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IN THE SUPREME COURT OF THE STATE OF NEVADA

TERESA ANN GREVELLE,

Appellant,

vs.

STATE OF NEVADA,

Respondent.

Electronically Filed
May 23 2022 03:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Docket No. 83579
District Court No. CV 12-6043

RESPONDENT'S ANSWERING BRIEF

Appeal from Judgment of Conviction
Sixth Judicial Distract Court, County of Humboldt
The Honorable Michael R. Montero

ATTORNEY FOR RESPONDENT

Anthony R. Gordon
Deputy District Attorney
Nevada State Bar No. 2278
Humboldt County
District Attorney's Office
501 S. Bridge Street
PO Box 909
Winnemucca, NV 89446
(775) 623-6360 Phone
(775) 623-6365 Fax

ATTORNEY FOR APPELLANT

Rendal B. Miller
Miller Law Inc.
Nevada State Bar No. 12257
115 West 5th Street
Winnemucca, NV 89445
(775) 623-5000

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1 Embezzlement in violation of NRS 205.300, a Category C Felony, which was
2 suspended and the Appellant was then placed on probation for a period of sixty
3 months, and was ordered to make restitution payments to the victim in this matter,
4 Steve Lucas/Lucus Livestock, to whom the embezzlement was from, in the amount
5 of \$65,000 in monthly payments of no less than \$1,500.00 per month. (See Appellant's
6 Appendix Pages 002-007).

7
8 Subsequently, on May 10, 2020, an Order was filed by this Court vacating the
9 previously filed Order, entered on December 18, 2017, Honorably Discharging the
10 Appellant from probation, as the Court found that it had entered the December 18,
11 2017 Discharge Order, on the mistaken belief of the Court that restitution had been
12 fully paid, and then re-imposing probation on the Appellant. (See Appellant's Appendix
13 Pages 0069-0073).¹ The balance then owed by the Appellant to the victim from her
14 original criminal case was approximately \$22,700.00, as shown by the Civil Confession
15 of Judgment filed in this case on April 4, 2018. (See Appellant's Appendix Page 0017).

16
17 Thereafter, the Appellant filed a Motion in the District Court, titled *Defendant's*
18 *Motion to Discharge from Probation, filed August 28, 2019*, to discharge the probation
19 placed on her, which the Respondent opposed and the District Court ultimately then
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23 ¹The record below reflects the fact that the State of Nevada, Department of Public
24 Safety, Division of Parole and Probation informed the District Court in connection
25 with its original discharge request of Appellant in December of 2017, that the
restitution previously ordered in this case had not been paid in full. (See Appellant's
Appendix page 0177).

1 denied on August 14, 2020, finding that that there was no evidence of any new or
2 additional payments of restitution to the victim in this matter, and that the State of
3 Nevada, Department of Public Safety, Division of Parole and Probation has not
4 provided to the District Court any information of efforts to recover the remaining
5 restitution amount, which still was outstanding at that time. (*See Appellant's Appendix*
6 *Pages 0079-0083; 0120-0123; 0150-0152*).

8 Subsequently, the Appellant later sought a stay of her probation while she
9 attempted to litigate a Petition for Writ of Habeas Corpus filed with the Nevada
10 Supreme Court, which was denied by this Court on November 12, 2020, holding that
11 a Writ of Habeas Corpus should be sought in the appropriate district court in the first
12 instance. (*See Order Denying Petition filed in Nevada Supreme Court Case No. 81977, filed*
13 *November 12, 2020*). The Appellant then filed a Petition for a Writ of Habeas Corpus
14 (Post-Conviction) in the District Court on December 17, 2020, where after both the
15 State of Nevada, Department of Public Safety, Division of Parole and Probation and
16 the Respondent filed responses to, a hearing was held before the District Court on
17 May 18, 2021, with the District Court subsequently issuing an Order of Dismissal on
18 June 21 2021. (*See Appellant's Appendix Pages 0154-0170; 0175-0180; 0182-0189; 0214-*
19 *0216*). The Appellant did not file an appeal from the June 21, 2021 District Court
20 Order of Dismissal pursuant to *Nevada Rules of Appellate Procedure (3)(A)(b)(1)*, but
21 instead filed a Motion for Reconsideration and/or Clarification on June 27, 2021,
22 which the District Court later issued an Order Clarifying its Order for Dismissal
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1 Entered on June 21, 2021, and dishonorably discharged the Appellant from probation
2 on September 8, 2021. (*See Appellant's Appendix Pages 0218-0222; 0228-0230*).
3 Thereafter, Appellant then filed an untimely Notice of Appeal in the District Court on
4 October 4, 2021 (*See Appellant's Appendix Pages 0232-0233*).

6 Finally, while this Court on February 7, 2022, issued an Order reinstated
7 briefing in this matter, it noted that this appeal was "subject to later dismissal if it is
8 determined that appellate jurisdiction is lacking." (*Emphasis added*). *See Teresa Ann*
9 *Grevelle v. The State of Nevada, Case #83579, Order Reinstating Briefing, filed February 7,*
10 *2022.*

12 STANDARD OF REVIEW

13 The Respondent argues that the standard of review for Issue I, Issue II, and
14 Issue III is an abuse of discretion standard of review, as discussed below.

16 ARGUMENT

17 ISSUE I: This Court does not have Jurisdiction over this Appeal pursuant to
18 *Nevada Rules of Appellate Procedure (3)(A)(b)(1)*, in light of the fact that the District
19 Court's June 21, 2021 Order in this Case was a Final Order Subject to Appeal
20 Regarding the Issues in this Case.

22 Pursuant to *Nevada Rules of Appellate Procedure (NRAP) (3)(A)(b)(1)*, an appeal
23 may be taken from a final judgment entered in an action or proceeding commenced in
24 the court in which the judgment is rendered. *See NRAP) (3)(A)(b)(1)*. This Court has
25 previously ruled that finality of a district court's decision is not based up its label as an

1 “order or “judgment,” but rather on what the decision substantially accomplishes,”
2 *citing e.g., Lee v. GNLV Corp.*, 116 Nev 424, 427, 996 P.2d 416, 417-18 (2000) and
3 *Bally’s Grand Hotel v. Reeves*, 112 Nev 1487, 929 P.2d 936 (1996). (*See Order allowing*
4 *Appeal to Proceed and to Show Cause Regarding Cross-Appeal, filed on August 31, 2021, page 2*).

6 In the present case, the District Court’s July 21, 2021 Order for Dismissal was a
7 final order in this case under *NRAP (3)(A)(b)(1)*, since it disposed of all the issues,
8 even if the District Court did not issue a definitive or a particularized rationale and
9 analysis for its decision, since after the District Court’s July 21, 2021 Order for
10 Dismissal, there were no pleadings pending before the District Court for decision, nor
11 was one ever anticipated. (*See Order for Dismissal in Teresa Ann Gravelle v. The State of*
12 *Nevada, Case #CR 1206043, filed June 21, 2021*). (*See Appellant’s Appendix Pages 0214-*
13 *0216*).

16 It is well settled law in this Court that a Motion for Reconsideration is not a
17 tolling motion for purposes of *NRAP (4)(a)(4)(A)*. *See Chapman Indus. United Ins. Co. of*
18 *America*, 110 Nev. 454, 874 P.2d 739 (1994). As a result, Appellant has failed to justify
19 the jurisdictional basis for her appeal in this case, and it should therefore be dismissed
20 for as bring untimely filed, pursuant to *NRAP (4)(a)(1)*.

22 **ISSUE II: The District Court has a wide discretion in Imposing a Sentence**
23 **that will not be Overturned Absent a Showing of an Abuse of Discretion.**

24 Under the Nevada law, this Court has previously ruled that the sentencing
25 judge has wide discretion in imposing a sentence, and that this determination will not

1 be overruled absent a showing of abuse of discretion, *Norwood v. State*, 112 Nev. 438,
2 915 P.2d 177 (1996), *citing Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379
3 (1987). Additionally, a sentencing court is often privileged to consider facts and
4 circumstances which would clearly not be admissible at trial. *Silks v. State*, 92 Nev. 91,
5 93-94, 545 P.2d 1159, 1161 (1976). Moreover, it is a well-established law in Nevada
6 that the legislature, within Constitutional limits, is empowered to define crimes and
7 determine punishments and that the courts are not to encroach upon this domain
8 lightly. *Schmidt v. State*, 94 Nev. 695, 697. (1978). *See also Egan v. Sheriff*, 88 Nev. 611,
9 503 P. 2d 16 (1972); *Deveroux v. State*. 96 Nev. 288. 610 P.2d 722, 723. *See also State v.*
10 *Sala*, 63 Nev. 270, 169 P.2d 524 (1946). The degree to which a judge considers age
11 and the absence of a prior record of offenses is within his discretionary authority.
12 *Deveroux Supra* 610 P.2d at 723-724, and *Sheriff v. Williams*, 96 Nev. 22, 604 P.2d 800
13 (1980). There is also a general presumption in Nevada favoring the validity of statutes
14 which dictates a recognition of their constitutionality unless a violation of
15 Constitutional principles is clearly apparent. *Schmitz Supra* at 697. Similar to *Norwood*,
16 *supra*, the Court in *Deveroux, supra* noted that the trial judge has wide discretion in
17 imposing a prison term and, in the absence of a showing of abuse of such discretion,
18 this Court will not disturb the sentence. *Deveroux, supra* 610 P.2d at 723. *See also State v.*
19 *Sala, supra*.

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Additionally, this Court has held that a sentence of imprisonment which is
within the limits of a valid statute, regardless of its severity, is normally not considered

1 cruel and unusual punishment in the Constitutional sense. *Schmidt Supra* at 665. *United*
2 *States v. Johnson*, 507 F.2d 826 (7th Cir. 1974), *Cert. denied*. 421 U.S. 949, 95 S.Ct. 1682,
3 44 L.Ed.2d 103 (1975), and that a sentencing proceeding is not a second trial and the
4 court is privileged to consider facts and circumstances that would not be admissible at
5 trial. *See Silks v. State*, *supra*.

7 Finally, a district court is not required to articulate its reasons for imposing a
8 particular sentence. *See Campbell v. Eight Judicial Dist. Court*, 114 Nev. 410, 414, 957
9 P.2d 1141, 1143 (1998). *See also Park v. Johnson*, No. 2: 19-cv-01298-APG-BNW (D.
10 Nev. Apr. 8, 2021), *citing Campbell v. Eight Judicial Dist. Court, supra*.

12 In the present case, Appellant initially asserts that the District Court below
13 improperly re-imposed probation on the Appellant on May 10, 2019, after she was
14 honorably discharged for failure to pay restitution in light of economic hardship. (*See*
15 *Appellant's Opening Brief, filed April 8, 2022, Pages 12-13*), (*See Appellant's Appendix Pages*
16 *0069-0073*).

18 As the Nevada Department of Public Safety, Division of Parole and Probation
19 previously noted in its *Response to Petition for Writ of Habeas Corpus (Post Conviction) dated*
20 *March 18, 2021*, and the State of Nevada asserts again here as Respondent,
21 Respondent does not represent the District Court for purposes of defending the
22 hearing having been held in this matter as alleged on September 11, 2018, since other
23 than the requests by the victim's attorney in this matter seeking a hearing, Respondent
24 has absolutely no insight into the Court's thinking process in having ordered the
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1 September 11, 2018, hearing to be held in this matter in the first place. (*See Appellant's*
2 *Appendix Pages 0020-0024; 0175 to 0176*), Nevertheless, a district court's decision to
3 place a defendant on probation, such as the Appellant here, should not be disturbed
4 here on appeal, absent an abuse of discretion. (*See NRS 176A.100(1)(c)*).

6 It is clear here that based on the overall facts and circumstances developed in
7 the record in this case, including the original sentencing transcript in this case, as well
8 as the hearing in this matter on September 11, 2018, the sentence in this case was
9 within the District Court's sound discretion, as allowed under *Norwood v. State, Supra*,
10 and *Silks v. State, Supra*, nor was the sentence imposed here contrary to the Due
11 Process Clause of the Fifth Amendment of the United States Constitution to be
12 considered cruel and unusual punishment under *Schmidt, Supra* at 665 & *United States v.*
13 *Johnson*, 507 F.2d 826 (7th Cir. 1974), Cert. den. 421 U.S. 949, 95 S.Ct. 1682, 44
14 L.Ed.2d 103 (1975). As a result, the District Court here was within its rights to impose
15 a period of probation on the Appellant in order to insure that the restitution was fully
16 paid to the victim in this case, as long as the term of probation does not exceed the
17 then five year maximum for a felony under *NRS 178A.500 (1)(b)*.

21 ISSUE III: A District Court Cannot Impose a Sentence of Probation beyond
22 Five Years for a Felony Conviction prior to June 30, 2020 under *NRS 176A.500*
23 *(1)(b)*, and even if had in fact did so here, the issue now moot before this Court.

24 Appellant next argues here that essentially the Court cannot impose a sentence
25 of probation for a felony beyond five years pursuant to *NRS 176A.500 (1)(b)*. (*See*

1 *Appellant's Opening Brief Page 16*). This Court should not have to decide this issue since
2 it is moot before this Court as the Appellant is no longer on probation. As this Court
3 stated in *Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010):
4

5 “The question of mootness is one of justiciability. This court's duty is
6 not to render advisory opinions but, rather, to resolve actual
7 controversies by an enforceable judgment. *NCAA v. University of*
8 *Nevada*, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must
9 be present through all stages of the proceeding, see *Arizonans for Official*
10 *English v. Arizona*, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170
11 (1997); *Lewis v. Continental Bank Corp.*, 494 U.S. 472, 476-78, 110 S.Ct.
12 1249, 108 L.Ed.2d 400 (1990), and even though a case may present a live
13 controversy at its beginning, subsequent events may render the case
14 moot. *University Sys. v. Nevadans for Sound Gov't*, 120 Nev. 712, 720, 100
15 P.3d 179, 186 (2004); *Wedekind v. Bell*, 26 Nev. 395, 413-15, 69 P. 612,
16 613-14 (1902).” See *Personhood Nevada v. Bristol*, supra 245 P.3d at 574.

17 In the present case, the Appellant was convicted of stealing a significant
18 amount of money which she plead guilty to on March 18, 2014, and pursuant to her
19 duly entered Judgment of Conviction on August 19, 2014, she was sentenced to a
20 term of twelve (12) months to thirty-two (32) months in the Nevada Department of
21 Corrections for a violation of embezzlement in violation of *NRS 205.300*, a Category
22 C Felony, with that sentence suspended, and the Appellant was placed on formal
23 probation that included a special condition that she make restitution for the money
24 that was stolen within the sixty (60) month probationary period that was then ordered,
25 including making thirty-thousand dollar (\$30,000) payment within ninthly (90) days of
her original grant of probation, and with the failure to do so would be considered a
probation violation of a special probation condition. (*See Appellant's Appendix Pages*

1 002-007). Since the Appellant is no longer on Probation, the issue of whether the
2 District Court improperly extended Appellant's probation beyond the five-year
3 statutory limit under *NRS 178A.500 (1)(b)* is now moot and should not be decided by
4 this Court.
5

6 Furthermore, when the District Court below later entered an order to discharge
7 the Appellant from Probation on December 18, 2017, it was on the District Court's
8 mistaken belief that Appellant's restitution had in fact been fully paid, but after
9 subsequently learning that not all of the Appellant's restitution was in fact paid in full,
10 the District Court then on May 10, 2019, vacated its previous Order Honorably
11 Discharging the Petitioner from Probation, and re-imposed her probation under *NRS*
12 *176A.500(1)(b)*. (*See Appellant's Appendix Pages 0014; 0069-0073*). Nevertheless, even if
13 *NRS 176A.500(1)(b)*, on its face does not allow the District Court to extend the
14 Appellant's probation period beyond the then five-year statutory limitation, Appellant
15 cites no law that would not allow the District Court to break up or toll a period of
16 probation under *NRS 176A.500(1)(b)*, as what arguably happened here based on the
17 decision on the District Court below re-imposing probation in this matter. In fact, the
18 current version of *NRS 176A.500* actually allows an extension of time in a certain
19 instance, showing some latitude given to the Courts by the Nevada Legislature in
20 sentencing defendants. *See NRS 176A.500(2)*(Extension of time of probation allowed
21 for completion of time in Specialty Courts). Moreover, the issue here is essentially
22 moot in any event, since both parties agree that the Appellant is not under any term
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1 of probation at the present time, and it is within the sound discretion of the District
2 Court to determine if the Appellant honorably served her previously imposed term of
3 probation, by having fulling her terms of probation for the entire period thereof,
4 which did not happen in this case, as the District Court so determined. (*See NRS*
5 *176A.850(1)(a)*) (*See Appellant's Appendix, Pages 0228-0230*).

7 As a result, whether the District Court improperly extended the Appellant's
8 probation beyond the five-year statutory limit under *NRS 178A.500 (1)(b)* is now
9 moot. What the District Court was concerned about below, and what we have in this
10 case, is a victim that still suffers a significant economic damage of an amount that
11 the Appellant has admitted to, at least the amount of approximately \$22,700.00,
12 who was mistakenly discharged early from her probation period. To have been
13 allowed at the time for Appellant to be released without all her probation time
14 actually being served under *NRS 176A.500(1)(b)*, and not paying any further
15 restitution in this matter, as a condition of her probation, would not have been in
16 the best interests of justice, and would have caused an undue and unnecessary
17 burden on the victim in this case, Steve Lucas/Lucas Livestock, who has already
18 waited nearly seven years at that point to be fully restored financially for their
19 loss at the hands of the Appellant.

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1 CONCLUSION

2 Based on the arguments above, the State of Nevada respectfully asks this
3 Court to affirm the sentence imposed upon Appellant in this case.
4

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

7 Dated this 23rd day of May, 2022.

8 MICHAEL MACDONALD
9 Humboldt County District Attorney

10 By Anthony R. Gordon

11 ANTHONY R. GORDON
12 Nevada State Bar No. 2278
13 Deputy District Attorney
14 P.O. Box 909
15 Winnemucca, Nevada, 89446
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1 the Nevada Rules of Appellate Procedure.

2 Dated this the 23rd day of May, 2022.

3 MICHAEL MACDONALD
4 Humboldt County District Attorney

5
6 By Anthony R. Gordon
7 ANTHONY R. GORDON
8 Nevada State Bar No. 2278
9 Deputy District Attorney
10 P.O. Box 909
11 Winnemucca, Nevada 89446
12 (775) 623-6360
13
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18
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1 **CERTIFICATE OF SERVICE**

2
3 Pursuant to NRC 5(b) I certify that I am an employee of the Humboldt
4 County District Attorney's Office, and that on the 23rd day of May, 2022, I
5 mailed/delivered a copy of the **RESPONDENT'S ANSWERING BRIEF** to:
6

7 Rendal B. Miller
8 Miller Law Inc.
9 115 West 5th Street
10 Winnemucca, NV 89445

11 Aaron Ford
12 Attorney General
13 100 N. Carson Street
14 Carson City, Nevada 89701

15 
16 Employee, OFFICE OF THE
17 DISTRICT ATTORNEY
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