

AUG 03 2009

SALT LAKE COUNTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT^{By} Deputy Clerk

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,

Plaintiff,

vs.

PRESTON JASON WOOD,

Defendant.

:

:

:

:

:

RESTITUTION ORDER

CASE NO. 081903155

Judge Michele M. Christiansen

Pending before the Court is a Motion for Restitution relating to Preston Jason Wood's (Defendant) convictions for a Class A Misdemeanor Simple Assault and Class B Misdemeanor Domestic Violence in the Presence of a Child. The State of Utah (State) and the victim, by and through her attorneys, submit that Defendant owes total restitution in the amount of \$6625.41. The amount of \$5,177.25 is claimed by the State as verified expenses or losses incurred by the victim and paid by the Office of Crime Victims Reparations and \$1,448.16 is the amount claimed directly by the victim in this case for medical expenses, travel expenses for attending court hearings, lost wages, and relocation expenses. The victim has also made a claim that the Defendant pay for any mental health counseling obtained in the future for herself or her children.

Defendant disagrees with the requested restitution amount arguing that the request for restitution was untimely, the victim does not have the right to directly petition the

Court for restitution, the State's request for restitution is inappropriate because the State is seeking restitution for the Office of Crime Victim Reparations and not the victim, and that the expenses listed in the restitution request are inappropriate because there is no indication that the expenses claimed by the victim arose out of facts or events constituting the defendant's criminal activities. Finally, Defendant argues that since he is incarcerated he does not have the ability to pay restitution so it should not be ordered.

DISCUSSION

1. *The Request for Restitution was Timely Submitted.*

On October 20, 2008, Defendant was convicted of a Class A Misdemeanor Assault and a Class B Misdemeanor Domestic Violence in the Presence of a Child. At the hearing on October 20th, the Court sentenced the defendant to 545 days in jail and held the issue of restitution open for a period of 90 days. Both the victim's motion and the State's motion for restitution were filed on January 20, 2009. While the defendant is correct that January 18, 2009 was the 90th day after October 20, 2008, January 18, 2009 was a Sunday and January 19, 2009 was a court holiday. The Utah Rules of Civil and Criminal Procedure provide that weekends and holidays are not to be counted in computing periods of time and so the restitution motions were timely filed when they were filed on January 20, 2009.

2. *The Victim has a Right to Restitution, to Petition the Court Directly and the Requested Restitution Amounts are Appropriate*

Utah law mandates that a court order restitution “[w]hen a defendant is convicted of criminal activity that has resulted in pecuniary damages.” Utah Code Ann. § 77-38a-302(1). Section 76-3-201 of the Utah Code defines restitution as “full, partial or nominal payment for pecuniary damages to a victim” of criminal activity and pecuniary damages as “all special damages, but not general damages.” Utah Code Ann. § 76-3-201(1)(d) and (1)(c); *but see State v. Corbitt*, 82 P.3d 211 (Utah Ct. App. 2003) (Orme, J., concurring). Special damages consist of “actual loss of past earnings and anticipated loss of future earnings.” Utah Code Ann. § 63-25a-411(4)(d). In seeking compensable damages, the victim must show that a loss has actually occurred. *See Valley Colour, Inc. v. Beuchert Builders, Inc.*, 944 P.2d 361, 364 (Utah 1997). Utah courts have stated that “the well-settled remedial purpose of [Utah’s] restitution statute is ‘to compensate victims for the harm caused by a defendant and . . . to spare victims the time, expense, and emotional difficulties of separate civil litigation to recover their damages from the defendant.’” *Corbitt*, 82 P.3d at 215 (quoting *Monson v. Carver*, 928 P.2d 1017, 1027 (Utah 1996)). In this case, Defendant pled guilty to and was convicted of assaulting his girlfriend in the presence of three minor children. Clearly, each individual present at the time of the assault was harmed by Defendant’s criminal actions are each entitled to be compensated for the damages they have incurred as the result of Defendant’s actions.

Moreover, the restitution statutes in Utah law place a number of affirmative

obligations on state agencies, prosecutors and courts to ensure that a victim's interest in restitution is protected. Although the prosecuting entity is required by Section 77-38a-202 of the Utah Code to submit restitution claims to the court, this requirement does not bar the victim from applying directly to the court for restitution. In fact, given the procedures outlined in Utah Code Ann. § 77-38a-302 for determining an appropriate restitution award, a direct request from the victim setting forth actual losses and damages would assist the Court in making an accurate restitution determination.

Furthermore, Utah law clearly envisions a court ordering a defendant to pay complete restitution and allows a court to order a defendant to pay restitution to the Office of Crime Victim Reparations (CVR) for expenses paid by CVR on behalf of a victim. *See* Utah Code Ann. § 63M-7-503 ("A reparations award may not supplant restitution[,] ... [t]he court may not reduce an order of restitution based on a reparations award[,] ... [i]f, due to reparation payments to a victim, the Office of Crime Victim Reparations is assigned ... a claim for the victim's judgment for restitution or a portion of the restitution, the office may file with the sentencing court a notice of the assignment ... [and] [u]pon conviction and sentencing of the defendant, the court shall enter a civil judgment for complete restitution as provided in Section 77-38a-401 and identify [CVR] as the assignee of the assigned portion of the judgment."). Moreover, inasmuch as the definition of "victim" pursuant to Utah law is "any person whom the court determines has suffered pecuniary damages as a result of the defendant's criminal activities," CVR could certainly be considered another victim in this case as it has paid certain of the victim's expenses which

were incurred as the result of Defendant's criminal activity. Utah Code Ann. § 77-38a-102(14)(a). Finally, Section 77-38a-402 of the Utah Code establishes a list of priorities for how restitution payments should be applied. CVR is the second priority after the victim. Therefore, the Court finds that amounts requested by the State in restitution to reimburse CVR are appropriate.

Finally, the victim's request that Defendant pay restitution for medical expenses, travel expenses, relocation expenses, and mental health counseling are all pecuniary damages suffered by the victim as a result of Defendant's criminal actions. Therefore, the Court orders that Defendant pay the requested restitution for those items in this case.

3. *Defendant Will Have the Ability to Pay Restitution Once He is Released From Jail*

The fact that Defendant is currently incarcerated certainly affects his ability to pay restitution at the current time. However, Defendant will not be incarcerated indefinitely and will be released to the community upon completion of his sentence. Accordingly, Defendant will have the ability to pay restitution and the Court finds no circumstance that would make restitution inappropriate in this case.

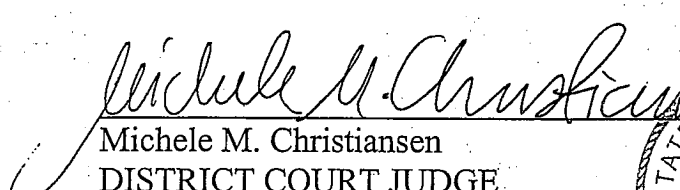
CONCLUSION

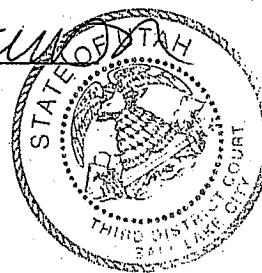
The Court orders that Defendant pay total restitution in the amount of \$6625.41. The amount of \$5,177.25 is to be paid to the Office of Crime Victims Reparations and \$1,448.16 shall be paid to the victim. If further expenses are incurred by the victim in the

future for mental health counseling, the State shall submit a motion to amend the Restitution Order to include those amounts.

DATED this 29 day of July, 2009,

BY THE COURT:


Michele M. Christiansen
DISTRICT COURT JUDGE



I certify that a copy of the attached document was sent to the following people for case 081903155 by the method and on the date specified.

MAIL: BRANDON E SIMMONS 2035 S 1300 E SALT LAKE CITY UT
84105-2720

Date:

Date: Aug 3-09

mmarut

Deputy Court Clerk