IN THE SUPREME COURT OF THE STATE OF NEVADA

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

CASE NO: 79554

ANSWER TO PETITION FOR REVIEW

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and answers this Petition for Review in obedience to this Court's order filed March 29, 2021, in the above-captioned case.

This answer is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 8th day of April, 2021.

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

ARGUMENT

"Supreme Court review is not a matter of right but of judicial discretion." NRAP 40B(a). Pursuant to that statute, the Supreme Court considers certain factors when determining whether to review a Court of Appeals decision, including, "(1) Whether the question presented is one of first impression of general statewide significance; (2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or (3) Whether the case involves fundamental issues of statewide public importance." NRAP 40B(a). Appellants bear the burden of "succinctly stat[ing] the precise basis on which [they] seek[] review by the Supreme Court." NRAP 40B(d).

Appellant raises two claims in support of Supreme Court review. First, Appellant argues that the Court of Appeals ("COA") Amended Order of Affirmance ("COA Affirmance") conflicts with the Nevada Supreme Court decision in Culverson v. State, 95 Nev. 433, 596 P.2d 220 (1979), as it upheld a sentence that was allegedly disproportionate. Petition for Review ("Petition") at 1. Second, Appellant argues that the COA Affirmance also conflicts with Hooks v. State, 124 Nev. 48, 176 P.3d 1081 (2008),[1] as Appellant allegedly did *not* knowingly, intelligently, and voluntarily waive his right to counsel. Id. at 1-3.

[1] Appellant also includes a reference to Banks v. State, Supreme Court Case No. 75106, 2019 WL 4791704 (September 27, 2019) (unpublished disposition) as grounds for this Court's review. Petition at 1-3. This is not a cognizable reason for

I. APPELLANT FAILS TO DEMONSTRATE THE COA AFFIRMANCE CONFLICTS WITH CULVERSON

Appellant first claims that his sentence is disproportionate, and therefore is unconstitutional. See Petition at 3-8. Specifically, Appellant claims that his sentence was based on incorrect reasoning by the district court. Id. at 5. Appellant also argues that the sentences being imposed consecutively "shocks the conscience" so as to render Appellant's aggregate sentence unconstitutional. Id. at 6-8. Appellant's arguments are unavailing, and are further belied by the COA Affirmance.

A. Appellant's "sole reason" argument is belied by the record

Appellant argues that the district court based its sentencing decision on one, "*sole* reason." Petition at 5 (emphasis in original). However, the COA made the following analysis when upholding Appellant's conviction and sentence: "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.'" COA Affirmance at 3. Therefore, because the COA found *multiple* reasons upon which the district court based its sentencing decision – which reasons, according to the COA, *ratified* the sentence imposed – Appellant's allegation of

review. See NRAP 36(c)(2) ("An unpublished disposition…does not establish mandatory precedent…"). As such, the State has focused its argument on addressing Hooks, 124 Nev. 48, 176 P.3d 1081.

"factual inaccuracy" is belied by the record and cannot justify review of the COA Affirmance.

B. Appellant's sentence is constitutional under Nevada precedent

Appellant next argues that the imposition of consecutive sentences is disproportionate such "'as to shock the conscience'" and render his sentence unconstitutional. Petition at 6 (quoting Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489 (2009)). Appellant also relies on Solem v. Helm, 463 U.S. 277, 292 (1983) to argue that the COA should have found unreasonable disproportionality. Id.

The COA Affirmance expressly explains *why* Appellant's sentence *does not* "shock the conscience": first, Appellant's individual sentences fell within the applicable statutory limits. See COA Affirmance at 2-3. Second, Appellant's psychosexual evaluation determined that Appellant was "a high risk" to commit further offenses "both sexually and violently." See id. at 3. Therefore, the COA concluded, "the district court did not abuse its discretion because the sentences fell within the statutory parameters and the sentences were not disproportionate." Id.

The COA's rationales are supported by Nevada precedent. The Nevada Supreme Court has determined that, as long as a sentence is within the statutory limits, a sentence will not normally be considered cruel or unusual. Glegola v. State, 110 Nev. 344, 871 P.2d 950 (1994). Furthermore, the Nevada Supreme Court has recognized the Legislature's intent to grant district courts wide discretion when

imposing sentences concurrently or consecutively. Pitmon v. State, 131 Nev. 1334, 352 P.3d 655 (Ct. App. 2015).

While Appellant references other Nevada cases in which violent crimes received concurrent sentences,[2] Appellant's argument amounts to a mere demonstration of the district courts' recognized "wide discretion" in imposing sentences. See e.g., Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987). Indeed, "[t]he Eighth Amendment of the United States Constitution does not require strict proportionality between crime and sentence but forbids only an extreme sentence that is grossly disproportionate to the crime." Chavez, 125 Nev. at 347-48, 213 P.3d at 489; accord. Harmelin v. Michigan, 501 U.S. 957, 1000-01, 111 S.Ct. 2680 (1991) (plurality opinion). Therefore, Appellant's reference fails to undermine the COA Affirmance.

Finally, the Nevada Supreme Court has declined to apply a Solem analysis to any Nevada case, and should continue to do so here. See Houk, 103 Nev. 659, 747 P.2d 1376; see also Sims v. State, 107 Nev. 438, 814 P.2d 63 (1991); see also 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)). Instead, the Nevada Supreme

[2] While Appellant also references foreign cases and sentences, Appellant has failed to allege, much less demonstrate, that those cases have been adopted in Nevada, or that the respective statutes applicable in those cases are sufficiently similar to Nevada so as to be persuasive. See Petition at 7-8.

Court has consistently echoed its standard of review for allegedly excessive criminal sentences, expressly stating, "we do not review nondeath sentences for excessiveness." 132 Nev. 410, 414, 373 P.3d 98, 102 (2016). As Appellant is not subject to a sentence of death, this Court should continue to deny the review Appellant seeks.

In sum, Appellant fails to demonstrate that his sentence is so disproportionate so as to "shock the conscience." Moreover, Appellant fails to specifically demonstrate *how* the COA Affirmance conflicts with Culverson, as the Culverson Court *upheld* a sentence that fell within the statutory limits. See 95 Nev. at 435, 596 P.2d at 221-22. As such, Appellant is not entitled to review of the COA Affirmance. NRAP 40B(a).

II. APPELLANT FAILS TO DEMONSTRATE THE COA AFFIRMANCE CONFLICTS WITH HOOKS

Appellant next argues that, because he could did not sufficiently "understand the elements of *each* crime," nor " 'the dangers, disadvantages, and *consequences* of representing himself," he did not knowingly, intelligently, and voluntarily waive his right to counsel. Petition at 8-9 (*citing* Hooks, 124 Nev. 48, 176 P.3d 1081). Appellant's argument is belied by the record.

In affirming Appellant's conviction, the COA rejected Appellant's argument about the district court's canvass, finding that the district court "properly conducted a Faretta canvass and determined Miles's waiver was knowing, intelligent, and

voluntary." COA Affirmance at 7. In so finding, the COA noted, "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.'" Id. (quoting Graves v. State, 112 Nev. 118, 125, 912 P.2d 234, 238-39 (1996)). Of significance, the COA made specific findings in support of its conclusion that Appellant was aware of the referenced dangers and disadvantages:

> 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.

Id.

The district court's decision – and the COA's affirmance thereof – are expressly supported by Nevada and U.S. Supreme Court precedent. The U.S. Supreme Court explained in Faretta that an accused may insist on representing himself, "however counterproductive that course may be." Faretta v. California, 422 U.S. 806, 835, 95 S.Ct. 2525 (1975). Consistently, the U.S. Supreme Court later 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)). The Nevada Supreme Court has elaborated that the test is not whether a defendant is *capable* to defend themselves; instead, 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. 330, 337-38, 22 P.3d 1164, 1169-70 (2001).

Therefore, in light of Appellant's continued insistence that he be allowed to represent himself, the COA reasonably determined:

> …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-represented, and because the court inquired into a plethora of criteria for its determination.

COA Affirmance at 8.

Indeed, Appellant's invocation of Hooks is puzzling. See Petition at 8. The Hooks 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." 124 Nev. at 55, 176 P.3d at 1085. The Hooks 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). As such, the COA Affirmance is directly in line with Hooks when it explained, "Miles affirmatively desired to represent himself, and the court must honor his choice."

COA affirmance at 9. Because the COA Affirmance is in line with Hooks, it does not meet the criteria for review under NRAP 40B(a).

CONCLUSION

Based upon the foregoing and the record before this Court, the State respectfully submits that Appellant's Petition for Review should be denied.

Dated this 8th day of April, 2021.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this petition for review or answer 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 Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the page and type-volume limitations of NRAP 40, 40A and 40B because it is proportionately spaced, has a typeface of 14 points, contains 1,697 words and does not exceed 10 pages.

Dated this 8th day of April, 2021.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 8, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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