

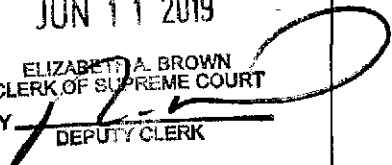
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

KATHLEEN ROSETTA MURPHY,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 76476-COA

FILED

JUN 11 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

Kathleen Rosetta Murphy appeals from a judgment of conviction entered pursuant to a guilty plea of embezzlement. Second Judicial District Court, Washoe County; David A. Hardy, Judge.

First, Murphy claims the district court erred by setting a restitution amount that was greater than the restitution amount stipulated to by the parties without providing any justification. However, Murphy did not object to the restitution award on this ground or ask the district court to explain its restitution award, and she has not demonstrated the district court's failure to explain its restitution award constituted plain error. See NRS 178.602; *Mendoza-Lobos v. State*, 125 Nev. 634, 644, 218 P.3d 501, 507 (2009) (applying plain-error review to alleged sentencing errors). Moreover, there was no error because “[r]estitution under NRS 176.033(1)(c) is a sentencing determination,” *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.3d 133, 135 (1999), and the district court is not required to state its reasons for

imposing a sentence, *Campbell v. Eighth Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998).


Second, Murphy claims the district court erred by setting a restitution amount that was greater than the restitution amount stipulated to by the parties without providing fair notice.¹ However, Murphy did not object to the restitution award on this ground, and she has not demonstrated the district court committed plain error. See NRS 178.602; *Mendoza-Lobos*, 125 Nev. at 644, 218 P.3d at 507.


Third, Murphy claims the district court erred by setting a restitution amount that was not based on accurate and reliable evidence. However, the record demonstrates the victim store owner and the victim corporate representative both testified during sentencing that the store suffered a \$15,694 loss as a result of Murphy's embezzlement, Murphy had an opportunity to cross-examine both of these witnesses, and Murphy made no showing that the restitution amount they claimed was based on inaccurate or unreliable information. We conclude Murphy has failed to demonstrate the district court did not rely upon reasonably reliable evidence when setting the restitution amount. See *Stephans v. State*, 127 Nev. 712, 716, 262 P.3d 727, 731 (2011) ("An owner of property may testify


¹We note, because the presentence investigation report (PSI), which was provided to Murphy before the sentencing hearing, recommended awarding restitution in an amount greater than was stipulated to, Murphy had notice that a greater amount of restitution was being sought. Further, the PSI and a letter from the victim, which was attached to the PSI, clearly explained the basis for seeking the greater amount of restitution.

to its value, at least so long as the owner has personal knowledge, or the ability to provide expert proof, of value.” (internal citation omitted)); *see also* *Martinez*, 115 Nev. at 13, 974 P.2d at 135 (“Sentencing courts are cautioned to rely on reliable and accurate evidence in setting restitution. 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.”). Accordingly, we

ORDER the judgment of conviction AFFIRMED.


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. David A. Hardy, District Judge
Washoe County Public Defender
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk