

IN THE SUPREME COURT OF THE STATE OF NEVADA

JEFFERY ANTHONY BERTHOT,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 47925

FILED

JAN 10 2007

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

ORDER AFFIRMING IN PART, VACATING IN PART AND
REMANDING

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea, of one count of grand larceny. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge. The district court sentenced appellant Jeffery Anthony Berthot to serve a prison term of 18 to 48 months and ordered him to pay \$245.38 in restitution.

First, Berthot contends that there was insufficient evidence to support his conviction for grand larceny. He specifically claims that there was no evidence that the property he took was worth \$250 or more. However, Berthot relieved the State of its burden to prove each element of the offense beyond a reasonable doubt when he pleaded guilty.¹

¹See generally Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

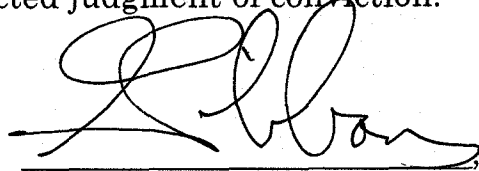
Second, Berthot contends that the State breached the plea agreement by arguing for a higher sentence. The parties' written plea agreement contained a clause which provided that the State was free to argue for an appropriate sentence if Berthot failed to appear at any scheduled proceeding. Accordingly, the State did not breach the plea agreement when it argued for a higher sentence after Berthot failed to appear at a sentencing hearing.²

Third, Berthot contends that the district court erred when it applied the restitution award from another case to this case. Our review of the record reveals that the district court tacked the restitution award from a misdemeanor case onto this felony case so that the Division of Parole and Probation would have the authority to collect the restitution from Berthot upon his parole. There is no authority supporting the district court's decision to apply the restitution award from one case to the sentence imposed in a second case.³ Therefore, we vacate the restitution award, and we

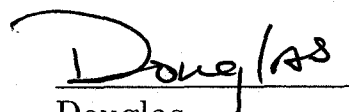
²See Sparks v. State, 121 Nev. 107, 110 P.3d 486 (2005) (a failure to appear clause in a plea agreement is lawful and enforceable).

³See NRS 176.033(1)(c); Erickson 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").

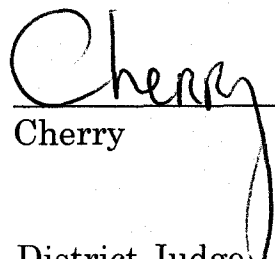
ORDER the judgment of conviction AFFIRMED IN PART
AND VACATED IN PART AND REMAND this matter to the district court
with instructions to enter a corrected judgment of conviction.



Gibbons J.



Douglas J.



Cherry J.

cc: Hon. Connie J. Steinheimer, District Judge
Michael V. Roth
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk