

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES ROBERT STAPP,
Appellant.

v.

STATE OF NEVADA,
Respondent.

Electronically Filed
Dec 29 2021 04:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 83886

DOCKETING STATEMENT

1. Judicial District: Second County: Washoe
Judge: Honorable Connie Steinheimer District Court Case No.: CR20-4057
2. If the Defendant was given a sentence,
 - a) what is the sentence? 96-240 months in the Department of Corrections.
 - b) has the sentence been stayed pending appeal? Not at this time.
 - c) was defending admitted to bail pending appeal? Not at this time.
3. Was counsel in the district court appointed or retained? Retained.
4. Attorney filling this docketing statement?
Attorney: Larry K. Dunn Telephone: (775) 322-5656
Firm: Larry K. Dunn & Associates
Address: 1201 Terminal Way Ste. 221B, Reno, Nevada 89502
Client: Appellant, JAMES ROBERT STAPP
5. Is appellate counsel appointed or retained? Neither
6. Attorneys representing Respondents:
Attorney: Appellate Deputy Telephone 775-337-5750
Firm: Washoe Co. District Attorney's Address: 1 South Sierra St, 7th Floor
Office, Appellate Division Reno, Nevada 89501
Clients: STATE OF NEVADA
7. Nature of disposition below: Judgment upon Guilty Plea
8. Does this appeal raise issues concerning any of the following: Not applicable.

9. Expedited appeals: The court may decide to expedite the appellate process in this matter. Are you in favor of proceeding in such manner? Yes.

10. Pending and prior proceedings in this court: None to the undersigned's knowledge.

11. Pending and prior proceedings in other courts: None to the undersigned's knowledge.

12. Nature of action:

Appellant was charged in December, 2020, with five counts of lewdness with a child under the age of 14, during the years of 2014-2019. Appellant entered into a plea bargain with the State to plead guilty to two counts of attempted lewdness with a child under the age of 14, with the Parties being free to argue at the time of sentencing. In the PSIR the Division noted that Appellant's birthdate is December 9, 1947, making him 74-years-old. Further, as noted in the PSIR, Appellant had been diagnosed with high blood pressure, ulcerative colitis in 2020, and heart disease, having undergone a triple bypass open heart surgery in April 2021, and is currently prescribed seven prescription medications. He underwent a psychosexual evaluation, and was determined not to pose a high risk of re-offense based upon a currently accepted standard of assessment. He has one prior misdemeanor conviction from 1982.

Although eligible for probation, the court below imposed a sentence of 96-240 months in prison for each count, to be served concurrently. The Division did not

make a sentencing recommendation, but did recommend special conditions in the event of a grant of probation.

13. Issues on appeal:

1) Did the trial court abuse its discretion and violate Appellant's Fifth and Sixth Amendment rights at sentencing? More specifically (pending the undersigned's receipt of the actual transcript):

a) Did the trial court improperly impose the prison sentence based upon the Court's opinion that Appellant is a "predator" and only way to stop Appellant from reoffending was to put him in prison, despite the finding of the psychosexual risk assessment?

b) Did the trial court improperly impose the sentence based upon representations of uncharged misconduct that could not be proven?

c) Did the trial court improperly refuse to consider mitigating evidence in the form of a second psychosexual evaluation revealing the Appellant to have a low risk to re-offend?

2) Under the circumstances, and given that the Court had discretion to impose a probation sentence, is the sentence imposed herein cruel and unusual in violation of the Eighth Amendment? Put otherwise, is this sentence for this defendant a *de facto* death sentence?

14. Constitutional issues: Not applicable.

15. Assignment to the Court of Appeals:

The Case is presumptively pushed down to the Court of Appeals per NRAP 17(b)(1).

16. Issues of first impression or of public interest: No

17. Length of trial: Not applicable.

18. Oral argument: Would you object to submission of this appeal for disposition without oral argument? Yes.

TIMELINESS OF NOTICE OF APPEAL

19. Date the court announced decision, sentence or order appeal from: November 4, 2021.

20. Date of entry of written judgment: November 4, 2021.

21. If this appeal is from an order granting or denying a petition for writ of habeas corpus, indicate the date written notice of entry of judgment or order was served by the district court: Not applicable.

22. If the time for filing notice of appeal was tolled by a post judgment motion...: Not applicable.

23. Date of notice of appeal filed: December 2, 2021.

24. Specify statute or rule governing the time limit for filing the notice of appeal: NRAP 4(b).

25. Specify statute, rule or other authority that grants this court jurisdiction to review from: NRS 177.015(3).

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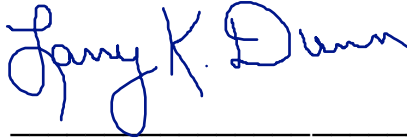
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VERIFICATION

I certify that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief.

James Robert Stapp
Name of Appellant

December 29, 2021
Date

Larry K. Dunn
Name of counsel of record

Signature of counsel of record

CERTIFICATE OF SERVICE

The undersigned does hereby swear and declare under penalty of perjury that they are an employee of LARRY K. DUNN & ASSOCIATES, and that on the 29th day of December, 2021, they caused a true and correct copy of the preceding document to be served upon all necessary parties by way of electronic service through the Court's E-flex filing system, addressed as follows:

Washoe County District Attorney's Office
Appellate Division
1 South Sierra Street, 7th Floor
Reno, Nevada 89501
districtattorney@da.washoecounty.us

DATED this 29th day of December, 2021.



Lindsay Dunn