

IN THE SUPREME COURT OF THE STATE OF NEVADA

GLENN PERRY COUCH, III,

No. 35478

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

**FILED**

NOV 21 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, pursuant to a jury verdict, of obtaining money by false pretenses, a felony, in violation of NRS 205.380. On December 8, 1999, the district court sentenced appellant to a prison term of 28 to 72 months. The district court then suspended the prison sentence, placed appellant on probation, and ordered him to pay restitution in the amount of \$74,000.00. The district court gave appellant until February 21, 2000, to pay \$57,100.00 of the total amount, and until April 6, 2000, to pay the remaining \$16,900.00.

Appellant first argues that the district court erred in admitting certain prior bad act testimony. We disagree.

NRS 48.045(2), which governs the admissibility of prior bad acts, provides:

Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

Further, for evidence of a prior bad act to be admissible, the district court must find, outside the presence of the jury, that "(1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing evidence; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice." *Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65 (1997). The determination of the trial court will not be overturned absent manifest error. See *Petrocelli v. State*, 101 Nev. 46, 52, 692 P.2d 503, 508 (1985).

Here, the district court admitted testimony from two witnesses who testified that they conducted separate transactions with appellant whereby appellant made false representations causing each of them to suffer significant financial losses. One of the witnesses also testified that he currently has a civil judgment against appellant resulting from appellant's malfeasance in that transaction. After a Petrocelli hearing, the district court determined that testimony from the two witnesses was admissible to show intent and absence of mistake or accident. After a review of the record, we conclude that the district court did not err in its determination that the prior bad act evidence was admissible.

Appellant next argues that the district court erred by instructing the jury that the State did not need to prove specific intent to defraud the victim. We conclude, as did the district court, that the instruction in question is an accurate statement of law as stated in NRS 489.724 and does

not improperly instruct the jury to presume any element of the offense with which appellant was charged and convicted.

Finally, appellant contends that the district court erred in setting time limits within which to pay the \$74,000.00 in restitution. Appellant's entire argument is based on his speculation that he could be subject to probation revocation and incarceration if he failed to pay the restitution amount because of indigence. Although, appellant cites cases from other jurisdictions to support his argument, he completely fails to acknowledge controlling Nevada law.

NRS 176A.430(1) provides:

The court shall order as a condition of probation or suspension of sentence, in appropriate circumstances, that the defendant make full or partial restitution to the person or persons named in the order, at the times and in the amounts specified in the order unless the court finds that restitution is impracticable.

Further, NRS 176A.430(4) provides that

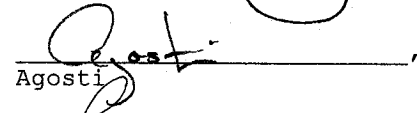
[f]ailure to comply with the terms of an order for restitution is a violation of a condition of probation or suspension of sentence unless the defendant's failure has been caused by economic hardship resulting in his inability to pay the amount due. The defendant is entitled to a hearing to show the existence of such a hardship.

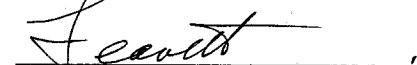
This appeal does not involve revocation of appellant's probation based on a failure to pay restitution. We are confident that NRS 176A.430(4) will adequately address appellant's concerns should that time ever come. Therefore, appellant's argument is without merit.

Having considered appellant's contentions and concluded that they are without merit, we affirm appellant's conviction for obtaining money by false pretenses.<sup>1</sup>

It is so ORDERED.<sup>2</sup>

  
Shearing, J.

  
Agosti, J.

  
Leavitt, J.

cc: Hon. Archie E. Blake, District Judge  
Attorney General  
Churchill County District Attorney  
Rick Lawton  
Churchill County Clerk

---

<sup>1</sup>We note that appellant's counsel failed to include a copy of the contested jury instruction as part of the appendix to the fast track statement as required by NRAP 3C(e) and NRAP 30. Further, as noted in this order, appellant's counsel completely failed to acknowledge or research a controlling Nevada statute on the restitution issue. Counsel's actions have resulted in a waste of judicial resources. Appellant's counsel is strongly cautioned to exercise care in the drafting and filing of documents with this court and that similar actions in the future may result in the imposition of significant monetary sanctions.

<sup>2</sup>We have considered all proper person documents filed or received in this matter, and we conclude that the relief requested is not warranted.