

IN THE SUPREME COURT OF THE STATE OF NEVADA

RODERICK STEPHEN SKINNER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Tracie K. Lindeman  
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Appeal from a Judgment of Conviction in Case Number CR14-0644  
The Second Judicial District Court of the State of Nevada  
Honorable David A. Hardy, District Judge

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APPELLANT'S REPLY BRIEF

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## ARGUMENT IN REPLY

Knowing that this Court is loath to substitute its opinion for that of the district court judge in sentencing matters, the State opens with the suggestion that that is what Mr. Skinner preciously wants this Court to do. See Respondent's Answering Brief (RAB) at 1 (“Appellant Skinner contends that this Court should substitute its judgment for that of the district court ...”). Not so. Mr. Skinner seeks this Court’s determination that Judge Hardy abused his discretion in sending him to prison instead of placing him on probation.

The State also mistakenly asserts that Mr. Skinner wants deportation “as a condition of probation,” which is improper. *Id.* Here the State cites *United States v. Jalilian*, 896 F.2d 447 (10th Cir. 1990). In *Jalilian* the sentencing court had actually ordered Mr. Jalilian “to leave the county” as a condition of probation under 18 U.S.C. § 3563. On appeal, Mr. Jalilian argued that the district court’s order “was a de facto deportation order that exceed[ed] the authority granted by section 3563,” and the Court of Appeals agreed. 896 F.2d at 448. The court said that a “court’s sua sponte order deporting an alien” is outside of the legislative scheme that vests “exclusive authority [in] the Attorney

General to order the deportation of aliens pursuant to 8 U.S.C. section 1252.” *Id.*

In the instant case, Mr. Skinner has not sought, nor is he seeking, deportation as a condition of probation. Rather, as noted in the Opening Brief, Mr. Skinner’s placement on probation—given his ICE hold—would automatically resort in deportation proceedings, an event that the Division of Parole and Probation has prepared for in other cases. See Appellant’s Opening Brief at 8 & 12-13; and see JA 171-72 (noting that an ICE hold means that Mr. Skinner will “be deported, eventually, whether it’s if he’s granted probation, or when he’s released from prison.” As such, “[h]is case will stay open with the Division ... in a file cabinet [called the Deportation Caseload].”). Thus, unlike *United States v. Jalilian*, an order granting probation here is not a de facto deportation order; it is a grant of probation—albeit, a grant that will result in the Attorney General initiating deportation proceedings against Mr. Skinner consistent with his legislative grant of authority.

It is apparent in the record that Judge Hardy sentenced Mr. Skinner to prison as a matter of “control.” JA 216, 218. Respectfully, this appears to be a display of judicial power, not considered discretion.

*Cf. Bouras v. Holder*, 779 F.3d 665, 676 (7th Cir. 2015) (Posner, J., dissenting) (“Oh, it is excellent / To have a giant’s strength; but it is tyrannous / To use it like a giant.”).<sup>1</sup> In order to avoid an abuse of discretion a district court should “give due considerations to the issues at hand.” *Patterson v. State*, 129 Nev. \_\_\_\_, \_\_\_\_, 298 P.3d 433, 439 (2013) (citations omitted). Here, Judge Hardy abused his sentencing discretion.

## CONCLUSION

Accordingly, this Court should reverse the sentence imposed below and remand with instructions to place Mr. Skinner on probation subject to his ICE hold, and action by the Attorney General of the United States.

DATED this 8th day of April 2015.

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<sup>1</sup> Judge Posner quotes, without citation, from William Shakespeare’s *Measure for Measure* act 2, sc. 2, 1. 108 (1604). See The Yale Book of Quotations 692 (Fred R. Shapiro, ed. 2006).

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because: This brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, even including the parts of the brief though exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains a total of 1,018 words. NRAP 32(a)(7)(A)(i), (ii).

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the

accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 8th day of April 2015.

/s/ John Reese Petty

JOHN REESE PETTY

Chief Deputy, Nevada State Bar No.10

### **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 8th day of April 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy,  
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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