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State v. Jensen Respondent's Brief Dckt. 36018

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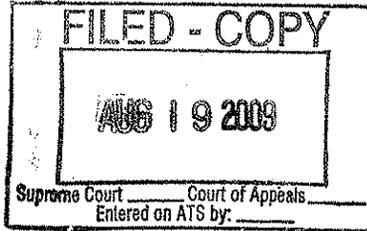
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IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,
Plaintiff-Respondent,
vs.
VICKI ARLENE JENSEN,
Defendant-Appellant.

NO. 36018



BRIEF OF RESPONDENT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF TWIN FALLS

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STATEMENT OF THE CASE

Nature of the Case

Vicki Jensen appeals from the restitution order associated with her conviction for first degree murder.

Statement of Facts and Course of Proceedings

Vicki Jensen pled guilty to first degree murder. (#27465 R.¹, pp.94-95.) She was sentenced on March 14, 2001 to a determinate life sentence. (Id.) In July 2007, the district court entered a restitution order for Jensen and two co-defendants to pay \$22,500 to the Idaho Industrial Commission for funeral expenses and death benefits on behalf of the victim. (R., pp.14-17.) The order was entered without hearing, and served on Jensen's counsel, the Twin Falls County Public Defender's Office. (Id.)

In March 2008, Jensen filed a "motion to proceed with an untimely appeal" of the restitution order.² (R., pp.24-25, 44.) In June 2008, she filed an "appeal of order of restitution." (R., pp.19-21, 44-45.) The district court construed the latter motion as an I.R.C.P 60(b) motion requesting relief from a final judgment, and set a hearing, which was held on September 22, 2008. (R., pp.27-32, 36; see generally Tr., pp.4-32.)

¹ The record from Idaho Supreme Court docket #27465 has been augmented into the appellate record. (See 1/13/09 Order Augmenting Appeal.)

² The district court did not receive this motion in March 2008. However, during a September 2008 hearing, Jensen produced a time-stamped copy of the motion which contained the date March 6, 2008. This motion was admitted into evidence. The district court subsequently found that Jensen actually filed her "motion to proceed with an untimely appeal" on March 6, 2008. (R., p.44; 9/22/08 Tr., p.15, L.25 – p.17, L.7.)

Following that hearing, the district court denied Jensen's motion to proceed with an untimely appeal of the restitution order, and her request for relief under I.R.C.P. 60(b)(1) - (6), finding both untimely. (R., pp.47-54.) However, the district court granted Jensen's motion to set aside the restitution order pursuant to the provision of I.R.C.P 60(b) that preserves preexisting powers of the court to grant relief from civil judgments within one year after the judgment was entered, when the judgment was "obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in said action." (R., pp.54-57.)

The district court set aside the restitution order, and instructed the state to file a formal restitution motion within thirty days if it still wished to pursue restitution. (R., pp.57-58.) The state did so, and a restitution hearing was set. (R., pp.62-63; see generally, Tr., pp.33-72.)

At the restitution hearing, Jensen did not contest the amount of restitution that was ordered. (Tr., p.38, L.14 – p.39, L.3.) Instead, Jensen presented testimony about her lack of ability to pay restitution, and her financial needs while incarcerated, and argued that restitution should not be ordered. (Tr., p.42, L.5 - p.43, L.10; p.45, L.3 – p.51, L.12; p.57, L.16 – p.59, L.22.) Jensen also argued that the district court lost jurisdiction to order restitution during the state's delay in requesting it originally. (Tr., p.57, Ls.10-15.)

The court considered the lack of prejudice suffered by Jensen during the delay, and Jensen's financial needs and ability to pay in ordering Jensen to pay \$22,550, jointly and severally with her co-defendants, to the Idaho Industrial

Commission. (Tr., p.61, L.14 – p.72, L.9; R., pp.70-71.) Jensen timely appealed this second restitution order. (R., pp.74-77.)

ISSUES

Jensen states the issues on appeal as:

1. Did the district court have jurisdiction to order restitution in Ms. Jensen's case?
2. Did the district court abuse its discretion when it ordered Ms. Jensen to pay \$22,500 in restitution in light of her inability to pay?

(Appellant's brief, p.4.)

The state rephrases the issues on appeal as:

1. Did the district court lack jurisdiction under I.C. § 19-5304(10) to set aside Jensen's original restitution order?
2. If the district court had jurisdiction to set aside Ms. Jensen's original restitution order, has Jensen failed to show that the court lacked jurisdiction to enter either restitution order?
3. Has Jensen failed to show that the district court abused its discretion when it ordered Jensen to pay \$22,500 in restitution?

ARGUMENT

I.

The District Court Lacked Jurisdiction To Set Aside Jensen's Original Restitution Order

A. Introduction

The district court lacked jurisdiction under I.C. § 19-5304(10) to set aside Vicki Jensen's original restitution order pursuant to I.R.C.P. 60(b).

B. Standard Of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004).

C. The District Court Lacked Jurisdiction To Set Aside Jensen's Original Restitution Order, And Therefore, The Original Restitution Order Is Still Valid

The Idaho Supreme Court "has long recognized that a court's jurisdiction to amend or set aside the judgment in a case does not continue forever." State v. Jakoski, 139 Idaho 352, 354-355, 70 P.3d 711, 713-714 (2003) (citations omitted). Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal. Id. at 355, 70 P.3d at 714.

Idaho Code § 19-5304(10) provides that "[a] defendant, against whom a restitution order has been entered, may, within forty-two (42) days of the entry of

the order of restitution, request relief from the restitution order in accordance with the Idaho rules of civil procedure relating to relief from final orders.”

Pursuant to I.C. § 19-5304(10), a defendant against whom restitution has been ordered has two options to contest the order – she may appeal the restitution order directly, or she may request relief from the order in accordance with the Idaho rules of civil procedure, such as I.R.C.P. 60(b), that relate to relief from final orders. State v. Fortin, 124 Idaho 323, 328, 859 P.2d 359, 364 (Ct. App. 1993); State v. Bybee, 115 Idaho 541, 542 n.1, 768 P.2d 804, 805 n.1 (Ct. App. 1989). Thus, if a defendant chooses to appeal her restitution order, that appeal must come within 42 days of the entry of the order of restitution. I.C. § 19-5304(10). If a defendant chooses to request relief from the restitution order under the Idaho rules of civil procedure, that request must come within 42 days of the entry of the order of restitution. *Id.* No matter which avenue a defendant chooses, the challenge or request for relief from the order must come within 42 days of the entry of the order of restitution. *Id.*

In the present case, the district court correctly denied as untimely both Jensen’s direct appeal of the original restitution order, and her request for relief under I.R.C.P. 60(b)(1) and (6)³, both of which were filed months after the restitution order was entered. (R., pp.43-54.)

³ At the time Jensen filed her “appeal of order of restitution”, which the court construed as a request for relief pursuant to I.R.C.P. 60(b), that rule stated that a motion brought pursuant to I.R.C.P. 60(b)(1),(2),(3), and (6) must be brought within six months after the judgment is entered. The district court determined that only I.R.C.P. 60(b)(1) and (6) were potentially applicable to this case, and that Jensen’s motion was thus untimely with regards to those provisions. (R., pp.50-54.)

However, the court granted Jensen's request for relief and set aside the restitution order under the provision of I.R.C.P 60(b) applicable to default judgments, which preserves a district court's pre-existing right "to set aside, as provided by law, within (1) year after judgment was entered, a judgment obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in said action." (R., pp.54-57). The district court found that Jensen's motion under I.R.C.P 60(b) was timely with regards to this provision, and its one-year time limit. (R., pp.54-57.)

The state first asserts that in setting aside the original restitution order, the district court erred by treating the restitution order as a default judgment subject to the set-aside provisions of I.R.C.P. 60(b). In this criminal case, Jensen had obviously appeared as a party and was represented by counsel. Thus, the district court did not have the jurisdiction to utilize I.R.C.P. 60(b) to set aside Jensen's restitution under the provision of that rule intended to grant relief to those who never appeared or were personally served in a civil action.

Even if the district court had the jurisdiction to treat Jensen's original restitution order as a default judgment subject to I.R.C.P. 60(b), and to consider the restitution portion of Jensen's criminal case as a separate civil proceeding in which she never appeared or was personally served, it was still jurisdictionally barred from utilizing I.R.C.P. 60(b) by the time restriction imposed by I.C. § 19-5304(10). The district court addressed I.C. § 19-5304(10), but read that statute's 42-day time restriction as permissive rather than mandatory. The district court

found that I.C. § 19-5304(10) merely provided a defendant the option to either request relief from a restitution order within 42 days, or request relief sometime later, as long as the motion complied with the time restrictions of the Idaho rules of civil procedure:

In the absence of contrary appellate opinion the [c]ourt holds that as a matter of law that the 42 day limitation provided in I.C. § 19-5304(10) does not preclude Jensen's [m]otion provided she has complied with the time requirements of Rule 60(b). The statute provides that the defendant "may, within forty-two (42) days of the entry of the order of restitution, request relief from the restitution order." *Id.* (emphasis added). A plain reading of the statute gives a defendant the right, but [not] the mandatory duty, to file within 42 days.

(R., p.52 (emphasis in original).)

The district court's reading of I.C. § 19-5304(10) is inconsistent with the plain meaning and legislative intent of the statute. The statute states that a defendant "may...request relief from the restitution order..." The permissive "may" applies to the defendant's choice of whether to request relief from a restitution order or not. If a defendant does choose to request relief, I.C. § 19-5304(10) limits that request in two ways. See State v. Levicek, 131 Idaho 130, 953 P.2d 214 (1998) (recognizing I.C. § 19-5304(10) as a statute which limits appellate review of restitution orders). First, a defendant may only request relief in accordance with the Idaho rules of civil procedure. Second, the request must come within 42 days of the entry of the order of restitution.

In the present case, however, the district court applied the permissive "may" to the second restriction, providing the defendant the choice of whether to abide by it or not, rendering the time frame of "42 days" a nullity. This is contrary

to the well-settled principle in Idaho that in construing a statute, “effect must be given to all the words of the statute if possible, so that none will be void, superfluous, or redundant.” Ameritel Inns, Inc. v. Pocatello-Chubbuck Auditorium or Community Center Dist., 146 Idaho 202, ___, 192 P.3d 1026, 1028 (2008) (quoting In re Winton Lumber Co., 57 Idaho 131, 136, 63 P.2d 664, 666 (1936)). This rule of statutory construction applies to criminal statutes as well as civil. See State v. Mercer, 143 Idaho 108, 109, 138 P.3d 308, 309 (2006); State v. Griffith, 127 Idaho 8, 10-11, 896 P.2d 334, 336-337 (1995).

While there was evidence and factual findings that Jensen did not receive personal notice of the restitution order until several months after its entry (R., p.45), still, under any possible reading of the facts, her request for relief from the restitution order was untimely under a proper reading of I.C. § 19-5304(10). She did not file within 42 days of the time the restitution order was entered, or even within 42 days of the time the district court found that Jensen had actual notice of the order.⁴ It was not until June 2008, approximately six months after she had actual notice of the restitution order, and approximately eleven months after the order was entered, that Jensen filed her “appeal of order of restitution,” a motion that the court construed as a request for relief under I.R.C.P. 60(b). (R., pp. 28, 30-31, 44-45.)

In addition, as explained by the Idaho Court of Appeals in Hoopes v. Bagley, 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990):

⁴ The district court found that Jensen received personal notice of the restitution order in December 2007. (R., p.45.) Jensen did not file anything with the court until March 2008, when she filed her “motion to proceed with an untimely appeal”, which was subsequently denied. (R., p.44, 47-50.)

[R]ule 60(b)(6) has clearly defined limits. The party making a Rule 60(b)(6) motion must demonstrate unique and compelling circumstances justifying relief. See *Puphal v. Puphal*, 105 Idaho 302, 669 P.2d 191 (1983). The motion cannot be a disguised substitute for a timely appeal. *Id.* We have previously stated that where an appeal from the judgment is the proper remedy, "Rule 60(b)(6) may not be used as an end-run around the time limits of I.A.R. 14." *Stauffer, supra*, 112 Idaho at 142, 730 P.2d at 1062.

Hoopes, 117 Idaho at 1093-94, 793 P.2d at 1265-66.

As in Hoopes, Jensen plainly tried to use I.R.C.P. 60(b) as a substitute for a timely appeal. Any alleged error of the district court under of I.C. § 19-5304(10) could have been addressed by timely appeal, if not within 42 days from the entry of the restitution order, certainly no later than 42 days of Jensen's actual notice of the order.

The 42 day time limit in I.C. § 19-5304(10) is a jurisdictional one. Although the district court agreed to hold a hearing on Jensen's I.R.C.P. 60(b) motion and decide the issue on the merits, the court lacked jurisdiction to even consider Jensen's request for relief. The district court's power to grant relief pursuant to Idaho Code § 19-5304(10) had expired 42 days after the issuance of the restitution order, or at least, 42 days after Jensen had actual notice of it. Jensen failed to cite any statute or rule that would extend the district court's jurisdiction to set aside the judgment entered against her. This Court should affirm the original restitution order because it was validly entered and Jensen's subsequent untimely challenge to the order was jurisdictionally barred.

II.

In The Alternative, If The District Court Had Jurisdiction To Consider Jensen's Motion, It Also Had Jurisdiction To Enter The Second Restitution Order

A. Introduction

Jensen contends that the district court lacked jurisdiction to enter either of the two restitution orders against her, because the state's delay in seeking the first restitution order was not "necessary" under I.C. § 19-5304(6). (Appellant's brief, pp.5-10.) Jensen's argument, however, ignores the procedural history of this case.

Idaho Code § 19-5304(6) granted the district court jurisdiction to enter the first restitution order. Since Jensen failed to appeal that order, this Court lacks jurisdiction to entertain a challenge to its entry. The second restitution order was entered as a result of Jensen's own I.R.C.P 60(b) motion requesting that the district court re-establish jurisdiction over her case and provide relief from the first restitution order. If the district court had jurisdiction to consider her I.R.C.P. 60(b) motion and set aside her first restitution order, then it necessarily had jurisdiction to enter the second restitution order.

B. Standard Of Review

"Whether a court lacks jurisdiction is a question of law that may be raised at any time, and over which appellate courts exercise free review." State v. Jones, 140 Idaho 755, 757, 101 P.3d 699, 701 (2004).

C. This Court Lacks Jurisdiction To Hear Jensen's Challenge To The First Restitution Order

A timely filed notice of appeal is a prerequisite to appellate jurisdiction. State v. Payan, 128 Idaho 866, 867, 920 P.2d 82, 83 (Ct. App. 1996); State v. Fuller, 104 Idaho 891, 665 P.2d 190 (Ct. App. 1983). An appeal as a matter of right may be perfected "only by physically filing a notice of appeal ... within 42 days from the date evidenced by the filing stamp ... on any judgment, order or decree of the district court appealable as a matter of right" I.A.R. 14(a); see also I.C.R. 54.3.

Idaho Code § 19-5304(6) reads, in relevant part, "[r]estitution orders shall be entered by the court at the time of sentencing or such later date as deemed necessary by the court." *Id.* The district court expressly utilized this authority in entering Jensen's first restitution order. (Tr., p.63, L.25 – p.65, L.12.) Jensen failed to appeal this order within 42 days of its entry, as required by I.A.R. 14. Thus, this Court has no jurisdiction to review whether the district court erroneously determined that entering a restitution order after sentencing was "necessary" under I.C. § 19-5304(6).

Jensen attempts to circumvent the 42 day deadline of I.A.R. 14, and her failure to meet it, by framing her challenge as a jurisdictional issue. Jensen argues that Idaho Code § 19-5304(6) confers a jurisdictional requirement on the court, and that since the state's delay in requesting restitution was not "necessary," then the district court lacked jurisdiction to order restitution. (Appellant's brief, pp.5-10.)

The plain language of I.C. § 19-5304(6), however, speaks of discretion, rather than jurisdiction. The statute expressly empowers a district court to order restitution after the time of sentencing, “as deemed necessary by the court.” It is thus left to the sound discretion of a district court whether or not to order restitution later than the date of sentencing. While Jensen had the opportunity to challenge the district court’s use of this discretion by filing a timely appeal from the original restitution order, she failed to do so.

In arguing that the district court lacked jurisdiction to order the first restitution order, Jensen cites State v. Ferguson, 138 Idaho 659, 67 P.3d 1271 (2002). (Appellant’s brief, pp.5-6, 8.) Ferguson, however, timely appealed from the order of restitution in that case. Ferguson, 128 Idaho at 661, 67 P.3d at 1273. Ferguson does not stand for the proposition that an appellate court may review a district court’s determination of “necessity” under I.C. § 19-5304(6) with regards to an unappealed order.

Jensen’s reliance on Jakoski (Appellant’s brief, p.6), is likewise unavailing. I.C. § 19-5304(6) provides a mechanism to extend jurisdiction when “deemed necessary by the court.” It is the underlying finding of necessity that Jensen challenges, but over which this Court lacks appellate jurisdiction.

Because Jensen did not timely appeal from the entry of the first order of restitution, this Court lacks jurisdiction to entertain any challenge to it. Jensen’s claim that the district court erred by finding the timing necessary under the applicable statute may thus not be entertained on appeal.

D. If The District Court Had Jurisdiction To Consider Jensen's Motion, It Necessarily Had Jurisdiction to Enter The Second Restitution Order

Jensen also contends the district court lacked jurisdiction to enter the second restitution order, from which she appeals. (Appellant's brief pp.5-10.) This argument however, is merely an attempt to bootstrap review of the first restitution order over which this Court lacks jurisdiction.

As stated above, this Court lacks jurisdiction to review the first, and unappealed, order of restitution. In addition, the district court lacked jurisdiction to set aside that order, under I.R.C.P. 60(b), as set forth above in Section I. If, however, the district court had jurisdiction to set aside the first restitution order on the grounds of lack of notice to the defendant under I.R.C.P. 60(b), Jensen has failed to assert any grounds for concluding that the district court somehow lost jurisdiction between the grant of her I.R.C.P. 60(b) motion, and entry of the second restitution order. Instead, Jensen merely argues that the delay in entering the first restitution order robbed the court's jurisdiction to enter the second one.

This bootstrap argument should be rejected. This Court lacks jurisdiction to review the first restitution order. A timely appeal from the second order does not vest it with such jurisdiction. Jensen's argument that the second order is invalid because the first one was invites this Court to exceed its jurisdiction.

III.
The District Court Did Not Abuse Its Discretion In Ordering Jensen To Pay
\$22,500 In Restitution

A. Introduction

Jensen contends that the district court abused its discretion under I.C. § 19-5304(7) by ordering her to pay \$22,500 in restitution despite her financial needs while incarcerated, and her lack of financial resources and earning ability. (Appellant's brief, pp.10-11.) The record however, reflects that the district court did consider these factors, and thus complied with I.C. § 19-5304(7).

B. Standard Of Review

The decision whether to order restitution is committed to the trial court's discretion, and the trial court's factual findings in relation to restitution will not be disturbed if supported by substantial evidence. State v. Smith, 144 Idaho 687, 692, 169 P.3d 275, 280 (Ct. App. 2007).

C. The District Court Properly Considered Jensen's Ability To Pay Restitution Because It Properly Considered The Relevant Factors Of I.C. § 19-5304(7)

Idaho's restitution statute provides that the sentencing court "shall" order restitution for economic loss actually suffered by the victim. I.C. § 19-5304(2). Nevertheless, the court may decline to order restitution or order less than full restitution after considering other factors, including "the financial resources, needs, and earning ability of the defendant." I.C. § 19-5304(3), (7). While a district court is required to *consider* these factors, inability to pay neither precludes nor limits a restitution award; rather, ability to pay is only one factor for

a court's consideration when it makes a discretionary restitution determination. State v. Olpin, 140 Idaho 377, 379, 93 P.3d 708, 710 (Ct. App. 2004) (citing State v. Taie, 138 Idaho 878, 880, 71 P.3d 477, 479 (Ct. App. 2003)). In addition, “[t]he immediate inability to pay restitution by a defendant shall not be, in and of itself, a reason to not order restitution.” I.C. § 19-5304(7).

In State v. Olpin, the defendant challenged a restitution order where at the restitution hearing, the district court did not specifically state that it had considered the defendant's ability to pay. Olpin, 140 Idaho at 379-380, 93 P.3d at 710-711. This ability was referenced only in Olpin's PSI. Id. at 380. The Idaho Court of Appeals stated that it was still not convinced that the district court failed to adequately consider Olpin's ability to pay restitution, and the restitution order was affirmed. Id.

In the restitution hearing of the present case, the district court expressly recognized the requirements of I.C. § 19-5304(7), including the defendant's financial needs and ability to pay. (Tr., p.66, Ls.5-9.) The court made factual findings regarding Jensen's ability to pay restitution, and recognized that Jensen will be incarcerated for the rest of her life, cannot attain parole, and currently earns only \$0.20 an hour for penitentiary system work. (Tr., p.66, Ls.13-21.)

The district court then expressed its consideration of Jensen's financial needs while incarcerated (Tr., p.68, L.24 – p.69, L.6), and reiterated its duty to consider the factors of I.C. § 19-5304(7), and not outside, non-economic factors:

What other factors can we look at in this case? One of the factors that I'm not going to look at is the nature of the crime, nor the reasons why restitution was ordered in this case. I understand the state's argument that this was a horrendous crime. I

understand that it had a great deal of impact on the family, but I don't think that's one of the factors that I should be considering when setting restitution. Rather, I should be setting restitution based upon what subsection (7) says and that is to look at the economics of this and not look at the principles that [the prosecutor] has outlined. I want the record to show that I am not considering those factors in my decision today.

When the legislature passed this law, they specifically provided that the current ability to pay restitution is a factor that I could look at, but, in and of itself, is not a reason not to order restitution.

(Tr., p.69, Ls.7-23.)

The district court then went on to discuss the Idaho Court of Appeal's holding in State v. Bybee, 115 Idaho 541, 768 P.2d 804 (Ct. App. 1989). (Tr., p.69, L.24 – p.71, L.8.) Bybee was convicted of grand theft, and was ultimately ordered to pay over 1.5 million dollars in restitution. Bybee 115 Idaho at 542, 768 P.2d at 805. Bybee argued that the amount was excessive given his incarceration, age, financial needs and inability to pay. Id. at 543. The Idaho Court of Appeals, however, found no abuse of discretion:

Given the magnitude of the amounts involved here, we believe it unlikely that Bybee will ever meet the full amount of restitution ordered. But, in the event Bybee is able to obtain some assets, the victims should have ready access to the assets for satisfaction of their losses. The order of restitution will provide the essential avenue of relief to the victims. The order may be recorded as a judgment and the victims may execute as provided by law for civil judgments. I.C. § 19-5305.

If the order required Bybee to make installment payments or if had set a deadline for paying restitution, we would be included to vacate the order. As it now stands, however, the order simply gives the victims the present ability to obtain a judgment. We see nothing wrong with that.

Id.

Jensen, like Bybee, will very likely never fully repay the victims for her crime. That fact, standing alone, does not show an abuse of discretion. Further, while Jensen will be incarcerated the rest of her life, the district court recognized that there are ways incarcerated inmates can potentially obtain money, including inheritances, and gifts from friends and relatives. (Tr., p.66, Ls.16-21; p.71, L.23 – p.72, L.6.) The victims of Jensen's crimes should have access to any assets that Jensen might come across.

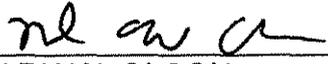
The district court, in summing up its proper consideration of the I.C. § 19-5304(7) factors, stated, "In this case it's certainly undesirable from the standpoint of the defendant because of her limited financial ability, but I don't find that that is a reason not to order restitution in this case." (Tr., p.71, Ls.17-20.)

In arguing that the district court abused its discretion by failing to adequately consider her ability to pay restitution, Jensen merely repeats the evidence that she presented at the restitution hearing, and essentially expresses disagreement with the district court's eventual decision. (Appellant's brief, 10-12.) Jensen thus does not provide argument that the district court actually failed to consider her ability to pay restitution, nor does she highlight any part of the record that would indicate as much. The fact that the Jensen disagrees with the district court's decision does not amount to an abuse of discretion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's first order of restitution, or, in the alternative, that this Court affirm the district court's second order of restitution.

DATED this 19th day of August 2009.



MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 19th day of August 2009, served a true and correct copy of the attached BRIEF OF RESPONDENT by causing a copy addressed to:

HEATHER M. CARLSON
DEPUTY STATE APPELLATE PUBLIC DEFENDER

to be placed in The State Appellate Public Defender's basket located in the Idaho Supreme Court Clerk's office.



MARK W. OLSON
Deputy Attorney General

MWO/pm