IN THE SUPREME COURT OF THE STATE OF NEVADA

UPUTAUA DIANA POASA, No. 76676

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

REPLY TO FAST TRACK RESPONSE

The power of a district court to award credit for time served is found both in statute and case law. NRS 176.055(1), as interpreted by the Nevada Supreme Court, ensures that a defendant receives credit for all time served toward the ultimate sentence. That purpose is not irrational. "[T]here is nothing whatever irrational about a general rule that pretrial detention time should be credited as a matter of course." *Kuykendall v. State*, 112 Nev. 1285, 1287, 926 P.2d 781, 783 (1996) (quoting *Beauchamp v. Murphy*, 37 F.3d 700, 707 (1st Cir. 1994) (internal quotation marks and ellipsis omitted). In this appeal Ms. Poasa seeks credit for the 99 days she spent in the Washoe County Jail prior to her sentencing because she could not post bail that had been set

at $5,000.00, cash only. JA 25. (Ms. Poasa otherwise does not contest her sentence.) In contrast, the State's response seeks to upend over forty years of settled law.

The doctrine of *stare decisis* requires however, adherence to past precedent unless "compelling," "weighty," or "conclusive" reasons exist for overruling it. Stated differently, prior case law will not be overruled unless it was "badly reasoned" or is "unworkable." See *Cooper v. State*, 134 Nev. Adv. Op. 52, 422 P.3d 722, 731 (2018) (Pickering, J., dissenting) (quoting and comparing *Miller v. Burk*, 124 Nev. 579, 597, 188 P.3d 1112, 1124 (2008) and *State v. Lloyd*, 129 Nev. 739, 750, 312 P.3d 467, 474 (2013)). See also, Fast Track Response (FTR) at 4 (citing *Harris v. State*, 130 Nev. 435, 441, 329 P.3d 619, 623 (2014) (focusing on "unworkability" and "bad reasoning" as the governing factors).

In both *Harris* and *Lloyd* the Court noted the confusing and inconsistent applications of the doctrinal rules announced in prior cases that it overruled. See *Harris*, 130 Nev. at 439-441, 329 P.3d at 622-24; *Lloyd*, 129 Nev. at 745-50, 312 P.3d at 471-74. Here, the State offers no compelling, weighty, or conclusive reason to disturb the rule announced in *Anglin v. State*, 90 Nev. 287, 525 P.2d 34 (1974), and its progeny. Nor

does the State demonstrate that the bright-line rule announced in *Anglin* is unworkable. Thus, the State must be contending that *Anglin* was "badly reasoned." Here the State's primary (and only) argument to overrule *Anglin* is that the statute frames the award of credit for time served as permissive (using the word "may"), but the *Anglin* Court interpreted the statute to make the award of credit for time served mandatory. FTR at 4-8. The State asserts "[t]he Nevada legislature's intention to afford the district courts with discretion to award presentence credit is clear." FTR at 9. It is noteworthy that over the forty-plus years since *Anglin* was decided the Nevada legislature has not sought to amend the statute despite *Anglin's* interpretation. See *Northern Nev. Ass'n Injured Workers v. SIIS*, 107 Nev. 108, 112, 807 P.2d 728, 730 (1991) (observing that when the Legislature has had ample opportunity to change statutory law after the Court has interpreted that law but does not do so, the Court presumes that the Legislature approves of the Court's construction).

"[T]he doctrine of stare decisis imposes a significant burden on the party requesting that a court disavow one of its precedents and ... a court will not disavow one of its precedents unless serious detriment

prejudicial to the public interest is demonstrated." *Miller v. Burk*, 124 Nev. at 597 n.63, 188 P.3d at 1124 n.63 (citing *Grotts v. Zahner*, 115 Nev. 339, 342, 989 P.2d 415, 417 (1999) (Rose, J., dissenting)). The State has not met that burden; its disagreement with mandatory credit for all time served in predisposition custody is not sufficient to overrule settled precedent. *Miller v. Burk*, 124 Nev. at 597, 188 P.3d at 1124 ("Mere disagreement does not suffice.").

One more thing. The State's suggestion that this Court "should reexamine" *Anglin*, FTR at 9, is both unnecessary and unwise. It is unnecessary because the State has not shown that *Anglin* and its progeny has "produced confusion" or makes it difficult for "district courts to apply the law." *State v. Lloyd*, 129 Nev. at 748-49, 312 P.3d at 472-73. It is unwise because to do so invites, as the State puts it, this Court (or more likely the Court of Appeals) "to consider each case presented regarding pretrial credits to determine if the sentencing court abused its discretion, instead of following a blanket rule that credit is mandatory." FTR at 9. Put differently, the State invites this Court's review, on a case-by-case basis, on whether *this* denial of credit for predisposition custody constituted an abuse of discretion, but *that*

denial of credit for predisposition custody was not, and the difference in results is based on ____(fill in the blank)_____. This Court should decline the State's invitation. *Anglin* was not badly reasoned. It correctly accounted for "the punitive aspect of predispositional confinement" by requiring sentencing credit under NRS 176.055(1) for that time. *Anglin*, 90 Nev. at 290, 525 P.2d at 36. Additionally, its bright-line rule works.

Applying *Anglin's* rule to Ms. Poasa means that this Court should reverse and remand with instructions to return to Ms. Poasa the 99 days custody credit the district court improperly forfeited. The State's argument that the loss of 99 days credit is justified because Ms. Poasa "had issues complying on pretrial supervision," FTR at 2, should be rejected. Ms. Poasa's failure to comply with pretrial supervision resulted in her incarceration pending sentencing, because she could not meet bail. All credit for that "dead-time" should have been awarded to Ms. Poasa, and the district court abused its discretion when it ordered that time forfeited.

VERIFICATION

1. I hereby certify that this fast track 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 fast track brief has been prepared in a proportionally spaced typeface using Century in 14-point font.

2. I further certify that this fast track brief complies with the page — or type — volume limitations of NRAP 3C(h)(2) because it is: Proportionately spaced, has a typeface of 14 points, a total of 1,261 words and does not exceed 16 pages.

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

information and belief.

DATED this 13th day of October 2018.

/s/ John Reese Petty
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 13th day of October 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Washoe County District Attorney's Office

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

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