

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAWN WALLIS KING,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 40378

FILED

JAN 13 2003

CLERK OF THE SUPREME COURT  
OF THE STATE OF NEVADA  
J. Richards

ORDER AFFIRMING IN PART, VACATING IN PART AND  
REMANDING

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of attempted possession of stolen property. The district court sentenced appellant Dawn Wallis King to serve a prison term of 12-48 months, and ordered her to pay restitution in the amount of \$40,020.25.

King contends that the district court erred in its determination of the restitution award. King argues that: (1) the State failed to follow the plea negotiations regarding the payment of restitution; (2) the restitution award was not supported by the evidence; and (3) the district court erred in its determination of the correct victim entitled to restitution. The State concedes error and asks this court to vacate the restitution award. We agree with both parties and conclude that the district court erred.

“[A] defendant may be ordered to pay restitution only for an offense that [she] has admitted, upon which [she] has been found guilty, or upon which [she] has agreed to pay restitution.”<sup>1</sup> A sentencing court must

<sup>1</sup>Erickson v. State, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991); see also NRS 176.033(1)(c) (“If a sentence of imprisonment is required or

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rely on reliable and accurate information in calculating a restitution award.<sup>2</sup> Absent an abuse of discretion, “this court generally will not disturb a district court’s sentencing determination so long as it does not rest upon impalpable or highly suspect evidence.”<sup>3</sup>

In the justice court, King waived her right to a preliminary hearing and agreed to plead guilty to attempted possession of stolen property; the property in question was a sapphire ring with diamonds owned by King’s mother. King admitted pawning the ring for \$50.00; the ring was recovered and seized as evidence. With the State’s assent, defense counsel informed the court that as part of the plea negotiations, the “State retains the right to argue [at sentencing], and part of the agreement is she will pay restitution to the pawn shop.” A criminal information was filed in the district court charging King with attempted possession of her mother’s ring.

At the sentencing hearing, the State argued that the victim was King’s mother, not the pawn shop, despite the recovery of the ring. Further, based on the Division of Parole and Probation’s recommendation, the State argued that King should pay over \$40,000.00 in restitution based on other jewelry allegedly stolen from King’s mother. King, however, was not charged with any offense pertaining to jewelry other than the ring. King only claimed responsibility for pawning the ring. At a subsequent hearing on the matter of restitution, King’s mother testified,

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*... continued*

permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense.”).

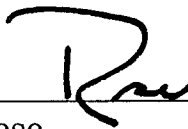
<sup>2</sup>See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

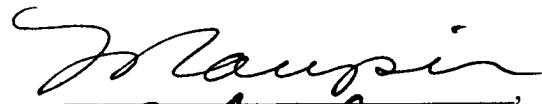
<sup>3</sup>Id. at 12-13, 974 P.2d at 135.

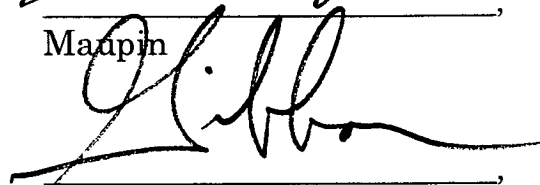
without support or corroboration, that her daughter had been stealing from her for years, and that she believed King was responsible for three boxes of jewelry that were missing from her home. The district court ordered King to pay \$40,020.25 in restitution to her mother. We conclude that the district court erred.

King admitted to taking and pawning a ring for \$50.00. The ring was recovered and will ultimately be returned to its owner. King agreed to pay restitution to the pawn shop for its loss, and we conclude that the pawn shop is the proper victim entitled to reimbursement. King cannot be ordered to pay restitution for an offense which she has not admitted, been found guilty of, or for which she has agreed to pay restitution. The district court's award of restitution for offenses beyond which King pleaded guilty to was an abuse of discretion. Therefore, we conclude that the restitution award must be vacated and the case remanded to the district court for a new sentencing hearing in order to set a new award of restitution for the pawn shop as the proper victim. Accordingly, we

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

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. Donald M. Mosley, District Judge  
Clark County Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Clark County Clerk