

Circuit Court for Baltimore County
Case No. 3K16001755

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1689

September Term, 2016

PHILIP PAUL INGRAM, JR.

v.

STATE OF MARYLAND

Woodward C.J.,
Friedman,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned)

JJ.

PER CURIAM

Filed: December 11, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant, Philip Paul Ingram, Jr. was charged with theft scheme of \$10,000 to under \$100,000. On August 17, 2016, pursuant to a plea agreement, the State amended the charge to theft \$1,000 to under \$10,000 and appellant pled guilty to that offense. The theft scheme count was nol prossed. That same day, the court sentenced appellant to 10 years imprisonment, all but 18 months suspended, to be followed by 3 years of supervised probation. As a condition of probation, the court ordered appellant to pay BJs Wholesale Club restitution in the amount of \$18,964.55.¹ He appeals from the court’s restitution order on the grounds that “neither the victim nor the State requested restitution.”² We affirm.

Appellant argues that pursuant to Md. Code, Crim. Proc. Art. § 11-603, a court may “enter a judgment of restitution for a victim whose property was stolen or damaged,” if “‘the victim or the State requests restitution’ and ‘the court is presented with competent evidence’ in support of that request.” Appellant alleges that in exchange for his plea, the State agreed to “submit on the Defendant’s record and victim impact,” and did not request restitution.

The State responds that appellant’s claim fails “because his restitution was not ordered pursuant to the discretionary language of CP § 11-603, but rather was a mandatory

¹ Appellant had stolen \$18,964 worth of tires from his employer, BJ Wholesale Club. None of the stolen tires were recovered.

² This was appellant’s sole contention in his initial brief. Appellant subsequently filed a reply to the State’s brief, where he argues **FOR THE FIRST TIME** that even if the trial court was permitted to order restitution where neither the State nor the victim requested restitution, it was error for the court to order restitution in excess of \$9,999 as he pled guilty and was convicted of theft of at least \$1,000 but less than \$10,000. We decline to address this argument as appellant failed to raise it in his initial brief. *See Anderson v. Burson*, 196 Md. App. 457 (2010).

component of his sentence for theft.” The State argues that the penalty provision of § 7-104 of the Criminal Law Article, under which appellant was convicted, “does not permit the court the discretion to omit restitution from the sentence of a person convicted of theft.”

While a review of the transcript confirms that there was no discussion on the record regarding restitution, we agree with the State that the trial court properly awarded restitution in this matter. We review the “circuit court’s restitution order for an abuse of discretion.” *McCrimmon v. State*, 225 Md. App. 301, 306 (2015) (citations omitted). “[I]f an order of restitution is illegal in any respect,” however, “we review it as a matter of law.” *Id.* Appellant pled guilty of theft in violation of § 7-104. The penalty section of the statute provides:

- (g)(1) A person convicted of theft of property or services with a value of:
 - (i) at least \$1,000 but less than \$10,000 is guilty of a felony and:
 - 1. is subject to imprisonment not exceeding 5 years or a fine not exceeding \$10,000 or both; and
 - 2. *shall restore the property taken to the owner or pay the owner the value of the property or services;*

Md. Code Ann., Criminal Law § 7-104(g)(1) (emphasis added). This section “expressly directs that restitution shall be made to the theft victims.” *Carlini v. State*, 215 Md. App. 415, 455 (2013). As a result, the payment of restitution is required “as a matter of law.” *Id.*

In *Carlini*, the defendant pled guilty to felony theft scheme and when the plea agreement was placed on the record, the State did not request restitution. In determining whether the defendant should have, nonetheless, anticipated the entry of a restitution order, we noted the following:

The appellant’s crime was no crime of violence with the possibility of property damage as an incidental collateral consequence. This crime was all about money...The only way this appellant could have hoped to catch any sort of a break would have been by a commitment to make at least partial restitution to his victims. From the first word to the last word of plea negotiations, restitution was the elephant standing in the middle of the room. It was the *raison d’être* for even talking. For the appellant to pretend that he was blind to the elephant standing in front of him is surrealistic and his feigned surprise three and one-half years later is disingenuous in the extreme.

215 Md. App. at 456.

While the amount stolen in *Carlini* was considerably more than in the present case, appellant’s theft of nearly \$19,000, as proffered by the State in support of the plea, is not an insignificant amount. We held in *Carlini* that a “plea agreement that necessarily includes the possibility or probability of probation need not expressly spell out each and every standard condition of probation.” 215 Md. App. at 454. Further, the “failure of a plea agreement to mention restitution by no means implies that there is an agreed-upon sentencing cap that precludes restitution.” *Id.* at 455.

In the present case, the plea agreement left the court free to impose up to the maximum penalty of ten years of incarceration. At sentencing defense counsel asked the court to impose a split sentence so that appellant could be supervised on probation. Clearly appellant was aware that the court’s sentence included the probability of probation. He was also made aware by the theft statute itself that restitution was mandated, because he was unable to “restore the property” that was taken. As a result, the order of restitution was not in error.

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