

IN THE SUPREME COURT OF THE STATE OF NEVADA

BONNIE HUIZAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 44260 **FILED**

JUL 05 2005

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

ORDER AFFIRMING IN PART, REVERSING IN PART, AND
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted embezzlement. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Bonnie Huizar to serve a prison term of 12 to 32 months and ordered her to pay \$27,336.19 in restitution.

Huizar's sole contention is that the district court abused its discretion in ordering restitution in an amount over \$6,800.00, the amount to which she stipulated to pay in pleading guilty. Huizar contends that the restitution order of \$27,336.19 is suspect given the victim's poor accounting methods, as well as the fact that several people had access to the money at issue.

"[A] defendant may be ordered to pay restitution only for an offense that [s]he has admitted, upon which [s]he has been found guilty, or upon which [s]he has agreed to pay restitution."¹ This rule "avoids the

¹Erickson 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.").


manifest injustice of punishing defendants for charges to which they have neither admitted guilt nor been adjudicated guilty."²


In this case, Huizar pleaded guilty to attempting to embezzle money from a casino during the time period from July 1, 2003, to May 12, 2004. Huizar continually maintained that she attempted to embezzle only \$5,000.00 and, in the plea agreement, agreed to "make full restitution in this matter in an approximate amount of \$6800.00, as determined by the court." At the sentencing hearing, the State noted that it was aware that the casino claimed that more than \$100,000.00 was stolen, but explained that it agreed to \$6,800.00 in restitution because it did not believe that the casino could prove that Huizar was responsible for all the variances since three employees worked in the soft count room where the money was stolen. Moreover, according to the representative from the Division of Parole and Probation, who calculated the \$27,336.19 award based on information submitted by the casino controller, there were variances reported by the casino for shifts that Huizar did not work, and there was conflicting information received from the Gaming Control Board on the adequacy of the casino's controls. Under these circumstances, it is unclear from the record on appeal whether the district court ordered restitution for losses that could not be attributed to Huizar. Accordingly, we vacate the restitution order in the judgment of conviction and remand this case to the district court for a hearing on the proper amount of restitution.

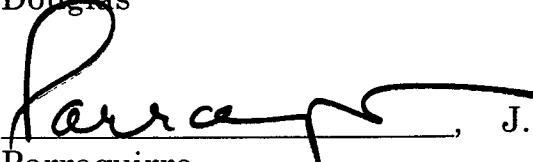
Having considered Huizar's contention and concluded that a hearing on the issue of restitution is necessary, we

²Erickson, 107 Nev. at 866, 821 P.2d at 1043.

ORDER the judgment of conviction AFFIRMED IN PART,
VACATED IN PART AND REMAND this matter to the district court for
proceedings consistent with this order.


_____, J.
Maupin


_____, J.
Douglas


_____, J.
Parraguirre

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