

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 14, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP2676-CR

Cir. Ct. No. 2005CF87

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DONNA KAY TROMBLEY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Ashland County:
ROBERT E. EATON, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Donna Kay Trombley appeals an order denying her motion to reduce the restitution she must pay to the victim of her theft. She argues: (1) the sentencing court failed to apply proper procedures under Wis.

STAT. § 973.20(13)¹ when it set restitution at \$196,415.16;² (2) Trombley did not stipulate to the amount of restitution and the State failed to prove the amount due; and (3) she is entitled to modification of the amount due as a condition of probation under WIS. STAT. § 973.09(3)(a). We reject these arguments and affirm the order.

¶2 Trombley and her ex-husband, Jon Sollie, were convicted of stealing funds from Sollie's now deceased mother by misusing Sollie's power of attorney. Trombley pled no contest to one count of theft as a party to a crime. The attorney for the estate filed a "Restitution Information" form with the district attorney's office which included a victim impact statement. The total amount of restitution requested was \$196,865.16. The presentence investigation report (PSI) calculated the amount misappropriated at \$191,863.22 based on subtracting Sollie's third of the inheritance from the amount he and Trombley misappropriated. At the sentencing hearing, Trombley's counsel stated, "We can't argue with the amount," but he argued against joint and several liability based on Sollie's greater responsibility. After counsel suggested restitution of \$20,000, the court asked:

Are you telling me that the victims only suffered \$20,000 in loss; or are you telling me that even though the victims may have suffered \$196,000 in loss, your client should only be responsible for \$20,000 of it; or are you telling me that, while, regardless of the amount of the loss, your client's only able to pay \$20,000 of it?"

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² The amount was initially set at \$196,865.16, but was subsequently reduced in the restitution order.

Counsel responded:

Our position would be that the victims have lost approximately \$200,000. Okay. I guess ... my client is probably not able to pay more than \$20,000, but that's not the basis of where we come up with this. We're considering \$20,000 as a round figure as we believe she would be approximately 10 percent culpable.

The court rejected the argument and ordered joint and several liability for Trombley and Sollie and, as a condition of her probation, ordered Trombley to pay 20 percent of her gross income toward restitution.

¶3 Nineteen months after sentencing, Trombley filed a motion to reduce restitution to one-half of the total loss, alleging restitution was not properly established at sentencing and she was entitled to modification of the amount as a condition of probation. The trial court denied the motion without a hearing.

¶4 Trombley's argument that the sentencing court did not comply with WIS. STAT. § 973.20(13) fails for several reasons. First, parts of the argument are based on misquoting the statute. Section 973.20(13)(b) does not require the district attorney to obtain information from the victim. It requires the district attorney to "attempt to obtain from the victim" information regarding restitution. Section 973.20(13)(c) does not provide that the court "shall" employ any specific method for determining restitution. Rather, if there is no stipulation, the statute provides that the court "may" utilize various procedures for determining restitution.

¶5 In addition, Trombley did stipulate to the amount of restitution. A stipulation for the purpose of restitution does not imply a formal written agreement. *See State v. Szarkowitz*, 157 Wis. 2d 740, 749, 460 N.W.2d 819 (Ct. App. 1990). Rather, after receiving notice of the amount of restitution sought, a

defendant who fails to challenge the eligibility of the victim or the amount of restitution constructively stipulates to the restitution order. *State v. Leighton*, 2000 WI App 156, ¶55, 237 Wis. 2d 709, 616 N.W.2d 126. Although Trombley’s counsel at sentencing suggested only \$20,000 restitution, he did not challenge the amount of loss to the estate or its right to recover the full amount. The amount due was set out in the restitution summary and PSI, and Trombley’s only objection to restitution was imposition of joint and several liability for the full amount because she considered Sollie more culpable. Based on her stipulation and the court’s rejection of her argument against joint and several liability, the court appropriately set the amount of restitution.

¶6 Trombley is not entitled to an additional hearing under WIS. STAT. § 973.20(13). Even if she had not stipulated to the amount of restitution, her motion to amend the amount was untimely. The sentencing hearing provided Trombley with ample notice and opportunity to be heard regarding restitution.

¶7 Finally, WIS. STAT. § 973.09(3)(a) allows the court to modify the terms of probation “for cause.” However, Trombley has not established cause for modifying the conditions of her probation. Her motion attempts to revisit the court’s earlier decision to impose joint and several liability.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

