

*This opinion is nonprecedential except as provided by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
A21-0695**

Kurt Lee Villa, petitioner,
Appellant,

vs.

State of Minnesota,
Respondent.

**Filed December 20, 2021
Affirmed
Worke, Judge**

Cottonwood County District Court
File No. 17-CR-15-283

Jason M. Birkholz, Michelle K. Olsen, Birkholz & Associates, LLC, Mankato, Minnesota
(for appellant)

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

Nicholas A. Anderson, Cottonwood County Attorney, Windom, Minnesota (for
respondent)

Considered and decided by Florey, Presiding Judge; Worke, Judge; and Bryan,
Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the district court erred by denying his motion to vacate a
restitution order against him, asserting that the district court lacked authority to order
restitution. We affirm.

FACTS

The facts are undisputed. A jury convicted appellant Kurt Lee Villa of third-degree assault. At the sentencing hearing, the victim testified, without supporting documentation, that he accrued approximately \$45,000 in medical bills. The district court stayed the imposition of Villa's sentence and placed him on supervised probation for five years. As one of Villa's probation conditions, the district court ordered him to pay restitution. But the district court delayed ordering a specific amount of restitution until it received an affidavit of restitution to be filed within 30 days by respondent State of Minnesota. Later, at the state's request, the district court granted a 45-day extension for the state to file the affidavit.

After Villa filed a direct appeal, the state submitted its restitution affidavit itemizing the victim's \$42,601.74 in damages.¹ The district court ordered Villa to pay \$42,601.74 in restitution according to a payment plan. But because Villa failed to make payments, the district court later amended the sentencing order and entered the remaining amount of restitution as a civil judgment against him.

Villa then moved the district court to vacate the restitution order and civil judgment under Minn. R. Crim. P. 27.03, subd. 9. The district court denied Villa's motion. This appeal followed.

¹ On direct appeal, this court rejected Villa's arguments that the prosecutor committed misconduct and that his right to a speedy trial was violated. *State v. Villa*, No. A17-1051, 2018 WL 3014575, at *1 (Minn. App. June 18, 2018), *rev. denied* (Minn. Sept. 18, 2018). Because Villa filed his direct appeal before restitution was finalized, we did not address restitution at that time.

DECISION

Villa asserts that, because the district court knew the approximate amount of the victim's damages at the sentencing hearing, it lacked authority to order restitution after that hearing.

A court may correct a sentence that is unauthorized by law at any time. Minn. R. Crim. P. 27.03, subd. 9. A sentence is unauthorized if it violates the law or applicable statutes. *Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). Restitution is part of a criminal sentence. *State v. Borg*, 834 N.W.2d 194, 198 (Minn. 2013). A defendant may use rule 27.03 to challenge restitution that is contrary to law or applicable statutes. *Evans*, 880 N.W.2d at 359. We review de novo a district court's denial of a motion to correct a sentence under rule 27.03, subdivision 9. *Id.* And although we review a district court's decision to order restitution for an abuse of discretion, we review whether the district court has authority to order restitution de novo. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

Before ordering restitution, the district court "shall obtain" information from the victim that "describe[s] the items or elements of loss, itemize[s] the total dollar amounts of restitution claimed, and specif[ies] the reasons justifying these amounts, if restitution is in the form of money or property." Minn. Stat. § 611A.04, subd. 1 (2020). Ordinarily, a district court must resolve the restitution issue at the sentencing hearing if it receives competent evidence relating to the restitution amount at least three days before sentencing. *See id.* But if it does not receive the information relating to restitution in time, restitution may be reserved or continued. *Id.*

The district court may order restitution after a sentencing hearing if, among other things, “the true extent of the victim’s loss . . . was not known at the time of [] sentencing.” *Id.*, subd. 1(b)(3). It is the district court’s knowledge of the extent of the victim’s loss, not the victim’s or state’s knowledge, that is relevant under this statute. *Mason v. State*, 652 N.W.2d 269, 272 (Minn. App. 2002).

Here, the state had not filed an affidavit of restitution by the time of sentencing. Further, the amount the victim claimed at sentencing was only an aggregated estimate. The victim did not explain how he arrived at the \$45,000 figure, nor did he itemize the expenses comprising that figure. Thus, the district court did not know the “true extent” of the victim’s damages at sentencing.

This case is similar to *State v. Irby*, in which the defendant argued that the district court lacked authority to issue restitution because the amount of damages was supposedly known at sentencing. 957 N.W.2d 111, 122 (Minn. App. 2021), *rev. granted in part* (May 26, 2021).² But there, as here, the state had not submitted an affidavit of restitution by the time of sentencing. *Id.* And although the victim in *Irby* presented some evidence of damages at sentencing, even specifying \$65,657.82 as the amount, both the defendant and the state acknowledged that the amount was not “solid.” *Id.* The district court reserved restitution and issued a restitution order after sentencing. *Id.* We affirmed the restitution award, noting that the victim had not “finally determined” its damages at the

² The supreme court granted review only on the issue of interpreting the wrongfully-obtaining-assistance statute. *State v. Irby*, No. A20-0375 (Minn. May 26, 2021) (order). It denied review on the restitution issue. *Id.*

time of sentencing. *Id.* Because the victim's estimated damages in this case are even less certain than the victim's damages in *Irby*, we similarly conclude that the district court did not know the "true extent" of the victim's damages here. *See id.*; *see also In re Welfare of M.R.H.*, 716 N.W.2d 349, 352 (Minn. App. 2006) (affirming post-sentencing restitution order when, although victims claimed \$21,619.96 in restitution affidavit submitted at sentencing, the affidavit remained to be investigated), *rev. denied* (Minn. Aug. 15, 2006).

Villa contends that the definitions of "true" and "extent" require only that the district court know the "actual scope" of the victim's damages. But even using Villa's definition, the terms "true extent" and "actual scope" require more than mere estimation.

Villa asserts that "nothing in the statute requires the victim to submit the actual dollar amount of restitution." This is inaccurate. The statute requires that the information related to restitution "describe the items or elements of loss, itemize the total dollar amounts . . . , and specify the reasons justifying these amounts," which implies something more than either estimation or aggregation. Minn. Stat. § 611A.04, subd. 1.

Villa finally argues that this case is like *State v. Meredyk*, in which we stated that the district court lacked authority to modify restitution under section 611A.04 because "the extent of the victims' losses were clearly established at . . . sentencing by [the defendant's] own admissions." 754 N.W.2d 596, 601 (Minn. App. 2008) (concluding that district court had authority to modify restitution for other reasons). But *Meredyk* is distinguishable. There, the defendant negotiated a plea agreement in which she admitted that she stole "approximately \$400,000," and that the amount of the victim's loss for which she must pay was \$400,000. *Id.* Here, in contrast, Villa has not admitted the restitution amount. Further,

the only available evidence was the victim's estimate that he incurred approximately \$45,000 in medical bills, without any documentation or additional vetting. Such an estimate does not provide the same level of certainty that was present in *Meredyk*.

In sum, the district court had authority to order restitution after the sentencing hearing because it did not know the "true extent" of the victim's damages at the time of sentencing.

Affirmed.