

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

RENE GEOVANY ALFARO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 78674-COA

FILED

MAY 15 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF REVERSAL AND REMAND

Rene Geovany Alfaro appeals from a judgment of conviction entered pursuant to a jury verdict of voluntary manslaughter with the use of a deadly weapon and pursuant to a guilty plea of ownership or possession of a firearm by a prohibited person. Eighth Judicial District Court, Clark County; Valerie Adair, Judge.

Alfaro claims the district court erred by not sufficiently identifying the restitution to be paid. We conclude this claim lacks merit because the judgment of conviction clearly identifies the amount of restitution to be paid and the entity the restitution is to be paid to. *See* NRS 176.033(1)(c).

Alfaro also claims the district court abused its discretion when setting the amount of restitution to be paid. He asserts that the restitution awarded is not supported by substantial and competent evidence.

Restitution is a sentencing determination that this court generally will not disturb so long as it does not rest upon impalpable or highly suspect evidence. *See Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). The district court must rely on reliable and accurate information when calculating a restitution award. *Id.* at 13, 974 P.2d at



135. "A defendant is not entitled to a full evidentiary hearing at sentencing regarding restitution, but he is entitled to challenge the restitution sought by the state and may obtain and present evidence to support that challenge." *Id.*

At sentencing, Alfaro objected to the restitution being sought on the basis that the amount seemed high and the defense had not received any documentation to support the amount of restitution being sought. In response, the State said that had it been aware the objection was forthcoming it would have sought documentation regarding the restitution from Victims of Crime, and the State indicated that it was willing to provide the documentation to Alfaro. The district court said it sounded like the State was willing to provide the paperwork to Alfaro and if Alfaro had an issue with the paperwork, he could ask the court to reconsider the restitution. The court then stated that because the victim was transported to the hospital and received medical treatment and there were funeral expenses, restitution in the amount of \$20,846.27 did not seem inordinately high and ordered Alfaro to pay restitution in that amount.

Our review of the record reveals that the only thing provided at sentencing in support of the Division of Parole and Probation's restitution recommendation was a conclusory statement in the presentence investigation report that the Victims of Crime indicated it had paid \$20,846.27 toward funeral expenses and death benefits. Given Alfaro's objection, the district court should have conducted a restitution hearing to allow the State to provide a sufficient factual basis to support the Division's recommendation and to allow Alfaro an opportunity to challenge the restitution being sought by the State. *See id.* Under the circumstances

presented, we reverse the restitution award and remand to the district court with instructions to conduct a restitution hearing. Accordingly, we

ORDER the judgment of conviction REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.


_____, C.J.
Gibbons


_____, J.
Bulla

TAO, J., concurring:

I agree that reversal is required because the record lacks evidentiary support for the district court's award of restitution. But oh what a waste of time and judicial resources.

During the district court sentencing hearing on April 4, 2019, Alfaro objected to the amount of restitution requested by the State as calculated in the PSI by the Division of Parole and Probation. The State responded that, had it known that an objection was forthcoming, it could easily have sought the relevant documents, but since it had no warning, it had not done so. But the prosecutor offered:

They can contact me. I can try to get that paperwork.

Based upon this, the district court stated:

[The State] it sounds like, is willing to provide the paperwork to you. If there's an issue, you can certainly ask the Court to reconsider it.


In order to move things along, the district court then tentatively awarded the requested amount of restitution. Weeks later, on April 17, apparently without receiving any request for reconsideration, it entered a written order awarding the requested amount.

So as we sit here today, the appellate record lacks evidentiary support confirming that the district court's award of restitution meets the legal standard. See *Martinez v. State*, 115 Nev. 9, 12-13, 974 P.2d 133, 135 (1999). But what the record also lacks is any indication that, before filing this appeal, Alfaro made any attempt to solve the problem by taking the prosecutor up on her offer to retrieve the documents for him and re-visit the issue with the district court (notably Alfaro's briefing deftly avoids addressing this). Had Alfaro tried to follow up on the prosecutor's offer, he might have had the documents in his hands a year ago. The requested restitution of \$20,846.27 is a highly specific amount, and the PSI indicates that it represented the amount that Nevada Victims of Crime paid toward funeral expenses and death benefits, which suggests that some detailed documentary support existed and would have been available had Alfaro sought it. Had Alfaro accepted the prosecutor's offer to get them, or alternatively directly asked Nevada Victims of Crime to provide them, he would have quickly known if any discrepancy existed. If one did, he could have accepted the district judge's offer to bring this to her attention and quickly resolve the issue via a request for reconsideration without needing to file an appeal that instead has now consumed an entire additional year.

Based upon the transcript, it appears that both the prosecutor and the district court acted in good faith when they extended their

unsolicited offers of cooperation to Alfaro. The district court certainly appeared to believe that the prosecutor's offer was genuine, and there is no indication (and Alfaro does not assert) that the prosecutor ever reneged on her offer. Under these circumstances, not accepting the offer and instead filing an appeal to this court, although legally justified, was perhaps the very worst possible way for Alfaro to resolve the problem. A full year has passed and Alfaro still does not possess the documents in question. What he possesses instead is the Pyrrhic victory of an Order of Reversal from this court dated May 2020 that orders the district court to do what it already freely volunteered to do back on April 4, 2019 -- review the documents that the prosecutor offered to retrieve from Nevada Victims of Crime to see if they match up with the restitution request. And to achieve that Pyrrhic victory -- one whose only accomplishment is to bring things back to the way they already were a year ago -- Alfaro had to involve an appellate lawyer and another layer of the judiciary just to get what the prosecutor voluntarily offered to get for him back in April 2019.

The appellate court system exists to allow parties to redress problems that occur in district courts. A defect occurred in connection with the district court's proceedings, and this Order seeks to correct it. Alfaro wins. But this was hardly the most optimal way for Alfaro to handle the problem when better and faster alternatives were voluntarily extended to him in what by all accounts was the spirit of good will and cooperation. Other parties with pending appeals wondering why it takes so long for appellate courts to resolve their cases need only look at this case for an answer.


_____, J.
Tao

cc: Hon. Valerie Adair, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk