

[Cite as *State v. Payne*, 2015-Ohio-698.]

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

STATE OF OHIO

Plaintiff-Appellee

v.

BRYAN PAYNE

Defendant-Appellant

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Appellate Case No. 2014-CA-21

Trial Court Case No. 2013-CR-767

(Criminal Appeal from
Common Pleas Court)

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OPINION

Rendered on the 27th day of February, 2015.

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HALL, J.

{¶ 1} Bryan Payne appeals from his conviction and sentence following a guilty plea to one count of cocaine trafficking, a second-degree felony.

{¶ 2} In his sole assignment of error, Payne contends the trial court erred in including a \$2,100 restitution obligation in its judgment entry.

{¶ 3} The record reflects that Payne pled guilty to the above-referenced charge, which was reduced from a first-degree felony, as part of negotiated plea agreement. The agreement provided for the dismissal of other charges and for Payne's forfeiture of cash and a vehicle. A written plea form Payne signed mentioned restitution among other possible financial sanctions, but restitution was not addressed during his January 16, 2014 plea hearing. At Payne's February 6, 2014 sentencing hearing, the trial court imposed an eight-year prison term and ordered him to pay court costs. The trial court also terminated his community control in another case and imposed a consecutive prison term in it. Restitution was not mentioned at sentencing. In its February 7, 2014 judgment entry, however, the trial court ordered Payne to pay \$2,100 in restitution. (Doc. #12 at 2). Although the judgment entry does not identify a recipient, a presentence-investigation (PSI) report states that the \$2,100 restitution obligation "can be paid to the Probation Department for forwarding to the proper investigative authorities." (PSI at 2). A bill of particulars accompanying the PSI reveals that \$2,100 is the amount of money a confidential informant spent to buy cocaine from Payne on two occasions. It appears, then, that restitution was ordered to reimburse the Clark County Sheriff's Department for the controlled drug buys.

{¶ 4} On appeal, Payne makes two challenges to the restitution order. First, he claims law-enforcement agencies are not victims entitled to restitution under Ohio law. Second, he contends the trial court erred in including a restitution obligation in the judgment entry where restitution was not imposed during the sentencing hearing. For its part, the State concedes that the trial court erred in awarding restitution to a law-enforcement agency absent Payne's agreement to pay such restitution. We agree.

{¶ 5} In *State v. Moody*, 2d Dist. Greene No. 2011-CA-29, 2013-Ohio-2234, we recognized that law-enforcement agencies are not entitled to restitution for funds spent in the performance of their investigative or other duties. *Id.* at ¶ 12. We also noted, however, that a defendant can consent to pay restitution to a law-enforcement agency pursuant to a plea agreement. *Id.* But the mere inclusion of language in a plea form listing restitution as a possible financial sanction does not establish consent. This is so because “being told about the possibility of restitution is not the same as agreeing to pay restitution.” *Id.* at ¶ 15. In another recent case, *State v. Johnson*, 2d Dist. Clark No. 2013 CA 75, 2014-Ohio-3355, this court followed *Moody* and held that, absent an agreement to do so, a defendant cannot be ordered pay restitution through a probation department to reimburse a sheriff’s department for money spent on controlled drug buys.

{¶ 6} Here the parties’ plea agreement did not address restitution at all. Although Payne’s plea form mentioned restitution as one of several possible financial sanctions, the record contains no evidence that he consented to pay restitution to reimburse the Clark County Sheriff’s Department for its controlled drug buys. Therefore, we agree with the parties that the trial court erred in ordering him to pay restitution.

{¶ 7} Payne’s assignment of error is sustained. The trial court’s judgment is hereby modified by vacating the requirement that he pay restitution of \$2,100. As modified, the trial court’s judgment is affirmed.

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FROELICH, P.J., and FAIN, J., concur.

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Hon. Douglas M. Rastatter