

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 9, 2014

v

MOHAMMED NAYEF AL-KHATEEB,

Defendant-Appellant.

No. 318188
Wayne Circuit Court
LC No. 13-003314-FH

Before: JANSEN, P.J., and TALBOT and SERVITTO, JJ.

PER CURIAM.

Mohammed Nayef Al-Khateeb appeals by delayed leave granted his guilty plea conviction of larceny from a person.¹ The trial court sentenced Al-Khateeb to 2 to 10 years' imprisonment, as well as ordered him to pay costs and restitution. We affirm, but remand for correction of the judgment of sentence.

Al-Khateeb contends that the trial court abused its discretion by ordering him to pay restitution in an amount to be determined. We disagree. The amount of restitution is reviewed for an abuse of discretion.² Questions of statutory interpretation are reviewed de novo.³

This issue is waived. Waiver is "the intentional relinquishment or abandonment of a known right."⁴ A defendant may waive an objection by his counsel's affirmative approval of the

¹ MCL 750.357.

² *People v Newton*, 257 Mich App 61, 68; 665 NW2d 504 (2003).

³ *People v McKinley*, 496 Mich 410, 414-415; 852 NW2d 770 (2014).

⁴ *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) (citation and quotation marks omitted).

trial court's action, which extinguishes any error.⁵ "A defendant may not claim error regarding an issue on appeal where his lawyer deemed the action proper at trial or otherwise acquiesced."⁶

The sentence agreement, to which Al-Khateeb agreed, provided that restitution was to be determined. At sentencing, Al-Khateeb requested that proof of the \$800 in restitution, the amount recommended in the presentence investigation report (PSIR), be presented to the probation department, and the trial court granted the request by ordering that restitution be paid in an amount to be determined based on the submission of documentation to the probation department. By accepting the plea agreement and specifically requesting the action that was taken by the court, Al-Khateeb waived any error.⁷

Nonetheless, we find no error. "Restitution encompasses only those losses that are easily ascertained and are a direct result of a defendant's criminal conduct. The prosecution must prove the amount of the victim's loss by a preponderance of the evidence."⁸ MCL 780.767(4) provides that "[a]ny dispute as to the proper amount or type of restitution shall be resolved by the court by a preponderance of the evidence. The burden of demonstrating the amount of the loss sustained by a victim as a result of the offense shall be on the prosecuting attorney." In *People v Tyler*,⁹ this Court held that where the trial court failed to follow the statutory procedure for determining the amount of restitution to which the victim was entitled, described in MCL 780.767, and there was no presentence report available, it was "impossible to ascertain whether the restitution was ordered for allowable damages," and therefore, the amount that the defendant was ordered to pay was arbitrary. Accordingly, this Court in *Tyler* remanded for resentencing.¹⁰

Here, however, while the trial court did not follow MCL 780.767 and determine the amount of restitution based on the victim's losses,¹¹ unlike in *Tyler*, Al-Khateeb's PSIR is available and indicates that the \$800 in restitution requested by the victim's family was for the amount it cost to replace the cell phone that Al-Khateeb stole. Al-Khateeb did not dispute that amount, subject to proof being provided to substantiate it. The costs to replace the cell phone that Al-Khateeb stole would be the "direct result" of his criminal conduct and, thus, an "allowable" amount of damages.¹² Moreover, because Al-Khateeb failed to dispute the amount,

⁵ *Id.* at 216.

⁶ *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002).

⁷ See *Carter*, 462 Mich at 216; *Rodriguez*, 251 Mich App at 32.

⁸ *People v Gubachy*, 272 Mich App 706, 708; 728 NW2d 891 (2006) (citations omitted).

⁹ 188 Mich App 83, 89-90; 468 NW2d 537 (1991).

¹⁰ *Id.* at 90.

¹¹ See *id.* at 89-90.

¹² *Gubachy*, 272 Mich App at 708; *Tyler*, 188 Mich App at 90.

the trial court was not required to resolve the dispute by a preponderance of the evidence.¹³ Thus, the trial court did not abuse its discretion.

The judgment of sentence, however, does not reflect the trial court's ruling at sentencing. The judgment of sentence indicates only that restitution is "TBD" and does not reflect the requirement that the amount of restitution be substantiated by documentation. Given that courts speak through their written judgments, not their oral statements, the judgment of sentence must accurately reflect the sentence.¹⁴ The judgment of sentence must be corrected to indicate that the amount of restitution imposed must be determined based on documentation submitted. Accordingly, we remand for correction of the judgment of sentence.¹⁵ A copy of the amended judgment of sentence should be sent to the Department of Corrections.¹⁶

Al-Khateeb also contends that the trial court exceeded its authority by restricting the Department of Corrections from releasing him from parole until his fines and costs were paid. We disagree.

This Court reviews sentencing issues for an abuse of discretion.¹⁷ This issue is also waived. At sentencing, Al-Khateeb requested that the fees and restitution "not be made as a condition to be released on parole, but that they have to be paid while he's out on parole so he can be employed and pay all his costs." The trial court granted Al-Khateeb's request and indicated that it would "make the court costs a condition of parole. You pay those while you're on parole." The judgment of sentence provides: "Pay court costs as a condition of parole." By specifically requesting the action taken by the trial court, Al-Khateeb waived any error.¹⁸

Nonetheless, we find no error. This Court has held that a sentencing judge does not have the power to make full payment of restitution a prerequisite for obtaining parole or early release.¹⁹ The trial court, however, did not make the payment of costs a condition for Al-Khateeb to be released on parole. Rather, the trial court made the payment of costs a condition for Al-Khateeb to be released from parole. Al-Khateeb has failed to provide any relevant

¹³ See MCL 780.767(4).

¹⁴ *People v Vincent*, 455 Mich 110, 123; 565 NW2d 629 (1997).

¹⁵ See MCR 6.435(A); MCR 7.216(A)(7); *People v Brown*, 492 Mich 684, 700 n 52; 822 NW2d 208 (2012) ("Where an error in the judgment of sentence rendered the sentence inconsistent with the sentence the court intended, we have ordered that the judgment of sentence be amended.").

¹⁶ See *People v Lackey*, 490 Mich 1000, 1000; 807 NW2d 321 (2012).

¹⁷ *People v Sabin (On Second Remand)*, 242 Mich App 656, 660; 620 NW2d 19 (2000).

¹⁸ See *Carter*, 462 Mich at 216; *Rodriguez*, 251 Mich App at 32.

¹⁹ *People v Greenberg*, 176 Mich App 296, 311; 439 NW2d 336 (1989). See also *People v Gosselin*, 493 Mich 900; 822 NW2d 792 (2012) (remanding for correction of the judgment of sentence to delete the requirement that the defendant pay one-third of her restitution before she may be released on parole).

supporting authority for the argument that the trial court cannot restrict the decision to release a defendant from parole. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.”²⁰ Therefore, the trial court did not abuse its discretion.

Affirmed, but remanded for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Michael J. Talbot
/s/ Deborah A. Servitto

²⁰ *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (2009) (citation and quotation marks omitted).