[Cite as *In re T.J.*, 2015-Ohio-2881.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

IN RE: T.J.	:	
	:	
	:	C.A. CASE NO. 2014-CA-35
	:	
	:	T.C. NO. 2012JA146, 2014JA61
	:	
	:	(Civil Appeal from Common Pleas
	:	Court, Juvenile Division)
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O P I N I O N

Rendered on the 17th day of July, 2015.

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FROELICH, P.J.

{¶ 1} Appellant, T.J., admitted in Case No. 2014 JA 61 to engaging in a pattern of corrupt activity, a felony of the second degree if committed by an adult, and to a probation violation in Case No. 2012 JA 146. As part of T.J.'s plea, the state dismissed 83 additional charges against T.J. in Case No. 2014 JA 61, including several charges of

theft, receiving stolen property, criminal mischief, possession of drug paraphernalia, and possession of marijuana. The juvenile court committed T.J. to the Department of Youth Services for a minimum of one year, maximum up to his 21st birthday, and ordered him to pay restitution totaling $5,946.17 to four individuals, to obtain a GED, and to write apology letters. The juvenile court terminated, unsuccessfully, T.J.'s probation in Case No. 2012 JA 146.

{¶ 2} T.J. appeals from his adjudication, raising three assignments of error.

I. Restitution Order

{¶ 3} T.J.'s first and second assignments of error state:

> The juvenile court committed plain error when it ordered T.J. to pay an amount of restitution which exceeded the actual economic loss suffered by the victims. * * *
>
> The juvenile court committed plain error when it failed to consider community service in lieu of financial sanctions before ordering T.J. to pay restitution * * *.

{¶ 4} R.C. 2152.20(A)(3) generally authorizes a juvenile court to require a delinquent child to "make restitution to the victim of the child's delinquent act * * * in an amount based upon the victim's economic loss caused by or related to the delinquent act." The term "economic loss" means any economic detriment suffered by a victim of a delinquent act as a direct and proximate result of that act. R.C. 2152.02(L).

{¶ 5} In determining the amount of restitution, the juvenile court may base its order on an amount recommended by the victim, the offender, a presentence investigation report, "estimates or receipts indicating the cost of repairing or replacing

property, and any other information." R.C. 2152.20(A)(3). The court's restitution order cannot exceed the amount of economic loss incurred by the victim as a direct and proximate result of the delinquent act. *Id.* If the amount of restitution is disputed, the court must hold a hearing on the amount of restitution. *Id.*

{¶ 6} The juvenile court "may hold a hearing if necessary to determine whether a child is able to pay a sanction" imposed. R.C. 2152.20(C). However, the statute does not require the court to hold a hearing. *In re J.G.*, 2013-Ohio-583, 986 N.E.2d 1122, ¶ 11 (8th Dist.). If the delinquent child is indigent, "the court shall consider imposing a term of community service * * * in lieu of imposing a financial sanction under this section." R.C. 2152.20(D).

{¶ 7} At T.J.'s disposition hearing, the State offered Exhibit 1, which indicated the names of all of the victims, identified those that had returned victim impact statements, and stated the amount of economic loss suffered by four of the victims. The record includes the victim impact statements, which also itemized the economic losses. The State requested restitution totaling $5,946.17. Defense counsel addressed the issue of restitution, stating,

> We have indeed received the State's request for a restitution of $5,946.17. I've shown those to my client. I've looked at them myself as well. I've shown them to or at least shared the amount with his mother. I don't believe any of us are objecting to the amount of restitution requested. [T.J.] knows that he's going to have to pay that.

The juvenile court orally ordered T.J. to pay restitution to the four individuals in the amounts outlined in Exhibit 1. Consistent with Exhibit 1, the juvenile court ordered in its

judgment entry that T.J. pay restitution in the following amounts: (1) Victim #1, $775; (2) Victim #2, $289; (3) Victim #3, $4,553.67; and (4) Victim #4, $328.50.

{¶ 8} On appeal, T.J. does not dispute the restitution orders regarding Victims #1 and #4. However, T.J. claims that the juvenile court's restitution orders with respect to Victims #2 and #3 exceed their economic loss. He further argues that the juvenile court failed to consider community service in lieu of restitution.

{¶ 9} T.J. did not object to the juvenile court's imposition of restitution at the disposition hearing, and we thus review the court's restitution order for plain error. In order to constitute plain error, the error must be an obvious defect in the trial proceedings, and the error must have affected substantial rights. *State v. Norris*, 2d Dist. Montgomery No. 26147, 2015-Ohio-624, ¶ 22; Crim.R. 52(B). The Ohio Supreme Court has recently reiterated that, even if an accused shows that the trial court committed plain error affecting the outcome of the proceeding, an appellate court is not required to correct it. *State v. Rogers*, Slip Opinion No. 2015-Ohio-2459, ¶ 23. Rather, plain error should be noticed "with the utmost caution, under exceptional circumstances and *only* to prevent a manifest miscarriage of justice." (Emphasis added in *Rogers*) *Id*., quoting *State v. Long*, 53 Ohio St.2d 91, 372 N.E.2d 804 (1978), paragraph three of the syllabus.

{¶ 10} First, we find no merit to T.J.'s argument that the juvenile court committed plain error by failing to consider community service as an alternative to restitution. R.C. 2152.20(D) merely obligates the juvenile court to "consider" community service in lieu of financial sanctions. *In re M.A.L*., 2d Dist. Miami No. 06-CA-36, 2007-Ohio-2426, ¶ 18. "[W]hen a statute requires only that a trial court 'shall consider' a factor or issue, a silent record raises a presumption that the trial court fulfilled its obligation." *Id*.; *see also, e.g.,*

In re J.G., 2013-Ohio-583, 986 N.E.2d 1122, at ¶ 13; *In re C.P*., 5th Dist. Tuscarawas No. 2012 AP 02 0016, 2012-Ohio-5453, ¶ 82-83; *In re Boss B*., 6th Dist. Lucas No. L-07-1343, 2008-Ohio-2995, ¶ 21. Here, nothing in the record indicates that the juvenile court failed to consider community service in lieu of financial sanctions. And given that defense counsel told the juvenile court at the disposition hearing that T.J. and his mother both understood that T.J. would need to pay restitution to the victims, we find no error, plain or otherwise, in the juvenile court's decision to impose restitution.

{¶ 11} Second, we find no plain error in the juvenile court's order of restitution in the amount of $289 to Victim #2 and $4,553.67 to Victim #3.

{¶ 12} Victim #2's victim impact statement (which was prepared by his wife) indicated that their car was stolen from their driveway between late March 28 and early March 29, 2014. The morning of March 29, Victim #2 rented another car for the weekend to assure transportation for their son, who has physical and intellectual disabilities. A receipt from Enterprise Rent-A-Car reflected that the total cost of the three-day rental was $149.18.

{¶ 13} The police recovered the stolen vehicle during the afternoon of March 29 and returned it to the owners that evening; the vehicle was covered "top and bottom with mud and long grass." Victim #2 paid for two car washes, at the cost of $10 each. The statement indicated that missing items included the vehicle's owner's manual, a key to the vehicle, several of their son's cassette tapes, and a steering lock (value $19). A new key for the vehicle would cost $96.47, although they were "not inclined" to buy one as long as a stolen key remained unaccounted for. State's Exhibit 1 sought restitution for Victim #2 in the amount of $289, representing $250 for Victim #2's insurance deductible (which

presumably included the car rental, cost of a replacement key, and cassette tapes), $19 for the steering lock, and $20 for the two car washes.

{¶ 14} T.J. complains that Victim #2 should not have been reimbursed for a three-day car rental from Enterprise Rent-A-Car, when his vehicle was located by the police and returned within a day of its being stolen. Victim #2's victim impact statement reflects that, prior to his vehicle's return, he rented a car for the weekend. At that time, Victim #2 had no way of knowing when or if his vehicle would be located and returned. In the absence of a hearing, the record contains no information about whether Victim #2 could have returned the rental vehicle to that Enterprise location after only one day. In addition, Victim #2's statement indicated that his vehicle required multiple car washes to remove mud and grass from the car, including under the car and from the wheel wells. There is no dispute concerning Victim #2's actual out-of-pocket payment for the rental vehicle. Based on the information before it, the court could have reasonably concluded that the three-day rental was a reasonable expense, incurred as a direct and proximate result of the theft of Victim #2's vehicle by T.J. We find no plain error in the juvenile court's inclusion of $149.18 for the car rental in its order of restitution.

{¶ 15} With respect to Victim #3, T.J. asserts that the juvenile court committed plain error when it ordered T.J. to pay the replacement value for Victim #3's stolen items.

{¶ 16} According to the information provided by Victim #3 and Victim #3's insurance company, Victim #3 had six items of jewelry and a Garmin GPS device stolen from his vehicle. The stolen jewelry consisted of (1) a gold and diamond wedding band, purchased 20 years before the offense, (2) a women's gold and diamond watch, purchased 15 years earlier, (3) a women's Seiko watch, purchased 15 years ealier, (4) a

gold and diamond tennis bracelet, purchased 12 years earlier, (5) a women's Brighton watch, purchased 12 years earlier, and (6) a men's gold nugget bracelet, purchased 7 years before the offense. Victim #3's victim impact statement (completed by his wife) provided the approximate purchase prices for the items, totaling $3,750.

{¶ 17} Victim #3's insurance company calculated the replacement value for the jewelry to be $5,453.67 and the GPS device to be $84.36. The insurance company reimbursed Victim #3 for the Garmin GPS device and, per the policy limit on jewelry, $1,000 for the missing jewelry. The insurance company's documentation was provided to the juvenile court by a victim advocate; the victim advocate's cover letter to the court indicated that Victim #3 had out-of-pocket loss of $4,553.67, and the State asked for that amount in restitution for Victim #3.

{¶ 18} T.J. argues that the juvenile court erred in using the replacement cost of the jewelry and GPS device. The GPS device was reimbursed by the insurance company, and was not included in the amount of restitution. We need not address this item further.

{¶ 19} As for the jewelry, R.C. 2152.20(A)(3) specifically states that the juvenile court may award restitution based on information provided by the victim and on "estimates or receipts indicating the cost of repairing or *replacing* property, and any other information." (Emphasis added.) R.C. 2152.20(A)(3). The insurance company's valuation of the stolen jewelry provided competent, credible evidence of the jewelry's present value for purposes of restitution. Given the nature and age of the items stolen, the court reasonably applied the replacement value, as opposed to the purchase price, to determine the economic loss sustained by Victim #3.

{¶ 20} T.J.'s first and second assignments of error are overruled.

{¶ 21} We note that, based on the insurance company's documentation, Victim #3's uninsured loss was actually $4,453.67, not $4,553.67 ($5,453.67 - $1,000 = $4,453.67). It appears that the victim advocate misstated Victim #3's out-of-pocket loss as $4,553.67 and, in Exhibit 1, the State inadvertently stated the value of the stolen jewelry as $5,553.67, not $5,453.67; both thus overstated Victim #3's economic loss by $100. Accordingly, we modify the juvenile court's restitution order for Victim #3 to $4,453.67, and remand to the juvenile court for a new entry reflecting this modification.

II. Ineffective Assistance of Counsel

{¶ 22} T.J.'s third assignment of error states that his trial counsel rendered ineffective assistance. He argues that his attorney should have objected to the juvenile court's restitution order and advocated for the court to consider community service in lieu of a financial sanction.

{¶ 23} To reverse a conviction based on ineffective assistance of counsel, an appellant must demonstrate both that trial counsel's conduct fell below an objective standard of reasonableness and that the errors were serious enough to create a reasonable probability that, but for the errors, the result of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 688, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 373 (1989). Trial counsel is entitled to a strong presumption that his or her conduct falls within the wide range of reasonable assistance. *Strickland*, 466 U.S. at 688. Hindsight is not permitted to distort the assessment of what was reasonable in light of counsel's perspective at the time, and a debatable decision concerning trial strategy cannot form the basis of a finding of

ineffective assistance of counsel. *State v. Cook*, 65 Ohio St.3d 516, 524–525, 605 N.E.2d 70 (1992); *State v. Rucker*, 2d Dist. Montgomery No. 24340, 2012-Ohio-4860, ¶ 58.

{¶ 24} Based on the record before us, we find no basis to conclude that counsel acted deficiently. The juvenile court had competent, credible evidence regarding the amount of restitution from Victim #2's and Victim #3's victim impact statements, their supporting documentation, and State's Exhibit 1. Based on the information before the juvenile court, we cannot conclude that the juvenile court would have ordered a lesser amount of restitution had counsel objected to the court's restitution order. In addition, the record provides no basis to conclude that the juvenile court would have ordered community control, as an alternative to restitution, had defense counsel expressly asked the court to consider that alternative.

{¶ 25} T.J.'s third assignment of error is overruled.

III. Conclusion

{¶ 26} The juvenile court's judgment will be affirmed, as modified. The matter will be remanded to the juvenile court for a new entry reflecting the modification of Victim #3's restitution.

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FAIN, J. and HALL, J., concur.

Copies mailed to:

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