

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0252**

Howard William Amos, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed January 4, 2021
Affirmed in part, reversed in part, and remanded
Ross, Judge**

Hennepin County District Court
File No. 27-CR-16-23877

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

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

Michael O. Freeman, Hennepin County Attorney, Mark V. Griffin, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Considered and decided by Ross, Presiding Judge; Segal, Chief Judge; and Florey, Judge.

NONPRECEDENTIAL OPINION

ROSS, Judge

The state accused Howard Amos of colliding with and killing a pedestrian and her unborn child while Amos led police on a high-speed chase through a residential neighborhood. Amos pleaded guilty to fleeing police in a vehicle resulting in death, and

the district court sentenced him to serve 20 years in prison and pay about \$10,000 in restitution. Amos petitioned for postconviction relief, arguing that his guilty plea is invalid because he was influenced by medication and his attorney provided ineffective assistance, and arguing that the district court ordered restitution without a factual basis. Amos asks us to reverse the postconviction decision as to restitution because the state submitted no documents showing the victim family's sustained loss. He also asks us to "review his [guilty-plea] claims and the evidence in the record to determine whether the district court abused its discretion in denying those claims." We affirm in part, declining to review the record in search of a possible error that Amos does not identify. We reverse in part and remand, because the state failed to supply the district court with the factual basis for the restitution.

FACTS

According to the criminal complaint in this case, police saw a black sport utility vehicle operating recklessly one night in September 2016 in a north Minneapolis residential neighborhood, and they initiated a traffic stop with lights and siren. The SUV sped away from police, reaching speeds of about 60 miles per hour. The driver failed to navigate a traffic circle, plowed over a young woman, and crashed into a row of parked cars. The driver, Howard Amos, leapt from the SUV while it was still moving, and he continued his flight on foot. One chasing officer attempted unsuccessfully to stop Amos with a Taser. Amos then forced his way into a parked car occupied by three women and a child, attempting to steal the car with the occupants inside. Amos fought against the officers who tried to extract him from the car, but they eventually succeeded.

The state charged Amos with attempted robbery and fleeing a police officer in a motor vehicle resulting in death. Amos pleaded guilty to the fleeing charge, and the district court sentenced him to 20 years in prison. During sentencing, the district court also executed a restitution order that had been drafted by the prosecutor, directing Amos to pay the victim's family and the Crime Victims Reparations Board (CVRB) a combined total of \$10,435.74. Amos challenged the restitution order, maintaining that he lacked the ability to pay the amount ordered. The district court rejected the challenge as untimely under the 30-day challenge period in Minnesota Statutes section 611.045A, subdivision 3(b) (2018).

Amos petitioned for postconviction relief in 2019. He challenged his guilty plea under two theories. He maintained that his guilty plea was invalid because he entered it while he was under the influence of prescription medication. He also maintained that his attorney had provided ineffective assistance of counsel during the plea hearing by failing to raise the medication issue. And he challenged the restitution order because the district court lacked a sufficient factual basis to order restitution. The district court denied postconviction relief. Amos appeals.

DECISION

Amos appeals the district court's denial of his postconviction petition. We review the district court's denial of a petition for postconviction relief for an abuse of discretion, reviewing the court's factual findings for clear error and its legal conclusions de novo. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). For the reasons that follow, we conclude that Amos is entitled to some relief, but only as to restitution. Amos also filed a motion to strike the state's addendum and portions of the state's brief citing the addendum.

In particular, he asks us to strike the portions of the state’s submissions consisting of restitution claims and supporting documents from the victim’s family and the CVRB because they were not filed with and considered by the district court. We do not consider appellate submissions that are not part of the record on appeal. Minn. R. Civ. App. P. 110.01 (the record on appeal consists of “[t]he documents filed in the trial court, the exhibits, and the transcript of the proceedings”); *Fabio v. Bellomo*, 489 N.W.2d 241, 246 (Minn. App. 1992), *aff’d*, 504 N.W.2d 758 (Minn. 1993). The challenged information was never part of the record before the district court, and it therefore should not be considered in the appeal. The state agrees with Amos’s motion to strike, and we grant it without further discussion.

I

Amos does not offer any specific challenge to the district court’s rejection of his plea contest. His brief observes that the district court rejected his contention that his plea was invalid on account of alleged influence by his medication and on account of his attorney’s alleged ineffective assistance. Without more, he invites us to examine the evidence in the record, review the district court’s analysis, and then “determine whether the district court abused its discretion in denying those claims.” Inasmuch as an appellate court will not address a mere conclusory assertion of error that is not developed into a legal argument, *State v. Wembley*, 712 N.W.2d 783, 795 (Minn. App. 2006), *aff’d on other grounds*, 728 N.W.2d 243 (Minn. 2007), we will not search for a flaw that the appellant has not identified. We add that we see no facially apparent error.

II

More substantively, Amos contends that the postconviction court abused its discretion by allowing the restitution award to stand when the district court erred in the first place by awarding restitution without a sufficient factual basis. Before we turn to the merits of Amos's contention, we first address the state's procedural challenge to the argument, which is that Amos either forfeited or waived all objections to the restitution order.

The state argues first that Amos forfeited his objection to the legality of the restitution award by failing to object to it during the sentencing hearing. Restitution is a form of criminal sentence. Minn. Stat. § 609.10, subd. 1(a)(5) (2018); *State v. Gaiovnik*, 794 N.W.2d 643, 649 (Minn. 2011). A petitioner may challenge the legality of a criminal sentence in a petition for postconviction relief even though he did not object during sentencing. Minn. Stat. § 590.01, subd. 1 (2018); *see also State v. Henderson*, 706 N.W.2d 758, 759–60 (Minn. 2005) (citing postconviction petition as circumstance when a defendant may challenge a sentencing issue despite having failed to object during sentencing). Amos's postconviction petition asserts that the district court erred by awarding restitution without supporting facts, making the sentence illegal. Amos did not forfeit his challenge to the legality of the restitution by failing to object during the restitution proceeding.

The state argues second that Amos forfeited the contest by missing the 30-day deadline to challenge restitution under Minnesota Statutes section 611A.045, subdivision 3(b) (2018). An offender who seeks to challenge the amount or type of

restitution must do so with a specific written objection within 30 days after the restitution order. Minn. Stat. § 611A.045, subd. 3. But this deadline does not apply when an offender challenges the district court's legal authority to order restitution. *Gaiovnik*, 794 N.W.2d at 647, 649. Amos challenges the district court's legal authority, arguing that it erred by awarding restitution without any factual basis. His argument does not rest on whether any particular amount is correct; it rests on the district court's power to order restitution on a record devoid of any factual basis. We are satisfied that section 611A.045, subdivision 3, does not foreclose Amos's argument.

The state argues third that Amos waived his challenge to the actual dollar amount of restitution during the restitution hearing. But again, whether he waived the amount of the request is not material to his urging that restitution generally is unlawful here. We will address his argument on the merits.

We agree that the district court erred by issuing restitution without a factual basis and that the postconviction court therefore should have granted relief. A district court lacks the authority to order restitution without a factual basis identifying the amount of economic loss sustained by the victim as a result of the offense. Minn. Stat. § 611A.045, subd. 1 (2018); *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984). The postconviction court implicitly found that the record lacked factual support for the restitution award, concluding, "[T]he factual basis for the [restitution] request needs to be made part of the record." The record supports the finding. The district court originally executed a restitution order that was drafted and presented by the state. The prosecutor claimed to have expense receipts and restitution claim forms from the CVRB and the victim's family. But the record does

not show that the prosecutor ever submitted those documents or provided any testimony from the board or the victim's family. The state concedes that those documents were never provided to the district court. Because the district court had no factual basis on which to order restitution, the postconviction court abused its discretion by failing to grant relief.

We are inclined to grant the relief Amos requests, which is to vacate the restitution order with no further proceedings. But in reversing a restitution order on the same ground—the lack of a factual basis—the supreme court remanded with instructions to allow the district court to develop a record of the victim's losses. *Fader*, 358 N.W.2d at 48. Amos argues unpersuasively against a remand, maintaining that the district court never properly had a restitution claim before it under Minnesota Statutes section 611A.04, subdivision 1 (2018). But a district court can order restitution even when no one has made a restitution claim. Minn. Stat. § 609.10, subd. 1 (2018); *Gaiovnik*, 794 N.W.2d at 652. And the district court must follow the procedures in section 611A.04, subdivision 1, only when *a victim* submits a request for restitution. *Gaiovnik*, 794 N.W.2d at 650. That is not our circumstance. We recognize that *Fader* involved a direct appeal and that this case instead involves our review of a denied postconviction petition. But Amos does not contend that this distinction is material, and we see no statutory or other reason to treat victims differently depending on the mechanism challenging a restitution order. Following *Fader*, 358 N.W.2d at 48, we therefore “remand the case to the trial court for reconsideration, at which time the parties may present evidence bearing on the issue of economic loss to the victim and her family.”

Affirmed in part, reversed in part, and remanded.