

Circuit Court for Charles County
Case No. C-08-CR-22-000454

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 132

September Term, 2023

CARLOS WALTER VILLATORO

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by the Circuit Court for Charles County of providing plumbing services without a license, Carlos Walter Villatoro, appellant, presents for our review three questions, which for clarity we reduce and rephrase to a single issue: whether the court erred in ordering that he pay restitution. For the reasons that follow, we shall vacate the court's order of restitution and corresponding civil judgment, and remand with instructions to enter a new order and judgment. We shall otherwise affirm the judgment of the circuit court.

On September 14, 2021, Mr. Villatoro was charged with theft of property of a value of at least \$25,000 but less than \$100,000, acting as a contractor without a license as required by law, knowingly and willfully abandoning and failing to perform a home improvement contract without justification, and providing plumbing services without a license. On October 21, 2022, Mr. Villatoro appeared before the court for a pre-trial hearing, at which the prosecutor stated, and defense counsel confirmed, that the parties had entered a plea agreement. The court confirmed the terms of the agreement with Mr. Villatoro as follows:

[THE COURT:] So, my understanding, sir, is you wish to plead guilty to Count 4, providing plumbing without a license. And, that carries a maximum penalty of six months . . . looking at six months of incarceration. And, the State is going to drop the other charges. And, the parties are free to allocute and there is going to be a restitution hearing to determine if restitution is appropriate in this case. [W]ith respect to probationary terms or probation before judgment, there is no agreement. That's up to the [c]ourt. And . . . the parties are requesting a restitution hearing be set in about sixty days.

Is that your full understanding of the agreement?

[MR.] VILLATORO: Yes.

With respect to the amount of restitution, defense counsel stated: “[T]he claimed amount is forty thousand. [Mr. Villatoro] has other numbers to present to the [c]ourt as to the . . . bill process that happened. I know that . . . there is a dispute . . . on the number.”

In her statement of facts, the prosecutor stated, in pertinent part:

[O]n or about June 1st of 202[1] in Charles County, [Mr.] Villatoro[] did contract with the victim in this case, Ebon[ie] Lynch, for forty thousand dollars. [Mr. Villatoro] did contract with the victim to complete several renovations to include plumbing work. [Mr. Villatoro] was to complete a portion of the renovations by July the 1st of 2021, and was to complete the second portion of renovations by August 1st of 2021. Both [Mr. Villatoro] and his staff were inconsistent when showing up to work. And, to this date, [Mr. Villatoro] had not completed the work but the victim did have to hire out another contractor to complete that work.

* * *

[A]t the time of the events [Mr. Villatoro] was not licensed to . . . complete plumbing work.

The court subsequently convicted Mr. Villatoro of the offense.

On February 21, 2023, Mr. Villatoro appeared before the court for a hearing on sentencing and restitution. The State called Ms. Lynch, who testified that she initially “agreed to pay” Mr. Villatoro \$63,000, but “actually pa[id] him” \$40,000. During Ms. Lynch’s testimony, the State entered into evidence the written “contract” between her and Mr. Villatoro, which described the work to be completed as follows:

- Living room/din[ing] rooms wall
- Demolition of existing kitchen
- Installation of new cabinets
- Countertop installation
- Remove box in the kitchen
- Floor installation sum roof LVT
- Carpet installation 4 rooms

Hallway floor installation LVT
Floor installation on the Stairs
Carpet installation in closet
Demolition of Bathroom of the second level
Remove Jacuzzi
Relocation of toilet and shower
Demolition of ceiling first floor textured areas
Expansion of a room
First floor support facility
Back door

According to Ms. Lynch, the only work done by Mr. Villatoro was “demolition work done by his crew,” including removal of carpeting and tile, and installation of “backer board.” After Mr. Villatoro failed to complete the work, Ms. Lynch paid another contractor the sum of \$54,600 to do so.

Following Ms. Lynch’s testimony, Mr. Villatoro testified that of the money given to him by Ms. Lynch, he spent \$6,500 on a “drywall contractor,” \$400-500 on drywall materials, \$3,000-3,500 on demolition, \$2,000 on “electrical work,” \$3,000-3,500 on plumbing, \$2,000 on spackling material, approximately \$2,000 on flooring and bathroom material, \$1,000 on travel to Ms. Lynch’s home, and \$3,000 on his salary. During cross-examination, Mr. Villatoro admitted that he did not “have anything showing receipts for materials that [he] bought.” Mr. Villatoro also admitted that although Ms. Lynch had paid him \$40,000, he “didn’t give the res[t] of the money back.”

Following the close of the evidence, defense counsel requested of the court, in pertinent part: “[I]f you impose a restitution amount, that you impose a restitution amount to the difference as to what he testified only, which, by my calculations, are about fifteen thousand dollars.” The court subsequently sentenced Mr. Villatoro to a term of

imprisonment of six months, all but thirty days suspended, and a subsequent term of probation of three years. With respect to restitution, the court stated:

In this case, I think it's more appropriate to award the direct out-of-pocket loss than it is to award the entire amount in this case. In this case, the original amount agreed upon was sixty-three thousand dollars. The amount the victim had to pay to have the work completed was fifty-four thousand six hundred dollars, which, by my math, is a difference of eight thousand four hundred dollars. So, I took the forty thousand dollars that was paid and subtracted eight thousand four hundred dollars and came to the direct out-of-pocket loss of the victim of thirty-two thousand six hundred dollars.

So, I'm awarding restitution in the amount of thirty-two thousand six hundred dollars And, I'm reducing it to a civil judgment.

Mr. Villatoro subsequently signed an order of probation that reflected the amount of the court's award and that it would be reduced to a civil judgment. The court subsequently issued an "Order of Restitution-Civil Judgment" in which it memorialized the award.

Mr. Villatoro contends that the court erred in awarding restitution, because "there was no evidence presented by the State of a 'direct out of pocket loss' directly connected to the" specific offense of providing plumbing services without a license, the court failed to find "competent specific amounts due" and "to deduct Mr. Villatoro's uncontroverted expenditures and expenses amounts at the job site," and "awarding the victim . . . a civil judgment . . . constructively enforced an un-enforceable contract." (Emphasis omitted.)

The State counters that Mr. Villatoro's contention "has not been preserved for appellate review," because "[a]t no point during the sentencing hearing did [he] object to the court's order of restitution" or "raise any of the arguments . . . that he does on appeal," and he "consented to" the order "by signing the order of probation." Alternatively, the State contends that the "loss for which restitution was ordered was a direct result of [Mr.]

Villatoro’s crime and supported by competent evidence,” and that the “court did not err in reducing the restitution award to a civil judgment.”

We agree with the State that Mr. Villatoro’s contention is not preserved for our review. The Supreme Court of Maryland has stated that a defendant waives a complaint about restitution as a condition of probation when the defendant “make[s] no objection when the trial court announce[s] the . . . condition[] as part of the probation” and signs “the written order of probation and the judgment of restitution, . . . thereby facially consent[ing] to their terms.” *Chaney v. State*, 397 Md. 460, 467-68 (2007). Here, Mr. Villatoro objected only to the amount of restitution, and signed the written order of probation, which explicitly included the payment of restitution as a condition of probation. Hence, Mr. Villatoro’s contention is waived.

Even if Mr. Villatoro’s contention was preserved for our review, he would not prevail. The Supreme Court of Maryland has stated that “under [certain] circumstances, . . . Maryland’s trial courts may order restitution as a condition of probation in a criminal case for injuries to victims of other crimes committed by the defendant that have no direct relationship to the crime for which the defendant has been convicted and the restitution ordered.” *State v. Stachowski*, 440 Md. 504, 506 (2014). These circumstances include the agreement of the defendant “voluntarily and expressly to pay restitution to the victims in his home improvement fraud cases as a condition of probation,” defense counsel’s acknowledgment of the agreement as correct, and “respective *quid pro quos* for what [the defendant] and the State agreed to,” *id.* at 516, all of which are present in the instant matter. With respect to the amount of restitution, the court was not required to believe Mr.

Villatoro’s testimony with respect to his alleged expenditures, and he does not dispute that he failed to produce receipts or other evidence supporting his testimony. Mr. Villatoro also admitted that he took \$40,000 from Ms. Lynch, performed only a portion of the work required under the parties’ “contract,” and failed to return any of the money to Ms. Lynch. Finally, the Supreme Court of Maryland has stated that an “order of restitution, even when entered as a civil judgment, concludes only the matters that were raised or that could have been raised[] in the criminal proceeding,” and “does not, and cannot, establish civil liability for anything beyond the matters it concludes.” *Grey v. Allstate*, 363 Md. 445, 451 (2001). Hence, the court did not err in ordering that Mr. Villatoro pay restitution.

Although we find that the court did not err in so ordering, we note a mathematical error in the court’s calculation of the amount of restitution. \$40,000 minus \$8,400 is \$31,600, not \$32,600. Accordingly, we vacate the order of restitution and corresponding civil judgment, and remand with instructions to enter a new order and judgment reflecting the correct amount.

**ORDER OF RESTITUTION AND
CORRESPONDING CIVIL JUDGMENT
VACATED. JUDGMENT OF THE
CIRCUIT COURT FOR CHARLES
COUNTY OTHERWISE AFFIRMED.
CASE REMANDED TO THAT COURT
FOR FURTHER PROCEEDINGS
CONSISTENT WITH THIS OPINION.
COSTS TO BE PAID ONE-HALF BY
APPELLANT AND ONE-HALF BY
CHARLES COUNTY.**