

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JAMES FITZSIMMONS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 65969

FILED

OCT 16 2015

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

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Janet J. Berry, Judge. Appellant Kevin James Fitzsimmons raises two contentions on appeal.


First, appellant contends that the district court erred in relying on evidence admitted during a prior sentencing hearing, which was vacated. We discern no plain error. *See Valdez v. State*, 124 Nev. 1172, 1190, 196 P.3d 465, 477 (2008) (reviewing unobjected-to error for plain error affecting substantial rights). Fitzsimmons did not demonstrate that the district court relied solely on “impalpable or highly suspect evidence.” *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). In imposing sentence, the district court stated that it relied on appellant’s extensive history of criminal convictions in determining that habitual criminal sentencing was appropriate. The court did not indicate that it considered any of appellant’s uncharged conduct. Therefore, appellant cannot demonstrate that the court’s consideration of this evidence affected his substantial rights.

Second, appellant contends that the amount of restitution ordered in the amount of \$4,176.46 is contradicted by the record. We

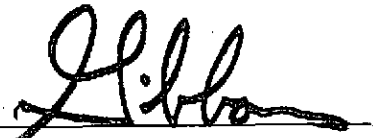
conclude that he failed to demonstrate that the restitution award was based on impalpable or highly suspect evidence. *See Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999); *see also Major v. State*, 130 Nev. Adv. Op. 70, 333 P.3d 235, 238 (2014) (noting that a district court must rely on reliable and accurate information in calculating a restitution award). The record indicates that the victims reported losses of over \$13,000 and the presentence investigation report's detailed accounting established the amount of losses at \$4,176.46. Therefore, the district court relied on reasonably reliable and accurate evidence in setting restitution.

Having considered Fitzsimmons' contentions, and concluded that they lack merit, we


ORDER the judgment of conviction AFFIRMED.

 _____, J.

Saitta

 _____, J.

Gibbons

 _____, J.

Pickering

cc: Hon. Janet J. Berry, District Judge
Law Office of Thomas L. Qualls, Ltd.
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk