

Circuit Court for Baltimore County
Case No. C-03-CR-22-001730

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 667

September Term, 2023

JOSEPH SMITH

v.

STATE OF MARYLAND, ET AL.

Arthur,
Tang,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: May 30, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

The Circuit Court for Baltimore County denied a crime victim’s timely request for restitution and his request for reconsideration of that decision. The victim appealed.

For the reasons stated herein, we shall vacate the order denying the motion for reconsideration of the denial of the request for restitution and remand the case for further proceedings consistent with this opinion.

BACKGROUND

On March 31, 2022, defendant Lance Meehan assaulted Joseph Smith. In his application for a statement of charges to a district court commissioner, Smith claimed that Meehan strangled him and struck him in the face. Smith also claimed to have urinated on himself while he was being strangled and to have suffered blurred vision. When the police arrived on the scene, Smith claimed, they observed redness and abrasions on his neck. Smith claims to have been transported to a hospital for treatment.

On April 25, 2022, the State indicted Meehan on charges of first- and second-degree assault. Pursuant to a plea agreement, Meehan entered into an *Alford* plea¹ on the charge of second-degree assault on January 17, 2023. The State dismissed the charge of first-degree assault.

At the sentencing hearing on March 1, 2023, the State told the court that it did not seek restitution, but that the victim’s advocate had indicated that he might seek

¹ “An *Alford* plea is ‘a guilty plea containing a protestation of innocence.’” *Johnson v. State*, 247 Md. App. 170, 177 n.2 (2020) (quoting *Bishop v. State*, 417 Md. 1, 19 (2010)). “For most purposes, an *Alford* plea is the ‘functional equivalent of a guilty plea.’” *Id.* (quoting *Bishop v. State*, 417 Md. at 20).

restitution. Smith, through counsel, informed the court that he did intend to seek restitution for lost wages, dental expenses, and property damage to a coat that was ripped during the assault. Because he was still gathering his documentation, Smith asked that the court set the restitution hearing for another date.

The court expressed concern that no one had mentioned restitution when Meehan entered his plea and that restitution had not been part of the plea negotiations between Meehan and the State. The State responded that it had discussed the general subject of restitution with Smith, before Smith was represented by counsel, and had advised Smith of the difficulty in collecting restitution while simultaneously seeking a plea of incarceration. The State did not oppose restitution, but said that it would feel “strange” to request it at this point.

The court asked the parties and Smith’s counsel to approach the bench. At the bench, Smith’s counsel reiterated Smith’s intention to seek restitution. He showed the court a dentist’s bill for \$800.00 and told the court that Smith’s bank statements would show that the damaged coat was valued at \$600.00.

The court denied the request for a restitution hearing. It reasoned that the victim had presented no documentation other than the dentist’s bill, which was not clearly tied to an injury suffered in the assault. The court also reasoned that the victim had “acquiesced” in the negotiated plea agreement, which did not mention restitution. The court added that the State itself did not seek restitution. Finally, the court remarked that Smith had the right to bring a civil action for the damages that he claims to have suffered as a result of the assault.

Smith moved for reconsideration of the court’s decision, attaching additional documentation in support of his claims. The court denied the motion, and Smith took this appeal.²

Neither the State nor Meehan, the criminal defendant, filed an appellate brief.

QUESTIONS PRESENTED

Smith raises one multi-part question, which we have condensed and reformulated as follows: Did the court err in denying Smith’s request for a restitution hearing and his request for reconsideration of that decision?³

² Maryland Code (2001, 2018 Repl. Vol.), § 11-103(e)(4) of the Criminal Procedure Article authorizes a victim of a crime to request relief within 30 days after a court’s alleged failure to consider or alleged improper denial of the victim’s right to restitution. Subsection (b) of that statute provides that “a victim of a crime for which the defendant . . . is charged may . . . appeal to the Appellate Court of Maryland from a final order that denies or fails to consider a right secured to the victim by subsection (e)(4) of this section[.]” *Id.* § 11-103(b).

³ Smith framed the question in this way:

Whether a trial court can deny a crime victim’s request for a restitution hearing because:

- (1) the request for the hearing was not accompanied by comprehensive supporting documentation of the victim’s restitution claims, despite victim counsel’s production of one bill and proffer that additional documentation would be forthcoming prior to the restitution hearing;
- (2) the State’s failure to include restitution in a plea agreement or to request restitution;
- (3) the court’s impression that the crime victim, after being approached out of the presence of his retained counsel, by his silence had implicitly acquiesced to no restitution, and
- (4) the availability of alternative civil remedies.

We conclude that the court erred. Consequently, we shall vacate the order denying the motion for reconsideration of the denial of the request for restitution and remand the case for further proceedings consistent with this opinion.

STANDARD OF REVIEW

Because this case involves a crime victim’s statutory right to restitution, it presents an issue of statutory interpretation. We review issues of statutory interpretation without deference to the circuit court. *See, e.g., Thomas v. State*, 239 Md. App. 483, 489 (2018), *aff’d*, 465 Md. 288 (2019).

DISCUSSION

Under § 11-603(a)(2) of the Criminal Procedure (“CP”) Article of the Maryland Code (2001, 2018 Repl. Vol.), “a court may enter a judgment of restitution that orders a defendant . . . to make restitution in addition to any other penalty for the commission of a crime . . . if . . . as a direct result of the crime . . . , the victim suffered: (i) actual medical, dental, hospital, counseling, funeral, or burial expenses or losses; (ii) direct out-of-pocket loss; (iii) loss of earnings; or (iv) expenses incurred with rehabilitation[.]” *See Lafontant v. State*, 197 Md. App. 217, 226 (2011).

“Generally, courts may impose restitution as either a condition of probation or as part of a sentence.” *Lafontant v. State*, 197 Md. App. at 226. “However, if a court entering a judgment of restitution to a victim under CP § 11-603 does elect to order a period of probation, ‘compliance with the judgment of restitution . . . shall be a condition of probation . . . in addition to a sentence or disposition’” *Id.* (quoting CP § 11-607(a)(1)(iii)(1)).

CP § 11-603(b) provides that:

A victim is presumed to have a right to restitution under subsection (a) of this section if:

- (1) the victim or the State requests restitution; and
- (2) the court is presented with competent evidence of any item listed in subsection (a) of this section.

Thus, “restitution is in fact a right held by victims and, in a criminal proceeding, can be requested by either the victim or the State.” *Lafontant v. State*, 197 Md. App. at 226.

“An order of restitution entered in a criminal case, even when attached as a condition of probation, is a criminal sanction—part of the punishment for the crime.” *Chaney v. State*, 397 Md. 460, 470 (2007); *accord Carlini v. State*, 215 Md. App. 415, 453 (2013); *Lafontant v. State*, 197 Md. App. at 228. “Because restitution is part of a criminal sentence, as a matter of both Constitutional due process and Maryland criminal procedure, such an order may not be entered unless (1) the defendant is given reasonable notice that restitution is being sought and the amount that is being requested, (2) the defendant is given a fair opportunity to defend against the request, and (3) there is sufficient admissible evidence to support the request—evidence of the amount of a loss or expense incurred for which restitution is allowed and evidence that such loss or expense was a direct result of the defendant’s criminal behavior.” *Chaney v. State*, 397 Md. at 470.

In this case, the court appears to have denied the victim’s request for a restitution hearing in part because he had only some of the documentation to prove his claims. To

the extent that the court based its decision on that ground, it erred. At the restitution hearing itself, a victim must present admissible evidence to support the request—evidence of the amount of a loss or expense incurred for which restitution is allowed and evidence that such loss or expense was a direct result of the defendant’s criminal behavior. *Chaney v. State*, 397 Md. at 470.⁴ A victim, however, need not present any such evidence merely to request a restitution hearing. In fact, when a defendant faces multiple charges, a victim may not know which losses are compensable through restitution (and thus which losses must be proved) until the defendant has been convicted. In the circumstances of this case, Smith had no obligation to present any documentation to invoke his right to a hearing on the issue of restitution.

The court clearly denied the request for a restitution hearing because the State did not join in the request. In doing so, the court erred. Under CP § 11-603(b), either the victim or the State may request restitution. Restitution is “a right held by victims[.]” *Lafontant v. State*, 197 Md. App. at 226. “[T]he victim has a statutory right to request restitution, within the parameters set by law, independent of the State’s right to request it.” *Id.* at 236. Smith, therefore, had the right to request a restitution hearing even if the

⁴ CP § 11-615(a) provides that, “[i]n a restitution hearing held under [CP § 11-603], a written statement or bill for medical, dental, hospital, counseling, funeral, or burial expenses is legally sufficient evidence of the amount, fairness, and reasonableness of the charges and the necessity of the services or materials provided.” Similarly, § 10-917 of the Courts and Judicial Proceedings Article of the Maryland Code (1974, 2020 Repl. Vol.), provides that “[a] written statement of expenses or a bill shall be taken as prima facie evidence at a restitution hearing as provided under § 11-615 of the Criminal Procedure Article.”

State did not join in the request. The State’s refusal to join in the request did not defeat Smith’s right to restitution.

In reasoning that Smith had “acquiesced” in a plea agreement that did not mention restitution, the court may have thought that a victim cannot request restitution once the court has accepted a plea. If so, the court was incorrect. In *Lafontant v. State*, 197 Md. App. at 237, this Court upheld an order of restitution that was imposed after the defendant had entered into a plea agreement that made no mention of restitution. In that case, we held, the defendant “could not reasonably have believed that the terms of the bargain impliedly waived the victim’s right to restitution.” *Id.* at 234. Even if the defendant “might have understood the *State* was impliedly waiving its right to request restitution,” we reasoned that he “should reasonably have understood that the *victim* was not.” *Id.* (emphasis in original). Moreover, when the defendant entered into the plea agreement, he “should reasonably have known that the court could impose a period of probation, and that one of the conditions might be restitution, if requested by the victim.” *Id.* at 236. “Accordingly,” we held that the “[plea] agreement contained neither an express nor an implied waiver of the victim’s right to restitution in a criminal and/or civil proceeding.” *Id.* at 234; accord *Carlini v. State*, 215 Md. App. at 455 (stating that “[t]he failure of a plea agreement to mention restitution by no means implies that there is an agreed-upon sentencing cap that precludes restitution”).

Finally, the court denied the request for a restitution hearing because the victim had a civil remedy for damages. Again, the court erred. The “predominant and traditional purpose” of restitution “is to reimburse the victim for certain kinds of

expenses that he or she incurred as a direct result of the defendant’s criminal activity.” *Chaney v. State*, 397 Md. at 470; *accord Shannon v. State*, 241 Md. App. 233, 247-48 (2019), *aff’d*, 468 Md. 322 (2020). The restitution statute relieves a victim of the burden of finding and engaging an attorney, at the victim’s own expense, to obtain a judgment for specific kinds of economic damages. Furthermore, because any judgment for restitution must be a condition of probation (CP § 11-607(a)(1)(iii)), the defendant’s failure to pay restitution may amount to a violation of probation, which may lead to incarceration or the threat of incarceration. Thus, the restitution statute affords a victim a potential enforcement mechanism that is unavailable for civil judgments. In short, the theoretical availability of a civil remedy is no substitute for the statutory right of restitution.

In summary, Smith invoked his statutory right to restitution before the court imposed a sentence. In those circumstances, the court was obligated to conduct a hearing to determine the amount of restitution, if any, to which Smith was entitled. The court erred in declining to conduct that hearing. Consequently, we vacate the court’s order and remand the case so that the court can conduct the hearing.

**ORDER OF THE CIRCUIT COURT FOR
BALTIMORE COUNTY DENYING THE
MOTION FOR RECONSIDERATION OF
THE DENIAL OF THE REQUEST FOR
RESTITUTION VACATED. COSTS TO
BE PAID ONE-HALF BY LANCE
MEEHAN AND ONE-HALF BY
BALTIMORE COUNTY.**