

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNADETTE MILLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40444

FILED

APR 28 2003

ORDER OF AFFIRMANCE

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

This is an appeal from a judgment of conviction, pursuant to a guilty plea, of one count of gross misdemeanor conspiracy to possess stolen property. The district court sentenced appellant Bernadette Miller to serve 1 year in county jail and then suspended execution of the sentence, placing Miller on probation for a period not to exceed three years. As a condition of probation, the district court ordered Miller to pay \$9,255.00 in restitution pursuant to NRS 176A.430.

Miller was originally charged with possession of stolen property for pawning a gold ring, a diamond tennis bracelet, a gold rope bracelet, a diamond and sapphire tennis bracelet, two gold chains, a ladies watch, and a set of diamond earrings. Miller's daughter allegedly went into her father's home, took the jewelry from her stepmother, and gave it to Miller who subsequently pawned it. In pleading guilty to the charge, Miller agreed: "to make restitution to the victim of the offense . . . and the victim of any related offense which is being dismissed or not prosecuted pursuant to the [plea agreement]."¹

¹In exchange for Miller's guilty plea, the State agreed to recommend probation and request that the district court reduce Miller's conviction to misdemeanor petty larceny upon successful completion of probation.

Miller contends that the district court erred in imposing \$9,255.00 in restitution as a condition of probation because there was insufficient evidence that the victims sustained losses in that amount. In particular, Miller contends that the only basis for the amount of restitution was a reference contained in the presentence investigation report prepared by a representative of the Division of Parole and Probation, who Miller alleges relied solely on the victims' valuations of the losses incurred.² We conclude that Miller's contention lacks merit.

NRS 176A.430(1) authorizes restitution as a condition of probation "in appropriate circumstances." This court has held the district court has broad discretionary powers to impose restitution as a condition of probation, which are liberally construed.³

In the instant case, we conclude that the district court acted within its broad discretion in imposing \$9,255.00 in restitution as a condition of probation. Specifically, the district court relied on the investigation conducted by the Division of Parole and Probation regarding the losses sustained by the victims. At the sentencing hearing, the State noted that the Division conducted a thorough investigation into the value of the jewelry taken and subtracted out the value of the missing jewelry

²We note that there were apparently some written appraisals supporting one of the victim's account of the estimated values of the jewelry. Although not contained in the record on appeal, at the plea canvass, the prosecutor commented that based on his review of the "appraisal reports from The Jewelers in Las Vegas, [the restitution was] into the thousands of dollars" and that the Division of Parole and Probation would "decipher out which property was . . . the victims."

³Igbinovia v. State, 111 Nev. 699, 709-10, 895 P.2d 1304, 1310-11 (1995).

not attributable to Miller's conduct. Although defense counsel argued that (1) the presentence investigation report was incorrect, (2) all the stolen property that had come into Miller's possession had been returned, and (3) one ring listed as stolen was actually owned by Miller, Miller failed to present any documentary or testimonial evidence in support of her arguments. Accordingly, Miller failed to show that the district court abused its discretion in ordering her to pay the victims \$9,255.00 in restitution.

Miller next contends that she was deprived of property without due process of law because she was not afforded a hearing before the imposition of restitution as a condition of probation. We disagree.

This court has held that a "defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but [she] is entitled to challenge restitution sought by the [S]tate and may obtain and present evidence to support that challenge."⁴ Here, the record of the sentencing proceeding reveals that Miller was afforded an opportunity to present evidence in support of her challenge to the restitution sought by the State. Accordingly, Miller's right to due process was not violated by the imposition of restitution as a condition of probation.

Finally, Miller contends that her guilty plea was not knowing and voluntary because the amount of restitution was in dispute at the time that she pleaded guilty.⁵ We decline to consider Miller's challenge to

⁴Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999) (discussing restitution awarded under NRS 176.033).


⁵To the extent that Miller challenges the validity of her waiver of the preliminary hearing, we decline to consider her contention. Miller waived her right to raise that issue by entering a guilty plea. See Webb v. State,

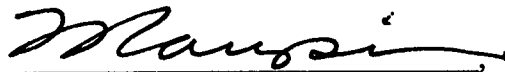
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the validity of her guilty plea. Generally, this court will not permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgment of conviction.⁶ Instead, a defendant must raise a challenge to the validity of a guilty plea in the district court in the first instance by initiating a post-conviction proceeding.⁷ Miller must therefore pursue her claim involving the validity of her guilty plea in the district court.

Having considered Miller's contentions and concluded that they either lack merit or are not appropriate for review on direct appeal, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

... continued

91 Nev. 469, 538 P.2d 164 (1975); Tollett v. Henderson, 411 U.S. 258 (1973).

⁶Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); but see Lyons v. State, 105 Nev. 317, 775 P.2d 219 (1989) and Smith v. State, 110 Nev. 1009, 879 P.2d 60 (1994) (recognizing that this court will consider the validity of a guilty plea on direct appeal where the error alleged is clear from the face of the record).

⁷Bryant, 102 Nev. at 272, 721 P.2d at 368.

cc: Hon. Michael L. Douglas, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk