

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER TRUSCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Jan 11 2022 10:20 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 83853

MOTION FOR BAIL PENDING APPEAL

COMES NOW, Appellant Christopher Trusca, by and through counsel, Jamie Resch, Esq., and moves this Court for reasonable bail pending appeal pursuant to NRS 177.145, 178.484, and 178.488. This motion is based on the following memoranda and all papers and pleadings on file herein.

MEMORANDUM

Trusca was convicted below pursuant to a plea of guilty of one count of possession of visual presentation depicting sexual conduct of a child, a Category B felony. The plea agreement allowed all parties the right to argue at sentencing.

The sentencing was conducted remotely notwithstanding an administrative order that required an in-person sentencing where imprisonment was likely. The court in fact sentenced Trusca to a term of imprisonment at sentencing which was held on October 19, 2021. Trusca was out of custody at that time.

Trusca reported to court for a surrender date on October 26, 2021. At that time, he informed the judge that his infant daughter was scheduled for a heart procedure. The court allowed Trusca to remain out-of-custody until November 23, 2021. Trusca changed counsel following that hearing.

With the help of undersigned counsel, Trusca filed a motion for resentencing along with a motion for bail pending appeal. Those motions were heard at the November 23, 2021 surrender date. The court denied them both and took Trusca into custody at that time. Trusca thereafter filed a notice of appeal which is this proceeding.

Trusca now moves for bail pending appeal before this Court, as his request below was denied. Trusca submits, as he did below, that bail may be granted "unless it appears that the appeal is frivolous or taken for

delay.” NRS 178.488. Below, Trusca informed the trial court of this Court’s precedential decision in Bergna v. State, 120 Nev. 869, 875, 102 P.3d 549 (2004) (additional considerations include consideration of whether the defendant is a flight risk or danger to the community).

The transcript from that hearing is now available and attached. Trusca would submit that the district court erred because it denied bail based on extrajudicial research, chiefly “Webster’s” [dictionary]. Transcript, p. 10. This resulted in an overly-strict definition of “frivolous” which the trial court used to deny relief.

Applying Bergna, as this Court should, the case for bail is much stronger. Mr. Trusca remained out-of-custody, trouble free, during the pendency of his case to include even after it was known he had been sentenced to prison. Likewise, Mr. Trusca made all court appearances including those arising after the sentence was imposed. Additional factors are set forth in the declaration below.

Also, the briefing herein will set forth at least two issues on appeal which are valid and viable, not (under any definition) “frivolous” as the trial

court found. Nor is this appeal taken for delay. Mr. Trusca understands he does not have a constitutional right to bail after conviction. That said, given the issues to be raised including rapidly developing procedural safeguards related to the pandemic at sentencings, Trusca submits the setting of reasonable bail is appropriate.

DATED this 11th day of January, 2022.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: / s / Jamie J. Resch
JAMIE J. RESCH
Attorney for Appellant

DECLARATION OF JAMIE RESCH

1. That Declarant is an attorney duly licensed to practice law in all courts in the State of Nevada.
2. That Declarant is counsel for Christopher Trusca in this matter, to include with respect to a pending appeal as well as motions for bail and modification of sentence.

3. Mr. Trusca was sentenced to prison despite strong arguments that would have supported a suspended sentence and the grant of probation. It is believed there are several reasons for this, including that the sentencing court may have misapprehended certain representations as fact which were not accurate.
4. Mr. Trusca moved for bail pending appeal below, which was denied. As noted in this motion, the State agreed to an OR release after entry of plea. Further, even after he was sentenced to prison, Mr. Trusca was allowed several weeks in which to surrender. A strong case can be made that Mr. Trusca is not a particular flight risk or danger to the community.
5. Mr. Trusca has in fact never missed a court appearance in this matter, and he has complied with all court orders.
6. Any appeal taken herein is not frivolous or made for delay. Similar issues have been raised in multiple pending cases before the Nevada Supreme Court, particularly as it pertains to remote sentencings held over low quality connections. There are also

issues related to the sentencing that may raise questions of fundamental fairness and the right to counsel.

7. Mr. Trusca has been a resident of Clark County for many years, and although he has a minor history of drug crimes prior to the instant offense, the evidence of record explains that these offenses are related to a severe drug addiction problem that started after the death of Mr. Trusca's older brother.
8. Mr. Trusca receives incredible support from an extended family that includes his father, mother, and stepfather.
9. Mr. Trusca complied with this Court's orders, such as to get fitted for electronic monitoring, even though that resulted him needlessly spending three days in custody from November 2 to 4, 2021.

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10. If release on bail is allowed, Mr. Trusca's stated intent is to continue to make all court appearances and adhere to all court orders.

I declare under penalty of perjury that the foregoing is true and correct.

DATED and EXECUTED this 11th day of January, 2022.

Respectfully submitted,

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: / s / *Jamie J. Resch*

JAMIE J. RESCH
Attorney for Appellant
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CERTIFICATE OF SERVICE

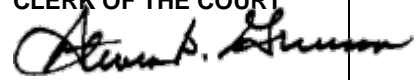
I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 11th day of January, 2022.

Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

STEVEN WOLFSON
Clark County District Attorney
Counsel for Respondent

AARON FORD
Nevada Attorney General

By: /s/ Jamie Resch
An Employee of RESCH LAW, PLLC
d/b/a Conviction Solutions



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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 CHRISTOPHER TRUSCA,

12 Defendant.

CASE NO. C-21-356689-1

DEPT. VI

13 BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE
14 TUESDAY, NOVEMBER 23, 2021

15 **RECORDER'S TRANSCRIPT OF PROCEEDINGS: DEFENDANT'S MOTION**
16 **FOR BAIL PENDING APPEAL; DEFENDANT'S MOTION TO MODIFY**
17 **SENTENCE; STATUS CHECK: SURRENDER**

18 APPEARANCES:

19 For the State:

WILLIAM C. ROWLES, ESQ.
Chief Deputy District Attorneys

20
21 For the Defendant:

JAMIE J. RESCH, ESQ.

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23
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25 RECORDED BY: DE'AWNA TAKAS, COURT RECORDER

1 Tuesday, November 23, 2021, Las Vegas, Nevada

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3 [Proceedings began at 11:14 a.m.]

4 THE COURT: Trusca, 356689. Counsel state your appearance.

5 MR. ROWLES: Good morning, Your Honor, William Rowles on behalf
6 of the State, 13577.

7 MR. RESCH: Jamie Resch, I'm here for Mr. Trusca who is also here
8 in person.

9 THE COURT: Okay this is defendant's motion to modify, and then
10 there's also motion for bail. Let's start with the motion to modify. Do you have
11 anything to add?

12 MR. RESCH: I do. Just some brief remarks. I read State's response.
13 They seem to agree that jurisdiction to modify a sentence could exist before the
14 defendant starts serving it, which he hasn't in this particular case, so that was our
15 initial point. But if we put that aside we've also shown that there were two
16 deficiencies at the time of sentencing such as the State's representations about
17 drug use and how it would've accounted for Mr. Trusca's actions, as well as the
18 fact that the sentencing was held remotely over the internet.

19 One fun note the day after I filed the motion the *Chaparro* case came
20 out. It's cited by the State. Purports to -- it's a published case, it purports to talk
21 about standards applicable to remote sentencings in Nevada. I would disagree
22 with the State's characterization that it simple holds it, sentencing, remotely were
23 permissible in all situations. I don't read it that way at all. What it said was, they're
24 permissible if they result in a fair and just hearing. Such as when the defendant --
25 and these cited on page six of the decision, has the ability to confidentially

1 communicate with counsel during the hearing as well as the fact in that case an
2 administrative order in effect at the time prohibited in-person hearings. In this case
3 we presented evidence that Mr. Trusca could not communicate confidentially with
4 his attorney at the time of sentencing because they were in two different locations
5 both on their phone. As well the order that I've provided with the motion at the time
6 of Mr. Trusca's sentencing said do it in person if there's a risk of going to prison.
7 So the exact opposite of the *Chaparro* case.

8 It's our position base on those two issues and/or the fact that he hasn't
9 started serving his sentence yet that the Court could modify the sentence to
10 include doing the sentencing over to remedy these errors.

11 THE COURT: Well first of all and I think even you quoted it, you're
12 argument that if there's a risk of going to prison that's not what is says. And
13 there's, I would imagine, I can't think of any, there's always a risk. Unless it's
14 somehow a conditional plea and then the Judge doesn't have to accept that. It is
15 and I don't have the -- I can't find the quote, but this was I believe the State --

16 MR. RESCH: Well they retained the right --

17 THE COURT: -- had no [indiscernible]

18 MR. RESCH: -- to argue, which in contrast to, I guess, a plea where
19 both sides were recommend probation, something like that. So the administrative
20 order in effect contemplated that if the plea calls for prison time or the potential for
21 prison time that it should be held in person, the sentencing.

22 THE COURT: So the other issue is, why didn't your client show up in
23 person? Nobody prevented that.

24 MR. RESCH: Okay, that's true. He's, of course, operating on the
25 advice of his attorneys, and so, you know, if you're uneducated in handling the

1 matter yourself --

2 THE COURT: So --

3 MR. RESCH: -- as most defendant's would be, they're relying on their
4 attorney to provide that information.

5 THE COURT: Okay. So your -- I assume that's -- your suggestion of
6 ineffective assistance, but that's not appropriate for a modification of sentence.

7 MR. RESCH: I agree with that, which is why we tried to steer clear of
8 that and I'm focusing on the just and fairness of the hearing, which is a
9 constitutional issue.

10 THE COURT: All right. State?

11 MR. ROWLES: Your Honor, the State's position is that he voluntarily
12 chose to appear via Bluejeans. He was out of custody. He wasn't even on
13 electronic monitoring at the time so there were no restrictions with his movement.
14 Him and his attorney chose to appear in different locations. You can't voluntarily
15 decide not to come to court and then raise that as an issue.

16 Second, Your Honor, as our opposition lays out, we don't believe this
17 is an appropriate remedy. The only basis to challenge on a motion to modify is for
18 material untrue or mistake regarding his criminal history. The rest needs to be
19 challenged in a pre-trial writ of habeas corpus, which has not been filed. This is
20 more appropriate for district court or -- excuse me, the Nevada Supreme Court or
21 writs of habeas corpus.

22 Second [sic], Your Honor, the State did not make a mistake of fact.
23 Correlation does not equal causation. The defense cites a study that doesn't
24 necessarily mean that because ingested heroine that all of a sudden I'm turned on
25 by little kids. All it does is suggest that people who are turned on by little kids also

1 like drugs. It's not a surprise that deadbeats do deadbeat things. This is an
2 individual who viewed child pornography on -- several times, downloaded several
3 images of child pornography over the course of several years. The sentence was
4 fair and just and appropriate. Unless the Court has any other specific questions, I'll
5 submit.

6 THE COURT: No. Go ahead.

7 MR. RESCH: If I may, sorry. That does remind me of one more issue.
8 As to the credits, then so I think we've explained Mr. Trusca's spent three
9 additional days in custody.

10 MR. ROWLES: Our opposition doesn't -- says we oppose that. I don't
11 oppose that, sorry.

12 MR. RESCH: Oh, okay. All right, so perhaps I'm hearing that we can
13 correct the Judgment of Conviction to include those days, bringing it to seven
14 instead of four.

15 THE COURT: That's --

16 MR. RESCH: If that's agreed upon then --

17 THE COURT: That's agreed --

18 MR. RESCH: -- I don't have anything --

19 THE COURT: -- upon?

20 MR. RESCH: -- further to say about that.

21 THE COURT: That's good.

22 MR. RESCH: Okay. I guess I would just say as far as the
23 representations, according to *State vs. Eighth Judicial District Court*, they don't
24 need to be intentional. It's just information that is not accurate and so even if the
25 Court wanted to set aside our studies, which I provided, they're simply provided a

1 proof that there is some evidence that there's a connection between drug use and
2 child pornography addiction. That was the entire theory of the psychosexual
3 examine, was that there was relationship between those two things. I don't think
4 the examiner explained it very well. She simply stated that it existed and then
5 came up with her risk to reoffend assessment without going into much depth. But
6 there definitely is a connection there. Not saying, of course, that all drug users will
7 view child porn or vice-versa but the pathology is that work on the addiction
8 diseases, as it it's being more commonly known these days, are similar and exist
9 in multiple ways to include drug use, child pornography, gambling or any other
10 types of addictions.

11 THE COURT: All right, thank you. I'm going to deny the motion and
12 here's why, first of all a motion to modify the sentence, although I suppose
13 because he hasn't started his -- he hasn't gone to prison yet it's appropriate to
14 potentially consider it but the grounds here are basically two:

15 One, that he allegedly didn't have, if you will, good communication
16 with his attorney and, again as I pointed out, that's clearly appears to be his --
17 and/or his counsel's choice. He is entitled to representation at this stage there's no
18 question of that. He was represented and answered appropriately, etcetera.

19 The second ground was regarding the drug information, etcetera.
20 There's nothing, and we don't have a record, so there's nothing to show that the
21 Judge took that in to account for anything other than hyperbole. And I guess
22 second to that is there's no real showing one way or the other regarding what
23 effect if any it does or doesn't have. And although I saw the study it again it leaves
24 it far from any conclusive effects either way. So again there's nothing to show that
25 Judge Hardy used that in deciding or making his decision. And so it's denied. I'm

1 giving him his three additional days. So that's it.

2 Then the motion for bail pending appeal anything to add on that?

3 MR. RESCH: Just super briefly. I'm handing the State a copy of this
4 letter which we got from his daughter's doctor the other day. Just again further
5 confirming we're talking about a 7-month-old -- how old is she, a 7-month-old baby
6 with serious heart problems. Mr. Trusca's the father, you know, in the middle of
7 trying to deal those things, I get it, but, you know, prison's inconvenient doesn't
8 matter what you're up to in your life, but there are compelling reasons for Mr.
9 Trusca to be out of custody to deal with those at this time. The standard on appeal
10 for bail is the question of, what is the risk to the community, what's the risk that he
11 will flee, and whether the issues are frivolous.

12 I would suggest the issues we previously discussed here today are at
13 least debatable and therefore not frivolous. As far as his danger to the community
14 and flight risk, we've addressed those in the motion. He's been out of custody with
15 no restrictions, has made all his court appearances, gotten in no further trouble.
16 For all these reasons there would be value in continuing his status on bail.
17 Certainly at the conclusion of the hearing today I will almost certainly be filing the
18 notice of appeal. It's been something like 29 days since the judgment was
19 entered.

20 THE COURT: So I wanted to ask you and I certainly didn't -- it's
21 appropriate to this as in my mind nothing to do with the other motion. On exhibit A
22 you attached some medical records and granted these are back -- and I have no
23 idea why you did, back in 5 of 29 if you look at the conclusion, no signs of heart
24 failure, infant is asymptomatic.

25 MR. RESCH: Oh, all right. May I approach? I do have an --

1 THE COURT: Okay.

2 MR. RESCH: -- updated letter.

3 THE COURT: Tell me what's going on now because generally -- and
4 I'm not a doctor, but they're following a problem that --

5 MR. RESCH: This is a letter from just the other day and identifies
6 congestive heart failure and a variety of other conditions that do require on going
7 care from the doctor. And I apologize for the first records, that was the best that I
8 had, you know, when you order records --

9 THE COURT: Okay, I --

10 MR. RESCH: --you get what they send you and had to pick from that.
11 But this I think more directly addresses the Court's point.

12 THE COURT: Well, again, I'm not a doctor; he's following her for a
13 problem with her heart, and I hate to say it you know a little medical knowledge,
14 that sometimes this when the child is born, these if you will, I believe it's a hole
15 they close up, and the again in 5/29 infant is asymptomatic. Now here he's still
16 following her but, and I certainly as a father would be worried, I'm not saying he
17 shouldn't be, you know, following, treating, etcetera, being concerned, but you had
18 indicated, I thought, surgery was imminent and as of, what, yesterday there's no
19 mention of that.

20 Do you want me to attach this as a Courts exhibit?

21 MR. RESCH: Could we please?

22 THE COURT: Sure.

23 MR. RESCH: Thank you. I can only represent that Mr. Trusca's
24 indicating to me right now that surgery is still contemplated. I think that at the time
25 it was presented certainly by the providers as something more imminent. Turns

1 out it hasn't happened. Again, as a father maybe thankful --

2 THE COURT: I'm --

3 MR. RESCH: -- you know, it's not like you wanna rush your --

4 THE COURT: -- sure he's anxious. I'm sure he's concerned. I am
5 sympathetic to that, but -- anyway, all right State your opposition.

6 MR. ROWLES: If I may respond orally, Your Honor?

7 THE COURT: Yes.

8 MR. ROWLES: With regards to the prefactors, I think the fact that he's
9 been convicted of possession of child sexual abuse material and sentenced to
10 prison demonstrate that he is a danger to our community. With regards to flight
11 risk, there is a significant difference between showing up to court when you
12 believe you might be a suitable candidate for probation, and showing up to court
13 when you are 100% aware that there is a prison sentence that is about to be
14 imposed.

15 With regards to the issues on appeal, I do believe these are frivolous,
16 Your Honor, as demonstrated by today's outcome with the motion to modify that's
17 really the biggest factor, Your Honor, is I don't think he's gonna have a likelihood
18 of success on appeal given the representations made during sentencing given the
19 fact that he voluntarily decided not to show up in-person for court especially given
20 the recent Nevada Supreme Court opinion allowing remote appearances for
21 sentencing hearings. On that, I'll submit.

22 With regards to the -- the only reason the State allowed Mr. Trusca to
23 move past his surrender date was because of the representations that there was a
24 surgery pending for his young daughter. There does not appear to be any surgery.
25 It appears to be an individual who has a condition that's being treated adequately

1 by the medical professionals. It's time for his sentence to be imposed, Your Honor.
2 The State would ask that this motion be denied.

3 THE COURT: Last word.

4 MR. RESCH: Sure. Just to be fair, you know, it took a certain level of
5 intestinal fortitude to walk in here today without any restrictions whatsoever and he
6 has done that. If allowed to stay out on bail he would continue to do that. They've
7 retained me. We're looking forward to the appeal. And, again, the standard is
8 whether or not the issues are frivolous. Deny does not mean frivolous. I
9 understand the Court's ruling here today. I, again, just simply suggest it's
10 debatable. The issues are raised in good faith and there's a basis to continue his
11 status on bail while we appeal them.

12 THE COURT: All right, thank you. Raising an issue for an appeal is
13 always appropriate, but I tend to in certain -- obviously by background is civil,
14 when they're talking about frivolous motions or generally when they're talking
15 about frivolous, they're asking to sanction -- extreme sanctions of dismissing a
16 case. So I looked up frivolous, and I believe Webster's says frivolous means no
17 sound basis in fact or law. And if we were deciding bail pending an appeal on
18 every case that while an appeal is being filed you always have the right to -- every
19 case I don't know if there's -- well certainly they don't file appeals in some cases
20 but I see them all the time, that doesn't mean that it is a sound basis in fact or
21 law.

22 The arguments you made today, assuming those are the grounds on
23 appeal, to me, have no basis -- no sound basis in fact or law. Yes I denied him,
24 and could the supreme court possibly disagree? Well of course. But these to me
25 are very clear issues that do not, and I guess I have to keep repeating, no sound

1 basis in fact or law. The guilty plea agreement is the guilty plea agreement. And
2 the issues raised do not have merit and so therefore I'm denying the motion for
3 bail pending appeal.

4 I will say for the record that he has made all his appearances,
5 including today. But that's not the basis for my denial. So that's it, he's gonna
6 surrender and we'll move forward.

7 MR. RESCH: With the Court's permission would -- I mean I'd be
8 happy to do it or if the State is prevailing here today as it sounds, could they be
9 directed to prepare an order so I have something to work off on appeal?

10 THE COURT: Absolutely.

11 MR. ROWLES: Yes, Your Honor.

12 THE COURT: Okay. What else?

13 THE MARSHAL: Your Honor he's being remanded now, or?

14 THE COURT: Yes, he's being remanded now.

15 MR. RESCH: Thank you.

16 THE COURT: He's surrendering either way you want to put it, yes.

17 [Proceedings concluded at 11:33 a.m.]

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20
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio/video proceedings in the above-entitled case to the best of my ability.

23 
24 De'Awna Takas
25 Court Recorder/Transcriber