

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 20, 2012

v

CHAD JAMES GARRISON,

Defendant-Appellant.

No. 307102
Cheboygan Circuit Court
LC No. 11-004309-FC

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by delayed leave granted from that portion of the judgment of sentence requiring him to pay restitution. We remand to the trial court for a redetermination of restitution.

Defendant admitted stealing four snowmobiles and two trailers, and pled guilty to larceny greater than \$1,000 but less than \$20,000, MCL 750.356(3)(a). At the sentencing hearing, defendant objected to the restitution award, and the trial court granted defendant 30 days to work out an agreement with the prosecution, or to file an objection and request a hearing. Defendant timely objected.

At the restitution hearing, defense counsel objected to the payment of travel expenses to the victims, arguing that the victims made a voluntary choice to drive up to check the status of their lost items. The trial court disagreed, holding that this was a consequence directly caused by defendant's conduct. Additionally, defense counsel objected to one victim receiving an amount of restitution above the cash value appraised for one of the trailers by an insurance adjustor. The item in question was a Triton trailer that had been completely destroyed. An insurance adjustor had appraised the value of the trailer at a cash value of \$1,958.00 and a replacement cost of \$2,794.50. The trial court found that the cash appraisal value likely would be insufficient to allow the victim to repurchase a comparable trailer, so it ordered the defendant to pay \$1,311.00, an amount between the cash appraisal value and the replacement cost that it determined to be proper, after accounting for \$1,000.00 in insurance proceeds that the victim had received for the damage.

It is inaccurate to say that a trial court has discretion to award restitution; rather, "a trial court must order the defendant to pay restitution and the amount must fully compensate the defendant's victims." *People v Allen*, 295 Mich App 277, 281, n 1; 813 NW2d 806 (2012). A

trial court therefore abuses its discretion when it orders restitution other than full restitution. *Id.* at n 1. “Whether and to what a extent a loss must be compensated is a matter of statutory interpretation; and this Court reviews de novo the proper interpretation of statutes.” *Id.*, citing *People v Bemmer*, 286 Mich App 26, 31; 777 NW2d 464 (2009). We review a trial court’s factual findings underlying a restitution order for clear error. MCR 2.613(C). A finding is clearly erroneous if this Court is left with the definite and firm conviction that a mistake has been made. *Allen*, 295 Mich App at 281.

Restitution is not a substitute for civil damages, but encompasses only those losses that are easily ascertained and directly result from defendant’s criminal conduct. *People v White*, 212 Mich App 298, 316; 536 NW2d 876 (1995). A trial court may require a convicted felon to pay costs only if such costs are expressly authorized by statute. *People v Slocum*, 213 Mich App 239, 242; 539 NW2d 572 (1995). Both MCL 769.1a and the Crime Victim’s Rights Act (CVRA), MCL 780.751 *et seq.*, provide that the sentencing court shall order a defendant to pay restitution in addition to any other penalty authorized by law. See MCL 769.1a; MCL 780.766.

This Court has previously held that neither MCL 769.1a nor the CVRA, MCL 780.766, authorizes the sentencing court to order a defendant to pay restitution to reimburse the victim for traveling expenses. *People v Jones*, 168 Mich App 191; 423 NW2d 614 (1988).¹ We agree with the *Jones* court, and do not read either statute to provide a court with the authority to order the defendant to pay such expenses. Therefore, the trial court abused its discretion in ordering defendant to pay for travel expenses. *Allen*, 295 Mich App at 281 n 1.

The trial court did not err in ordering restitution for the destroyed trailer at a slightly higher value than the insurance appraisal of “actual cash value.” The trial court was permitted to award the “fair market value” of the destroyed property. MCL 769.1a(3)(b)(i)-(ii); MCL 780.766(3)(b)(i)-(ii). If the “fair market value . . . cannot be determined or is impractical to ascertain,” then restitution is to be ordered based on the property’s “replacement value.” *Id.*

It appears from the record that the trial court did not adopt the insurer’s “actual cash value” appraisal as conclusive of the property’s “fair market value.” Nothing in the statutes requires the trial court to adopt an insurer’s appraisal of the property’s actual cash value as its “fair market value.” Having been unable to determine or practically ascertain the “fair market value,” the trial court thus permissibly considered what it would cost to replace the destroyed trailer with a comparable one, and determined that the insurer’s “actual cash value” estimate would be insufficient to do so. But the court also did not adopt the insurer’s estimate of “replacement cost” (as the statutes also do not require) and instead adopted a figure between the two as one that likely would be adequate to allow for the replacement of the destroyed trailer.

¹ Although *Jones* was decided before the 2005 amendments to the CVRA, 2005 PA 184, we do not find that the amendments overruled or modified *Jones*. Rather, the amendments only made the ordering of restitution mandatory rather than permissive. See *People v Gubachy*, 272 Mich App 706, 712-713; 728 NW2d 891 (2006).

Given the CVRA's intended purpose of making the victims of crime as whole as possible, *Gubachy*, 272 Mich App at 712-713, the trial court did not err in granting an amount above what the appraiser calculated as "cash value," so that the victim would be able to purchase a replacement trailer.

Affirmed in part, reversed in part, and remanded for redetermination of restitution consistent with this opinion. We do not retain jurisdiction.

/s/E. Thomas Fitzgerald

/s/ Mark T. Boonstra

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METER, J. (*concurring in part and dissenting in part*).

I respectfully dissent from that portion of the majority opinion holding that the trial court abused its discretion in ordering defendant to pay his victims for travel expenses related to his criminal conduct. I would affirm this appeal in its entirety.

I acknowledge that this Court, in *People v Jones*, 168 Mich App 191, 196; 423 NW2d 614 (1988), concluded that victims' travel expenses are not compensable as restitution. However, MCR 7.215(J)(1) states:

Precedential Effect of Published Decisions. A panel of the Court of Appeals must follow the rule of law established by a prior published decision of the Court of Appeals issued on or after November 1, 1990, that has not been reversed or modified by the Supreme Court, or by a special panel of the Court of Appeals as provided in this rule.

Because *Jones* was decided before November 1, 1990, the prosecution correctly asserts that it is not binding law.

The prosecution is also correct that the imposition of restitution is *mandatory* (except in certain circumstances not applicable here). MCL 780.766(2). The purpose of restitution is to make victims whole for the losses they have suffered as a result of a defendant's criminal course of conduct. MCL 780.766(2); *People v Gahan*, 456 Mich 264, 271-272; 571 NW2d 503 (1997); *People v Gubachy*, 272 Mich App 706, 713; 728 NW2d 891 (2006). In *Gubachy, id.*, this Court stated that "the Legislature has clearly manifested an intent to make victims of a crime as whole as they can be fairly made and to leave the determination of how best to do so at the trial court's discretion" The Court concluded that a victim's labor costs in inventorying and restocking lost merchandise were properly included in a restitution award. *Id.* at 713-714. In reaching this

conclusion, the Court indicated that MCL 780.766 provides a non-exhaustive list of remedies. *Id.* at 711-714.

Especially in light of *Gubachy*, I believe that the designation of victims' travel expenses as restitution is allowable under MCL 780.766. It serves the intended purpose of making victims as whole as possible.¹

I would affirm this appeal in its entirety.

/s/ Patrick M. Meter

¹ The majority cites *People v Slocum*, 213 Mich App 239, 242; 539 NW2d 572 (1995), for the proposition that assessed "costs" must be expressly authorized by statute. Even assuming that restitution-based travel expenses are encompassed by the term "costs" as employed in *Slocum*, I find that these expenses are authorized by virtue of MCL 780.766