

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFREY CLACK,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45068

**FILED**

OCT 21 2005

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of battery with substantial bodily harm. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge. The district court sentenced appellant Jeffrey Clack to a prison term of 24-60 months, suspended execution of the sentence, and placed him on a term of probation for five years. The district court also ordered Clack to pay restitution in the amount of \$47,961.00 and \$8,800.00.

Clack's sole contention is that the district court's restitution award "was not supported by evidence, did not direct to whom it was payable, did not cite authority for ordering restitution, and was inappropriately ordered to reimburse an insurance company." We disagree with Clack'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."<sup>1</sup> NRS 176A.430(1)

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<sup>1</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.").

authorizes restitution as a condition of probation “in appropriate circumstances.”<sup>2</sup> This court has held that the district court has broad discretionary powers, which are liberally construed, to impose restitution as a condition of probation.<sup>3</sup> 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.”<sup>4</sup> A district court, however, must rely on reliable and accurate information in calculating a restitution award.<sup>5</sup> A defendant’s obligation to pay restitution to the victim may not be reduced because the victim is reimbursed by another entity, such as an insurance carrier.<sup>6</sup> 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 impalpable or highly suspect evidence.”<sup>7</sup>

In this case, at the sentencing hearing, Clack never challenged the amount of restitution awarded, and therefore, failed to preserve this issue for review on appeal. Nevertheless, our review of the record on appeal reveals that Clack has failed to demonstrate that the district court

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<sup>2</sup>NRS 176A.400(1)(a) states that “[i]n issuing an order granting probation, the court may fix the terms and conditions thereof, including, without limitation . . . [a] requirement for restitution.”

<sup>3</sup>See Igbinovia v. State, 111 Nev. 699, 710, 895 P.2d 1304, 1311 (1995); Korby v. State, 93 Nev. 326, 565 P.2d 1006 (1977).

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

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

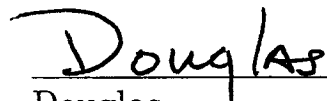
<sup>6</sup>See id. at 12, 974 P.2d at 135.


<sup>7</sup>Id. at 12-13, 974 P.2d at 135.

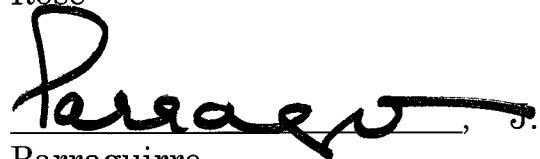
relied on impalpable or highly suspect evidence in determining the amount of restitution. Further, the district court clearly and expressly intended the award of restitution to be paid directly to the statutory victim and not to any third party. Accordingly, we conclude that the district court did not err in its sentencing determination.

Having considered Clack's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.

  
\_\_\_\_\_, J.  
Douglas

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Parraguirre

cc: Hon. Donald M. Mosley, District Judge  
Goodman & Chesnoff  
Attorney General Brian Sandoval/Carson City  
Clark County District Attorney David J. Roger  
Clark County Clerk