

IN THE SUPREME COURT OF THE STATE OF NEVADA

SAMINA JACKSON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46108

FILED

JUL 05 2006

ORDER OF REVERSAL AND REMAND

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

This is a proper person appeal from an order of the district court denying appellant Samina Jackson's proper person motion to correct an illegal sentence. Eighth Judicial District Court, Clark County; Joseph T. Bonaventure, Judge.

On May 19, 2003, the district court convicted Jackson, pursuant to a guilty plea, of attempted battery with substantial bodily harm. The district court sentenced Jackson to serve a term of one year in the Clark County Detention Center, suspended the sentence, placed her on probation for a period of time not to exceed three years, and ordered her to pay restitution in the amount of \$16,667.12. As a condition of probation, the district court ordered Jackson to sign a civil confession of judgment, agreeing to pay restitution. Thereafter, on June 5, 2003, a confession of judgment was filed in the district court. This document referred to the University Medical Center (UMC) as the "victim in this matter" and authorized the entry of a civil judgment against Jackson in favor of UMC in the amount of \$16,667.12.¹

¹The actual victim of the crime received treatment at UMC for injuries inflicted by Jackson.

On January 27, 2005, with the assistance of counsel, Jackson filed "a motion to modify sentence relating to restitution only." The motion represented that Jackson had paid \$3,000 in restitution to UMC "for medical bills of the victim" and that the medical expenses of the victim incurred at UMC had been "paid in full" by the victim's insurance company. Thus, the motion requested the district court to amend Jackson's condition of probation directing her to pay restitution to UMC.

The State opposed the motion, arguing in part that "the Defendant is to pay the victim, and if the victim's bills were covered by insurance, the victim is contractually obligated to reimburse the insurance company for payments made. To hold otherwise, would be a reward to the Defendant for having picked a victim who happened to be insured." Although the record is not entirely clear on the point, it appears that the State may have been under the misapprehension that Jackson had been ordered to pay restitution to the actual victim, rather than to UMC.

The district court heard arguments on February 7, 2005, and entered a written order denying the motion on February 14, 2005.² Although the district court had suggested that Jackson appeal the ruling to "get a clarification" from this court respecting the law of restitution in this State, Jackson did not file an appeal .

On August 29, 2005, however, Jackson filed a proper person motion to correct an illegal sentence, again arguing that the district court should amend the condition of probation requiring her to pay restitution to UMC. The State opposed the motion, again arguing that "the Defendant

²The district court entered a second written order denying the motion on June 20, 2005.

was correctly ordered to pay [restitution] to the victim."³ On September 27, 2005, the district court denied the motion on the ground that Jackson had presented no new arguments. This appeal followed.

A motion to correct an illegal sentence may only challenge the facial legality of the sentence.⁴ "A motion to correct an illegal sentence 'presupposes a valid conviction and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to the imposition of sentence.'"⁵ In support of her motion, Jackson argued below that: (1) the restitution was illegal under this court's holding in Martinez v. State,⁶ and (2) the district court had the power to modify an illegal sentence at any time. As discussed below, we conclude that Jackson's reliance on Martinez is misplaced; however, we further conclude that, technically, the restitution ordered in this case does not facially comply with the requirements of NRS 176A.430.

In Martinez, we observed that technically, "medical care providers who treat crime victims are not victims of crime as defined in NRS 176.015(5)(b)."⁷ Nonetheless, we went on to conclude that "crime victims' unpaid medical bills are debts of the victim" and the "district

³As noted, the State may have been under the incorrect impression that Jackson was paying restitution to the actual victim who was injured by Jackson, rather than to UMC, where the actual victim received medical treatment for those injuries.

⁴Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

⁵Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985)).

⁶See Martinez v. State, 115 Nev. 9, 974 P.2d 133 (1999).

⁷Id. at 11, 974 P.2d at 134.

court could properly order [Martinez] to pay as restitution [under NRS 176.033] the victims' medical bills that directly resulted from [Martinez] criminal conduct." Thus, even if the district court had imposed restitution in this case under the statutory restitution provisions of NRS 176.033, which as discussed below it clearly did not, the court could have properly ordered Jackson to pay to UMC the medical bills of the actual victim.

In the instant case, however, the district court did not order Jackson to pay statutory restitution under NRS 176.033; rather, the court ordered Jackson to pay restitution as a condition of probation under NRS 176A.430. In Igbinovia v. State, this court distinguished between statutory restitution under NRS 176.033 and restitution ordered as a condition of probation.⁸ Specifically, Igbinovia held that a district court enjoys wide discretion to impose probation conditions, and as such, the court has the discretion under NRS 176A.430(1) to order restitution to be paid as a condition of probation to any person named in an order of the district court, including to the victim, a medical provider, or an insurance company.⁹ As NRS 176A.430(1) provides:

The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable. Such an order may require payment for medical or psychological treatment of any person whom the defendant has injured.

⁸111 Nev. 699, 707, 895 P.2d 1304, 1309 (1995).

⁹Id.

(Emphasis added.) Therefore, it was well within the discretion of the district court under NRS 176A.430 and our holding in Igbinovia to order Jackson to pay restitution to UMC as a condition of probation.

We further note, however, that the confession of judgment filed by Jackson is the only document in the record indicating that it was initially the intention of the district court at sentencing to order Jackson to pay restitution to UMC. The judgment of conviction simply directs Jackson to file a civil confession of judgment and to pay restitution in the specified amount; it does not expressly designate a specific recipient of the restitution or state terms relating to its payment. Thus, because the district court did not designate a specific recipient, the restitution order does not comply with that portion of NRS 176A.430(1) requiring the district court to order restitution "to the person or persons named in the order, at the times and in the amounts specified in the order." Therefore, we conclude that technically the restitution order in this case does not facially comply with the statutory requirements.

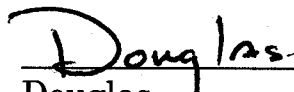
Under the circumstances of this case, we are of the view that the district court's order must be reversed and this matter remanded for further proceedings to correct this technical deficiency. Additionally, because the record reflects confusion below respecting the restitution in this case, and because the district court suggested that clarification from this court was warranted, we have set forth the following considerations for the guidance of the parties and the district court in the proceedings on remand.

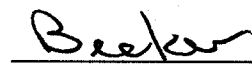
On remand, the district court must enter a written order specifically naming the recipient of the remaining restitution to be paid by Jackson in compliance with the requirements of NRS 176A.430. In so

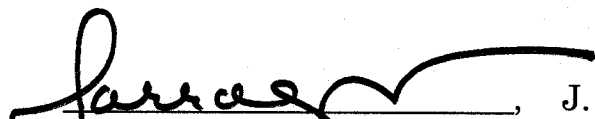
doing, we note that under our holding in Igbinovia and NRS 176A.450, it is within the discretion of the district court to modify the condition of probation to provide for a different recipient of the restitution other than UMC.¹⁰ Notably, the record before us reflects that it was uncontested below that UMC had been paid in full by the actual victim's insurer. Thus, on remand, it is not only within the discretion of the district court to modify the condition of probation respecting the payment of restitution to UMC, but under NRS 176A.430, NRS 176A.450, and our holding in Igbinovia, it is also within the discretion of the district court to order the restitution to be paid to any person or persons named by the district court in a written order specifically detailing the terms and the recipient of the restitution.

Accordingly, based on the foregoing, we hereby

REVERSE AND REMAND this matter to the district court for further proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

¹⁰Under NRS 176A.450, the district court "by order duly entered, . . . may impose, and may at any time modify, any conditions of probation or suspension of sentence."

cc: Hon. Joseph T. Bonaventure, District Judge
Samina Jackson
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk