

IN THE SUPREME COURT OF THE STATE OF NEVADA

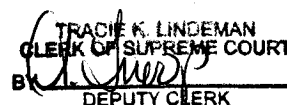
ANTHONY SCHWAB,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55655

FILED

DEC 10 2010

ORDER OF AFFIRMANCE

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

This an appeal from a judgment of conviction entered pursuant to a guilty plea of one count of engaging in a business without a contractor's license in violation of NRS 624.700. Eighth Judicial District Court, Clark County; David B. Barker, Judge.

First, appellant Anthony Schwab contends that the district court erred by failing to apply the proper burden of proof standard to the evidence adduced during the restitution hearing. Schwab suggests that a restitution hearing is a criminal proceeding and therefore the proper burden of proof standard is "beyond a reasonable doubt" or, at the very least, "clear and convincing evidence." And Schwab argues that the district court erred by using the "preponderance of the evidence" standard. We have never held that the evidence used by a district court to set restitution must meet a particular burden of proof. Instead, we have decided that restitution is a sentencing determination, observed that a sentencing determination will seldom be disturbed unless it is based on impalpable or high suspect evidence, and cautioned that restitution must be based on reliable and accurate evidence. Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). Schwab has not demonstrated that the

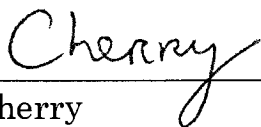
district court's restitution award was based on unreliable or inaccurate evidence and we conclude that his contention is without merit.


Second, Schwab contends that the district court erred by failing to apply the rules of evidence to the restitution hearing. However, restitution is a sentencing determination, *id.*, and the rules of evidence do not apply to sentencing, NRS 47.020(3)(c); therefore, this contention is without merit.


Third, Schwab contends that the district court erred by failing to provide the evidentiary basis and method used to calculate the restitution amount. During the restitution hearing, the district court stated that the restitution award was based on the testimony presented, the terms of the contracts, and the handwritten liquidated damages clause, and that the amount of restitution proffered by the State was discounted by the amount of money that fell outside the four-corners of the contracts. Accordingly, Schwab's contention is belied by the record and without merit.

Having considered Schwab's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Cherry


_____, J.
Saitta


_____, J.
Gibbons

cc: Hon. David B. Barker, District Judge
Chris T. Rasmussen
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk