

*This opinion is nonprecedential except as provided by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
A22-0315**

State of Minnesota,
Respondent,

vs.

Antwan Jamar Jamison,
Appellant.

**Filed January 17, 2023
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Stearns County District Court
File No. 73-CR-20-5697

Keith Ellison, Attorney General, Peter Magnuson, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Suzanne M. Senecal-Hill, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Jesson, Presiding Judge; Connolly, Judge; and Johnson, Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

Appellant moved to dismiss the charges against him on the ground that respondent the State of Minnesota had violated the Uniform Mandatory Disposition of Detainers Act (UMDDA). His motion was denied, and, after a jury trial, he was convicted of third-degree

burglary. He challenges his conviction, arguing that the district court erred in denying his motion, and his sentence, arguing that the district court failed to consider appellant's ability to pay when it ordered restitution. Because we see no error in the denial of appellant's motion to dismiss, we affirm his conviction; because we agree that the restitution award should be remanded to comply with the requirements set out after sentencing in *State v. Wigham*, 967 N.W.2d 657 (Minn. 2021), we reverse and remand the restitution award.

FACTS

In April 2020, deadlines governing district court proceedings were suspended during the COVID-19 pandemic emergency. In August 2020, the state charged appellant Antwan Jamison with burglary and arson. On September 8, 2020, he requested final disposition of all charges against him and a trial within six months, i.e., before March 8, 2021, under the UMDDA, codified at Minn. Stat. § 629.292 (2020). On March 3, 2021, the state filed a notice of motion and motion for a finding of good cause to extend the detainer deadline beyond 180 days because courtrooms had been closed due to the pandemic; on March 31, 2021, appellant moved to dismiss the charges for lack of jurisdiction because the time allowed for his trial had expired.

Following a hearing on these motions, the district court, in May 2021, issued an order denying appellant's motion to dismiss, reserving the state's motion to show good cause, and noting that the six-month deadline for appellant's trial had been tolled by legislative action until September 15, 2021. In July 2021, the district court issued an order stating that trial would occur from September 13-17, 2021; in September, the district court

found no good cause to extend the deadline because trial was scheduled to begin two days before September 15, 2021.

The jury found appellant not guilty of first- and second-degree arson and guilty of third-degree burglary. On December 9, 2021, appellant was sentenced to the presumptive 30 months in prison and ordered to pay \$25,000 in restitution in this case jointly and severally with another case against him.

On December 22, 2021, the supreme court released *Wigham*, 967 N.W.2d at 664 (holding that, in ordering restitution, a district court must expressly state that it considered the defendant's income, resources, and obligations, as required by Minn. Stat. § 611A.045, subd. 1 (2020)).

Appellant argues that the district court erred in denying his motion to dismiss and seeks reversal of his conviction; he also argues that the district court erred under *Wigham* in awarding restitution without having indicated that it considered appellant's circumstances and seeks reversal and remand of the restitution order for compliance with *Wigham*.

DECISION

1. Jurisdiction

The UMDDA provides that, within six months after receipt of a defendant's request for final disposition and certificate, the complaint shall be brought to trial; if the indictment is not brought to trial within that period, no court will have jurisdiction of it and it shall be dismissed with prejudice. Minn. Stat. § 629.292, subd. 3. This court reviews issues of

jurisdiction and of statutory interpretation de novo. *In re State v. Wilson*, 632 N.W.2d 225, 227, 229 (Minn. 2001).

On April 15, 2020, the legislature suspended statutory deadlines due to the COVID-19 pandemic: “[t]he running of deadlines imposed by statutes governing proceedings in the district and appellate courts, including . . . time periods prescribed by statute, is suspended during the peacetime emergency declared on March 13, 2020 . . . and for 60 days after the end of the peacetime emergency declaration”; it also provided that this section would expire on the earlier of 60 days after the end of the peacetime emergency or February 15, 2021. 2020 Minn. Laws ch. 74, art. 1, § 16, at 66. Three days before its expiration, on February 12, 2021, the law was amended to provide that deadlines would not expire between March 13, 2020, and April 15, 2021. 2021 Minn. Laws ch. 3, § 1, at 211.

The complaint was filed on August 28, 2020, before the effective date of the law, and appellant requested speedy disposition under the UMDDA on September 8, 2020, and the resulting six-month deadline was therefore March 8, 2021. However, that deadline was suspended and did not begin to run until February 12, 2021; thus, the six-month period was extended to August 12, 2021. Moreover, a defendant’s motion to dismiss for failure to timely honor a UMDDA request for final disposition of a criminal charge tolls the six-month period until final disposition of the motion. *Wilson*, 632 N.W.2d at 230. The district court calculated:

[Appellant’s] Motion to Dismiss was filed on March 31, 2021, and this order resolving the motion was issued on May 4, 2021. There are thirty-four (34) calendar days between the time of filing and resolution of [appellant’s] motion. Accordingly, thirty-four (34) days should be added to the end of the six

month time period to bring [appellant's] matters to trial and will expire . . . on September 15, 2021.

. . . [B]ecause the six month deadline was tolled, and does not expire until September 15, 2021, the Complaints remain in force and effect, the Court retains jurisdiction over those matters, and thus they are not subject to dismissal pursuant to Minn. Stat. § 629.292.

Appellant argues that the district court erred in concluding that “[t]he language of [the session laws] is clear and unambiguous and does not contain any exclusions or exceptions” because both sessions laws state that:

Nothing in this paragraph prevents a court from holding a hearing, requiring an appearance, or issuing an order during the peacetime emergency if the judge determines that individual circumstances relevant to public safety, personal safety, or other emergency matters require action in a specific case.

Based on this language, appellant argues that the session laws did not apply to the six-month UMDDA deadline. But the session laws state that they apply to “deadlines imposed by statutes governing proceedings in the district and appellate courts, including . . . time period prescribed by statute.” 2021 Minn. Laws ch. 3, § 1, at 211; 2020 Minn. Laws ch. 74, art. 1, § 16, at 66.

Appellant also argues that the Continuing Orders issued by the supreme court, which provided that district courts could process cases using remote technology and hold criminal jury trials if the chief judge of the district and the chief justice of the supreme court approved, superceded the session laws suspending UMDDA deadlines. But, as the district court observed, “While it is certainly true that the State had every ability to initiate the proceedings in these cases prior to March 2021, and while these factors may be relevant to a determination of whether good cause exists to extend the six month statutory deadline,

these facts and allegations are not relevant to whether the Complaints should be dismissed [under the UMDDA].” Because appellant’s trial was scheduled to begin on September 13, 2021, two days before the expiration of the six-month deadline, the state’s motion for good cause to extend the deadline became moot. The district court did not err in denying appellant’s motion to dismiss the charges because the time for trial had expired.

2. Restitution

A district court’s authority to order restitution is a question of law, subject to de novo review, while a restitution award itself is reviewed for an abuse of discretion. *Wigham*, 967 N.W.2d at 662.

In ordering restitution, a district court is required to consider both the amount of the economic loss sustained by the victim and the circumstances of the defendant, including income, resources, and obligations. Minn. Stat. § 611A.045, subd. 1(a) (2020); *see also State v. Hanninen*, 533 N.W.2d 660, 662 (Minn. App. 1995) (explaining that this requirement will prevent a district court from imposing “a judgment that can never be satisfied”) (quotation omitted), *rev. denied* (Minn. Sept. 28, 1995). A district court fulfills its duty to consider the defendant’s circumstances by stating, orally or in writing, that it did consider the defendant’s ability to pay restitution. *Wigham*, 967 N.W.2d at 664.

The restitution order here contains no statement concerning appellant’s circumstances; it says only that appellant “shall develop a restitution payment schedule which shall be incorporated into any probation agreement made herein, all pursuant to Minn. Stat. § 611A.045, subd. 2a.” Appellant argues that “[t]he district court made no such

express statement [of consideration of appellant's circumstances] either at sentencing or in the restitution order," and the state does not refute this argument.

While the district court need not make specific findings as to a defendant's circumstances when it says that it has considered them, "we hold that the record must include sufficient evidence about the defendant's income, resources, and obligations to allow a district court to consider the defendant's ability to pay the amount of restitution ordered." *Id.* at 665. Such evidence may be found in the record, in the presentence investigation (PSI), in a defendant's statement of ability to pay, or in a restitution payment schedule. *See, e.g., State v. Paludicki*, 727 N.W.2d 662, 667-68 (Minn. 2007) (evidence provided by the record); *State v. Maidi*, 537 N.W.2d 280, 285 (Minn. 1995) (evidence found in restitution payment schedule); and *State v. Alexander*, 855 N.W.2d 340, 344 (Minn. App. 2014) (evidence provided by the PSI and the defendant's statement); *see also State v. Miller*, 842 N.W.2d 474, 479 (Minn. App. 2014) (reversing and remanding because there was no PSI and no defendant's statement to provide evidence), *rev. denied*, (Minn. Apr. 15, 2014).

Here, as in *Wigham*, "the district court did not expressly state that it considered [the defendant's] ability to pay, and . . . the record does not include sufficient evidence about [the defendant's] income, resources, and obligations to allow the court to consider [his] ability to pay the amount of restitution ordered." *Wigham*, 967 N.W.2d at 666. In *Wigham*, because "the [district] court did not consider [the defendant's] ability to pay as required by section 611A.045, subd. 1," the supreme court reversed and remanded to the district court "for further proceedings on restitution." *Id.*

We affirm appellant's conviction and, in light of *Wigham*, reverse and remand the restitution award to the district court for further proceedings on restitution.

Affirmed in part, reversed in part, and remanded.