

**STATE OF MINNESOTA
IN COURT OF APPEALS
A24-0910**

State of Minnesota,
Respondent,

vs.

Eric Eugene Baker,
Appellant.

**Filed April 21, 2025
Reversed and remanded
Larkin, Judge**

Ramsey County District Court
File No. 62-CR-22-1674

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

John J. Choi, Ramsey County Attorney, Peter R. Marker, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Rebecca Ireland, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Schmidt, Presiding Judge; Johnson, Judge; and Larkin, Judge.

SYLLABUS

The district court abused its discretion by failing to consider a defendant's ability to pay restitution, as required by Minn. Stat. § 611A.045, subd. 1(a)(2) (2024), and *State v. Wigham*, 967 N.W.2d 657 (Minn. 2021).

OPINION

LARKIN, Judge

Appellant challenges the district court's orders for restitution, arguing that the district court failed to perform its statutory duty to consider his ability to pay and that it relatedly erred by determining that appellant "waived" this statutory consideration. Because the district court did not comply with the statutory requirement that it consider appellant's ability to pay, we reverse the restitution orders and remand.

FACTS

Respondent State of Minnesota charged appellant Eric Eugene Baker with first-degree manslaughter, unlawful possession of a firearm, and unlawful possession of ammunition following his involvement in a shooting death. Baker pleaded guilty to first-degree manslaughter pursuant to a plea agreement, and the remaining charges were dismissed. Baker's petition to plead guilty listed "Restitution" as part of the plea agreement, but it did not specify an amount.

The victim's mother requested restitution of \$336.92, and the Minnesota Crime Victims Reparations Board (CVRB) requested restitution of \$4,919.85. At sentencing, Baker's attorney stated that Baker was "more than happy" to pay restitution of \$336.92 to the victim's family, but he asked that the court consider Baker's lack of financial resources, as described in the presentence investigation report, before ordering Baker to pay \$4,919.85 to the CVRB. Baker did not dispute the reasonableness of the requested amounts; he asked only that the court consider his ability to pay the larger amount to the CVRB.

The district court ordered Baker to pay both requested amounts, finding that Baker’s plea agreement included an agreement to pay restitution and that Baker therefore waived his right to assert an inability to pay.

Baker appeals.

ISSUES

Did Baker’s plea agreement to pay restitution in an undetermined amount relieve the district court of its statutory obligation to evaluate his ability to pay when ordering restitution?

ANALYSIS

This appeal regards Minn. Stat. § 611A.045, subd. 1 (2024), which sets forth the procedural requirements for issuing an order for restitution. The statute requires the district court to consider the circumstances of both the victim and the defendant as follows:

(a) The court, in determining whether to order restitution and the amount of the restitution, shall consider the following factors:

(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.*

(b) If there is more than one victim of a crime, the court shall give priority to victims who are not governmental entities when ordering restitution.

Minn. Stat. § 611A.045, subd. 1 (emphasis added). The district court’s compliance with the requirement in subdivision 1(a)(2) is at issue here.

The supreme court has referred to “the income, resources, and obligations of the defendant” as the defendant’s “ability to pay.” *Wigham*, 967 N.W.2d at 659 n.1 (quotations

omitted). In *Wigham*, the supreme court described the steps the district court must take to fulfill its statutory mandate to consider the defendant's ability to pay, and held as follows:

Accordingly, we hold that 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, either orally or in writing, that it considered the defendant's ability to pay. Further, while we do not require that the district court make specific findings about the defendant's income, resources, and obligations to support a court's express statement that it considered the defendant's ability to pay, 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 664-65 (footnotes omitted).

In so holding, the *Wigham* court noted "the indisputably mandatory nature of the directive that the district court 'shall consider' the defendant's ability to pay," stating that "shall" is a mandatory directive in this context. *Id.* at 663 (emphasis omitted) (quoting Minn. Stat. § 611A.045, subd. 1). Thus, the supreme court stated that the district court "must affirmatively take into account the defendant's ability to pay when awarding and setting the amount of restitution." *Id.* The *Wigham* court also stated that, although a district court has broad discretion in ordering restitution, that discretion "is constrained by the statutory requirements set forth in Minn. Stat. § 611A.045." *Id.* at 662.

The *Wigham* court concluded that

because the district court did not expressly state that it considered Wigham's ability to pay, and because the record does not include sufficient evidence about Wigham's income, resources, and obligations to allow the court to consider Wigham's ability to pay the amount of restitution ordered, we conclude that the court did not consider Wigham's ability to

pay as required by section 611A.045, subd. 1. We therefore reverse the decision of the court of appeals and remand to the district court for further proceedings on restitution. Before ordering restitution on remand, the district court should ensure that the [presentence investigation] is updated to include information on Wigham’s income, resources, and obligations. The district court must also expressly state, either orally or in writing, that it has considered Wigham’s ability to pay—his income, resources, and obligations—when ordering restitution.

Id. at 666 (citation omitted).

The district court here did not expressly state that it had considered Baker’s ability to pay, as required by *Wigham*. Instead, the district court expressly stated that it did *not* consider Baker’s ability to pay because Baker had waived his right to consideration of that issue. The district court explained:

Your plea agreement includes an agreement to pay restitution. So it’s my finding that by you agreeing to pay restitution as part of your plea agreement, you’ve waived your right to claim that under Minnesota statutory law you would be absolved of the obligation to pay because of inability to pay for lack of assets. You agreed to pay restitution. . . . So I have the discretion to award the restitution or not. And in my discretion, I am going to require you to pay all of the restitution.

Baker contends, and the state agrees, that the district court did not satisfy the statutory requirement—as interpreted in *Wigham*—that it consider Baker’s ability to pay.¹ We have an obligation to “decide cases in accordance with the law,” even if the parties

¹ The state qualified its concession, stating that its position would be different if Baker had agreed to a specific amount of restitution or had conceded that he could pay the amount ordered. See *Wigham*, 967 N.W.2d at 665 (“A defendant’s express concession that he or she could pay the amount of restitution awarded also may be sufficient ability-to-pay evidence.”). But the state acknowledges that “those are not the circumstances here.” Our decision is limited to the circumstances before us.

agree on an issue. *State v. Brown*, 937 N.W.2d 146, 157 (Minn. App. 2019) (quotation omitted). We therefore consider whether the district court satisfied its obligation under Minn. Stat. § 611A.045, subd. 1(a)(2), in accordance with the requirements set forth in *Wigham*.

Our research does not reveal legal authority supporting the district court's conclusion that Baker's plea agreement alone constituted a waiver of the district court's statutory obligation to consider a defendant's ability to pay when ordering restitution. Assuming, without deciding, that a defendant can waive that statutory requirement, the record here does not support a determination that Baker did so.²

"Waiver is the voluntary relinquishment of a known right." *State v. Jones*, 772 N.W.2d 496, 504 (Minn. 2009). "It is the expression of an intention not to insist on what the law affords." *Valspar Refinish, Inc. v. Gaylord's, Inc.*, 764 N.W.2d 359, 367 (Minn. 2009) (quotation omitted). "Knowledge and intent are essential elements of waiver." *Id.*

Neither the transcript of the plea hearing nor Baker's petition to plead guilty establish that Baker was aware of, understood, and agreed to waive the district court's statutory obligation to consider his ability to pay when determining the amount of restitution. Indeed, there is no mention in the record of any waiver regarding the process for determining restitution, including consideration of Baker's ability to pay. Under the circumstances, Baker's agreement to pay restitution did not relieve the district court of its statutory obligation to evaluate Baker's ability to pay when ordering restitution.

² Baker notes: "It remains questionable whether a defendant could 'waive' this statutory requirement, as it is not a 'right' vested to the defendant but a directive to the court."

DECISION

The district court abused its discretion by not considering Baker's ability to pay as required by section 611A.045, subdivision 1(a)(2), and *Wigham*. We therefore reverse the district court's orders for restitution and remand to the district court for further proceedings on restitution, specifically, a consideration of Baker's ability to pay based on an adequately developed record in accordance with *Wigham*.

Reversed and remanded.