IN THE SUPREME COURT OF THE STATE OF NEVADA

TONIA BARNES,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 36932

FILED

DEC 14 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of gross misdemeanor conspiracy to commit battery with substantial harm. The district court sentenced appellant Tonia Barnes to one year in county jail and then suspended execution of the sentence and placed Barnes on probation for a period not to exceed three years. As a condition of probation, the district court ordered Barnes to pay $9,181.48 in restitution pursuant to NRS 176A.430.

Barnes first contends that the district court erred in denying her motion to withdraw her guilty plea because she provided credible evidence that she did not read the plea agreement before entering her plea and that she was innocent of battery because the victim was the initial aggressor. We disagree.

On a motion to withdraw a guilty plea, the defendant has the burden of showing that the guilty plea was not entered knowingly and intelligently.[1] To determine if a plea is valid, the court must consider the entire record and the totality of the facts and circumstances of a case.[2] "On appeal from a district court's denial of a motion to withdraw a guilty plea, this court 'will presume that the lower court correctly assessed the

[1]See Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986).

[2]See id. at 271, 721 P.2d at 367; see also Mitchell v. State, 109 Nev. 137, 140-41, 848 P.2d 1060, 1061-62 (1993).

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validity of the plea, and we will not reverse the lower court's determination absent a clear showing of an abuse of discretion.'"[3]

In the instant case, we conclude that the district court did not abuse its discretion in denying Barnes' motion to withdraw her guilty plea because Barnes' guilty plea was knowing and intelligent. Barnes was advised of the constitutional rights she was waiving and of the direct consequences arising from her guilty plea in the plea agreement and by the district court. Further, at the plea canvass, Barnes admitted that she committed the charged crime; namely, that she became involved in a fight with the victim and severely injured her. Because the totality of the circumstances indicates that Barnes' plea was knowing and intelligent, we conclude that the district court did not abuse its discretion in denying Barnes' motion to withdraw her guilty plea.

Barnes next contends that the district court erred in imposing restitution as a condition of probation in the amount of $9,181.48 because there was insufficient evidence presented of the victim's medical bills and lost wages. We disagree.

NRS 176A.430(1) authorizes restitution as a condition of probation "in appropriate circumstances." This court has held that the district court has broad discretionary powers to impose restitution as a condition of probation, which are liberally construed.[4] Moreover, this court has held that the grant of restitution is a sentencing determination that will not be disturbed provided it does not rest upon impalpable or highly suspect evidence.[5]

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[3]Riker v. State, 111 Nev. 1316, 1322, 905 P.2d 706, 710 (1995) (quoting Bryant, 102 Nev. at 272, 721 P.2d at 368).

[4]Igbinovia v. State, 111 Nev. 699, 709-10, 895 P.2d 1304, 1310-11 (1995). Because we conclude that the legislature has vested the district court with broad discretion in imposing restitution as a condition of probation, we reject Barnes' argument that such restitution is designed only to compensate for out-of-pocket medical expenses, and that crime victims should seek a civil remedy for other damages causally related to their injuries. See id.

[5]See generally Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999) (holding that restitution awarded under NRS 176.033 will not be disturbed provided it is not based upon highly suspect or impalpable evidence).

In the instant case, we conclude that the district court's decision to impose $9,181.48 in restitution as a condition of probation is supported by substantial evidence that is neither suspect nor impalpable. Specifically, the victim testified that she sustained $6,717.48 in medical bills arising from the surgery and suffered lost wages of $2464.00 because she missed approximately 76 hours of work as a result of her injuries in the fight. At the sentencing hearing, Barnes declined her opportunity to cross-examine the victim with respect to these amounts and presented no contradictory evidence.[6] Accordingly, the district court's determination that the victim sustained $9,181.48 in losses as a result of Barnes' criminal conduct is supported by substantial evidence.

Finally, Barnes contends that the district court erred in ordering restitution because it treated an insurance company as a victim in violation of this court's holding in Martinez v. State.[7] We conclude that Barnes' contention lacks merit.

Our holding in Martinez concerned a restitution award imposed pursuant to NRS 176.033(1)(c)[8], and it is inapplicable to an award of restitution imposed as a condition of probation pursuant to NRS 176A.430. In construing the statutory language authorizing restitution as a condition of probation, this court has recognized that "the legislature chose to accord broad authority to the district court judge to order restitution not only to 'victims,' but to any 'person or persons named in the order.'"[9] Further, even assuming Martinez were applicable, that case held that "restitution of medical expenses, while inappropriate when payment is ordered to be made to an insurer, is not inappropriate when the payment, regardless of reimbursement, is ordered to be made to the

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[6]Because Barnes was afforded an opportunity to cross-examine the witness and present evidence in support of her challenge to the restitution sought by the State, we reject Barnes argument that she was not afforded due process before the imposition of restitution as a condition of probation. See generally id. at 13, 974 P.2d at 135 ("A defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but [she] is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge.").

[7]115 Nev. 9, 974 P.2d 133 (1999).

[8]115 Nev. at 11, 974 P.2d at 134.

[9]Igbinovia, 111 Nev. at 709, 895 P.2d at 1310.

victim."[10] Here, the district court ordered that restitution for medical expenses be paid directly to the victim, not her insurance company. Accordingly, we conclude that the restitution order neither implicated nor ran afoul of our holding in Martinez.

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

ORDER the judgment of conviction AFFIRMED.

_____, J.
Shearing

_____, J.
Rose

_____, J.
Becker

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Frank J. Cremen
Clark County Clerk

[10]Martinez, 115 Nev. at 12, 974 P.2d at 135.