

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 45748
 Plaintiff-Respondent,)
) Kootenai County Case No.
 v.) CR-2015-16514
)
 QUENTELL HENRI HICKS,)
)
 Defendant-Appellant.)
 _____)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF KOOTENAI**

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District Judge

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STATEMENT OF THE CASE

Nature Of The Case

Quentell Henri Hicks appeals from the district court's Order of Restitution requiring Hicks to pay \$9,650 to the Crime Victim Compensation Program. Hicks argues on appeal that the district court abused its discretion by refusing to consider the victim's employment history in calculating her lost wages and by not adequately considering his testimony regarding the source of his victim's PTSD.

Statement Of The Facts And Course Of The Proceedings

On December 14, 2015, Quentell Henri Hicks entered an Alford¹ plea to a felony domestic violence charge. (R., pp.72-73.) The state alleged that, on October 7, 2015, Hicks "did willfully and unlawfully use force and/or violence upon Jan White by hitting her." (R., p.75.) Statements that White and her son made to the police supported the allegation. (See PSI, p.3.) The state made clear at the change of plea hearing that "[t]here maybe [sic] restitution, but nothing has been solidified." (R., p.72.)

At the sentencing hearing, the state requested "\$407 for restitution" but emphasized the amount was "to be left open to be filed." (R., p.92.) The district court sentenced Hicks to a minimum of five years of incarceration with an additional five years indeterminate and retained jurisdiction. (R., pp.95-96.) The district court "further ordered pursuant to I.C. § 19-5302 that the court shall reserve jurisdiction to determine the amount of restitution." (R., p.96 (capitalization altered).) The district court advised Hicks that "[t]he amount [of

¹ North Carolina v. Alford, 400 U.S. 25 (1970).

restitution] shall be determined from time to time by stipulation or upon notice and hearing.” (Id.)

The district court held another hearing when Hicks’s “rider” expired in November 2016. (R., pp.99-100.) At the hearing, the prosecutor informed the district court and Hicks that his “office ha[d] received a restitution request from Ms. White” and that he was working with her to figure out what could “be paid by the state.” (R., p.99.) The district court placed Hicks on supervised probation for four years and noted that “[r]estitution [was] left open.” (Id.)

On November 9, 2017, the state filed a Memorandum Of Restitution seeking \$9,650 in restitution to be paid to the Crime Victim’s Compensation Program (CVCP). (R., p.125.) The state attached a letter from CVCP and a summary itemizing the payments made by CVCP that indicated \$9,650 had been paid out to White for “wage loss.” (R., pp.127-28.)

On December 12, 2017, the district court held an evidentiary hearing on the request for restitution. (R., pp.144-45.) The state presented testimony from Erica Chown, a financial recovery officer at CVCP. (Tr., p.6, L.17 – p.7, L.7.) She outlined the protocol that CVCP follows when it receives an application from a victim: CVCP gathers information from the victim about the crime and requests “law enforcement reports and other pertinent information” to substantiate the information gathered from the victim and to determine eligibility for payment. (Tr., p.7, L.23 – p.8, L.13.) If CVCP determines the victim is eligible to participate in the program, it contacts the victim to gather information about expenses incurred by the victim as a result of the crime. (Id.) Based on the information provided by the victim and the benefits CVCP can offer, CVCP then requests “information from the providers in order to substantiate the claims for services rendered.”

(Tr., p.8, Ls.10-13.) If the information gathered supports the victim’s request, CVCP “pays a maximum of \$175 or two-thirds of the average weekly wage for the time period that was established that the victim missed work.” (Tr., p.9, Ls.15-23.)

Chown testified that CVCP followed its protocol in this case. (Tr., p.8, Ls.14-16.) White requested payment “for time missed from work.” (Tr., p.8, L.23 – p.9, L.1.) CVCP requested “information directly from her employer, and then . . . also corroborated her crime-related disability from work with her treating health care provider.” (Tr., p.9, Ls.2-10.) CVCP “received documentation from a treating health care provider indicating a formal diagnosis that was related to the crime and disabled Jan White from work for the indicated period of time.” (Tr., p.13, L.19 – p.14, L.1.) Specifically, Dr. Jeffrey Meech, a doctor of psychology, diagnosed White with PTSD related to Hicks’s battery of White. (Tr., p.16, L.19 – p.17, L.6.) CVCP independently verified that Dr. Meech “was licensed to practice in the state of Idaho and that his license is current and valid.” (Tr., p.17, Ls.15-23.)

Based on the information CVCP gathered from White’s employer and health care provider, CVCP determined White was eligible for a weekly payment of \$175 for four separate periods of time: October 7-14, 2015 (\$200); October 16, 2015 (\$25); October 20 – November 1, 2015 (\$325); and November 3, 2015 – October 31, 2016 (\$9,100). (Tr., p.9, L.15 – p.11, L.2; State’s Exhibit 1.) CVCP determined the total compensable amount was \$9,650 and paid White that amount. (Tr., p.9, Ls.11-14, State’s Exhibit 1.)

Hicks was the only witness for the defense. He conceded that White had a job on October 7, 2015—the first day in CVCP’s calculation for lost wages—but testified that she did not have a job prior to that from October 2013 through October 6, 2015—dates that

were not used in CVCP's calculation for lost wages. (Tr., p.23, Ls.1-11.) Hicks testified that he is willing to pay for the first three periods calculated by CVCP but not the fourth period because he did not "feel as though it's fair" because "Ms. White has never had any employment history," she "is not willing to work," and "[s]he wants to live off of other people's money." (Tr., p.23, L.24 – p.25, L.3.) He also testified that "[h]er stress/PTSD, it's caused from her divorce that she's been going through." (Id.)

Hicks's counsel argued to the district court that, "[w]hen you have to show lost wages, you have to show that there was in fact a pattern of employment." (Tr., p.26, Ls.12-14.) The district court pressed Hicks's counsel to provide "one case . . . that says you have to have a pattern in order to establish wage loss." (Tr., p.26, Ls.21-24.) Hicks's counsel could not do so. (Tr., p.27, Ls.9-11.)

The district court found that Hicks's defense "isn't supported by the law." (Tr., p.27, L.15 – p.28, L.12.) The district court ordered Hicks to pay \$9,650 in restitution to CVCP for payments it had made to White (R., p.146), because "[t]he police report indicates that the victim was working on the day in question, and Mr. Hicks verifies today that she was working on that day in question" (Tr., p.28, Ls.5-12). Hicks timely appealed from that order. (R., pp.148-51.)

ISSUE

Hicks states the issue on appeal as:

Did the district court abuse its discretion when it ordered restitution?

(Appellant's brief, p.6.)

The state rephrases the issue as:

Has Hicks failed to show that the district court abused its discretion when it ordered restitution?

ARGUMENT

The District Court Did Not Abuse Its Discretion When It Ordered Restitution

A. Introduction

The district court did not abuse its discretion when it ordered Hicks to pay \$9,650 to CVCP. Evidence presented at the restitution hearing showed that CVCP verified with the victim's employer and medical provider the wages the victim lost as a result of Hicks's crime. Because CVCP made payments totaling \$9,650 to the victim of Hicks's crime, the district court properly ordered Hicks to pay that amount in restitution to CVCP.

Hicks erroneously argues on appeal that the district court abused its discretion by failing to consider the victim's employment history when determining the amount to pay in restitution. Hicks could not cite to the district court, and has not cited on appeal, any authority for the proposition that a victim must establish a pattern of employment to obtain restitution for economic loss suffered as a result of the crime against her. Moreover, the statute that lists the factors a district court must consider when deciding the amount to order in restitution makes no mention of the victim's employment history.

Hicks also argues that the district court did not adequately consider his testimony as to the source of the victim's PTSD. But a licensed doctor of psychology determined the victim's PTSD was related to Hicks's crime. The district court did not clearly err by crediting the doctor's diagnosis over Hicks's inconsistent and unsupported say-so.

B. Standard Of Review

“Whether to order restitution . . . is within the district court's discretion” State v. Wisdom, 161 Idaho 916, 919, 393 P.3d 576, 579 (2017) (alteration omitted). The district court must “base the restitution award on the preponderance of evidence submitted by the

prosecutor, defendant, victim, or presentence investigator.” Id. “What amount of restitution to award is a question of fact for the district court, whose findings will not be disturbed if supported by substantial evidence.” Id.

C. The District Court Did Not Abuse Its Discretion When It Ordered Hicks To Pay \$9,650 In Restitution To CVCP

The district court properly awarded \$9,650 in restitution to CVCP. “Unless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of a crime which results in an economic loss to the victim to make restitution to the victim.” I.C. § 19-5304(2). Under the statute, “[e]conomic loss’ includes, but is not limited to, . . . lost wages.” I.C. § 19-5304(1)(a). And the term “victim” includes CVCP when “payment was made [by CVCP] to or on behalf of a directly injured victim.” I.C. § 19-5304(1)(e)(iii).

The state showed, by a preponderance of the evidence, that CVCP paid White \$9,650 for wages she lost due to Hicks’s battery. There was no dispute at the hearing that White was employed at the time the crime occurred: Hicks himself testified that White had a job that day. (Tr., p.23, Ls.5-7.) Chown testified that White’s crime-related injury had been diagnosed as PTSD by a doctor of psychology who was licensed to practice in Idaho. (Tr., p.16, L.19 – p.17, L.23.) She also testified that CVCP “used the information that was provided by the health care provider and by the employer to establish a period of disability during which [White] missed work due to crime-related injuries.” (Tr., p.9, Ls.15-23.) CVCP came up with “four specific periods of time that were missed and verified by the employer and the health care providers.” (Tr., p.10, Ls.4-11.) CVCP determined White was eligible for \$175 for each week she missed work. (Tr., p.9, L.11 – p.10, L.11); see I.C. § 72-1019(1). CVCP calculated and paid out a compensable amount of \$9,650. (Tr.,

p.9, Ls.11-14; State’s Exhibit 1.) Because CVCP paid White \$9,650 for wages she lost due to Hicks’s crime, the district court did not abuse its discretion when it ordered Hicks to pay CVCP \$9,650. See I.C. § 19-5304(1)(e)(iii), (2).

Hicks erroneously argues that the district court abused its discretion by not considering White’s employment history when deciding the proper amount of restitution. (Appellant’s brief, p.8.) He could not provide the district court with any authority for the proposition that a victim must establish a history of employment to receive restitution for lost wages (Tr., p.26, L.3 – p.27, L.14), and he has failed to provide any such authority on appeal (Appellant’s brief, p.8). That is reason enough to reject his argument. See Murray v. State, 156 Idaho 159, 168, 321 P.3d 709, 718 (2014) (“A party waives an issue cited on appeal if either authority or argument is lacking, not just if both are lacking.” (quoting State v. Wood, 132 Idaho 88, 94, 967 P.2d 702, 708 (1998))).

But his argument also lacks merit. The Idaho Supreme Court has been clear: “[w]hether to order restitution, and in what amount, is . . . guided by consideration of the factors set forth in Idaho Code section 19-5304(7).” Wisdom, 161 Idaho at 919, 393 P.3d at 579 (quoting State v. Corbus, 150 Idaho 599, 602, 249 P.3d 398, 401 (2011)). Idaho Code § 19-5304(7) makes no mention of the victim’s employment history.

Hicks also argues that the district court did not adequately consider his testimony that “Ms. White’s stress and PTSD were caused by her divorce and her inability to get compensation.” (Appellant’s brief, p.8.) Presumably, Hicks is challenging the district court’s implicit factual finding that he caused White’s PTSD by battering her, which means he must show clear error. See Wisdom, 161 Idaho at 919, 393 P.3d at 579. He has fallen far short.

For starters, Hicks's argument contradicts his concession at the evidentiary hearing that it "would be fair and just" for him to pay restitution for the first three periods of time the victim missed work due to her PTSD. (Tr., p.25, L.19 – p.26, L.2.) If Hicks did not cause the PTSD, which is the reason White missed work, he should not have to pay any restitution. Moreover, Hicks provided no basis for his opinion that White's "stress/PTSD, it's caused from her divorce that she's been going through." (Tr., p.24, L.8 – p.25, L.3.) And Hicks's opinion was contradicted by a doctor of psychology who verified that White's PTSD was related to Hicks's crime. (Tr., p.16, L.19 – p.17, L.6.) The district court did not clearly err by crediting the diagnosis of a doctor of psychology who is licensed to practice in Idaho over the unsupported opinion provided by Hicks who "attended Tacoma Community College for 1 ½ years [but] did not graduate." (PSI, p.15.)

CONCLUSION

The state respectfully requests this Court affirm the district court's Order of Restitution.

DATED this 31st day of August, 2018.

/s/ Jeff Nye
JEFF NYE
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 31st day of August, 2018, served a true and correct copy of the foregoing BRIEF OF RESPONDENT to the attorney listed below by means of iCourt File and Serve:

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JN/dd