

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL MICHAEL ETTLICH,

No. 37938

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

OCT 10 2001

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

ORDER AFFIRMING IN PART, REVERSING IN PART AND

REMANDING

This is an appeal from two judgments of conviction. District Court Case No. C173408A is a conviction, pursuant to a guilty plea, of one count of grand larceny auto. The district court sentenced appellant to serve a prison term of 12 to 36 months, ordered him to pay \$12,920.76 in restitution, and credited him 80 days for time served. District Court Case No. C173409 is a conviction, pursuant to a guilty plea, of one count of possession of a stolen vehicle and one count of possession of a credit card without the cardholder's consent. The district court sentenced appellant to serve a prison term of 16 to 72 months for possession of a stolen vehicle and a concurrent prison term of 12 to 34 months for possession of a credit card without consent and ordered him to pay \$250.00 in restitution. The district court further ordered the sentences imposed to run concurrent with the sentence imposed in District Court Case number C173408A and credited appellant two days for time served.

Appellant first contends that the district court violated his right to due process, equal protection, and double jeopardy by refusing to give him credit for time served. Specifically, appellant contends that because he was in custody on several different charges in two cases that resulted in concurrent sentences, he is entitled to credit for time served on each charge.

We conclude that this contention is without merit. Appellant was in custody for eighty-two days and received eighty days of credit on one case and two days of credit on another. Appellant is not entitled to be credited twice for the eighty-two-day period he spent in jail merely

because he was in custody on two cases that resulted in concurrent sentences. The district court is not obligated to apply credit for time served equally to concurrent sentences.¹ Accordingly, the district court did not violate appellant's constitutional rights in refusing to credit him twice for the time he spent in confinement.

Appellant next contends that the district court erred in ordering restitution without first holding a restitution hearing. We agree with this contention.

In Martinez v. State,² this court held that a criminal defendant is "entitled to challenge restitution sought by the [S]tate and may obtain and present evidence to support that challenge."³ Although a formal evidentiary hearing is not required, a criminal defendant must be given a forum to make arguments related to the propriety and the amount of restitution.⁴

In the present matter, at the sentencing hearing, the State made no arguments and presented no evidence with respect to restitution. Rather, the amount of restitution was calculated by the Division of Parole and Probation and set forth in the presentence investigation report.⁵ Counsel for appellant objected to the amount of restitution and requested a restitution hearing, stating that appellant was "not sure where [the amount calculated] came from." The district court did not conduct a restitution hearing, but rather ordered appellant to pay restitution of \$12,920.79 in one case and \$250.00 in another. Because the district court did not allow appellant the opportunity to challenge the amount of restitution and because neither side presented evidence with respect to restitution, we vacate the orders of restitution and direct the district court to determine the proper amount of restitution in accordance with the foregoing. Accordingly, we

¹See NRS 176.055.

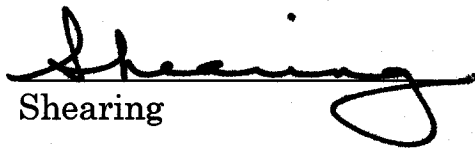
²115 Nev. 9, 974 P.2d 133 (1999).

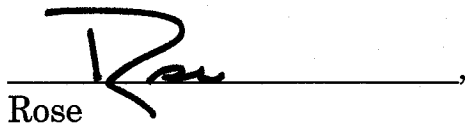
³Id. at 13, 974 P.2d at 135.

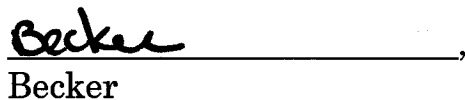
⁴See 24 C.J.S. Criminal Law § 1779, at 435 (1989).

⁵The Division of Parole and Probation apparently calculated the amount of restitution based on witness accounts, which were not attached to the reports. It is unclear from the record whether these reports were provided to appellant prior to sentencing.

ORDER the judgments of conviction AFFIRMED IN PART AND VACATED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.


_____, J.
Shearing


_____, J.
Rose


_____, J.
Becker

cc: Hon. Mark W. Gibbons, District Judge
Attorney General
Clark County District Attorney
Clark County Public Defender
Clark County Clerk