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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

STATE OF IDAHO,	)	
	)	<b>NO. 45976</b>
Plaintiff-Respondent,	)	
	)	<b>ADA COUNTY NO. CR01-17-18977</b>
v.	)	
	)	
ALLEN LEE MOORE,	)	<b>APPELLANT'S BRIEF</b>
	)	
Defendant-Appellant.	)	
_____	)	

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**BRIEF OF APPELLANT**

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**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL  
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE  
COUNTY OF ADA**

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**HONORABLE RICHARD D. GREENWOOD**  
District Judge

---

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## STATEMENT OF THE CASE

### Nature of the Case

Allen Lee Moore appeals from the district court's restitution order. Because the State requested restitution after the time allowed by the district court, and the only reason for the delay was that the State had miscalendared the deadline, the district court abused its discretion when it allowed the late filing and awarded restitution. This court should vacate the restitution order.

### Statement of Facts and Course of Proceedings

Mr. Moore pled guilty to felony aggravated battery and misdemeanor simple battery in August 2017, and in exchange the State agreed to recommend a unified sentence of ten years, with two years fixed, and a period of retained jurisdiction. (R., pp.64–71; 10/24/17 Tr., p.6, L.16–p.7, L.24.) On October 30, 2017, the court sentenced him to a unified term of eight years, with two years fixed, and placed him on probation. (R., pp.81–86.) At the State's request, the court left restitution open for sixty days. (R., p.85; 10/24/17 Tr., p.16, L.11–p.17, L.6, p.25, Ls.14–21.)

On January 23, 2018, the State filed a motion for restitution (R., pp.91–92), which the court addressed at a hearing on March 22, 2018. The prosecutor acknowledged that the motion was roughly thirty days late, explaining:

[Y]ou had given us 60 days. I emailed our restitution end of the department and told them that it was due in 60 days. It is most common for us to have 90 days, and so they had mis-calendared it and filed it within 90 days. And then Mr. Schou had notified me that we had filed it late and he'd be objecting to it. . . .

. . . .

I always make it a habit to email the restitution and tell how many days they have, and so I had told her 60. . . .

. . . .

And then I don't put it on my own calendar because, frankly, that's not my job.

(3/22/18 Tr., p.7, L.21–p.8, L.14.) Later on, the prosecutor added that she did not know what due date her office gave to the victims (3/22/18 Tr., p.12, Ls.20–21), but that she filed their restitution request on January 23, the same day that she received the final restitution amount from the Crime Victims Compensation Program (the “CVCP”) (3/22/18 Tr., p.9, Ls.16–23). She conceded that “the proper method would have been for us to ask for an extension of time, but we did not receive that final statement by Crime Victims Compensation until January 23rd, which is the reason that we submitted the motion and order on that date.” (3/22/18 Tr., p.10, Ls.1–7.)

Mr. Moore acknowledged that he was not prejudiced by the late filing (though he also asserted prejudice was irrelevant to the analysis) and that he had no argument on the merits of the restitution request, but he objected to the filing as untimely. (3/22/18 Tr., p.12, Ls.6–13, p.15, Ls.17–18.) Relying on I.C. § 19-5304 and *State v. Ferguson*, 138 Idaho 659, 662 (Ct. App. 2002), he argued that he hadn’t heard anything from the State to indicate that the delay was “necessary.” (3/22/18 Tr., p.11, Ls.7–20.) The State had not claimed they could not have gotten the information earlier or that the CVCP and Medicaid would not have complied with the deadline had they been made aware of it. (3/22/18 Tr., p.11, L.20–p.12, L.5.)

The court initially indicated it was going to deny the State’s request as untimely, explaining, “I did enter an order retaining that for a period of 60 days, and it does not implicate or affect in any way the civil remedies available to victims. They are always free to file suit.” (3/22/18 Tr., p.8, Ls.16–20.) But after hearing additional argument, it decided to award restitution. It explained that the sixty-day order was not jurisdictional and was just to ensure that the case wrapped up in a timely manner. (3/22/18 Tr., p.14, Ls.14–22.) It went on:

I go back and look at the statute itself, and it says, “Unless the Court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in economic loss to the victim to make restitution to the victim.” That’s a mandatory directive. And so on

further contemplation, I will relieve the State of the deadline under these circumstances, not because, necessarily, the victims coordinator's office was dilatory, but because it does appear that—at least as to part of the restitution requested, that it was simply—the information wasn't available. And I am not sure what the story is with Medicaid, but—and I also perceive no real injury to the defendant. He caused the damage. If it's owed—and I haven't heard about objections on the merits—

....

I looked at the submitted materials submitted by the State, and it did appear that it was the right people and the right dates, and they are hospital charges.

So with that, I will—

....

grant the oral request for relief from the 60-day deadline.

(3/22/18 Tr., p.14, L.23–p.15, L.1.) The court later clarified that it was holding that the late filing for both the CVCP and Medicaid was because the information was not available. (3/22/18 Tr., p.17, Ls.18–24.) Finally, the court rejected Mr. Moore's argument that although "the restitution statute does contemplate restitution being ordered . . . unless inappropriate, it also does say when it should be ordered"—"at the time of sentencing or such later date as deemed necessary by the Court." (3/22/18 Tr., p.16, Ls.4–17 (referencing I.C. § 19-5304(6).) It said,

given the fact that that deadline really is not hard and fast by statute, and the reason I put it there is to have a time where these things come to an end, but I am not intending to get—but I don't think that that procedural device should overrule the mandates of the statute.

In other words, I don't think a procedure should get in the way of the merits.

(3/22/18 Tr., p.17, L.25–p.18, L.7.)

The court later ordered Mr. Moore to pay \$1,650.39 in restitution (R., pp.126–27), and he timely appealed (R., pp.139–40).

## ISSUE

Did the district court abuse its discretion when it accepted the State's late restitution request and awarded restitution because the only reason for the delay was that the State had miscalendared the deadline?

## ARGUMENT

### The District Court Abused Its Discretion When It Accepted The State's Late Restitution Request And Awarded Restitution Because The Only Reason For The Delay Was That The State Had Miscalendared The Deadline

According to I.C. § 19-5304(2), “[u]nless the court determines that an order of restitution would be inappropriate or undesirable, it shall order a defendant found guilty of any crime which results in an economic loss to the victim to make restitution to the victim.” Further, “[r]estitution orders shall be entered by the court at the time of sentencing *or such later date as deemed necessary by the court.*” I.C. § 19-5304(6) (emphasis added).

This Court reviews restitution awards for an abuse of discretion. *State v. Nelson*, 161 Idaho 692, 695 (2017); *State v. Cunningham*, 161 Idaho 698, 700 (2017).

To determine whether the district court abused its discretion, this Court evaluates whether the district court: (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with relevant legal standards; and (3) reached its decision by an exercise of reason.

*State v. Wisdom*, 161 Idaho 916, 919 (2017). “The district court’s factual findings with regard to restitution will not be disturbed on appeal if supported by substantial evidence.” *State v. Corbus*, 150 Idaho 599, 602 (2011) (citing *State v. Lombard*, 149 Idaho 819, 822 (Ct. App. 2010)). Substantial evidence is “relevant evidence as a reasonable mind might accept to support a conclusion.” *Wisdom*, 161 Idaho at 919 (quoting *State v. Straub*, 153 Idaho 882, 885 (2013)).

The district court abused its discretion by entertaining the State’s tardy motion for restitution because it did not exercise reason and did not act consistently with the relevant legal standards. As an initial matter, there is no evidence in the record to support the court’s conclusion that the amount of restitution was not available to the victims in time to comply with its sixty-day deadline. (3/22/18 Tr., p.15, Ls.5–16, p.17, Ls.18–24.) Instead, the record shows that that information was available to the victims well before the deadline, but that at least some

of that information was not actually provided to the State until after, presumably because the State had miscalendared the deadline. (3/22/18 Tr., p.7, L.21–p.8, L.14, p.12, Ls.2–21.) The State filed documentation from both Medicaid and the CVCP to support its restitution request, and that documentation was printed long before the sixty-day deadline expired on December 29, 2017. The statement from Saint Alphonsus for Mr. Hansen’s medical bills states, “Current Date: 8/18/2017,” on the bottom, right-hand corner. (R., p.93.) The Medicaid documents for Ms. Moore are dated “Aug 18, 2017,” on the bottom left-hand corner. (R., pp.94–95.) The letter from the Crime Victims Compensation Program, which was dated January 23, 2018, attached documents that say “Printed on 11/17/2017” in the top left-hand corner. (R., pp.96–97.) Therefore, the court’s finding that the victims were unable to provide the restitution documentation to the State within the sixty-day deadline is not supported by substantial evidence; the necessary documents were generated months before.

As a result, the district court did not act consistently with I.C. § 19-5304(6) when it awarded restitution outside of the sixty-day window because it was not actually “necessary” to enter the restitution order at such a late date. The required information was in fact available, and the State’s failure to file its restitution request within the time allowed by the court simply because it did not properly calendar the deadline clearly could not make the late filing “necessary.” For this reason, the court’s conclusion that procedure should not “overrule the mandates of the statute” missed the mark. (3/22/18 Tr., p.17, L.25–p.18, L.7.) Idaho Code § 19-5304 itself creates a procedural bar to ordering restitution after sentencing unless “deemed necessary by the court.” I.C. § 19-5304(6). Finally, as discussed by the court during its initial ruling, denying the restitution request “does not implicate or affect in any way the civil remedies available to victims. They are always free to file suit.” (3/22/18 Tr., p.8, Ls.16–20.) The district

court therefore abused its discretion by accepting the State's tardy restitution request and by awarding restitution.

CONCLUSION

Mr. Moore respectfully asks that this Court vacate the district court's restitution order.

DATED this 20<sup>th</sup> day of November, 2018.

/s/ Maya P. Waldron  
MAYA P. WALDRON  
Deputy State Appellate Public Defender

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20<sup>th</sup> day of November, 2018, I caused a true and correct copy of the foregoing APPELLANT'S BRIEF, to be served as follows:

KENNETH K. JORGENSEN  
DEPUTY ATTORNEY GENERAL  
E-Service: ecf@ag.idaho.gov

/s/ Evan A. Smith  
EVAN A. SMITH  
Administrative Assistant

MPW/eas