

**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).

2018 IL App (4th) 160389-U

NO. 4-16-0389

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
July 18, 2018  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
PAUL A. TART,	)	No. 13CF391
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa Kessler Righter,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.  
Justices DeArmond and Cavanagh concurred in the judgment.

**ORDER**

¶ 1 *Held:* Defendant’s claim of ineffective assistance of counsel is better suited for a collateral proceeding as the appellate record is insufficient to resolve the question.

¶ 2 In December 2015, defendant entered a voluntary open guilty plea in this case.

As part of his sentence, defendant’s attorney and the State agreed to an amount of money defendant would pay in restitution to certain individuals and groups. Defendant now argues his trial counsel was ineffective because the agreed order required defendant to make payments that were not statutorily authorized. The record in this case is not sufficient to determine whether defendant’s trial counsel was ineffective for doing this. As a result, defendant’s claim would be better suited to a collateral proceeding. Because we cannot determine from the record in this case whether defendant’s counsel was constitutionally ineffective, we affirm defendant’s conviction and sentence in this case.

¶ 3

## I. BACKGROUND

¶ 4 In October 2013, the State charged defendant by information with one count of theft (720 ILCS 5/16-1(a)(1)(A) (West 2012)), alleging he “knowingly obtained by deception property of Loretta Woodward, namely United States Currency, with the intent to deprive Loretta Woodward permanently of the use or benefit of this item.” The charging document also noted defendant had a prior burglary conviction in Coles County case No. 00-CF-659.

¶ 5 On December 9, 2015, defendant entered an open guilty plea, which the trial court accepted.

¶ 6 On January 11, 2016, at a joint hearing in this case and Coles County case No. 16-CF-6, defendant’s attorney, Thomas J. Logue, filed a motion to withdraw as defendant’s counsel, alleging defendant had used Logue’s services to perpetrate a crime or fraud, which was pending against defendant in Coles County case No. 16-CF-6. The trial court granted Logue’s motion and appointed a public defender to represent defendant in both cases.

¶ 7 In April 2016, the trial court sentenced defendant to five years in prison with credit for 253 days served and ordered defendant to pay certain fines and restitution as set forth in a written judgment of restitution in the amount of \$2407.54, which was later changed to \$2126.43. Defendant was ordered to pay restitution as follows: \$448.63 to Loretta Woodward; \$80 to Vicki Trueblood; \$100 to Christian Women’s Fellowship; \$199 to Sharon Patton; \$150 to Jan Ernst; \$75 to Gayle and Mike Strader; \$41.52 to Stan Huffman; \$170 to Michael Loy; \$200 to Calvary Baptist Church; \$32 to Walter Carlson; \$40 to Clarence Schrader; and \$590.28 to Laura Ann Sidwell.

¶ 8 On April 12, 2016, defendant filed a motion to reconsider his sentence. On May 4, 2016, defense counsel filed his Illinois Supreme Court Rule 604(d) (eff. Mar. 8, 2016)

certificate. On May 9, 2016, the trial court denied defendant's motion to reconsider sentence.

¶ 9 This appeal followed.

¶ 10 II. ANALYSIS

¶ 11 Defendant argues he received ineffective assistance of counsel at his sentencing hearing because his counsel entered into an agreement obligating defendant to pay statutorily- unauthorized restitution to individuals and organizations who were not victims in the charged offense in this case. The restitution order required defendant to pay \$448.63 to the victim in the charged crime, Loretta Woodward. Defendant concedes this was proper. However, defendant argues the remainder of the restitution order, requiring payment of \$1677.80 to other individuals not mentioned in the charge or at the plea hearing, was not authorized by statute and his trial counsel was ineffective for stipulating to this agreement at sentencing. Defendant asks this court to reduce defendant's restitution order to \$448.63, the amount owed Woodward.

¶ 12 Pursuant to section 5-5-6 of the Unified Code of Corrections (730 ILCS 5/5-5-6 (West 2012)), a defendant can be ordered to pay restitution. However, "[t]he trial court does not have authority to order restitution for damages resulting from criminal conduct other than that charged in the indictment unless an exception \*\*\* exists." *People v. Bradford*, 207 Ill. App. 3d 436, 439, 566 N.E.2d 56, 58 (1991).

¶ 13 Based on the facts in this case, defendant argues no exception applies here and no statutory basis exists to require defendant to pay restitution to anyone other than Woodward.

According to defendant:

“[His] trial counsel provided ineffective assistance by agreeing that [defendant] should pay individuals extraneous to the charge—restitution exceeding that which was statutorily authorized. The ‘various individuals and

organizations' the State's [A]ttorney discusses are in no way part of the same criminal conduct of which [defendant] was convicted.”

¶ 14 The State does not argue defendant is wrong with regard to the restitution order. However, the State argues this issue would be better raised in a collateral proceeding because the record does not reflect whether trial counsel was unaware the portion of the restitution order at issue was not statutorily authorized or knew it was not statutorily authorized but made a strategic decision to agree to both the authorized and unauthorized restitution in hopes of receiving a lenient sentence for defendant from the trial court because defendant was taking full responsibility for both charged and uncharged offenses. It is also unclear whether defendant was aware he was agreeing to pay restitution that was not authorized by statute.

¶ 15 In *People v. Veach*, 2017 IL 120649, ¶ 46, 89 N.E.3d 366, 375, our supreme court noted defendants are required to raise claims of ineffective assistance of counsel on direct review if the claims are apparent on the record. However, the court also stated “ineffective assistance of counsel claims may sometimes be better suited to collateral proceedings but only when the record is incomplete or inadequate for resolving the claim.” *Veach*, 2017 IL 120649, ¶46, 89 N.E.3d at 375.

¶ 16 In this case, the record does not establish whether defense counsel was unaware part of the restitution order was not statutorily authorized or did know but made a strategic decision defendant might receive a more lenient prison sentence if he took full responsibility for uncharged bad acts even though he was not convicted of those bad acts. Thus, we conclude this issue would be better raised in a collateral proceeding.

¶ 17 III. CONCLUSION

¶ 18 For the reasons stated, we affirm defendant's conviction and sentence in this case.

As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 19            Affirmed.