

[Cite as *State v. Williams*, 2015-Ohio-2522.]

Court of Appeals of Ohio

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

JOURNAL ENTRY AND OPINION
Nos. 102220, 102221, 102222, and 102223

STATE OF OHIO

PLAINTIFF-APPELLEE

vs.

DENNIS WILLIAMS

DEFENDANT-APPELLANT

JUDGMENT:
AFFIRMED

Criminal Appeal from the
Cuyahoga County Court of Common Pleas
Case Nos. CR-14-585441-A, CR-14-582805-A,
CR-13-572800-A, and CR-14-586913-A

BEFORE: Boyle, J., Keough, P.J., and S. Gallagher, J.

RELEASED AND JOURNALIZED: June 25, 2015

ATTORNEY FOR APPELLANT

Kelly A. Gallagher
P.O. Box 45551
Westlake, Ohio 44145

ATTORNEYS FOR APPELLEE

Timothy J. McGinty
Cuyahoga County Prosecutor
BY: Frank Romeo Zeleznikar
Assistant County Prosecutor
Justice Center, 8th Floor
1200 Ontario Street
Cleveland, Ohio 44113

MARY J. BOYLE, J.:

{¶1} In this consolidated appeal, defendant-appellant, Dennis Williams, appeals his sentence, arguing that the trial court abused its discretion in ordering restitution without first holding a hearing and without requiring supporting documentation. Finding no merit to the appeal, we affirm.

Procedural History and Facts

{¶2} In May 2014, Williams pleaded guilty to amended indictments in two separate cases, namely, receiving stolen property in Cuyahoga C.P. No. CR-13-572800 and aggravated assault in Cuyahoga C.P. No. CR-14-582805. While awaiting sentencing on these two cases, Williams was subsequently indicted in two more cases wherein he ultimately reached a plea agreement with the state. In November 2014, Williams pleaded guilty to amended indictments of robbery and trafficking in Cuyahoga C.P. No. CR-14-586913 and attempted felonious assault, with a one-year firearm specification, and vandalism in Cuyahoga C.P. No. CR-14-585441.

{¶3} At the November 4, 2104 plea hearing, the prosecutor advised the court that “there is possibly restitution for damage done to the fire house” in connection with Case No. CR-14-585441. According to the record, Williams fired gun shots inside the Cleveland Fire Department while aiming at an individual.

{¶4} Two days later, the trial court held the sentencing hearing. With regard to Cuyahoga C.P. No. CR-14-585441, the prosecutor informed the court that it was seeking \$727 in restitution. Defense counsel initially disputed this amount, arguing that he had

no verification of the amount and that this was the first time that he had been alerted to such an amount. The trial court then allowed Cleveland Fire Department Assistant Chief Timothy O'Toole to testify as to the restitution amount.

{¶5} Assistant Chief O'Toole testified that he had "just received a text and an email indicating that the amount was \$727.00" from the executive officer who oversees purchasing and procurement for the division of fire. He further indicated that, if required, he could produce documentation.

{¶6} In response, defense counsel addressed the court and stated the following:

Judge, I'm not going to beef about \$700. If he says it's \$700, you know, two windows seems excessive to me. But, I think that's what it is. And, again, I think Mr. Williams is here to step up to the plate for the issues in this case. And, if restitution is one of them, he would be responsible for that judge.

{¶7} The trial court then proceeded to sentence Williams on each of the four cases, imposing concurrent terms of 12 months on all the counts in Cuyahoga C.P. Nos. CR-13-572800, CR-14-582805, and CR-14-586913. The trial court further imposed a total prison term of four years in Cuyahoga C.P. No. CR-14-585441, to be served consecutively to the 12-month prison term imposed in the other cases, for a total prison term of five years. The trial court further ordered Williams to pay restitution in Cuyahoga C.P. No. CR-14-585441 for the full \$727 requested.

{¶8} Williams now appeals, challenging the trial court's order to pay restitution.

Restitution

{¶9} In his sole assignment of error, Williams argues that the trial court should have held a separate hearing on restitution because his defense counsel disputed the amount. He further argues that the award of restitution must be reversed because it was not supported by competent, credible evidence. We find these arguments to lack merit.

{¶10} R.C. 2929.18(A)(1) governs restitution and provides that financial sanctions may include:

Restitution by the offender to the victim of the offender's crime * * * in an amount based on the victim's economic loss. * * * If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. 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, * * * 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. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount.

{¶11} The standard of review of a trial court's order of restitution is an abuse of discretion. *State v. Milenius*, 8th Dist. Cuyahoga No. 100407, 2014-Ohio-3585, ¶ 10, citing *State v. Marbury*, 104 Ohio App.3d 179, 661 N.E.2d 271 (8th Dist.1995). The

term “abuse of discretion” connotes judgment exercised by a court that does not comport with either reason or the record. *Milenius* at ¶ 10.

{¶12} Here, the record reveals that, while Williams initially disputed the amount of restitution, he later withdrew any objection and in fact agreed to pay restitution after hearing the testimony of Assistant Chief O’Toole. Indeed, Williams’s defense counsel expressly stated at the sentencing hearing that Williams wished “to step up to the plate for the issues in the case,” including paying the restitution requested. Williams cannot now complain on appeal of an alleged error that he invited the trial court to make. *State v. Jackson*, 8th Dist. Cuyahoga No. 99059, 2013-Ohio-3136, ¶ 15 (“any argument that the trial court had no authority to impose restitution * * * is contrary to appellant’s position at sentencing and precluded by [invited error] doctrine”).

{¶13} And the order of restitution in this case was proper and supported by competent, credible evidence. As noted by the Ohio Supreme Court, “[a] trial court has discretion to order restitution in an appropriate case and may base the amount it orders on a recommendation of the victim * * * but the amount ordered cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense.” *State v. Lalain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, ¶ 24. Aside from the fact that Williams agreed to the amount, the court heard the testimony of Assistant Chief O’Toole that supported the award. Assistant Chief O’Toole testified as to the cost of replacing the windows damaged in the course of Williams’s criminal conduct.

{¶14} Accordingly, we overrule Williams's sole assignment of error.

{¶15} Judgment affirmed.

It is ordered that appellee recover from appellant the costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

MARY J. BOYLE, JUDGE

KATHLEEN ANN KEOUGH, P.J., and
SEAN C. GALLAGHER, J., CONCUR

Key Terms:

102220, 102221, 102222, 102223

Restitution; R.C. 2929.18(A)(1). Aside from the fact that defendant agreed to the amount of restitution, the trial court relied on competent, credible evidence in determining the amount of restitution.

