

**NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37**

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellee	:	
v.	:	
	:	
KENNETH MISZLER,	:	
	:	
Appellant	:	No. 1800 EDA 2014

Appeal from the Judgment of Sentence Entered May 23, 2014,  
in the Court of Common Pleas of Wayne County,  
Criminal Division, at No(s): CP-64-CR-0000386-2013

BEFORE: LAZARUS, WECHT, and STRASSBURGER, JJ.\*

MEMORANDUM BY STRASSBURGER, J.: **FILED MARCH 10, 2015**

Kenneth Miszler (Appellant) appeals from the judgment of sentence entered May 23, 2014. We affirm.

The trial court set forth the relevant factual and procedural history of this case as follows.

On October 21, 2013, [Appellant] was charged with one (1) count of Driving Under Influence of Alcohol or Controlled Substance [(DUI)], one (1) count of [DUI] — Highest Rate, one (1) count of Duties at Stop Sign, and one (1) count of Careless Driving. The charges stemmed from a two-vehicle car accident that [Appellant] allegedly caused.

On February 27, 2014, [Appellant] entered a plea of guilty to one (1) count of [DUI] — Highest Rate, 75 Pa.C.S. § 3802(c). On May 23, 2014, [Appellant] was sentenced to the following: pay the costs of prosecution; pay a fine in the amount of one-thousand dollars; undergo incarceration in the Wayne County Correctional Facility for a period of not less than ten days, nor more than six months; pay restitution in the amount of two-hundred sixteen thousand three dollars and at a minimum monthly rate of two-hundred and fifty dollars; participate in and

\*Retired Senior Judge assigned to the Superior Court.

cooperate with drug and alcohol addiction treatment in accordance with his drug and alcohol assessment; refrain from the use of alcohol or illegal controlled substances, and the abuse of prescription drugs, over-the-counter drugs, or any other substances, or frequenting places whose primary purpose is to dispense alcohol; attend and complete the Alcohol Highway Safety course, costs to be paid by [Appellant]; submit to random drug testing and be subject to personal/property searches; perform fifty hours of community service within three months; and pay a supervision fee of fifty-dollars per month to the Wayne County Probation Department while on parole. ...

[Appellant] filed a notice of appeal on June 26, 2014. [Appellant] filed his Concise Statement of [Errors] Complained of on Appeal [pursuant to Pa.R.A.P. 1925(b)] on July 14, 2014. [On July 31, 2014, the trial court filed its Pa.R.A.P. 1925(a) opinion.]

Trial Court Opinion, 7/31/2014, at 1-2 (unnumbered) (repetition of quantities in numeric format omitted).

Appellant raises the following issue for our review.

1. Did the [trial] court err as a matter of law in sentencing [Appellant] to pay restitution, presumably to the victims' auto and home insurance company, in the amount of \$216,003.83, when the Commonwealth failed to meet its burden of proving that the victims suffered personal injuries directly resulting from [Appellant's] DUI, offered no evidence to prove the nature of the injuries the victims sustained, and failed to prove the relation between these unknown injuries and the amounts claimed?

Appellant's Brief at 5.

We consider Appellant's arguments mindful of the following.

In the context of criminal proceedings, an order of restitution is not simply an award of damages, but, rather, a sentence. An appeal from an order of restitution based upon a claim that a restitution order is unsupported by the record challenges the legality, rather than the discretionary aspects, of sentencing. The determination as to whether the trial court imposed an illegal

sentence is a question of law; our standard of review in cases dealing with questions of law is plenary.

***Commonwealth v. Stradley***, 50 A.3d 769, 771–72 (Pa. Super. 2012)

(citations and quotation marks omitted).

The restitution statute provides, in relevant part, as follows.

**§ 1106. Restitution for injuries to person or property**

**(a) General rule.**—Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.

\* \* \*

**(c) Mandatory restitution.—**

(1) The court shall order full restitution:

(i) Regardless of the financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss.

\* \* \*

(2) At the time of sentencing the court shall specify the amount and method of restitution. In determining the amount and method of restitution, the court:

(i) Shall consider the extent of injury suffered by the victim, the victim's request for restitution as presented to the district attorney in accordance with paragraph (4)

and such other matters as it deems appropriate.

(ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just.

\* \* \*

(4) (i) It shall be the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered. This recommendation shall be based upon information solicited by the district attorney and received from the victim.

18 Pa.C.S. § 1106(a), (c).

Where, as here, the court imposes restitution as a direct sentence and not as a condition of probation, our courts have determined that restitution is appropriate “only as to loss caused by the very offense for which [the defendant] was tried and convicted.” ***Commonwealth v. Cooper***, 466 A.2d 195, 197 (Pa. Super. 1983).

Appellant first argues that the court lacked authority to impose restitution in this matter “because the Commonwealth failed to prove that the [victims’] injuries were directly caused by [Appellant’s] DUI.” Appellant’s Brief at 18.

It is undisputed that Appellant pled guilty to DUI and specifically agreed, as part of that guilty plea, to “make full restitution on all counts.”

Written Guilty Plea Colloquy, 2/27/2014, at ¶ 48 (emphasis in original). Nonetheless, Appellant now takes issue with the Commonwealth's reliance at sentencing on the transcript of Appellant's guilty plea, and the facts set forth in the affidavit of probable cause, and contends that it failed to "present ... substantive evidence regarding the cause of the subject collision" to support its argument for restitution. Appellant's Brief at 19-20.

Appellant does not argue that his guilty plea was constitutionally invalid. Thus, we presume that Appellant had a full understanding of the nature and consequences of his plea agreement, which included the factual scenario underlying the charges and the specific agreement to pay restitution to the victims. **See Commonwealth v. Pollard**, 832 A.2d 517, 522 (Pa. Super. 2003) (holding that "[o]ur law presumes that a defendant who enters a guilty plea was aware of what he was doing. He bears the burden of proving otherwise."). Accordingly, because the terms were agreed to specifically at the time of Appellant's guilty plea, we reject his argument that the Commonwealth was required to present additional "substantive" evidence to support its demand for restitution. **See Commonwealth v. Ortiz**, 854 A.2d 1280, 1284 (Pa. Super. 2004) (*en banc*) (honoring restitution order that was part of the negotiated sentence, the terms of which certainly induced the defendant to enter the plea).

Moreover, to the extent that Appellant argues that the trial court lacked the authority to impose restitution, this Court has noted as follows in a factually similar case.

Although the evidence relied upon by the trial court [in ordering restitution] did not arise during trial because of [Walker's] guilty plea, nevertheless ... the court found that [Walker's] driving while under the influence was a substantial factor in causing the injuries to the victims. Just as this finding of causation supports the sentencing court's decision to apply the enhanced sentencing guideline, it likewise supports the court's decision to impose restitution.

**Walker**, 666 A.3d at 309 (citation omitted).

This Court has made clear that restitution may be imposed as part of the judgment of sentence for a DUI conviction where there is either an explicit finding by the trial court that damage occurred as the direct result of the DUI, or where the record clearly implies that the damage occurred as a direct result of the DUI. **See Commonwealth v. Fuqua**, 407 A.2d 24, 26 (Pa. Super. 1979) *superseded by statute on other grounds as stated in Commonwealth v. Runion*, 662 A.2d 617 (Pa. 1995); **Walker, supra**.

Instantly, the trial court stated in its 1925(a) opinion,

[a]ccording to the criminal complaint, [Appellant] told the Pennsylvania State Trooper who responded to the accident that [Appellant] had consumed alcoholic beverages prior to driving. [Appellant's] blood alcohol level after the accident was 0.165%, more than twice the legal limit. [Appellant's] degree of intoxication indicates that [Appellant] was not capable of safely operating a vehicle at the time of the accident. [Appellant's] incapability to safely operate a vehicle ultimately [led] to the two vehicle collision in the instant case. [Appellant's] intoxication

while driving was a substantial factor, although perhaps not the sole factor, in causing the car accident and the victims' injuries. [Appellant] stated that he "thought the victim[s'] vehicle was far enough back that [he] could [pull out onto the roadway] without a collision occurring ...." [Appellant's] intoxication caused [Appellant] to misjudge the risk of entering the lane of traffic. Therefore, there exists a direct casual connection between the crime [Appellant] pleaded guilty to and the injuries the victims sustained as a result of the car accident.

Trial Court Opinion, 7/31/2014, at 3-4 (unnumbered) (citation omitted).

Thus, as the court explained, the damage, injuries, and losses suffered by the victims herein is inseparable from Appellant's act of DUI. For all of the foregoing reasons, we hold that the court had the authority to impose restitution as a part of Appellant's DUI sentence.

Next, Appellant argues that the record does not support the amount of restitution imposed. Appellant's Brief at 21. Specifically, Appellant contends that the evidence was deficient because the Commonwealth's witness failed to connect the insurance company's payment of medical bills to the injuries suffered by the victims in the accident at issue. *Id.* at 23. This claim is belied by the record.

As the trial court noted,

[t]o support its recommendation for restitution, the Commonwealth offered the testimony of Mary Bombard (hereinafter "Ms. Bombard"), a Claim Representative II for Unitrin Auto and Home Insurance Company (hereafter "Unitrin Insurance). Ms. Bombard handled the claims of the victims in the instant case. The victims were insured under an insurance policy with Unitrin Insurance.

Ms. Bombard testified that all medical payments made by Unitrin Insurance for the victims' injuries were necessary, reasonable and related to the two car collision in the instant case. To make that determination, Ms. Bombard examined the medical bills and the doctor's notes regarding each procedure performed. The Commonwealth, through the testimony of Ms. Bombard, entered into evidence the victims' payment ledgers from Unitrin Insurance and copies of the checks Unitrin Insurance issued for payment of the victims' medical expenses.

Trial Court Opinion, 7/31/2014, at 4-5 (unnumbered) (footnotes and citations omitted).

Further, at sentencing, Appellant's counsel stipulated to the fact that the checks issued by the victims' insurance company were submitted under the claim number associated with the accident. N.T., 5/23/2014, at 6. This stipulation contradicts Appellant's argument that "it is not self-evident that these payments are directly related to the subject accident." Appellant's Brief at 23.

Our review of the record supports the trial court's determination that the Commonwealth "provided a sufficient factual basis on the record which supported its recommendation for restitution in the amount of ... \$215,003.83." Trial Court Opinion, 7/31/2014, at 5 (unnumbered). Accordingly, we affirm Appellant's judgment of sentence.

Judgment of sentence affirmed.



J-A33021-14

Judgment Entered.



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Joseph D. Seletyn, Esq.

Prothonotary

Date: 3/10/2015