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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA23-99

Filed 2 July 2024

Yadkin County, Nos. 20 CRS 50649-50, 21 CRS 167

STATE OF NORTH CAROLINA

v.

STACEY LYNN BOWLIN

Appeal by Defendant from judgment entered 18 April 2022 by Judge Michael D. Duncan in Yadkin County Superior Court. Heard in the Court of Appeals 1 November 2023.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Phillip K. Woods, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Anne M. Gomez, for Defendant.

PER CURIAM.

Defendant Stacey Lynn Bowlin appeals from judgment and commitment entered upon a jury's verdict finding him guilty of felony breaking or entering, felony larceny, and conspiracy to break or enter with the intent to commit a felony therein, and upon his plea to having attained habitual felon status. Defendant's sole

argument on direct appeal is that the trial court's order that he pay \$2,430.38 in restitution was not supported by the evidence. Defendant also petitions this court to issue a writ of certiorari to address his argument that the trial court erred by sentencing him as a habitual felon where he pled guilty to having attained habitual felon status prior to trial. We find no merit in Defendant's argument concerning restitution and no error in the order for restitution. In our discretion, we deny Defendant's petition for writ of certiorari and do not address his habitual felon argument. *See* N.C. R. App. P. 21.

I. Background

Defendant was indicted for felony breaking or entering, felony larceny, conspiracy to break or enter with the intent to commit a felony therein, and having attained habitual felon status. Prior to trial, Defendant pled guilty to having attained habitual felon status. Following a trial, the jury found Defendant guilty as indicted and guilty of an aggravating factor. The trial court entered judgment and commitment, sentencing Defendant as a habitual felon to presumptive-range sentences totaling 236-321 months' imprisonment and ordering him to pay \$2,430.38 in restitution. Defendant appealed.

II. Analysis

Defendant argues that the amount of restitution ordered by the trial court is not supported by the evidence. We disagree.

The trial court's restitution order must be supported by competent evidence from trial or sentencing. *State v. Mumford*, 364 N.C. 394, 403, 699 S.E.2d 911, 917 (2010). "[T]he quantum of evidence needed to support a restitution award is not high." *State v. Moore*, 365 N.C. 283, 285, 715 S.E.2d 847, 849 (2011). "When . . . there is some evidence as to the appropriate amount of restitution, the recommendation will not be overruled on appeal." *State v. Hunt*, 80 N.C. App. 190, 195, 341 S.E.2d 350, 354 (1986). Whether the evidence supports the trial court's restitution 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).

In *Hunt*, this Court found no error in the trial court's recommendation of \$18,364 in restitution where the victim "testified that the hospital bill 'is \$10,364' and the doctor's bill 'around \$8,000.'" 80 N.C. App. at 195, 341 S.E.2d at 354. Similarly, in *State v. Davis*, testimony by one of the victims and the co-defendant was sufficient to support the restitution award of \$180, even though the evidence admitted at trial was conflicting: "[The victim] testified that although she did not know the exact amount, the pocketbook taken from her contained 'between a hundred and twenty and a hundred and fifty dollars in cash.' On the other hand, [the co-defendant] testified the pocketbook contained about \$240.00 of which he took \$40.00." 167 N.C. App. 770, 776, 607 S.E.2d 5, 10 (2005).

Here, Sandra Benge, the victim of Defendant's crimes, testified at trial to the following. After spending the night at her sister's house, she returned to her home to

find her front door “[a]ll the way open,” a window broken out, the back door broken, “coins scattered,” and “some stuff taken.” Missing were her late husband’s penny collection, most of her collector dolls, a “[l]ittle bit of jewelry[, a]nd some stuff that can’t be replaced.”

The penny collections started “at Indian Head and went all the way up to 2017” and “were in their own individual containers. Each – each roll had 50 pennies in it, and each case had \$50 worth of pennies in it” Although she did not know exactly how many boxes of pennies were missing, she estimated that “[a]t least” 20 boxes were missing. Missing silver coins were valued at approximately \$10 and missing silver jewelry was valued at approximately \$150. The dolls “were not just a Barbie doll you buy off the shelf”; they were collector dolls “like Marilyn Monroe, the Gone With The Wind series” and “the Wizard of Oz.” Bengé had owned the dolls “[t]wenty-some years, at least” and had purchased them herself. When asked to value the goods taken from her home, Bengé testified that she and her daughter “did a rough estimate of over \$5,000.” When asked to explain her testimony that the value of the missing items was over \$5,000, she testified, “All the dolls and stuff, my daughter looked them up to replace them. Replacement value.”

Defendant’s cousin and State’s witness, Jason Alexander, testified that he pawned some of the stolen coins and “received a little over \$2,000 for what we cashed in.”

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Opinion of the Court

Here, as in *Davis*, the testimony from Benge and Alexander was sufficient to support the restitution award of \$2,430.38, even if there was conflicting evidence adduced at trial. *See Davis*, 167 N.C. App. at 776, 607 S.E.2d at 10. Accordingly, as in *Hunt* and *Davis*, “there is some evidence as to the appropriate amount of restitution [and] the recommendation will not be overruled on appeal.” *Davis*, 167 N.C. App. at 776, 607 S.E.2d at 10 (quoting *Hunt*, 80 N.C. App. at 195, 341 S.E.2d at 354). We find no error in the trial court’s order for restitution.

NO ERROR.

Panel consisting of:

Judges TYSON, MURPHY, and COLLINS.

Report per Rule 30(e).