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STATEMENT OF ISSUES ON APPEAL

Whether the family court judge erred by ordering a liquidation of the fourteen-year-old appellant's assets, and for him to cooperate with the solicitor's office and DJJ in conducting an inventory of his personal property for this purpose, since this was a highly improper restitution method because it was punitive and it therefore did not promote the rehabilitation of the minor appellant?

STATEMENT OF THE CASE

Appellant appeared on April 13, 2005 before the Honorable Marion D. Myers in the Pickens County Family Court. John W. Dejong represented the fourteen-year-old appellant. Mary Frances Patrick was the solicitor. R. 1.

Appellant pled guilty to charges of malicious injury to personal property, one count of burglary in the second degree and destruction of a human repository. R. 36. R. 2, ll. 1 – 19; R. 5, l. 15 - 6, l. 10. At the conclusion of the hearing Judge Myers ordered appellant to be evaluated by the Department of Juvenile Justice. R. 8, l. 25 – 9, l. 21.

A depositional hearing was held on August 17, 2005 before the Honorable Wayne M. Creech. John W. Dejong represented appellant. Mary Frances Patrick was the solicitor. R. 12.

At the conclusion of the hearing the judge ordered appellant committed to the Department of Juvenile Justice for an indeterminate not to exceed his twenty-first birthday. That sentence was suspended after the service of a ninety day determinate sentence. The judge also ordered appellant to cooperate with the solicitor's office in inventorying his personal property and the "liquidation of his assets" to pay restitution to the victims. R. 30, l. 16 – 31, l. 21.

This appeal follows.

ARGUMENT

Defense counsel correctly argued the judge should not use the award of restitution to the victims to set appellant “up to fail coming out of the gate.” The judge’s restitution award including the “liquidation of appellant’s assets” was punitive, and therefore it went against the promotion of the rehabilitative aspects of appellant making reparations to the victims.

Relevant Facts

As seen, appellant pled guilty to destruction of property offenses, and burglary in the second degree. The Davis family, who knew appellant, said “there was fifteen thousand worth of damage done” to their property. R. 17, l. 13 – 18, l. 10.

The judge at first stated he was inclined to issue a restitution order, and have the fifteen thousand dollars reduced to a civil judgment when appellant was released from DJJ. R. 19, l. 11 – 20, l. 18.

The victim then complained that the money they had paid to fix their property could have been earning interest in the interim. R. 20, ll. 19 – 21. They also complained because appellant’s grandparents apparently bought him a “four-wheeler” which they thought the fourteen-year-old appellant did not deserve. R. 21, ll. 14 – 20.

Defense counsel told the judge appellant was fourteen-years-old. Appellant’s mother was serving a ten year sentence in the Department of Corrections. Appellant’s father had just been released from the Department of Corrections. Counsel said “I’m thankful his grandparents are here for him.” Counsel told the judge appellant, otherwise, “never had a chance.” R. 22, ll.2-25.

Counsel argued that while restitution was left to the judge's discretion that "under the best or worst of circumstances, I certainly would ask that we not set this young man up to fail coming out of the gate, your Honor. I certainly think he should pay something. He is fourteen years of age as I indicated, he won't be fifteen until April of next year. Until then, he cannot as I understand the employment law [he] is really not [able to] be employed - - -." R. 23, ll. 12 – 18.

The judge at this point interrupted counsel, and stated that the victims said appellant had assets. The judge said a representative from DJJ could go to appellant's house and inventory appellant's assets and dispose of (liquidate) them. R. 23, ll. 19 – 25.

The judge used as examples of appellant's assets that could be sold -- the four-wheeler and his play station. The judge said if the law prohibited him from doing this he wanted to know the legal authority that prohibited it. R. 23, l. 19 – 25, l. 9.

Defense counsel then noted there would be an issue of the title to the four-wheeler and that he did not know if "the play station and all that" was "gifted." Appellant's grandfather interjected that the four-wheeler was "in my name," and that he owed three thousand dollars on it. R. 25, ll. 10 – 15.

The victim then told appellant, "you can be a good kid." "And you're smart, don't waste it. Turn around and change it now and make yourself somebody and make your grandparents proud." R. 28, ll. 5 – 13.

The judge then ruled that DJJ and the solicitor's office would conduct an inventory of all appellant's assets. The judge said he was ordering that the property not be disposed of by anyone after it was inventoried. The judge then ordered a "liquidation of appellant's

assets” to satisfy the fifteen thousand six hundred and eighty-seven dollar restitution award.
R. 30, l. 16 – 32, l. 23.

Discussion

South Carolina Code § 20-7-7805(A) (3), governs the authority of the judge to place a child on probation. This statute states that “probation must not be ordered or administered as punishment but as a measure for the protection, guidance, and well-being of the child and a child’s family.”

As to restitution, the statute provides that the “Department of Juvenile Justice, in coordination with local community agencies, shall develop and encourage employment of a *constructive nature* designed to make reparation and to promote *the rehabilitation* of the child. When considering the appropriate amount of monetary restitution to be ordered, the court shall establish the monetary loss suffered by the victim and then weigh and consider this amount against the number of individuals involved in causing the monetary loss, the child’s particular role in causing this loss, and the child’s ability to pay the amount over a reasonable period of time. The Department of Juvenile Justice shall develop a system for the transferring of court-ordered restitution from the child to the victim or owner of property injured, destroyed, or stolen.” See South Carolina Code § 20-7-7805(A) (3). (emphasis added).

Defense counsel argued and requested that the court not “set appellant up to fail” with a harsh restitution award or conditions. Yet that is exactly what the judge did by ordering the harsh, punitive and cruel liquidation of a fourteen year old child’s “assets” as punishment. Selling a child’s play station and other items, seemingly gifts since appellant

could not work, was a punitive method of paying restitution. This restitution process not only “set appellant up to fail” it was totally devoid of any rehabilitative aspect whatsoever.

Further, even with a civil judgment the family court judge earlier mentioned there are exemptions to prevent the offender or debtor from being left destitute or destroyed.

This Court has recognized that even in an adult criminal case in General Sessions Court the judge should take into account the anticipated rehabilitative effect on the defendant when determining the manner of restitution or the method of payment. See State v. Cox, 326 S.C 440, 484 S.E.2d 108, 109 (Ct. App. 1997). See also South Carolina Code § 17-35-322.

While a judge has broad discretion in ordering restitution or reparations to the victims, he must still, particularly in family court, consider the rehabilitative aspects of a restitutionary award. That clearly was the intent of the legislature. Yet, the manner of restitution ordered here conversely was cruel and counter productive. The judge abused his discretion in ordering this manner of restitution, and the family court judge’s restitution award and method should be vacated.

CONCLUSION

By reason of the foregoing argument, the order of restitution in this case should be vacated, and this case remanded to the Pickens County Family Court for further proceedings not inconsistent with this Court's opinion.

Respectfully submitted,

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October 18, 2006

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

October 17, 2006

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

Wayne M. Creech, Family Court Judge

IN THE INTEREST OF: RUSSELL JAMES B.,
A MINOR UNDER THE AGE
OF SEVENTEEN,

APPELLANT

FINAL BRIEF OF APPELLANT

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