

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD DOUGLAS SNEDEGAR,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 42190

FILED

MAR 12 2004

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

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 Richard Douglas Snedegar to serve a prison term of 18-48 months and ordered him to pay \$5,262.16 in restitution.

Snedegar's sole contention is that the district court erred in its determination of the restitution award. Snedegar argues that the district court's restitution determination was based upon impalpable and highly suspect evidence. 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 he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution."¹ A district court retains the discretion "to consider a wide, largely unlimited variety of information to

¹Erickson 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.").

insure that the punishment fits not only the crime, but also the individual defendant.”² A district court, however, must rely on reliable and accurate information in calculating a restitution award.³ 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.”⁴

In this case, we conclude that the district court erred. Both the criminal information and signed guilty plea memorandum noted that the only stolen property in question was a camera having a value in excess of \$250.00. The camera was recovered and ultimately returned to its owner. At Snedegar’s sentencing hearing, the State informed the district court that, after a further investigation, it was discovered that the victim, the owner of the camera, was also missing jewelry, and that Snedegar had also pawned jewelry. The State failed to charge Snedegar with an offense related to the jewelry, let alone demonstrate that the jewelry pawned by Snedegar was in fact the instant victim’s jewelry. During his statement in allocution, Snedegar stated that “[n]one of this jewelry is relatively related to this incident.”

Snedegar cannot be ordered to pay restitution for an offense which he has not admitted or been found guilty of. Additionally, Snedegar never agreed to pay restitution as part of the terms of his plea bargain. The district court’s award of restitution for an offense beyond which Snedegar pleaded guilty to was an abuse of discretion. Therefore, we


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


³Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999).

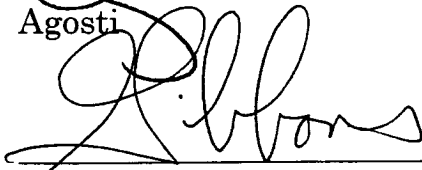
⁴Id. at 12-13, 974 P.2d at 135.

conclude that the restitution award must be vacated and the case remanded to the district court for a new sentencing hearing in order to determine the proper amount, if any, of restitution owed to the 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.
Becker


_____, J.
Agosti


_____, J.
Gibbons

cc: Hon. Steven R. Kosach, District Judge
Washoe County Public Defender
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk