

*This opinion is nonprecedential except as provided by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
A22-0630**

State of Minnesota,
Respondent,

vs.

Joshua Henry Baion Cummings,
Appellant.

**Filed March 13, 2023
Affirmed
Frisch, Judge**

Hennepin County District Court
File No. 27-CR-20-21224

Keith Ellison, Attorney General, James H. Clark III, Assistant Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Leah C. Graf, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Jesson, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

FRISCH, Judge

Appellant argues that the district court abused its discretion by denying his motion to withdraw his *Alford* plea of guilty and erred in considering the equity in his home in

determining restitution. Because the district court did not abuse its discretion by denying appellant's motion to withdraw his *Alford* plea and properly considered appellant's ability to pay restitution, we affirm.

FACTS

In March 2019, Minnesota Department of Human Services (DHS) notified appellant Joshua Henry Baion Cummings¹ that it was seeking a one-year suspension of his employment as a personal care assistant (PCA) because he “repeatedly . . . caused claims to be submitted from which required information was incorrect; and engaged in a pattern of making false statements of material facts for the purposes of obtaining greater compensation than that to which [he was] legally entitled.” Baion was simultaneously employed at a hospital in a non-PCA position.

DHS and Baion entered into a settlement agreement whereby Baion agreed to a one-year suspension from working as a PCA for any enrolled Minnesota Health Care Programs provider. Baion was not represented by an attorney in this administrative proceeding. The matter was referred to the Medicare Fraud Unit for possible criminal proceedings.

Respondent State of Minnesota charged Baion with four counts of theft by swindle and two counts of theft by false representation. Baion was represented by counsel in this proceeding and entered an *Alford* plea to one count of theft by false representation.² The

¹ Because appellant refers to himself as “Baion” in his brief, we refer to him as Baion in our opinion.

² An *Alford* plea allows a defendant to plead guilty while maintaining innocence of the charged offense because there is sufficient evidence for a jury to find the defendant guilty

plea agreement provided that Baion not be employed in a Medicare-funded job and that restitution was \$16,471.51, but that Baion could challenge his ability to pay restitution.

The hospital then terminated Baion's employment. Baion then moved to withdraw his *Alford* plea, arguing that he did not understand that he could lose his hospital employment as a result of the plea. The district court heard testimony from Baion and the assistant attorney general who handled the administrative proceeding (the former AAG) on the motion. The district court denied Baion's motion to withdraw his plea.

At the sentencing hearing, the state sought a reduced restitution award because DHS recovered some funds. The district court heard testimony from Baion and arguments from both parties on Baion's ability to pay. Ultimately, the district court sentenced Baion in accordance with the plea agreement and ordered Baion to pay restitution in the amount of \$14,579.62, to be paid in monthly installments of at least \$50.

Baion appeals.

DECISION

Baion argues that the district court abused its discretion by denying his motion to withdraw his *Alford* plea and erred by considering the equity in his home when ordering restitution. We address each argument in turn.

at trial. *State v. Goulette*, 258 N.W.2d 758, 760-61 (Minn. 1977) (discussing *North Carolina v. Alford*, 400 U.S. 25, 37 (1970)).

I. The district court did not abuse its discretion by denying Baion’s motion to withdraw his *Alford* plea.

Baion argues that the district court abused its discretion in denying his motion to withdraw his *Alford* plea. He claims that he is entitled to withdraw his plea because the district court did not give due consideration to the context of the plea, it misapplied the law, and the state did not establish prejudice associated with plea withdrawal.

A defendant may withdraw a plea under two circumstances: (1) any time it is necessary to correct a manifest injustice or (2) before sentencing and at the court’s discretion if it is fair and just to permit withdrawal (the fair-and-just standard). Minn. R. Crim. P. 15.05, subds. 1, 2. Baion sought to withdraw his plea under the fair-and-just standard. Under that standard, a district court considers (1) the reasons the defendant advances to support withdrawal of the plea and (2) whether granting the motion prejudices the state. Minn. R. Crim. P. 15.05, subd. 2; *State v. Raleigh*, 778 N.W.2d 90, 97 (Minn. 2010). The defendant bears the burden of advancing sufficient reasons to support withdrawal, and the state bears the burden of showing prejudice by the withdrawal. *Raleigh*, 778 N.W.2d at 97.

We review a district court’s denial of a motion to withdraw a plea under the fair-and-just standard for an abuse of discretion, and we reverse “only in the rare case.” *Id.* (quotation omitted). A district court abuses its discretion when its decision is based on an erroneous view of the law or is not supported by the facts in the record. *State v. Hallmark*, 927 N.W.2d 281, 291 (Minn. 2019).

We reject each of Baion's arguments. First, the district court considered the stated reasons why Baion wanted to withdraw his plea. Baion testified that he sought to withdraw his plea because he did not anticipate that entering the plea could result in the loss of his hospital employment. The district court heard testimony from Baion explaining his confusion and specifically acknowledged his assertion that the former AAG "told him expressly that the only criminal action would be restitution." The former AAG later testified about his interactions with Baion during the administrative proceeding. The former AAG testified that he did not give Baion legal advice, disclosed an outstanding criminal referral, explained that he did not have control over criminal charges or proceedings, did not tell Baion that he would not lose his hospital position as part of a potential criminal case, advised Baion to seek counsel several times, did not discuss the potential for restitution with Baion, and did not discuss whether Baion would lose a specific job outside of the function of the settlement agreement. The district court ultimately found the former AAG to be credible and denied Baion's motion. Thus, the record shows that, contrary to Baion's assertion, the district court thoroughly considered the context of Baion's *Alford* plea.

Second, the district court properly applied *Kim v. State*, 434 N.W.2d 263 (Minn. 1989), in analyzing whether Baion presented a fair-and-just reason for withdrawal. In *Kim*, the supreme court affirmed the district court's denial of the defendant's motion to withdraw his plea because the defendant did not establish that there was a fair-and-just reason to withdraw. 434 N.W.2d at 266-67. There, the defendant sought to withdraw his plea because he did not think he would lose his job as a collateral consequence of the plea

agreement, and the supreme court determined that this was a unilateral mistake resulting from the defendant's own failure to heed advice to consult with his employer about the impact of his plea before accepting the plea agreement. *Id.*

Again, contrary to Baion's assertion, the district court did not find that *Kim required* denial of Baion's motion. Rather, the district court cited *Kim* as support for its determination that "it was not an abuse of discretion" to deny a motion to withdraw a plea where there was no mutual mistake about potential collateral consequences of the plea and that Baion's mistake was perpetuated by his own failure to consult with counsel or his employer about potential consequences of his plea. Thus, the district court properly cited *Kim* as support for its determination that Baion had not presented a fair-and-just reason for plea withdrawal.

Third, the absence of demonstrated prejudice to the state does not require a district court to grant a plea-withdrawal motion. Even if there is no prejudice to the state, a district court may still deny a motion for plea withdrawal under the fair-and-just standard. *See Raleigh*, 778 N.W.2d at 98 (holding that the district court did not abuse its discretion by denying a plea-withdrawal motion under the fair-and-just standard when the defendant failed to provide any substantiated reason why the withdrawal would be fair and just). The district court determined that Baion did not set forth fair-and-just reasons for plea withdrawal because Baion could have learned about the potential to lose his hospital employment if he had consulted his attorney or employer on the matter. Thus, even if the state did not show prejudice associated with plea withdrawal, we see no abuse of discretion in the district court's denial of Baion's motion to withdraw his *Alford* plea.

II. The district court did not err in considering home equity in its restitution decision.

Baion argues that the district court erred by (1) contemplating the possibility of a home-equity loan in considering his ability to pay restitution, and (2) requiring him to get a loan to pay restitution. Because Minn. Stat. § 611A.045, subd. 1(a) (2022), does not preclude a district court from considering home equity and the district court did not order Baion to seek a home-equity loan, we disagree.

When ordering restitution, a district court must consider both the amount of the economic loss sustained by the victim and the “income, resources, and obligations of the defendant.” Minn. Stat. § 611A.045, subd. 1(a). Courts have a “wide flexibility to structure restitution orders that take into account a defendant’s ability to pay” and the primary purpose of restitution is to compensate victims. *State v. Maldi*, 537 N.W.2d 280, 285-86 (Minn. 1995). A district court’s authority to order restitution is a question of law, subject to de novo review, while a restitution award itself is reviewed for an abuse of discretion. *State v. Wigham*, 967 N.W.2d 657, 662 (Minn. 2021).

Baion contends that the equity in his home is not an “income, resource, or obligation” under the plain and unambiguous meaning of Minn. Stat. § 611A.045, subd. 1(a)(2). “When interpreting a statute, we seek to ascertain the Legislature’s intent.” *State v. Morgan*, 968 N.W.2d 25, 30 (Minn. 2021). We first determine whether language in the statute is ambiguous. *Id.* A statute is ambiguous if it is “susceptible to more than one reasonable interpretation.” *Id.* If no statutory definition applies, such as here, we look to the ordinary meaning of the word to determine if the statute is ambiguous. *Id.*; see Minn.

Stat. §§ 611A.01, .045 (2022) (not defining “resources”). If the statute is unambiguous, we apply the plain meaning. *Morgan*, 968 N.W.2d at 30. The ordinary and plain meaning of a word not defined by statute can be determined based on dictionary definitions. *State v. Powers*, 962 N.W.2d 853, 858 (Minn. 2021).

The meaning of “resource” in Minn. Stat. § 611A.045, subd. 1(a)(2), is unambiguous. “Resource” is ordinarily defined as “[s]omething that is available for use or that can be used for support or help” or in its plural form, “resources,” “[a]n available supply, especially of money, that can be drawn on when needed.” *The American Heritage Dictionary of the English Language* 1459 (5th ed. 2018). Applying that plain meaning, home equity is a resource. Home equity is a homeowner’s property interest in their home. *See Black’s Law Dictionary* 681 (11th ed. 2019) (defining equity as “[a]n ownership interest in property”); *id.* at 880 (defining home as “[a] dwelling place”). Home equity can be accessed through transactions such as a home-equity loan or a home-equity line of credit. *See id.* at 1123 (defining home-equity loan as “[a] line of bank credit given to a homeowner, using as collateral the homeowner’s equity in the home,” which is also termed home-equity line of credit). Because home equity is a source of funding owned by, and therefore available to, a homeowner, it is properly considered a “resource” of a defendant-homeowner under Minn. Stat. § 611A.045, subd. 1(a)(2).

Baion urges us to distinguish home equity from other types of resources because it cannot be immediately accessed and is derived from a non-liquid asset, a home. But the plain language of Minn. Stat. § 611A.045, subd. 1(a)(2), does not restrict what may be considered a resource to liquid assets or that which is immediately available to satisfy a

restitution award. Indeed, the supreme court has determined that a district court may properly consider future income, which is similarly not available to satisfy a restitution award at the time of the award. *See State v. Lindsey*, 632 N.W.2d 652, 663-64 (Minn. 2001) (affirming a portion of a restitution order that required an indigent defendant's prison wages be applied to restitution).

We note that the statute does not distinguish among types of resources and places no limitations on the resources a district court may consider in determining a defendant's ability to pay restitution. And while we recognize that a homestead may receive special treatment in regard to civil judgments, *see* Minn. Stat. § 550.175 (2022) (describing execution on real property that includes a homestead), no language in Minn. Stat. § 611A.045, subd. 1(a)(2), requires district courts to treat homes or homesteads differently from other resources. The fact that the legislature distinguishes homesteads in other statutes shows that the legislature knows how to create such a distinction if it so desired. *See State v. Expose*, 872 N.W.2d 252, 257-59 (Minn. 2015) (rejecting an argument that exceptions in other statutes supports recognition of an exception to the therapist-client privilege in part because the existence of exceptions in other statutes “demonstrate that the Legislature knows how to create an exception to the therapist-client privilege when it wishes to do so”). The district court properly considered whether Baion had equity in his home in issuing its restitution order.

Baion also asserts that the district court improperly ordered him to obtain a home-equity loan and to use the proceeds of such a loan to satisfy the restitution award. A district court cannot order a defendant to sell property to satisfy a restitution order. *State v.*

Alexander, 855 N.W.2d 340, 349 (Minn. App. 2014). “The statute only permits the district court to determine whether restitution is appropriate and in what amount based on the victim’s loss and the defendant’s ability to pay.” *Id.* at 347 (citing Minn. Stat. § 611A.045, subd. 1(a)). But the statute is not explicit as to how a district court must consider a defendant’s ability to pay when ordering restitution. *Maidi*, 537 N.W.2d at 285. Rather, the statute accords a district court “wide flexibility” to impose payment schedules within a defendant’s means. *Id.* at 285-86.

We view the district court’s comments at the sentencing hearing and its restitution order as a reflection of the district court’s aim to consider Baion’s ability to pay, rather than an order to seek or acquire a home-equity loan to satisfy the restitution award. The district court was made aware that Baion owned a home and questioned Baion regarding the value of that asset (i.e., the equity). The district court then stated that “[i]t does appear that there’s probably money in the house to get an equity line” and that “based upon that” it would “issue a restitution order in the amount of \$14,579.62.” The district court informed Baion that he could file an objection to the restitution award and then “suggest[ed]” that Baion inquire about a home-equity loan. The district court stated that it would find that Baion did not have an ability to pay “if there is not value in the home.” In its ultimate award of restitution, the district court stated that it did not believe that Baion could pay installments of over \$400 per month, which is approximately how much Baion would need to pay in order to satisfy the full restitution amount by the end of his probationary term, unless it was through a home-equity loan.

In its written restitution order, the district court did not mandate Baion seek or acquire a home-equity loan. Nor did the district court order Baion to use the proceeds of a loan to satisfy the restitution award. Instead, the district court ordered Baion to pay a de minimis amount of at least \$50 per month. The record on appeal does not reflect that Baion objected to the restitution order.

The district court's restitution order reflects its proper consideration of (1) the victim's loss and (2) the defendant's ability to pay. The primary purpose of restitution is to compensate victims. *Maidi*, 537 N.W.2d at 286. But "the payment schedule or structure included in a restitution order should reflect the defendant's ability to pay." *Wigham*, 967 N.W.2d at 663; *see also Maidi*, 537 N.W.2d at 285-86 (reading Minn. Stat. § 611A.045, subd. 1, to permit a district court to order a large restitution amount so long as it considers a defendant's resources when imposing a payment schedule and affirming a district court order that the defendant "mathematically [could] never pay off" on the payment schedule ordered). The district court ordered restitution in the amount of loss to the victim, DHS, \$14,579.62. And the district court ordered Baion to pay a monthly installment of at least \$50 per month, which reflected Baion's ability to pay. We see no abuse of discretion in the district court's restitution order.

Affirmed.