

SUPREME COURT OF APPEALS OF WEST VIRGINIA
April 7, 2014 Argument Docket
LAWS Program - Madison, WV

3. State v. Rebecca F., No. 13-0311

Procedural and Factual Background:

This case involves a criminal appeal. The defendant, Rebecca F., appeals the Circuit Court of Berkeley County's sentencing order entered on January 14, 2013. The defendant entered guilty pleas under *Alford* circumstances to eight felony counts of identity theft. The defendant used her daughter's name and personal identifying information to procure revolving credit accounts. The circuit court sentenced the defendant to eight terms of incarceration of five years, one for each count of identity theft. The Court sentenced the defendant to five years in prison followed by an extended term of probation.

The defendant requests that the Supreme Court of Appeals of West Virginia reverse the ruling of the Circuit Court of Berkeley County and order that the defendant's sentence be suspended for an alternative sentence. She further requests that the Court set aside the circuit court's award of \$10,000.00 in restorative restitution, or money to be paid by the defendant to compensate the victim for her loss.

Restitution: The circuit court's order awarding "restorative restitution" states, in part:

I'm going to order that restitution be made in the amount of \$10,942.74 and further restitution of \$10,000.00 to the victim in this case because of the attempts and time and the effort she has to make to try to rectify the wrongful credit aspect of it. That not only takes time and money and things like that so it is a restorative restitution is what I'm going to call it. It is not pain and suffering or anything like that, but it is just to help cover for what it takes.

Defendant Rebecca F.'s Argument: The defendant argues that the circuit court erred in denying her request for her entire sentence to be suspended in lieu of probation or home incarceration. The defendant asserts that she has always maintained employment and is two courses shy of completing her master's degree. She also asserts that she has been a productive member of society, and she has shown remorse and has taken responsibility for her actions. The defendant further asserts that the circuit court erred in awarding the victim "restorative" restitution. The defendant argues that the statute does not allow or justify the court's award of "restorative" restitution.

Respondent State's Argument: The State argues that the circuit court properly sentenced the defendant within the statutory guidelines as well as within the bounds of the plea agreement of the parties. The State asserts that the circuit court considered all appropriate factors, including the defendant's education, employment history, and criminal history when it determined the defendant's sentence. The State asserts that "restorative" restitution should be awarded to the victim who has started her adult life with her credit destroyed. Due to her poor credit score, the victim has had difficulty obtaining housing, a vehicle, employment, and student loans. Therefore, the State argues that the circuit court properly awarded the victim restitution equal to the amount of debt incurred in her name so that she can combat the negative effects of her ruined credit.