2017 IL App (2d) 141033-U
No. 2-14-1033
Order filed March 21, 2017

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Stephenson County.
Plaintiff-Appellee,	)	
v.	)	No. 11-CF-120
KATHERINE R. STRONG,	)	Honorable Michael P. Bald,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: Upon the victim's death, the trial court properly modified defendant's restitution obligation to make it payable to the victim's heirs: the court retained the power to do so even after the one-year period during which defendant was originally required to pay the restitution in full; the court was not required to find that defendant had willfully refused to pay; the victim's heirs were proper "victims" under the restitution statute.

¶ 2 On September 1, 2011, defendant, Katherine R. Strong, entered a negotiated plea of guilty in the circuit court of Stephenson County to a single count of theft (720 ILCS 5/16-1(a)(1)(A) (West 2010)). She was sentenced to a 30-month term of probation and was ordered to pay a $500 fine and $7582.08 in restitution by September 1, 2012. Restitution was to be paid to

Jill Conley and was a condition of probation. On February 21, 2014, the State filed a petition to revoke defendant's probation, alleging, *inter alia*, that she had not paid restitution in full. During a status hearing on April 24, 2014, the prosecutor advised the trial court that Conley had passed away. The prosecutor added that "[the restitution] payments are the only thing keeping [Conley's] estate open, which is costly to the heirs and inconvenient for their attorneys, so we wouldn't [*sic*] ask that the *** sentencing order be changed for the remaining balance to be paid to the heirs as set out in the order." The record reflects that, at a subsequent hearing, the prosecutor submitted to the trial court a previously entered order declaring Sarah Gorham, Denise Caldwell, and Elizabeth Sanders to be Conley's heirs. On July 15, 2014, over defendant's objection, the trial court ordered the remaining balance of restitution paid to Gorham, Caldwell, and Sanders. Defendant argues on appeal that the trial court erred in doing so. We affirm.

¶ 3 We initially note that the State moved to dismiss this appeal for lack of jurisdiction and we ordered the motion taken with the case. The following general principles govern our analysis of appellate jurisdiction:

> "The Illinois Constitution provides that the appellate court has jurisdiction to hear appeals from both final judgments and other orders for which the supreme court rules permit interlocutory appeals. [Citation.] An order's substance, and not its form, determines whether it is appealable. [Citation.] An order is said to be final if it ' " ' disposes of the rights of the parties, either upon the entire controversy or upon some definite and separate part thereof.' " [Citation.]' [Citation.] In a criminal case, there is no final judgment until the imposition of sentence, and in the absence of that judgment,

an appeal cannot be entertained except as specified in Supreme Court Rule 604 [(eff. July 1, 2006)]. [Citation.]" *People v. Albitar*, 374 Ill. App. 3d 718, 721 (2007).

¶ 4 Here, final judgment was initially entered on September 1, 2011, when the trial court sentenced defendant to a 30-month term of probation in accordance with her plea agreement. However, Illinois Supreme Court Rule 604(b) (eff. Mar. 8, 2016) provides that a defendant who has been sentenced to probation "may *** appeal from an order modifying the conditions of or revoking such [a] *** sentence." For purposes of appeal, the modification order is final when entered in writing. *People v. Rymut*, 216 Ill. App. 3d 920, 925 (1991). Payment of restitution to Conley was a condition of defendant's probation. Consequently, Rule 604(b) would permit an appeal from a written order modifying defendant's obligation to pay restitution. The State insists, however, that "[t]he decision by the trial court to change the recipients of the restitution was not a final judgment." This is so, according to the State, because "[t]he change in who receives the payment of the restitution has no effect upon the defendant's obligation to make the restitution payments." We disagree. It is clear that a criminal defendant may challenge a restitution order on the basis that the applicable statutory provisions do not permit an award to a particular recipient. See *People v. Danenberger*, 364 Ill. App. 3d 936, 941-42 (2006). Moreover, "although the trial court has discretion in imposing conditions of probation, it may not stretch the concept of restitution beyond that embodied in the statute that specifically addresses criminal defendants' potential liability for restitution." *Id.* at 945. We can see no reason why changing the identity of the recipient of restitution (which conceivably could transform a valid restitution order into an erroneous one) should not be considered an appealable modification, within the meaning of Rule 604(b). We therefore conclude that our jurisdiction is proper and we deny the State's motion to dismiss the appeal.

¶ 5 Turning to the merits, section 5-5-6 of the Unified Code of Corrections (Code) (730 ILCS 5/5-5-6 (West 2014) provides, in pertinent part, as follows:

> "In all convictions for offenses in violation of the Criminal Code of 1961 or the Criminal Code of 2012 *** in which the person received any injury to his or her person or damage to his or her real or personal property as a result of the criminal act of the defendant, the court shall order restitution as provided in this Section. In all other cases, except cases in which restitution is required under this Section, the court must at the sentence hearing determine whether restitution is an appropriate sentence to be imposed on each defendant convicted of an offense. If the court determines that an order directing the offender to make restitution is appropriate, the offender may be sentenced to make restitution."

¶ 6 Defendant first argues that the sentencing order required payment of restitution within one year and that only civil remedies were available to collect the unpaid balance after that period expired. In support of this argument, defendant relies primarily on our supreme court's decision in *In re Jaime P.*, 223 Ill. 2d 526 (2003). In that case, the respondent, who was born on October 3, 1982, was adjudicated a delinquent and sentenced to, *inter alia*, a five-year term of probation on November 19, 1999, and ordered to pay restitution. On October 27, 2003, the respondent filed a petition to terminate probation on the grounds that the term of probation could not extend beyond her twenty-first birthday. Our supreme court agreed, but noted that, under section 5-5-6, "restitution is to be paid in full within 'a period of time not in excess of 5 years' [citation], except that where certain circumstances exist, the court may impose an additional period of time, not to exceed two years, within which to make restitution [citation]." *Id.* at 531-32. The *Jaime P.* court concluded that "respondent's probation period should have automatically terminated on October 3, 2003, her twenty-first birthday, although the court, as any circuit court,

could oversee payment of restitution [citations] until, at the latest, November 19, 2006." *Id.* at 540. Nothing in *Jaime P.* suggests that, when a trial court orders payment of restitution within a period of less than the statutory maximum, the court's oversight ends when the period for payment set forth in the restitution order expires. Thus, it was not contrary to *Jaime P.* for the trial court in this case to continue to oversee payment of restitution on July 15, 2014, which was less than three years after the restitution order was originally entered.

¶ 7 Defendant next argues that the trial court's statutory "power" to modify the restitution order was not "triggered." Section 5-5-6(i) of the Code (730 ILCS 5/5-5-6(i) (West 2014)) provides, in pertinent part, that "[a] sentence of restitution may be modified or revoked by the court if the offender commits another offense, *or the offender fails to make restitution as ordered by the court*, but no sentence to make restitution shall be revoked unless the court shall find that the offender has had the financial ability to make restitution, and he has wilfully refused to do so." (Emphasis added.) It is undisputed that defendant did not pay the full amount of restitution ordered. Defendant argues that the trial court did not find that she "had the financial ability to pay the restitution and was wilfully refusing to pay." However, because the trial court merely modified the sentence of restitution rather than revoking it, such findings were unnecessary.

¶ 8 Finally, defendant argues that it was error to order payment to Conley's heirs, who, according to defendant, are not "victims," within the meaning of the applicable statutes. Section 3-1-2(n) of the Code (730 ILCS 5/3-1-2(n) (West 2014)) adopts the definition of "victim" set forth in section 3(a) of the Rights of Crime Victims and Witnesses Act (Act), which, during the relevant time frame, provided as follows:

> "The terms used in this Act, *unless the context clearly requires otherwise*, shall have the following meanings:

> (a) 'Crime victim' and 'victim' mean (1) a person physically injured in this State as a result of a violent crime perpetrated or attempted against that person or (2) a person who suffers injury to or loss of property as a result of a violent crime perpetrated or attempted against that person or (3) a single representative who may be the spouse, parent, child or sibling of a person killed as a result of a violent crime perpetrated against the person killed or the spouse, parent, child or sibling of any person granted rights under this Act who is physically or mentally incapable of exercising such rights, except where the spouse, parent, child or sibling is also the defendant or prisoner or (4) any person against whom a violent crime has been committed or (5) any person who has suffered personal injury as a result of a violation of Section 11-501 of the Illinois Vehicle Code, or of a similar provision of a local ordinance, or of Section 9-3 of the Criminal Code of 1961 or the Criminal Code of 2012 or (6) in proceedings under the Juvenile Court Act of 1987, both parents, legal guardians, foster parents, or a single adult representative of a minor or disabled person who is a crime victim." (Emphasis added.) 725 ILCS 120/3(a) (West 2014).

¶ 9 Although this definition contemplates that a violent crime has occurred, our supreme court expanded the definition for purposes of section 5-5-6 of the Code, holding that section 5-5-6 "was intended to apply to victims of nonviolent as well as violent crimes." *People v. Lowe*, 153 Ill. 2d 195, 207 (1992). Furthermore, *People v. Strebin*, 209 Ill. App. 3d 1078 (1991), illustrates that, in the context of section 5-5-6, the term "victim" is not narrowly confined to the persons described in section 3(a) of the Act. In *Strebin*, the court held that a State agency that paid for counseling services for a victim of aggravated battery of a child was itself a "victim"

within the meaning of section 5-5-6. The agency was therefore entitled to restitution for the cost of those services. The *Strebin* court reasoned as follows:

> "If a defendant may be ordered to pay restitution to a victim who (by way of example) has paid $1,000 for counseling services, we fail to see why a court should not be permitted to order a defendant to pay the same $1,000 for the same counseling services that were provided to the victim without cost to her because she is indigent. *Someone* is paying the costs of that counseling, which was necessitated as a result of the defendant's criminal behavior, and whoever that 'someone' is, whether the victim herself, her family, a friend, or some private or governmental agency, the defendant should still be made to pay the costs of that counseling. To hold otherwise would render the victim's indigence a fortuitous occurrence for the defendant, freeing him of a financial obligation that he should rightly bear.
>
> We are also aware that in cases like the present one, when counseling services are being provided by [government agencies] the financial resources of such agencies are often limited and may be inadequate to meet the demand for services like those provided in the present case. In our judgment, ordering a defendant to pay restitution to such agencies is clearly consistent with the legislative purpose behind section 5-5-6(b) of the Code. [Citation.]" (Emphasis in original.) *Id.* at 1085-86.

¶ 10 Likewise, in this case, it is now Conley's heirs who are harmed by defendant's theft of funds that would have passed to them as a result of Conley's death. There appears to be no dispute that the representative of Conley's estate seeks to close the estate to avoid additional expense. We recognize that it might not always be appropriate to circumvent the probate process by ordering restitution to be paid directly to a crime victim's heirs. A court should not do so

when it would be forced to resolve controversies affecting the distribution of the victim's estate, such as the identity of heirs, their rights *inter se*, or the sufficiency of the estate to satisfy claims entitled to payment before distribution of property to the heirs. On the other hand, we see no reason why a victim's heirs should necessarily bear the expense and inconvenience of distributing restitution payments through probate where there is no dispute as to who the ultimate recipients will be. That appears to be the case here. During the proceedings below, defendant did not dispute the identity of Conley's heirs. Nor did defendant suggest that there were, or might have been, unsatisfied claims against the estate. Therefore, it was appropriate to order that future restitution payments be tendered to Conley's heirs directly.

¶ 11 For the foregoing reasons, the judgment of the circuit court of Stephenson County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 12 Affirmed.