

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR MOORE

Appellant,

vs.

THE STATE OF NEVADA

Respondent

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Docket No. 82747

**Direct Appeal From A Judgment of Conviction After
Denial of A Motion to Modify/Correct/illegal Sentence**

Eighth Judicial District Court

The Honorable Michael Villani District Judge

District Court No. C-16-312844-1

APPELLANT'S AMENDED REPLY BRIEF

DAN M. WINDER, ESQ.
Nevada Bar No. 001569
3507 W. Charleston Blvd.
Las Vegas, Nevada 89102
(702) 878-6000

STEVEN B. WOLFSON, ESQ.
Clark County District Attorney
200 Lewis Ave.
Las Vegas, Nevada 89101
(702) 671-2500

AARON D. FORD, ESQ.
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

Counsel for Appellant

Counsel for Respondent

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed pursuant to that rule. These representations are made so that the justices of this Court may evaluate any potential conflicts warranting disqualification or recusal.

1. Attorney of Record for Appellant:
 - a. Dan M. Winder, Esq.
2. Publicly-held Companies Associated:
 - a. N/A
3. Law Firm(s) Appearing in the Court(s) Below:
 - a. Clark County District Attorney

DATED this 22nd of March, 2022.

/s/ Dan M. Winder
DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569

I. LEGAL ARGUMENT

THE STATE’S OPPOSITION CONFIRMS THAT WITHDRAWAL OF Appellant’S PLEA IS “FAIR AND JUST”.

The State concedes that Nevada Law allows the District Court to grant a motion made prior to sentencing or adjudication of guilt for any substantial reason that is fair and just. Stevenson v. State, 354 P. 3d 1277, 131 Nev. Adv. Op. 61 (2015). Although the State alleges that the “Appellant has failed to set forth any fair and just reason that should allow him to withdraw a guilty plea agreement...” that conclusion is untrue. Appellant alleged eight (8) reasons to support the

withdrawal of his guilty plea.¹ The State's Answering Brief only addresses one (1) reason offered by Appellant, and that opposition is insufficient.

Among other factors, it was pointed out in the trial court, that Appellant has a remedial IQ and is of special needs and was confused about the meaning of concurrent and consecutive. The State never addresses that allegation, and although Appellant's prior attorney never brought that concern to the Court's

¹ 1. Moore was never given explanation as to the consequences of the plea. Moore was led to believe, by prior counsel, that his plea was for concurrent time between all three (3) counts.

2. Moore has a remedial IQ and is of special needs and was confused about the meaning of concurrent and consecutive.

3. Moore would not have entered plea if he understood that he was getting consecutive time in addition to the stipulated second degree murder sentence.

4. Moore never had opportunity to speak with prior counsel personally. He was only afforded the chance to speak with his two inexperienced associates.

5. Prior counsel had been personally assigned responsibility for this case, but he assigned responsibility to two associated attorneys with very little experience. Neither had the requisite knowledge or experience or understanding of his case.

6. Moore felt under extreme pressure to immediately make a decision on accepting the plea agreement and did not have any time to review plea with prior counsel directly.

7. Moore was told he either signed the plea agreement, or he would go to trial immediately and lose resulting in his doing a life sentence.

8. Moore has always made it clear to prior counsel that in order to avoid trial, he would only accept a 10-25, but never agreed to anything more than that amount.

(Appellant's Opening Brief pgs 6-7)

attention, that allegation when coupled with all of the other reasons raised by Appellant makes it clear that withdrawal of the plea is warranted. Alternately, the State should honor the negotiations that Appellant believes was what he agreed to, 10 to 25 years on Count 1, with his sentence on Count 2 and Count 3 being run concurrent.

In further support of Appellant's appeal, one only need to look at the Guilty Plea Agreement signed by Appellant. On page 1, line 26 there was an interlineation made to the plea referring to the concurrent aspect of the plea. (RAP pgs 11-21) Apparently, even Appellant's counsel was confused as to the plea when he stated to the Court that "2 and 3 will be consecutive to - concurrent - consecutive to 1". The State even conceded that the plea "it's not explicitly clear." (RAP pgs 32-48) If the attorneys couldn't understand the plea, how could Appellant, a young man with special needs and a remedial IQ be expected to understand the plea?

When this confusion as to the terms of the plea negotiations, is coupled with Appellant's claim that he was rushed into the plea by his counsel, along with Appellant's claim that he was led to believe that he was pleading to concurrent time between all counts, along with the other claims Appellant stated in his Motion, all coupled with to Appellant's remedial IQ and his stated confusion as to

concurrent vs. consecutive time, it is clear that due process and fundamental fairness mandate the withdrawal of Appellant's plea. See Molina v. State, 120 Nev. 185, 189 (2004).

III.

CONCLUSION

Based upon all of the above, after looking at the “totality of the circumstance” State v. Freese, 116 Nev. 1097, 1104 (2000), it is clear that either Appellant should be allowed to withdraw his plea and proceed to trial, or Appellant should be afforded his believed negotiation running his sentence on Count 2 and Count 3 concurrent with the stipulation 10-25 year sentence on Count 1. (RAP pgs 22-24).

DATED this 23rd day of March, 2022.

/s/ Dan M. Winder
DAN M. WINDER, ESQ.
Nevada State Bar No.: 001569

CERTIFICATE OF COMPLIANCE

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 WordPerfect Office - Version X5 in Times New Roman, font size 14.

I further certify that this brief complies 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)©, it does not exceed fifteen (15) pages.

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 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

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Rules of Appellate Procedure.

DATED this 23rd day of March, 2022.

Respectfully submitted,

/s/ Dan M. Winder

DAN M. WINDER, ESQ.

Nevada Bar No. 001569

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this 23rd day of March, 2022 a true and accurate copy of the Appellant's Reply Brief was electronically filed with the Nevada Supreme Court. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Steven B. Wolfson, Esq.
Clark County District Attorney
200 Lewis Ave.
Las Vegas, Nevada 89101

Aaron Ford, Esq.
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3420

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

ARTHUR MOORE
NDOC No. 1090745
Southern Desert State Prison
20825 Cold Creek Rd.
Indian Springs, NV 89018

/s/ Sherrie Martin
An Employee of Dan M. Winder, Esq.