

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0553**

State of Minnesota,
Respondent,

vs.

Jory Daniel Wiebrand,
Appellant.

**Filed December 19, 2022
Affirmed
Bryan, Judge**

Hennepin County District Court
File Nos. 27-CR-20-10963, 27-CR-20-11960

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jennifer L. Lauermann, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bryan, Presiding Judge; Bjorkman, Judge; and Slieter, Judge.

NONPRECEDENTIAL OPINION

BRYAN, Judge

Appellant challenges the district court's decision to impose restitution, raising the following two arguments: (1) the record lacked sufficient facts to support the restitution order; and (2) the district court failed to consider appellant's ability to pay restitution.

Because the restitution request satisfied the statutory requirements for ordering restitution paid to the Crime Victims Reparations Board (CVRB) and because the district court properly considered appellant's ability to pay, we conclude the district court did not abuse its discretion in ordering restitution.

FACTS

In April and May 2020, respondent State of Minnesota charged appellant Jory Wiebrand with various offenses in thirteen case files. Wiebrand ultimately pleaded guilty to four counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct, and he agreed to pay restitution in all of the charged cases. At sentencing, the district court ordered restitution to be paid to the CVRB in the amounts of \$10,780.39 and \$44.09 for victims B.M. and J.K., respectively.¹ The district court advised Wiebrand that he would have 30 days to contest the restitution order. Wiebrand submitted an affidavit challenging restitution within the 30-day timeframe. The district court scheduled a contested restitution hearing. In lieu of an evidentiary hearing, however, the parties stipulated to evidence and submitted their arguments in writing.

The district court concluded that the preponderance of the evidence established the specific payments made by the CVRB to reimburse the victims for their expenses. Additionally, the district court considered Wiebrand's ability to pay and determined that "it is within [Wiebrand's] means to pay the restitution ordered." The district court ordered

¹ The restitution awards relating to the other victims are not challenged in this appeal.

Wiebrand to pay “a reasonable amount per month toward restitution from his prison wages after he obtains employment.” Wiebrand appeals.

DECISION

I. Sufficiency of the Evidence to Support the CVRB’s Restitution Request

Wiebrand first argues that the information provided by the CVRB does not establish a sufficient factual basis for the restitution award. We are not convinced because the record includes the CVRB payment orders detailing the amounts that the CVRB paid the victims.

Restitution requested by the CVRB is governed by Minnesota Statutes section 611A.04, subdivision 1a (2022). The permissive language of this provision contemplates restitution requests being accompanied by a copy of the CVRB payment orders, if any are issued, that show the amounts paid by the CVRB to the victim:

The Crime Victims Reparations Board may request restitution on behalf of a victim by filing a copy of orders of the board, if any, which detail any amounts paid by the board to the victim. The board may file the payment order with the [district] court administrator or with the person or agency the [district] court has designated to obtain information relating to restitution.

The statutory provisions for restitution requests submitted by the CVRB differ from the provisions governing direct restitution requests by a victim, which are set forth in Minnesota Statutes section 611A.04, subdivision 1 (2022). Unlike CVRB requests pursuant to subdivision 1a, direct victim requests under subdivision 1 “must describe the items or elements of loss, itemize the total dollar amounts of restitution claimed, and specify the reasons justifying these amounts, if restitution is in the form of money or

property.” Minn. Stat. § 611A.04, subd. 1. We generally review a restitution order for an abuse of discretion. *See, e.g., State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021).

In this case, Wiebrand argues that the CVRB’s submissions did not describe “the nature and amount of the losses with reasonable specificity,” citing *State v. Keehn*, 554 N.W.2d 405, 408 (Minn. App. 1996), *rev. denied* (Minn. Dec. 17, 1996) and *State v. Fader*, 358 N.W.2d 42, 48 (Minn. 1984). Both cases, however, concern direct victim requests, not requests made by the CVRB. Importantly, Wiebrand does not that argue the statute is ambiguous, make any statutory interpretation analysis, or challenge the restitution award on the grounds that the CVRB failed to provide a list of the amounts paid to the victims.² After reviewing the record, it is clear that the CVRB fulfilled its statutory obligations. The CVRB submitted payment orders detailing the dates, places, and amounts it paid the victims. Because we decline to adopt a new legal rule extending *Keehn* and *Fader* to restitution requests submitted by the CVRB and because the CVRB’s submissions satisfied subdivision 1a, we conclude the district court did not abuse its discretion.

II. Consideration of Wiebrand’s Ability to Pay

Wiebrand also argues that the district court failed to consider his ability to pay. We conclude, however, that the district court adequately considered Wiebrand’s ability to pay.

² To the extent that portions of Wiebrand’s brief could be construed as asserting procedural errors prior to the initial restitution order or asserting errors regarding the timelines in subdivision 1a, such arguments are unavailing. Wiebrand does not challenge any aspect of the contested process that followed the initial order and makes no argument that any such errors affected the ultimate outcome of the ensuing proceeding. Thus, we need not address the merits of these arguments. *See State v. Cloutier*, 971 N.W.2d 743, 749 (Minn. App. 2022) (“[E]rror without prejudice is not grounds for reversal.”), *rev. granted on other grounds* (Minn. May 17, 2022).

The restitution statute requires district courts to “consider . . . the income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a) (2022). Although the district court need not make specific findings regarding ability to pay, it must “expressly state, either orally or in writing, that it has considered” those factors. *Wigham*, 967 N.W.2d at 659, 664-65. The record must contain sufficient evidence about those factors to facilitate the district court’s consideration of them. *Id.* Moreover, “Minnesota courts have upheld restitution orders even when the appellant may not be able to pay the restitution amount.” *State v. Alexander*, 855 N.W.2d 340, 344-45 (Minn. App. 2014) (listing cases affirming restitution awards where the defendant is in prison, ordered to pay restitution from prison earnings, or unable to pay the entire restitution award). We review the district court’s findings of fact for clear error and its ultimate order of restitution for an abuse of discretion. *State v. Andersen*, 871 N.W.2d 910, 913 (Minn. 2015).

In this case, the district court considered Wiebrand’s ability to pay. It explicitly determined that Wiebrand was physically capable of working and would be able to work while incarcerated. The district court also noted that while Wiebrand’s income may be stagnant while he serves his time in prison, the total of his weekly earnings over the course of the next thirty years is nearly double the amount of restitution. Finally, the district court determined that based these factors, Wiebrand’s work history in the community, and his ability to work after his release from prison, it was within Wiebrand’s means to pay the restitution ordered. These findings are supported by the record, and we discern no abuse of discretion in the district court’s consideration of Wiebrand’s ability to pay.

Affirmed.