

*This opinion is nonprecedential except as provided by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
A26-0354**

State of Minnesota,
Respondent,

vs.

Robert Jefferey Stark,
Appellant.

**Filed October 12, 2026
Reversed and remanded
Slieter, Judge***

Hennepin County District Court
File No. 27-CR-19-26299

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

Mary F. Moriarty, Hennepin County Attorney, Adam E. Petras, Assistant County Attorney,
Minneapolis, Minnesota (for respondent)

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

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

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

NONPRECEDENTIAL OPINION

SLIETER, Judge

Appellant Robert Jefferey Stark pleaded guilty to theft by swindle based on his admission that he stole large sums of money from his bank and former employer. The district court ordered him to pay approximately \$66,000 in restitution. We conclude that the district court erred by ordering restitution without sufficient evidence in the record regarding Stark's ability to pay. Therefore, we reverse and remand for further proceedings.

FACTS

Stark stole large sums of money from his bank and his former employer. In late 2018, Stark used unsupported checks, transfers between accounts, and numerous withdrawals to swindle the bank out of approximately \$18,000. In 2018 and 2019, Stark deposited five checks meant for his employer into his own account, causing approximately \$48,000 in losses to his former employer.

In October 2019, respondent State of Minnesota filed a complaint in which it charged Stark with theft by swindle, in violation of Minn. Stat. § 609.52, subd. 2(a)(4) (2018). In three additional actions, the state also charged Stark with theft from his former employer, two counts of fifth-degree controlled substance possession, and one count of fleeing a peace officer.

Pursuant to a global plea agreement, Stark pleaded guilty to three crimes: one count of theft by swindle, in violation of Minn. Stat. § 609.52, subd. 2(a)(4); and two counts of fifth-degree controlled-substance possession in violation of Minn. Stat. § 152.025, subd. 2(1) (2020). In exchange for Stark's guilty pleas, the state dismissed the theft charge and

the fleeing-a-peace-officer charge and recommended concurrent, stayed sentences of 17 months of imprisonment with a referral to drug court. The agreement contemplated that the state would seek restitution in both of the theft cases and that Stark reserved the right to challenge restitution.

In April 2023, the district court sentenced Stark to three concurrent, stayed terms of 17 months of imprisonment, referred him to drug court, and ordered Stark to pay a total of \$66,972.88 in restitution. Later that month, Stark filed a timely motion contesting the restitution order and requesting a restitution hearing.

Stark filed a supporting affidavit in February 2025, and the district court scheduled a restitution hearing.¹ In his affidavit, Stark challenged the restitution awards on the grounds that the respective claims did not adequately describe the items or elements of loss or adequately itemize the total dollar amounts claimed. Stark also stated that the affidavits for restitution lacked clarity with respect to whether the claimants had filed insurance claims or utilized the claimed losses for a tax write-off.

The district court conducted a restitution hearing on two days in July and August 2025. The district court heard witness testimony from representatives from the bank and the former employer. The representatives testified to the losses sustained because of Stark's activities. Stark's attorney cross-examined both witnesses, focusing on whether they had mitigated their losses in any way. Stark did not testify and did not call any

¹At the hearing and in the restitution order the district court stated that the delay in the filing of the affidavit and the scheduling of the hearing was the result of a miscommunication and that Stark's affidavit and the restitution hearing would not be considered untimely.

witnesses. The arguments of Stark's attorney focused on whether restitution was appropriate in light of alternative avenues by which the bank and the former employer could be made whole. He also suggested that Stark should not be held individually liable for the bank's losses associated with his business account. Stark's attorney also stated that "there are significant concerns about . . . ability to pay," but did not elaborate further on that issue.

Following the attorneys' arguments, the district court asked Stark's attorney to elaborate on his "concern regarding ability to pay." Counsel conceded that "we do not have testimony to support that," but nonetheless argued that Stark is "significantly indigent" and that ordering the full amount of restitution would create a "significant hardship for him." The district court responded by noting that it could not accept Stark's arguments about his indigence as evidence. The district court noted that the record did not contain a presentence investigation (PSI) report or "any other factual information" related to "Stark's income, resources, and obligations." The district court then asked if Stark was prepared to supplement the record with testimony or other evidence. Stark's attorney responded that Stark is not prepared to testify but noted that his claim of indigency was supported in the record by his qualification for assistance by the public defender's office. The district court took the matter under advisement.

In early December 2025, the district court filed a ten-page order in which it dismissed Stark's restitution challenge and ordered him to pay \$17,885.77 to the bank and \$48,131.61 to his former employer. Stark appeals.

DECISION

Stark argues that the district court abused its discretion in ordering restitution because the record contains insufficient evidence regarding Stark's income, resources, and obligations.

As part of a felony sentence, a district court may order a defendant to pay restitution to a crime victim. Minn. Stat. § 609.10, subd. 1(a)(5) (2024). The “primary purpose” of restitution is “to restore crime victims to the same financial position they were in before the crime.” *State v. Currin*, 974 N.W.2d 567, 572 (Minn. 2022) (quotation omitted). “[I]n determining whether to order restitution and the amount of the restitution,” a district court “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.” Minn. Stat. § 611A.045, subd. 1(a) (2024). “[T]he statute requires that information regarding both factors be included in a presentence investigation report.” *State v. Cloutier*, 987 N.W.2d 214, 219 (Minn. 2023); *see also* Minn. Stat. § 611A.045, subd. 2 (2024) (“The presentence investigation report . . . must contain information pertaining to the factors set forth in subdivision 1.”); Minn. Stat. § 609.115, subd. 1 (2024) (providing that “the court shall, before sentence is imposed, cause a presentence investigation and written report to be made to the court” when a defendant has been convicted of a felony).

With respect to the second factor, “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.” *State v. Wigham*, 967 N.W.2d

657, 665 (Minn. 2021). “Although the statutory requirement mandates that courts consider a defendant’s ability to pay, it does not require 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)).

If the state has proved that a crime victim sustained an economic loss as a result of the defendant’s crime, a district court has broad discretion to order restitution. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). Accordingly, appellate courts apply an abuse-of-discretion standard of review to a district court’s restitution award. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

The district court discussed Stark’s ability to pay in its order and memorandum. The district court noted that the record contained evidence indicating that: (1) Stark had originally been represented by private counsel, who withdrew after two years for multiple reasons; (2) Stark posted bonds of \$40,000 and \$5,000 in two cases; and (3) after the withdrawal of private counsel, Stark was represented by the public defender’s office. Ultimately, the district court concluded that Stark was not entitled to relief based on his inability to pay because he did not meet his burden to produce evidence supporting his challenge or to allege in his affidavit with specificity his challenge to the restitution amount, under Minn. Stat. § 611A.045, subd. 3(a).²

²The district court’s interpretation of the defendant’s burden in subdivision 3(a) is at odds with binding precedent. The supreme court has stated that, while “[s]ubdivision 3(a) imposes certain burdens on the defendant and the State when a defendant challenges restitution . . . the plain language of subdivision 3(a) does not assign a burden of proof regarding a defendant’s income, resources, and obligations.” *Cloutier*, 987 N.W.2d at 219-20. The supreme court explained that “the district court can fulfill its statutory mandate to

The supreme court has stated 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.” *Wigham*, 967 N.W.2d at 664. Additionally, while the supreme court does 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, the court has held “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 665.

The supreme court has provided examples of the type of ability-to-pay evidence that may meaningfully inform a district court’s decision to order restitution. *See id.* Such evidence may include records that contain “specific, concrete evidence of the defendant’s income, resources, and obligations,” a PSI that “includes information about the defendant’s income, resources, and obligations,” or a “defendant’s express concession that he or she could pay the amount of restitution.” *Id.*

In this case, at the restitution hearing, the district court indicated that it had reviewed the record for evidence related to Stark’s income, resources, and obligations but could not

consider a defendant’s income, resources, and obligations in a process that assigns no party a burden of proof.” *Id.* at 222. Additionally, this court has cast doubt on the proposition that a defendant can waive the district court’s statutory obligation to consider a defendant’s ability to pay under subdivision 1(a)(2). *See State v. Baker*, 20 N.W.3d 897, 900 (Minn. App. 2025). Furthermore, the plea agreement contemplated that Stark reserved the right to challenge restitution.

locate a PSI. The district court stated, “I don’t believe there’s any other factual information in the record for me to rely on in making my decision here.” The district court continued, “So in terms of the requirement that I consider Mr. Stark’s income, resources, and obligations, I certainly would do that to the extent that that were made part of the record by Mr. Stark,” but noted, “I understand that is not happening.” Stark’s counsel affirmed that “Mr. Stark is not prepared to testify at this time.” The district court also noted that it was “unable to locate public-defender eligibility form” in the record.

The record evidence cited by the district court is tenuous. It appears that the district court references Stark’s retention of private counsel to demonstrate that he had some financial means. It is true that Stark initially retained private counsel however, the record indicates that one of the primary reasons for which his counsel sought to withdraw was Stark’s “refusal to pay his fee.” The record also indicates that in March 2022 Stark was able to secure a \$40,000 bond through a bond company. The district court seems to give little weight to the fact that Stark was apparently eligible for a public defender in 2022 by stating that there is “nothing in the record to demonstrate [Stark] was reassessed for eligibility more recently.”³ In sum, the record evidence cited by the district court does not

³The district court stated that it was “unable to locate a public-defender eligibility form.” The record does, however, contain a document entitled “Court Appointed Attorney Eligibility,” dated September 2022. The form indicates that Stark has been unemployed since 2020, is without income, and has no assets. Although this document does appear to contain “specific, concrete evidence of the defendant’s income, resources, and obligations,” *see id.*, the district court stated that it was “unable to locate a public-defender eligibility form” and so apparently did not consider it.

contain “specific, concrete evidence of the defendant’s income, resources, and obligations.” *See Wigham*, 967 N.W.2d at 665.

Accordingly, the district court did not meet its obligation under Minn. Stat. § 611A.045, subd. 1(a)(2), because the record does not contain sufficient evidence about Stark’s income, resources, and obligations to allow the district court to consider his ability to pay the amount of restitution ordered.

Therefore, we reverse the district court’s order for restitution and remand for further proceedings on restitution to specifically consider Stark’s ability to pay based on an adequately developed record in accordance with *Wigham*.

Reversed and remanded.