

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE  
April 11, 2023 Session

**FILED**  
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**STATE OF TENNESSEE v. DONALD WAYNE HAYNES**

**Appeal from the Criminal Court for Wilson County**  
**No. 2020-CR-1226                      Michael Collins, Judge**

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**No. M2022-00828-CCA-R3-CD**

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The Defendant, Donald Haynes, pleaded guilty to two counts of attempted aggravated sexual battery in exchange for an effective sentence of eight years to be served on probation. At a subsequent restitution hearing, the trial court ordered the Defendant to pay \$42,000 in restitution to the victim in monthly installments of \$500. On appeal, the Defendant contends that there was insufficient evidence of pecuniary loss to support an order of restitution. After review, we reverse and remand the case for the trial court to determine the victim’s credibility, the victim’s pecuniary loss, if any, and to make adequate findings of fact, if any, to support the imposition of restitution based upon sufficient credible evidence of pecuniary loss.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Reversed  
and Remanded**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which CAMILLE R. MCMULLEN, P.J., and MATTHEW J. WILSON, J., joined.

David H. Veile, Franklin, Tennessee, for the appellant, Donald Wayne Haynes.

Jonathan Skrmetti, Attorney General and Reporter; T. Austin Watkins, Senior Assistant Attorney General; Jason L. Lawson, District Attorney General; and Sharon L. Reddick, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**  
**I. Facts**

In November 2020, a Wilson County grand jury indicted the Defendant for six counts of aggravated rape that occurred between 1979 and 1985. In August 2021, pursuant to a plea agreement, the Defendant entered a guilty plea to two counts of attempted aggravated sexual battery, for an effective sentence of eight years of probation. On

February 9, 2022, the trial court held a hearing on the issue of restitution for the victim and to determine whether a requirement of the sex offender probation might be waived in his case. For purposes of this appeal, we address only the issue of restitution.

The victim, forty-nine years old at the time of the hearing, testified that the Defendant and his wife adopted her as an infant, and she was raised by them. The sexual abuse began when the victim was three and continued until she was thirteen, at which time the conduct was reported to the Wilson County Sheriff's Office. The Defendant admitted to the conduct, but the victim was not removed from the home and no criminal charges were initiated.

The victim recalled that she began "acting out" at age eleven and began "seeing a counselor," Dr. Louise Strang. The victim engaged in counseling for the entirety of the time she remained in the Defendant's home, and the Defendant paid for the counseling. The victim moved out of the family home at age eighteen after she graduated from high school. From this point forward, she assumed financial responsibility for her mental health treatment. The focus of her treatment was to address the repercussions of the Defendant's sexual abuse of the victim.

The victim stated that in 1991, after leaving the family home, she began seeing a psychiatrist for the prescription of psychiatric medication in addition to her counseling with Dr. Strang. According to the victim, she was in counseling with Dr. Strang "on and off for many years." The victim obtained full-time employment at various jobs that provided medical insurance; however, the deductibles for those policies were "huge," so the victim paid "out of pocket" for her mental health treatment.

After obtaining her license for massage therapy, the victim moved to Chicago for ten years. While in Chicago she saw a psychiatrist for medication management and a psychologist for counseling, as she had while living in Tennessee.

At the end of 2009, the victim became pregnant and moved back to Tennessee. She worked as a massage therapist and continued with her mental health treatment. She saw Dr. Vedavyasa Biliyar for her psychiatric needs and resumed treatment with Dr. Strang for counseling. When she returned to Tennessee, she sought insurance through TennCare, and TennCare paid for her treatment with Dr. Biliyar. Dr. Strang, however, did not accept TennCare, so the victim elected to pay for her treatment with Dr. Strang

The victim testified that she was diagnosed with depression, anxiety, insomnia, and complex post-traumatic stress syndrome as a result of the sexual abuse. The victim estimated that she attended "thousands of hours of counseling" due to the Defendant's abuse. The victim admitted that she had seen "quite a few" psychologists throughout her

life but could provide only Dr. Strang's name as a treatment provider. The victim acknowledged that she and the prosecutor had "lots and lots of conversations about records" to document the victim's expenses, but that she did not have any documentation of the expenses related to her treatment.

The victim explained her method of calculation, saying that she had paid Dr. Strang \$60 per session in 2014 based on Dr. Strang's "notes" indicating "20 or so doctor visits." Relying on those 2014 notes, she estimated she paid \$3,060 per year and then multiplied that amount by twenty-five years. The victim clarified that, although she based her estimate upon Dr. Strang's 2014 notes, she did not see Dr. Strang for twenty-five years. She said her "best estimate" was that she paid a psychologist, whether Dr. Strang or someone else, \$60 per session for twenty-five years. Based upon the appellate record, it appears that the victim submitted handwritten notes of her expense calculations for the presentence report and then asked Dr. Strang to email the presentence report investigator confirming that the victim's handwritten notes were "correct." By agreement of the parties, the trial court struck the victim's handwritten calculations submitted as documentation of her pecuniary loss from the record.

As to psychiatric treatment, the victim estimated that she saw a psychiatrist every three months for medication management for twenty-five years. Because TennCare paid for psychiatric treatment from 2010 to 2016, the victim estimated treatment cost from 1991 to 2010, concluding she spent \$10,000 total. Although she was on TennCare in 2014, she based her calculation on Dr. Biliyar's 2014 "records." The victim explained that the \$10,000 estimate was not for Dr. Biliyar but "just for some psychiatrist from '91 to '10." She also estimated that her co-payments for medication through TennCare from 2010 to 2016 totaled \$3,000. She stated that she had "documentation" from Walgreens indicating the amount was \$3,000, but that she had left it at home.

On cross-examination, the victim agreed that the prosecutor had been asking her for "documentation" of the medical expenses incurred for mental health treatment since before the plea agreement was entered on August 16, 2021. The victim reiterated that she took dates from Dr. Strang's "notes", multiplied the number of those dates by \$60, and concluded that she paid \$3,060 per year for "thirty-one years." She imputed \$3,060 per year since 1991. She admitted that she could not remember the exact amount paid and did not "have that type of information." The victim agreed that she had not produced a receipt for any of the services. She explained that this was because she paid "cash" and Dr. Strang was "like 70 years old" and, therefore, did not provide receipts.

As to her expenses related to Dr. Biliyar's treatment, the victim stated that initially she calculated the expenses for thirty-one years as she had for Dr. Strang. She later realized

that she did not pay any costs associated with Dr. Biliyar while on TennCare for six years, so she reduced her calculations for her expenses related to Dr. Biliyar by six years.

The victim testified that she last saw Dr. Strang and Dr. Biliyar in 2016 because she was incarcerated in November 2016 and released in the beginning of 2018. She did not pay any medical expenses during her incarceration. The victim testified that she paid \$300 per month for medication from 1991 to 2010. She said she had no receipts for those expenses, but she based her estimate on Dr. Biliyar's prescriptions. She added that her costs were likely "a lot more" than \$300 a month but that she was "going to be conservative."

The victim clarified that she had pain management prescriptions for a titanium rod placed in her back in 2012 but that there were no co-payments for those prescriptions, only for the mental health medications. The Defendant's attorney then asked, "But sitting here today you can't tell the Judge accurately what you actually paid. You're just estimating based on that it's the best you can do." The victim responded, "Absolutely." The victim stated that the amounts she testified to were a "very fair estimate." She stated that she could not remember her expenses from thirty-one years ago but was certain that she "did pay it."

On redirect examination, the victim stated that to establish her pecuniary loss she used the limited "records" she possessed to "refresh [her] recollection" as to her expenses and then came up with her "best estimate" of out-of-pocket expenses. She testified that she estimated the cost of her psychiatric treatment was \$10,000, the treatment from the psychologist was \$76,500, and medications from 2010 to 2016 was \$3,000. The trial court queried the victim, asking, "You had out-of-pocket while you had TennCare?" and, contrary to the victim's testimony about her pain management medications, the victim responded "Well, yes, sir. You always have a copay." The victim reiterated that the medication expenses were \$300 a month from 1991 to 2010, before she was on TennCare, for a total of \$90,000. She testified that the total amount of her expenses for mental health treatment was \$179,500.

On recross, the victim admitted that she first claimed \$411,000 was her pecuniary loss and later changed it to \$383,000 but was now testifying to a total amount of \$179,500.

The Defendant's wife testified that she and the Defendant had been married for fifty-seven years. The Defendant worked at DuPont but had since retired. The Defendant's wife testified that they owned their home as joint tenants with a right of survivorship, and they owned two vehicles. The couple lived on a monthly income related to the Defendant's retirement account. The Defendant's wife received an inheritance but most of it had been used toward the Defendant's bond and representation.

After the hearing, the trial court issued a written order finding that the Defendant had the ability to pay restitution and imposed a restitution amount of \$42,000. It is from this judgment that the Defendant appeals.

## II. Analysis

On appeal, the Defendant argues that the trial court abused its discretion when it ordered restitution without sufficient evidence of the victim's pecuniary loss. The State concedes that the trial court did not determine pecuniary loss before setting restitution and did not make adequate factual findings to support the restitution imposed. The State asks that we remand the case for additional proof and new findings of fact and conclusions of law. We agree with both the Defendant and the State, with the exception that we do not remand for additional proof. We reverse the trial court's order of restitution, and remand for the trial court to determine the victim's pecuniary loss, if any, that is based on credible and adequate evidence that is substantiated in the record of the restitution hearing held in the trial court on February 9, 2022.

A trial court, in conjunction with a probated sentence, may order a defendant to make restitution to the victims of the offense. *See* T.C.A. § 40-35-304(a). The amount is determined based on "the nature and amount of the victim's pecuniary loss." T.C.A. § 40-35-304(b). "Pecuniary loss," in the context of this section, means "[a]ll special damages, but not general damages, as substantiated by evidence in the record or as agreed to by the defendant." T.C.A. § 40-35-304(e)(1). However, the restitution award "does not have to equal or mirror the victim's precise pecuniary loss." *State v. Smith*, 898 S.W.2d 742, 747 (Tenn. Crim. App. 1994); *see State v. Mathes*, 114 S.W.3d 915, 919 (Tenn. 2003).

The sentencing court must consider not only the victim's loss but also the financial resources and future ability of a defendant to pay. T.C.A. § 40-35-304(d); *State v. Bottoms*, 87 S.W.3d 95, 108 (Tenn. Crim. App. 2001). In ordering restitution, the trial court shall specify the amount of time for payment and may permit payment or performance of restitution in installments. T.C.A. § 40-35-304(c). The court may not, however, establish a payment or schedule extending beyond the expiration of the sentence. T.C.A. § 40-35-304(g)(2). Further, upon expiration of the time of payment or the payment schedule imposed, any unpaid portion of the restitution may be converted to a civil judgment. T.C.A. § 40-35-304(h)(1); *Bottoms*, 87 S.W.3d at 108.

This court has held that we review a trial court's restitution order for an abuse of discretion, granting a presumption of reasonableness to within range sentences reflecting a proper application of the purposes and principles of the Sentencing Act. *State v. Bohanon*, No. M2012-02366-CCA-R3-CD, 2013 WL 5777254, at \*5 (Tenn. Crim. App., Oct. 25,

2013) (relying on *State v. Bise*, 380 S.W.3d 682, 707 (Tenn. 2012) and *State v. Caudle*, 388 S.W.3d 273, 278-79 (Tenn. 2012)), *no perm. app. filed*; see also T.C.A. § 40-35-104(c)(2) (providing that restitution is authorized by the statute governing alternative sentences). “A trial court abuses its discretion when it applies incorrect legal standards, reaches an illogical conclusion, bases its ruling on a clearly erroneous assessment of the proof, or applies reasoning that causes an injustice to the complaining party.” *State v. Phelps*, 329 S.W.3d 436, 443 (Tenn. 2010). While there is no set formula for determining restitution, *State v. Johnson*, 968 S.W.2d 883, 886 (Tenn. Crim. App. 1997), above all, the restitution amount must be reasonable. *Smith*, 898 S.W.2d at 747.

The trial court made the following findings relevant to the issues on appeal: The court finds specifically that the Defendant has the present and continued future ability to pay restitution . . . . The court finds that the victim has requested, is in need of, has testified to, submitted some documentation of and would reasonably be expected to incur pecuniary loss as a result of her victimization [by] the Defendant such that would necessitate restitution. The court finds that specific documentation for the full amount of restitution the victim requested is insufficient. The court finds that the Defendant shall pay the amount of \$42,000 in restitution to the victim in the amount of \$500 per month, beginning immediately until paid in full. The court specifically finds that due to the nature of the perpetration on the victim as a minor child, that the victim may reasonably believe her perpetrator would never be held to account to his wrong doing since it was admitted to law enforcement in 1986 without charges being brought, that the victim suffered mentally and emotionally as a result of her abuse, and the sheer passage of time has been prohibitive on the victim in documenting specific damages for the past 40 years. This court finds it reasonable to expect as both a victim and offender that someone may incur \$1,000 a year in damages for treatment and prescriptions medication as a result of such abuse that the victim suffered.

The State correctly notes that, in its order, the trial court did not determine the victim’s pecuniary loss or make any findings as to pecuniary loss. Additionally, the trial court made no finding as to the victim’s credibility. Any finding of pecuniary loss in this case must necessarily be based solely on the testimony of the victim, because no documentation or other evidence of pecuniary loss was presented. Pecuniary loss must be substantiated by the evidence in the record or agreed to by the defendant. T.C.A. § 40-35-304(e)(1); *Bohanon*, 2013 WL 5777254, at \*6. Because an order of restitution may be converted to a civil judgment, the burden of proof may not fall far below that required in a civil suit in order to prevent criminal courts from becoming “a haven for ‘victims’ who think their losses might not meet the level of proof necessary to recover in a civil case.” *Bottoms*, 87 S.W.3d at 108 (quoting *State v. McKinney*, No. 03C01-9309-CR-00307, 1994

WL 592042, at \*4 (Tenn. Crim. App., at Knoxville, Oct. 26, 1994)). The victim must present sufficient evidence to allow the trial court to make a reasonable determination of loss. *Bottoms*, 87 S.W.3d at 108. “While a victim’s testimony alone may be sufficient to establish special damages for purposes of restitution, general statements regarding the amount of loss without explanation as to how the value was determined are insufficient.” *Bohanon*, 2013 WL 5777254, at \*7; see *State v. Truette*, No. M2005-00927-CCA-R3-CD, 2006 WL 2000540, at \*3 (Tenn. Crim. App., July 19, 2006) (quoting *State v. Turner*, No. M2003-02064-CCA-R3-CD, 2004 WL 2775485, at \*8 (Tenn. Crim. App., Dec. 1, 2004). Documentation supporting testimony regarding loss is “helpful.” *State v. Jewell*, No. M2015-02141-CCA-R3-CD, 2017 WL 65242, at \*8 (Tenn. Crim. App., Jan. 6, 2017) (citing *State v. Reid*, No. M2014-01681-CCA-R3-CD, 2015 WL 3989127, at \*3 (Tenn. Crim. App., June 30, 2015), *no perm. app. filed.*), (quoting *State v. Gibson*, No. M2001-01430-CCA-R3-CD, 2002 WL 1358711, at \*2 (Tenn. Crim. App., June 24, 2002), *no perm. app. filed.*), *no perm. app. filed.* Furthermore, an order of restitution may not be based on arbitrary estimates. *Truette*, 2006 WL 2000540, at \*4.

Relative to the sufficiency of the pecuniary loss, we find guidance in *State v. Jewell*. In that case, the defendant pleaded guilty to one count of theft of property against her employer, and the State presented testimony from two of the victim’s employees regarding the approximate amounts of loss. *Jewell*, 2017 WL 65242, at \*9. The trial court subsequently determined that the amount of the victim’s loss was \$372,000 and imposed a restitution award of \$100,000. *Id.* at \*4. This court held that “origin of” the figure for the victim’s total loss was “completely unclear given the more specific testimony regarding categories of loss.” *Id.* at \*9. This court, utilizing the abuse of discretion standard of *Bise*, concluded that there was an inadequate explanation as to how this figure was calculated and that the trial court could not have reliably found the amount of the loss. *Id.* at \*9-10. We reversed and remanded for a determination regarding the value of the loss. *Id.* at \*10.

The *Jewell* court relied upon several cases in rendering its decision that we likewise find instructive. *Id.* at \*8-9. In *State v. Bohanon*, two victims testified to their losses by theft. While the victims’ testimony regarding specific stolen items, accompanied by the victims’ estimation of the value of the items, was held to be sufficient evidence to uphold the restitution award, this court concluded that the testimony of one victim that he was missing tools valued at \$10,000 was insufficient to sustain the award as to that loss. *Bohanon*, 2013 WL 5777254, at \*7. Applying the *Bise* abuse of discretion standard, this court reversed the award regarding the \$10,000 in tools, noting that the victim had at first testified the tools were worth \$50,000 and that he provided no specific evidence regarding which tools were missing, merely stating that they were “expensive” and “everything a mechanic would need.” *Id.* We concluded that this testimony was insufficient to allow the trial court to make a reasonable or reliable determination of value regarding these items. *Id.*

In *State v. Bottoms*, this court, applying the appropriate *de novo* standard of review at that time, likewise found the amount of restitution unsubstantiated. 87 S.W.3d at 108. The victim in *Bottoms* testified that he completed repairs after an arson at a rental house and that \$28,000 was a “relatively” accurate assessment of the cost. *Id.* at 107. He provided an estimate from a contractor for approximately \$28,600 worth of repairs, but only provided an invoice for approximately \$6,096 of repairs and testified that he had completed many repairs himself and had not brought his other bills. *Id.* This court concluded that the victim’s actual loss was “uncertain[ ]” and that the trial court could not determine the loss with reliability. *Id.* at 109. Like in *Jewell*, this court, despite the fact that the \$10,000 restitution award had been set far below the claimed value of the loss of \$28,000, reversed and remanded for a determination of the value of the loss. *Id.*

In line with these cases, we agree with the trial court that there was insufficient evidence presented to establish the pecuniary loss to the victim. The victim requested restitution for expenses in three categories: (1) psychiatric visits, (2) medication, and (3) counseling. The victim provided no documentation during the hearing on this matter but relied solely on her testimony.<sup>1</sup> She explained that the numbers provided were her “best estimate” based upon “notes” from Dr. Strang and records from Dr. Biliyar from 2014. Based upon information she gathered from the 2014 records that were not introduced at the hearing, the victim estimated that she saw a psychiatrist, although she could only name one, every three months between 1991 and 2010 – nineteen years – for a total amount of \$10,000. The victim stated that, while on TennCare, she paid \$3,000 in co-payments for medication from 2010 to 2016. Based upon those TennCare figures, she estimated her medication expenses from 1991 to 2010, prior to TennCare coverage, were \$300 a month for a total of \$90,000. Also using information from the 2014 records as a guide, she estimated her counseling costs were \$3,060 per year for twenty-five years totaling \$76,500.<sup>2</sup> This included the time during which she was on TennCare because her psychologist did not accept TennCare insurance. The victim then testified that the total amount of her expenses for mental health treatment was \$179,500.

The trial court stated that, as to the full amount requested, the evidence presented for the court to properly determine the victim’s pecuniary loss was “insufficient.” The trial

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<sup>1</sup> The testimony seems to indicate that she provided some “documentation” to the investigating officer who prepared the pre-sentence report. The “documentation” was the victim’s own estimations and was attached to the presentence report. The parties agreed, however, to strike the victim’s estimations from the record.

<sup>2</sup> On direct examination, the victim testified that the out-of-pocket expenses were calculated for thirty-one years; however, on cross-examination, she testified the out-of-pocket expenses were calculated for twenty-five years. We note that \$3,060 multiplied by twenty-five years is \$76,500, so we reference the twenty-five years as the multiplier rather than thirty-one years.



court, however, after stating the evidence did not support a finding of restitution in the amount of \$179,500, did not determine the actual pecuniary loss. In addition to failing to find the victim's actual pecuniary loss, the trial court did not identify what testimony the trial court found credible in support of ordering \$42,000 as a "reasonable" figure. As stated above, an order of restitution may not be based on arbitrary estimates. *Truette*, 2006 WL 2000540, at \*4. The trial court estimated "that someone may incur \$1,000 a year in damages for treatment and prescriptions medication as a result of such abuse that the victim suffered" and then set a restitution of \$42,000.

It appears the trial court ordered restitution to cover forty-two years, however, the evidence at the hearing was that the victim did not have any expenses until 1991, insurance covered some of the years from 1991 to 2016, and she did not incur any expenses while incarcerated. Because the trial court did not make specific findings of fact as to the victim's pecuniary loss, it is difficult for us to determine whether these gaps in expenses were considered and how the trial court arrived at restitution covering forty-two years.

In considering the proper remedy, we note that it is the victim's responsibility to provide sufficient facts about the loss for the trial court to make a reasonable determination about the amount of pecuniary loss. *See Bottoms*, 87 S.W.3d at 108. Furthermore, the mental health treatment expenses paid could not be established through the victim's testimony alone. She candidly admitted that she had no recollection of the costs associated with her treatment or specific dates as to when her treatment began or ended with a given provider. She could not produce the names of all of her providers. Therefore, the victim's estimates could not have been based upon the expenses at the time of the services or purchase of medications because her estimates were based upon information from 2014. *See Lewis*, 2015 WL 3541424, at \*3. In our view, to assume the treatment expenses in 1991 were the same as the expense in 2014 is not reasonable. Absent her own recollection or documentation of expenses in her possession, the victim presumably could have submitted documentation from either Dr. Biliyar or Dr. Strang; the record appears to indicate that she elected not to do so for medical privacy reasons. The victim acknowledged that she had documents for medication purchased at Walgreens, however, she did not bring them to court and, by way of explanation, only offered that she left the documents at home.

The State requests a new hearing and the cases cited above all resulted in remand for a new hearing. We do not think a new hearing is appropriate in this case because the victim was given ample time to present sufficient proof of her pecuniary loss. The victim either did not have the proper documentation or elected not to produce what documentation she possessed. Therefore, an additional hearing is not necessary. The Defendant argues that we should vacate the restitution award entirely given the lack of evidence supporting the order of restitution. We are not persuaded that this is the appropriate remedy either. In

this case, we remand to the trial court to enter an order of restitution that contains: (1) a finding as to the victim's pecuniary loss based upon the evidence presented at the February 9, 2022 hearing. Because the only evidence presented was the victim's testimony, the trial court must determine what credible testimony offered by the victim is reliable evidence that supports a reasonable determination of the victim's pecuniary loss, if any; and (2) a determination of how much of that amount the Defendant can reasonably be expected to pay; and (3) the appropriate restitution amount, if any. The trial court has stated that the evidence is insufficient, but, upon remand, should the trial court order restitution, the trial court should explain which credible evidence it relied upon to determine the victim's pecuniary loss, if any. Accordingly, we reverse the restitution order of the trial court and remand for the trial court to determine the terms of any restitution ordered consistent with the opinion of this court.

### **III. Conclusion**

For the aforementioned reasons, the judgment of the trial court is reversed and remanded.

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ROBERT W. WEDEMEYER, JUDGE