

**NOTICE**

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2016 IL App (4th) 150814-U

NO. 4-15-0814

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**

February 25, 2016

Carla Bender

4<sup>th</sup> District Appellate

Court, IL

In re: JAMES W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	McLean County
v.	)	No. 14JD301
JAMES W.,	)	
Respondent-Appellant.	)	Honorable
	)	John Brian Goldrick,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.  
Presiding Justice Knecht and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* Respondent forfeited any claim his restitution amount was incorrect by failing to raise the issue in the trial court and agreeing to the amount of restitution ordered.

¶ 2 The trial court adjudicated respondent, James W., a delinquent minor after finding him guilty of burglary. The court sentenced respondent to 60 months' probation and ordered him to pay \$390 in restitution and a \$250 deoxyribonucleic acid fee. Respondent appeals the restitution order. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Respondent does not contest the trial court's delinquency adjudication. Therefore, we will only include the facts necessary to address the issue raised on appeal.

¶ 5 In a bench trial conducted in June and July 2015, respondent was found guilty of burglary. The evidence showed respondent entered the vehicle of Andrew Yaklich and took a

coat, a global positioning satellite (GPS) unit, and a pair of Oakley sunglasses.

¶ 6 The September 2015 social-investigation report stated the police report reflected the value of the stolen items as follows: "Oakley Sunglasses[] \$100.00, dress coat \$100, Tom Tom GPS[] \$120.00." Court services indicated it had not received a victim-impact statement or a request for restitution from Yaklich. Court services recommended respondent be ordered to pay restitution in an amount deemed appropriate by the trial court.

¶ 7 At the October 2015 sentencing hearing, Yaklich was present. The parties acknowledged receipt of the social-investigation report and had no corrections. During sentencing recommendations, the State argued as follows:

"So, first of all, the offense that the minor committed is a serious one. It is a felony offense, a Class 2 offense that happened in November of 2014. I am requesting on behalf of Mr. Yaklich \$390 in restitution. I believe that's appropriate. He was fair in evaluating what the current worth of the property that was taken."

Defense counsel stated, "And the restitution amount, based on the fact that [respondent] is 18, should be made by him. He'll have time to get that paid off as well. I do wish to add that the minor is currently looking for further employment."

¶ 8 The trial court made respondent a ward of the court and sentenced him to 60 months' probation or until his twenty-first birthday on July 21, 2018. The court advised respondent he would be subject to the standard terms and conditions of probation. It also told respondent, "You'll have to pay restitution of \$390 to Mr. Yaklich." Later, defense counsel asked the court, "And the payment date for the restitution, the [\$]390?" The court responded it would be 18 months from the sentencing date. Respondent signed the order of probation, which

reflected restitution in the amount of \$390. Respondent did not file any posttrial motions.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 On appeal, respondent argues the trial court erred when it ordered him to pay restitution in an amount greater than proved at trial. A trial court's restitution order is reviewed for an abuse of discretion. *People v. Stites*, 344 Ill. App. 3d 1123, 1125, 802 N.E.2d 303, 305 (2003). The State argues respondent forfeited this issue by failing to object at the sentencing hearing or raise it in a posttrial motion. The State further argues respondent waived the issue by agreeing to the imposition of \$390 in restitution as a condition of probation. Respondent argues this court should consider the issue under the plain-error doctrine.

¶ 12 The trial court may order restitution after conviction for an offense resulting in damages to the victim. 730 ILCS 5/5-5-6 (West 2014). In determining the restitution amount due, "the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge \*\*\* caused by the same conduct." 730 ILCS 5/5-5-6(b) (West 2014). "In no event shall the victim be entitled to recover restitution in excess of the actual out-of-pocket" expenses, losses, or damages caused, even where multiple defendants are held accountable for the same property loss or damage. 730 ILCS 5/5-5-6(c)(1) (West 2014). The court may use the "uncontested facts contained in the presentence report" concerning the expenses or damages to the property. *People v. Gallinger*, 252 Ill. App. 3d 816, 820, 624 N.E.2d 399, 402 (1993).

¶ 13 In his reply brief, respondent acknowledges the restitution issue was not preserved for appeal but argues we should consider the error as plain error because the plain-error doctrine allows courts to review an error when "a clear or obvious error occurred and the error is so

serious that it denied the defendant a fair trial or sentencing hearing." We decline to consider the restitution order under the plain-error doctrine.

¶ 14 In *People v. Reed*, 177 Ill. 2d 389, 393, 801, 686 N.E.2d 584, 586 (1997), the supreme court held section 5-8-1(c) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-1(c) (West 1996)) "require[s] sentencing issues be raised in the trial court in order to preserve those issues for appellate review." Section 5-8-1(c) of the Unified Code is now codified under section 5-4.5-50(d) of the Unified Code (730 ILCS 5/5-4.5-50(d) (West 2014)) and states as follows:

"A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence."

The *Reed* court explained the rationale behind the statute as follows:

"Requiring a written post-sentencing motion will allow the trial court the opportunity to review a defendant's contention of sentencing error and save the delay and expense inherent in appeal if they are meritorious. Such a motion also focuses the attention of the trial court upon a defendant's alleged errors and gives the appellate court the benefit of the trial court's reasoned judgment on those issues." *Reed*, 177 Ill. 2d at 394, 686 N.E.2d at 586.

¶ 15 Following *Reed*, this court addressed the forfeiture rule under section 5-8-1(c) of the Unified Code in *People v. Rathbone*, 345 Ill. App. 3d 305, 308, 802 N.E.2d 333, 336 (2003), where the defendant argued on appeal the trial court abused its discretion at sentencing by

sentencing him for "violating the terms of his probation rather than for residential burglary." *Id.* The defendant opined the court made this error based upon statements the court made while explaining its sentencing decision from the bench. *Id.* at 307-08, 802 N.E.2d at 335-36. The defendant did not, however, include his claim in a postsentence motion. *Id.* at 308, 802 N.E.2d at 336. This court concluded the defendant forfeited his claim, noting as follows:

"[D]efendant's claim is precisely the type of claim the forfeiture rule is intended to bar from review when not first considered by the trial court. Had defendant raised this issue in the trial court, that court could have answered the claim by either (1) acknowledging its mistake and correcting the sentence, or (2) explaining that the court did not improperly sentence defendant based on his conduct on probation. If the court did not change the sentence, then a record would have been made on the matter now before us, avoiding the need for this court to speculate as to the basis for the trial court's sentence." *Id.* at 310, 802 N.E.2d at 337.

¶ 16 Here, the social-investigation report reflected the stolen items were valued at a total of \$320 based on the police report. Yaklich was present at the sentencing hearing. The State asked for \$390 "on behalf of Mr. Yaklich," noting, "[h]e was fair in evaluating what the current worth of the property that was taken." Respondent agreed to \$390. Respondent had an opportunity to disagree with the amount of restitution recommended in the trial court. Had he raised the issue at the time of sentencing, the State could have explained the reason for seeking \$390, presumably based on the valuation made by Yaklich which court services did not have, or indicated the correct amount should have been \$320. Had respondent raised the issue in a post-

sentencing motion, the same would have been true. Instead, respondent agreed to \$390. The record does not establish a clear error here. Additionally, assuming an error occurred, as the State points out, respondent essentially acquiesced in any error when he agreed with the amount at the sentencing hearing and when he signed the probation order reflecting the \$390 in restitution. See *People v. Beavers*, 141 Ill. App. 3d 790, 797, 491 N.E.2d 438, 443 (1986) (holding the defendant waived his claim restitution was improperly imposed by inviting the court to enter a particular restitution order, finding, "we cannot allow the defendant to complain of an error in which he acquiesced or invited"); *Gallinger*, 252 Ill. App. 3d at 818, 624 N.E.2d at 401 (the defendant waived the restitution issue by specifically agreeing at trial to the imposition of restitution as a condition of probation).

¶ 17 As our supreme court stated in *People v. Allen*, 222 Ill. 2d 340, 353, 856 N.E.2d 349, 356 (2006):

"The plain error doctrine is not a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court. [Citation.] Instead, it is a narrow and limited exception to the general rule of forfeiture, whose purpose is to protect the right of the defendant and the integrity and reputation of the judicial process. [Citation.]"  
(Internal quotation marks omitted.)

The plain-error doctrine does not apply to the trial court's alleged error regarding restitution in this case. Accordingly, we find respondent has forfeited the issue for appeal and decline to address the merits of respondent's claim.

¶ 18

### III. CONCLUSION

¶ 19 For the foregoing reasons, we affirm the trial court's judgment.

¶ 20 Affirmed.