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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-417
)	
IRIS HENRY,)	Honorable
)	Susan Clancy Boles,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Presiding Justice Schostok and Justice Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The trial court was statutorily authorized to extend defendant's conditional discharge and accompanying period of restitution to seven years; (2) the trial court did not abuse its discretion in ordering defendant to pay restitution in \$420 annual payments, as the schedule allowed her to pay despite the disability that limited her to part-time work.

¶ 2 Defendant, Iris Henry, appeals her sentence of conditional discharge and restitution for theft (720 ILCS 5/16-1(a)(1) (West 2010)). She contends that the trial court exceeded its statutory authority and abused its discretion when it sentenced her to seven years of conditional discharge with restitution paid over that period. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant was convicted following a bench trial in connection with the theft of a purse from a casino. She was sentenced to 24 months' probation and 100 hours of community service and was ordered to pay \$3,835 in restitution. Defendant appealed, and we vacated and remanded for consideration of her ability to pay restitution and whether she should pay it in a single payment or in installments. *People v. Henry*, 2012 IL App (2d) 111199-U.

¶ 5 On remand, defendant requested that the court terminate her probation and public service and find that she was incapable of paying restitution. In the alternative, she asked that the court impose a term of nonreporting conditional discharge with the condition that she pay restitution by a set date. She also asked that the court waive monthly payments and take other actions, such as waiving fees, to direct all available funds toward restitution.

¶ 6 Defendant testified that she was 55 and was unemployed because of a physical disability that prevented her from walking great distances or sitting for extended periods of time. She had a college degree in business management and a paralegal certificate. Before her conviction, she was self-employed in the transportation business, but she had been unable to obtain the necessary business permits since her conviction. Since becoming disabled, she had once obtained office employment without disclosing her disability, but she was terminated when her disability was discovered by her employer. She had been unemployed on and off since 2003 and was looking for employment.

¶ 7 Defendant was guardian of her five-year-old grandson, and her income was limited to disability payments of \$1,012 per month and government assistance of \$268 per month. Her rent was \$700 and, after paying for other expenses, she generally ran out of money before the end of the month.

¶ 8 The court imposed a seven-year term of conditional discharge, waived the monthly reporting and community-service requirements, and instead required defendant to report twice per year. It also waived the conditional-discharge fees. Noting defendant's education and demeanor, the court found that, despite her physical limitations, she had the ability to work on a part-time basis to meet her restitution obligations. The court reimposed the \$3,835 order but reduced it to \$2,940 based on payments defendant had already made. The court then found that, based on defendant's employment status and physical limitations, there was good cause not to order monthly installment payments. Instead, the court ordered payments of \$420 per year over seven years. Defendant appeals.

¶ 9

II. ANALYSIS

¶ 10 Defendant first contends that the court erred in resentencing her to seven years of conditional discharge that required payment of restitution over the seven-year term. She argues that doing so violated section 5-4.5-40(d) of the Unified Code of Corrections (Code) (730 ILCS 5/5-4.5-40(d) (West 2010)).

¶ 11 Ordinarily, a sentencing issue not raised during the sentencing hearing or in a postsentencing motion results in forfeiture of that issue on appeal. See *People v. Watkins*, 325 Ill. App. 3d 13, 17 (2001), *abrogated on other grounds* by *People v. Bailey*, 2014 IL 115459. However, there are exceptions to this rule. One of those exceptions provides that a void sentencing order may be attacked at any time. *People v. Mancilla*, 331 Ill. App. 3d 35, 37 (2002). "Any portion of a sentence that is not statutorily authorized is void." *People v. Day*, 2011 IL App (2d) 091358, ¶ 48. Here, defendant argues that the restitution order is void. However, defendant points to only a portion of the Code and fails to note its full provisions.

¶ 12 Section 5-4.5-40(d) provides that, except as provided by other sections, including section 5-6-2(e) of the Code (730 ILCS 5/5-6-2(e) (West 2010)), the period of probation or conditional discharge shall not exceed 30 months. However, section 5-6-2(e) provides that a court may extend any period of probation or conditional discharge for the payment of restitution. *Id.* Meanwhile, section 5-5-6(f) of the Code (730 ILCS 5/5-5-6(f) (West 2010)) provides that the court shall fix a period not in excess of five years for payment of restitution. However, that section also provides that the court may extend the five-year period if it deems it necessary and in the best interest of the victim and that it may waive requirements of monthly payments if it finds good cause to do so. *Id.* Thus, contrary to defendant's assertions, the court was statutorily authorized to extend the conditional-discharge period and the period in which restitution must be made.

¶ 13 Defendant next contends that the court abused its discretion when it ordered annual payments of restitution. She argues that she is incapable of making the payments.

¶ 14 “A trial court must determine a reasonable time and manner for the payment of restitution to ensure that restitution can be paid.” *Day*, 2011 IL App (2d) 091358, ¶ 56. “[T]he trial court is not required to consider a defendant's financial circumstances when setting the amount of restitution; the trial court is required to consider the ability to pay only when determining the time and manner of payment or when considering a petition to revoke restitution.” (Emphasis omitted.) *Id.* “A trial court's order concerning the time and manner of payment of restitution is reviewed for an abuse of discretion.” *Id.* An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, or unreasonable or where no reasonable person would take the court's view. *People v. Caffey*, 205 Ill. 2d 52, 89 (2001).

¶ 15 Here, the trial court crafted a reasonable schedule to allow defendant to make restitution despite her physical limitations. The court heard evidence about her ability to work and reasonably concluded that she could work part time. The court then waived monthly payments in favor of an annual amount to provide for greater flexibility. In arguing that the court abused its discretion, defendant cites cases in which the reviewing court modified a restitution order from a fixed monthly payment to one based on a percentage of income. But in those cases, the initial restitution order equaled or exceeded the defendant's income (*People v. Reece*, 228 Ill. App. 3d 390, 396 (1992); *People v. Knowles*, 92 Ill. App. 3d 537, 540-41 (1980)) or was at least 25% of the defendant's income (*People v. Rupert*, 148 Ill. App. 3d 27, 29-30 (1986)). In two cases, the amount of the payment was reduced to 10% of the defendant's net income. *Rupert*, 148 Ill. App. 3d at 30; *Knowles*, 92 Ill. App. 3d at 541. Here, the trial court's order allowed defendant to set aside as little as \$35 per month toward her annual payment, which was significantly less than 10% of her monthly income. That determination was not arbitrary, fanciful, or unreasonable. Thus, it was not an abuse of discretion.

¶ 16

III. CONCLUSION

¶ 17 The trial court did not exceed its statutory authority or abuse its discretion in ordering restitution to be paid over a seven-year period. Accordingly, the judgment of the circuit court of Kane County is affirmed.

¶ 18 Affirmed.