

*This opinion is nonprecedential except as provided by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
A20-0623**

State of Minnesota,
Respondent,

vs.

Katherine Cora Johnson,
Appellant.

**Filed November 22, 2021
Affirmed
Cleary, Judge***

Ramsey County District Court
File No. 62-CR-19-8824

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

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

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

Considered and decided by Worke, Presiding Judge; Cochran, Judge; and Cleary, Judge.

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

NONPRECEDENTIAL OPINION

CLEARY, Judge

After appellant pleaded guilty to and was convicted of second-degree assault with a dangerous weapon, the district court awarded restitution to the Minnesota Crime Victims Reparations Board (CVRB) to reimburse it for funds paid to the victim. In this appeal, appellant argues the district court abused its discretion by weighing the victim's right to restitution rather than CVRB's right to restitution against appellant's ability to pay. We conclude that, in ordering restitution, the district court is not required to weigh CVRB's right to restitution against appellant's ability to pay. We affirm.

FACTS

In November 2019, respondent State of Minnesota charged appellant Katherine Cora Johnson with second-degree assault with a dangerous weapon pursuant to Minn. Stat. § 609.222, subd. 1 (2018). In December 2019, appellant pleaded guilty and admitted that she brandished a knife at a bus driver saying that she was going to kill him after he asked her to get off the bus.

At the January 2020 sentencing hearing, appellant argued for a durational departure from 21 months to one year and one day, but asked for an executed sentence because she was concerned that she would get "in trouble" again if she was on probation. The district court found the offense less serious than typical and ordered a departure to 15 months' incarceration. The district court also ordered restitution but left the record open for probation to determine the amount.

At the contested restitution hearing, appellant testified about her financial circumstances. At the time, appellant had been incarcerated for 13 months, save for a one-week period of release, and had an expected release date in February 2021. She had “just started” working in prison earning approximately \$20, less prison charges, every two weeks. She wanted to save money for a transport from prison to St. Paul, where she hoped to live after her release.

Appellant had been homeless since 2011, though she lived with her boyfriend before her incarceration in 2019. She had not held a job since 2011 and had about 15 short-term jobs throughout her life. Appellant had no plan to support herself after her release, no plan for vocational or college training, and no plan for securing a job.

After the hearing, the district court ordered appellant to pay \$8,668.65 in restitution. The district court found that CVRB had already paid the agreed-upon restitution amount of \$8,668.65 to the victim. After considering appellant’s minimal wages received in prison and her history of unemployment, inconsistent employment, and minimum-wage jobs, the district court found that appellant’s ability to pay “was limited” while in custody but that “there is no reason why she should not be able to be gainfully employed once she is out of custody.” The district court determined that appellant “should be able to make minimal payments toward restitution over several years” and that her current inability to pay did not outweigh the victim’s right to restitution. This appeal follows.

DECISION

We review a district court’s restitution decision for an abuse of discretion. *State v. Davis*, 907 N.W.2d 220, 223 (Minn. App. 2018), *rev. denied* (Minn. Apr. 17, 2018). A

court abuses its discretion when its decision is arbitrary, without justification, or in contravention of the law. *State v. Mix*, 646 N.W.2d 247, 250 (Minn. App. 2002), *rev. denied* (Minn. Aug. 20, 2002). Restitution is compensation to the victim or the victim’s family, or, if the victim “already has been fully compensated, payment of money to a victim assistance program or other program directed by the court.” Minn. Stat. § 609.10, subd. 2(a) (2018). A crime victim “has the right to receive restitution as part of the disposition of a criminal charge . . . if the offender is convicted.” Minn. Stat. § 611A.04, subd. 1 (2018). Restitution in criminal cases aims to compensate victims for their losses. *State v. Rey*, 905 N.W.2d 490, 496 (Minn. 2018). A challenge to the district court’s authority to order restitution represents a legal question subject to de novo review. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

In determining whether and how much restitution to order, 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, subd. 1(a) (2018). Although it is the state’s burden to show a victim’s total losses, here there is no dispute as to the victim’s economic loss of \$8,668.65 as a result of appellant’s offense. *See* Minn. Stat. § 611A.045, subd. 3(a) (2018).

Appellant argues that the restitution award is an abuse of discretion because the district court improperly concluded that CVRB’s right to restitution outweighed the rehabilitation interest served by reducing appellant’s restitution obligation based on her inability to pay. The crux of appellant’s argument is that “restitution paid by a defendant to CVRB is qualitatively different from restitution paid to compensate a private victim for

his or her loss.” The state counters that “it is well-established that there is no difference between ordering restitution to be paid directly to the victim” or to CVRB when it has already paid the victim. We agree with the state.¹

CVRB is empowered to seek restitution on behalf of itself or victims. *Evans v. State*, 880 N.W.2d 357, 360 (Minn. 2016). Restitution requested by CVRB “may be considered to be both on its own behalf and on behalf of the victim.” Minn. Stat. § 611A.04, subd. 1a (2018). If CVRB “has paid reparations to the victim or on the victim’s behalf, the court shall order restitution payments to be made directly to [CVRB].” *Id.*; *see also* Minn. Stat. § 611A.04, subd. 3 (2018) (if CVRB has paid reparations to the victim or on the victim’s behalf, “[a]ny order for restitution in favor of a victim shall also operate as an order for restitution in favor of [CVRB].”). This is because Minn. Stat. § 611A.61, subd. 1 (2018) provides CVRB with a subrogation right. *Evans*, 880 N.W.2d at 361 (analyzing an earlier and identical version of the statute). “The state shall be subrogated, to the extent of reparations awarded, to all the claimant’s rights to recover benefits or advantages for economic loss from a source which is or, if readily available to the victim or claimant would be, a collateral source.” Minn. Stat. § 611A.61, subd. 1. “Put differently, when the CVRB pays reparations it steps into the shoes of the victim.” *Evans*, 880 N.W.2d at 361.

¹ Appellant makes no argument as to whether the district court abused its discretion when it properly weighed the victim’s right to restitution against appellant’s inability to pay. “It is axiomatic that issues not ‘argued’ in the briefs are deemed waived on appeal.” *In re Application of Olson for Payment of Servs.*, 648 N.W.2d 226, 228 (Minn. 2002) (quotation omitted). Therefore, we will not address this issue.

Minnesota law plainly establishes the district court's legal authority to award restitution to CVRB without weighing CVRB's rights to compensation against the rehabilitation interest served by reducing the appellant's restitution obligation based on her inability to pay. *See id.*; *see also Davis*, 907 N.W.2d at 228 (directing the district court to consider the victim's right to restitution against Davis' inability to pay despite CVRB's payment to the victim).

Appellant argues that CVRB's subrogation right after it pays a victim is not identical to the right held by a primary victim and cites cases in other contexts in which the Minnesota Supreme Court recognized that subrogation is "not an absolute right, but rather, one that depends on equities and attending facts and circumstances in each case." *Citizens State Bank v. Raven Trading Partners, Inc.*, 786 N.W.2d 274, 279 (Minn. 2010) (quotation omitted). This caselaw is inapplicable here. In *Citizens State Bank*, the supreme court discussed equitable subrogation and its existence alongside the Minnesota Recording Act. *Id.* Appellant offers no authority suggesting that the equitable subrogation doctrine, as discussed in *Citizens State Bank*, is applicable in the criminal context or specifically applicable to CVRB's explicit subrogation right pursuant to Minn. Stat. § 611A.61, subd. 1. Likewise, appellant offers no authority suggesting that the doctrine requires the district court to weigh CVRB's right to restitution against the rehabilitation interest served by reducing appellant's restitution obligation based on her inability to pay.

Appellant cites *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984) for the proposition that the restitution available to CVRB is not compensation for a victim's injury suffered from criminal harm and that compensation to CVRB has a wholly different character than

restitution payments made to a victim to restore the victim for his loss. In *Fader*, the district court was found to have abused its discretion in ordering Fader to pay \$10,000 in restitution because there was no evidence that the victim or her family sustained any economic loss and there was insufficient evidence of the defendant's ability to pay the amount in question. *Id.* at 47-48. The supreme court did not discuss CVRB's subrogation right; rather, it merely concluded that the record did "not provide a factual basis for the restitution award," and upon remand, "the parties may present evidence bearing on the issue of economic loss to the victim and her family." *Id.* at 48. To the extent that appellant attempts to create a distinction between CVRB's and the victim's right to restitution, *Fader* does not offer support.

It should not be overlooked that appellant has struggled to provide for herself and will likely continue do so upon release. The district court clearly understood this when it recognized that appellant's ability to pay "was limited" and when it found appellant could likely make "minimal payments" toward restitution. Given that the amount of the restitution sought was not challenged and that CVRB was entitled to a restitution award pursuant to its statutory right to subrogation, the district court did not abuse its discretion.

Affirmed.