

[Cite as *State v. Thompson*, 2011-Ohio-5169.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio, :
 :
 Plaintiff-Appellee, :
 : Nos. 10AP-1004 and 10AP-1173
 v. : (C.P.C. No. 09CR-02-1170)
 :
 David A. Thompson, : (REGULAR CALENDAR)
 :
 Defendant-Appellant. :

D E C I S I O N

Rendered on October 6, 2011

Ron O'Brien, Prosecuting Attorney, and *Kimberly M. Bond*,
for appellee.

Giorgianni Law LLC, and *Paul Giorgianni*, for appellant.

APPEAL from the Franklin County Court of Common Pleas.

FRENCH, J.

{¶1} Defendant-appellant, David A. Thompson ("Thompson"), appeals the judgment of the Franklin County Court of Common Pleas, which convicted him of engaging in a pattern of corrupt activity, theft, tampering with records, money laundering, forgery, and filing incomplete, false, and fraudulent tax returns. For the following reasons, we affirm in part and reverse in part.

{¶2} On February 27, 2009, Thompson was indicted on 23 felony counts, as follows: two counts of engaging in a pattern of corrupt activity, first-degree felonies; one count of theft, a first-degree felony; three counts of tampering with records, third-degree felonies; nine counts of money laundering, third-degree felonies; one count of forgery, a third-degree felony; and seven counts of filing incomplete, false, and fraudulent tax returns, fifth-degree felonies. The indictment was based on Thompson's alleged actions during his tenure as pastor of the World of Pentecost Church (the "church") in Columbus, a position he held from 1995, when his father, George Thompson, retired from that position, until 2007. Thompson waived his right to a jury trial, and this case was tried to the court in August and September 2010.

{¶3} This case stems primarily from Thompson's use of church money and property. While Thompson served as pastor, the church had approximately 80 to 85 members. Church members provided financial support to the church through tithe offerings, consisting of ten percent of their income. The church bylaws partially defined a member in good standing as one who is faithful in financially supporting the church with tithes and offerings. Designated tithing envelopes were collected during church services and given, unopened, to the pastor, and the church bylaws required tithes to be "deposited into an assistance fund, from which shall come the pastor's salary and disbursements to help meet various needs of the assembly." (State's Exhibit N.) At all relevant times, the church maintained the assistance fund in a checking account, first with The First Bremen Bank and, later, with Fairfield National Bank. Thompson had absolute control over the assistance fund.

{¶4} The church did not establish the amount of its pastor's salary, but gave Thompson the freedom to take whatever he wanted from the assistance fund as a salary. Church secretary Sharon Daniel testified, "[h]e could have kept the entire assistance fund if he wanted." (Tr. Vol. I, 185.) Church members implicitly trusted their pastor, whom they viewed as God's representative, and believed that questioning or criticizing the pastor was improper. Only Thompson knew how much was given in tithes, but he did not keep an accounting of the tithes and did not apprise the congregation of the assistance fund balance at any time.

{¶5} Church members also contributed to various other church funds, including a building fund. The building fund was funded from specified offerings and special projects for the purpose of saving to build a new church. Building fund contributions were given in designated envelopes, which, like tithes, were given, unopened, to the pastor. The church bylaws required that building fund offerings be deposited into a building fund account and required the pastor to report building fund offerings at the annual business meeting. At all relevant times, the church maintained a money-market building fund account at The First Bremen Bank. Thompson had absolute control over accounting for collections going into the building fund account, and he testified that he deposited building fund offerings into that account "[m]ost all the time." (Tr. Vol. IV, 930.)

{¶6} Through 2004, Thompson presented building fund reports at the church's annual business meetings, in which he represented the yearly income, expenses, and balance of the building fund account. Thompson did not provide documentation or receipts to substantiate his reports, but the church voted to accept each report,

including the expenses listed in them. In 2005 and 2006, Thompson neither called annual meetings nor prepared building fund reports.

{¶7} In the 1980s, while Thompson's father was pastor, the church nearly depleted its building fund by purchasing a large tract of land. Subsequently, during Thompson's tenure, the church sold two parcels of the purchased land. In 2000, the church sold approximately 6.6 acres to the city of Columbus for \$243,500, and, in 2002, the church sold between 14 and 16 acres for \$679,033.89. Both sales were duly approved, as required by the applicable bylaws.¹ Doug Girton, a church elder, explained that "[i]t was always the plan, the stated plan of the whole church that after we had acquired I believe it was roughly 65 acres out on Brice Road that the general big picture plan was to sell off parts of it to gain the moneys to build on the remaining part." (Tr. Vol. II, 305.) Neither the bylaws nor any written minutes expressly addressed the treatment of the land sales proceeds, but several church members testified that those proceeds were to be maintained in the building fund. Sharon Daniel and Steven Schwendeman testified that church meetings included discussions that the sales proceeds would go back into the building fund. Consistent with this testimony, Thompson's building fund reports for the applicable years indicated deposits of the sales proceeds into the building fund account.

{¶8} Thompson concedes that he falsified the building fund reports he presented to the church. For example, bank records reveal that Thompson deposited

¹ In 2001, Thompson initiated a change to the church bylaws. Whereas, prior to 2001, business decisions were made by a two-thirds vote of the entire congregation, the new bylaws created a nine-member advisory committee, which held all of the voting power. The advisory committee included the pastor, the church administrator, the church secretary, two trustees, and four other members, all of whom the pastor appointed.

the entire proceeds from the 2002 sale directly into the assistance fund checking account despite his representation in the 2002 building fund report that he deposited those proceeds into the building fund account. Thompson initially deposited the proceeds from the 2000 sale into the building fund account, but he almost immediately transferred those proceeds to the assistance fund account. The 2000 building fund report does not reflect Thompson's transfer of the sale proceeds to the assistance fund account and states the year-end balance of the building fund account as \$178,632.22. In contrast, bank records reflect a 2000 year-end balance of less than \$5,000. In the 2002 building fund report, Thompson misrepresented the year-end balance as \$681,892.49. In stark contrast, bank records reflect a year-end balance of \$22,203.42. At trial, Thompson admitted that the building fund balance should have been \$619,000 at the end of 2004, whereas the account was actually almost empty. When Thompson was removed as pastor in 2007, the building fund was practically exhausted.

{¶9} Neither the church bylaws nor a vote by the church or the advisory committee expressly authorized Thompson to transfer money from the building fund into the assistance fund or to spend building fund money with the unfettered discretion accorded his use of money from the assistance fund. Sharon Daniel testified that there was never a discussion at any business meeting to allow Thompson to put building fund money into the assistance fund or to use building fund money, including the money from the land sales, for any expenses other than those listed in the building fund reports. Advisory committee member Steve Schwendeman similarly testified that there was never a discussion during business meetings or a vote to authorize Thompson to transfer money from the building fund to the assistance fund or to use building fund

money for his personal use. Thompson agreed that he did not obtain permission from the advisory committee to transfer building fund money to the assistance fund account.

{¶10} Despite the absence of express authority from the advisory committee or the church bylaws, and despite his admitted presentation of false building fund reports that concealed his commingling of the building and assistance funds, Thompson nevertheless testified that he believed he was permitted to use the building fund as he saw fit to meet the church's needs and that he did no wrong with respect to spending. Thompson testified that he presented false building fund reports to the advisory committee because he felt intimidated by committee members, whom he viewed as hostile when they questioned claimed expenses, and whom he believed had a vision for the church different than his own. Thompson denied spending building fund money on himself.

{¶11} In January 2007, church members learned the church was delinquent on property taxes and discovered an open mortgage, contrary to their understanding that the church was unencumbered. Subsequent review of bank records revealed that Thompson had obtained numerous loans in the church's name from 1998 through 2005, and they totaled over \$500,000. Thompson obtained several of those loans to purchase personal vehicles; Thompson admitted purchasing ten vehicles in the church's name between 2000 and 2007. In 2005, Thompson obtained a \$130,000 loan, in part to purchase a \$75,000 BMW automobile. When the bank required additional collateral for the loan, Thompson agreed to mortgage the church building. In order to obtain the loan and mortgage, Thompson created a false corporate borrowing resolution, which purported to confer borrowing authority on Thompson, and which was purportedly

signed by the church administrator, Dave Simpson. Thompson admitted that, in direct contradiction of the corporate borrowing resolution, the advisory committee did not authorize the loan, and Simpson did not sign the resolution. Thompson did not pay off the 2005 loan, and the BMW was not returned to the church.

{¶12} The church bylaws in effect since 2001 stated that trustees, including the pastor, were not authorized to buy, sell, encumber or give away any property belonging to the church without a two-thirds vote of the advisory committee. The bylaws also stated that "[a]ll MAJOR business such as LARGE purchases and the buying, selling, encumbering or giving away of property shall be transacted at a duly called business meeting," which the pastor was required to call. (State's Exhibit N.) (Emphasis sic.) There were no business meetings to discuss any of the loans Thompson obtained, and the advisory committee did not authorize, and was, in fact, unaware of, Thompson's loans and mortgages on church property. Thompson admitted that he did not request approval for any loan and that he, instead, completed the transactions himself, without prior approval from the advisory committee. Thompson additionally admitted forging the corporate borrowing resolution to procure the 2005 loan.

{¶13} Upon learning about the delinquent property taxes and the outstanding mortgage on the church in January 2007, several church members, including the advisory committee members, met to discuss the situation. Days later, the church elders confronted Thompson, who admitted that he had encumbered the church with various mortgages and also informed the elders that the building fund was tied up in an investment overseas and could not be recovered. Thompson initially stated that \$800,000 of the church's money was tied up in the investment, but at trial he testified

that he invested \$225,000. Douglas Girton, a church elder who attended that meeting, stated that Thompson explained that he did not seek advisory committee approval for his actions because he did not think the committee would approve.

{¶14} The following Tuesday, a church meeting was held, at which church members expected Thompson to explain the mortgages and what happened to the building fund money. Instead, Thompson's father returned to take control of the church and urged the congregation to forgive Thompson's admittedly bad judgment and move on. At the meeting, Thompson again admitted that he had taken out mortgages on the church and stated that he had invested the building fund, although he was unable to produce documentation regarding that investment or to explain clearly where the money had gone.

{¶15} At trial, Thompson claimed he invested \$225,000 of church money in an investment scheme brought to his attention by Pastor Jerry Harper, believing that the initial investment was protected. Without obtaining permission from the advisory committee, Thompson wire-transferred \$225,000 to Pastor Harper, who claimed that the invested funds had been sent overseas in error. Although Harper testified that he expected investors to be made whole with respect to their initial investment, no money had been returned as of trial, and Harper had no documentation to support his expectation.

{¶16} When Thompson was removed as pastor by a vote of the advisory committee, approximately \$800 remained in the building fund account, and Thompson closed out the assistance fund account. Additionally, the church was left with various debts, including the 2005 loan for \$130,000, secured by a mortgage on the church

building. In his appellate brief, Thompson concedes that, "[b]y the time the congregants terminated [his] employment in 2007, [he] had spent all of the \$922,533.89 of land-sale proceeds, and the church owed a bank \$130,000." (Appellant's Brief at 4.) As of trial, Thompson had not repaid any money to the church.

{¶17} On September 30, 2010, the trial court announced its verdict. The trial court acquitted Thompson of one count of engaging in a pattern of corrupt activity, as alleged in count two of the indictment. With respect to count three of the indictment, which charged Thompson with first-degree theft, the trial court found Thompson guilty of the lesser-included offense of second-degree theft.² The court found Thompson guilty on all remaining counts and ordered a pre-sentence investigation ("PSI").

{¶18} At its sentencing hearing, the trial court heard statements from several church members and from Edgar A. Posey, pastor of Living Faith Apostolic Church. The trial court also heard arguments from both the prosecutor and defense counsel and a statement from Thompson. The trial judge stated that he had also reviewed the many letters he received in support of Thompson, including letters from former church members. Ultimately, the trial court sentenced Thompson to an aggregate five-year prison term with a consecutive, six-year period of community control, and ordered Thompson to pay \$733,048.86 in restitution to the church upon release from prison. The trial court filed its final judgment entry on December 8, 2010.

² Theft is a first-degree felony when the value of the property or services stolen is \$1,000,000 or more, whereas it is a second-degree felony when the value is at least \$500,000, but less than \$1,000,000. R.C. 2913.02(B)(2).

{¶19} Thompson initially filed a notice of appeal on December 3, 2010, prior to the trial court's final judgment entry, and he filed a second notice of appeal on December 20, 2010. This court has consolidated these appeals. Thompson presently asserts the following assignments of error:

1. The amount of the sentence of restitution is erroneous.
2. The conviction for theft (Count 3) is not supported by sufficient evidence.
3. In sentencing [Thompson] to restitution, the trial court failed to consider [Thompson's] inability to pay \$733,048.
4. The trial court erred in sentencing [Thompson] to restitution of \$733,048 despite [Thompson's] inability to pay.

Thompson appeals his conviction only with respect to count three, for theft, and appeals his sentence only with respect to the amount of restitution.

{¶20} By his first assignment of error, Thompson contends that the trial court erred in calculating the amount of restitution. Pursuant to R.C. 2929.18(A)(1), a court may order an offender to pay restitution in an amount based upon the victim's economic loss. "[T]he 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." R.C. 2929.18(A)(1). The amount of restitution must be supported by competent, credible evidence from which the court can discern the amount to a reasonable degree of certainty. *State v. Sommer*, 154 Ohio App.3d 421, 2003-Ohio-5022, ¶12; *State v. Gears* (1999), 135 Ohio App.3d 297, 300.

{¶21} Thompson's PSI suggested that Thompson stole \$1,972,602.81 from the church. At Thompson's sentencing hearing, however, the prosecutor recommended

that the trial court order restitution between \$700,000 and \$750,000. The prosecutor argued that "there should have been at the very least over \$600,000 left in this building fund and [Thompson] left the church with a mortgage of over \$100,000." (Tr. Vol. VI, 27.) Thompson's counsel did not dispute that there were "some damages due here" but responded that restitution cannot be accurately calculated. (Tr. Vol. VI, 44.) Nevertheless, he disputed that Thompson stole \$1,972,602.81 and noted that mediation in the civil cases against Thompson, arising from the same events as this criminal case, resulted in an agreement that the church's damages were \$200,000. Thompson stated as follows at the sentencing hearing:

And, Your Honor, we have agreed. There is the civil case. I will certainly – I don't care if I lose the house or whatever. It doesn't matter. I am certainly happy and willing to pay back, to pay any moneys to [the church]. I will certainly do that and I'll obviously do that from a prison cell. And I would ask you to consider a sentence where if I would not – if I would go delinquent on any kind of restitution that a sentence would [be] reinstated or reinforced or however you – the technical term would be, I really don't know that, that you would. * * * I'm willing to pay these people. I'm willing to pay whatever, to be honest with you, because access to my family is worth it.

(Tr. Vol. VI, 62-63.)

{¶22} Before addressing the substance of Thompson's first assignment of error, we consider the appropriate standard of review. The state argues that, because Thompson did not object to the order of restitution, he waived all but plain error with respect to restitution. Plain error exists when there is an error that is plain or obvious and that affects a substantial right. *State v. Griffin*, 10th Dist. No. 10AP-902, 2011-Ohio-4250, ¶13. The error must be so obvious that it should have been apparent to the

trial court without objection. *State v. DeJoy*, 10th Dist. No. 10AP-919, 2011-Ohio-2745, ¶32.

{¶23} Thompson, on the other hand, argues that he did not waive his right to appeal the restitution amount because a defendant has no obligation to object after the trial court announces a sentence. Thompson argues that the plain-error standard applies only if a defendant does not object to a restitution figure recommended by the prosecutor. In support of his argument, he cites *State v. Hughes*, 10th Dist. No. 01AP-196, 2001-Ohio-8872, in which this court conducted a plain-error review where the defendant did not object to the restitution requested by the state, but *Hughes* does not limit application of the plain-error standard to that specific situation.

{¶24} Ample authority supports the state's argument that a failure to object to restitution in the trial court waives all but plain error. Like other Ohio appellate courts, this court has applied the plain-error standard to appeals regarding orders of restitution, and the amounts thereof, where the appellant did not object to the amount of restitution below. See *DeJoy* at ¶32 (Because appellant did not object to the restitution order during the sentencing hearing, and only filed an objection three days later, "we review for plain error."); *State v. White*, 10th Dist. No. 10AP-34, 2011-Ohio-2364; see also *State v. Frazier*, 4th Dist. No. 10CA15, 2011-Ohio-1137, ¶14; *State v. Bielek*, 11th Dist. No. 2010-L-029, 2010-Ohio-5402, ¶13; *State v. Pagan*, 3d Dist. No. 3-09-13, 2010-Ohio-833, ¶9; *State v. Myrick*, 8th Dist. No. 91492, 2009-Ohio-2030, ¶30; *State v. Belbachir*, 7th Dist. No. 08 BE 24, 2009-Ohio-1511, ¶10; *State v. Cook*, 6th Dist. No. OT-07-020, 2008-Ohio-89, ¶70 (failure to dispute the amount of restitution during

sentencing or by post-sentencing motion constituted waiver of the issue); *State v. Bobo*, 2d Dist. No. 21012, 2006-Ohio-4147, ¶10.

{¶25} Here, after announcing his sentence, including restitution, the trial judge afforded Thompson the opportunity to ask questions and afforded counsel the opportunity to offer anything further on behalf of their respective clients. Neither Thompson nor his attorney objected to the order or amount of restitution. Nevertheless, restitution is limited to the actual loss caused by the offense of which the defendant is convicted. *State v. Ratliff*, 2d Dist. No. 10-CA-61, 2011-Ohio-2313, ¶17. Because Thompson and his attorney consistently contested the amount of the underlying, alleged theft throughout the trial proceedings and at the sentencing hearing, we conclude that Thompson did not waive all but plain error with respect to the amount of restitution. See *id.* at ¶14 (refusing to apply the plain-error standard where defense counsel disputed the amount of the underlying theft at the defendant's plea hearing and sentencing hearing). Therefore, we review the restitution amount for an abuse of discretion. See *State v. Blay*, 10th Dist. No. 10AP-247, 2010-Ohio-4749, ¶8, quoting *State v. Whiting*, 2d Dist. No. 20168, 2004-Ohio-5284, ¶7 ("In general, '[a]n appellate court's review of the amount of restitution ordered by a trial court is governed by an abuse of discretion standard.' "). An abuse of discretion requires more than an error of law or judgment; it connotes that the court's attitude is unreasonable, unconscionable or arbitrary. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

{¶26} The trial court limited its consideration of restitution to the sales proceeds from the 2000 and 2002 land sales and Thompson's 2005 loan for \$130,000, for a total of \$1,052,533.89. The trial court reduced that amount by the total expenses from the

building fund listed on Thompson's 2000, 2001, and 2002 building fund reports, because the church approved those expenses, totaling \$319,485.03. Subtracting those expenses, the trial court ordered restitution of \$733,048.86.

{¶27} Thompson contends that there are three, interrelated flaws in the trial court's calculation that require reversal of the restitution award. First, Thompson contends that the trial court impliedly and erroneously found that Thompson's commingling of the building fund and the assistance fund constituted theft. Second, Thompson contends that the trial court erroneously included in the restitution the expenses listed on the 2003 and 2004 building fund reports. Third, Thompson contends that the trial court erroneously found that every other distribution from the assistance fund constituted theft. For these same reasons, Thompson maintains, in his second assignment of error, that there was insufficient evidence to support his theft conviction.

{¶28} Thompson first contends that the trial court impliedly and erroneously found that commingling the building fund and the assistance fund constituted theft. Thompson does not dispute that he transferred and/or directly deposited the proceeds from the two land sales into the assistance fund account, but he argues that the commingling of the building and assistance funds neither constituted theft nor caused economic harm to the church. Nothing in the trial court's judgment, however, suggests that the court considered Thompson's transfer of money from the building fund to the assistance fund account, or his commingling of those funds, as theft.

{¶29} Thompson not only commingled the building fund and the assistance fund, but also depleted the building fund money. The church afforded Thompson unfettered discretion over tithe contributions in the assistance fund account, from which he was

entitled to take a salary and pay for church needs, but Thompson did not possess the same discretion over the building fund. The church bylaws contemplated a separation of the building fund from tithing contributions and required them to be maintained in separate accounts. Thompson was required to deposit building fund offerings into a building fund account, and he was required to provide a written report of building fund offerings at the church's annual business meeting. In direct contrast, Thompson had no reporting duty with respect to the assistance fund account, into which he was required to deposit the tithe offerings. Furthermore, Thompson was subject to the church bylaw that prohibited trustees, including himself, from selling, giving away, or encumbering church property without a two-thirds vote of the advisory committee. Although Thompson seems to contend that, simply by putting building fund money into the assistance fund account, he created his own unfettered discretion to use that money as he saw fit, the record does not support that contention. Accordingly, it was not Thompson's transfer and/or deposit of the land sales proceeds into the assistance fund account, but his unauthorized depletion of those proceeds, that gave rise to the church's economic loss.

{¶30} Thompson next argues that the trial court erroneously failed to subtract from its award of restitution the reported and approved expenses listed on the 2003 and 2004 building fund reports, just as it subtracted the expenses from the 2000, 2001, and 2002 building fund reports. In this respect, we agree. The trial court explained that it did not credit Thompson for reported expenditures in 2003 and 2004 "because there was no money in the [building fund] account, even though [Thompson] was indicating

that he was using money out of the building fund account at that time." (Tr. Vol. VI, 65.)

We discern no basis for the trial court's distinction.

{¶31} As with the reported expenses from prior years, the church approved the listed expenditures in 2003 and 2004 as properly deducted from the balance of the building fund, as reported by Thompson. The fact that the money had been transferred to the assistance fund does not alter the fact that the church approved the payment of those expenses from building fund monies, regardless of whether the building fund monies had been commingled with the assistance fund. For example, in 2002, Thompson reported building fund expenses totaling \$206,431.82, which the trial court deducted from the restitution amount, despite the fact that the balance of the building fund account never exceeded \$22,203.42 during 2002. Accordingly, there is no basis for distinguishing the 2002 expenses from the 2003 and 2004 expenses. There is no evidence that Thompson did not pay the expenses listed in his reports, even if the expenses were paid out of the assistance fund account, which included the commingled building fund money. To the extent the church approved those expenses, the church was not economically harmed with respect to those amounts. Accordingly, we conclude that the trial court abused its discretion when it refused to give Thompson credit for \$107,321.39 in approved building fund expenditures for the years 2003 and 2004.

{¶32} Thompson's final argument with respect to the restitution amount is that not all expenditures from the assistance fund other than the approved building-fund expenses constituted theft because those expenditures encompassed legitimate payments for his salary, expense reimbursements, and church needs. Thompson argues that, because the record contains no evidence of the amount he withdrew from

the assistance fund as a salary and for expense reimbursements, it is impossible to determine the amount of restitution owing. He similarly argues that the record does not reveal the amount of non-theft distributions from the assistance fund used for church needs, as permitted by the church bylaws. Accordingly, Thompson maintains that the state failed to prove what amount of distributions from the assistance fund account constituted theft.

{¶33} Contrary to Thompson's contention, the trial court's calculation does not erroneously treat his compensation, expense reimbursements, and legitimate church expenses indiscriminately as theft because the court considered only the land-sales proceeds and Thompson's 2005 loan/mortgage when calculating restitution. At the sentencing hearing, the prosecutor recommended restitution between \$700,000 and \$750,000, based on the sales proceeds that should have remained in the building fund and on the over-\$100,000 church debt as a result of Thompson's 2005 loan. As stated above, Thompson's deposit of the sales proceeds into the assistance fund account did not create authority for Thompson to use the proceeds as he wished. Thompson was not authorized to spend building fund money unless the expenditure was approved by the congregation or the advisory committee, and Thompson's unauthorized spending of the sales proceeds caused economic loss to the church. Other than those expenses approved by the church, Thompson exceeded his authority by spending the remaining sales proceeds, regardless of which account those proceeds were held in and regardless of whether the proceeds were spent on purportedly legitimate uses for the tithing contributions in the assistance fund. With respect to the 2005 loan, Thompson did not request or obtain authority from the advisory committee, as required by the

church bylaws, to encumber church property. Thompson did not repay the loan or turn over the automobile, and the church was left with that debt. The trial court did not err by including the amount of the 2005 loan and mortgage in its restitution calculation.

{¶34} For these reasons, we sustain Thompson's first assignment of error based solely on the trial court's failure to deduct \$107,321.39 in expenditures reported by Thompson and approved by the church for the years 2003 and 2004 from the restitution amount.

{¶35} In his second assignment of error, Thompson argues that, for the same reasons advanced in his first assignment of error, his conviction for theft is not supported by sufficient evidence. Sufficiency of the evidence is a legal standard that tests whether the evidence introduced at trial is legally sufficient to support a verdict. *State v. Thompkins*, 78 Ohio St.3d 380, 386, 1997-Ohio-52. We examine the evidence in the light most favorable to the state and determine whether any rational trier of fact could have found that the state proved beyond a reasonable doubt the essential elements of the crime. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Yarbrough*, 95 Ohio St.3d 227, 2002-Ohio-2126, ¶78. We will not disturb the verdict unless we determine that reasonable minds could not arrive at the conclusion reached by the trier of fact. *Jenks* at 273. In determining whether a conviction is based on sufficient evidence, we do not assess whether the evidence is to be believed, but whether, if believed, the evidence against a defendant would support a conviction. See *Jenks*, paragraph two of the syllabus; *Yarbrough* at ¶79 (noting that courts do not evaluate witness credibility when reviewing a sufficiency of the evidence claim).

{¶36} The trial court convicted Thompson of theft under R.C. 2913.02(A), which provides, in pertinent part, as follows:

No person, with purpose to deprive the owner of property * * *, shall knowingly obtain or exert control over * * * the property * * * in any of the following ways:

- (1) Without the consent of the owner or person authorized to give consent;
- (2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;
- (3) By deception.

Theft is a second-degree felony when the value of the stolen property is at least \$500,000 but less than \$1,000,000. R.C. 2913.02(B)(2). As discussed in relation to Thompson's first assignment of error, Thompson's theft conviction is supported by evidence that he depleted the proceeds of the 2000 and 2002 property sales from the church's building fund, mortgaged the church building, and took out loans in the church's name without express or implied consent. Moreover, Thompson's misrepresentations about the proceeds and the building fund balance, as well as his creation and presentation of the forged documents to obtain the 2005 loan, constitute evidence of Thompson's purpose to deprive the church of its property. Examining the evidence in the light most favorable to the state, a rational trier of fact could conclude, as the trial court did, that Thompson was guilty of second-degree theft. Accordingly, we overrule Thompson's second assignment of error.

{¶37} Thompson's third and fourth assignments of error relate to a trial court's duty to consider an offender's present and future ability to pay a financial sanction before ordering restitution under R.C. 2929.19(B)(6). In his third assignment of error,

Thompson asserts that the trial court failed to consider his ability to pay, and, in his fourth assignment of error, Thompson asserts that the court erred by ordering restitution that he does not, in fact, have a present and/or future ability to pay. We consider these related assignments of error together.

{¶38} Neither Thompson nor his attorney raised an issue regarding Thompson's alleged inability to pay restitution or presented specific information to the trial court demonstrating an inability to pay restitution prior to sentencing. To the contrary, Thompson stated that he was "willing to pay whatever." (Tr. Vol. VI, 63.) Neither did Thompson or his attorney object to the award of restitution, based on the trial court's alleged failure to consider Thompson's ability to pay, after the trial court announced the restitution award. Accordingly, Thompson has forfeited all but plain error in this regard. See *State v. Edwards*, 10th Dist. No. 10AP-681, 2011-Ohio-3157, ¶27, citing *State v. Policaro*, 10th Dist. No. 06AP-913, 2007-Ohio-1469, ¶6.

{¶39} A court need neither consider express factors nor make specific findings on the record regarding an offender's ability to pay restitution. *State v. Martin*, 140 Ohio App.3d 326, 338, 2000-Ohio-1942. "The court need only 'consider the offender's present and future ability to pay the amount' before it imposes the sanction of restitution." *State v. Strickland*, 10th Dist. No. 08AP-164, 2008-Ohio-5968, ¶22. There is no statutory requirement that a court hold a hearing to determine if the defendant is able to pay, but there must be some evidence in the record that the trial court considered defendant's present and future ability to pay the restitution. *State v. Conway*, 10th Dist. No. 03AP-1120, 2004-Ohio-5067, ¶7.

{¶40} Review of the record in this case indicates that the trial court complied with its statutory duty. First and foremost, in its judgment entry, the trial court expressly stated that it considered Thompson's present and future ability to pay a financial sanction before ordering restitution. See *White* at ¶78 (similar statement was sufficient under a plain-error standard). The trial court also suggested that it had reviewed and relied on Thompson's PSI, which contained pertinent information about Thompson's age, health, education, home ownership, and work history. When a trial court considers a PSI, compliance with R.C. 2929.19(B)(6) is presumed. *Conway* at ¶10, citing *State v. Moore*, 12th Dist. No. CA2002-12-307, 2003-Ohio-6255; see also *State v. Barker*, 8th Dist. No. 93574, 2010-Ohio-4480, ¶14 (under a plain-error standard, a " cursory reference in the record" to the PSI met "the low threshold of R.C. 2929.19(B)(6)"); *Ratliff* at ¶13 (trial court considered the defendant's ability to pay where it considered the PSI and the defendant indicated an intent to pay restitution). The PSI and the trial testimony indicated that Thompson was employed subsequent to his removal from the church, and they provide no basis for determining that Thompson will be unable to attain employment after his release from prison. Thompson did not argue that he would be unemployable, and the record contains no evidence of any physical or mental condition that would preclude him from working after his release from prison. Upon review, we conclude that the record contains sufficient evidence that the trial court considered Thompson's present and future ability to pay restitution, and we discern no plain error in the trial court's restitution order based on Thompson's contention that he cannot pay. See *State v. Kruger*, 2d Dist. No. 2005-CA-19, 2006-Ohio-2361, ¶49 (nothing in R.C. 2929.18 limits an order of restitution by the offender's ability to pay); *State v. Collier*, 184

Ohio App.3d 247, 2009-Ohio-4652, ¶13; *Conway* at ¶6 (a defendant's indigency does not preclude the imposition of a financial sanction). For these reasons, we overrule Thompson's third and fourth assignments of error.

{¶41} In conclusion, we affirm the Franklin County Court of Common Pleas' judgment of conviction, but we reverse the court's order of restitution as a result of the trial court's failure to deduct approved building fund expenditures from 2003 and 2004, totaling \$107,321.39. Accordingly, we remand this matter to the trial court for entry of a new order of restitution, reduced by that amount.

*Judgment affirmed in part, reversed in part;
cause remanded with instructions.*

BRYANT, P.J., and TYACK, J., concur.
