

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

LUIGY RICHARD LOPEZ-DELGADO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 78472

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**RESPONDENT'S ANSWERING BRIEF**

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**RESPONDENT'S ANSWERING BRIEF**

**I. STATEMENT OF THE FACTS**

On November 27, 2017, a Juvenile Probation Officer reported to the Washoe County Sheriff's Office that Appellant Luigi Richard Lopez-Delgado ("Lopez-Delgado") had been having sex with the 14-year-old victim, H.T. Presentence Investigation Report ("PSI")<sup>1</sup> p. 5, Joint Appendix ("JA") p. 2. H.T. had reportedly informed Lopez-Delgado that she was 14 before they had sex. *Id.* On December 4, 2017, the Sparks Police Department responded to a reported runaway and learned that H.T. had run away after she was confronted by her grandmother about her

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<sup>1</sup> The State has filed a contemporaneous Motion to Transmit the Presentence Investigation Report. As the PSI is not included in the Joint Appendix, PSI page numbers reference the PSI's own pagination.

relationship with Lopez-Delgado. *Id.* After returning home, H.T. told officers that she had sex with a man she refused to name in a RV outside of his house. *Id.*

On December 11, 2017, during a forensic interview, H.T. reported that she had a “kind of like girlfriend/boyfriend relationship” but refused to identify Lopez-Delgado by name. *Id.* H.T. also confirmed that she had informed Lopez-Delgado that she was 14 during their first meeting and before they had sex. PSI p. 6. H.T. specifically remembered the conversation because they discussed their age difference. *Id.* A Washoe County Sheriff’s Office detective extracted H.T.’s phone and discovered that Lopez-Delgado’s profile on the website where they met listed his age as 17. *Id.* During the course of their relationship, which started around November 5, 2017, Lopez-Delgado and H.T. engaged in vaginal intercourse about six or seven times and she also performed fellatio on him. *Id.* H.T. reported that the most recent sexual activity occurred on December 4, 2017, the same day that Sparks Police officers had responded to the runaway report. *Id.* All of the sexual activity occurred in the RV outside of Lopez-Delgado’s house. *Id.*

In reviewing the communications between Lopez-Delgado and H.T. that were obtained from H.T.’s phone, detectives observed that Lopez-

Delgado asked her to send him a picture of herself bending over. *Id.* H.T. responded with photographs showing her exposed buttocks and vagina. *Id.* Lopez-Delgado requested another photo from H.T. “like the last one, but spread open more.” *Id.* After H.T. asked Lopez-Delgado if he wanted another photo, Lopez-Delgado requested a video. *Id.* H.T. obliged and sent Lopez-Delgado a video depicting her vagina. *Id.*

Several days later, on November 11, 2017, Lopez-Delgado asked H.T. to send a pornographic photo of herself to another male. *Id.* Lopez-Delgado specifically instructed H.T. to “[s]how him your pussy. It’s hot if you just send him a pic of your pussy spread.” *Id.* Lopez-Delgado asked H.T. to send him a screenshot as confirmation that she had sent the photo. *Id.* The victim sent Lopez-Delgado several more sexually explicit photos over the following days. *Id.*

On November 14, 2017, Lopez-Delgado instructed H.T. to delete their conversations and she responded with another photo of her vagina. *Id.* Lopez-Delgado responded to the photo the following day by telling H.T. that “you have a beautiful pussy.” *Id.* H.T. sent Lopez-Delgado more explicit photos and Lopez-Delgado responded with specific requests for photos. *Id.* H.T. complied with Lopez-Delgado’s requests for explicit photos of her genitals. *Id.*

On November 16, 2017, Lopez-Delgado and H.T. had a conversation wherein they discussed their relationship. PSI p. 7. Lopez-Delgado told H.T. that he was unsure about dating her due to her age, but “I still want u.” *Id.* When H.T. asked how long they would have to wait to date, Lopez-Delgado told her until she was 16. *Id.* The messages between Lopez-Delgado and H.T. continued through November 20, 2017.

On December 13, 2017, Lopez-Delgado was contacted by a detective. *Id.* Lopez-Delgado denied knowing H.T., denied using social media, denied using dating sites, and claimed he had not been in an intimate or physical relationship with anyone for over a year. *Id.* Lopez-Delgado stated that there was no reason that H.T.’s DNA would be in his RV. *Id.* After being confronted with the messages between himself and H.T., Lopez-Delgado claimed that he did not know her and had never seen her before invoking his right to counsel. *Id.*

On December 14, 2017, detectives processed Lopez-Delgado’s RV. *Id.* Subsequent analysis of the samples obtained from the RV showed that H.T.’s DNA matched a stain with an estimated frequency of 1 in 21.66 octillion individuals. *Id.*

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## II. STATEMENT OF THE ISSUES

Did the district court abuse its discretion by sentencing Lopez-Delgado within statutory parameters?

## III. ARGUMENT

### A. Standard of Review

“A sentencing judge is allowed wide discretion in imposing a sentence; 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). A sentence within the statutory limits is not cruel and unusual punishment where the statute itself is constitutional, and the sentence is not so unreasonably disproportionate as to shock the conscience. See Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) *quoting* Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979).

### B. Discussion

Lopez-Delgado argues that the sentencing court ignored his presentation of mitigating evidence in passing sentence. Aside from running two of the sentences consecutively to one another, the court otherwise followed the joint recommendation of the parties. Therefore, the abuse of discretion argument necessarily suggests that the court abused its

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discretion solely as to the imposition of a consecutive sentence and not as to the length of the sentences themselves.

It is undisputed in Nevada that a sentencing court has discretion to run sentences consecutively or concurrently with one another. *See e.g. Pitmon v. State*, 131 Nev. 123, 352 P.3d 655 (Ct. App. 2015); NRS 176.035(1) (“the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first imposed.”). However, there is no requirement in Nevada that the sentencing court must specifically state each and every factor that was considered in imposing a sentence.

The record reflects that the sentencing court accepted letters that were offered in mitigation on Lopez-Delgado’s behalf. JA 73-74. The court reviewed the PSI and the psychological evaluation that contained mitigating information in the form of his lack of prior criminal history and certification as not representing a high risk to reoffend. JA 73-74. The court demonstrated its familiarity with the contents of the PSI when the prosecutor provided it with an exhibit showing some of the conversations between Lopez-Delgado and H.T. JA 80.

The court weighed the aggravating factors (including the victim’s age and Lopez-Delgado’s demonstrated knowledge of her age prior to engaging

and continuing to engage in a sexual relationship with the juvenile victim) with the mitigating information and reached its own conclusion about the appropriate sentence. Just because the court disagreed with the recommendation of the parties and weighed the aggravating factors more heavily than the mitigating factors in reaching a conclusion does not mean that the court ignored the mitigation information. The record of the sentencing hearing shows the court's concern with the factual scenario set forth in the PSI and Lopez-Delgado's demonstrated disregard for the impact that his behavior might have on the victim even after learning about her age. JA 76, 89. Running two of Lopez-Delgado's three sentences consecutively to one another under those circumstances is not unreasonable and does not demonstrate an abuse of discretion.

#### IV. CONCLUSION

The State respectfully requests that the Court deny Lopez-Delgado's appeal and affirm his sentence.

DATED: August 20, 2019.

CHRISTOPHER J. HICKS  
DISTRICT ATTORNEY

By: Kevin Naughton  
Appellate Deputy

## **CERTIFICATE OF COMPLIANCE**

1. I hereby 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 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 pages.

3. Finally, 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, in particular 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 on is to be found. I understand that I may be subject to sanctions in

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: August 20, 2019.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on August 20, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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