



State v. Coney

2002 | Cited 0 times | Court of Appeals of Minnesota | September 24, 2002

Affirmed

UNPUBLISHED OPINION

On appeal from an amended restitution order, Autumn Coney contends that the state has not sustained its burden of proving \$6,434 of the court-ordered \$42,642 restitution. Because the district court had an adequate factual basis to order restitution amounting to \$42,642, we find no abuse of discretion and affirm.

FACTS

Autumn Coney pleaded guilty to nine counts of financial exploitation of a vulnerable person. The guilty plea was based on evidence that in 1999 Coney befriended Marjorie Fehr, an elderly, medically dependent woman and, in the course of their one-year friendship, convinced Fehr to give her more than \$40,000.

The district court sentenced Coney to 72 months in prison, \$47,264 in restitution to Fehr, and \$400 in restitution to the Polk County Victim Assistance Program (PCVAP). Coney filed an affidavit challenging the amount of the restitution, stating that she was not responsible for \$11,056 of the restitution to Fehr and listing specific checks, drawn on Fehr's account, that Coney denied were for her benefit.

At the hearing on Coney's challenge to the restitution amount, a representative from the PCVAP testified to Fehr's statements about the disputed checks. Fehr agreed that \$1,236 worth of checks should not be included in the restitution amount because some of the checks were for items that Fehr used herself and some were compensation to Coney's husband for work he had performed on Fehr's house. But Fehr asserted that Coney received the amounts in the remaining disputed checks.

Coney admitted that she had received "a substantial amount of money" from Fehr during their one-year friendship, but disputed that she received the benefit of the checks listed in her affidavit and that other checks represented loans or gifts from Fehr. Coney further claimed that she had repaid Fehr money that Fehr had allegedly loaned to her, but Coney produced no evidence to substantiate the claim of repayment. Coney also challenged additional checks that she did not list in her affidavit.



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After the hearing, but before the district court issued its decision, the state filed an amended certificate of restitution reducing the amount that Coney owed Fehr from \$47,264 to \$42,642.

The district court issued an order setting the restitution owed to Fehr at \$42,642. The court found that the state had met its burden of demonstrating the nature and amount of the loss sustained by Fehr, that the loss amounted to \$42,642, and that Coney's testimony on her remaining claims was not credible. Coney appeals, contending that the court should have reduced the original amount by \$11,056 rather than \$4,622, and, therefore, the restitution amount set by the court should be further reduced by \$6,434.

DECISION

Under Minnesota law, crime victims are entitled to restitution that includes, but is not limited to, out-of-pocket expenses relating to the crime for which an offender is convicted. Minn. Stat. § 611A.04, subd. 1 (2000). The restitution must be based on a factual determination of the victim's economic injury, and the factual determination must show with reasonable specificity the type and amount of the loss. *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984); *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000). The district court has significant discretion in determining the type and amount of expense that comprises restitution, and we will not reverse a determination that has an adequate factual basis. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999), cert. denied, 528 U.S. 1165 (2000).

In a challenge to a restitution amount, the offender has the burden of production. Minn. Stat. § 611A.045, subd. 3(a) (2000); see also *Thole*, 614 N.W.2d at 235. The offender must file with the court and the prosecuting attorney "a detailed sworn affidavit * * * setting forth all challenges to the restitution or items of restitution, and specifying all reasons justifying dollar amounts of restitution which differ from the amounts requested by the victim." Minn. Stat. § 611A.045, subd. 3(a). Once the offender has properly challenged the restitution order, the burden of substantiating the type and the amount of the restitution by a preponderance of the evidence shifts to the prosecution. Minn. Stat. § 611A.045, subd. 3(a).

Coney disputes the inclusion of several checks, some listed in her affidavit and some only addressed at the hearing, in the restitution total. She claims that she did not receive the benefit of some of the checks and that the remaining checks were either gifts or loans.

At the hearing and prior to the state filing its amended certificate of restitution, the PCVAP representative testified that Fehr agreed that \$1,236 of the amount listed in Coney's affidavit should be subtracted from the restitution amount because Fehr believed that these funds were either payments to Coney's husband for work done at Fehr's home or monies that Fehr used for herself.

The PCVAP representative provided information on each of the checks that Coney disputed. The representative's testimony was based on her recollection from her interviews with Fehr, notes from



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the interviews, and a spreadsheet the representative created that listed the amount and payee of both the disputed and undisputed checks. The district court admitted as exhibits the transcripts of the interviews, the notes from the interviews, and the spreadsheet. Although Coney's testimony contradicted some of the information provided by the PCVAP representative, the district court specifically found that Coney's testimony was not credible. We do not retry credibility determination on appeal. Minn. R. Civ. P. 52.01 (requiring appellate courts to give "due regard" to the district court's assessment of the credibility of a witness).

The district court also properly rejected Coney's request to deduct the amounts of the checks not listed in her affidavit challenging the restitution amount. Detailing the disputed amounts in an affidavit is the "sole vehicle by which the offender can meet the burden of pleading, and an essential element of the offender's case required to meet the burden of production." Thole, 614 N.W.2d at 235. The state demonstrated by a preponderance of the evidence that Coney caused Fehr out-of-pocket losses in the amount of \$42,642. Minn. Stat. §§ 611A.04, subd. 1, .045, subd. 3(a).

The district court's amended restitution order was based on the demonstrated out-of-pocket expenses and rejected Coney's explanations that were not credible and claims not listed in her affidavit challenging restitution. The district court's order is based on the evidence and is not an abuse of discretion.

Affirmed.

