

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 23-588

STATE OF WEST VIRGINIA

Respondent,

v.

WILLIAM EDWARD BELMONTE, JR.,

Petitioner.

BRIEF OF RESPONDENT

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INTRODUCTION

The Jefferson County Circuit Court committed no error when it ordered Petitioner, Willie Belmonte, Jr., to pay a total restitution amount of \$11,006.84 as a result of his convictions following his guilty pleas to thirteen felony sex-offenses perpetrated against L.B.,¹ a minor victim.

ASSIGNMENT OF ERROR

Petitioner raises a single assignment of error in his appellate brief:

The lower court erred by setting restitution in the amount of an aggregate \$11,006.84, to be paid between the victim's mother and the West Virginia Crime Victim Compensation Fund, when this figure was derived either from evidence which was not statutorily authorized to be classified as restitution, or was based solely upon documentation filed subsequent to the restitution hearing, and not admitted as evidence in said hearing, without giving Petitioner the ability to contest said amount in violation of his due process rights.

Pet'r's Br. 1. Petitioner divides this single claim into two parts:

1. The proper amount of restitution, as conceded by Petitioner in the restitution hearing, should only relate to the victim's therapy and medical appointments, which would result in a restitution amount of \$578.10.
2. The lower court erred when it assessed restitution in the amount of \$8,917.54 to the Crime Victim Compensation Fund, without requiring the State to prove such loss by a preponderance of the evidence, and there was no evidence elicited in a hearing to support this restitution claim.

Pet'r's Br. 4, 8.

STATEMENT OF THE CASE

A Jefferson County grand jury returned a twenty-nine count felony indictment charging Petitioner with thirteen counts of sexual abuse by a parent, guardian, custodian, or person in position of trust to a child; eight counts of the use of obscene matter with intent to seduce a minor; four counts of solicitation of a minor via a computer and engaging in an overt act; two counts of

¹ Pursuant to Rule 40(e) of the West Virginia Rules of Appellate Procedure, Respondent will refer to the minor victim by their first and last initial in order to prevent the dissemination of personal identifying information.

solicitation of a minor via a computer; one count of use of a minor in filming sexually explicitly conduct; and one count of possession of child pornography. App. 4-17. All charges stemmed from an investigation that began after two students at Jefferson High School reported that their classmate, L.B., a female minor, was engaged in an inappropriate sexual relationship with Petitioner, a male teacher at the school. App. 2.

During the initial report of the sexual relationship between Petitioner and L.B., the two student witnesses advised that L.B. had informed them that she had performed oral sex on Petitioner on multiple occasions, and they had engaged in sexual intercourse on one occasion in August 2021. App. 2. When police asked her about the allegations, L.B. confirmed that she and Petitioner had been in a sexual relationship. App. 2.

Officers scheduled a forensic interview for L.B. to further discuss the nature of her relationship with Petitioner. App. 2. During that interview, L.B. disclosed that she and Petitioner had developed a sexual relationship, that Petitioner had regularly requested nude photographs of her, and that Petitioner also sent L.B. photographs and videos of his penis, including images and recordings of him masturbating. App. 2. L.B. explained that toward the end of the 2020-2021 school year, Petitioner had her perform oral sex on him inside a storage closet on school grounds, during school hours. App. 2. She also disclosed that while Petitioner was house-sitting for a friend, Petitioner had her meet him at his friend's house where they had sexual intercourse. App. 2. These claims were corroborated after officers obtained various electronic devices from Petitioner and L.B. App. 2.

Petitioner entered into a plea agreement with the State on October 24, 2022, and agreed to plead guilty to eight counts of sexual abuse by a parent, guardian, custodian, or person in position of trust to a child; three counts of the use of obscene matter with intent to seduce a minor; and two

counts of solicitation of a minor via a computer and engaging in an overt act. App. 19-20. In exchange, the State agreed to dismiss the remaining sixteen counts of the indictment. App. 25. Pursuant to the terms of the agreement, Petitioner acknowledged that he was responsible for paying restitution, and specifically affirmed that he would "pay restitution through the Jefferson County Circuit Clerk to the victim and/or any person or entity that already paid or will pay for any expense that can be considered as restitution." App. 26. Petitioner also agreed that:

In addition to any restitution which may be ordered by a court under W. Va. Code Chapter 61, Article 11a, the court may order Defendant to pay all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the defendant is convicted, whether or not the victim is considered to have sustained bodily injury.

App. 26.

During the plea hearing, the circuit court noted that the State had requested restitution, and asked the parties if the matter needed to be set for a separate restitution hearing. App. 236. The circuit court instructed the parties to work out an agreement on restitution, but if they were unable, the State was directed to file a motion for a hearing to determine the amount of restitution. App. 237.

On March 14, 2023, the State filed a motion for a restitution hearing and requested that the circuit court order Petitioner pay restitution in the amount of \$6,954.00 as requested prior to the plea hearing. App. 77. The circuit court scheduled a restitution hearing for June 12, 2023. App. 83.

At the restitution hearing, the State argued that that the \$6,954.00 that it was seeking in restitution was for the "mileage for the victim's parents for appearance[s] for court and investigation, for trial preparation, and for appointments for the child for counseling." App. 244. The amount also included the parents' lost wages, and noted that because L.B.'s parents are

self-employed the work missed for court appearances amounted to \$4,500.00, and \$1,800.00 for trial preparation. App. 244. The State explained that L.B.'s parents have an hourly compensation rate of \$75.00 per hour, and the mileage reimbursement request was based off the prevailing per-mile rate for the State of West Virginia as of January 1, 2021. App. 244. The State also explained that none of those expenses were submitted to the West Virginia Crime Victims Compensation Fund for reimbursement. App. 244.

Although the State proffered that none of the expenses set forth in its \$6,954 restitution request was submitted to the Crime Victims Compensation Fund, it did learn just prior to the hearing that L.B.'s parents had made a claim and were reimbursed by the Crime Victims Compensation Fund for separate expenses related to tutoring services L.B. had been receiving as a result of her inability to return to school following the disclosure of her sexual relationship with Petitioner. App. 245. Thus, the State reiterated that the restitution request for \$6,954 was for lost wages and other out-of-pocket expenses incurred by L.B.'s parents, and were not tied to any compensation requested or received from the Crime Victims Compensation Fund. App. 246-47.

In an effort to narrow the scope of the hearing to the matters that were in dispute, the Court tasked Petitioner to provide an "opening statement" detailing the issues that he wished to address regarding the restitution request. App. 247. Petitioner argued that "under the restitution statute definition the parents of a minor victim are not victims and, therefore, restitution is to be paid per the statute by the defendant to the victim[.]" App. 247. The circuit court then asked whether the court was required to order restitution to the Crime Victims Compensation Fund if the fund paid for services as a result of the Petitioner's criminal conduct. App. 247. The issue was discussed without reaching a specific resolution at the time, App. 247-51, and the hearing moved on to the State's presentation of evidence. App. 250.

Petitioner explained that the issues he planned to address during the hearing involved the hours listed by L.B.'s parents related to the lost wages claim. App. 251. Petitioner noted that all of the "lost wages" claims were in increments of either four hours or eight hours, and questioned whether certain court hearings actually required L.B.'s parents to take that much time off from work. App. 251. Next, Petitioner raised issue with whether both parents appeared for all the hearings, and if not, why one could not have stayed at the job while the other attended hearings or other appointments with L.B. App. 251-52. It was within these parameters that the circuit court heard testimony from L.B.'s mother. App. 252.

L.B.'s mother testified that the restitution requests were provided to the probation officer conducting the presentence investigation, and that the request sought restitution for "miles to various proceedings, miles traveled, and a listing of counseling sessions." App. 252. She testified that she kept contemporaneous notes or records for each of the appointments, which provided the basis of the requests she gave to the probation officer. App. 252-53. L.B.'s mother testified that she and her husband run a residential contracting business. App. 253. When they had court hearings or appointments, given the nature of their work, they had to factor in the necessary time to shower and get ready for those hearings. App. 253. In addition, they also had to factor in wait times, and the fact that once a hearing or counseling session was done, they would have to gather up their equipment before returning to their job site. App. 254. Thus, taking either a half-day or a full day off from work for the hearings was necessary, otherwise they would have to miss the appointments. App. 254. She also detailed circumstances in which she would have to cancel jobs entirely in order to attend court hearings, regardless of whether those court hearings were later cancelled or rescheduled. App. 256. At the end of her direct examination, L.B.'s mother testified that everything contained within the restitution request was true and accurate. App. 256.

On cross-examination, Petitioner's questioning focused primarily on whether the lost wage amounts were accurately reflective of the work that was being missed at the time. For example, Petitioner questioned L.B.'s mother as to the \$75.00 hourly rate, to which L.B.'s mother stated that was a "very conservative average for the work that we do." App. 260-61. L.B.'s mother stated that if they use their heavy equipment, or if her husband does specialized tasks such as welding, the hourly wage is higher. App. 260-61.

After L.B.'s mother's testimony, the State admitted three exhibits without objection: the state mileage reimbursement chart for 2021, App. 86; a list of appointments that L.B.'s parents provided transportation to, App. 87; and a list of the appointment dates, App. 88-89, 271-72.

The court instructed the parties to prepare and file memorandums of law detailing any legal arguments they had regarding the ability of the parents of a minor victim to recover lost wages through a restitution order. App. 275. The court sought clarification on the law regarding minor victims, as well as reimbursement to the Crime Victims Compensation Fund. App. 275.

On July 18, 2023, the State filed a supplemental restitution request seeking, in addition to the \$6,954.00 previously requested, the amount of \$8,917.54 payable to the Crime Victims Compensation Fund for "replacement services" tied to L.B.'s tutoring expenses. App. 92, 115-149. After this request, the total amount requested by the State in restitution was \$15,871.54. App. 92. Petitioner did not submit records refuting the State's supplement, or request the record be reopened for additional testimony.

In Petitioner's memorandum of law, he first argued that Petitioner's parents were not entitled to restitution for lost wages resulting from their attendance at court proceedings. App. 97. Petitioner relied on this Court's holding in *State v. Cummings*, 214 W. Va. 317, 320, 589 S.E.2d 48, 51 (2003), in which this Court explained that lost wages are only appropriately awarded through

restitution when the lost wages are the result of the victim sustaining a bodily injury that renders him or her unable to work. App. 97. Petitioner then asserted that L.B.'s parents are not "victims" under West Virginia Code § 61-11A-2, and, as a result, they were ineligible to receive restitution for travel expenses. App. 97-98. Finally, Petitioner argued that the State's request for the additional restitution payment to the Crime Victims Compensation Fund should be denied, because to order restitution for that amount would violate Petitioner's due process rights under the Fourteenth Amendment to the United States Constitution. App. 98-99. Petitioner acknowledges that "restitution to the Victim Compensation Fund is permissible under W. Va. Code §61-11A-4(e)" but the issuance of an "order without the defendant first being able to examine and cross-examine supporting evidence for the tutoring costs violates his 14th Amendment Right to a hearing as none of this evidence was available prior to or at his restitution hearing." App. 99.

In the State's memorandum of law, it agreed with Petitioner's general argument relying on this Court's holding in *Cummings*, and reduced the amount of restitution by \$4,864.70, eliminating the parents' request for lost wages while attending court proceedings. App. 105-06. It is after this reduction that the State settled on its request for restitution in the total amount of \$11,006.84.

The State also argued that, while the circuit court is not required to order a defendant to pay restitution to the Crime Victims Compensation Fund, the court was certainly permitted to do so if it decided that such payment was appropriate. App. 106. The State argued that the Crime Victims Compensation Fund was a "third party" as contemplated under West Virginia Code §61-11A-4(e), and that the circuit court was within its discretion to order Petitioner to pay restitution to the Crime Victims Compensation Fund for money it paid to compensate L.B. for tutoring services. App. 106.

The circuit court entered its restitution order on September 12, 2023, and ordered Petitioner to pay restitution in the amount of \$11,006.84. App. 145. Of that amount, \$2,089.30 was payable to L.B.'s mother for lost wages and mileage, while the remaining \$8,917.54 was payable to the Crime Victims Compensation Fund for the amount it paid to reimburse L.B.'s parents for tutoring services following Petitioner's arrest. App. 145. In support of its restitution order, the circuit court recognized that West Virginia Code § 61-11A-4 provides that a defendant shall pay restitution "to the greatest extent economically practicable" to a victim who suffers physical, psychological, or economic injury or loss as a result of a felony or misdemeanor. App. 148. The circuit court noted that West Virginia Code § 61-11-A-1 *et seq.*, establishes a "presumption in favor of an award of full restitution to victims, unless the circuit court determines by a preponderance of the evidence that full restitution is impractical[.]" App. 148 (quoting syl. pt. 3, *State v. Lucas*, 201 W. Va. 271, 496 S.E.2d 221 (1997)). The circuit court recognized that "the burden of demonstrating the amount of the loss sustained by the victim as a result of the offense shall be on the prosecuting attorney," and that the prosecuting attorney must prove such loss by a preponderance of the evidence. App. 148-49 (citing W. Va. Code § 61-11A-5(d)). The court further found that West Virginia Code § 61-8B-13 allows the sentencing judge to order, in addition to any expense subject to restitution under Chapter 61, Article 11A of the West Virginia Code, that a defendant pay "all or any portion of the cost of medical, psychological or psychiatric treatment of the victim, the need for which results from the act or acts for which the defendant is convicted, whether or not the victim is considered to have sustained bodily injury." App. 149.

The circuit court's order also found that the State appropriately reduced the amount of restitution requested by \$4,864.70 pursuant to this Court's holding in *State v. Cummings*, 214 W. Va. 317, 589 S.E.2d 48 (2003). App. 149. Thus, the circuit court found that the State had proved

by a preponderance of the evidence that L.B.'s parents were "entitled to lost wages and mileage for loss due to medical reasons or to obtain immediate protection of L.B." App. 149. Specifically, the Court found that L.B.'s parents had incurred lost wages in the amount of \$300.00 for L.B.'s forensic interview following the initial report of the sexual abuse; \$600.00 to meet with school personnel and for medical testing; \$300.00 for preparing and filing a restraining order; and \$300.00 for attending the final restraining order hearing. App. 149. The circuit court similarly found that L.B.'s parents were entitled to \$44.50 in mileage expenses for transporting L.B. to each of the listed events. App. 149-50. Finally, the circuit court ordered that L.B.'s parents were entitled to an additional \$544.50 for mileage for transporting L.B. to and from appointments with a therapist. App. 150.

The circuit court rejected Petitioner's arguments that because L.B. did not pay for these expenses herself, he is not required to pay restitution to L.B.'s parents. App. 150. The circuit court found that "[p]arents of a minor child are responsible for payment of a minor's expenses," which includes expenses associated with "medical care, food, transportation, education, and housing." App. 150. The circuit court also found that "a minor victim does not incur these expenses prior to reaching the age of majority. It is usually the parents who incur these expenses" and whether "a parent bore these expenses and not the minor victim would not excuse a defendant from paying" restitution for them. App. 150. The circuit court held that the expenses for education, taking the child to undergo medical testing, and for obtaining a restraining order were "incurred for the minor victim's health, protection and education," and the circuit court found that it did "not expect a minor child, especially a sexual assault victim, to complete these tasks on [her] own." App. 150.

In addition to all of these findings, the court held that it could properly consider the parents of L.B. as a "third party" subject to restitution under the relevant statutory provisions. App. 151.

To this end, the circuit court found that it could, "in the interest of justice, order restitution to any person who has compensated the victim for loss." App. 151. The circuit court explained that L.B.'s parents, at the very least, have done this, and that "[i]f a court can order a defendant to pay restitution to an insurance company who paid a victim, it, of course, can order restitution to a parent who has sustained economic loss to care for their child" who was injured by a defendant's criminal conduct. App. 151.

Finally, the circuit court also found that Petitioner should pay restitution to the West Virginia Crime Victims Compensation Fund in the amount of \$8,917.54 for the money it paid for L.B.'s tutoring services. App. 151. The court ordered that while West Virginia Code § 61-11A-4(e) provides that a court shall not impose restitution "with respect to a loss for which the victim has received or is to receive compensation from a third party," it may do so "in the interests of justice" to compensate "any person who has compensated the victim for loss to the extent that the person paid the compensation." App. 151. The lower court noted that West Virginia Code § 61-11A-4(e) explicitly provides that the Crime Victims Compensation Fund falls within the category of "any person who has compensated the victim for loss." App. 151. As to the amount, the circuit court noted that the State had provided documentation detailing the amount paid by the Crime Victims Compensation Fund for tutoring services. App. 151-52. The court found that the State had proved by a preponderance of the evidence that the Crime Victims Compensation Fund paid \$8,917.54 for tutoring services, that the tutoring services L.B. received were necessary professional services as authorized under West Virginia Code § 61-11A-2(b)(2), and ordered Petitioner to pay restitution in that amount to the West Virginia Crime Victims Compensation Fund.

It is from the circuit court's September 12, 2023, restitution order that Petitioner now appeals.

SUMMARY OF THE ARGUMENT

The circuit court properly ordered Petitioner to pay \$11,006.84 in restitution to L.B., her parents, and the West Virginia Crime Victims Compensation Fund. When the Victim Protection Act of West Virginia Code § 61-11A-1, *et seq.* is read *in pari materia* with the West Virginia Crime Victims Compensation Act of West Virginia Code § 14-2A-1, *et seq.*, it is clear that the legislature intended for the parents or legal guardians of a minor victim to be considered "victims" for restitution purposes. This conclusion is not only supported by the plain text of the applicable law, but it is wholly consistent with basic principles of public policy, in that there can be no reasonable explanation for why a criminal defendant should escape the obligation to pay restitution simply because he victimized a minor wholly dependent on their parents for support. L.B.'s parents suffered a loss of wages, which was used to directly support L.B. through providing her with food, clothing, shelter, and educational services. And this loss was directly tied to the criminal conduct of Petitioner. There is nothing in the West Virginia Code that would reasonably support the conclusion that the Legislature intended that a criminal defendant escape restitution based upon the fact that his victim is a child.

Although Petitioner does not specifically raise an argument regarding L.B. turning eighteen years of age during the course of the underlying proceedings, it is important to note that this fact would not change the analysis or indicate that the restitution order was in any way improper or erroneous. That is because the Crime Victims Compensation Act explicitly states that a "claimant" for purposes of the statute includes "third persons" who "legally assumes or voluntarily pays the obligations of a victim" as being a "claimant" under the rules, and, therefore, proper recipients of funds paid by the Crime Victims Compensation Fund. W. Va. Code § 14-2A-3(a)(3). Accordingly, L.B.'s parents are proper claimants, regardless of whether L.B. turned eighteen after the

commission of the crime, because they continued to provide support for L.B. throughout the entire timeframe that the restitution order covers.

Petitioner's claim that the circuit court's order that Petitioner pay restitution to the Crime Victims Compensation Fund amounted to a violation of his due process rights also fails. First, West Virginia Code § 14-2A-5 explicitly provides that restitution may be awarded to the Crime Victims Compensation Fund. Second, Petitioner's claim that he was entitled to an evidentiary hearing on that specific issue is misplaced, and lacks any legal support. Indeed, there is no right to an evidentiary hearing, or a right to cross-examine witnesses for restitution purposes, so long as the evidence relied upon contains a sufficient indicia of reliability to support its probable accuracy. Petitioner's hollow claims that he did not have the ability to challenge the amounts or cross-examine witnesses regarding them are not relevant in this circumstance. Petitioner was notified of the claims at the June 12, 2023, restitution hearing, and was given numerous documents detailing the amounts paid by the Crime Victims Compensation Fund. Petitioner offers no argument for why these documents lack a sufficient indicia of reliability, or why the documents fail to meet the preponderance of the evidence standard necessary for the circuit court to properly order restitution paid to the Crime Victims Compensation Fund. Petitioner's hollow assertions should be rejected, and the restitution order entered by the circuit court should be affirmed.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Oral argument is unnecessary pursuant to Rule 18(a)(4) of the West Virginia Rules of Appellate Procedure as the facts and legal arguments are adequately presented in the briefs and record on appeal, and the decisional process would not be significantly aided by oral argument. This case is appropriate for disposition by memorandum decision. Petitioner's appeal should be

rejected, as the restitution order was entered upon the Circuit Court's determination that the State had met its burden of proving the restitution amount by a preponderance of the evidence. Accordingly, the restitution order entered by the Jefferson County Circuit Court should be affirmed.

ARGUMENT

I. Standard of Review

"The Supreme Court of Appeals reviews sentencing orders, including orders of restitution made in connection with a defendant's sentencing, under a deferential abuse of discretion standard, unless the order violates statutory or constitutional commands." Syl. pt. 1, *Lucas*, 201 W. Va. 271, 496 S.E.2d 221.

II. The circuit court was statutorily authorized to order Petitioner pay restitution in the amount of \$11,006.87 to L.B.'s parents and to the West Virginia Crime Victims Compensation Fund, and based upon the State's proof by a preponderance of the evidence that the amount was accurate.

A. L.B.'s parents were entitled to restitution in the amount of \$2,089.30 to cover costs associated with lost wages, travel expenses, and medical appointments for L.B. as a direct result of the criminal conduct for which Petitioner was convicted.

Petitioner was convicted of multiple felonies involving sexual abuse and sexual assault of his teenage student, L.B., a child. Like most children in high school, L.B. was wholly dependent on her parents for support, even after she turned eighteen following Petitioner's victimization. West Virginia Code § 61-11A-5(a) provides that the amount of restitution ordered to be paid shall be based upon the court's consideration of, among other things, "the loss sustained by any victim as a result of the offense." Because L.B. was dependent on her parents for food, clothing, shelter, education, and all other forms of financial support, any loss that her parents sustained directly impacted L.B. Petitioner's argument, if accepted, would result in an absurd loophole that would

allow a defendant who perpetrates abuse upon a child to escape restitution simply because his victim had not achieved the age of majority or is unable to provide for herself, regardless of the trauma and harm inflicted upon her. Petitioner's claim is inconsistent with the legislative intent behind the statutory provisions dealing with restitution to crime victims, and it is inconsistent with the general presumption of full restitution to the victims of crimes. For these reasons, Petitioner's claim should be rejected, and the circuit court's restitution order should be affirmed.

While West Virginia Code § 61-11A-1, *et seq.* does not explicitly provide that the parents of a victim are, themselves, victims, the legislative intent behind the various restitution statutes clearly demonstrates that they are. "It is well established in this and other jurisdictions that statutes which are not inconsistent with one another, and which relate to the same subject matter, are *in pari materia*." *State ex rel. Slatton v. Boles*, 147 W. Va. 674, 682, 130 S.E.2d 192, 198 (1963). When statutes are read *in pari materia*, they "must be construed together and the legislative intention, as gathered from the whole of the enactments, must be given effect." Syl. pt. 1, *id.* (citation and internal quotation marks omitted).

Both the West Virginia Victim Protection Act of Chapter 61, Article 11A of the West Virginia Code, and the West Virginia Crime Victim Compensation Act of Chapter 14, Article 2A deal with compensation to victims of crimes. They are not inconsistent with one another, and both aim to ensure that crime victims are properly compensated as a result of economic loss or injuries they suffer as a direct result of the perpetration of criminal conduct upon them. The Legislature explicitly stated that the purpose behind the enactment of the West Virginia Victim Protection Act was because "all too often, the victim of a serious crime is forced to suffer physical, psychological or financial hardship first as a result of the criminal act and then as a result of contact with the criminal justice system not totally responsive to the needs of such victims." W. Va. Code

§ 61-11A-1(a). Similarly, the Legislature stated that the purpose behind the Crime Victim Compensation Act was rooted in its acknowledgment that "the provision of governmental services to prevent crime is not wholly effective" and that the act was intended to "establish a system of compensation for the victims of crime which would provide a partial remedy for the failure of the state to fully achieve this primary purpose of government." W. Va. Code § 14-2A-2.

The legislative intent behind both statutes cannot reasonably be read to support Petitioner's argument that the Legislature intended for the term "victim" to be defined in such rigid and narrow terms only informed by technicalities and not by the personal realities that exist when *anyone* is the victim of criminal conduct. Indeed, the reality is that a minor victim is not the one who provides financial support for themselves. Likewise, a victim who only attains the age of majority after being victimized, but still living at home, does not provide her own financial support. These victims are necessarily dependent upon their parents, caretakers, or legal guardians for support, and this reality cannot support a conclusion that the Legislature completely disregarded this when enacting the two statutes.

In addition to this basic policy point, the two statutory provisions themselves support the *in pari materia* reading. West Virginia Code § 61-11A-1a *requires* any prosecutor to notify any victim, in writing, of the provisions of the Crime Victim Compensation Act of Chapter 14, Article 2A. And if the Crime Victim Compensation Act does distribute funds to a crime victim for losses incurred as a result of criminal conduct, West Virginia Code § 61-11A-4(e) explicitly provides that restitution payments may be paid to the West Virginia Crime Victims Compensation Fund.

In this vein, West Virginia Code § 14-2A-3(g) defines "work loss" as an allowable expense, and that the term includes "loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim." Also, it provides that the term "work

loss" also includes "loss of income from work by the claimant, the victim, or the parent or legal guardian of a minor victim who must miss work to attend court proceedings conducted for the prosecution of the offender." *Id.* § 14-2A-3(h). Subsection (f) further defines "allowable expenses" as "charges incurred or to be incurred for reasonably needed medical care, including products, services, and accommodations related to medical and psychological care . . . rehabilitation and other remedial treatment and care." *Id.* § 14-2A-3(f)(1). Moreover, a victim is entitled to "[r]easonable travel expenses not to exceed \$5,000 for a claimant to attend court proceedings conducted for the prosecution of the offender." *Id.* § 14-2A-3(f)(4).

Thus, it is clear that L.B.'s parents are entitled to compensation from the Crime Victims Compensation Fund for the amounts payable to them in the circuit court's restitution order. Similarly, it is clear from the language of West Virginia Code § 61-11A-4(e) that if the Crime Victims Compensation Fund pays to reimburse a victim's parents, the offender is necessarily subject to being ordered to pay restitution to the Crime Victims Fund for those amounts. Petitioner has not offered any legitimate reason why the Legislature would have intended that, despite this, an order directing an offender to pay these same amounts directly to the victim's parents is suddenly improper and in violation of the relevant statutory provisions.

L.B.'s parents were entitled to compensation for the costs incurred from having to miss work to take L.B. to court proceedings, medical, and therapy appointments. In the circuit court's restitution order, it specified that the \$2,089.30 included \$1,500.00 for wages L.B.'s parents lost from taking L.B. to her forensic interview, for meetings with school personnel and medical testing, for the filing of a restraining order, and for attending the final hearing regarding that restraining order. The circuit court also specified that Petitioner was obligated to pay \$44.80 in mileage expenses for travel to and from those events, as well as an additional \$544.50 for mileage expenses

to and from L.B.'s therapist appointments. App. 149-150. This reflects the entirety of \$2,089.30 restitution Petitioner was ordered to pay to L.B.'s parents.

Thus, when reading Chapter 61, Article 11A of the West Virginia Code *in pari materia* to Chapter 14, Article 2A of the West Virginia Code, the intent of the legislature was to ensure that a victim, or a victim's parents—in the event that the victim is a dependent minor—be fully compensated for economic loss sustained as a result of the criminal acts of a defendant. Here, while L.B. did not provide for herself, that should not insulate Petitioner from compensating L.B.'s parents for the loss they suffered, simply because they provided for L.B. financially at the time Petitioner perpetrated his crimes. Indeed, the "circuit court's discretion in addressing the issue of restitution to crime victims at the time of a criminal defendant's sentencing is to be guided by *a presumption in favor of an award of full restitution to the victims.*" Syl. pt. 3, *Lucas*, 201 W. Va. 271, 496 S.E.2d 221. The circuit court's restitution order did just that, and his focus on the fact that the "victim" relied on the financial support of her parents does not alter this conclusion.

In any event, even if this Court finds that the circuit court's restitution order was in violation of the statutory provisions, any error is harmless beyond a reasonable doubt. The circuit court was authorized to order that Petitioner pay this amount in restitution. If the statute does not authorize payment directly to L.B.'s parents, it explicitly authorizes restitution payable to the Crime Victims Compensation Fund if L.B.'s parents made the claim through it and were compensated. It cannot be true that the specific payee of the restitution order renders the order invalid, especially when the amounts paid are necessarily going to the same place. In one circumstance, the Petitioner is paying L.B.'s parents directly for lost wages and other out of pocket expenses; while in the other, Petitioner is paying the Crime Victims Compensation Fund to compensate its payment to L.B.'s parents for the same expenses and losses.

Because of this, any claim Petitioner made, either in the proceedings below or in his appellate brief, regarding the fact that L.B. turned eighteen years of age during the course of the underlying proceedings is nothing more than a red herring. The Crime Victims Compensation Act defines a claimant as including "[a] third person . . . who legally assumes or voluntarily pays the obligations of the victim or a victim's dependents when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim." W. Va. Code § 14-2A-3(a)(3). Petitioner does not dispute that L.B.'s parents did not "legally assume" or "voluntarily pay" the amount of money covered by the restitution order, that the Crime Victims Compensation Fund improperly paid L.B.'s parents for those amounts, or point to any legal authority that would support an argument that he is not subject to paying restitution to the Crime Victims Compensation Fund for the amounts paid to L.B.'s parents to cover L.B.'s tutoring services.

Thus, regardless of whether the order is a violation of the statutory provisions—which Respondent asserts that it was not—any error must be construed as harmless because the circuit court could still properly order Petitioner to pay that same amount to the West Virginia Crime Victims Compensation Fund. Rule 52(a) of the West Virginia Rules of Criminal Procedure provides that "any error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Here, Petitioner would have been subject to paying the amount of restitution regardless of whether it was paid directly to L.B.'s parents, or whether Petitioner was ordered to pay the Crime Victims Compensation Fund to compensate for its payment of those same expenses to L.B.'s parents. Petitioner's claim in this regard is without merit, and the circuit court's restitution order should be affirmed.

B. Petitioner had no due process right to a hearing or the ability to cross-examine witnesses regarding the \$8,917.54 paid to L.B.'s parents from the Crime Victims Compensation Fund.

Petitioner's due process rights were not violated when the circuit court ordered him to pay \$8,917.54 to the West Virginia Crime Victims Compensation Fund for money paid for L.B.'s tutoring services following Petitioner's arrest for sexually assaulting her. Contrary to Petitioner's claim on appeal, the circuit court was not required to afford him a hearing on this specific issue, nor was Petitioner entitled to cross-examine witnesses regarding the amounts or the necessity of the services. West Virginia Code §§14-2A-3 and 61-11A-4(e) authorized the circuit court to order Petitioner pay the Crime Victims Compensation Fund for L.B.'s tutoring services, as reimbursed to the family by the Fund. Petitioner's claim should be rejected, and the circuit court's restitution order should be affirmed.

Initially, Petitioner's due process claim hinges on his assertion that he was entitled to an evidentiary hearing prior to the circuit court issuing ruling on whether Petitioner was required to pay restitution to the Crime Victims Compensation Fund. Pet'r's Br. 8. Petitioner asserts, correctly, that West Virginia Code § 61-11A-5 (1984) requires the State to prove its restitution claim by a preponderance of the evidence. Pet'r's Br. 8. Petitioner argues, however, that the State did not meet this burden because the issue was not addressed in the restitution hearing, and implies that the lack of a second evidentiary hearing on that specific issue precludes the court from finding that the State met its burden. Pet'r's Br. 8. To be sure, there is no legal authority to support Petitioner's claim that an evidentiary hearing is required when there is a dispute as to the amount of restitution, and there is certainly no legal authority that supports Petitioner's claim that his due process rights were violated by the circuit court's order directing he pay restitution to the Crime Victims Compensation Fund.

In addressing the federal equivalent to West Virginia Code § 61-11A-5, the Fourth Circuit Court of Appeals recognized that the identical language used in 18 U.S.C. § 3664(e) "does not require the district court to hold an evidentiary hearing. Rather, whether the district court should hold an evidentiary hearing is committed to the discretion of the district court." *United States v. Ziadeh*, 104 F. App'x 869, 874 (4th Cir. 2004). Given the identical language used between the two statutory provisions, and the fact that neither statute requires an evidentiary hearing, this Court should reject any claim that Petitioner raises in the instant case that the court's failure to provide a second evidentiary hearing was erroneous.

The foundational component of Petitioner's assignment in this regard is that he did not have an opportunity to "cross-examine" witnesses or "meaningful[ly]" challenge the evidence. Pet'r's Br. 8-9. But this argument must fail too, because courts have regularly held that evidence in support of an award of restitution does not need to be tested through cross-examination for it to be sufficient. Indeed, the amount of restitution ordered does not need to "be proven with exactitude." *In re Sealed Case*, 702 F.3d 59, 66 (D.C. Cir. 2012). To satisfy the preponderance of the evidence standard, evidence offered in support of a restitution amount need only demonstrate the amount to "some reasonable certainty." *United States v. Monzel*, 641 F.3d 528, 540 (D.C. Cir. 2011) (quoting *United States v. Doe*, 488 F.3d 1154, 1160 (9th Cir. 2007)). Courts may properly determine the amount of restitution to award based upon evidence "bearing 'sufficient indicia of reliability to support is probable accuracy.'" *United States v. Baston*, 818 F.3d 651, 665 (11th Cir. 2016). And this can be based upon evidence not subject to cross-examination. See *United States v. Hairston*, 888 F.2d 1349, 1353 n.7 (11th Cir. 1989) (finding that hearsay evidence was sufficient to calculate an award of restitution); *In re Sealed Case*, 702 F.3d at 67 (finding that grand jury testimony was sufficient to calculate restitution amount); *Baston*, 818 F.3d at 665 ("Contrary to Baston's

argument, evidence can be sufficiently reliable for purposes of restitution even if it was not subject to rigorous cross-examination . . . And district courts are not required to hear live testimony at every restitution hearing." (citations omitted)).

The argument Petitioner relies on now is similar to that used in the *Baston* case, which the Eleventh Circuit Court of Appeals rejected as amounting to an argument lacking "any specific reason why the testimony was inaccurate or untrustworthy." *Baston*, 818 F.3d at 665. The same is true here: Petitioner simply questions the accuracy, not because of anything regarding the evidence itself, but only because he claims that he did not have the opportunity to meaningfully challenge it. But federal circuit courts throughout the country have recognized that submitting evidence in support of a restitution amount does not need to be put to the rigors of cross-examination, so long as the evidence itself possesses "sufficient indicia of reliability to support its probable accuracy." *United States v. Bernadine*, 73 F.3d 1078, 1080-81 (11th Cir. 1996). Petitioner's argument that simply because the evidence used to calculate the restitution amount was not specifically addressed at the restitution hearing is neither relevant, nor indicative of some inherent untrustworthiness of the information.

It is important to note that Petitioner explicitly agreed in his plea agreement that he would "pay restitution through the Jefferson County Circuit Clerk to the victim *and/or any person or entity that already paid or will pay for any expense that can be considered as restitution.*" App. 26 (emphasis added). Petitioner does not dispute that the Crime Victims Compensation Fund paid the amount requested, and clearly, West Virginia Code § 14-2A-3(h) authorizes the Crime Victims Compensation Fund to pay for "expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for the benefit of himself or herself or his or her family if he or she had not been injured." And because

Petitioner does not contest that the Crime Victims Compensation Fund actually paid this amount, his argument must fail because West Virginia Code § 61-11A-4(e) explicitly provides that a circuit court is authorized "in the interest of justice, [to] order restitution to any person who has compensated the victim for loss to the extent that the person paid the compensation," and that "the term 'any person who has compensated the victim for loss' shall include the West Virginia Crime Victims Compensation Fund." The circuit court, thus, had statutory authority to order Petitioner pay the restitution amount to the Crime Victims Compensation Fund.

Moving to Petitioner's substantive claim that the State did not meet its burden, this argument must also fail. First, Petitioner had notice that a claim had been made to the Crime Victims Compensation Fund at the June 12, 2023, hearing. App. 244, 276-77. The State provided Petitioner with the relevant documents and orders from the Legislative Claim Commission detailing all of the payments made from the Crime Victims Compensation Fund to the victim and her family on July 18, 2023. App. 115-49. Petitioner had the opportunity to review those documents prior to filing his memorandum of law in support of his position as to restitution, and did in fact directly address those specific amounts in his memorandum of law. App. 98-99. Despite basing his objection to this amount on the fact that he did not have the opportunity to challenge the specific amount at the restitution hearing or to cross-examine witnesses, Petitioner did not request an evidentiary hearing. App. 98-99.

It appears that Petitioner would like for this Court to adopt a rule that would treat restitution hearings in such a way that there is a presumption against the payment of restitution such that a Petitioner is entitled to the same types of procedural safeguards applicable to the guilt phase of a jury trial. If this is, in fact, what Petitioner argues, there is no legal support for it. Indeed, at the time of Petitioner's restitution hearing, he had already been convicted of thirteen felony

sex-offenses related to his assault and abuse of L.B., an underaged student at the high school where he taught. Petitioner had already been afforded his due process rights regarding the underlying criminal offense, and Petitioner has not set forth any legal authority that would support his general proposition that he is entitled, as a matter of right, to challenge and cross-examine any witness that may testify as to the losses incurred as a result of the criminal acts for which he was convicted. The holdings in *Hairston*, 888 F.2d at 1353 (restitution award based on hearsay was permissible), and *In re Sealed Case*, 702 F.3d at 67 (restitution award based on grand jury testimony was permissible), demonstrate Petitioner's claim is without merit, and should be viewed by this Court as persuasive authority debunking the very premise of Petitioner's claim. The discretion courts possess in adopting procedures during a restitution hearing are broad, and only require that "the defendant is given an adequate opportunity to present his position as to matters in dispute." *United States v. Maurer*, 226 F.3d 150, 151 (2d Cir. 2000).

Petitioner was given the relevant information tied to the amounts paid for L.B.'s tutoring services, and he had the opportunity to respond to it and state his position. He is not, as a matter of right, entitled to a separate evidentiary hearing, to cross-examine witnesses as to the restitution amount, or to the same due process rights he possessed during the pre-conviction stages of his underlying criminal proceedings. Petitioner was afforded every right he was entitled to prior to the circuit court's entry of the restitution order, and his claim that the lack of an evidentiary hearing or the ability to cross-examine witnesses regarding that specific amount violated his due process rights is simply incorrect. The documents provided in support of the amount possessed a sufficient indicia of reliability, and Petitioner has offered no argument to the contrary outside of his conclusory assertions.

Despite his table-pounding assertion that his inalienable rights have been violated, Petitioner has not presented any evidence that would demonstrate the circuit court committed a clear abuse of its discretion when it viewed the numerous documents detailing the amounts paid by the Crime Victims Compensation Fund, and found that those documents were sufficient to establish that the State had proven by a preponderance of the evidence the amounts requested. For these reasons, Petitioner's assignment should be rejected, and the circuit court's restitution order should be affirmed.

CONCLUSION


For the foregoing reasons, Respondent respectfully prays this Honorable Court affirm Petitioner's convictions and sentences as set forth in Jefferson County Criminal Case Number 22-F-11.

Respectfully submitted,

STATE OF WEST VIRGINIA,
Respondent,

By counsel,

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

Appeal No. 23-588

STATE OF WEST VIRGINIA

Respondent,

v.

WILLIAM EDWARD BELMONTE, JR.,

Petitioner.

CERTIFICATE OF SERVICE

I, name, do hereby certify that the foregoing Brief of Respondent is being served on [all] counsel of record by File & Serve Xpress this 16th day of February, 2024, [and for additional counsel who are not e-filing users, by email and by depositing a copy of the same in the United States Mail, via first-class postage prepaid, addressed as follows:]

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