

ANTONIO MIXON, )  
)  
Appellant, )  
)  
vs. )  
)  
THE STATE OF NEVADA, )  
)  
Respondent. )  
\_\_\_\_\_ )

Electronically Filed  
Aug 28 2019 12:50 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
Case No. 78900

1. **Name of party:** Antonio Mixon.
2. **Name of attorney submitting this fast track statement:**  
  
HOWARD S. BROOKS, #3374  
Clark County Public Defender's Office  
309 S. Third St., Ste. 226  
Las Vegas, Nevada 89155  
(702) 455-4685
3. **Name of appellate counsel if different from trial counsel:**  
  
.
4. **Judicial district, county, and district court docket number**  
**lower court proceedings:** Eighth Judicial District, County of Clark,  
District Court Case No. C-17-327439-1.
5. **Name of judge issuing order appealed from:** Linda Bell.
6. **Length of trial.** N/A.

7. **Conviction(s) appealed from:** Attempt Possession or Control of Dangerous Weapon or Facsimile by an Incarcerated Person. (3 ROA 599)<sup>1</sup>

8. **Sentence for each count:** \$25 Admin. Fee; \$3 DNA collection fee; 12-30 months in prison, consecutive to C277977 with 0 CTS. DNA fee and testing waived, previously submitted. (3: 599).

9. **Date district court announced decision:** 05/21/19.

10. **Date of entry of written judgment:** 05/28/19. (3: 599).

11. **Habeas corpus:** N/A.

12. **Post-judgment motion:** N/A.

13. **Notice of appeal filed:** 05/23/19 (3: 595).

14. **Rule governing the time limit for filing the notice of appeal:** NRAP4(b).

15. **Statute which grants jurisdiction to review the judgment:** NRS 177.015.

16. **Disposition below:** Judgment upon entry of plea of guilt.

17. **Pending and prior proceedings in this court:** N/A.

18. **Pending and prior proceedings in other courts:** N/A.

---

<sup>1</sup> The Record on Appeal consists of 980 pages organized into four volumes. References to the record are in parentheses, and identify the volume number followed by the page number

19. **Proceedings raising same issues.** The issue raised in this case is common in the appeals of criminal judgements.

20. **Pursuant to NRAP 17, is this matter presumptively assigned to the Court of Appeals? Identify issues or circumstances that override any presumptive assignment to the Court of Appeals or require retention by the Supreme Court. Issues should be identified and explained with specific reference to arguments in the Fast Track Statement.** This appellant does not oppose the assignment to the Court of Appeals.

21. **Procedural history.** The State of Nevada, on August 18, 2017, filed a criminal complaint alleging the Appellant committed two crimes, Battery by a Prisoner, a category B felony pursuant to NRS 200.481, and Possession of a Dangerous Weapon by an Inmate, a category B felony pursuant to NRS 212.185. (1: 1-2). The Appellant unconditionally waived a preliminary hearing in Justice Court, and the magistrate ordered the Appellant to answer the charges in District Court. (1: 6). The State filed, on October 25, 2017, an Information alleging the same two crimes. (1: 11-13).

The Appellant entered a plea of not guilty to the charges on November 1, 2017. (3: 626).

The case proceeded to trial on January 2, 2018 (2:247, 3: 641), but the District Court declared a mistrial. (4: 8353).

On April 6, 2018, the District Court granted the Defendant's Motion to Represent Himself at Trial. (3: 611; 4:882).

On March 26, 2019, the Appellant plead guilty to one count of Attempt Possession or Control of a Dangerous Weapon by an Incarcerated Person, a category c felony. The State recommended a sentence of 12 to 30 months consecutive to any sentences already imposed upon the Appellant. (3: 622; 4: 958).

On April 5, 2019, the Appellant filed a Motion to Withdraw Guilty Plea, (3: 546-50), which was denied after a hearing on May 21, 2019. (3: 589; 4: 973).

The District Court sentenced the Appellant to prison. (4:978). The Appellant filed a Notice of Appeal on May 23, 2019 (3: 595) and a Judgment of Conviction was filed May 28, 2019. (3: 599).

22. **Statement of facts.** The Appellant plead guilty to a reduced charge. (3: 622; 4: 958). The Appellant moved to withdraw his guilty plea. (3: 546-50). The District Court denied the motion to withdraw the guilty plea. (3: 589; 4: 973).

23. **Issues on appeal.**

**I. THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING THE MOTION TO WITHDRAW GUILTY PLEA.**

24. **Legal argument, including authorities:**

**I. THE DISTRICT COURT ABUSED ITS DISCRETION BY DENYING THE MOTION TO WITHDRAW GUILTY PLEA.**

Nevada statutory law allows a defendant, who has plead guilty to a crime, to withdraw that plea prior to sentencing if “manifest injustice” will occur by allowing the plea to stand. **NRS 176.165.**

A part of the analysis of the guilty plea’s validity is whether the plea was knowingly, voluntarily, and intelligently entered. *Stevenson v. State*, 131 Nev. 598, 354 P.3d 1277 (2015).

The District Court must also consider the totality of the circumstances regarding the plea to determine if it should stand. *Id.*

The Appellant’s motion alleged that the State coerced the guilty plea by increasing his bail. (See generally 3: 546-49; 4: 972).

The District Court did not specifically address that issue when the Court found that the plea was knowingly, voluntarily, and intelligently entered. (4: 973).

Because the District Court did not go beyond the “knowingly, voluntarily and intelligently” entered plea as a matter of analysis, the District

Court did not complete the required analysis, and the District Court abused its discretion in denying the motion. *State v. Adams*, 94 Nev. 503, 581 P.2d 868 (1978).

25. **Preservation of issues:** The Appellant filed a motion to withdraw his guilty plea. (3: 546). The issue is preserved.

26. **Issues of first impression or of public interest:** Not applicable.

Respectfully submitted,

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By /s/ Howard S. Brooks  
HOWARD S. BROOKS, #3374  
Chief Deputy Public Defender  
309 South Third St., Ste. 226  
Las Vegas, NV 89155-2610  
(702) 455-4685

## **VERIFICATION**

1. I hereby certify that this fast track statement 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 statement has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this fast track statement complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is either:

[XX] Proportionately spaced, has a typeface of 14 points or more, and contains 6 pages which does not exceed the 16 page limit.

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

///

///

///

///

///

track statement, 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 statement is true and complete to the best of my knowledge, information and belief.

DATED this 28 day of August, 2019.

DARIN F. IMLAY

CLARK COUNTY PUBLIC DEFENDER

By /s/ Howard S. Brooks

HOWARD S. BROOKS, #3374  
Chief Deputy Public Defender

### **CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 day of August, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
STEVEN S. OWENS

HOWARD S. BROOKS

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

ANTONIO LEE MIXON  
NDOC No: 1019828  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89018

BY /s/ Carrie M. Connolly  
Employee, Clark County Public  
Defender's Office