

1 only if dissatisfied with the history set forth in the fast track statement: The State
2 adopts Appellant's procedural history

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4 6. Statement of facts. Briefly set forth the facts material to the issues on
5 appeal only if dissatisfied with the statement set forth in the fast track statement
6 (provide citations for every assertion of fact to the appendix, if any, or to the rough
7 draft transcript): The State accepts Appellant's statement of facts, and further notes
8 that Appellant on December 1, 2020, the Appellant entered a plea of no contest to
9 one count of Conspiracy to Possess a Controlled Substance, a Gross Misdemeanor, in
10 violation of NRS 199.480, NRS 193.140 and NRS 453.336). (See Respondent's Exhibit
11 pages 5-11). The facts of this case arise from an incident on February 8, 2020, where
12 the Appellant was in possession of a Scheduled 1 Controlled Substance-
13 Methamphetamine in Winnemucca, Humboldt County, Nevada. On August 13, 2021,
14 the Appellant was then sentenced, by way of an Amended Judgment of Conviction, to
15 Three Hundred Sixty-Four (364) days in the Humboldt County (NV) Detention
16 Center, with credit for time served of one hundred eighty-two days (182). (*Id.*). The
17 Respondent alleges that Appellant was sentenced properly by the District Court under
18 Nevada law, and given credit for all pre-sentencing time served in confinement in
19 Humboldt County, Nevada.

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21 7. Issues on appeal. State concisely your response to the principal issue
22 in this appeal. Respondent objects to Appellant's statement of the issue on appeal and
23 notes the issues on appeal as follows:
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1 I. Did the District Court exceed its authority when it imposed a term of
2 Three Hundred Sixty-Four (364) days in the Humboldt County (NV) Detention
3 Center, with credit for time served for one hundred eighty-two (182), suspended that
4 sentence, placed the Appellant on Probation and ordered the Appellant to complete
5 Humboldt County Mental Health Court Program, as a condition of her probation?
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7 ISSUE I: The District Court did not exceed its authority when it imposed a
8 term of Three Hundred Sixty-Four (364) days in the Humboldt County (NV)
9 Detention Center, with credit for time served for one hundred eighty-two (182),
10 suspended that sentence, placed the Appellant on Probation and ordered the
11 Appellant to complete Humboldt County Mental Health Court Program, as a
12 condition of her probation.
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14 Under Nevada law, this Court has previously ruled that the sentencing judge
15 has wide discretion in imposing a sentence, and that this determination will not be
16 overruled absent a showing of abuse of discretion, *Norwood v. State*, 112 Nev. 438, 915
17 P.2d 177 (1996), *citing Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987).
18 Additionally, a sentencing court is often privileged to consider facts and circumstances
19 which would clearly not be admissible at trial, *Silks v. State*, 92 Nev. 91, 93-94, 545
20 P.2d 1159, 1161 (1976). Moreover, it is a well-established law in Nevada that the
21 legislature, within Constitutional limits, is empowered to define crimes and determine
22 punishments and that the courts are not to encroach upon this domain lightly. *Schmidt*
23 *v. State*, 94 Nev. 695, 697, 584 P.2d 695, 697 (1978). *See also Egan v. Sheriff*, 88 Nev.
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1 611, 503 P. 2d 16 (1972); *Deveroux v. State*, 96 Nev. 388, 610 P.2d 722, 723 (1980). See
2 also *State v. Sala*, 63 Nev. 270, 169 P.2d 524 (1946). The degree to which a judge
3 considers age and the absence of a prior record of offenses is within his discretionary
4 authority. *Deveroux supra* 610 P.2d at 723-724, and *Sheriff v. Williams*, 96 Nev. 22, 604
5 P.2d 800 (1980). There is also a general presumption in Nevada favoring the validity
6 of statutes which dictates a recognition of their constitutionality, unless a violation of
7 Constitutional principles is clearly apparent. *Schmidt, supra* 584 P.2d at 697. Similar to
8 *Norwood, supra*, the Court in *Deveroux supra*, noted that the trial judge has wide
9 discretion in imposing a prison term and, in the absence of a showing of abuse of
10 such discretion, this Court will not disturb the sentence. *Deveroux supra* 610 P.2d at 723. See also
11 *State v. Sala*, 63 Nev. 270, 169 P.2d 524 (1946). The degree to which a judge considers
12 age and the absence of a prior record of offenses is within his discretionary authority.
13 *Deveroux supra* 610 P.2d at 723.
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17 Finally, this Court has held that a sentence of imprisonment which is within the
18 limits of a valid statute, regardless of its severity, is normally not considered cruel and
19 unusual punishment in the Constitutional sense. *Schmidt supra* 584 P.2d at 697. *United*
20 *States v. Johnson*, 507 F.2d 826 (7th Cir. 1974), Cert. denied. 421 U.S. 949, 95 S.Ct.
21 1682, 44 L.Ed.2d 103 (1975), and that a sentencing proceeding is not a second trial
22 and the court is privileged to consider facts and circumstances that would not be
23 admissible at trial. *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).
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1 In the present case, the District Court here was within its authority, based on
2 all the facts and circumstances presented to it at sentencing, surrounding the
3 Appellant and her criminal conduct, to sentence the Appellant to Three Hundred
4 Sixty-Four (364) days in the Humboldt County (NV) Detention Center, with credit
5 for time served of one hundred eight-two (182) days, suspended that sentence, placed
6 the Appellant on Probation and ordered the Appellant to complete Humboldt County
7 Mental Health Court Program, as a condition of her probation.
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10 Appellant does not deny the fact that if the District Court had sentenced the
11 Appellant to the above sentence originally on December 21, 2020, that this sentence
12 would be not be illegal, or even alleges now that the District Court supported its
13 sentence solely by impalpable and highly suspect evidence. *See U.S. v. Lai*, 944 F.2d.
14 1434, 1441 (9th Cir.1991) ([t]he district court may not consider improper, inaccurate,
15 or mistaken information, nor may it make groundless inferences in imposing
16 sentence), which is entirely consistent with this Court in *Denson v. State*, 112 Nev. 489,
17 915 P.2d 284,(1996)([t]his Court “will reverse a sentence if it is supported solely by
18 impalpable and highly suspect evidence”) (*Emphasis original*). *Denson, supra* 112 Nev. at
19 492, 915 P.2d. at 286.
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22 In Appellant’s Fast Track Opening Brief, Appellant cites to *Miranda v. State*, 956
23 P.2d 1377 (1998), in arguing that the District Court improperly raised her sentence
24 from its original sentencing of Appellant on December 21, 2020, to the second time it
25 sentenced the Appellant on August 13, 2021, by increasing her probation to twelve

1 months (12) from fourteen (14) days, in the Humboldt County Detention Center, and
2 ordering her to complete the Humboldt County Mental Health Court Program as a
3 condition of her probat. (*See Appellant's Fast Track Statement, page Page 5*). However,
4 Appellant's reliance on *Miranda v. State, supra* is seriously misplaced since this Court in
5 *Miranda, supra* dealt with a sentence which was determined to be illegal, an instance
6 not at all present in the pending case, and where this Court in *Miranda, supra*, expressly
7 noted that "Correction of an illegally imposed sentence does not necessarily violate
8 double jeopardy simply because the correction increases the punishment, *citing United*
9 *States v. Garren*, 884 F.2d 427m 431 (9th Cir, 1989). *See Miranda v. State, supra*. Moreover,
10 under NRS 176.555 in dealing with the Correction on an Illegal Sentence, NRS
11 176.555 requires that the sentence itself must be illegal to be modified, an instance
12 that the Appellant has simply not shown in this case.

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16 Additionally, Appellant's citation to *Cripps v. State* 122 Nev. 764, 137 P.3d 1187
17 (2006) is also misplaced, as *Cripps, supra* expressly prohibits, with a very limited
18 exception, any judicial involvement in the *formulation or discussions of a potential plea*
19 *agreement*, as compared to a normal sentencing discussion with a defendant, as clearly
20 what occurred in this case. (*Emphasis added*). *See Cripps, supra* 137 P.3d at 1192 to 1193.

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22 In summary, the District Court fashioned an appropriate and legal sentence for
23 the Appellant, when it imposed a term of Three Hundred Sixty-Four (364) days in the
24 Humboldt County (NV) Detention Center, with credit for time served for one
25 hundred eight-two days (182), then suspended that sentence and placed the Appellant

1 on Probation, with a condition that the Appellant complete Humboldt County Mental
2 Health Court Program, after her legal conviction for one count of Conspiracy to
3 Possess a Controlled Substance, a Gross Misdemeanor, in violation of *NRS 199.480*,
4 *NRS 193.140* and *NRS 453.336*, where the legislature imposed a maximum term of
5 imprisonment of Three Hundred Sixty-Four (364) days for each count of Conspiracy
6 to Possess a Controlled Substance, a Gross Misdemeanor, in violation of *NRS*
7 *199.480*, *NRS 193.140* and *NRS 453.336*, and where the imposed term of
8 imprisonment in this case was within the statutory limits for the offense that the
9 Appellant actually pled guilty to.
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12 Finally, the sentence in this case was within the District Court's sound
13 discretion, as allowed under *Norwood v. State, supra*, and *Silks v. State, supra*, nor was the
14 sentence imposed here contrary to the Due Process Clause of the Fifth Amendment
15 of the United States Constitution to be considered cruel and unusual punishment
16 under *Schmidt, supra* 584 P.2d at 697 and *United States v. Johnson*, 507 F.2d 826 (7th Cir.
17 1974), Cert. den. 421 U.S. 949, 95 S.Ct. 1682, 44 L.Ed.2d 103 (1975).
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1 8. Preservation of issues. State concisely your response to appellant's
2 position concerning the preservation of issues on appeal: Not Applicable.

3 Dated this 22 day of October, 2021.

4
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- Dated this the 22 day of October, 2021.

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