

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES NEWMAN A/K/A MATTHEW
JAMES SCHUM,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47916

FILED

DEC 06 2006

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Shuck*
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 each of burglary and forgery. Eighth Judicial District Court, Clark County; Valerie Adair, Judge. The district court sentenced appellant to serve concurrent prison terms of 17-60 months and 12-32 months and ordered him to pay \$9,200.00 in restitution.

Appellant contends that the district court erred in its determination of the restitution award. “[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.”¹ A district court retains the discretion “to consider a wide, largely unlimited

¹Erickson 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.”).

variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”² A district court, however, must base the restitution award on reliable and accurate information.³ 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.”⁴

In the instant case, the district court based its restitution award on the victim’s statement at the sentencing hearing that, without his consent, \$11,000.00 was withdrawn from his checking account and credited to an online PayPal account. The victim stated that he recovered \$1,800.00 of the total amount. Appellant objected to the restitution award. As defense counsel pointed out, “none of those charges were ever alleged against” appellant. Moreover, it is not clear from the record that the guilty plea contemplated an agreement by appellant to pay restitution for this specific monetary loss. Therefore, we conclude that the restitution award must be vacated and the case remanded to the district court for a new sentencing hearing in order to determine whether the Paypal transactions fall within the scope of the agreement to pay restitution, and the proper amount of restitution if appropriate.

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

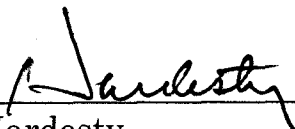
³See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).


⁴Id. at 12-13, 974 P.2d at 135.

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.⁵


_____, J.
Becker


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General George Chanos/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

⁵Appellant also contends that the State breached the plea agreement by failing to join him in his objection to the amount of restitution. However, the written plea agreement states, among other things, that regarding restitution, the "State agrees to not prosecute for any other checks written prior to 6/1/06 but def. agrees to pay restitution for them." Therefore, appellant's contention is belied by the record. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).