

IN THE SUPREME COURT OF THE STATE OF NEVADA

GREGORY ALLEN KELLY, JR.,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57043

FILED

MAY 10 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a judgment of conviction and an amended judgment of conviction, pursuant to a no contest plea, of conspiracy to commit assault. First Judicial District Court, Carson City; James E. Wilson, Judge; First Judicial District Court, Carson City; Robert E. Rose, Senior Judge.¹

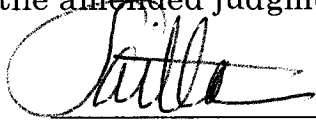
First, appellant Gregory Allen Kelly, Jr., contends that the district court erred by not awarding him additional credit for time served in presentence confinement. The judgment of conviction, filed on September 7, 2010, awarded Kelly credit for 10 days spent in presentence confinement. The issue of credit was not addressed by the amended judgment of conviction filed on September 29, 2010. In order to challenge the amount of credit awarded, Kelly needed to file a timely notice of appeal from the original judgment of conviction filed on September 7th. See Morrell v. Edwards, 98 Nev. 91, 92-93, 640 P.2d 1322, 1324 (1982). Kelly's notice of appeal, however, was not filed until October 25, 2010, beyond the expiration of the 30-day appeal period prescribed by NRAP

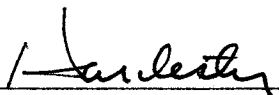
¹Sr. Judge Rose presided over the restitution hearing.

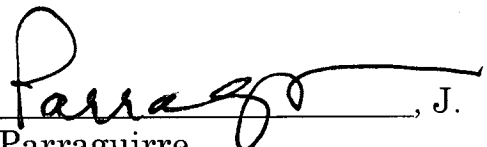
4(b). Therefore, because Kelly's notice of appeal from the original judgment of conviction was untimely filed, we lack jurisdiction to consider this issue. See Lozada v. State, 110 Nev. 349, 352, 871 P.2d 944, 946 (1994).

Second, Kelly contends that the district court abused its discretion by imposing restitution. A district court must rely on reliable and accurate information in calculating a restitution award and its determination will not be disturbed absent an abuse of discretion. See Martinez v. State, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999); Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993); see also NRS 176.033(1)(c). Here, the district court conducted a hearing, heard arguments from counsel, and determined that the \$29,214 award "rightfully is stated as restitution." We agree and conclude that the district court did not abuse its discretion in imposing restitution. Accordingly, we

ORDER the amended judgment of conviction AFFIRMED.


_____, J.
Saitta


_____, J.
Hardesty


_____, J.
Parraguirre

cc: Chief Judge, First Judicial District Court
Hon. Robert E. Rose, Senior Justice
Kay Ellen Armstrong
Attorney General/Carson City
Carson City District Attorney
Carson City Clerk