

*This opinion is nonprecedential except as provided by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
A23-1448**

In the Matter of the Welfare of: S. S. M., Child.

**Filed July 8, 2024
Affirmed
Smith, Tracy M., Judge**

Hennepin County District Court
File Nos. 27-JV-22-2911, 27-JV-22-2610

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

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

Mary F. Moriarty, Hennepin County Attorney, Sean P. Cahill, Assistant County Attorney, Minneapolis, Minnesota (for respondent State of Minnesota)

Considered and decided by Bjorkman, Presiding Judge; Smith, Tracy M., Judge;
and Slieter, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

In this appeal from a juvenile disposition order, appellant S.S.M. argues that the district court abused its discretion by ordering him to pay \$2,183.19 in restitution, jointly and severally with a codefendant, for the damage to the victim's car and home. S.S.M. contends that respondent State of Minnesota failed to prove that the losses to the home were directly caused by the criminal-damage-to-property offense to which he pleaded

guilty and that the district court's factual findings regarding his ability to pay were clearly erroneous. We affirm.

FACTS

In October 2022, the state charged S.S.M. by juvenile-delinquency petition with one felony count of first-degree criminal damage to property. The state alleged that, on September 6, 2022, S.S.M. and five other males threw landscaping rocks at victim M.A.'s car and the windows of M.A.'s home. The landscaping rocks caused "extensive damage" to the car and broke several windows of the home. Surveillance video captured all six males throwing rocks at M.A.'s car. When the police arrested S.S.M. near M.A.'s home, S.S.M. claimed that he "only threw one rock" at "a small window."

In November 2022, the state charged S.S.M. by juvenile-delinquency petition with another felony count of first-degree criminal damage to property as well as one felony count of theft of a motor vehicle, one misdemeanor count of driving without a valid license, and one misdemeanor count of reckless driving. The state alleged that, on September 11, 2022, S.S.M. stole a rental car and crashed the car into a barrier. The car was totaled, and the barrier needed to be repaired or replaced.

Under a plea agreement resolving both cases, S.S.M. admitted to the first-degree criminal-damage-to-property counts in exchange for stays of adjudication on those counts and dismissal of the other counts. He also agreed to pay "joint and several" restitution for "all of the counts in [both] cases even if they ha[d] been dismissed." The following exchange took place regarding restitution:

THE COURT: [T]here will [be] a restitution investigation where we'll decide how much money of restitution you'll have to pay for the damages. . . . [I]t's going to be joint and several, so if some of the individuals that were involved in commission of these offenses with you, if they pay a portion of it, then you don't have to pay that portion. But if they're not able to make payments, you would have to pay for the entirety of the damage, okay?

[S.S.M.]: Okay.

S.S.M. was afforded the opportunity to contest the amount of restitution if it was inappropriate.

At the disposition hearing, the district court stayed adjudication of the charges for six months (which would be until August 2, 2023) with the possibility of an extension of the stays for six more months. The district court also placed S.S.M. on probation subject to several probationary conditions.

M.A. filed an affidavit for restitution for the September 6 incident. He claimed losses in the amount of \$2,183.19, comprising \$750 for the insurance deductible for his damaged car and \$1,433.19 for the damage to the windows of his home. The victim of the September 11 incident did not report the monetary amount of the damage sustained. The Hennepin County Juvenile Probation Department prepared a restitution report in which it recommended that S.S.M. pay the amount of restitution stated in M.A.'s affidavit. The probation department determined that S.S.M. had no income but that he had no financial obligations and was eligible for paid work through the probation department.

In a restitution order filed on May 2, 2023, the district court ordered S.S.M. to pay restitution, on a joint and several basis with a codefendant, in the amount of \$2,183.19 to

M.A. by the date of the expiration of his stays of adjudication. The district court also ordered that any restitution left unpaid at that time be reduced to a judgment against S.S.M. In the order, the district court said that it “considered the income, resources, and obligations” of S.S.M. and that S.S.M. could “contact Probation for assistance with paid work programs.”

S.S.M. moved to vacate the restitution order and requested a contested restitution hearing. He claimed in an affidavit that it was “improper” to require him to pay \$2,183.19 in restitution because he “was only involved in the damage to the car” and “did not damage any of the house windows.” He also stated that he did not have the ability to pay the amount of restitution ordered because he did not have a job and his family was not in a position to help him pay. Following the contested restitution hearing held on August 23, 2023, at which S.S.M. did not appear, the district court issued an order denying S.S.M.’s motion and reaffirming its original restitution order.

S.S.M. appeals.

DECISION

“[I]f [a] child is found to have violated a state or local law or ordinance which has resulted in damage to the person or property of another, the court may order the child to make reasonable restitution for such damage” if “deemed necessary to the rehabilitation of the child.” Minn. Stat. § 260B.198, subd. 1(a)(5) (2022). In juvenile-delinquency matters, restitution is governed by this restitution provision of the juvenile-delinquency statute as well as by the general restitution statutes. *In re Welfare of H.A.D.*, 764 N.W.2d 64, 66 (Minn. 2009); *see* Minn. Stat. §§ 611A.04, .045 (general restitution statutes) (2022).

“A district court has broad discretion to award restitution, and the district court’s order will not be reversed absent an abuse of that discretion.” *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). A district court abuses its discretion when its decision regarding restitution is based on an erroneous interpretation or application of the law. *State v. Boettcher*, 931 N.W.2d 376, 380 (Minn. 2019). “The district court’s factual findings will not be disturbed unless they are clearly erroneous.” *Andersen*, 871 N.W.2d at 913.

S.S.M. argues that the district court’s order requiring him to pay \$1,433.19 in restitution for the damage to M.A.’s home must be reversed because the state failed to prove that the losses were directly caused by his offense. Additionally, S.S.M. argues that the district court’s restitution order must be reversed and remanded because the district court’s factual findings regarding his ability to pay \$2,183.19 in restitution were clearly erroneous. We address each argument in turn.

Restitution for the Damage to the House

S.S.M. argues that his restitution obligation should be reduced by \$1,433.19—the cost of the damage to M.A.’s house. He makes two arguments, neither of which is persuasive.

First, S.S.M. argues that the award of restitution for the damage to the house is erroneous because, after he filed his affidavit challenging the restitution award, the state failed to meet its burden to show that M.A.’s house-related losses were directly caused by his crime. *See* Minn. Stat. § 611A.045, subd. 3(a) (allocating evidentiary burdens). S.S.M.’s affidavit stated, “On May 2, 2023, I was ordered to pay \$2,183.19 in restitution. I believe this restitution is improper because I was only involved in the damage to the car.

I did not damage any of the house windows nor did I damage any part of the house or yard.” The state did not challenge S.S.M.’s representations. S.S.M. argues that, because the state did not prove that he damaged the house, the district court erred by ordering restitution for those losses.

S.S.M. relies on *Boettcher*. In that case, the Minnesota Supreme Court stated that the “general rule . . . is that a district court may order restitution only for losses that are directly caused by, or follow naturally as a consequence of, the defendant’s crime.” *Boettcher*, 931 N.W.2d at 381. But the supreme court in *Boettcher* included a qualification:

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 recognized that different principles apply depending on whether restitution is awarded as part of a plea agreement, and it explicitly acknowledged the principle in *Kennedy* that a defendant may agree to a broader scope of restitution in exchange for the dismissal of charges. This principle reflects the rule that courts “generally should not alter the terms of a restitution obligation negotiated as part of a plea agreement if it materially changes the expectations of the parties to the bargain.” *State v. Meredyk*, 754 N.W.2d 596, 604 (Minn. App. 2008).

Here, the bargained-for expectation of the parties was that S.S.M., along with a codefendant, would be jointly and severally responsible to pay restitution for all the losses that M.A. suffered from the group rock-throwing incident at M.A.’s home. The district

court therefore did not err by ordering restitution for the damage to the house even though the state did not dispute S.S.M.’s assertion that he did not cause that specific loss.¹

Second, S.S.M. argues that the district court erred by imposing joint and several liability for M.A.’s house losses because it did so based on its erroneous factual finding that S.S.M. agreed to “joint and several liability for any restitution award.” S.S.M. asserts that the finding is clearly erroneous because “[he] reserved the right to contest restitution if it was not appropriate.” A factual finding is clearly erroneous if it is “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *In re Civ. Commitment of Kenney*, 963 N.W.2d 214, 221 (Minn. 2021) (quotation omitted).

At the plea hearing, defense counsel outlined the terms of the plea agreement and stated that “[t]here will be a restitution investigation and [S.S.M. will] receive that and have an opportunity to contest that if it’s not appropriate.” Defense counsel also made clear that the restitution “will be joint and several.” From this record, the district court could reasonably determine that the plea agreement contemplated that, while S.S.M. would be able to contest the restitution amount, the obligation for the losses would be joint and

¹ This case is similar to another nonprecedential but persuasive opinion from this court. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) (stating that nonprecedential opinions may be cited for their persuasive value). In *State v. Wurtzberger*, we affirmed the appellant’s joint and several restitution obligation for the loss of collectible items stolen during a series of burglaries, despite the appellant’s argument that she should be responsible only for losses that directly resulted from the one burglary to which she pleaded guilty. No. A23-0387, 2023 WL 7119125, at *2-3 (Minn. App. Oct. 30, 2023), *rev. denied* (Minn. Jan. 16, 2024). We explained, “Here, the bargained-for expectation of the parties was that Wurtzberger would be jointly responsible to pay restitution for the value of the stolen comic books, even though the burglary offense to which she pleaded guilty did not result in such loss.” *Id.* Similar reasoning applies here.

several. As a result, the district court’s factual finding was not clearly erroneous, and S.S.M.’s argument fails.²

Ability to Pay

In awarding restitution, a 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). “[A] district court fulfills its statutory duty to consider a defendant’s income, resources, and obligations in awarding and setting the amount of restitution when it expressly states, . . . in writing, that it considered the defendant’s ability to pay.” *State v. Wigham*, 967 N.W.2d 657, 664 (Minn. 2021); see *In re Welfare of I.N.A.*, 902 N.W.2d 635, 642 (Minn. App. 2017) (requiring written findings in juvenile-delinquency cases), *rev. denied* (Minn. Nov. 28, 2017).

In its August 30, 2023 order denying S.S.M.’s restitution challenge and reaffirming its earlier order, the district court found the following:

[T]he Youth’s affidavit does not indicate why he cannot take advantage of the paid work program offered by Juvenile Probation or otherwise obtain employment. . . . The Youth has approximately two years and four months before he turns 19 years old on January 1, 2026. Certainly, the Youth has the resource of time to engage in paid work to pay his restitution obligation, and he would be required to work fewer than two hours per week to satisfy the amount of restitution ordered by the Court in these matters before his 19th birthday.

² Because the district court did not abuse its discretion by ordering S.S.M. to pay restitution for the damage to M.A.’s home pursuant to the plea agreement, we need not address the state’s alternative argument that the district court’s restitution award is appropriate under the direct-cause standard.

S.S.M. concedes that “[t]he district court considered [his] ability to pay.” But he argues that the district court erroneously found that he had “more than two years” to pay his restitution obligation when, in fact, he only had three months—from May 2, 2023, until August 2, 2023—at which point his stays of adjudication expired and the district court’s jurisdiction over him terminated. The state concurs that the district court made a clearly erroneous factual finding to the extent that it found that S.S.M. had two years left on probation during which he could use the paid work program, but it contends that the error was harmless.

“[E]rror without prejudice is not grounds for reversal.” *State v. Cloutier*, 971 N.W.2d 743, 749 (Minn. App. 2022), *aff’d*, 987 N.W.2d 214 (Minn. 2023). Even assuming that the district court erroneously considered that S.S.M. had two years to pay his restitution obligation before the district court’s jurisdiction ended, the error was harmless. The district court reviewed the restitution report, which contained information about S.S.M.’s ability to pay. The district court also stated that it had considered S.S.M.’s ability to pay. And it noted that S.S.M. did not show that he could not obtain employment other than the paid work program. Further, the district court determined that the amount of restitution that S.S.M. must pay is relatively small compared to M.A.’s and the other victim’s total losses. And, significantly, the district court contemplated the possibility of nonsatisfaction of the obligation and ordered that the amount of any unpaid restitution would be entered as a judgment against S.S.M. Under this approach, a failure to pay—whether by age 19 or by August 2, 2023—would not subject S.S.M. to adjudication of the delinquency petition. As a result, any mistake by the district court was harmless.

We conclude that the district court adequately considered S.S.M.'s ability to pay \$2,183.19 in restitution.

Affirmed.