

FILED

APR 13 2022

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF THE SUPREME COURT
BY: *[Signature]*
DEPUTY CLERK

DEMARENE COLEMAN
Appellant,
vs.
THE STATE OF NEVADA
Respondent.

Supreme Court No. 84292
District Court No. C215295

APPELLANT'S INFORMAL BRIEF

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017
APR 13 2022
ELIZABETH A. BROWN
CLERK OF THE SUPREME COURT
DEPUTY CLERK

22-11714

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
February 1	

Notice of Appeal. Give the date you filed your notice of appeal in the district court: February 15th 2020

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
C215295	Motion for Modification of Sentence	Judicial District Court

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

Yes No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

Petitioner is an inmate of the NDOC, Southern Desert Correctional Center who has been incarcerated since July 19th 2005 i.e. (see: Exhibit "B" PSI p.1) of Count (1) one First Degree Murder (Category A Felony ^{NRS 200.010} _{NRS 200.030}) & Count (2) two Battery with use of a Deadly Weapon (Category B Felony NRS 200.481) (Guilty Plea Agreement) Both parties agree to recommend Twenty (20) to Fifty (50) years in the NDOC. The State will not oppose Concurrent time between the Counts (see: Exhibit "A" Plea Agreement) (Sentence;) petitioner was sentenced by

Judge Jackie Glass to a "Parole-Eligibility Sentence Statute" to a Maximum of Fifty(50) year with a Minimum Parole eligibility of Twenty (20) years; as to Count 2 to a Maximum of one hundred Twenty (120) months with a Minimum Parole eligibility of Forty-Eight (48) month to run concurrent with Count 1; with seven hundred Fifty-five (755) days credit for time served (see; Exhibit J.O.C "D") Both parties **Did Not Agree** to A Maximum of Fifty(50) years with a Minimum Parole Eligibility of Twenty (20) years; as to count 2. to a Maximum parole eligibility of Forty Eight (48) months to run Concurrent with Count 1 There's two different languages being used in the Plea Agreement and J.O.C (see; Exhibit "A" and "D"). The record shows petitioners lack of understanding of the possibilities of the Consequences. The Judge, on record accepted the Plea Agreement to which both parties, and that she would follow the agreement since that's what made the deal go forward (see; Exhibit "C" Entry of Plea pg 7, 8.)

(Guilty Plea Agreement) page 1 of agreement Exhibit "A" The language does not reference anything about "Parole Eligibility" or, A Maximum of Fifty(50) year with a Minimum Parole Eligibility of Twenty(20) (see; Exhibit "A" Plea Agreement)

(Santobello v New York 404 US 257, 30 L. Ed. 2d 427, 92 S.Ct. 495)

This phase of the process of criminal justice and the adjudicative element inherent in accepting a plea of guilty must be attended by safeguards to insure the defendant what is reasonably due in the circumstances. Those circumstances will vary, but a constant factor is that when a plea rests in any significant degree on a promise or Agreement of the prosecutor, so that it can be said to be part of the Inducement or consideration such promise must be fulfilled

(Citti v Nev 107, 89; 807 P.2d 724; 1991 Nev Lexis 12, No 20934)

When the state enters a plea agreement, it is held to the most Meticulous standards of both promise and performance. The Violation of the terms of the spirit of the Plea bargain requires reversal

(THE STATE OF NEVADA v RICARDO LORENZO CROCKET. 110 Nev 838; 877 P.2d 1077 lexis109)

A plea bargain standing alone is without constitutional significance; in itself it is a mere executory agreement which, until embodied in the judgment of a court does not deprive an accused of liberty or any other constitutionally protected interest. It is the ensuing guilty plea that implicates the Constitution however once a defendant enters a guilty plea and the plea is **Accepted** by the court **due process** requires that the plea bargain be honored. (Note) It is a **Cardinal principle** of contract law that no term of a contract should be construed to be in conflict with another unless no other reasonable construction is possible. (JACK PAUL BANKA vs NEV 476 P.3d 1191 2020 Nev lexis74)

Where there is a range of punishments by fine or imprisonment a defendant must be informed of both the **floor** and **ceiling** of that range in order to make a knowing and voluntary plea decision.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

The District Court Error was it did not take the Time, and do A visual examination of the Evidence that accompany. The Motion to Modify sentence which clearly show the Guilty Plea Agreement between both parties (Exhibits "A" "B" "C" "E") Once the plea was Accepted, the court was bound to what both parties Agreed To **Twenty (20) to Fifty (50)** (Santobello vs New York 404 US). (Liza Brown v Susan E. Poole 337 F.3d 1155; Lexis 11518). (United State of America v Alberto Dela Fuente 8 F.3d 1333 Lexis 2777) The is of course. No absolute right to have a guilty plea accepted a court may Reject a plea in exercise of sound judicial discretion. (When a plea rests in any significant degree on a promise or agreement of a

prosecutor, so it can be said to be a part of the inducement or consideration such promise must be fulfilled. It is clear from the United States Supreme Court's Santobello decision that due respect for the integrity of plea bargains demands that once a defendant has carried out his part of the bargain, the government must fulfill its part. Plea agreements are contractual in nature and are measured by contract law standards in construing an agreement. The court must determine what the defendant reasonably understood to be the terms of the agreement when he pled guilty. As with other contracts, provisions of plea agreements are occasionally ambiguous; the government ordinarily must bear responsibility for any lack of clarity. Construing ambiguities in favor of the defendant makes sense in light of the parties' respective bargaining power and expertise.

The "Minimum Maximum", Parole Eligibility, Sentencing Statute are Essential Elements of the Plea Agreement. At no point was the petitioner informed of the "Sentencing Statute. There is no way that defendant knowingly and intelligently understood the guilty Plea, which is a "Essential Mistake" (see: Exhibit "C" entry of guilty Plea pp. 7, line 22, and 23)

(United States v. Gary 954 F.3d 194 (2020))

Guilty plea was not knowingly and intelligently made because he did not understand the essential elements of the offense to which he pled guilty, because the court accepted Gary's plea without giving him notice of an element of the offense the court error is structural.

(Brow v. U.S. 42 F. Supp. 2d 133 (D. Puerto Rico 1998))

The government may not breach any term of a plea agreement which induced a defendant to plead guilty (Fundamental Fairness Doctrine as Foundation of Plea) when the government makes a promise that induces someone to relinquish

constitutional or other substantial right that promise must be fulfill "Bamallo v. Reno 931 F.Supp 884, 892 (D.D.C. 1996) if a defendant enter into a plea bargain, the court has the responsibility to ensure that the defendant receives his or her benefit of the bargain. United States v. Tilley, 964 F.2d 66 (1st cir 1992) United States v. Monrone 580 F.3d 552 (ca 7 2009) As a general matter, we interpret plea agreement in accordance with ordinary principles of contract law. (United States v. Ingram 979 F.2d 1179, 1184 (7th cir 1992)) we shall "review the language of the plea agreement objectively" limiting "the parties right under the plea agreement to those matter upon which they Actually Agreed" (United States v. Williams 102 F.3d 923, 927 (7th cir 1996)) as we consistently have recognized plea agreement are "Unique Contracts" "that implicate the defendants right to fundamental fairness under due process clause" Ingram [ibid] 1184] Thus "we review the language of the plea agreement objectively and hold the government to the literal term of the text. we cannot say that the parties reasonably could have expected that by signing the agreement Mr. Monrone relinquished his right to see a sentence reduction. (Lee v U.S. 137 s.ct 1958, 582 US 198 L.Ed 2d 476 (2017)) The attorney has a clear obligation to fully inform client of the available options we have held that the failure to convey a plea offer constitutes ineffective assistance (see; Griffin 5531c 33c F.3d at 734) but in the context of the sentencing guidelines more is required a crimined defendant has right to expect at least that his attorney will review the charges with him by explaining the elements necessary for the government to secure a conviction discuss the evidence as it bears on those elements and explain the sentencing exposure the defendant will face as a consequence of exercising each of the options available.

As a remedy Petitioner would like for his J.O.C to reflect what both parties agreed to on the Guilty Plea Agreement (Exhibit "A" pg 1) and (Exhibit "B" PS1 pg 2) To A (Twenty (20) to Fifty (50)) A "Specific Performance" or to Resentence petitioner To A "Parole Eligibility" sentence Statute A Maximum of Twenty five (25) years with parole eligibility at (10) years Minimum with Monetary Compensation for Punitive Damages open for Negotiations

For these formentioned reason it is more than evident that petitioner is entitled to "Specific Performance" or Resentencing or any relief deemed necessary. petitioner prays and hopes to have this court Grants his Sentence Modification Motion for Specific Performance

DATED this 5 day of April, 2022

Demarene Coleman
Signature of Appellant


Demarene Coleman
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- By personally serving it upon him/her; or
- By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

DATED this 5 day of April, 2020.


Signature of Appellant

Demaree Coleman
Print Name of Appellant

P.O. Box 208
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