

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRENDA LEE SETZER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50857

FILED

AUG 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
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 attempted embezzlement. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Brenda Lee Setzer to serve a prison term of 24 to 60 months and ordered her to pay \$6,859 in restitution.

Setzer contends that the district court abused its discretion by failing to base its restitution award on competent evidence. Setzer claims that during her arraignment the deputy district attorney announced that the restitution amount would be approximately \$700; however, during sentencing the district court imposed a restitution amount that was more than nine times that amount. Setzer argues that this restitution amount was not supported with adequate documentation or sworn testimony and it was awarded over her objection.

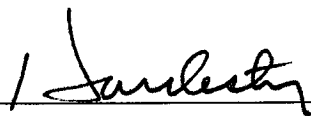
A district court retains the discretion “to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”¹ A district court, however, must rely on reliable and accurate information in calculating a restitution award.²

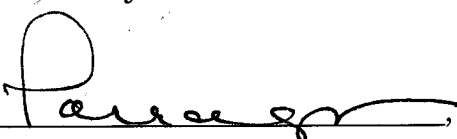
During sentencing, the Division of Parole and Probation representative announced that the restitution amount “should be \$6,859.” Setzer objected to the restitution amount and argued that it was not supported by competent evidence. Setzer observed that the presentence investigation report indicated that the victim had declined to submit a victim-impact statement and that the Division’s restitution recommendation was based on a phone call during which “[t]he loss prevention department indicated . . . that they are seeking restitution in the amount of \$6,859.” The district court acknowledged Setzer’s objection and imposed the restitution amount recommended by the Division. We conclude that the district court abused its discretion by ordering a restitution award that was not based on reliable and accurate information and that the restitution award must be vacated. Accordingly, we

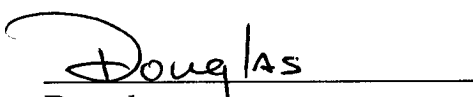
¹Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

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

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.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

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