

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

APR 30 2008

MATTHEW DEAN GOODNER
aka JASON HILLIARD,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Case No. 51148

FAST TRACK RESPONSE

1. Name of party filing this fast track response:

The State of Nevada

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

Steven S. Owens
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155
(702) 671-2750

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

Same as (2) above.

4. Proceedings raising same issues. List the case name and docket number of all appeals or original proceedings presently pending before this court, of which you are aware, which raise the same issues raised in this appeal: This issue is commonly raised in Defense appeals, but the State is unaware of any currently pending proceedings which raise the issue.

5. Statement of the Case.

APR 30 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

APPELLATE W/DOCS LAWCLERK/VILLANI, JAKE/STEVE'S ASSIGNMENTS/GOODNER, MATTHEW AKA HILLIARD, JASON - 51148 - FTR DISPROPORTIONATE SENTENCING.

18-10743

1 This is an appeal from a judgment of conviction, pursuant to a Guilty Plea
2 Agreement, of: Three Counts of Possession of Stolen Vehicle (Category B Felony –
3 NRS § 205.273, 207.010(a)). Eighth Judicial District Court, Clark County; Hon.
4 Donald M. Mosley, District Judge.

5 **6. Statement of facts.**

6 On November 14, 2007, Matthew Dean Goodner a.k.a. Jason Hillard
7 (hereinafter “Defendant”) was charged via Criminal Complaint with: three (3) Counts
8 of Grand Larceny Auto, one (1) Count of Conspiracy to Commit Murder, one (1)
9 Count of First Degree Kidnapping With Use of a Deadly Weapon, (1) Count of
10 Murder With Use of a Deadly Weapon, and three (3) Counts of Possession of Stolen
11 Vehicle. (A. App. pp. 1-3).

12 On November 16, 2007, an Information was filed charging Defendant with
13 three (3) Counts of Possession of Stolen Vehicle. (A. App. pp. 4-5).

14 On November 19, 2007, Defendant pled guilty via Guilty Plea Agreement
15 (GPA) to all three (3) Counts charged in the Information and stipulated to treatment as
16 a small habitual criminal. (A. App. pp. 6-10).

17 On January 30, 2008, Defendant was sentenced as a small habitual criminal and
18 ordered to serve five (5) to twenty (20) years for each Count in the Nevada
19 Department of Corrections, with Counts I and II to run concurrently and Count III to
20 run consecutively with Count II. (A. App. pp. 14-15). Defendant’s sentence was to run
21 consecutive with another case he had pending for Possession of a Controlled
22 Substance with Intent to Sell (C231837). Id.

23 **7. Issue on appeal.**

24 Whether Defendant was properly sentenced.

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

1 **DEFENDANT WAS PROPERLY SENTENCED**

2 NRS § 205.273 provides in pertinent part:

3 1. A person commits an offense involving a stolen vehicle if
4 the person:

5 ...

6 (b) Has in his possession a motor vehicle which he knows or
7 has reason to believe has been stolen.

8 ...

9 4. If the prosecuting attorney proves that the value of the
10 vehicle involved is \$2,500 or more, the person who
11 violated the provisions of subsection 1 is **guilty of a
category B felony** and shall be punished by
imprisonment in the state prison for a minimum term of
not less than 1 year and a maximum term of not more
than 10 years, and by a fine of not more than \$10,000.
(emphasis added).

12 Additionally, NRS § 207.010(a) provides in pertinent part:

13 Any crime of which fraud or intent to defraud is an element, or
14 of petit larceny, or of any felony, who has previously been two
15 times convicted, whether in this state or elsewhere, of any
16 crime which under the laws of the situs of the crime or of this
17 state would amount to a felony, or who has previously been
18 three times convicted, whether in this state or elsewhere, of
19 petit larceny, or of any misdemeanor or gross misdemeanor of
which fraud or intent to defraud is an element, is a **habitual
criminal and shall be punished for a category B felony by
imprisonment in the state prison for a minimum term of
not less than 5 years and a maximum term of not more than
20 years.** (emphasis added).

20 This Court has held statutes that increase punishment for habitual offenders do not
21 deny equal protection and are constitutional. White v. State, 83 Nev. 292, 429 P.2d
22 55, (1967). Further, this Court has held that sentencing is an individualized process;
23 therefore, no rule of law requires a court to sentence codefendants to identical terms.
24 Nobles v. Warden, Nevada Dept. of Prisons, 106 Nev. 67, 787 P.2d 390 (1990). Also,
25 co-defendants may be punished differently for the commission of the same crime.
26 Bates v. State, 84 Nev. 43, 436 P.2d 27 (1968). Finally, this Court has held that a
27 district court has wide discretion over imposing a prison term and this court will not
28 disturb the sentence absent a showing of abuse of such discretion. Glegola v. State,

1 110 Nev. 344, 349, 871 P.2d 950, 953 (1994). Defendant's arguments are contrary to
2 the precedent cited, *supra*, and thus his appeal is without merit.

3 Here, Defendant's GPA provided in pertinent part:

4 The State and I stipulate to small habitual criminal
5 treatment on all three counts of Possession of Stolen Vehicle
6 and that I will receive a sentence of five (5) to twenty (20)
7 years in the Nevada Department of Corrections on each
8 count. The State and Defendant will retain the full right to
9 argue whether the counts will run concurrent or
10 consecutive at rendition of sentence. (A. App. p. 6, emphasis
11 added).

12 ...

13 I understand that if more than one sentence of imprisonment is
14 imposed and I am eligible to serve the sentences concurrently,
15 the sentencing judge has the discretion to order the
16 sentences served concurrently or consecutively.

17 I also understand that information regarding charges not
18 filed, dismissed charges, or charges to be dismissed
19 pursuant to this agreement may be considered by the judge
20 at sentencing.

21 ...

22 (A. App. p. 7, emphasis added).

23 Defendant was sentenced for a term of five (5) to twenty (20) years for each
24 count, which is in line with the expected range of sentencing provided by both NRS §
25 207.010(a) and Defendant's GPA. Additionally, Defendant was fully aware that,
26 based on the arguments of counsel at sentencing, his sentences would either run
27 concurrently or consecutively and the decision would be at the trial court's discretion.
28 Defendant cannot now argue that his sentence somehow violated his due process
rights, because he waived any such rights when he agreed to and signed his GPA. (A.
App. pp. 3-4).

Defendant also argues that, because his co-defendant did not receive a similar
sentence, his sentence is unconstitutional. Defendant has done nothing more than
vaguely state "[t]here is a patent Equal Protection issue here" without going into
specifics as to how he qualifies as a protected class or how the trial court lacked a
rational basis to sentence him. This Court is not required to accept Defendant's

1 argument that an Equal Protection issue exists simply because Defendant used the
2 words "Equal Protection" in his Fast Track Statement. Additionally, this Court held in
3 both Nobles and Bates, *supra*, that co-defendants need not be similarly punished.

4 Defendant's final argument is that the trial court did not specifically state its
5 reasoning for running Count III consecutively with Count II. Defendant argues that
6 without articulating its reasoning, there is no way to tell if the trial court gave weight
7 to unproven or dismissed charges when sentencing him. However, Defendant was
8 given notice in his GPA that the trial court may consider such charges, and thus he has
9 waived his right to argue this issue.

10 **9. Preservation of the Issues.**

11 The State notes that the Defendant has not set forth any issues at all in his Fast
12 Track Statement, and thus this Court should dismiss his appeal in its entirety.


13 The State also notes that Defendant responded to the question of "Preservation
14 of issues" in his Fast Track Statement by stating "N/A." The State contends that since
15 Defendant's "issue" was not preserved at trial, his appeal is not properly before this
16 Court.

- 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

Dated this 23rd day of April, 2008.

DAVID ROGER
Clark County District Attorney

BY


STEVENS S. OWENS
Chief District Attorney
Nevada Bar #004352
200 Lewis Avenue, 3th Floor
Las Vegas, Nevada 89155-2212
(702) 671-2500

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

CERTIFICATE OF MAILING

I hereby certify and affirm that I mailed a copy of the foregoing Fast Track Response to the attorney of record listed below on April 23, 2008.

Kenneth G. Frizzell, II, Esq.
509 South Sixth Street
Las Vegas, Nevada 89101

BY Margie English
Employee, District Attorney's Office

OWENS/Jake Villani/english