

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 9, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

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.

No. 99-0822-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM J. LUDWIG,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Vernon County:
MICHAEL J. ROSBOROUGH, Judge. *Reversed and cause remanded with
directions.*

Before Vergeront, Roggensack and Deininger, JJ.

¶1 PER CURIAM. William Ludwig appeals from a restitution order. The issue is whether the trial court applied a proper legal standard when it ordered Ludwig to fully compensate his victims despite a finding that he could not do so before his sentence expired. Because we conclude the trial court applied an

erroneous legal standard, we reverse and remand to redetermine the amount of restitution.

¶2 In March 1998 the trial court sentenced Ludwig to a seven-year prison term for substantial battery as a repeater. His parole eligibility date was set for December 1999, and his mandatory release date was November 2002.

¶3 The court also set Ludwig's restitution obligation at \$31,783, which Ludwig stipulated was a proper calculation of the total damage to his victims. He moved to reduce restitution, however, on the grounds that he could not afford to pay \$31,783 before his sentence expired in 2005. After hearing evidence on the motion, the court ruled, in relevant part, as follows:

I think its contrary to the intent of the restitution statute as set forth by the legislature for the court to limit restitution unless some of the following factors are present; if someone is handicapped, mentally or physically is disabled, uneducable, elderly. None of those factors apply here. There is a healthy young individual who has a good work capacity and a good working future after he is returned to the community. His sentence is one where he will be returned to the community in the next few years.

I agree that he is to pay restitution until such time as his parole is completed and I find that it is unlikely that he will be able to pay all of it off by the time he is paroled or by the time his parole is completed and by the time he is discharged from supervision. However, I am also aware that I believe the statute provides that a restitution order can be converted to a civil judgment at the time someone is discharged from parole....

I don't see any reason in this case, because none of those factors that I mentioned; mentally or physically handicapped, disabled, lack of educability or age apply so as to suggest this defendant would never have the ability to pay the full restitution in this case.

¶4 On appeal Ludwig contends the applicable statutes limit restitution to the amount the defendant is able to pay before the expiration of parole.

¶5 The trial court must order full or partial restitution to the victim of a crime unless substantial reason exists not to do so. WISCONSIN STAT. § 973.20(1r) (1997-98).¹ In ordering restitution, the court must consider, among other factors, the victim's loss, the defendant's financial resources and earning ability, and the need and earning ability of the defendant's dependents. Section 973.20(13)(a). Restitution shall be a condition of the defendant's probation, extended supervision or parole, and after termination of those forms of control the victim may enforce restitution in the same manner as a judgment in a civil action. Section 973.20(1r). If the defendant is ordered to pay restitution over a period of time, the end of the specified period shall be no later than the end of any period of probation, extended supervision or parole. Section 973.20(10). The interpretation of these statutes is a question of law we review without deference to the trial court. *State v. Setagord*, 211 Wis. 2d 397, 405-06, 565 N.W.2d 506 (1997). We construe related statutes together to harmonize their meaning. *State v. Robinson*, 140 Wis. 2d 673, 677, 412 N.W.2d 535 (Ct. App. 1987).

¶6 Properly construed the relevant provisions of WIS. STAT. § 973.20 require the trial court to base restitution on the amount it determines the defendant can pay before he/she is released from the sentence, including all probation, extended supervision and parole. Section 973.20(1r) allows the court to order partial restitution. Section 973.20(10) provides that restitution shall be ordered for the period not later than the end of the sentence. Section 973.20(13)(a) requires

¹ All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

the trial court to consider the defendant's financial resources and obligations. Read together these statutes plainly demonstrate a legislative intent to compute restitution based on what the defendant can pay before completion of the sentence. The fact that victims may still collect restitution after the end of the sentence, by civil means, does not indicate a contradictory intent. If it did, the trial court's authority to order partial restitution and its mandate to consider the defendant's financial circumstances would be rendered meaningless. Full restitution would be ordered in all cases.

¶7 We construe statutes to avoid rendering any of their provisions meaningless or superfluous. *State v. Achterberg*, 201 Wis. 2d 291, 299, 548 N.W.2d 515 (1996). We therefore remand for a redetermination of Ludwig's restitution obligation, based on findings as to the restitution Ludwig can pay before his sentence ends in 2005.

By the Court—Order reversed and cause remanded with directions.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

