

*This opinion will be unpublished and may not be cited except as provided by Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A13-1425**

State of Minnesota,  
Respondent,

vs.

Robert Tauqueer Johnson,  
Appellant.

**Filed June 30, 2014  
Affirmed  
Stauber, Judge**

Olmsted County District Court  
File No. 55CR126131

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Mark A. Ostrem, Olmsted County Attorney, James P. Spencer, Assistant County Attorney, Rochester, Minnesota (for respondent)

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

Considered and decided by Larkin, Presiding Judge; Worke, Judge; and Stauber, Judge.

**UNPUBLISHED OPINION**

**STAUBER**, Judge

On appeal from his conviction of multiple drug offenses, appellant challenges the district court's order requiring him to pay \$1,900 in restitution. Because appellant

waived the issue by failing to object to the restitution order at the time of sentencing, we affirm.

## **FACTS**

In September 2012, appellant Robert Tauqueer Johnson was charged with multiple drug offenses stemming from a series of controlled buys conducted between July and September of 2012. The complaint alleged that the controlled buys involved a confidential reliable informant (CRI) to the Rochester Police Department (RPD). Appellant subsequently pleaded guilty to two counts of aiding and abetting third-degree sale of narcotics and two counts of second-degree sale of schedule one or two narcotics in a school/park/public-housing zone. Based on the terms of the plea agreement, the remaining charges were dismissed. The district court then sentenced appellant to 111 months in prison and ordered that he pay \$1,900 in restitution to the RPD for buy money and payments to the CRI. This appeal followed.

## **D E C I S I O N**

Appellant challenges the district court's order requiring him to pay \$1,900 in restitution to the RPD. This court reviews a district court's order for restitution under an abuse-of-discretion standard. *State v. Tenerelli*, 598 N.W.2d 668, 672 (Minn. 1999). But whether a claimed item of restitution meets the statutory requirements is a question of law that is reviewed de novo. *State v. Thole*, 614 N.W.2d 231, 234 (Minn. App. 2000).

A restitution request “may include, but is not limited to, any out-of-pocket losses resulting from the crime.” Minn. Stat. § 611A.04, subd. 1(a) (2012). “[A] loss claimed as an item of restitution by a crime victim must have some factual relationship to the

crime committed—a compensable loss must be directly caused by the conduct for which the defendant was convicted.” *State v. Nelson*, 796 N.W.2d 343, 347 (Minn. App. 2011) (quotation omitted).

In order to challenge a district court’s restitution order, an offender must submit a detailed affidavit setting forth all challenges to the amount of, or specific items of restitution. Minn. Stat. § 611A.045, subd. 3(a) (2012). According to the statute, an offender must also request “a hearing within 30 days of receiving written notification of the amount of restitution requested, or within 30 days of sentencing, whichever is later. . . . A defendant may not challenge restitution after the 30–day time period has passed.” *Id.*, subd. 3(b) (2012).

Appellant argues that the “district court abused its discretion when it ordered [him] to pay \$1,900 in restitution because the state did not meet its burden to show [that] the loss was directly caused by appellant’s conduct.” But the state contends that this issue need not be decided on the merits because appellant failed to challenge the restitution order below. Thus, the state argues that appellant’s challenge to the court-ordered restitution has been waived.

We agree. In *State v. Gaiovnik*, the supreme court recognized that “the typical procedure that a defendant must follow in order to preserve a sentencing issue for appeal is to raise the issue with the district court at the sentencing hearing.” 794 N.W.2d 643, 648 (Minn. 2011) (holding that the procedures under Minn. Stat. § 611A.045, subd. 3(b) do not apply “where the only challenge is to the legal authority of the court to order restitution and that challenge was raised in the district court”). And this court has stated

that “[a]bsent a specific agreement concerning restitution, a plea agreement as to charge and sentence neither precludes restitution nor limits the district court in its consideration of the amount of restitution and defendant’s ability to pay,” and that “failure to object to restitution either during [the] plea hearing or during sentencing constitutes a waiver” of the issue. *State v. Anderson*, 507 N.W.2d 245, 245, 247 (Minn. App. 1993), *review denied* (Minn. Dec. 22, 1993); *see also State v. Henderson*, 706 N.W.2d 758, 759-60 (Minn. 2005) (discussing how a defendant’s failure to raise an issue at the time sentence is imposed can constitute a waiver of the defendant’s ability to raise the issue for later review).

Here, the record reflects that appellant did not object to the district court order for restitution at or before sentencing. Appellant’s challenge to the restitution order is therefore waived.

**Affirmed.**