IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN P. GEIL,

Appellant

v.

THE STATE OF NEVADA,

Respondent

Docket No. 83831

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

RESPONDENT'S ANSWERING BRIEF

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I. ROUTING STATEMENT

The State of Nevada agrees with Appellant's Routing Statement. This case is presumptively assigned to the Nevada Court of Appeals. NRAP 17(b)(1).

II. ISSUES PRESENTED FOR REVIEW

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

II. STATEMENT OF THE CASE

The State agrees with the Statement of the Case contained in the Opening Brief.

IV. STATEMENT OF FACTS

The State agrees with the Statement of Facts contained in the Opening Brief.

V. SUMMARY OF THE ARGUMENT

The district court properly sentenced Mr. Geil. The district court considered the criminal history, the facts of the case and Mr. Geil's prior performance on probation, all proper considerations for sentencing. The sentence should be affirmed.

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VI. ARGUMENT

STANDARD OF REVIEW

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

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

Nevada Constitution, Article 1, Sec. 6, and the Eighth Amendment of the United States Constitution ban cruel and unusual punishment. A sentence 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." *Culverson v. State*, 95 Nev. 433, 435, 596 P.2d 220, 221–22 (1979). *Blume v. State*, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996). "So 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, this court will refrain from interfering with the sentence imposed." *Silks v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). Mr. Geil claims that the sentence in this case is "so unreasonably disproportionate to the offense as to shock the conscience." Opening Brief, Page 6.

In Nevada, the minimum term of imprisonment that may be imposed must not exceed 40 percent of the maximum term imposed. NRS 193.130(1). The maximum possible penalty for this offense of Obtaining and Using Persona Identifying Information of Another Person, in violation of NRS 205.463, a Category C Felony, is twenty-four (24) to sixty (60) months in the Nevada State Prison and the court may impose a fine of up to $10,000. NRS 193.130(2)(c); AA 7; AA 25. The district court imposed a sentence of eighteen (18) to sixty (60) months with no fine, which is a prison sentence less than the maximum allowed under Nevada law. AA 40. The Presentence Investigation Report (PSI) confirmed that this was the Defendant's third felony conviction.[1] Further, the PSI indicates that Mr. Geil has committed similar crimes in Washoe County, where he was sentenced to 12-36 months in prison, consecutive to another felony case in Washoe County. PSI, page 8. The facts of this case establish that the Mr. Geil possessed three credit cards and thirteen players club cards in victim #2's name. PS, page 10.

During the sentencing hearing, the district court stated:

THE COURT: The Court's considered probation, but based upon your criminal history, the Court will not give you that privilege. The Court notes this will be your third felony, and then additionally, the presentence

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

investigation report indicated that you have previous problems completing probation and parole.

The Court will sentence you a minimum of 18 months to a maximum of 60 months. Based upon the criminal history, I'm not going to give you the benefit of concurrent time, so the 18 to 60 will be consecutive to the previous cases.

AA 36. The district court sentence is reasonable based on the information cited by the district court and the information contained in the PSI. Mr. Geil had been engaging in a course of criminal conduct over several years and the district court could properly consider that in determining an appropriate sentence.

Mr. Geil contends that the district court improperly relied on the victim impact statement. The record belies this claim. The district court specifically stated that it did not read or consider the victim impact statement. The exchange between Mr. Geil's counsel and the district court regarding the victim impact statement was as follows:

MS. DYER: Yes. Your Honor, that is my understanding of the agreement as well. We would just ask that -- we read through the victim impact statement. I reviewed that with my client. There's quite a few accusations within that victim impact statement and so we would just ask that the Court not rely on

the impactful and highly suspect evidence within it and we would just ask that the Court follow the agreement of the parties this morning. AA 35

THE COURT: All right. So for purposes of the record, the Court has not -- it's -- I recognize that it's in the file, but I have not read it. And so as there is an argument on it, the Court will not consider the victim impact statement as part of the court sentencing. AA 35.

The district court judge specifically stated in this case that he had not read the victim impact statement and he would not consider it for purposes of sentencing. Id. The district judge informed the parties that he had received the letter, however, once counsel for Mr. Geil raised concerns with certain information, the district court definitively stated that the judge had not read the letter and would not consider it. Contrast that with *Todd v. State*, where "nothing in the record indicated that the district judge did not read the letter and the notes, and the fact that the letter was located in the confidential envelope which was to be opened only by the district judge is a strong indication that the district judge read the letter and the notes prior to sentencing Todd" and "the district judge never informed the parties that he had received and read Bull's letter and Todd's attached notes." *Todd v. State*, 113 Nev. 18, 24, 931 P.2d 721, 724 (1997). Mr. Geil was not prejudiced by the victim impact letter in this case because clearly the judge never considered it. AA 35:9-13.

Geil contends that the district court's sentencing decision was based on factors outside the information and the appellant's criminal history. Specifically Geil claims that the decision was based on the judge's irritation from the events that had occurred earlier in the morning. Opening Brief, p. 7. In fact, the decision had nothing to do with the events from earlier in the morning. The district judge carefully delineated the reasons for the sentence, including that this was Mr. Geil's third felony and he had previously failed probation. AA 36. Although the district judge may have been frustrated by events of the morning, the record is clear, that after the break, the judge carefully considered Mr. Geil's case and the factors appropriate for the district court to consider when determining and imposing the appropriate sentence.

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VII. CONCLUSION

Mr. Geil asks this court to reverse the sentence imposed by the district court. The district court imposed less than the maximum sentence allowed by the statute and the district judge did not rely on improper information in imposing the sentence. The sentence was based upon the facts, the prior criminal history of Appellant, and Mr. Geil's prior performance on probation. These are all proper considerations made by the district court. The sentence was not cruel and unusual punishment and this court must uphold the sentence.

Dated this 12th day of May, 2022.

/S/

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VIII. ATTORNEY'S CERTIFICATE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4)-(6), and either the page- or type-volume limitations stated in NRAP 32(a)(7) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point Times New Roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(A)(ii) it is proportionately spaced, has a typeface of 14 points or more, and contains 1301 words and does not exceed 136 lines of text.

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.

/S/
Stephen B. Rye
District Attorney
Attorney for Respondent

IX. CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 13, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ALEXANDRA DYER, ESQ.
Counsel for Appellant

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Nevada Attorney General

/S/
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