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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 4-508 / 93-1888

STATE OF IOWA,

Appellee,

vs.

ROBERT J. STARK,

Appellant.

Appeal from the Iowa District Court for Story County, Timothy J. Finn, Judge.

Defendant appeals the amount of the district court's award of restitution to the victim following his conviction of first-degree theft. **AFFIRMED.**

Joseph M. Isenberg, Ames, for appellant.

Bonnie J. Campbell, Attorney General, Robert P. Ewald, Assistant Attorney General, Mary E. Richards, County Attorney, and Stephen H. Holmes, Assistant County Attorney, for appellee.

Considered by Hayden, P.J., and Habhab and Huitink, JJ.

HUITINK, J.

Robert Stark appeals from the restitution order entered following his conviction of first-degree theft. We affirm.

Tina Kaufman gave Stark $27,130 to invest in the stock market. They agreed that any profits would be equally divided and the account would be closed if its value fell below $25,000.

Stark deposited $25,000 with a brokerage firm and kept the balance for his own use. He made frequent trades and made use of put and call options. He also leveraged the account by making margin purchases. He withdrew $2500 from the account on one occasion and gave $1000 to Kaufman claiming it was a distribution of profits. In December 1992 Kaufman inquired as to the value of the account and was informed the balance was down to $15,000. She immediately closed the account. Kaufman received $15,831.70 after closing the account. This is $11,298.68 less than she gave Stark to invest.

Stark made an additional $8300 withdrawal after the account was closed. Liability on the brokerage's claim for reimbursement from Kaufman for $8300 had not been resolved as of the sentencing hearing.

The district court ordered Stark to make $11,103.68 restitution to Kaufman. This amount is the difference remaining after credit for the amount Kaufman recovered from her account and an additional $195 credit. The district court deferred any decision regarding restitution

of the $8300 withdrawal until the brokerage's claims are resolved.

On appeal Stark contends the restitution order should have been limited to $5,246.68. He argues that Kaufman's immediate liquidation of the account unreasonably reduced its value by causing all the outstanding put and call options and margin calls to be exercised on that date.

We review for an abuse of discretion. State v. Wagner, 484 N.W.2d 212, 214 (Iowa App. 1992). Discretion is abused if it is clear the sentencing judge has applied an improper standard, failed to follow established legal rules, or has based the decision on a record devoid of facts to support the decision. See Berg v. Des Moines Gen. Hosp. Co., 456 N.W.2d 173, 176 (Iowa 1990) (citations omitted).

In a criminal case the sentencing court is required to order full victim restitution. Iowa Code § 901.2 (1993). The State must establish a causal connection between the criminal conduct and the victim's damages by a preponderance of the evidence. State v. Holmberg, 449 N.W.2d 376, 377 (Iowa 1989). This is essentially the same as the proximate cause requirement for recovery of damages in a tort action. State v. Starkey, 437 N.W.2d 573, 574 (Iowa App. 1989).

Based on our limited review of the record we cannot say the district court abused its discretion. The record contains sufficient facts supporting the district court's finding of a causal connection between Stark's criminal

conduct and Kaufman's damages. The restitution order also cites appropriate legal authority supporting the sentencing court's legal conclusions.

We also disagree with the defendant's contention that Kaufman's decision to liquidate her account was the proximate cause of a portion of her damages. This argument is not supported by the facts. Moreover, such a conclusion would require consideration of comparative fault concepts that are not applicable in this context. State v. Wagner, 484 N.W.2d 212, 216 (Iowa App. 1992).

The sentence imposed, including the restitution provision, fell well within the sentencing court's discretion. The district court's judgment is accordingly affirmed.

AFFIRMED.