

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

STEVEN FLOYD VOSS,

No. 81472

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Clerk of Supreme Court

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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**RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF**

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**RESPONDENT'S SUPPLEMENTAL ANSWERING BRIEF**

**I. STATEMENT OF THE CASE<sup>1</sup>**

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

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<sup>1</sup> 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.<sup>2</sup> 2 AA 233-278.

The district court entered a new judgment of conviction on July 8, 2020. *Id.* at 279-281. On July 16, 2020, Voss acting in pro per filed a timely notice of appeal. *Id.* at 282-283. Voss filed an “Emergency Motion for Withdrawal of Court Appointed Counsel” in proper person on February 9, 2021. This Court denied motion on February 18, 2021. Voss’s first appointed attorney in this appeal, Tracie Lindeman, Esq., filed the Opening Brief on February 23, 2021. Respondent filed its Answering Brief on March 25, 2021. On April 13, 2021, Victoria Oldenburg, Esq. filed a notice of appearance. On April 16, 2021, Voss filed yet another proper person motion to discharge his second appointed appellate counsel, which was denied by this Court on April 22, 2021. With leave of this Court, Ms. Oldenburg filed a Supplemental Opening Brief on August 10, 2021. This Supplemental Answering Brief addresses the single issue raised in the Supplemental Opening Brief.

## II. STATEMENT OF ISSUE

### A. Whether the district court abused its discretion by denying Voss’s Motion to Suspend Resentencing.

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<sup>2</sup> The State will address the facts relevant to Voss’s claims from this sentencing hearing in the argument section of this brief.

### III. STATEMENT OF FACTS<sup>3</sup>

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 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.

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<sup>3</sup> These facts are taken from pages 5 and 6 of the Presentence Investigation Report filed in this case on April 19, 2021.

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

In the Supplemental Opening Brief, Voss argues that the district court abused its discretion by not continuing the sentencing hearing in order to allow him more time to contest allegations in the Presentence Investigation Report, which was prepared in 1996. He also repeats his complaint that he needed more time to present mitigation evidence at the resentencing. But Voss has known he would be resentenced since August of 2018, and he has never specified what witnesses or evidence he would have been able to present with additional time. It is clear that Voss's attempt to once again cause his re-sentencing to be delayed is yet another example of what the district court recognized as part of Voss's "long-endured strategy [...] to file motion after motion and appeal after appeal in an effort to prevent his resentencing." 2 AA 229. The district court did not abuse its discretion in proceeding with sentencing, and this Court should affirm its decision.



## V. ARGUMENT

### A. The District Court Did Not Abuse its Discretion by Denying Voss's Motion to Suspend Resentencing.

The State respectfully incorporates by reference the points and authorities in its Answering Brief filed on March 25, 2021.

1. The district court correctly rejected Voss's arguments regarding the PSI.

Voss argues that the district court abused its discretion by denying his Motion to Suspend Resentencing. He argues that he had documentation to contradict statements in the PSI, but he concedes that the district court gave him the benefit of the doubt regarding the portions of the PSI Voss contends were inaccurate. Supplemental Opening Brief, 4.

At sentencing, Voss stated that he had “some concerns” regarding the PSI, and documentation the State might present in support of allegations contained in the PSI. 2 AA 237. The district court thoroughly explained why it was rejecting Voss's attempt to further dilate the proceedings in order to contest the PSI:

Having reviewed the pleadings on file, this court finds the issue raised by Mr. Voss related to the PSI is unsupported. NRS 176.1351 mandates that the Division of Parole and Probation, quote, prepare a PSI to be used at sentencing for any defendant who pleads guilty or who is found guilty of a felony, closed quote. That is Stockmeier at 127 Nevada at 248.

Because the court cannot base its sentencing decision on information or accusations that were founded on impalpable or

highly suspect evidence, the PSI must not include information based on impalpable or highly suspect evidence, also Stockmeier at 255.

Mr. Voss has issued a blanket assertion related to the PSI regarding factual misrepresentations and fabrications but provides no specifics and no information as to what is allegedly false in the PSI and does not allege that the information contained therein is based on impalpable or highly suspect evidence. The Presentence Investigation Report was issued on November 20th, 1996. This court has been attempting in earnest to resentence Mr. Voss since the issuance of the court of appeals order granting petition on August 15th, 2018.

2 AA 245.

The district court further observed that it had set this matter for sentencing on multiple occasions, but that Voss had filed at least 16 motions and four appeals to prevent the court from proceeding with the resentencing. It also noted that at the original sentencing in 1996, Voss's trial counsel only had one correction to the PSI, and that when given an opportunity to address the Court, Voss had stated that his attorney had "pretty much addressed our side." *Id.*, 246. The Court reasoned that Voss had not specified what information in the PSI he believed to be inaccurate and denied his motion. *Id.* It also correctly observed that Voss cited no authority that the prosecution is required to provide all documents supporting a PSI, which is prepared by the Department of Parole and Probation. *Id.*, 247.

In response to Voss's objection to being sentenced via remote means, the district court judge cited the Second Judicial District Court's Administrative Order 2020-05 issued March 18, 2020, which provided that such hearings be conducted via simultaneous audiovisual transmission. 2 AA 247-248. Although Voss references his objection, he provides no analysis as to how the district court erred in proceeding with the re-sentencing over his objection.

2. Voss had ample opportunity to provide mitigation evidence, and never identified what mitigating information he wished to present.

Voss's motion to suspend his sentencing generally stated he needed 90 additional days to present mitigating evidence, but he never identified why, or what type of evidence he intended to present. 1 AA Part 3, 155-166. At his sentencing, he referenced "mitigating evidence" but provided no further details. 2 AA 237:

But I'll note that, again, when we have been ready to do this before, there has been no allegation or no contention or no suggestion that witnesses would appear on your behalf. And I don't know who those witnesses are. You've been incarcerated for some time. I don't know if they are fellow inmates or people that you knew before your incarceration.

But if you want to make a representation about what they would have said, that's fine. But this court is not persuaded that the expression you've made this morning about intent to call witnesses is to do anything except try and put the sentencing off even further.

2 AA 267.

In the Supplemental Opening Brief, he still cannot specify what mitigating information he could have presented to the Court with more time. The district court observed that Voss knew he was going to be re-sentenced since August of 2018. *Id.*, 266. Additionally, to the extent that Voss complains he was ignorant about the subpoena process or other court procedures, it worth noting that it is Voss himself who has repeatedly rejected court-appointed attorneys.

VI. CONCLUSION

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

DATED: September 23, 2021.

CHRISTOPHER J. HICKS  
DISTRICT ATTORNEY

By: Jennifer Noble  
Chief 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: September 23, 2021.

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**CERTIFICATE OF SERVICE**

I hereby certify that this document was filed electronically with the Nevada Supreme Court on September 23, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Victoria T. Oldenburg, Esq

/s/ Tatyana Kazantseva  
Tatyana Kazantseva