

Rule 26, Ariz. R. Crim. P. – Sentencing

RESTITUTION: Restitution for lost wages.....Revised 3/2010

If a victim loses wages by attending court, those lost wages are proper subjects of restitution, even when the victim's attendance is voluntary rather than mandatory. *State v. Lindsley*, 191 Ariz. 195, 198, 953 P.2d 1248, 1251 (App. 1997). Economic loss subject to restitution may also include future lost wages when a victim has been seriously injured or killed. *State v. Blanton*, 173 Ariz. 517, 520, 844 P.2d 1167, 1170 (App. 1992), and lost wages and travel expenses for a victim's survivors who had to travel to Arizona to settle the victim's financial affairs. *State v. Baltzell*, 175 Ariz. 437, 439, 857 P.2d 1291, 1293 (App. 1992).

In *In re Ryan A.*, 202 Ariz. 19, 39 P.3d 543 (App. 2002), the Court of Appeals held that restitution for "lost wages" was broad enough to include restitution for lost wages for both parents who voluntarily accompanied a minor victim to a juvenile disposition hearing. The Court also held that restitution may extend to economic losses such as lost vacation time or annual leave, stating, "The loss of such benefits is a real economic loss tied to wages earned." *Id.* at 19, ¶ 31, 39 P.3d at 549. In *State v. Lindsley*, 191 Ariz. 195, 953 P.2d 1248 (App. 1997), the defendant found the victim's lost wallet and was arrested attempting to cash a forged check. Police found the wallet in the defendant's purse with marijuana inside it. The wallet was returned to the victim, but it smelled of marijuana and the victim had to replace it. The defendant was found guilty of forgery and drug offenses and the victim sought restitution for the wallet, as well as for lost wages for the time she attended the trial and other court proceedings.

The defense argued that since the defendant was found guilty only of forgery and drug offenses, not of theft of the wallet, the court could not order her to pay restitution for the damaged wallet. The defense also argued that the victim should only be reimbursed lost wages for court appearances when she was ordered to appear, saying that when she voluntarily appeared, her lost wages were merely consequential damages. The Court of Appeals held that the wallet and all of the lost wages were subject to restitution. The damage to the wallet was a proper subject of restitution because the defendant admitted the theft of the wallet under oath, and the damage was directly related to the defendant's unlawful possession of the wallet and the marijuana. The Court also found all of the lost wages were subject to restitution:

The fact that the victim was in court at all was a direct result of defendant's crime. She did not "choose" to attend the hearings as a disinterested bystander might, but because she was the victim of defendant's actions and thus, unavoidably entwined in the criminal proceedings. But for defendant's criminal actions, the victim certainly would not have been present at the proceedings. It is a direct result of a crime that the victim attends the hearings and thus suffers wage loss. We believe it makes no difference whether the victim attended pursuant to subpoena or not.

Id. at 199, 953 P.2d at 1252. The Court also noted that denying restitution for the lost wages could be tantamount to denying the victim her constitutional and statutory right to attend court proceedings. *Id.* And a minor victim's parents were entitled to restitution for their lost wages incurred while taking the victim to medical appointments and juvenile court hearings. *In re Erika V.*, 194 Ariz. 399, 401, ¶ 8, 983 P.2d 768, 770 (App. 1999).