

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE EDWARD DUNSON,

Defendant-Appellant.

UNPUBLISHED

February 4, 1997

No. 192399

Genesee Circuit Court

LC No. 93-48127 FC

Before: Gribbs, P.J., and Holbrook, Jr., and J.L. Martlew,* JJ.

PER CURIAM.

In 1993, defendant pleaded guilty of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and of being an habitual offender, second offense, MCL 769.10; MSA 28.1082. He was sentenced to serve fifteen to thirty years in prison and ordered to pay restitution of \$21,669.10 to certain insurance companies who had compensated victims of defendant's criminal offense. He appealed as of right and this Court affirmed defendant's convictions and prison sentence but remanded the matter to the trial court "for a redetermination of restitution in light of all the relevant factors" in the Crime Victim's Rights Act, MCL 780.767; MSA 28.1287(767), including his financial needs and ability to pay. *People v Dunson*, unpublished memorandum opinion of the Court of Appeals (Docket No. 164483, rel'd 12/9/94). On remand, the trial court ordered defendant to pay twenty percent of his net weekly income while in prison toward the full restitution amount of \$21,669.10. He again appeals as of right and we affirm.

Defendant first argues that the order of restitution to the insurance companies was not supported by any "interest of justice," as required by the pre-amendment language of MCL 780.766(10); MSA 28.1287(766)(10). Even assuming that defendant is correct that the amended version of § 16(10) of the CVRA—which deleted the "interest of justice" language—is inapplicable to this matter because the amendment did not become effective until January 10, 1994, we are persuaded that the violent and damaging nature of defendant's offense provides ample justification for the restitution order. Cf. *People v Gourd*, 200 Mich App 493, 496; 504 NW2d 699 (1993) (no "special facts" present to justify restitution to insurance company). As a consequence, defendant's prior appellate counsel was not

* Circuit judge, sitting on the Court of Appeals by assignment.

ineffective for failing to raise this issue at the remand hearing. See *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant next argues that the restitution order be vacated because the trial court failed on remand to address the relevant statutory factors, including financial dependents and ability to pay. On remand, the parties expressly stipulated to the court's use of the facts set forth in the original and updated presentence investigation reports. The original report indicated that defendant was single and the father of a then five-year-old son, who at that time was supported by ADC provided to the mother. Defendant did not pay child support for his son. The updated report indicated that defendant was gainfully employed in the prison laundry and was earning approximately \$60 to \$70 a month.

Defendant's appellate counsel argued to the court that, based on defendant's limited prison income, he had "a minimal ability to pay restitution." The prosecutor argued that there was "no debate over the amount of restitution," but simply defendant's ability to pay in light of his lengthy prison sentence. The prosecutor recommended that defendant be ordered "to pay an appropriate amount percentage [sic] of his earnings" while in prison. The court ordered defendant to "pay twenty percent of his net weekly income toward restitution" and further ordered this financial obligation to cease upon his release from the jurisdiction of the Department of Corrections. The court reasoned that this amount was comparable to child support for one dependent.

Although defendant argues that the full restitution of \$21,669.10 was excessive, we note that Mr. Herbert Kellow—the man who was held at knife point by defendant—indicated to the presentence investigator that his insurance company reimbursed him only \$15,000 for his van for which he had paid \$28,000. Mr. Kellow further indicated that he was unable to afford a new van, similar to the one totaled in the accident, because the cost had increased to \$39,000. Thus, it appears to us that defendant's primary victim—Mr. Kellow—will continue to suffer financially, without recourse, as a result of defendant's criminal act. Given these circumstances, we conclude that the court adequately considered the relevant factors and that the restitution order does not impose an undue hardship on defendant.

Finally, defendant argues that because he was sentenced to serve a prison term and to pay restitution his right not to be placed in double jeopardy, i.e., multiple punishments imposed for a single offense, was violated. We find no merit to this argument. The order of restitution was intended to compensate the victims for loss, not to punish defendant. See *United States v Halper*, 490 US 435; 104 L Ed 2d 487; 109 S Ct 1892 (1989) (addressing the distinction between a statutory civil penalty imposed as "punishment" or as compensation for victim's loss).

Affirmed.

/s/ Roman S. Gribbs
/s/ Donald E. Holbrook, Jr.
/s/ Jeffrey L. Martlew