

IN THE SUPREME COURT OF THE STATE OF NEVADA

TONY G. HEWITT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 51112

**FILED**

NOV 21 2008

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person petition for a writ of mandamus, or alternatively, motion to clarify judgment of conviction. Eighth Judicial District Court, Clark County; Stewart L. Bell, Judge.

On April 6, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of attempted sexual assault on a child under the age of fourteen. The district court sentenced appellant to serve a term of 72 to 180 months in the Nevada State Prison. Appellant was further ordered to pay \$3,809.60 in restitution. No direct appeal was filed.

On July 24, 2006, appellant filed a proper person motion to withdraw the guilty plea in the district court. On January 17, 2007, appellant filed a proper person post-conviction petition for a writ of habeas corpus in the district court. The State opposed the petition. Pursuant to NRS 34.750 and 34.770, the district court declined to appoint counsel to represent appellant or to conduct an evidentiary hearing. On May 8, 2007, the district court denied appellant's petition. On November 15, 2007, the

district court denied appellant's motion. This court affirmed the orders of the district court on appeal.<sup>1</sup>

On December 11, 2007, appellant filed a proper person petition for a writ of mandamus, or alternatively, motion to clarify judgment of conviction in the district court. On January 24, 2008, the district court denied the petition. This appeal followed.

In his petition, appellant contended that the district court failed to determine a specific dollar amount for restitution. Appellant further claimed that the judgment of conviction failed to set forth the name of the victim. Appellant claimed that he had a right to have the victim testify regarding the amounts owed and proffer receipts.

Our review of the record on appeal reveals that the district court did not abuse its discretion in denying appellant's petition. Appellant's claim was improperly raised in a petition for a writ of mandamus as he had an adequate legal remedy by way of a direct appeal or a timely post-conviction petition for a writ of habeas corpus.<sup>2</sup> Appellant failed to demonstrate any error requiring clarification of the judgment of conviction. The presentence investigation report indicated that restitution was owed for money paid on behalf of the victim by the Clark County Social Services; restitution to a government agency for the money expended on behalf of the victim is appropriate.<sup>3</sup> The record indicates that

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<sup>1</sup>Hewitt v. State, Docket No. 49520 (Order of Affirmance, December 10, 2007).

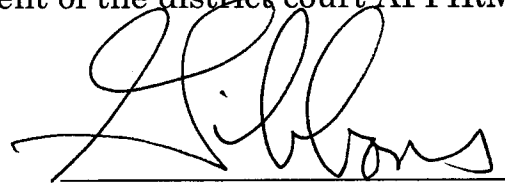
<sup>2</sup>See NRS 34.170.

<sup>3</sup>See Roe v. State, 112 Nev. 733, 917 P.2d 959 (1996).

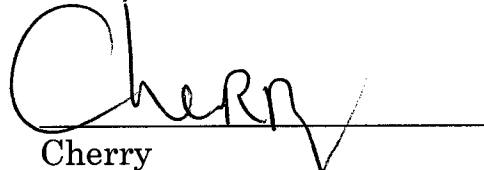
appellant failed to challenge the restitution amount set forth in the presentence investigation report, and thus, appellant waived any challenge to that amount.<sup>4</sup>

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.<sup>5</sup> Accordingly, we

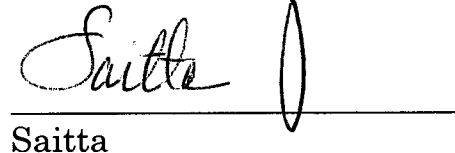
ORDER the judgment of the district court AFFIRMED.<sup>6</sup>

  
\_\_\_\_\_, C. J.

Gibbons

  
\_\_\_\_\_, J.

Cherry

  
\_\_\_\_\_, J.

Saitta

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<sup>4</sup>Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

<sup>5</sup>See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

<sup>6</sup>We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Stewart L. Bell, District Judge  
Tony G. Hewitt  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk