



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215

P.O. BOX 1688

MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880

TTY: (800) 947-3529

Facsimile (608) 267-0640

Web Site: www.wicourts.gov

DISTRICT III

January 28, 2025

To:

Hon. Beau G. Liegeois
Circuit Court Judge
Electronic Notice

Anne Christenson Murphy
Electronic Notice

John VanderLeest
Clerk of Circuit Court
Brown County Courthouse
Electronic Notice

Juan Leon Nava 512688
Oshkosh Correctional Inst.
P.O. Box 3310
Oshkosh, WI 54903-3310

You are hereby notified that the Court has entered the following opinion and order:

2022AP2180-CR

State of Wisconsin v. Juan Leon Nava (L. C. No. 2006CF310)

Before Stark, P.J., Hruz and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Juan Leon Nava, pro se, appeals a circuit court order denying his motion to vacate a restitution order entered in 2009. He argues: (1) the order was not properly entered under Wis. STAT. § 973.20 (2021-22);¹ (2) his due process rights were violated; (3) the order violates his right to be free from double jeopardy because it was entered after sentencing; and (4) he had a legitimate expectation of finality in his sentence, which was violated by the delayed entry of the restitution order. Based on our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. Because there is

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

no reversible error in terms of how the restitution order was decided or entered, we summarily affirm the order denying the motion to vacate the restitution order.

Nava was convicted, after a jury trial, of first-degree intentional homicide, arson, and three counts of first-degree reckless endangerment. The convictions stemmed from Nava stabbing his girlfriend twenty-nine times and setting fire to her home while her three young children were inside. In April 2007, the circuit court sentenced Nava to life imprisonment without the eligibility for release on the homicide charge. The court also imposed terms of seven years and six months of initial confinement followed by five years of extended supervision for the three first-degree reckless endangerment convictions, to be served concurrently to each other but consecutively to the homicide charge, and twenty-five years of initial confinement followed by fifteen years of extended supervision for the arson charge, to be served consecutively to all other counts. During sentencing, the court addressed restitution but deferred setting the amount, leaving it to be determined.

Two weeks after sentencing, the State informed the circuit court and defense counsel that the restitution amount was \$30,200, payable to the homicide victim's parents and the Crime Victim Compensation Program. Nava did not object or request a hearing on the restitution amount. The court entered the restitution order on November 13, 2009, thirty-one months after Nava's conviction was entered. Nava did not appeal the restitution determination at that time.

In 2018, Nava filed a motion for an informal restitution hearing, arguing that he had not been given an opportunity to contest the restitution amount. The circuit court denied the motion as untimely, and Nava did not appeal that decision. Four years later, in 2022, Nava filed another motion to vacate the restitution order. The court declined to take action, noting that the matter

had been previously addressed, and it denied Nava's motion by operation of law. This appeal follows.

Nava first argues that the circuit court failed to follow the statutory requirements under WIS. STAT. § 973.20 when it entered the restitution order.² Wisconsin law permits courts to defer restitution determinations at sentencing if the amount cannot be finalized. Section 973.20(13)(c) outlines procedures for such deferrals, and the statutory timelines are directory, not mandatory, provided there is no prejudice to the defendant. *See State v. Perry*, 181 Wis. 2d 43, 53-56, 510 N.W.2d 722 (Ct. App. 1993).

The circuit court adhered to WIS. STAT. § 973.20 by deferring the determination of restitution at sentencing, wherein the court noted that further documentation was required. Two weeks after sentencing, the State notified Nava and his counsel that the amount of restitution was \$30,200, reduced from an initial claim of \$104,000. Nava received this notification, and he did not object, request a hearing, or dispute the amount. By failing to act, Nava constructively stipulated to the restitution amount. *See State v. Leighton*, 2000 WI App 156, ¶¶55-56, 237 Wis. 2d 709, 616 N.W.2d 126 (stating that if the defendant does not object after being given notice of the restitution summary, the court may proceed on the understanding that the claimed amount is not in dispute). Moreover, Nava actively participated at sentencing, where restitution was discussed, and his counsel raised concerns about Nava's ability to pay, which the court considered, but concluded that Nava would be ordered to pay restitution despite his relative inability to pay. The court's eventual entry of the restitution order in 2009, although delayed,

² The State argues that we should reject Nava's arguments on procedural grounds, but we have decided to reach the merits of Nava's arguments.

complied with the statute's flexible provisions. Nava has not presented—and we do not see—any evidence indicating that Nava was prejudiced by this delay, especially given that he will be incarcerated for the rest of his life. Accordingly, we conclude that the restitution order was properly entered.

Nava next argues that his due process rights were violated because he was not afforded an opportunity to contest, rather than stipulate to, the restitution amount. The record indicates that Nava had adequate notice of the restitution amount. Two weeks after sentencing, he was informed of the proposed restitution order of \$30,200. Despite having this information, Nava did not raise any objections or request a hearing at that time or in the years that followed. Although Nava suggests that the lack of a formal restitution hearing was unfair, he did not request a hearing. In addition, the circuit court considered his ability to pay at the sentencing hearing. These steps ensured procedural fairness. Therefore, Nava's argument that his due process rights were violated fails.

Nava next argues that the restitution order violates his right to be free from double jeopardy because it was entered after his sentencing. While double jeopardy protections prevent multiple punishments for the same offense, *State v. Gruetzmacher*, 2004 WI 55, ¶22, 271 Wis. 2d 585, 679 N.W.2d 533, restitution is not a new punishment but rather an element of the original sentencing process. Restitution was contemplated and explicitly deferred at sentencing, with the judgment of conviction reflecting the “to be determined” status of the amount. This deferral does not constitute a second punishment. The restitution order, entered two years later, was consistent with the circuit court's earlier pronouncements and cannot reasonably be construed as a separate or additional penalty. The restitution order does not violate double jeopardy protections.

Nava next contends that he had a legitimate expectation of finality in his sentence, which the delayed entry of the restitution order violated. We disagree. The circuit court clearly stated at Nava's sentencing that restitution would be determined after additional information was submitted. Nava was on notice that the issue of restitution remained open and had no grounds to presume the matter was resolved. Moreover, as we previously explained, given that he is serving a life sentence without eligibility for release, we do not see that there was any great need for the restitution order to be expeditiously entered to avoid prejudice to Nava.

Upon the foregoing,

IT IS ORDERED that the order is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals