



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT I

February 23, 2021

To:

Hon. David A. Hansher
Milwaukee County Courthouse
901 N. 9th St.
Milwaukee, WI 53233

Nicholas DeSantis
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707

John Barrett
Clerk of Circuit Court
Room 114
821 W. State Street
Milwaukee, WI 53233

Elizabeth A. Longo
Assistant District Attorney
District Attorney's Office
821 W. State. St. - Ste. 405
Milwaukee, WI 53233

Christopher P. August
Assistant State Public Defender
735 N. Water Street, Ste. 912
Milwaukee, WI 53202-4116

You are hereby notified that the Court has entered the following opinion and order:

2020AP1042-CR State of Wisconsin v. Dallas D. McDowell (L.C. # 2018CF4534)

Before Dugan, Donald and White, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Dallas D. McDowell appeals a judgment convicting him of robbery with use of force, as a party to a crime. He also appeals an order denying his postconviction motion. McDowell argues that the circuit court erred in setting restitution at \$2245 because that was more than the victim's actual

out-of-pocket costs. We conclude that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2017-18).¹ Upon review, we affirm.

At the sentencing hearing, McDowell was informed that the victim sought \$2245 in restitution. The circuit court asked the defense if it had any questions regarding restitution. Defense counsel asked a few clarifying questions about the circumstances surrounding the damage to the victim's hearing aid during the robbery and about the date the hearing aid was replaced. Defense counsel then informed the circuit court that it did not have any additional questions. After it imposed sentence, the circuit court ordered McDowell to pay \$2245 in restitution.

Pursuant to WIS. STAT. § 973.20(13)(c), the circuit court may order restitution without a restitution hearing if the defendant stipulates to the restitution claimed by the victim. The defendant stipulates to the amount of restitution by not objecting to the amount claimed. *See State v. Hopkins*, 196 Wis. 2d 36, 44, 538 N.W.2d 543 (Ct. App. 1995). In *Hopkins*, we explained that “[t]he use of the word ‘stipulate’ in [§] 973.20(13)(c) does not imply a requirement of a formal written stipulation, signed by the defendant, as to the amount of restitution claimed.” *Id.* at 42 (citation omitted). Rather, the circuit court “is entitled to proceed on the understanding that the claimed amount is not in dispute, and so order restitution under [§] 973.20(13)(c)” when a defendant has been given notice of the restitution sought and does not object to the amount claimed. *Id.* Here, McDowell was given notice of the amount of restitution the victim claimed but he did not ask any questions regarding the amount of restitution and did

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

not object to the amount. Under these circumstances, we conclude that McDowell stipulated to restitution. Therefore, we will not reverse the restitution award. *See id.*

McDowell contends the State's position that McDowell stipulated to restitution is inconsistent with its stance when we ordered jurisdiction memoranda in this appeal before briefing. We disagree. The State agreed that we had jurisdiction to consider McDowell's appeal in its jurisdiction memorandum. That stance is not at odds with the State's current argument that McDowell should not be allowed seek a reduction in the amount of the restitution he must pay because he did not object to the amount of the award at the sentencing.

Upon the foregoing,

IT IS ORDERED that the judgment and the order of the circuit court are summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals