

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES WILLIAM KELLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44121

FILED

FEB 03 2005

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

ORDER AFFIRMING IN PART AND VACATING JUDGMENT IN PART
AND REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of conspiracy to commit embezzlement. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant to a jail term of 12 months. The district court suspended the sentence, placing appellant on probation for a period not to exceed 3 years, and ordered appellant to pay restitution in the amount of \$5,555.00.

Appellant's sole contention is that the district court erred by ordering restitution. Specifically, appellant argues that the Contractor's Board has already reimbursed the victim, and the Contractor's Board is an insurer. On December 29, 2004, the State filed a confession of error.

We conclude that the judgment of conviction is unclear as to whether restitution is to be paid to the Contractor's Board or the victim, and also whether the restitution is part of the sentence pursuant to NRS 176.033(1)(c), or whether it is a condition of probation pursuant to NRS 176A.430(1). We therefore conclude that the restitution order should be vacated so that the district court can clarify the judgment of conviction.

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.

Becker, C.J.
Becker

Rose, J.
Rose

Hardesty, J.
Hardesty

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk