

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2

3 STEVEN P. GEIL,

4 Appellant,

5 vs.

6 STATE OF NEVADA,

7 Respondent.

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Docket No. 83831

8 **Appeal From Judgment of Conviction**
9 **Third Judicial District Court, Lyon County, Nevada**
10 **The Honorable Leon Aberasturi, District Court Judge**

11 **Appellant's Opening Brief**

12

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1 **I. JURISDICTIONAL STATEMENT**

2 This Court has jurisdiction over this appeal pursuant to NRS 177.015(3)
3 and Section 4 of Article 6 of the Nevada Constitution, as it is an appeal from a
4 criminal conviction in a case where the District Court had original jurisdiction.
5 Appellant filed a timely notice of appeal on November 18, 2021, with full briefing
6 ordered on March 23, 2022.

7 **II. ROUTING STATEMENT**

8 Because this case involves an appeal from a judgment of conviction from a
9 guilty plea to a Category C Felony, this matter should be presumptively assigned
10 to the Court of Appeals in accordance with NRAP 17(b)(1).

11 **III. STATEMENT OF ISSUES**

12 1. Did the sentence imposed violate the Constitutional prohibition against cruel
13 and unusual punishments because it was so disproportionate to the offense and
14 mitigating factors that it shocks the conscience?

15 **IV. STATEMENT OF THE CASE**

16 Appellant pled guilty to Obtaining and Using Personal Identifying
17 Information of Another Person, a category C Felony in violation of NRS 205.463
18 and was sentenced to a minimum term of eighteen months with a maximum term
19 of sixty months, consecutive to the Second Judicial Court cases CR21-0812 and
20 CR19-0975.

1 **V. ¹STATEMENT OF FACTS**

2 On February 15, 2021, Ralene Amirr contacted Lyon County dispatch to
3 report that her wallet and several credit cards had been stolen from her home
4 located at 1482 Grey Bluffs Drive in Fernley, NV. Presentence Investigation
5 Report (PSI) at 9. Ralene filed a report with the Lyon County Police Department
6 stating that her daughter, Lexa Amirr, had come into her home uninvited and stolen
7 credit cards from her purse. *Id.* Ralene told the responding deputy that Lexa was
8 driving a white Jeep registered in Ralene's name. *Id.* Deputy Erik Pruitt observed
9 Lexa at the Love's Truck stop in Fernley, NV. *Id.*

10 Deputy Pruitt conducted a traffic stop where he made contact with Lexa and
11 a passenger who identified himself as Luis Garcia but was later identified as the
12 appellant. PSI at 9-10. After questioning Lexa, the deputy conducted a search of
13 the vehicle where he saw an expandable baton, various controlled substances, drug
14 paraphernalia, a safe, a black zip case, and multiple credit cards in the victims'
15 names. PSI at 9. After arresting both Lexa and the appellant, the deputy found a
16 debit card and casino players card in the name of Steven Geil. *Id.* The deputy
17 arrested the appellant for possession of a dangerous weapon and possession of
18 stolen credit cards and identifying information. PSI at 10.

19
20

¹ The Presentence Investigation Report referenced has been transmitted under seal.

1 Once the appellant was transported to the Lyon County Jail, Deputy John
2 Vandiver informed Deputy Pruitt that the appellant had been booked the previous
3 day under Luis Garcia's name, and that his actual name was Steven Geil. *Id.* The
4 deputy applied for and was granted a search warrant for the black zip case and safe
5 located in the vehicle. *Id.*

6 The deputies subsequently conducted a search of the black zip case and safe
7 which contained credit cards and players cards in the appellant's name and the
8 personal identifying information of individuals who were not Mr. Geil. *Id.*

9 On February 17, 2021, the district attorney's office filed a criminal
10 complaint against the appellant. Appellant's Appendix (AA) at 1-2. The complaint
11 charged the appellant with Obtaining and Using Personal Identifying Information
12 of Another Person, in violation of NRS 205.463, a Category C Felony. AA at 1.
13 The complaint alleged that the appellant obtained the personal identifying
14 information of another and did use the name of Luis Garcia to avoid
15 arrest/prosecution in Fernley, Nevada. AA at 1: 25.

16 The appellant's appointed counsel was Wayne Pedersen. Mr. Pedersen
17 represented the appellant until June 1, 2021, when the appellant filed a notice of
18 withdrawal. AA at 3-6.

19 Following this, Orrin Johnson Law was appointed to represent the appellant
20 on July 29, 2021. A negotiation was reached between the parties where the

1 appellant would agree to plead guilty to Obtaining and Using Personal Identifying
2 Information of Another Person a Cat C Felony. AA at 24-28. In the guilty plea
3 agreement, the parties jointly recommended a sentence of 12-36 months in the
4 Nevada Department of Corrections, and further recommend that the sentence run
5 concurrently with his current term of incarceration in Second Judicial District
6 Court cases CR21-0812 and CR19-0975. AA at 24.

7 The appellant was arraigned on September 13, 2021. AA at 10-23. During
8 this hearing the appellant plead guilty to Obtaining and Using Personal Identifying
9 Information of Another Person a Cat C Felony. AA at 16:18-21. The guilty plea
10 memorandum reached by the parties was also filed with the court. AA at 16: 21-24.

11 The appellant was sentenced on October 25, 2021. AA at 29-38. During this
12 hearing, the court reviewed the Presentence Investigation Report (PSI). AA at 36:
13 11-14. At sentencing, the court asked if counsel had a copy of the PSI and if there
14 were any corrections. AA at 32: 21-24; 33: 1-3. The state indicated that there were
15 no corrections, and defense counsel asked for the court's indulgence in order to
16 answer a question from the appellant. AA at 32: 24; 33: 2-3. Following this
17 request, the court became irritated and cited that he was tired of the lack of
18 preparedness. AA at 33: 4-10. Additionally, the court stated that several cases were
19 continued earlier that day. AA at 33: 11-14. The court took a quick break for
20 counsel to get their "stuff together". AA at 33: 12-13.

1 Following this break, the court asked again if there were any factual
2 corrections to the PSI and the parties agreed that there were no corrections. AA at
3 33:16-22. Additionally, defense counsel asked that the court not consider any
4 highly suspect or impalpable evidence due to several allegations that were made in
5 the victim impact statement. AA at 35: 4-8. The court noted that the statement was
6 in the court's file, but the court had not reviewed it so therefore it would not be
7 considered during sentencing. AA at 35: 9-13.

8 The court referred to the appellant's PSI, citing that this was the appellant's
9 third felony and that the appellant had issues with completing probation in the past.
10 AA at 36: 11-14. Ultimately, the court sentenced the appellant to 18-60 months to
11 run consecutively with the Second Judicial District Court cases and no credit for
12 time served. AA at 36: 15-19.

13 The Judgment of Conviction was filed on November 1, 2021, which
14 reflected the sentencing imposed by the court on October 25, 2021. AA at 39-41

15 **VI. SUMMARY OF ARGUMENT**

16 The District Court sentenced the appellant to the maximum possible penalty
17 for this offense. The District Court maintains discretion with sentencing, however
18 the outside factors considered by the court prior to the appellant's sentencing
19 incorrectly influenced the court's decision. The sentence went well beyond the
20 agreement of the parties and was grossly unfair considering the facts of the case.

1 The sentence itself was based on emotional outside factors of the court and prior
2 incidents in the court's calendar rather than the actual crime itself.

3 **VII. STANDARD OF REVIEW**

4 A district court's sentencing decision is reviewed for abuse of discretion.
5 *Chavez v. State*, 125 Nev. 328, 348 (2009).

6 **VIII. ARGUMENT**

7 **1. Did the sentence imposed violate the Constitutional prohibition against**
8 **cruel and unusual punishments because it was so disproportionate to the**
9 **offense and mitigating factors that it shocks the conscience?**

10 Article I, Section 6 of the Nevada Constitution bans "cruel or unusual
11 punishments" from being inflicted upon a criminal defendant, as does the Eighth
12 Amendment to the US Constitution. Nev. Const. art. I, §6.

13 Ordinarily, a sentence within the statutory limits will not be deemed cruel
14 and unusual punishment under our constitutions. *Blume v. State*, 112 Nev. 472,
15 475 (1996). However, the exceptions to this general rule are if "the statute fixing
16 punishment is unconstitutional or the sentence is so unreasonably disproportionate
17 to the offense as to shock the conscience." *Culverson v. State*, 95 Nev. 433, 435,
18 (1979). It is the second exception that applies in the present case.

19 The court will not interfere with a sentence unless the record demonstrates
20 prejudice resulting from consideration of information or accusations founded on

1 facts supported only by impalpable or highly suspect evidence. *Silks v. State*, 92
2 Nev. 91 (1976).

3 Here, the court's sentencing decision was based on factors outside of the
4 information and the appellant's criminal history. AA at 33: 4-14. When taken as a
5 whole, the record shows that the sentence was based on the judge's irritation from
6 events that had occurred earlier that morning, defense counsel asking for the
7 court's indulgence to answer the appellant's question, and based on the victim
8 impact statement. AA at 33: 4-14; 35: 9-13.

9 It is clear from the record that the court was irritated about the prior cases
10 that came before the appellant's sentencing. AA at 33: 4-14. The judge stated that
11 he was tired of the lack of preparedness of counsel and questioned how many cases
12 had to be continued that morning. *Id.* Cases which involved neither Mr. Geil nor
13 his attorney. He concluded by strongly suggesting the parties "get [their] stuff
14 together" and that the court would be in recess. *Id.* Clearly, the events that
15 occurred prior to and having nothing to do with the appellant's sentencing irritated
16 the court that morning, setting the tone for the appellant's sentencing and
17 influenced the court's sentencing decision.

18 In addition to the issues that occurred earlier that morning, the court was
19 clearly and inexplicably irritated with defense counsel. *Id.* Defense counsel asked
20 for the court's indulgence when the judge asked if there were any factual

1 corrections in the PSI. AA at 33:1-14. Defense counsel asked for the court's
2 indulgence because the appellant had a question about the PSI. Before answering
3 the court's question about whether there were any factual corrections, defense
4 counsel- as part of her obligations to competently represent the appellant under the
5 Rules of Professional Conduct 1.1 - needed to address the appellant's last-minute
6 question about the PSI. Clearly, either the time it took to answer the question or the
7 fact that defense counsel took time to answer the appellant's questions irritated the
8 court. AA at 33:1-14. Even if the court's irritation was somehow warranted, this
9 should not have influenced the court's sentencing decision.

10 Lastly, while the court acknowledged that the victim impact statement would
11 not be considered in the sentencing decision, this was not brought up until defense
12 counsel asked the court to not rely on highly suspect or impalpable evidence that
13 was contained within the victim impact statement. AA at 35:1-13. The court was
14 still aware that there was a victim impact statement, and the victim had taken the
15 time to write a letter about the appellant. AA at 35: 9-11. It is difficult at that point
16 not to consider the impact statement at all.

17 Based on the facts of this case, the sentence that was imposed on the
18 appellant is grossly unfair. He was not arrested because he was using another
19 person's identifying information, he was arrested due to the fact that the driver, of
20 which he was a passenger to, had a dangerous weapon in the vehicle and had stolen

1 Ralene Amirr's credit cards. *Id.* Additionally, the appellant is not denying that he
2 was in possession of another person's identifying information. AA at 16:17-21;
3 PSI: 10. The appellant took responsibility for his actions by pleading guilty to the
4 charge. AA at 16:17-21. A sentence of 18-60 months running consecutively with
5 his Second Judicial District court case is grossly unfair in light of the fact that he
6 took responsibility for his actions and the actual facts of the case.

7 The court's sentencing decision is one that shocks the conscience because it
8 is based on prior incidents that happened on the courts calendar that morning and
9 the court's irritation at defense counsel. The sentencing decision was not based on
10 the substance of the case.

11 **IX. CONCLUSION**

12 Steven Geil committed the crime of Obtaining and Using the Identity of
13 Another Person, which he acknowledged when he plead guilty to this offense.
14 However, the sentencing decision in the appellant's case is one that shocks the
15 conscience because the court relied on highly suspect and impalpable evidence and
16 the sentence itself was grossly unfair based on the facts of the case.

17 Additionally, defense counsel has a duty under the Rules of Professional
18 Conduct to answer questions clients may have, regardless of when questions arise
19 and how long it may take to effectively answer those questions. Allowing this
20 sentencing decision to stand will have a chilling effect on zealous advocacy. It was

1 not the appellant's fault that the court calendar had several continuances that
2 morning, and he should be allowed to ask his attorney a question during
3 sentencing. The fact that his sentence was based on the irritation of the court rather
4 than the actual substance of the case shocks the conscience.

5 Appellant therefore prays this court VACATES the judgment of conviction
6 in this case and REMANDS this case to the district court to amend the judgment of
7 conviction to the sentence agreed upon in the Guilty Plea Agreement of 12-36
8 months to run consecutively with the appellant's Second Judicial District Court
9 cases.

10 Dated: March 23, 2022

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1 **VERIFICATION AND CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this Opening Brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
4 the type style requirements of NRAP 32(a)(6) because:

5 [X] This Opening Brief has been prepared in a proportionally spaced type
6 face using Microsoft Word 2010 in 14 point Times New Roman font.

7 2. I further certify that this Opening Brief statement complies with the
8 type volume limitations stated in Rule 32(a)(7), because it is proportionally
9 spaced, has a typeface of 14 points or more, and contains 2,226 words.

10 3. Finally, I hereby certify that I have read this appellate brief, and to
11 the best of my knowledge, information, and belief, it is not frivolous or interposed
12 for any improper purpose. I further certify that this brief complies with all
13 applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1),
14 which requires every assertion in the brief regarding matters in the record to be
15 supported by appropriate references to the page and volume number, if any, of the
16 transcript or appendix where the matter relied on is to be found. I understand that

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18 ///

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1 I may be subject to sanctions in the event that the accompanying brief is not in
2 conformity with the requirements of the Nevada Rules of Appellate Procedure.

3 Dated: March 23, 2022

4
5 By: /s/ Alexandra M. Dyer
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1 **CERTIFICATE OF SERVICE**

2 I certify that this document was filed electronically with the Nevada
3 Supreme Court on March 23, 2022. Electronic service of this document will be
4 made in accordance with the Master Service List as Follows:

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13 I further certify that I served a copy of this document by mailing a
14 true and correct copy thereof, postage pre-paid via USPS, addressed to:

15 STEVEN P. GEIL, #1197996
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19 Dated: March 23, 2022

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