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ADVANCE SHEET HEADNOTE
May 27, 2025

2025 CO 30

No. 23SC622, *People v. Roberson* – Criminal Procedure – Restitution – C.R.S. § 18-1.3-603 – Waiver – Statutory Rights.

The supreme court holds that a defendant waived her statutory right to have a restitution amount ordered within ninety-one days of sentencing under section 18-1.3-603(1)(b), C.R.S. (2024). This is because the defendant did not object when a trial court scheduled a status conference to set the amount of restitution outside of the ninety-one-day period, requested numerous continuances thereafter, and did not attempt to assert her statutory right until nearly a year after the ninety-one-day deadline had passed. These facts are distinct from *People v. Weeks*, 2021 CO 75, 498 P.3d 142, where the court vacated a defendant's restitution order because it violated the statute and that defendant had timely asserted his right to have restitution set within ninety-one days absent a showing of good cause. Accordingly, the court concludes that the defendant's restitution order cannot be vacated.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2025 CO 30

Supreme Court Case No. 23SC622
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA1713

Petitioner:

The People of the State of Colorado,

v.

Respondent:

Jessica Jo Roberson.

Judgment Reversed

en banc

May 27, 2025

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JUSTICE HART delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT, JUSTICE HOOD, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.
JUSTICE GABRIEL, joined by **CHIEF JUSTICE MÁRQUEZ,** concurred in the judgment.

JUSTICE HART delivered the Opinion of the Court.

¶1 Jessica Jo Roberson pleaded guilty to one count of forgery and one count of theft and agreed to pay \$21,450 in restitution, with “additional restitution” to be determined. Defense counsel confirmed this agreement to the court during the providency hearing. Then at sentencing, Roberson herself told the court that she “most definitely want[ed] to repay the victims.” Twenty-eight days later, the prosecution filed a proposed order for \$62,241.28 in restitution. Roberson’s counsel objected and asked for additional time to review the numbers underlying the proposed amount. The court offered a hearing date outside the ninety-one-day statutory deadline in section 18-1.3-603(1)(b), C.R.S. (2024), to make a final determination of the restitution amount. Roberson’s counsel accepted that date.

¶2 The question we answer here is whether Roberson’s acceptance of a hearing date outside the ninety-one-day statutory deadline constituted a voluntary waiver of a statutory right. We conclude that it did.

I. Facts and Procedural History

¶3 Roberson formerly worked for a car dealership. During the time she was employed at the dealership, she apparently forged her name on four business checks and used the company credit card to make several unauthorized purchases. She pleaded guilty to felony counts of forgery and theft, misdemeanor criminal mischief, and a probation violation. At the time of sentencing, the victim had

determined the value of certain elements of these offenses but told the prosecution he needed more time to go through records to determine what other losses might be directly attributable to Roberson's conduct. The plea agreement, which was part of the sentence, therefore provided that the "parties stipulate to \$21,450.00 in restitution for the benefit of [the victim]. Additional restitution will be reserved."

¶4 Accordingly, during the sentencing hearing on June 25, 2020, the district court stated that it would "order restitution, reserving the amount, and give the People until July 24[] to file any notice," after which it would give Roberson fourteen days to file an objection. At defense counsel's request, however, the court changed Roberson's objection deadline to twenty-one days after the notice and stated: "[I]f you need an extension at that point, just file a motion[,] [a]nd we'll see where we are within the [ninety-one] days."

¶5 Twenty-eight days after sentencing, on July 23, the prosecution requested restitution in the amount of \$62,241.28. The next day, consistent with its original sentencing order but not with the colloquy at sentencing, the court ordered that Roberson had fourteen days, until August 7, to file an objection to the restitution request. On August 10, because defense counsel had not filed an objection, the court entered an order for the amount of restitution requested by the prosecution.

¶6 On August 11, however, defense counsel filed an objection and asked the court to reconsider its restitution order because she had relied on the court's

statement at sentencing that Roberson would have twenty-one days to object to the restitution amount. The court granted Roberson's motion "based on the reasons stated in the motion" and directed the parties to set the matter for a status conference.

¶7 The court held a status conference on August 13, at which defense counsel, who was new to the case, explained that she needed additional time to gather information about the plea negotiations as well as additional information from the prosecution to substantiate the claimed amount of restitution. At that conference, the court proposed a hearing date of October 2, which was outside the ninety-one-day statutory deadline for determining restitution. § 18-1.3-603(1)(b) ("subsection (1)(b)"). Defense counsel agreed to that date.

¶8 Several additional continuances were requested, most by defense counsel, and the restitution hearing was ultimately held on two days in August and September 2021. On the final day of the restitution hearing—446 days after sentencing—Roberson argued that the court lacked the authority to enter any restitution because the ninety-one-day statutory deadline had passed. The court disagreed and stated that it "[could] find, and [did] find, good cause to not have entered the order for restitution based upon the objection and the necessity of setting it for a hearing." Ultimately, the court found that the prosecution provided

sufficient evidence to establish restitution in the amount of its most recent amended request of \$59,870.93.

¶9 Roberson appealed. A week after Roberson filed her notice of appeal, we issued our opinion in *People v. Weeks*, 2021 CO 75, ¶ 5, 498 P.3d 142, 148, and held that trial courts must determine and order the amount of restitution owed within ninety-one days of sentencing, absent an express and timely finding of good cause to extend that deadline. Pursuant to *Weeks*, Roberson argued in the court of appeals that the district court lacked the authority to order restitution because it didn't make an express good-cause finding before the statutory deadline passed. The People countered that Roberson had waived this claim by accepting a hearing date outside the ninety-one-day deadline and then requesting additional extensions beyond that timeframe.

¶10 A unanimous division of the court of appeals agreed with Roberson, explaining that neither an implicit finding of good cause nor one made after the statutory deadline expires is sufficient to extend the deadline. *People v. Roberson*, 2023 COA 70, ¶ 12, 537 P.3d 825, 828. The division noted that the district court had initially entered a timely restitution order on August 10, 2020, but concluded that the court had ultimately failed to meet the deadline to enter a final order when it set a status conference for October 2 without making an express good-cause finding. *Id.* at ¶ 14, 537 P.3d at 828. The division rejected the People's argument

that Roberson had waived this claim because Roberson accepted the October 2 hearing date. According to the division, “[h]ad the legislature intended for acceptance of a date beyond the ninety-first day to have these [waiver] consequences, it would have so indicated in the plain language of the restitution statute.” *Id.* at ¶ 29, 537 P.3d at 831. The division further concluded that the People’s argument that Roberson’s several requests for continuances constituted waiver similarly lacked merit because the district court “was already without authority to order restitution” once the ninety-one-day deadline had passed. *Id.* at ¶ 30, 537 P.3d at 831. Accordingly, the division vacated the district court’s restitution order. *Id.* at ¶ 34, 537 P.3d at 831.

¶11 The People petitioned this court for certiorari review, and we granted that petition.¹

¹ We granted certiorari to review the following issues:

1. Whether a defendant invites error or waives a claim that their restitution order must be vacated due to statutory procedural violations when they agree to pay restitution in their plea agreement, object to a timely restitution request and order, and request and expressly agree to a restitution hearing set beyond the ninety-one-day statutory deadline.
2. If not waived or invited, whether an appellate court can affirm a restitution order where a violation of the restitution statute’s procedural requirements is harmless.

II. Analysis

¶12 For the reasons we explain in our opinion in *Babcock v. People*, 2025 CO ___, ¶¶ 21-26, __ P.3d __, one of the four companion cases we announce today, the ninety-one-day statutory period within which a judge should set a restitution amount is not jurisdictional and can be waived.

¶13 We review de novo whether a claim is waived. *Richardson v. People*, 2020 CO 46, ¶ 21, 481 P.3d 1, 5. When the right at issue is a statutory right, waiver “must be voluntary, but need not be knowing and intelligent.” *Finney v. People*, 2014 CO 38, ¶ 16, 325 P.3d 1044, 1050.² Waiver can be demonstrated through explicit words or actions, or it may be implied “as when a party engages in conduct that manifests an intent to relinquish a right or privilege or acts inconsistently with its assertion.” *Forgette v. People*, 2023 CO 4, ¶ 28, 524 P.3d 1, 7. Moreover, when statutory rights are at issue, the actions of counsel are relevant to our analysis, as “[c]ounsel may waive a defendant’s statutory rights.” *Finney*, ¶ 16, 325 P.3d at 1050. Waiver extinguishes error and therefore appellate review. *Rediger*, ¶ 40, 416 P.3d at 902.

¶14 Here, the right asserted is statutory: the right to have a restitution amount ordered within ninety-one days of sentencing absent an express finding of good

² This is an important distinction from waiver of a fundamental constitutional right, which we have emphasized is “the intentional relinquishment of a *known* right or privilege.” *People v. Rediger*, 2018 CO 32, ¶ 39, 416 P.3d 893, 902 (quoting *Dep’ts of Health v. Donahue*, 690 P.2d 243, 247 (Colo. 1984)).

cause to extend that deadline. § 18-1.3-603(1)(b). And the People assert that Roberson waived any claim that the restitution order against her must be vacated due to the alleged violations of the statutory deadline. Therefore, the issue before us is whether the record demonstrates a voluntary waiver of Roberson’s statutory rights. We conclude that it does.

¶15 Roberson asserts that her case is indistinguishable from *Weeks*. But it is not, and the differences are pivotal. In *Weeks*, the People did not argue before this court that a waiver had occurred, and Weeks, in fact, asserted his statutory rights before the ninety-one-day deadline had lapsed. In *Weeks*, without defense objection, the trial court granted the prosecution ninety-one days to request an amount of restitution. ¶ 11, 498 P.3d at 149. Nine days later, however, the prosecutor filed a motion asking the court to enter an “interim amount” of \$525.00 while he investigated whether there were grounds to seek more. *Id.* at ¶ 12, 498 P.3d at 149. Twenty-three days after the prosecution’s motion, well before the expiration of the ninety-one days, defense counsel objected, arguing that the issue of a restitution amount could not remain open indefinitely so the “interim amount” should be considered final. *Id.* at ¶ 13, 498 P.3d at 149. The court did not act on either the prosecution’s motion or the defendant’s objection. *Id.* at ¶¶ 12–13, 498 P.3d at 149. Eventually, at a defense-requested hearing ten months after sentencing, the defendant argued that the court no longer had the authority to order a restitution

amount because the ninety-one-day deadline in subsection (1)(b) had lapsed. *Id.* at ¶ 14, 498 P.3d at 149–50.

¶16 By contrast, here, Roberson did not object to the trial court’s suggestion that the parties hold a second status conference on October 2—*ninety-nine* days after sentencing. That second conference was set in response to Roberson’s request for more documentation regarding the amount of restitution, which had been requested twenty-eight days after sentencing. What’s more, Roberson then requested *four additional continuances* between October 2 and June 25 of the following year, despite the fact that the ninety-one days had already elapsed. Unlike in *Weeks*, at no point did Roberson argue that the amount she assented to in her plea agreement should be finalized on the ninety-first day. And it was not until 446 days after sentencing that Roberson even attempted to assert her statutory right to a restitution order within ninety-one days.

¶17 Roberson’s failure to object to a hearing outside the statutory deadline and subsequent repeated requests for continuances—all without any mention of the ninety-one-day deadline despite numerous opportunities to do so—reflects “conduct that manifests an intent to relinquish a right or privilege or acts inconsistently with its assertion.” *Forgette*, ¶ 28, 524 P.3d at 7. The division’s conclusion to the contrary was in error. Roberson’s failure to object to the October 2 hearing, when it fell outside of the ninety-one-day deadline and when

the statutory deadline had been expressly mentioned at the sentencing hearing, constituted a voluntary waiver of a statutory right.

III. Conclusion

¶18 Roberson voluntarily waived the statutory claim she presented to the court of appeals and now presents to this court. Accordingly, we reverse the division's opinion and remand the case for further proceedings, including consideration of Roberson's contentions not previously reached by the division.

JUSTICE GABRIEL, joined by **CHIEF JUSTICE MÁRQUEZ**, concurred in the judgment.

JUSTICE GABRIEL, joined by CHIEF JUSTICE MÁRQUEZ, concurring in the judgment.

¶19 For the reasons set forth in my opinion concurring in the judgment in *Babcock v. People*, 2025 CO 26, __ P.3d __ (Gabriel, J., concurring in the judgment), which is also being announced today, I continue to believe that a waiver is “the intentional relinquishment of a known right or privilege.” *People v. Rediger*, 2018 CO 32, ¶ 39, 416 P.3d 893, 902 (quoting *Dep’t of Health v. Donahue*, 690 P.2d 243, 247 (Colo. 1984)). Accordingly, for the reasons further set forth in my separate opinion in *Babcock*, ¶¶ 54–62, I cannot agree with the majority’s conclusion that Jessica Jo Roberson implicitly waived her claim of a violation of the restitution statute when she assented to a hearing on her objection to the district court’s restitution order after the restitution statute’s ninety-one-day deadline, § 18-1.3-603(1)(b), C.R.S. (2024), had expired. Maj. op. ¶¶ 12–17.

¶20 For different reasons, however, I reach the same ultimate conclusion in this case as the majority. Here, the district court entered an order determining the amount of restitution before the expiration of the statutory ninety-one-day period. Accordingly, the entry of the order complied with the statute. It was only after the court entered its timely order that Roberson objected and sought a hearing, and she then requested multiple continuances of that hearing. In these circumstances, any error by the court in reconsidering its restitution award after the expiration of the ninety-one-day deadline was arguably invited by Roberson. See *Rediger*, ¶ 34,

416 P.3d at 901 (noting that the invited error doctrine prevents parties from complaining on appeal of errors that they invited or injected into a case). Even if any such error was not invited, however, for the reasons set forth in my separate opinion in *Babcock*, ¶¶ 48–53, I believe that Roberson’s request for or assent to a hearing beyond the ninety-one-day statutory deadline established good cause under section 18-1.3-603(1)(b) for extending that deadline.

¶21 For these reasons, I perceive no error in the district court’s conducting a hearing on Roberson’s objection to the restitution award beyond the statute’s ninety-one-day deadline. Accordingly, I respectfully concur in the majority’s judgment.