IN THE COURT OF APPEALS OF THE STATE OF ALASKA

A.C., a minor, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12742 Trial Court No. 3KN-14-041 DL MEMORANDUM OPINION No. 6567 — January 10, 2018

Appeal from the Superior Court, Third Judicial District, Kenai, Carl Bauman, Judge.

Appearances: J. Adam Bartlett, under contract with the Office of Public Advocacy, Anchorage, for the Appellant. Michal Stryszak, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Mannheimer, Chief Judge, and Allard and Wollenberg, Judges.

Judge ALLARD.

A.C., a minor, appeals the restitution order issued in his juvenile delinquency case. A.C. does not argue that the restitution order is not supported by substantial evidence; instead, he raises various challenges to what he asserts are

procedural deficiencies in the superior court's restitution order. For the reasons explained here, we find no merit to A.C.'s claims on appeal.

Background facts and prior proceedings

A.C. was one of seven juveniles who were involved in a riot and escape from a juvenile detention center in Kenai. During the riot, two Department of Juvenile Justice officers were assaulted and severely injured. A.C. appears to have played a lesser role during the riot, and there is no evidence that A.C. was one of the juveniles who directly assaulted the officers. The five juveniles who played more major roles in the riot and escape were waived into adult court and charged as adults. A.C. and one other juvenile, S.A., remained in juvenile court.

A.C.'s case was ultimately resolved through a plea agreement with the State. A copy of the written plea agreement was filed in open court and is part of the record on appeal.

Pursuant to this plea agreement, A.C. admitted to conduct that would have constituted second-degree assault, escape, and riot had he been an adult. A.C. also agreed to be jointly and severally liable with his co-defendants for "complete restitution" to the victims. In addition, the plea agreement stated that "[the] codefendants' parents, as well as [A.C.]'s parents, will also be listed on the restitution order."

The plea agreement was accepted by the superior court at the adjudication hearing. A disposition hearing was then held, where everything but the amount of restitution was resolved. The State later submitted a proposed restitution order, calculating the victims' medical and related costs at $53,450.29. The proposed restitution order made A.C. jointly and severally liable for the full amount with his six co-defendants; the proposed order did not list the parents of any of the co-defendants.

A.C.'s attorney filed written objections to the proposed restitution order. In these written objections, the attorney claimed, *inter alia*, that A.C. should not be

jointly and severally liable for the full amount of restitution because the probation officer had stated in a recent email that A.C. would be liable for only 1/7th of the total amount of restitution and that was therefore "the agreement." A.C.'s attorney also claimed that A.C. should not be responsible for the full amount of restitution because he played only a minor role in the offenses. In addition, A.C.'s attorney asserted that the proposed restitution order was deficient because it did not include the parents of the juveniles who had been waived into adult court.[1]

The State responded to the first two objections by pointing out that A.C. had already agreed, as part of the plea agreement, to be jointly and severally liable for the full restitution. The State acknowledged that eight months *after* the plea agreement had been accepted, the juvenile probation officer erroneously sent an email to A.C.'s attorney suggesting (contrary to the terms of the plea agreement) that the probation officer intended to recommend that A.C. pay only 1/7th of the total costs. But the State asserted that the probation officer's mistake was not binding on the State because the probation officer did not have the authority to alter the terms of the already-accepted plea agreement. The State also asserted that the probation officer's mistake was immediately recognized by the assistant district attorney (who was copied on the email), and the probation officer then sent a second email to the defense attorney correcting his mistake and clarifying that A.C. would be jointly and severally liable for the full amount of restitution as agreed to in the plea agreement.

The State responded to the third objection by pointing out that it knew of no authority under which the parents of juveniles waived into adult court could be held

[1] A.C.'s attorney also asserted that A.C.'s parents had not been properly served with the proposed order, but this objection is not at issue in this appeal.

liable for restitution by the juvenile court. And the State pointed out that A.C.'s attorney had provided no such authority.

A.C.'s attorney did not respond to the State's arguments. A.C.'s attorney did request an evidentiary hearing on restitution, which was granted by the court. However, the evidentiary hearing was almost entirely focused on evidence from the victims and other witnesses documenting the factual basis for the amount of restitution requested.[2]

Late in the hearing, the probation officer was called to testify about his email communication with the defense attorney. The probation officer acknowledged that he initially sent the defense attorney an email suggesting that restitution would be apportioned among the co-defendants and that A.C. would therefore owe 1/7th of the full restitution amount. However, the probation officer confirmed that he subsequently sent a second email correcting this original email, in which he clearly stated that restitution would be joint and several, as provided in the plea agreement. A.C.'s attorney did not introduce any evidence suggesting that he had not received this second email. Nor did he introduce any evidence suggesting that A.C. had detrimentally relied on the probation officer's first email (or explain how A.C. could have detrimentally relied on an email that was sent *after* the plea agreement had already been negotiated and accepted).

The parties apparently ran out of time at the end of the restitution hearing. A.C.'s attorney therefore submitted an offer of proof regarding A.C.'s proposed testimony, indicating that A.C. would testify that he did not know that his co-defendants

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[2] We note that, on the morning of the restitution hearing, A.C.'s attorney joined a motion filed by S.A.'s attorney. (S.A. is the other juvenile who remained in juvenile court.) This motion apparently raised various constitutional challenges to the State's proposed restitution order. However, the motion is not part of the record in this case and the specific challenges are therefore unknown. A.C.'s appellate attorney does not raise any claims related to this motion.

would assault the officers, and that he had participated in the riot under duress. The State argued that this proposed testimony was irrelevant to the restitution issue because A.C. had already agreed under the plea agreement to be jointly and severally liable for the full amount of restitution.

The restitution hearing ended with the court inviting both parties to submit their final arguments in writing. Neither party responded to this invitation.

The superior court subsequently issued a final restitution order making A.C. and his parents jointly and severally liable for the full amount of restitution. The restitution order listed the co-defendants, but it did not list the parents of the co-defendants. A.C.'s attorney did not move for reconsideration of the order, nor did he request any further findings or explanation for why his earlier objections had been rejected by the court.

This appeal then followed.

A.C.'s argument on appeal

As already noted, A.C. does not dispute that the victims were entitled to the amount of restitution that was ordered. Nor does he argue that his attorney's objections to the restitution order were actually meritorious. Instead, he argues only that the restitution order was procedurally deficient because the court did not provide any findings that justified its rejection of A.C.'s attorney's objections.

We find no merit to this claim. The record is clear that A.C. agreed to be jointly and severally liable for full restitution as part of his plea agreement — thereby waiving any claim that the restitution amount should be apportioned among the co-defendants, as well as any claim that his lesser role should be considered in determining the appropriate amount of restitution. As already noted, A.C.'s attorney never produced or offered any evidence that the parties had any different understanding of the restitution

terms when they entered the agreement. Nor did A.C.'s attorney ever seek rescission of the agreement based on any purported misunderstanding of those terms.

Given these circumstances, we see no reason why the judge should have provided additional explanation of why he rejected the attorney's unsupported contention that the restitution order should differ from the terms of the plea agreement, particularly in the absence of any direct request by A.C.'s attorney to provide such an explanation.

We acknowledge that the final restitution order does not list the parents of the five co-defendants who were waived into adult court even though the plea agreement stated that it would.[3] But A.C.'s attorney never argued that this was a material term of the agreement. Nor did he provide any legal authority for his claim that the juvenile court had the authority to hold the parents of the waived juveniles liable for restitution.

Moreover, even if this language had been added to the restitution order, it would not have been binding on any of the parents. A.C.'s restitution order bound A.C. and his parents because they were parties, but it could not bind the non-party co-defendants or their parents. Instead, that liability (if any) could only be resolved in the co-defendants' own cases. To the extent that this was contrary to the understanding of the parties when they entered into the plea agreement in A.C.'s case, it was incumbent on A.C.'s attorney to raise this issue and to seek rescission of the agreement on this ground, if appropriate. But, as already noted, this did not occur.

Thus, given the manner in which this case was resolved and the lack of authority or evidentiary support for A.C.'s attorney's objections, we affirm the restitution order in this case.

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[3] We note that the proposed restitution order and the final restitution order also do not appear to include the parents of the co-defendant who remained in juvenile court.

Conclusion

The judgment of the superior court is AFFIRMED.