

IN THE SUPREME COURT OF THE STATE OF NEVADA

TERRENCE BOWSER,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Supreme Court Case No. 71516

District Court Case No.
C-211162-2

APPELLANT'S SUPPLEMENTAL REPLY BRIEF

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Appeal from Judgment of Conviction  
Eighth Judicial District Court, Clark County

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ATTORNEY FOR APPELLANT

RESCH LAW, PLLC d/b/a
Conviction Solutions
Jamie J. Resch
Nevada Bar Number 7154
2620 Regatta Dr., Suite 102
Las Vegas, Nevada, 89128
(702) 483-7360

ATTORNEYS FOR RESPONDENT

CLARK COUNTY DISTRICT ATTY.
Steven B. Wolfson
200 Lewis Ave., 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

NEVADA ATTORNEY GENERAL
Adam Paul Laxalt
100 N. Carson St.
Carson City, Nevada 89701
(775) 684-1265

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I. ARGUMENT

The supplemental briefing raises an important question concerning the increase in the duration of Bowser's sentences on Counts 4 and 6.

Bowser argued that this Court has already held that sentences may not be increased following a retrial absent "identifiable conduct by the defendant occurring after the original sentence which would justify a more severe sentence." Holbrook v. State, 90 Nev. 95, 518 P.2d 1242 (1974), citing North Carolina v. Pearce, 395 U.S. 711 (1969). The State's supplemental answering brief does not even attempt to distinguish these cases. The rule that identifiable conduct is required to increase a sentence after retrial is well-established and should be applied here.

The trial court's statements at the time of the resentencing confirm that no such identifiable conduct occurred. At most, the court agreed "[T]he verdict changed." 6 AA 1218. But the trial court, and the State in its supplemental answer, both fail to identify anything about Bowser that would justify an increased sentence. The record here instead shows Bowser was in prison in the approximate ten years between the trials, during which

time he was a model prisoner with not even a disciplinary infraction, much less any new charges. 6 AA 1225.

While the supplemental answering brief focuses on relief under Wilson v. State, 123 Nev. 587, 170 P.3d 975 (2007) and Dolby v. State, 106 Nev. 63, 787 P.2d 388 (1990), the State's analysis of those cases is also lacking. In summary, the State argues in conclusory fashion that they are inapplicable as they involved resentencing hearings and not a sentencing after retrial.

The State's position disregards this Court's language regarding Nevada's "strong double jeopardy protections." Wilson, 123 Nev. at 592. There is no difference with regard to Counts 4 and 6 of the instant matter that would justify different rules between resentencing and retrial. Whether merely resentenced or retried, Counts 4 and 6 feature convictions for the same exact offenses in both trials, the same as if Bowser had merely been resentenced. There is no good reason, and the State certainly does not supply one, to treat resentencing hearings differently than retrials where the exact same offenses are involved.

In total, the State does not dispute that the sentences imposed after retrial on Counts 4 and 6 are harsher than those originally imposed, and no meaningful explanation has been provided for treating resentencing differently than retrial where the exact same offenses are involved.

Meanwhile, Bowser has explained that “strong” Double Jeopardy protections justify protecting Bowser from harsher sentences on Counts 4 and 6, and Holbrook forbids said harsher sentences in the first instance where no new conduct would justify a harsher sentence.

The Double Jeopardy Clause of the Nevada and/or United States Constitution therefore forbids the harsher sentences imposed upon Bowser for Counts 4 and 6, and they must be reversed with instructions that the original, concurrent terms be imposed.

II. CONCLUSION

Based on the foregoing, Bowser respectfully requests this Court reverse the lower court's judgment of conviction and grant relief on any and all claims presented on appeal.

DATED this 28th day of July, 2017.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: 

JAMIE J. RESCH
Attorney for Appellant
2620 Regatta Dr. #102
Las Vegas, Nevada 89128
(702) 483-7360

RULE 28.2 ATTORNEY CERTIFICATE

1. 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, including 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 and volume number, if any, of the transcript or appendix where the matter relied upon is 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.
2. I further 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 Microsoft Word 2016 in 14-point font of the Ebrima style.
3. I further certify this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it is proportionally spaced, has a typeface of 14 points or more, and contains 510 words.

DATED this 28th day of July, 2017.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: 

JAMIE J. RESCH

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 28, 2017, electronic service of the foregoing document shall be made in accordance with the master service list as follows:

STEVEN WOLFSON
Clark County District Attorney
Counsel for Respondent

ADAM P. LAXALT
Nevada Attorney General

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke at the end.

An Employee of RESCH LAW, PLLC, d/b/a
Conviction Solutions