

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW WAYNE KUEHNIS,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 45219

**FILED**

JUL 28 2005

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richard*  
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 one count of attempted embezzlement. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant to a prison term of 12 to 32 months, and ordered appellant to pay restitution in the amount of \$9,625.05. The district court suspended the sentence and placed appellant on probation for a period not to exceed 36 months.

Appellant's sole contention on appeal is that a portion of the award of restitution is not adequately supported by the record. On July 5, 2005, the State filed a confession of error.

Restitution under NRS 176.033(1)(c) is a sentencing determination.<sup>1</sup> On appeal, 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>2</sup> Although the district court is allowed to consider a wide variety of information in matters of sentencing,

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<sup>1</sup>See Martinez v. State, 115 Nev. 9, 974 P.2d 133 (1999).

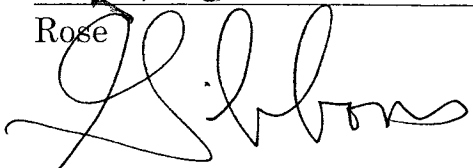
<sup>2</sup>See Lloyd v. State, 94 Nev. 167, 576 P.2d 740 (1978).


an award of restitution must be based on reliable and accurate information.<sup>3</sup>

In the instant case, appellant agreed to pay restitution in the amount of \$6,423.35, which was based on the loss suffered by the victim. At sentencing, a letter from the victim was presented that requested additional restitution in the amount of \$3,152.70 for "incidental expenses." Apart from the letter, there was no evidence presented to support the additional amount, and we conclude that it is not adequately supported by the record. We therefore vacate the order of restitution and direct the district court to determine the proper amount of restitution in accordance with the foregoing. 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.

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

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

  
\_\_\_\_\_, J.  
Hardesty

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<sup>3</sup>See Martinez, 115 Nev. at 13, 974 P.2d at 135.

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