

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEAN LYNN HART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 46488

FILED

MAY 10 2006

ORDER OF REVERSAL AND REMAND

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

This is an appeal from a judgment of conviction, entered pursuant to a plea of no contest, of one count of conspiracy to commit battery with a deadly weapon. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Dean Lynn Hart to serve a nine-month jail term and pay restitution in the amount of \$70,000.

First, Hart contends that the district court erred by ordering him to pay restitution to a victim whom he did not admit to harming. We disagree. Hart entered a plea of no contest to a charge that he conspired to commit battery with a deadly weapon upon the person of Roderick Dalhaus. At sentencing, the district court ordered Hart "to pay restitution in the amount of \$70,000 to Mr. Dalhaus." We conclude that Hart was ordered to pay restitution only to the victim of the crime to which he pleaded no contest.¹

¹Erickson v. State, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991) ("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"); see also NRS 176.033(1)(c) ("If a sentence of imprisonment is required or permitted by statute, the court shall . . . [i]f

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Second, Hart contends that the district court erred by ordering a restitution award of \$70,000 without establishing a sufficient basis for the award. We agree.

During sentencing, the State informed the district court that Dalhaus had filed a claim with Victims of Crime, that Victims of Crime had not yet compiled all of the bills to determine a final figure, and that Dalhaus claimed \$70,000 in medical bills -- an amount which did not include the expenses he incurred taking care of his family while he was out of work. Hart challenged Dalhaus's figure and noted the lack of adequate or accurate documentation. The district court continued sentencing to allow the State an opportunity to gather information to support its claim of \$70,000.

When sentencing resumed, the State conceded that it was unable to produce either Dalhaus or reliable documentation. The Division of Parole and Probation did provide a copy of Dalhaus's victim impact statement, in which he stated

Cuts on left hand occurred from knife attack. Complete loss of use of left thumb, minimum use of left ring finger, nerve damage to finger, has no feeling. Doctor bills total approximately 70,000. Have all doc bills. I lost my job, out of work 12 weeks loss at a thousand dollars a week, basically had to sell almost everything I had to take care of my family, car and tools.

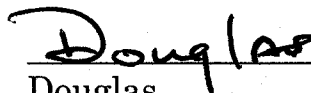
... continued


restitution is appropriate, set an amount of restitution for each victim of the offense").


(Emphasis added.) The statement went on to say that Dalhaus sold a 2001 Geo Tracker that he paid \$8,000 for to someone for \$4,500. The district court observed that "it's appropriate that we have these types of letters from victims of crime, and it's a typical way we receive such information," and it ordered Hart to pay restitution in the amount of \$70,000.

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."² A district court, however, must rely on reliable and accurate information in calculating a restitution award.³ We conclude that the victim's impact statement with nothing more is not a reasonable basis for calculating a restitution award. Accordingly, we

ORDER the judgment of the district court REVERSED and REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Douglas


_____, J.
Becker


_____, J.
Parraguirre

²Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

³Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General George Chanos/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk