

NOT DESIGNATED FOR PUBLICATION

No. 125,048

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,
Appellee,

v.

DOMONIC RAY LEE MCKINZY SR.,
Appellant.

MEMORANDUM OPINION

Appeal from Wyandotte District Court; JENNIFER L. MYERS, judge. Opinion filed August 4, 2023. Affirmed.

Peter Maharry, of Kansas Appellate Defender Office, for appellant.

Kayla Roehler, deputy district attorney, *Mark A. Dupree Sr.*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before COBLE, P.J., GARDNER and CLINE, JJ.

PER CURIAM: Domonic Ray Lee McKinzy Sr. appeals the district court's order that he pay almost \$5,000 in restitution after he pleaded guilty to second-degree murder. But McKinzy has failed to meet his burden under K.S.A. 2017 Supp. 21-6604(b)(1) to show the order was unworkable. The district court did not abuse its discretion when finding his lengthy prison sentence and uncertain future earnings were insufficient to qualify for an exception to the general rule requiring the imposition of restitution in a criminal sentence. We therefore affirm the court's restitution order.

In July 2017, McKinzy was living with his mother and her husband, Cornelius Felton. After a thunderstorm caused a power outage, Felton went into the basement where McKinzy resided to check the fuse box. McKinzy became upset that Felton was in the basement, and then went to the kitchen and retrieved two kitchen knives. He confronted and stabbed Felton, who later died from his injuries.

McKinzy eventually pleaded guilty to second-degree murder, after he was allowed to withdraw his original plea due to allegations of ineffective assistance of his original trial counsel. *State v. McKinzy*, No. 121,464, 2021 WL 4496098, at *1 (Kan. App. 2021) (unpublished opinion). At his sentencing, the State sought \$4,924.12 in restitution. McKinzy objected, arguing that he would be unable to pay this amount as well as take care of his mental health problems and housing after serving a long prison sentence.

Despite McKinzy's objection, the district court ordered restitution in the amount requested by the State and sentenced McKinzy to 438 months' imprisonment and 36 months' postrelease. It noted that McKinzy was reportedly doing well while taking mental health medication during his incarceration and found that, so long as McKinzy remained on mental health medication, "a restitution plan should be workable" during his imprisonment and postrelease term.

Appellate courts review the "amount of restitution and the manner in which it is made to the aggrieved party" for abuse of discretion. *State v. Martin*, 308 Kan. 1343, 1349, 429 P.3d 896 (2018). A judicial action constitutes an abuse of discretion if (1) it is arbitrary, fanciful, or unreasonable; (2) it is based on an error of law; or (3) it is based on an error of fact. *State v. Levy*, 313 Kan. 232, 237, 485 P.3d 605 (2021).

K.S.A. 2017 Supp. 21-6604(b)(1) provides that a sentencing court "shall" order restitution, unless it "finds compelling circumstances which would render a plan of restitution unworkable." Restitution is thus the rule and not the exception. *State v. Holt*,

305 Kan. 839, 842, 390 P.3d 1 (2017). The burden is on McKinzy to present evidence of compelling circumstances that prove unworkability, and imprisonment alone cannot render restitution unworkable. *State v. Tucker*, 311 Kan. 565, 567-68, 465 P.3d 173 (2020); see *State v. Alcala*, 301 Kan. 832, 840, 348 P.3d 570 (2015).

In determining the workability of a restitution order, a district court should take several factors into account, including:

"the defendant's income, present and future earning capacity, living expenses, debts and financial obligations, and dependents. In some circumstances, the amount of time it will take a defendant to pay off a restitution order will also be relevant, especially if the defendant is subject to probation until the restitution is paid in full." *State v. Meeks*, 307 Kan. 813, 820, 415 P.3d 400 (2018).

But "[i]n all circumstances, the district court should keep in mind the ultimate goals of restitution," which include "compensation to the victim." 307 Kan. at 820.

McKinzy argues on appeal that the district court abused its discretion by ordering him to pay \$4,924.12 in restitution given his "questionable" earning capacity while incarcerated or upon his release after 36 years in prison. He relies on his lack of assets and employment in the six months prior to his arrest, along with his history of mental health problems to support his claim.

McKinzy argues that "the earning capacity of an inmate is extremely limited." And, citing *State v. Smith*, No. 123,611, 2022 WL 188732, at *10 (Kan. App.) (unpublished opinion), *rev. denied* 316 Kan. 763 (2022), McKinzy contends that a pivotal factor in workability is whether an inmate has a history of gainful employment. McKinzy notes that instead of gainful employment, he has a history of serious mental illness.

McKinzy's reliance on his mental health history is undercut by the competency evaluation conducted in the underlying case. The report from the evaluation noted that while McKinzy reported a history of hospitalizations for diagnoses of schizophrenia and bipolar disorder, the medical records from those hospitalizations revealed his symptoms were drug induced, including methamphetamine, cocaine, and cannabis. The report found McKinzy's behavior during the evaluation was "consistent with feigned or exaggerated psychopathology," and he "endorsed, with high frequency, symptoms that are highly atypical in patients with genuine psychiatric or cognitive disorders." It concluded McKinzy was competent to stand trial and found no evidence to support that McKinzy lacked the requisite mental state at the time he committed the charged offenses. Likewise, the district court pointed out that McKinzy argued in support of his motion for a durational departure that, while he was on mental health medication, he functioned "great."

To demonstrate unworkability, Kansas caselaw requires more than a lengthy prison sentence and uncertain future earnings. In *Holt*, for instance, the Kansas Supreme Court held a restitution plan to be workable despite the district court sentencing the defendant to life in prison. 305 Kan. at 842-45. And in *Meeks*, \$14,356.21 in restitution was considered workable regardless of financial difficulties because the defendant had the ability to make payments in the future. 307 Kan. at 821; see *State v. Alcalá*, 301 Kan. 832, 840, 348 P.3d 570 (2015) (defendant fails to show unworkability when he cannot demonstrate inability to pay in the future); see also *State v. Taylor*, 317 Kan. 364, 369-70, 530 P.3d 431 (2023) (defendant fails to show unworkability simply by arguing he lacks assets to pay restitution in full at time of sentencing).

The burden to prove unworkability was with McKinzy. He offers no evidence to support his claim of unemployability either during or after incarceration other than his allegations of mental health issues. But the court considered this claim and found those

issues were addressed with medication. Given that McKinzy himself noted that medication helps him, we cannot say the court's conclusion was unreasonable.

Apart from this, the State points out that K.S.A. 2017 Supp. 22-3717(n) grants McKinzy the opportunity to reduce the restitution amount after he completes his prison sentence. McKinzy thus has protection if he cannot make payments. The statute states:

"If the court which sentenced an inmate specified at the time of sentencing the amount and the recipient of any restitution ordered as a condition of parole or postrelease supervision, the prisoner review board shall order as a condition of parole or postrelease supervision that the inmate pay restitution in the amount and manner provided in the journal entry unless the board finds compelling circumstances that would render a plan of restitution unworkable." K.S.A. 2017 Supp. 22-3717(n).

Ultimately, McKinzy fails to carve an exception to the general rule of restitution. And because the district court acted reasonably, we affirm its restitution order.

Affirmed.