

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES VANCE WILLIAMS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 43122 **FILED**

JUL 23 2004

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Rubak*  
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, VACATING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of three counts of possession of stolen property. Second Judicial District Court, Washoe County; James W. Hardesty, Judge. The district court sentenced appellant James Vance Williams to serve three consecutive prison terms of 24 to 60 months and ordered him to pay \$375.00 in restitution.

Williams first contends that the district court abused its discretion because the sentence imposed is too harsh given the fact that he has taken significant steps to address his drug addiction and acknowledged that he broke the law. Additionally, William contends that the district court erred at sentencing by failing to explain, on the record, its justification for the harsh sentence. Citing to the dissent in Tanksley v. State,<sup>1</sup> Williams asks this court to review the sentence to see that justice was done. We conclude that Williams's contention is without merit.

This court has consistently afforded the district court wide discretion in its sentencing decision and will refrain from interfering with

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<sup>1</sup>113 Nev. 844, 852, 944 P.2d 240, 245 (1997) (Rose, J., dissenting).

the sentence imposed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.”<sup>2</sup> Regardless of its severity, a sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate to the crime as to shock the conscience.<sup>3</sup>

In the instant case, Williams does not allege that the district court relied on impalpable or highly suspect evidence or that the sentencing statutes are unconstitutional. Further, we note that the sentence imposed was within the parameters provided by the relevant statutes.<sup>4</sup> Moreover, we do not presume that a district court abused its sentencing discretion merely because it failed to explain, on the record, its justification for imposing a particular sentence.<sup>5</sup> Finally, the sentence imposed is not so unreasonably disproportionate to the crime as to shock the conscience. Accordingly, we conclude that the district court did not abuse its discretion at sentencing.

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<sup>2</sup>Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976); Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987).

<sup>3</sup>Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

<sup>4</sup>See NRS 205.275(2)(b); NRS 193.130(2)(c) (providing for a prison sentence of 1 to 5 years).

<sup>5</sup>See generally Jones v. State, 107 Nev. 632, 636, 817 P.2d 1179, 1181 (1991) (stating that “trial judges are presumed to know the law and to apply it in making their decisions”).

Williams next contends that the district court erred in ordering restitution for uncharged crimes for which Williams did not agree to pay restitution. The State concedes that "the record does not clearly indicate the basis for the district court's order regarding restitution" and asks this court to vacate the restitution award. We agree with both parties and conclude that the district court erred.

"[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution."<sup>6</sup> In this case, it appears that the district court may have imposed restitution for uncharged offenses for which Williams did not agree to pay restitution.<sup>7</sup> Because there was no agreement to pay restitution for uncharged offenses, Williams is only required to pay restitution for the offenses for which he has admitted, namely, the losses sustained from pawning one set of stolen Callaway golf clubs at Palace Jewelry and Loan and losses sustained from pawning two K2 snowboards and one Lamar snowboard at Metropawn.<sup>8</sup> Therefore, we conclude that the restitution award must be vacated and the case remanded to the district court for a new sentencing hearing in order

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<sup>6</sup>Erickson v. State, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991); see also NRS 176.033(1)(c) ("If a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense.").

<sup>7</sup>The issue of restitution was not addressed in the plea agreement or at the plea canvass.


<sup>8</sup>Williams alleges that the stolen property has been returned to the victims.

to determine the proper amount of restitution owed to the victims. Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.<sup>9</sup>

  
\_\_\_\_\_, J.  
Becker

  
\_\_\_\_\_, J.  
Agosti

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. James W. Hardesty, District Judge  
Washoe County Public Defender  
James Vance Williams  
Attorney General Brian Sandoval/Carson City  
Washoe County District Attorney Richard A. Gammick  
Washoe District Court Clerk

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<sup>9</sup>Because Williams is represented by counsel in this matter, we decline to grant appellant permission to file documents in proper person in this court. See NRAP 46(b). Accordingly, the clerk of this court shall return to Williams unfiled all proper person documents that he has submitted to this court in this matter.