

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

No. 81472

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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RESPONDENT'S ANSWERING BRIEF

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RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE CASE¹

In July of 1996 Appellant Steven Floyd Voss (hereinafter, “Voss”) was charged with the following felony offenses: one count of burglary (Count I); two counts of uttering a forged instrument (Counts II and III); two counts of forgery (Counts IV and V); and attempted theft (Count VI). 1 Appellant’s Appendix (“AA”) 1-5. A jury convicted Voss of the six felony offenses charged and he was originally sentenced on November 27, 1996. *Id.* at 6-7.

On August 9, 2001, the district court granted Voss’s post-conviction petition in part and ordered a new sentencing hearing. *Id.* at 8-16. Other

¹ The State agrees with Appellant Steven Floyd Voss’s Statement of Jurisdiction and Routing Statement. As such, those matters will not be repeated herein. NRAP 28(b).

litigation occurred in the case, but Voss was not resentenced according to the order. Voss ultimately filed a pro se petition for extraordinary relief seeking a new sentencing hearing, which the Nevada Court of Appeals granted on August 15, 2018. *Id.* at 17-19 (Court of Appeals Order in Dkt. 74227-COA). The Court of Appeals ordered its clerk to issue a writ of mandamus instructing the district court to resentence Voss. *Id.* at 19. A notice in lieu of remittitur was issued on January 22, 2019. *See Voss v. Second Judicial Dist. Court*, Dkt. 74227.

Thereafter, the district court set the matter for resentencing on several occasions; however, as the district court explained, “Voss filed no less than sixteen motions and four appeals with the Nevada Supreme Court in an effort to prevent this Court from proceeding with resentencing.” 2 AA 228: 15-17. In the district court’s July 7, 2020 order, it found:

Mr. Voss’s long endured strategy has been to file motion after motion and appeal after appeal in an effort to prevent his resentencing. Mr. Voss has successfully found a loophole in which he is attempting to park his case and hold it in a perpetual procedural limbo. Mr. Voss’s strategy is to make procedurally invalid motions, wait for the Court to rule on them, appeal the decision, have the appellate courts deny the appeals as premature and issue a remittitur, and then Mr. Voss starts the process over again.

Id. at 229: 9-14.

The district court’s July 7, 2020 order “resolve[d] all pending motions filed by Mr. Voss....” *Id.* at 14-15. The district court conducted a resentencing

hearing the same day it issued its order.² 2 AA 233-278.

The district court entered a new judgment of conviction on July 8, 2020. *Id.* at 279-281. On July 10, 2020, Voss acting in pro per filed a timely notice of appeal. *Id.* at 282-283.

II. STATEMENT OF ISSUES

- A. Whether Voss has shown that the district court abused its discretion when it denied his presentence motions, when it considered controlling law and Voss has not supported his assignment of error with cogent argument or relevant portions of the record on appeal?
- B. Whether Voss has shown that the district court abused its sentencing discretion, when the record in fact shows that the district court expressly stated it would not consider the evidence he claims it improperly relied upon?

III. STATEMENT OF FACTS³

On June 14, 1996, deputies responded to the Jacpine Motel, located at 5501 West Fourth Street in Reno, related to a missing person's report for Beverly Ann Baxter. During the investigation of Ms. Baxter's disappearance, deputies learned that Voss had attempted to cash a \$5,000.00 check against Ms. Baxter's account at a local bank that same day. Deputies learned that Voss had previously deposited a settlement

² The State will address the facts relevant to Voss's claims from this sentencing hearing in the argument section of this brief.

³ These facts are taken from pages 5 and 6 of the Presentence Investigation Report ("PSI") prepared in advance of the 1996 sentencing hearing. The State is contemporaneously moving to transmit the PSI.

check allegedly on behalf of Ms. Baxter in the amount of \$5,026.00. Bank representatives found Voss's behavior suspicious and refused to cash the second check made out to Voss without first contacting Ms. Baxter. Bank personnel also notified police.

Deputies arrived at the Bank and spoke with Voss, who admitted to depositing the settlement check. Voss claimed that Ms. Baxter had agreed to provide him with \$5,000.00 so he could place a down payment on a mobile home. Voss claimed to be unaware of Ms. Baxter's whereabouts, despite the alleged close relationship and Voss being the last person to have contact with her before.

Deputies later discovered that Voss went to Ms. Baxter's place of employment on June 12, 1996, and borrowed Ms. Baxter's keyring to allegedly check on repair work he had previously performed on her vehicle. Voss was observed that same day entering Ms. Baxter's residence while she was at work and when questioned claimed he went into the residence at Ms. Baxter's request to obtain "business papers" and make copies for her.

IV. SUMMARY OF ARGUMENT

Voss has failed to present an adequate record or cogent argument on appeal to support his first assignment of error. Voss's second claim is

belied by the record. As such, this Court should affirm the judgment of conviction in this case.

V. ARGUMENT

A. The district court did not abuse its discretion by denying Voss's Presentencing Motions in Limine.

Initially, it is of note that Voss raised several arguments in his presentence motions in limine. On Appeal, Voss focuses on two of his arguments, but asserts that he does not abandon any of the others. Opening Brief ("OB"), pg. 4: 5-10. However, it is an appellant's burden to present "relevant authority and cogent argument" and the Nevada Supreme Court has held that "issues not so presented need not be addressed by this court." *Browning v. State*, 120 Nev. 347, 354, 91 P.3d 39, 45 (2004). As such, this Court should not consider the other arguments contained in Voss's motion(s) below because he has not presented cogent argument or authority on appeal to show that the district court erred by denying his motion on those grounds.

Voss next contends that this Court should consider whether the legislature actually intended to impose separate punishments for uttering a forged instrument, forgery, and attempted theft when they allegedly arise from the same incident. OB, pg. 5. Voss concedes that the charges at issue

pass the *Blockburger*⁴ test, but maintains that his convictions for multiple counts of uttering a forged instrument, forgery, and attempted theft violates the Double Jeopardy clause. *Id.* Voss does not develop his argument on this point. However, the Nevada Supreme Court has rejected a similar argument in the past. It has explained that when the offenses at issue have separate elements, “the statutes do not proscribe the ‘same offense,’ and the presumption against multiple punishments for the ‘same offense’ does not arise, defeating [the appellant’s] double jeopardy challenge[s].” *See Jackson v. State*, 128 Nev. 598, 607, 291 P.3d 1274, 1280 (2012). As such, Voss’s Double Jeopardy argument is without merit.⁵

Voss’s final contention regarding his pretrial motions is that the district court did not properly consider his claim related to whether the justice court had probable cause to bind him over for one of the forgery charges (Count V). Initially, Voss criticizes the district court because it allegedly did not consider this argument. However, the assertion at issue here was part of Voss’s larger claim that the verdict for Count V should be set aside because the facts alleged in the charging document did not state

⁴ *Blockburger v. United States*, 284 U.S. 299 (1932).

⁵ The Nevada Supreme Court has also rejected a “same conduct” approach to analyzing the issue. Thus, to the extent that Voss is claiming that the offenses were redundant, his challenge is also without merit. *See Jackson*, 128 Nev. at 608, 291 P.3d at 1280-1281.

an offense upon which judgment could be imposed.⁶ The district court concluded that Voss's claim had no merit because it found that the Information satisfied the statutory requirements for a charging document and Nevada Supreme Court precedent. 2 AA 227 (citing NRS 173.075 and *Laney v. State*, 86 Nev. 173, 177, 466 P.2d 666, 669 (1970), for the proposition that "a judgment will not be set aside or a new trial granted, in a criminal case, unless the accused is able to affirmatively demonstrate that the information is so insufficient that it results in a miscarriage of justice or actually prejudices him in respect to a substantial right.").

Voss has not shown that the district court acted arbitrarily or capriciously and/or ignored controlling law. *See Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (defining an abuse of discretion as a decision which is "arbitrary or capricious or if it exceeds the bounds of law or reason"); *MB America, Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 88, 367 P.3d 1286, 1292 (2016) ("[a]n abuse of discretion can occur when the district court bases its decision on a clearly erroneous factual determination or it disregards controlling law."). Voss has failed to show that the district

⁶ In separate portions of Voss's motion below, he argued that each of the verdicts needed to be set aside. The district court handled the arguments collectively in its order. 2 AA 226-227. The claim at issue on appeal only concerns his argument with respect to Count V.

court reached the wrong result. *See Wyatt v. State*, 86 Nev. 294, 468 P.2d 338 (1970) (a judgment or order will be affirmed on appeal if it reaches the right result, even though it is based on an incorrect ground).

The factual issue Voss raises concerns the Criminal Complaint filed in justice court, not the Information that preceded the jury verdict. Voss does not contend that the Information was faulty. Thus, Voss's argument concerns the probable cause stage of the proceeding and any error that may have occurred there would be harmless in light of the jury's guilty verdict. *See e.g., Dettloff v. State*, 120 Nev. 588, 596, 97 P.3d 586, 591 (2004). This argument could have also been easily dispensed with because it does not concern the new sentencing hearing ordered by the Court of Appeals and could have, and should have, been raised in earlier litigation. *See Witter v. State*, 135 Nev. 412, 416-417, 452 P.3d 412 (2019); *Jackson v. State*, 133 Nev. 880, 881-882, 410 P.3d 1004 (App. 2017).

Moreover, Voss has failed to show that the district court made a clearly erroneous factual determination. The district court reviewed the Information, which was the charging document that Voss proceeded to trial on. Voss's contentions concerned the Criminal Complaint from justice court, but Voss did not provide the district court with the document to support his claim. Nor has Voss provided this Court the Criminal

Complaint to support his contention on appeal. As such, this Court should presume that the missing document supports the district court's decision to move forward with sentencing. *See e.g. Cuzze v. University and Community College System of Nevada*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (noting that NRAP 30(b)(3) requires an appellant to include any portion of the record that is necessary for the determination of the issues raised on appeal and holding "[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court's decision."). This Court should conclude that Voss has failed to show that the district court abused its discretion by denying his presentence motion in limine.

B. The sentence imposed is not a result of the consideration of palpable or highly suspect information.

Voss contends that his judgment of conviction should be reversed because the State argued that the district court should consider his subsequent murder conviction, which was the very evidence that required his resentencing in the first instance. Voss's argument is without merit.

The Nevada Supreme Court has consistently afforded district courts wide discretion in their sentencing decisions. *See Houk v. State*, 103 Nev. 659, 747 P.2d 1376 (1987). Appellate Courts will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate

prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

Even assuming *arguendo*, that consideration of Voss's conviction that occurred between the offense in this case and the resentencing would amount to impalpable or highly suspect evidence, Voss has not shown that the district court relied on his subsequent murder conviction when it imposed his sentence here. Indeed, the district court expressly stated it would not consider any conviction after the original conviction in this case. It explained:

... I will not take into consideration any of the conviction post the conviction in Case No. CR96-1581. The way I – and this has already been the subject of an order issued by this court—the direction that is provided by the court of appeals in their order granting petition is that this court today is to step into the shoes of a court that would have sentenced Mr. Voss on November 20th, 1996. And the only thing that is relevant to this sentencing here today is what happened up to and including that date, and, accordingly, I will not consider that.

2 AA 261.

The district court also noted that it would not consider the portions of the PSI offense synopsis that suggested Voss was involved in Ms. Baxter's disappearance based on its understanding of the Court of Appeals order. *Id.* at 262-264. The district court also noted it would not consider all of the

matters in the PSI which Voss disputed. *Id.* at 265. The district court explained what it intended to consider as follows:

So, I want you to know that what I intend to do is look at the law of the case, which is that a jury found you guilty of all six counts that were filed in the original information. And I don't want to marginalize the PSI. It's very important. It gives me some very important information about what happened here, about who you are, about your history, et cetera. But to the extent that you have raised issues that are in conflict today, I am not going to consider those and I'm going to give you the benefit of the doubt as to all of them.

Id.

The record belies Voss's claim that the district court considered impalpable or highly suspect information. Indeed, the district court made it clear that it would not consider disputed PSI matters or Voss's subsequent murder conviction. Voss does not contend that his sentence exceeded the statutory range. Therefore, Voss has failed to show that the district court abused its broad sentencing discretion, and this Court should not interfere with the sentence imposed.

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VI. CONCLUSION

Based on the foregoing the judgment of conviction should be affirmed.

DATED: March 25, 2021.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: MARILEE CATE
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: March 25, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 25, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Tracie K. Lindeman, Esq

/s/ Tatyana Kazantseva
Tatyana Kazantseva