

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

MICHAEL JAMES ROBERTS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 67984

FILED

OCT 19 2015

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

*ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING*

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of possession of stolen property. Eighth Judicial District Court, Clark County; Stefany Miley, Judge.


Appellant Michael James Roberts first argues the district court erred in imposing restitution. Roberts asserts the loss of property for which restitution was imposed did not arise out of the crime to which he pleaded guilty. Roberts argues that the property loss occurred during the commission of a burglary or a larceny, crimes of which Roberts was not convicted. Roberts' argument lacks merit. Roberts acknowledged in the guilty plea agreement and at the plea canvass that he possessed stolen property belonging to the three named victims. Roberts further acknowledged in the guilty plea agreement that he would be ordered to pay an appropriate amount of restitution as part of his sentence for possession of stolen property. See NRS 205.275(3) (stating "the court shall order the person to pay restitution" as a result of a conviction for possession of stolen property). Accordingly, the district court properly ordered Roberts to pay restitution.

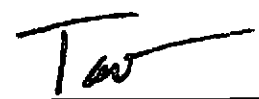
Second, Roberts argues the district court abused its discretion in determining the amount of restitution to award the victims. A sentencing judge has wide discretion when ordering restitution. *See Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). In determining the appropriate amount of restitution, a district court should rely on reliable and accurate information and its determination will not be disturbed absent an abuse of discretion. *Martinez v. State*, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999); *Houk*, 103 Nev. at 664, 747 P.2d at 1379. An abuse of discretion occurs when a defendant's sentence is based upon "information or accusations founded on impalpable or highly suspect evidence." *Goodson v. State*, 98 Nev. 493, 496, 654 P.2d 1006, 1007 (1982).

Here, the State sought an award of \$650 in restitution to the victims and Roberts objected to that amount. The district court did not conduct a restitution hearing, but relied upon statements contained in the presentence investigation report asserting the district attorney's file reflected that one victim sustained a \$500 insurance deductible fee as a result of the crime. The report also stated another victim submitted a restitution claim for \$150. There is no evidence in the record before this court in the form of receipts, other documentation, or testimony to support these amounts.

We conclude there is an insufficient factual basis to support the award of \$650 in restitution because it was based solely on out-of-court statements without documentary support. Therefore, the district court abused its discretion in ordering restitution in the amount of \$650 and we remand for the district court to conduct a hearing to determine the appropriate restitution amount based upon reliable and accurate information. *See* NRS 176.033(1)(c). Accordingly, we

ORDER the judgment of conviction AFFIRMED IN PART
AND REVERSED IN PART AND REMAND this matter to the district
court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Stefany Miley, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk