

Scholarly Commons @ UNLV Boyd Law

Nevada Supreme Court Summaries

Law Journals

1-1-2004

Summary of Martinez v. State

Scott Whittemore
Nevada Law Journal

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Law Commons](#), and the [Criminal Procedure Commons](#)

Recommended Citation

Whittemore, Scott, "Summary of Martinez v. State" (2004). *Nevada Supreme Court Summaries*. 685.
<https://scholars.law.unlv.edu/nvscs/685>

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact youngwoo.ban@unlv.edu.

Martinez v. State, 88 P.3d 825 (Nev. 2004)¹

CRIMINAL LAW - RESTITUTION

Summary

Gina Martinez appealed a district court order denying her motion for return of money deposited as bail.

Disposition

The Supreme Court of Nevada (“the court”) held that the district court lacked statutory authority to apply the cash bail deposited by Martinez for criminal defendant Patrick O’Kelly as restitution for his crimes.

Factual & Procedural History

In August of 2000, a criminal complaint was filed in Las Vegas Justice’s Court against O’Kelly on the charge of theft. The Las Vegas Justice’s Court bound O’Kelley over to the district court, and transferred the cash bail to the district court. At O’Kelley’s arraignment he filed a guilty plea agreement that stated he would forfeit \$5,038 \$6,000 of the cash bail he owed as restitution for crimes that he had committed. The district court then set O’Kelly’s sentencing date, but he failed to appear. Subsequently, the district court issued a bench warrant for his arrest, and sent Martinez a notice that the cash deposit would be forfeited.

After O’Kelley’s arrest and sentencing, pursuant to the plea agreement, the money was to be used as restitution. Martinez, represented by an attorney, moved for the return of the bail money. However, the district court refused her request, and Martinez appealed.

Discussion

The court was then presented with the question of whether the district court was authorized to apply the cash bail, which was a question of first impression for the Nevada court.² However, the court found that across the country, in many different jurisdictions, courts do not have inherent authority to apply cash bail to pay a fine, costs or restitution.³

Citing to an Illinois case, where their Court of Appeals held that cash bail deposit by a third party may be applied to restitution, the court was quick to point out that there was an Illinois statute which specifically granted that appeals court the authority to do so.⁴

¹ By Scott Whittemore

² *Martinez*, 88 P.3d at 826.

³ *Id.* at 826. *See also* State v. Nath, 137 Idaho 712, 52 P.3d 857 (Nev. 2002); State v. Centarowski, 166 Wis.2d 700, 480 N.W.2d 790 (Ct. App. 1992).

⁴ *Id.* at 826. (*citing* People v. Rayburn, 258 Ill.App.3d, 196 Ill.Dec. 598, 630 N.E.3d 533 (1994)).

Turning to Nevada's statute, the court found that allow the State's law allows for using bail money for fines and costs, no statutory provision authorizes the use of bail money for the purposes of restitution.⁵ Furthermore the court found that Nevada's statutes did not put Martinez on notice that the money she put up on O'Kelley's behalf might be applied in such a way. Thus, although the district court may have been authorized to use the bail money to pay a fine or costs, it lacked statutory authority to apply the money towards his ordered restitution.⁶

Conclusion

The district court erred in applying the bail money posted by Martinez to pay O'Kelley's restitution obligation.⁷ Thus, the court reversed the district court's order, and remanded the case back to the district court for further proceedings consistent with its opinion.

⁵ *Id.* at 827. *See also* NEV. REV. STAT. 178.522(1) (2003); 178.528 (2003).

⁶ *Id.* at 827. *See also* State v. Giordano, 283 N.J. Super. 323, 661 A.2d 1311, 1314 (Ct. App. Div. 1995) (holding that neither the bail agreement nor statute allowed bail money to be used to satisfy a defendant's restitution obligation without the consent of the third party who provided the bail).

⁷ *Id.* at 827.