

SUPREME COURT OF MONTANA

State v. Kalal

2009 MT 103 (2009) · No. DA 08-0275 · Decided March 31, 2009

SUMMARY

The Supreme Court of Montana considered whether a victim seeking criminal restitution had a duty to mitigate lost-income damages by renting a replacement tractor. The court held that the civil-law reasonableness standard applies to mitigation in criminal restitution proceedings and affirmed the \$15,960 restitution award because renting and transporting a tractor was impracticable under the circumstances.

CASE DETAILS

COURT	Supreme Court of Montana
WRITING FOR THE COURT	W. William Leaphart; John Warner; James C. Nelson; Patricia Cotter
JURISDICTION	Montana
DECIDED	March 31, 2009
DOCKET	DA 08-0275
DISPOSITION	affirmed
PROCEDURAL POSTURE	Kalal appealed from a District Court order requiring him to pay additional criminal restitution for the victim's lost income.
STANDARD OF REVIEW	The legality of a criminal sentence is reviewed to determine whether it is a legal sentence. Findings concerning the amount of restitution are reviewed for clear error.
PRECEDENTIAL VALUE	Published Montana Supreme Court opinion; precedential.
PARTIES	Daniel Carl Kalal v. State of Montana

TOPICS

- restitution criminal
- sentencing
- criminal procedure
- remedies
- damages

PRACTICE AREAS

- criminal law
- criminal restitution
- sentencing
- damages mitigation

QUESTIONS PRESENTED

1. What standard governs a victim's duty to mitigate pecuniary loss when criminal restitution is based on damages recoverable in a civil action?
2. Whether the District Court clearly erred by awarding \$15,960 in lost-income restitution without requiring the victim to rent a replacement tractor.

HOLDINGS

1. The civil-law standard for mitigation of damages applies to criminal restitution: a victim is expected to do what a reasonable and prudent person would do if capable under the circumstances, but need not take action that is unreasonable or impracticable.
2. The District Court did not clearly err in awarding \$15,960 in lost-income restitution based on the impracticability and expense of renting and transporting a replacement tractor.

KEY QUOTATIONS

“The test is: What would an ordinary prudent person be expected to do if capable, under the circumstances?” (¶ 9)

“An injured person is not expected to do what is “unreasonable or impracticable.”” (¶ 9)

“Thus we adopt the following test: What would a reasonable and prudent person be expected to do if capable, under the circumstances?” (¶ 9)

FACTUAL BACKGROUND

Kalal stole a tractor from Jim Petranek and pleaded guilty. Petranek claimed lost income from projects he planned to perform with the tractor, including fencing, cabin construction and grass production. Kalal argued that Petranek had a duty to mitigate his loss by renting another tractor, but the District Court found that Petranek's work schedule, the distance involved and the logistical burden of renting and transporting a tractor made that alternative impracticable. The court awarded \$15,960 for lost income and rejected an additional hunting-lease claim.

PROCEDURAL HISTORY

Kalal pleaded guilty to theft of a tractor and received a two-year deferred imposition of sentence. The District Court initially ordered restitution of \$23,513.43, which Kalal paid. After additional briefing concerning the victim's lost-income claim, the court ordered Kalal to pay an additional \$15,960 in restitution. The Montana Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Cesnik, 2005 MT 257, 329 Mont. 63, 122 P.3d 456

- State v. Heath, 2004 MT 126, 321 Mont. 280, 90 P.3d 426
- Bitterroot Intl Sys. v. Western Star Trucks, 2007 MT 48, 336 Mont. 145, 153 P.3d 627
- McPherson v. Kerr, 195 Mont. 454, 636 P.2d 852 (1981)
- Spackman v. Ralph M. Parsons Co., 147 Mont. 500, 414 P.2d 918 (1966)
- Harrington v. Holiday Rambler Corp., 176 Mont. 37, 575 P.2d 578 (1978)

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