

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VICTORIA SHANNA MORRISON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76092-COA

FILED

MAY 28 2019

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

ORDER OF AFFIRMANCE

Victoria Shanna Morrison appeals from a judgment of conviction, pursuant to a guilty plea, for child abuse and neglect causing substantial mental harm. First Judicial District Court, Carson City; James Todd Russell, Judge.

Morrison made false representations to her minor son and various other parties that he had leukemia and was dying. Based on these claims, Helping One Woman (HOW) organized a fundraiser to assist with costs and expenses. As a result of the fundraiser, HOW raised \$1,000 and donated the proceeds to Morrison. Later, the State charged Morrison with obtaining money by false pretenses and child abuse and neglect. Morrison pleaded guilty to child abuse and neglect causing substantial mental harm, and according to the plea agreement, she understood that she "[would] be ordered to make restitution" for related charges that the State dismissed or declined to prosecute.

On appeal, Morrison argues that the district court abused its discretion when it ordered her to pay \$1,000 in restitution to HOW. Specifically, Morrison contends that HOW is not a victim under NRS

176.033(1)(c) or NRS 176.015¹ because it voluntarily donated the money and did not suffer a loss, and that the district court failed to identify the actual victims.

As a threshold matter, we must consider whether HOW is a victim pursuant to NRS 176.033(1)(c) and NRS 176.015. Morrison argues that HOW is not a victim because its donation was voluntary, and that it did not suffer a loss. We disagree.

When restitution is appropriate, NRS 176.033(1)(c) requires a court to “set an amount of restitution for each victim of the offense.” While the legislature did not define victim in NRS 176.033, it did provide a useful definition of victim in NRS 176.015, which, among other things, addresses who may make a victim-impact statement at sentencing. The relevant portion of NRS 176.015(5)(d)(1) defines a victim as “[a] person, including a governmental entity, against whom a crime has been committed . . . [and a] person who has been injured or killed as a direct result of the commission of a crime” Additionally, the Supreme Court of Nevada has defined a victim as a passive party whose “harm or loss suffered is generally unexpected and occurs without . . . voluntary participation.” *Igbinovia v. State*, 111 Nev. 699, 706, 895 P.2d 1304, 1308 (1995). In other words, a victim is one “who is ‘tricked, duped, or subjected to hardship.’” *Id.* (quoting *U.S. v. Gibbens*, 25 F.3d 28, 34 (1st Cir.1994)).

Here, Morrison intentionally and deceitfully told her ten-year-old son, as well as others in the community, that he had leukemia, and that he was terminally ill. Because of these misrepresentations, HOW organized

¹The Legislature amended NRS 176.015 in 2017. 2017 Nev. Rev. Stat., ch. 484, § 1, at 3018-19. However, the amendments do not affect the analysis in this case.

a fundraiser for Morrison's son, raised money, and subsequently donated the money directly to Morrison. Thus, HOW suffered an actual, tangible loss that included not only the money it donated, but also the time, money and effort associated with organizing the fundraiser itself. *See Roe v. State*, 112 Nev. 733, 735, 917 P.2d 959, 960 (1996) (affirming a grant of restitution to a government agency for resources it expended on behalf of victims of a crime). Moreover, HOW's conduct, i.e., organizing the fundraiser, cannot be described as voluntary because voluntary implies that the act was "not impelled by outside influence." *Voluntary*, Black's Law Dictionary (10th ed. 2014). Certainly, HOW would not have organized the fundraiser and given Morrison the proceeds therefrom absent her false claims regarding her son's health. Therefore, Nevada law supports the district court's finding that HOW was a victim of Morrison's criminal scheme.

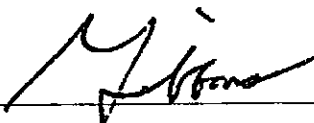
Furthermore, having determined that HOW is a victim, we conclude that the district court did not abuse its discretion in ordering restitution. Restitution is a sentencing determination that will not be disturbed on appeal absent an abuse of discretion. *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005). Moreover, a defendant may be ordered to pay restitution only for crimes "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) (emphasis added).

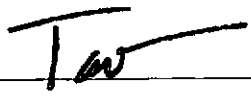
Here, the State initially charged Morrison with obtaining money by false pretenses and child abuse and neglect. In exchange for pleading guilty to child abuse and neglect causing substantial mental harm,

the State agreed to dismiss the other charges, including obtaining money by false pretenses. Moreover, by signing the plea agreement, Morrison acknowledged that she understood the district court would order her to make restitution for related charges that the State dismissed or declined to prosecute. Therefore, the district court did not abuse its discretion and properly ordered restitution.²

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. James Todd Russell, District Judge
State Public Defender/Carson City
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk

²Because we conclude that HOW is a victim, we need not address Morrison's other arguments.