

IN THE SUPREME COURT OF IOWA

STATE OF IOWA,

Plaintiff-Appellee,

v.

ROYRIGUEZ PATTERSON,

Defendant-Appellant.

SUPREME COURT 21-0672

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HONORABLE CHRISTOPHER KEMP, JUDGE

APPELLANT'S REPLY BRIEF AND ARGUMENT

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CERTIFICATE OF SERVICE

On the 12th day of August 2022, the undersigned certifies that a true copy of the foregoing instrument was served upon Defendant-Appellant by placing one copy thereof in the United States mail, proper postage attached, addressed to Royriguez Patterson, 4115 Pamela Ct., Apt. 9, West Des Moines, IA 50266.

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. The Supreme Court should grant review in Polk County number NTA0948898.

Authorities

Iowa Const. art. V, § 4

Iowa R. App. P. 6.108

State v. Holberg, 449 N.W.2d 376, 377 (Iowa 1989)

II. Patterson has a right of appeal from the pecuniary damages restitution order entered after judgment and sentence. Alternatively, Patterson should be granted a writ of certiorari in Polk County number OWOM088283.

Authorities

Right of Appeal

State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017)

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Iowa Code § 910.7(2021)

Iowa Code § 910.7(5) (2021)

State v. Zarate, 908 N.W.2d 831, 839-40 (Iowa 2018)

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Equal Protection

Iowa Code § 910.1(6) (2021)

State v. Bonstetter, 637 N.W.2d 161, 165 (Iowa 2001)

State v. Roache, 920 N.W.2d 93, 102 (Iowa 2018)

State v. Watts, 587 N.W.2d 750, 751 (Iowa 1998)

III. The pecuniary damages restitution order lacks substantial evidentiary support.

Authorities

DeVoss v. State, 648 N.W.2d 56, 63 (Iowa 2002)

STATEMENT OF THE CASE

COMES NOW the defendant-appellant, pursuant to Iowa R. App. P. 6.903(4), and hereby submits the following argument in reply to the plaintiff-appellee's brief.

ARGUMENT

I. The Supreme Court should grant review in Polk County number NTA0948898.

Preservation of Error.

The question in this Division is not subject to the ordinary preservation of error analysis. The district court cannot determine this Court's jurisdiction. Iowa Const. art. V, § 4. This question is properly before the Court. Patterson filed a notice of appeal within 30 days of the restitution order. (4/13/21 Ruling; NOA) (App. pp. 34-38, 39). While he does not have a right of appeal in a dismissed case, Iowa Rule of Appellate Procedure 6.108 states:

If any case is initiated by a notice of appeal, an application for interlocutory appeal, an application for discretionary review, or a petition for writ of certiorari and the appellate court determines another form of review was the proper one, the case shall not be dismissed, but shall proceed as though the

proper form of review had been requested. The court may treat the documents upon which the action was initiated as seeking the proper form of review and, in appropriate cases, may order the parties to file jurisdictional statements. Nothing in this rule shall operate to extend the time for initiating a case.

Iowa R. App. P. 6.108. The Supreme Court ordered jurisdictional statements. (6/1/21 SCt Order)(App. pp. 40-42). The Court ordered the issues briefed and submitted with the appeal. (10/13/21 SCt Order)(App. pp. 73-75).

The plea agreement in OWOM088283 does not prohibit Patterson from seeking a writ of certiorari or an application for discretionary review in NTA0948898. Patterson agreed to pay court costs in NTA0948898 but he did not agree to an amount of victim restitution. The written guilty plea stated, “Counts I and III and companion citation NTA0948898 to be dismissed at Defendant’s cost.” The written guilty plea further stated, “As part of the plea agreement, I agree to pay full court costs & victim restitution for any dismissed counts and/or cases so I give up the right to request a reasonable ability to pay (RATP) determination as to court costs in any such case.”

(OWOM088283 Plea p. 2)(App. p. 15). When read in context the adjective “full” only modified court costs. Alternatively, if “full” modified victim restitution, the determination of the amount of restitution is subject to the State meeting its burden to prove the damages are causally connected to the established criminal act. State v. Holberg, 449 N.W.2d 376, 377 (Iowa 1989).

II. Patterson has a right of appeal from the pecuniary damages restitution order entered after judgment and sentence. Alternatively, Patterson should be granted a writ of certiorari in Polk County number OWOM088283.

Right of Appeal

The State filed a motion to amend Patterson’s sentence. (2/8/21 Motion to Amend Sentence to Include Restitution)(App. p. 27). An order which adds restitution to a previously imposed sentence is a new sentencing order. The addition of a victim restitution obligation inserts a new term into the sentence. Cf. State v. Propps, 897 N.W.2d 91, 96 (Iowa 2017) (stating by denying a motion to correct illegal

sentence, the district court neither disturbed the underlying sentence nor entered a new judgment of sentence).

A criminal defendant has a right to be personally present at sentencing. Iowa R. Crim. P. 2.27(1); State v. Jones, 817 N.W.2d 11, 18 (Iowa 2012) (noting the defendant's right to be present at every stage is rooted in both the confrontation clauses and due process clauses of the state and federal constitutions); State v. Alspach, 554 N.W.2d 882, 883 (Iowa 1996) (noting sentencing is a critical stage of the criminal proceeding). The district court may not enter a new judgment and sentence without the defendant's personal presence, unless voluntarily waived. Patterson did not waive his right to be present at sentencing. (OWCR088283 Plea p. 2)(App. p. 15).

The February 8, 2021 order which imposed victim restitution without a hearing and Patterson's personal presence is not a valid amended sentencing order. (Suppl. Order) (App. pp. 28-29). If the February 8, 2021 supplemental

order was the “final” victim restitution order, Patterson would request the Court vacate the order and remand for hearing. State v. Atwood, 602 N.W.2d 775, 781 (Iowa 1974) (stating prejudice may be presumed if a defendant is absent; however, any such presumption can be rebutted under a harmless-error analysis.). However, the April 13, 2021 Ruling superseded the February 8, 2021 supplemental order. (4/13/21 Ruling)(App. pp. 34-37). The April 13, 2021 Ruling is the last amended sentencing order – a final order of judgment.

Iowa Code section 910.3(10) provides, in relevant part, “[a] permanent restitution order entered after the time of sentencing shall only be challenged pursuant to section 910.7.” Iowa Code § 910.3(10) (2021). This statute is not applicable to the present case. While Patterson was originally sentenced in December 2020, his sentence has since been amended twice. (12/21/20 Order; Suppl Order; 4/13/21 Ruling)(App. pp. 20-26, 28-29, 34-38). Because the April 13, 2021 Ruling is an amended judgment and sentence it is not

subject to section 910.3(10). The restitution hearing was part of resentencing, thereby, Iowa Code section 910.7 is not applicable. Iowa Code § 910.7 (2021) (petition for hearing). Thus, Iowa Code section 910.7(5) which provides appellate review is by writ of certiorari is likewise inapplicable to the present case. Iowa Code § 910.7(5) (2021).

This Court has recognized that when a new judgment of sentence is entered that there is a right of appeal. *Compare State v. Zarate*, 908 N.W.2d 831, 839-40 (Iowa 2018) (defendant was resentenced, appealed and the Supreme Court retained the appeal) *with State v. Propps*, 897 N.W.2d at 96 (denial of a motion to correct illegal sentence did not result in a change of the original sentence). Patterson has a right of appeal. Iowa R. App. P. 6.101(1)(b); Iowa Code § 814.6(1)(a)(3).

Equal Protection

Patterson is similarly situated to a civil defendant sued for damages from an automobile accident. Iowa Code section 910.1(6) defines pecuniary damages:

all damages to the extent not paid by an insurer on an insurance claim by the victim, which a victim could *recover against the offender in a civil action arising out of the same facts or event*, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.

Iowa Code § 910.1(6) (2021) (emphasis added). “The rationale of restitution under criminal law is similar to the rationale of tort under civil law.” State v. Bonstetter, 637 N.W.2d 161, 165 (Iowa 2001). “Iowa Code chapter 910 expressly relies on civil liability principles to determine restitution for a crime victim’s pecuniary damages.” State v. Roache, 920 N.W.2d 93, 102 (Iowa 2018). The Supreme Court has stated that Iowa Code section 910.1(6) (formerly section 910.1(3)) “connote[s] a requirement that the victim prove a prima facie case of liability premised on some civil theory such as fault or intentional tort. Proximate cause, of course, would be a necessary element of such a prima facie case.” State v. Watts, 587 N.W.2d 750, 751 (Iowa 1998).

III. The pecuniary damages restitution order lacks substantial evidentiary support.

In the district court, the State only sought restitution for lost wages from the year 2020. (Tr. p. 35L4-p. 36L4) (“..., I think the request for merely the 34,000 dollars of wages that were lost for his inability to work for the year 2020 is more than reasonable ...”). The district court did not award Tidwell restitution for the year 2021. (4/13/21 Ruling p. 4)(App. p. 37). Therefore, the argument raised for the first time on appeal that Tidwell suffered lost wages for 14 months is not preserved. DeVoss v. State, 648 N.W.2d 56, 63 (Iowa 2002) (stating “[b]ecause error preservation is based on fairness, we think both parties should be bound by the rule. Ordinarily, we attempt to protect the district court from being ambushed by parties raising issues on appeal that were not raised in the district court. We see no reason why we should not apply the same rationale to the parties themselves.”). If the Court determines the district court’s order is supported by substantial evidence, the \$6,000 payment from the Iowa

Attorney General's Office must be deducted from the total restitution amount to avoid a windfall.

CONCLUSION

Royriguez Patterson respectfully requests this Court grant him review in Polk County NTA0948898, and find he has a right of appeal in Polk County OWOM088283 or grant review by certiorari. Patterson respectfully request this Court vacate the pecuniary damages restitution order because it is not supported by substantial evidence. Alternatively, Patterson requests the Court reduce the restitution order by \$6,000 and remand the case to the district court to enter a corrected restitution order.

ATTORNEY'S COST CERTIFICATE

The undersigned, hereby certifies that the true cost of producing the necessary copies of the foregoing Brief and Argument was \$2.06, and that amount has been paid in full by the Office of the Appellate Defender.

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATIONS, TYPEFACE REQUIREMENTS AND TYPE-STYLE REQUIREMENTS

This brief complies with the typeface requirements and type-volume limitation of Iowa Rs. App. P. 6.903(1)(d) and 6.903(1)(g)(1) because:

[X] this brief has been prepared in a proportionally spaced typeface Bookman Old Style, font 14 point and contains 1,454 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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