STATE OF MINNESOTA
IN COURT OF APPEALS
A10-2027

State of Minnesota,
Respondent,

vs.

Troy Matthew Shannon,
Appellant.

Filed June 13, 2011
Reversed
Bjorkman, Judge

Hennepin County District Court
File No. 27-CR-09-21400

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

Michael O. Freeman, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Julie Loftus Nelson, Bruno & Nelson, Minneapolis, Minnesota (for appellant)

Considered and decided by Halbrooks, Presiding Judge; Wright, Judge; and Bjorkman, Judge.

U N P U B L I S H E D O P I N I O N

BJORKMAN, Judge

Appellant challenges the district court's order for restitution as part of his criminal sentence, contending that valid settlement agreements with the victims preclude the restitution award. We reverse.

FACTS

On June 4, 2010, appellant Troy Matthew Shannon pleaded guilty to three counts of theft by swindle of over $35,000 and one count of identity theft for his actions involving fraudulent real estate and mortgage transactions. Pursuant to a plea agreement, Shannon received concurrent prison terms totaling 45 months. The state sought restitution in the amount of $488,247 based on the amount of the loans Shannon obtained through fraud from Chase Home Finance LLC and CitiMortgage, Inc. Shannon objected based on settlements he had reached under which Chase agreed to accept $70,000 and CitiBank agreed to accept $50,000 to compensate their losses. During the restitution hearing, Shannon presented CitiBank's written confirmation that its account was "paid in full" as of July 23, and Chase's written acknowledgment that its account was "settled in full" on August 5. The district court concluded that Shannon's obligation to pay restitution was not limited by these agreements and ordered Shannon to pay restitution in the amount of $288,090 to Chase and $200,157 to CitiBank, "less any money already received." This appeal follows.

D E C I S I O N

A victim of a crime has the right to receive restitution as part of the offender's sentence. Minn. Stat. § 611A.04, subd. 1(a) (2010). In determining the amount of restitution to award, the district court considers several factors, including "the amount of economic loss sustained by the victim as a result of the offense." Minn. Stat. § 611A.045, subd. 1(a)(1) (2010). "The primary purpose of the [restitution] statute is to restore crime victims to the same financial position they were in before the crime." *State*

v. Palubicki, 727 N.W.2d 662, 666 (Minn. 2007). We review a district court's order for restitution under an abuse-of-discretion standard. *State v. Tenerelli*, 598 N.W.2d 668, 671 (Minn. 1999). But whether a claimed restitution item meets the statutory requirements is a question of law that we review de novo. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000).

In challenging the district court's restitution order, Shannon does not dispute the original loan amounts from which the restitution claim is derived. Rather, he argues that he "reached complete and valid civil settlement agreements with the victim-lenders that resolved all claims arising out of his offenses," and that these agreements should limit the restitution award. The state does not dispute the validity of the two settlements.

This court recently considered the impact of civil settlements on court-ordered restitution in *State v. Arends*, 786 N.W.2d 885 (Minn. App. 2010), *review denied* (Minn. Oct. 27, 2010), and *State v. Ramsay*, 789 N.W.2d 513 (Minn. App. 2010). In *Arends*, the defendant stole more than $40,000 from his employer by making fraudulent credit-card purchases. 786 N.W.2d at 887. Arends was involved in a civil action with the victim-employer in which the victim-employer counterclaimed for damages related to Arend's criminal conduct. *Id.* The parties reached a settlement under which they agreed to "pay each other nothing," release each other from all claims, and dismiss the civil matter with prejudice. *Id.* In the criminal matter, the district court certified the question of whether the civil settlement of all claims precludes the state from seeking restitution in the criminal case. *Id.* In answering the certified question in the affirmative, we stated that "[a] valid settlement agreement is final, conclusive, and binding upon the parties," and

"[a]n injured party who has accepted satisfaction from one source cannot recover again for the same injury." *Id.* at 889. We emphasized that the victim-employer suffered no uncompensated loss and held that, "when an alleged victim has made a complete, valid civil settlement of all claims resulting from a criminal offense, the state is precluded from seeking restitution." *Id.*

Our focus in *Ramsay* was on whether a district court abuses its discretion when it awards restitution in excess of the amount agreed on in a civil settlement. 789 N.W.2d at 514. As in *Arends*, defendant Ramsay stole money from her employer. *Id.* at 514-15. The state charged Ramsay with a crime and the victim-employer sued Ramsay to recover the funds. *Id.* at 515. The civil action settled, with Ramsay agreeing to pay the victim-employer a lump sum and the victim-employer agreeing to limit its request for restitution in the criminal case to $20,000. *Id.* The district court acknowledged the settlement, but emphasized that it had discretion to determine the appropriate restitution amount pursuant to statute. *Id.* at 515-16. We reversed, holding that the district court abused its discretion by awarding restitution in excess of the amount agreed to by the parties in the civil action. *Id.* at 518. Citing *Arends*, we emphasized that the terms of a binding civil settlement "must be considered" and that any restitution ordered against Ramsay "must be limited to no more than $20,000." *Id.* at 517-518.

Shannon asserts that *Arends* and *Ramsay* likewise require reversal of the restitution award here. The state disagrees, arguing that the district court did not abuse its discretion in ordering restitution because the civil settlement did not fully compensate the banks for their losses. Citing *State v. Belfry*, 416 N.W.2d 811, 813 (Minn. App. 1987),

the state also argues that restitution serves a broader rehabilitative purpose and that "other societal and jurisprudential concerns, values and goals come into play." We are not persuaded.

We acknowledge that Shannon did not repay the loans he obtained through fraud in full and that restitution payments may, indeed, serve a rehabilitative purpose. But this case does not involve victims who have uncompensated loss. Chase and CitiBank validly contracted with Shannon to fully settle the losses resulting from the fraudulent loans. There is no allegation that the agreements were voidable, the result of fraud or mistake, or made in anticipation of an additional restitution award in the criminal proceeding. The banks accepted immediate, reduced payments as "full" satisfaction of the outstanding loan balances; no additional "payment obligation" remained. *See Arends*, 786 N.W.2d at 889. These undisputed facts are markedly different from the situation in *Belfry*, where the victims did not concede that their respective partial settlements fully compensated them for their losses. *See* 416 N.W.2d at 812-13. Because the banks agreed to accept partial compensation in exchange for a full release of their claims against Shannon, there was no uncompensated loss or payment obligation to be satisfied through restitution. On this record, we conclude that the district court abused its discretion in awarding restitution.

Reversed.