IN THE SUPREME COURT OF THE STATE OF NEVADA

BENNETT GRIMES,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

CASE NO: 67598

FAST TRACK RESPONSE

ROUTING STATEMENT: This is a direct appeal from a judgment of conviction that challenges only the sentence imposed or the sufficiency of the evidence. However, as this appeal raises an issue of statewide importance and first impression, the State submits this appeal is appropriately retained by the Nevada Supreme Court. See NRAP 17(a)(13), (14).

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:

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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:

The State is not aware of any pending proceedings which raise the same issues raised in this appeal.

5. Procedural history.

On September 14, 2011, Grimes was charged by way of Information with Count 1: Attempt Murder with Use of a Deadly Weapon in Violation of Temporary Protective Order (Category B Felony – NRS 200.010; 200.030; 193.330; 193.165; 193.166); Count 2: Burglary while in Possession of Deadly Weapon in Violation of Temporary Protective Order (Category B Felony – NRS 205.060; 193.166); and Count 3: Battery with Use of a Deadly Weapon Constituting Domestic Violence Resulting in Substantial Bodily Harm in Violation of Temporary Protective Order (Category B Felony – NRS 200.481; 200.485; 33.018; 193.166). I AA 9-11. The State filed a Third Amended Information just prior to trial charging the same offenses.. I AA 173-175.

Trial commenced on October 10, 2012, and concluded on October 15, 2012, with the jury returning a guilty verdict on all three counts. I AA 211-212. On October 22, 2012, Grimes filed a Motion for New Trial. On November 5, 2012, the State filed its Opposition. I AA 217-220. On November 6, 2012, the Court denied the Motion. II AA 258.

On February 12, 2013, the Court sentenced Grimes. V AA 1045-46. In addition to the $25.00 Administrative Assessment fee, and $150.00 DNA Analysis Fee, Grimes was adjudged guilty under the small habitual criminal statute years for Counts 2 and 3, and sentenced as follows: Count 1 – to a minimum of 8 years and a maximum of 20 years in the Nevada Department of Corrections (NDC), plus a consecutive term of a minimum of 5 years and a maximum of 15 years in the NDC for use of a deadly weapon; Count 2 – a minimum of 8 years and a maximum of 20 years in the NDC, to run concurrent with Count 1; and Count 3 – a minimum of 8 years and a maximum of 20 years in the NDC, to run consecutive to Counts 1 and 2, with 581 days credit for time served. I AA 224-25; V AA 1045-46. On February 21, 2013, the Judgment of Conviction was filed. I AA 224-25. Grimes filed a Notice of Appeal on March 8, 2013. I AA 226-29. On February 27, 2014, the Nevada Supreme Court issued an Order of Affirmance, affirming Grimes' convictions and sentences. VI AA 1196-1206. Remittitur issued March 24, 2014. Id.

On September 9, 2013, while his direct appeal was pending, Grimes filed a Motion to Correct Illegal Sentence. VI AA 1103-30. On September 23, 2013, the State filed its Opposition. VI AA 1131-40. On October 3, 2013, Grimes filed a Reply in Support of Motion to Correct Illegal Sentence. VI AA 1152-64. The State also filed a Surreply in Support of Opposition to Defendant's Motion to Correct Illegal Sentence on October 3, 2013. VI AA 1146-51. On the same day, the Court heard

arguments on the Motion. VI AA 1169-90. On February 26, 2015, the Court denied the Motion. VI AA 1167-68. On May 1, 2015, the Order Denying the Motion was filed. VI AA 1167. On March 16, 2015, Grimes filed a Notice of Appeal. VI AA 1231-33. On July 2, 2015, Grimes filed his Fast Track Statement.

6. Statement of Facts.

Grimes' first sentencing hearing was set for February 7, 2013. V AA 1022. During this sentencing hearing, Grimes objected to the adjudication of Count 3. V AA 1030. The State argued that under Jackson v. Nevada, Grimes could be adjudicated guilty of both Counts 1 and 3. V AA 1030. The Court requested time to review the case and continued the sentencing hearing to February 12, 2013. V AA 1031-33. On February 12, 2013, after argument by both parties, the Court found that under Jackson, Grimes could be adjudicated guilty of both Counts 1 and 3. V AA 1034-37. The Court adjudicated Grimes guilty on all counts and sentenced him to an aggregate sentence of twenty-one (21) to fifty-five (55) years in NDC. V AA 1037-47; V1 AA 1132.

On September 9, 2013, Grimes filed a Motion to Correct Illegal Sentence, in which he claimed Jackson was applied ex post facto to his case. VI AA 1103-30. On September 23, 2013, the State filed its Opposition, arguing Jackson was retroactive and that Grimes' case did not violate ex post facto. VI AA 1131-40. On October 3, 2013, the Court heard arguments on the Motion. VI AA 1169-90. During that

hearing, the Court stated that it believed this issue was already discussed and resolved at the Sentencing Hearing but passed the matter for final judgment. VI AA 1171. The Court denied the Motion on February 26, 2015. VI AA 1167-68. On May 1, 2015, the Order Denying the Motion was filed. VI AA 1167. On March 16, 2015, Grimes filed a Notice of Appeal. VI AA 1231-33. On July 2, 2015, Grimes filed his Fast Track Statement.

7. Issue(s) on appeal.

Whether the district court properly denied Grimes' Motion to Correct Illegal Sentence.

8. Legal Argument, including authorities:

I. THE DISTRICT COURT PROPERLY DENIED GRIMES' MOTION TO CORRECT ILLEGAL SENTENCE.

Grimes appeals the district court's denial of his Motion to Correct Illegal Sentence. NRS 176.555 states that "[t]he court may correct an illegal sentence at any time." See also Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992). However, the grounds to correct an illegal sentence are interpreted narrowly under a limited scope. See Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996); see also Haney v. State, 124 Nev. Adv. Op. 40, 185 P.3d 350, 352 (2008). "A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for

challenging the validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing." Edwards, 112 Nev. at 708, 918 P.2d at 324.

This Court reviews a district court's decision denying a motion to correct illegal sentence for an abuse of discretion. Haney v. State, 124 Nev. 408, 411, 185 P.3d 350, 352 (2008). A sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of discretion, the district court's determination will not be disturbed on appeal. Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)).

The district court did not abuse its discretion by denying Grimes' Motion to correct an illegal sentence because Grimes' Motion was not properly before the district court as it requested the court to reconsider a legal issue already fully litigated and determined at Grimes' sentencing. Additionally, Grimes' Motion was properly denied because the court lacked the jurisdiction to grant the Motion while Grimes' appeal was pending. Further, Grimes' Motion was properly denied because Grimes presented claims not cognizable in a Motion to Correct Illegal Sentence. Finally, Grimes' Motion was properly denied because Grimes' rights under the Ex Post Facto and Due Process Clauses were not violated by the court imposing sentences on both Counts 1 and 3 under Jackson.

A. Grimes' Motion was Not Properly Before the District Court Because It Essentially Requested the Court to Reconsider a Legal Issue Already Fully Litigated and Determined at Grimes' Sentencing

Hearing, and He Failed to Establish Even a Prima Facie Basis for Reconsideration

Grimes' Motion was a thinly veiled attempt to have the Court reconsider a legal issue already fully litigated and determined at his sentencing hearing. His Motion failed to even make a request for consideration, much less attempt to justify why leave to reconsider should have be granted under the substantive requirements of the rule governing such requests. There was no basis for the district court to grant leave for reconsideration because the district court already considered at the sentencing hearing whether applying Jackson, 128 Nev. Adv. Op. 55, 291 P.3d 1274 (2012), and adjudicating Grimes guilty of both Counts 1 and 3 would constitute an ex post facto violation.

District Court Rule 13(7), governing "Rehearing of Motions," provides:

> No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.

"District Court Rule (DCR) 12(7) provides that a motion for reconsideration or rehearing may be made with leave for the court." Arnold v. Kip, 123 Nev. 410, 416, 168 P.3d 1050, 1054 (2007). Rehearing is warranted where the Court "has overlooked or misapprehended material facts or questions of law or when [it has] overlooked, misapplied, or failed to consider legal authority directly controlling a dispositive issue[.]" Great Basin Water Network v. State Eng'r, 126 Nev. Adv. Op.

20, 234 P.3d 912, 913-914 (2010) (discussing standard applicable to appellate analog NRAP 40(c)(2)).

Grimes' ex post facto challenge to being adjudicated guilty as to both Counts 1 and 3 was considered by the Court and rejected on the merits at sentencing. Restyling his claims as a motion to correct illegal sentence did nothing to entitle him to a reconsideration of that prior determination. The presentation of Grimes' single persuasive authority from another jurisdiction did not warrant reconsideration. See Fast Track Statement at 15 (arguing the persuasive impact of Ex parte Scales, 853 S.W.2d 586 (Tex. Crim. App. 1993)). That case was published in 1993 and it was untimely brought to the Court's attention. Moreover, that merely persuasive authority – which has never been cited by another jurisdiction – is not a "legal authority directly controlling a dispositive issue," which would warrant reconsideration, Great Basin Water Network, supra. Thus, Grimes' Motion was properly denied due to his failure to seek and inability to justify reconsideration of the Court's legal determination at his sentencing.

B. Grimes' Motion was Properly Denied Because the District Court Did Not Have the Jurisdiction to Grant the Motion while Grimes' Appeal was Pending

"Jurisdiction in an appeal is vested *solely* in the supreme court until the remittitur issues to the district court." (emphasis added) Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). While an appeal is pending, district courts

do not have jurisdiction over the case until remittitur has issued. Id. Generally, once a defendant files a notice of appeal with the Nevada Supreme Court, that divests the district court of jurisdiction to hear the matter until remittitur issues. See Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). The general divesting of jurisdiction applies to all proceedings not "collateral to or independent from the appealed order." Foster v. Dingwall, 126 Nev. __, 228 P.3d 453, 455 (2010).

Here, Grimes had a direct appeal pending while his Motion to Correct Illegal Sentence was before the district court. Further, Grimes' Motion was not collateral but a direct attack on his Judgment of Conviction and his sentencing proceedings.[1] Accordingly, the district court had no jurisdiction to consider Grimes' Motion to Correct Illegal Sentence.

C. Grimes' Motion Was Properly Denied Because It Presented Claims Not Cognizable in a Motion to Correct Illegal Sentence

NRS 176.555, governing "Correction of illegal sentence," provides that "[t]he court may correct an illegal sentence at any time." A motion to correct an illegal sentence looks only to see if the sentence is illegal upon its face. Edwards, 112 Nev. at 708, 918 P.2d at 324. The Court in Edwards further explained:

> A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time; such a motion cannot be used as a vehicle for challenging the

[1] Grimes' improper use of a Motion to Correct Illegal Sentence to challenge his Judgment of Conviction and sentence will be addressed infra.

> validity of a judgment of conviction or sentence based on alleged errors occurring at trial or sentencing. Issues concerning the validity of a conviction or sentence, except in certain cases, must be raised in habeas proceedings.

Id. at 707, 918 P.2d at 324. An "illegal sentence' is one which is at variance with the controlling sentencing statute, or "illegal" in a sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided. Id. (quoting Allen v. United States, 495 A.2d 1145, 1149 (D.C. 1985); Robinson v. United States, 454 A.2d 810, 813 (D.C. 1982)).

Grimes' ex post facto/due process challenge to the procedure followed at his sentencing hearing is not substantively within the scope of a motion to correct illegal sentence as recognized in Edwards. He did not attempt to demonstrate any facial invalidity in his Judgment of Conviction. The Edwards Court expressly held that the type of claims Grimes made in his Motion are not cognizable in a motion to correct illegal sentence. The Court has noted that "such a motion cannot be used as a vehicle for challenging the validity of a judgement of conviction or sentence *based on alleged errors occurring at trial or sentencing*." Edwards, 112 Nev. at 707, 918 P.2d at 324 (emphasis added). Having already filed a 27-page Fast Track Statement in his direct appeal, Grimes was instead improperly using the Motion as a vehicle for obtaining additional appellate review of issues omitted from his direct appeal. Regardless of his motives, Grimes could not pursue the issue through a motion to

correct illegal sentence. Cf. id. at 704 n.2-709, 918 P.2d at 325 n.2.[2] Thus, Grimes' Motion was properly denied because it raised a claim not cognizable in the "very narrow scope" of a motion to correct illegal sentence.

D. Even Assuming The Motion was Substantively and Procedurally Proper, Grimes' Motion was Properly Denied Because Grimes' Rights Under the Ex Post Facto and Due Process Clauses Were Not Violated by the Court Adjudicating Grimes Guilty of and Imposing Sentences on Both Counts 1 and 3

1. Standard for Determining the Existence of an Ex Post Facto/Due Process Violation under Calder/Bouie

Laws that retroactively alter the definition of crimes or increase the punishment for crimes constitute violations of the prohibition on ex post facto punishments. Miller v Ignacio, 112 Nev. 930, 921 P.2d 882 (1996). An ex post facto law is defined exclusively as a law falling into one of the four categories delineated in Calder v. Bull, 3 U.S. 385, 390 (1798). See Carmell v. Texas, 529 U.S 513, 537-39, 120 S. Ct. 1620, 1635 (2000); Collins v. Youngblood, 497 U.S. 37, 41-42, 110

[2] We have observed that defendants are increasingly filing in district court documents entitle "motion to correct illegal sentence" or "motion to modify sentence" to challenge the validity of their convictions and sentences in violation of the exclusive remedy provision detailed in NRS 34.724(2)(b), in an attempt to circumvent the procedural bars governing post-conviction petitions for habeas relief under NRS chapter 34. We have also observed that the district courts are often addressing the merits of issues regarding the validity of convictions of sentences when such issues are presented in motions to modify or correct allegedly illegal sentences without regard for the procedural bars the legislature has established. If a motion to correct an illegal sentence or to modify a sentence raises issues outside of the very narrow scope of the inherent authority recognized in this Opinion, the motion should be summarily denied…

S. Ct. 2715, 2718-19 (1990). As Calder explained, ex post facto laws include the following:

> (1) Every law that makes an action, done before the passing of the law, and which was innocent when done, criminal; and punishes such action;
> (2) Every law that aggravates a crime, or makes it greater than it was, when committed;
> (3) Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crimes, when committed;
> (4) Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

The Calder categories provide "an exclusive definition of ex post facto laws," Collins, 497 U.S. at 42, 110 S. Ct. at 2719, and the United States Supreme Court has admonished that it is "a mistake to stray beyond Calder's four categories." Carnell, 529 U.S. at 539, 120 S. Ct. at 1620. There is no clear formula for determining whether a statute increases the degree of punishment for a particular crime, Miller, 112 Nev. at 933, 921 P.2d at 883, but "[a]fter Collins, the focus of the ex post facto inquiry is not on whether a legislative change produces some ambiguous sort of 'disadvantage,'…but on whether any such change alters the definition of criminal conduct or increases the penalty by which a crime is punishable." California Dep't of Corr. v. Morales, 514 U.S. 499, 506 n.3, 115 S. Ct. 1597, 1602 n.3 (1995). Mechanical changes that may impact a defendant's sentence are not per se ex post facto. Id. at 508-09, 115 S. Ct. at 1603-04. Likewise, statutes that disadvantage

defendants are not ex post facto if they are only procedural in nature. Dobbert v. Florida, 432 U.S. 282, 97 S. Ct. 2290 (1977) (no ex post facto violation in retroactively applying change to procedure for capital sentencing determinations).

The constitutional protection against ex post facto laws applies as a matter of due process under the Fifth Amendment, equally to judicial pronouncements and doctrines. Marks v. United States, 430 U.S. 188, 191-92, 97 S. Ct. 990, 993 (1977); Bouie v. City of Columbia, 378 U.S. 347, 352054, 84 S. Ct. 1697, 1703 (1964) ("'(A)n unforeseeable judicial enlargement of a criminal statute, applied retroactively, operates precisely like an ex post facto law, such as Art. I, § 10, of the Constitution forbids…If a state legislature is barred by the Ex Post Facto Clause from achieving precisely the same result by judicial construction.'"). Ex post facto analysis under the due process clause hinges upon whether the judicial pronouncement or doctrinal change constitutes an "unforeseeable judicial construction" of the law. Marks, 430 U.S. at 192-193, 97 S. Ct. at 993. To constitute a due process violation, the new judicial pronouncement or doctrinal change must be "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue[.]" Bouie, 378 U.S. at 354, 84 S. Ct. 1697 (citation omitted).

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2. Application of Jackson's Disapproval of the Salazar-Skiba Redundancy Analysis Does Not Constitute an Ex Post Facto Law/Due Process Violation

As already determined by the district court at sentencing, Grimes cannot locate his alleged ex post facto violation in any of the four Calder categories. Further, he cannot demonstrate that Jackson's change in the law was so unforeseeable that its application to him constitutes a due process violation under Bouie. Application of Jackson did nothing to change the amount of punishment attaching to the crimes Grimes committed. Grimes's sole legal justification for invalidating his Count 3 conviction is a reference to the Texas case, Ex parte Scales, 853 S.W.2d 586 (Tex. Crim. App. 1993). Putting aside that Ex parte Scales has never once been cited outside of Texas and deals with a doctrine never employed in Nevada, there are a number of factors that seriously diminish its persuasive value. Under Bouie's ex post facto due process test, Grimes cannot establish a similar claim that disapproval of the Salazar-Skiba redundancy analysis was an "unforeseeable judicial construction" of the law "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue[.]"Marks, 430 U.S. at 192-193, 97 S. Ct. at 993; Bouie, 378 U.S. at 354, 84 S. Ct. 1697.

Unlike the redundancy analysis developed in Nevada, Texas's carving doctrine at issue in Ex parte Scales was almost a century old at the time it was doctrinally abandoned in 1982. See Ex parte McWilliams, 634 S.W.2d 815 (Tex.

Crim. App. 1980) (citing cases dating 1896 and 1905 as the origin of the so-called carving doctrine and noting "[t]here is no definitive statement of the carving doctrine; it is a nebulous rule applied only in this jurisdiction."). Conversely, the Salazar-Skiba redundancy analysis (if it even constitutes a doctrine per se) was a jurisprudential outlier consisting of two "conclusory," opinions, which arose beginning in 1998. Jackson v. State, 291 P.3d at 1282 (noting Skiba "exhibits the same conclusory analysis as Salazar."). Further, this Court noted that the redundancy doctrine it was overturning is "unique" in the sense that only Nevada follows it. Id. at 1280.

Even more importantly, this Court in Jackson outlined how the United States Supreme Court had likewise vacillated between "same elements" and "same conduct" and ultimately made the same doctrinal change this Court decided to embrace first in Barton v. State, 117 Nev. 686, 30 P.3d 1103 (2001); overruled on unrelated grounds by, Rosas v. State, 122 Nev. 1258, 147 P.3d 1101 (2006), and again in Jackson. This Court explained this inevitable progression in Jackson:

> Like Nevada, the United States Supreme Court has vacillated on whether to pursue, in addition to Blockburger's "same elements" test, a "same conduct" analysis in assessing cumulative punishment…a mere three years after Grady, the Court overruled it outright, reasoning that Grady was "not only wrong in principle, it has already proved unstable in application."
> In Barton, this court retraced the Supreme Court's path in Grady and Dixon and endorsed Dixon's "same elements" approach, to the exclusion of Grady's "same conduct" approach. Although Barton arose in the context of lesser-included-offense

> instructions, its stated holding applies to other contexts as well, including specifically, to questions of whether the conviction of a defendant for two offenses violates double jeopardy, whether a jury finding of guilt on two offenses was proper, and whether two offenses merged. Id. at 689-90, 30 P.3d at 1105. Indeed, the principal "same conduct" case Barton overrules, is a double jeopardy/cumulative punishment case. And Barton states its holding categorically: To the extent that our prior case law conflicts with the adoption of the elements test, we overrule Owens v. State and expressly reject the same conduct approach *that has been used in various contexts*; [j]ust as the United States Supreme Court found [Grady's] same conduct test to be unworkable…, we to conclude that *eliminating the use of this test* will promote mutual fairness.

Jackson, 291 P.3d at 1280-81 (emphasis original) (internal quotations and citations omitted). Essentially then, the Court in Jackson was saying that Barton had already overturned the "same conduct" mode of analysis relied on in Salazar-Skiba. It is quizzical then that Grimes claims the disapproval of Salazar-Skiba was an "unforeseeable judicial construction" of the law "unexpected and indefensible by reference to the law which had been expressed prior to the conduct in issue." Instead, Jackson merely followed the path already staked out in Barton. Indeed, Jackson, far from constituting an "unforeseeable," "unexpected," and "indefensible" change of law, was instead a bit of doctrinal housekeeping long foreshadowed by the approaches of every court, including the United States Supreme Court and Nevada Supreme Court precedent. Because Barton in 2001 had already "eliminat[ed]" the "same conduct" redundancy test for all "contexts," Grimes cannot with a straight face say that Jackson was "unforeseeable," "unexpected," and "indefensible." Under

Marks and Bouie, supra, if he cannot make that showing, his ex post facto/due process challenge goes nowhere. Thus, Grimes' Motion was properly denied because he utterly fails to demonstrate application of Jackson to him constitutes an ex post facto/due process violation.[3]

CONCLUSION

Based upon the foregoing, the State respectfully requests that this Court affirm the district court's decision. To the extent this Court finds the District Court came to the appropriate conclusion for the wrong reason, it is of no consequence and the District Court's decision should be affirmed. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right

[3] Further, to find Jackson is not retroactive would expressly undermine the sentencing Court's intent. After rejecting Grimes' Jackson argument at sentencing, the Court sentenced Grimes to a consecutive term for Count 3 due to his two prior felony convictions for Battery Constituting Domestic Violence and the facts of this case wherein he stabbed his estranged wife 21 times in front of her mother, in violation of a lawful Temporary Protective Order, and was only stopped when a police officer burst into the house, leapt and grabbed his wrist, thus stopping a murder in the making. Based on the sentencing structure, it was obviously important to the judge that Grimes guy spend *decades* away from any woman. However, if this Court reverses and remands for resentencing, Wilson v. State, 123 Nev. 587, 170 P.3d 975 (2007), bars the sentencing judge from redistributing its sentence among the remaining two counts and Grimes will ultimately receive a 40% discount on his sentence in direct contradiction with the intent of the sentencing judge. See Pitmon v. State, 131 Nev. Adv. Rep. 16, 352 P.3d 655 (App. 2015) ("[T]he nature of criminal sentencing in Nevada is such that judges must be able to exercise discretion in order to match the sentence imposed in each case to the nature of a particular crime, the background of a particular defendant, the potential effect of the crime on any victim, and any other relevant factor.").

result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal.").

9. Preservation of the Issue.

The issue was litigated below.

VERIFICATION

1. I hereby certify that this Fast Track Response 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 Fast Track Response has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point and Times New Roman style.
2. I further certify that this Fast Track Response complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is proportionately spaced, has a typeface of 14 points or more, contains 4,232 words.
3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track response and the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track response, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track response is true and complete to the best of my knowledge, information and belief.

Dated this 4th day of September, 2015.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Christopher Burton*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 4th day of September, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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