

IN THE SUPREME COURT OF THE STATE OF NEVADA

GINNY LEE CAMPANARO,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 37783

FILED

JUL 10 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. R. [Signature]*
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from a judgment of conviction, pursuant to a nolo contendere plea, of embezzlement. The district court sentenced appellant to serve 36 to 120 months in prison and ordered appellant to pay restitution in the amount of \$96,711.81.

Appellant contends that the district court abused its discretion in ordering appellant to pay restitution in the amount of \$96,711.81. Appellant challenges the restitution order on two grounds.

First, appellant complains that the district court based the restitution figure on the victim's testimony at sentencing that appellant had embezzled over \$96,000.00 from the victim over a two-year period of time, but appellant was only charged with and pleaded guilty to embezzling money from the victim over a three-month period of time. Appellant also points out that she only agreed to pay \$59,320.27 in restitution as part of the plea agreement. Appellant relies on our decision in Erickson v. State,¹ wherein we held that "a defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution."

¹107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991).

Second, appellant argues that the district court erred by failing to take into account the money that appellant had repaid to the victim prior to sentencing in determining the appropriate amount of restitution. At the sentencing hearing, appellant proffered a copy of a cancelled check in the amount of \$18,000.00 that had been deposited into the victim's checking account. Appellant argues that the district court abused its discretion and afforded the victim a windfall of \$18,000.00 by failing to take this amount into consideration in determining the appropriate amount of restitution.

The State confesses error on the claims raised by appellant and agrees that this case should be remanded to the district court to determine the correct amount of restitution. We agree that the claims raised by appellant have merit and that this matter should be remanded for a hearing to determine the appropriate amount of restitution. Accordingly, we

ORDER the restitution award VACATED AND REMAND this matter to the district court for proceedings consistent with this order.

Young, J.
Young

Leavitt, J.
Leavitt

Becker, J.
Becker

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Lane, Fahrendorf, Vilorio & Oliphant, LLP
Washoe County Clerk