

**In the
Supreme Court of Ohio**

STATE OF OHIO,	:	CASE No. 24-0265
PLAINTIFF-APPELLANT,	:	ON APPEAL FROM THE FRANKLIN COUNTY COURT OF APPEALS,
v.	:	TENTH APPELLATE DISTRICT
T.W.C.,	:	COURT OF APPEALS
DEFENDANT -APPELLEE.	:	CASE No. 23AP-196

**AMICUS CURIAE OHIO CRIME VICTIM JUSTICE CENTER'S BRIEF IN SUPPORT OF PLAINTIFF-
APPELLANT STATE OF OHIO**

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STATEMENT OF INTEREST OF *AMICUS CURIAE*

Ohio Crime Victim Justice Center (“OCVJC”) is a statewide nonprofit organization with offices in Columbus, Cincinnati, and Cleveland. OCVJC was founded in 2000 to provide crime victims a place to report victims’ rights violations and to provide free legal representation to preserve and enforce their rights. OCVJC’s mission is to ensure that the constitutional, statutory, and inherent rights of Ohio’s state and federal crime victims are upheld throughout the criminal justice process in Ohio’s 88 counties. OCVJC accomplishes this mission by providing free direct legal representation to Ohio crime victims in state and federal courts to preserve and enforce victims’ rights during criminal proceedings. OCVJC also assists victims in accompanying protection order proceedings, Title IX proceedings, military proceedings, and immigration proceedings. In addition to providing direct legal assistance, OCVJC provides free victims’ rights education and training to hospital personnel, social workers, counselors, court appointed special advocates, guardians ad litem, law enforcement, prosecutors, courts, and the community, and briefs courts as *amicus curiae* on issues of importance regarding the rights of Ohio crime victims in state and federal courts.

STATEMENT OF THE FACTS

Amicus curiae references and incorporates the Statement of the Facts submitted as part of the Appellant’s Brief.

ARGUMENT IN SUPPORT OF PROPOSITION OF LAW

Proposition of Law No. 1: Sealing or expunging defendants’ convictions when restitution orders are still outstanding deprives victims of their due process property rights and their constitutional and statutory rights to restitution.

- a. **Mid-State Credit Union meets the definition of “victim.”**

Prior to the passage of Marsy’s Law, Ohio appeals courts commonly held that the term “victim” as used in former R.C. 2929.18 should be given its plain and ordinary meaning. *See State v. Samuels*, 2003-Ohio-6106, ¶ 5 (4th Dist.) (“A ‘victim’ is generally defined as the person who was ‘the object’ of the crime - e.g. the victim of the robbery is the person who was robbed.”).

Mid-State Credit Union is identified by the trial court as the victim in the sentencing entry, (T.d. 25), and in the entry sealing T.W.C.’s convictions. (T.d. 42). Furthermore, there seems to be no legal dispute that Mid-State Credit Union is a victim.

b. The sentencing entry contains a restitution order.

The former iteration of R.C. 2929.18(A) in effect at the time of T.W.C.’s sentencing in the underlying matter states, in pertinent part:

Financial sanctions that may be imposed pursuant to this section include, but are not limited to, the following:

(1) Restitution by the offender to the victim of the offender’s crime or any survivor of the victim, in an amount based on the victim’s economic loss. If the court imposes restitution, the court shall order that the restitution be made to the victim in open court, to the adult probation department that serves the county on behalf of the victim, to the clerk of courts, or to another agency designated by the court. If the court imposes restitution, at sentencing, the court shall determine the amount of restitution to be made by the offender. If the court imposes restitution, the court may base the amount of restitution it orders 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 other information, provided that the amount the court orders as restitution shall not exceed the amount of the economic loss suffered by the victim as a direct and proximate result of the commission of the offense. If the court decides to impose restitution, the court shall hold a hearing on restitution if the offender, victim, or survivor disputes the amount. All restitution payments shall be credited against any recovery of economic loss in a civil action brought by the victim or any survivor of the victim against the offender. If the court imposes restitution, the court may order that the offender pay a surcharge of not more than five per cent of the amount of the restitution otherwise ordered to the entity responsible for collecting and processing restitution payments. The victim or survivor may request that the prosecutor in the case file a motion, or the offender may file a motion, for modification of the payment terms of any

restitution ordered. If the court grants the motion, it may modify the payment terms as it determines appropriate.

(2) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision, or as described in division (B)(2) of this section to one or more law enforcement agencies, with the amount of the fine based on a standard percentage of the offender's daily income over a period of time determined by the court and based upon the seriousness of the offense. A fine ordered under this division shall not exceed the maximum conventional fine amount authorized for the level of the offense under division (A)(3) of this section.

(3) Except as provided in division (B)(1), (3), or (4) of this section, a fine payable by the offender to the state, to a political subdivision when appropriate for a felony, or as described in division (B)(2) of this section to one or more law enforcement agencies, in the following amount:

- (a) For a felony of the first degree, not more than twenty thousand dollars;
- (b) For a felony of the second degree, not more than fifteen thousand dollars;
- (c) For a felony of the third degree, not more than ten thousand dollars;
- (d) For a felony of the fourth degree, not more than five thousand dollars;
- (e) For a felony of the fifth degree, not more than two thousand five hundred dollars.

(4) A state fine or costs as defined in section 2949.111 of the Revised Code.

(5)(a) Reimbursement by the offender of any or all of the costs of sanctions incurred by the government, including the following:

- (i) All or part of the costs of implementing any community control sanction, including a supervision fee under section 2951.021 of the Revised Code;
- (ii) All or part of the costs of confinement under a sanction imposed pursuant to section 2929.14 or 2929.16 of the Revised Code, provided that the amount of reimbursement ordered under this division shall not exceed the total amount of reimbursement the offender is able to pay as determined at a hearing and shall not exceed the actual cost of the confinement.

(b) If the offender is sentenced to a sanction of confinement pursuant to section 2929.14 or 2929.16 of the Revised Code that is to be served in a facility operated by a board of county commissioners, a legislative authority of a municipal corporation, or another local governmental entity, if, pursuant to section 307.93, 341.14, 341.19, 341.23, 753.02, 753.04, 753.16, 2301.56, or 2947.19 of the Revised Code and section 2929.37 of the Revised Code, the board, legislative authority, or other local governmental entity requires prisoners to reimburse the county, municipal corporation, or other entity for its expenses incurred by reason of the prisoner's confinement, and if the court does not impose a financial sanction under division (A)(5)(a)(ii) of this section, confinement costs may be assessed pursuant to section 2929.37 of the Revised Code. In addition, the offender may be required to pay the fees specified in section 2929.38 of the Revised Code in accordance with that section.

(c) Reimbursement by the offender for costs pursuant to section 2929.71 of the Revised Code.

This section contemplates three basic groups of potential financial sanctions: restitution, fines, and reimbursement for the costs of prosecution or confinement. Nowhere does this section authorize a trial court to order, as a financial sanction, a civil judgment in lieu of restitution. *See id.* This, of course, does not mean that a trial court cannot convert a restitution order into a civil judgment in favor of the victim. *State v. J.L.*, 2020-Ohio-3466, ¶ 18 (10th Dist.) (“The application of R.C. 2929.18(D)(1) does not alter the determination of whether restitution was fully paid. Instead, R.C. 2929.18(D)(1) merely provides a way of collecting a financial sanction by obtaining a certificate of judgment in the same manner and form as a certificate of judgment in a civil case. Whether ordered in the original judgment or a subsequently obtained certificate of judgment, the recompense to the victim remains unsatisfied.”).

In this case, the trial court’s order was clear—the sentencing entry stated: “Restitution in the amount of Two Thousand Six Hundred Sixty Three Dollars (\$2,663.00) is entered as a civil judgment against Defendant and in favor of victim Mid-State Credit Union.” (T.d. 25). By the plain language of the entry, the trial court ordered “restitution,” which it then reduced to a civil judgment pursuant to former R.C. 2929.18(D), which states, in pertinent part:

A financial sanction of restitution imposed pursuant to this section is an order in favor of the victim of the offender’s criminal act that can be collected through execution as described in division (D)(1) of this section or through an order as described in division (D)(2) of this section, and the offender shall be considered for purposes of the collection as the judgment debtor. Imposition of a financial sanction and execution on the judgment does not preclude any other power of the court to impose or enforce sanctions on the offender. Once the financial sanction is imposed as a judgment or order under this division, the victim, private provider, state, or political subdivision may bring an action to do any of the following:

- (1) Obtain execution of the judgment or order through any available procedure, including:
 - (a) An execution against the property of the judgment debtor under Chapter 2329. of the Revised Code;
 - (b) An execution against the person of the judgment debtor under Chapter 2331. of the Revised Code;

- (c) A proceeding in aid of execution under Chapter 2333. of the Revised Code, including:
 - (i) A proceeding for the examination of the judgment debtor under sections 2333.09 to 2333.12 and sections 2333.15 to 2333.27 of the Revised Code;
 - (ii) A proceeding for attachment of the person of the judgment debtor under section 2333.28 of the Revised Code;
 - (iii) A creditor's suit under section 2333.01 of the Revised Code.
- (d) The attachment of the property of the judgment debtor under Chapter 2715. of the Revised Code;
- (e) The garnishment of the property of the judgment debtor under Chapter 2716. of the Revised Code.
- (2) Obtain an order for the assignment of wages of the judgment debtor under section 1321.33 of the Revised Code.

The trial court's sentencing entry reflected the very nature of a restitution sanction, it did nothing to change its character as a restitution order and criminal sanction.

"Sanction" is defined as "any penalty imposed upon an offender who is convicted of or pleads guilty to an offense, as punishment for the offense." *See* R.C. 2929.01(DD). Restitution ordered by a trial court in a criminal case is a financial sanction. *See State v. Danison*, 2005-Ohio-781, ¶ 6 ("The sentence imposed on an offender for a felony may include financial sanctions, including restitution in an amount based on the victim's economic loss.") Thus, the trial court's sentencing entry ordering T.W.C. to pay \$2,663.00 to Mid-State Credit Union is undoubtedly a criminal sanction. Until that sanction is completed, T.W.C. is not eligible for sealing of his record. R.C. 2953.32(A)(1).

This Court has held that "the final discharge required by R.C. 2953.32(A)(1) does not occur until an offender satisfies all sentencing requirements." *See State v. P.J.F.*, 2022-Ohio-4152, ¶ 13. Because the trial court ordered T.W.C. to pay \$2,663.00 to Mid-State Credit Union as part of his criminal sanction, despite the language used in the sentencing entry, T.W.C. has not achieved final discharge and the trial court impermissibly sealed his conviction.

The Tenth District’s holding to the contrary is problematic because, many times, victims must exhaust extensive resources and exert heroic efforts to collect the restitution they are rightfully owed. It is a well-known, and frequently ignored, fact that many defendants do not start repaying restitution orders until after their release from imprisonment, often subsequent to payment of their court fees and fines, which often causes years of delay.

If the Tenth District’s decision is permitted to stand, victims will not only be required to try to discern the language used by trial court judges in sentencing entries, but also retain civil counsel to ensure that the civil judgment does not go dormant or become unenforceable, leaving victims empty-handed and in the same financial position they were in on the day the offender was sentenced. The Tenth District’s decision opens a substantial loophole for defendants state-wide to escape financial obligations to their victims and leaves victims with no recourse or justice.

The sentencing entry contained a restitution order, not simply a civil judgment. This is evident from the plain language of the entry and the nature of restitution itself, as well as the parameters set forth in former R.C. 2929.18 to constrain trial courts’ financial sanction options. The Tenth District erred in holding otherwise.

c. The Tenth District’s interpretation of the trial court’s order as “not a restitution order” undermines the punitive and rehabilitative purposes of restitution.

This Court has acknowledged that requiring an offender to pay restitution to the victim as a criminal sanction “serves both remedial and punitive purposes.” *State v. Aguirre*, 2014-Ohio-4603, ¶ 23. Restitution is also rehabilitative to the extent that it compels defendants to recognize the real harms that their actions cause victims. *Paroline v. United States*, 572 U.S. 434, 457–458 (2014).

Thus, in holding that a victim's failure to renew a civil judgment eradicated a restitution order, the Tenth District disregarded restitution's punitive and rehabilitative purposes. The state cannot force a victim to renew a civil order. For this reason, the Tenth District's interpretation of former Revised Code Section 2929.18 and the trial court's sentencing entry produces an absurd result. *State ex rel. Colvin v. Brunner*, 2008-Ohio-5041, ¶ 58, citing *State ex rel. Essig v. Blackwell*, 2004-Ohio-5586, ¶ 28 ("Courts have a duty to interpret the law in a way that avoids unreasonable and absurd results.").

d. As a crime victim, Mid-State Credit Union has the constitutional right to protect its property interest.

Mid-State Credit Union has procedural due process rights to protect its property interest, in this case, the restitution order, pursuant to the Fourteenth Amendment to the United States Constitution.

'[P]roperty' denotes a broad range of interests that are secured by 'existing rules or understandings.' A person's interest in a benefit is a 'property' interest for due process purposes if there are such rules or mutually explicit understandings that support his claim of entitlement to the benefit and that he may invoke at a hearing.

Perry v. Sindermann, 408 U.S. 593, 601 (1972), citing *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972). The United States Supreme Court has consistently held that the procedural due process hearing requirement applies to "the taking of private property, the revocation of licenses, the operation of state dispute-settlement mechanisms, when one person seeks to take property from another, or to government-created jobs held, absent 'cause' for termination." (Internal citations omitted.) *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

In the present action, the trial court is unlawfully depriving Mid-State Credit Union of the restitution order that mandates T.W.C. to pay \$2,663.00 in restitution to the victim. The \$2,663.00 in restitution is Mid-State Credit Union's property because this monetary award was

ordered to replace the forged checks cashed by T.W.C. Although Ohio Const., art. I, § 10a was not in effect back in 2004, it took effect in 2018, well before the trial court's decision to waive T.W.C.'s financial sanctions. Pursuant to Ohio Const., art. I, § 10a(A)(7), victims have a constitutional right to restitution, and, thus, victims have a property interest in enforcing restitution orders.

“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’ ” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965), citing *Grannis v. Ordean*, 234 U.S. 385, 394 (1914). “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” *Id.* at 334, citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972). In *Mathews*, the Supreme Court identified three factors under which issues of procedural due process may be evaluated:

First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Id. at 335, citing *Goldberg v. Kelly*, 397 U.S. 254, 263-271 (1970).

Here, the private interest affected is Mid-State Credit Union's property interest in the \$2,663.00 in restitution the trial court awarded. The risk of Mid-State Credit Union being deprived of its constitutional right to due process is extremely high in this case because the trial court judge ignored the statutory requirements of R.C. 2953.32(A)(1)(b) that T.W.C. satisfy all sentencing requirements to achieve “final discharge” when the trial court sealed his conviction despite the outstanding restitution amount owed to Mid-State Credit Union. Permitting a trial court judge to seal a conviction despite outstanding restitution owed to the victim would

effectively deny them the opportunity to protect and defend their property interest and exercise their constitutional and statutory rights. Lastly, there is no fiscal or administrative burden on the government because the state is the party appealing this decision.

For these reasons, the trial court cannot be permitted to deprive Mid-State Credit Union of their property interest through a hearing on expungement or sealing of convictions.

e. A defendant's ability to pay restitution cannot be considered by the court.

Many Ohio appellate courts have held that indigency of a defendant does not bar the court from imposing a financial sanction such as restitution. *See State v. Moore*, 2003-Ohio-6255, ¶ 37 (12th Dist.); *State v. Brewer*, 2014-Ohio-1903, ¶ 46 (4th Dist.); *State v. Jennings*, 2013-Ohio-5428, ¶ 43 (8th Dist.); *State v. Cooper*, 2004-Ohio-529, ¶ 16 (11th Dist.). In fact, when the law mandates the payment of restitution, courts do not need to consider the offender's ability to pay. *See State v. Storms*, 2017-Ohio-8658, ¶ 18 (4th Dist.). Moreover, post-Marsy's Law, it is unconstitutional to limit a victim to anything less than the "full and timely" restitution they are constitutionally guaranteed based on the defendant's ability to pay. Ohio Const., art. I, § 10a(A)(7).

Based on this case law that both precedes and proceeds the sentencing entry in this matter, the trial court erred in considering T.W.C.'s ability to pay the outstanding restitution amount of \$2,663.00 at the expungement hearing. This was not a factor that should have, or could have, been considered in ultimately granting the sealing of his convictions despite his outstanding restitution.

CONCLUSION

For the foregoing reasons, amicus respectfully requests that this Court overturn the Tenth District Court of Appeals decision and remand for reinstatement of the restitution order to Mid-State Credit Union.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of this Jurisdictional Brief was sent by electronic mail and/or ordinary U.S. mail on August 5th, 2024, to:

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