

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY**

STATE OF DELAWARE,	:	
	:	ID NO. 1212000753
_____ v. _____	:	
	:	
GEORGE SCHAFFERMAN,	:	
	:	
Defendant.	:	

*Submitted: August 27, 2013
Decided: August 30, 2013*

*Upon Consideration of The State of Delaware's
Request for Restitution for VCAP*
DENIED

ORDER

Nicole S. Hartman, Esq., Deputy Attorney General, Department of Justice, Dover, Delaware for the State of Delaware.

Robert A. Harpster, Esq., Office of the Public Defender, Dover, Delaware for Defendant.

Young, J.

SUMMARY

Upon Motion of Defendant, this matter came before the Court for hearing regarding the restitution Order of this Court at sentencing. Because the restitution beneficiary was the Victim's Compensation Fund ("VCAP"), which compensated the victim, but which was not a victim; and because no part of the original sentence included any compensating fine; no vehicle for collection through sentencing exists. Accordingly, the claim to have a final dollar amount restitution order is **DENIED**.

FACTS

Defendant herein, George Schafferman, was convicted of the crime of offensive touching, as well as marijuana possession. In the course of this crime, Defendant struck with his fists two individuals: Mr. Frisbie and Mr. Paquette. As a result of that striking, Mr. Paquette sustained injury causing him to miss work resulting in a loss of \$193.53, which was duly paid to him by the Victim's Compensation Fund.

Following that resolution, the State requested an Order for Restitution in favor of the VCAP. That request was essentially pursuant to the plea agreement executed by Mr. Schafferman. Actually, the determination of the amount claimed was made some 73 days post plea entry. The Order relative to that by the Court indicated a 60 day period for amount determination. Defendant Schafferman raises that timeliness issue as a bar to the claim. The Court finds utterly no prejudice to Defendant because of that two week "delay." Rather, that timing was merely a framework to prevent undue delay on the part of the State, which was not

demonstrated here. So, on that basis, Defendant's position is not sustained.

The significant issue is whether or not a restitution claim can be made on the part of VCAP.

Restitution is provided for by 11 Del. Code § 4106. It appears to have some specific eligibility limitations. However, given the issues in this case only one is of consequence. That one is the requirement that Restitution be provided for "victims." *Redick v. State*, Del. Supr., 858 A.2d 947 (2004), states: "A victim is one who suffers injury or loss..." Further, the Court noted that "an order to pay restitution to a non-victim is...illegal."

The State cannot dispute that VCAP is not "a victim." Rather, it is, in effect and for our purposes, an insurer or indemnitor for the victim. That same statute (§ 4106) does go on to say, at subsection c, that when an offender is ordered to make financial reparations, the payments "shall first be applied to" VCAP. That certainly suggests a Legislative desire to have an Order for a Defendant to repay loss to VCAP. If that is the case, an Order for such an obligation must come from someplace, based upon some authority. Both the State and the defense seem to suggest that 11 Del. Code § 9018 could be read to have provided a vehicle for reimbursement to VCAP. There they differ.

Defendant says: No, 9018 provides for fines, not restitution substitutes; and, further, even if it were a "fine" it would have had to have been made at sentencing. Defendant goes on to cite the 2013 Supreme Court case of *Brock v. State*, 61 A.3d 617. That case certainly does say: "The Superior Court has no authority to order restitution to anyone other than a victim." Additionally, that Court held: "The

State v. Schafferman
ID No: 1212000753
August 29, 2013

\$25,000 so-called ‘fine’ was, in substance, restitution under a different label for [VCAP’s] \$25,000 payment to the hospital for [the actual victim’s] medical expenses.”

The State argues that the *Brock*, Supr. case is inapposite, because the conviction was for Possessing a Deadly Weapon By a Person Prohibited. That, says the State, is a victimless crime. No one sustained any loss because of Defendant’s carrying a weapon (with the possible exception of society). That was not a distinction the Supreme Court drew. Moreover, somehow or other James got victimized in this whole affair to the extent of \$25,000 worth of medical expenses, which VCAP compensated.

Be that as it may, *Brock* says what it says very clearly.

If that is, as it appears to be, the case, then there would appear to be no vehicle for VCAP to obtain reimbursement. At the time of sentencing, it is very possible that VCAP would not yet have determined what, if anything, it owed to the “actual victim.” Even if it had known, and had transmitted that to the State, it would still, under this logic, not be entitled to restitution (since it is not “the victim”), and could not receive repayment under the rubric of a “fine” when it’s merely “restitution under a different label.”

That raises two concerns. First, it is counter-intuitive to have a system that precludes recovery for an expense caused by a perpetrator, whether it is for the original human victim or his indemnitor. Second, as indicated above, 11 Del. Code § 4106 (c) not only presumes compensation to VCAP, but gives it priority.

To this, Defendant says: “Well, 11 Del. Code § 9014 (b) allows recovery of

State v. Schafferman
ID No: 1212000753
August 29, 2013

any payment by “any person” through a civil proceeding. To begin with, that could conceivably present problems to VCAP in establishing its self as a “person” in this context, even in this “corporate person” sophisticated State. Perhaps of greater concern is that getting a Civil verdict could be problematic, but more. Even with Civil judgment in hand, VCAP would still not be part of the criminal collection process (Level I – Restitution Only – probation or Court Collections). Therefore, 11 Del. Code § 4106 (c) does not seem to have been satisfied.

CONCLUSION

Because of the absence of any Order at sentencing other than to “Pay Restitution,” where VCAP is decidedly held not to be a “victim” entitled to restitution, the claim by the State for “restitution” for VCAP is **DENIED**. The issue at a later sentencing where this problem may arise will be dealt with at that point.

IT IS SO ORDERED.

/s/ Robert B. Young
J.

RBV/lmc
oc: Prothonotary
cc: Opinion Distribution
Counsel
File