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IN THE SUPREME COURT OF THE STATE OF NEVADA

DUJUAN DON LOOPER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Sep 19 2014 10:39 a.m.
Tracie K. Lindeman
Supreme Court Case No. 65608
Clerk of Supreme Court
District Court Case No. C279379

E-file No.

FAST TRACK STATEMENT

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1 **FAST TRACK STATEMENT**

2
3 COMES NOW, Appellant DUJUAN DON LOOPER, by and through his
4 attorneys of record, ANTHONY P. SGRO, ESQ. and MELINDA A. WEAVER,
5 ESQ. of the law firm of PATTI, SGRO, LEWIS & ROGER, and for his Fast Track
6
7 Statement submits the following:

8 1. **Name of the party filing this fast track statement:** Dajuan Don Looper.

9 2. **Name, law firm, address, and telephone number of attorney**

10
11 **submitting this fast track statement:**

12 Anthony P. Sgro, Esq.
13 Melinda A. Weaver, Esq.
14 PATTI, SGRO, LEWIS & ROGER
15 720 S. 7th Street, 3rd Floor
16 Las Vegas, Nevada 89101
(702) 385-9595

17 3. **Name, law firm, address, and phone number of appellate counsel if**
18 **different from trial counsel:** N/A.

19
20 4. **Judicial district, county, and district court docket number of lower**
21 **court proceedings:** Eighth Judicial District, Clark County, District Court,
22 Case No. C-12-279379, and Eighth Judicial District, Clark County,
23 District Court, Case No. C-12-279418 (Consolidated under Case No. C-
24 12-279379).
25

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

27 The Honorable Judge Elissa F. Cadish.
28

1 6. **Length of trial:** N/A

2 7. **Conviction appealed from:** Consolidated Case No. C-12-279379

3 Count I - Attempt Sexual Assault with A Minor Under Fourteen Years of
4 Age; Count II - Battery Constituting Domestic Violence – Strangulation;
5 Count III - Possession of Visual Presentation Depicting Sexual Conduct of
6 A Child.
7

8
9 8. **Sentence for each count:** As to COUNT I the Appellant was
10 SENTENCED to a MAXIMUM OF TWO HUNDRED FORTY (240)
11 MONTHS AND A MINIMUM OF NINETY-SIX (96) MONTHS in the
12 Nevada Department of Corrections (NDC), as to COUNT II, a
13 MAXIMUM OF SIXTY (60) MONTHS AND A MINIMUM OF
14 NINETEEN (19) MONTHS in the Nevada Department of Corrections
15 (NDC) CONSECUTIVE TO COUNT I, and as to COUNT III, a
16 MAXIMUM OF SEVENTY-TWO (72) MONTHS AND A MINIMUM
17 OF NINETEEN (19) MONTHS in the Nevada Department of Corrections
18 (NDC) CONSECUTIVE TO COUNTS I & II. Appellant was credited
19 with EIGHT HUNDRED NINE (809) DAYS for time served. In addition,
20 a special SENTENCE OF LIFETIME SUPERVISION was imposed to
21 commence upon release from any term of probation, parole or
22 imprisonment.
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- 1 **9. Date district court announced decision, sentence, or order appealed**
2 **from:** April 28, 2014.
- 3 **10. Date of entry of written judgment or order appealed from:** Judgment
4 of Conviction filed on May 23, 2014.
- 5
6 **11. If this appeal is from an order granting or denying a petition for a**
7 **writ of habeas corpus, indicate the date written notice of entry of**
8 **judgment or order was served by the court:** N/A.
- 9
10 **12. If the time for filing notice of appeal was tolled by a post-judgment**
11 **motion,**
12
13 **a. Specify the type of motion, and the date of filing of the motion:**
14 N/A.
- 15 **b. Date of entry of written order resolving matter:** N/A.
- 16
17 **13. Date of notice of appeal filed:** May 6, 2014.
- 18 **14. Specify statute or rule governing the time limit for filing notice of**
19 **appeal, e.g. N.R.A.P. 4(b), N.R.S. 34.560, N.R.S. 34.575, N.R.S.**
20 **177.015, or other:** N.R.S 177.015.
- 21
22 **15. Specify statute, rule or other authority which grants this court**
23 **jurisdiction to review the judgment or order appealed from:** N.R.S.
24 2.090, N.R.S. 2.110, N.R.A.P 3 (C).
- 25
26 **16. Specify the nature of the disposition below:**
27 Conviction pursuant to Guilty Plea Agreement.
- 28

1 **17. Pending and prior proceedings to this court:** N/A.

2 **18. Pending and prior proceedings in other courts:** N/A.

3 **19. Proceedings raising same issues:** N/A.

4 **20. Procedural history:** On February 22, 2012, Dajuan Don Looper
5
6 (hereinafter “Appellant”) was charged by way of Amended Information with
7 Sexual Assault with a Minor Under Fourteen Years of Age (NRS 200.364,
8 200.366); Lewdness with a Child Under the Age of 14 (NRS 201.230); Use of a
9 Minor in Producing Pornography (NRS 200.700, 200.710, 200.750); and
10 Possession of Visual Presentation Depicting Sexual Conduct of a Child (NRS
11 200.700, 200.730) in Case No. C-12-279418. (AA 1-3) Contemporaneously, the
12 Appellant was charged by way of Amended Information, dated February 22, 2012,
13 with Second Degree Kidnapping (NRS 200.310, 200.330); Coercion (NRS
14 207.190), Child Abuse and Neglect (NRS 200.508); Battery Constituting Domestic
15 Violence- Strangulation (NRS 200.481, 200.485, 33.018); and Battery Constituting
16 Domestic Violence (NRS 200.481, 200.485, 33.018) in Case No. C-12-279379.
17 (AA 5-7).

18 On February 15, 2013, the Case Nos. C-12-279379 and C-12-279418 were
19 consolidated into Case No. C-12-279379. A Second Amended Information was
20 filed, alleging all charges included in the original cases (excluding one count of
21 misdemeanor domestic violence). (AA 8-11).

1 On January 8, 2014, the Appellant pled guilty to one (1) count of Attempt
2 Sexual Assault with a Minor Under Fourteen Years of Age (NRS 193.330,
3 200.364, 200.366); one (1) count of Battery Constituting Domestic Violence-
4 Strangulation (NRS 200.481; 200.485; 33.018); and one (1) count Possession of
5 Visual Presentation Depicting Sexual Conduct of a Child (NRS 200.700, 200.730).
6 (AA 12-22). In anticipation of sentencing, counsel for the Appellant filed a
7 sentencing memorandum on April 22, 2014. (AA 23-55). In the memorandum
8
9 Looper provided a report from Greg Harder, PsyD, which documented the
10 Appellants voluntary submission to a psycho-sexual evaluation conducted on
11
12 February 26, 2014. (AA 25).¹
13

14 Dr. Harder conducted the interview with Mr. Looper and determined that
15 based upon his 1) prior successful completion of probation, 2) the fact that he does
16 not abuse substances, 3) his lack of a juvenile arrest record, 4) his lack of prior
17 sexually related charges, 4) his lack of mental health difficulties, 5) his domestic
18 relationship at the time of the crime, 6) his ability to hold a relationship over two
19 years, 7) his age, 8) lack of childhood abuse, 9) lack of institutionalization, 10)
20 lack of suicidal or homicidal tendencies, 11) that the alleged victim was not a
21 stranger, 12) lack of multiple victims, and 13) lack of weapon used, that Mr.
22 Looper is a low risk to reoffend. (AA 25).
23
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27 ¹ Due to potential HIPPA violations and privacy issues the Appellant submitted Dr. Harder's report privately to the
28 Court. The Appellant will be more than happy to provide the report to this Court in a similar manner.

1 Together with the findings of Dr. Harder, the Appellant produced numerous
2 letters from his friends and family documenting that he has a loving a stable
3 support network. (AA 30-55). The February 13, 2014 Presentence Investigation
4 Report prepared for sentencing in this matter recommended a sentence of Count 1:
5 fifty-three (53) months to two hundred and forty months (240); Count 2: nineteen
6 (19) months to sixty (60) months, to run consecutive to Count 1; and Count 3:
7 nineteen (19) to seventy-two (72) months, to run concurrent to Count 2.
8
9

10 On April 28, 2014, a sentencing hearing was held on the matter. (AA 56-88).
11 At the time of the hearing, the Court heard from the Appellant and his counsel, as
12 well as the minor victim, her mother, and the minor victim's grandmother. (AA 56-
13 88). Following testimony, the Court rendered the sentence more fully described in
14 Paragraph 8 of this Statement, *supra*. (AA 87). On May 23, 2014, the Judgment of
15 Conviction was filed. (AA 89-90).
16
17

18 **20. Statement of Facts:**

19 No preliminary hearing was conducted in this matter, as the Appellant
20 waived his right to such under the advice of his prior counsel. Notwithstanding the
21 absence of testimony in this case, the Appellant pled guilty to the above referenced
22 charges wherein it was alleged that Appellant attempted to digitally penetrate a
23 minor under the age of fourteen, and was found in possession of one or more
24 mobile phone or photographic images of the said minor's genital area. (AA 12-19).
25 Appellant additionally pled guilty to committing a battery on his domestic partner.
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1 (AA 12-19).

2 **21. Issues on Appeal:**

- 3 1. Whether the District Court abused its discretion under the 8th and 14th
4 Amendments to the United States Constitution and Article 1, §6 of the
5 Nevada Constitution by sentencing the Appellant to maximum
6 consecutive sentences in the presence of clear mitigating circumstances.
7

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

9
10 Appellant received the maximum sentence for each of the three of the
11 offenses to which he pled guilty. The Judge ordered the sentences of 96 to 240
12 months for Count 1, 19 to 60 months for Count II, and 19 to 72 months for Count
13 III, to run consecutively. Appellant contends that this sentence, although within
14 the statutory sentencing range for each individual offense, was driven by emotion,
15 and not the result of fair and impartial consideration of the facts and mitigating
16 circumstances of the case.
17

18
19 At the time of sentencing, the Judge was noticeably affected upon hearing
20 the statements of the victims, and reacted on that emotion in rendering the harsh
21 sentence. Further, the resultant sentence demonstrates a clear disregard of
22 substantial mitigating factors regularly considered by the court, such as:
23

- 24
25 • Appellant was determined to be a low risk to reoffend by a qualified
26 evaluator.
27
28 • Appellant has no prior history of any sexual offense.

- The charges against Appellant stem from a singular instance, not a pattern of deviant behavior.
- The relationship between Appellant and his domestic partner was contentious, and often involved mutual combat.
- The Presentence Report provided for a significantly lighter sentence.
- Appellant chose to plead guilty, which spared the victims the emotional turmoil of a trial, and spared the court its time and expense.
- Appellant has a large extended family willing to provide him with a stable environment upon his release from prison.

These mitigating factors are regularly recognized by the sentencing court, and are normally the type of factors that allow for a reduction of the maximum sentence.

The extreme sentence rendered by the Court demonstrates an abuse of discretion on the part of the District Court Judge and was violative of both the 8th and 14th Amendments to the United States Constitution and Article 1, §6 of the Nevada Constitution, prohibiting imposition of cruel and unusual punishment. Article 1, §6 of the Nevada Constitution states:

Excessive bail shall not be required nor excessive fines imposed, nor shall cruel or unusual punishment be inflicted, nor shall witnesses be unreasonably detained.

In *Schmidt v. State*, 94 Nev. 665, 668, 584 P.2d 695, 697 (1978), the Nevada Supreme Court stated that a statute enacted by the state legislature is presumed valid; however, a sentence is unconstitutional “if it is so disproportionate to the

1 crime for which it is inflicted that it shocks the conscience and offends the
2 fundamental notions of human dignity . . .” The Legislature is empowered to
3 define crimes and determine punishments and usually the Supreme Court does not
4 encroach upon that domain lightly. *Sheriff v. Williams*, 96 Nev. 22, 604 P.2d
5 800 (1980). Furthermore, the trial judge has wide discretion in imposing a prison
6 term, but if the trial judge abuses his discretion, then the Supreme Court is free to
7 disturb the sentence. *State v. Sala*, 63 Nev. 270, 169 P.2d 524 (1946). Cruel and
8 unusual punishment is not defined in either the State or Federal constitutions.

11 Recently the United States Supreme Court in *Thompson v. Oklahoma*, 487
12 U.S. 815, 108 S.Ct. 2687, 2691, 101 L.Ed.2d 702 (1988), noted that the authors of
13 the Eighth Amendment drafted a categorical prohibition against the infliction of
14 cruel and unusual punishment, but they made no attempt to define the contours of
15 that category. They delegated that task to the future generation of judges who have
16 been guided by the “evolving standards of decency that mark the progress of a
17 maturing society.” *Trop v. Dolis*, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d
18 630 (1958) (plurality opinion). The Nevada Supreme Court in *Naovarath v. State*,
19 105 Nev. 525, 779 P.2d 944 (1989) cited former United States Supreme Court
20 Justice, Frank Murphy, in an unpublished draft opinion as follows:
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25 “More than any other provision in the constitution, the prohibition
26 of cruel and unusual punishment depends largely, if not entirely,
27 upon the humanitarian instincts of the judiciary. We have nothing
28 to guide us in defining what is cruel and unusual apart from our
conscience. A punishment which is considered fair today may be
considered cruel tomorrow. And so we are not dealing here with a

1 set of absolutes. Our decision must necessarily spring from the
2 mosaic of our beliefs, our backgrounds and the degree of our faith
and the dignity of the human personality.” Id. at p. 4.

3 It is clear from the above cited case law that the Nevada Constitution does
4 prohibit the infliction of cruel and unusual punishment. The Supreme Court has
5 the right and duty to review the decisions of district court judges to determine if
6 they have abused their discretion in imposition of sentences. It is also clear that
7 the Supreme Court can determine in a particular case that the district court judge
8 has abused its discretion and has imposed a sentence that is, in fact, cruel and
9 unusual. See *Naovarath v. State*, supra.

10 In the instant case, the District Court judge sentenced the Appellant to 96 to
11 240 months, to run consecutive with another sentence of 19 to 60 months and 19 to
12 72 months in prison, despite the fact that Appellant pled guilty, and was considered
13 to be a low risk to reoffend. Furthermore, there was significant disparity between
14 the sentence imposed by the District Court and the Presentence Report prepared by
15 the Department of Parole and Probation. Finally, it should be noted that the
16 Appellant agreed to plead guilty to the above referenced charges, which spared the
17 victims the emotional turmoil of enduring trial.

18 Based upon the foregoing substantial mitigating factors, the sentence
19 imposed by the District Court was clearly outside the boundaries of fair play and
20 justice. As such, the Appellant respectfully requests that this Court mitigate the
21

instant sentence and remand to the District Court for imposition of a sentence in comportment with the facts on the record.

23. Preservation of issues: N/A

24. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest? If so, explain: N/A

/s/ Anthony P. Sgro, Esq.

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Attorneys for Appellant

VERIFICATION

1
2 1. I hereby certify that this fast-track statement complies with the
3 formatting requirements of the N.R.A.P. 32(a)(4), the type-face requirements of
4 N.R.A.P. 32(a)(5) and the type-style requirements of N.R.A.P. 32(a)(6) because
5 this fast track statement has been prepared in a proportionally spaced typeface
6 using Microsoft Word 2010 in a size 14 font using Times New Roman.
7

8
9 2. I further certify that this fast-track statement complies with the page
10 or type-volume limitations of N.R.A.P. 3C(h)(2) because it is proportionally
11 spaced, has a type-face of 14 points or more, and contains 2,306 words, and does
12 not exceed fifteen (15) pages.
13

14 3. Finally, I recognize that pursuant to N.R.A.P. 3(c), I am responsible
15 for filing a timely fast track statement and that the Supreme Court of Nevada may
16 sanction an attorney for failing to file a timely fast track statement of failing to
17 raise material issues or arguments in the fast track statement, or failing to
18 cooperate fully with the appellate process during the course of appeal. I therefore
19 certify that the information provided in this fast track statement is true and
20 complete to the best of my knowledge, information and belief.
21
22

23 DATED this 18th day of September, 2014.
24

25 /s/ Anthony P. Sgro, Esq.
26 Anthony P. Sgro, Esq.
27 Nevada Bar No. 3881
28 PATTI, SGRO, LEWIS & ROGER
720 S. 7th Street, 3rd Floor
Las Vegas, Nevada 89101

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CERTIFICATE OF MAILING

I, the undersigned employee of PATTI, SGRO, LEWIS, & ROGER hereby
certify that on the 18th day of September, 2014, I served a copy of the foregoing
Fast Track Statement and Appendix by depositing a copy of the same in a sealed
envelope in the United States Mail at Las Vegas, Nevada, first class postage fully
prepaid and addressed to:

Dujuan Looper
High Desert State Prison
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Inmate ID # 1120989

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/s/ Melinda Weaver, Esq.
An employee of PATTI, SGRO, LEWIS, & ROGER