

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 26, 2010**

David R. Schanker  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2009AP2005-CR**

**Cir. Ct. No. 2008CM3547**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**BRIAN SCOTT PIOTTER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: DOMINIC S. AMATO, Judge. *Judgment modified and as modified affirmed; order, subject to our modification of the judgment, affirmed.*

¶1 FINE, J. Brian Scott Piotter appeals the judgment entered on his guilty plea to unlawful entry into a locked building. See WIS. STAT. § 943.15(1). He also appeals the circuit court's order denying his motion for postconviction

relief. He contends that the circuit court erred by requiring him to pay \$2,230 as restitution. We affirm in part and reverse in part.

¶2 As material to this appeal, Piotter pled guilty to the unlawful entry into the Georgian Court Condominiums on East Greenwich Avenue in Milwaukee. The circuit court ordered that Piotter pay two items of restitution: (1) \$430 for a lock that the condominium association installed before Piotter committed the crime that is the subject of this appeal, and (2) \$1,800 for a more-secure locking system that the association installed after Piotter broke in. Although not contesting that the association actually spent the \$2,230, Piotter argues that there was an insufficient nexus between what he did and the earlier expenditure of \$430, and, in connection with the \$1800, he did not physically damage any of the association's property and that he should not therefore be forced to pay for the security upgrade.

¶3 Restitution in criminal cases is governed by WIS. STAT. § 973.20. As material, the statute authorizes the circuit court to require a defendant to “[p]ay all special damages, but not general damages, substantiated by evidence in the record, which could be recovered in a civil action against the defendant for his or her conduct in the commission of a crime considered at sentencing.” WIS. STAT. § 973.20(5)(a). A “[c]rime considered at sentencing” means any crime for which the defendant was convicted and any read-in crime.” WIS. STAT. § 973.20(1g)(a). We review *de novo* the circuit court's application of the restitution statute. *See State v. Johnson*, 2002 WI App 166, ¶7, 256 Wis. 2d 871, 877, 649 N.W.2d 284, 287. The circuit court has discretion, however, whether to award restitution if restitution is authorized by the statute. *Ibid.* We address Piotter's contentions in turn.

A. *The \$430.*

¶4 Piotter argues that the circuit court did not have authority to make him pay the \$430 because that expense was not caused by a “crime for which [he] was convicted [or] any read-in crime,” although the president of the association testified that the \$430 installation was because the association caught Piotter on a surveillance camera walking through the lobby. The State agrees with Piotter.

¶5 Although we are not bound by the State’s concession, *see State v. Gomaz*, 141 Wis. 2d 302, 307, 414 N.W.2d 626, 629 (1987), we are, of course, bound by the statute, as is the circuit court. While the circuit court was justified in believing the association president that Piotter’s earlier entry triggered the \$430 upgrade, the earlier entry did not fit the statute’s definition of “of a crime considered at sentencing.” Accordingly, we vacate that portion of the judgment that directs Piotter to pay \$430 in restitution. *See* WIS. STAT. § 808.09 (court of appeals may modify judgment from which an appeal is taken).

B. *The \$1,800.*

¶6 We now turn to whether Piotter can be made to pay for the cost to install the \$1,800 locking system, which according to the testimony by the condominium association president was installed because the association believed that increased security was needed because of Piotter’s successful break-ins. She testified that they caught Piotter on a surveillance camera when he broke in following the \$430 installation: “And we ended up having to spend the \$1,800 to prevent this from happening again.” The circuit court found that the \$1,800 upgrade was needed “because he kept getting in, or anyone else could get in. So they had to make it stronger.”

¶7 “In proving causation, a victim must show that the defendant’s criminal activity was a ‘substantial factor’ in causing damage. The defendant’s actions must be the ‘precipitating cause of the injury’ and the harm must have resulted from ‘the natural consequence[s] of the actions.’” *See State v. Rash*, 2003 WI App 32, ¶6, 260 Wis. 2d 369, 374, 659 N.W.2d 189, 192 (quoted source omitted). Here, the need to bolster the condominium association’s security against intrusion was a justified and needed expense that was triggered by Potter’s criminal entry into the association’s building, to which he pled guilty. *See Johnson*, 2002 WI App 166, ¶21, 256 Wis. 2d at 885–886, 649 N.W.2d at 290–291 (an enhanced security system proper item of restitution). Further, “[a] defendant ‘cannot escape responsibility for restitution simply because his or her conduct did not directly cause the damage.’” *State v. Johnson*, 2005 WI App 201, ¶13, 287 Wis. 2d 381, 394, 704 N.W.2d 625, 631 (quoted source omitted).

¶8 Other than our modification of the judgment to vacate that aspect of the restitution order that includes the \$430, we affirm.

*By the Court.*—Judgment modified and as modified affirmed; order, subject to our modification of the judgment, affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4

