

IN THE SUPREME COURT OF THE STATE OF NEVADA

GEORGE A. WITHERS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37513

FILED

APR 30 2002

ORDER OF AFFIRMANCE

JANEITE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Rehak*
CHIEF DEPUTY CLERK

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one gross misdemeanor count of conspiracy to possess a stolen vehicle. The district court sentenced appellant George A. Withers to serve one year in the Clark County Detention Center; the district court then suspended the sentence and placed Withers on probation for an indeterminate period not to exceed three years. The district court also ordered Withers to pay restitution in the amount of \$21,390.20 plus the \$427.00 deductible.

Withers' sole contention on appeal is that he was improperly ordered to pay restitution to the victim for an amount previously reimbursed to the victim by its insurance carrier. Withers argues that the district court improperly considered the insurance carrier as the victim for purposes of restitution. We disagree with Withers' contention.

This court has stated that "[r]estitution under NRS 176.033(1)(c) is a sentencing determination. On appeal, this court generally will not disturb a district court's sentencing determination so long as it does not rest upon impalpable or highly suspect evidence."¹ A defendant's obligation to pay restitution to the victim may not be reduced because the victim is reimbursed by another entity, such as an insurance

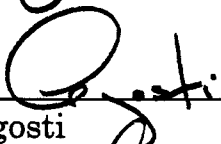
¹Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999).


carrier.² The obligation to pay restitution remains even though a victim's insurance carrier is not a victim for restitution purposes.³ In this case, considering that the victim is the auto dealership and not the insurance carrier as suggested by Withers, that restitution was properly ordered to be paid to the statutory victim, and that Withers is not challenging the amount of restitution, we conclude that the district court did not err in its sentencing determination.

Therefore, having considered Withers' contention and concluded it lacks merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
William L. Wolfbrandt Jr.
Clark County Clerk

²See *id.* at 12, 974 P.2d at 135.

³See *id.* at 11-12, 974 P.2d at 134; see also NRS 176.015(5)(b), which provides, in part, that the term "victim" includes "(1) A person, including a governmental entity, against whom a crime has been committed; [and] (2) A person who has been injured or killed as a direct result of the commission of a crime."