

SUPREME COURT OF VERMONT

State v. Dwight

2018 VT 73 (Vt. 2018) · No. 2017-075 · Decided July 27, 2018

SUMMARY

The Vermont Supreme Court affirmed a restitution order entered after Lucas Dwight’s conviction for simple assault. The court held that dental expenses incurred by the victim remained eligible for restitution even though the victim’s father paid them, and that the sentencing court could consider the defendant’s reasonably foreseeable earning capacity when establishing a repayment schedule. The court concluded that the payment schedule was not impermissibly punitive.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Skoglund, J.; Robinson, J.; Eaton, J.; Carroll, J.
JURISDICTION	Vermont
DECIDED	July 27, 2018
DOCKET	2017-075
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed a restitution order entered as a condition of probation following his nolo contendere plea and conviction for simple assault.
STANDARD OF REVIEW	Restitution orders are reviewed for abuse of discretion. Questions of law and statutory interpretation involved in a restitution order are reviewed de novo. An abuse of discretion exists when the trial court withholds discretion or exercises it for clearly untenable reasons or to a clearly untenable extent.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Lucas Dwight v. State of Vermont

TOPICS

- restitution criminal
- sentencing
- criminal procedure
- statutory interpretation
- standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether restitution may be ordered for dental expenses incurred by the direct victim but paid by the victim's father.
2. Whether the trial court could consider the defendant's reasonably foreseeable earning capacity in establishing a restitution payment schedule.
3. Whether the payment schedule was an abuse of discretion because it was impermissibly punitive.

HOLDINGS

1. Uninsured medical expenses incurred by the direct victim constitute a material loss eligible for restitution regardless of whether the victim, a parent, or another person paid the expenses.
2. When establishing a restitution payment schedule, a court may consider the defendant's reasonably foreseeable earning capacity, including the income the defendant could earn by working full time at the defendant's current wage in the defendant's existing occupation.
3. The repayment schedule was not impermissibly punitive and was not an abuse of discretion.

KEY QUOTATIONS

“The loss incurred was complainant’s loss, not father’s. Complainant incurred the dental expenses, and uninsured medical expenses constitute material losses without regard to who paid them or whether they have been paid at all.” (¶ 10)

“We conclude that the Legislature intended the court to consider not only a defendant’s immediate ability to pay, but also his or her earning capacity.” (¶ 14)

“We also hold that it is within the court’s discretion to consider reasonably foreseeable earning capacity in determining an appropriate restitution schedule, and here the court’s ordered schedule was not punitive.” (¶ 21)

FACTUAL BACKGROUND

Connor Richards was assaulted in May 2016 and lost four teeth, incurring \$21,441.15 in uninsured dental expenses. Richards's father paid those expenses by credit card, while Richards incurred a \$28,000 student loan because funds previously provided by his parents were used for dental care. Dwight had a high school education, worked seasonally at \$14 per hour, and reported monthly income below his expenses. The trial court found he could reasonably work a standard forty-hour week and ordered restitution payments accordingly.

PROCEDURAL HISTORY

Dwight was originally charged with aggravated assault, but the charge was amended to simple assault under 13 V.S.A. § 1023(a)(1). He pleaded nolo contendere, received a suspended sentence with three days on work crew, and was placed on probation with restitution as a condition. After two restitution hearings, the trial court ordered

him to pay \$21,441.15 for the victim's dental expenses and established a payment schedule based in part on his ability to work full time at his existing wage. The Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Hughes, 2010 VT 72, ¶ 8, 188 Vt. 595, 5 A.3d 926
- State v. Gorton, 2014 VT 1, ¶ 8, 195 Vt. 460, 90 A.3d 901
- Unifund CCR Partners v. Zimmer, 2016 VT 33, ¶ 15, 201 Vt. 474, 144 A.3d 1045
- State v. Blake, 2017 VT 68, ¶ 8, 174 A.3d 126
- State v. Stewart, 2017 VT 82, ¶ 7, 176 A.3d 1120
- State v. Thomas, 2010 VT 107, ¶ 17, 189 Vt. 106, 14 A.3d 961
- State v. LaFlam, 2008 VT 108, ¶ 11, 184 Vt. 629, 965 A.2d 519
- State v. Baker, 2017 VT 91, ¶¶ 12, 14, 20, 177 A.3d 1093
- State v. Kenvin, 2011 VT 123, ¶¶ 13, 16, 191 Vt. 30, 38 A.3d 26
- In re Boardman, 2009 VT 42, ¶ 20, 186 Vt. 176, 979 A.2d 1010
- State v. Jarvis, 146 Vt. 636, 637, 509 A.2d 1005 (1986)
- Brown v. W.T. Martin Plumbing & Heating, Inc., 2013 VT 38, ¶ 20, 194 Vt. 12, 72 A.3d 346
- In re Girouard, 2014 VT 75, ¶ 12 n.2, 197 Vt. 162, 102 A.3d 1079
- Aither v. Estate of Aither, 2006 VT 111, ¶¶ 9-10, 180 Vt. 472, 913 A.2d 376
- State v. Bohannon, 2010 VT 22, ¶ 6, 187 Vt. 410, 996 A.2d 196
- State v. Breeden, 932 P.2d 936, 939 (Idaho Ct. App. 1997)
- State v. Brunner, 2014 VT 62, ¶ 11, 196 Vt. 571, 99 A.3d 1019
- State v. Putnam, 2015 VT 113, ¶¶ 49-50, 200 Vt. 257, 130 A.3d 836
- Town of Milton Bd. of Health v. Brisson, 2016 VT 56, ¶ 24, 202 Vt. 121, 147 A.3d 990