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ADVANCE SHEET HEADNOTE
November 8, 2021

2021 CO 74

No. 20SC491, *People v. Roddy* – Restitution – Statutory Interpretation – Procedural Deadlines – Plea Agreements.

In this case, the supreme court addresses whether the ninety-one-day time limit in section 18-1.3-603(1)(b), C.R.S. (2021), applies to the prosecution's determination of proposed restitution or to the court's entry of the restitution order. Applying this court's holding in *People v. Weeks*, 2021 CO 75, __ P.3d __, also announced today, the court concludes that the ninety-one-day deadline applies to the court's order regarding the restitution amount. Here, the district court's order exceeded that ninety-one-day period and was untimely. Although the restitution statute also permits a court to extend the deadline for good cause, the adequacy of the district court's good-cause finding is not before the supreme court, so the case is remanded to the court of appeals on that issue for application of *Weeks*.

If that finding is deemed adequate on remand, the district court will need to address the permissible scope of restitution. Therefore, the supreme court further

holds that, absent an agreement between the defendant and the prosecution at the time the plea is entered, a sentencing court may not impose restitution for pecuniary losses proximately caused by conduct exclusively related to dismissed charges.

Accordingly, the judgment of the court of appeals is vacated, and the case 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 74

Supreme Court Case No. 20SC491
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 17CA2267

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Jonathan D. Roddy.

Judgment Vacated

en banc

November 8, 2021

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

¶1 Defendant, Jonathan Roddy, and his ex-wife have been embroiled in post-decree domestic-relations litigation for more than a decade. While that history is long and complex, the legal questions presented in this related criminal case are relatively straightforward. In exchange for dismissal of the original criminal charges, Roddy pled guilty to first degree criminal trespass, a crime that he committed in his ex-wife’s home. He received a deferred judgment and sentence, and the court ordered him to pay restitution to his ex-wife as the victim.

¶2 Roddy contends that the district court erred when it (1) entered the restitution order beyond the ninety-one-day time limit prescribed by statute and (2) included losses proximately caused by conduct related to the dismissed charges as well as the charge to which he pled guilty.

¶3 A division of the court of appeals affirmed the district court’s decision to enter the order after the ninety-one-day limit had expired. *People v. Roddy*, 2020 COA 72, ¶ 29, 490 P.3d 755, 760. But the division also limited restitution to only “the losses caused by the conduct to which [Roddy] pleaded guilty.” *Id.* at ¶ 37, 490 P.3d at 761–62.

¶4 Applying our holding in *People v. Weeks*, 2021 CO 75, __ P.3d __, which we also announce today, we conclude that the statutory ninety-one-day deadline applies to a trial court’s order regarding the restitution amount. Here, the district court exceeded that ninety-one-day period. So, its order was untimely.

¶5 The restitution statute, however, also permits a trial court to extend the deadline for good cause. Here, the district court made a good-cause finding albeit well after the ninety-one-day window had closed. Because the efficacy of the district court's belated good-cause finding is not before us, we remand the case to the court of appeals on that issue for application of *Weeks*. If that finding is deemed adequate on remand, the district court will need to address the permissible scope of restitution. Therefore, we also hold that, absent an agreement between the defendant and the prosecution at the time the plea is entered, a court may not impose restitution for pecuniary losses proximately caused by conduct exclusively related to dismissed charges.

I. Facts and Procedural History

¶6 Roddy and the victim have been divorced since 2003. They have one child, J.R., together and have been engaged in post-decree domestic-relations litigation regarding parenting time, child support, and parental decision-making authority since 2009.

¶7 This case presents a separate but related criminal matter. Roddy entered the victim's home one day while she was away. He did so without her permission, arguably in violation of an existing court order regarding curbside exchange of J.R., and he took photographs that he sought to exploit in the domestic-relations case.

¶8 Using J.R.'s iPad, Roddy's current wife also accessed seven years of the victim's private files, including correspondence with the victim's attorneys, accountants, family, and friends. Roddy and his wife also intended to use some of this pilfered information against the victim in the domestic-relations case.

¶9 Roddy was initially charged with stalking and a computer crime.¹ As part of a plea agreement, Roddy pled guilty to an added count of first degree criminal trespass in exchange for dismissal of the original charges and a two-year deferred judgment and sentence. The written plea agreement was silent as to restitution; however, the joint motion for deferred judgment, which Roddy signed, provided:

The defendant agrees that he has a sufficient amount of income and/or assets to pay all of the restitution and fees ordered by the court. The defendant is aware that failure to pay restitution or fees shall constitute prima facie evidence of a violation of the deferred sentence and judgment.

The district court accepted the plea agreement and granted the prosecution's request for ninety-one days to determine restitution.

¶10 Ninety days later, the prosecution filed its motion for restitution, requesting \$390,613.90. This amount was based, in large measure, on the victim's legal fees from two separate firms: one that was handling the domestic-relations case and

¹ Roddy's wife was separately charged with a computer crime. She pled guilty to the charge, but the prosecution did not seek restitution in her case.

another that was representing the victim's interests in the criminal case and in parallel civil proceedings.

¶11 Roddy objected and asked the prosecution to identify the factual basis of the request. In response, the prosecution pointed to both Roddy's conduct—entering and photographing the victim's home without permission—and his wife's conduct—using J.R.'s iPad to access the victim's email account, which contained privileged communications and personal contacts—as support for its restitution request.

¶12 The prosecution then outlined three expense categories: (1) investigation of the criminal offense, (2) victim protection, and (3) recovery of the stolen data. It later significantly increased its request based on soaring fees and costs the victim continued to incur, mostly in those same categories.

¶13 On October 20, 2017 (457 days after accepting Roddy's guilty plea and imposing the deferred judgment), the court entered its restitution order. After concluding that the prosecution had shown good cause to amend its restitution request, the court ordered Roddy to pay \$688,535.13.

¶14 Roddy appealed the restitution order. As relevant here, the division concluded that the district court had the authority to enter the order because, even if the ninety-one-day time limit applied to entry of the court's order, the district court impliedly had found good cause to extend its deadline. *Roddy*, ¶¶ 23–29,

490 P.3d at 760. The division then concluded, however, that the district court erred by including in the restitution order losses not proximately caused by Roddy's trespass onto the victim's property. *Id.* at ¶¶ 30, 36–37, 490 P.3d at 761–62. So, the division reversed the restitution order and remanded the case to the district court to determine restitution based only on the trespass to which Roddy had pled guilty. *Id.* at ¶ 37, 490 P.3d at 762.

¶15 The prosecution petitioned this court for certiorari review, which we granted.²

II. Analysis

¶16 We begin by addressing whether the ninety-one-day time limit in section 18-1.3-603(1)(b), C.R.S. (2021), applies to the prosecution's determination of proposed restitution or to the court's entry of the restitution order. We then discuss whether a trial court may impose restitution for pecuniary losses proximately caused by conduct exclusively related to dismissed charges.

² We granted certiorari to review the following issues:

1. Whether restitution may be based on charged conduct dismissed pursuant to a plea agreement.
2. Whether the ninety-one-day time limit in section 18-1.3-603(1)(b), C.R.S. (2020), applies to the prosecution's determination of restitution, and not to the court's authority to enter a restitution order.

A. Timeliness

¶17 We review de novo the division’s interpretation of section 18-1.3-603. *See Cowen v. People*, 2018 CO 96, ¶ 11, 431 P.3d 215, 218. In interpreting statutes, our primary goal is to ascertain and give effect to legislative intent. *Id.* at ¶ 12, 431 P.3d at 218. We begin with the plain language of the statute, reading the statute as a whole and giving words and phrases their commonly understood meanings. *People v. Sosa*, 2019 COA 182, ¶¶ 12-13, 487 P.3d 1203, 1206. If the language is clear and unambiguous, we apply it as written. *Cowen*, ¶ 12, 431 P.3d at 218. If, however, the language is susceptible of more than one reasonable interpretation, it is ambiguous, and we may turn to extrinsic aids to guide our interpretation. *Id.*

¶18 Section 18-1.3-603(1) provides that “[e]very order of conviction,”³ with one exception not relevant here, “shall include consideration of restitution”; meaning, the order must include at least one 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

³ A conviction, for restitution purposes, is defined as a guilty verdict by a judge or jury, a nolo contendere or guilty plea that is accepted by the court, or a juvenile adjudication. § 18-1.3-602(2), C.R.S. (2021). It also includes “having received a deferred judgment and sentence or deferred adjudication; except that a person shall not be deemed to have been convicted if the person has successfully completed a deferred sentence or deferred adjudication.” *Id.*

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.

Subsection (1)(b), the ninety-one-day time limit, is at issue here.

¶19 In *Weeks*, we 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.” ¶ 5; *see also Meza v. People*, 2018 CO 23, ¶ 18, 415 P.3d 303, 309. Thus, here, the district court was obligated to determine restitution within ninety-one days of sentencing unless, before those ninety-one days expired, it expressly found good cause for extending the deadline. *See Weeks*, ¶ 5.

¶20 At Roddy’s dispositional hearing, he pled guilty to the trespass charge, and the district court reserved ninety-one days to determine restitution pursuant to section 18-1.3-603(1)(b). The prosecution filed its initial restitution request ninety days later. Roddy objected. The court held several hearings to resolve the disagreement. Thus, although the district court did not enter a restitution amount until approximately fifteen months after sentencing, the parties actively litigated

the amount throughout much of that time. And in its restitution order, the court expressly held “that good cause ha[d] been shown” for the prosecution’s amended motion for restitution and related filings. The court further concluded that “the final amount of restitution due has not been set by the Court and [the victim] has continued to incur and pay attorney fees and costs.” It then ordered Roddy to pay the victim \$688,535.13 in restitution.

¶21 In keeping with *Weeks*, however, we conclude that the court was required to order the restitution amount within ninety-one days of sentencing, unless it found good cause to extend that time period. Because the issue of the efficacy of the district court’s good-cause finding is not before us, we do not reach it and instead remand to the court of appeals for application of *Weeks*.

B. Dismissed Charges

¶22 We now turn to the basis of the restitution order, as this issue could arise on remand.

¶23 Although a sentencing court has broad discretion to determine the terms and conditions of a restitution order, *People v. Perez*, 2020 COA 83, ¶ 10, 490 P.3d 768, 770, whether the court had the authority to impose restitution presents a legal question that we review de novo, *Cowen*, ¶ 11, 431 P.3d at 218.

¶24 We also review de novo the parties’ obligations under a plea agreement. *People v. Johnson*, 999 P.2d 825, 829 (Colo. 2000). In doing so, we apply an objective

standard of reasonableness. *People v. Antonio-Antimo*, 29 P.3d 298, 303 (Colo. 2000) (“In interpreting a plea agreement, the court focuses on the meaning a reasonable person would have attached to the agreement at the time the agreement was entered into.”). We look to the plain language of the agreement and resolve any ambiguity in favor of the defendant. *Keller v. People*, 29 P.3d 290, 297 (Colo. 2000). “Our task is not to rewrite the bargain in question, but to interpret it consistently with the reasonable intent of the parties in light of the defendant’s right to be treated fairly by the government.” *Craig v. People*, 986 P.2d 951, 961 (Colo. 1999).

¶25 The General Assembly has declared that people “found guilty of” causing suffering and hardship to crime victims should be obligated “to make full restitution to those harmed by their misconduct,” § 18-1.3-601(1)(b), C.R.S. (2021), and the restitution statutes should be liberally construed to accomplish this purpose, § 18-1.3-601(2). Restitution is “any pecuniary loss suffered by a victim . . . or injuries proximately caused by an offender’s conduct and that can be reasonably calculated and recompensed in money.” § 18-1.3-602(3)(a), C.R.S. (2021).

¶26 We have previously held that courts may not impose restitution “for pecuniary losses caused by conduct that formed the basis of a charge of which the defendant has been acquitted.” *Cowen*, ¶ 2, 431 P.3d at 216. In reaching this conclusion, we focused on the legislature’s plain language, limiting restitution to

those who were “found guilty” and basing the amount of restitution on “an offender’s conduct.” *Id.* at ¶¶ 16–21, 431 P.3d at 219–20 (quoting §§ 18-1.3-601(1)(b), -602(3)(a)); *see also id.* at ¶ 21, 431 P.3d at 219 (quoting dictionary definitions to define an “offender” as “a person who has committed a crime”). Based on a plain reading of these terms, we reasoned that

[w]hen an individual is acquitted of a charge, he cannot be deemed an “offender” because he is by definition not a person who committed the crime charged. It follows that the conduct on which the charge was based cannot constitute the “conduct of an offender.” Nor can the victim named in the acquitted charge be considered a person aggrieved by the “conduct of an offender.”

Id. at ¶ 21, 431 P.3d at 219–20. Further, because a defendant is presumed innocent of every charge unless proven guilty, where a defendant is acquitted of a particular charge, the presumption of innocence remains with respect to the acquitted charge regardless of a finding of guilt as to other charges. *Id.* at ¶ 38, 431 P.3d at 223; *see also Nelson v. Colorado*, 137 S. Ct. 1249, 1256 (2017) (“[The State] may not presume a person, adjudged guilty of no crime, nonetheless guilty *enough* for monetary exactions.”). Given the facts of the *Cowen* case, however, we expressly left “for another day the question of whether . . . restitution ordered for losses caused by uncharged conduct [would] pass[] constitutional muster.” *Cowen*, ¶ 38 n.10, 431 P.3d at 223 n.10.

¶27 A division of the court of appeals answered that question in the negative a year later. In *Sosa*, the defendant was charged with accessory to first or second

degree murder based on a drive-by shooting in which two men were injured and another killed. ¶¶ 2-5, 487 P.3d at 1205. As part of a plea agreement, the defendant pled guilty to the added charge of accessory to second degree murder heat of passion, and the original charge was dismissed, with the understanding that the defendant would be ordered to pay restitution based on *the dismissed count*. *Id.* at ¶ 5, 487 P.3d at 1205. But the trial court ordered the defendant to pay restitution for losses arising from conduct *for which she had never been charged*, including the shooting victims' medical bills and lost wages, and the deceased's funeral costs. *Id.* at ¶ 6, 487 P.3d at 1205. Extending the reasoning from *Cowen*, the division concluded that "[w]hen an individual is not charged with a crime, she cannot be found guilty of (or plead guilty to) that crime" and cannot, therefore, "be deemed an 'offender' because she 'is by definition not a person who committed the crime charged.'" *Id.* at ¶ 26, 487 P.3d at 1208 (quoting *Cowen*, ¶ 21, 431 P.3d at 219). So, any conduct underlying the uncharged crime "cannot be deemed the 'conduct of an offender.'" *Id.* As with conduct underlying acquitted charges, "[d]ue process demands that [defendants] retain the presumption of innocence with respect to conduct for which [they are] not charged." *Id.* at ¶ 27, 487 P.3d at 1208.

¶28 The division further observed that although crimes that are charged but then dismissed as part of a plea agreement are not necessarily the same as

uncharged crimes, the same reasoning applies for determining restitution. *Id.* at ¶ 28, 487 P.3d at 1208. Once a charge is dismissed, a defendant can neither be found guilty of, nor plead guilty to, that charge and cannot, therefore, be an “offender” as to that charge. *Id.* So, a court may not order restitution for injury or losses proximately caused by conduct that forms the basis of only the dismissed charge. *Id.* That said, the prosecution and the defendant may strike a plea agreement that extends the scope of the restitution order to include uncharged conduct or dismissed counts. *See id.* at ¶ 30, 487 P.3d at 1209 (“[A] defendant may receive the benefit of avoiding trial, pleading guilty to fewer or different offenses, and receiving a reduced sentence in exchange for making full restitution to those harmed by her conduct. Both sides ought to be free to leverage restitution”); *see also People v. Quinonez*, 735 P.2d 159, 163 (Colo. 1987) (“[W]here a defendant agrees to pay restitution to ‘victims’ named in dismissed counts but not named in counts to which the defendant pleads guilty as a part of a plea bargain, a restitution order issued as a condition of sentence is valid.”), *superseded by statute*, § 18-1.3-602(4)(a), *on other grounds as stated in Dubois v. People*, 211 P.3d 41, 44-45 (Colo. 2009).

¶29 We agree with the reasoning of the division in *Sosa*.

¶30 Here, the plea agreement contained no language that Roddy would pay restitution for injury or loss related to the dismissed charges. At the dispositional

hearing, the court described the offense of first degree criminal trespass to Roddy, advised him of the rights he would be giving up by entering a guilty plea to that charge, and asked him whether his plea was knowing and voluntary. As a factual basis for the charge, the prosecutor said that “the original facts in this case involve a very lengthy amount of time, during which time Mr. Roddy was observing [the victim] and would follow her in social media, follow her business and the like.” However, the prosecutor then said that “the factual basis to the charge of first-degree criminal trespass for the purposes of the plea” is that “in November of 2014, [Roddy] had returned to the victim’s residence with [J.R.] . . . [and] took the opportunity to go inside of the residence and actually do an investigation inside. He didn’t have permission to be inside the residence” The court accepted the plea and invited argument concerning sentencing.

¶31 Roddy’s attorney noted that Roddy was accepting responsibility for the trespass; however, he repeatedly distinguished Roddy’s conduct underlying the trespass from Roddy’s wife’s conduct in committing the computer crime offense.

¶32 Given the absence of anything in the written plea agreement, or any other clear indication that the parties had agreed that the conduct related only to the dismissed charges would be considered in determining restitution (e.g., an oral representation on the record during a dispositional hearing plainly supplementing the written plea agreement), the district court could not order restitution for the

dismissed charges. Simply put, if a defendant does not agree, *at the time* the plea agreement is entered on the record, to pay restitution for pecuniary loss beyond that proximately caused by the conduct essential to the charges to which he pleads guilty, it is improper for a court to order it.

¶33 Therefore, we conclude that the district court's restitution order was improper to the extent that it imposed restitution based on any conduct relating exclusively to the dismissed charges.

III. Conclusion

¶34 Although we agree with much of the division's reasoning, we vacate the judgment of the court of appeals and remand the case (1) for the court of appeals to assess the efficacy of the district court's belated good-cause finding in light of *Weeks*; and (2) if that finding is deemed adequate, for the district court to recalculate the restitution amount based only on the pecuniary loss proximately caused by the conduct essential to the offense to which Roddy pled guilty – first degree criminal trespass.