

IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT IN AND FOR  
ORANGE COUNTY, FLORIDA

APPELLATE CASE NO: 07-AP-01  
LOWER CASE NO: 48-2004-MM-9247-O

ROOSEVELT WILLIAMS,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

\_\_\_\_\_ /

Appeal from the County Court for Orange County,  
Florida, Faye Allen, County Court Judge

Robert Wesley, Public Defender, and Charissa McIntosh,  
Assistant Public Defender, for Appellant

Lawson Lamar, State Attorney, and Abigail Forrester  
Jordanby, Assistant State Attorney, for Appellee

Before Whitehead, Munyon, and McDonald, J.J.

**FINAL ORDER REVERSING TRIAL COURT**

Roosevelt Williams appeals the trial court's Final Judgment and Order on Restitution dated December 1, 2006. This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1). After consideration of the record on appeal and the parties' briefs, this court dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320 and reverses the ruling of the trial court.

Mr. Williams was charged with contracting without a license in violation of Section 489.127(1)(f), Florida Statutes. On February 2, 2005, he entered a plea of no contest to the charge. On December 1, 2006, the trial court conducted a restitution hearing.

At the restitution hearing, Dean Compton testified that in 2003 he entered into a contract with Mr. Williams for construction of an addition onto the Compton home at a price of \$17,700. At some point Mr. Williams abandoned the Compton jobsite and Mr. Compton and his son had to complete the work. When Mr. Williams abandoned the job, there was work uncompleted under the contract, as well as completed work which was substandard and had to be repaired in order for the project to pass inspection.

Mr. Compton authenticated pictures of the project, and a summary of his costs to complete, including labor and materials. Mr. Compton computed the number of labor hours at 486.5 and the cost of labor at \$10 per hour. The summary sheet showed a total cost to complete of \$12,003 and included work by an electrician as well as 32 trips to and from the building supply store which Mr. Compton computed at \$5 per trip. Mr. Williams was paid \$13,700 within the first three weeks of the project, leaving a balance of \$4,000 due under the contract.

The Restitution Order entered on December 1, 2006, awarded Mr. Compton \$13,860, representing a refund of the \$13,700 Mr. Compton paid to Mr. Williams and \$160 for Mr. Compton having to drive to and from the supply store.

The issue on appeal is whether the trial court erred in determining the amount of restitution to be paid.

The standard of review on appeal is abuse of discretion. *See Koile v. State*, 902 So. 2d 822, 824 (Fla. 5<sup>th</sup> DCA 2005):

The burden of proving the amount of restitution is on the State, and the amount must be proved by a preponderance of the evidence. *See* §775.089(7), Fla. Stat. (2001); *Santana v. State*, 795 So. 2d 1112 (Fla. 5th DCA 2001). Restitution must be proved by substantial competent evidence. *See Sparkman v. State*, 445 So. 2d 1115 (Fla. 2d DCA 1984).

Mr. Williams argues that because he had partially performed under the contract, the homeowner was unjustly enriched by an award of the entire amount paid to Mr. Williams plus mileage for travel to and from the building supply store. He points out that the purpose of restitution is to make the victim whole and that a defendant should not be ordered to pay an amount exceeding that which would accomplish that purpose.

Mr. Williams further argues that Mr. Compton is entitled to restitution only in the amount of “that part of the loss which is specifically caused by the criminal offense of contracting without a license.” The only loss attributable to the crime of contracting without a license is the cost expended due solely to the lack of a license, such as re-inspection fees. Mr. Williams contends that the State did not present evidence of loss associated with the lack of a contractor’s license and therefore the order of restitution cannot stand. He argues that the repair work performed by Mr. Compton and his son were due to faulty workmanship *not* to lack of a contractor’s license.

Mr. Williams contends that the amount of restitution should be the amount paid to Mr. Williams under the contract, less the value of Mr. Williams partial performance, plus the cost of any re-inspection required solely because of the lack of a license.

The State, on the other hand, argues that the trial court was correct in ordering restitution in the amount of \$13,860. Citing *Sejia v. State*, 12 Fla. L. Weekly Supp. 823(b) (Fla. 6<sup>th</sup> Cir. Ct. 2005), the state argues that this court should not accept an unlicensed contractor’s claim that any damage to the homeowner was caused, not by the lack of a license, but by defective workmanship. In rejecting a similar argument, the *Sejia* court noted that such reasoning was “sophistry” and that the primary purpose of requiring contractors to be licensed is to ensure competence.

The State contends that Mr. Compton was not unjustly enriched since he paid out \$25,703 and was awarded only \$13,860 as restitution.

Mr. Williams' argument that Mr. Compton's compensation is limited to the costs that flow solely from the lack of a contractor's license is meritless. This court agrees with the position articulated in *Sejia v. State*, 12 Fla. L. Weekly Supp. 823(b) (Fla. 6<sup>th</sup> Cir. Ct. 2005) and disregards this claim.

Although restitution is designed to compensate the victim of a crime, it is also intended "to serve the rehabilitative, deterrent, and retributive goals of the criminal justice system." *Kirby v. State*, 863 So. 2d 238 (Fla. 2003). To this end, the courts have broad discretion in fashioning a suitable restitution award. See *C.M.S. v. State*, 997 So. 2d 520 (Fla. 2d DCA 2008) (noting that Section 775.089(1)(a), Florida Statutes (2006) directs the court to award restitution but does not specify a method for computing damage or loss)

Still, the goal is not to make the victim better off than he would have been before the crime occurred. See *Bowman v. State*, 698 So. 2d 615, 616 (Fla. 2d DCA 1997). And a defendant may not be ordered to pay restitution that exceeds the measure of damages suffered by the victim. See *Maurer v. State*, 939 So. 2d 234 (Fla. 5<sup>th</sup> DCA 2006).

All the cases cited in Mr. Williams' Amended Initial Brief involve theft. Those cases differ from the case at bar in that Mr. Compton did not have an item stolen from him, the value of which could be readily ascertained. Nor can a salvage value be determined. Therefore, the court looks to the law governing construction contracts in order to determine Mr. Compton's loss.

In construction contract cases, where there has been partial performance by the contractor, damages are calculated by deducting the reasonable cost to complete from the

contract price. See *American Structural Systems, Inc. v. R.B. Gay Const. Co., Inc.*, 619 So. 2d 366 (Fla. 1<sup>st</sup> DCA 1993). In the instant case, the contract price was \$17,700 and the cost to complete was \$12,003, leaving \$5,697 due the contractor. Since Mr. Compton paid Mr. Williams \$13,700, the amount of restitution should be \$8,003. Put another way, Mr. Compton paid \$25,703 (\$13,700 to Mr. Williams and \$12,003 to complete the project) for work which was valued by the parties at \$17,700. The difference in the amount contracted for and the amount paid is \$8,003 and that's the amount of restitution Mr. Compton should receive.

If Mr. Compton receives \$13,860 as restitution, then he has paid only \$11,843 for the entire project rather than the agreed price of \$17,700. In that case, Mr. Compton would indeed be better off than he would have been but for the criminal offense, and Mr. Williams would be compensating the victim in excess of his loss.

Based on the foregoing, it is ORDERED AND ADJUDGED that the judgment of the trial court is REVERSED AND REMANDED for entry of an order of restitution in the amount of \$8,003.00.

DONE AND ORDERED this 14<sup>th</sup> day of April, 2010.

\_\_\_\_\_/S/\_\_\_\_\_  
REGINALD WHITEHEAD  
Circuit Court Judge

\_\_\_\_\_/S/\_\_\_\_\_  
LISA T. MUNYON  
Circuit Court Judge

\_\_\_\_\_/S/\_\_\_\_\_  
ROGER J. MCDONALD  
Circuit Court Judge

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished, via U.S. Mail/hand Delivery, to Charissa McIntosh, Assistant Public Defender, 435 N. Orange Avenue, Suite 400, Orlando, FL 32801, to Abigail Forrester Jorandby, Assistant State Attorney, 415 N. Orange Avenue, Orlando, FL 32801, this 14<sup>th</sup> day of April, 2010.

\_\_\_\_\_/S/\_\_\_\_\_  
Judicial Assistant