

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 24-483

Judge:

Complainant:

ORDER

February 28, 2025

The Complainant alleged a superior court commissioner improperly imposed restitution in a juvenile criminal case.

The role of the Commission on Judicial Conduct is to impartially determine whether a judicial officer has engaged in conduct that violates the Arizona Code of Judicial Conduct or Article 6.1 of the Arizona Constitution. There must be clear and convincing evidence of such a violation in order for the Commission to take disciplinary action against a judicial officer.

The Commission does not have jurisdiction to overturn, amend, or remand a judicial officer's legal rulings. The Commission reviewed all relevant available information and concluded there was not clear and convincing evidence of ethical misconduct in this matter. The complaint is therefore dismissed pursuant to Commission Rules 16(a) and 23(a).

Commission member Denise K. Aguilar did not participate in the consideration of this matter.

Copies of this order were distributed to all appropriate persons on February 28, 2025.

CONFIDENTIAL

Arizona Commission on Judicial Conduct
1501 W. Washington Street, Suite 229
Phoenix, Arizona 85007

FOR OFFICE USE ONLY

2024-483

COMPLAINT AGAINST A JUDGE

Name: Judge's Name:

Instructions: Use this form or plain paper of the same size to file a complaint. Describe in your own words what you believe the judge did that constitutes judicial misconduct. Be specific and list all of the names, dates, times, and places that will help the commission understand your concerns. Additional pages may be attached along with copies (not originals) of relevant court documents. Please complete one side of the paper only, and keep a copy of the complaint for your records.

On _____ my daughter was dating the victims _____ son
whom cut my daughters ankle monitor off. My daughter and _____ then gave information to a man named
_____ who then proceeded to commit a robbery of _____ home. My daughter was
not present at the victims house when this happened. However my daughter is the only one charged with
robbery. My daughter did not take any of the victims belonging or money. The main suspect was found
with belongings. The victim has not presented any evidence to support this amount of money being stolen
yet my daughter is being held liable for _____ plus I the parent am being held responsible for
_____. In Arizona the law states that I must be allowed to be heard in court which I was never given the
chance to be heard in court before this decision was made. The order also states my daughter was found
to be held responsible because she was present at the time of the robbery which is in fact untrue. There
are witnesses stating my daughter was not present. The case was not handle properly. Also my daughter
father was not held responsible and I was solely charged with resituituon. This is a huge fanancial berden
to my family for an act I did not commit. My daughter is going to suffer the rest of her life for this. The
order states that the court simplifies with my daughter which is also very untrue. Her first payment is due
by _____. The court has her locked in an mental institution in which my daughter is suffering
additional trauma from being attacked and witnessing violence .The injustice that the court is doing to my
daughter will forever be impactful toward her. The judge showed no sympathy toward a child who is
already suffered so much, and did not take into consideration all the facts that were actually stated in this
case. This amount of resitution is very injutice and sets this juvenile up for a failing future. I as the parent
desrve to be heard and was not given an opportunity to. There are way too many details of this case that
have been left out.

COURT OF ARIZONA
COUNTY

CLERK OF THE COURT

HONORABLE

Deputy

IN THE MATTER OF:

DOB:

COC-JUV-ACCOUNT SERVICES
JPD-VICTIM RIGHTS
VICTIM SERVICES-CA-JUV

RULING
RESTITUTION ORDERED

The Court took the issue of Restitution under advisement following an evidentiary hearing on _____ and _____. The Court has considered the law, the pleadings, the testimony of the victim, _____, the exhibits, and the arguments of counsel.

Factual Background

On or about _____, the juvenile, _____ (DOB: _____) was involved in a burglary at the victim's apartment. _____ knew the victim's _____-year old son and had previously been inside the victim's apartment with him.

COURT OF ARIZONA
COUNTY

After the burglary, the victim claimed over _____ dollars were stolen from a safe that had been pried open, along with personal items described more in detail below. He also alleged some of his property was damaged and his apartment was trashed. Although it appears others were involved, including 2 adults, _____ was the only one charged with Burglary, 2nd degree, residential, a Class 3 Felony.

On _____, _____ plead delinquent to Count 1, (Amended): Theft, a Class 6 undesignated felony committed on _____. In the plea agreement agreed “

” The Court accepted the plea and adjudicated _____ delinquent of Count 1, as amended.

The victim now seeks restitution in the total amount of _____. See, Exhs. 3 and 4. At the restitution hearing, the victim testified he had just moved to Arizona from _____ to spend more time with his son who lived in _____. He had recently retired from law enforcement after _____ years of service in _____. Around the time of the burglary, he was in _____ wrapping up some things. His son went by his apartment to check on it when he discovered it had been broken into. The victim’s son called him, and he returned to Arizona.

The police were able to recover some of the items from a hotel room where the suspects were staying. They recovered _____ in hundred-dollar bills, a _____ filled with a large quantity of coins (later calculated at _____), a blue _____ basketball jersey and casino chips. One of the suspects, _____, had _____ on her person. See, Exh1.

The victim credibly testified his losses from the theft are as follows:

- A total of _____ in hundred-dollar bills;
- _____ pistol;
- Approximately _____ in loose coins in a glass jar;
- An _____ watch he valued at _____;
- Two bottles of cologne he valued at _____;
- _____ dollars in single bills;
- Change counter worth _____ containing _____ in change; and
- three two-dollar bills.

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The victim credibly testified there were two sources for the [redacted] First, his mother gave him [redacted] as a gift each year since [redacted]. Second, he had been collecting one hundred-dollar bills since [redacted] as part of his "rainy day fund." Besides his pension, the [redacted] stolen represented all his retirement savings.

To corroborate his testimony, he presented a photograph of two stacks of money with [redacted] written on a note attached to each stack of money. *See, Exh. 10.* He also presented bank statements showing [redacted] deposits and other photographs of stacks of money. None of the photographs were dated.

He credibly testified to the other money that was missing as well.

As to the property, he did a google search and came up with replacement values since he did not have any receipts. On cross examination, he acknowledged in the police report, the police recovered [redacted] in coins. He further acknowledged the police report indicates the recovered [redacted] from the hotel room and [redacted] in one-hundred-dollar bills suspect [redacted] had on her person. The victim testified none of the impounded money from the hotel room has been returned to him.

On cross, he acknowledged, according to the police report, the main suspect, [redacted] had [redacted] in one-hundred-dollar bills in his possession. However, he pointed out this [redacted] is marked as [redacted] money in the report. He does not anticipate receiving this money and has not received it. He acknowledged the police report notes the watch as broken and worth one dollar.

The victim testified he had other expenses he did not list as a loss in his statement. When [redacted] and perhaps others were in his apartment, they poured cleaning products all over the place. He had to get the carpet cleaned. Since he reported his loss to the police last year and early this year, he has discovered he is missing other items that he did not list on his verified victim's loss statements. He also is not seeking restitution for the suit in his closet that was ruined from the cleaning products.

The victim testified he has emotionally suffered since the burglary. As a retired police officer, he had always been "on the other side" and not the victim. His life was turned upside down. He was moving to Arizona to develop a stronger bond with this son and now his relationship with his son is strained. He has bouts of depression, "[redacted]" Even though the victim testified hundreds of times as a police officer, it was emotionally difficult to testify here.

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COUNTY

Analysis

A juvenile offender is required to make “full or partial restitution to the victim of the offense for which the juvenile was adjudicated delinquent.” Ariz. Rev. Stat. § 8-344(A) (West 2024). The purpose of the statute, like all “restitution statutes generally[,] is to make the victim whole.” *In re Ryan A.*, 202 Ariz. 19, ¶ 27 (Ct. App. 2002). “To ensure that the victim is made whole, the court has broad discretion in setting the restitution amount based on the facts of the case.” *In re William L.*, 211 Ariz. 236, 239, ¶12 (Ct. App. 2005). After considering the nature of the offense, and the age, physical and mental condition and earning capacity of the juvenile, the court shall order the juvenile to make full or partial restitution. ARS 8-344(A)

A victim of a delinquent minor's criminal offenses must be compensated for any economic loss that would not have occurred but for the juvenile's delinquent conduct that directly caused the victim's loss. *In re Andrew C.*, 215 Ariz. 366, 368, ¶¶ 9-10 (Ct. App. 2007). Economic loss is “any loss incurred by a person as a result of the commission of an offense.” Ariz. Rev. Stat. § 13-105(16). The burden of proof required to award restitution is proof by a preponderance of the evidence. *In re Stephanie B.*, 204 Ariz. 466, 470, ¶ 15 (Ct. App. 2003). Proof by a preponderance of the evidence means “proof which leads the [trier of fact] to find that the existence of the contested fact is more probable than its nonexistence.” *Matter of Appeal in Maricopa County Juv. Action No. J-84984*, 138 Ariz. 282, 283 (1983) (citation omitted).

A loss is recoverable as restitution if it meets three requirements: (1) the loss must be economic, (2) the loss must be one that the victim would not have incurred but for the criminal conduct, and (3) the criminal conduct must directly cause the economic loss. *State v. Wilkinson*, 202 Ariz. 27, 29, ¶ 7 (2002). If the third requirement is lacking, i.e., if the loss does not flow directly from the defendant's criminal activity, then the loss is considered a non-recoverable, consequential damage. *Id.* A loss flows directly from a defendant's criminal activity if it results “without the intervention of additional causative factors.” *Id.*

Restitution is commonly referred to as making the victim “whole.” *See, e.g., In re Ryan A.*, 202 Ariz. 19, 24, ¶ 20 (Ct. App. 2002); *State v. Reynolds*, 171 Ariz. 678, 681 (Ct. App. 1992) (“a trial court is required to determine the full amount of the victim's loss to make the victim whole”). In each case, the court “must consider the victim's loss in fashioning an order appropriate to a particular case.” *Matter of Appeal in Pima County Juv. Action No. 45363-3*, 151 Ariz. 541, 541 (Ct. App. 1986).

Restitution is not “unfair punishment, but rather accountability for unlawful conduct. The availability of a restitution lien obviates any inclination to impose a punitive sanction.” *In re Kristen C.*, 193 Ariz. 562 (Ct. App. 1999)

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COMPLAINT ON ITS WEBSITE.**

**FOR ACCESS TO THE
REMAINDER OF THE
COMPLAINT IN THIS MATTER,
PLEASE MAKE YOUR REQUEST
IN WRITING TO THE
COMMISSION ON JUDICIAL
CONDUCT AND REFERENCE
THE COMMISSION CASE
NUMBER IN YOUR REQUEST.**