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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA 19-898

Filed: 7 April 2020

Pamlico County, Nos. 14 CRS 50013-14, 50020, 15 CRS 45

STATE OF NORTH CAROLINA

v.

SAMUEL TYLER POTTER, Defendant.

Appeal by defendant from judgments entered 5 March 2019 by Judge Joshua W. Willey Jr. in Pamlico County Superior Court. Heard in the Court of Appeals 18 March 2020.

Attorney General Joshua H. Stein, by Assistant Attorney General Robert C. Ennis, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Wyatt Orsbon, for defendant-appellant.

YOUNG, Judge.

This appeal arises out of a restitution order. The State's evidence did not support the restitution award, and therefore, we reverse and remand. We decline to address other arguments based on the restitution award.

I. Factual and Procedural History

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On 4 January 2014, Samuel Tyler Potter (“Defendant”) broke into his grandfather’s house and stole several long guns and weapons. Defendant was arrested on 10 January 2014 and detained in Pamlico County Jail under a \$175,000 bond. That same day, Defendant called a local bail bondsman, Reginald Beasley (“Beasley”), and told Beasley that he would immediately pay Beasley if he bonded him out. Beasley agreed and executed a \$175,000 surety bail bond for Defendant’s release that night. Beasley paid 15% of Defendant’s \$175,000 bail bond for his release. Upon his release, Defendant told Beasley he needed to go to his grandfather’s property where Defendant claimed the safe containing the gold and money was located. At that location, Defendant attempted to murder Beasley by striking him repeatedly with a machete. Beasley eventually escaped and had to undergo extensive medical treatment.

On 23 January 2017, Defendant pled guilty to attempted first-degree murder, voluntary manslaughter, burning other buildings, breaking or entering and larceny. The trial court sentenced Defendant, and he filed a *pro se* written notice of appeal and petitioned this Court for *certiorari* review.

On *certiorari* review, this Court vacated the judgments and remanded for a new trial. On remand, Defendant entered into two separate plea agreements. First, he pled guilty to voluntary manslaughter, and the trial court sentenced him to a minimum 44 months and maximum 65 months. Second, he pled guilty to assault

with a deadly weapon with intent to kill inflicting serious injury, breaking or entering, larceny, and obtaining property by false pretenses. The trial court consolidated the convictions for that plea into one judgment, imposing a consecutive sentence of a minimum 72 months, maximum 99 months, and ordered “restitution in the amount of \$26,500 shall be recorded as a civil judgment.” Defendant gave oral notice of appeal. Defendant filed an appellate brief and a petition for writ of *certiorari*, seeking review of the trial court’s 6 March 2019 restitution award.

II. State’s Evidence

a. Standard of Review

Pursuant to N.C. Gen. Stat. § 15A-1446(d)(18) (2019), restitution orders may be challenged on appeal irrespective of whether the defendant objected at the time restitution was imposed. *State v. Mumford*, 364 N.C. 394, 403, 699 S.E.2d 911, 917 (2010). The trial court’s restitution order must be supported by competent evidence from trial or sentencing. *Mumford*, 364 N.C. at 403, 699 S.E.2d at 917. Whether the evidence supports the court’s order is a question of law, reviewed *de novo* on appeal. *State v. Wright*, 212 N.C. App. 640, 645, 711 S.E.2d 797, 801 (2011). Under this standard, the appellate court considers the question of restitution anew and freely substitutes its own view of the sufficiency of the evidence for that of the trial court. *See State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (defining *de novo* review).

b. Analysis

Defendant contends that the amount of restitution ordered by the trial court is not supported by the State's evidence. We agree.

The State concedes that although there was evidence supporting the trial court's restitution award, it likely was not specific enough to support the \$26,500 awarded. Here, the State submitted a restitution worksheet requesting the trial court award Beasley \$26,500 in restitution. The State presented a completed Appearance Bond for Pretrial Release form signed by a Pamlico County Magistrate on 10 January 2014, and a \$175,000 surety bail bond executed to effectuate Defendant's release from jail that same day. At sentencing, the prosecutor explained that Beasley stated he had to post 15% of the \$175,000 surety bond to execute it through his insurance. As a result, Beasley said he "was out" \$26,500.

Although there was " 'some evidence' to support an award of restitution" to Beasley, the documentation showing Beasley executed a \$175,000 surety bail bond for Defendant's release from jail was "not specific enough to support" the \$26,500 award. *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011). "A restitution worksheet, unsupported by testimony, documentation, or stipulation, 'is insufficient to support an order for restitution.' " *State v. Blount*, 209 N.C. App. 340, 348, 703 S.E.2d 921, 927 (2011). "[T]he quantum of evidence needed to support a restitution award is not high." *Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011). But a

prosecutor's "unsworn statements" are insufficient. *See State v. Wilson*, 340 N.C. 720, 727, 459 S.E.2d 192, 196 (1995). The State's unsworn statements as to the amount Beasley allegedly posted for the bond were insufficient to support the specific amount of restitution awarded. While the appearance bond showed that the amount of Defendant's bond was \$175,000, nothing in the documentation shows that Beasley actually paid the 15%. Furthermore, Defendant did not stipulate to the State's restitution worksheet.¹

Accordingly, the restitution award is reversed for insufficient evidence, and remanded to the trial court for a new restitution hearing to determine the amount of damages proximately caused by Defendant's conduct, and to calculate the correct amount of restitution.

Defendant makes two additional arguments challenging the restitution award. Specifically, Defendant argues that the trial court failed to consider the required factors regarding Defendant's ability to pay restitution. Defendant further argues that the Crime Victims' Rights Act does not authorize the trial court to enter its restitution award as a civil judgment against Defendant. However, because we remand the restitution award on other grounds, we do not reach the merits of these arguments.

REVERSED AND REMANDED.

¹ State and Defendant concede that 15% of \$175,000 equals \$26,250 rather than \$26,500.

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Judges INMAN and ZACHARY concur.

Report per Rule 30(e).