

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN JAMES OSBORNE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 38929

FILED

AUG 21 2002

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of attempted murder with the use of a deadly weapon. The district court adjudicated appellant Kevin James Osborne a habitual criminal¹ and sentenced him to serve a prison term of life without the possibility of parole, to be served consecutively to all prior terms of incarceration; Osborne was also ordered to pay \$31,448.89 in restitution. This timely appeal followed.

Osborne contends the district court erred in not conducting an evidentiary hearing to determine the proper amount of restitution to be paid. Osborne argues that the district court did not set the amount of restitution as required by NRS 176.033(1)(c), but instead improperly left the calculation of the specific amount to "either the [S]tate's attorney or the Department of Prison." The district court ordered Osborne to pay restitution to reimburse the prison for the medical expenses incurred as a result of his attempted murder of the victim, another inmate at the prison. Osborne requests that this court vacate the order of restitution and

¹In 1999, Osborne was twice convicted of first-degree murder and sentenced in both cases to serve a term of life in prison without the possibility of parole.

remand the matter to the district court for a hearing. We disagree with Osborne's contention.

NRS 176.033(1)(c) states that "[i]f a sentence of imprisonment is required or permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense." This court has held that "victims' medical costs for the treatment of their injuries directly resulting from the crime are the proper subject of restitution."² In this case, the district court set the amount of restitution based on the presentence investigation report and recommendation of the Division of Parole and Probation. Although Osborne requested a hearing to determine the amount of restitution, he failed to object to the specific amount of restitution ordered, and he failed to object to the district court's sentencing without conducting a hearing. Therefore, Osborne has waived this issue.³

Nevertheless, our review of the record on appeal reveals that Osborne's contention is without merit. "[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."⁴ Furthermore, "a defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge restitution sought by the state and may obtain and present evidence to support that challenge."⁵

²Norwood v. State, 112 Nev. 438, 441, 915 P.2d 277, 279 (1996).

³See Martinez v. State, 115 Nev. 9, 12, 974 P.2d 133, 135 (1999); Williams v. State, 103 Nev. 227, 232, 737 P.2d 508, 511 (1987).

⁴Martinez, 115 Nev. at 13, 974 P.2d at 135.


⁵Id.

As stated above, Osborne did not object to the specific amount of restitution ordered by the district court, and on appeal only contends that the district court should have conducted an evidentiary hearing on the matter. We conclude that the district court satisfied NRS 176.033(1)(c) by setting the amount of restitution based on the recommendation of the Division of Parole and Probation, and that Osborne is not entitled to an evidentiary hearing.

Having considered Osborne's contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Young


_____, J.
Agosti


_____, J.
Leavitt

cc: Hon. Dan L. Papez, District Judge
State Public Defender/Carson City
State Public Defender/Ely
Attorney General/Carson City
White Pine County District Attorney
White Pine County Clerk