

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOHN HENRY TURNER, III,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51927

FILED

SEP 05 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 grand larceny. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant John Henry Turner, III, to a prison term of 12 to 32 months and ordered him to pay \$2,014.03 in restitution.

Turner contends that the district court abused its discretion by ordering restitution for items that Turner did not admit to stealing and did not agree to pay for in the guilty plea agreement, and by ordering restitution without establishing a sufficient basis for the restitution amount. The State agrees with Turner that this appeal should be remanded for a new sentencing hearing to determine restitution.

“[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

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
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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, Turner pleaded guilty to grand larceny and admitted that he stole a gun from the victim. At sentencing, the State and the Division of Parole and Probation (Division) recommended that the district court award restitution in the amount of \$723.98. This amount reflected the victim’s valuation of the stolen gun and attached grips and sights. The Division stated that although the victim provided information stating that he was owed \$2,014.03 for the loss of several items, including the gun, the Division did not recommend awarding the full amount because they could only relate \$723.98 of the total claimed back to Turner. The victim testified at sentencing that he was missing several items in addition to the gun and the total value of his missing items was \$2,014.03. The victim also presented the district court with a notarized statement from the

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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).

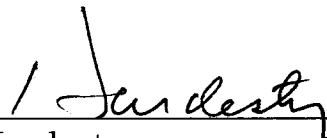
³See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

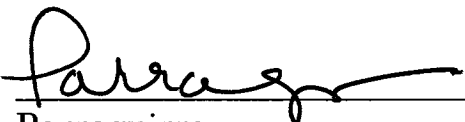
⁴Id. at 12-13, 974 P.2d at 135.

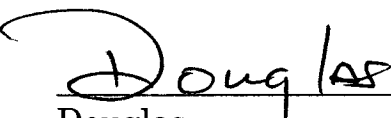
victim's hunting partner that the victim had previously owned all of the items listed. Turner denied responsibility for taking any items other than the gun and objected to the imposition of restitution.

We conclude that the district court abused its discretion by awarding restitution for items that Turner (1) was not charged with taking, (2) did not admit to taking, (3) was not found guilty of taking, and (4) did not agree to pay restitution for. Therefore, the restitution order must be vacated and this case remanded to the district 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.


_____, 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