

*This opinion is nonprecedential except as provided by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
A25-1930**

State of Minnesota,
Respondent,

vs.

Clayton Robert Kessler,
Appellant.

**Filed June 29, 2026
Affirmed
Rasmusson, Judge**

Wright County District Court
File No. 86-CR-24-3488

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

Brian A. Lutes, Wright County Attorney, Jennifer Buske, Assistant County Attorney,
Buffalo, Minnesota (for respondent)

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

Considered and decided by Johnson, Presiding Judge; Bond, Judge; and Rasmusson,
Judge.

NONPRECEDENTIAL OPINION

RASMUSSON, Judge

After appellant Clayton Robert Kessler pleaded guilty to attempted burglary, the district court ordered him to pay \$6,450 in restitution. On appeal, Kessler argues that the district court erred by failing to properly consider his ability to pay. We affirm.

FACTS

On March 23, 2024, law enforcement responded to a report of an individual attempting to break into a house and vehicle and eventually identified the individual as Kessler. The victim found “pry marks” on the rear sliding door of the house and three screwdrivers stuck into the door frame.

Respondent State of Minnesota charged Kessler with (1) attempted second-degree burglary of a dwelling in violation of Minn. Stat. §§ 609.17, subd. 1, .582, subd. 2(a)(1) (2022); (2) first-degree criminal damage to property in violation of Minn. Stat. § 609.595, subd. 1(4) (2022); (3) motor vehicle tampering in violation of Minn. Stat. § 609.546(2) (2022); and (4) theft in violation of Minn. Stat. § 609.52, subd. 2(a)(1) (2022).

After the incident, a restitution affidavit was filed on behalf of the victim seeking \$6,450 to replace the damaged back door.¹ The affidavit was accompanied by an estimate from a construction company that confirmed the claimed amount.

In May 2025, Kessler entered an *Alford* plea to attempted burglary in exchange for a 24-month sentence and dismissal of the remaining counts.² The district court accepted

¹ As Kessler notes in his brief, the affidavits related to restitution are confidential documents. The court may discuss the contents of the affidavits, however, because they were openly discussed at the contested restitution hearing. *See* Minn. Gen. R. Prac. 11.03 (stating that nonpublic documents submitted as such “are not accessible to the public except to the extent that they are admitted into evidence in a testimonial hearing or trial”).

² An *Alford* plea is a guilty plea in which the defendant pleads guilty to a charge based on the belief that the evidence would be sufficient for a jury to convict him but maintains his actual innocence. *State v. Theis*, 742 N.W.2d 643, 647 (Minn. 2007) (citing *North Carolina v. Alford*, 400 U.S. 25, 38 (1970)).

the plea, sentenced Kessler according to the plea agreement, and ordered him to pay \$6,450 in restitution.

Kessler timely filed a request for a hearing to challenge restitution. In his supporting affidavit, he challenged the restitution award, asserting that the claim inadequately described the items or elements lost and failed to specify the reasons justifying the amount claimed. The day before the scheduled contested restitution hearing, Kessler filed a second affidavit.³ This affidavit added the following additional reasons for the challenge: the claim does not adequately itemize the total dollar amounts; the issue of restitution was not reserved or continued at the sentencing or dispositional hearing; and “other,” without any additional explanation provided by Kessler. Attached to the affidavit was an unsigned document entitled “Notice of Motion and Motion for Restitution Hearing,” which requested that the district court consider Kessler’s income, resources, and obligations and the amount of economic loss sustained by the victim as a result of the offense.

At the contested restitution hearing Kessler narrowed the basis for his challenge to (1) whether the sliding door was damaged to the point that it needed to be replaced and (2) his ability to pay restitution. Despite some disagreement among the parties about whether the second issue was properly before the court, the district court decided to proceed with both questions.⁴ The district court reviewed seven exhibits which showed the

³ The second affidavit was untimely. A “detailed sworn affidavit of the offender setting forth all challenges to the restitution . . . must be served on the prosecuting attorney and the court at least five business days before the hearing.” Minn. Stat. § 611A.045, subd. 3(a) (2024). The issue of timeliness is not before us, so we do not address it further.

⁴ The district court’s decision to proceed with the second issue was not appealed.

screwdrivers and damage to the back door. The district court then heard testimony from the victim about the type and amount of damage to the door, which included an estimate of the replacement cost. The victim also testified that replacing the door was his only option. Kessler argued that the evidence was insufficient to show the door needed to be replaced instead of repaired. Kessler testified that he could not afford a restitution obligation because he had been in custody for nine months, had never been employed, did not have outstanding debts, did not know the amount of fees he would incur when released from prison, and did not have anywhere to live after his release. Kessler asked the court to consider his inability to pay and vacate the order for restitution.

The district court denied Kessler's request to vacate or modify its restitution order. It found the victim's testimony credible and sufficient to support the restitution amount. The district court also expressly considered Kessler's ability to pay. It stated:

In regard to the ability to pay a restitution amount, one, Mr. Kessler's in prison by his own conduct, this conduct for the restitution that he's now been ordered to pay. He's been ordered to pay \$6,450. It is not such an amount of money that he can't pay when he is released from prison or it can be reduced to civil judgment. So I'm going to deny the motion to modify or otherwise vacate the restitution order. The restitution ordered at sentencing in the amount of \$6,450 will remain in place.

Kessler now appeals, requesting that we reverse the restitution award because the district court failed to properly consider his ability to pay.

DECISION

Appellate courts "generally review a restitution order for an abuse of the district court's broad discretion." *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021) (quotation

omitted). Appellate courts review de novo whether the district court fulfilled its statutory obligation to consider a defendant's ability to pay when it ordered restitution. *Id.* (citing *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015) (stating that questions concerning the authority of the court to order restitution are questions of law subject to de novo review)).

A district court must comply with the requirements set forth in Minn. Stat. § 611A.045 (2024) when ordering restitution. *Wigham*, 967 N.W.2d at 662. Under section 611A.045, subdivision 1(a), a district court must consider “the income, resources, and obligations of the defendant” in determining whether restitution is appropriate. “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.” *Id.* at 664.

The court is not required to “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” to fulfill its statutory duty. *Id.* at 665. However, “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.* Such evidence may include “specific, concrete evidence of the defendant's income, resources, and obligations”; information from a presentence investigation; “express concession” by the defendant that they are able to pay the amount of restitution awarded; or the inclusion of a restitution-payment schedule or structure reflecting the defendant's “ability to make the periodic payments.” *Id.* at 665-66. “Although the statutory requirement mandates that [district] courts consider a defendant's ability to pay,

it does not require [district] courts to limit a restitution award amount to only what the defendant can afford.” *Id.* at 664 n.4 (citing *State v. Lindsey*, 632 N.W.2d 652, 663-64 (Minn. 2001)).

Kessler concedes that the district court expressly stated that it considered his ability to pay during the contested restitution hearing. However, he argues that the district court committed reversible error under *Wigham* because it focused on the “wrong things”— “[i]nstead of truly considering [his] income, resources, and obligation[s], the district court focused on circumstances not relevant to the question of [his] ability to pay.” Kessler contends that the district court erred because “it really just stated facts that apply to most people challenging restitution and recounted the law of restitution”—namely, that he was “in prison by his own conduct, this conduct for the restitution that he’s now been ordered to pay” and “it [could] be reduced to civil judgment” after he is released from prison. He asserts that the district court should have relied on his testimony in which he stated he had “no money, no job, and no home to go to once he would be released from prison.” He therefore asks us to reverse the restitution award and remand for reconsideration of the restitution request.

Because the district court is not required to make specific findings to support its statement, the question before us is whether the record includes sufficient evidence about Kessler’s income, resources, and obligations to allow the district court to consider his ability to pay the amount of restitution ordered. *See id.* at 665. Under *Wigham*, our review is not limited to the district court’s express reasoning or findings, but rather it may look at

all evidence before the district court at the time of the contested restitution hearing. *See id.* at 664 n.5, 665.

Here, Kessler testified about his ability to pay. He testified that, at the time of the contested restitution hearing, he had been incarcerated at Lino Lakes prison for nine months, was not (and had never in his life been) employed, did not have any outstanding debts, was unsure whether he would have to pay any fees once he was released from prison, and did not have anywhere to live upon his release. This testimony constitutes “specific, concrete evidence of the defendant’s income, resources, and obligations” which *Wigham* identifies as a “type of ability-to-pay evidence that meaningfully informs a district court’s decision to order restitution.” *Id.* at 665 (citing *State v. Palubicki*, 727 N.W.2d 662, 667-68 (Minn. 2007) (affirming a restitution award and noting that it was “established” at the restitution hearing that the defendant had no assets and earned only \$1.25 per hour working at a prison job)), *id.* at 665-66 (“The defendant, of course, may assist the district court in fulfilling its duty to consider the defendant’s ability to pay by providing information about his or her income, resources, and obligations.”).

Although it is true that Kessler’s testimony suggests that he may not have the income and resources to *presently afford* the restitution amount, that is not the question before us. The question before us is whether the district court fulfilled its statutory obligation to consider the defendant’s ability to pay restitution. “[T]he statutory requirement mandates that [district] courts consider a defendant’s ability to pay, it does not require [district] courts to limit a restitution award amount to only what the defendant can afford.” *Id.* at 664 n.4 (citing *Lindsey*, 632 N.W.2d at 663-64); *see also State v. Davis*, 907 N.W.2d 220, 228

(Minn. App. 2018) (“[Although] an offender’s ability to pay is relevant and appropriate for a court’s consideration when ordering restitution, an offender’s inability to pay cannot extinguish a victim’s right to restitution when that victim has experienced economic loss from that offender’s crime.”), *rev. denied* (Minn. Apr. 17, 2018).

Additionally, a defendant’s ability to pay restitution is not limited to the defendant’s present income and resources; a district court may consider the defendant’s ability to pay restitution in the future. *See State v. Maidi*, 537 N.W.2d 280, 285-86 (Minn. 1995). Here, the district court noted that the restitution amount was “not such an amount of money that [Kessler couldn’t] pay when he is released from prison,” which was in the near future at the time of the restitution hearing.

Because the district court expressly considered Kessler’s ability to pay during the contested restitution hearing and the record includes sufficient evidence about his income, resources, and obligations to allow the district court to do so, the district court satisfied its statutory obligation. Accordingly, the district court did not abuse its discretion when it denied Kessler’s request to vacate or modify restitution.

Affirmed.