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LAW OFFICES OF KENNETH G. FRIZZELL, III
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Attorney for Defendant

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW DEAN GOODNER
aka JASON HILLIARD,

Appellant,

No. 51148

vs.

District Court Case No. C236726

THE STATE OF NEVADA,

Respondent.

FILED

APR 16 2008

FAST TRACK STATEMENT

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY Tracie K. Lindeman
DEPUTY CLERK

1. Name of the Party filing this fast track statement:

Matthew Dean Goodner a/k/a Jason Hilliard

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

Kenneth G. Frizzell, III, Esq.
509 South Sixth Street
Las Vegas, Nevada 89101
(702) 366-1230

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

SAME AS ABOVE

4. Judicial district, county, and district court docket number of lower court proceedings:

District Court XIV
Clark County
Case-Docket: 07-C-236726

5. Name of judge issuing decision, judgment, or order appealed from:

Judge Donald M. Mosley

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APR 16 2008
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

- 1 6. Length of Trial. If this action proceeded to trial in the district court, how many
2 days did the trial last?
- 3 There was no trial. This was an appeal from a plea agreement and
4 subsequent sentencing.
- 5 7. Conviction (s) appealed from:
- 6 Possession of Stolen Vehicle, Three Counts
- 7 8. Sentence for each count:
- 8 Maximum of Twenty (20) years and a Minimum of Five (5) years, two to
9 run concurrently, count 3 to run consecutively, also consecutive to
10 C231837
- 11 9. Date district court announced decision, sentence, or order appealed from:
- 12 January 30, 2008
- 13 10. Date of entry of written judgment or order appealed from:
- 14 February 7, 2008
- 15 (a) If no written judgment or order was filed in the district court, explain the
16 basis for seeking appellate review:
- 17 N/A
- 18 11. If this appeal is from an order granting or denying a petition for a writ of
19 habeas corpus, indicate the date written notice of entry of judgment or order
20 was served by the court: N/A
- 21 12. If the time for filing the notice of appeal was tolled by a post-judgment motion:
- 22 N/A
- 23 (a) specify the type of motion, and the date of filing of the motion:
- 24 13. Date notice of appeal filed:
- 25 February 20, 2008
- 26 14. Specify statute or rule governing the time limit for filing the notice of appeal:
- 27 NRAP 4 (b)
- 28 15. Specify statute, rule or other authority which grants this court jurisdiction to

1 review the judgment or order appealed from:

2 NRS 177.015(3)

3 16. Specify the nature of disposition below: Sentencing after negotiated plea
4 agreement.

5 17. Pending and prior proceedings in this court. List the case name and docket
6 number of all appeals or original proceedings presently or previously pending
7 before this court which are related to this appeal: N/A

8 18. Pending and prior proceeding in other court. List the case name, number and
9 court of all pending and prior proceedings in other courts which are related to
10 this appeal: N/A

11 19. Proceedings raising same issues. List the case name and docket number of all
12 appeals or original proceedings presently pending before this court, of which
13 you are aware, which raise the same issues you intend to raise in this appeal:

14 Counsel is unaware of any pending proceedings before this court which
15 raise the same issue as the instant appeal.

16 20. Procedural history. Briefly describe the procedural history of the case (provide
17 citations for every assertion of fact to the appendix, if any, or to the rough draft
18 transcript): The appellant in this case was charged with at the Justice Court
19 with Grand Larceny, Conspiracy to Commit Murder, Murder with use of a Deadly
20 Weapon, First Degree Kidnapping with use of a Deadly Weapon, and Possession
21 of a Stolen Vehicle. His codefendant, BRIDGETT ANN CORDOVA, was charged in
22 this information with Murder and Conspiracy to commit murder. On December
23 24, 2007, he waived his preliminary hearing, and agreed to plead to. On
24 November 19, 2007, he plead guilty to three counts of Possession of a Stolen
25 Vehicle. See Plea Agreement. He was sentenced on January 30, 2008, See
26 Judgment of Conviction filed February 7, 2008, to three terms of Not less than
27 Five Years and not more than Twenty Years, with Counts 1 and 2 to run
28 concurrently, and Count 3 to run consecutively to the 2 counts in the

1 information, and to run consecutively with a previous conviction, case no.
2 C231837. The case of the codefendant, however, was dismissed. See minute
3 order of September 17, 2008. The appellant gave notice of Appeal on February
4 20, 2008. See Notice of appeal.

5 21. Statement of Facts. Briefly set forth the facts material to the issue on appeal: The
6 codefendant's cases were dismissed, there is no articulable reason for her to be
7 dismissed. This created a huge sentencing disparity.

8 22. Issues on appeal. State concisely the principal issue(s) in this appeal:

9 23. Legal argument, including authorities: This is an extremely disproportionate
10 sentence, both defendants were charged with Murder and Conspiracy. There is a
11 patent Equal Protection issue here. As held in a Washington case State v.
12 Handley, 115 Wn.2d 275

13
14 *"Applying equal protection principles to the context of sentencing codefendants, two*
15 *rules are derived: (1) If a defendant can establish that he or she is similarly situated with*
16 *another defendant by virtue of near identical participation in the same set of criminal*
17 *circumstances, then the defendant will have established a class of which he or she is a*
18 *member. Only after membership in such a class is established will equal protection*
19 *scrutiny be invoked. Then, only if there is no rational basis for the differentiation among*
20 *the various class members will a reviewing court find an equal protection violation; (2) If*
21 *a defendant is a member of a suspect class and can establish that he or she received*
22 *disparate treatment because of that membership, i.e., that there was intentional or*
23 *purposeful discrimination, then the court will invoke equal protection scrutiny."*

24 Although this is not a guideline state, there should be some reasons articulated for
25 a consecutive sentence. Here there were none. It is not disputed that he was charged
26 originally with murder, however, this case was dismissed, and for the court to "stack" the
27 sentences, if a reason was for a dismissed case, where there was no factual basis
28 acknowledged or proven, treatment like this is tantamount to Due Process. Again, the
state of Washington gives guidance here, as it, like the Federal System, is a guideline
state. In *State v. Hicks*, 61 Wn. App. 923, (Wa. 1991), aggravating factors were held to
exist, and the appellate court stated them, at 926:

1 *"Mr. Hicks was charged with three counts of first degree burglary and three counts of*
2 *first degree rape. He pleaded guilty to all counts. At the sentencing hearing, the court*
3 *found the following aggravating factors: (1) the rapes occurred in the victims' homes;*
4 *(2) two of the victims were exceptionally vulnerable because they were attacked in their*
5 *sleep; (3) two victims were vulnerable because they were both over the age of 70; (4)*
6 *the victims were each vulnerable because they lived alone; (5) deliberate cruelty to two*
7 *of the victims; and (6) one victim suffered multiple sexual attacks.*

8 In that case, the trial court made findings. The court stated that:

9 "The reasons for imposing an exceptional sentence must encompass factors other than
10 those that are inherent in the offense and are used in computing the presumptive range
11 for the charge, citing

12 1. State v. Falling, 50 Wn. App. 47, 53, 747 P.2d 1119 (1987)."

13 Here, in this case, it should be remanded, in order to determine if the trial court
14 gave weight to unproven and dismissed charges. If he did so, this would be a 6th
15 Amendment Right of Confrontation Denial, as well as a denial of Due Process. Further,
16 the disparate sentence violates the Equal Protection Clause, and the Appellant has made
17 such a showing.

18 24. Preservation of issues. State concisely how each enumerated issue on appeal
19 was preserved during trial. If the issue was not preserved, explain why this court
20 should review the issue: N/A

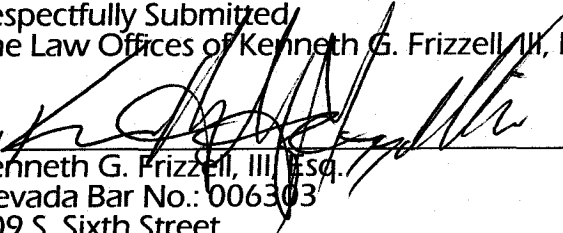
21 25. Issues of first impression or of public interest. Does this appeal present a
22 substantial legal issue of first impression in this jurisdiction or one affecting an
23 important public interest? If so explain:

24 In a sentencing scheme, there should be articulated reasons for sentences, as is
25 the case in several states, such as Washington, as well as in the federal system, in order
26 that sentences are not arbitrary, inconsistent, or disparate. The trial court should
27 articulate its findings for consecutive sentences, or sentences of any kind, so that
28 appellate review is assured. Here, unproven, dismissed conduct may very well have
played a part in the appellant's stacked sentences. The public has an interest in having a
consistent judiciary, to promote uniformity in sentences, and this court should remand
the case back for sentencing, and require the trial court to make findings, analagous to

1 guideline schemes. Even though guideline schemes are not binding, they still provide a
2 framework that is intended to promote uniformity of sentences.

3 DATED this 9 day of April, 2008

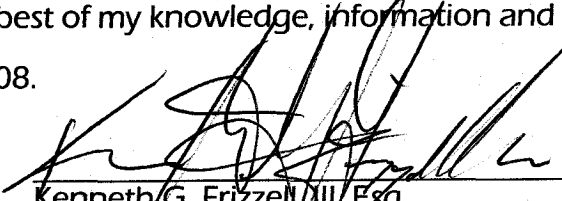
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5 Respectfully Submitted,
6 The Law Offices of Kenneth G. Frizzell III, Esq.

7 By 
8 Kenneth G. Frizzell, III, Esq.
9 Nevada Bar No.: 006303
509 S. Sixth Street
Las Vegas, Nevada 89101
10 (702) 366-1230

11
12 VERIFICATION

13 I recognize that pursuant to NRAP 3 (c) I am responsible for filing a timely fast
14 track statement and that the Supreme Court of Nevada may sanction an attorney for
15 failing to file a timely fast track statement, or failing to raise material issues or arguments
16 in the fast track statement, or failing to cooperate fully with appellate counsel during the
17 course of an appeal. I therefore certify that the information provided in this fast track
18 statement is true and complete to the best of my knowledge, information and belief.

19 DATED this 9 day of April, 2008.

20
21 
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RECEIPT OF COPY of the foregoing FAST TRACK STATEMENT is hereby
acknowledged this ____ day of April, 2008.

David Roger
Clark County District Attorney
By _____

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4 Heather M. Patten

Employee of Kenneth G. Frizzell III, Esq.