

SUMMARY STATEMENT

State v. Foeller

Docket No. 47777

Melissa Kay Foeller (“Foeller”) appealed from the district court’s order of restitution. Foeller pled guilty to two counts of grand theft and one count of tax evasion. She signed a plea agreement that stipulated she would pay restitution amounts as determined by the district court in accordance with Idaho Code section 19-5304, the criminal restitution statute. On appeal, Foeller argued that the district court erred in ordering her to pay \$535,952.87 to Travelers Casualty, her employer’s insurer, because it failed to adequately consider her foreseeable ability to pay that amount. Additionally, Foeller argued the district court abused its discretion by ordering her to pay \$48,775 in restitution to the Idaho State Tax Commission (“Tax Commission”) for the tax evasion charge. Foeller asserted the restitution amount was impermissibly speculative because it was based on an estimate of the taxes she owed. She also claimed that owed taxes are future revenue, not compensable as an economic loss under section 19-5304(1)(a).

The Idaho Supreme Court affirmed both of the district court’s restitution orders. Regarding the \$535,952.87 awarded to Travelers Casualty, the Court concluded that substantial evidence in the record supported the district court’s finding that Foeller would be able to pay at least some of the restitution after her release from prison. Regarding the \$48,775 awarded to the State Tax Commission, the Court determined that unpaid taxes qualify as an economic loss under the criminal restitution statute and are not an unduly speculative loss. The Court did not consider whether the Idaho Income Tax Act conflicts with the criminal restitution statute because Foeller raised this argument for the first time on appeal.

This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.