

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**No. 84612**

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**APRIL PARKS**

Appellant,

v.

**THE STATE OF NEVADA**

Respondent.

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Appeal from Amended Judgment of Conviction  
Eighth Judicial District Court, Clark County  
The Honorable Ellie Roohani, District Court Judge  
District Court Case No. C-17-321808-1

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**APPELLANT'S REPLY BRIEF**

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I.

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**II.**

**ARGUMENT**

Appellant April Parks (“Parks”) maintains the district court erred in its restitution order and respectfully requests this Honorable Court grant this appeal.

**A. PARKS RETAINS THE RIGHT TO APPEAL EXCESSIVE  
RESTITUTION ORDER BECAUSE THE IMPOSITION OF AN  
ILLEGAL SENTENCE IS A MISCARRIAGE OF JUSTICE  
CONSTITUTING PLAIN ERROR**

A party’s failure to object in district court does not waive their right to raise plain error on appeal. *Lamb v. State*, 127 Nev. 26, 40, 251 P.3d 700, 709 (2011) (internal citations omitted). A plain error is an error (1) readily apparent from the record, (2) that has caused “actual prejudice or a miscarriage of justice,” (3) affecting the appellant’s substantial rights. *Martinoirellan v. State*, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015). To demonstrate this causal effect, the appellant must show “a reasonable probability that, but for the error” the restitution award would have been different. *United States v. Clark*, 748 F. App’x 143, 144 (9th Cir. 2019) (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 76, 124 S. Ct. 2333, 159 L. Ed. 2d 157 (2004)).

A court may *only* award restitution to compensate victims for actual losses (1) they suffered as a result of the offenses to which the defendant admitted or was convicted, or (2) for which the defendant agreed to pay restitution. *Erickson v. State*, 107 Nev. 864, 866, 821 P.2d 1042, 1043 (1991); *United States v. Gamma Tech*

1 *Indus., Inc.*, 265 F.3d 917, 926 (9th Cir. 2001) (restitution in a criminal case may  
2 only compensate victims for actual losses caused by defendant’s criminal conduct)  
3 (citing *United States v. Rodrigues*, 229 F.3d 842, 845 (9th Cir. 2000)). Victims  
4 whose losses simply “arise out of the same transaction or conduct” as these charges  
5 do not qualify. *Erickson*, 107 Nev. at 866. Courts do not have legal authority to  
6 order restitution incorporating any losses caused by offenses for which the  
7 defendant has not, either voluntarily or involuntarily, been deemed responsible. *See*  
8 *United States v. Cobbs*, 967 F.2d 1555, 1558 (11th Cir. 1992). Any sentence  
9 inconsistent with law – in effect an illegal sentence – yields a miscarriage of justice  
10 and plain error. *See id.* at 1557 (internal citation omitted); *see also United States v.*  
11 *Ameline*, 409 F.3d 1073, 1081 (9th Cir. 2005) (en banc) (holding that imposition of  
12 an illegal sentence is “a miscarriage of justice” that satisfies the fourth element of  
13 the plain error test). Illegal sentences may be corrected at any time. Nev. Rev. Stat.  
14 § 176.555. Thus, a restitution award exceeding actual losses victims suffered as a  
15 result of the defendant’s admitted-to or convicted-of crimes is an illegal sentence  
16 constituting plain error that is properly raised on appeal. *See Cobbs*, 967 F.2d at  
17 1558; *see also United States v. Fu Sheng Kuo*, 620 F.3d 1158, 1166 (9th Cir. 2010);  
18 *see also United States v. Weinstein*, 834 F.2d 1454, 1456 (9th Cir. 1987) (review  
19 for plain error when the restitution amount “exceeds the actual damages or loss”  
20 caused by the offense for which the defendant was convicted).  
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1 Per NRS 176.105(1)(c), a judgment of conviction must include “the amount  
2 and terms of *any* ... restitution.” Emphasis added. NRS 176.033(1)(c) further  
3 requires a court to “set an amount of restitution for each victim of the offense.” *See*  
4 *Erickson*, 107 Nev. at 866. Defendants must pay restitution to the “persons named  
5 in the order...in the amounts specified.” NRS 176A.430(1). Courts in the Ninth  
6 Circuit have also held that a court “must demonstrate a rational basis for its award  
7 and ensure that the record is sufficient to permit meaningful review.” *Valenti v.*  
8 *Covello*, No. 218CV02199CASSHK, 2021 WL 3578879, at \*52 (C.D. Cal. Mar.  
9 19, 2021), *report and recommendation adopted*, No. 218CV02199CASSHK, 2022  
10 WL 445027 (C.D. Cal. Feb. 11, 2022) (citing *People v. Giordano*, 42 Cal. 4th 644,  
11 664, 170 P.3d 623, 637 (2007)).  
12

13  
14 Here, the district court committed plain error in ordering a restitution award  
15 contrary to the law. Per Parks’ Amended Judgment of Conviction (“AJOC”) for  
16 Case No. C-17-321808-1, she pled guilty to two exploitation counts, two theft  
17 counts, and one perjury count. AA I 23. She also pled to one exploitation count in  
18 concurrently-run Case No. C-18-329886-2. AA I 26. Both AJOCs read, “TOTAL  
19 RESTITUTION in the amount of \$554,397.71 payable jointly and severally with  
20 Co-Defendants in all cases as follows...” then named and allocated specific dollar  
21 amounts to thirty-eight (38) victims of the admitted-to offenses identified in the  
22  
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24

1 AJOCs. AA I 24-25, 27-28. The sum of these awards is \$412,943.02, accounting  
2 for less than seventy-five percent (75%) of the total order.

3       Indeed, the district court seemingly attempted to comply with state law in this  
4 restitution order. The AJOCs reflect the actual loss each victim incurred from a  
5 specific crime for which Parks has accepted responsibility, as provided in the  
6 Amended Indictment.<sup>1</sup> See AA I 01. However, state law requires that judgments of  
7 conviction include (1) the terms of *any* restitution, with (2) set amounts allocated to  
8 *each* victim of an offense, (3) the persons *named* in the order. Thus, to be legally  
9 sufficient, these AJOCs must specifically identify who lost what due to which  
10 crime. That they use identical language reflecting the same awards and recipients  
11 for “all cases,” with Case No. C-18-329886-2 providing no additional explanation,  
12 victims, or allocations, indicates that the thirty-eight (38) named persons represent  
13 an exhaustive list of all victims to whom Parks owes restitution.  
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16       The combined losses listed in the AJOCs account for less than three-quarters  
17 of the total award and the order provides no explanation for the remaining  
18 \$141,454.69. Thus, more than a quarter of the restitution order can only be  
19 attributed to losses arising from related conduct, uncharged offenses, or counts  
20 dismissed in accordance with the plea agreement. Regardless, it cannot possibly  
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23 <sup>1</sup> With the exception of William Flewellen who was included twice in the  
24 Amended Indictment, but the duplicate was removed in the AJOCs.



1 represent the only legally-sufficient basis for restitution – loss suffered by victims  
2 of the admitted-to crimes. Rather than compensate victims, this sum effectively  
3 punishes Parks for crimes neither party claims she committed – a “manifest  
4 injustice.” *See Erickson*, 107 Nev. at 866.

5  
6 Clearly, “but for” the unauthorized inclusion of an excess \$141,454.69, the  
7 restitution award would have been twenty-five percent (25%) smaller. This  
8 significant discrepancy is readily apparent from the record. Thus, this restitution  
9 order is an illegal sentence constituting a miscarriage of justice and plain error. As  
10 such, Parks maintains the right to raise this issue on appeal, and the court may  
11 correct it at any time.

12  
13 **B. THE RESTITUTION ORDER MUST BE VACATED AND**  
14 **PROPERLY RECALCULATED IN ACCORDANCE WITH THE**  
15 **LAW**

16 The Supreme Court of Nevada finds plain error and vacates restitution orders  
17 that include losses suffered by anyone other than an “actual victim” of the  
18 defendant’s admitted-to or convicted-of offenses. *See Erickson*, 107 Nev. at 866;  
19 *see also Greenwood v. State*, 112 Nev. 408, 915 P.2d 258, 261 (1996); *see also*  
20 *Igbinovia v. State*, 111 Nev. 699, 711, 895 P.2d 1304 (1995). In *Erickson*, the  
21 defendant pled guilty to one count in exchange for four others being dropped.  
22 *Erickson*, 107 Nev. at 821. The restitution order only reflected losses suffered by  
23 victims of his dismissed or uncharged offenses, however, not the offense to which  
24

1 he pled. On appeal, the defendant argued this award, which effectively punished  
2 him for offenses for which he had never assumed nor been assigned guilt, exceeded  
3 the district court's authority under NRS 176.033(1). The State Supreme Court  
4 agreed and vacated this "manifestly unjust" restitution order. *Erickson*, 107 Nev. at  
5 866.  
6

7 The facts of this case align with *Erickson*. Parks' restitution order also  
8 exceeded the district court's authority by including losses stemming from offenses  
9 other than those to which she had pled guilty. As a result, she is also effectively  
10 being punished for crimes neither party attributed to her. Thus, as the *Erickson* court  
11 vacated an unauthorized sentence unjustly affecting the defendant's rights, this  
12 Court should vacate Parks' order accordingly.  
13

14 Although not controlling, both the Supreme Court of Nevada and the Ninth  
15 Circuit have issued dispositions vacating restitution orders when it is unclear from  
16 the record whether the amount was properly calculated and sufficiently supported.  
17 This includes uncertainty as to which specific losses the defendant had admitted to  
18 or agreed to pay. *Santos v. State*, 128 Nev. 932, 381 P.3d 659 (2012) (unpublished  
19 disposition); *see also Haddox v. State*, 127 Nev. 1139, 373 P.3d 919 (2011)  
20 (unpublished disposition) (order vacated despite defendant's agreement to pay "full  
21 restitution" when record did not indicate whether she had admitted to or agreed to  
22 pay for specific losses included). It also includes instances in which the district court  
23  
24

1 provided “inadequate explanation” for how it calculated the award amount. *United*  
2 *States v. Waknine*, 543 F.3d 546, 555–56 (9th Cir. 2008) (finding the district court  
3 gave no explanation for how the court arrived at this figure and “no combination of  
4 figures” totaled this amount). In such cases, the orders were vacated and cases  
5 remanded so additional information about or explanation for the award  
6 determination could be obtained.  
7

8 In *Santos v. State*, the defendant pled guilty to attempted grand larceny after  
9 having admitted that she stole several items from the victim. *Santos*, 128 Nev. 932  
10 (unpublished disposition). When the restitution award reimbursed the victim for all  
11 reported losses, the defendant contested the inclusion of two particular items.  
12 Although the signed plea agreement obligated her to pay restitution for “any related  
13 offense which is being dismissed or not prosecuted pursuant to this agreement,” the  
14 record did not indicate whether she had agreed to pay for or admitted to these  
15 specific losses. The Supreme Court of Nevada vacated the award and remanded the  
16 case to determine whether her plea agreement had “contemplated the restitution  
17 award to include the contested items.” *Id.*  
18  
19

20 Parks’ Guilty Plea Agreement (“GPA”) contains the same provision  
21 attempting to obligate her to pay restitution for related offenses. AA I 10. The  
22 *Santos* holding reaffirms that a court does not have authority to include such losses  
23 in a restitution award, regardless of a plea agreement’s “catch-all” provision  
24

1 asserting otherwise. An order must only include losses arising from the specific  
2 conduct for which the defendant explicitly assumed responsibility. Although non-  
3 binding, this Supreme Court of Nevada decision indicates that when the record is  
4 unclear as to what specific losses the plea agreement contemplated, or which were  
5 included in calculating the restitution order, it should be vacated and clarified on  
6 remand.  
7

8       Thus, despite language in Parks' GPA attempting to legitimize an order  
9 lumping together losses from "any related offense," the law is clear: a restitution  
10 award may only include losses resulting from her admitted-to offenses.  
11 Furthermore, the record must identify exactly which losses were contemplated in  
12 the GPA and which were included in the order. Even if the \$141,454.69 represented  
13 the loss directly incurred by a victim of Parks' Case No. C-18-329886-2 count, the  
14 record does not make this clear. This court must be able to determine whether the  
15 inclusion of this loss had been contemplated by the plea agreement and which losses  
16 were included in the calculation of this award. Because this cannot be ascertained  
17 from the record, as in *Santos*, this order must be vacated and the case remanded for  
18 clarity.  
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1 IV.

2 **CERTIFICATE OF COMPLIANCE**

3 I hereby certify that I have read this appellate brief, and to the best of my  
4 knowledge, information, and belief, it is not frivolous or interposed for any  
5 improper purpose. I certify that this brief complies with all applicable Nevada Rules  
6 of Appellate Procedure, in particular NRAP 28(e)(1), which requires every  
7 assertion in the brief regarding matters in the record to be supported by a reference  
8 to the page of the transcript or appendix where the matter relied on is to be found.  
9 I further certify that this brief complies with the formatting requirements of NRAP  
10 32(a)(4)-(6) and the type style requirements of NRAP 32(a)(6) because this brief  
11 has been prepared in a proportionately spaced typeface using Microsoft Word, a  
12 word-processing program, in 14 point Times New Roman.  
13  
14

15 I further certify that this brief complies with the type volume limitations of  
16 NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or  
17 more and contains 1,938 words. I understand that I may be subject to sanctions in  
18 the event that the accompanying brief is not in conformity with the requirements of  
19 the Nevada Rules of Appellate Procedure.  
20

21 Dated this 28th day of December 2022.

22 Respectfully submitted,

23 By: /s/ James A. Oronoz  
24 JAMES A. ORONoz, ESQ.  
*Attorney for Appellant*

1 V.

2 **CERTIFICATE OF SERVICE**

3 I hereby certify and affirm that this document was filed electronically with  
4 the Nevada Supreme Court on December 28, 2022. Electronic Service of the  
5 foregoing document shall be made in accordance with the Master Service List as  
6 follows:  
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9 Nevada Attorney General

10 STEVEN B. WOLFSON  
11 Clark County District Attorney

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