

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL RABE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

FREDERICK STEINMANN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41259

No. 41260

FILED

NOV 05 2003

ORDER OF AFFIRMANCE

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

These are appeals from judgments of conviction, pursuant to guilty pleas, of one count of conspiracy to commit the crime of embezzlement, a gross misdemeanor in violation of NRS 205.300. The district court sentenced appellants Frederick Steinmann and Michael Rabe to serve jail terms of 12 months, suspended execution of the sentences and placed appellants on probation for an indeterminate period not to exceed 36 months. The district court ordered appellants to pay \$10,129.49 in restitution jointly and severally. We elect to consolidate these appeals for disposition.¹

Appellants' sole contention is that the district court erred in its determination of the restitution award. Appellants were managers in the arcade at the Atlantis Casino Resort, and both were responsible for recovering money and tokens. Appellants argue that: (1) as part of the

¹See NRAP 3(b).

plea negotiation process, and as reflected in the written guilty plea agreement, they agreed to a restitution award of only \$900.00; (2) they admitted to embezzling only that amount, and on only one occasion; and (3) that any monetary loss by the victim greater than that amount could not be attributed to them. We conclude that appellants' contention is without merit.

“[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution.”² A district court retains the discretion “to consider a wide, largely unlimited variety of information to insure that the punishment fits not only the crime, but also the individual defendant.”³ A district court, however, must rely on reliable and accurate information in calculating a restitution award.⁴ 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.”⁵

Appellants cannot demonstrate that the district court relied on impalpable or highly suspect evidence in determining the amount of

²Erickson 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 permitted by statute, the court shall: . . . [i]f restitution is appropriate, set an amount of restitution for each victim of the offense.”).

³Martinez v. State, 114 Nev. 735, 738, 961 P.2d 143, 145 (1998).

⁴See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

⁵Id. at 12-13, 974 P.2d at 135.

restitution ordered for the reimbursement of the victim's monetary loss. At the first sentencing hearing, when the Division of Parole and Probation recommended a restitution amount of nearly \$11,000.00, the district court continued the sentencing and scheduled a restitution hearing. The district court conducted a restitution hearing and considered the testimony of the Atlantis' internal audit manager, representing the victim. The manager testified that after the discovery of the crime, she performed an audit of the previous three months and determined that the Atlantis' loss was between \$10,900.00 and \$11,280.00. This three-month period was included within the time frame contemplated in the criminal information, which charged appellants with conspiracy to commit the crime of embezzlement, "on or between the month of January A.D. 2002, and the 6th day of May A.D. 2002, or thereabout," and to which appellants both admitted. The manager also extensively and credibly testified that it was highly unlikely that any other person or persons working together were able to embezzle the money based on the casino's internal controls. Furthermore, appellants were informed by the district court at their arraignment, again during the first sentencing hearing held prior to the restitution hearing, and in the written plea agreements, that the district court was not "bound by the agreement of the parties and that the matter of sentencing is to be determined solely by the Court."⁶ Therefore, based on all of the above, we conclude that the district court did not abuse its

⁶We also note that the district court, at the first sentencing hearing, asked appellants if they wished to withdraw their guilty pleas, to which counsel responded in the negative.

discretion in determining the amount of restitution to be paid by the appellants.

Having considered the appellants' contention and concluded that it is without merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

cc: Hon. James W. Hardesty, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk