

**IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION**

<p>ALFONSO KEPTOT, <i>Appellant,</i> v. REPUBLIC OF PALAU, <i>Appellee.</i></p>
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Cite as: 2018 Palau 2
Criminal Appeal No. 17-003
Appeal from Criminal Case No. 16-154

Decided: April 20, 2018

Counsel for Appellant..... DeJon M. Redd
Counsel for Appellee..... Poseci Lalabalavu

BEFORE: ARTHUR NGIRAKLSONG, Chief Justice
JOHN K. RECHUCHER, Associate Justice
R. BARRIE MICHELSEN, Associate Justice

Appeal from the Trial Division, the Honorable Oldias Ngiraikelau, Presiding Justice,
presiding.

OPINION

MICHELSEN, Justice :

[¶ 1] This appeal arises from an order of restitution requiring the Appellant to pay \$6,447.75 to the Peleliu State Government for damages to its Legislative building that he caused in a single car accident. Appellant asserts that the trial court abused its discretion when determining the dollar amount for the damages. Appellant asks this court to reverse the trial court’s order of restitution and remand to determine a standard for defining “substantial evidence” of a victim’s actual loss. Because the trial court used the correct standard and its calculations were not clearly erroneous, we affirm.

FACTUAL BACKGROUND

[¶ 2] In the early hours of October 8, 2016, Appellant lost control of his vehicle and crashed into the wall of the Peleliu State Legislature building. The Appellant failed a field sobriety test and admitted to drinking heavily before the accident. He was charged with driving while under the influence of alcohol or intoxicating liquor in violation of 42 PNC § 514. He agreed to plead guilty pursuant to a plea agreement that included a provision that appellant would “pay restitution, if any, determined by the Probation Office, and as later ordered by the court.” The Probation Office determined the restitution based on a handwritten proposal of costs by a contractor, United Trust Construction Company (UTCC), in the amount of \$6,447.75, and filed a Determination of Restitution. The Appellant objected to that number, and therefore a restitution hearing was scheduled. At the restitution hearing¹ the trial court accepted the estimate as the appropriate amount of restitution.

[¶ 3] Fact-finding by the trial court is reviewed by the "clearly erroneous" standard enunciated in *ROP v. Chisato*, 2 ROP Intrm. 227, 237-238 (1991). The Court in *Adelbai v. ROP*, 15 ROP 150, 152-53 (2008) suggested in *dicta* that, for restitution amounts, the standard is "abuse of discretion." We do not follow that *dicta* but adhere to the usual "clearly erroneous" standard for fact-finding in criminal cases, which would include a court's findings concerning restitution amounts as part of a sentence.

DISCUSSION

I. Applicable Statute

[¶ 4] Appellant alleges that the trial court abused its discretion by setting a restitution amount without showing proof of damages by a preponderance of the evidence. He cites this Court’s decision in *Adelbai*, which states that “proof of damages for purposes of compensating a victim under this section shall be by a preponderance of the evidence.” 15 ROP at 153 (quoting 17

¹ This case was originally before Senior Judge Rudimch. The Senior Judge recused herself at the original restitution hearing on April 19, 2017 upon determining that UTCC was owned by her maternal uncle. The sentencing hearing continued with Presiding Justice Ngiraikelau on July 6, 2017.

PNC § 3105). However in 2013, the statutory basis for the “preponderance of the evidence” requirement was repealed and replaced by 17 PNC § 657. This statute is the applicable provision for this appeal.

[¶ 5] The current statute has a different focus for proving damages. The sentencing court is directed to order restitution based upon the victim’s “reasonable and verified damages.” 17 PNC § 657(b). The statute also provides that “reasonable and verified” losses may be shown through “the actual or estimated cost of repair” to the damaged property. 17 PNC § 657(c)(1). Thus, the Peleliu State Legislature as the victim in this case does not need to prove that the costs of repair have already been borne prior to sentencing. A showing of an estimated current cost to repair the damage would be sufficient to comply with the current statute.

II. Review of Restitution Amount

[¶ 6] Appellant argues there is inadequate information regarding the repairs needed for the Legislature building. We disagree. The trial court had the benefit of both the contents of the probation office report and the testimony of Ms. Denise Sambal, a Peleliu State Employee.

[¶ 7] At the restitution hearing, the Defendant was given the opportunity to raise objections to the probation officer report. The Defendant called Ms. Sambal who had been subpoenaed by the Republic, to testify regarding the process for obtaining bids to repair the building. She testified that the damage caused by the Defendant’s car was substantial. The building sustained damage to its walls, posts, and door. She agreed that the Legislature had not obtained the usual three bids to repair the damage. The Legislature had difficulty finding a contractor on Peleliu, and was forced to look for one in Koror. There is no provision in 17 PNC § 657(c)(1) requiring three bids in order to determine the estimated cost of repair. The Defendant did not provide any evidence of his own to show that the determination was excessive or that there were other contractors qualified to do the work who would have charged less.

[¶ 8] Thus, the trial court was not clearly erroneous when it ordered the Appellant to pay restitution in the amount ordered. The trial court heard evidence from an employee of the government, who described the damage,

and from the Probation Officer who interviewed the contractor employed to correct the damage.² The contractor provided the Legislature with an estimated cost of repairing the building. Thus, there was a justifiable basis for the amount of restitution awarded to the Legislature, and the trial court made "a clear and independent ruling" as the *Adelbai* court noted is required. *Adelbai* at 155.

CONCLUSION

[¶ 9] Appellant's assertion that the victim must show "substantive evidence" is unfounded. There is nothing in the current statute that requires "substantive evidence" in order to determine restitution. There is only the aforementioned requirement that restitution be "reasonable and verified" which has been proven in this case.

[¶ 10] For the reasons above, the Court **AFFIRMS** the Trial Court's assessment of the amount of restitution.

SO ORDERED, this 20th day of April, 2018.

² Note that Palau's Rules of Evidence specifically do not apply to sentencing hearings. ROP R. Evid. 1101(d)(3).