

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING
AND, IF FILED, DETERMINED

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
OF THE STATE OF FLORIDA IN AND FOR PINELLAS COUNTY

TYLER MOORE

Appellant,

v.

Appeal No. CRC 12-00018 APANO
UCN 522012AP000018XXXXCR

STATE OF FLORIDA
Appellee.

Opinion filed May 13, 2013.

Appeal from a judgment and sentence
entered by the Pinellas County Court
County Judge Donald E. Horrox

Frank D. L. Winstead, Esquire
Attorney for Appellant

Philip M. Piazza, Esquire
Office of the State Attorney
Attorney for Appellee

ORDER AND OPINION

PETERS, Judge.

THIS MATTER is before the Court on Appellant, Tyler Moore's, appeal from a conviction, after a jury trial, of Battery, a first degree misdemeanor, in violation of § 784.03 Fla. Stat. (2006). On appeal, Mr. Moore argues that the trial court's entry of a restitution lien was error. We disagree and affirm.

Background

On September 7, 2011, a Misdemeanor Information was filed charging the Appellant with Battery. Mr. Moore was found guilty after a jury trial on March 21, 2012. On March 28, 2012, the trial court imposed sentence. The following exchange occurred at sentencing:

THE COURT: You have 30 days to appeal the judgment and sentence that I've imposed here. If you can't afford an attorney one will be appointed to represent you. [...]

THE COURT: Oh, actually, and there's restitution.

MR. PIAZZA: Yes, Your Honor.

THE COURT: Restitution in the amount of \$11,001.08.

MR. TEICHLER: Judge, I don't necessarily dispute the amount. I just nothing in documents.

THE COURT: Well, here's what I'm going to do. I'm going to order it. And then if he wants to have a hearing on it, a restitution hearing on it. We can go ahead and set it. All right?

MR. TEICHLER: Okay. Thank you, Judge.

THE COURT: But I am going to order it. I'm going to impose it as a lien though since I'm not sentencing him to probation. And the likelihood of him being able to pay \$11,000 in the next year is, you know, low. So I'm going to go ahead and, you know, just impose it as a lien.

Mr. Moore never requested a restitution hearing. A notice of appeal was timely filed.

Preserving Issues for Appeal

In a criminal case, if the error is not properly preserved or is unpreserved, the conviction can be reversed only if the error is "fundamental."¹ *Goodwin v. State*, 751

¹ *Fundamental error* is "error that 'reach[es] down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.'" *Kilgore v. State*, 688 So.2d 895, 898 (Fla. 1996). [*F*]undamental error in the trial context [is] error that "goes to the

So.2d 537, 544 (Fla. 1999); *See* § 924.051(3) Fla. Stat. (1997). In order to be preserved for further review by a higher court, an issue must be presented to the lower court and the specific legal argument or ground to be argued on appeal or review must be part of that presentation if it is to be considered preserved. *Sunset Harbour Condominium Association v. Robbins*, 914 So2d 925 (Fla. 2005); *Tillman v. State*, 471 So2d 32 (Fla. 1985); *Moss v. Moss*, 939 So2d 159 (Fla. 2nd DCA 2006); *See* § 924.051(1)(b) Fla. Stat. (1997). As a general rule, it is not appropriate for a party to raise an issue for the first time on appeal. *Sunset Harbour Condominium Association*, 914 So2d at 928. It is elementary that before a trial court will be held in error, that trial judge must have been presented with an opportunity to rule on the issue in dispute. *See Moss*, 939 So2d at 165.

The Present Case

At sentencing, the Appellant, Mr. Moore, made no objection to the imposition of a restitution lien. His attorney's only expressed concern was for documentation of the amount of that restitution. The trial court immediately addressed that concern by stating that, upon Mr. Moore's request, a restitution hearing would be scheduled.² The court then asked defense counsel, "[a]ll right?" Defense counsel responded "Okay. Thank you, Judge." There was no objection; not even a disagreement. Appellant's trial counsel certainly did not suggest the trial court's entry of a restitution lien was error. The only concern was that the amount of the restitution be documented or more formally established. That concern was addressed to the satisfaction of the defense. No issue

foundation of the case or the merits of the cause of action and is equivalent to a denial of due process." *State v. T.G.*, 800 So.2d 204, 211 (Fla. 2001) (emphasis added)

² At any such hearing the burden of demonstrating the amount of the loss sustained by a victim as a result of the offense is on the state attorney. § 775.089(7) Fla. Stat. (1988).

remained. Mr. Moore thereafter never requested the scheduling of any restitution hearing. The record reflects no error, fundamental or otherwise, by the trial court.

Conclusion

Based upon the foregoing, this court affirms the orders of the trial court.

IT IS THEREFORE ORDERED that the judgment and sentence of the trial court and the trial court orders addressing restitution are affirmed.

ORDERED at Clearwater, Florida this 13th day of May, 2013.

Original order entered on May 13, 2013, by Circuit Judges Michael F. Andrews, Raymond O. Gross, and R. Timothy Peters.

cc: Honorable Donald E. Horrox
Frank D. L. Winstead, Esquire
Office of the State Attorney