IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTIAN STEPHON MILES,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 79554

RESPONDENT'S ANSWERING BRIEF

Appeal From Judgment of Conviction
Eighth Judicial District Court, Clark County

MARIO D. VALENCIA, ESQ.
Nevada Bar #006154
40 S. Stephanie St., Ste. 201
Henderson, Nevada 89012
(702) 384-7494

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

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ROUTING STATEMENT

This case is not presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(2), as this case includes a direct appeal from a judgment of conviction based on a jury verdict that involves a conviction for a Category A felony.

STATEMENT OF THE ISSUE(S)

1. Whether Appellant fails to demonstrate his sentence amounts to cruel and unusual punishment.
2. Whether NRS 176.035 is not unconstitutional.
3. Whether the district court did not abuse its discretion by honoring Appellant's unequivocal desire to represent himself.

STATEMENT OF THE CASE

On May 15, 2015, Christian Miles (hereinafter, "Appellant") was charged by way of Information, as follows: Count 1 – SEX TRAFFICKING OF A CHILD

UNDER 18 YEARS OF AGE (NRS 201.300.2a1); Count 2 – FIRST DEGREE KIDNAPPING (NRS 200.310, 200.320); Count 3 – LIVING FROM THE EARNINGS OF A PROSTITUTE (NRS 201.320); and Count 4 – CHILD ABUSE, NEGLECT, OR ENDANGERMENT (NRS 200.508(1)) for actions on or between February 8, 2015 and February 13, 2015. Appellant's Appendix, Volume 1 ("1AA") at 23-25.

On May 2, 2016 Appellant filed for the withdrawal of his counsel. 1AA at 64-68. The matter came on for hearing before the district court on June 28, 2016, at which time a Faretta Canvass was conducted, and Appellant was allowed to represent himself with Mr. Robert Beckett, Esq. as standby counsel. Id. at 69-70, 71-88.

On April 1, 2019, Appellant's case proceeded to jury trial. 2AA at 114. On April 9, 2019, the jury returned a verdict convicting Appellant on all four counts as charged. 8AA at 1345-46.

On September 3, 2019, Appellant appeared in court and was sentenced as follows: on COUNT 1 to LIFE in prison, with a minimum parole eligibility of five (5) years; on COUNT 2 to LIFE in prison, with a minimum parole eligibility of five (5) years, consecutive to COUNT 1; on COUNT 3 to forty-eight (48) months in prison, with a minimum parole eligibility of nineteen (19) months, consecutive to COUNT 1; and on COUNT 4 to seventy-two (72) months in prison, with a minimum

parole eligibility of twenty-eight (28) months, consecutive to COUNTS 3, 2, and 1. 8AA at 1355-74. The district court acknowledged Appellant's 546 days credit for time served. Id. at 1373. The district court also ordered that Appellant register as a sex offender within 48 hours of release from custody. Id. at 1374. The Judgment of Conviction was filed on September 5, 2019. Id. at 1383-84. The Judgment of Conviction was amended on March 26, 2020 to reflect a correct aggregate minimum sentence of 163 months. Id. at 1385-88.

On April 2, 2020 Appellant filed his Notice of Appeal. 8AA at 1389-90. Appellant filed his Opening Brief on April 20, 2020. The State now responds thereto:

STATEMENT OF THE FACTS

On February 8, 2015, G.K., a 16-year-old girl, was on house arrest at her mother's house as a condition of probation. 4AA at 506-07. G.K. was on probation for earlier acts of prostitution. Id. at 520-21. G.K. met Appellant through Facebook, who contacted her to work for him as a prostitute. Id. at 573-74.

On the night in question, G.K. told her mother that she was going to a friend's house, and when she was told she could not, G.K. left her mother's house without permission. 4AA at 507-08. G.K.'s mother drove around their neighborhood looking for G.K., but did not find her. Id. at 510-11. G.K. testified that Appellant picked her up from the back gate of her community. Id. at 577. G.K.'s stepfather saw G.K. get into a car, and he followed it in his own vehicle. Id. at 516. The car began to drive

recklessly, so G.K.'s stepfather discontinued his pursuit. Id. G.K.'s mother called both the police and G.K.'s probation officer and gave them the information about the car in which G.K. left. Id. at 517, 520.

G.K. and Appellant proceeded to a Walmart, where Appellant purchased tools to cut off G.K.'s house arrest bracelet. Id. at 581-82. Appellant then drove G.K. to his home, where he cut off the house arrest bracelet. Id. at 583. G.K. disposed of the bracelet by throwing it out of a car window while driving to a hotel. Id. at 583-84. Appellant bought G.K. a cellular phone that had a texting application which he could access with his own phone. 4AA at 586. G.K. used that phone to communicate with Appellant. Id. at 588. A few days later, Appellant got a new phone number, that he then used to communicate with G.K. Id. at 595. G.K. and Appellant then set up multiple arrangements for G.K. to engage in prostitution, after which she gave Appellant the money. Id. at 597-608. Appellant also posted pictures of G.K. on Craigslist.com to advertise her prostitution. Id. at 621-22.

G.K.'s mother took information about Appellant's car to the community security gate and asked to review security camera footage. Id. at 511. The community security guards were able to find footage of a car matching the license plate and description of the car that picked up G.K. Id. G.K.'s mother was able to get a printout showing that car. Id.

G.K.'s mother attempted to find G.K. by contacting G.K.'s friend through social media. 4AA at 521. G.K.'s mother offered this friend $50 to pick G.K. up and take her to Arizona Charlie's Casino. Id. at 521-22. When G.K.'s friend agreed, G.K.'s mother contacted G.K.'s probation officer and told her of the agreement. Id. at 522. At the Arizona Charlie's Casino, G.K. was arrested by her probation officer. Id.

SUMMARY OF THE ARGUMENT

Appellant fails to demonstrate that he is entitled to relief on his claims. First, Appellant fails to demonstrate that the sentence imposed by the district court amounts to cruel and unusual punishment, as the sentence was within the district court's discretion and within the limits prescribed by statute. Second, Appellant fails to demonstrate that the statute allowing discretionary imposition of concurrent or consecutive sentences is unconstitutionally vague, as the constitutionality of that statute has been upheld, and Appellant fails to provide grounds for overturning that precedent. Finally, Appellant fails to show that the district court erred by allowing him to represent himself, as Appellant's desire was unequivocal and the district court properly cautioned and canvassed Appellant regarding self-representation.

ARGUMENT

I. APPELLANT FAILS TO DEMONSTRATE HIS SENTENCE AMOUNTS TO CRUEL AND UNUSUAL PUNISHMENT.

The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979).

Additionally, the Nevada Supreme Court has granted district courts "wide discretion" in sentencing decisions, and these are not to be disturbed "[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." Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A sentencing judge is permitted broad discretion in imposing a sentence and absent an abuse of discretion, the district court's determination will not be disturbed on appeal. Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)). As long as the sentence is within the limits set by the legislature, a sentence will

normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994).

Appellant bases his argument on Solem v. Helm, 463 U.S. 277, 103 S.Ct. 3001 (1983). Appellant's Opening Brief ("AOB") at 23. However, the language of Solem demonstrates that it was intended to be limited in scope. Furthermore, Appellant fails to demonstrate that Nevada has adopted the analysis set forth in Solem; in fact, a review of Nevada precedent shows that the Nevada Supreme Court has declined to utilize that analysis when presented with the opportunity. Additionally, a review of Appellant's case demonstrates that his sentence does not amount to an abuse of the district court's wide sentencing discretion.

A. The Solem analysis is limited in its scope

The Solem Court set forth a "proportionality analysis under the Eighth Amendment." 463 U.S. at 292, 103 S.Ct. at 3011. However, in so doing, the United States Supreme Court reaffirmed its stance "that, '[o]utside the context of capital punishment, *successful* challenges to the proportionality of particular sentences [will be] exceedingly rare.'" Id. at 289-90, 103 S.Ct. at 3009 (citing Rummel v. Estelle, 445 U.S. 263, 100 S.Ct. 1133 (1980)) (emphasis and modifications in original). That Court went on to explain, "[r]eviewing courts, of course, should grant substantial deference to the broad authority that legislatures necessarily possess in determining the types and limits of punishments for crimes, as well as to the discretion that trial

courts possess in sentencing convicted criminals." Id. at 290, 103 S.Ct. at 3009. Finally, the Solem Court discussed the difference between punishments of death and imprisonment, explaining:

> The easiest comparison, of course, is between capital punishment and noncapital punishments, for the death penalty is different from other punishments in kind rather than degree. For sentences of imprisonment, the problem is not so much one of ordering, but one of line-drawing. It is clear that a 25-year sentence generally is more severe than a 15-year sentence, but *in most cases it would be difficult to decide that the former violates the Eighth Amendment while the latter does not*.

463 U.S. at 294, 103 S.Ct. at 3012 (emphasis added).

Appellant was adjudicated for two separate Category A felonies, SEX TRAFFICKING OF A CHILD UNDER 18 YEARS OF AGE (NRS 201.300(2)(a)(1)), and FIRST DEGREE KIDNAPPING (NRS 200.310, 200.320). The punishment *pursuant to statute* for Appellant's sex trafficking offense is set forth in NRS 201.300(2)(b)(2)(III):

> If the child is at least 16 years of age but less than 18 years of age when the offense is committed…by imprisonment in the state prison for life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served, and may be further punished by a fine of not more than $10,000.

The punishment *pursuant to statute* for Appellant's kidnapping offense is set forth in NRS 200.320(2):

> (a) For life with the possibility of parole, with eligibility for parole beginning when a minimum of 5 years has been served; or
> (b) For a definite term of 15 years, with eligibility for parole beginning when a minimum of 5 years has been served.

Appellant does not contend that he was improperly adjudicated, or that the statutes under which he was sentenced are unconstitutional – he just argues his sentence under those statutes violates the Eighth Amendment. See generally, AOB at 20-27. However, because the Nevada Legislature specifically allows sentencing courts to decide concurrent or consecutive imposition, it is clear that the instant scenario fits the Solem Court's description as difficult to differentiate between constitutional and unconstitutional. See, Solem, 463 U.S. at 294, 103 S.Ct. at 3012; NRS 176.035.[1] Furthermore, because Appellant's sentence fell within the statutory guidelines set forth by the Nevada Legislature, the Solem decision dictates that both the district court's discretion and the Nevada Legislature's determination as to the appropriate sentence deserve "substantial deference." Id. at 290, 103 S.Ct. at 3009.

Because the instant case fits the description of those cases to which the United States Supreme Court expressly determined the Solem analysis would not successfully apply, the State respectfully submits that the instant case falls outside the scope of Solem and that such an analysis is inapplicable here.

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[1] Appellant does challenge the constitutionality of this statute. AOB at 27. However, his failure to challenge the constitutionality of the individual statutes under which he was sentenced should be fatal to his "cruel and unusual punishment" complaint pursuant to *Nevada* precedent. See, Glegola, 110 Nev. 344, 871 P.2d 950.

B. Nevada has never adopted the Solem analysis

In addition, the Nevada Supreme Court has never adopted the Solem analysis and should decline to do so here. A review of Nevada case law demonstrates that Solem claims have been raised multiple times, and each time the Nevada Supreme Court has declined to utilize the Solem analysis, much less adopt it.

In Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987) the defendant was convicted of three (3) counts of issuance of no account check and two counts of uttering forged instrument. That defendant received a total of five ten (10)-year sentences, all consecutive, and appealed her sentence as disproportionate under Solem. Id. at 660, 747 P.2d at 1376. In its analysis, the Houk Court did not engage in the three-part proportionality analysis as set forth in Solem. Instead, that Court reinforced Nevada guidelines that "[o]rdinarily, a sentence of imprisonment that is within the statutory limits is not considered cruel and unusual punishment." Houk at 664, 747 P.2d at 1378 (citing Schmidt v. State, 94 Nev. 665, 584 P.2d 695 (1978)). Recognizing the substantial deference owed the legislature and sentencing courts, the Houk Court concluded that the maximum allowable penalty on each crime, each running consecutively, was proportionate to the defendant's crimes. Id. at 664, 747 P.2d at 1379. The same rationale has been repeated by the Nevada Supreme Court on multiple occasions in which defendants have raised Solem challenges to their sentences. See, Epp v. State, 107 Nev. 510, 814 P.2d 1011 (1991) (defendant's

sentence of six years in prison for neglecting or refusing to support or maintain his two minor children was not cruel and unusual because it fell within the statutory limits, and it was not facially disproportionate to the crime defendant committed); see also, Allred v. State, 120 Nev. 410, 420, 92 P.3d 1246, 1253 (2004) (defendant's sentence of two to five years in prison for battery with substantial bodily harm was within the statutory limits, and the Nevada Supreme Court explained its prerogative to "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.'" (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976))).

In Sims v. State, 107 Nev. 438, 814 P.2d 63 (1991) the defendant was convicted of one count of grand larceny. That defendant was adjudicated as a habitual criminal and sentenced to life without the possibility of parole. Id. at 439, 814 P.2d at 63. He also argued, citing to Solem, that his sentence was disproportionate and a violation of the Eighth Amendment. Id. The Nevada Supreme Court disagreed, concluding that no Solem analysis was warranted in that case. Id. at 440, 814 P.2d at 64. That Court explained its rationale, identifying its consideration of "both the rarity with which the Solem-type of appellate review was projected by the Solem court, and the remaining vitality of Rummel." Id. Rather than engaging in a proportionality analysis, the Sims Court deferred to the sentencing

judge's familiarity with the case and the defendant's criminal background and concluded, "[d]espite what may appear to be an unduly harsh sentence based on the record before us, the sentence was lawful and presumably consonant with the judge's perceptions of Sims' just deserts and the punitive attitude of the community in which the judge serves." Id. On that basis, the Sims Court upheld the sentence imposed.

The Nevada Supreme Court likewise rejected a Solem argument in Castillo v. State, 110 Nev. 535, 874 P.2d 1252 (1994) (disapproved of on other grounds by Wood v. State, 111 Nev. 428, 892 P.2d 944 (1995)). In Castillo, a young man was convicted of sexual assault and battery with intent to commit sexual assault for actions committed while he was fifteen years old. Id. at 537, 874 P.2d at 1254. Castillo argued that, because he was a juvenile at the time he committed the offenses, the maximum statutory penalty for each crime violated the Eighth Amendment. Id. at 542-43, 874 P.2d at 1257. Though Castillo raised his claim under Solem, the Court analyzed his claim pursuant to Randell and Deveroux, acknowledging the trial court's "wide discretion in imposing a sentence." Id. at 544, 874 P.2d at 1258. The Court further cited to Lloyd v. State for the proposition that a sentence within statutory limits is not to be considered cruel and unusual "unless it is so disproportionate to the crime that it shocks the conscience and offends fundamental notions of human dignity." Id. (citing Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 743 (1978)).

Finally, the Nevada Supreme Court has consistently echoed its standard of review for claims of excessive criminal sentences. Recently, that Court was clear regarding the applicable standard for such claims in Harte v. State, 132 Nev. 410, 373 P.3d 98 (2016). Specifically, the Harte Court explained:

> Regardless of its severity, a sentence, that is "within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221–22 (1979)); *see also* Harmelin v. Michigan, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (plurality opinion) (explaining that "[t]he Eighth Amendment does not require strict proportionality between crime and sentence[;] ... it forbids only extreme sentences that are 'grossly disproportionate' to the crime" (citation omitted)).

Id. at 414, 373 P.3d at 102. The Harte Court also expressly stated, "we do not review nondeath sentences for excessiveness." Id.

Appellant has done nothing to distinguish his sentence from those of the defendants in the foregoing cases. See, AOB at 20-27. In fact, he does not even acknowledge the extensive Nevada authority addressing Solem. See, id. These failures should be fatal to his Solem complaint.

C. Appellant's sentence does not amount to an abuse of the district court's wide discretion for sentencing

Pursuant to Randell, Appellant bears the burden to demonstrate that the district court's decision to run the sentences consecutive to each other amounted to an abuse of discretion. 109 Nev. 5, 846 P.2d 278. The Nevada Supreme Court has

previously explained that claims unsupported by legal citations will not be considered. See, NRAP 28(a)(9)(A), (j); Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n.38, 130 P.3d 1280, 1288 n.38 (2006); Dept. of Motor Vehicles and Public Safety v. Rowland, 107 Nev. 475, 479, 814 P.2d 80, 83 (1991) (unsupported arguments are summarily rejected); Randall v. Salvation Army, 100 Nev. 466, 470-71, 686 P.2d 241, 244 (1984) (court may decline consideration of issues lacking citation to relevant legal authority). Indeed, "[i]t is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by [the Nevada Supreme Court]." Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987).

Appellant argues that the district court did not give "enough to justify" its sentencing decision. AOB at 22. However, he fails to cite to a single case supporting his assertion that the district court abused its decision in not further explaining its decision. See, id. at 20-23. Appellant also cites to numerous cases where "Nevada courts have allowed defendants…to have their sentences run concurrently." Id. at 25, 26. However, Appellant fails to include any relevant legal authority that sets a standard for determining between the concurrent and consecutive imposition of sentences. See, id. at 24-27. Therefore, Appellant has failed to meet his burden, and this Court should decline to consider his argument.

Because Appellant fails to demonstrate that the district court abused its discretion at sentencing, he cannot show that his sentence amounts to cruel and unusual punishment. Therefore, Appellant's Amended Judgment of Conviction should be affirmed.

II. NRS 176.035 IS NOT UNCONSTITUTIONAL.

Appellant claims that NRS 176.035(1) is unconstitutionally vague because it allowed the district court "unfettered discretion in determining whether the sentences imposed on Miles should be concurrent or consecutive." AOB at 28. However, Appellant acknowledges that his complaint has previously been rejected. Id. at 31-32. While Appellant makes the unqualified assertion that "the reasoning of the court of appeals is inapplicable to this case," the previous rejection of this exact complaint has been published, and constitutes binding precedent. AOB at 32.

As set forth, *supra*, in Nevada, district courts have wide discretion in imposing a sentence. Houk, 103 Nev. at 664, 747 P.2d at 1379. Further, a sentencing decision will not be overruled on appeal absent a showing of an abuse of discretion. Id.

Additionally, "the constitutionality of a statute is a question of law that [a reviewing court] review[s] de novo." Silvar v. Eighth Judicial Dist. Court, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006). Since statutes are presumed to be valid, a person who challenges the validity of a statute bears the burden of making a "clear showing of invalidity." Id.

In Pitmon v. State, 131 Nev. 123, 127, 352 P.3d 655, 658 (Ct. App. 2015), the Nevada Court of Appeals determined that the "mere existence of such discretion [as that allowed by NRS 176.035] does not, by itself, render a statute unconstitutionally vague." Thereafter, the Pitmon Court determined that it:

> [could not] conclude that the text of NRS 176.035(1) is so "permeated" by vagueness that the imposition of consecutive sentences would be unfair "in most circumstances" whenever a defendant is sentenced for committing two separate crimes. *Quite to the contrary,* it seems to the court that *the imposition of consecutive sentences for the commission of two separate crimes would represent an outcome reasonably to be expected by persons of ordinary intelligence*.

Id. at 131, 352 P.3d at 661 (emphasis added) (citation omitted). Therefore, Appellant's mere suggestion otherwise does not overcome the Nevada Court of Appeals express finding of constitutionality.

Furthermore, Appellant's contention that "[i]f this case was heard by 10 different judges, *chances are* that Miles would have received 10 different sentences," is without merit and has been rejected by the Nevada Supreme Court. AOB at 32 (emphasis added). The Nevada Supreme Court has held that it does not view itself as an appellate sentencing body. Sims, 107 Nev. at 440, 814 P.2d at 64 (1991). Therefore, even if this Court believes that a different court may have pronounced a different sentence than that imposed in this case, that belief does not constitute grounds for invalidating the statute allowing the district courts' discretion at sentencing. Id. In fact, district courts are granted such wide discretion at

sentencing because 1) they are each "more familiar with [the defendant's] criminal background and attitude" than reviewing courts; and 2) because, as quoted by Appellant, "[l]egislatures cannot create enough sentencing law to match the nuances of each crime and perpetrator." Id.; AOB at 31 n.9 (quoting Sims, 107 Nev. at 442-43, 814 P.2d at 65-66 (dissent of Justice Rose)).

As such, Appellant's claim that NRS 176.035(1) is unconstitutionally vague is without merit and fails. Therefore, his Amended Judgment of Conviction should be affirmed.

III. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY HONORING APPELLANT'S UNEQUIVOCAL DESIRE TO REPRESENT HIMSELF.

Appellant's final complaint is that the district court did not sufficiently "protect [Appellant's] right to representation." AOB at 32. Once again, Appellant's argument falls woefully short of demonstrating he is entitled to relief.

"A criminal defendant has the right to self-representation under the Sixth Amendment of the United States Constitution and Nevada Constitution. However, an accused who chooses self-representation must satisfy the court that his waiver of the right to counsel is knowing and voluntary. Such a choice can be competent and intelligent even though the accused lacks the skill and experience of a lawyer, but the record should establish that the accused was 'made aware of the dangers and disadvantages of self-representation.'" Vanisi v. State, 117 Nev. 330, 337-38, 22

P.3d 1164, 1169-70 (2001) (quoting Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525 (1975)).

An accused may insist upon representing himself, "however counterproductive that course may be." Faretta, 422 U.S. at 835, 95 S.Ct. at 2525. The United States Supreme Court has further explained, "'[t]he right to defend is personal,' and a defendant's choice in exercising that right 'must be honored out of that respect for the individual which is the lifeblood of the law." McCoy v. Louisiana, 138 S.Ct. 1500, 1507, 200 L.Ed.2d 821 (2018) (quoting Illinois v. Allen, 397 U.S. 337, 350-51, 90 S.Ct. 1057 (1970) (Brennan, J., concurring)). Indeed, the test is not whether a defendant is *capable* to defend themselves – it is error for the district court to deny an accused the opportunity to represent themselves as long as the waiver is knowing and voluntary. Vanisi, 117 Nev. at 337-38, 22 P.3d at 1169-70.

Appellant makes two separate arguments in support of his complaint that the district court erred by allowing him to represent himself: 1) Appellant's decision to represent himself was not made knowingly and voluntarily; and 2) the district court should have revoked Appellant's self-representation. AOB at 33, 41. Both arguments are meritless:

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A. Appellant's decision to represent himself was knowing and voluntary

The Nevada Supreme Court has explained, "if a defendant willingly waives counsel and chooses self-representation with an understanding of its dangers, including the difficulties presented by a complex case, he or she has the right to do so." Vanisi, 117 Nev. at 341-42, 22 P.3d at 1172. "The only question is whether the defendant 'competently and intelligently' *chose* self-representation, not whether he was able to 'competently and intelligently' represent himself." Graves v. State, 112 Nev. 118, 124, 912 P.2d 234, 238 (1996) (emphasis in original).

Here, the transcript shows that Appellant "competently and intelligently" *chose* to represent himself. The district court conducted a lengthy canvas, and advised Appellant of the dangers and difficulties of representing himself. For the sake of judicial economy, the State does not include the entire text of the district court's canvass, but instead refers this Court to the transcript of the same. See, 1AA at 72-85. Included in the Court's canvass were questions regarding Appellant's level of education, Appellant's experience with the criminal justice system, Appellant's motivation for representing himself, Appellant's legal training, Appellant's understanding of the case against him, the complexity of criminal cases, jury selection, Appellant's right to choose to testify or not testify, questioning witnesses, the punishments for the two Category A felonies Appellant was facing, the grounds

for objections, Appellant's age, and the district court's belief that self-representation is ill-advised. Id.

Appellant relies on Hook v. State, 124 Nev. 48, 176 P.3d 1081 (2008), to argue that the district court's Faretta canvass was insufficient. AOB at 34. However, the Hook Court explicitly affirmed that reviewing courts must "give deference to the district court's decision to allow the defendant to waive his right to counsel." Id. at 55, 176 P.3d at 1085. The Hook Court further maintained its long-held position "that even the omission of a canvass is not reversible error if it appears from the whole record that the defendant knew his rights and *insisted upon representing himself*." Id. (emphasis added) (interior citations and modifications omitted). Here, the record is clear that Appellant was insistent upon representing himself, and was unwavering in his belief that certain defenses and motions should be raised despite multiple counsels' advice to the contrary. See, e.g., 1AA at 75.

Appellant also cites to Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990), representing that the same held "that the constitutional right of self-representation can be properly denied or revoked, where: 'the case is especially complex, requiring the assistance of counsel.'" AOB at 40. Appellant's citation and representation thereof attempt to mislead this Court in two (2) ways. First, the Lyons Court did not mention, much less discuss at any length, revocation of a defendant's invoked right to self-representation. See generally, 106 Nev. 438, 796 P.2d 210. Second, and more

troubling, is Appellant's failure to acknowledge that Lyons was abrogated *on the specific ground of complexity*. See, Vanisi, 117 Nev. at 341, 22 P.3d at 1172 (clarifying that, though relevant to a court's determination of a defendant's understanding of the consequences of waiving counsel, "it is not an independent basis for denial of a motion for self-representation.").

Because the district court sufficiently canvassed Appellant, and because the record demonstrates Appellant's insistence upon representing himself, Appellant cannot show that the district court erred by granting Appellant's motion for self-representation. Therefore, Appellant's Amended Judgment of Conviction should be affirmed.

B. Appellant fails to demonstrate that the district court erred by not revoking Appellant's right to self-representation

Appellant next contends that "the district court also failed Miles by choosing not to implement standby counsel even once it was clear that Miles was drawing out the case and causing undue delay." AOB at 41. Appellant is wrong, and his failure to support this claim with any legal authority renders his argument without merit and insufficient to warrant relief.

As stated *supra*, Appellant's citation to Lyons for the proposition that the district court could, much less had some duty to, revoke Appellant's right to self-representation, is without merit, as that case does not set forth any such ability or responsibility. See generally, 106 Nev. 438, 796 P.2d 210. It is Appellant's duty to

"present relevant authority and cogent argument; issues not so presented need not be addressed." Maresca, 103 Nev. at 673, 748 P.2d at 6.

Furthermore, Appellant's position that he should have been "saved from himself" lacks merit. AOB at 41-42. In fact, the United States Supreme Court has summarized, "self-representation will often increase the likelihood of an unfavorable outcome but 'is based on the fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.'" McCoy, 138 S.Ct. at 1508, 200 L.Ed.2d 821 (quoting Weaver v. Massachusetts, 582 U.S. ___, ___, 137 S.Ct. 1899, 1908 (2017)). Appellant cannot now argue that the unfavorable result of his decision to represent himself, against the counsel of the district court, rendered the district court's allowance of self-representation erroneous.

Because Appellant cannot demonstrate that the district court had a burden to save him from his own poor decision, Appellant's Amended Judgment of Conviction should be affirmed.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court AFFIRM Appellant's Amended Judgment of Conviction.

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Dated this 19th day of May, 2020.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Niman*
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

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 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 5,057 words and 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 the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 19th day of May, 2020.

Respectfully submitted

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Niman*
JOHN NIMAN
Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 19, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

MARIO D. VALENCIA, ESQ.
Counsel for Appellant

JOHN NIMAN
Deputy District Attorney

/s/ E. Davis
Employee, Clark County
District Attorney's Office

JN/Joshua Judd/ed