

*This opinion is nonprecedential except as provided by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
A25-1724**

State of Minnesota,
Respondent,

vs.

Brian Wayne Crabtree,
Appellant.

**Filed May 26, 2026
Affirmed in part, reversed in part, and remanded
Connolly, Judge**

Becker County District Court
File No. 03-CR-23-1887

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

Brian W. McDonald, Becker County Attorney, Detroit Lakes, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Eva F. Wailes, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Connolly, Judge; and Ede,
Judge.

NONPRECEDENTIAL OPINION

CONNOLLY, Judge

On appeal from his conviction of felony theft, appellant challenges the district court's restitution order, arguing that the district court lacked authority to order restitution after sentencing and failed to adequately consider his ability to pay the restitution ordered.

Because appellant did not raise the issue below, we affirm the district court's authority to order restitution after sentencing. But because the district court failed to consider appellant's ability to pay restitution, we reverse and remand for the court to expressly consider appellant's ability to pay restitution.

FACTS

In October 2023, respondent State of Minnesota charged appellant Brian Wayne Crabtree with felony theft and possession of stolen property. Appellant subsequently agreed to a "global resolution" involving the charges in this case, as well as the charges in two other files. Under the terms of the plea agreement, appellant would plead guilty to felony theft and a charge in a different file, and all other charges would be dismissed. Appellant would then receive the presumptive sentence for the felony-theft offense and a 364-day concurrent sentence for the other offense. Appellant also agreed to pay restitution for the felony-theft offense "in an amount determined by the Court at sentencing or after sentencing if there's a challenge." And appellant agreed to pay restitution in the amount of \$855.82 to the victim in a file that was dismissed.

After appellant pleaded guilty, the parties appeared for sentencing. Although restitution affidavits had been filed, appellant requested that sentencing be continued because the presentence-investigation (PSI) report did not contain sufficient information regarding his income, resources, and obligations for purposes of restitution. The district court decided to proceed with sentencing and leave restitution open for 30 days so that appellant could file an objection to restitution if he desired, either as to the amount requested or based on his ability to pay. The district court also stated that it would order

the department of corrections to conduct a post-sentence investigation into appellant's income, resources, and obligations for a restitution hearing to be held after sentencing. Appellant was then sentenced the next day pursuant to the terms of his plea agreement.

Appellant did not file an objection to restitution, and no further hearings were conducted. The district court later filed a restitution order in July 2025, ordering appellant to pay a total of \$69,374.23 to the three victims that had requested restitution. This appeal follows.¹

DECISION

Appellant challenges the district court's award of restitution. Such an award is part of a sentence. *See Evans v. State*, 880 N.W.2d 357, 359 (Minn. 2016). "For a sentence to be unauthorized, it must be contrary to law or applicable statutes." *Id.* Appellate courts review a district court's decision to order restitution for an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015). But questions about the district court's authority to award restitution are reviewed de novo. *Id.*

Under Minnesota law "[a] victim of a crime has the right to receive restitution as part of the disposition of a criminal charge . . . against the offender if the offender is convicted." Minn. Stat. § 611A.04, subd. 1(a) (2024). The district court may reserve the issue of restitution if an affidavit or competent evidence of the loss is not received in time to be considered at the sentencing hearing. *Id.* But the district court may issue an order of restitution after the sentencing or dispositional hearing only if specific criteria are met:

¹ Respondent did not file a brief in this matter and we ordered that the case be determined on the merits pursuant to Minn. R. Civ. App. P. 142.03.

(1) the offender is on probation, committed to the commissioner of corrections, or on supervised release;

(2) sufficient evidence of a right to restitution has been submitted; and

(3) *the true extent of the victim's loss or the loss of the Crime Victims Reimbursement Board was not known at the time of the sentencing or dispositional hearing, or hearing on the restitution request.*

Id., subd. 1(b) (2024) (emphasis added).

Appellant argues that, “because the true extent of the victims’ losses was known at sentencing, the district court lacked legal authority to postpone ordering restitution until after sentencing.” But the supreme court recently reiterated that “a failure to object to a restitution award does not bar an appeal where the only challenge is to the legal authority of the court to order restitution *and that challenge was raised in the district court.*” *State v. Haynes*, 24 N.W.3d 313, 317 (Minn. 2025) (quotations omitted). Here, although the record reflects that appellant requested that sentencing be continued due to a lack of information in the PSI related to appellant’s ability to pay restitution, he did not object on the ground that the district court would lack authority to order restitution after he was sentenced because the victims’ losses were known at the time of sentencing. Thus, under *Haynes*, this argument is forfeited. *See id.* at 318 (concluding that the defendant “forfeited” his restitution challenge “by failing to raise it below”).

Appellant also contends that the district court failed to “comply with Minn. Stat. § 611A.045 [(2024)] when it ordered restitution” by failing to consider his ability to pay. We agree. Under the statute, a district court must consider “the income, resources, and

obligations of the defendant” before deciding whether ordering restitution is appropriate. Minn. Stat. § 611A.045, subd. 1(a)(2). “[A] district court fulfills its statutory duty . . . when it expressly states, either orally or in writing, that it considered the defendant’s ability to pay.” *State v. Wigham*, 967 N.W.2d 657, 664-65 (Minn. 2021). And this court recently held that Minn. Stat. § 611.045 and *Wigham* require the district court to expressly consider a defendant’s ability to pay, even when payment of an unspecified amount of restitution is part of a plea agreement. *State v. Baker*, 20 N.W.3d 897, 900-01 (Minn. App. 2025).

Here, the district court failed to fulfill its statutory duty to expressly consider appellant’s income, resources, and obligations before ordering him to pay restitution. The record reflects that restitution was ordered about two months after appellant was sentenced. Although at sentencing, the district court ordered “a Post-Sentence Investigation to be conducted” in order “to address [the] resources, obligations and income” of appellant, nowhere in the sentencing transcript did the court consider appellant’s ability to pay restitution. Moreover, no restitution hearing was held, so there was no additional opportunity for the court to make an oral record. And the restitution order does not include any written statements indicating that the district court considered appellant’s ability to pay restitution. We therefore reverse the district court’s restitution order and remand for consideration of appellant’s ability to pay restitution.

Affirmed in part, reversed in part, and remanded.