

IN THE SUPREME COURT OF IOWA
Supreme Court No. 22-0771

STATE OF IOWA,
Plaintiff-Appellee,

vs.
B. C. D.,
Defendant-Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
FOR SCOTT COUNTY
THE HONORABLE CHERYL TRAUM (DEFERRED JUDGMENT
REVIEW ORDER) AND CHRISTINE DALTON (RESTITUTION
ORDER), JUDGES

APPELLEE'S BRIEF

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AMENDED FINAL

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. THIS CASE SHOULD BE CONSIDERED AS A PETITION FOR WRIT OF CERTIORARI AS THIS IS THE PROPER MEANS TO CHALLENGE RESTITUTION UNDER IOWA CODE SECTIONS 910.3(10) AND 910.7(5).

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III. THE DISTRICT COURT HAD AUTHORITY TO ENTER A RESTITUTION ORDER ON THE “DISMISSED AND EXPUNGED” CASE.

Authorities

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IV. THERE IS SUBSTANTIAL EVIDENTIARY SUPPORT FOR THE RESTITUTION AMOUNT THE COURT ORDERED.

Authorities

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V. CERTIORARI SHOULD BE GRANTED TO CORRECT THE ILLEGAL SENTENCE THAT RESULTED FROM THE COURT’S FAILURE TO ORDER RESTITUTION IN A TIMELY MANNER.

Authorities

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ROUTING STATEMENT

This case presents an issue of first impression and a question of changing legal principles and should be retained by the Iowa Supreme Court. Iowa R. App. P. 6.1101(2)(c) and (f). That is, this case involves the application of Iowa Code chapter 910 and the proper means to seek review of a restitution order when a deferred judgment has been imposed. The resolution of this case will have impact on the manner in which restitution orders may be challenged. Iowa R. App. P. 6.

STATEMENT OF THE CASE

Nature of the Case

B. C. D. appeals the restitution order for pecuniary damages. The Honorable Christine Dalton entered the restitution order in Scott County. The issues to consider include the correct form of review, whether the district court had subject matter jurisdiction, whether the court had authority to enter a restitution order after the court dismissed and expunged the charge, whether the court had a sufficient basis to order the amount of restitution imposed, and whether the court's dismissal and expungement of the case before restitution was entered constituted error.

Course of Proceedings

The Scott County Attorney charged B. C. D. with one count of third-degree criminal mischief, a violation of Iowa Code section 716.5, and punishable as an aggravated misdemeanor after she damaged C. B.'s cars. Trial Info. AGCR408554 and Mins. of Testimony (4/8/20); App. 7-9; Conf. App. 5-15. The parties entered into a plea agreement under which B. C. D. pleaded guilty to the reduced charged of fourth-degree criminal mischief. Written Guilty Plea (8/19/21); App. 16-20. The district court deferred judgment and placed B. C. D. on unsupervised probation for one year. Order Deferred Judgment (8/19/21); App. 21-24. The court imposed a civil penalty of \$315 and ordered a restitution hearing be set to determine the amount of restitution for pecuniary damages. Order Deferred Judgment (8/19/21); App. 21-24. The court also set a hearing on the deferred judgment for February 18, 2022, to determine if B. C. D. completed the requirements of the deferred judgment. Order Deferred Judgment (8/19/21); App. 21-24.

B. C. D. filed a request for a reasonable ability to pay determination and a financial affidavit. Req. Reasonable Ability to Pay (8/19/21), Financial Affidavit (8/19/21); App. 25, 26-30. The

district court set a hearing on restitution for October 28, 2021, and later continued the hearing until December 9, 2021. Order (9/17/21), Order for Continuance (10/28/21); App. 31-32, 33.

According to the docket for AGCR408554, there is no indication that a hearing occurred, although the sheriff served subpoenas and the court approved a hearing via Zoom. See Trial court docket, *State v. Donahue*, Scott Co. No. AGCR408554, Subpoena Return (Doss) (12/8/21), Subpoena Return (Jacobsen) (12/6/21), Order (12/6/21); App. 5-6, 36, 35, 37-38. The next entry on the electronic docket is the order dismissing and expunging the deferred judgment on February 15, 2022. Deferred Judgment Review Order (2/15/22); App. 39-40. The order also provides, “the case will not be expunged until all monies owing have been paid in full.” Deferred Judgment Review Order (2/15/22); App. 39-40.

Approximately two hours after the entry of the deferred judgment review order, the district court filed an order setting a restitution hearing on March 24, 2022. Order (2/15/22); App. 41-42. The court held a hearing on March 24, 2022, and later entered an order imposing restitution for pecuniary damages in the amount of \$6067.44. Order (4/8/22); App. 46-48.

B. C. D. filed a notice of appeal on May 5, 2022, and challenged the district court's restitution order. Not. of Appeal (5/5/22); App. 49-52. On May 17, 2022, the Iowa supreme court noted that a right to appeal does not exist from a restitution order when a deferred judgment is entered. Sup. Ct. No. 22-0771 Order (5/17/22). The court directed B. C. D. to file a statement regarding appellate review and why review should be granted. Sup. Ct. No. 22-0771 Order (5/17/22). B. C. D. subsequently filed a petition for writ of certiorari/and or application for discretionary review. Pet. Writ of Cert./Discretionary Review (7/2/22). The State resisted the petition/application, however, the supreme court granted the application for discretionary review. Resistance (7/11/22), Sup. Ct. Order (8/9/22).

Facts

In her written guilty plea, B. C. D. admitted:

In Scott County, Iowa, I scratched the hood of a sedan when I had no right to do so. T. J. W. [co-defendant] proceeded to cause further damage to another vehicle at the same location.

Written Guilty Plea (8/19/21); App. 16-20.

ARGUMENT

I. THIS CASE SHOULD BE CONSIDERED AS A PETITION FOR WRIT OF CERTIORARI AS THIS IS THE PROPER MEANS TO CHALLENGE RESTITUTION UNDER IOWA CODE SECTIONS 910.3(10) AND 910.7(5).

Appellate Review

In the supreme court's order granting discretionary review, the court directed the parties to address the proper means of review. The State asserts that this court should consider the issues raised as certiorari action in accordance with Iowa Code sections 910.3(10) and 901.7(5).

Certiorari

In *State v. Patterson*, 984 N.W.2d 449, 454 (Iowa 2023), this court recently addressed the proper means to challenge a restitution order. The *Patterson* court found that, under the Iowa Constitution, our appellate jurisdiction is subject to “such restrictions as the general assembly may, by law, prescribe.” *Patterson*, 984 N.W.2d at 454 (citing Iowa Const. art. V, § 4). Ordinarily, Iowa Code section 814.6 – which generally provides criminal defendants with a “right of appeal” - determines whether we have “subject-matter jurisdiction for the review of a criminal defendant's appeal.” *State v. Propps*, 897 N.W.2d 91, 96 (Iowa 2017); *see also* Iowa Code § 814.6(1)(a).

But the *Patterson* court also noted that the legislature has also enacted special provisions that govern appellate review of restitution orders. *Patterson*, 984 N.W.2d at 454. The court further determined that its “analysis must account for those provisions.” *See id.* § 4.7 (directing that “[i]f a general [statutory] provision conflicts with a special ... provision,” and if the conflict “is irreconcilable,” then “the special ... provision prevails”). *See generally* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183–88 (2012) (discussing the “general/specific canon”).

Iowa Code section 910.3 sets out how a court is to determine restitution and how a defendant may challenge restitution orders. Iowa Code § 910.3. There are two provisions in section 910.3 that address challenging restitution orders. *See* Iowa Code § 910.3. Section 910.3(8) addresses restitution orders that are entered at the time of sentencing. Iowa Code § 910.3(8). The court did not enter an order for pecuniary damages at the time it deferred judgment. Order Deferred Judgment (8/19/21), Order (4/8/22); App. 21-24, 46-48. The order assessed only a \$315 civil penalty which constitutes category A restitution. Order Deferred Judgment (8/19/21); App. 21-24;

Iowa Code § 910.1(1). The deferred judgment order did not include an amount of restitution for pecuniary damages or for Category B restitution. Order Deferred Judgment (8/19/21); App. 21-24.

Iowa Code section 910.3(10) applies when, as in this case, the court enters a restitution order after the time of sentencing. Iowa Code § 910.3(10). That section provides:

A permanent restitution order may be superseded by subsequent orders if additional or different restitution is ordered. *A permanent restitution order entered after the time of sentencing shall only be challenged pursuant to section 910.7.*

Iowa Code § 910.3(10)(emphasis added). The district court sentenced B. C. D. on August 19, 2021, however, the court did not enter a restitution order until April 8, 2022. Order Deferred Judgment (8/19/21), Order (4/8/22); App. 21-24, 46-48. Section 910.3(10) requires that a permanent order of restitution entered after sentencing “shall only” be challenged pursuant to section 910.7. Iowa Code § 4.1(30) (the word “shall” imposes a duty); *State v. Klawonn*, 609 N.W.2d 515, 522 (Iowa 2000) (“we have [also] interpreted the term ‘shall’ in a statute to create a mandatory duty, not discretion.”) Iowa Code section 910.7(5) provides:

Appellate review of a district court ruling under this section shall be by writ of certiorari.

Iowa Code § 910.7(5). Thus, the statute requires restitution challenges entered after the date of sentencing to be challenged by certiorari.

In *Patterson*, the court noted that a “writ of certiorari lies where a ... court has exceeded its jurisdiction or otherwise acted illegally...” Section 910.7(5) provides that “appellate review of a district court ruling . . . shall be by writ of certiorari.” *Lozano Campuzano v. Iowa Dist. Ct.*, 940 N.W.2d 431, 434 (Iowa 2020) (second omission in original) (quoting *Weissenburger v. Iowa Dist. Ct.*, 740 N.W.2d 431, 434 (Iowa 2007)). “We have interpreted this standard liberally.” *Bousman v. Iowa Dist. Ct.*, 630 N.W.2d 789, 794 (Iowa 2001). An “illegality” occurs “when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law.” *State v. Iowa Dist. Ct.*, 828 N.W.2d 607, 611 (Iowa 2013) (quoting *State Pub. Def. v. Iowa Dist. Ct.*, 747 N.W.2d 218, 220 (Iowa 2008)). Because B. C. D. asserts that the district court acted illegally in ordering restitution after the case had been dismissed and expunged and the amount of restitution imposed lacked a “factual basis,” certiorari is the appropriate means to consider the claims raised. Similarly, the State asserts that certiorari review is appropriate because if the district court’s order expunging and dismissing the case

extinguished the court's ability to order restitution, that order dismissing and expunging the case amounts to an illegal sentence. *See* Issue V. The district court was required to impose restitution in accordance with Iowa Code § 910.2(1)(a), and the court's failure to do so constitutes an illegal sentence.

Discretionary review

The State notes, however, that *State v. Stessman*, 460 N.W.2d 461, 464 (Iowa 1990), provides that “the proper route of possible review for a restitution order issued as part of or following a deferred judgment is an application for discretionary review.” Although the *Stessman* court rejected the defendant's request to consider the restitution challenge following entry of a deferred judgment as a certiorari action, sections 910.3(10) and 910.7(5) did not exist when the court decided the case. *Id.* at 463. The State submits that the changes to section 910.3 and 910.7 have statutorily overruled *Stessman*. *Ogden v. Iowa Dist. Court For Polk County*, 309 N.W.2d 401 (1981) (per curiam) (no comparable statute was in effect at the time this court decided the case). Review should be by certiorari.

II. THE DISTRICT COURT HAD SUBJECT MATTER JURISDICTION WHEN IT ENTERED THE RESTITUTION ORDER; THE ORDER REGARDING THE EXPUNGEMENT OF THE DEFERRED JUDGMENT DID NOT TAKE EFFECT UNTIL “ALL MONIES OWING HA[D] BEEN PAID IN FULL.”

Preservation of Error

The State does not contest error preservation. A lack of subject matter jurisdiction can be raised at anytime. *State v. Mandicino*, 509 N.W.2d 481, 482 (Iowa 1993).

Standard of Review

“Our review of the proceedings concerning subject matter jurisdiction is at law. . .” *Tigges v. City of Ames*, 356 N.W.2d 503, 512 (Iowa 1984).

Merits

The district court had subject matter jurisdiction to impose restitution for pecuniary damages following the defendant’s guilty plea to fourth-degree criminal mischief. The district court’s order regarding the “deferred judgment review” did not extinguish the court’s jurisdiction over the matter.

Subject matter jurisdiction is:

. . . the power of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court's attention.

Jurisdiction over the subject matter of a claim must be conferred by a constitutional or statutory grant.

DeStefano v. Apts. Downtown, Inc., 879 N.W.2d 155, 164

(Iowa 2016) (internal quotation marks and citations omitted).

B. C. D. pleaded guilty to a serious misdemeanor offense. Written Guilty Plea (8/19/21); App. 21-24. The district court had jurisdiction over the criminal offense under by virtue of the Iowa Constitution and Iowa Code sections 602.6306 and 910.2(1)(a). Iowa Const. art. V, § 6, Iowa Code §§ 602.6306 and 910.2(1)(a).

Article V, section 6 of the Iowa Constitution provides that “[t]he district court shall be a court of law and equity . . . and have jurisdiction in civil and criminal matters . . . in such manner as shall be prescribed by law.” Iowa Const. art. V, § 6. Iowa Code section 602.6306 states that district associate judges have jurisdiction of indictable misdemeanors, class “D” felony violations, and other felony arraignments. Iowa Code § 602.6306; *State v. Iowa District Court for Polk County*, 581 N.W.2d 640, 644 (Iowa 1998) (district associate judges have jurisdiction over indictable misdemeanors).

The court’s jurisdiction over the indictable misdemeanor in this case also required the court to order restitution in the criminal case

under Iowa Code section 910.2(1)(a). Iowa Code § 910.2(1)(a). That section provides:

In all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that pecuniary damages be paid by each offender to the victims of the offender's criminal activities. . .

Iowa Code § 910.2(1)(a). Thus, these constitutional and statutory provisions conferred jurisdiction over the matter at hand. Iowa Const. art. V, § 6, Iowa Code §§ 602.6306 and 910.2(1)(a).

B. C. D. asserts, however, that the court lacked jurisdiction to impose restitution because the case was “dismissed.” She continues that Iowa Code section 803.1(1) gives Iowa courts subject matter jurisdiction over an offense a person commits within or outside the state. Iowa Code § 803.1(1). Section 803.1(1) pertains to territorial jurisdiction, not subject matter jurisdiction. *State v. Rimmer*, 877 N.W.2d 652, 661 (Iowa 2016) (territorial jurisdiction refers to a state’s power “to create criminal law, especially with respect to the permissible geographical scope of penal legislation.”) B. C. D.’s reliance on section 803.1(1) is misplaced.

Similarly, her interpretation of the order dismissing the charges is short-sighted. The order provides that the “charge(s) should not be

dismissed and expunged. All dismissed charges shall now also be expunged.” Deferred Judg. Review Order (2/15/22) (original emphasis); App. 41-42. The next line states “Defendant is hereby advised that the case will not be expunged until all monies owing have been paid in full.” Deferred Judg. Review Order (2/15/22); App. 41-42.

The order informed B. C. D. that the charges would be dismissed and expunged *only after* all monies had been paid in full. Deferred Judg. Review Order (2/15/22); App. 41-42. The order did not preclude the court from ordering restitution for pecuniary damages in the case. The order was a temporary order because the financial obligations still needed to be determined and paid. Deferred Judg. Review Order (2/15/22); App. 41-42. It was incumbent upon the court to enter the order for restitution, in particular, pecuniary damages. Indeed, The State requested restitution for pecuniary damages *prior* to the entry of the guilty plea. Stmt. Pecuniary Damages (6/9/20) and (2/8/21); App. 10-12, 13-15. B. C. D. requested a reasonable ability to pay hearing and filed a financial affidavit after the court accepted her plea. Req. Ability to Pay Hearing (8/19/21), Financial Affidavit (8/19/21); App. 25, 26-30.

Two hearings had been set but the court did not enter an order on restitution. Order Setting Hearing (9/17/21), Order for Continuance (10/28/21); App. 31-32, 33-34. The court is required by statute to enter an order on restitution and the deferred judgment review order represents an acknowledgement that the charges would be dismissed and expunged *only after* “all monies owing have been paid in full.” Deferred Judg. Review Order (2/15/22); App. 39-40. Thus, the court still had to determine the amount of restitution.

Roughly two hours after the issuance of the deferred judgment review order, the district court scheduled a restitution hearing. Order Setting Hearing (2/15/22); App. 41-42. Because the district court entered an order for a restitution hearing on this case even after the charges were “dismissed,” the reasonable conclusion is that the court – and the parties --- understood the court still had to enter the amount of restitution. Once restitution was ordered, B. C. D. would know the amount she had to pay to get the charges expunged. The district court committed no error in ordering restitution for pecuniary damages after the entry of the deferred judgment order.

III. THE DISTRICT COURT HAD AUTHORITY TO ENTER A RESTITUTION ORDER ON THE “DISMISSED AND EXPUNGED” CASE.

Preservation of Error

The State does not agree error has been preserved on this claim. *Mandicino*, 509 N.W.2d at 483 (an impediment to a court’s authority can be obviated by consent, waiver, or estoppel). B. C. D. consented to the imposition of restitution by participating in the hearing. In addition, B. C. D. waived any claim by and failing to challenge the court’s authority to enter a restitution order below knowing that the court previously entered an order “dismissing and expunging” the deferred judgment. Rest. Tr. p. 1, line 1 through p. 3, line 13. This claim cannot be considered.

To the extent that B. C. D. asserts that the imposition of restitution following the dismissal and expungement is an illegal sentence, B. C. D. is incorrect. Def. Brief at 19. If an illegality existed in this case, it was the failure to order restitution before dismissing and expunging the case. The court could not dismiss or expunge the case until restitution had been ordered. *See* Issue V.

Standard of Review

Review is for errors at law. *Iowa District Court Polk County*, 581 N.W.2d at 643 (review on certiorari is for the correction of errors at law).

Merits

The district court had authority to enter the restitution order. The court's prior order "dismissing and expunging" the charge of criminal mischief did not preclude the entry of the restitution order which the court was required to impose under section 910.2(1)(a). The order "dismissing and expunging" the charge informed B. C. D. that the charge would be expunged only after "all monies owing have been paid in full." Thus, the order cannot be read to extinguish the court's authority to order restitution when the amount had not yet been determined.

As discussed above, subject matter jurisdiction refers to the power of a court to deal with a class of cases to which a particular class belongs. *DeStefano*, 879 N.W.2d at 164. Although a court may have subject matter jurisdiction, it may lack the authority to hear a particular case for one reason or another. *In re Estate of Falck*, 672 N.W.2d 785, 789-90 (Iowa 2003). A court's lack of authority "is not

conclusively fatal to the validity of an order.” *In re Marriage of Seyler*, 559 N.W.2d 7, 10 n. 3 (Iowa 1997). Thus, if a party waives the court’s authority to hear a particular case, the judgment becomes final and is not subject to collateral attack. *Falck*, 672 N.W.2d at 790.

In this case, the district court had the authority to enter the restitution order because the order “dismissing and expunging” the charge was more akin to a notice to B. C. D. that her charge would be dismissed and expunged *when her restitution obligation had been satisfied*. Deferred Judg. Review Order (2/15/22); App. 39-40. The order did not extinguish her obligation to pay restitution.

If the court finds that the court lacked authority to enter the restitution order after it previously dismissed and expunged the charge, the restitution order is still valid. B. C. D. did not challenge the entry of the restitution but actively participated in the hearing and challenged the amount of restitution the victim, C. B., sought. Rest. Tr. p. 17, line 15 through p. 20, line 10, p. 21, line 5 through p. 25, line 2. She did not challenge the court’s authority to impose it. Thus, B. C. D. consented to the entry of the restitution order and/or waived any challenge. The district court’s restitution order must stand.

IV. THERE IS SUBSTANTIAL EVIDENTIARY SUPPORT FOR THE RESTITUTION AMOUNT THE COURT ORDERED.

Preservation of Error

The State does not contest error preservation.

Standard of Review

The court reviews restitution orders for correction of errors at law. *State v. Hagen*, 840 N.W.2d 140, 144 (Iowa 2013).

Merits

Restitution is a creature of statute. *Hagen*, 840 N.W.2d at 149. The framework for restitution is found in Iowa Code chapter 910. When ordering criminal restitution, a court applies the provisions of that chapter. *Id.*

Under the statute, “restitution” is defined as the “payment of pecuniary damages to a victim in an amount and in the manner provided by the offender’s plan of restitution.” Iowa Code § 910.1(4). “Pecuniary damages” means “all damages to the extent not paid by an insurer . . . which a victim could recover against the offender in a civil action or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium.” Iowa Code § 910.1(6) (2021). The purpose of these criminal restitution statutes is to protect the public by compensating victims for criminal

activities and rehabilitate the offender by instilling responsibility in the offender. *State v. Shears*, 920 N.W.2d 527, 530–31 (Iowa 2018) (citing *State v. Izzolena*, 609 N.W.2d 541, 548 (Iowa 2000)); *State v. Kluesner*, 389 N.W.2d 370, 372 (Iowa 1986).

Restitution is mandatory “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered.” Iowa Code § 910.2; *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998) (noting that restitution is mandatory when a defendant pleads guilty); *State v. Kluesner*, 389 N.W.2d 370, 373 (Iowa 1986) (requiring that sentencing court order restitution where defendant pled guilty and was granted a deferred judgment). The burden is on the State to show the victim is entitled to restitution. *Shears*, 920 N.W.2d at 532. The State must produce evidence on the amount of damages sought. *Id.*

The State sought restitution for the damage B. C. D. and her co-defendant, T. J. W., caused to C. B.’s vehicles. Stmt. Of Pecuniary Damages (6/9/20) and (2/8/21); App. 10-12, 13-15. At the restitution hearing, C. B. testified that on February 19, 2020, T. J. W. and B. C. D. came to her apartment and were banging on the door. Rest. Tr. p. 5, lines 4-23. T. J. W. and B. C. D. were yelling “all kinds of

stuff about her son.” Rest. Tr. p. 5, lines 18-23. T. J. W. is a former girlfriend of C. B.’s son. Rest. Tr. p. 4, lines 18-23.

C. B. did not let T. J. W. or B. C. D. into the apartment. Rest. Tr. p. 5, lines 9-17. She looked outside the window and saw the two women damaging her two vehicles; a 2004 Ford Escape and a 2004 Hyundai sedan. Rest. Tr. p. 5, line 24 through p. 6, line 11. C. B. saw B. C. D. scratching the hood of the Hyundai. Rest. Tr. p. 6, lines 12-25. While B. C. D. scratched the hood, T. J. W. opened the rear doors of the sedan and threw out several items that were in the backseat. Rest. Tr. p. 6, lines 12-25, p. 8, lines 8-21. C. B. grabbed her phone and recorded the incident. Rest. Tr. p. 6, line 18 through p. 7, line 18.

B. C. D. realized that she was being recorded and walked away. Rest. Tr. p. 7, lines 1-8. T. J. W. continued the destruction. Rest. Tr. p. 7, lines 1-8. She grabbed a metal crowbar and a jack that C. B. had in the backseat to repair her brakes. Rest. Tr. p. 7, lines 1-8. T. J. W. threw the items at the Hyundai and shattered the windshield of the Hyundai. Rest. Tr. p. 7, lines 1-8. She also used the metal objects to dent the sedan. Rest. Tr. p. 7, lines 1-8. T. J. W. walked over to the 2004 Escape and damaged it by breaking the windshield and scratching and denting it. Rest. Tr. p. 7, line 12 through p. 8, line 21.

There was substantial damage to both cars “all over.” Rest. Tr. p. 9, lines 8-17.

C. B. testified that she had to “junk” the Hyundai. Rest. Tr. p. 9, line 15 through p. 10, line 17. The cost to repair the vehicle exceeded its value. Rest. Tr. p. 9, lines 15-24. The Blue Book value ranged from \$1479 to \$3460 with a “private party value of “\$2470.” Rest. Tr. p. 10, lines 3-17, Exh. 1; App. 43-44. She did not have insurance for the vehicle. Rest. Tr. p. 10, lines 21-25. She received \$150 for the Hyundai when she disposed of it. Rest. Tr. p. 10, lines 16-20.

C. B. could only afford to repair the windshield of the Ford Escape. Rest. Tr. p. 11, lines 7-19. The cost to repair the windshield was \$234.84. Rest. Tr. p. 11, lines 7-23, Exh. 3; App. 45. The Escape, however, needed additional repairs that she could not afford to make on her own. Rest. Tr. p. 12, line 10 through p. 16, line 3, Exh. 3; App. 45. The repair estimate for the Escape was \$3512.60. Exh. 3; App. 45.

After hearing this testimony, the district court entered a restitution order in the amount of \$6067.44. Rest. Order (4/8/22); App. 46-48. The order found “T. J. W. and B. C. D. are joint and

severally liable for payment of \$6067.44” in victim restitution payable to C. B. Rest. Order (4/8/22); App. 46-48.

B. C. D. now contests the amount of restitution. She contends that C. B.’s testimony is that the only evidence regarding damage to the vehicle came from C. B. “who has a motivation to lie about” the issue. Def. Brief at 25-26. C. B., however, testified about the extent of the damage and provided a video of the criminal act. Rest. Tr. p. 3, line 17 through p. 21, line 1. She also testified about the condition of the Ford before the incident occurred. Rest. Tr. p. 12, lines 10-25. She described it as being in “decent shape.” Rest. Tr. p. 12, lines 10-25. There was “no rust,” no broken windows, and only normal “wear and tear.” Rest. Tr. p. 12, line 10 through p. 13, line 6. The evidence supports the court’s findings.

B. C. D. also takes issue with the amount restitution the court imposed. Def. Brief at 28. She questions how the court arrived at the \$6067.44 amount. Def. Brief at 28. At the hearing, the State established the following amounts as damages:

\$2470.00	Blue Book value of Hyundai
\$ 234.84	Windshield repair of Ford
<u>\$3512.60</u>	Repair estimate of Ford

\$6217.44

Less \$ 150.00 Payment for Hyundai

\$6067.44 TOTAL

Rest. Order (4/8/22); App. 46-48. The restitution order is supported by substantial evidence. The district court must be affirmed.

V. CERTIORARI SHOULD BE GRANTED TO CORRECT THE ILLEGAL SENTENCE THAT RESULTED FROM THE COURT’S FAILURE TO ORDER RESTITUTION IN A TIMELY MANNER.

Preservation of Error

Our rules of error preservation are circumvented when a party claims their sentence is illegal. *State v. Bruegger*, 773 N.W.2d 862, 871 (Iowa 2009). “Where, as here, the claim is that the sentence itself is inherently illegal, whether based on constitution or statute ... the claim may be brought at any time.” *Bruegger*, 773 N.W.2d at 872. This includes claims brought for the first time on appeal. *See id.* at 870–72.

Standard of Review

Our review of challenges to the illegality of a sentence is for errors at law. *State v. Tindell*, 629 N.W.2d 357, 359 (Iowa 2001) (citing *State v. Carstens*, 594 N.W.2d 436, 437 (Iowa 1999)).

Merits

If this court finds that the district court could not order restitution after the charge was “dismissed and expunged,” the State asserts that the order dismissing and expunging the charge was illegal. *Bruegger*, 773 N.W.2d at 872. A district court has a mandatory duty to impose restitution in “all criminal cases” and the court’s failure to order restitution in a timely manner is an illegal sentence. Iowa Code § 910.2(1)(a). The court lacked power to dismiss the charge when the court still had the statutory duty to impose restitution.

Restitution is a creature of statute. *Hagen*, 840 N.W.2d at 149. The framework for restitution is found in Iowa Code chapter 910. When ordering criminal restitution, a court applies the provisions of that chapter. *Id.*

The purpose of these criminal restitution statutes is to protect the public by compensating victims for criminal activities and rehabilitate the offender by instilling responsibility in the offender. *State v. Shears*, 920 N.W.2d 527, 530–31 (Iowa 2018) (citing *Izzolena*, 609 N.W.2d at 548; *Kluesner*, 389 N.W.2d at 372).

Restitution is mandatory “[i]n all criminal cases in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered.” Iowa Code § 910.2; *State v. Watts*, 587 N.W.2d 750, 751 (Iowa 1998) (noting that restitution is mandatory when a defendant pleads guilty); *Kluesner*, 389 N.W.2d at 373 (requiring that sentencing court order restitution where defendant pled guilty and was granted a deferred judgment).

At the time the district court entered the deferred judgment review order on February 15, 2022, the court had not entered an order for restitution on the requested pecuniary damages. Deferred Judg. Review Order (2/15/22); App. 39-40. The State requested pecuniary damages, B. C. D. requested a reasonable ability to pay hearing, and she filed a financial affidavit. Stmt. Pecuniary Damages (6/9/20) and (2/8/21), Req. Reasonable Ability to Pay (8/19/21), Financial Affidavit (8/19/21); App. 10-12, 13-15, 25, 26-30. The district court set two hearings to determine restitution and the reasonable ability to pay, but court did not enter an order of restitution until April 8, 2022. Order (9/17/21), Order for Continuance (10/28/21); App. 31-32, 33-24.

The court ordered restitution after it entered the order dismissing and expunging the case. Rest. Order (4/8/22); App. 46-48. If the order dismissing and expunging the case was final and divested the court of jurisdiction over the case, the court acted illegally. The court could not dismiss or expunge the charge until the matter of restitution had been addressed. A court has a mandatory duty under the statute to enter a restitution order. Iowa Code § 910.2(1)(a). When, as in this case, restitution was requested, and the court failed to order restitution until after the case was dismissed or expunged, the order dismissing or expunging the case is illegal because the court had to order restitution. The district court's order dismissing or expunging the case is illegal because restitution had not yet been determined. The order dismissing and expunging the case must be reversed.

CONCLUSION

The district court's restitution order must be affirmed.

REQUEST FOR ORAL SUBMISSION

The State requests to be heard in oral argument.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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) or (2) because:

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