
LEGAL UPDATE

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IOWA SUPREME COURT DECISION — RESTITUTION AND REASONABLE ABILITY TO PAY

Purpose. *Legal updates are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update is intended to provide legislators, legislative staff, and other persons interested in legislative matters with summaries of recent meetings, court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although an update may identify issues for consideration by the General Assembly, it should not be interpreted as advocating any particular course of action.*

State v. Albright

Filed March 22, 2019, as amended June 5, 2019

No. 17-1286

www.iowacourts.gov/courtcases/4803/embed/SupremeCourtOpinion

Factual and Procedural Background. Charles Albright (Albright) and the complaining witness were romantic partners and cohabitated. On October 7, 2016, Albright physically assaulted the complaining witness. When the complaining witness attempted to leave, Albright prevented her from doing so and told her she was not leaving the house. Albright continued to physically assault the complaining witness intermittently for hours and blocked the residence's exits repeatedly when she attempted to leave.

The State charged Albright with willful injury resulting in serious injury, a class "C" felony, in violation of Iowa Code section 708.4(1) (2016) and kidnapping in the first degree, a class "A" felony, in violation of Iowa Code sections 710.1 and 710.2.

A jury convicted Albright of willful injury causing serious injury and kidnapping in the first degree. The district court ordered Albright to serve a term not to exceed five years for the willful injury conviction and life in prison for the kidnapping conviction. Albright was ordered to pay various fines and surcharges for both convictions including court costs. Regarding Albright's reasonable ability to pay, the district court found the defendant had the reasonable ability to pay the defendant's obligations including crime victim assistance reimbursement, court costs including correctional fees, and court-appointed attorney fees. The district court did not have the amount of each item of restitution before it when it determined Albright's reasonable ability to pay.

Albright appealed to the Iowa Supreme Court (Court).

Issues on Appeal. Albright brought several issues on appeal. This legal briefing will address whether the district court erred in ordering Albright to pay restitution without first considering his reasonable ability to pay.

Holding. The Court, in a 6-0 holding, vacated the restitution portion of the sentencing order and remanded the case to the district court to order restitution consistent with the opinion. The Court held the district court must make a reasonable-ability-to-pay determination, in consideration of each item of restitution, before ordering the defendant to pay restitution.

Analysis. The Court initially analyzed the Iowa Code regarding restitution. Restitution is defined in Iowa Code section 910.1(4) as the "payment of pecuniary damages to a victim in an amount and in the manner

provided by the offender's plan of restitution." Iowa Code section 910.1(3) defines pecuniary damages as including "all damages to the extent not paid by an insurer, which a victim could recover against the offender in a civil action arising out of the same facts or event, except punitive damages and damages for pain, suffering, mental anguish, and loss of consortium." Pecuniary damages also include "damages for wrongful death and expenses incurred for psychiatric or psychological services or counseling or other counseling for the victim which became necessary as a direct result of the criminal activity." In addition to pecuniary damages, Iowa Code section 910.1(4) provides that restitution may also include fines, penalties, surcharges, contributions to local anticrime or crime victim compensation programs, court costs including correctional fees, and court-appointed attorney fees.

The Court interpreted Iowa Code section 910.2 as creating two categories of restitution. The first category, assessed regardless of a defendant's ability to pay, includes restitution "to the victim of the offender's criminal activities [and] to the clerk of court for fines, penalties, [and] surcharges." The second category, assessed only if a defendant has the reasonable ability to pay, includes contributions to local anticrime or crime victim compensation programs, restitution to public agencies, court costs including correctional fees, and court-appointed attorney fees.

The Court next analyzed how the amount of restitution is to be calculated and submitted to the district court by a county attorney pursuant to Iowa Code section 910.3. The county attorney is required to prepare a statement of pecuniary damages to victims, contributions to the crime victim compensation program, and expenses incurred by public agencies. If the county attorney does not have the pecuniary damage amounts at the time of sentencing, the county attorney is required to provide a statement of pecuniary damages incurred up to that time to the clerk of court no later than 30 days after sentencing. The clerk of court is required to prepare a statement including court-appointed attorney fees and correctional fees. Both the county attorney and the clerk of court's statements must be included in the presentence investigation report if provided to the presentence investigator.

The district court may set out the amount of restitution at the time of sentencing or at a later date. If the full amount of restitution is not available at the time of sentencing, the court is required to issue a temporary order determining a reasonable amount of restitution identified up to that time, but the district court may continue to order "permanent, supplemental" restitution orders as necessary until the full amount of restitution is determined. District court orders setting out the amount of restitution are included in the plan of restitution.

The Court's opinion urged district courts to "take whatever steps necessary to ensure the items of restitution are before the court at the time of sentencing." The Court held that a district court must wait to enter a final order of restitution until all items of restitution are before the court. The Court further held that if a district court does issue multiple restitution orders, the district court shall only make an assessment as to a defendant's reasonable ability to pay when the court has considered all items of restitution before it. In determining a defendant's reasonable ability to pay, the defendant may be required to file a financial statement or have a discussion with the district court regarding the defendant's financial situation.

The Court held that a reasonable-ability-to-pay determination makes restitution provisions constitutional. A defendant has a reasonable ability to pay when the defendant can do so "without hardship" (citing *Fuller v. Oregon*, 417 U.S. 40, 53–54 (1974)). The Court listed several other factors for district courts to consider when awarding the final amount of restitution based on a defendant's reasonable ability to pay including the financial resources of the defendant; whether restitution payments would deprive the defendant or the defendant's dependents of minimum, basic human needs; the present and potential future financial needs and earning ability of the defendant and the defendant's dependents; and the hardships the defendant and the defendant's family would have to endure if repayment is required.

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