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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)
) No. 47554-2019
 Plaintiff-Respondent,)
) Minidoka County Case No.
 v.) CR34-18-4108
)
 JUSTIN EARL CLAYBORN,)
)
 Defendant-Appellant.)
)
)

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF MINIDOKA**

**HONORABLE JONATHAN P. BRODY
District Judge**

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**ATTORNEYS FOR
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STATEMENT OF THE CASE

Nature Of The Case

Justin Earl Clayborn appeals from the district court's restitution orders.

Statement Of The Facts And Course Of The Proceedings

The state charged Clayborn with misdemeanor DUI, felony eluding a police officer, aggravated battery on certain law enforcement personnel, and alleged a deadly weapon enhancement. (R., pp.65-68.) The state also filed an information part II alleging that Clayborn was a persistent violator. (R., pp.69-70.) Eventually the case settled; pursuant to the parties' plea agreement Clayborn pleaded guilty to felony eluding and admitted the persistent violator enhancement. (R., p.91.) The remainder of the charges were dismissed. (Id.) The district court sentenced Clayborn to ten years imprisonment with five years fixed. (R., p.122.) Additionally, the court ordered "the matter of restitution" would be "held open for 90 days." (R., p.122.)

At a subsequent hearing the state requested \$46,843.01 in restitution, which ultimately included sums "on behalf of Lt. Dan Kindig, payable to the Idaho State Insurance Fund," "on behalf of Minidoka County, payable to ICRMP," as well as sums payable to the City of Pocatello and the Minidoka County Sheriff's Office. (R., pp.128-32.) Clayborn and the state stipulated to restitution in the amount of \$50,343.10. (R., pp.125, 128-32; Tr., p.5, Ls.8-10.) Thereafter, the district court entered a series of restitution orders, and amended restitution orders, pursuant to the parties' stipulation. (R., pp.133-62, 191-93.)

Clayborn timely appealed.¹ (R., pp.167-71, 186-90.)

¹ Clayborn filed a pro se letter with this Court that was docketed as a notice of appeal on November 4, 2019. (R., pp.8, 166.)

ISSUE

Clayborn states the issue on appeal as:

Did the district court abuse its discretion by ordering Mr. Clayborn to pay restitution?

(Appellant's brief, p.3.)

The state rephrases the issue as:

Does the invited error doctrine bar Clayborn's challenge to the restitution orders he stipulated to?

ARGUMENT

Because Clayborn Stipulated To The Restitution Orders The Invited Error Doctrine Bars His Claim

Clayborn argues the district court abused its discretion in ordering restitution. (Appellant’s brief, pp.4-5.) But he does so “mindful of” the well-established doctrine that bars his claim: invited error. (Appellant’s brief, pp.4-5.) As Clayborn concedes, parties cannot complain of errors on appeal that they themselves invited. (Appellant’s brief, p.5 (citing State v. Abdullah, 158 Idaho 386, 420-21 (2015).) This is because it is “well settled in Idaho” that defendants “may not request a particular ruling by the trial court and later argue on appeal that the ruling was erroneous.” State v. Griffith, 110 Idaho 613, 614, 716 P.2d 1385, 1386 (Ct. App. 1986). It is equally settled that the invited error doctrine “applies to sentencing decisions as well as to rulings during trial.” Id. Restitution is a sentencing decision, and if a defendant stipulates to restitution he is inviting the court to order him to pay it. A restitution stipulation is, therefore, the quintessential invited error.

Clayborn concedes he stipulated to the restitution orders below. (Appellant’s brief, pp.1, 5; R., pp.125, 128-32.) The invited error doctrine accordingly bars his claim and this Court should reject it without considering the merits. Griffith, 110 Idaho at 614.

Even if the invited error doctrine did not bar this claim Clayborn shows no error. He complains that “despite the stipulation, the district court should have ordered a lesser amount because Mr. Clayborn’s insurance company denied his claim, but ‘should have paid a number of parties,’ and Mr. Clayborn will have to file ‘suit against the insurance company’ for reimbursement.” (Appellant’s brief, p.5 (citing Tr., p.3, Ls.19-20; p.5, Ls.5-10).) According to

Clayborn, given these confounding circumstances, “the district court did not exercise reason and thus abused its discretion by ordering restitution.” (Appellant’s brief, p.5.)

Clayborn cites no legal authority showing it is an abuse of discretion to enter a stipulated-to restitution order simply because the restitution payor is having his own private difficulties arranging reimbursement from a third party. State v. Zichko, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996) (“When issues on appeal are not supported by propositions of law, authority, or argument, they will not be considered.”). Moreover, Clayborn knew “his insurance company came back and denied” his claims, and fully anticipated filing suit against his insurance company when he stipulated to the restitution orders. (R., p.125; Tr., p.3, Ls.18-20; p.5, Ls.5-9 (where defense counsel noted Clayborn’s position that “the insurance company should have paid a number of parties” and that “Clayborn is going to be filing suit against the insurance company”).) If Clayborn himself was well aware of his own insurance issues, and yet he stipulated to restitution, he cannot begin to show the district court acted unreasonably by ordering exactly what the parties agreed to, under circumstances everyone knew about. Because Clayborn does not supply any authority that suggests the district court abused its discretion he fails to show any error on the merits.

CONCLUSION

The state respectfully requests this Court affirm the district court's restitution orders.

DATED this 23rd day of June, 2020.

/s/ Kale D. Gans
KALE D. GANS
Deputy Attorney General

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 23rd day of June, 2020, 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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/s/ Kale D. Gans
KALE D. GANS
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KDG/dd