

*This opinion is nonprecedential except as provided by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**

A22-1047

A22-1051

State of Minnesota,
Respondent,

vs.

Jason Paul Baumer,
Appellant.

Filed April 17, 2023

Affirmed

Segal, Chief Judge

Benton County District Court
File Nos. 05-CR-20-646, 05-CR-21-1591

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

Philip K. Miller, Benton County Attorney, Natalie Schiferl, Assistant County Attorney,
Foley, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Chang Y. Lau, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Segal, Chief Judge; and Cleary,
Judge.*

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

NONPRECEDENTIAL OPINION

SEGAL, Chief Judge

In these consolidated appeals, appellant challenges the district court's restitution orders, arguing that the district court erred by ordering him to pay restitution for losses that were not directly caused by his offenses. We affirm.

FACTS

The facts underlying the two consolidated cases are briefly as follows. In the first case, respondent State of Minnesota charged appellant Jason Paul Baumer, in April 2020, with one count of unauthorized use of a motor vehicle and one count of receiving stolen property (file 646).¹ The complaint alleged that Baumer stole a pickup truck and trailer from J.D. in October 2018. According to the complaint, Baumer was seen by law enforcement near the stolen vehicle. An acquaintance of Baumer indicated that Baumer had been driving the vehicle for several days prior to law enforcement locating the vehicle. After law enforcement recovered the vehicle, testing of a DNA sample taken from the vehicle's steering wheel showed a match for Baumer. And law enforcement found the stolen trailer at the home of Baumer's parents.

In the second case, the state charged Baumer, in September 2021, with two counts of receiving stolen property, two counts of third-degree burglary, and one count of fleeing a peace officer (file 1591).² The complaint alleged that law enforcement responded to a

¹ These charges were filed in district court file 05-CR-20-646, appellate file A22-1047.

² These charges were filed in district court file 05-CR-21-1591, appellate file A22-1051.

report of a burglary in process. Upon arrival, the officers spoke with the property owners, who reported that they saw a man in one of their machine sheds. A neighbor reported that they saw a man riding an all-terrain vehicle (ATV) away from the property at a high rate of speed and through a cornfield. Law enforcement located the man, later identified as Baumer, still driving the ATV. They attempted to initiate a traffic stop, but Baumer did not pull over; they were, however, able to arrest him nearby. Law enforcement recovered the abandoned ATV in a swampy area and later recovered a second stolen ATV near Baumer's residence.

Baumer and the state reached a global plea agreement to resolve file 646, file 1591, and several other charged and uncharged offenses. The agreement called for Baumer to plead guilty in file 646 to unauthorized use of a motor vehicle and, in file 1591, to fleeing a peace officer. The agreement contemplated that Baumer would receive a sentence of 25 months in prison for unauthorized use of a motor vehicle and 22 months in prison for fleeing a peace officer, to run concurrently. Another condition of the agreement was that Baumer would be required to pay "restitution on all files, including uncharged ones." In exchange, the state agreed that it would dismiss the remaining charges in files 646 and 1591, dismiss the charges in two other district court files, and refrain from charging Baumer in two "likely felony cases." According to Baumer's counsel, one uncharged offense "involve[ed] a fish house" and the other "involve[ed] another Unauthorized Use of a Motor Vehicle." The prosecutor confirmed at the plea hearing that "there would be restitution across all of the cases here in Benton County including the uncharged ones as part of the agreement, and that's why [the state is] willing to not charge them."

In April 2022, the district court sentenced Baumer in accordance with the plea agreement. The district court also ordered Baumer to pay a total of \$4,600 in restitution, including restitution in the amount of \$3,000 in file 646, \$600 in file 1591, and \$1,000 in one of the uncharged files.

Restitution to J.D. in File 646

In file 646, the district court ordered Baumer to pay \$3,000 in restitution to J.D., the owner of the pickup truck and trailer involved in Baumer's unauthorized-use-of-a-motor-vehicle conviction. J.D. submitted an affidavit requesting restitution for the "uninsured items [and] costs for . . . stolen truck, enclosed trailer, tools." Those costs included: (1) \$1,000 for the insurance deductible for the tools and equipment missing from the truck; (2) \$500 for the insurance deductible for the stolen truck; (3) \$1,500 for the damage to the uninsured trailer; (4) \$150 for labor costs to recover the pickup truck; (5) \$250 for labor costs to recover the trailer and related items; and (6) \$1,000 for labor costs to inventory the missing items. J.D. also included a thorough inventory of the items that were allegedly missing from the pickup truck and trailer when it was recovered and estimated their value at over \$11,000.

At sentencing, Baumer's counsel objected to J.D.'s claim for restitution to the extent it sought payment of amounts for which J.D. had been reimbursed by his insurance carrier. The district court responded that it had reviewed the affidavit of restitution and noted "[i]t does appear that there's references to two separate deductibles and some non-insured items." The district court deducted the amounts that appeared to have been reimbursed

through insurance and ordered Baumer to pay \$3,000 in restitution to J.D., explaining that the \$3,000 “appears to be the amount of his uninsured or unreimbursed losses.”

Restitution to J.D. and E.D. in File 1591

The district court also ordered Baumer to pay restitution to J.D. and E.D. in file 1591. J.D. and E.D. alleged that Baumer took various items from their property and damaged their cornfield. The complaint indicates that a neighbor saw Baumer “tearing through a cornfield” on an ATV and, when law enforcement recovered the ATV, it “had broken . . . cornstalks and vegetation trapped in the undercarriage.” J.D. and E.D. filed an affidavit of restitution seeking a total of \$600: \$400 for damage to the cornfield and \$200 for missing truck tires. The prosecutor included this request when summarizing the restitution requests at sentencing, and Baumer did not object. The district court consequently ordered Baumer to pay the full \$600 requested.

Restitution to J.W. for Uncharged Matter

Finally, the district court ordered Baumer to pay restitution to J.W. in the amount of \$1,000. At sentencing, the prosecutor indicated that restitution to J.W. was “from one of the uncharged-and-agreement-not-to-charge files.” J.W. submitted an affidavit of restitution requesting \$500 for a fishing boat and \$500 for a boat trailer. Baumer did not object to the requested restitution, and the district court awarded the full \$1,000 requested by J.W. As noted above, the restitution to J.W. related to an uncharged offense that the

state agreed not to charge as part of the global plea agreement. The district court ordered restitution to J.W. as part of Baumer's sentence in file 646.

During the sentencing hearing, the district court summarized the three restitution awards and advised Baumer twice that if he wished to challenge the restitution awards he could file an affidavit, and the district court would then hold a hearing on his challenge. Baumer did not file an affidavit or request a hearing, but now challenges the restitution awards on direct appeal.

DECISION

On appeal, Baumer argues that the district court erred in including certain items in its restitution orders because they were not “directly caused” by the two offenses to which he pleaded guilty and were thus outside the scope of restitution allowed for crime victims in Minn. Stat. § 611A.04, subd. 1(a) (2022). That statute provides that “restitution may include, but is not limited to, any out-of-pocket losses *resulting from* the crime.” Minn. Stat. § 611A.04, subd. 1(a) (emphasis added). The phrase “resulting from” has been interpreted by the supreme court as meaning that a loss must be “directly caused by, or follow naturally as a consequence of, the defendant’s crime” to qualify for payment as restitution. *State v. Boettcher*, 931 N.W.2d 376, 381 (Minn. 2019).

This court reviews a district court’s award of restitution for abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). “A [district] court abuses its discretion when its decision is based on an erroneous view of the law.” *Boettcher*, 931 N.W.2d at 380 (quotation omitted).

Baumer does not challenge on appeal all of the items of restitution that he was ordered to pay; instead, his challenge is limited to the following: (1) in file 646, he challenges \$600 of the \$3,000 in restitution ordered, arguing that \$600 is reimbursement for missing tools from the pickup truck Baumer was charged with stealing; (2) in file 1591, he challenges the full \$600 in restitution, which includes \$400 in damages to the cornfield Baumer drove through on a stolen ATV, and \$200 related to four missing truck tires; and (3) he challenges the full \$1,000 in restitution ordered in one of the uncharged cases, which includes \$500 for losses related to a fishing boat and \$500 for a boat trailer. Baumer argues that none of these losses were directly caused by the two crimes to which he pleaded guilty—unauthorized use of a motor vehicle in file 646, and fleeing a peace officer in file 1591. He maintains that in neither file did he plead guilty to stealing tools and truck tires, or to damaging a cornfield, fishing boat, and trailer, and so the losses related to these items were thus not “directly caused by, or follow[ed] naturally as a consequence of” the offenses to which he pleaded guilty. *Id.* at 381. He argues that the order to pay these items of restitution must therefore be reversed.

We reject Baumer’s appeal because he failed to assert his arguments before the district court and thus cannot raise them on this direct appeal. In addition, restitution for both the charged and uncharged offenses was part and parcel of a plea agreement. As such, Baumer cannot get around his failure to raise his arguments before the district court by relying on the provision in Minn. R. Crim. P. 27.03, subd. 9, that allows the courts to “at any time correct a sentence not authorized by law.” To hold otherwise would allow defendants to cherry pick and reject part of a plea agreement while retaining the balance.

Failure to Assert Arguments Before the District Court

An offender may challenge a restitution award using the procedure established in Minn. Stat. § 611A.045, subd. 3 (2022). As relevant here, the statute provides that “[a]n offender may challenge restitution, but must do so by requesting a hearing . . . within 30 days of sentencing” and “may not challenge restitution after the 30-day time period has passed.” Minn. Stat. § 611A.045, subd. 3(b). During the sentencing hearing, the district court advised Baumer twice that if he wished to challenge the restitution awards he could file an affidavit, and the district court would then holding a hearing. Baumer did not file an affidavit and did not challenge the ordered restitution before the district court either within 30 days or otherwise.

Baumer argues that he may nevertheless assert his objections to the ordered restitution on this appeal because his argument goes to the legal authority of the district court to order restitution for these items and is not a fact-based challenge. Baumer argues that his claims are properly characterized as a legal challenge because his argument goes not to the amount or type of restitution, but to the question of whether the losses were “directly caused by, or follow naturally as a consequence of” the two offenses to which he pleaded guilty. *Boettcher*, 931 N.W.2d at 381. Baumer then points to caselaw stating that the 30-day deadline in Minn. Stat. § 611A.045, subd. 3(b), to request a hearing to dispute restitution does not apply to challenges to the legal authority of the court to order an item of restitution. *See, e.g., State v. Gaiovnik*, 794 N.W.2d 643, 649 (Minn. 2011) (stating that the 30-day time period in Minn. Stat. § 611A.045, subd. 3(b), “does not preclude [an offender] from challenging in a direct appeal the district court’s legal authority to award

restitution when he raised this legal issue with the district court at the sentencing hearing”). He thus maintains that his objections to the ordered restitution can be considered by this court in this direct appeal.

Even if we were to agree with Baumer that his claims assert a legal challenge,³ Baumer would still not be entitled to assert such a challenge for the first time on appeal. *Gaiovnik* provides authority for allowing a restitution challenge to proceed despite missing the 30-day deadline in Minn. Stat. § 611A.045, subd. 3(b), when the issue being asserted constitutes a challenge to the legal authority of the court to order restitution. 794 N.W.2d at 649. But nothing in that case or any other cited by Baumer provides authority for the proposition that an appellant can bypass the district court and assert a challenge to restitution for the first time on appeal. *See State v. Sorenson*, 441 N.W.2d 455, 457 (Minn. 1989) (declining to address a legal argument not raised below and noting that “[u]sually, we will not decide issues which are not first addressed by the trial court and are raised for the first time on appeal”). Indeed, the supreme court stated in *Gaiovnik* that the “failure to submit a written challenge within 30 days after the sentencing hearing does not preclude [a defendant] from challenging in a direct appeal the district court’s legal authority to award restitution *when he raised this legal issue with the district court at the sentence hearing.*” *Gaiovnik*, 794 N.W.2d at 649 (emphasis added).

³ We have repeatedly held in nonprecedential opinions, cited here for their persuasive value, that the issue of whether a victim’s loss was directly caused by, or followed naturally as a consequence of, a crime is a fact-based challenge, not a legal one. *See State v. Kingbird*, No. A22-0116, 2022 WL 17946959, at *6 (Minn. App. Dec. 27, 2022), and cases cited in footnote three of that opinion.

Here, Baumer’s only objection at the sentencing hearing was to paying restitution for items that were reimbursed to the victim by insurance. He did not assert any objection before the district court at the sentencing hearing or later concerning the issues he now raises. We note that “[w]e may . . . at our discretion, decide to hear [issues raised for the first time on appeal] when the interests of justice require their consideration and addressing them would not work an unfair surprise on a party.” *Sorenson*, 441 N.W.2d at 457. But as will be discussed in greater detail below, for this court to address Baumer’s arguments for the first time on appeal would be unfair to the state. We thus conclude that Baumer has forfeited his challenges to the restitution orders.

Impact of Plea Agreement

We also conclude that Baumer’s argument fails because it is clear from the record that restitution was a key condition of the global plea agreement that Baumer and the state reached in this case. That agreement included the payment of restitution for charged offenses that were dismissed and uncharged offenses that the state agreed not to charge as part of the plea negotiation.⁴

A district court may order restitution for the losses of victims harmed by the offenses in dismissed counts when there is an agreement to do so as part of a plea bargain. *See State v. Kennedy*, 327 N.W.2d 3, 5 (Minn. 1982) (holding that reasonable restitution can be imposed for losses incurred by victims not just of the offenses to which the defendant has

⁴ The state ultimately only received one restitution request related to the uncharged matters, the request from J.W. At sentencing, the prosecutor indicated that the state had reached out to other victims, but “[e]verybody [else] who we have contact information for has indicated they’re not going to be requesting restitution.”

pleaded guilty when the restitution is part of a plea agreement); *State v. Wallace*, 545 N.W.2d 674, 677 (Minn. App. 1996) (holding “that, independent of [chapter 611A], the payment of restitution . . . as an essential term of a negotiated plea agreement may constitute a valid contract where on the defendant’s part it is both voluntary and informed, where both parties receive the benefit of the bargain, and where it has been accepted by the sentencing court”), *rev. denied* (Minn. May 21, 1996).

Baumer asks this court to conclude, however, that the principle articulated in *Kennedy*—that restitution can be ordered for dismissed charges if it is part of a plea negotiation—“has been superseded and overturned by modern restitution statutes^[5] and the supreme court’s decision in *State v. Riggs*.”⁶ He further maintains that, as a result, restitution can only be ordered for losses related to offenses involving a conviction. He maintains that the restitution ordered in the dismissed and uncharged cases is thus an illegal sentence that can be challenged at any time under Minn. R. Crim. P. 27.03, subd. 9.

We do not agree. The Minnesota Supreme Court has continued to acknowledge the principle established in *Kennedy* even after its decision in *Riggs*. In *Boettcher*, the supreme court stated: “The general rule articulated in . . . *Riggs* is that a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence

⁵ As Baumer notes, the legislature amended the law in 1983—the year after *Kennedy* was decided—to create a statutory right for victims to request restitution. 1983 Minn. Laws ch. 262, art. 1, § 4; *see also* Minn. Stat. § 611A.04, subd. 1(a).

⁶ In *State v. Riggs*, 865 N.W.2d 679, 685 (Minn. 2015), the supreme court held that the restitution statute, Minn. Stat. § 611A.045, subd. 1 (2014), contained an exhaustive list of factors to be considered when determining the amount of restitution.

of, the defendant's crime." 931 N.W.2d at 381. But the supreme court included the following footnote:

In this case, the restitution order followed a jury trial, not a guilty plea. Principles that apply to criminal restitution in guilty-plea cases, *see, e.g., State v. Kennedy*, 327 N.W.2d 3, 4 (Minn. 1982) (allowing the defendant to agree to pay restitution for the losses of victims not named in complaint in exchange for dismissal of charges), are inapplicable.

Id. at 381 n.5. The supreme court thus recognized that different principles apply depending on whether restitution is awarded as part of a plea agreement, and explicitly acknowledged the principle in *Kennedy* that a defendant may agree to a broader scope of restitution in exchange for the dismissal of charges. *Kennedy* thus remains good law and requiring payment of restitution for dismissed or uncharged offenses is not inconsistent with Minnesota Statutes chapter 611A. Baumer's argument that the challenged items of restitution constitute an illegal sentence thus fails.

This conclusion also forecloses Baumer's argument that he can rely on Minn. R. Crim. P. 27.03, subd. 9, to obtain appellate review of his objections to the restitution orders without having first asserted those objections before the district court. That rule provides that "[t]he court may at any time correct a sentence not authorized by law." Minn. R. Crim. P. 27.03, subd. 9. An appellant may use the procedure in this rule to challenge a restitution award. *Evans v. State*, 880 N.W.2d 357, 359-60 (Minn. 2016). But "a challenge to a sentence imposed as part of a plea agreement involves more than simply the sentence." *State v. Coles*, 862 N.W.2d 477, 481 (Minn. 2015). When an appellant's rule 27.03, subdivision 9, motion implicates a plea agreement, including the state's dismissal of other

pending charges, the exclusive remedy is a petition for postconviction relief. *Id.* at 480-82; *see also Evans*, 880 N.W.2d at 360 (holding that a rule 27.03, subdivision 9 motion is not the proper method to challenge a restitution award if payment of restitution is a material part of the plea negotiation). Thus, while Baumer is correct that rule 27.03, subdivision 9, may generally be used to challenge a restitution award, it is nevertheless inapplicable here.

As a final matter, we note that Baumer suggests he was unclear about the scope of the global plea agreement. If that was the case, however, he either should have pursued that issue with the district court—as the district court expressly invited—or sought to withdraw his guilty plea. *See Kennedy*, 327 N.W.2d at 4-5 (noting that if the defendant objected to elements of the restitution ordered as part of a plea agreement, then he either “should have stated it at that time” or “withdrawn his guilty pleas and stood trial”). To allow the relief he requests here—reducing the amount of restitution while holding the state to the promises it made in the plea agreement—would frustrate the terms of the plea agreement and be unfair to the state.

Affirmed.