

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER MATTHEW
COLEMAN,

Defendant and Appellant.

A100338

(Mendocino County
Super. Ct. No. 0144478)

Christopher Matthew Coleman appeals after pleading guilty to first degree murder. He contends the court's victim restitution order was in excess of its statutory authority. We vacate the order in part, and otherwise affirm the judgment.

Factual and Procedural Background

In February 2001, Joan LeFeat was shot and killed inside her store. Defendant, then aged 15, was charged as an adult with murder, robbery, burglary, and attempted theft of a vehicle. The information included special allegations that defendant committed the murder while engaged in a robbery and burglary, inflicted torture, was armed with and used a firearm.

Defendant pled guilty to first degree murder. The remaining charges and special allegations were dismissed. Defendant was sentenced to 25 years to life in state prison and ordered to pay a restitution fine of \$10,000. Victim restitution was to be determined by the probation department, and the matter was continued for that purpose. Over

defense objection, the court subsequently ordered victim restitution in the amount of \$132,953, as the victim's family requested.¹ Defendant timely appealed.

Defendant also filed a habeas corpus petition, which was initially consolidated with this appeal. In September 2004, this court concluded that defendant had made a prima facie showing he had received ineffective assistance of counsel. We issued an order to show cause and remanded the matter for an evidentiary hearing. At an October 2005 hearing in the superior court, the defense announced its decision not to move forward with the motion to withdraw the plea.

Discussion

The only issue raised on appeal is the propriety of the victim restitution award. Penal Code section 1202.4, subdivision (f) provides, in relevant part: "In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court."² The term "victim" includes the victim's children and immediate surviving family. (Subd. (k)(1).)

Economic losses include, but are not limited to, the value of stolen or damaged property; medical and mental health counseling expenses; wages or profits lost due to the victim's injury or time the victim spent as a witness or in assisting law enforcement; attorney fees incurred to recover economic losses; expenses incurred to move away from the defendant; expenses to increase residential security or to retrofit a residence or vehicle to accommodate a disabled victim; and interest accrued on all reimbursable

¹ Defendant objected below to the nature of the expenses claimed, but not specifically to their lack of documentation. He contends that issue was not waived, however, and that any failure to preserve it would have constituted ineffective assistance of counsel, a position the Attorney General does not challenge in his brief. The restitution order also included \$18,224 to the Victim Compensation Claims Board for amounts already paid to the victim's family. Defendant does not challenge that portion of the award.

² Subsequent statutory references are to Penal Code section 1202.4, unless otherwise indicated.

expenses. (Subd. (f)(3)(A-K); see also *People v. Fulton* (2003) 109 Cal.App.4th 876, 883-885.)

Any losses for which restitution is ordered must result from defendant's criminal conduct.³ (*People v. Scroggins* (1987) 191 Cal.App.3d 502, 507, 508; see also *People v. Ortiz* (1997) 53 Cal.App.4th 791, 799.) "[T]he purpose of the restitution statute is to make th[e] victim whole, not to give a windfall." (*People v. Thygesen* (1999) 69 Cal.App.4th 988, 995.) Loss of time is not per se compensable; a loss of wages or profits is required. (*People v. Friscia, supra*, 18 Cal.App.4th at p. 838.) "[T]he Legislature did not give trial courts the ability to reimburse victims for what amounts to civil damages." (*Id.* at p. 839; see also *People v. Richards* (1976) 17 Cal.3d 614, 620-621 [restitution not a substitute for a civil action to recover damages].)

"As the trial court is vested with great discretion in fixing a restitution award, some cases have held that appellate review is guided by the abuse of discretion standard. [Citations.] Under that standard, we are required to keep in mind that even though the trial court has broad discretion in making a restitution award, that discretion is not unlimited. While it is not required to make an order in keeping with the exact amount of loss, the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious. [Citations.] [¶] However, *People v. Vournazos* (1988) 198 Cal.App.3d 948, 958-959 [] applied the substantial evidence test in concluding that a hearsay probation report was insufficient evidence upon which to base a restitution award." (*People v. Thygesen, supra*, 69 Cal.App.4th at pp. 992-993.) Whichever standard of review, or combination thereof is used may make little practical difference. If substantial evidence does not support the

³ The Attorney General contends the trial court "may include amounts for additional damages that were not included within the charged offense." The case on which he relies, however, *People v. Goulart* (1990) 224 Cal.App.3d 71, 79, involved restitution imposed as a condition of probation, an area where the trial court traditionally has broader discretion. (See, e.g., *People v. Percelle* (2005) 126 Cal.App.4th 164, 179-180; *People v. Friscia* (1993) 18 Cal.App.4th 834, 836-838; *People v. Foster* (1993) 14 Cal.App.4th 939, 950.) *People v. Goulart* did not authorize restitution for damages not caused by a defendant's criminal conduct.

award, and in the absence of other rational explanation, the trial court's action must involve an abuse of discretion. (*Id.* at p. 993; see also *People v. Harvest* (2000) 84 Cal.App.4th 641, 653.)

The trial court awarded restitution to the victim's three children in the full amounts listed in their unverified written statements to the probation department. Donald Phillips requested \$28,889, which included \$20,000 for an unspecified "job loss," and the remainder for travel expenses for 41 trips to close the victim's store and attend trial.⁴ Daniel Armas claimed \$30,000 for otherwise unspecified "loss wages approx. one year," and \$300 for medical expenses.⁵ Amber LeFeat reported disbursements of \$54,205.13, including payment of the victim's credit card bills, loans, real property taxes, mortgage, utility and other household and business bills for nine months after the victim's death, and more than \$30,000 in "settlement" charges on a deed of trust. LeFeat also claimed an \$11,423.98 loss on returned store inventory, over \$5,000 in attorney fees, and \$550 per day in projected average store sales.⁶ She also listed approximately \$2,000 in doctor's bills and prescriptions, and 7,458 miles of travel (of unspecified value). LeFeat's restitution claim totaled \$73,764.

On this record the court lacked adequate information from which to determine whether the claimed losses were statutorily compensable. It is unclear, for example, how the victim's real property taxes or personal debts could be found to have resulted from defendant's criminal conduct. (See *People v. Scroggins*, *supra*, 191 Cal.App.3d at

⁴ Phillips's described his calculation of expenses as \$.365 per mile for each 320-mile round trip, plus \$25 per day for meals over four days (the average length of his stay on each trip).

⁵ Armas also listed mileage of unspecified value for "nine months of roundtrips . . . to take care of [the victim's] house and yard four or five times a week," totaling 10,044 miles, and 900 miles driven to see a therapist.

⁶ LeFeat may have intended to multiply the average daily sales of the store by the number of days left on its five-year lease. She did not perform that calculation, however, and it appears that only one day of lost sales was actually included in the restitution awarded. In a letter to the probation department, LeFeat described the claimed attorney fees as relating to the victim's estate and having herself appointed as administrator.

pp. 506-507.) Nor has the Attorney General cited any authority permitting recovery for unspecified job loss by members of the victim’s family. When the value of the claimed losses has not been properly established in the trial court, its restitution order cannot stand. (See *People v. Harvest, supra*, 84 Cal.App.4th at p. 653; *People v. Thygesen, supra*, 69 Cal.App.4th at pp. 995-996; *People v. Vournazos, supra*, 198 Cal.App.3d at pp. 958-959.)⁷

“We do not imply that criminals should not be held responsible for all the consequences of their acts. But that is a debate we have no power to resolve; the Legislature did not give trial courts the ability to reimburse victims for what amounts to civil damages.” (*People v. Friscia, supra*, 18 Cal.App.4th at p. 839.) We therefore vacate the direct restitution ordered for Phillips, Armas, and LeFeat, without prejudice to their submission of claims shown to be properly compensable under the statute.

⁷ The Attorney General cites three cases for the proposition that “[a] victim is not required to provide documentation of value or even establish the value of stolen property or amount of damages to a certainty.” Those cases do not support the restitution award entered here. In *People v. Carbajal* (1995) 10 Cal.4th 1114, 1121, the court merely observed that “[t]here is no requirement the restitution order be limited to the exact amount of the loss in which the defendant is actually found culpable, nor is there any requirement the order reflect the amount of damages that might be recoverable in a civil action. [Citation.]” In *People v. Thygesen, supra*, 69 Cal.App.4th at p. 992, the court held: “While it is not required to make an order in keeping with the exact amount of loss, the trial court must use a rational method that could reasonably be said to make the victim whole, and may not make an order which is arbitrary or capricious. [Citations.]” In *In re S. S.* (1995) 37 Cal.App.4th 543, 548, the court concluded the claimed losses were described with sufficient specificity to provide notice to the defendant. We also reject as overly broad the Attorney General’s argument that “[a]ny speculation as to the value or amount of damages caused is necessitated by the fact that appellant killed the victim.”

Disposition

The direct victim restitution ordered to Donald Phillips, Daniel Armas, and Amber LeFeat is vacated. In all other respects, the judgment is affirmed. The matter is remanded to the trial court for further proceedings regarding restitution.

Corrigan, J.

We concur:

McGuinness, P. J.

Parrilli, J.