

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC ZESSMAN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 41490

FILED

SEP 24 2003

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 nolo contendere plea and a guilty plea, of one count each of robbery and conspiracy to commit robbery.¹ The district court sentenced appellant Eric William Zessman to serve a prison term of 24 to 75 months for the robbery count and a concurrent prison term of 12 to 30 months for the conspiracy count. The district court also ordered Zessman to pay \$1,574,795.00 in restitution.

First, Zessman contends that his guilty plea and his nolo contendere plea were not knowing and voluntary because he was not: (1) told that the robbery count was punishable by both imprisonment and a fine; (2) informed that he would have to pay a DNA testing fee; and (3) advised of the sentencing range and the elements of the conspiracy count.

¹Appellant entered a nolo contendere plea to the robbery count and a guilty plea to the conspiracy count.

We decline to consider Zessman's challenge to the validity of his guilty and nolo contendere pleas.

Generally, this court will not permit a defendant to challenge the validity of a plea on direct appeal from the judgment of conviction.² 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.³ We therefore conclude that Zessman must first pursue his claim involving the validity of his guilty and nolo contendere pleas in the district court.

Second, Zessman contends that the district court erred in awarding \$1,574,795.000 in restitution because it was ordered to be paid to an insurance company in violation of this court's holding in Martinez v. State.⁴ We conclude that Zessman's contention lacks merit.

In Martinez, this court held that "a sentencing court may not order a defendant to pay restitution to an insurance company for the

²Bryant 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).

³Bryant, 102 Nev. at 272, 721 P.2d at 368.

⁴115 Nev. 9, 974 P.2d 133 (1999).

company's payment of a claim by or on behalf of a crime victim."⁵ However, this court further recognized that: "[t]his ruling does not prevent an insurance company that reimbursed a crime victim from seeking subrogation from a criminal defendant."⁶

In this case, the district court ordered Zessman to pay \$1,574,795.00 in restitution. We disagree with Zessman that the district court treated the insurance company as a victim, as prohibited by Martinez. Accordingly, we conclude that the district court did not abuse its discretion in ordering restitution.

Third, Zessman contends that the district court erred in denying his motion for return of personal property. Zessman, however, has neither identified the personal items he seeks returned nor cited any relevant authority in support of his contention that he is entitled to bring a motion for return of his personal property in the context of the criminal proceeding.⁷ Therefore, we conclude that the district court did not err in denying Zessman's motion.⁸

⁵See id. at 12, 974 P.2d at 135.

⁶See id.


⁷See Maresca v. State, 103 Nev. 669, 748 P.2d 3 (1987) (this court need not consider contentions unsupported by relevant authority).


⁸We note that Zessman's remedy, if any, is by way of a civil action in the district court, pursuant to NRS 179.125 et seq., based on the State's
continued on next page . . .

Having considered Zessman's contentions and concluded that they lack merit, we

ORDER the judgment of conviction AFFIRMED.


_____, J.
Becker


_____, J.
Shearing


_____, J.
Gibbons

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

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failure to initiate a civil forfeiture proceeding before refusing to return his property.