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IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 68011

Electronically Filed
Aug 21 2015 11:31 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CHRISTOPHER LEROY ROACH,)
Appellant,)
v.)
STATE OF NEVADA,)
Respondent.)

FAST TRACK STATEMENT

1. Name of party filing this fast track statement:
CHRISTOPHER LEROY ROACH, by and through his counsel, CAESAR ALMASE.
2. Name, law firm, address, and telephone number of attorney submitting this fast track statement:
Caesar Almase, Esq.
Almase Law
530 S. 7th St.
Las Vegas, NV 89101
(702) 463-5590
3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel:
Not Applicable.
4. Judicial district, county, and district court docket number of lower court proceedings:

1 Eighth Judicial District, Clark County, District Court Case No.: C-14-
2 300979-1.

3 5. Name of judge issuing decision, judgment, or order appealed from:
4

5 Hon. Stefany Miley.

6 6. Length of trial:
7

8 Not Applicable.

9 7. Conviction appealed from:
10

11 Count 1, Robbery With Use Of A Deadly Weapon and Count 2, Conspiracy
12 To Commit Robbery.

13 8. Sentence for each count:
14

15 Appellant was sentenced on Count 1, to a minimum of sixty (60) months to
16 a maximum of one hundred eighty (180) months, plus a consecutive term of a
17 minimum of sixty (60) months to a maximum of one hundred eighty (180)
18 months in the Nevada Department of Corrections; and on Count 2, to a
19 minimum of thirteen (13) months to a maximum of sixty (60), consecutive to
20 Count 1.
21

22 9. Date District Court announced decision, sentence, or order appealed from:
23

24 The District Court sentenced Appellant on May 6, 2015.

25 10. Date of entry of written judgment or order appealed from:
26

27 Original Judgment of Conviction was filed on May 12, 2015.
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1 11.If this appeal is from an order granting or denying a petition for a writ of
2 habeas corpus, indicate the date written notice of entry of judgment or order
3 was served by the court:
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5 Not Applicable.

6 12.If the time for filing the notice of appeal was tolled by a post-judgment
7 motion, specify the type of motion, and the date of filing of the motion:
8

9 Not Applicable.

10 13.Date Notice of Appeal filed:
11

12 May 12, 2015.

13 14.Specify the statute or rule governing the time limit for filing the Notice of
14 Appeal:
15

16 NRAP 4(b), and NRS 177.015.

17 15.Specify statute rule, or other authority which grants this court jurisdiction to
18 review the judgment or order appealed from:
19

20 NRS 177.015.

21 16.Specify the nature of disposition below:
22

23 Judgment after guilty plea entered.

24 17.Pending and prior proceeding in this court:
25

26 Not Applicable.

27 18.Pending and prior proceedings in other courts:
28

1 Not Applicable.

2 19.Proceedings raising same issues before this court:

3 Not Applicable.

4 20.Procedural history:

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6 On July 30, 2014, Appellant was charged by Second Amended Criminal
7 Complaint with three counts of Conspiracy To Commit Robbery, two counts
8 of Robbery With Use Of A Deadly Weapon, one count of Coercion, one count
9 of Robbery, and one count of Possession Of Stolen Property (Appellant's
10 Appendix (AA), 1-4). A preliminary hearing was conducted and on
11 September 22, 2014, the Criminal Information was filed in District Court
12 charging Appellant with the same above counts (AA, 5-10). On the date set
13 for Calendar Call, March 11, 2015, Appellant pled guilty to Robbery With Use
14 Of A Deadly Weapon and Conspiracy To Commit Robbery (AA, 11-26). The
15 District Court conducted a plea canvass with Appellant and accepted his plea
16 of guilt (AA, 23-26). The Guilty Plea Agreement, which was filed in open
17 court on that date, stated the prosecution would retain the right to argue (AA,
18 27-35). On May 6, 2015, the District Court sentenced Appellant and his co-
19 defendants, after argument by the prosecution and defense counsel (AA, 36-
20 50). On May 12, 2015, Judgment Of Conviction (AA, 51-52) and Appellant's
21 proper person Notice Of Appeal (AA, 53-54) were filed in District Court.
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1 21. Statement of facts:

2 The original charges stem from three separate robberies involving
3 Appellant and his two co-defendants, and four named victims (AA, 1-4).
4 These robberies occurred over the course of two days (AA, 1-4), with
5 Appellant ostensibly having a role in each. After much discussion with
6 defense counsel and going over the legal and factual issues of the case,
7 Appellant determined to take responsibility for his actions, rather than force
8 the State to prove the charges at trial, which would necessitate the victims
9 reliving their ordeal via testimony. Appellant was forthcoming during his plea
10 canvass and readily admitted culpability (AA, 23-26).

11 At sentencing, the State argued for a total amount of incarceration of a
12 minimum of 148 months and a maximum of 432 months (AA, 38, ln. 16-21),
13 and acknowledged Appellant had only one prior felony when he was a juvenile
14 (AA, 42, ln. 7-12). Defense counsel for Appellant asked for a 4 to 10 year
15 sentence (AA, 45, ln. 13). The argument on behalf of Appellant included: that
16 he had the one prior felony as a juvenile; was only 22 years of age; has mental
17 health issues; his docile nature during all interactions with defense counsel;
18 that Appellant was likely not the person who planned these robberies; that the
19 factual circumstances of the case—none of the victims were physically
20 injured, do not warrant a lengthy sentence; and Appellant took full
21

1 responsibility for his actions (AA, 44-46). Regarding Appellant's mental
2 health issues, he suffers from Dysthymia, a form of long-term depression, and
3 attempted suicide on a few occasions (AA, 44, ln. 24-25).
4

5 22.Issue on Appeal:

6 Appellant's sentence amounts to cruel and unusual punishment and does
7 not serve the interests of justice.
8

9 23.Legal Argument:

10 Article 1, Sec. 6 of the Nevada Constitution provides:

11 "Excessive bail shall not be required nor excessive fines imposed, nor shall
12 cruel or unusual punishment be inflicted, nor shall witnesses be unreasonably
13 detained."¹ The federal and state constitutions do not explicitly define "cruel
14 and unusual punishment," and the U.S. Supreme Court has made no attempt to
15 define the terms, but have delegated the task to future generations of judges
16 guided by the "evolving standards of decency that mark the progress of a
17 maturing society."²
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21 In Schmidt v. State this Honorable Court concluded that a legislatively
22 enacted statute is presumed valid but, a sentence is unconstitutional "if it is so
23 disproportionate to the crime for which it is inflicted that it shocks the
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26 ¹See also U.S. Const. Amend. VIII.

27 ²Thompson v. Oklahoma, 487 U.S. 815 (1988); Trop v. Dulles, 356 U.S. 86, 101 (1958)
28 (plurality opinion).

1 conscience and offends the fundamental notions of human dignity”³
2 Further, the Eighth Amendment “guarantees individuals the right not to be
3 subjected to excessive sanctions” and “[t]he right flows from the basic precept
4 of justice that punishment for crime should be graduated and proportioned to
5 the offense.”⁴
6

7 In Franklin v. State, this Honorable Court stated that its own “prior
8 precedents do not preclude a direct appeal from a defendant whose conviction
9 is based on a guilty plea.”⁵ The Franklin court then listed certain illustrative
10 claims that an Appellant could pursue in a direct appeal, including: a challenge
11 to the constitutional validity of the statute on which the conviction was based; a
12 challenge to the sentence imposed on constitutional or other grounds; a claim
13 that the state breaches the plea agreement at sentencing; a challenge to the
14 procedures employed that led to the entry of plea, if that challenge does not
15 include the voluntariness of the plea; and a claim that the district court
16 entertained an actual bias or that there were other conditions that rendered the
17 proceedings unfair. *Id.*, at 1059.
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23 In the present case, Appellant took full responsibility for his actions in the
24 three robberies, and chose not to put the victims, who were uninjured, in the
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26 ³94 Nev. 665, 668, 584 P.2d 695, 697 (1978).

27 ⁴Roper v. Simmons, 543 U.S. 551, 560 (2005).

28 ⁵877 P.2d 1058, 1059; 110 Nev. 750 (1994).

1 position of having to relive their experiences at trial. He understood he was
2 not eligible for probation and just hoped for a short term of incarceration,
3 specifically 4-10 years in the aggregate. Appellant was only 22 years old at
4 the time of sentencing, had only one prior felony conviction when he was a
5 juvenile, had demonstrated a peaceful nature during all interactions with
6 defense counsel, and was very likely not the person who planned these
7 robberies but rather acted a follower. Notably, Appellant suffers from long-
8 term depression causing him to attempt suicide a number of times.
9

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11 The District Court erred by sentencing Appellant to a total of 133 months to
12 420 months. If this sentence stands, Appellant will be at least 11 years older,
13 approximately, when released on parole. Given the underlying circumstances
14 in this case, Appellant's mental health issues, his age, lack of criminal history,
15 and the status of the law regarding cruel and unusual punishment, the District
16 Court should have sentenced him to a much shorter length of incarceration.
17 The interests of justice are not served by Appellant's lengthy incarceration,
18 and his sentence amounts to cruel and unusual punishment.
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23 24.Preservation of issues:

24 Appellant filed a timely appeal of his sentence. Moreover, the issue of
25 whether appellant's sentence amounted to cruel and unusual punishment was
26 preserved, as a violation of the state and federal Constitutional prohibition
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1 against cruel and unusual punishment cannot be waived.

2 25. Issues of first impression or of public interest:

3 The issue of whether appellant's sentence amounted to cruel and unusual
4 punishment is of great public interest because all individuals in the United
5 States have an absolute right to be free of cruel and unusual punishment, as
6 safeguarded by state and federal Constitutions.
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9 Respectfully submitted this 21st day of August, 2015.

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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this fast track statement complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the
4 type style requirements of NRAP 32(a)(6) because:
5

6 This fast track statement has been prepared in a proportionally spaced typeface
7 using Microsoft ® Word 2008 for Mac Version 10.10.1 in font size 14 and a type style
8 of Times New Roman.
9

10 2. I further certify that this fast track statement complies with the page- or type-volume
11 limitations of NRAP 3C(h)(2) because it:
12

13 Does not exceed ___11___ pages.

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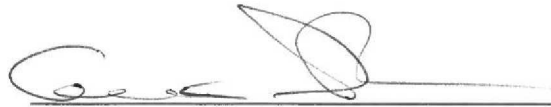
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1 I therefore certify that the information provided in this fast track statement is true
2 and complete to the best of my knowledge, information and belief.

3 Respectfully submitted this 21st day of August, 2015.
4

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 21st day of August, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney

Adam Paul Laxalt
Attorney General

Service of the foregoing document shall also be made via US regular mail to the following:

Christopher Leroy Roach, Inmate ID #1076731
Indian Springs, Nevada State Prison
PO Box 650
Indian Springs, NV 89070
LEGAL MAIL



Caesar Almase