

Circuit Court for Baltimore City
Case No.: 818159015

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 231

September Term, 2021

RODNEY HARRIS

v.

STATE OF MARYLAND

Fader, C.J.,
Leahy,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: November 30, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On July 20, 2018, appellant Rodney Harris appeared in the Circuit Court for Baltimore City and pleaded guilty to theft \$100 to under \$1,500 and was sentenced to six months imprisonment, with two months and five days suspended, to be followed by a one-year term of supervised probation. He was also ordered to pay \$923.79 in restitution to the theft victim, with payments to be made through the Maryland Division of Parole and Probation on or before July 20, 2019. He did not seek leave to appeal. The restitution order was reduced to a money judgment and indexed as such. *See* civil case no. 24-C-18-004310.

In February 2021, the self-represented Mr. Harris filed in the criminal case a pleading he captioned “application to waive restitution.” He asserted that he was “given multiple sanctions” for the theft conviction, including “jail time, probation and restitution” and claimed that he “still [had] a probation that will become violated due to [his] indigency to pay the \$1,000 fine to the victim.” He alleged that he was homeless and jobless, and that he is unable “to come up with \$1,000 to pay the acclaimed victim let alone pay child support.” The circuit court denied the request.

On appeal, Mr. Harris makes two assertions in support of his argument that the court erred in denying his request: (1) he was subjected to a “double jeopardy clause violation” because he was sentenced multiple times for “one act”; and (2) he should not be required to pay the restitution award because he does not have the financial means to do so.

The State responds that Mr. Harris’s double jeopardy argument is meritless because he was sentenced in accordance with Md. Code, Criminal Law, § 7-104(g)(2), which provides that a defendant convicted of theft of property or services with a value of at least

\$100 but less than \$1,500 is subject to a maximum six months’ imprisonment (for a first conviction), a fine not exceeding \$500, and “shall restore the property taken to the owner or pay the owner the value of the property or services.” As for Mr. Harris’s assertion that he has the inability to pay the restitution, the State responds that his argument “is not yet ripe” because he had not been charged with violation of probation for failing to make restitution.

We hold that there was no double jeopardy violation. As mandated by statute, Mr. Harris was ordered to restore the property (which he claims was a cell phone) to the owner or pay the value of that property. Mr. Harris did not challenge the restitution award after it was entered and his time to do so has passed. As for his argument that he is financially unable to pay the restitution, we agree with the State that that issue is not properly before us in this appeal.

Finally, given that the restitution award has been reduced to a money judgment, we find no fault in the circuit court’s denial of Mr. Harris’s belated request to waive restitution.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**