


IN THE SUPREME COURT OF THE STATE OF NEVADA

GUY ANTHONY JOHNSTONE,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 46965

**FILED**

**JUL 13 2006**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY   
CHIEF 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 gross misdemeanor unlawful taking of a motor vehicle. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Guy Anthony Johnstone to serve a jail term of 12 months and ordered him to pay \$3,000.00 in restitution.

Johnstone's sole contention on appeal is that the district court erred by ordering restitution without first holding a hearing. The State concedes error, noting that it "is not averse to remanding the case to the district court for a restitution hearing." We agree.

A defendant may be ordered to pay restitution only for losses arising from 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> Although the district court has discretion in imposing restitution, the determination

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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.").

should be based on reliable and accurate evidence.<sup>2</sup> While a full restitution hearing is not required, a criminal defendant "is entitled to challenge restitution sought by the [S]tate and may obtain and present evidence to support that challenge."<sup>3</sup>

Our review of the transcript of the sentencing hearing indicates that both Johnstone and defense counsel questioned the calculation from the Division of Parole and Probation that \$3,000.00 in restitution was appropriate. Specifically, at the sentencing hearing, Johnstone stated, "I don't know where the \$3,000.00 is coming from" because the victim got the car back. Defense counsel stated, "I believe the 3,000 was the owner indicated that he had to go buy another car during the interim." After the district court imposed sentence, defense counsel objected to the amount of restitution, explaining that it was not supported by competent evidence. The district court noted the objection, but did not conduct further proceedings.

We conclude that insufficient evidence supports the order of restitution. Therefore, we vacate the restitution award and remand this case to the district court to take evidence at a new sentencing hearing on the issue of restitution owed to the victim.<sup>4</sup> Accordingly, we

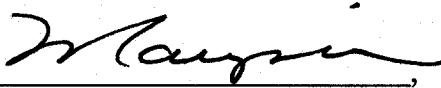
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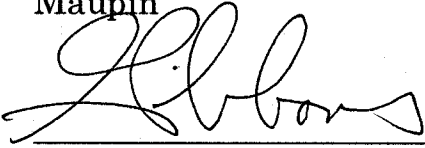
<sup>2</sup>See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

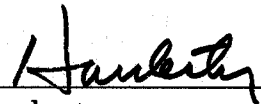
<sup>3</sup>Id.

<sup>4</sup>Johnstone requests that we remand the case to a different district court judge. Johnstone has not provided this court with any compelling reason in support of his argument; accordingly, this case is remanded to the same district court judge. Cf. Santobello v. New York, 404 U.S. 257 (1971).

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

  
\_\_\_\_\_, J.  
Maupin

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

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

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