

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON BEST,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 83495

Electronically Filed
Mar 31 2022 09:27 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S ANSWERING BRIEF

CHRISTOPHER J. HICKS
Washoe County District Attorney

VICTORIA T. OLDENBURG, ESQ.
Oldenburg Law Office
P.O. Box 17422
Reno, Nevada 89511

MARILEE CATE
Appellate Deputy
One South Sierra Street
Reno, Nevada 89501

ATTORNEY FOR APPELLANT

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	<u>Pages</u>
I. STATEMENT OF THE CASE.....	1
II. STATEMENT OF ISSUES.....	2
III. STATEMENT OF FACTS	2
IV. SUMMARY OF ARGUMENT.....	5
V. ARGUMENT	5
A. Standard of review	5
B. The district court did not abuse its sentencing discretion.	6
VI. CONCLUSION	8

TABLE OF AUTHORITIES

	<u>Pages</u>
<u>Cases</u>	
<i>Blume v. State</i> , 112 Nev. 472, 475, 915 P.2d 282, 284 (1996).....	7
<i>Houk v. State</i> , 103 Nev. 659, 747 P.2d 1376 (1987)	5
<i>Scherer v. State</i> , 89 Nev. 372, 374, 513 P.2d 1232, 1233 (1973)	6
<i>Silks v. State</i> , 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)	5
<u>Statutes</u>	
NRS 177.075(1)	6
NRS 200.481	6
<u>Rules</u>	
NRAP 28(b).....	1
NRAP 4(b).....	6

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRANDON BEST,

No. 83495

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____ /

RESPONDENT'S ANSWERING BRIEF

I. **STATEMENT OF THE CASE**¹

On June 9, 2021, Appellant Brandon Best (hereinafter, “Best”) pleaded guilty in this case to battery with a deadly weapon, a category B felony. Appellant’s Appendix (“AA”) 10-14, 25. He was sentenced in this case, and two other cases not at issue in this appeal, on August 11, 2021. *Id.* at 52. The Court sentenced Best to a minimum term of forty-eight (48) months to a maximum term of one hundred and twenty (120) months in the Nevada Department of Corrections, with credit for two hundred and eighteen (218) days time served. *Id.* at 86, 92-93. This appeal follows.

¹ The State agrees with Appellant Brandon Best’s Jurisdictional Statement and Routing Statement. These matters will not be repeated herein. NRAP 28(b).

II. STATEMENT OF ISSUES

Whether the district court abused its sentencing discretion when it sentenced Best within the statutory range of punishment and did not rely on impalpable or highly suspect information?

III. STATEMENT OF FACTS²

On October 24, 2020, officers with the Sparks Police Department responded to a residence on Prater Way on reports of shots fired. PSI, 5; AA 1. Upon arrival, officers learned that Lucas Blaine was in his room playing video games when he heard a screeching noise outside and observed his best friend, Best, with a firearm. *Id.* Best pointed the firearm at the window and shot three times. PSI, 5. Lucas Blaine recalled seeing two flashes and going down to the ground, where he immediately felt pain in his chest. *Id.* Officers observed a red circular mark on Lucas Blaine’s rib and elbow. *Id.* While Lucas Blaine was receiving medical attention, Best sent him a social media message with a photo of a firearm on his lap. *Id.*

Officers learned that Best and the victim were friends, but were involved in a dispute at the time of the shooting. *Id.* at 5-6. The day before the shooting, Best told Lucas Blaine to stop “trash talking” about him and

² These facts are based primarily on the Presentence Investigation Report (“PSI”), which was filed with this Court under seal on March 7, 2022. The pagination cited herein conforms with the original document.

threatened, “I’ll deal with you tonight; I’m getting my gun and I will shoot you.” *Id.* at 6. Officers responded to Best’s apartment complex and detained Best when he left his residence. *Id.* A search of his person revealed unfired .357 rounds in his pocket. *Id.* Officers requested and were granted a search warrant for Best’s residence and recovered several shell casings from .357 and .38 caliber firearms. *Id.* Two matching firearms were recovered from a baby’s crib inside the residence. *Id.* The .38 caliber revolver recovered from the crib matched the photograph that Best sent Lucas Blaine while he was receiving medical attention after the shooting. *Id.* Best was arrested and pursuant to plea negotiations pleaded guilty to battery with a deadly weapon for this offense. AA, 10-14, 25.

While this case was pending, Best was arrested in two other cases. *See id.* at 17-18. Those cases were also negotiated and Best subsequently pleaded guilty to robbery with a deadly weapon and felony child abuse. *Id.* at 53. Sentencing for all three cases occurred on August 11, 2021. *Id.* at 52, 53.

Prior to sentencing, Best’s attorneys filed substance abuse and mental health evaluations for the Court’s consideration. *Id.* at 30-42. Relying on those evaluations, Best argued for the minimum sentence on each case and for the sentences to be imposed concurrently. *Id.* at 67-69, 71-76. Best

made a short statement in allocution. *Id.* at 77. The State argued for a combination of consecutive and concurrent sentences in the three cases and asked for a four-to-ten-year sentence in this case. *Id.* at 79.

At three different points during the sentencing hearing, the district court acknowledged Best's "horrible childhood," and his substance abuse and mental health issues that have developed as a result. *Id.* at 64-65, 73, 85-86. The district court considered other mitigating factors, such as Best's young age, lack of serious criminal history before the three offenses, his marketable skill in wood flooring assembly, and his supportive grandmother. *Id.* at 65, 73, 85-86.

Yet, the district court had to balance those facts with the serious nature of the offenses. *Id.* at 53 (describing the offenses as "three very serious matters"), 66 (noting that on the other side of the mitigating factors, is "the seriousness of the crimes here, which are horrible"), 73 ("these are very, very serious crimes"). As the district court noted immediately before imposing sentence, "people could have died here. The threats, the violence, the approach, the words used, the circumstances are extremely disturbing." *Id.* at 86. Taking everything into account, the district court did not follow Best's request for minimum sentences. The district court imposed a mix of consecutive and concurrent sentences. *Id.*

at 86-88. For this case, the district court imposed four to ten years, or forty-eight to one hundred and twenty (120) months, in the Nevada Department of Corrections. *Id.* at 86, 92-93.

IV. SUMMARY OF ARGUMENT

The district court did not abuse its sentencing discretion here. Its sentence was within the statutory limits. Best does not contend the statute is unconstitutional. Nor does Best contend that the district court imposed its sentence based on highly suspect or impalpable information. As such, this Court should affirm the judgment of conviction.

V. ARGUMENT

A. Standard of review

The Nevada Supreme Court has consistently afforded district courts wide discretion in their sentencing decisions. *See Houk v. State*, 103 Nev. 659, 747 P.2d 1376 (1987). Appellate Courts will refrain from interfering with the sentence imposed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

///

///

B. The district court did not abuse its sentencing discretion.

In this case, Best concedes that he was sentenced within the statutory parameters of NRS 200.481. Opening Brief (“OB”), 7. Best does not contend that the district court relied on highly suspect or impalpable information. *See id.* at 6-8. Instead, Best argues that the district court should have imposed a minimum sentence and should not have imposed a consecutive sentence in CR21-0995 due to the mitigating circumstances he presented. *See id.* These arguments are misplaced.

Initially, Best did not appeal his sentence in Case Number CR21-0995. The notice of appeal was only filed in this case, Case Number CR20-3438A. AA 96-97. A consecutive sentence was not imposed in this case. *See* AA 92-93. The consecutive sentence was imposed in Case Number CR21-0995. *Id.* at 94-95. Because no notice of appeal was filed in that case, this Court lacks jurisdiction to consider the appropriateness of the consecutive sentence imposed therein. *See* NRAP 4(b); NRS 177.075(1); *Scherer v. State*, 89 Nev. 372, 374, 513 P.2d 1232, 1233 (1973) (“[t]he timely filing of a notice of appeal is jurisdictional and is an essential prerequisite to the perfection of an appeal”).

This Court should also reject Best’s contention that the district court should have imposed the minimum sentence in this case due to his mental

health and substance abuse issues. As the district court acknowledged three different times during sentencing, there were mitigating factors present in this case. Best's childhood, substance abuse, and mental health were considerations. However, the significance of the offense outweighed those considerations. Best fired three shots at the home of his best friend. Not only did he shoot the home, but his friend and victim in this case observed Best through the window. Best pointed the firearm at the victim and shot three times. Thankfully, the victim was not critically injured as a result. Best made threats against the victim prior to the shooting—indicating that he would get his gun and come for the victim. Then, after the shooting, Best continued to terrorize the victim by sending the victim a picture of himself holding a gun on social media.

In conclusion, the sentence here was within the statutory limits and was not based on impalpable or highly suspect information. Further, under the facts of the case, where Best threatened his best friend and attempted to shoot him in his home, the sentence of four to ten years in prison does not shock the conscious. *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (cleaned up) (holding that regardless of severity, “[a] sentence [that is] within the statutory limits is not cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so

unreasonably disproportionate to the offense as to shock the conscience.”).

As such, the district court did not abuse its discretion here and the judgment of conviction should be affirmed.

VI. CONCLUSION

Based on the foregoing, the State respectfully requests that this Court affirm the judgment of conviction.

DATED: March 31, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: MARILEE CATE
Appellate Deputy

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 2013 in Georgia 14.

2. I further certify that this brief complies with the page limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it does not exceed 30 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: March 31, 2022.

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: MARILEE CATE
Appellate Deputy
Nevada State Bar No. 12563
One South Sierra Street
Reno, Nevada 89520
(775) 328-3200

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on March 31, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Victoria T. Oldenburg, Esq.

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA