

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

State of Ohio

Court of Appeals No. S-13-007

Appellee

Trial Court No. 12 CR 830

v.

Jeremy M. Williams

DECISION AND JUDGMENT

Appellant

Decided: November 1, 2013

* * * * *

Thomas L. Stierwalt, Sandusky County Prosecuting Attorney,
and Norman P. Solze, Assistant Prosecuting Attorney, for appellee.

John A. Brikmanis, for appellant.

* * * * *

JENSEN, J.

{¶ 1} This is an appeal from a judgment of the Sandusky County Court of Common Pleas, in which appellant Jeremy M. Williams was sentenced on one count of trafficking in cocaine in violation of R.C. 2925.03(A)(1)(C)(4)(d), a felony of the third degree.

{¶ 2} Appellant asserts one assignment of error:

THE [TRIAL] COURT ERRED WHEN IT ORDERED APPELLANT TO PAY RESTITUTION IN THE AMOUNT OF \$1700 TO REIMBURSE THE OHIO BCI FOR MONEY USED TO PURCHASE COCAINE.

{¶ 3} The relevant facts to the issue raised on appeal are as follows. On July 18, 2012, appellant was indicted on two counts of trafficking in cocaine in violation of R.C. 2925.03(A)(1)(C)(4)(d), each a felony of the third degree. Appellant entered into a plea agreement with the state on October 24, 2012. In exchange for his plea of no contest on the first count of trafficking in cocaine, the state agreed to dismiss the second count of the indictment. The trial court accepted appellant's plea of no contest and subsequently found him guilty of one count of trafficking in cocaine.

{¶ 4} On January 23, 2013, the trial court sentenced appellant to 18 months in the custody and control of the Ohio Department of Rehabilitation and Corrections and further ordered him to pay the costs of his court-appointed attorney, as well as court costs. The court also ordered appellant to pay restitution in the amount of \$1,700 to the Ohio Bureau of Criminal Investigation (BCI) for funds BCI expended pursuing drug buys with appellant. Appellant's counsel objected to the court's order of restitution at the time of sentencing.

{¶ 5} Appellant's sole assignment of error focuses on the validity of granting restitution to a law enforcement agency for funds the agency expended during drug buys

with appellant. Appellant contends that R.C. 2929.18(A) does not authorize restitution to BCI.

{¶ 6} Ohio appellate courts review restitution-based errors under the plain error doctrine. *State v. Gears*, 135 Ohio App.3d 297, 299, 733 N.E.2d 683, 685 (6th Dist.1999), citing *State v. Marbury*, 104 Ohio App.3d 179, 181, 661 N.E.2d 271, 272 (8th Dist.1995). The “imposition of a sentence not authorized by statute constitutes plain error.” *State v. Stewart*, 3d Dist. Wyandot No. 16-08-11, 2008-Ohio-5823, ¶ 7, citing *State v. Rohda*, 135 Ohio App.3d 21, 25, 732 N.E.2d 1018, 1020 (3d Dist.1999).

{¶ 7} “R.C. 2929.18(A) governs restitution and how it may be imposed.” *State v. Collins*, 6th Dist. Huron Nos. H-09-001, H-09-005, 2009-Ohio-6346, ¶ 51, citing *State v. Didion*, 173 Ohio App.3d 130, 2007-Ohio-4494, 877 N.E.2d 725, ¶ 28 (3d Dist.). R.C. 2929.18(A)(1) provides that a court may impose restitution “to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss.” The statute does not authorize courts to order restitution to third parties. *Collins* at ¶ 51, citing R.C. 2929.18(A)(1).

{¶ 8} Black’s Law Dictionary defines a “victim” as “[a] person harmed by a crime, tort, or other wrong.” Black’s Law Dictionary (9th Ed.2009). In certain circumstances, a government entity may be considered a victim under R.C. 2929.18(A)(1), when, for example, government funds are embezzled or when government property is vandalized.” *State v. Samuels*, 4th Dist. Washington No. 03CA8, 2003-Ohio-6106, ¶ 5 (Nov. 10, 2003). However, “a government entity voluntarily

advancing its own funds to pursue a drug buy through an informant is not one of the scenarios contemplated by R.C. 2929.18(A)(1).” *Id.* at ¶ 10. Furthermore, “absent an explicit agreement by the parties concerning the type and the amount of restitution requested in [a] case,” courts remain unwilling to uphold a trial court’s decision ordering a defendant to make restitution to a police agency. *Id.*

{¶ 9} In *Collins*, the trial court ordered the defendant to pay \$5,855 in restitution to the Norwalk Police Department as part of sentencing. *Collins* at ¶ 52. On appeal, this court stated that although the trial court may have awarded “restitution to the police department for its expenses in using a confidential informant and making the buys[,] * * * such expenses do not render the police department a ‘victim’ to which restitution is authorized.” *Id.*

{¶ 10} In its brief, the state concedes that the trial court erred when it “ordered appellant to pay restitution for monies used to make buys,” citing this court’s decision in *Collins* as its rationale.

{¶ 11} Appellant’s sole assignment of error is well-taken. The judgment of the Sandusky County Court of Common Pleas is reversed as to the order of restitution but is affirmed in all other respects. This matter is remanded to the trial court to enter a judgment consistent with this decision. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed in part
and affirmed in part.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. *See also* 6th Dist.Loc.App.R. 4.

Arlene Singer, P.J.

JUDGE

Stephen A. Yarbrough, J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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