

**IN THE COURT OF APPEALS OF OHIO  
SECOND APPELLATE DISTRICT  
CLARK COUNTY**

STATE OF OHIO	:	
	:	
Plaintiff-Appellee	:	C.A. CASE NO. 2014-CA-85
	:	
V.	:	T.C. NO. 14CR272
	:	
MARIA MOLLETT	:	(Criminal appeal from
	:	Common Pleas Court)
Defendant-Appellant	:	
	:	

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**OPINION**

Rendered on the 1st day of May, 2015.

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DONOVAN, J.

{¶ 1} Defendant-appellant Maria Mollett appeals from her conviction and sentence for one count of receiving stolen property (RSP), in violation of R.C. 2913.51(A), a felony of the fifth degree. Millett filed a timely notice of appeal with this Court on July 30, 2014.

{¶ 2} On April 24, 2014, Mollett was indicted on two counts of RSP. Count one of

the indictment was accompanied by a firearm specification. The charges stemmed from an incident in which Mollett's friend Juanita Sanchez stole several items from the residence of Gary Clay. Sanchez asked Mollett to pawn the items. Mollett agreed and sold several of the stolen items at local pawn shops and antique stores. According to the State, Mollett received \$1,154.00 for the items she was able to pawn.

{¶ 3} Mollett entered into plea negotiations with the State, ultimately agreeing to plead guilty to Count II, RSP, in exchange for dismissal of the first count and the firearm specification. After the plea hearing, Mollett was released on her own recognizance and directed by the trial court to return for disposition on July 24, 2014.

{¶ 4} Pursuant to R.C. 2929.13(B)(1)(a), a felony of the fifth degree carries a maximum penalty of one year in prison but is subject to mandatory community control unless the trial court finds that an exception applies under R.C. 2929.13(B)(1)(b). Prior to sentencing, the trial court ordered Mollett to submit to a drug test. Mollett subsequently tested positive for opiates. At the sentencing hearing, Mollett admitted that she had ingested a Vicodin pill the night before because of a migraine. Mollett further stated that her mother had given her the pill, and she did not have a prescription for it. By testing positive for opiates, the trial court found that Mollett had violated a condition of her bond and sentenced her to ten months in prison. R.C. 2929.13(B)(1)(b). The trial court also ordered her to pay \$7,500.00 in restitution.

{¶ 5} It is from this judgment that Mollett now appeals.

{¶ 6} Because they are interrelated, Mollett's first, second, and third assignments of error will be discussed together as follows:

{¶ 7} "THE TRIAL COURT'S ORDER REQUIRING MOLLETT TO SUBMIT TO A

URINE TESTING [sic] WITHOUT CAUSE WAS A VIOLATION OF MOLLETT'S FOURTH AMENDMENT RIGHTS."

{¶ 8} "MOLLETT WAS DENIED HER SIXTH AMENDMENT RIGHT TO COUNSEL WHEN ORDERED TO SUBMIT TO A SEARCH OUTSIDE OF HER ATTORNEY'S PRESENCE."

{¶ 9} "MOLLETT WAS DENIED HER RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL."

{¶ 10} As previously stated, Mollett pled guilty to one count of RSP, a felony of the fifth degree. Based on the positive results of the drug test ordered by the trial court at the sentencing hearing, Mollett's own-recognizance bond was revoked, and she was sentenced to ten months in prison. Ten months has lapsed and post-release control was optional. This Court's review of the Ohio Department of Rehabilitation and Correction's website confirms that Mollett is no longer an inmate, nor is she subject to post-release control. See *State v. Erdman*, 2d Dist. Montgomery No. 25814, 2014-Ohio-2997, ¶ 3 (taking judicial notice that the appellant's name no longer appeared on the ODRC website).

{¶ 11} The issues raised by appointed appellate counsel in assignments of error I, II, and III are moot because Mollett has completed her sentence. The present appeal does not involve her conviction for RSP, and this court cannot provide any relief for the prison sentence she served as a result of the trial court revoking her bond as a result of the positive drug test. See *State v. Tidd*, 2d Dist. Montgomery No. 24922, 2012-Ohio-4982, ¶12 ("After this appeal had been submitted for decision on the merits, it occurred to this court that the appeal might be moot, since it appeared that Tidd had

completed the nine-month prison sentence imposed following the revocation of her community control sanctions. Therefore, any meaningful relief that this court could provide would be the reversal of the nine-month sentence, which she has already completed.”).

{¶ 12} Because Mollett is appealing from the revocation of her bond and the imposition of a sentence that she has completed, the above assignments of error are moot.

{¶ 13} Because they are interrelated, Mollett’s fourth and fifth assignments of error will be discussed together as follows:

{¶ 14} “THE TRIAL COURT ERRED IN NOT HOLDING A RESTITUTION HEARING AFTER MOLLETT CHALLENGED THE BASIS FOR THE CALCULATION OF RESTITUTION.”

{¶ 15} “THE TRIAL COURT ERRED IN FAILING TO CONSIDER MOLLETT’S ABILITY TO PAY RESTITUTION.”

{¶ 16} In her fourth assignment, Mollett argues that the trial court improperly denied her a hearing before ordering her to pay restitution to the victim in the amount of \$7,500.00. Mollett also contends that the trial court failed to consider her ability to pay any restitution.

{¶ 17} A trial court abuses its discretion when it orders restitution that does not bear a reasonable relationship to the actual financial loss suffered. *State v. Williams*, 34 Ohio App.3d 33, 516 N.E. 2d 1270 (2d Dist. 1986). Therefore, we review a trial court’s order of restitution under an abuse of discretion standard. See, e.g., *State v. Naylor*, 2d Dist. Montgomery No. 24098, 2011-Ohio-960, ¶22. “The abuse of discretion standard is

defined as '[a]n appellate court's standard for reviewing a decision that is asserted to be grossly unsound, unreasonable, illegal, or unsupported by the evidence.' " *State v. Boles*, 2d Dist. Montgomery No. 23037, 2010-Ohio-278, ¶18, quoting Black's Law Dictionary, Eighth Edition (2004), at 11.

**{¶ 18}** R.C. 2929.18(A)(1) allows a trial court to order, as a financial sanction, an amount of restitution to be paid by an offender to his victim "based on the victim's economic loss. \* \* \* If the court imposes restitution, the court may base the amount of restitution it orders on an amount recommended by the victim, the offender, a presentence investigation report, estimates or receipts indicating the cost of repairing or replacing property, and other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense."

**{¶ 19}** A hearing is required only "if the offender, victim, or survivor disputes the amount of restitution ordered by the court." *State v. Wilson*, 2d Dist. Montgomery No. 23167, 2010-Ohio-109, ¶21, citing R.C. 2929.18(A)(1). We note that Mollett's counsel disputed the amount of restitution ordered and requested a hearing to determine the proper amount. Prior to sentencing, the victim, Gary Clay, submitted a handwritten note to the trial court listing all of the items stolen from him and pawned by Mollett. Clay alleged that he suffered approximately \$10,500.00 in losses as a result of the theft of his property. Mollett's PSI also stated that the amount of restitution should be \$10,500.00. The trial court then reduced the restitution order to \$7,500.00, which was the maximum amount the court could order based on the offense for which she was convicted.

**{¶ 20}** "For due process reasons, the amount of restitution must bear a reasonable

relationship to the loss suffered. Accordingly, to ensure a lawful award, there must be competent, credible evidence in the record to support the trial court's order of restitution 'to a reasonable degree of certainty.' The amount of restitution requested should, if necessary, be substantiated through documentary or testimonial evidence. *State v. Bender*, 2d Dist. Champaign No. 2004 CA 11, 2005-Ohio-919, at ¶10." *State v. Summers*, 2d Dist. Montgomery No. 21465, 2006-Ohio-3199, ¶44.

{¶ 21} The following exchange occurred at Mollett's sentencing hearing on July 24, 2014:

Defense Counsel: Judge, with regard to the restitution order I'd like the Court to allow me to supplement the record and I'll gather the information and supply it to the Court here later on this morning.

With regard to the values that have been given here it lists two guns, two pistols. I don't know if that's also referring to the two shotguns. I know at least one was recovered and returned.

This other property was recovered and returned so again we have serious concerns about the accuracy of the restitution that's been determined.

I think a restitution hearing should be conducted. My whole purpose of that is so I can supplement the records with pawn slips, pictures of the items returned, so we have a complete record for purposes of appeal.

The Court: Well, I think what's been placed on record is that your client was linked to the theft of a miter saw, which was \$200.00, lots of coins for \$500.00 or more, a diamond ring for \$800.00, and then lots of jewelry for

\$3,000.00 or more.

That will be all for today.

**{¶ 22}** As previously stated, R.C. 2929.18(A)(1) requires the trial court to hold a hearing in order to determine the appropriate amount of restitution where, as here, the defendant disputes the amount. The sum of the items listed by the trial court at the sentencing hearing is approximately \$4,500.00, which is well below the actual restitution amount of \$7,500.00 ordered by the court. Clearly, Mollett should have been afforded the opportunity to present evidence regarding the value and identity of the items claimed to have been stolen and unrecovered by Clay, including establishing a relationship to the RSP for which she was convicted.

**{¶ 23}** For the foregoing reasons, we conclude that the restitution order in the amount of \$7,500.00 is not supported by competent, credible evidence. Thus, we conclude that the trial court abused its discretion in ordering restitution without holding a hearing to determine the appropriate amount and identity of the unrecovered items.

**{¶ 24}** In her fifth assignment of error, Mollett claims that the trial court failed to consider her ability to repay her victim before ordering restitution. The record does not support her claim.

**{¶ 25}** R.C. 2929.19(B)(5) imposes a duty upon the trial court to “consider the offender’s present and future ability to pay” before imposing any financial sanctions under R.C. 2929.18. See *State v. Martin*, 140 Ohio App.3d 326, 338, 747 N.E.2d 318 (4th Dist.2000). However, the statute establishes no particular factors for the court to take into consideration, nor is a hearing necessary before making this determination. *Id.* Moreover, although it is preferable, a court imposing financial sanctions need not

expressly state on the record that it considered an offender's ability to pay. *State v. Parker*, 2d Dist. Champaign No. 03CA0017, 2004-Ohio-1313, ¶42. Where the trial court fails to make an explicit finding on a defendant's relative ability to pay, this court has observed that a trial court's consideration of this issue may be "inferred from the record under appropriate circumstances." *Id.*

In *State v. Ayers*, 2d Dist. Greene No. 2004CA0034, 2005-Ohio-44, this court held a trial court's order of restitution was contrary to law because there was nothing in the record indicating the trial court considered the defendant's ability to pay the ordered amount. Information contained in a presentence investigation report relating to defendant's age, health, education and employment history, coupled with a statement by the trial court that it considered the presentence report, has been found sufficient to demonstrate that the trial court considered defendant's ability to pay a financial sanction. (Citations omitted) Here, although the trial court stated that it had reviewed the presentence report, that document has not been included in the files and records presented to this court. Neither does the State rely on its contents to refute Defendant's contention. Without knowledge of the contents of that presentence report, we cannot infer from it that the trial court considered Defendant's present and future ability to pay a financial sanction.

*Ayers*, at ¶25.

{¶ 26} In the instant case, both the sentencing transcript and the judgment entry of conviction indicate that the trial court considered the PSI report prior to ordering Mollett to



pay restitution. Additionally, we have reviewed the contents of Mollett's PSI, and it contains information about her age, health, education, and work history. There is nothing in the PSI indicating that Mollett would be unable to work after her release from prison. Mollett is young, thirty-two years old, has a tenth grade education, and is healthy. Mollett also has a demonstrated work history at Trutec, Springfield Plastics, Subway, and Burger King. Therefore, in the absence of any evidence suggesting otherwise, we find that the trial court considered Mollett's ability to pay when it ordered restitution.

**{¶ 27}** Mollett's fourth assignment of error is sustained, and her fifth assignment is overruled.

**{¶ 28}** Mollett's fourth assignment of error having been sustained, the order of restitution is reversed, and this cause is remanded for a hearing on the issue of restitution. In all other respects, the judgment of the trial court is affirmed.

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HALL, J. and WELBAUM, J., concur.

Copies mailed to:

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