

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARY PICKETT

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Supreme Court No. 75042

District Court No. 10c26523-2

FILED

FEB 26 2018

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

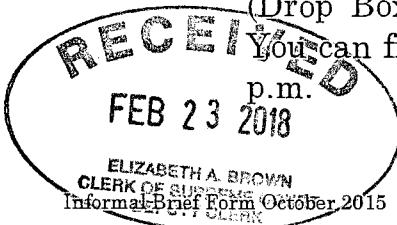
BY Richard

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00



18-07407

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
1-10-2018	order denying deft. pro-per motion for modification of sentence

Notice of Appeal. Give the date you filed your notice of appeal in the district court: January 24th 2018

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

Appellant was arrested on or about February 11, 2010 on charges related to a series of bar robberies committed between November 1, 2009 and December 1, 2009 or thereafter.

Appellant agreed to plead guilty to charges related to the bar robberies (1) counts ; (1) exp felon in possession of a firearm, (2) conspiracy to commit robbery, (3) robbery with the use of a weapon, (4) burglary with the use of a weapon, or similar titled

on or about the 25th day of February 2010.

Appellant was sentenced on or about May 10, 2010 on the (4) counts referenced above. On counts; (1), (2) and (4) appellant was sentenced to 2-5 yrs and on count (3) appellant was sentenced to 10 to 25 yrs pursuant to NRS 207.010 consecutive to counts (1), (2), (4).

Appellant did not file a direct appeal, however he did file a postconviction writ of Habeas Corpus on or about January 27, 2011. The writ was denied April 6, 2011. On June 17, 2011 appellant appealed to the Nevada Supreme Court who affirmed the lower courts decision remittitur issued on November 1, 2011.

Appellant filed his motion for modification of sentence on December 6, 2017, which was denied without explanation on January 8, 2018. The instant appeal followed.

Appellant believes the District Court erred or was wrong denying his motion without comment that would aid this Court with appellant review. Appellant's motion for modification of sentence was the proper vehicle for the District Court to review the sentencing transcript and determine if the record gave even the appearance of a procedural abnormality that is protected under due process.

Informal Brief Form October 2015

WALKER v. Deeds 1995, 50 F3d 670 (supra) was sequentially executed in a manner that despite there being no specific step by step formula or instructions outlining a prescribed order that the District Court must adhere to, this court can determine if the order in which the District Court gathered its information in the case at bar could be construed as giving even a marginal appearance of a due-process violation that could have been clarified through the motion that was filed.

Appellant alleged the statement made by the Court immediately after validating the judgments of convictions may have been procedurally out of sequential order, and should not have been articulated prior to receiving or offering to hear any mitigating information or evidence. As such the District Court could have invoked jurisdiction pursuant to Edwards v. State 112 Nev 704, 707 (supra) and/or Passanisi v. State 108 Nev 318, 321 (supra), and consider the mitigating information that was attached to the motion for modification of sentence if only to error on the side of caution.

The Nevada Supreme Court specifically noted in WALKER that "the decision to adjudicate is not automatic on the finding of the commission of three felonies" - And the Appellant would submit to this court that the spirit of WALKER would also be interpreted to include that the decision to adjudicate is not also automatic based on negotiations either, a District Court judge must still weigh both factors "For" and "Against" adjudication. In Clark v State 1993, 851 P2d 426 the court determined "person alleged to be a habitual offender is subjected to the broadest kind of judicial discretion"

Appellant would argue that plea negotiations or stipulations do not supercede the spirit of Clark. And that the term "broadest kind of judicial discretion" most certainly implies that the court should first give the offender the opportunity to offer mitigating information before the court offers its predisposed inclinations.

The argument of appellants motion was the court made a procedural misstep after validating the prior J.O.C. that could have been redressed upon motion for modification. ~~And~~ Nevada law implies that the next step after validating the J.O.C. the court should have performed was to offer, or inquire as to mitigating information instead of a dialogue more consistent with reasons for adjudication then almost as an afterthought inquire about mitigating information or evidence.

Appellants motion for modification of sentence was a prayer that the court might see the validity in the possibility that the courts sequential order in weighing factors both "For" and "Against" adjudication might have been mistakenly incorrect. And afforded appellant the "broadest kind of judicial discretion" pursuant to Clark (supra), by invoking jurisdiction pursuant to Edwards and consider the mitigating evidence that was attached to appellants motion, to determine if the unweighed information would place the appellant in a more favorable light. A light that might not have caused the court to exercise its discretion to dismiss the charge of habitual criminality, but perhaps the court might have exercised its discretion and sentenced Appellant pursuant to the small habitual instead, as prayed for in his motion.

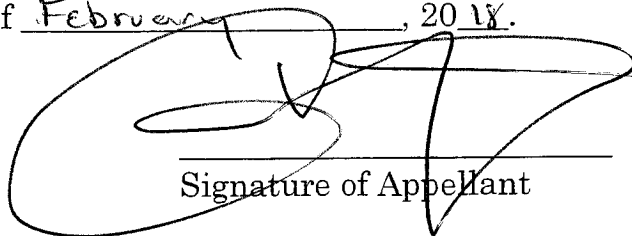
Simply put the appellant believes that the term "worked to the defendants extreme detriment" is broad enough to encompass

situations such as his where the record might demonstrate a blurred line between negotiations, and judicial discretion that may have affected sentencing. When the court all but adjudicated the appellant before receiving mitigating evidence, Appellant is not pointing a finger at the court saying "you made a mistake". Appellant simply moved the court asking the court to consider information that would have been submitted at sentencing had the court not stated what it was inclined to do prior to offering to receive mitigating information.

Whatever else that may be said appellants argument that the District Court should have received, and weighed mitigating information before the court declared its inclinations is valid.

~~(And)~~ The court should have clarified its position regarding that argument in its order, but did not. Therefore appellants motion should be remanded back to the lower court for further proceedings and oral arguments.

DATED this 23rd day of February, 2018.



Signature of Appellant

Cary Pickett #57891
Print Name of Appellant

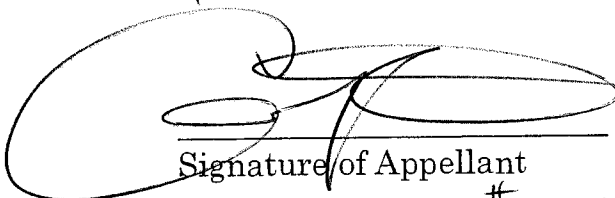
CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

CLARK County D.A. OFFICE
% NOREEN DEMONTE 3rd FL
200 LEWIS AVE
Las Vegas NV, 89155

DATED this 24th day of February, 2018.


Signature of Appellant

Cary Pickett #57591
Print Name of Appellant

P.O. Box 7000
Address

Carson City NV 89707
City/State/Zip

Telephone