

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANTHONY JACKSON,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Feb 22 2017 02:40 p.m.

Elizabeth A. Brown

CASE NO: 70870 Clerk of Supreme Court

ROUTING STATEMENT

This case is presumptively assigned to the Nevada Court of Appeals because it is an appeal from a judgment of conviction based on a guilty plea pursuant to North Carolina v. Alford, 400 U.S. 25 (1970). NRAP 17 (b)(1).

FAST TRACK RESPONSE

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:**

Krista D. Barrie
Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2750

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:** N/A

5. Procedural history.

On March 19, 2015, Appellant Anthony Jackson (“Appellant”) was charged in a Criminal Complaint with Carrying Concealed Firearm or Other Deadly Weapon (Category C Felony - NRS 202.350 (1)(d)(3) - NOC 51459) and Ownership or Possession of Firearm by Prohibited Person (Category B Felony - NRS 202.360 - NOC 51460). Appellant’s Appendix (“AA”) 1-2.

On March 30, 2016, pursuant to negotiations, Appellant was charged by way of Information with one count of Possession of Dangerous Weapon (Gross Misdemeanor – NRS 202.350 – NOC 51454). AA 14-15. On March 31, 2016, Appellant pleaded guilty, by way of North Carolina v. Alford, 400 U.S. 25 (1970), to the charge alleged in the Information. AA 16-23.

On April 12, 2016, Appellant was sentenced to 300 days in the Clark County Detention Center, to be served concurrently with the sentence for a California case for which he had previously been convicted. AA 30-32. The sentence was suspended, and he was placed on probation for a period not to exceed one year, concurrent with the California case, for which he was also on probation. Id. The Judgment of Conviction was entered on May 13, 2016.¹ AA 24.

¹ The original Judgment of Conviction stated the wrong sentence of 364 days rather than the sentence of 300 days that is reflected in the minutes and transcript of the sentencing hearing, and is agreed upon by the parties. AA 30-32, 58-59, 73. An Amended Judgment of Conviction reflecting the revocation of probation and the correct sentence was filed on September 14, 2016. AA 73-74.

On June 21, 2016, Appellant's probation was revoked based on his violation of probation. His original sentence of 300 days in the Clark County Detention Center was imposed, with 46 days credit for time served. AA 33.

On July 15, 2016, Appellant filed a Notice of Appeal. Appellant's Fast Track Statement (FTS) was filed on February 3, 2017. The State responds herein.

6. Statement of Facts.

Appellant was arrested by Gaming Control Board agents after an attempt to cheat at blackjack at the Fiesta Casino. AA 48; FTS at 3. Agents checked the backseat of their car before placing Appellant in the backseat and did not find any weapons. AA 48. The agents took Appellant to the Clark County Detention Center, and then turned in the car. AA 48. When another agent checked out the same car, he found a pouch containing a firearm in the backseat. AA 49. Appellant was the only person who had access to the backseat of the car from the time he was arrested to the time that the firearm was found; he was the only person who could have left the firearm there. AA 49.

7. Issue on appeal.

Whether a sentence that falls within statutory guidelines constitutes cruel and unusual punishment.

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8. Legal Argument, including authorities:

Appellant asserts that a sentence of 300 days in the Clark County Detention Center, which was initially suspended while he was placed on probation, is cruel and unusual punishment after he pleaded guilty to a gross misdemeanor by way of North Carolina v. Alford, 400 U.S. 25 (1970). As discussed below, this claim is without merit.

The Eighth Amendment to the United States Constitution and Article 1, Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual punishment. This Court has stated that “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’” Allred v. State, 120 Nev. 410, 420, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996); Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)).

Additionally, this Court has granted district courts “wide discretion” in sentencing decisions, which are not to be disturbed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). 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, 8, 846 P.2d 278, 280 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)). As long as the sentence is within the limits set by the Legislature, it will normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 953 (1994).

Appellant's sentence of 300 days was within the statutory range, and was not even the maximum sentence provided by statute. A person who violates NRS 202.350 by possessing a dangerous weapon is guilty of a gross misdemeanor for a first offense. NRS 202.350(2)(a)(1). NRS 193.140 provides that "[e]very person convicted of a gross misdemeanor shall be punished by imprisonment in the county jail for not more than 364 days, or by a fine of not more than \$2,000, or by both fine and imprisonment[.]" Appellant was sentenced to a term of 300 days in the Clark County Detention Center, in accordance with statute.

As Appellant's sentence is within the applicable statutory range, he must show that either: 1) the statute is unconstitutional or 2) that the "sentence is so unreasonably disproportionate to the offense as to shock the conscience." Blume, 112 Nev. at 475, 915 P.2d at 284. This Court has held that "a punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the

severity of the crime. A punishment might fail the test on either ground.” Pickard v. State, 94 Nev. 681, 684-85, 585 P.2d 1342, 1344 (1978).

Appellant’s argument that his sentence was cruel and unusual punishment – that is was so disproportionate as to shock the conscience – is baseless. Appellant was sentenced to a term of 300 days, but the sentence was suspended and he was placed on probation for one year, concurrent with the probation he was serving for a California conviction. Not only was the underlying sentence within statutory guidelines, but Appellant initially received one year of probation that was revoked only because he violated its terms.

Additionally, when imposing the sentence, the district court considered that Appellant would be allowed to remain with the same probation officer who had been working with him on his California case so that he could continue with any progress he was making:

THE COURT: Oh, his probation was transferred.

MR. BERKLEY: Exactly. So he’s currently serving probation in Nevada. So as long as this runs concurrent, it should do it for the –

THE COURT: I put down concurrent with the California case.

MR. BERKLEY: That's correct. I think that's the right terminology. He's serving on a California case here in Nevada. That's the right way to say it.

THE COURT: That was my question.

MR. BERKLEY: As long as it runs concurrent, and Your Honor follows the negotiations, he's already been supervised for some time. He's had the same probation officer for some time.

THE COURT: He can stay with that same – I remember. That would make sense. We'll keep the same probation going. This one is just concurrent. Hopefully he can work at the trucking company and he won't be back.

AA at 55-56.

The district court also imposed a special condition that Appellant should work full-time while on probation so that he would stay out of trouble. AA 56. Appellant told the district court that his probation officer had been working with him on becoming employed at a trucking company, and noted that this opportunity would be affected by a longer probation term. AA 57. The district court then suspended Appellant's sentence and placed him on probation, to run concurrent with his

California case. Appellant does not suggest what sentence would have been more fair than the one he received.

Appellant's sentence of 300 days was well within statutory guidelines. Additionally, the sentence was not so disproportionate to the offense that it would shock the conscience. This claim is without merit, and should be denied.

9. Preservation of the Issue.

The issue was preserved.

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 1,403 words and 8 pages.
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 22nd day of February, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Krista D. Barrie*

KRISTA D. BARRIE
Chief Deputy District Attorney
Nevada Bar #010310
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P O Box 552212
Las Vegas, NV 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 22nd day of February, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

MAXWELL A. BERKLEY
Deputy Public Defender

KRISTA D. BARRIE
Chief Deputy District Attorney

BY /s/ J. Garcia
Employee,
Clark County District Attorney's Office

KDB/Nima Afshar/jg