

IN THE COURT OF APPEALS OF IOWA

No. 3-1144 / 12-2263
Filed January 23, 2014

STATE OF IOWA,
Plaintiff-Appellee,

vs.

SHAWN MAXWELL DOEHLER,
Defendant-Appellant.

Appeal from the Iowa District Court for Marshall County, James C. Ellefson, Judge.

On appeal, Shawn Doehler claims the district court erred in excluding a co-defendant from paying restitution under Iowa Code section 910.3B (2011) jointly and severally with Doehler and another co-defendant. We conclude Doehler has no standing to bring this appeal. **APPEAL DISMISSED.**

John J. Haney of Hinshaw, Danielson & Haney, P.C., Marshalltown, for appellant.

Thomas J. Miller, Attorney General, Martha E. Trout, Assistant Attorney General, Jennifer Miller, County Attorney, and Doug Hammerand, Assistant County Attorney, for appellee.

Considered by Doyle, P.J., and Tabor and Bower, JJ.

DOYLE, P.J.

In this appeal, defendant Shawn Doehler takes an unorthodox tack. He does not appeal his own sentence, but rather, he appeals the sentence of one of his co-defendants. We conclude Doehler has no standing to bring this appeal. Consequently, we dismiss his appeal.

Doehler, Thomas Vaughn, and Steven Etzen were charged in a three-count trial information with first-degree murder, first-degree robbery, and first-degree burglary. The charges arose out of the events of the evening of February 6, 2012, including the death of Benjamin Benda. Doehler pled guilty to first-degree robbery, in violation of Iowa Code sections 711.1(1)-(3), 711.2, and 703.1 (2011), and going armed with intent, in violation of section 708.8. Vaughn pled guilty to conspiracy to commit a forcible felony. Etzen pled guilty to second-degree murder. As the district court recounted:

All the pleas were the result of plea agreements that attempted to consider the varying levels of culpability of the three defendants. Mr. Etzen was the individual who carried the weapon to the scene and fired it. Mr. Doehler supplied the weapon that Mr. Etzen used. Mr. Vaughn accompanied the other two.

All three defendants were sentenced on the afternoon of September 11, 2012. During Doehler's sentencing, the court expressed the view that the restitution obligation created by Iowa Code section 910.3B might not apply to Vaughn. Mr. Doehler's counsel took exception and contended that all three defendants should be jointly and severally liable for the \$150,000 restitution obligation.

During the sentencing of Mr. Vaughn, the State took the position that section 910.3B restitution should not be applied to Mr. Vaughn. The court agreed and did not impose that restitution obligation [in Vaughn's sentencing order] because Mr. Vaughn's conduct was not a proximate cause of Mr. Benda's death.

In the third sentencing of the day, that of Mr. Etzen, the court ordered that Mr. Etzen would have the section 910.3B restitution obligation [of \$150,000] and that he would be jointly and severally liable with Mr. Doehler.

Doehler was sentenced to thirty years imprisonment and was ordered to pay victim restitution in the amount of \$150,000, jointly and severally with co-defendant Etzen. Vaughn was not ordered to pay any victim restitution.

Doehler objected to the district court's refusal to order Vaughn to pay restitution jointly and severally with Doehler and Etzen. He asserted "Vaughn should be ordered to pay the \$150,000 restitution jointly and severally with Etzen and [Doehler]." A hearing was then held under the dual captions of Doehler and Vaughn's criminal cases.¹ During the hearing, the court pondered:

Mr. Doehler is asking me to enter an order in Mr. Vaughn's case, and I don't know—I don't know how to characterize that. Is that a standing question? Certainly he's affected, and I get that, but whether I'm expressing it with the correct legal headline or not—and standing may not be the right headline—I'm concerned about my ability to enter an order in the Vaughn case on the motion of a co-defendant in a different case. And I would hope that [counsel for the State, Doehler, and Vaughn] would address that, if you will. If there simply is no authority, then I'll do the best I can to figure it out.

No post-hearing briefing by the parties is reflected in the record before us.

In its post-hearing order, the district court held: "Because this issue does directly concern Mr. Doehler's restitution plan, and because nothing in Iowa law provides otherwise, Mr. Doehler does have legal standing to raise this issue." The court then concluded Vaughn's conduct was not a proximate cause of Benda's death and therefore ordered Vaughn "not be required to pay section 910.3B restitution in this matter." The court denied Doehler's motion.

¹ After the sentencing hearing, the court was advised that Etzen did not believe that Vaughn should be held jointly and severally liable and that Etzen had directed his counsel not to pursue that matter. Etzen and his counsel did not participate in the hearing on Doehler's objection, and Etzen is not a party to this appeal.

Doehler appeals, claiming the district court erred in excluding co-defendant Vaughn from paying restitution in the amount of \$150,000 under Iowa Code section 910.3B jointly and severally with Doehler and Etzen.² Before turning to the merits of Doehler's claim, we must determine whether Doehler has standing to challenge the district court's refusal to order Vaughn to pay victim restitution jointly and severally with Doehler. If Doehler has no standing, we need not address the merits of his claim.

We agree with the district court the issue "does directly concern Mr. Doehler's restitution plan." Imposing restitution upon Vaughn jointly and severally with Doehler would benefit Doehler because of the potential of credit against his obligation for amounts actually paid by Vaughn. Doehler was sentenced to thirty years imprisonment. Vaughn was sentenced to ten years imprisonment. It is therefore likely Vaughn will be released back into society much sooner than Doehler. Presumably, Vaughn will then be in a position to generate much more income than he could in prison. Under such circumstances, it is more likely Vaughn will begin making restitution payments before Doehler does.³ But the possibility Vaughn would make such payments is wholly speculative, and a failure of a jointly and severally liable co-defendant to make payments does not excuse full payment by Doehler. Nevertheless, Doehler's interest in imposition of restitution upon Vaughn jointly and severally is obvious.

² This is not, nor could it be, a direct appeal from the no-restitution sentencing order entered in Vaughn's criminal case. It is axiomatic that "an appeal will not lie at the instance of one who is not a party to the order, judgment, or decree from which the appeal is taken." *Chicago, B. & Q. R. Co. v. Bd. of Supervisors*, 221 N.W. 223, 225 (Iowa 1928). That is, "[a] stranger to the record" cannot appeal. *Id.* (citations omitted). Doehler is a stranger, or non-party, to Vaughn's sentencing order. *See id.*

³ A crime victim or a deceased victim's estate may enforce a restitution judgment in the same manner as a civil judgment. Iowa Code § 915.100(2)(f).

But does his interest in the matter give him standing to challenge the no-restitution sentencing order? We think not.

Doehler's interest in imposition of restitution upon Vaughn is certainly no greater than the interest of the victim here, Benda's estate. The issue of whether or not a victim may appeal a criminal defendant's restitution order has been addressed by the federal courts, and those courts have uniformly held the Crime Victims' Rights Act (CVRA), 18 U.S.C. § 3771(d)(3), does not grant crime victims party status, and thus, crime victims lack standing to appeal criminal defendants' restitution orders. See *United States v. Fast*, 709 F.3d 712, 715 (8th Cir. 2013). "Notwithstanding the rights reflected in the restitution statutes, crime victims are not parties to a criminal sentencing proceeding." *United States v. Aguirre-Gonzalez*, 597 F.3d 46, 53 (1st Cir. 2010). "A restitution order is a part of a defendant's sentence." *United States v. Stoerr*, 695 F.3d 271, 276 (3d Cir. 2012). "[P]ermitting a non-party to appeal a restitution order 'would produce the extraordinary result of reopening [a criminal defendant's] sentence' for the benefit of a private party." *Id.* at 276-77 (citation omitted). "All Courts of Appeals to have addressed this issue have concluded that nonparties cannot directly appeal a restitution order entered against a criminal defendant." *Fast*, 709 F.3d at 715. Like the CVRA, Iowa's restitution rights statute does not grant a crime victim party status with regard to a restitution order entered against a criminal defendant. See Iowa Code § 915.100.

Doehler does not contest the fact that he is a non-party to Vaughn's criminal proceeding. He cites no authority, and we can find none, for the resentencing of a co-defendant at the request of a defendant because that

defendant would prefer to share the burden of a valid restitution order with the co-defendant. Doehler's status in the matter rises no higher than his victim's status. If a crime victim lacks standing to appeal a criminal defendant's restitution order, it necessarily follows Doehler has no standing or right to challenge or appeal the restitution order entered in Vaughn's case.

Because Doehler lacked standing to challenge or appeal Vaughn's restitution order, we dismiss Doehler's appeal.

APPEAL DISMISSED.