

*This opinion is nonprecedential except as provided by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
A20-1095**

State of Minnesota,
Respondent,

vs.

Aaron Dante Moreno,
Appellant.

**Filed March 22, 2021
Reversed and remanded
Hooten, Judge**

Benton County District Court
File No. 05-CR-18-1633

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

Philip K. Miller, Benton County Attorney, Karl Schmidt, Assistant County Attorney,
Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Laura Geyer Heinrich, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Hooten, Presiding Judge; Johnson, Judge; and Slieter,
Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this appeal from his conviction for aggravated robbery, appellant argues that the district court erred in denying his request for a restitution hearing because the Minnesota governor's executive order suspending district court statutory filing deadlines tolled the

30-day period in which a request to challenge restitution must be brought. We reverse and remand.

FACTS

After an incident occurring in August 2018, the state charged appellant Aaron Dante Moreno with seven felony counts, including aggravated robbery in the first degree (count two), in violation of Minn. Stat. § 609.245, subd. 1 (2018). At the plea and sentencing hearing on March 3, 2020, Moreno pleaded guilty to count two, and the state dismissed the other counts. As part of a plea agreement, Moreno agreed to pay a fine, as well as restitution to the victim, the Minnesota Crime Victims' Reparation Board, or both, "at an amount determined by the [district] [c]ourt at sentencing," but the plea agreement did not specify the amount of restitution to be paid. At the plea and sentencing hearing, the parties agreed to a 156-month sentence, which was a 24-month upward aggravated departure from the presumptive sentencing guideline range. However, the parties also agreed that the sentence would satisfy Moreno's pending federal criminal matter and eliminate any new charges from the federal government on another matter. On March 3, 2020, the district court sentenced Moreno to 156 months in prison and ordered him to pay \$985 in restitution to the victim and \$1,852.53 to the Minnesota Crime Victims Reparations Board.

On March 13, 2020, Minnesota Governor Timothy Walz issued Emergency Executive Order 20-1 (the executive order) declaring a peacetime emergency due to the spread of the infectious disease COVID-19 and the resulting pandemic. On April 15, 2020, Governor Walz signed 2020 Minn. Laws ch. 74, art. 1—entitled "the COVID 19 Policy"—into law. Section 16 of the law provides that

[t]he running of deadlines imposed by statutes governing proceedings in the district and appellate courts, including any statutes of limitations or other time periods prescribed by statute, is suspended during the peacetime emergency declared on March 13, 2020, in governor’s Executive Order 20-01 and any extensions authorized under Minnesota Statutes, section 12.31, subdivision 2, and for 60 days after the end of the peacetime emergency declaration.

2020 Minn. Laws ch. 74, art. 1, § 16. The law “applies to all deadlines that had not expired as of March 13, 2020.” *Id.*

On April 29, 2020, Moreno, acting pro se, filed a request in district court for a contested restitution hearing pursuant to Minn. Stat. § 611A.045 (2020). The district court denied Moreno’s request for a restitution hearing as untimely. In its order denying Moreno’s request, the district court stated that although Minn. Stat. § 611A.045, subd. 3(b) (2020) required Moreno to file his request within 30 days of receiving notice of the restitution order, and although Moreno received notice of this filing deadline both orally and in writing at the sentencing hearing, he still “failed to submit his request for a contested restitution hearing within a timely manner.” The order did not address 2020 Minn. Laws ch. 74, art. 1, § 16, which suspended statutorily-created filing deadlines. Moreno appeals.

DECISION

As part of a felony sentence, the district court may order an offender to pay restitution to a crime victim. Minn. Stat. § 609.10, subd. 2 (2018). An offender may challenge restitution by filing a written request for a hearing within 30 days of receiving written notice of the restitution requested, or within 30 days of sentencing, whichever is later. Minn. Stat. § 611A.045, subd. 3(b). “[I]f the defendant challenges the restitution

amount sought, the statute requires the court to conduct a restitution hearing.” *State v. Willis*, 898 N.W.2d 642, 648 n.8 (Minn. 2017).

We review issues of statutory interpretation de novo. *State v. Stay*, 935 N.W.2d 428, 430 (Minn. 2019). “Under the de novo standard, we do not defer to the analysis of the courts below, but instead we exercise independent review.” *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018).

Moreno contends that the district court erred in denying his request for a restitution hearing as untimely because 2020 Minn. Laws ch. 74, art. 1, § 16 suspended the 30-day filing deadline to request a restitution hearing under Minn. Stat. § 611A.045, subd. 3(b). The state submitted a letter stating that it does not intend to file a brief in this matter. Therefore, we decide the appeal on the merits. *See* Minn. R. Civ. App. P. 142.03.

On April 15, 2020, Governor Walz signed 2020 Minn. Laws ch. 74, art. 1, § 16 into law retroactively suspending all statutorily-created filing deadlines that “had not expired as of March 13, 2020.” The governor ordered the suspension to continue “during the peacetime emergency . . . and for 60 days after the end of the peacetime emergency declaration” or until “February 15, 2021, whichever is earlier.” 2020 Minn. Laws ch. 74, art. 1, § 16. At Moreno’s sentencing on March 3, 2020, the district court ordered him to pay restitution, which triggered the 30-day period in which to request a restitution hearing under Minn. Stat. § 611A.045, subd. 3(b). Moreno’s deadline to request a hearing had not expired as of March 13, 2020 and thus 2020 Minn. Laws ch. 74, art. 1, § 16 tolled Moreno’s 30-day statutory deadline to request a restitution hearing until “60 days after the end of the peacetime emergency declaration” or until “February 15, 2021, whichever is earlier.”

When Moreno filed his request for a restitution hearing on April 29, 2020, the peacetime emergency declaration remained in effect after being extended through May 13, 2020 by Governor Walz's Executive Order 20-35. Therefore, the suspension of Moreno's 30-day statutory deadline to file a written request for a restitution hearing also remained in effect, making his April 29, 2020 request timely.

Because the district court does not have discretion to deny a restitution hearing when the defendant's request is timely, the district court erred by denying Moreno's request, and we reverse the district court's denial of relief and remand to the district court with instructions to schedule a restitution hearing.

Reversed and remanded.