019 hearing. In addition, the register of actions for the burglary case does not indicate that a hearing either was scheduled for or actually occurred in February 2019. And, as noted by the juvenile court, the February 2019 order that discharged K.D.M. from probation included two case numbers but not the case

number of the burglary case. Accordingly, the juvenile court reasonably determined that K.D.M.'s probation had not been discharged.

Thus, the juvenile court did not lack authority to order restitution.

II. Ability to Pay

K.D.M. also argues that the juvenile court erred by ordering restitution in an amount that he is unable to pay.

Upon finding that a child is delinquent, a juvenile court “shall enter an order making any . . . disposition[] . . . which [is] deemed necessary to the rehabilitation of the child.” Minn. Stat. § 260B.198, subd. 1(a). As stated above, if the child’s offense “resulted in damage to the person or property of another,” the juvenile court may order the child to “make reasonable restitution for such damage.” *Id.*, subd. 1(a)(5).¹ In ordering a juvenile to pay restitution, a juvenile court is governed by statutory provisions in both the Juvenile Court Act, Minn. Stat. § 260B.198, subd. 1(a)(5), and the general restitution statute, Minn. Stat. §§ 611A.04-.046 (2018). *H.A.D.*, 764 N.W.2d at 66; *I.N.A.*, 902 N.W.2d at 640.

“[I]n determining whether to order restitution and the amount of the restitution,” a court “shall consider” two criteria: first, “the amount of economic loss sustained by the victim as a result of the offense” and, second, “the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a). A court’s analysis of these two statutory criteria is guided by procedures that are prescribed by statute. As an initial matter,

¹In the juvenile court, K.D.M. also argued that restitution in a juvenile-delinquency case must be necessary to the juvenile’s rehabilitation and must be reasonable. But K.D.M. has not renewed those arguments on appeal.

“the offender shall have the burden to produce evidence if the offender intends to challenge the amount of restitution or specific items of restitution or their dollar amounts.” *Id.*, subd. 3(a). The offender’s burden of production “must include a detailed sworn affidavit of the offender setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim or victims.” *Id.* If the offender has satisfied his or her burden of production, the prosecution bears “[t]he burden of demonstrating the amount of loss sustained by a victim as a result of the offense and the appropriateness of a particular type of restitution.” *Id.* The court must resolve any disputes “as to the proper amount or type of restitution” by applying a preponderance-of-the-evidence evidentiary standard. *Id.* On appeal of a juvenile court’s order for restitution, this court applies an abuse-of-discretion standard of review. *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), *review denied* (Minn. Aug. 15, 2006).

In this case, K.D.M. did not personally execute an affidavit challenging restitution on the ground that he is unable to pay, as required by statute. In addition, K.D.M. did not testify at the restitution hearing because he was absent from court on the second and third days of the hearing. The juvenile court found that K.D.M. waived his right to appear, and that finding is not challenged on appeal. The juvenile court stated in its order that the only evidence in the record concerning K.D.M.’s ability to pay restitution is evidence “that juveniles on probation in Hennepin County are eligible to earn \$60.00 per day on weekends to pay off their restitution.” Based on that evidence, the juvenile court ordered K.D.M. to pay restitution in the full amount of the victims’ losses, \$6,000.

On appeal, K.D.M. contends that the juvenile court overlooked evidence that he is unable to pay \$6,000 in restitution. K.D.M. asserts that he qualified for a public defender, that his parents have limited means, and that he was unsuccessful in a prior opportunity to earn money through a probation-based work program. These contentions do not directly address the fact that K.D.M. did not comply with the statute that requires an offender to submit a “detailed sworn affidavit” with “all challenges” to restitution and “all reasons” justifying a lesser amount of restitution. *See* Minn. Stat. § 611A.045, subd. 3(a). The affidavit required by statute is “the sole vehicle” by which an offender can satisfy the burden of production. *State v. Thole*, 614 N.W.2d 231, 235 (Minn. App. 2000). The absence of a timely affidavit is a sufficient reason for rejecting an offender’s challenge to an award of restitution. *State v. Smith*, 876 N.W.2d 310, 336 (Minn. 2016). By not filing an affidavit, K.D.M. failed to satisfy his burden of production.

In any event, the evidence identified by K.D.M. does not compel a finding that he is unable to pay restitution of \$6,000. That he qualified for a public defender at the outset of the case does not preclude him from earning money thereafter, and his parent’s financial resources are not determinative of his own ability to pay restitution. The evidence concerning his prior attempts to earn money while on probation is potentially relevant, but K.D.M.’s attorney did not make that argument to the juvenile court.

As stated above, the juvenile court found “that juveniles on probation in Hennepin County are eligible to earn \$60.00 per day on weekends to pay off their restitution.” The juvenile court’s finding is supported by evidence introduced by the state. K.D.M.’s probation officer testified that K.D.M. was eligible to earn money through a supervised

work program. A different probation employee who works with the supervised work program testified that the program pays juvenile workers \$60 per day and that K.D.M. received credit for 12 full days of work in 2018 and 2019. The district court's finding also is consistent with caselaw that allows a court to consider income that an adult offender may earn while serving a prison sentence. See *State v. Lindsey*, 632 N.W.2d 652, 664 (Minn. 2001); *State v. Tenerelli*, 583 N.W.2d 1, 3 (Minn. App. 1998), *aff'd*, 598 N.W.2d 668 (Minn. 1999).

Thus, the juvenile court did not abuse its discretion by finding that K.D.M. is able to pay restitution in the amount of \$6,000.

Affirmed.