

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH INCITTI,

No. 35426

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 13 2000

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, entered pursuant to a guilty plea under Alford,¹ of robbery. The district court sentenced appellant Joseph Incitti to serve two years of imprisonment concurrently with a New Jersey sentence; Incitti received 285 days credit for time served. Additionally, the court ordered Incitti to pay \$2,795.32 in extradition fees and a \$25 administrative assessment fee.

On appeal, Incitti raises one issue. He claims that the district court erroneously ordered him to pay extradition fees without holding a formal hearing.²

We conclude that the district court did not err in ordering Incitti to pay restitution pursuant to NRS 176.033(1)(c) and NRS 179.225. These statutes do not necessarily require the lower court to hold a formal hearing on the issue of restitution. Rather, the court is simply required to "conduct an investigation of the financial status of the

¹North Carolina v. Alford, 400 U.S. 25 (1970).

²Although Incitti claims that the district court's action violated his due process rights, his argument relies entirely on relevant statutory authority. Incitti provides no authority supporting a claim of a constitutional violation unrelated to his statutory claim.

person to determine his ability to make restitution." NRS 179.225(2). The statute sets forth certain factors that the district court must determine in this investigation, specifically whether the defendant "is able to pay any existing obligations for: (a) Child support; (b) Restitution to victims of crimes; and (c) Any administrative assessment required to be paid pursuant to NRS 62.2175, 176.059 and 176.062." NRS 179.225(2). If the court determines the defendant "is financially able to pay [these] obligations," NRS 179.225(3) provides that the court shall order the defendant to pay extradition expenses.

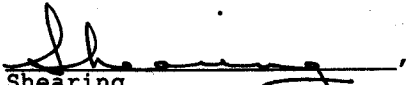
Consistent with these statutory provisions, we conclude that the district court may reasonably rely on the presentence investigation report in fulfilling the requirement that it investigate a defendant's ability to pay extradition expenses. Unless it is challenged, the information therein may provide a basis for the district court to conclude that the defendant should be required to pay extradition expenses. Further, we are not persuaded that the district court's findings need be explicit when there is reasonable evidence to support the conclusion that restitution is appropriate and where, as here, the district court affords the defense an opportunity to be heard concerning extradition expenses.

Here, the presentence investigation report reflects that Incitti had no child support obligations, and Incitti did not contest this information. Further, the sentencing court did not order restitution to the victim of the instant offense, and Incitti did not allege that he owed restitution in any other case. Thus, it appears that the only obligation the district court was required to consider was Incitti's ability to pay the

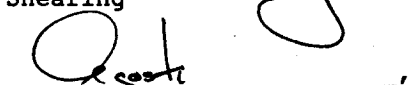
\$25 administrative assessment fee. We are not persuaded that the district court was required to afford great weight to consideration of this minor expense. Accordingly, we conclude that the district court did not err in ordering Incitti to pay extradition expenses, notwithstanding information that he was approximately \$11,000 in debt and that he was required to serve a New Jersey sentence.³ In so ruling, we note that the presentence investigation report reflects that Incitti had previously been employed earning \$700 per week.

Having concluded that Incitti is not entitled to relief in this appeal, we affirm the judgment of the district court.

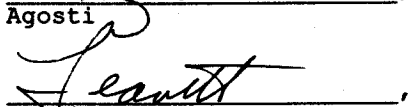
It is so ORDERED.



Shearing J.



Agosti J.



Leavitt J.

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk

³We note that the New Jersey sentence appears to be relatively short. The presentence report reflects that, on August 18, 1998, Incitti received a seven-year sentence in a New Jersey case, and that he was credited with 267 days for time served.