

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Pickens County
Honorable Wayne M. Creech, Circuit Court Judge

IN THE INTEREST OF: Russell James B.,
A minor under the age of seventeen,

Appellant.

AMENDED FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant asks whether the family court erred ordering liquidation of his (a fourteen year old's) personal property since this was a highly improper restitution method because it was punitive and therefore did not promote rehabilitation. (Appellant's Statement of Issues on Appeal).

STATEMENT OF THE CASE

Appellant (DOB 4.22.91) appeared with counsel before the Honorable Marion D. Myers, Judge, in the Family Court of Pickens County on April 13, 2005. Appellant admitted the allegations of juvenile petitions charging destruction of a human repository (2005-107), malicious injury to personal property (2005-136), and second degree burglary (2005-39). The court committed the juvenile to DJJ for evaluation. On August 17, 2005, Appellant and his counsel came before the Honorable Wayne M. Creech, Judge, for disposition. The court issued a written Order dated August 18, 2005 placing the juvenile on probation, including special conditions. Appellant served opposing counsel with timely Notice of Appeal.

ARGUMENT

The juvenile did not complain in the family court that the method of restitution was punitive and would not promote his rehabilitation, and the complaint should not be considered for the first time on appeal.

The Family Court Hearings

Appellant's mother was incarcerated, and his father had been incarcerated. His grandparents adopted him. The grandfather noted that Appellant helped him care for the partially paralyzed grandmother, and he needed Appellant at home. Appellant was thirteen years of age and, after repeating a grade, in the seventh grade. A co-defendant and Appellant broke into and vandalized the D.'s home on November 13, 2004. On February 18, 2005, another accomplice and Appellant went into the H.'s home, sat around, watched pornographic movies, and damaged the home. Between February 28 and March 2, 2005, still another accomplice and Appellant went to a church and - by hand and with a four wheeler - pushed over gravestones. (R. pp. 3-8).

At the hearing for disposition, DJJ recommended probation with suspended alternative placement, counseling, outpatient drug treatment, random drug testing, the youth advocate program, a letter of apology to the victims, parenting for the adoptive parents, and restitution. The state concurred and recommended eleven hundred dollars (\$1100) restitution. (R. pp. 13-15). Victim H. said Appellant's share of her damage was \$687, and victim D. claimed \$15,000 damage. D. also noted difficulty getting her insurer to pay, and she had retained counsel. (R. pp. 16-18).

Appellant's counsel agreed that Appellant should pay restitution in an amount set by the court. (R. p. 23, lines 11-15). Counsel thought that Appellant could not be

employed until he was fifteen years old in April of next year.¹ R. p. 23, lines 15-18). The court thought that the juvenile should be responsible for every dime, and his assets could be considered to raise money for the victims. Based upon the adoptive father's stating that the four wheeler was in his name and he owed money on it, the court found that it was not the juvenile's, and he should not have anything to do with it. (R. p. 19, lines 22-23; p. 23, line 19 - p. 26, line 2).

The court issued a written Order for Probation, with special conditions. The court suspended an indeterminate commitment to DJJ, ordered no contact with certain persons, counseling, outpatient drug treatment, cooperation with the Youth Advocate Program, random drug tests, community service, writing a letter of apology to all victims, parenting sessions for the adoptive father, and prohibited the juvenile's riding any four wheelers. The court ordered the child's adoptive father to give all money that would have been used to purchase gifts to pay on monetary restitution. Based upon a DJJ inventory, the juvenile's assets deemed sellable were to be sold and used to pay restitution within six months. Thereafter, monetary restitution was to be paid on a regular basis. The court ordered payments through the Pickens County Clerk of Court to victims D. (\$15,000) and H. (\$687). (Order dated August 18, 2005, R. pp. 37-28).

The Issue on Appeal

Appellant says the family court ordered an inventory and liquidation of his assets to satisfy the fifteen thousand six hundred and eighty-seven dollar (\$15,687) restitution

¹ ○ 26 S.C.Code Ann.Reg. 71-3105 (Supp.2005) identifies agricultural employment (excluding certain work) outside of school hours for fourteen year olds and twelve or thirteen year olds with parental consent. 26 S.C.Code Ann.Reg. 71-3106 (Supp.2005) identifies employment for fourteen year olds outside of school hours (and with limited work hours when school is in session) and in certain described work for retail, food and gasoline service.

award. The family court has discretion in ordering restitution, but the amount of restitution should facilitate the juvenile's rehabilitation. The family court's awarding restitution by liquidating his assets was without the statute since it was punitive and wanting potential for rehabilitation. (Initial Brief of Appellant).

Appellant asked for leniency in the family court but raised no complaint about the amount of restitution or the method of restitution in that it was punitive and without the statute. Matters that have not been presented to and considered by the lower court are waived and should not be considered by the appellate court. E.g., State v. McHoney, 344 S.C. 85, 99, 544 S.E.2d 30 (2001)(contemporaneous objection required to preserve issue for appellate review); State v. Newton, 274 S.C. 287, 262 S.E.2d 906 (1980)(questions neither presented to nor passed upon by the trial judge are waived and should not be considered by the appellate court for the first time on appeal). The issue on appeal should not be considered further.

Even if the appellate court should consider the substance of the self-serving complaint raised for the first time on appeal, it demonstrates no merit. The Victims' Bill of Rights gives the victims of crime the right to prompt and full restitution from juvenile offenders convicted of criminal conduct causing loss or injury to a victim. S.C. Const. art. I, § 24 (A)(9). "The circuit and family court must address the issue of restitution as provided by statute." S.C. Code Ann. § 16-3-1550 (G). S.C. Code § 20-7-7805 (A)(3) (Supp. 2006) provides for the family court to place a child on probation for a period of time not to exceed the child's eighteenth birthday and to impose monetary restitution as a condition of probation. In the Interest of Terrence M., 368 S.C. 276, 628 S.E.2d 295

(Ct.App. 2006). Probation is not for punishment. Rather, probation should correct maladjustment and guide the child for both his own well-being and that of his family. The statute encourages constructive employment for both reparation and the juvenile's rehabilitation. The court should determine the amount of monetary restitution on the basis of the victim's loss, the juvenile's role in causing the loss, and the juvenile's ability to pay the amount over a reasonable period of time. S.C. Code § 20-7-7805 (A)(3) (Supp. 2006). The liquidation of the juvenile's assets is purely speculative since nothing in the record shows that any assets were deemed sellable by DJJ and used to pay restitution within six months of the court order. Further, the only reasonable inference is that the court's initial source and method of restitution were for the rehabilitative purpose of holding the juvenile accountable for his own actions and understanding the loss that he caused the victims. "The underlying purposes of juvenile restitution are victim compensation and juvenile accountability, and thus restitution provisions of a juvenile justice act are construed liberally in favor of imposing restitution." Am. Jur.2d Juvenile Courts and Delinquent and Dependent Children § 67.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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