

IN THE SUPREME COURT OF THE STATE OF NEVADA

GUY ANTHONY JOHNSTONE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51601

FILED

SEP 05 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *J. W. W. W.*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an amended judgment of conviction, pursuant to a guilty plea, of one count of unlawful taking of a motor vehicle. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Guy Anthony Johnstone to a jail term of 12 months and ordered him to pay \$3,000 in restitution. On direct appeal, this court reversed the restitution award and remanded the matter to the district court for a hearing on the amount of restitution.¹ On April 8, 2008, the district court conducted a hearing and entered an amended judgment of conviction that awarded restitution in the amount of \$2,300. This appeal followed.

Johnstone contends that the district court abused its discretion by ordering restitution without establishing a sufficient basis for the restitution amount. This claim lacks merit.

“[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or

¹Johnstone v. State, Docket No. 46965 (Order Affirming in Part, Vacating in Part and Remanding, July 13, 2006).

upon which he has agreed to pay restitution.”² 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.”³ A district court, however, must rely on reliable and accurate information in calculating a restitution award.⁴ 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.”⁵

Johnstone fails to demonstrate that the district court relied on unreliable or inaccurate information when calculating the restitution award. Johnstone admitted to unlawfully taking the victim’s car. At the restitution hearing, the victim testified that his insurance company paid his finance company the fair market value for his car at the time the car was stolen. The fair market value of the car, however, was \$2,300 below the amount the victim still owed the finance company for the car. Thus, the victim was still indebted to his finance company for \$2,300. Although the car was eventually recovered, the car was turned over to the insurance company because it had paid out on the victim’s insurance claim. The victim testified that, at the time of the restitution hearing, he was not in

²Erickson 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 . . .”).

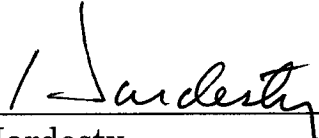
³Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

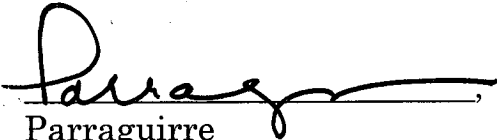
⁴See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

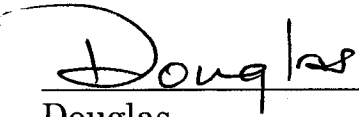
⁵Id. at 12-13, 974 P.2d at 135.

possession of the car, he had already paid \$1,622.44 of the \$2,300 owed to the finance company, and he was obligated to pay the remainder of the \$2,300. We conclude that the district court did not abuse its discretion when calculating the restitution award, and we

ORDER the amended judgment of conviction AFFIRMED.


_____, 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