

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHANIE L. MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 49267

FILED

JUL 18 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *JMB*
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 five counts of willfully endangering a child as the result of child neglect. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge. The district court sentenced appellant Stephanie L. Miller to five concurrent jail terms of 12 months, suspended execution of the sentence, and placed her on probation for an indeterminate period not to exceed 3 years. The district court ordered Miller to pay \$89,761.00 in restitution jointly and severally with her codefendant-husband.

Miller contends that the district court abused its discretion in its determination of the restitution award. Specifically, Miller argues that the amount awarded to the victim-business, Kids Kottage, for costs associated with caring for the five child-victims, was based on suspect evidence and "did not address any offsets or federal subsidized funding that might have come into play." Miller claims that the restitution award should be vacated and the matter remanded to the district court for a new sentencing hearing. We agree.

In the presentence investigation report prepared by the Division of Parole and Probation, Kids Kottage provided information indicating that the cost of caring for Miller's five children was \$132 per

day, with the total cost amounting to \$89,761.00. At the sentencing hearing, no representative from Kids Kottage was present, and no other documentation was provided to the court pertaining to its restitution request. Defense counsel questioned the amount requested by Kids Kottage, and asked for a continuance in order “to establish where they get those numbers from and actually come to that tally.” The district court followed the recommendation of the Division, placed Miller on probation, and ordered her to pay \$89,761.00 in restitution jointly and severally with her husband.

We conclude that the district court abused its discretion 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, as noted above, no representative from Kids Kottage was present at the sentencing hearing, and the Division’s representative did not address Miller’s legitimate concerns about the restitution calculation. As a result, the State failed to provide a sufficient factual basis supporting the restitution award. Therefore, we conclude that the restitution award must be vacated and the case remanded to the district court for a new

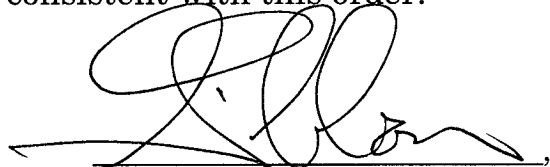
¹See NRS 176.033(1)(c) (“[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense”).

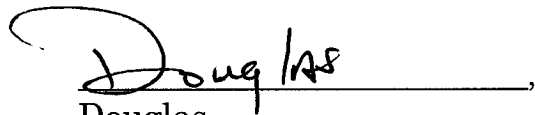
²See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

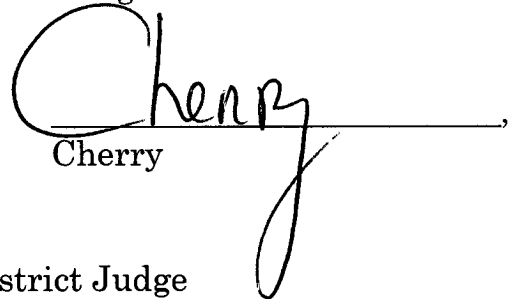
sentencing hearing in order to determine the amount of restitution Kids Kottage is entitled.³

Accordingly, 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.


_____, J.
Gibbons


_____, J.
Douglas


_____, J.
Cherry

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

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 impalpable or highly suspect evidence”).