IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN DRYDEN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 83233

RESPONDENT'S ANSWERING BRIEF

Appeal From the Denial of a Motion to Withdraw Guilty Plea
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

Pursuant to NRAP 17(b)(3), this case is presumptively assigned to the Nevada Court of Appeals because it is an appeal from a judgment of conviction based on a guilty plea regarding a category B felony.

STATEMENT OF THE ISSUE

I. Whether the district court properly denied Dryden's Motion to Withdraw Guilty Plea when the totality of circumstances show Appellant failed to provide a fair and just reason to allow him to withdraw his plea.

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STATEMENT OF THE CASE

On September 19, 2018, Bryan Dryden ("Dryden") was charged by way of Indictment with one count of Sexual Assault With Use of a Deadly Weapon. ("Appellant's Appendix") BD00001.

On November 5, 2019, Dryden pled guilty to the lesser charge of Attempt Sexual Assault. Respondent's Appendix ("RA") 054. On that same day, an Amended Indictment was filed in open court. RA 062.

On January 7, 2020, prior to sentencing, Dryden indicated that he wanted to withdraw his guilty plea and Marisa Border, Esq. was appointed counsel for the limited purpose of determining whether a plea withdrawal was permitted. RA 064

On March 2, 2020, Dryden filed a Motion to Withdraw Guilty Plea (Prior to Sentencing). BD00004. The State filed an Opposition on March 31, 2020. RA 065. A three-day evidentiary hearing was held throughout a span of a few months on August 13, 2020, October 13, 2020, and October 29, 2020. BD00043; BD00065; RA 072. On December 10, 2020, Dryden, through counsel, filed Defendant's Brief in Support of Motion to Withdraw Guilty Plea. BD0009. On December 30, 2020, the State filed Brief in Support of State's Opposition to Defendant's Motion to Withdraw Guilty Plea. RA 103. The district court denied the Motion to Withdraw Guilty Plea on January 28, 2021. BD00025.

On July 8, 2021, Dryden was adjudged guilty of Attempt Sexual Assault (Category B Felony) and sentenced to a minimum of sixty (60) months and a maximum of two hundred forty (240) months in the Nevada department of Corrections, concurrent with case 09C258241, with zero (0) days credit for time served, and a special sentence of lifetime supervision imposed, and ordered to register as a sex offender. RA 114. Additionally, Dryden was ordered to pay the following fees: $25.00 Administrative Assessment Fee, $967.00 Psychosexual Evaluation Fee, $2,575.81 Restitution payable to Clark County Social Services and $150.00 DNA Analysis Fee including testing to determine genetic markers plus $3.00 DNA Collection Fee. RA 114.

Dryden, through counsel, filed a Notice of Appeal on July 14, 2021. BD00028. On that same day, Mr. Abbatangelo filed a Motion to Withdraw as Attorney of Record. RA 117. The district court granted Mr. Abbatangelo's Motion to Withdraw on July 28, 2021. BD00015.

Dryden's Judgment of Conviction was filed July 29, 2021. RA 114.

On August 13, 2021, Dryden in pro person, filed a Notice of Appeal to withdraw his guilty plea. RA 122.

On August 13, 2021, Dryden filed two motions: Motion to Withdraw Counsel and Motion to Withdraw Counsel on Record & Appoint New Counsel to Appeal the Withdrawal of Plea Deal from Judgment of Conviction (6-8-21). RA 131; RA 127.

On September 22, 2021, the State filed its response to both Motions. RA 137. On October 5, 2021, the district court clarified that there was a direct appeal and the Nevada Supreme Court denied counsel's request to withdraw. RA 150. Consequently, Mr. Abbatangelo requested his Motion be withdrawn and stricken. RA 150.

Dryden, through counsel, filed an Opening Brief on March 4, 2022.

STATEMENT OF THE FACTS

On August 29, 2007, K.S. reported she was sexually assaulted by an unknown male. RA 023-26. On the night of the attack, K.S. and the male were walking together from Flamingo to Tropicana, cutting through the desert. RA 023-24. K.S. was struck from behind and hit her head on something as she fell. RA 025. She "came to" with the male kicking her and telling her to get dressed. RA 025. K.S. knew the male had a gun because he had previously told her, and she saw the outline of the gun when she fell and when she came to. RA 025. Believing she was going to die, K.S. threw her underwear into a bush to leave evidence of the crime. RA 025-26.

K.S. got up and ran for her life towards a gas station as the male screamed that he was going to shoot her. RA 026. She made it to the gas station and called 911 from a payphone but dropped the phone when she saw he was getting close. RA 026. K.S. ran inside the gas station while the male continued screaming that he was going

to kill her. RA 026-27. The police arrived and K.S. was taken to the hospital. RA 027.

K.S. knew she was sexually assaulted because she has a medical condition that makes sex very painful and makes her bleed. RA 029. That night, K.S. experienced that same pain; additionally, her vaginal area was sticky, and her chest was heavy and in pain as if someone had put a lot of pressure on it. RA 028-29.

On April 18, 2018, a cold-case detective following a new forensic lead in K.S.'s case interviewed Appellant. RA 013. Appellant initially denied having ever seen or knowing K.S. and denied any involvement in the rape. RA 013-16. When the detective asked Appellant if he knew what DNA is, Appellant replied, "Yeah. They've got DNA on me?" RA 016. After Appellant was informed that DNA was found inside K.S., Appellant stated, "If I had sex with her, I didn't, it was consensual." RA 016. Towards the end of the interview, the detective executed a search warrant to collect a buccal swab from Appellant. RA 017. After the warrant was executed, Appellant changed his story and admitted to having sex with K.S., "I didn't rape her, we got drunk and we had sex in a field." RA 017.

On or about June 13, 2018, an analysis report comparing Appellant's DNA sample and DNA from K.S.'s sexual assault kit was distributed: Appellant's DNA matched the profile obtained from the sperm of the vaginal and cervical swabs of K.S.'s sexual assault kit. RA 009-10.

SUMMARY OF THE ARGUMENT

The district court did not err in denying Appellant's motion to withdraw his plea because Appellant lacked any fair and just reason to do so.

The totality of circumstances shows Appellant's allegations – counsel's failure to explain the sentencing structure; counsel's bribe and coercion to plead guilty; complete breakdown of communication with his counsel; and cognitive inability to plead guilty due to lack of medications – are belied by the record, including by Appellant's own admission that he used the instant plea as a placeholder. The record further demonstrates that Appellant's actions are a scheme to take advantage of the system as he previously attempted to do so in his other case, 09C258241. In that case, Appellant also alleged issues with his medications and that he was coerced by counsel.

Accordingly, the district court properly found that Appellant's reasons did not create any fair and just reason to allow him to withdraw his guilty plea.

ARGUMENT

I. THE TOTALITY OF CIRCUMSTANCES DOES NOT SHOW A FAIR AND JUST REASON TO ALLOW APPELLANT TO WITHDRAW HIS GUILTY PLEA

Entry of a guilty plea is a solemn act, not lightly accepted. United States v. Ensminger, 567 F.3d 587, 592–93 (9th Cir. 2009). Although a defendant may, prior to sentencing withdraw his plea for a substantial reason which is "fair and just,"

Stevenson v. State, 131 Nev. 598, 601, 354 P.3d 1277, 1279 (2015), "[o]nce the plea is accepted, permitting withdrawal is, as it ought to be, the exception, not an automatic right." Ensminger, 567 F.3d at 593. When determining whether a defendant has shown such a substantial reason that it is fair and just to allow the privilege of withdrawing the guilty plea, the district court looks at the totality of the circumstances, including but not limited to whether the plea was entered knowingly and voluntarily. Stevenson, 131 Nev. at 603, 354 P.3d at 1279–80.

When a defendant has made a tactical decision to enter a guilty plea, a change of mind or a determination that choosing to enter the plea was a bad choice is not sufficient to allow withdrawal of the plea. Id. at 605, 354 P.3d at 1281–82. The purpose of focusing on what is fair and just is "to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty." United States v. Alexander, 948 F.2d 1002, 1004 (6th Cir. 1991) (internal quotation marks omitted).

A defendant may not use the agreement as a placeholder until he determines a more favorable course of action. Ensminger, 567 F.3d at 593. Even a good faith change of heart is not a fair and just reason. Id. ("Our prior decisions make clear that a change of heart—even a good faith change of heart—is not a fair and just reason that entitles Ensminger to withdraw his plea, even where the government incurs no

prejudice."). Similarly, the Court must not "allow the solemn entry of a guilty plea to 'become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim.'" Stevenson, 131 Nev. at 605, 354 P.3d at 1282 quoting Barker, 514 F.2d at 221.

Before sentencing, a defendant may withdraw his guilty plea for any reason that is fair and just. Id. A district court must consider the totality of the circumstances and is not confined to issues of whether the plea is free and voluntary. Id. However, the Court's reasoning in Stevenson does not give a defendant carte blanche to withdraw his guilty plea before sentencing. In fact, the Stevenson Court affirmed the lower court's decision denying Stevenson's motion to withdraw his plea, despite claims that he was coerced into pleading guilty by the court's unfavorable rulings, misled by defense counsel about the availability of evidence, and left with very little time to decide whether to enter his plea. Id. The Court was also unpersuaded by the defendant's claims that he was acting impulsively and made a split-second decision to enter his plea. Id. In denying Stevenson's myriad of claims, the Court reasoned that he had failed to present a substantial reason to withdraw his plea and, "to withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to 'become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim.'" Id. (quoting United States v. Barker, 514 F.2d 208, 221 (D.C. Cir. 1975)).

As a preliminary matter, Dryden contends a fundamental deficiency occurred because the district court did not make any specific credibility findings. Appellant's Opening Brief ("AOB") at 7-8. This argument fails for two reasons.

First, there is no requirement that the district court explicitly state or include in its order specific credibility determinations. The cases Dryden cites stand for the proposition that factual determinations are given deference on appeal, not that specific credibility determinations are required.

Second, although not required, the district court did make specific credibility determinations. In denying the motion, the court stated, "I did sit through the hearing and observed all the testimony and I do not find a basis to withdraw the guilty plea. It's going to be denied as set forth in the State's brief and opposition." The credibility determinations were specifically made by referencing them in a separate document. The district court further made specific credibility determination regarding Dryden's allegations against his counsel. After the district court pronounced its ruling, Dryden interjected:

> THE DEFENDANT: I mean, this is crazy that there's no merit, that my counsel paid me to take the guilty plea and then told me to lie through the plea canvass.
>
> THE COURT: I sat, I observed, and I don't believe that for a minute, Mr. Dryden.

BD00025. The court explicitly and specifically stated it did not find Dryden credible.

Even if this Court holds those specific credibility findings lacking, the district court's denial of Dryden's motion is an implicit finding that Dryden's testimony was not credible. Thus, no fundamental deficiency occurred.

Dryden next contends that the district court should have allowed him to withdraw his plea because: (1) his attorney did not properly explain the sentencing structure to him; (2) there was a breakdown of communication between him and his counsel; (3) he was coerced and bribed by his attorney to enter his plea; and (4) he was unable to make a capable decision because of the delay in his numerous psychiatric medications. AOB at 9-15. The district court properly found that Dryden's reasons did not create any fair and just reason to allow him to withdraw his guilty plea. The totality of the circumstances shows Dryden's claims are belied by the record including by Dryden's own admission that he used this plea as a placeholder. Dryden's credibility is further undermined as he raised the ***exact*** arguments – he was not properly medicated, and his counsel coerced him into pleading guilty – in his prior murder case.

(1) Allegedly counsel did not properly explain the sentencing structure to Dryden

Dryden contends there was a misunderstanding regarding the recommended sentence and parole eligibility. AOB at 9-10. Dryden allegedly believed, because of counsel's advice, that the State's offer was four (4) to ten (10) years when in fact Dryden's recommended sentence was five (5) to twenty (20) years. AOB at 9-10.

This claim is belied by the record as the Guilty Plea Agreement ("GPA"), counsel's testimony at the evidentiary hearing, and Dryden's plea canvass demonstrate that he was aware that the recommended sentence was five (5) to twenty (20) years.

The GPA states on two different pages that the recommended sentence was five (5) to twenty (20) years. Likewise, the GPA also stated on different pages that the court was not obliged to accept the parties' stipulated sentence.

> The parties stipulate to a sentence of five (5) years to twenty (20) years in the Nevada Department of Corrections, to run concurrently with Case No. 09C258241.
>
> …
>
> I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than TWO (2) years and a maximum term of not more than TWENTY (20) years.
>
> …
>
> I understand that if more than one sentence of imprisonment is imposed and I am eligible to serve the sentences concurrently, the sentencing judge has the discretion to order the sentences served concurrently or consecutively.
>
> …
>
> I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.
>
> I understand that if my attorney or the State of Nevada or both recommend any specific punishment to the Court, the Court is not obligated to accept the recommendation.

RA 045-48.

At the evidentiary hearing, Dryden's counsel testified that he reviewed every page of the GPA with Dryden.

> Q: So, Mr. Abbatangelo, you had just testified that you went through the guilty plea agreement with Mr. Dryden, correct?
>
> A: Yes
>
> Q: Okay. And in doing so, you went through the actual specifics of the negotiation which was that both parties were agreeing to 5 to 20 years in the Nevada Department of Corrections, correct?
>
> A: Yes, I go right -- page by page.

BD00078-79. Thereby, since the recommended sentence appeared on two pages of the GPA and counsel reviewed the GPA with Dryden, page by page, Dryden was aware of the recommended sentence.

Dryden's claim is further belied by the entry of plea transcript because the recommended sentence was also placed on the record and Dryden confirmed the recommendation was five (5) to twenty (20) years:

> THE COURT: All right. My understanding this case is negotiated. I have a guilty plea agreement here. What are the negotiations?
>
> MR. ABBATANGELO: Your Honor, at this time, we'll be pleading to attempt sexual assault, stip to 5 to 20, run concurrent to 09C258241.
>
> THE COURT: Is that your understanding of the negotiations, Mr. Dryden?
>
> THE DEFENDANT: Yes ma'am.

RA 058. Dryden was thoroughly canvassed about the sentencing, including that he was not guaranteed any sort of sentence by pleading guilty sentencing was solely up to the court.

> The Court: Do you understand the range of punishment is 2 to 20 years in the Nevada Department of Corrections?
>
> The Defendant: Yes.

RA 061. The court reiterated that same point when Dryden implied that the underlying sentence would run concurrent with his other case:

> The Court: do you understand that while it's probationable sentencing is up to me including whether the court runs consecutive or concurrent to anything else?
>
> The Defendant: Yes ma'am.
>
> The Court: And no one can promise you probation, leniency, or any special treatment; you understand that?
>
> The Defendant: We just went over the- running it concurrent with my current charge.
>
> The Court: But there's no guarantees.
>
> The Defendant: right, it's up to you.
>
> The Court: It's still going to be ultimately up to me.
>
> The Defendant: Yes ma'am.

RA 061.

As the record belies Dryden's claim of being unaware of the recommended sentence, accordingly, the record renders Dryden's collateral claim concerning parole eligibility meritless. The evidentiary hearing transcript also demonstrates that counsel did not advise Appellant that he would be eligible for parole in eight (8) years instead of twelve (12):

> Q: Okay. So, in discussing a situation like Mr. Dryden's where you were already aware in his other case that he had been denied parole, would you have gone through that same situation here if he had accepted this negotiation, been denied parole, how much time it would take for him to expire his sentence?
>
> A: I don't recall going over the time it would take for his sentence to actually expire
>
> Q: Are you aware as you sit there what it would take on a 5 to 20-year sentence for someone to clean up their case?
>
> A: I would usually tell people the max and the minimum is 40 percent off the top which would be 12 years.
>
> …
>
> Q: Do you have any specific recollection of telling Mr. Dryden that he would have cleaned up his 5 to 20-year sentence within 8 years?
>
> A: I do not recall that. I don't recall talking about any expiration.

BD00079-80. Thus, if counsel discussed Dryden's parole eligibility, then it would have been based on 5-20 years and not 4-10 years.

Therefore, Dryden's claims regarding recommended sentencing and parole eligibility fail and are not fair and just reasons to allow Dryden to withdraw his guilty plea.

(2) Counsel allegedly bribed and coerced Dryden to plead guilty

In his Motion to Withdraw Guilty Plea, Dryden claimed that his counsel bribed him with a television and tennis shoes to plead guilty and advised Dryden to lie at the entry of plea. BD00004. Dryden now attempts to use this baseless

accusation as a misunderstanding to find a fair and just reason to withdraw his plea. AOB at 11-12. The record, however, shows Dryden is taking advantage of the friendly relationship he had with his counsel, Mr. Abbatangelo.

Under oath, counsel testified at the evidentiary hearing that he had a good relationship with Dryden. BD00057. Dryden was always polite with counsel and even gifted counsel a handmade religious cross. BD00057. Mr. Abbatangelo believed Dryden was sincere and believed Dryden when Dryden said he had changed his ways. BD00057. While discussing Dryden's guilty plea, Dryden pointed out that a television would be a great distraction to spend the additional years he would serve as a result of pleading guilty. BD00077-78. Being fond of Dryden and knowing that Dryden does not have family or friends to support him while incarcerated, counsel decided to gift Dryden a television and tennis shoes - at Dryden's request. BD00077, 00086. Mr. Abbatangelo made Dryden aware that counsel enjoys trials in part because of the monetary gain so the only person taking a risk by going to trial was Dryden. BD00078. Counsel also testified to informing Dryden that regardless of whether Dryden t pled guilty, counsel would still have gifted Dryden a television because counsel liked Dryden as an individual. BD00058. The district court heard counsel and Dryden's testimonies and found Dryden was not credible in his allegations that counsel bribed him and forced him to lie at the entry of plea.

BD00025. As will be discussed below, this is not the first time Dryden alleges a counsel has forced him to plead guilty against his will.

Accordingly, the district court found Dryden fabricated and manipulated the situation. Thus, Dryden's claim regarding bribery and coercion is not a just and fair reason to permit him to withdraw his guilty plea.

(3) Alleged breakdown of communication between Dryden and his counsel

Dryden contends that the district court should have granted his motion because of the "fundamental disagreements and disputes with his counsel." AOB at 12. In support of his contention, Dryden cites cases including Ramirez v. Yates, 71 F. Supp. 3d 1100 (N.D. Cal. 2014) and Stenson v. Lambert, 504 F.3d 873, 8876-87 (9th Cir. 2007), which hold that ineffective assistance of counsel can stem from a complete breakdown of communication between an attorney and the client. AOB 13-14. These cases – where the courts determined there was no breakdown of communication between the defendants and their attorneys – are factually similar to the instant case.

In Ramirez, the Petitioner claimed "the trial court abused its discretion when it failed to grant his motion to substitute counsel during trial and before sentencing ... and failed to adequately inquire into the breakdown in the attorney-client relationship…" Ramirez, 71 F. Supp. 3d at 1113. There, the Ramirez Court noted that "the Sixth Amendment does not guarantee a 'meaningful relationship' between

a client and his attorney." Id. at 1114 (quoting Morris v. Slappy, 461 U.S. 1, 14 103 S.Ct. 1610, 75 (1983)). Ramirez alleged a complete breakdown of communication based on his counsel not taking notes while the prosecution's leading witness testified and reading the California Vehicle Code for approximately half an hour when the book was irrelevant to his case. Id. As a result of this, Ramirez lost all confidence in his counsel and could no longer communicate with him. Id. The Ramirez Court determined there was no breakdown in communication where the district court considered Appellant's allegations at length via hearings; Ramirez's counsel conveyed continuous communication and provided reasonable justifications for his strategical decisions; and the trial court observed the courtroom and assured Ramirez that his counsel was taking notes. Id. at 1115-16.

In Stenson, the Washington Supreme Court rejected Stenson's claim of complete breakdown of communication in the attorney-client relationship because the trial court held several hearings to determine whether there was a breakdown of communication. 504 F.3d 886-87. At the hearings, the trial court scrutinized the lines of communication between Stenson and co-counsels and found there was no breakdown of communication. Id.

Similar to Ramirez and Stenson, the district court in this case considered Dryden's allegations regarding his claims that counsel bribed him to plead guilty and advised him to lie at the plea canvass and had inadequate interactions with

counsel. To determine these claims, the district court appointed Marisa Border as Dryden's counsel, set a briefing schedule, and conducted an evidentiary hearing where Dryden and Mr. Abbatangelo testified. RA 064. Like the counsels in Ramirez and Stenson, Mr. Abbatangelo was questioned regarding his communication with Dryden.

Under oath, Mr. Abbatangelo testified he visited Dryden in prison several times, sometimes by himself and other times with his investigator. BD00056. Mr. Abbatangelo discussed the case with Dryden, and both were ready to go forward with trial; the week before trial, Mr. Abbatangelo met with Dryden at least three (3) times. BD00056, 00059. The day before trial, however, Dryden decided to plead guilty. BD00056.

Mr. Abbatangelo also testified that he reviewed the GPA with Dryden. BD00078. The State's offer was the same before the weekend as the day of the trial, so Mr. Abbatangelo was able to speak with Dryden multiple times about the same offer. After observing and listening to Mr. Abbatangelo and Dryden's testimonies and reading the parties' briefs, the district court found Dryden's allegations against Mr. Abbatangelo were groundless. BD00025. Further, the record shows that there was not a complete nor any sort of breakdown in communication as neither party stopped nor refused to speak to each other. The record shows they were in communication throughout the proceedings. Dryden is not entitled to a particular

relationship with Mr. Abbatangelo. Morris, 461 U.S. at 14, 103 S.Ct. at 75. This claim of communication breakdown is simply an excuse for Dryden to withdraw his guilty plea and thus not a fair and just reason to permit him to do so.

(4) Dryden allegedly was unable to make a capable decision because of the delay in his numerous psychiatric medications

Dryden claims that days prior to the entry of plea he was deprived of his medications, which resulted in mental and physical anguish such that he did not understand the GPA and only pled guilty because he felt "the torture would end." AOB at 14-15. This claim is also belied by the record in numerous instances.

By signing the Guilty Plea Agreement in this case, Dryden acknowledged that:

> I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.
>
> All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.
>
> I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.
>
> I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.
>
> I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.

> My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

RA 049-50.

At the evidentiary hearing, counsel testified regarding Dryden's state of mind and demeanor. Dryden was lucid and understood the questions asked of him, and questions he asked when counsel reviewed the GPA with Dryden. BD00076. Counsel further testified that one (1) week prior to trial, Dryden appeared fine:

> He seemed to be understanding everything. He – I would say would be a typical client right before jury trial for these types of charges because they're – you know, if we lose, you're doing ten years minimum. So, he – there were sometimes he seemed a little anxious but he seemed to be understanding everything and very lucid.

BD00060.

Further, the only medical-related complaint Dryden had was about food poisoning. BD00076. Dryden never complained to counsel that he was not receiving the appropriate amount of medication to understand the proceedings. BD00076. This is also confirmed by the plea canvass:

> THE COURT: Are you currently under the influence of any drug, medication, or alcoholic beverage?
>
> THE DEFENDANT: No ma'am.
>
> THE COURT: Do you understand the proceedings that are happening here today?
>
> THE DEFENDANT: Yes ma'am.

RA 048. He was further canvassed:

> The Court: Have you discussed this case with your attorney?
>
> The Defendant: Yes ma'am. . . .
>
> The Court: Are you making this plea freely and voluntarily?
>
> The Defendant: Yes, I am.
>
> The Court: Has anyone forced or threatened you or anyone close to you to get you to enter this plea?
>
> The Defendant: No ma'am
>
> The Court: Has anyone made you promises other than what's contained in the guilty plea agreement to get you to enter this plea?
>
> The Defendant: No ma'am

RA 048.

Dryden's claim is further contradicted by his own testimony at the evidentiary hearing. Dryden specifically stated multiple times during the testimony that he used his guilty plea as a placeholder. A defendant may not use the agreement as a placeholder until he determines a more favorable course of action. Ensminger, 567 F.3d at 593. He discussed both his physical and mental "anguish" at length, but then stated, "I was just sure that I would be able to withdraw my plea and get new counsel by the fact that he was paying me and agreed to pay me if I took this deal." BD00084. Dryden repeats himself again, stating:

> A: My thoughts were just that I was going to have the plea overturned. I was going to put in a withdrawal of plea to try to get new counsel. I really wasn't in the right frame of mind to take the plea deal, no.
>
> Q: Okay. And those were your thoughts on the actual day you entered your plea on November 5th of 2019?
>
> A: That was my – my thoughts were that I would be able to withdraw my plea under grounds of coercion, regardless of what I was signing to. I – especially if I was to get a financial statement with his name and money on there, my thoughts were that nothing mattered except for that. That's all I could think of.

BD00085. Additionally, when asked by the State if he lied to the judge when entering his plea he stated, "I don't believe so I don't believe I was lying, I was telling the – as much as I could to secure a plea deal that I was made to believe was the best thing for me, which I found out was not the truth." RA 080. Dryden made his intentions even clearer in the following exchange:

> Q: And that was the plan from the beginning, to go in there, plead guilty, and then later withdraw it?
>
> A: If I felt it necessary, yes.

RA 085.

The record coupled with the fact that Dryden has made the same arguments to withdraw his plea in his prior murder case demonstrates this is a ploy. At the evidentiary hearing, the State introduced several exhibits, including Dryden's Motion to Withdraw Guilty Plea in case 09C258241 – wherein like the instant case Dryden pled guilty on the day of trial – and the Nevada Supreme Court's Order of

Affirmance. RA 076-77; 151-166; 167-170. He also used the same arguments regarding his medication and coercion by his attorney in order to attempt to withdraw his plea. RA 076. Dryden's Motion to Withdraw Guilty Plea went in front of the Nevada Supreme Court, where the Nevada Supreme Court determined there was no basis for his claims. In 09C258241, Dryden argued that he was unable to enter his plea voluntarily because he took too many of his medications and was coerced. RA 151-166. The Nevada Supreme Court Stated in the Order of Affirmance No. 58822:

> We conclude that Dryden has failed to substantiate his coercion claims. First, the district court canvassed Dryden on his understanding of the proceedings, the nature of the charges, and the possible penalties. Second, Dryden signed a plea agreement memorializing the negotiations and attesting that this plea was not coerced. Third, during the canvass, he admitted his guilt and claimed to enter the plea voluntarily….Dryden also argues that his plea was unknowing and involuntary because he was under the influence of psychiatric medication. We disagree. Here, the district court was aware of Dryden's medications. He was specifically canvassed on his medication use. . . Further, Dryden signed a written plea agreement attesting that he was not under the influence of any controlled substance which would impair his comprehension or understanding of the plea.

RA 168.

Likewise, here, there is no basis for Dryden's arguments in the instant case. All the above facts discussed by the Nevada Supreme Court in Dryden's prior case hold true in this case. Dryden was canvassed thoroughly by the court. Based on his own statements at the evidentiary hearing, he is attempting to game the system to his advantage, entering a plea until he can later come up with arguments that he feels

will allow him the withdraw that very plea. The only evidence put forth to support his allegations are his self-serving statements that he lacked an understanding of what was occurring, while in the next breath stating he was simply using the plea as a place holder.

To allow Dryden to withdraw his guilty plea based on these unsubstantiated allegations would be the very issue the Stevenson decision was trying to avoid: "To withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to 'become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim." Stevenson, 131 Nev. at 605, 354 P.3d at 1282 quoting Barker, 514 F.2d at 221. Dryden is trying to abuse and game the system to his advantage. The decision in Stevenson is used to uphold the integrity of the guilty plea system and it is clear this is the type of claim Stevenson is supposed to prevent. Id. The totality of the circumstances show that Dryden had a change of heart about pleading guilty. This, however, can never be a reason, even if it made in good faith, to withdraw a guilty plea. Dryden agreed to the guilty plea, was canvassed by the court, and found to have entered the agreement freely and voluntarily. He agreed he was not under duress or coercion, had adequately reviewed the materials of the guilty plea agreement with his attorney, and he was not being promised anything by anyone to plead guilty. Thus, Dryden has shown no fair or just reason to withdraw his guilty plea.

CONCLUSION

Based on the foregoing, the State respectfully requests the denial of Dryden's Motion to Withdraw Guilty Plea be affirmed.

Dated this 4th day of May, 2022.

Respectfully submitted,

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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 2003 in 14 point font of the Times New Roman style.
2. **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)(C), it is either proportionately spaced, has a typeface of 14 points of more, contains 5,611 words and 25 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 4th day of May, 2022.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 4th day of May, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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