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ADVANCE SHEET HEADNOTE
November 8, 2021

2021 CO 75

No. 20SC340, *People v. Weeks* – Restitution – § 18-1.3-603, C.R.S. (2021) – Statutory Interpretation – Procedural Deadlines – “Good Cause” to Extend Trial Court’s Deadline – “Extenuating Circumstances” to Extend Prosecution’s Deadline.

Today the supreme court interprets the restitution statute, section 18-1.3-603, C.R.S. (2021).

The supreme court concludes that the deadline in subsection (1)(b) refers to the trial court’s determination of the restitution amount the defendant must pay, not to the prosecution’s determination of the proposed amount of restitution. This deadline may be extended only if, before the deadline expires, the court expressly finds good cause for doing so.

The prosecution is subject to a statutory deadline as well. Under subsection (2), it must file the “information” in support of a motion for restitution – i.e., the amount of the proposed restitution – before the judgment of conviction or, if that information isn’t yet available, no later than ninety-one days

after the judgment of conviction. The court may extend this deadline only if, before the deadline expires, it expressly finds that there are extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution.

It follows that neither a request for more time to determine the proposed amount of restitution nor an order granting such a request justifies extending the prosecution's deadline in subsection (2) or the court's deadline in subsection (1)(b). Rather, each deadline requires an express finding – one relating to extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution and the other relating to good cause for extending the court's deadline to determine the amount of restitution the defendant must pay. It also follows that neither a belated request for more time to determine the proposed amount of restitution nor an order granting such a request may act as a defibrillator to resuscitate an expired deadline.

At a sentencing hearing, a trial court must be mindful that it has to enter one or more of the four types of restitution orders listed in subsection (1). Reserving the issue of restitution in its entirety until a later date isn't one of them. Nowhere does the restitution statute permit the prosecution to ask that the issue of restitution (not just the amount of restitution) remain open for any period of time after the judgment of conviction enters. Nor does any part of subsection (1)

authorize the court to address the issue of restitution in a judgment of conviction by entering an order deferring that issue in its entirety. Subsection (1)(b) allows the court to shelve the determination of the *amount* of restitution after entering a preliminary order requiring restitution.

In this case, the trial court determined the amount of restitution almost a year after the judgment of conviction and long after the ninety-one-day deadline in subsection (1)(b) expired. And it did so without making an express and timely finding of good cause for extending that deadline. Neither the prosecutor's request to have the issue of restitution (in its entirety) remain open for ninety-one days nor the court's decision to grant that request could justify extending the court's deadline to determine the amount of restitution under subsection (1)(b). Accordingly, the court of appeals correctly concluded that by the time the trial court ordered the defendant to pay restitution, it lacked authority to do so.

Because the court of appeals read section 18-1.3-603 in general harmony with the supreme court's interpretation, the judgment is affirmed. The matter is remanded for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2021 CO 75

Supreme Court Case No. 20SC340
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 19CA255

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Benjamin Weeks.

Judgment Affirmed

en banc

November 8, 2021

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JUSTICE SAMOUR delivered the Opinion of the Court.
JUSTICE BERKENKOTTER does not participate.

¶1 Old habits die hard. That certainly seems to be the case when it comes to the manner in which restitution motions are generally submitted and resolved.

Over time, the practice that has evolved goes something like this:

On the day of the sentencing hearing, the prosecution informs the court that it has not yet filed a motion for restitution and that it would like to reserve the issue for ninety-one days. Without objection from the defense, the court grants the request and reserves restitution for ninety-one days. The court then provides that, if the prosecution files a timely motion for restitution, the defense may file an objection and ask for an evidentiary hearing. After the sentencing hearing, the mittimus simply reflects that restitution has been reserved for ninety-one days.

¶2 This longstanding practice was followed here. The problem is that it doesn't comport with the current restitution statute, section 18-1.3-603, C.R.S. (2021). In fairness to our colleagues litigating and presiding over criminal cases, section 18-1.3-603 is not a paragon of clarity. It comes as no surprise, then, that divisions of the court of appeals have interpreted the statute differently.¹ Today we strive to provide guidance in this area of the law.

¹ Compare *People v. Weeks*, 2020 COA 44, ¶¶ 12–13, 490 P.3d 672, 675, with *People v. Perez*, 2020 COA 83, ¶¶ 30–37, 490 P.3d 768, 773–75.

¶3 Save for a very narrow exception not applicable here, section 18-1.3-603(1) requires that *all* judgments of conviction contain an order regarding restitution.² Section 18-1.3-603(1) sets forth four options – and only four options – related to the types of restitution orders trial courts may enter: (a) an order requiring a specific amount of restitution; (b) an order requiring restitution but indicating that the specific amount will be determined within either ninety-one days of the judgment of conviction or, upon a showing of good cause, an extension of that time period; (c) an order, in addition to or in lieu of a specific amount of restitution, requiring payment of the actual costs of a victim’s specific future treatment; and (d) an order finding that there is no restitution because no victim suffered a pecuniary loss. Every judgment of conviction must include one or more of these four types of restitution orders. § 18-1.3-603(1).

¶4 Under subsection (1)(b), the court enters a preliminary order requiring the defendant to pay restitution but notes that the specific amount will be determined later. § 18-1.3-603(1)(b). Subsection (1)(b) contains a deadline: The amount of

² A judgment of conviction consists of “a recital of the plea, the verdict or findings, the sentence, the finding of the amount of presentence confinement, and costs, if any . . . , the finding of the amount of earned time credit,” if any, “an order or finding regarding restitution as required by section 18-1.3-603, . . . and a statement that the defendant is required to register as a sex offender, if applicable.” Crim. P. 32(b)(3)(I).

restitution must be determined within ninety-one days of the judgment of conviction unless good cause exists for extending that time period.

¶5 We now conclude that the deadline in subsection (1)(b) refers to the court's determination of the restitution amount the defendant must pay, not to the prosecution's determination of the proposed amount of restitution. We further conclude that this deadline may be extended only if, before the deadline expires, the court expressly finds good cause for doing so.

¶6 The prosecution is subject to a statutory deadline as well. Under subsection (2), it must file the "information" in support of a motion for restitution—i.e., "the amount" of the proposed restitution—before the judgment of conviction or, if that information isn't yet available, no later than ninety-one days after the judgment of conviction. § 18-1.3-603(2).³ We now conclude that the court may extend this deadline only if, before the deadline expires, it expressly finds that there are extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution.

³ Under subsection (2), the "information" in support of a motion for restitution also includes "the identities of the victims." § 18-1.3-603(2). We refer only to the proposed amount of restitution in this opinion for two reasons: (1) the identities of the victims have no relevance to the issues before us; and (2) to determine the proposed amount of restitution, the prosecution must necessarily determine the identities of the victims allegedly entitled to restitution.

¶7 It follows that neither a request for more time to determine the proposed amount of restitution nor an order granting such a request justifies extending the prosecution's deadline in subsection (2) or the court's deadline in subsection (1)(b). Rather, each deadline requires an express finding – one relating to extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution and the other relating to good cause for extending the court's deadline to determine the amount of restitution the defendant must pay.⁴ It also follows that neither a belated request for more time to determine the proposed amount of restitution nor an order granting such a request may act as a defibrillator to resuscitate an expired deadline.

¶8 Ideally, a request for an extension of the prosecution's deadline should be made and resolved before or during the sentencing hearing.⁵ And, if the court needs to extend its own deadline (including as a result of extending the

⁴ In requiring an express finding of extenuating circumstances to extend the prosecution's deadline and an express finding of good cause to extend the court's deadline, we don't mean to suggest that talismanic incantations are necessary. In both instances, substance controls over form.

⁵ Unless we indicate otherwise, when we refer to a sentencing hearing in this opinion, we mean a hearing at which the court actually sentences the defendant. Neither deadline in section 18-1.3-603 is triggered absent imposition of the sentence because the sentence is a critical component of the judgment of conviction. *See* Crim. P. 32(b)(3)(I).

prosecution's deadline or because it anticipates briefing, a hearing, or both to resolve a motion for restitution), it should ideally make a finding of good cause no later than the sentencing hearing. Following the sentencing hearing, the prosecution may still request and receive an extension of its deadline and the court may still extend its own deadline, but the court must be mindful that it has to enter one or more of the four types of restitution orders listed in subsection (1) at the sentencing hearing. Nowhere does section 18-1.3-603 permit the prosecution to request or the court to order that the issue of restitution (not just the amount of restitution) remain open for any period of time after the judgment of conviction enters. Thus, at a sentencing hearing, the trial court judge should be prepared to put in place a plan that enforces the prosecution's deadline in subsection (2) and adheres to the court's deadline in subsection (1)(b).

¶9 Lastly, when the court enters a preliminary restitution order pursuant to subsection (1)(b) at a sentencing hearing, the mittimus should reflect that restitution has been ordered but that the amount will be determined later (either within ninety-one days or within whatever expanded timeframe the court has established based on a finding of good cause). Then, when the court subsequently determines the amount of restitution (assuming it does so in a timely fashion), the mittimus should be updated accordingly. Of course, if the prosecution fails to timely submit the proposed amount of restitution or if the court ultimately orders

no restitution (including after considering the merits of the restitution motion), the mittimus should be updated to reflect that no restitution is required.

¶10 The court of appeals in this case read section 18-1.3-603 in general harmony with our interpretation. Accordingly, we affirm its judgment and remand for further proceedings consistent with this opinion. On remand, the division should return the case to the trial court with instructions to amend the mittimus to reflect that no restitution is required.

I. Facts and Procedural History

¶11 Benjamin Weeks robbed a convenience store with a deadly weapon. A jury of his peers found him guilty of two counts of aggravated robbery and two counts of felony menacing. At his sentencing hearing, which was held approximately a month later, the prosecutor asked that the issue of restitution “remain open.” Notably, the prosecutor informed the court that he’d determined he would be seeking restitution but hadn’t filed a motion yet. He promised to follow up with a written motion within ninety-one days.⁶ Defense counsel indicated that he would address restitution “when there’s a motion filed.” The court granted the

⁶ At the time of the sentencing hearing, the court had already granted the prosecution’s motion for restitution in the codefendant’s case.

prosecutor's request, reserved the issue of restitution for ninety-one days, and set a briefing schedule:

I will leave restitution open for ninety-one days. If a motion is filed, any response should be filed within twenty-eight days and any reply within seven. If anyone wants a hearing, the request needs to be made in the pleadings. If no request is made, I'll rule on the pleadings.

¶12 Nine days later, the prosecutor filed a motion requesting that the court enter an "interim amount" of restitution of \$524.19—the amount stolen during the robbery (\$506.54) plus prejudgment interest (\$17.65). The prosecutor informed the court that he was still investigating whether there were grounds to seek additional restitution.

¶13 Twenty-three days later, Weeks filed a response in which he argued that the convenience store's losses were limited to the \$506.54 taken during the robbery and that restitution should not remain an open issue indefinitely. Neither party requested a hearing, and the court did not immediately act on the matter.

¶14 A little over eight months after the sentencing hearing, Weeks filed a motion seeking a hearing on the issue of restitution. The court granted the request and held a hearing two months later. At that hearing, the prosecutor informed the court that he was seeking restitution in the amount of \$524.19. Weeks countered that the court no longer had authority to require him to pay restitution because the ninety-one-day deadline in subsection (1)(b) had expired. The court took the matter under advisement.

¶15 Nearly a year after the sentencing hearing, the court issued an order granting the prosecutor's motion for \$524.19 in restitution. In a separate order, the court rejected Weeks's contention that it had lost authority to require him to pay restitution. It's this order that serves as the centerpiece of the proceedings before us.

¶16 The trial court sensed "some tension" between the deadline in subsection (2), which it understood as requiring the prosecution to submit a restitution motion no later than ninety-one days after the judgment of conviction, and the deadline in subsection (1)(b), which it understood as requiring a resolution of any restitution motion within ninety-one days of the judgment of conviction. Having both deadlines expire on the same day, reasoned the court, would "deprive a defendant of any opportunity to respond" to a motion, "deprive both parties of any opportunity to request a hearing," and "deprive the court of any ability to consider" the merits of a motion "beyond the moments" between its filing "and the end of the day." The court explained that, consistent with subsection (2), it had given the prosecution ninety-one days to file a motion for restitution. But, added the court, it had also given Weeks time to file a response, the prosecution time to file a reply, and both parties time to request a hearing. Thus, all in all, the court figured it had allowed itself "more than ninety-one days" to determine restitution.

¶17 Notably, the court recognized that subsection (1)(b) permits an extension of the court’s ninety-one-day deadline upon a finding of good cause. Although the court acknowledged it had made no finding of good cause prior to the expiration of this deadline, it found that the “briefing and hearing procedure created at the time of sentencing” had “implicitly established good cause for restitution to be determined beyond the ninety-one-day period.”

¶18 Weeks appealed, and a split division of the court of appeals vacated the trial court’s restitution order. The division disagreed with the People’s suggestion that the ninety-one-day deadline for determining restitution in subsection (1)(b) refers to their obligation to determine the proposed amount of restitution. *People v. Weeks*, 2020 COA 44, ¶¶ 12–13, 490 P.3d 672, 675. Instead, concluded the division, that deadline “refers to the district court’s obligation to order a specific amount of restitution within ninety-one days, unless good cause exists to extend [it].” *Id.* at ¶ 13, 490 P.3d at 675.

¶19 The division observed that there are two deadlines governing two “distinct obligations” in section 18-1.3-603: one, under subsection (2), relating to the prosecution’s obligation to submit the proposed amount of restitution, and the other, under subsection (1)(b), relating to the court’s obligation to determine the amount of restitution. *Id.* at ¶¶ 14–15, 490 P.3d at 675 (relying on *People v. Harman*, 97 P.3d 290, 294 (Colo. App. 2004)). And, correspondingly, the division viewed

the statute as containing two different standards to extend those deadlines: extenuating circumstances for the prosecution's deadline and good cause for the court's deadline. *Id.* at ¶ 15, 490 P.3d at 675. The division continued that, "if the prosecution needs the full ninety-one days (or more) to complete its request for restitution under section 18-1.3-603(2), that in itself could constitute 'good cause' for the trial court to extend its restitution ruling beyond the ninety-one-day deadline under section 18-1.3-603(1)(b)." *Id.* at ¶ 20, 490 P.3d at 676.

¶20 Because the trial court neither determined the restitution amount within ninety-one days of the judgment of conviction nor found good cause to extend that deadline, the division held that the trial court lacked authority to enter the restitution order. *Id.* at ¶¶ 23-28, 490 P.3d at 676-77. The division further noted that the record did not show "what good cause, if any, existed for [the] inordinate delay" between the sentencing hearing and the restitution order. *Id.* at ¶ 27, 490 P.3d at 677. And the division was unwilling to "infer the existence of good cause in the absence of such an explanation." *Id.*

¶21 Judge Berger dissented. In his view, "when a court extends the time for the prosecutor to seek restitution" under subsection (2), "that extension implicitly constitutes good cause for the trial court to decide the motion outside of the

prescribed ninety-one-day period” under subsection (1)(b).⁷ *Id.* at ¶ 36, 490 P.3d at 678 (Berger, J., dissenting). According to Judge Berger, granting the prosecution “an additional ninety-one days after the date of sentencing to request restitution” should, at a minimum, constitute “good cause for the court to decide the matter *after* the ninety-one-day” period ends because the trial court “[o]bviously . . . needs time to decide the motion after it is filed and any briefing is completed.” *Id.* at ¶ 38, 490 P.3d at 678–79. Moreover, maintained Judge Berger, the majority’s interpretation leads to an absurd result because “the legislature could not have intended that no restitution would enter if no decision issued in ninety-one days.” *Id.* at ¶ 42, 490 P.3d at 679. Such a result, opined Judge Berger, “prevents a crime victim from receiving restitution that is not only timely requested by the prosecutor, but also conceded by the defendant.” *Id.*

⁷ To be clear, the prosecution doesn’t need the court’s permission to submit the information in support of a motion for restitution within ninety-one days of the judgment of conviction, so long as that information isn’t available before the judgment of conviction. See § 18-1.3-603(2). It’s the *extension of that ninety-one-day period* that requires a request—one supported by extenuating circumstances. *Id.* In this case, the prosecution didn’t request, and the court didn’t grant, an extension of that ninety-one-day period.

¶22 The prosecution asked our court to review the division’s decision. We agreed to do so.⁸

II. Analysis

¶23 We begin by setting forth the standard of review and familiar principles of statutory interpretation. Guided by this authority, we construe section 18-1.3-603 and then apply it in this case. Because we generally agree with the division’s application of the statute, we affirm.

A. Standard of Review and Familiar Principles of Statutory Interpretation

¶24 Questions of statutory interpretation are questions of law. *People v. Sprinkle*, 2021 CO 60, ¶ 12, 489 P.3d 1242, 1245. We review such questions de novo. *Id.*

⁸ We granted certiorari to review the following issues:

1. Whether the court of appeals erred in holding that section 18-1.3-603(1)(b), C.R.S. (2019), mandates that the trial court order a specific amount of restitution within ninety-one days of conviction, unless good cause exists to extend that deadline.
2. Assuming the ninety-one-day deadline in section 18-1.3-603(1)(b), C.R.S. (2019), refers to the court’s obligation to determine the restitution amount, whether the court of appeals erred in concluding that the trial court’s extension of the prosecution’s deadline under section 18-1.3-603(2), C.R.S. (2019), was insufficient to establish “good cause” for the court’s extension of its own deadline for issuing a restitution order.

¶25 In construing a statute, we aim to effectuate the General Assembly’s intent. *People v. Ross*, 2021 CO 9, ¶ 23, 479 P.3d 910, 915. Our first step in this endeavor is to inspect “the language of the statute, giving its words and phrases their plain and ordinary meaning.” *McCulley v. People*, 2020 CO 40, ¶ 10, 463 P.3d 254, 257. This is the cardinal rule of statutory interpretation, *Cowen v. People*, 2018 CO 96, ¶ 12, 431 P.3d 215, 218, and for good reason: “[C]ourts must presume that a legislature says in a statute what it means and means in a statute what it says there.” *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253–54 (1992).

¶26 We must take care to read statutory words and phrases in context and in accordance with the rules of grammar and common usage. *McCulley*, ¶ 10, 463 P.3d at 257. We must take equal care to construe a statute “as a whole,” with an eye toward giving consistent, harmonious, and sensible effect to all its parts. *Whitaker v. People*, 48 P.3d 555, 558 (Colo. 2002); see also *Pineda-Liberato v. People*, 2017 CO 95, ¶ 21–23, 403 P.3d 160, 164 (observing, in the context of restitution, that the statutory scheme must be construed as a whole, giving consistent, harmonious, and sensible effect to all its parts). At the same time, we must “avoid constructions that would render any words or phrases superfluous or lead to illogical or absurd results.” *McCoy v. People*, 2019 CO 44, ¶ 38, 442 P.3d 379, 389.

¶27 When the language of a statute is clear and unambiguous, we give effect to its plain and ordinary meaning “and look no further.” *Cowen*, ¶ 12, 431 P.3d at

218. “In such a situation, the ‘first canon is also the last’ and the ‘judicial inquiry is complete.’” *Id.* (quoting *Germain*, 503 U.S. at 254). If, however, the statutory language is susceptible of more than one reasonable interpretation and is thus ambiguous, we may resort to extrinsic aids of construction to address the ambiguity and decide which reasonable interpretation to accept based on the legislature’s intent. *Id.*

B. We Generally Agree With the Division’s Interpretation of Section 18-1.3-603

¶28 The division’s interpretation of section 18-1.3-603 is generally in lockstep with the longstanding tenets of statutory interpretation we just recited. We therefore agree with the division’s decision to vacate the trial court’s restitution order.

¶29 Section 18-1.3-603 governs restitution. It provides in pertinent part:

(1) Every order of conviction of a felony, misdemeanor, petty, or traffic misdemeanor offense, except any order of conviction for a state traffic misdemeanor offense issued by a municipal or county court in which the prosecuting attorney is acting as a special deputy district attorney pursuant to an agreement with the district attorney’s office, shall include consideration of restitution. Each such order shall include one or more of the following:

(a) An order of a specific amount of restitution be paid by the defendant;

(b) An order that the defendant is obligated to pay restitution, but that the specific amount of restitution shall be determined within the ninety-one days immediately following the order of conviction,

unless good cause is shown for extending the time period by which the restitution amount shall be determined;

(c) An order, in addition to or in place of a specific amount of restitution, that the defendant pay restitution covering the actual costs of specific future treatment of any victim of the crime; or

(d) Contain a specific finding that no victim of the crime suffered a pecuniary loss and therefore no order for the payment of restitution is being entered.

(2) The court shall base its order for restitution upon information presented to the court by the prosecuting attorney, who shall compile such information through victim impact statements or other means to determine the amount of restitution and the identities of the victims. Further, the prosecuting attorney shall present this information to the court prior to the order of conviction or within ninety-one days, if it is not available prior to the order of conviction. The court may extend this date if it finds that there are extenuating circumstances affecting the prosecuting attorney's ability to determine restitution.

¶30 At the outset, we note that the parties assume that subsection (2) controls the timeframe within which the prosecution must make a *motion* for restitution. But subsection (2) actually addresses the timeframe within which the prosecution must submit the "information" in support of a motion for restitution—i.e., the amount of the proposed restitution. § 18-1.3-603(2). More importantly, contrary to the parties' understanding of subsection (2), section 18-1.3-603 clearly envisions that any motion for restitution must be made before or during the sentencing hearing, even if the information supporting the motion isn't yet available and the prosecution needs additional time to provide it. Nowhere does the statute permit the prosecution to ask that the issue of restitution (not just the amount of

restitution) “remain open” for any period of time after the judgment of conviction enters. Nor does any part of subsection (1) authorize the court to address the issue of restitution in a judgment of conviction by entering an order deferring that issue in its entirety. Subsection (1)(b) allows the court to shelve the determination of the *amount* of restitution after entering a preliminary order requiring restitution. And the court can only enter such an order if the prosecution has made a motion for restitution.⁹

¶31 Thus, what the deadline in subsection (2) controls is the timeframe within which the prosecution must submit the proposed amount of restitution. § 18-1.3-603(2). Pursuant to subsection (2), the prosecution must file that information before the judgment of conviction or, if it isn’t yet available, within ninety-one days of the judgment of conviction. The court may extend that

⁹ In *Sanoff v. People*, 187 P.3d 576, 578–79 (Colo. 2008), we determined that, since a judgment of conviction becomes a final and appealable order with the inclusion of any of the four types of restitution orders enumerated in subsection (1), a defendant’s conviction becomes a final and appealable judgment of conviction upon entry of a preliminary restitution order under subsection (1)(b), even though the order doesn’t include the amount of restitution. We further concluded there that the restitution statute necessarily contemplates the possibility of a second proceeding – within either ninety-one days or, upon a showing of good cause, a longer time period – that would produce a second final, appealable order. *Id.* at 578.

deadline only if it finds that there are extenuating circumstances affecting the prosecution's ability to determine the proposed amount of restitution.

¶32 With that understanding in mind, we turn to the parties' dispute, which revolves around the deadline in subsection (1)(b). The People contend that this deadline, too, applies to them. But that can't be. As the division cogently explained, adopting such an interpretation would render the language in subsection (1)(b) "superfluous of the language" in subsection (2), *Weeks*, ¶ 14, 490 P.3d at 675, and we must avoid interpretations that render any provision in a statute superfluous, *see McCoy*, ¶ 38, 442 P.3d at 389. Differently put, if the legislature set forth the prosecution's deadline in subsection (2) – and the parties agree that it did – why would it have addressed the prosecution's deadline again in subsection (1)(b)?¹⁰

¶33 The legislature could not have intended to subject the prosecution to two conflicting standards. Construing both subsections (1)(b) and (2) as imposing deadlines on the prosecution would mean that the prosecution would have to show "good cause" to obtain an extension of the deadline governing the

¹⁰ Though the parties incorrectly assume that the deadline in subsection (2) governs the filing of a motion for restitution (as opposed to the filing of the information in support of such a motion), they concur that subsection (2) controls the prosecution's obligation with respect to restitution.

determination of the proposed restitution amount but “extenuating circumstances” to obtain an extension of the deadline governing the submission of the information in support of the restitution motion (i.e., the proposed restitution amount). We must avoid statutory interpretations that lead to illogical or absurd results. *McCoy*, ¶ 38, 442 P.3d at 389.

¶34 True enough, in discussing the situation in which the determination of the amount of restitution must be deferred, subsection (1)(b) doesn’t refer to the court or the prosecution. It simply states that “the specific amount of restitution *shall be determined* within the ninety-one days immediately following” the judgment of conviction. § 18-1.3-603(1)(b) (emphasis added). The use of the passive voice in the phrase “shall be determined” throws a monkey wrench into the analysis and puts the parties at loggerheads. But we’re required to read that phrase in context, *see McCulley*, ¶ 10, 463 P.3d at 257, and unlike subsection (2), which focuses on the prosecution’s obligation, subsection (1)(b) is all about the court’s obligation. Subsection (1) outlines the four different types of restitution orders available to the court. And subsection (1)(b) specifically authorizes the court to preliminarily require the defendant to pay restitution and to table the determination of the amount of restitution.

¶35 The fact that, as Judge Berger correctly pointed out, subsection (1)(b) requires a good cause *showing*, instead of a good cause *finding*, doesn’t move the

needle in the People's favor. To be sure, the former generally describes something a party must do while the latter always describes something the court must do. But here, reading subsection (1)(b) in context demonstrates that the General Assembly intended that the court, not the prosecution, make the requisite *showing*. Nothing in subsection (1) relates to the prosecution. That subsection deals with orders, and the prosecution doesn't have authority to enter orders – only the court does. And, given our conclusion that subsection (1)(b) concerns the court's deadline, it makes sense that it's the court that must show good cause to extend that deadline.

¶36 Subsection (3)(a) of the statute is equally unavailing for the People. That subsection merely permits a court to increase an order of restitution “if additional victims or additional losses,” not known when the order of restitution was entered, “are later discovered and the final amount of restitution due has not been set by the court.” § 18-1.3-603(3)(a). By way of example, subsection (3)(a) may apply in a situation in which the court has entered a subsection (1)(b) order preliminarily requiring a partial amount of restitution but deferring the final amount of restitution. Subsection (3)(a), however, creates no exception to the deadline in subsection (1)(b). Hence, even when subsection (3)(a) is invoked to increase the amount of restitution required by a preliminary restitution order, the court must determine the final amount of restitution within ninety-one days of the judgment

of conviction or within whatever expanded time period the court has established upon a finding of good cause.¹¹

¶37 The People insist, though, that interpreting section 18-1.3-603 as the division did here generates tension between subsection (1)(b) and subsection (2) because it imposes a single deadline on both the prosecution and the court. If a prosecutor submits the information in support of a motion for restitution on the last day of the ninety-one-day deadline in subsection (2), posit the People, “it will usually be impossible for the district court to rule on the restitution request within the same period, particularly because the court will need to afford the defendant an opportunity to respond.” Thus, urge the People, it doesn’t make sense to declare that the same ninety-one-day deadline governs both the prosecution’s obligation

¹¹ Subsection (1)(b) “contains nothing actually precluding the court from making findings” at a sentencing hearing “with regard to particular victims or losses of which the prosecution is aware, while reserving until a later date . . . findings with regard to other victims or losses of which the prosecution is not yet aware.” *Meza v. People*, 2018 CO 23, ¶ 14, 415 P.3d 303, 308. The statutory scheme expressly “allows for specific amounts of restitution to be determined and ordered” at a sentencing hearing, “without their necessarily representing the ‘final amount’ to be set by the court, giving meaning to the provision of [subsection] (3)(a) allowing an increase in restitution until the setting of a final amount.” *Id.* at ¶ 15, 415 P.3d at 308. In the absence of an order pursuant to subsection (1)(b) or a subsequent order pursuant to subsection (3)(a), however, “the statute does not purport to empower the sentencing court to set an amount of restitution following entry of the judgment of conviction in question.” *Id.*; accord *People v. Belibi*, 2018 CO 24, ¶ 8, 415 P.3d 301, 303.

to submit the proposed amount of restitution and the court's obligation to determine the amount of restitution.

¶38 The People's position, which coincides with the trial court's rationale, has intuitive appeal. Nevertheless, the tension the People complain about is a byproduct of the way the restitution statute was drafted. As we acknowledged from the get-go, the statute is not a model of clarity. Inartful drafting by the legislature, however, doesn't give us carte blanche to rewrite a statute. See *DePierre v. United States*, 564 U.S. 70, 82 (2011) ("That we may rue inartful legislative drafting, however, does not excuse us from the responsibility of construing a statute as faithfully as possible to its actual text."). Whatever practical challenges may exist as a result of particular phrasing in a statute, the proper remedy is legislative action, not judicial fiat. Hence, so long as section 18-1.3-603 remains in effect, we are oathbound to construe it as written. See *McCulley*, ¶ 10, 463 P.3d at 257.

¶39 Giving the words and phrases in section 18-1.3-603 their plain and ordinary meaning, and reading those words and phrases in context, we conclude that the ninety-one-day deadline in subsection (1)(b) refers to the court's deadline to determine the amount of restitution the defendant must pay. Further, under the plain and ordinary meaning of the language in subsection (1)(b), the court may extend that deadline only for good cause.

¶40 We next conclude, based on the plain and ordinary meaning of the words and phrases in subsection (1)(b), that any finding of good cause must be made expressly and before the court’s deadline expires. The same holds true for the prosecution’s deadline in subsection (2): Given the plain and ordinary meaning of the words and phrases in that subsection, any finding of extenuating circumstances to extend the prosecution’s ninety-one-day deadline must be made expressly and before the deadline expires.

¶41 We recognize that this interpretation of section 18-1.3-603 has the potential to lead to an undesirable result. As Judge Berger pointed out, it’s possible that a defendant could avoid paying restitution solely because the court failed to comply with its deadline under subsection (1)(b).¹² But we have unwavering confidence that our trial courts will comply with the subsection (1)(b) deadline when applicable.

¹² Even when the court loses authority to order a defendant to pay restitution, the victim’s losses might be compensable under the Crime Victim Compensation Act. See § 24-4.1-109, C.R.S. (2021). As we explained in *People v. Nelson*, the “crime victim compensation fund,” which was created by the Crime Victim Compensation Act, is meant to be “the payor of last resort.” 2015 CO 68, ¶¶ 23, 27, 362 P.3d 1070, 1074, *rev’d on other grounds, Nelson v. Colorado*, 137 S. Ct. 1249 (2017). If a victim “receives compensation from another source (such as restitution from the defendant), in addition to compensation from the fund, the victim must refund either the lesser sum or the amount of compensation that exceeds his losses.” *Id.* at ¶ 27, 362 P.3d at 1074.

¶42 Besides, the interpretation advanced by the People would risk rendering the court's deadline in subsection (1)(b) meaningless. What's the point of enacting the deadline in subsection (1)(b) if the court can be deemed to have impliedly extended it in a case like this one? Asked differently, what purpose does the deadline in subsection (1)(b) serve if, almost a year after it expires, a court may retroactively find good cause for extending it based on nothing more than the fact that it inadvertently set a briefing schedule that exceeded it?

¶43 In enacting subsection (1)(b), the legislature was clearly concerned with the length of time it was taking trial courts to finalize restitution orders and, by extension, how long victims were waiting to receive restitution. See § 18-1.3-601(1)(e), C.R.S. (2021) ("An effective criminal justice system requires *timely* restitution to victims of crime . . . in order to lessen the financial burdens inflicted upon them, to compensate them for their suffering and hardship, and to preserve the individual dignity of victims." (emphasis added)); see also § 18-1.3-601(1)(g)(II) ("The purposes of this part 6 are to facilitate . . . [t]he effective and *timely* assessment, collection, and distribution of restitution" (emphasis added)). Our task in interpreting subsection (1)(b) is to give effect to the General Assembly's intent. *Ross*, ¶ 23, 479 P.3d at 915. Avoiding the possibility of an undesirable result by essentially nullifying the deadline in subsection (1)(b) would

be tantamount to disregarding the legislature's intent.¹³ Again, to the extent that there are problems with the current statute, they should be brought to the attention of our colleagues in the legislature.

¶44 Based on the foregoing conclusions, we detail below how we envision the prosecution, the defendant, and the trial court judge proceeding at a sentencing hearing during which the court orders the defendant to pay restitution but defers the specific amount:

The Prosecution

The prosecution should make a motion for restitution before or during the sentencing hearing.¹⁴ If the prosecution has already determined the proposed amount of restitution, that information

¹³ We are aware that the legislature directed us to “liberally” construe section 18-1.3-603 to ensure that restitution is “ordered, collected, and disbursed” to victims of crime. § 18-1.3-601(2). But this provision can’t function as a green light to jettison the deadline in subsection (1)(b). See *Hazelwood v. Saul*, 619 P.2d 499, 501 (Colo. 1980) (“To liberally construe the statute[] . . . is not to ignore entirely the requirements of [that] statute[].”); see also *Md. Cas. Co. v. Indus. Comm’n*, 178 P.2d 426, 427 (Colo. 1947) (“[T]he provisions of the [statute] are to be liberally construed, nevertheless any liberal construction cannot be extended so as to clothe . . . reviewing courts with power to read [into] the statute any provisions which are not contained therein.”).

¹⁴ We reiterate that, by the time of the sentencing hearing, the prosecution should know whether it is seeking restitution, even if the information related to the proposed amount isn’t yet available. If, following entry of a preliminary restitution order under subsection (1)(b), the prosecution conducts further investigation and has a change of heart vis-à-vis its request for restitution, it should notify the court and the defendant of that decision. The court should then amend the mittimus accordingly.

should be included in the motion. If the proposed amount of restitution is not yet available and the prosecution informs the court that it plans to submit that information within ninety-one days, it should give an estimate of when that will occur. In the event the prosecution needs more than ninety-one days to submit the proposed amount of restitution, it will have to present extenuating circumstances warranting an extension of that time period. As part of such a request, the prosecution should provide an estimate of how much additional time it needs. (As we mentioned earlier, although not ideal, a request for an extension of the prosecution's deadline may be filed after the sentencing hearing.)

The Defendant

If the prosecution's motion contains the proposed amount of restitution, the defendant should inform the court whether he or she objects to the motion and is requesting an opportunity for briefing, a hearing, or both. In the event the prosecution needs more time to submit the proposed amount of restitution, the defendant should advise the court whether he or she objects to a subsection (1)(b) preliminary restitution order.¹⁵ Assuming there is no objection to such an order or that any objection is overruled, the defendant should tell the court how he or she intends to proceed. Absent an agreement regarding the yet-to-be-determined proposed amount of restitution, the defendant should convey an intent to oppose whatever proposed

¹⁵ The legislature has declared that all persons found guilty of causing suffering and hardship to a crime victim are "under a moral and legal obligation to make full restitution to those harmed by their misconduct." § 18-1.3-601(1)(b). Consequently, in the vast majority of cases in which a defendant opposes a motion for restitution, the dispute centers on the proposed amount of restitution, not on whether the court may require the defendant to pay restitution. In the event, however, that there is an objection to a preliminary restitution order under subsection (1)(b), the court may rule on the objection after hearing from the defendant. In the rare case the court deems briefing, a hearing, or both necessary to resolve the objection, it will have to continue the sentencing hearing because it won't be able to enter any of the four types of restitution orders in subsection (1).

amount of restitution the prosecution may eventually request or take a wait-and-see posture pending the submission of the proposed amount of restitution. Of course, if the prosecution seeks an extension of its ninety-one-day deadline in subsection (2), the defendant may counter any contention regarding the existence of extenuating circumstances.

The Trial Court Judge

Based on the information provided by the parties, the trial court judge should decide whether good cause exists to extend the court's ninety-one-day deadline under subsection (1)(b). (As we mentioned earlier, although not ideal, the court's deadline may be extended after the sentencing hearing.) If the judge has found that extenuating circumstances exist justifying an extension of the prosecution's deadline, he or she will clearly be able to find good cause to extend the court's deadline. Similarly, if the defendant requests briefing and a hearing, there may be circumstances (e.g., the court's docket, counsel's schedules, or the complexity of the dispute) that warrant a finding of good cause for extending the court's deadline. Even without such a request, however, it's possible that there will be good cause to extend the court's deadline. For example, if the prosecution advises that it needs ninety-one days (or close to it) to submit the proposed amount of restitution and the defendant is uncertain whether he or she will object to that proposed amount, there may well be good cause for extending the court's deadline. Regardless of how the judge proceeds, he or she should ensure that the mittimus reflects that restitution has been ordered but that the amount will be determined later (within ninety-one days or within whatever timeframe has been established based on a finding of good cause). And, thereafter, the judge should update the mittimus as appropriate.

C. Application

¶45 Here, the trial court determined the amount of restitution almost a year after the judgment of conviction and long after the ninety-one-day deadline in subsection (1)(b) expired. And it did so without making an express and timely

finding of good cause for extending that deadline. Neither the prosecutor's request to have the issue of restitution (in its entirety) "remain open" for ninety-one days nor the court's decision to grant that request could justify extending the court's deadline to determine the amount of restitution under subsection (1)(b). Accordingly, the division correctly concluded that by the time the trial court ordered Weeks to pay restitution, it lacked authority to do so.

III. Conclusion

¶46 We infer from the restitution statute that the legislature expects litigants and judges to be prepared to address the issue of restitution at sentencing hearings. At such a hearing, a judge must enter one or more of four types of restitution orders. Reserving the issue of restitution in its entirety until a later date isn't one of them.

¶47 Imperfect as our restitution statute may be, trial courts have to find a way to adhere to it. Because the trial court in this case violated the ninety-one-day deadline in subsection (1)(b) to determine the amount of restitution, the division correctly vacated the restitution order. We therefore affirm and remand for further proceedings consistent with this opinion.¹⁶

¹⁶ To the extent that any of the following decisions from the court of appeals are inconsistent with this opinion, they are overruled: *People v. Rice*, 2020 COA 143, 478 P.3d 1276; *Perez*, 2020 COA 83, 490 P.3d 768; *People v. Knoeppchen*, 2019 COA 34, 459 P.3d 679; *People v. Madison*, 2018 COA 62, 436 P.3d 544; *People v. McLain*,

2016 COA 74, 411 P.3d 1037; *People v. Turecek*, 2012 COA 59, 280 P.3d 73; *People v. Rockne*, 2012 COA 198, 315 P.3d 172; *People v. Hill*, 296 P.3d 121 (Colo. App. 2011); *People v. McCann*, 122 P.3d 1085 (Colo. App. 2005); *Harman*, 97 P.3d 290.