

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRUCE SCOTT OMAN,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55697

FILED

SEP 29 2010

CLERK OF THE SUPREME COURT  
BY *Angela*

ORDER AFFIRMING IN PART, VACATING IN PART AND  
REMANDING

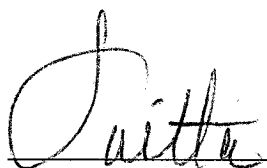
This is an appeal from a judgment of conviction, pursuant to a guilty plea, of burglary. Second Judicial District Court, Washoe County; Steven P. Elliott, Judge.

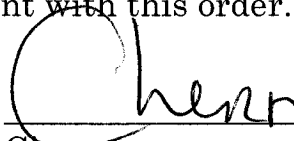
First, appellant Bruce Scott Oman contends that the district court erred by failing to conduct a hearing on his motion for substitution of counsel. However, Oman waived any challenge relating to this motion by pleading guilty. See Webb v. State, 91 Nev. 469, 470, 538 P.2d 164, 165 (1975). Moreover, there is no indication in the record that Oman expressly preserved this issue for review on appeal. See NRS 174.035(3).

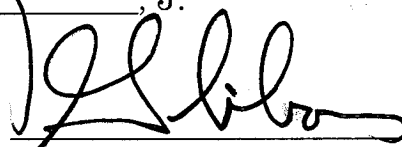
Second, Oman contends that the district court abused its discretion by adjudicating him a habitual criminal because one prior felony was stale. Having carefully reviewed the record, we discern no abuse of discretion. See NRS 207.010(2); Hughes v. State, 116 Nev. 327, 333, 996 P.2d 890, 893 (2000); Arajakis v. State, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) ("NRS 207.010 makes no special allowance for . . . the remoteness of convictions").

Third, Oman asserts that the district court erred by ordering restitution in the full amount of the items taken because the items were returned and there was no evidence that the items could not be resold for the full or a reduced price. We agree. The information available to the court at sentencing indicated that the stolen items had been returned but could not be resold because they had been removed from their original packaging. However, Oman represented that some of the items had not been removed from the packaging and the State did not contest this representation. In addition, we note that it appears the restitution award was supported only by the victim's statement as reported in the presentence investigation report; no documentation or testimony regarding restitution was presented at sentencing. See Martinez v. State, 115 Nev. 9, 13, 974 P.2d 133, 135 (1999) (the district court must rely on accurate and reliable evidence in calculating a restitution award). Therefore, we conclude that the district court abused its discretion by awarding the victim the entire amount of the stolen items in restitution and that the restitution award must be vacated. See id. at 12-13, 974 P.2d at 135; Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). 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.

  
Saitta, J.

  
Cherry, J.

  
Gibbons, J.

cc: Hon. Steven P. Elliott, District Judge  
Washoe District Court Clerk  
Mary Lou Wilson  
Attorney General/Carson City  
Washoe County District Attorney