

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY JACKSON aka)
ANTHONY RASHARD JACKSON,)
)
Appellant,)
)
v.)
)
THE STATE OF NEVADA,)
)
Respondent.)

No. 70870

E-File

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Elizabeth A. Brown
Clerk of Supreme Court

FAST TRACK STATEMENT

1. **Name of party:** ANTHONY JACKSON aka ANTHONY RASHARD JACKSON.
2. **Name of attorney submitting this fast track statement:**
MAXWELL A. BERKLEY, #12180
Clark County Public Defender's Office
309 S. Third St., Ste. 226
Las Vegas, Nevada 89155
(702) 455-4685
3. **Name of appellate counsel if different from trial counsel:**
Same.
4. **Judicial district, county, and district court docket number of lower court proceedings:** Eighth Judicial District, County of Clark, District Court Case No. C313747.
5. **Judge issuing order appealed from:** Judge Kerry Earley.

6. **Length of trial.** N/A.
7. **Conviction(s) appealed from:** Possession of a Dangerous Weapon.
8. **Sentence for each count:** Probation revoked, three hundred days in CCDC with 46 days CTS.
9. **Date district court announced decision:** 06/21/16.
10. **Date of entry of written judgment:** 09/14/16.
11. **Habeas corpus:** N/A.
12. **Post-judgment motion:** N/A.
13. **Notice of appeal filed:** 07/26/16.
14. **Rule governing the time limit for filing the notice of appeal:** NRAP4(b).
15. **Statute which grants jurisdiction to review the judgment:** NRS 177.015.
16. **Disposition below:** Judgment upon entry of plea of guilt.
17. **Pending and prior proceedings in this court:** N/A.
18. **Pending and prior proceedings in other courts:** N/A.
19. **Proceedings raising same issues.** Appellate counsel is unaware of any pending proceedings before this Court which raise the same issues as the instant appeal.

20. **Pursuant to NRAP 17, is this matter presumptively assigned to the Court of Appeals? Identify issues or circumstances that override any presumptive assignment to the Court of Appeals or require retention by the Supreme Court. Issues should be identified and explained with specific reference to arguments in the Fast Track Statement.** Counsel has no objection to assignment to the Court of Appeals.

21. **Procedural history.** In a criminal complaint filed 05/19/15, Appellant was charged with one count of Carrying a Concealed Firearm or Other Deadly Weapon and one count of Ownership or Possession of Firearm by Prohibited Person. (App. pp. 1-2). On March 31, 2016, Appellant entered a guilty plea by way of Alford to Possession of a Dangerous Weapon. (App. pp. 16-23). On May 13, 2016, Judgment of Conviction was filed and Appellant was sentenced to \$25 Admin. Assessment fee; \$150 DNA analysis fee; \$3 DNA collection fee; 364 days suspended and placed on probation. (App. pp. 24-26). On July 15, 2016, Appellant filed a Pro Per Notice of Appeal. (App. 27-28).

22. **Statement of facts.** On April 19, 2015, Appellant Jackson was observed on surveillance video switching his card to create a blackjack which increased his chances of winning. Appellant was arrested for Cheating at Gambling. During a search a small metal smoking pipe was

removed from his left front shorts pocket. A search of his vehicle revealed a handgun stolen on January 23, 1992 in Little Rock, Arkansas. Appellant was re-arrested for a Concealed Weapon.

23. **Issues on appeal.** Based upon the facts of this particular case, whether the District Court abused its discretion in sentencing Mr. Green and whether the sentence imposed amounted to cruel and unusual punishment in violation of Nevada Constitution, Article 1, §6.

24. **Legal argument, including authorities:**

The Constitution of the United States of America, Amendment 8 prohibits the imposition of cruel and unusual punishment. In this case, Appellant took responsibility for his crime and pled guilty. For that action, Appellant was sentenced to 364 days concurrent with California case, suspended and placed on probation for one year concurrent with California case.

The sentence the Appellant received violated Nevada Constitution, Article 1, §6 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 crime for which it is inflicted that it shocks the conscience and offends the fundamental notions of human dignity . . .” The Legislature is empowered to define crimes and determine punishments and usually the Supreme Court does not encroach upon that domain lightly. Sheriff v. Williams, 96 Nev. 22, 604 P.2d 800 (1980). Furthermore, the trial judge does have wide discretion in imposing a jail term, but if the trial judge abuses his discretion, then the Supreme Court is free to disturb the sentence. State v. Sala, 63 Nev. 270, 169 P.2d 524 (1946). What cruel and unusual punishment means is not spelled out in either State or Federal constitutions. Recently the United States Supreme Court in Thompson v. Oklahoma, 487 U.S. 815, 108 S.Ct. 2687, 2691, 101 L.Ed.2d 702 (1988), noted that the authors of the Eighth Amendment drafted a categorical prohibition against the infliction of cruel and unusual punishment, but they made no attempt to define the contours of that category. They delegated that task to the future generation of judges who have been guided by the “evolving standards of decency that mark the progress of a maturing society.” Trop v. Dolis, 356 U.S. 86, 101, 78 S.Ct. 590, 598, 2 L.Ed.2d 630

(1958) (plurality opinion). The Nevada Supreme Court in Naovarath v. State, 105 Nev. 525, 779 P.2d 944 (1989) cited former United States Supreme Court Justice, Frank Murphy, in an unpublished draft opinion as follows:

More than any other provision in the constitution, the prohibition of cruel and unusual punishment depends largely, if not entirely, upon the humanitarian instincts of the judiciary. We have nothing 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 set of absolutes. Our decision must necessarily spring from the mosaic of our beliefs, our backgrounds and the degree of our faith and the dignity of the human personality. Id. at p. 4.

It is clear from the above cited case law that the Nevada Constitution does prohibit the infliction of cruel and unusual punishment. The Supreme Court has the right and duty to review the decisions of district court judges to determine if they have abused their discretion in imposition of sentences. It is also clear that based upon the facts and circumstances of specific cases, the Supreme Court can determine that as it applies to the specific case, a district court judge has abused his discretion and has imposed a sentence that is, in fact, cruel and unusual. See Naovarath v. State, *supra*. In the instant case, the District Court judge sentenced Mr. Jackson to a term of three hundred sixty-four (364) days concurrent with his California case, suspended and placed on probation for one year concurrent with his

California case. In a case where the Appellant took responsibility for his crime and pled guilty, it is the position of Appellant that the sentence imposed was an abuse of discretion and did amount to cruel and unusual punishment.

- 25. **Preservation of issues:** The issue raised here is constitutional.
- 26. **Issues of first impression or of public interest:** N/A.

Respectfully submitted,
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Maxwell A. Berkley
MAXWELL A. BERKLEY, #12180
Deputy Public Defender
309 South Third St., Ste. 226
Las Vegas, NV 89155-2610
(702) 455-4685

VERIFICATION

1. I hereby certify that this fast track statement 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 statement has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

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

[XX] Proportionately spaced, has a typeface of 14 points or more, and contains 7 pages which does not exceed the 10 page limit.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track statement and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track statement, or failing to raise material issues or arguments in the fast track statement, 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 statement is true and complete to the best of my knowledge, information and belief.

DATED this 3rd day of February, 2017.

Respectfully submitted,
PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By /s/ Maxwell A. Berkley
MAXWELL A. BERKLEY, #12180
Deputy Public Defender
309 South Third St., Ste. 226
Las Vegas, NV 89155-2610
(702) 455-4685

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 3rd day of February, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM LAXALT
STEVEN S. OWENS

MAXWELL BERKLEY
HOWARD S. BROOKS

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

ANTHONY JACKSON
AKA ANTHONY RASHARD JOHNSON
2745 Stargate Street
Las Vegas, NV 89108

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office