

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RICHARD MICHAEL LESSICK,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69273

FILED

APR 20 2016

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 grand larceny of personal goods or property with a value of \$650 or more, but less than \$3,500. Tenth Judicial District Court, Churchill County; Thomas L. Stockard, Judge.

Appellant Richard Lessick claims the district court abused its discretion by denying his presentence motion to withdraw his guilty plea. He asserts that his plea was not knowingly entered because he lacked an understanding about the computation of restitution.

A defendant may move to withdraw a guilty plea before sentencing, NRS 176.165, and "a district court may grant a defendant's motion to withdraw his guilty plea before sentencing for any reason where permitting withdrawal would be fair and just," *Stevenson v. State*, 131 Nev. ___, ___, 354 P.3d 1277, 1281 (2015). To this end, the Nevada Supreme Court recently disavowed the standard previously announced in *Crawford v. State*, 117 Nev. 718, 30 P.3d 1123 (2001), which focused exclusively on whether the plea was knowing, voluntarily, and intelligently made, and affirmed that "the district court must consider the totality of the circumstances to determine whether permitting withdrawal

of a guilty plea before sentencing would be fair and just." *Stevenson*, 131 Nev. at ___, 354 P.3d at 1281.


Lessick orally moved to withdraw his guilty plea at the sentencing hearing. Although not initially identified as a basis for withdrawing his plea, during the discussion about withdrawing his plea, Lessick stated he did not know what he was pleading guilty to; specifically, he did not realize he was pleading guilty to restitution in the amount of \$172,000. After reviewing the plea canvass with the district court, Lessick stated he was confused, because the State was seeking \$172,000 in restitution, but he pleaded guilty to grand larceny of property valued at between \$650 and \$3,500. The court stated the amount being sought in restitution was for damages and that it had not yet decided the amount of restitution to be awarded. The court asked the State to explain, from its perspective, the difference between the crime Lessick pleaded guilty to and the amount of restitution being sought. The State explained that the plea negotiations contemplated Lessick would agree to pay restitution in the "ballpark of \$150,000" and, in exchange, Lessick would be permitted to plead guilty to grand larceny for a lesser monetary value. When Lessick started to speak again, Lessick's counsel asked if he could interrupt, spoke with Lessick off the record, and thanked the court. After counsel's discussion with Lessick, the district court denied the motion to withdraw.


The record demonstrates the district court considered the totality of the circumstances before denying the motion to withdraw the guilty plea, and we conclude it did not abuse its discretion by denying the motion to withdraw the plea.


Lessick also appears to argue the award of restitution was invalid because it was based on impalpable and highly suspect evidence. He asserts that it was improper for the court to use the replacement cost for the damaged generators, rather than repair cost, when determining restitution.

The State sought restitution in the amount of \$172,400. Lessick's counsel argued against this amount, asserting the plea negotiations contemplated restitution in the amount of \$150,000. And when arguing for probation, Lessick's counsel acknowledged there was \$150,000 worth of damage. During the victim impact statement, the person who calculated the amount of restitution acknowledged that he only looked at replacement cost for the generators and he did not look to see what would be needed to repair the generators. The district court ultimately rejected the State's request for restitution and imposed restitution in the amount of \$150,000. We conclude Lessick fails to demonstrate the district court abused its discretion when imposing restitution. *See Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Silver

cc: Hon. Thomas L. Stockard, District Judge
Charles B. Woodman
Attorney General/Carson City
Churchill County District Attorney/Fallon
Churchill County Clerk