

**NOTICE**

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

**FILED**

September 20, 2017  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

2017 IL App (4th) 150536-U  
NO. 4-15-0536

IN THE APPELLATE COURT  
OF ILLINOIS  
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
EDMUND P. ROCHESTER,	)	No. 14CF1610
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.  
Justices Holder White and Knecht concurred in the judgment.

**ORDER**

¶ 1 *Held:* (1) The trial court erred in ordering defendant to pay restitution based on a charge for which he was not convicted.

(2) The trial court erred in not establishing a deadline for payment of restitution.

¶ 2 On May 13, 2015, the trial court held a sentencing hearing in this case. The court sentenced defendant Edmund P. Rochester to concurrent prison terms of two years for forgery and four years for burglary with credit for 164 days served. In a written order, the court ordered defendant to pay \$5341.10 in restitution. On appeal, defendant argues the trial court ordered him to pay restitution on a charge he was not convicted of committing. Defendant also argues the restitution order is deficient and the cause should be remanded for a proper restitution hearing. We affirm defendant’s conviction and prison sentence but remand this case with directions for the trial court to both reduce defendant’s restitution obligation to \$3470.50 and conduct a hearing to determine (1) a deadline for defendant to finish paying restitution and (2) the manner in which

the payments should be made. The trial court shall consider defendant's ability to pay when making both of these determinations.

¶ 3

### I. BACKGROUND

¶ 4

On November 26, 2014, the State charged defendant with two counts of forgery (720 ILCS 5/17-3(a)(2) (West 2014)) and one count of burglary (720 ILCS 5/19-1(a) (West 2014)). Count I charged defendant with forgery based on actions he took with regard to check No. 700548 in the amount of \$1870.50, which he cashed at the branch of the First Financial Bank located at 1205 South Neil Street in Champaign. Count II charged defendant with forgery based on actions he took with regard to check No. 700556 in the amount of \$3470.50, which he cashed at the First Financial Bank branch located at 2510 South Philo in Urbana. Count III charged defendant with burglary for "knowingly and without authority enter[ing] a building belonging to First Financial Bank \*\*\* located at 2510 South Philo with the intent to commit forgery therein." The jury found defendant guilty of counts II and III based on his actions at the bank branch located at 2510 South Philo in Urbana. The court declared a mistrial on count I because the jury was unable to reach a decision.

¶ 5

On May 13, 2015, the trial court sentenced defendant to two years in the Department of Corrections for forgery and a concurrent four year sentence for burglary with credit for 164 days in custody. In a written order, the court ordered defendant to pay \$5341.10 in restitution.

¶ 6

On May 15, 2015, defendant filed a motion to reconsider sentence. Other than mentioning the trial court had ordered him to pay restitution, defendant made no specific arguments with regard to the restitution order. On July 1, 2015, the trial court denied the motion to reconsider sentence.

¶ 7 This appeal followed.

¶ 8 II. ANALYSIS

¶ 9 On appeal, defendant argues the trial court erred in ordering him to pay \$5341.10 in restitution because that amount is the sum of both checks he was charged with forging. However, defendant was not convicted of any offense related to check No. 700548 in the amount of \$1870.50. Instead, both of his convictions stemmed from his actions with regard to check No. 700556 in the amount of \$3470.50.

¶ 10 Defendant asks this court to reduce his restitution obligation to \$3470.50, the amount of check No. 700556. In addition, defendant argues the entire restitution order should be vacated and the cause remanded for a proper restitution hearing because the trial court did not consider defendant's ability to pay or determine whether the restitution was to be paid in installments or a lump sum.

¶ 11 Defendant acknowledges he failed to preserve these issues because he did not include them in his motion to reduce sentence. However, he argues we should excuse his forfeiture based on the plain error doctrine. According to our supreme court, "The plain error rule may be invoked if the evidence at a sentencing hearing was closely balanced, or if the error was so egregious as to deprive the defendant of a fair sentencing hearing." *People v. Hall*, 195 Ill. 2d 1, 18, 743 N.E.2d 126, 136 (2000).

¶ 12 A. Amount of Restitution

¶ 13 Defendant first argues the trial court erred in ordering him to pay restitution in the amount of \$5431.10 for the reasons stated above. Citing *People v. McClard*, 359 Ill. App. 3d 914, 834 N.E.2d 984 (2005), defendant argues the court may not order him to pay restitution

based on an alleged forgery for which he was not convicted. The State agrees the court erred when it ordered defendant to pay restitution in the amount of \$5431.10.

¶ 14 We next look at whether this court should review the error under the plain error doctrine. We note our supreme court has stated “[t]he imposition of an unauthorized sentence affects substantial rights” and is reviewable pursuant to the plain error doctrine. *People v. Hicks*, 181 Ill. 2d 541, 545, 693 N.E.2d 373, 375 (1998). As a result, we will review this forfeited error under the second prong of the plain error rule. The State concedes the restitution order should be reduced to \$3470.50 (check No. 700556), because defendant was not convicted of any offense based on check No. 700548 in the amount of \$1870.50. We accept the State’s concession and order the trial court to reduce the restitution obligation to \$3470.50.

¶ 15 B. Defendant’s Ability and Time to Pay Restitution

¶ 16 Defendant next argues the trial court’s restitution order is deficient. According to defendant, the court erred (1) by not considering his ability to pay restitution and (2) by not stating when or how the restitution must be paid. Based on our review of the record, the court did not set a deadline for defendant to finish paying his restitution.

¶ 17 Defendant asks this court to vacate the restitution order and remand the case for a proper restitution hearing. Once again, defendant acknowledges he did not preserve this issue for review. However, he asks us to review the issue under the plain error rule.

¶ 18 As stated earlier, we first must determine whether the trial court erred unless the record clearly shows plain error did not occur. *People v. Shaw*, 2016 IL App (4th) 150444, ¶ 69, 52 N.E.3d 728. We first note a trial court is not statutorily obligated to consider a defendant’s ability to pay restitution when imposing restitution. *People v. Otten*, 228 Ill. App. 3d 305, 313,

591 N.E.2d 907, 912 (1992). As a result, the court did not err in not considering defendant's ability to pay in determining the amount of restitution defendant owed.

¶ 19 However, the trial court is required to consider the defendant's financial ability when determining the manner and time in which restitution shall be paid. *People v. Lambert*, 195 Ill. App. 3d 314, 334, 552 N.E.2d 300, 313 (1990). Based on the record in this case, we cannot say the trial court considered defendant's ability to pay within a certain period of time because the court did not establish a deadline for payment to be made.

¶ 20 The State relies on the trial court's order listing the fines and restitution imposed on defendant as establishing a deadline for payment. The State points to language on the form stating, "All fines assessed to the Defendant must be paid within twelve months of release from custody." However, the court did not check the box on the form next to this language indicating it applied in this case.

¶ 21 Relying on *People v. Brooks*, 158 Ill. 2d 260, 633 N.E.2d 692 (1994), the State next argues it is understandable the trial court did not set a deadline to pay restitution. According to the State:

"In *Brooks*, our Supreme Court did not consider defendant's argument that the order was inappropriate for its failure to specify the method and manner of payment. *People v. Brooks*, 158 Ill. 2d 260, 272 (1994). It held 'the trial court's failure is understandable, given that defendant had yet to serve his term and the regularity and amount of his future income, if any, was unknown.' *Brooks*, 158 Ill. 2d at 272."

However, our supreme court did not excuse a trial court's failure to establish a definite period in which the restitution had to be paid. In *Brooks*, the trial court ordered the defendant to pay

\$2767.93 in restitution within two years of his release from prison. *Brooks*, 158 Ill. 2d at 272, 633 N.E.2d at 697. The trial court in this case set no deadline for defendant to pay the restitution. As a result, the situation here is easily distinguishable from *Brooks*. The court's failure to establish a deadline for payment of restitution makes the restitution order "fatally incomplete." *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1067, 890 N.E.2d 964, 969 (2008).

¶ 22 Because we have found error, we next must determine whether the error is reviewable under the plain error doctrine. We find this error reviewable under the second prong of plain error analysis because defendant needs to know when he must satisfy the restitution order considering the potential consequences of him not complying with the order, including seizure of his property. 730 ILCS 5/5-5-6(b) (West 2014). As an aside, we note that finding plain error here benefits the victim of this crime. Without a firm deadline, defendant could not be found delinquent in the event he failed to pay restitution. A restitution order acts as a judgment lien in favor of the victim which may be enforced by the victim to satisfy any payment that is delinquent (730 ILCS 5/5-5-6(m)(3) (West 2014)). Without a deadline, there can be no delinquency. Thus, we remand this case for a new restitution hearing to determine an appropriate payment schedule and deadline for payment based on defendant's ability to pay.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated above, we affirm defendant's conviction and prison sentence, but remand for the trial court (1) to reduce the amount of defendant's restitution obligation to \$3470.50 and (2) to hold a hearing to determine, based on defendant's ability to pay, a deadline for defendant to satisfy his restitution obligation and, if appropriate, a payment schedule.

¶ 25 Affirmed in part; remanded with directions.