

IN THE SUPREME COURT OF THE STATE OF NEVADA

JESSE MICHAEL TODD, II,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 48922

FILED

JUN 08 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
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 possession of stolen property. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Jesse Michael Todd to serve a prison term of 12-36 months and ordered him to pay \$5,920.40 in restitution.

Todd contends that the district court erred in its determination of the restitution award. Specifically, Todd argues that the \$4,000.00 awarded to the victim for alleged labor costs was not supported by the record. Todd claims that the restitution award should be reduced to \$1,920.40, the replacement cost for the damaged, stolen property. We agree.

In the presentence investigation report prepared by the Division of Parole and Probation, the victim-business, Covalence Plastics, provided information indicating that the cost of the stolen materials amounted to \$1,920.40. The victim also requested reimbursement for two days of additional labor costs due to the theft. At the sentencing hearing, defense counsel objected to the \$4,000.00 requested by the victim for labor costs. The State, as well, asked the district court to impose restitution only for the cost of the stolen materials. The Division's representative

stated that “[t]he Division’s position is we only charge for the material that was lost,” and similarly, asked the district court to impose restitution only for the cost of the stolen materials. No representative from the victim-business was present at the sentencing hearing.

We conclude that the district court erred in its determination of the restitution award.¹ A district court must base the restitution award on reliable and accurate information.² In this case, the victim-business did not provide the Division with any documentation whatsoever demonstrating how it calculated its alleged lost labor costs. And as noted above, the victim-business was not present at the sentencing hearing. As a result, both the prosecutor and the Division’s representative stated only that a restitution award equal to the cost of the lost materials was appropriate. Therefore, we conclude that \$4,000.00 of the restitution award must be vacated and the case remanded to the district court for a new sentencing hearing in order to determine the amount of restitution for the victim’s lost labor costs, if any.³

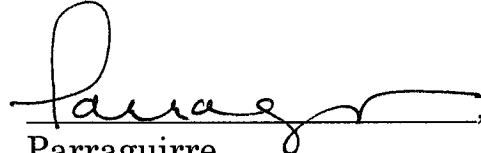
Accordingly, we

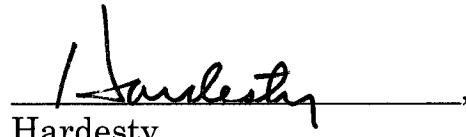
¹See NRS 176.033(1)(c) (“[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense”).

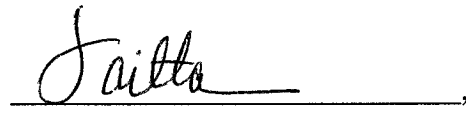
²See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

³See id. at 12-13, 974 P.2d at 135 (“this court generally will not disturb a district court’s sentencing determination so long as it does not rest upon palpable or highly suspect evidence”).

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.


Parraguirre, J.


Hardesty, J.


Saitta, J.

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