

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROSE SANCHEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 69853

FILED

DEC 30 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Appellant Rose Sanchez appeals from a judgment of conviction, entered pursuant to a guilty plea, of burglary. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Sanchez argues the district court abused its discretion at sentencing by imposing restitution for an uncharged, separate residential burglary.¹ Sanchez asserts this was improper because she did not agree to pay restitution for the residential burglary in the plea agreement. A district court's determination regarding restitution will not be disturbed absent an abuse of discretion. *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). The Nevada Supreme Court has explained "that a defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution." *Erickson v. State*, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991).

In the written plea agreement, Sanchez agreed to pay restitution for "any cases related to the instant case and in Case No.

¹The Honorable James Bixler, Senior Judge, presided over the restitution hearing.

15F01122X.”² Sanchez also agreed to pay restitution to the “victim of any related offense which is being dismissed or not prosecuted pursuant to this agreement.” At the sentencing hearing, the State sought restitution stemming from the uncharged residential burglary in which Sanchez and a codefendant took watches with a combined value of more than one hundred thousand dollars. The State asserted that it had decided not to charge Sanchez with the residential burglary due to her agreement to plead guilty in this case and for her agreement to pay restitution to the victim of the residential burglary. The district court reviewed the guilty plea agreement and concluded Sanchez agreed to be responsible for restitution regarding the uncharged residential burglary.

However, the guilty plea agreement does not specifically address restitution for the uncharged residential burglary, it was not addressed at the plea canvass, and the record does not demonstrate the State specifically decided not to prosecute that burglary in exchange for Sanchez’s guilty plea in this matter. We note, at the restitution hearing, the State acknowledged the decision not to file charges was a “charging decision [the prosecutor] didn’t make.”

In light of this acknowledgment and the failure of the guilty plea agreement to specifically address restitution for an uncharged residential burglary, the record does not show that the State’s decision to decline to pursue charges for the residential burglary was a part of the guilty plea agreement in this matter. Because the record does not demonstrate the decision to forgo charging Sanchez with the residential burglary was a part of the guilty plea agreement in this matter, we


²The instant case involved the burglary of a vehicle and Case No. 15F01122X involved a burglary of a pawn shop.

conclude the district court abused its discretion in deciding that Sanchez had agreed to pay restitution for that burglary and in ordering Sanchez to pay \$105,700 in restitution for that burglary. *See id.* (explaining that it is a manifest injustice to impose restitution when a defendant has not been found guilty or admitted responsibility for restitution for that offense). Accordingly, we reverse the imposition of restitution for the uncharged residential burglary and instruct the district court to enter an amended judgment of conviction that removes the restitution imposed for that offense.

Having concluded Sanchez is only entitled to the relief described herein, we

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


_____, C.J.
Gibbons


_____, J.
Tao

SILVER, J., dissenting:

I dissent.


_____, J.
Silver

cc: Hon. Michael Villani, District Judge
Law Offices of Martin Hart, LLC
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk