

IN THE SUPREME COURT OF THE STATE OF NEVADA

GARRET JAMES REUBEN VIGIL,
JR.,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 83551

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RESPONDENT'S ANSWERING BRIEF

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Appellant,

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_____ /

RESPONDENT'S ANSWERING BRIEF

I. STATEMENT OF THE FACTS

Because this case was resolved via a plea negotiation, the following facts are derived from the Presentence Investigation Report (“PSI”). The Respondent has filed a contemporaneous Motion to Transmit Presentence Investigation Report. Because the PSI is not included in an appendix, citations to the PSI refer to the PSI’s own pagination.

On May 7, 2019, Sparks Police Department officers responded to a report of a woman banging on a witness’s vehicle asking for help. PSI p. 6. That woman was later identified as the victim in this case, Angelina Krugler. *Id.*, Joint Appendix (“JA”) p. 1-2. The witness reported that a male, later identified as Appellant Garret James Reuben Vigil, Jr. (“Vigil”), came up behind Ms. Krugler, grabbed her, and pulled her towards an apartment complex where he pinned her up against a vehicle. *Id.* The

witness saw Vigil holding Ms. Krugler's hands behind her back and he yelled at the witness to keep going. *Id.*

One of the responding officers recalled responding to the apartment complex previously on reports of a similar battery. *Id.* Officers went to the apartment related to the earlier battery and knocked on the door. *Id.* Officers could see a woman inside and a light flicker on and off, but nobody answered the door. *Id.*

Officers contacted neighbors who identified Vigil and Ms. Krugler. *Id.* They presented photographs of Vigil and Ms. Krugler to the witness, who positively identified them as the participants in the altercation. *Id.*

Officers obtained a search warrant for the apartment and got a key for the apartment. *Id.* While they were waiting for the key, Vigil contacted a police sergeant and denied being inside the apartment while also claiming that everyone was fine and not hurt. *Id.* Ms. Krugler also called the sergeant and said that she was not at the apartment and everyone was okay. *Id.* However, based upon the sounds coming from within the apartment, police were able to determine that Ms. Krugler was inside. *Id.*

Police entered the apartment and contacted several people, including Ms. Krugler and Vigil. *Id.* Vigil refused to exit the apartment without an

arrest warrant. *Id.* Police provided him with a picture of a warrant and he complied with orders and was arrested. *Id.*

Police interviewed Ms. Krugler who appeared nervous and said she was worried that she might be in trouble. PSI p. 7. Ms. Krugler explained that she had previously been battered by Vigil and did not seek help. *Id.* Ms. Krugler said that the incident that night started when she and Vigil began arguing while driving. *Id.* During the argument, Vigil backhanded her on the right side of her face. *Id.* An officer observed that Ms. Krugler had a black eye and an injury near the bridge of her nose. *Id.* Ms. Krugler said that as they continued to drive around, Vigil hit her on the left side of her face with a closed fist, causing her ear to bleed. *Id.* When they got back to the apartment, Ms. Krugler ran towards the witness's vehicle and banged on the window asking for help. *Id.* She reported that Vigil grabbed her from behind, pinned her to a vehicle, and then picked her up and carried her into the apartment. *Id.*

Inside the apartment, Vigil locked them both inside of their bedroom where he threatened to break her neck before the police arrived. *Id.* When police knocked on the door, Vigil prevented Ms. Krugler and the other people inside of the apartment from exiting. *Id.*

II. STATEMENT OF THE ISSUES

- A. Did the district court abuse its discretion by sentencing Vigil to a term of imprisonment rather than probation?

III. ARGUMENT

- A. The district court did not abuse its discretion at sentencing.

1. Standard of Review

“A sentencing judge is allowed wide discretion in imposing a sentence; absent an abuse of discretion, the district court’s determination will not be disturbed on appeal.” Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993). “[A]n abuse of discretion will be found only when the record demonstrates ‘prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.’” Lloyd v. State, 94 Nev. 167, 170, 576 P.2d 740, 742 (1978) *quoting* Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

2. Discussion

The Nevada Supreme Court has long reviewed sentences for an abuse of discretion and not whether it would have imposed a different sentence under the circumstances. *See e.g.*, Houk v. State, 103 Nev. 659, 664 747 P.2d 1376, 1379 (1987) (“The sentencing judge has wide discretion in imposing a sentence, and that determination will not be overruled absent a showing of abuse of discretion.”). Moreover, the Court has held that “[u]nless the record reveals prejudice resulting from the introduction of

objectionable material, we will not interfere with the sentence imposed.”
Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723 (1980) *citing Silks*,
supra.

Vigil acknowledges that the district court did not abuse its discretion under the Silks standard. Instead, Vigil asks that the Court engage in a “comparative analysis of what sentencing structures were recommended and why.” Opening Brief, p. 12. Vigil relies upon a single case from Colorado for the premise that a district court can abuse its discretion by failing to strike “a fair accommodation between the defendant’s need for rehabilitation and society’s interest in safety and deterrence.” Opening Brief p. 11 citing People v. Watkins, 613 P.2d 633, 635-36 (Colo. 1980).

The Nevada Supreme Court has previously declined to adopt a requirement that district courts announce the reasons for imposing a sentence of incarceration based upon Watkins and a federal case from the Second Circuit, United States v. Brown, 479 F.2d 1170 (2nd Cir. 1973). Campbell v. Eighth Judicial Dist. Court, 114 Nev. 410, 414, 957 P.2d 1131, 1143 (1998). In doing so, the Campbell court held that requiring district courts to state its reasoning in imposing a particular sentence is an action “best left to the legislature.” *Id.*

The decision to suspend a prison sentence, where not otherwise governed by statute, is a discretionary one. NRS 176A.100(1)(c) (“the court may suspend the execution of the sentence imposed and grant probation as the court deems advisable.”). Vigil pled guilty and was convicted of Attempted Coercion With Physical Force or Immediate Threat of Physical Force, Constituting Domestic Violence, a violation of NRS 193.330 being an attempt to violate NRS 207.190(2)(a). JA 48. The decision to suspend a sentence for that offense is not governed by statute, thus leaving it within the discretion of the district court.

Although the district court was not required to set forth its rationale for sentencing Vigil to a term of imprisonment rather than granting him probation, it did briefly highlight the competing concerns at sentencing: that Vigil had been out of custody for nearly two years since the offense while also having a troubling criminal history. JA 45. Although Vigil seeks to hand-wave his criminal history on appeal by saying “it is what it is,” it was obviously something that the district court was concerned about. Opening Brief p. 13.

It is worth noting that Vigil’s criminal history, while not extremely extensive, consists almost entirely of crimes of violence, crimes involving domestic violence, and is replete with supervision violations. Specifically,

Vigil had previously been convicted of a misdemeanor Violation of Domestic Violence Temporary Protection Order in Washoe County in 2014; a felony Assault with Deadly Weapon with Force Likely to Cause Great Bodily Injury, a misdemeanor Child Abuse/Endanger: Great Bodily Injury or Death, a misdemeanor count of Domestic Violence, and a misdemeanor Violation of Court Order: Domestic Violence in Placerville, California in 2014; a gross misdemeanor Child Endangerment charge in Washoe County in 2015; a misdemeanor Contempt: Violate Protective Order/Etc. in Auburn, California in 2015; and a gross misdemeanor Child Endangerment in Washoe County in 2016. PSI pp. 4-5. The district court was obviously concerned about that history despite Vigil's recent track record while out on supervised bail pending resolution of the instant case.

As Vigil does not contend that the district court based its decision upon any highly suspect or impalpable evidence, he necessarily asks that this Court substitutes its own judgment for that of the district court; something the Nevada Supreme Court has deemed "presumptively improper." Sims v. State, 107 Nev. 438, 440, 814 P.2d 63, 64 (1991). The Sims court also held that "[a]lthough we may very well have imposed a different, more lenient sentence, we do not view the proper role of this court to be that of an appellate sentencing body. *Id.* Vigil's citation to a

single decision from another jurisdiction is not compelling and should not be the basis for rewriting the manner in which Nevada's appellate courts review the sentencing decisions of district courts.

IV. CONCLUSION

The district court did not abuse its discretion by sentencing Vigil to a term of imprisonment rather than probation. The decision to suspend the sentence, or not, was within the discretion of the court. Vigil does not contend that the district court abused its discretion under the controlling case law, but instead suggests that this Court should overturn decades of jurisprudence to engage in a comparative sentencing analysis and effectively substitute its judgment for that of the district court. This Court should decline the invitation and affirm Vigil's sentence.

DATED: January 21, 2022.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: Kevin Naughton
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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: January 21, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on January 21, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

John Reese Petty, Esq.

/s/ Tatyana Kazantseva
TATYANA KAZANTSEVA