IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN STEPHON MILES, Appellant, v. THE STATE OF NEVADA, Respondent.	)	No. 79554

Petition for Review

Pursuant to NRAP 40B, appellant, Christian Stephon Miles, petitions for Supreme Court review of the Court of Appeals' *Amended Order of Affirmance* entered on January 29, 2021. *See* Ex. 1.

DATED: March 15, 2021.

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Questions Presented for Review

1. In *Culverson v. State*, this Court held that a sentence, even if it is within statutory limits, is unconstitutional if it is unreasonably disproportionate to the offense. Miles argued his aggregate sentence (back-to-back life sentences) is unreasonably disproportionate to his nonviolent offenses and thus unconstitutional. The Court of Appeals nevertheless affirmed his sentence because "the sentences fell within statutory parameters." Does the Court of Appeals' decision conflict with *Culverson*?

Miles was sentenced to four consecutive sentences, including back-to-back life sentences, for nonviolent offenses and despite not being a habitual criminal. He argued on appeal that his aggregate sentence was unconstitutional because, even if each individual sentence is within statutory limits, the ultimate aggregate sentence is unreasonably disproportionate to his offenses. The Court of Appeals held that the district court "did not abuse its discretion" because the "sentences" — not the aggregate "sentence" — "fell within statutory parameters." *Amended Order of Affirmance* at 3. Supreme Court review is warranted to determine whether the Court of Appeals' decision conflicts with *Culverson v. State*, 95 Nev. 433, 596 P.2d 220 (1979). *See* NRAP 40B(a)(2).

2. According to *Hooks v. State* and *Banks v. State*, a defendant should understand the elements of *each* crime charged, the possible penalties, and the *total possible sentence* he could receive if convicted, in order to knowingly, intelligently, and voluntarily waive his right to counsel. Miles did not understand the elements of *each* crime charged, the possible penalties, and the *total possible sentence*

> he could receive if convicted. Nevertheless, the Court of Appeals held that Miles's waiver of the right to counsel was valid. Does the Court of Appeals' decision conflict with *Hooks* and *Banks*?

According to this Court's prior decisions in *Hooks v. State*, 124 Nev. 48, 176 P.3d 1081 (2008), and *Banks v. State*, 2019 WL 4791704, No. 75106, (September 27, 2019) (unpublished disposition), in order for a defendant's waiver of the right to counsel to be knowingly, intelligently, and voluntarily made, a defendant should understand the elements of *each* crime charged, the possible penalties or punishments, and the *total possible sentence* he could receive if convicted. General warnings about the dangers of self-representation and general questions about such things as age and education are insufficient to establish a valid waiver. *Hooks*, 124 Nev. at 56-57, 176 P.3d at 1085-86 (general warnings about the dangers of self-representation and limited inquiry into education insufficient for a valid waiver, and "of particular significance . . . it d[id] not appear that Hooks understood the potential sentence when he chose to represent himself").

Miles did not understand the elements of *each* crime charged. He also did not understand the possible penalties or punishments for each offense. And he did not understand the *total possible sentence* he could receive if convicted.

Nevertheless, the Court of Appeals held that Miles's waiver was knowingly,

intelligently, and voluntarily made because the district court warned Miles multiple times that "waiving his right to counsel was ill-advised," and that he faced *a* — not multiple — potential life sentence. *Amended Order of Affirmance* at 7. The Court of Appeals decision conflicts with *Hooks* and *Banks*. Supreme Court review is warranted. *See* NRAP 40B(a)(2).

Argument

I. The Court of Appeals' decisions conflicts with *Culverson v. State*.

The Court of Appeals' decision conflicts with this Court's prior decision in *Culverson v. State*, which holds that a sentence, even if it is within statutory limits, is unconstitutional if it "is so *unreasonably disproportionate* to the offense as to shock the conscience." 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979) (emphasis added). The Court of Appeals held the opposite.

In its Order of Affirmance, the Court of Appeals noted that Miles's argument is that the "district court violated his Eighth Amendment right to be protected from cruel and unusual punishment when it imposed his sentences to run consecutively because the ultimate sentence [*i.e.*, back-to-back life sentences for nonviolent crimes] was [unreasonably] disproportionate to the offenses he committed." *Order of Affirmance* at 2. Rather than address Miles's constitutional argument, however, the Court of Appeals held that "the district court did not abuse

its discretion because *the sentences fell within statutory parameters*." *Id*. at 3 (emphasis added). After Miles filed a petition for rehearing because the court overlooked and failed to address his constitutional argument, the Court of Appeals filed an Amended Order of Affirmance stating the exact same thing — "the district court did not abuse its discretion because *the sentences fell within the statutory parameters*" — but added "and the sentences were not disproportionate." *Amended Order of Affirmance* at 3 (emphasis added).

Whether the Court of Appeals' amended decision means (1) there was no abuse of discretion because the sentences are within statutory parameters and no abuse of discretion because the sentences are proportionate, or (2) there was no abuse of discretion because the sentences are within statutory limits and, besides there being no abuse of discretion, the sentences are proportionate, the Court of Appeals' amended decision misses the constitutional point and conflicts with *Culverson*.

The issue is not, and Miles never argued, whether a district court has discretion or abused its discretion in imposing the sentences it did. Nor is the issue whether the individual *sentences*, plural, are within statutory parameters. There's no question the sentences are within statutory parameters and a district court has discretion to impose consecutive sentences. Miles's argument is that, even if each

individual sentence is within statutory parameters, his aggregate sentence is "unreasonably disproportionate" to his nonviolent crimes and thus unconstitutional as explained in *Culverson*. Put another way, although a district court has discretion to impose consecutive sentences, doing so may result in an aggregate sentence that is "so *unreasonably disproportionate* to the offense as to shock the conscience." In which case, the aggregate sentence is unconstitutional pursuant to *Culverson*. 95 Nev. at 435, 596 P.2d at 221-22.

Miles's aggregate sentence is unconstitutionally disproportionate, as shown below.

A. The district court's sole reason for imposing all consecutive sentences is factually inaccurate.

Miles was sentenced to four consecutive sentences, including back-to-back life sentences, for nonviolent crimes. *Opening Brief* at 7, 22. The *sole* reason the district court gave for imposing this punishment was "because [he had] done it before." *Opening Brief* at 22 (*citing* 8 AA 1373). But he hadn't "done it before." He didn't have any prior convictions for Sex Trafficking of a Child under 18 Years of Age or First Degree Kidnapping.[1] There also are mitigating facts in this

[1] To be sure, Miles did have a prior conviction for pandering, which is a category C felony. *See* Supplemental PSI 5-6; *see also* NRS 201.300(1). Nevertheless, he did not have any prior convictions for the crimes he was charged with and convicted of in this case. *See* Supplemental PSI 5-6.

case.

B. Proportionality analysis

Constitutional challenges are reviewed de novo. *Grey v. State*, 124 Nev. 110, 117, 178 P.3d 154, 159 (2008). True, Nevada courts possess wide sentencing discretion, *see Houk v. State*,103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987), but they may not impose a sentence that is "so unreasonably disproportionate to the offense as to shock the conscience." *Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 489 (2009) (citation omitted). Such a sentence is unconstitutional. *Culverson*, 95 Nev. at 435, 596 P.2d at 221-22.

Although Nevada district courts have been given little guidance on sentencing proportionality, the United States Supreme Court has instructed that proportionality "should be guided by objective criteria, including (i) the gravity of the offense and the harshness of the penalty; (ii) the sentences imposed on other criminals in the same jurisdiction; and (iii) the sentences imposed for commission of the same crime in other jurisdictions." *Solem v. Helm*, 463 U.S. 277, 292 (1983). Using this objective criteria to analyze Miles's aggregate sentence shows how it is unreasonably disproportionate to his offenses.

First, the gravity of Miles's offenses does not match the ultimate penalty imposed. Miles used no violence or force, and the victim (Gabby) — a 16-year-old

teenager at the time who escaped from house arrest — was complicit. *See* 4 AA 572, 577-79. Without downplaying the severity of kidnapping in general, this case is simply not a typical kidnapping. Gabby was not forcibly taken from her home to unwillingly commit illegal acts. Rather, she purposefully ran away from home because she wanted to engage in prostitution, which she had done before (thus, the reason she was on house arrest). *See* 4 AA 574-75, 577-79.

Second, district courts have imposed concurrent sentences in this jurisdiction for more violent and extreme crimes. *See e.g.*, *Hubbard v. State*, 134 Nev. 450, 453, 422 P.3d 1260, 1263 (2018) (burglary, conspiracy to commit robbery, assault, and discharge of a firearm); *Hathaway v. State*, 119 Nev. 248, 251, 71 P.3d 503, 505 (2003) (first-degree murder, sexual assault, and attempted sexual assault). In comparison to these other, egregiously violent crimes, it is clear that running all of Miles's sentences consecutively resulted in an unreasonably disproportionate sentence in light of the facts and circumstances of this case.

Finally, other jurisdictions have allowed kidnapping sentences to run concurrently, even in cases that involve violent crimes in addition to kidnapping. *See e.g.*, *State v. Gordon*, 161 Ariz. 308, 778 P.2d 1204 (1989) (burglary, kidnapping, and sexual assault); *People v. Reynolds*, 638 P.2d 43 (Colo. 1981) (rape, kidnapping, and deviate sexual intercourse by force). If these cases have

allowed concurrent sentencing, the same could have been done in this case to prevent an unreasonably disproportionate aggregate sentence.

C. Conclusion

Miles's offenses are deserving of substantial consequences, but his aggregate sentence (back-to-back life sentences and then some) reflects much more egregious, violent crimes. It is unreasonably disproportionate, even if each individual sentence is within statutory parameters. The Court, therefore, should reverse the Court of Appeals' decision because it conflicts with *Culverson*.

II. The Court of Appeals' decision conflicts with *Hooks v. State* and *Banks v. State*.

"To knowingly, intelligently, and voluntarily waive the right to counsel, the defendant should . . . be made aware of the dangers and disadvantages of self-representation, so that the record will establish that he knows what he is doing and his choice is made with eyes open." *Hooks v. State*, 124 Nev. 48, 54, 176 P.3d 1081, 1084 (2008) (internal citations and quotations omitted). This requires that a defendant "understand 'the elements of *each* crime' charged, including 'the possible penalties or punishments, and *the total possible sentence* the defendant could receive' if convicted." *Banks v. State*, 2019 WL 4791704, *1, No. 75106, (September 27, 2019) (unpublished disposition) (emphasis added) (citing SCR

253(3)(f), (g); *Hooks*, 124 Nev. at 54, 176 P.3d at 1084).

The record in this case unequivocally shows that Miles did not understand the elements of *each* crime he was charged with, and he did not understand "the possible penalties or punishments, and *the total possible sentence* [he] could receive" if convicted. *Banks*, 2019 WL 4791704,*1 (emphasis added); *see also Hooks*, 124 Nev. at 56-57, 176 P.3d at 1086 (reversing due to a limited inquiry into a defendant's understanding of "the dangers, disadvantages, and *consequences* of representing himself at trial," noting that a lack of understanding "the potential sentence" was of "particular significance") (emphasis added).

His waiver therefore was not knowingly, intelligently, and voluntarily made, in particular given that this Court is to " 'indulge in every reasonable presumption against waiver' of the right to counsel." *Hooks*, 124 Nev. at 57, 176 P.3d at 1086 (quoting *Brewer v. Williams*, 430 U.S. 387, 404 (1977)); *see also Scott v. State*, 110 Nev. 622, 626, 877 P.2d 503, 506 (1994) (providing that because the defendant was not "informed that he might be facing an additional charge with a greater penalty" if found guilty at the conclusion of trial, his "waiver of the right to counsel [was] unknowing and unintelligent, and thus invalid under *Faretta*").

A. Miles did not understand the elements of **each** *crime charged.*

Miles did not understand "the elements of *each* crime" he was charged with.

Banks, 2019 WL 4791704, *1 (*citing* SCR 253(3)(f), (g); *Hooks*, 124 Nev. at 54, 176 P.3d at 1084) (emphasis added). In fact, the record shows he did not even know or understand the elements of one of the crimes, let alone all four. During his *Faretta* canvass, the following exchange took place:

> THE COURT: An attorney knows the elements of *the offense* [singular] that you've been charged with and any other possible defenses that could be presented on your behalf. Are you aware of the elements and *the crime* [singular] that you're charged with?[2]
>
> THE DEFENDANT: Yes.
>
> THE COURT: What are they?
>
> THE DEFENDANT: Sex trafficking –
>
> THE COURT: What's the elements of sex trafficking? Do you understand that each criminal charge has numerous elements to it that the State has to prove beyond a reasonable doubt?
>
> THE DEFENDANT: – yes, Your Honor.
>
> THE COURT: Do you know what the elements of *the crime* [singular] you're charged with are?
>
> THE DEFENDANT: Yes, Your Honor.
>
> THE COURT: What are they?
>
> THE DEFENDANT: Recruiting – recruiting, enticing a person to commit sex trafficking, *conspiracy*; **it's a whole bunch**, your Honor. **I don't know off the top of my head**, but there's a whole bunch of elements Your Honor.

[2] Miles was actually charged with four crimes. 1 AA 112-13.

1 AA 78 (emphasis added).

It is clear Miles did not know the elements of the Sex Trafficking of a Child under 18 Years of Age charge. *Id*. ("I don't know off the top of my head, but there's a whole bunch of elements, Your Honor."). Moreover, there is nothing in the record to show he understood, or was even asked about, the elements of his other charges (*i.e.*, First Degree Kidnapping; Living from the Earnings of a Prostitute; and Child Abuse, Neglect, or Endangerment). 1 AA 112-13. Since the record as a whole fails to show Miles knew and understood the elements of *each* crime he was charged with, he could not have knowingly, intelligently, and voluntarily waived his right to counsel with "eyes open." *Hooks*, 124 Nev. at 54, 176 P.3d at 1084; *Banks*, 2019 WL 4791704, *1 (to show that a defendant knowingly makes his choice to waive his constitutional right to counsel with "eyes open," the record must establish he "understand[s] 'the elements of *each* crime' charged") (internal citations omitted) (emphasis added).

B. Miles did not understand the possible penalties and punishments, and the **total possible sentence** *he could receive if convicted on all counts.*

Miles was charged with four crimes, including two category A felonies. 1 AA 112-13. During his *Faretta* canvass, however, the district court only addressed the possible penalty or punishment associated with *one* of the Category A felonies.

Specifically, the court told Miles: "You could be — if you're convicted on first-degree kidnapping in Count 2, you could be sentenced to life. Do you understand that?" 1 AA 83.

The court did not address the possible penalties or punishments for the other Category A felony Miles faced (*i.e.*, Sex Trafficking of a Minor under 18 Years of Age (NRS 201.300(2)(b)(2)(III)), or for the other felonies he was charged with (*i.e.*, Living from the Earnings of a Prostitute (NRS 201.320(1)(b)), and Child Abuse, Neglect, or Endangerment (NRS 200.508(1)(b)(1))). 1 AA 112-13. Similarly, and just as significantly, the district court did not address "*the total possible sentence* [Miles] could receive if convicted" on all counts; in particular, the possible *aggregate sentence* that he could face if the court imposed all of his sentences consecutively, which it did. *Banks*, 2019 WL 4791704, *1 (internal citation and quotation marks omitted) (emphasis added).

Miles's total possible sentence was not "[f]ive to life," as he mistakenly believed. 1 AA 83. It was a minimum of 12 years in prison and maximum back-to-back life sentences. *See* NRS 193.130(2)(d), 200.320(2)(a), 200.508(1)(b)(1), 201.300(2)(b)(2)(III), and 201.320(1)(b). Miles clearly did not understand the possible penalties and punishments he was facing, including the *total aggregate sentence* he could receive if convicted on all counts. *Banks*, 2019

WL 4791704, *1. He therefore could not, and did not, knowingly and intelligently waive his constitutional right to counsel. *Hooks*, 124 Nev. at 54, 176 P.3d at 1084.

C. The Court of Appeals, nevertheless, erroneously held Miles's waiver was knowingly, intelligently, and voluntarily made.

The Court of Appeals, nevertheless, held that Miles's waiver was knowingly, intelligently, and voluntarily made because, even if the district court "only inform[ed] Miles what his potential sentence could be if convicted on *one* charge *and not all of them*," the district court "warned Miles multiple times during its *Faretta* canvass that waiving his right to counsel was ill-advised," and noted he was facing a potential life sentence; not multiple consecutive life sentences. *Amended Order of Affirmance* at 7.

The Court of Appeals' decision conflicts with *Hooks* and *Banks* for the reasons stated above, and because this Court holds that general warnings about the dangers of self-representation, and general questions about age, education, and other such general topics are insufficient to establish a valid waiver of the right to counsel; particularly, when the record shows the defendant did not understand the elements of *each* crime charged, the potential penalties, and *the total possible sentence* he could receive if convicted. *See*, *Hooks*, 124 Nev. at 56-57, 176 P.3d at 1085-86. Supreme Court review therefore is warranted. *See* NRAP 40B(a)(2).

Conclusion

For these reasons, the Court should grant Miles's petition for review and reverse the Court of Appeals' decision.

DATED: March 15, 2021.

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Certificate of Compliance

1. I hereby certify that I have read this petition, 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, including NRAP 28(e)(1), which requires every assertion 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 upon is found. I understand that I may be subject to sanctions in the event that the accompanying petition for review is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I hereby certify that this petition for review 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 it has been prepared in a proportionally spaced typeface using WordPerfect X9 in 14-point font of the Times New Roman style.

3. I further certify that this petition complies with the type-volume limitations of NRAP 40, 40A and 40B because it is proportionally spaced, has a typeface of 14 points and contains no more than 2,982 words.

DATED: March 15, 2021.

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Certificate of Service

I hereby certify and affirm that this document, **Petition for Review**, was filed electronically with the Nevada Supreme Court on March 15, 2021. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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EXHIBIT 1

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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

CHRISTIAN STEPHON MILES,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 79554-COA

AMENDED ORDER OF AFFIRMANCE AND ORDER DENYING REHEARING[1]

Christian Stephon Miles appeals from a judgment of conviction, pursuant to a jury verdict, of sex trafficking of a child under 18 years of age, first-degree kidnapping, living from the earnings of a prostitute, and child abuse, neglect, or endangerment. Eighth Judicial District Court, Clark County; Mary Kay Holthus, Judge.

Police arrested Miles for prostituting a 16-year-old girl, eventually charging him with sex trafficking of a child under 18 years of age, first-degree kidnapping, living from the earnings of a prostitute, and child abuse, neglect, or endangerment.[2] Before trial, Miles filed a motion to withdraw counsel so he could represent himself. The district court conducted a *Faretta* canvass to satisfy the requirement that Miles's waiver was knowing, intelligent, and voluntary. *Faretta v. California*, 422 U.S. 806 (1975). The district court also cautioned Miles numerous times that self-representation was ill-advised. However, Miles persisted and the court

[1]Miles has filed a petition for rehearing of our prior order of affirmance. Having reviewed the petition, we conclude rehearing is not warranted and deny it. We issue this amended order, however, in order to clarify an issue and to correct a minor error.

[2]We do not recount the facts except as necessary to our disposition.

granted his motion to withdraw counsel and allowed him to represent himself.

After a seven-day trial, the jury convicted Miles on all charges. The district court sentenced Miles as follows: life in prison for Count 1 with a minimum parole eligibility of five years; life in prison for Count 2 with a minimum parole eligibility of five years, consecutive to Count 1; 48 months in prison for Count 3 with a minimum parole eligibility of 19 months, consecutive to Counts 1 and 2; and 72 months in prison for Count 4 with a minimum parole eligibility of 28 months, consecutive to Counts 1, 2, and 3.

Miles appeals from the district court's judgment of conviction. First, Miles argues that the district court violated his Eighth Amendment right to be protected from cruel and unusual punishment when it imposed his sentences to run consecutively because the ultimate sentence was disproportionate to the offenses he committed. Second, Miles contends NRS 176.035(1) is unconstitutionally vague in violation of the Due Process Clauses of the Fifth and Fourteenth Amendments to the U.S. Constitution, as well as Article 1, Section 8, Clause 2 of the Nevada Constitution, because it allows district courts unfettered discretion to impose concurrent or consecutive sentences. Third, Miles argues the district court violated his Sixth Amendment right to counsel when it allowed him to represent himself because the court failed to properly conduct a *Faretta* canvass to determine whether his waiver of the right to counsel was knowing, intelligent, and voluntary. Fourth, Miles contends the court should have implemented standby counsel when it was apparent Miles acted improperly while representing himself. We disagree and address his arguments in turn.

First, the district court did not abuse its discretion when it imposed consecutive sentences. This court reviews a judgment of conviction imposing consecutive sentences for an abuse of discretion. *See Pitmon v.*

State, 131 Nev. 123, 126-27, 352 P.3d 655, 657-658 (Ct. App. 2015). While this court affords broad discretion to district courts when sentencing a defendant, this discretion is not limitless. *See Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000) (explaining that although "the district court is afforded wide discretion" in imposing a sentence, that discretion is not limitless). A district court does not abuse its discretion when the sentence it imposes falls within statutory limits. *See Gallon v. State*, Docket No. 75976 (Order of Affirmance, October 24, 2019) (concluding that the district court did not abuse its discretion in its sentencing because it relied on the facts of the case and the sentence fell "within statutory limits"); *Nemcek v. State*, Docket No. 68919 (Order of Affirmance, May 9, 2016) (holding the district court did not abuse its discretion in its sentencing because "Appellant's sentence is within the statutory limits" and because the district court has independence when determining its sentence).

Here, the district court did not abuse its discretion when it imposed consecutive sentences. The district court based its decision on the facts of the case, Miles's criminal history, and a psychosexual evaluation depicting Miles as "a high risk to re-offend both sexually and violently." Using these facts, the district court imposed a sentence that fell within the parameters provided by the relevant statutes, including NRS 176.035(1). Thus, the district court did not abuse its discretion because the sentences fell within the statutory parameters and the sentences were not disproportionate.

Second, NRS 176.035(1) is not unconstitutionally vague. NRS 176.035(1) states: "[W]henever a person is convicted of two or more offenses, and sentence has been pronounced for one offense, the court in imposing any subsequent sentence may provide that the sentences subsequently pronounced run either concurrently or consecutively with the sentence first

imposed." The Legislature intended to grant the district court discretion to determine whether to impose sentences concurrently or consecutively. *Pitmon v. State*, 131 Nev. 123, 128-29, 352 P.3d 655, 659 (Ct. App. 2015). This court has previously concluded that NRS 176.035(1) is unambiguous and constitutional, *id.* at 129, 352 P.3d at 659, and therefore Miles's argument is without merit. Accordingly, we decline to revisit *Pitmon*.

A statute's constitutionality is a question of law that this court reviews de novo. *Berry v. State*, 125 Nev. 265, 279, 212 P.3d 1085, 1095 (2009), *abrogated on other grounds by State v. Castaneda*, 126 Nev. 478, 245 P.3d 550 (2010). We presume statutes are valid, and the burden therefore falls upon an appellant to "make a clear showing of invalidity." *Silvar v. Eighth Judicial Dist. Court*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). An appellant may challenge a statute as unconstitutional either because it is vague on its face, or because it is vague as applied to the appellant. *Flamingo Paradise Gaming, LLC v. Chanos*, 125 Nev. 502, 509-10, 217 P.3d 546, 551-52 (2009).

When analyzing whether a statute violates the Due Process Clause for unconstitutional vagueness, courts usually apply a two-factor test. *Pitmon*, 131 Nev. at 127-28, 352 P.3d at 658 (citing *Silvar*, 122 Nev. at 293, 129 P.3d at 685); *see also Kolender v. Lawson*, 461 U.S. 352, 357 (1983). Under this two-factor test, a statute is unconstitutionally vague "if it (1) fails to provide notice sufficient to enable persons of ordinary intelligence to understand what conduct is prohibited and (2) lacks specific standards, thereby encouraging, authorizing, or even failing to prevent arbitrary and discriminatory enforcement." *Silvar*, 122 Nev. at 293, 129 P.3d at 685. An ordinary person who commits and is convicted of two offenses should reasonably anticipate the possibility, and perhaps even the

likelihood, that the court will impose consecutive sentences. *Pitmon*, 131 Nev. at 130, 352 P.3d at 660.

Here, under *Silvar*'s two-factor test, NRS 176.035(1) is not unconstitutionally vague. First, the language in NRS 176.035(1) granting discretion to judges to impose concurrent or consecutive sentences is unambiguous. This court has previously come to that conclusion in *Pitmon*. The first sentence of NRS 176.035(1) states the district court "may" impose consecutive sentences. When read as a whole, NRS 176.035 is intended to grant the district court discretion to determine whether to impose sentences concurrently or consecutively and, thus, is unambiguous.

Further, Miles's argument that NRS 176.035(1) is unconstitutionally vague because it does not provide guidelines to the district court on how to determine whether to impose concurrent or consecutive sentences is unpersuasive. The fact that a statute grants the district court discretion to match the sentence imposed to the nature of every crime a defendant committed does not render NRS 176.035(1) unconstitutionally vague. The Due Process Clause only requires a statute to be understandable to persons of ordinary intelligence. An ordinary person that commits and is convicted of more than one offense should reasonably anticipate the possibility that he or she may serve consecutive sentences for each offense. Thus, NRS 176.035(1) is not unconstitutionally vague simply because it does not provide guidelines to the district court. Thus, NRS 176.035(1) is not unconstitutionally vague.

Additionally, Miles fails to satisfy plain error, which applies here because he did not raise the constitutionality of NRS 176.035(1) below. "[W]hen a criminal defendant fails to object to a district court's action, this court reviews the record for plain error only." *Berry v. State*, 125 Nev. 265, 282-83, 212 P.3d 1085, 1097 (2009), *abrogated on other grounds by State v.*

Castaneda, 126 Nev. 478, 245 P.3d 550 (2010). An error is plain when it is so clear "that it is apparent from a casual inspection of the record;" the defendant must also show the error impacted her or his substantial rights. *Id.* at 283, 212 P.3d at 1097.

Here, applying plain error analysis dictates NRS 176.035(1) is not unconstitutionally vague because Miles failed to show plain error: Miles does not argue it is apparent from a casual inspection of the record that an error is clear. Even if he had made this argument, the record does not support the notion that the district court erred. On the contrary, the record shows the district court based its decision on the facts of the case and imposed a sentence that fell within statutory parameters. Additionally, Miles has not shown that this error impacted his substantial rights. Thus, even if Miles had argued there was plain error, no such error exists.

Third, the district court did not abuse its discretion when it allowed Miles to represent himself. Whether a defendant validly waived his or her right to counsel is a question of law that is reviewed de novo, contingent upon the facts as found by the district court. *See Brewer v. Williams*, 430 U.S. 387, 403-04 (1977). This court gives deference to the district court's decision to allow a defendant to waive his or her right to counsel and represent him- or herself. *Hooks v. State*, 124 Nev. 48, 55, 176 P.3d 1081, 1085 (2008).

A criminal defendant must knowingly, intelligently, and voluntarily waive his or her right to counsel to exercise his or her right to self-representation. *Id.* at 53-54, 176 P.3d at 1084. Repeated assertions of one's right to self-representation alone are insufficient to show a valid waiver of the right to counsel. *Id.* at 57, 176 P.3d at 1086. To properly waive the right to counsel, the district court should conduct a *Faretta* canvass to make the defendant "aware of the dangers and disadvantages of

self-representation" so the record establishes that he or she knows what he or she is doing and his or her "choice is made with eyes open." *Id.* at 53-54, 176 P.3d at 1084 (internal quotation marks omitted). Areas of suggested inquiry for a *Faretta* canvass are provided in SCR 253(3).[3] However, the district court is not constitutionally required to inquire into any particular matter for a valid waiver if "it is apparent from the record that the defendant was aware of the dangers and disadvantages of self-representation." *Graves v. State*, 112 Nev. 118, 125, 912 P.2d 234, 238-39 (1996).

Here, the district court did not abuse its discretion because it properly conducted a *Faretta* canvass and determined Miles's waiver was knowing, intelligent, and voluntary. The record shows Miles was aware of the dangers and disadvantages of self-representation. The district court warned Miles multiple times during its *Faretta* canvass that waiving his right to counsel was ill-advised. Also, despite only informing Miles what his potential sentence could be if convicted of one charge and not all of them, the district court stressed that his potential sentence could be life imprisonment.

Additionally, the district court inquired into a plethora of criteria to make a proper finding that Miles's waiver was knowing, intelligent, and voluntary. The district court inquired into Miles's age, his education level, his experience with the judicial system, the complexity of criminal cases, his legal training, his understanding of the case against him, the grounds for objections, the potential life sentence he was facing, the

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[3]These areas *may* include a "[d]efendant's age, education, literacy, background, and prior experience or familiarity with legal proceedings; . . . [and] understanding of the elements of each crime and lesser included or related offenses." SCR 253(a), (f) (emphasis added).

district court's belief that self-representation was a bad decision, how to disqualify a juror, his right against self-incrimination, and more. Thus, the district court did not abuse its discretion in allowing Miles to represent himself because his choice to waive his right to counsel was knowing, intelligent, and voluntary, supported by the record that shows he acknowledged numerous times the disadvantages of self-representation, and because the court inquired into a plethora of criteria for its determination.

Fourth, the district court did not err when it did not implement standby counsel because there is no legal authority dictating that the district court must sua sponte *revoke* a defendant's right to self-representation for being disruptive. Despite self-representation usually being detrimental to a defendant's case, the district court must honor her or his choice. *Vanisi v. State*, 117 Nev. 330, 341, 22 P.3d 1164, 1172 (2001) (citing *Godinez v. Moran*, 509 U.S. 389, 400 (1993)). However, the district court has no duty to sua sponte revoke a criminal defendant's right to self-representation for being disruptive.[4] *See People v. Price*, No. B197624, 2008 WL 2440287, at *4 (Cal. Ct. App. June 18, 2008) (rejecting the notion that a district court must sua sponte "terminate" a defendant's right to self-representation simply because the defendant attempted to derail the court's sentencing timetable).

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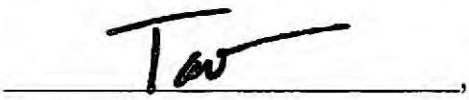
[4]There is no authority for the proposition that the district court had a duty to sua sponte revoke a defendant's right to self-representation for being disruptive. *Sharkey v. State*, Docket No. 75474-COA (Order of Affirmance, Ct. App., March 18, 2019) (comparing this proposition to *Vanisi*, 117 Nev. at 338, 22 P.3d at 1170 ("holding that a defendant's right to self-representation *may* be denied if the 'defendant is disruptive'") (emphasis added)).

Here, the district court did not err because Nevada precedent does not establish a duty for the district court to implement standby counsel for defendants who are disruptive. Miles affirmatively desired to represent himself, and the court must honor his choice. Thus, the district court did not err in allowing Miles to conduct his own defense because it had no duty to sua sponte revoke his right to self-representation for being disruptive.

Therefore, we

ORDER the judgment of conviction AFFIRMED.

_____, C.J.
Gibbons



_____, J.
Tao

_____, J.
Bulla

cc: Hon. Mary Kay Holthus, District Judge
Mario D. Valencia
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk