Winnemucca, Nevada 89446

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed Nov 23 2021 05:44 p.m. Elizabeth A. Brown Clerk of Supreme Court

Supreme Court No. 83579

RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE ENTERED OCTOBER 20, 2021

TERESA ANN GREVELLE,

Appellant,

VS.

THE STATE OF NEVADA,

Respondent.

COMES NOW, the Respondent STATE OF NEVADA, by and through Michael Macdonald, Humboldt County District Attorney, and Anthony R. Gordon, Humboldt County Deputy District Attorney, and hereby files this Reply to Appellant's Response to Order to Show Cause Entered October 20, 2021. This Reply is based on the following Points and Authorities, and all pleadings on file herein.

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

DATED this 23 day of November, 2021.

MICHAEL MACDONALD Humboldt County District Attorney

ANTHONY R. GORDON

Deputy District Attorney

Winnemucca, Nevada 89446

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MEMORANDUM OF POINTS AND AUTHORITIES

<u>I.</u> INTRODUCTION

Respondent, STATE OF NEVADA, files this Appellant's Response to Order to Show Cause Entered October 20, 2021. Respondent in this pleading does not represent the Nevada Department of Public Safety, Division of Parole and Probation, instead represents only the State of Nevada's prosecution interests through the Humboldt County District Attorney's Office. Respondent's position in this responsive pleading is that if this Court determines that the District Court's Order of Dismissal entered on June 21, 2021 was a final order, as a result this appeal is untimely filed under Nevada Rule of Appellate Procedure (NRAP) 4(b)(1)(A).

On July 7, 2014, the Appellant was convicted and sentenced to a term of twelve (12) months to thirty-two (32) months in the Nevada Department of Corrections for Embezzlement in violation of NRS 205,300, which was suspended and the Appellant was placed on probation for a period of sixty months, and was ordered to make restitution payments to the victim in this matter Steve Lucas/Lucus Livestock, to whom the embezzlement was from, in the amount of \$65,000 in monthly payments of no less than \$1,500.00 per month.

Subsequently, on May 10, 2020, an Order was filed by this Court vacating the previously filed Order, entered on December 18, 2017, Honorably Discharging the Appellant from probation, as the Court found that it had entered the December 18, 2017 Discharge Order, on the mistaken belief that restitution, if any, had been fully paid, and then re-imposing probation on the Appellant. The current balance owed by the Appellant to the victim from her original criminal case is approximately \$22,700.00, as shown by the Civil Confession of Judgment filed in this case on April 4, 2018.

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Thereafter, on August 28, 2019, the Appellant filed a Motion to Discharge the probation placed on her, where the District Court, which the District Court denied on August 14, 2020 finding that that there was no evidence of any new or additional payments of restitution to the victim in this matter, and that the State of Nevada, Division of Parole and Probation has not provided to the District Court any information of efforts to recover the remaining restitution amount, which still was outstanding at that time. (See District Court Order in State of Nevada v. Teresa Ann Gravelle, Case CR 12-6043, filed August 14, 2020). Subsequently, the Appellant later sought a stay of her probation while she attempted to litigate a Petition for Writ of Habeas Corpus filed with the Nevada Supreme Court, which was denied by this Court on November 12, 2020, holding that a Writ of Habeas Corpus should be sought in the appropriate district court in the first instance. (See Order Denying Petition filed in Nevada Supreme Court Case No. 81977). The Appellant then filed a Petition for a Writ of Habeas Corpus (Post-Conviction) in the District Court on December 17, 2020, where a hearing was held before the District Court on May 18, 2021, with the District Court subsequently issuing an Order of Dismissal on June 21 2021. The Appellant did not file an appeal from the June 21, 2021 District Court Order of Dismissal, instead filing a Motion for Reconsideration and/or Clarification on June 27, 2021, which the District Court later issued an Order dishonorably discharging the Appellant from probation on September 8, 2021.

LEGAL ARGUMENT

A. The District Court's June 21, 2021 Order in this Case was a Final Order Subject to Appeal Regarding the Issues in this Case:

This Court has previously ruled that finality of a district court's decision is not based up its label as an "order or "judgment," but rather on what the decision substantially accomplishes," citing e.g., Lee v. GNLV Corp., 116 Nev 424, 427, 996 P.2d 416, 417-18 (2000) and Bally's

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Grand Hotel v. Reeves, 112 Nev 1487, 929 P.2d 936 (1996). (See Order allowing Appeal to Proceed and to Show Cause Regarding Cross-Appeal, filed on August 31, 2021, page 2).

In the present case, the District Court's July 21, 2021 Order for Dismissal was a final order in this case, disposing of all the issues, even if the District Court did not issue a definitive or a particularized rationale and analysis for its decision, since after the District Court's July 21, 2021 Order for Dismissal, there were no pleadings pending before the District Court for decision, nor was one anticipated. (See Order for Dismissal in Teresa Ann Gravelle v. The State of Nevada, Case #CR 1206043, filed June 21, 2021). It is well settled law in this Court that a Motion for Reconsideration is not a tolling motion for purposes of NRAP (4)(A). See Chapman Indus. United Ins. Co. of America, 110 Nev. 454, 874 P.2d 739 (1994). As a result, Appellant's present appeal in this case must be dismissed as untimely.

CONCLUSION

Based on the above legal arguments, Appellant has failed to justify the basis for her cross-appeal in this case, and it should therefore be dismissed for a lack of jurisdiction.

Furthermore, pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

DATED this 23^{rd} day of November, 2021.

MICHAEL MACDONALD

Humboldt County District Attorney

ANTHONY R. FORDON .

Deputy District Attorney

Nevada State Bar No. 2278

Humboldt County District Attorney's Office

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) I certify that I am an employee of the Humboldt County District Attorney's Office, and that on the 23rd of November, 2021, I delivered a copy of the RESPONDENT'S REPLY TO APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE ENTERED AUGUST 20, 2021 to:

> RENDEL MILLER 115 West 5th Street Winnemucca, Nevada, 89445

AARON FORD Nevada Attorney General 100 N. Carson Street Carson City, NV 89701

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