

IN THE SUPREME COURT OF THE STATE OF NEVADA

ODILON PEREZ-GARCIA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 52572

FILED

FEB 04 2009

TRACE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of possession of credit cards without consent. Second Judicial District Court, Washoe County; Steven R. Kosach, Judge. The district court sentenced appellant Odilon Perez-Garcia to a prison term of 12-30 months, suspended execution of the sentence, and placed him on probation for an indeterminate period not to exceed 60 months. The district court ordered Perez-Garcia to pay \$8,313.75 in restitution.

Perez-Garcia contends that the district court erred in its determination of the restitution award. Specifically, Perez-Garcia claims that the district court did not address the matter of restitution during the plea canvass and that ordering him "to pay restitution for crimes not charged against him, not admitted by him or committed by him" is not "fair." Perez-Garcia argues that the matter should be remanded to the district court for a restitution hearing. We disagree.

"[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." Erickson 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.”). 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.” Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998). A district court, however, must rely on reliable and accurate information in calculating a restitution award. See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999). 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.” Id. at 12-13, 974 P.2d at 135. Furthermore, “[a] defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge.” Id. at 13, 974 P.2d at 135.

Our review of the record on appeal reveals that the district court did not abuse its discretion in its determination of the restitution award. Most importantly, we note that the written guilty plea agreement, signed by Perez-Garcia, explicitly stated that he agreed to “make full restitution in all cases in which I am presently charged to include those which are to be dismissed in exchange for my plea and any uncharged cases involving the following [two] victims.” (Emphasis added.) See Lee v. State, 115 Nev. 207, 211, 985 P.2d 164, 167 (1999). The district court set the amount of restitution based on the presentence investigation report, prepared by the Division of Parole and Probation, which detailed the items reported missing by the victims. Perez-Garcia never requested a hearing to determine the amount of restitution and, in fact, made the following statement at the sentencing hearing:

And I don’t want to turn this into a restitution hearing. I’ll just lodge my objection on the record.

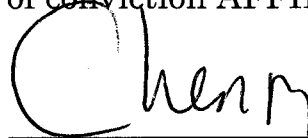
I don't think the evidence supports that my client burglarized the victim's home, and I will leave it at that, Your Honor.


Additionally, Perez-Garcia has failed to demonstrate, let alone allege, that the district court relied on impalpable or highly suspect evidence in setting the restitution award.


Finally, to the extent that Perez-Garcia is challenging the validity of his guilty plea, we note that, generally, challenges to the validity of a guilty plea must be raised in the district court in the first instance by either filing a motion to withdraw the guilty plea or commencing a post-conviction proceeding pursuant to NRS chapter 34. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 367-68 (1986); see also O'Guinn v. State, 118 Nev. 849, 851-52, 59 P.3d 488, 489-90 (2002). Because the record does not indicate that Perez-Garcia challenged the validity of his guilty plea in the district court, his claim is not appropriate for review on direct appeal from the judgment of conviction, and therefore, we need not address it. Bryant, 102 Nev. at 272, 721 P.2d at 368.

Having considered Perez-Garcia's contentions and concluded that they are without merit or not appropriately raised, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

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