

Children's Law Center of Indiana



Delinquency

10/5/11

In **P.J. v. State**, 955 N.E.2d 234 (Ind. Ct. App. 2011), the Court affirmed the juvenile court's order requiring the juvenile to pay restitution in the amount of \$347.13 pursuant to a plea agreement. The juvenile and an accomplice broke into Jennifer Mayberry's residence with the intent to take Mayberry's possessions on December 20, 2010. On December 21, 2010, the State filed a delinquency action against the juvenile, alleging that he committed what would be class B felony burglary and class D felony theft if committed by an adult. The juvenile and the State reached a plea agreement which provided: (1) the State would dismiss the theft charge in exchange for the juvenile's admission to the burglary charge; (2) the juvenile would testify against his accomplice; (3) the juvenile agreed to pay \$347.13 in restitution to Mayberry. The juvenile court accepted the plea. At the dispositional hearing, the juvenile court ordered the juvenile committed to Indiana Boys School for six months. The juvenile court further ordered the juvenile, among other things, to pay the agreed amount of \$347.13 in restitution to Mayberry. The juvenile appealed, arguing that the juvenile court abused its discretion in ordering him to pay restitution.

The Court concluded that the juvenile has waived his right to have the juvenile court inquire into his ability to pay, as he has acknowledged such ability in his plea agreement. Id. at 235. The juvenile argued that the juvenile court failed to inquire into his ability to pay before imposing the restitution obligation. The Court noted its holding in M.L. v. State, 838 N.E.2d 525, 529 (Ind. Ct. App. 2006), *trans. denied* that the trial court must make a determination of the juvenile's ability to pay even if the juvenile entered into a plea agreement "in which he agreed to make restitution in an amount to be determined by the Court." P.J. at 235. The Court in M.L. further held that "leaving the amount of restitution to the discretion of the trial court is not tantamount to waiving one's right to have the trial court inquire into his or her ability to pay." M.L. at 529-30. P.J. at 235. The Court opined that the juvenile's case included an issue not determined by the M.L. decision. P.J. at 235. The Court observed that in the instant case the juvenile had entered into a plea agreement where he agreed to pay a specific amount of restitution instead of leaving the amount to the discretion of the juvenile court. Id. The Court further observed: (1) the juvenile court accepted the plea; (2) it was therefore strictly bound by the plea's sentencing provisions and precluded from exercising discretion to determine the amount of restitution; (3) the restitution order is part of the sentence, rather than a condition of

probation; (4) in such a situation, the juvenile court is not required to inquire into the juvenile's ability to pay. Id.