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2012 IL App (3d) 110425-U

Order filed December 12, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-11-0425
)	Circuit No. 10-CM-773
)	
DANIELLE C. MONKUS,)	Honorable
)	John L. Bell,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.
Justices Holdridge and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's sentence was statutorily authorized.
- ¶ 2 Defendant, Danielle C. Monkus, was convicted of battery (720 ILCS 5/12-3(a)(1) (West 2010)) and sentenced to 20 days in jail, 12 months' conditional discharge, and \$2,136.64 in restitution. On appeal, defendant argues that the portion of her sentence that requires her to contribute 50% of her income tax refund toward restitution is void. We affirm.

¶ 3 **FACTS**

¶ 4 At trial, the evidence established that defendant was involved in a physical altercation with the victim, and the victim suffered a broken nose. The jury found defendant guilty of battery.

¶ 5 On January 21, 2011, the case was called for a sentencing hearing. The victim testified that she incurred \$2,995.95 in medical expenses. The trial court sentenced defendant to 20 days in jail, a 12-month period of probation, and \$2,995.95 in restitution. The court directed defendant to pay restitution from "50 percent of any income tax return till paid in full *** plus a meeting with the payment hearing officer."

¶ 6 On May 6, 2011, defendant filed a motion to reconsider her sentence. After a hearing, the court ordered that defendant serve a 12-month period of conditional discharge, instead of probation, and reduced the amount of restitution to \$2,136.64. The court maintained that defendant

"pay 50 percent of any income tax refund that she gets, plus I want a payment hearing officer order for a payment order pending that. In other words, we are not waiting for – I assume she's already filed for last year. I don't know. I'm not going to get in her personal life. But she's not going to file against [*sic*] for another year. I don't want restitution sitting there for a year. So I want her to go see the collections officer to go work out a payment plan now *** and then if she were to get any income tax return, then it's to be used towards the restitution."

The court concluded that it did not want the money withheld from defendant's income tax return.

¶ 7 Defendant filed a notice of appeal.

¶ 8 ANALYSIS

¶ 9 On appeal, defendant argues that the portion of her sentencing order requiring her to contribute 50% of her income tax refund toward restitution is void. Defendant acknowledges that she waived review of this issue, but argues that her sentence was void and therefore can be challenged at any time. Defendant contends that the trial court's order was not authorized by the restitution statute because it stipulated the source of the payment and created an impermissible annual payment. 730 ILCS 5/5-5-6 (West 2010).

¶ 10 Defendant's argument presents a question of law that we review *de novo*. *People v. Ramirez*, 214 Ill. 2d 176 (2005).

¶ 11 We agree that defendant has waived review of this issue. However, we examine the issue to determine if defendant's sentence was void, as a void order can be attacked at any time. *People v. Harris*, 319 Ill. App. 3d 534 (2001). A sentence that does not conform to statutory requirements is void. *People v. Monson*, 2012 IL App (3d) 100868.

¶ 12 Section 5-5-6 of the Unified Code of Corrections (Code) allows a court to order restitution in all convictions for offenses in violation of the Criminal Code of 1961 in which the victim received any injury to her person. 730 ILCS 5/5-5-6 (West 2010). The restitution statute is meant to make a defendant pay the costs incurred as a result of her actions, and its terms should be construed broadly to effectuate its remedial purpose. *People v. Graham*, 406 Ill. App. 3d 1183 (2011). The court shall determine whether restitution is paid in a single payment or in installments, and the period of time shall not exceed five years. 730 ILCS 5/5-5-6(f) (West 2010). "Complete restitution shall be paid in as short a time period as possible." *Id.* If restitution is to be paid over a period greater than six months, the court shall order that defendant make monthly payments. This requirement may be waived only if there is a finding of good

cause. *Id.*

¶ 13 Here, we find that defendant's restitution order was statutorily authorized. Section 5-5-6(f) of the Code requires that restitution be made in as short a time as possible. 730 ILCS 5/5-5-6(f) (West 2010). The trial court implicitly acknowledged that defendant could not make restitution in a single payment when it ordered defendant to meet with the payment hearing officer to establish a payment order. The court further ensured prompt payment by ordering defendant to allocate 50% of her income tax refund for restitution. Defendant was free to make this payment from any income source, so long as the amount was equal to 50% of her income tax refund and was paid on or near the date she received her refund.

¶ 14 Defendant argues that the court's order amounted to an unauthorized annual payment. However, defendant was ordered to meet with the payment hearing officer to establish a payment plan. The order for the tax refund payment merely specified a reasonable time and manner for a single annual payment within the anticipated plan, thereby expediting restitution. Although section 5-5-6 of the Code does not specify the source of restitution, we hold that the court's order was consistent with the goals of the statute, *i.e.*, to make defendant pay the costs incurred from her actions in as short a time as possible.

¶ 15 Next, defendant argues that the trial court failed to consider her ability to pay restitution from her income tax refund. See *People v. Fuzz*, 218 Ill. App. 3d 418 (1991) (trial court must consider defendant's ability to pay when determining the method and time of payment). Defendant did not raise this issue in her motion to reconsider sentence, and she does not argue for plain error review. Thus, we find that defendant has waived review of this argument. See *Graham*, 406 Ill. App. 3d 1183. Moreover, we note that the trial court implicitly considered

defendant's ability to pay when it ordered her to contribute 50% of her income tax refund toward restitution. Defendant kept the remaining 50% of her refund to use as she saw fit. Consequently, we hold that even if the issue was not waived, the trial court did not err.

¶ 16

CONCLUSION

¶ 17 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 18 Affirmed.