Circuit Court for Anne Arundel County
Case No. 02-K-00-000025

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1120

September Term, 2024

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CHARLES F. SHILLING

v.

STATE OF MARYLAND, ET AL.

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Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: May 29, 2025

* 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

In 1982, Appellee Allen Glenn Finke ("Finke") was convicted of felony murder of his aunt and sentenced to life in prison. No restitution was requested or awarded at the time Finke was sentenced. Over forty years later, the Circuit Court for Anne Arundel County granted Finke's motion to reopen his previously closed post-conviction proceeding and permitted him to file a belated motion for modification of sentence. Appellant Charles Shilling ("Shilling"), the victim's son, moved for reconsideration of the court's order permitting Finke to seek a sentence modification. At a hearing in April 2024, the circuit court denied Shilling's motion and heard argument on Finke's motion. The court heard victim impact statements from Shilling and others. At the conclusion of the hearing, the court granted Finke's motion and modified his sentence from life in prison to life with all but sixty-five years suspended and five years of supervised probation. Neither Shilling nor the State requested restitution during this hearing.

On May 15, 2024, pursuant to Md. Code, Crim. Pro. ("CP") § 11-103(e)(4)(i), Shilling filed a request seeking restitution arising from the court's newly imposed sentence, or in the alternative, to vacate the ruling modifying Finke's sentence. The request was for $9,850.00 in funeral and burial costs paid by Shilling's now deceased father at the time of his mother's death. The circuit court denied Shilling's request without explanation.

On appeal, Shilling presents one question for our review:

> Whether a trial court can deny a crime victim's documented request for restitution without providing any explanation.

For the reasons explained herein, we shall affirm.

## FACTS AND PROCEDURAL HISTORY

In December 1979, a jury found Finke guilty of felony murder and sentenced him to life in prison. He appealed the conviction, and this Court reversed and remanded the case for a new trial in 1981. In 1982, Finke was again found guilty of felony murder and again sentenced to life in prison. This conviction was affirmed by this Court on appeal. Finke subsequently pursued several avenues of relief including a 1999 post-conviction petition, a 2003 motion for reconsideration of sentence, and a 2023 motion to be evaluated for drug and alcohol dependency, all of which were denied. In October 2023, Finke filed a motion requesting that the court re-open his post-conviction proceeding, permit him to file a belated motion for modification of his sentence, and conduct a hearing. The State joined this motion, which it agreed was "in the interest of justice." The motion was granted, and Finke filed his motion for modification of sentence in January 2024. In April 2024, Shilling filed a motion for reconsideration of the circuit court's order allowing Finke to file a belated motion for modification of sentence. The State also filed a written opposition to Finke's motion to modify his sentence.

On April 15, 2024, the circuit court held a hearing on both motions. Shilling was represented by counsel from the Maryland Crime Victims Resource Center. After hearing from Finke's counsel, Shilling's counsel, and the State, the court denied Shilling's motion for reconsideration of Finke's motion to modify his sentence and proceeded to hear arguments on that modification request. During the hearing, the court heard victim impact statements from Shilling, his wife, and their two sons. Both Shilling and his wife observed that this hearing was the thirty-second proceeding that had been held since Finke was first

arrested in 1979. In their statements, they emphasized the emotional toll Shilling's mother's murder had taken on the entire family over the course of the preceding forty-five years and expressed dismay that Finke had not fully admitted his role in the murder. No request for restitution was made during these statements.

After hearing from Finke and his witnesses, the court asked the State what conditions of probation it would seek if Finke's sentence was modified. The State replied that it would request a psychological evaluation, a drug evaluation, and all applicable treatment recommendations. The State also requested that Finke have no contact with the Shilling family and that he participate in a support group or program designed to assist him with re-entry. The State concluded its remarks by commenting,

> Beyond that I think we would only then be, obviously we would ask for the full five years of probation. And I think after that it would simply just be the regular conditions, unless, I'm not seeing anybody raising their hand and saying I'm forgetting something specific. Those would be the conditions I think we would ask for at this point.

Nothing further was requested by Shilling, his attorney, or his family.

At the close of the hearing, the court modified Finke's sentence from life in prison to life with all but sixty-five years suspended and five years of supervised probation. In addition to the standard conditions of probation, the court ordered that Finke undergo psychological and substance use evaluation and follow all recommended treatment plans, that he have no contact with the Shilling family, and that he participate in an outside support group. He was also ordered not to use drugs or alcohol for the duration of his probation.

Thirty days following the court's ruling, on May 15, 2024, Shilling filed a written request for restitution pursuant to CP § 11-103(e)(4)(i). The request asked that payment of $9,850.20, to cover the funeral and burial expense paid by Shilling's father, be included as a condition of probation pursuant to CP § 11-607(a)(1)(iii)(2). Shilling included financial statements to verify the amount requested. Shilling did not allege in this filing that the circuit court had failed to consider his right to restitution at the modification hearing, but rather asserted without qualification that CP § 11-103(e)(4)(i) allowed him to move for an order of restitution within thirty days of Finke's amended commitment order. On July 8, 2024, the circuit court denied Shilling's requests without stating its reasons. This appeal followed.[1]

## DISCUSSION

### I. The circuit court did not err by denying Shilling's request for restitution without explanation because the request was not timely filed.

The State of Maryland provides broad rights to crime victims. Article 47 of the Maryland Declaration of Rights guarantees that a "victim of crime shall be treated by agents of the State with dignity, respect, and sensitivity during all phases of the criminal justice process." Md. Decl. of Rights, Art. 47. Among these rights is the right to request restitution in a criminal proceeding when, as a result of the criminal act, the victim suffers

[1] On appeal, the State independently filed a brief asserting arguments in alignment with the arguments presented by Shilling. Finke filed a motion to strike the State's brief, or in the alternative, to treat the State as an Amicus Curiae. The State also filed a motion requesting time to present oral arguments. We permitted the State to split argument time with Shilling. The State concedes that its position in this and similar cases related to victim's rights is not entirely clear. For the purposes of this case, we treat the State as an Amicus Curiae.

certain expenses or losses. CP § 11-603(a)(1)-(6). Because "restitution is part of a criminal sentence," a victim's right to restitution is not automatic and must be balanced with a defendant's due process rights. *Chaney v. State*, 397 Md. 460, 470 (2007). To do so, before a court can enter an order of restitution, the defendant must be given "reasonable notice that restitution is being sought and the amount that is being requested, . . . a fair opportunity to defend against the request," and the victim must supply "sufficient admissible evidence to support the request." *Id.* For this reason, a victim does not have a presumptive right to receive restitution until either the victim or the State requests it, and the court is presented with competent evidence in support of the request. CP § 11-603(b). When this is done, the defendant has the "[b]urden or proving that restitution is not fair and reasonable." CP § 11-615(b). Finally, CP § 11-605(b) requires that a "court that refuses to order restitution that is requested under Part I of this subtitle [CP §§ 11-601-11-620] shall state on the record the reasons." CP §11-605(b).

Section 11-103 of the Criminal Procedure article codifies a victim's statutory rights to file leave to appeal or seek relief when a court denies or fails to consider certain rights, including the right to restitution. Specifically, CP § 11-103(e)(4)(i) provides that a "victim who alleges the victim's right to restitution under § 11-603 of this title was not considered or was improperly denied may file a motion requesting relief within 30 days of the denial or alleged failure to consider." It further provides that "if the court finds that the victim's right to restitution under § 11-603 of this title was not considered or was improperly denied, the court may enter judgment of restitution." CP § 11-103(e)(4)(ii).

**A. Shilling did not make a timely request for restitution pursuant to CP § 11-103(e)(4)(i) because the issue was neither raised before nor decided by the circuit court at the time of Finke's sentence modification.**

At the heart of this appeal is Shilling's underlying assertion that he was empowered by CP § 11-103(e)(4)(i) to make an initial request for restitution within thirty days of Finke's sentence modification. In furtherance of this argument, Shilling appears to be making two independent -- but somewhat intersecting -- arguments. The first is that a crime victim has thirty days from the time of sentencing to request that the court enter an order of restitution as part of the sentence or as a condition of probation regardless of whether the question of restitution was raised during sentencing. This was the basis for Shilling's CP § 11-103(e)(4)(i) motion, in which he moved "within 30 days of the April 15, 2024 amended commitment order, as allowed by CP § 11-103(e)(4)(i), for an order of restitution[.]"

Shilling's second argument -- raised for the first time in his reply brief -- is that a CP § 11-103(e)(4)(i) motion is proper "when there is a victim 'who alleges that the victim's right to restitution was not considered or was improperly denied.'" CP § 11-103(e)(4)(i). The applicability of this motion is not, Shilling argues, dependant on the victim making a prior request for restitution at the time of sentencing. Although not explicitly stated, implicit in this argument is the contention that the lack of discussion regarding restitution by the circuit court during the modification hearing constituted a failure to consider Shilling's right to restitution, thereby justifying his CP § 11-103(e)(4)(i) motion.

Finke counters, contending that before a victim can avail himself of CP § 11-103(e)(4)(i), an initial request for restitution must be made at or before the time

of sentencing. Finke further argues that a court cannot fail to consider a victim's right to restitution when no request was before it. We agree with Finke that CP § 11-103(e)(4)(i) cannot be used to make an initial request for restitution absent an alleged failure to consider or improper denial of the victim's right to restitution, a circumstance that cannot exist when no request for restitution was previously made at sentencing. Here, because no request was made and no failure to consider occurred, Shilling's initial restitution request made pursuant to CP § 11-103(e)(4)(i) was untimely.

In arguing that a victim may request restitution for the first time within thirty days of any sentencing proceeding, Shilling relies on *Lafontant v. State*, 197 Md. App. 217 (2011) and its progeny for the proposition that Finke should have reasonably known that the court could impose restitution as a condition of his probation. Therefore, Shilling argues, Finke had no reasonable expectation of finality in his sentence until the thirty-day period afforded in CP § 11-103(e)(4)(i) had run, and altering the conditions of his probation to add restitution was permissible during that time. In our view, Shilling's reliance on these cases is misplaced.

In *Lafontant*, the State entered into a plea agreement with the defendant that "did not expressly require" restitution. *Lafontant*, 197 Md. App. at 233. When the victim presented a restitution request for the first time during sentencing and this request was granted by the court, the defendant argued on appeal that such an award violated the plea agreement. *Id.* at 225-26. This Court held that no such violation occurred. *Id.* at 237. First, the plea agreement, in which the State agreed to request no more than four years of active incarceration, "was not for a specific sentence," or "even for a recommendation of a

specific sentence." *Id.* at 234. More importantly, because "probation must be attached to a suspended sentence," the defendant in *Lafontant* "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 234-36. The defendant, therefore, could not reasonably presume at the time of the plea agreement that restitution was no longer possible.

The same was true in *Lindsay v. State*, 218 Md. App. 512, 517 (2014), *rev'd on other grounds sub nom. Griffin v. Lindsay*, 444 Md. 278 (2015), when the State entered into a plea agreement with the defendant that did not mention restitution. When the victim requested restitution for the first time at sentencing, the court denied it on the grounds that it would violate the terms of the plea agreement. *Lindsay*, 218 Md. App. at 517. Thirty days later, the victim filed a motion pursuant to CP § 11-103(e)(2) alleging that his right to restitution had been denied.[2] *Id.* The request was again denied because it violated the defendant's plea agreement and because adding restitution would be an impermissible increase in sentence. *Id.* This Court held that in enacting CP § 11-103(e)(2), "the legislature plainly intended to extend beyond the date of sentencing the time in which a court may award restitution." *Id.* at 543. We explained that CP § 11-103(e)(2) "expressly authorizes the court to enter a judgment of restitution on a timely motion for reconsideration if it finds that the restitution request was not considered or was denied." *Id.* We, therefore, held that,

[2] At the time *Lindsay* was decided, the language in CP §11-103(e)(4)(i) was codified in CP § 11-103(e)(2)(i).

> when a crime victim requests restitution but the request is not granted or is not considered, a criminal defendant cannot have a reasonable expectation of finality in a sentence that does not include restitution until the 30-day period in which to seek reconsideration has expired. Until that 30-day period has run, a sentence that does not include restitution, when a request for restitution was made, lacks the type of "finality" accorded constitutional significance and may be revised upon a timely motion for reconsideration under section 11-103(e)(2), to add a requirement to pay restitution.

*Id.* at 548-49.

Finally, in *Antoine v. State*, 245 Md. App. 521 (2020), this court applied the same logic to a case in which a court violated a victim's right to make an impact statement before sentencing and have that statement considered in determining the appropriate sentence. There, we vacated and remanded the case after the court entered probation before judgment subject to a plea agreement without hearing from the victim. *Antoine*, 245 Md. at 531. Importantly, the victim in *Antoine* had provided sufficient notice to invoke his right to present a victim impact statement before sentencing, and this "notice triggered [the] court's duty to 'ensure that the victim [was] in fact afforded the rights provided to victims by law.'" *Id.* at 545. It was only due to a mistake by the prosecutor that the victim was instructed not to attend the hearing at which the plea agreement was negotiated. *Id*. at 534-35. Again, we held that because the defendant was charged with knowledge of the victim's rights statutes and their appeal provisions, vacating the defendant's "sentence and plea agreement to remedy the violation of [the victim's] rights" was constitutionally permissible. *Id.* at 561.

Here, the facts of this case are distinguishable from the foregoing cases. First, because Shilling failed to raise the issue of restitution during the sentence modification hearing, Finke was not properly put on notice that restitution may be ordered as a condition of his probation. Unlike *Lafonant* and *Lindsay*, in which restitution was requested and denied before sentencing, here, Shilling made no request at all until thirty days after Finke's modified sentence was entered. Therefore, Finke had no reason to believe the terms of his probation would later be altered. As we explained in *Lindsay*, "a sentence that does not include restitution, *when a request for restitution was made*, lacks the type of 'finality' accorded constitutional significance and may be revised upon a timely motion for reconsideration under section 11-103(e)(2)." *Lindsay*, 218 Md. App. at 548 (emphasis added). In our view, this is an important distinction. In the cases cited by Shilling, the victims had asserted a right, before a final sentence was entered, that was subsequently denied or not considered. It was, therefore, incumbent upon the defendants to know and understand the potential remedies available to these victims that may result in an adjustment of their sentences or the terms of their probation. Here, because Shilling was entirely silent as to his desire for restitution while the court discussed and ordered the terms of his probation, Finke reasonably believed that these terms were final.

We do not hold, as Finke suggests, that victims must, in every instance, make a restitution request before or at the time of sentencing to avail themselves of relief pursuant to CP § 11-103(e)(4)(i). We can contemplate situations similar to *Antoine*, in which a victim who has otherwise given notice of his intent to participate in the proceedings is not afforded an opportunity to request restitution before sentencing either because he is not

present or because he has not properly been informed of his rights. In fact, Shilling offers his own example of when such a motion may be appropriate, explaining that "[i]f a request for restitution was overlooked by the prosecutor and an unrepresented victim only asks about why it was not ordered shortly after sentencing, restitution may be sought for the first time within 30 days after sentencing." We agree that in such a circumstance, a CP § 11-103(e)(4)(i) motion for reconsideration may be appropriate even absent an initial request at sentencing.

In this case, Shilling was present at the modification hearing and was represented by counsel from the Maryland Crime Victim's Resource Center, an organization that specializes in serving the interests of crime victims. Although the record is silent on the issue, Shilling has not asserted that he was unaware of his right to request restitution at sentencing and there is no reason to believe that he was uninformed. At no time during the hearing, however, did Shilling or his counsel raise the issue of restitution, including at the time when the court was discussing the terms of Finke's probation. Indeed, after the State detailed the conditions it recommended that the court impose, the Assistant State's Attorney seemingly scanned the room and said, "I'm not seeing anybody raising their hand and saying I'm forgetting something specific." Still, Shilling remained silent. Under these circumstances, there was no reason for Finke or the court to be on notice that the victim was interested in seeking restitution at the time of the entry of Finke's probation conditions. To alter those conditions pursuant to a novel request for restitution thirty days after resentencing would violate Finke's right to reasonable notice of and a fair opportunity to be heard regarding restitution.

We find Shilling's second argument even less persuasive. Section 11-103(e)(4)(i) permits a victim to seek relief when the court fails to consider a victim's right to restitution. A presumptive right to restitution does not attach until a victim or the State requests restitution and provides sufficient evidence in support of that request. CP § 11-603(b). Here, Shilling himself asserts on appeal that this presumption attached when he filed his CP § 11-103(e)(4)(i) request. As a request for relief, however, a CP § 11-103(e)(4)(i) request cannot be "treated the same as the action that caused the judgment subject to reconsideration." *Lindsay*, 444 Md. at 289. In other words, because the court was given no notice that the victim wished to request restitution and no actual request was made during the hearing, no presumptive right to restitution was triggered at the time of Finke's resentencing. The court, therefore, was not required to consider a right to restitution that had not yet been established and that was never before it. Absent such a failure to consider Shilling's statutory right to restitution -- a failure that was not alleged by Shilling in his motion -- relief was not available pursuant to § 11-103(e)(4)(i).

**B. Shilling was not required to present evidence in support of a restitution request during the sentence modification hearing.**

Shilling argues on appeal that his delay in making his initial request for restitution was proper because he had no reason prior to the April 15, 2024 hearing to review the decades-old bills relating to his mother's funeral and burial. For this reason, Shilling argues that it would have been premature to incur the trauma associated with this effort before he knew whether the court would entertain Finke's request for modification of sentence. We are empathetic to this circumstance, and we agree with Shilling that there

was no need for him to arrive at the April 14, 2024 hearing with documentation to support a request for restitution. This fact, however, does not relieve him of the obligation to raise the issue of restitution at that time.

As this Court explained in *Lindsay*, because restitution "may be ordered as part of a criminal defendant's sentence or made a condition of a term of probation, the ruling on a request for restitution is ordinarily made at the time of sentencing." *Lindsay*, 218 Md. App. at 542-43. It is not unheard of, however, for a ruling on a restitution request to occur at a subsequent restitution hearing at which the victim presents evidence to support the request. In *Goff v. State*, 387 Md. 327, 333 (2005), for example, during an assault, the defendant caused damage to the victim's shower. At sentencing, the State asked for restitution for the shower, but did not have the specific amount available. *Id.* At the close of the hearing, the court ordered the defendant to "pay restitution in an amount to be determined," and gave the State thirty days to submit restitution figures. *Id.* The court specified that if the amount was disputed, they would hold a hearing. *Id.* In this way, although the specific order was not made during sentencing, the defendant was properly on notice that restitution could be a condition of his probation, and he was afforded the opportunity to dispute the amount ordered at a future hearing. Here, the same course of action would have been appropriate.

### C. Even if Shilling's restitution request was timely filed, the circuit court was under no statutory obligation to state its reasons for denying the motion on the record.

Shilling's primary contention on appeal is that the circuit court erred by denying his request for restitution under CP § 11-103(e)(4)(i) without stating its reasons for doing so

on the record. Section 11-605 provides that a court is not required to "issue a judgment of restitution under Part I of this subtitle if the court finds that . . . the restitution obligor does not have the ability to pay the judgment of restitution," or if "there are extenuating circumstances that make a judgment of restitution inappropriate." CP § 11-605(a). The section also requires that a "court that refuses to order restitution that is requested under Part I of this subtitle shall state on the record the reasons." CP § 11-605(b). In other words, CP § 11-605(a) only implicates requests made pursuant to CP §§ 11-601 through 11-620, not those made pursuant to CP § 11-103(e)(4)(i), which falls within a different subtitle. Here, even assuming arguendo that Shilling's request for restitution was properly made pursuant to CP § 11-103(e)(4)(i), the court was under no obligation to state its reasons for denying the request, and therefore did not err by declining to do so.

## CONCLUSION

For the foregoing reasons, we hold that a crime victim who was present at sentencing, informed of his right to request restitution, and represented by counsel must raise the issue of restitution at the sentencing hearing before availing himself of any relief available pursuant to CP § 11-103(e)(4)(i). We further hold that under these conditions, a circuit court does not fail to consider a victim's right to restitution when no request for restitution was before it at the time of sentencing. Finally, we hold that a circuit court is not required by CP § 11-605(b) to state on the record its reasons for denying a victim's motion for relief pursuant to CP § 11-103(e)(4)(i). We, therefore, affirm the circuit court's denial of Shilling's motion for restitution.

**JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**