

IN THE SUPREME COURT OF THE STATE OF NEVADA

ISOM DAY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49081

**FILED**

**JUN 22 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, entered pursuant to a guilty plea, of one count of battery constituting domestic violence with substantial bodily harm. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge. The district court sentenced appellant Isom Day to serve a prison term of 12 to 30 months and ordered him to pay restitution in the amount of \$3,304.29.

First, Day contends that the district court abused its discretion by ordering restitution that was not agreed to in the guilty plea agreement or alluded to in the proceedings prior to sentencing. "[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."<sup>1</sup> Here, Day admitted that he was guilty of battery constituting domestic violence with substantial bodily harm, and, in the written guilty plea agreement, he agreed to pay restitution. Accordingly, we conclude that this contention is without merit.

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

Second, Day contends that the district court abused its discretion by ordering restitution that was not supported by sufficient evidence. Day specifically notes that there is no evidence that the "\$3,304.29 is truly an unpaid medical debt of the victim." 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."<sup>2</sup> A district court, however, must rely on reliable and accurate information in calculating a restitution award.<sup>3</sup> Here, the district court based its restitution award solely on the Division of Parole and Probation's unsupported presentence investigation report, which claimed that "[t]wo of the victim's receipts for prescription medications were located in the amount of \$59.98" and "[t]he University Medical Center . . . was contacted and they reported a financial loss of \$3,244.31 in medical services to the victim." We conclude that the presentence investigation report with nothing more is not a reasonable basis for calculating a restitution award and therefore the restitution award must be vacated.

Third, Day contends that the district court's "order to pay restitution in the judgment of conviction is vague and unenforceable because it does not specify to whom the restitution is to be paid." The district court is required to "set an amount of restitution for each victim of the offense."<sup>4</sup> Here, as Day notes, the restitution figure provided by the Division of Parole and Probation comprises two parts: the amount

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

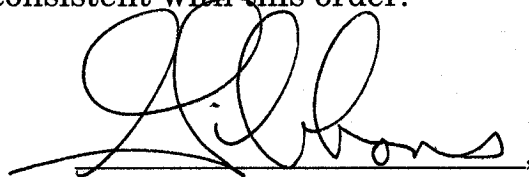
<sup>3</sup>Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

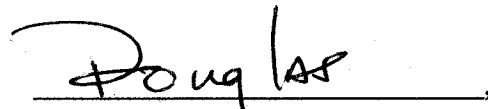
<sup>4</sup>NRS 176.033(1)(c).


indicated by the victim's prescription medicine receipts and the amount the University Medical Center alleged that it had lost treating the victim. We have previously held that a district court can properly order a defendant to pay restitution to a victim's medical care providers for treatment resulting from the defendant's conduct.<sup>5</sup> Under these circumstances, we conclude that the district court failed to identify with particularity the individuals or entities to receive restitution.

Having considered Day's contentions and concluded that the district court's basis for calculating the restitution award was not reasonable and that the judgment of conviction did not adequately identify who was to receive restitution, we

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.

  
Gibbons, J.

  
Douglas, J.

  
Cherry, J.

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<sup>5</sup>Martinez, 115 Nev. at 11, 974 P.2d at 134.

cc: Hon. Stewart L. Bell, District Judge  
Clark County Public Defender Philip J. Kohn  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk