

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARCY ANN HADDOX,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58273

FILED

SEP 14 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Anderson
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 embezzlement. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

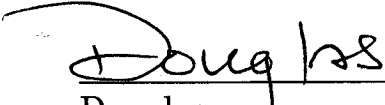
Appellant Darcy Ann Haddox contends that the district court's restitution award was not based on competent evidence and improperly reimburses the victim for losses she did not admit to, was convicted of, or agreed to pay. We agree with Haddox's contention in part.

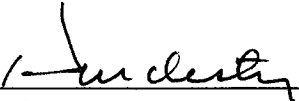
A district court must rely on reliable and accurate information in calculating a restitution award and its determination will not be disturbed absent an abuse of discretion. See Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999); Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993); see also NRS 176.033(1)(c). Here, the district court conducted a hearing and determined that the victim's testimony regarding her company's financial loss was credible and "her calculations [were] accurate and reliable." In this regard, we conclude that the district court did not abuse its discretion.

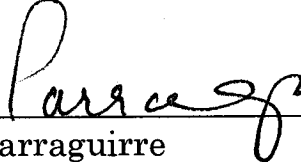
A defendant, however, "may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution." Erickson v. State, 107

Nev. 864, 866, 821 P.2d 1042, 1043 (1991). Here, Haddox pleaded to an offense occurring between December 2009 and February 17, 2010, and although the guilty plea agreement states that she agreed to pay "full restitution," there is no indication in the record that she admitted to or agreed to pay for losses incurred by the victim prior to the dates listed in the charging document. Nevertheless, the restitution awarded by the district court reimburses the victim for losses incurred during October and November of 2009. Therefore, even as a condition of probation, we conclude that the district court abused its discretion and we vacate the restitution award and remand the matter to the district court with instructions to conduct another restitution hearing. See Igbinovia v. State, 111 Nev. 699, 707-08, 895 P.2d 1304, 1309 (1995) (the district court has broad discretion to fix the conditions of probation); see also NRS 176A.400(1). 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.
Douglas


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Hon. Steven P. Elliott, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk