

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAUL HERNANDEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38334

FILED
CLERK OF SUPREME COURT

OCT 15 2002

ORDER OF AFFIRMANCE

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

This is a proper person appeal from an order of the district court denying appellant's motion to set aside restitution.

On March 7, 2000, the district court convicted appellant, pursuant to a plea of nolo contendere, of battery with the use of a deadly weapon.¹ The district court sentenced appellant to serve a term of twenty-four to sixty months in the Nevada State Prison. The district court also ordered appellant to pay \$4,761.22 in restitution.

On June 27, 2001, appellant filed a proper person motion to set aside restitution in the district court. The State opposed the motion. On July 25, 2001, the district court denied appellant's motion. Appellant did not file a direct appeal. On June 20, 2001, appellant filed a motion for reconsideration of the district court's denial of his motion to set aside

¹On November 20, 2000, the district court entered an amended judgment of conviction crediting appellant with one hundred sixty-two days for time served.

restitution in the district court. The State opposed the motion for reconsideration. On August 7, 2001, the district court denied appellant's motion for reconsideration. This appeal followed.²

In his motion, appellant contended that restitution for the victim's medical expenses was not appropriate because the victim "illegally entered" appellant's apartment and attacked him. "[V]ictims' medical costs for the treatment of their injuries directly resulting from the crime are the proper subject of restitution."³ The plea agreement stated that "I understand that by pleading nolo contendere . . . I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in [the amended information]." The amended information stated that appellant "willfully, unlawfully, and feloniously use[d] force or violence upon the [victim] with use of a deadly weapon." Accordingly, appellant admitted to committing a crime against the victim, and therefore, restitution for the victim's medical expenses was appropriate.

Appellant also contended that he did not receive adequate notice that he might be required to pay restitution. Specifically appellant

²To the extent that appellant attempts to appeal from the district court's order denying his motion for reconsideration, this court lacks jurisdiction to consider the appeal. See Phelps v. State, 111 Nev. 1021, 900 P.2d 344 (1995); Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

³Martinez v. State, 115 Nev. 9, 11, 974 P.2d 133, 134 (1999) (quoting Norwood v. State, 112 Nev. 438, 441, 915 P.2d 277, 279 (1996)).

argued that because the State knew the amount of the victim's medical bills, notice of the restitution requirement was inadequate because he was not informed of the amount of any possible restitution. This argument is without merit. "Restitution under NRS 176.033(1)(c) is a sentencing determination."⁴ "[T]his court generally will not disturb a district court's sentencing determination so long as it does not rest upon impalpable or highly suspect evidence."⁵ As appellant himself pointed out in his motion, the plea agreement stated that "if appropriate, I will be ordered to make restitution to the victim." Medical expenses are an appropriate subject of restitution.⁶ The amount is set by the district court; there is no requirement that a defendant must be notified of the amount prior to entering a plea.⁷ Furthermore, appellant did not allege that the amount was based upon impalpable or highly suspect evidence. Therefore, appellant did receive adequate notice.

⁴See Martinez, 115 Nev. at 12, 974 P.2d at 135.


⁵Id. at 12-13, 974 P.2d at 135; see also Silks v. State, 92 Nev. 91, 545 P.2d 1159 (1976).

⁶See Martinez, 115 Nev. at 11, 974 P.2d at 134.

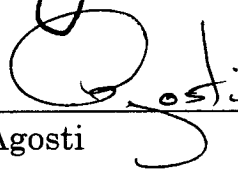
⁷See NRS 176.033; see also Martinez, 115 Nev. at 10, 974 P.2d at 134 (quoting State v. Davison, 116 Wash.2d 917, 809 P.2d 1374, 1375 (1991) ("The authority to impose restitution . . . is derived from statutes.' Thus, we are constrained by the statutory language in resolving these issues."))

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief and that briefing and oral argument are unwarranted.⁸ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Young


_____, J.
Agosti

cc: Hon. Joseph T. Bonaventure, District Judge
Attorney General/Carson City
Clark County District Attorney
Raul Hernandez
Clark County Clerk

⁸See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).