

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

FILED
United States Court of Appeals
Tenth Circuit

NOV 4 1992

ROBERT L. HOECKER
Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BILLY GENE HARRIS,

Defendant-Appellant.

No. 92-5077
(D.C. No. 89-CR-72-B)
(N.D. Oklahoma)

ORDER AND JUDGMENT*

Before MOORE, TACHA, and BRORBY, Circuit Judges.

After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

Mr. Harris appeals only that portion of his sentence relating to the amount of restitution ordered. We affirm.

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Mr. Harris was convicted of first degree murder of two individuals. A codefendant was convicted of the same offenses in a separate trial. Mr. Harris was sentenced to life imprisonment without parole.

Mr. Harris appealed his conviction and sentence. We affirmed, but vacated the restitution order and remanded for reconsideration as there was no evidence in the record concerning Mr. Harris' assets or income. No. 90-5028, Order and Judgment filed 2-21-92.

Upon remand the government presented evidence of Mr. Harris' financial ability to pay restitution which included the fact that Mr. Harris was employed within the prison as a furniture assembler and earned from \$100 to \$200 per month. The government further introduced evidence that Mr. Harris was eligible to participate in the Inmate Financial Responsibility Program wherein one-half of the inmate's salary is garnished for satisfaction of court-ordered financial obligations.

The evidence establishes that the victims' funeral expenses amounted to \$11,190.21 and at least \$500 was taken from the victims during their murder. The court found that Mr. Harris should make restitution in the amount of \$11,690.21 and so ordered.

Mr. Harris filed this appeal contending the codefendant had been ordered to make restitution for \$5,845.11, and as Mr. Harris had been ordered to pay \$11,690.21 the total restitution order exceeded the victims' loss. Mr. Harris asks this court to remand with instructions to order Mr. Harris to pay one-half the amount of loss sustained by the victims in this case.

After Mr. Harris filed his brief with this court, the trial court, acting pursuant to Fed. R. App. P. 36 (clerical mistakes in judgments arising from oversight may be corrected by the court at any time), amended the judgment and commitment order to impose joint and several liability upon Mr. Harris with the codefendant for the amount of \$11,690.21.

Mr. Harris has filed no reply brief responding to this amendment, which amendment was also set forth in the government's brief.

It therefore appears the trial court gave to Mr. Harris the relief he requested, i.e., the amount of total restitution ordered cannot exceed the amount of the victims' loss.

The judgment is therefore **AFFIRMED**.

Entered for the Court:

WADE BRORBY
United States Circuit Judge