

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN THE INTEREST OF: : No. 99-30, 109

SCOTT E. MORGRET :

A MINOR : JUVENILE

**Date: February 20, 2002**

**OPINION and ORDER**

Before the Court is a case review of the status of the juvenile Scott Morgret, to determine whether he has violated the terms of his probation, for failure to make restitution as ordered by this Court on June 4, 1999.

**Facts**

On April 15, 1999 an adjudication of delinquency was entered against juvenile, Scott Morgret, based upon the juvenile's counseled admission to the commission of the offense of involuntary manslaughter. On June 4, 1999, this Court entered an Order directing the youth to make full restitution to the victims' parents, Mr. and Mrs. Joseph DeFeo, in the amount of \$12,993. The restitution order attributed \$11,889 to funeral costs and the balance to various medical costs. To the extent any insurance provider had paid medical bills, payment was to be made to that provider. Neither the youth nor any other party affected by that order made objection to, or took any appeal from that order.

The juvenile is now age 20. His date of birth is February 21, 1981. He will become age 21 on February 21, 2002 and this Court will lose jurisdiction of him.

Before losing jurisdiction, Lycoming County Juvenile Probation wants the juvenile held in contempt for failure to comply with this Court's June 4<sup>th</sup> Order. The juvenile,

Scott Morgret, argues that he should be relieved from paying any further restitution because on May 25, 2000 a full and final release was signed by Mr. and Mrs. DeFeo in settlement of the civil action.

On April 26, 2000, Plaintiff, Joseph DeFeo, Sr., individually and as Administrator of the Estate of Joseph DeFeo, Jr., had filed a Petition to Approve Settlement of a wrongful death and survival action, previously filed against the juvenile and his parents. The Morgret's offered the limits of applicable insurance coverage, an amount totaling \$500,000 plus \$1000 in medical pay coverage, as full and final settlement of the wrongful death and survival action against Morgret, his parents, and his insurance carrier. The DeFeo's agreed to accept the monetary offer to settle the wrongful death action filed in the United States District Court. Judge James F. McClure, Jr. approved DeFeo's petition and dismissed the wrongful death action. On May 25, 2000, Joseph DeFeo, Sr. and Gail DeFeo signed a full and final release.

The Full and Final Release states that, Scott Morgret, his parents, and State Farm Fire & Casualty Company are released from all claims, demands, consequential, punitive and exemplary damages, and suits of any nature from the shooting on April 10, 1998, resulting in the death of Joseph DeFeo, Jr., all of which claims are the subject of a civil action in the United States District Court for the Middle District of Pennsylvania. The release goes on to say, 'It is further understood that the civil suit above shall be closed of record in a manner appropriate to the current stage of the proceedings.' The Commonwealth argues that the Civil release has no affect on the restitution ordered by this Court, as a method of rehabilitation of the offender.

The juvenile, after completing the Pennsylvania Youth Service Act II Program, in November 1999, began making payments toward his restitution of \$100.00 per month, an amount the juvenile probation office had determined he could afford. At that time and throughout the case the juvenile was employed at his mother's beauty salon. He has made a total payment, albeit sporadic at times, of \$3,150 over the past 27 months.

At the evidentiary hearing held November 24, 1999, there was testimony concerning the ability of the youth to be more gainfully employed or that his living expenses would justify an increased rate of payment of restitution. Based upon the evidence that was presented, this Court determined that the juvenile did not have any greater capacity to work or pay, and must order the restitution payment to remain at \$100.00 per month. A balance of \$9,743 is due to the DeFeo's who argue (through the District Attorney) that justice demands the juvenile pay restitution in full at this time and be sanctioned for the non-payment.

### **Discussion**

The restitution order was entered pursuant to 42 Pa.C.S. §6352 (a)(5); which provides:

The Court may order payment by the child of reasonable amounts of money as fines, costs or restitution as deemed appropriate as part of the plan of rehabilitation considering the nature of the acts committed and the earning capacity of the child. For an order made under this subsection, the court shall retain jurisdiction until there has been full compliance with the order or until the delinquent child attains 21 years of age. Any restitution order which remains unpaid at the time the child attains 21 years of age shall continue to be collectible under section 9728.

As part of the plan of rehabilitation, considering the nature of the acts committed, this Court ordered the juvenile to make full restitution to the victims, Mr. and Mrs.

Joseph DeFeo for the funeral expenses and medical bills they incurred due to the tragic death of their son at the hands of the juvenile. The Court determined at the time, that such rehabilitation was consistent with the protection of the public interest and best suited to the child's treatment, supervision, rehabilitation and welfare. This would enable the child to become a responsible and productive member of the community. In doing so, the amount of restitution ordered by this Court and the payment rate must not be beyond the juvenile's earning capacity. No party filed an appeal from that determination nor objected to the amount before this date. The juvenile has met his obligation under the Court's Order since the date it was filed.

The Court is aware that it must ensure that the restitution paid by the juvenile does not exceed the victim's damages. This Court does not see that the restitution of \$12,993, for funeral and some medical expenses, will exceed the victim's damages. Although the civil action settlement provides it is payment in full it does not make any reference to the restitution order, either by reducing the payment by the restitution paid, or by asserting the payment constitutes a payment of court ordered restitution.<sup>1</sup> As noted above, the restitution order is intended to have an impact upon the offending juvenile, as well as compensate the victims. If the juvenile's court ordered obligation were to be offset through payment of a civil settlement, most likely funded through insurance proceeds of a policy purchased by his parents, there would be no rehabilitative effect. Therefore, even if the release purported to satisfy the restitution order, this court would hold the provision as void for being contrary to public policy. The Civil release does not relieve the juvenile from his Court Ordered obligation. The juvenile shall resume his payment obligation as of the date this Opinion and Order are filed.

Furthermore, 42 Pa.C.S. §6352 (a)(5), specifies that once the juvenile turns 21 years of age, any restitution that remains unpaid will be collectible under 42 Pa.C.S. §9728. Juvenile Scott Morgret's date of birth is February 21, 1981. Therefore, on February 21, 2002, this Court shall not retain jurisdiction over the juvenile. In such cases, the statutory direction is a clear mandate. Unlike the procedures applicable to hold an adult who has been criminally convicted in contempt,<sup>2</sup> the Juvenile Act provides only that the juvenile who has attained age 21 shall have a judgment for unpaid restitution entered against him. Pursuant to §9728(a)(1), the Order entered by this Court for restitution shall, together with interest and any additional costs that may accrue, be a judgment in favor of the probation department upon Scott Morgret.

The Commonwealth further argues that the juvenile's parents be directed to pay restitution under 23 Pa.C.S. § 5503. The time for that to be done was at the original juvenile hearing in 1999. Although the record is not clear, it appears a determination may have been made at that time that the parents had no responsibility due to the child's emancipation under 23 Pa.C.S. § 5508. Regardless, the DeFeo's remedy is to bring a civil action under 23 Pa.C.S. § 5504. Contrary to the Commonwealth's contention, there is now no power for the Court to direct the parents to make such payment.

---

<sup>1</sup> See, as to restitution in a criminal action 18 Pa.C.S. § 1106 (g), which provides restitution paid shall reduce any judgment obtained in a civil action for the same loss.

<sup>2</sup> See, 18 Pa.C.S. § 1106(f).

**ORDER**

It is hereby ordered and directed that Juvenile Scott Morgret comply with this Court's June 4, 1999 Order and pay the remaining unpaid restitution. The Prothonotary is directed to enter this Order as a judgment pursuant to 42 Pa.C.S. §9728(b), against the juvenile and in favor of the juvenile probation office of Lycoming County, in the amount of \$9,743.00.

BY THE COURT:

William S. Kieser, Judge

cc: K. Osokow, Esquire  
E. Linhardt, Esquire  
Judges  
Suzanne R. Lovecchio, Law Clerk  
Gary L. Weber, Esquire (Lycoming Reporter)