

**IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO**

STATE OF OHIO,	:	APPEAL NO. C-150675
	:	TRIAL NO. B-1406283-A
Plaintiff-Appellee,	:	
vs.	:	<i>JUDGMENT ENTRY.</i>
MICHAEL CASNELLIE,	:	
Defendant-Appellant.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant Michael Casnellie appeals from the judgment of the trial court ordering him, as part of his sentence, to pay restitution in the amount of \$2,745. Casnellie had been caught stealing railroad tracks in hopes of selling them for scrap. He was in possession of a small amount of heroin when arrested.

Before trial, Casnellie moved the court for intervention in lieu of conviction (“ILC”). Following a hearing, the trial court found Casnellie ineligible for the ILC program. Casnellie then entered pleas of guilty to one count of theft and one count of heroin possession, both punishable as fifth-degree felonies. The trial court accepted Casnellie’s pleas, found him guilty, conducted a hearing into the amount of restitution due, determined that the economic loss to the victim was \$2,745, and imposed restitution in that amount as part of a sentence that included a three-year period of community control.

In his first assignment of error, Casnellie argues that the trial court erred in denying his motion for ILC. He maintains that because he was indigent, the trial court denied him equal protection of the law when it conditioned his participation in ILC on the paying of restitution. We disagree.

First, the record of the plea and sentencing hearings belies Casnellie's claim on appeal that he was indigent. Casnellie had obtained gainful employment with a construction company before sentencing, and he told the court that he was "eager" to pay restitution. Second, Casnellie was not eligible for ILC, even if, as he claimed, the trial court had made payment of restitution a prerequisite to being offered ILC. One of the many conditions of ILC eligibility is that the offender must be "willing to comply with all terms and conditions imposed by the court" including the requirement that "for at least one year [the offender shall] abstain from the use of illegal drugs and alcohol [and shall] participate in treatment and recovery support services." R.C. 2951.041(B)(9) and 2951.041(D). Here, at the plea hearing and again at the sentencing hearing, Casnellie indicated that he would not participate in a court-ordered treatment program. Since Casnellie was not eligible for ILC, any alleged error by the trial court could not have resulted in prejudice to him. The first assignment of error is overruled.

Casnellie's second assignment of error, in which he argues that the trial court erred by imposing restitution as part of his sentence without first holding a hearing and considering his ability to pay restitution, is also without merit.

The sentence imposed on a felony offender may include financial sanctions, including restitution in an amount based on the victim's economic loss. *See* R.C. 2929.18(A)(1); *see also State v. Danison*, 105 Ohio St.3d 127, 2005-Ohio-781, 823 N.E.2d 444, ¶ 6. Before imposing restitution, however, the trial court is required to consider the offender's ability to pay those amounts. While the court need not evaluate any express

factors or make any findings, there must be some evidence in the record that the court considered the offender's ability to pay. *See State v. Andrews*, 1st Dist. Hamilton No. C-110735, 2012-Ohio-4664, ¶ 31. That evidence may include financial information gleaned from the presentence investigation report or from the offender's own statements. *See id.*

Casnellie's only challenge to the amount of restitution was made at the ILC motion hearing. At sentencing, Casnellie did not challenge the loss demonstrated by the victim-impact statement. Second, there is ample evidence of record that the trial court considered Casnellie's ability to pay restitution in that amount, including Casnellie's own statements regarding his construction job, and his fines and fees resulting from prosecution for driving under a suspension in another county. The second assignment of error is overruled.

Therefore, we affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

FISCHER, P.J., CUNNINGHAM and STAUTBERG, JJ.

To the clerk:

Enter upon the journal of the court on September 7, 2016
per order of the court _____.
Presiding Judge