

IN THE SUPREME COURT OF THE STATE OF NEVADA

YVONNE MARY RHODEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51337

FILED

JUN 11 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY A. Alvarado
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 uttering a forged instrument. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Yvonne Mary Rhoden to a prison term of 12 to 48 months and ordered her to pay \$2,925 in restitution.

Rhoden 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 and by ordering restitution without establishing a sufficient basis for the restitution amount. The State has filed a confession of error in this appeal and agrees with Rhoden that this appeal should be remanded for a new sentencing hearing.

“[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.”¹ 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.”² A district court, however, must rely on reliable and accurate information in calculating a restitution award.³ Absent an abuse of discretion, “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.”⁴

Here, the Division of Parole and Probation recommended restitution in the amount of \$2,925 to compensate the victim for the value of a forged check, some baseball tickets and jewelry. Rhoden admitted to uttering a forged check in the amount of \$200 and taking baseball tickets valued at \$166, but she did not admit to taking any jewelry from the victim. The victim did not provide any written documentation or appear at the sentencing hearing to substantiate his claimed losses. We conclude that the district court’s reliance on the Division of Parole and Probation’s report, with nothing more to substantiate the claimed jewelry losses, was not a reasonable basis for calculating restitution. Therefore, the restitution order must be vacated and this case remanded to the district

¹Erickson 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: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense. . .”).


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

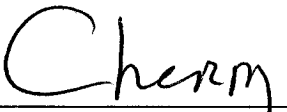
³See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

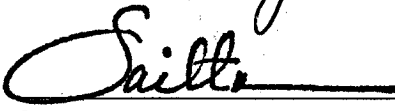
⁴Id. at 12-13, 974 P.2d at 135.

court for a new sentencing hearing to determine the proper amount of restitution. Accordingly, we

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. The clerk of this court shall immediately issue the remittitur in this appeal.⁵


_____, J.
Maupin


_____, J.
Cherry


_____, J.
Saitta

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

⁵NRAP 41(a).