

IN THE SUPREME COURT OF THE STATE OF NEVADA

THOMAS EDDIE WILLIS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 37676

FILED

NOV 21 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART AND REMANDING IN PART

This is an appeal from a judgment of conviction, pursuant to an Alford¹ plea for engaging in a business without a license in violation of NRS 624.700 and 624.750. The district court sentenced Eddie Willis to twelve months in jail and ordered him to pay \$5,825.00 in restitution. The district court suspended Willis' sentence and placed him on probation for an indeterminate period, not to exceed three years.

Willis contracted with Janine Hill to remodel a pool. Hill made a partial payment, but Willis failed to complete the pool. Hill subsequently hired another contractor to finish the pool. The district court's restitution award was based on the amount Hill paid the second contractor to finish the pool, plus the amount she paid Willis, minus the amount she had agreed to pay Willis.

Willis argues that by filing an Alford plea, he maintained his factual innocence, and thus, awarding restitution was inappropriate. He also contends that the district court applied the wrong standard to

¹North Carolina v. Alford, 400 U.S. 25 (1970).

calculate Janine Hill's restitution award. We conclude that an award of restitution was appropriate, however, we remand for a recalculation based on NRS 624.700(3)(c).

This court has held that "whenever a defendant maintains his or her innocence but pleads guilty pursuant to Alford, the plea constitutes one of nolo contendere."² A district court may order restitution pursuant to a plea of nolo contendere.³ Our review of the plea canvass and written plea agreement reveals that Willis understood the consequences of his plea, and that he might be ordered to pay restitution. Thus, the district court properly awarded Hill restitution based on Willis' nolo contendere plea.

However, the district court improperly calculated the restitution award. NRS 624.700(3)(c) specifically states that a person convicted under NRS 624.700(1) may be required to pay damages "caused as a result of [his] violation up to the amount of his pecuniary gain from the violation." The district court calculated the restitution award in such

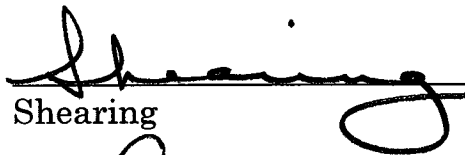
²State v. Gomes, 112 Nev. 1473, 1479, 930 P.2d 701, 705 (1996).


³NRS 179.225(2) states in pertinent part:

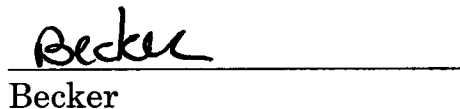
2. If a person is . . . convicted of, or pleads guilty, guilty but mentally ill or nolo contendere to the criminal charge for which he was returned . . . the court shall conduct an investigation of the financial status of the person to determine his ability to make restitution.

a way as to give Hill the benefit of the bargain with Willis, not the amount of Willis' pecuniary gain. NRS 624.700(3)(c) restricts the amount of recovery to the amount of the defendant's pecuniary gain. Thus, we affirm the district court's holding that restitution may be awarded pursuant to a plea of nolo contendere, but remand this case to the district court to recalculate the restitution award based on Willis' pecuniary gain. Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REMANDED IN PART.


Shearing, J.


Leavitt, J.


Becker, J.

cc: Hon. Sally L. Loehrer, District Judge
Chris T. Rasmussen
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk