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Minn. Stat. § 480A.08, subd. 3 (2008).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A09-1736**

State of Minnesota,
Respondent,

vs.

Cory Daniel Bell,
Appellant.

**Filed September 28, 2010
Affirmed
Kalitowski, Judge**

Sherburne County District Court
File No. 71-CR-08-1607

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Kathleen Heaney, Sherburne County Attorney, Therese Galatowitsch, Deputy County Attorney, Arden Fritz, Assistant County Attorney, Elk River, Minnesota (for respondent)

Bradford Colbert, Kezia Killion (certified student attorney), Legal Assistance to Minnesota Prisoners, St. Paul, Minnesota (for appellant)

Considered and decided by Connolly, Presiding Judge; Kalitowski, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

KALITOWSKI, Judge

Following his convictions of first-degree burglary and second-degree assault with a dangerous weapon, appellant Cory Daniel Bell challenges the district court's order requiring him to pay restitution for the installation and maintenance of a security system at the home of the victim. Because appellant's claim is procedurally barred we affirm the district court's order.

DECISION

An offender has the burden to submit a detailed affidavit setting forth all challenges to the amount of restitution or specific items of restitution. Minn. Stat. § 611A.045, subd. 3(a) (2008). In order to challenge restitution, an offender must “request[] a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. . . . A defendant may not challenge restitution after the 30-day time period has passed.” *Id.* at subd. 3(b) (2008). “Under the plain language of the statute, a valid dispute arises only after an offender meets the threshold burden of raising a specific objection by affidavit.” *State v. Thole*, 614 N.W.2d 231, 235 (Minn. App. 2000).

The parties do not dispute that appellant did not submit an affidavit detailing his restitution challenges, and that he did not request a hearing to present these challenges within 30 days of receiving notification, or sentencing; rather, he merely raised a verbal legal challenge during sentencing.

Appellant argues that the statute that requires an affidavit does not apply here because his challenges to the district court's restitution award are legal, not factual. Appellant contends that because we review de novo a district court's decision whether a specific item meets the statutory requirements of restitution, and because affidavits are traditionally vehicles for asserting facts, the procedures set forth in Minn. Stat. § 611A.045, subd. 3, do not apply to his solely-legal challenge. We disagree.

The plain language of Minn. Stat. § 611A.045, subd. 3(a), requires that "all challenges to the restitution or items of restitution" must be presented according to the statute's terms. And caselaw has clarified that pursuant to this plain language, a valid dispute arises only after an offender properly raises a specific objection by affidavit. *Thole*, 614 N.W.2d at 235. Thus, we reject appellant's argument that we should ignore the statute's language and conclude that it applies only to factual challenges.

Appellant argues that *Thole* does not control here because the court in *Thole* considered a question of fact, the amount of damages to a vehicle, not a question of law. But *Thole* does not limit its holding that the affidavit required by section 611A.045, subdivision 3, is "the sole vehicle by which the offender can meet the burden of pleading" in order to challenge restitution. *Id.* Further, in *Thole*, the appellant claimed that the items of restitution ordered, including the cost of changing the victim's vehicle locks, were not caused by the offense for which he was convicted. 614 N.W.2d at 234. The issue of whether a particular item of restitution fits within the statutory definition is a question of law. *In re Welfare of M.R.H.*, 716 N.W.2d 349, 351 (Minn. App. 2006), review denied (Minn. Aug. 15, 2006). Thus, the appellant's claim in *Thole* was

essentially a legal one, as here. Therefore, *Thole* governs this case and holds that the plain language of Minn. Stat. § 611A.045, subd. 3, requires that any and all challenges to restitution, whether factual or legal, be brought according to the statute's procedural requirements.

Because appellant failed to meet the procedural requirements for challenging restitution in Minn. Stat. § 611A.045, subd. 3, we conclude that his claim is barred. Thus, we do not reach the merit of appellant's claims. *See Thole*, 614 N.W.2d at 235 ("a valid dispute arises only after an offender meets the threshold burden of raising a specific objection by affidavit"). In addition, we decline to consider appellant's claim, raised for the first time in his reply brief, that he received ineffective assistance for his counsel's failure to comply with the statute in challenging the restitution order.

Affirmed.