

NOT DESIGNATED FOR PUBLICATION

No. 125,333

IN THE COURT OF APPEALS OF THE STATE OF KANSAS

STATE OF KANSAS,  
*Appellee,*

v.

MICHAEL LAWLER,  
*Appellant.*

MEMORANDUM OPINION

Appeal from Sedgwick District Court; CHRISTOPHER M. MAGANA, judge. Opinion filed May 12, 2023. Affirmed.

*Grace E. Tran*, of Kansas Appellate Defender Office, for appellant.

*Julie A. Koon*, assistant district attorney, *Marc Bennett*, district attorney, and *Kris W. Kobach*, attorney general, for appellee.

Before BRUNS, P.J., CLINE and HURST, JJ.

PER CURIAM: Michael L. Lawler appeals from the restitution order entered by the district court after he was convicted of felony theft. On appeal, Lawler contends that the district court's restitution order is not supported by substantial competent evidence even though he agreed to pay restitution as part of his plea agreement with the State. Lawler argues that he should have been discharged from his obligation to pay restitution under the plea agreement because the State was allowed to recommend a different sentence than the one agreed upon based on his commission of new crimes and violations of his bond conditions. Finding no error, we affirm.

## FACTS

Lawler entered into a plea agreement with the State encompassing this case and another case. In exchange for agreeing to plead guilty to felony theft in this case and to two charges in the other case, the State agreed to dismiss a third charge in the other case. The State further agreed to recommend a dispositional departure to probation in this case and Lawler was free to argue for an alternative disposition at sentencing. As part of the plea agreement, Lawler agreed to pay \$10,500 in restitution to the victim in this case. The plea agreement also provided that if Lawler committed new crimes, violated the conditions of bond, or failed to appear at any hearing prior to sentencing, the State would not be bound by its sentencing recommendations.

In pleading guilty to felony theft in this case, Lawler admitted that the victim paid him \$10,500 to replace the roof on his house but the work was not performed and the money was not returned. The district court found there was a sufficient factual basis and accepted Lawler's guilty plea. Because Lawler was charged with new offenses in another case, had failed to report to court services in violation of his bond conditions, and had failed to appear at his sentencing hearing as originally scheduled, the State informed the district court it no longer intended to follow the sentencing recommendations in the plea agreement. Consequently, the State asked the district court to impose the presumptive sentence and to order Lawler to pay the \$10,500 in restitution as he had agreed to do in the plea agreement.

In response, Lawler argued that if the State was no longer bound to follow the sentencing recommendations, he should no longer be bound by his agreement to pay restitution to the victim. Finding Lawler's argument to be unpersuasive, the district court denied his motion for dispositional departure and sentenced him to the presumptive sentence of 15 months' imprisonment. The district court further ordered Lawler to pay \$10,500 in restitution to the victim. Thereafter, Lawler filed a timely notice of appeal.

## ANALYSIS

Lawler contends that the district court abused its discretion in ordering restitution to the victim in this case. Specifically, he argues that the district court erred in finding that he was not relieved of his obligation to pay restitution as agreed upon because the State was not required to follow the sentencing recommendation set forth in the plea agreement. He further argues the district court's restitution order was erroneous because the State did not present evidence to support the amount requested.

In Kansas, restitution is a part of a criminal sentence and is an authorized disposition in criminal cases. See K.S.A. 2022 Supp. 21-6604(b)(1); *State v. Johnson*, 309 Kan. 992, 996, 441 P.3d 1036 (2019). "The amount of restitution and manner in which it is made to the aggrieved party is to be determined by the court exercising its judicial discretion and is subject to abuse of discretion review." *State v. Hunziker*, 274 Kan. 655, 660, 56 P.3d 202 (2002). A judicial action constitutes an abuse of discretion only 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).

An error of law occurs when the district court's exercise of discretion is guided by an erroneous legal conclusion. *State v. Gonzalez*, 290 Kan. 747, 755, 234 P.3d 1 (2010). An error of fact occurs when "substantial competent evidence does not support a factual finding on which a prerequisite conclusion of law or the exercise of discretion is based." *State v. Ward*, 292 Kan. 541, Syl. ¶ 3, 256 P.3d 801 (2011). The party asserting that the district court abused its discretion—in this case Lawler—bears the burden of showing such abuse. *State v. Crosby*, 312 Kan. 630, 635, 479 P.3d 167 (2021).

Furthermore, the interpretation and enforcement of plea agreements is generally subject to contract principles. *State v. Copes*, 290 Kan. 209, 217, 224 P.3d 571 (2010). As such, we exercise unlimited review over the interpretation and legal effect of the plea

agreement entered into by Lawler and the State. See *Trear v. Chamberlain*, 308 Kan. 932, 936, 425 P.3d 297 (2018). ""The primary rule for interpreting written contracts is to ascertain the parties' intent. If the terms of the contract are clear, the intent of the parties is to be determined from the language of the contract without applying rules of construction." [Citation omitted.]" *Peterson v. Ferrell*, 302 Kan. 99, 104, 349 P.3d 1269 (2015).

Additionally:

""An interpretation of a contractual provision should not be reached merely by isolating one particular sentence or provision, but by construing and considering the entire instrument from its four corners. The law favors reasonable interpretations, and results which vitiate the purpose of the terms of the agreement to an absurdity should be avoided." [Citation omitted.]" *Waste Connections of Kansas, Inc. v. Ritchie Corp.*, 296 Kan. 943, 963, 298 P.3d 250 (2013).

"Although the rigidity and proof of value that lies in a civil damage suit does not apply in a criminal case, the court's determination of restitution must be based on reliable evidence which yields a defensible restitution figure." [Citation omitted.]" *Hunziker*, 274 Kan. at 660. That is, substantial competent evidence must support "[the] district court's factual findings relating to the causal link between the crime committed and the victim's loss." *State v. King*, 288 Kan. 333, 354-55, 204 P.3d 585 (2009). Substantial competent evidence refers to legal and relevant evidence that a reasonable person could accept as being adequate to support a conclusion. *State v. Smith*, 312 Kan. 876, 887, 482 P.3d 586 (2021).

As a preliminary matter, the State argues the issue presented on appeal was not preserved because Lawler did not raise it before the district court. However, a review of the record on appeal reveals that Lawler represented to the district court that he was no longer agreeing to pay restitution to the victim and that the State had the burden to

support its claim for restitution. Further, Lawler asserted he was "effectuating [his] rights to challenge the restitution." Accordingly, we find that the issue presented on appeal is properly before us.

Generally, the State has the burden to prove the amount of restitution requested and establish a causal connection to the crime of conviction. See *State v. Shank*, 304 Kan. 89, 93, 369 P.3d 332 (2016). It is also well established that a district court has the authority to order restitution in the amount specified in a plea agreement. See *State v. Dexter*, 276 Kan. 909, 919, 80 P.3d 1125 (2003). Here, Lawler appears to be arguing that because the restitution agreed to in the plea agreement was allegedly unenforceable, the State needed to present additional evidence to support the amount of restitution at trial. Based on our review of the record in light of Kansas law, we find Lawler's argument unpersuasive.

The plea agreement entered by Lawler and the State provided, in part, as follows:

"1. Defendant agrees to enter a plea of guilty to the following:

"In 21CR1502:

"Count 1: K.S.A. 21-5801(a)(1)(b)(3): Theft, [severity level] 9,  
Nonperson Felony

"In 21CR2102:

"Count 1: K.S.A. 21-5427(a)(3)(b)(3)(A): Stalking, [severity level] 9,  
Person Felony

"Count 2: K.S.A. 21-5427(a)(3)(b)(3)(A): Stalking, [severity level] 9,  
Person Felony

"2. In exchange for defendant's successful plea of guilty as set forth in paragraph 1, the State agrees to dismiss Count 3 in 21CR2102 and the following recommendations will be made:

"a. The state will recommend the low number in the appropriate KSGA grid box on each felony count in each case.

"b. The state will recommend that the counts in 21CR2102 run concurrently to each other.

"c. The state will recommend that these two cases run consecutively to each other and to all prior convictions.

"d. The state will recommend that the court follow the presumption, believed to be probation, in 21CR2102.

"e. In 21CR1502, the state anticipates that the presumption will be imprisonment. The state will recommend a dispositional departure to probation based on the following substantial and compelling reasons in combination:

"i. The defendant is presumptive imprisonment due to his convictions in 21CR2102. Prior to these cases, the defendant would have been criminal history G and presumptive probation.

"ii. The defendant is presumptive probation on 21CR2102.

"iii. The availability of treatment programs within the community, including substance abuse treatment and batterer intervention programs that would better promote offender reformation.

"iv. Probation would allow the defendant a better opportunity to repay the restitution owed in this case.

....

"g. The defendant agrees to pay restitution in the amount of \$10,500 to [the victim] in 21CR1502.

....

"3. The defense is free to argue for an alternative disposition.

"Absent any specific agreement set out above the State will not be bound by this recommendation and may make any other sentencing recommendation it deems appropriate, including incarceration, in the event the Defendant was on felony bond, probation, assignment to community corrections, felony parole, or post release supervision at the time of the commission of this offense.

"The State will not be bound by this recommendation and may make any other sentencing recommendation it deems appropriate, including incarceration, in the event the Defendant is arrested, commits a new offense, violates bond conditions or fails to appear for a court appearance at any time prior to sentencing."

We find the plain and unambiguous language of the plea agreement to support the State's argument. In particular, Lawler is asking this court to do two things we cannot do: (1) construe one provision of the plea agreement in isolation; and (2) construe the isolated provision in a way that renders other provisions of the agreement meaningless. See *Waste Connections of Kansas, Inc.*, 296 Kan. at 963. Reading the provisions of the plea agreement in their entirety rather than in isolation, we find that Lawler not only agreed to pay restitution to the victim but also stipulated to the amount to be paid. Moreover, in pleading guilty to felony theft, Lawler admitted the victim had paid him \$10,500 to replace his roof but that the work was never performed and the money was never returned.

The record reflects that Lawler received the benefit of his bargain in that the State dismissed one of the charges against him in exchange for his plea. Also, Lawler acknowledges that the plea agreement allowed the State to make a different sentencing recommendation if he violated the conditions of his bond or committed new criminal offenses. And it is undisputed that he not only violated the conditions of his bond but also was charged with committing new crimes. Likewise, it is undisputed that he failed to appear at his sentencing hearing as originally scheduled and a warrant was issued for his arrest.

We find that the district court did not err—either factually or legally—in determining that the plea agreement released the State from its obligation to recommend a dispositional departure to probation. Significantly, the State was relieved of this obligation based on Lawler's conduct. Based on the plain and unambiguous language of the plea agreement, we find that the State did not breach the agreement. Instead, the State was excused from its agreement to recommend probation in light of Lawler's actions.

Furthermore, we find nothing in the plea agreement to suggest that Lawler would be released from his obligation to pay restitution under these circumstances. To the extent that he is asking for an equitable remedy—specific performance—it is important to recognize that his hands are unclean. As our Supreme Court has recognized: "Specific performance is not a matter of right, but of equity, and rests in the sound legal discretion of the court. Before the relief will be granted, . . . the facts and circumstances must be such as appeal to the conscience of the court and compel its discretion." [Citation omitted.]" *Shepard v. Dick*, 203 Kan. 164, 167, 453 P.2d 134 (1969). Further, "he who comes into equity must come with clean hands. The clean hands doctrine in substance provides that no person can obtain affirmative relief in equity with respect to a transaction in which he has, himself, been guilty of inequitable conduct." *Green v. Higgins*, 217 Kan. 217, 220, 535 P.2d 446 (1975). Indeed, it is ironic that Lawler seeks to benefit from his own wrongdoing.

Significantly, the factual basis for the felony theft charge was recited at the plea hearing and the district court asked Lawler if the allegations were true. Lawler responded, "Yes." The district court then stated: "And it's my understanding this was approximately \$10,000, based upon the plea agreement, [\$10,500] to be exact. And is that correct?" Lawler responded, "Yes." The district court also asked Lawler why the victim gave him the money and he explained it was to replace the roof on the victim's house. The district court asked Lawler whether he had done the work and he admitted that he had not. In addition, Lawler admitted that he did not return the money to the victim.

In addition to the amount of restitution being reflected in the plea agreement—as well as the probable cause affidavit—Lawler admitted to the amount at the plea hearing and to the fact that the money was taken from the victim. As such, there is substantial competent evidence in the record on appeal to support the district court's findings regarding both the amount requested and the causal connection between Lawler's crime and the victim's monetary loss. In other words, "the [district] court's determination of



restitution [was] based on reliable evidence which yield[ed] a defensible restitution figure.' [Citation omitted.]" *Hunziker*, 274 Kan. at 660.

Affirmed.