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**DISTRICT I**

May 18, 2021

To:

Hon. David L. Borowski  
Circuit Court Judge  
Milwaukee County Courthouse  
901 N. 9th St.  
Milwaukee, WI 53233

Hon. Janet C. Protasiewicz  
Circuit Court Judge  
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You are hereby notified that the Court has entered the following opinion and order:

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2020AP74-CR

State of Wisconsin v. Deonte Ramon Lewis (L.C. # 2017CF483)

Before Brash, P.J., Dugan 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).**

Deonte Ramon Lewis appeals from an amended judgment of conviction and from an order denying his postconviction motion to vacate a portion of the restitution award. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary

disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> The judgment and order are summarily affirmed.

In April 2018, Lewis pled guilty to one count of first-degree reckless homicide for his role in the death of E.R.S., who died after overdosing on heroin delivered by Lewis. Two other charges were dismissed and read in. The circuit court imposed sixteen years of imprisonment. Lewis agreed to \$3,821 in restitution for funeral expenses, but requested a restitution hearing on the \$39,924 that E.R.S.'s father had requested for fifteen weeks of lost wages.

Following a hearing, the circuit court offset the wage request by various amounts and awarded E.R.S.'s father \$16,538 in lost wages. Lewis filed a postconviction motion seeking to vacate the award, arguing that lost wages are “not a ‘pecuniary injury’” and are “not a proper subject of restitution.” The circuit court denied the motion.<sup>2</sup> It agreed with the State that any challenge to the circuit court’s authority to award the father’s lost wages as restitution should have been raised at the restitution hearing; because that challenge was not timely made, it was forfeited. The circuit court also concluded that “[n]otwithstanding forfeiture ... restitution was authorized for the victim’s father’s lost wages pursuant to” WIS. STAT. § 973.20(5)(a)-(b). Lewis appeals.

“When imposing sentence or ordering probation for any crime ... for which the defendant was convicted, the court ... shall order the defendant to make full or partial restitution under this section to any victim of a crime considered at sentencing[.]” WIS. STAT. § 973.20(1r). As applicable here, “victim” includes “[a] person against whom a crime has been committed” and, if

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

<sup>2</sup> The Honorable David L. Borowski imposed the restitution amounts. The Honorable Janet C. Protasiewicz denied the postconviction motion.

that person is deceased, “[a] family member of the person who is deceased.” See WIS. STAT. § 950.02(4)(a)1., 4.a.; see also *State v. Gribble*, 2001 WI App 227, ¶71, 248 Wis. 2d 409, 636 N.W.2d 488.

As noted, Lewis’s challenge to the restitution award was based on his belief that lost wages are not a “pecuniary injury” and thus are not the proper subject of restitution. However, our supreme court recently reached a contrary conclusion. In *State v. Muth*, 2020 WI 65, 392 Wis. 2d 578, 945 N.W.2d 645, T.K. was killed by a drunk driver. Two of T.K.’s adult daughters requested, as restitution, “compensation for income lost as a result of their spouses missing work” following the homicide. See *id.*, ¶6. The circuit court granted the request. Although this court reversed and remanded with directions to reduce the amount of restitution by removing the lost income awards, see *id.*, ¶1, our supreme court determined that wages lost as the result of the defendant’s criminal conduct may be recompensed by way of a restitution award. See *id.*, ¶¶2, 57.

In light of *Muth*, which was decided after Lewis filed his brief in this court, Lewis advised this court that he was “abandoning [his] argument that the restitution order for lost wages to the father of the victim does not comport with the restitution statute” and that he would not be submitting a reply to the State’s arguments” on forfeiture.

Upon the foregoing, therefore,

IT IS ORDERED that the judgment and order are summarily affirmed.

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

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*Sheila T. Reiff*  
Clerk of Court of Appeals