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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 5-046 / 94-551

STATE OF IOWA,

Appellee,

vs.

CHARLES WAYNE DRENNAN,

Appellant.

Appeal from the Iowa District Court for Johnson County, Sylvia A. Lewis, District Associate Judge.

Charles Drennan appeals from the restitution order imposed following his guilty plea to third-degree theft. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Andi S. Lipman, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, J. Patrick White, County Attorney, and David Tiffany, Assistant County Attorney, for appellee.

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

HAYDEN, P.J.

On March 10, 1993, Charles Drennan pled guilty to third-degree theft. He had written checks in excess of $500 altogether to businesses in Iowa City knowing they would not be honored by the bank. Drennan was immediately sentenced to thirty days to run concurrently with a sentence on another charge and was ordered to "make restitution to the victims per the county attorney's statement."

On January 18, 1994, the State filed a statement of pecuniary damages and amended it to include an additional victim "who was not listed in the trial information." Following a restitution hearing, the trial court ordered Drennan to pay restitution as requested by the State.

Drennan appeals. He raises three issues on appeal. Drennan first contends the trial court erred in untimely imposing restitution almost a year after sentencing. Second, he argues the trial court erred in assessing restitution allegedly exceeding the amount of loss suffered by the victim. Third, he claims the trial court erred in imposing restitution on an uncharged and allegedly unproven offense.

I. **Scope of Review.**

Defendant challenges the restitution ordered by the trial court. Appellate review of a trial court's restitution order is for correction of errors at law.

State v. Petrie, 478 N.W.2d 620, 622 (Iowa 1991); State v. Starkey, 437 N.W.2d 573, 574 (Iowa 1989) (citation omitted).

II. Timeliness of Restitution.

Defendant contends the State's statement of pecuniary damages was untimely because the statement was not provided within thirty days of sentencing. A review of Iowa Code section 910.3 (Supp. 1991) establishes the trial court acted properly here. Iowa Code section 910.3 provides in pertinent part:

> The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim assistance programs and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. . . . If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. . . . If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for pecuniary damages incurred up to that time, any award by the crime victim assistance programs, court-appointed attorney's fees or the expense of a public defender, and court costs. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

Iowa Code § 910.3 (emphasis added).

The language of the statute is clear, and the State's actions were within the purview of this section. The statute authorizes additional and supplemental orders

imposing restitution responsibilities for amounts and claims which become known and/or arise after sentencing without limitation as to the time. Because the statute does not require the statement be made within thirty days of sentencing, the State's request was timely. As such, defendant is not entitled to relief. We affirm on this issue.

III. Amount of Loss.

Restitution is defined in the Iowa Code as "payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution." Iowa Code § 910.1(3) (1991). Restitution cannot exceed the loss suffered by the victim. State v. Janz, 358 N.W.2d 547, 549 (Iowa 1984); see also Iowa Code § 910.1(2) (defining pecuniary damages).

Defendant claims the restitution order exceeded the amount of loss suffered. Defendant pled guilty to third-degree theft after he wrote checks from closed accounts to various Iowa City retailers. One of these retailers, Younkers Department Store, suffered a loss of $172.50 which included $157.50 for merchandise and $15.00 for a bad check charge. Defendant now contends an associate of his returned some of the merchandise to Younkers. Defendant complains the restitution order includes the items allegedly returned.

Defendant, however, is unable to show any proof the items were returned. Defendant did not produce a receipt

for the merchandise. Instead, defendant only claimed his associate tried to return the items, but Younkers kept the clothing because it had been purchased with a bad check. The State established, however, the items were neither returned nor kept by the store.

Kirby Martin, loss prevention manager of the Younkers store in Iowa City, testified the store had no record of the merchandise being returned to the store. Martin checked the records from June 16, 1992, through October 1992 and did not find any record cash or a merchandise receipt had been issued to defendant or defendant's associate. Defendant claimed Younkers kept the clothing; however, according to Younkers' policy, this would not have occurred. Martin stated a store clerk would not determine the clothing was stolen without consulting him first. Because defendant did not establish the items were returned to Younkers, his claim is without merit. We also affirm on this issue.

III. **Uncharged and Allegedly Unproven Offense.**

Lastly, defendant claims the trial court erred in ordering defendant to pay restitution for an uncharged and allegedly unproven offense; specifically, writing a bad check at an Athlete's Foot store. We need not reach the merits of this issue, however.

The State amended its statement on pecuniary damages on March 3, 1994, to include a check defendant wrote to Athlete's Foot. Defendant did not file a written resistance to this request.

At the restitution hearing held March 13, 1994, defendant never challenged the State's request to amend the restitution order to include the Athlete's Foot check. Defendant had the opportunity to challenge the amendment to the statement of pecuniary damages below, but did not do so. Defendant has failed to preserve error and this issue is waived. See State v. Tobin, 333 N.W.2d 842, 844 (Iowa 1983) (issues not raised in the trial court cannot be raised on appeal).

Judgment of the trial court affirmed.

AFFIRMED.