

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

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TED MICHAEL DONKO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO:

Electronically Filed  
Jun 15 2021 02:44 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
83037

**STATE'S RESPONSE TO APPELLANT'S MOTION TO CONSOLIDATE  
APPEALS 81075 AND 83037**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, JOHN NIMAN, and submits this Response to Appellant's Motion to Consolidate appeals 81075 and 83037 ("Motion").

This motion is based on the following memorandum, declaration of counsel, and all papers and pleadings on file herein.

Dated this 15<sup>th</sup> day of June, 2021.

Respectfully submitted,

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

BY */s/ John T. Niman*

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JOHN T. NIMAN  
Deputy District Attorney  
Nevada Bar #014408  
Office of the Clark County District Attorney

## **MEMORANDUM OF POINTS AND AUTHORITIES**

On June 14, 2021, Appellant filed a Motion to consolidate appeals 81075 and 83037. An identical Motion was filed in case 83037 on June 15, 2021. The State is filing identical responses in each case.

Appellant's appeal in case 83037 arises from the district court's entry of an amended Judgment of Conviction, filed May 25, 2021. Appellant's Motion represents that "[t]he sole appellate issue in Case No. 83037 arises from a post-trial ruling regarding a change in Donko's aggregate sentencing structure in the same district court case; this issue has already been substantively briefed and addressed by both parties in the Opening and Answering Briefs filed in Supreme Court Case No. 81075." Motion at 3.

Appellant is correct that the issue has been substantively briefed by both parties in appeal 81075. To the extent that consolidation prevents unnecessary and duplicative briefing by the parties, and preserves the limited judicial resources of this Court, the State has no objection to consolidation.

Notably, however, the amended Judgment of Conviction changes to some degree the posture or relevance of arguments already made in appeal 81075. For instance, Appellant argued that the district court erred in retaining jurisdiction over restitution without a legal basis. Appellant's Opening Brief, pages 26-28. The State responded to this argument in the Answering Brief. Answering Brief at 26-30.

Appellant has received an extension of time to file the Reply brief, but has not yet filed it as of the date of this response. The Amended Judgment of Conviction, however, no longer purports to retain jurisdiction over restitution, rendering these arguments moot. Amended Judgment of Conviction, filed May 25, 2021, at 3-4. Additionally, it's questionable whether the district court had the jurisdiction to file an amended Judgment of Conviction when appeal was taken from the initial Judgment of Conviction and jurisdiction rested with this Court. *See Foster v. Dingwall*, 126 Nev. 49, 52, 228 P.3d 453, 455 (2010) (holding that a district court is divested of jurisdiction to modify a judgment when an appeal is perfected from a prior judgment.)<sup>1</sup>

With those two notations, the State respectfully submits the decision of whether to consolidate cases 81075 and 83037 to this Court.

Dated this 15<sup>th</sup> day of June, 2021.

Respectfully submitted,

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

BY /s/ John T. Niman

JOHN T. NIMAN  
Deputy District Attorney  
Nevada Bar #014408  
Office of the Clark County District Attorney

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<sup>1</sup> To be clear, the State is not objecting to the amended Judgment of Conviction, but is just mentioning the potential issue for this Court's consideration when this Court determines whether to grant Appellant's Motion.

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 15<sup>th</sup> day of June, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

AUDREY M. CONWAY  
Chief Deputy Public Defender

JOHN T. NIMAN  
Deputy District Attorney

*/s/ J. Garcia*

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Employee, Clark County  
District Attorney's Office

JTN//jg