

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

DENZEL DORSEY, )  
#5899606, )  
Appellant, )  
v. )  
STATE OF NEVADA, )  
Respondent. )  
\_\_\_\_\_ )

Electronically Filed  
Jul 17 2020 03:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**CASE NO.: 79845**

**E-FILE**

**REPLY TO RESPONDENT'S ANSWERING BRIEF**

**Appeal from Judgment of Conviction  
Eighth Judicial District Court, Clark County**

TERRENCE M. JACKSON, ESQ.  
Nevada Bar No. 000854  
Law Office of Terrence M. Jackson  
624 South 9th Street  
Las Vegas, Nevada 89101  
(702) 386-0001  
Terry.jackson.esq@gmail.com

STEVEN B. WOLFSON  
Nevada Bar No. 001565  
Clark County District Attorney  
200 E. Lewis Avenue  
Las Vegas, Nevada 89155  
(702) 671-2750  
Steven.Wolfson@clarkcountynvda.com

AARON D. FORD  
Nevada Bar No. 007704  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

...  
Counsel for Appellant

Counsel for Respondent

## **TABLE OF CONTENTS**

	<b><u>Page No.</u></b>
TABLE OF AUTHORITIES.....	iii - iv
STATEMENT OF ISSUES PRESENTED FOR REVIEW.....	1 - 2
ARGUMENT.....	2 - 6
<b>I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE DEFENDANT’S MOTION TO WITHDRAW HIS INVALID PLEA OF GUILTY; .....</b>	<b>2</b>
<b>II. THE INCORRECT PLEA MEMO, WHICH WAS THE BASIS OF DEFENDANT’S GUILTY PLEA, IS GROUNDS FOR THE WITH- DRAWAL OF THAT GUILTY PLEA;.....</b>	<b>3</b>
<b>III. DEFENDANT’S SENTENCE WAS EXCESSIVE UNDER THE EIGHTH AMENDMENT BECAUSE IT EXCEEDED THE AGREED SENTENCE IN THE STIPULATION; .....</b>	<b>5</b>
CONCLUSION .....	6
CERTIFICATE OF COMPLIANCE .....	8
CERTIFICATE OF SERVICE .....	9

## TABLE OF AUTHORITIES

### FEDERAL CASES

### Page(s)

...

### NEVADA CASES

<i>Allred v. State</i> , 120 Nev. 410 (2004) .....	5
<i>Baal v. State</i> , 106 Nev. 69 (1990) .....	4
<i>Blume v. State</i> , 112 Nev. 472 (1996) .....	5
<i>Bryant v. State</i> , 102 Nev. 268 (1986) .....	4
<i>Calverson v. State</i> , 95 Nev. 433 (1973) .....	5
<i>Freese v. State</i> , 98 Nev. 235 (1982) .....	2, 4
<i>Glegola v. State</i> , 110 Nev. 344 (1994) .....	5
<i>Meyer v. State</i> , 95 Nev. 885 (1979) .....	3
<i>Mitchell v. State</i> , 109 Nev. 137, 138 (1993) .....	2
<i>Sanborn v. State</i> , 107 Nev. 399 (1991) .....	3
<i>Woods v. State</i> , 114 Nev. 468, 469 (1998) .....	2

...

...

...

## **OTHER STATE CASES**

...

## **CONSTITUTIONAL AMENDMENTS**

Eighth Amendment .....	<b>5</b>
------------------------	----------

## **MISCELLANEOUS AUTHORITIES**

...

## **STATUTES**

NRS 176.165 .....	<b>3</b>
NRS 207.010 .....	<b>5, 6</b>

...

## **APPELLATE RULES**

NRAP 28(e)(1) .....	<b>8</b>
NRAP 32(a)(4) .....	<b>8</b>
NRAP 32(a)(5) .....	<b>8</b>
NRAP 32(a)(6) .....	<b>8</b>
NRAP 32(a)(7) .....	<b>8</b>
NRAP 32(a)(7)(C) .....	<b>8</b>

...

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

---

<b>DENZEL DORSEY,</b>	)	
 #5899606,	)	
 Appellant,	)	<b>CASE NO.: 79845</b>
	)	
 v.	)	<b>E-FILE</b>
	)	
 STATE OF NEVADA,	)	
	)	
 Respondent.	)	
 _____	)	

**REPLY TO RESPONDENT’S ANSWERING BRIEF**

**Appeal From Judgment of Conviction**

**Eighth Judicial District Court, Clark County**

**STATEMENT OF ISSUES**

**I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE DEFENDANT HIS MOTION TO WITHDRAW HIS INVALID PLEA OF GUILTY.**

**II. THE INCORRECT PLEA MEMO, WHICH WAS THE BASIS OF DEFENDANT’S GUILTY PLEA, IS GROUNDS FOR THE PLEA’S WITHDRAWAL.**

**III. DEFENDANT’S SENTENCE WAS EXCESSIVE UNDER THE EIGHTH AMENDMENT BECAUSE IT EXCEEDED THE AGREED STIPULATION.**

**IV. CONCLUSION**

**ARGUMENT**

**I. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING THE DEFENDANT HIS MOTION TO WITHDRAW HIS INVALID PLEA OF GUILTY.**

Even giving great deference to the District Court’s decision denying Appellant’s Motion to Withdraw his plea, it is respectfully submitted that the District Court clearly abused its discretion under the totality of circumstance in this case. *Mitchell v. State*, 109 Nev. 137, 138, 848 P.2d 1060, 1060 (1993); *Freese v. State*, 98 Nev. 235 (1982). *See also, Woods v. State*, 114 Nev. 468, 469 (1998) (RAB, p. 8)

It is respectfully submitted that the District Court erred when it found Defendant’s plea was voluntary and intelligently made. It cannot be disputed there were misstatements in the plea memo. (A.A. p. 55)

The State conceded in their Responding Brief that pursuant to NRS 176.165, a defendant may withdraw his guilty plea . . . “for any substantial reason if it is fair and just.” Defendant submits he has established several substantial reasons that showed it is fair and just to allow withdrawal of his plea. *Meyer v. State*, 95 Nev. 885 (1979). NRS 176.165 Most importantly in this case was his counsel’s lack of preparation preplea. *Sanborn v. State*, 107 Nev. 399 (1991).

Counsel did not fully explain all the consequences of the plea to Defendant. Another significant factor in the totality of circumstances, which required that the plea be withdrawn, was the mistake in the written Plea Memorandum filed with the Court. This led to Defendant receiving a lengthier sentence than he anticipated when the habitual criminal statute was applied against him.

## **II. THE INCORRECT PLEA MEMO, WHICH WAS THE BASIS OF DEFENDANT’S GUILTY PLEA, IS GROUNDS FOR THE WITHDRAWAL OF THAT GUILTY PLEA.**

Defendant entered his plea of guilty on March 13, 2018, relying on the contents of the guilty plea memo. (A.A. p. 55-65) Even the State conceded the Plea Memo, relied upon by the Defendant before his entry of plea, was factually incorrect. (RAB, p. 18) The State however mistakenly claims that this error in the Plea Memorandum

is not grounds for Defendant to withdraw his plea, wrongly claiming there is no legal support for such a motion. (RAB, p. 19)

Defendant respectfully submits that the law is clear that the Plea Memorandum is one of the most important factors a defendant relies on in deciding whether to accept a negotiated plea. Hence, under the totality of circumstances, a significant mistake in a Plea Memorandum, especially a mistake affecting the length of Defendant's sentence, as was the fact in this case, must be considered such a significant factor that is so important that the Defendant's guilty plea must be found invalid and manifestly unjust. *Freese v. State, supra*. See also, *Bryant v. State*, 102 Nev. 268 (1986), *Baal v. State*, 106 Nev. 69 (1990).

The State's futile attempt to minimize the importance of this mistake in the Plea Memorandum (RAB, p. 19) is understandable, but wrong. An objective view of the facts clearly shows that the mistake in the Plea Memorandum requires reversal of the Defendant's conviction. That is because the most important part of the negotiations to the Defendant in any case is what the potential sentence will be. Any error in that Information requires withdrawal of the plea.

...

...



### **III. DEFENDANT’S SENTENCE WAS EXCESSIVE UNDER THE EIGHTH AMENDMENT BECAUSE IT EXCEEDED THE AGREED SENTENCE IN THE STIPULATION.**

The State argues in Respondent’s Answering Brief that because Defendant’s sentence of sixty (60) to one hundred fifty (150) months under NRS 207.010 was within statutory limits, and it was therefore not cruel and unusual punishment under the Eighth Amendment. *Glegola v. State*, 110 Nev. 344, 871 P.2d 950 (1994). (RAB, p. 24)

Defendant submits this sentence is nevertheless a sentence that was unfair and violative of his Eighth Amendment rights because it exceeded the stipulated sentence of sixty (60) to one hundred twenty (120) months. It is respectfully submitted the Court could not enforce a stipulation, which was drafted in this case by the State of Nevada, and then accept a change in the stipulation’s terms benefitting the State without giving the Defendant, the other party to the Stipulation, a chance to withdraw from the stipulated agreement. To enforce such an unfairly modified stipulation at sentencing, which increased the Defendant’s prison time, should be found to be “shocking to the conscience of the court.” *See, Blume v. State*, 112 Nev. 472 (1996), *Calverson v. State*, 95 Nev. 433 (1973), and *Allred v. State*, 120 Nev. 410 (2004).

It is respectfully submitted the State cannot argue that a lesser sentence was illegal because the State had placed the Defendant in the paradoxical situation of stipulating to what was not a legal sentence under NRS 207.010. If a sentence of 60 months to 120 months is illegal under NRS 207.010 (RAB, p. 24), the appropriate remedy for the court is that it must find is that habitual criminal treatment is illegal under the terms of Defendant's stipulation and not to punish the Defendant with a lengthier sentence than that sentence to which he and the State had stipulated.

### **CONCLUSION**

Appellant again submits based upon all the facts and arguments presented, this Honorable Court should find the district court erred in denying his Motion to Withdraw his invalid guilty plea, which it is respectfully submitted, under the totality of circumstances was invalid.

This Honorable Court should also find the district court erred in sentencing the Defendant to a term of 60 to 150 months based upon an improper and unconstitutional Stipulation in the plea memo to potential habitual criminal treatment. Because the Defendant agreed to a maximum of 120 months in the stipulated sentence, as this Court must find that his sentencing must be reversed. The case must be remanded to district court for such further action as necessary.

**DATED** this 17th day of July, 2020.

Respectfully submitted,

//s// Terrence M. Jackson

Terrence M. Jackson, Esquire

Law Office of Terrence M. Jackson

Nevada Bar No. 000854

624 South Ninth Street

Las Vegas, Nevada 89101

terry.jackson.esq@gmail.com

Counsel for Appellant, *Denzel Dorsey*

...

## CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply to Respondent's Answering Brief complies with the formatting requirements of NRAP 32(a)(4), the type-face requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using WordPerfect X7 in Times New Roman style and in size 14 font with 3.0 spacing for the Brief and 2.0 spacing for the citations.

2. I further certify that this brief does comply with the page- or type- volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is:

[ X ] Proportionately spaced, has a typeface of 14 points or more and contains 1,023 words, which is within the word limit.

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

DATED this 17th day of July, 2020.

Respectfully submitted,

/s/ Terrence M. Jackson

TERRENCE M. JACKSON, ESQ.

Counsel for Appellant, *Denzel Dorsey*

## CERTIFICATE OF SERVICE

I hereby certify that I am an assistant to Terrence M. Jackson, Esq., am a person competent to serve papers and not a party to the above-entitled action and on the 17th day of July, 2020, I served a copy of the foregoing: DENZEL DORSEY'S Reply to Respondent's Answering Brief as follows:

[X] Via Electronic Service (*eFlex*) to the Nevada Supreme Court and to the Eighth Judicial District Court, and by U.S. mail with first class postage affixed to the Petitioner/Appellant as follows:

STEVEN B. WOLFSON  
Clark County District Attorney  
[steven.wolfson@clarkcountynyda.com](mailto:steven.wolfson@clarkcountynyda.com)

AARON D. FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701

KAREN MISHLER  
Deputy District Attorney - Criminal  
[karen.mishler@clarkcountynyda.com](mailto:karen.mishler@clarkcountynyda.com)

DENZEL DORSEY  
ID# 5899606  
C/O P.O. Box 86164  
Terminal Annex  
Los Angeles, CA 90086

By: /s/ Ila C. Wills

Assistant to Terrence M. Jackson, Esq.