

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 SAMANTHA MARIE GRAHAM,)

4 Appellant)

5 vs.)

6 STATE OF NEVADA)

7 Respondent)
8

Supreme Court No. 83416

District Court No. 20-7157

Electronically Filed
Sep 24 2021 09:37 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

9 FAST TRACK STATEMENT

- 10
11 1. Name of party filing this fast track statement: Samantha Marie
12 Graham.
13
14 2. Name, law firm, address, and telephone number of attorney
15 submitting this fast track statement: Matt Stermitz, Humboldt County
16 Public Defender, Drawer 309, Winnemucca, Nevada 89446, 775-623-
17 6550.
18
19 3. Name, law firm, address, and telephone number of appellate counsel
20 if different from trial counsel: N/A.
21
22 4. Judicial district, county and district court docket number of lower court
23 proceedings: CR 20-7157, In the Sixth Judicial District Court,
24 Humboldt County, State of Nevada.
25
26 5. Name of judge issuing decision, judgment, or order appealed from:
27 The Honorable Michael Montero.
28

- 1 6. Length of trial. None.
- 2 7. Convictions appealed from: Amended Judgment of Conviction for the
3 crime of Conspiracy to Possess a Controlled Substance, a gross
4 misdemeanor on the 13th day of August, 2021. AA, p. 5.
- 5
6 8. Sentence on each count: The district court sentenced Samantha
7 Marie Graham to 364 days in the Humboldt County Detention Center,
8 suspended the sentence and ordered Samantha Marie Graham to
9 complete 12 months of formal probation and complete the Mental
10 Health Court program. AA, p. 6.
- 11
12
13 9. Date district court announced decision, sentence, or order appealed
14 from: The district court announced the sentence on the 3rd day of
15 August, 2021. AA, p. 5.
- 16
17
18 10. Date of entry of written judgment or order appealed from: The District
19 court entered a written judgment of conviction on the 13th day of
20 August, 2021. AA, p. 5.
- 21
22 11. If this appeal is from an order granting or denying a petition for a writ
23 of habeas corpus, indicate the date written notice of entry of judgment
24 or order was served by the court: Not applicable. (a) Specify
25 whether service was by delivery or by mail. Neither.
- 26
27
28

- 1 12. If the time for filing the notice of appeal was tolled by a post judgment
2 motion, specify the type of motion, date of filing of motion and the
3 date of entry of the written order resolving the motion. None of that
4 pertains to this appeal.
- 6 13. Date notice of appeal filed. Samantha Marie Graham filed an appeal
7 on the 24th day of August, 2021. AA, p. 12.
- 9 14. Specify statute or rule governing the time limit for filing the notice of
10 appeal: Nevada Rule of Appellate Procedure 4.
- 12 15. Specify statute, rule or other authority which grants this court
13 jurisdiction to review the judgment or order appealed from: Nevada
14 Revised Statute 177.015.
- 16 16. Specify the nature of disposition below. Samantha Marie Graham
17 plead no contest to Conspiracy to Possess a Controlled Substance, a
18 gross misdemeanor on the 1st of December, 2020. AA, p. 5. The
19 District Court sentenced Samantha Marie Graham to 364 days in the
20 Humboldt County Detention Center, suspended the sentence and
21 placed Samantha Marie Graham on 12 months of formal probation
22 and ordered her to complete the Mental Health Court program. AA,
23 p. 6.
- 27 17. Pending and prior proceedings in this court. None.

- 1 18. Pending and prior proceedings in other courts. None.
- 2 19. Proceedings raising same issue. None are known.
- 3 20. Procedural history. Samantha Marie Graham plead no contest, was
- 4 sentenced twice, and appeals her second sentence.
- 5
- 6 21. Statement of facts. On the 21st day of December, 2020, the District
- 7 Court sentenced Samantha Marie Graham to 364 days in the
- 8 Humboldt County Detention Center, suspended the sentence, and
- 9 placed Samantha Marie Graham on court supervised probation for 14
- 10 days. AA, p. 2. On the 13th day of August, 2021, the District Court
- 11 amended the judgment of conviction by increasing Samantha Marie
- 12 Graham's probation from 14 days to 12 months and by ordering
- 13 Samantha Marie Graham to complete the Mental Health Court
- 14 Program. AA, p. 6 – 7. Ostensibly, with the permission of Samantha
- 15 Marie Graham. AA, p. 6 – 7; p. 16.
- 16
- 17 22. Issues on appeal. Did the District Court exceed its authority by
- 18 amending the judgment of conviction by extending Samantha Marie
- 19 Graham's probation from 14 days to 12 months and ordering her to
- 20 complete the Mental Health Court Program.
- 21
- 22 23. Legal argument, including authorities. A district court can amend a
- 23 judgment of conviction to correct clerical mistakes or an illegal
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1 sentence. NRS 176.555; NRS 176.565. However, a district court
2 cannot increase sentence severity except to bring the sentence in
3 compliance with the pertinent statute. Miranda v. State, 114 Nev. 385
4 (1988).
5

6 Six months after ordering Samantha Marie Graham to serve 14
7 days of probation, the district court increased the term of probation to
8 12 months and ordered Samantha Marie Graham to complete the
9 Mental Health Court Program. AA, p. 6 – 7; p. 16. The district court
10 lacked authority to increase Samantha Marie Graham's probation
11 from 14 days to 12 months and order her to complete the Mental
12 Health Court program. Further, the district court should not have
13 negotiated with Samantha Marie Graham. Cripps v. State, 122 Nev.
14 764 (2006).
15
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19 The matter should be reversed. The district court abused its
20 discretion.
21

- 22 24. Preservation of issues: State concisely how each enumerated issue
23 on appeal was preserved during trial. If the issue was not preserved,
24 explain why this court should review the issue. An illegal sentence
25 can be corrected at any time. NRS 176.555.
26
27 25. Issues of first impression or of public interest. Yes.
28

1 26. Routing Statement: Pursuant to Appellate Rule 17(b)(1) an appeal of
2 a judgment of conviction resulting from a guilty plea shall be assigned
3 to the Court of Appeals.
4

5 Dated this 5th day of September, 2021.

6
7 Matt Stermitz

8 Matt Stermitz NSB 3610
9 Humboldt County Public Defender
10 Drawer 309
11 Winnemucca, Nevada 89445
12 775-623-6550

13 VERIFICATION

- 14 1. I hereby certify that this fast track statement complies with the
15 formatting requirements of NRAP 32(a)(4), the typeface
16 requirements of NRAP 32(a)(5) and the type style requirements of
17 NRAP 32(a)(6) because this fast tract statement has been
18 prepared in a proportionally spaced typeface using Microsoft Word
19 in type face of 14 point and Arial type face.
20
21 2. I further certify that this fast track statement complies with the
22 page or type-volume limitations of NRAP 3C(h)(2) because it does
23 not exceed 15 pages.
24
25 3. Finally, I recognize that pursuant to NRAP 3C I am responsible for
26 filing a timely fast track statement and that the Supreme Court of
27
28

1 Nevada may sanction an attorney for failing to raise material
2 issues or arguments in the fast track statement, or failing to
3 cooperate fully with appellate counsel during the course of an
4 appeal. I certify the information provided in this fast track is true
5 and complete to the best of my knowledge, information and belief.
6

7
8 Dated this 5th day of September, 2021.

9
10 Matt Stermitz
11 Matt Stermitz

12
13 CERTIFICATE OF SERVICE ON APPELLANT

14 Pursuant to applicable appellate rules, on the 24th day
15 of September 2021, the
16 undersigned mailed a copy of the foregoing addressed to Samantha
17 Marie Graham, c/o General Delivery, 295 Old Hwy 40 E, Golconda,
18 NV 89414.
19
20

21 Maureen Macdonald
22 Maureen Macdonald
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