

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3
4 ORIGINAL

5 ALFRED M. BLACKWELL

6 Appellant,

7 v.

Case No. 42273

8 THE STATE OF NEVADA,

9 Respondent.

FILED

FEB 25 2004

11 FAST TRACK RESPONSE

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *S. Young*
DEPUTY CLERK

12 1. Name of party filing this fast track response:

13 The State of Nevada

14 2. Name, law firm, address, and telephone number of attorney submitting
15 this fast track response:

16 James Tufteland
17 Clark County District Attorney's Office
18 200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4843

19 3. Name, law firm, address, and telephone number of appellate counsel if
20 different from trial counsel:

21 Same as (2) above.

22 4. Proceedings raising same issues. List the case name and docket number of
23 all appeals or original proceedings presently pending before this court, of which
24 you are aware, which raise the same issues raised in this appeal: None

25 5. Procedural history.

26 The State would concur with the procedural history as outlined in the Fast
27 Track Statement.

28 FEB 25 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

1 **6. Statement of facts.**

2 On November 23, 2002, Mike Golceker and Emmett James Connoly were both
3 working at the Las Vegas Manufacturing Jewelers. Mr. Connoly was the store
4 manager and Mr. Golceker was helping out his son whom owns the store. (Trial
5 Transcript—hereinafter “TT” July 24, 2003 pp. 4-5.) On that date, Mr. Golceker was
6 70 years old and Mr. Connoly was 63 years old. (TT July 24, 2003 p. 4 – repeated TT
7 September 23, 2003 p. 2.)

8 Alfred M. Blackwell, hereinafter “Defendant”, and his co-defendant, Mark Eric
9 Brown, entered the jewelry store, individually, posing as customers. Mr. Connoly
10 assisted the Defendant, who requested that a bracelet be fixed, and Mr. Golceker
11 assisted the co-defendant, who wanted his earring cleaned. Mr. Golceker and Mr.
12 Connoly proceeded to the back of the store to accommodate both requests. (TT July
13 24, 2003 pp. 8-10.) Unbeknownst to Mr. Connoly and Mr. Golceker, the Defendant
14 and co-defendant followed them to the back of the store. The Defendant punched Mr.
15 Connoly in the face several times as the co-defendant pulled out a gun and held it to
16 Mr. Golceker’s head. Both elderly men were then forced to lay face down on the
17 cement floor and their hands were tied behind their backs. (TT September 23, 2003
18 pp. 2, 3 -- TT July 24, 2003 pp. 10, 11.)

19 With their hands tied behind their backs and lying face down on the floor, both
20 men were savagely beaten by the Defendant and co-defendant. Mr. Golceker was
21 punched and kicked so severely that he was rendered unconscious. Mr. Golceker wore
22 glasses which made it extremely difficult to lay face down on the cement. Because of
23 this, Mr. Golceker moved his body. The co-defendant, upon noticing Mr. Golceker’s
24 changed position, came over and said “Oh, you moved” and hit him again. Mr.
25 Golceker was unable to identify the instrument he was hit with but distinctively
26 recalled that upon impact he “started bleeding from everywhere.” (TT July 24, 2003
27 pp. 11, 12.) Mr. Golceker lost three teeth (one knocked completely from his mouth,
28 the other two simply dangled by their roots). Mr. Golcker’s teeth were eventually

1 replaced once the enormous amount of swelling subsided. Mr. Golceker's eyes were
2 swollen shut for over two weeks and the very simple act of breathing was difficult and
3 extremely painful due to the severe bruising, externally and internally, of his nose and
4 mouth. (TT July 24, 2003 pp. 15-23.)

5 Mr. Connoly suffered equally. The Defendant beat Mr. Connoly mercilessly.
6 Mr. Connoly suffered three (3) fractured ribs and the cut to his left eye was so severe
7 that he received forty-seven (47) laser stitches. Mr. Connoly was hospitalized for three
8 (3) days at a cost in excess of \$10,000.00. Mr. Connoly continues to suffer brain
9 damage. (TT September 23, 2003 pp. 10-12.)

10 The Defendant and co-defendant stole approximately \$280,000.00 in inventory
11 and cash. (TT July 23, 2003 p. 36.) The Defendant was found three (3) days later in a
12 California hotel room wearing Mr. Connoly's red-faced Rolex. The co-defendant was
13 with the Defendant. (TT September 23, 2003 p. 3.) Restitution in the amount of
14 \$143,541.75 was ordered. (TT September 23, 2003 p. 13.)

15 **7. Issue on appeal.**

16 Whether the Court abused its discretion and violated the Constitutional
17 prohibition against Cruel and Unusual Punishment by deviating from the
18 recommendation made by the Division of Parole and Probation and imposing the
19 maximum sentence possible on the Defendant.

20 **8. Legal Argument, including authorities:**

21 The Defendant was adjudicated guilty of two counts of robbery, a violation of
22 N.R.S. 200.280. "A person who commits robbery is guilty of a category B felony and
23 shall be punished by imprisonment in the state prison for a minimum of not less than 2
24 years [24 months] and a maximum term of not more than 15 years [180 months]."
25 N.R.S. 200.280 (2).

26 This Honorable Court has stated repeatedly, "we deem it presumptively
27 improper for this court to superimpose its own views on sentences of incarceration
28 lawfully pronounced by our sentencing judges." Sims v. State, 107 Nev. 438, 814

1 P.2d 63 (1991). The Court continues, "Although we may very well have imposed a
2 different, more lenient sentence, we do not view the proper role of this court to be that
3 of an appellate sentencing body." Id.

4 The recommendation by the Department of Parole and Probation has no binding
5 effect on the courts. This Court held, "We stress that a judge has no duty beyond
6 'disclos[ing]...the factual content of the report of the presentence investigation and
7 the recommendations of the of the probations service and afford[ing] an opportunity
8 to each party to comment thereon.'" Etcheverry v. State, 107 Nev. 782, 821 P.2d 350
9 (1991) (quoting Shields v. State, 97 Nev. 472, 473, 634 P.2d 468, 468 (1981) (quoting
10 NRS 176.156)).

11 Here, the Defendant pled guilty to two counts of robbery, after four days of
12 trial. N.R.S. 200.280 (2) is extremely clear as to punishment, "A person who commits
13 robbery is guilty of a category B felony and shall be punished by imprisonment in the
14 state prison for a minimum of not less than 2 years [24 months] and a maximum term
15 of not more than 15 years [180 months]." The Defendant received the maximum
16 possible sentence – 6 to 15 years per count and the two counts are to run
17 consecutively to each other. Thus, the sentence imposed is well within the statutory
18 limits and should not be disturbed by this Honorable Court.

19 The Defendant states that his sentence is grossly disproportionate to the crime
20 and thus violates the constitutional prohibition against the infliction against cruel and
21 unusual punishment. In making such an argument, the Defendant appears to have
22 forgotten the unnecessary brutality of his crime.

23 The Defendant and co-defendant forced the two elderly gentlemen to lay face
24 down on the cement floor and they tied their hands behind their backs. At this
25 moment, the two elderly men posed absolutely no threat to the Defendant, as both
26 men were both incapacitated. The Defendant could have simply walked away from
27 the two men, gathered-up the store's inventory and cash and took off. Instead, the
28 Defendant chose to beat these elderly men mercilessly. The Defendant's savage and

1 relentless attack on Mr. Connoly left him with 3 fractured ribs, 47 laser stitches over
2 his left eye, permanent brain damage and a hospital bill in excess of \$10,000.00. (TT
3 September 23, 2003 pp. 10-12.) Mr. Golceker suffered a blow so devastating that it
4 knocked him out cold. His 3 knocked-out teeth could not be replaced immediately due
5 to the extensive swelling in his mouth. His eyes were swollen shut for two weeks. (TT
6 July 24, 2003 p. 15.)

7 The Defendant argues judicial prejudice in his Fast Track Statement. Defendant
8 alleges that the sentencing Judge became prejudiced after listening to Mr. Connoly's
9 brief statement prior to the Court imposing the sentence. (Defendant's Fast Track
10 Statement pp. 8, 9.) Mr. Connoly, the younger of the two elderly men, was unable to
11 testify at the trial because the trial ended abruptly with the Defendant accepting a plea
12 agreement. Therefore, Mr. Connoly attended the sentencing hearing in order to
13 provide a statement pursuant to NRS 176.015 (3) (b).

14 Mr. Connoly read a brief statement to the Court wherein he related what the
15 Defendant did to him and concluded by asking the Court "for the maximum sentence
16 you could give, sir." (TT September 23, 2003 p. 11.) The District Court Judge then
17 asked Counsel if there was anything further which both responded "no." The Court
18 asked the Defendant to stand and he then stated that the Defendant's conduct was
19 "outlandish" and that he agreed that "what Ms. De La Garza is recommending is
20 appropriate." (TT September 23, 2003 p. 12.) The Defendant's claim that the Judge
21 was somehow prejudiced by the victim's brief statement is belied by the record and is
22 clearly without merit and therefore, must be rejected.

23 The District Court Judge imposed the maximum penalty after having had the
24 opportunity to listen to four days of trial testimony and view the demonstrative
25 evidence presented during the trial. It is not the proper role of this Court to be an
26 appellate sentencing body. The sentence imposed by the District Court Judge was
27 clearly within the statutory limits. Therefore, the Defendant's claims are without merit
28 and this Court should affirm the judgment of conviction.

1 **9. Preservation of the Issue.**

2 This issue can be raised on appeal. See Franklin v. State, 110 Nev. 750, 752,
3 877 P. 2d 1058 (1994).

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Dated this 23rd day of February 2004.

DAVID ROGER
Clark County District Attorney

James H. Ireland
JAMES H. IRELAND

JAMES TUFTELAND
Chief Deputy District Attorney
Nevada Bar #000439
200 South Third Street
4th Floor
Las Vegas, Nevada 89155-2212
(702) 455-4711

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

Marcus D. Cooper
Clark County Public Defender
309 South Third Street, Suite 226
Post Office Box 552610
Las Vegas, Nevada 89155-2610

Margie English
Employee, Clark County
District Attorney's Office



OFFICE OF THE DISTRICT ATTORNEY

POST-CONVICTION PROCESSES

DAVID ROGER
District Attorney

J. CHARLES THOMPSON
Assistant District Attorney

ROBERT W. TEJTON
Assistant District Attorney

MARY-ANNE MILLER
County Counsel

JAMES TUFTELAND
Chief Deputy

CLARK A. PETERSON
Chief Deputy

February 23, 2004

The Honorable Janette Bloom
Clerk of the Supreme Court
State of Nevada
Capitol Complex
Carson City, Nevada 89710

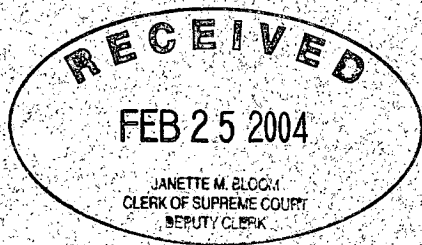
Re: Alfred M. Blackwell
vs.
The State of Nevada,
No. 42273

Dear Ms. Bloom:


We are enclosing the original and one copy of our Fast Track Response in the above-captioned case for filing in your office and for consideration by the Court.

Very truly yours,

DAVID ROGER
District Attorney



BY


JAMES TUFTELAND
Nevada Bar No. 000439
Chief Deputy District Attorney

Encl.
cc: Attorney General
TUFTELAND/english/Lisa Willardson