

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA MICHAEL ALBERICCI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57521

FILED

JUL 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order granting restitution. First Judicial District Court, Carson City; James Todd Russell, Judge.


Appellant Joshua Michael Albericci claims that the district court erred and unjustly enriched the Bureau of Land Management when setting the amount of restitution because, although the stolen all-terrain-vehicle (ATV) was returned to the BLM, no offset was given against the cost of a new vehicle.


At the restitution hearing,¹ a BLM representative testified that although the ATV was returned to the BLM upon recovery, the ATV was altered to the extent that it was unsafe. The BLM determined that it would be more beneficial to replace the recovered ATV with a two-wheel Kawasaki 450 for \$5894 than to repair the recovered ATV or purchase a new ATV for approximately \$7000. The representative provided a copy of

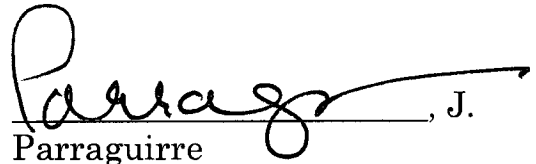
¹The Honorable James E. Wilson, Jr., presided at the restitution hearing.

the bill of sale demonstrating that the BLM paid \$5894 for the replacement. The recovered ATV was placed in storage and, at the time of the hearing, it was unclear whether it would be auctioned off or scrapped due to safety issues. The district court ordered Albericci to pay the BLM \$5894 in restitution and further ordered that any monetary gain realized by the BLM for the recovered ATV be transferred to Albericci. Albericci has failed to demonstrate that the award of restitution resulted in any unjust enrichment to the BLM. We conclude that because the district court relied on reliable and accurate evidence when setting the restitution to be paid to the BLM, see Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999), the district court did not abuse its discretion, see Martinez v. State, 114 Nev. 735, 737-38, 961 P.2d 143, 145 (1998) (a district court's sentencing determination will not be disturbed absent an abuse of discretion), and we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. James Todd Russell, District Judge
Hon. James E. Wilson, Jr., District Judge
Kay Ellen Armstrong
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk