

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD J. JOHNSON A/K/A
EDWARD JAMES JOHNSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 43703

FILED

JAN 10 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count each of home invasion and coercion. Eighth Judicial District Court, Clark County; Jackie Glass, Judge. The district court sentenced appellant Edward J. Johnson to serve consecutive prison terms of 24-120 months and 12-48 months and ordered him to pay \$5,500.00 in restitution.

First, Johnson contends that his guilty plea was not entered knowingly and voluntarily. More specifically, Johnson claims that he did not understand the nature of the charged offense of home invasion, and that it was "statutorily impossible" for him to have committed the offense because he was a legal resident of the apartment in question.

This court has held that, generally, challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34.¹ Because Johnson has

¹Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 319, 775 P.2d 219, 220 (1989), modified in part on other grounds by City of Las Vegas v. Dist. Ct., 118 Nev. 859, 59 P.3d 477 (2002).

not challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of conviction, and therefore, we will not address it.²

Second, Johnson contends that the district court abused its discretion and “exceeded its authority” in its determination of the restitution award. Johnson claims that “nowhere in any report prepared by law enforcement officials does it state that Appellant caused any damage to or loss of Complainant’s property aside from the slightly damaged threshold [sic].” We disagree with Johnson’s contention.

“[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.”³ A district court retains the discretion “to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”⁴ A district court, however, must rely on reliable and accurate information in calculating a restitution award.⁵ Absent an abuse of discretion, “this court generally will not disturb a district court’s sentencing determination so long as it does not rest upon palpable or

²Bryant, 102 Nev. at 272, 721 P.2d at 368.

³Erickson 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.”).

⁴Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

⁵Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

highly suspect evidence.”⁶ Furthermore, “a defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge.”⁷

In the instant case, Johnson never requested a hearing to determine the amount of restitution, and he failed to object to the district court’s imposition of restitution during the sentencing hearing. Therefore, Johnson has waived this issue for appellate review.⁸ Nevertheless, our review of the record on appeal reveals that the district court did not abuse its discretion in its determination of the restitution award. The district court set the amount of restitution based on the presentence investigation report and recommendation of the Division of Parole and Probation. Additionally, we note that Johnson was adequately advised and received sufficient notice of the restitution obligation by virtue of the fact that the written guilty plea agreement, signed by Johnson, explicitly informed him that, if appropriate, he would be ordered to pay restitution.⁹ Further, Johnson has failed to demonstrate that the district court relied on impalpable or highly suspect evidence in setting the award.

⁶Id. at 12-13, 974 P.2d at 135.


⁷Id. at 13, 974 P.2d at 135.


⁸See id. at 12, 974 P.2d at 135; Williams v. State, 103 Nev. 227, 232, 737 P.2d 508, 511 (1987).


⁹See Lee v. State, 115 Nev. 207, 985 P.2d 164 (1999).

Accordingly, having considered Johnson's contentions and concluded that they are either not appropriate for review on direct appeal, waived, or without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Jackie Glass, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk