

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

| | | |
|----------------------|---|---------------------|
| STATE OF OHIO, | : | APPEAL NO. C-220355 |
| | : | TRIAL NO. B-2103835 |
| Plaintiff-Appellee, | : | |
| | : | |
| vs. | : | <i>OPINION.</i> |
| | : | |
| MOISES MORALES, | : | |
| | : | |
| Defendant-Appellant. | : | |

Criminal Appeal From: Hamilton County Court of Common Pleas

Judgment Appealed From Is: Affirmed in Part, and Reversed in Part, and Cause Remanded

Date of Judgment Entry on Appeal: July 19, 2023

Melissa A. Powers, Hamilton County Prosecuting Attorney, *Mark E. Piepmeier*, Chief Assistant Prosecuting Attorney, and *Paula E. Adams*, Assistant Prosecuting Attorney, for Plaintiff-Appellee,

Raymond T. Faller, Hamilton County Public Defender, and *David Hoffmann*, Assistant Public Defender, for Defendant-Appellant.

BERGERON, Presiding Judge.

{¶1} While exceeding the speed limit in his vehicle, defendant-appellant Moises Morales ran a red light and crashed into another vehicle driven by Uber driver Christopher Walker as he provided a ride to two passengers. Mr. Morales eventually pled guilty to two counts of aggravated vehicular assault. The trial court imposed a thirty-month sentence, a five-year driver’s license suspension, an order to stay away from the victims, and restitution to be paid to Mr. Walker for the damage to his car. Mr. Morales now appeals, challenging only the restitution and the no-contact order. The state concedes the latter point, and we accordingly sustain the second assignment of error related to the no-contact order. But, after careful review of the record at hand, we reject Mr. Morales’s arguments related to the award of restitution.

I.

{¶2} In July 2021, Mr. Morales drove his 2008 Dodge Charger west on Riverside Drive, traveling at approximately 60 miles per hour in a 35 miles per hour zone. He sped through a red light at the intersection of Riverside Drive and Baines Avenue, colliding into Mr. Walker’s car. At the time, Mr. Walker was driving a 2019 Honda Accord, turning left from Baines Street to travel east on Riverside Drive. According to witnesses at the scene, Mr. Morales appeared intoxicated and smelled of alcohol after the accident. A police report identified Mr. Morales and Mr. Walker as the drivers involved in the accident, designating Mr. Morales as the driver in error.

{¶3} The accident seriously injured Mr. Walker’s two passengers, but their medical expenses were covered by insurance and worker’s compensation (and thus they did not seek restitution). Mr. Walker suffered minimal injuries, but his car—which he depended upon for his livelihood—was totaled. Mr. Morales was indicted on

two counts of aggravated vehicular assault under R.C. 2903.08(A)(1)(a) and two counts of vehicular assault under R.C. 2903.08(A)(2)(b). He eventually pled guilty to the two counts of aggravated vehicular assault in exchange for the dismissal of the other two charges.

{¶4} At the sentencing hearing, the court considered victim impact statements. Mr. Walker presented his request for restitution because his car insurance did not fully cover the unpaid cost of his outstanding auto loan. According to the records presented to the trial court, the gap between the insurance proceeds and his car loan totaled \$5,245.29, with estimated future interest on the loan at \$1,689.18. Because Mr. Morales indicated at sentencing that he would be unable to pay the \$5,245.29 at sentencing, the court ordered him to eventually pay \$6,943.47 in restitution to Mr. Walker, which combined the unpaid balance on the loan with the estimated future interest.

{¶5} Mr. Morales challenged the propriety of the restitution award given that Mr. Walker was not listed as a victim of either of the aggravated vehicular assault charges to which he pled guilty. The trial court disagreed, explaining that because Mr. Walker's car was totaled in the commission of the offense, he also constituted a victim. Mr. Morales timely appealed.

II.

{¶6} In his first assignment of error, Mr. Morales insists that the trial court erred in ordering him to pay restitution because Mr. Walker was not listed as a victim of either of the indictments for the offenses which precipitated the guilty pleas. Mr. Morales further asserts that Mr. Walker cannot qualify as a victim (since he did not

suffer any serious injuries) because a conviction of aggravated vehicular assault requires an element of serious harm.

{¶7} “[T]he proper standard of review when analyzing the imposition of restitution as part of a felony sentence is whether * * * this court clearly and convincingly finds that the sentence is contrary to law.” *State v. Thornton*, 2017-Ohio-4037, 91 N.E.3d 359, ¶ 12 (1st Dist.), citing *State v. Marcum*, 146 Ohio St.3d 516, 2016-Ohio-1002, 59 N.E.3d 1231, ¶ 10.

{¶8} R.C. 2929.18 empowers a court to order restitution to be paid to victims of a felony. To define “victim,” Mr. Morales steers us to the definition contained in R.C. 2930.01(H), which, at the time of the offense, defined a “victim” as:

(1) A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution or delinquency proceeding and subsequent proceedings to which this chapter makes reference.

(2) A person who receives injuries as a result of a vehicle, streetcar, trackless trolley, aquatic device, or aircraft accident that is proximately caused by a violation described in division (A)(3) of this section or a motor vehicle accident that is proximately caused by a violation described in division (A)(4) of this section and who receives medical treatment as described in division (A)(3) or (4) of this section, whichever is applicable.

{¶9} In response, the state maintains that we should employ the definition of “victim” contained in Article I, Section 10a of the Ohio Constitution, known as Marsy’s

Law. Marsy's Law secures several protections for crime victims, including the right "to full and timely restitution from the person who committed the criminal offense or delinquent act against the victim." Ohio Constitution, Article I, Section 10a(A)(7). Marsy's Law defines a "victim" differently than the statutory provision quoted above: "a person against whom the criminal offense or delinquent act is committed or who is directly and proximately harmed by the commission of the offense or act." Ohio Constitution, Article I, Section 10a(D). The Marsy's Law amendment also provides that "all provisions of this section shall be self-executing and severable, and shall supersede all conflicting state laws." Ohio Constitution, Article I, Section 10a(E).

{¶10} At oral argument, Mr. Morales's attorney suggested that Marsy's Law is *not* self-executing. But he failed to advance this point in his brief, and we typically should not consider arguments not contained within a party's brief. *Corbin v. Dailey*, 10th Dist. Franklin No. 08AP-802, 2009-Ohio-881, ¶ 7 ("Pursuant to App.R. 12(A)(2), we may disregard an assignment of error presented for review if the party raising it fails to argue the assignment separately in the brief, as required under App.R. 16(A)."). We accordingly decline to consider this point.

{¶11} Both parties acknowledge that Mr. Walker was mentioned in an accident report concerning the incident. However, we cannot find this report in the record before us, which prevents us from analyzing whether the report satisfies the requirements of R.C. 2930.01(H): "(1) A person who is identified as the victim of a crime or specified delinquent act in a police report or in a complaint, indictment, or information that charges the commission of a crime and that provides the basis for the criminal prosecution * * *." Therefore, we must turn to the state's contention regarding Marsy's Law.

{¶12} Mr. Morales concedes that if Marsy’s Law were to apply here, then Mr. Walker would satisfy its definition of “victim” to receive compensation. This court has previously determined that Marsy’s Law’s definition of “victim” would satisfy R.C. 2929.18. *State v. Jones*, 1st Dist. Hamilton No. C-190039, 2020-Ohio-81, ¶ 10-11 (“Applying the definition of victim found in Marsy’s Law, we agree with the trial court and find that Pack Rat meets the definition of victim for purposes of restitution * * * [and] is a victim under R.C. 2929.18.”).

{¶13} In light of this authority, Mr. Morales fails to articulate any reason why we should depart from our holding in *Jones* in applying the definition of “victim” from Marsy’s Law—or why we should not consider the common-sense understanding of “victim” as provided in the constitution. *See State v. Allen*, 159 Ohio St.3d 75, 2019-Ohio-4757, 147 N.E.3d 618, ¶ 4-5, quoting *Black’s Law Dictionary* 1798 (10th Ed.2014) (“As a useful starting point for our analysis, *Black’s Law Dictionary* defines ‘victim’ as a person or entity ‘harmed by a crime, tort, or other wrong. * * * When properly considered, it is apparent that the banks were victims * * * under any plausible, common-sense understanding of the word ‘victim.’ ”). We accordingly find that Mr. Walker is a “victim” consistent with R.C. 2929.18 for purposes of restitution.

{¶14} With the definition of “victim” satisfied, Mr. Morales advances two other challenges to the restitution award. First, he faults the trial court because Mr. Walker did not properly request restitution from the prosecutor, in compliance with how the Ohio Supreme Court interpreted Marsy’s Law in *State v. Fisk*, Slip Opinion No. 2022-Ohio-4435. He contends that, despite the sentencing report indicating that Mr. Walker requested restitution, the request was insufficient as it contained only

boilerplate language, and Mr. Walker never appeared in court and failed to immediately submit verifying receipts.

{¶15} But beyond a generic citation to *Fisk*, Mr. Morales does not explain how that decision supports his contention. Regardless, we fail to see how *Fisk* controls here: *Fisk* dealt with the proper procedure for a victim to appeal the trial court’s *denial* of restitution if the state can appeal the denial of restitution to the victim in compliance with Marsy’s Law. *Fisk* at ¶ 1. Here, Mr. Walker provided the court with appropriate documents that contained information about the restitution that he sought, and he also requested restitution in his victim impact statement. Therefore, we find that Mr. Walker’s request for restitution satisfied any necessary requirements.

{¶16} Finally, Mr. Morales contests the amount of restitution ordered, quibbling with the trial court’s tacking on of interest. A restitution amount “cannot be greater than the amount of economic loss suffered as a direct and proximate result of the commission of the offense.” *State v. Lelain*, 136 Ohio St.3d 248, 2013-Ohio-3093, 994 N.E.2d 423, paragraph one of the syllabus. Mr. Morales contends that if he paid off the amount of the loan before some or all of the interest accrued, Mr. Walker would reap an impermissible windfall. Admittedly, we do have concerns with the way the trial court calculated the amount. However, Mr. Morales never challenged the restitution amount below; he limited his objection to the victim definition issue that we discussed above. “An objection on one ground does not preserve for appeal other grounds.” *State v. Petty*, 10th Dist. Franklin No. 15AP-950, 2017-Ohio-1062, ¶ 49. Therefore, Mr. Morales failed to develop an adequate record that would enable us to review this point on appeal.

{¶17} For all of the reasons discussed above, we overrule Mr. Morales’s first assignment of error.

III.

{¶18} In his second assignment of error, Mr. Morales insists that the trial court erred in imposing a no-contact order—a community control sanction—in addition to a prison sentence. The state, for its part, agrees.

{¶19} Ohio courts have held that “a no-contact order is a community-control sanction.” *State v. Anderson*, 143 Ohio St.3d 173, 2015-Ohio-2089, 35 N.E.3d 512, ¶ 17. And a court cannot impose a sentence of both “a prison term and a community-control sanction for the same offense.” *Id.* at ¶ 32. Under R.C. 2953.08(G)(2), an appellate court may vacate a criminal sentence when it finds by clear and convincing evidence that the trial court’s sentence is contrary to law.

{¶20} The issuance of the no-contact order was therefore contrary to law, so we sustain Mr. Morales’s second assignment of error.

* * *

{¶21} In light of the foregoing analysis, we sustain Mr. Morales’s second assignment of error and remand this cause with instructions to the trial court to vacate the no-contact order. We affirm the trial court’s judgment in all other respects.

Judgment affirmed in part, reversed in part, and cause remanded.

BOCK and KINSLEY, JJ., concur.

Please note:

The court has recorded its entry on the date of the release of this opinion.