

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL TODD BOTELHO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 43247

**FILED**

JAN 06 2005

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

RESPONDENT'S ANSWERING BRIEF

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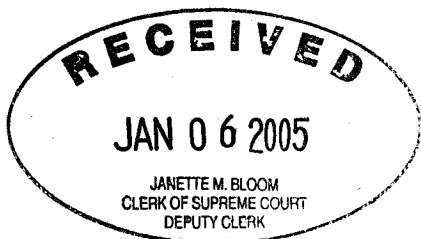
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05-00309

**TABLE OF CONTENTS**

	<u>Page</u>
I. STATEMENT OF THE CASE .....	1
II. STATEMENT OF THE FACTS .....	1
III. ARGUMENT .....	1
IV. CONCLUSION .....	2

**TABLE OF AUTHORITIES**

	<u>Page</u>
<u>Todd v. State</u>	
113 Nev. 18, 25, 931 P.2d 721, 725 (1997) .....	1

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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4 MICHAEL TODD BOTELHO,

5 Appellant,

6 v.

7 THE STATE OF NEVADA,

No. 43247

8 Respondent.  
9 \_\_\_\_\_/

10 RESPONDENT'S ANSWERING BRIEF

11 I. STATEMENT OF THE CASE

12 This is a direct appeal following pleas of guilty to First Degree Kidnapping and three counts  
13 of sexual assault. The district court imposed consecutive prison terms. This appeal followed.

14 II. STATEMENT OF THE FACTS

15 As indicated in the Opening Brief, appellant kidnapped and thrice sexually assaulted a young  
16 girl.

17 III. ARGUMENT

18 The sole contention raised on appeal is that the district court should have imposed concurrent  
19 prison terms for some of the crimes. That is, he seems to contend that some sexual assaults against children  
20 should be a freebie. The State disagrees.

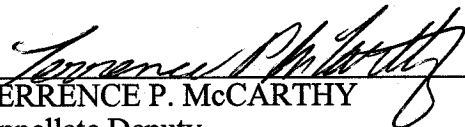
21 This Court has often held that it will not substitute its judgment for that of the sentencing  
22 court where the sentence is within the parameters established by statute. See Todd v. State, 113 Nev. 18,  
23 25, 931 P.2d 721, 725 (1997). Instead, one seeking to avoid a sentence must show that the sentence was  
24 illegal, or based solely on impalpable or highly suspect evidence, or the product of some other error of law.  
25 Id. Because Botelho has not attempted any such argument, the judgment of the Second Judicial District  
26 Court should be affirmed.

1 IV. CONCLUSION

2 The district court is charged with imposing sentence. Absent some error of law, this Court  
3 ought not to usurp that function. Instead, the judgment of the Second Judicial District Court should be  
4 affirmed.

5 DATED: January <sup>5</sup> 2005.

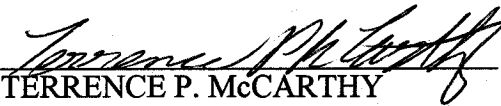
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8 By   
9 TERRENCE P. McCARTHY  
10 Appellate Deputy  
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1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that I have read this appellate brief, and to the best of my knowledge,  
3 information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this  
4 brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e), which  
5 requires every assertion in the brief regarding matters in the record to be supported by appropriate references  
6 to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying  
7 brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

8 DATED this 5 day of January, 2005.

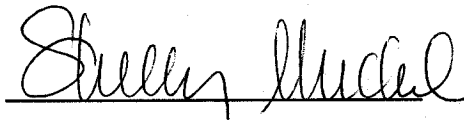
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County  
3 District Attorney's Office and that on this date, I forwarded a true copy of the foregoing document, through  
4 the Washoe County Interagency Mail, addressed to:

5 JOHN REESE PETTY  
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7 Washoe County Public Defender's Office  
8 Reno, Nevada 89501

9 DATED: January 5, 2005.

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