

No. 1-12-3251

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

| | | |
|--------------------------------------|---|------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the |
| |) | Circuit Court of |
| Plaintiff-Appellee, |) | Cook County. |
| |) | |
| v. |) | No. 11 CR 4540 |
| |) | |
| LEVI CRAWFORD, |) | Honorable |
| |) | William G. Lacy, |
| Defendant-Appellant. |) | Judge Presiding. |

JUSTICE HARRIS delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

ORDER

Held: We hold the State presented sufficient evidence to support the circuit court's determination as to the amount of restitution owed by defendant. The circuit court, however, failed to comply with section 5-5-6(f) of the Unified Code of Corrections (730 ILCS 5/5-5-6(f) (West 2008)) because it did not establish a repayment plan after it ordered defendant to pay restitution.

¶ 1 The circuit court convicted defendant, Levi Crawford, after a bench trial of one count of vendor fraud (305 ILCS 5/8A-3(a) (West 2008)) and two counts of theft over \$10,000 (720 ILCS

5/16-1(a)(1),(2) (West 2008)). The circuit court sentenced defendant to three years of probation and ordered him to pay \$28,747.30 in restitution. Defendant asks that the circuit court's restitution order be vacated and raises the following issues for our review: (1) whether the State presented evidence of misconduct covering the time period stated in the indictment, *i.e.*, 2004 through 2008, to support the amount of money ordered by the circuit court for restitution; and (2) whether the circuit court failed to consider defendant's ability to pay or establish a repayment schedule as directed to by section 5-5-6(f) the Unified Code of Corrections (Code). 730 ILCS 5/5-5-6(f) (West 2008). We hold the State presented sufficient evidence to support the circuit court's determination as to the amount of restitution owed by defendant. The circuit court, however, failed to comply with section 5-5-6(f) of the Code (730 ILCS 5/5-5-6(f) (West 2008)) because it did not establish a repayment schedule after it ordered defendant to pay restitution.

¶ 2

JURISDICTION

¶ 3 The circuit court sentenced defendant on October 19, 2012. Defendant timely filed his notice of appeal on the same day. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case entered below. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 603 (eff. Feb. 6, 2013); R. 606 (eff. Feb. 6, 2013).

¶ 4

BACKGROUND

¶ 5 Defendant was charged by indictment with one count of vendor fraud (305 ILCS 5/8A-3(a) (West 2008)) and two counts of theft over \$10,000 (720 ILCS 5/16-1(a)(1), (2) (West 2008)). The indictment alleged defendant's actions resulting in the indictment occurred from January 1, 2004 through March 28, 2008.

¶ 6 At trial, Pamela Wilson testified that she supervised the "Home Services Program" for the Department of Human Services, Division of Rehabilitative Services. She described it as a state funded program "that puts services in the homes of individuals to keep them from being institutionalized in a nursing home." The individual seeking admission to the program must request placement in the program and meet certain impairment and financial requirements. An individual is then given a personal assistant, who is either selected by the individual or assigned by DHS. Personal assistants need to provide DHS with references, identification, a social security card, and go into the local office to be informed of the program rules. Upon approval for services, a counselor from the local office will formulate a service plan that both a doctor and the individual seeking the services sign and agree to in order to keep the individual from being institutionalized. The service plan and a schedule are given to the personal assistant detailing the duties to be performed. In order to get paid, the personal assistant signs a timesheet verifying the hours worked each day. The individual must also sign the time sheet. The individual or the personal assistant then has three to five days to get the timesheet to the local office where it is reviewed. Payment is then issued to the personal assistant. The personal assistant has the choice of receiving payment through the mail or by depositing payment to a bank or debit card.

¶ 7 Wilson testified she was familiar with the service plan established for defendant, which was shown to her as an exhibit. The service plan indicated defendant needed assistance with bathing, getting in and out of bed, meal preparation, cleaning, and "help with leaving the home." Valda Randle, upon defendant's request, became his personal assistant. Wilson identified approximately four years of timesheets submitted under defendant's service plan, shown to her as an exhibit. Wilson testified that the timesheets are dated January 15, 2004 until February 29,

2008 and covered the time period from January 1, 2004 through February 29, 2008. The timesheets indicate that defendant is the customer and that Randle is the personal assistant. The address of 1212 South Michigan Avenue, No. 612, in Chicago, Illinois, 60605 is listed as both defendant's address and Randle's address. Both defendant and Randle signed the timesheets certifying the work performed and the hours worked. Wilson testified that Randle was then paid based on the timesheets.

¶ 8 Wilson testified she became directly involved with defendant after he was deemed to be unqualified for the program and his services terminated. Defendant complained, and on March 27, 2007, Wilson conducted a visit to defendant's home to reevaluate him. Wilson described defendant's apartment as "unclean" and "did not appear that he was receiving services from a personal assistant." She observed dirty dishes and a pile of laundry on the floor. Wilson testified that the personal assistant was supposed to help defendant with cleaning. Wilson interviewed defendant and it was determined that defendant did not need assistance because "[h]e was able to do most of the tasks independently." On February 2, 2008, DHS stopped providing services to defendant. On cross-examination, Wilson acknowledged that no time sheet was submitted for the pay period covering March 16, 2007 through March 31, 2007.

¶ 9 Heather Baker, an operations specialist employed by U.S. Bank, testified that defendant and Valda Randle had a joint checking account from at least September 2003 through May of 2008. The joint checking account listed defendant's address. The only checks deposited in the account, which numbered approximately 70, were from the State of Illinois. Defendant's name appeared on the deposit slips indicating he made the deposits. When asked "[w]hat, if any, access did you observe that Valda Randle had to that account," Baker answered, "[n]one." The checks were made payable "to *** Valda Randle care of [defendant.]" The checks were

endorsed by both Randle and defendant. The deposit slips, however, showed only defendant's name on it. Only defendant's bills were being paid on the account.

¶ 10 Doris Tindel testified that she was the property manager at defendant's apartment building from approximately 1998 until 2000 or 2001. As property manager, she addressed tenant complaints. The property had a doorman and cameras throughout the building. On January 24, 2000, Tindel sent defendant a letter stating that Randle was banned from the building. On cross-examination, Tindel testified she stopped working at the building "probably the end of 2000." She admitted that she did not know if the ban had been lifted when she left.

¶ 11 Special Agent Darcy White of the Illinois State Police Medical Fraud Bureau testified that she investigated Valda Randle and defendant for possible fraud. After reviewing time sheets, checks, and bank records of defendant's and Randle's joint account, Agent White and her partner interviewed defendant at his apartment on November 16, 2010. Defendant told Agent White that he had been involved with the Home Services Program for over 20 years and that he needed the services to help him with errands, shopping, and cleaning. He had had two personal assistants: Carol Morris for approximately six months, and Valda Randle for approximately 12 years. Defendant told Agent White that Randle never lived with him and that he thought she lived at 28th and Wilcox in Chicago. Defendant stated he submitted all of the timesheets except for approximately ten that Randle delivered to the post office. Regarding the checks that were mailed to his residence in Randle's name in care of him, defendant told Agent White that Randle would pick up the checks on her next work date. He would co-endorse them and she would cash or deposit them at the First Bank of Oak Park. Defendant told Agent White that he had never cashed a State of Illinois check. Agent White asked defendant about his joint checking account with Randle, to which defendant explained that the purpose of the joint

account was to make it easier for Randle to cash and deposit checks into the account. Defendant stated to Agent White that Randle had no access to the account and that she never wrote a check from the account.

¶ 12 Agent White testified that they then showed defendant the timesheets submitted to DHS from 2004 through 2008. Defendant verified his signature but stated that the handwriting on the timesheets dated 2006 and after did not appear to be his handwriting. Agent White also showed defendant checks from the State of Illinois, including from the years 2007 and 2008, with defendant's signature, which defendant verified. Agent White testified that when she asked defendant when he had last seen Randle, he answered that he had not seen her in eight to ten years. Defendant thought his personal assistant services ended in 2006 because he stopped submitting timesheets and was not receiving checks. He characterized the checks dated after 2006 as "reductions." Later that day, after the interview concluded, defendant called Agent White and left a voice message stating that his paperwork showed that services concluded in 2008 and confirmed that the checks from 2006 to 2008 were correct.

¶ 13 The parties entered into two stipulations. First the parties stipulated that Larry O'Brien, of the Office of the Comptroller for the State of Illinois, would identify the State's exhibit number ten as Randle's earnings from the State of Illinois for the period of December of 2003 through April of 2008. He would further testify that the checks were directly deposited into a joint bank account in Randle's and defendant's name at the First Bank of Oak Park. The parties stipulated that Virma Rodriguez, Auditor for the Illinois State Police Department, would identify the State's exhibit number 11 as a schedule of wages paid to Randle for the pay periods January 15, 2004, to March 31, 2008, that she prepared based on various documents she reviewed from the investigation. Those documents included police reports, Comptroller

records, bank records, DHS records, and a DHS profile from Mississippi. Rodriguez would testify that the net amount paid to Randle for pay periods January 15, 2004, until March 31, 2008, was \$25,419.74.¹

¶ 14 The State rested, and defendant moved for a directed finding, which the circuit court denied. Defendant also filed a motion to suppress his statements to Agent White, which the circuit court denied.

¶ 15 The circuit court found defendant guilty as charged. The court found the evidence against defendant to be "overwhelming" and explained that defendant falsified time sheets for his personal assistant despite admitting that he had not seen her in eight to ten years, which included the time frame of the charges against him. Defendant deposited the checks issued from the State of Illinois based on the time sheets into a joint account with Randle to which Randle did not have access. The court found that defendant used the account to pay his bills. The circuit court denied defendant's motion for a new trial.

¶ 16 The circuit court sentenced defendant to three years of felony probation and ordered that he pay restitution to DHS in the amount of \$28,747.30, which represented the gross, pre-tax amount the State of Illinois paid Randle from 2004 through 2008. The written sentencing order indicated the amount of restitution to be paid, but did not specify a time frame for payment or indicate when the final payment is due. Defense counsel orally motioned the court to reconsider the restitution portion of defendant's sentence. The State did not object to defense counsel's oral motion. The circuit court denied defendant's oral motion to reconsider his sentence. Defendant timely appealed.

¹ Exhibit 11 shows that the gross amount paid to Randle was \$28,747.30.

¶ 17

ANALYSIS

¶ 18 Initially, we note that the State contends that defendant has forfeited both issues he raises before this court due to his failure to file a written postsentencing motion raising his objections to the circuit court's restitution order. We disagree with the State. Our review of the record shows that after the circuit court announced its sentence, defendant made an oral motion to reconsider the restitution part of his sentence. The State did not object. Under these circumstances, the requirement of a written motion is waived. *People v. Davis*, 356 Ill. App. 3d 725, 731 (2005) ("the requirement of a written motion is waived where defendant makes an oral motion to reconsider his sentence and the State does not object.") Despite defendant's failure to file a written motion, we may address sentencing issues on any ground that appears on the record due to the State's failure to object to defendant's oral motion to reconsider. *Id.* Accordingly, we hold the State's forfeiture argument is without merit under these circumstances.

¶ 19 Defendant first argues that the circuit court's order requiring him to pay \$28,747.30 in restitution should be vacated because the State failed to present evidence showing that defendant fraudulently obtained funds from the State of Illinois for the period charged in the indictment, *i.e.*, January of 2004 to March of 2008. Defendant claims that the restitution order should only cover the time period of April of 2005 to March of 2008 based on defendant's personal assistant's, Valda Randle's, food stamp records showing she moved to Mississippi in April of 2005. Alternatively, defendant argues that he received the ineffective assistance of counsel. To support his claim, defendant argues that his trial counsel improperly stipulated to Virma Rodriguez's testimony regarding the State's exhibit 11, which contained references to Randle living in Mississippi in 2003.

¶ 20 The State argues the circuit court properly exercised its discretion by ordering defendant to pay restitution payments from 2004 to 2008 because the order is supported by defendant's admission that he had not seen his personal assistant, Valda Randle, since 2002. Specifically, the State points out that defendant admitted to police that he had not seen Randle since at least 2002 but still submitted time sheets to DHS from 2004 to 2008. In response to defendant's ineffective assistance of counsel claim, the State argues that defendant cannot show prejudice due to his admission to Agent White.

¶ 21 The Code allows the circuit court to order a defendant convicted of a criminal offense that resulted in damages to pay restitution for those damages. 730 ILCS 5/5-5.6 (West 2008). In determining the amount of restitution to be paid, "the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim" and allow for credits for returned, repaired, or restored property. 730 ILCS 5/5-5-6(b) (West 2008). "Alleged losses which are unsupported by the evidence must not be used as a basis for awarding restitution." *People v. Jones*, 206 Ill. App. 3d 477, 482 (1990); *People v. Thompson*, 200 Ill. App. 3d 23, 26 (1990) (" A trial court is not empowered to order restitution of sums extraneous to the charges before it."). In determining the actual costs to the victim, the circuit court must not guess or speculate. *People v. Dickey*, 2011 IL App (3d) 100397, ¶ 25. The circuit court's determination of the proper amount of restitution to be paid by a defendant will not be overturned absent an abuse of discretion. *People v. Fitzgerald*, 313 Ill. App. 3d 76, 81 (2000). Accordingly, unless the record shows no evidentiary or factual basis for the circuit court's finding as to the amount of restitution, we will uphold the circuit court's restitution order. *In re Shatavia S.*, 403 Ill. App. 3d 414, 418 (2010).

¶ 22 After reviewing the record in the present case, we hold that there is sufficient evidence in the record supporting the circuit court's restitution order. The State presented evidence showing defendant submitted false time sheets to DHS from 2004 through 2008. Specifically, Pamela Wilson identified the time sheets and testified they covered the time period from January 1, 2004 through February 29, 2008. The time sheets noted that Randle was defendant's personal assistant during those time periods. Through the testimony of Heather Baker, and the stipulated testimony of Larry O'Brien and Virma Rodriguez, the State established that checks from the State of Illinois were deposited into defendant's and Randle's joint checking account based on those timesheets. The schedule of wages indicated the gross amount the State of Illinois paid to Randle as \$28,747.30. Most importantly here, defendant admitted to Special Agent Darcy White of the Illinois State Police Medical Fraud Bureau on November 16, 2010, that he had not seen Randle in eight to ten years, which established that Randle was not at defendant's residence performing the required tasks since at least 2002. Accordingly, we hold the circuit court did not abuse its discretion when it ordered defendant to pay \$28,747.30 in restitution based on the time period of 2004 to 2008 where defendant admitted that he had not seen his personal assistant since at least 2002 but still submitted time sheets stating his personal assistant worked at his house from 2004 to 2008.

¶ 23 Defendant's admission to Agent White that he had not seen his personal assistant since at least 2002 is also fatal to his ineffective assistance of counsel claim because he cannot show prejudice. To prove he was denied the effective assistance of counsel, defendant has to show both deficient performance of trial counsel and that trial counsel's performance prejudiced him. *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004). To establish prejudice, a "defendant must prove that there is a reasonable probability that, but for counsel's unprofessional errors, the result

of the proceeding would have been different." *People v. Easley*, 192 Ill. 2d 307, 317 (2000). If prejudice is not shown, a court can dispose of an ineffective assistance of counsel claim without first determining whether counsel's performance was deficient. *People v. Givens*, 237 Ill. 2d 311, 331 (2010). Defendant's argument is based on the premise that the State's exhibit 11 referenced defendant's personal assistant living in Mississippi since 2003. Defendant argues that, absent the stipulation, the evidence shows that defendant's personal assistant moved to Mississippi in April 2005. Accordingly, defendant argues the proper timeline to compute the restitution order should have started in April of 2005, not the beginning of 2004 as reflected in the restitution order. Defendant's argument, however, fails to account for defendant's admission to Agent White that he had not seen his personal assistant since at least 2002. Defendant's admission is evidence, independent of the allegedly improper stipulation, supporting the circuit court's restitution order showing a starting date of 2004. Accordingly, based on defendant's admission predating the 2004 starting date supporting the circuit court's restitution order, we cannot say that the results of the proceedings would have been different had defendant's counsel not stipulated to the State's exhibit 11. Therefore, defendant has failed to show ineffective assistance of counsel.

¶ 24 Defendant next argues that the circuit court failed to comply with section 5-5-6(f) of the Code because it failed to take into account his ability to pay or to establish a payment schedule. The State argues the circuit court considered defendant's ability to pay before finding that defendant had three years to pay restitution in full. The State further argues that the circuit court's statements show that it intended to waive monthly payments.

¶ 25 Section 5-5-6(f) of the Code provides, in relevant part:

"(f) Taking into consideration the ability of the defendant to pay, including any real or personal property or any other assets of the defendant, the court shall determine whether restitution shall be paid in a single payment or installments, and shall fix a period of time not in excess of 5 years *** within which payment of restitution is to be paid in full. Complete restitution shall be paid in as short a time period as possible. ***. If the defendant is ordered to pay restitution and the court orders that restitution is to be paid over a period greater than 6 months, the court shall order that the defendant make monthly payments; the court may waive this requirement of monthly payments only if there is a specific finding of good cause for waiver." 730 ILCS 5/5-5-6(f) (West 2008).

¶ 26 Section 5-5-6(f) sets forth the time frame and method of payment for a defendant after restitution has been ordered. *People v. Gray*, 234 Ill. App. 3d 441, 444 (1992). A restitution order is fatally incomplete if the circuit court does not specify a particular time for payment of restitution. *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1067 (2008). Furthermore, "a sentencing order should be so complete that no further action by the court or a ministerial officer is required to ascertain its meaning." *People v. Richardson*, 252 Ill. App. 3d 593, 595 (1993). We review the circuit court's order regarding the time and manner of payment of restitution for an abuse of discretion. *People v. Day*, 2011 IL App (2d) 091358, ¶ 56.

¶ 27 Our review of the record shows that the circuit court first announced its sentence of defendant: three years of probation and restitution in the amount of \$28,747.30. After announcing its sentence, the following colloquy occurred between the parties and the court:

"MR. SHERWIN [Assistant State's Attorney]; Judge, given the high nature of the restitution involved I don't know if your Honor would entertain a motion for judgment order on that amount now.

THE COURT: Asking for judgment?

MR. SHERWIN: Yes. The usual course is to, you know, wait the 3 years and see if the defendant would pay.

THE COURT: Let's see if he can. Given what I read about his financial situation, I understand that's paying a lot every month. When we are near to probation you can make that request then.

* * *

MS. SILVA [Assistant Public Defender]: Judge, I guess I would make an oral motion to reconsider the sentence, the restitution part. He does not have any funds to pay that off. I would - -

THE COURT: Well, he's got 3 years.

MS. SILVA: I will supplement it with a written motion on Monday. I would also be asking to file a notice of appeal today.

* * *

THE COURT: The motion to reconsider sentence is denied. Leave to file notice of appeal is allowed."

The State's argument is based on the comments made by the court in the above interaction with the parties.

¶ 28 After reviewing the record, we hold that the circuit court abused its discretion when it failed to comply with section 5-5-6(f) of the Code after it ordered defendant to pay restitution in

the amount of \$28,747.30. We disagree with the State that the above colloquy demonstrates the court's intent to waive monthly payments in favor of allowing defendant three years to pay the full amount of restitution. Rather, the record shows that the circuit court did not take into account the following requirements of section 5-5-6(f): (1) the determination of a payment schedule, either in installments or single payment after taking into consideration defendant's ability to pay; and (2) requiring defendant to make monthly payments if restitution is to be paid over a period greater than 6 months, unless the court makes "a specific finding of good cause for waiver." 730 ILCS 5/5-5-6(f) (West 2008). The record provides no indication that the circuit court considered either of these requirements. Furthermore, the written order, despite being a form order with designated spaces for a payment schedule, also does not indicate the court's compliance with section 5-5-6(f). Therefore, we vacate in part the circuit court's order of restitution where it failed to include a payment plan and remand the matter to allow the circuit court to comply with section 5-5-6(f). 730 ILCS 5/5-5-6(f) (West 2008).

¶ 29 Accordingly, we affirm defendant's conviction, his sentence of probation, and the circuit court's order that defendant pay restitution in the amount of \$28,747.30. We vacate the portion of the circuit court's order where it failed to determine how defendant would pay restitution and remand the matter to allow the circuit court to comply with section 5-5-6(f) of the Code. 730 ILCS 5/5-5-6(f) (West 2008).

¶ 30 **CONCLUSION**

¶ 31 The judgment of the circuit court of Cook County is affirmed in part and vacated in part.

¶ 32 Affirmed in part and vacated in part; cause remanded.