

NO. A-25-684

IN THE COURT OF APPEALS
FOR THE STATE OF NEBRASKA

STATE OF NEBRASKA,
Appellee,
v.
JOSHUA J. CARPENTER,
Appellant,

APPEAL FROM THE DISTRICT COURT
OF GAGE COUNTY, NEBRASKA

The Honorable Ricky A. Schreiner, District Judge

BRIEF OF APPELLANT

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STATEMENT OF JURISDICTION

A. Basis Of Jurisdiction

This is an appeal by Appellant, Joshua J. Carpenter, of the restitution imposed in a case in which he pled “no contest” on March 6, 2025, to Count Two, *Obstructing Road*, in violation of Neb.Rev.Stat. § 39-301, a Class V misdemeanor. On March 31, 2025, Appellant was sentenced to a fine of \$100.00, court costs of \$62.00, and Appellant was ordered to pay restitution in the amount of \$15,000.00 on or before March 29, 2030.

This appeal is authorized by the Nebraska Constitution, Article I, Section 23 and Nebraska Revised Statute §25-1912.

B. Date Of Final Order/Judgment

Appellant was sentenced on March 31, 2025 in the County Court of Gage County, Nebraska. This sentence, specifically the order of restitution, was vacated by the District Court of Gage County, Nebraska on August 8, 2025 and remanded to the Gage County Court with directions.

C. Date Of Appeal Filing

Appellant filed his appeal on September 5, 2025. An order to proceed in forma pauperis was signed on September 5, 2025.

STATEMENT OF THE CASE

A. Kind Of Action / Nature Of The Case

This is a misdemeanor criminal case. Pursuant to a plea agreement, Appellant entered a plea of “no contest” to Count Two, *Obstructing Road*. In exchange, Appellee dismissed the remaining charge and the parties were free to argue as to whether restitution should be ordered. After an evidentiary hearing,

Appellant was ordered to pay restitution, in the amount of \$15,000.00, by March 29, 2030. This restitution order was vacated by the District Court of Gage County, Nebraska and remanded to the Gage County Court with directions.

B. The Issues Tried In County Court

The issue tried before the County Court was the determination of whether restitution was appropriate to be imposed against Appellant, in connection to his conviction for Count Two.

C. The Issues Appealed In District Court

On appeal, Appellant asserted that the County Court abused its discretion in ordering restitution, under the argument that criminal restitution was not appropriate for the crime for which Appellant was convicted. Appellant also asserted that the County Court erred in failing to determine whether Appellant was able to pay restitution.

D. How The Issues Were Decided

The County Court ordered the Appellant to pay restitution, in the amount of \$15,000.00, payable on or before March 29, 2030.

On appeal, the District Court determined that the County Court did not abuse its discretion in ordering Appellant to pay restitution, but the County Court did err in failing to consider the factors set forth in Nebraska Revised Statute §29-2281 once it made the decision to order restitution. The District Court vacated the order of restitution and remanded the cause back to County Court for a new sentencing hearing on the issue of restitution.

E. Standard of Review

A sentence will not be disturbed on appeal absent an abuse of discretion and this applies to the restitution portion of a criminal sentence. This principle is

grounded in the subjective nature of restitution determinations, which involve balancing statutory factors rather than applying a strict mathematical formula. A judicial abuse of discretion exists only when the trial court's reasons or rulings are clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result. *State v. Street*, 306 Neb. 380, 945 N.W.2d 450 (2020).

ASSIGNMENT OF ERROR

The District Court erred in finding that the County Court did not abuse its discretion in ordering Defendant to pay restitution.

PROPOSITIONS OF LAW

A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted. Nebraska Revised Statute §29-2280.

Defendant cannot be made to pay restitution if the record does not reflect that actual physical injury or property damage or loss was sustained by the victim as a direct result of the offense for which defendant has been convicted. *State v. Brohimer*, 238 Neb. 45, 468 N.W.2d 623 (1991).

Restitution ordered by a court pursuant to this section is a criminal penalty imposed as a punishment for a crime and is part of the criminal sentence imposed by the sentencing court. *State v. McCulley*, 305 Neb. 139, 939 N.W.2d 373 (2020).

Before restitution can properly be ordered, the trial court must consider (1) whether restitution should be ordered, (2) the amount of actual damages sustained by the victim of a crime, and (3) the amount of restitution a criminal defendant is capable of paying. *State v. McCulley*, 305 Neb. 139, 939 N.W.2d 373 (2020).

A sentence within statutory limits may be disturbed by an appellate court if the sentence imposed was an abuse of discretion. *State v. Riley*, 242 Neb. 887, 497 N.W.2d 23 (1993).

STATEMENT OF FACTS

Appellant was charged in this case with crimes related to Appellant's relocation of a mobile home through rural Gage County, Nebraska, on or about June 28, 2024 [23:19-23]. While Appellant was moving the mobile home, the wheel axles broke, causing the mobile home to become immobilized in the middle of a rural county road [23:24 to 24:2]. Over the following 5 days, Appellant made efforts to try and remove the mobile home from the roadway but was unable to do so, which led to the Gage County Sheriff's Department having to hire a removal service to move the mobile home out of the roadway [24:3-16].

Appellant eventually pled "no contest", through a plea agreement, to one criminal charge, *Obstructing Road* [T4 & 16:15 to 23:15]. As part of the plea agreement, the parties specified that there is no agreement as to the State's request for restitution [16:23 to 18:13].

The Court held a sentencing hearing on March 31, 2025, at which time an evidentiary hearing was also held in regards to Appellee's request for restitution [T5-6 & 28:15 to 65:13]. The Court heard evidence from one witness, Gage County Sheriff Millard Gustafson [31:11 to 43:4], in regards to his office's efforts to get Appellant to remove the mobile home himself and the County's eventual decision to hire an excavation company to remove the mobile home. After presentation of argument by both parties, as to the matter of whether restitution was appropriate [43:5 to 55:23], the Court ordered Appellant to pay restitution in the amount of \$15,000.00, payable by March 29, 2030 [55:24 to 57:18].

A notice of appeal to the Gage County District Court was filed on April 30, 2025 [T8]. The District Court received briefs from the parties and took the matter under advisement without any oral argument hearing. On September 8, 2025, the District Court filed a written order which found that the County Court did not abuse its discretion in ordering restitution but that it did err in not

considering Appellant's ability to pay restitution. The District Court vacated the County Court's order of restitution and remanded the cause with directions [T44-49].

Appellant timely filed a notice of appeal and a motion to proceed in forma pauperis to this Court.

ARGUMENT

It is the Appellant's contention that the County Court abused its discretion in determining that criminal restitution should be ordered in this case and that the District Court erred in finding that the County Court did not abuse its discretion in finding that restitution should be ordered.

Nebraska Revised Statute §29-2280 specifies that "A sentencing court may order the defendant to make restitution for the actual physical injury or property damage or loss sustained by the victim as a direct result of the offense for which the defendant has been convicted." Appellant asserts that the restitution sought by Appellee, solely to reimburse the Gage County Sheriff's Office, for expenses they incurred to dispose of the mobile home, did not fall within the parameters of permissible restitution, under §29-2280. Appellant asserts that there was no evidence presented by Appellee in regards to (1) physical injury, (2) property damage, or (3) loss that were suffered by any victim. Appellant asserts that the expenses incurred by the Gage County Sheriff's Department, in order to remove the mobile home from the county road, are not a "loss" of property or value that was directly related to the crime for which Appellant was convicted. Appellant asserts that the term "loss", as used in §29-2280, should not be attributed to expenses related to removing property from a roadway.

Gage County may certainly be within its rights to file a civil lawsuit against Appellant, to recover these expenses, but the purpose of criminal restitution is to compensate a victim for losses directly related to the criminal act for which a defendant has been convicted. Restitution ordered by a court pursuant to this section is a criminal penalty imposed as a punishment for a crime and is part of the criminal sentence imposed by the sentencing court. *State v. McCulley*, 305 Neb. 139, 939 N.W.2d 373 (2020). In this case, Appellant was convicted of

obstructing a roadway, due to him “placing or leaving any other obstruction” on a public road. This act did not itself directly cause an injury to the road, or damage any property, nor did it cause the County to suffer any financial loss, as contemplated under §29-2280. The term “loss”, within the context of §29-2280, should be restricted only to the loss of value or property that was directly related to Appellant's criminal actions. Within the context of this case, “loss” should be restricted to the actual taking of property or money, or a diminished value of some piece of property. Nebraska Revised Statute §29-2282 permits the Court to include other types of “loss”, when dealing with crimes that resulted in bodily injury or death. Only in these situations can the Court order restitution for things like medical expenses or lost wages, as long as they are directly related to the criminal acts of the defendant. It is clear that the legislature did not intend such ancillary expenses to be permissible, as court-ordered restitution, if the crime committed by the defendant *did not* involve bodily injury or death to a victim.

Appellant asserts that the Gage County Sheriff's Office's expenses, upon which the County Court's restitution order was based, are more in line with the types of loss contemplated under §29-2282. They are expenses related to the cleanup of the roadway, but not a “loss” of property or value that was directly related to Appellant's criminal act of obstructing the roadway. A defendant cannot be made to pay restitution if the record does not reflect that actual physical injury or property damage or loss was sustained by the victim as a direct result of the offense for which defendant has been convicted. *State v. Brohimer*, 238 Neb. 45, 468 N.W.2d 623 (1991).

A sentence imposed within statutory limits will not be disturbed on appeal absent an abuse of discretion. *State v. Manzer*, 245 Neb. 63, 511 N.W.2d 90 (1994). However, a sentence within statutory limits may be disturbed by an appellate court if the sentence imposed was an abuse of discretion. *State v. Riley*, 242 Neb. 887, 497 N.W.2d 23 (1993). The Appellant asserts that there was a judicial abuse of discretion in the case at bar. The Appellant believes that restitution should not have been ordered in this case and he asks the Court of Appeals to vacate the County Court's restitution order and remand the case to the County Court, with specific instructions to deny Appellee's request for restitution.

SUMMARY OF ARGUMENT

The District Court erred in finding that the County Court did not abuse its discretion in ordering restitution. The County Court abused its discretion in ordering Appellant to pay restitution to the Gage County Sheriff's Office, as the amount requested by Appellee was not related to damages, injury, or a loss directly resulting from the criminal actions of Appellant. Therefore, Appellant respectfully requests that the order of restitution be vacated and that the County Court be instructed to deny Appellee's request for restitution.

Respectfully submitted,
JOSHUA J. CARPENTER, Appellant

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CERTIFICATE OF COMPLIANCE WITH SUPREME COURT RULE §2-103

I, Lee Timan, hereby certify that this document complies with the word count as required under Nebraska Supreme Court Rule §-103. The word processing software used to create this document was *Apache OpenOffice 4 - Writer*. This word processing software indicates that the total word count for this document is **2,343 words**. This document used the *Times New Roman* typeface, size 12, with 1.15 line spacing.

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Certificate of Service

I hereby certify that on Wednesday, October 15, 2025 I provided a true and correct copy of this *Brief of Appellant Carpenter* to the following:

State of Nebraska represented by Michael Thomas Hilgers (24483) service method: Electronic Service to **katie.beiermann@nebraska.gov**

Signature: /s/ Lee Timan (24882)