

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALAN DEMETRIUS DANIELS
Appellant,

vs.

JERRY HOWELL, WARDEN, ET. AL.
Respondent.

Supreme Court No. 75468

District Court No. C262523

FILED

SEP 05 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: [Signature]
DEPUTY CLERK

APPELLANT'S INFORMAL BRIEF

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 submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas Courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

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
3.14.18	ORDER DENYING MOTION TO CORRECT DISPROPORTIONALITY OF SENTENCE

Notice of Appeal. Give the date you filed your notice of appeal in the district court: MARCH 25, 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.)

IN MY CASE, I WAS CHARGED AND CONVICTED OF COUNT 1 -
BURGLARY WHILE IN POSSESSION OF A FIREARM; COUNT 2 - CONSPIRACY
TO COMMIT ROBBERY; AND COUNT 3 - ROBBERY WITH USE OF A DEADLY
WEAPON; COUNT 4 - POSSESSION OF A FIREARM BY AN EX-FELON.
MY CO-DEFENDANT IN THIS CASE WAS CARY PICKETT. I WAS
CONVICTED AND SENTENCED UNDER THE MARYLAND CRIMINAL STATUTE, (NRS257.012)
AS WAS CO-DEFENDANT PICKETT, ON MAY 10, 2010, NRS207.010.

PICKETT'S CRIMINAL HISTORY CONTAINS MORE PRIOR FELONY CONVICTIONS AND PRISON TERMS THAN MY CRIMINAL HISTORY DOES. HOWEVER, ON SEPTEMBER 24, 2010, THERE WAS A SECOND AMENDED JUDGMENT OF CONVICTION FILED THAT RESENTENCED PICKETT TO (COUNT 3) A MAXIMUM OF 25 YEARS WITH A MINIMUM PAROLE ELIGIBILITY OF 10 YEARS.

PREVIOUSLY, WE WERE BOTH SENTENCED ON COUNT 3 TO LIFE WITH PAROLE ELIGIBILITY AFTER 10 YEARS; (SEE JOC), FOR THE SAME EXACT CRIMINAL CONDUCT, ACTS AND INCIDENTS.

I HAD NO KNOWLEDGE OF PICKETT'S RESENTENCING; VACATING THE LIFE TERM UNTIL I RECEIVED LEGAL ASSISTANCE FROM A FELLOW INMATE IN JANUARY 2018 WHO HELPED ME OBTAIN THE COURT RECORDS.

THE DISPROPORTIONALITY IN THE SENTENCES OF MYSELF AND PICKETT IS WHOLLY DETRIMENTAL TO ME AND PROHIBITED BY LAW FOR ANY CO-DEFENDANTS CONVICTED OF THE SAME EXACT CRIMES.

MY MOTION TO CORRECT THIS DISPROPORTIONALITY IN SENTENCING WAS DENIED BY THE DISTRICT COURT ON MARCH 14, 2018 AND I NOW SUBMIT MY INFORMAL BRIEF IN THIS MATTER.

* SEE DISTRICT COURT ERROR *

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

I believe ~~that~~ the District Court was wrong because of two things. First, Nevada law clearly states that a defendant cannot stipulate to a status. The habitual criminal punishment/treatment is a status, not a crime. See *Staley v. State*, 78 Tr. 2d 396 (1990).

The constitutional validity of prior convictions is a legal status to which a defendant may not stipulate, no matter what the plea bargain. See *McAnulty v. State*, 826 P.2d 567 (1992).

THE DISTRICT COURT ERRED IN DENYING MY MOTION TO CORRECT THE DISPROPORTIONALITY OF SENTENCES, WHEN IT KNEW OR SHOULD HAVE KNOWN THAT A DEFENDANT CANNOT STIPULATE TO A STATUS, CITING CLEARLY ESTABLISHED NEVADA SUPREME COURT CASE/LAW PRECEDENTS. I WAS SENTENCED UNDER NRS 207.012 (HABITUAL FELONY), WHEREAS MY CO-DEFENDANT WAS SENTENCED UNDER NRS 207.010 (HABITUAL CRIMINAL) FOR THE COMMISSION OF THE SAME EXACT CRIMES. HE RECEIVED A PRISON TERM OF 10-25 YEARS, WHILE I RECEIVED 15 TO LIFE, DESPITE HAVING LESS PRIOR ~~CRIMINAL~~ ^{CRIMINAL} HISTORY CONVICTIONS AND INCARCERATIONS THAN MY CO-DEFENDANT HAD.

Secondly, ON COUNT 1, I WAS SENTENCED TO (60 MONTHS) MINIMUM TO (180 MONTHS) MAXIMUM, WHILE MY CO-DEFENDANT WAS SENTENCED TO LESS THAN HALF OF THAT, 24 MONTHS MINIMUM TO (60 MONTHS) MAXIMUM, FOR THE SAME EXACT BURGLARY WHILE IN POSSESSION OF A FIREARM CONTAINED IN THE CRIMINAL INFORMATION AND JUDGMENTS OF CONVICTION.

THE ERROR OF DISPROPORTIONALITY IN THIS CASE CLEARLY AFFECTS MY SUBSTANTIAL RIGHTS; AS A "LIFE" PRISON TERM IMPOSED BY THE DISTRICT COURT IS SUBSTANTIAL BY ANY RATIONAL MEASURE.

EVEN A PLAIN ERROR SHOULD BE CORRECTED ONLY WHEN IT "SERIOUSLY AFFECTS THE FAIRNESS, INTEGRITY, AND PUBLIC REPUTATION OF JUDICIAL PROCEEDINGS". UNITED STATES V. OLANO, 113 S. CT. 1770 (1993); ALSO BIONDI V. STATE, 699 P.2D 1062 (1985); V.S. V DOOLEY, 688 P.3D 318 (2012) AND HARVEY V. STATE, 682 P.2D 1384 (1984).

THE DISTRICT COURT ERROR IN RESSENTENCING MY CO-DEFENDANT TO 10-25 YEARS AND NOT VACATING THE LIFE SENTENCE ON ME INDICATES UNFAIRNESS IN THE SENTENCING PROCESS AND SHOULD BE CORRECTED BY THIS COURT ON APPEAL.

I BELIEVE THAT THE DISPROPORTIONALITY OF SENTENCE AND THE DISCRETIONARY ASPECTS OF THE PLAIN ERROR DOCTRINE SUPPORTS RESENTENCING FOR ME IN THIS CASE.

THE RECORD IS CLEAR THAT MY CO-DEFENDANT HAD RECEIVED A SENTENCE ON COUNT 3 OF TEN TO LIFE ON MAY 10, 2010, BUT ON JULY 27, 2010, DUE TO CLERICAL ERROR, HIS SENTENCE WAS AMENDED AND THEREAFTER, ON SEPTEMBER 22, 2010, THE SAME SENTENCING JUDGE ORDERED PICKETT'S LIFE SENTENCE VACATED FROM IMPOSITION WHILE LEAVING MY LIFE SENTENCE IN PLACE, FOR THE SAME EXACT CRIMINAL CONDUCT.

PICKETT'S SECOND AMENDED JUDGMENT OF CONVICTION DEMONSTRATES THE DISPROPORTIONALITY IN THAT SENTENCE IN RELATION TO THE LIFE SENTENCE I RECEIVED, FROM THE SAME JUDGE, FOR THE SAME CRIMES.

THIS DISTRICT COURT ERROR IS COMPLETELY DETRIMENTAL TO ME AND HAS NO JUSTIFICATION FOR THIS DISPARITY IN THE RECORD. THIS IS A CASE WHERE SIMILAR DEFENDANTS WERE SENTENCED DIFFERENTLY FOR THE IDENTICAL CRIME. SEE GALL V. UNITED STATES, 127 S. CT. (2007); ALSO RITA V. UNITED STATES, 127 S. CT. 2456 (2007)

A STATE COURT DECISION IS "CONTRARY TO CLEARLY ESTABLISHED PRECEDENT IF THE STATE COURT APPLIES A RULE THAT CONTRADICTS THE GOVERNING LAW SET FORTH IN OUR CASES" OR "IF THE STATE COURT CONFRONTS A SET OF FACTS THAT ARE MATERIALLY INDISTINGUISHABLE FROM A DECISION OF THIS COURT AND NEVERTHELESS ARRIVES AT A RESULT DIFFERENT FROM OUR PRECEDENT." SEE WILLIAMS V. TAYLOR, 529 U.S. 362, 410-11 (2000). IN THIS CASE, THE DISTRICT COURT APPLIED THE CLEARLY ESTABLISHED STATE AND FEDERAL LAWS ERRONEOUSLY AND INCORRECTLY IN TERMS OF DISPROPORTIONALITY OF SENTENCES.

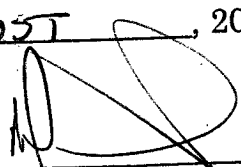
IF THE DISTRICT COURT, AS THE STATE ARGUES, (LACK) JURISDICTION TO MODIFY A SENTENCE
ONCE A DEFENDANT HAS STARTED SERVING IT, (PASSANISI V. STATE, 831 P.2d 1371) (1992),
THEN ON WHAT BASIS DID THE DISTRICT COURT MODIFY MY CO-DEFENDANTS LIFE SENTENCE
TO A PRISON TERM OF 10 TO 25 YEARS WITHOUT GIVING ME THE SAME BENEFIT?

I NOW ASK THIS COURT TO ORDER A RESENTENCING FOR ME IN THIS
MATTER TO VACATE THE LIFE SENTENCE IMPOSED FOR COUNT 3 AND THE
5-15 YEARS IMPOSED FOR COUNT 1; AND TO RESENTENCE ME TO THE SAME
PRISON TERMS THAT MY CO-DEFENDANT RECEIVED ON THOSE COUNTS; 2-5 YEARS
ON COUNT 1 AND 10-25 YEARS ON COUNT 3, AND TO AMEND MY
JUDGMENT OF CONVICTION TO REFLECT SAID CORRECTIONS.

Respectfully Submitted

DATED this 29th day of AUGUST, 2018.

x


Signature of Appellant

ALAN DANIELS #63982
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):

(1) SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 SOUTH CARSON ST., SUITE 201
CARSON CITY, NV 89701

(2) CHARLES W. THOMAS
200 Lewis Avenue
Las Vegas, NV 89133-2212

DATED this 29th day of AUGUST, 2018.

x 
Signature of Appellant

x ALAN DANIELS #63982
Print Name of Appellant

x P.O. Box 208 / SPCC / #63982
Address

x INDIAN SPRINGS, NV 89070
City/State/Zip

N/A
Telephone