

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEPHEN ALLEN FREDERICK,)	Supreme Ct No. 83962
)	District Ct No. CR 20-7222
Appellant)	Electronically Filed
vs.)	Apr 06 2022 07:06 p.m.
)	Elizabeth A. Brown
THE STATE OF NEVADA,)	Clerk of Supreme Court
)	
Respondent)	
_____)	

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

Table of Authorities.....	i
Jurisdictional Statement.....	ii
Routing Statement.....	ii
Statement of Issues.....	1
Statement of the Case.....	1
Statement of the Facts.....	1
Summary of Argument.....	2
Argument.....	2
Conclusion.....	3
Certificate of Compliance.....	5
Certificate of Service.....	6

TABLE OF AUTHORITIES

Cases

<u>U.S. v. Lai</u> , 944 F.2d 1434, (1991)	3
<u>Solm v. Helm</u> , 463 U.S. 277, 284 (1983).....	3
<u>U.S. v. Borrero-Isaza</u> , 887 F.2d 1349, 1352 (9 th Cir.1989).....	3
<u>United States v. Brady</u> , 895 F.2d 538 (9 th Cir. 1990).....	3
<u>United States v. Barker</u> , 771 F.2d 1362 (9 th Cir. 1985).....	3

1	NRS 177.015(3).....	ii
2	NRS 193.130.....	1
3	NRS 453.321.....	1
4	NRAP 4.....	ii
5	NRAP 17(b)(1).....	ii
6	NRAP 32... ..	5
7	Constitution	
8	8 th Amendment U.S. Constitution.....	3

JURISDICTIONAL STATEMENT

The Sixth Judicial District Court entered a judgment of conviction on the 23rd day of November, 2021. Appellant Appendix, hereinafter AA, p. 16. Stephen Allen Frederick filed a notice of appeal on the 16th day of December, 2021. AA, p. 20. Within the time permitted by NRAP 4.

NRS 177.015(3) grants this court jurisdiction to review the judgment of conviction appealed from.

ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals, pursuant to NRAP 17(b)(1).

STATEMENT OF ISSUES

Issue: The district court abused its discretion at sentencing. The district court failed to consider the individualized circumstances of Stephen Allen Frederick or articulate a rational for imposing the maximum sentence.

STATEMENT OF THE CASE

Stephen Allen Frederick plead guilty to one count of transporting a controlled substance, a category C felony, in violation of NRS 453.321 and NRS 193.130. AA, p. 11.

The district court sentenced Stephen Allen Frederick to a minimum term of twenty-four months and a maximum term of sixty months in the Nevada Department of Corrections. The sentence ran consecutive to a sentence imposed in CR 20-7199. AA, p. 17.

Stephen Allen Frederick appeals. AA, p. 20.

STATEMENT OF THE FACTS

Stephen Allen Frederick plead guilty to one count of transporting a controlled substance, a category C felony, in violation of NRS 453.321 and NRS 193.130. AA, p. 11.

At the sentencing hearing, Stephen Allen Frederick apologized. AA, p. 33. Stephen Allen Fredrick was humble. AA, p. 33. Stephen Allen

1 Frederick pointed out he had been clean and sober for seven months. AA,
2 p. 33. Stephen Allen Frederick was thankful and grateful. AA, p. 33.

3 Stephen Allen hoped for treatment and drug court. AA, p. 37.
4

5 Pursuant to NRS 193.130, Stephen Allen Frederick faced a potential
6 sentence of a minimum term of twelve to a maximum term of sixty months
7 in the Nevada Department of Corrections. AA, p. 12.
8

9 Stephen Allen Frederick was eligible for probation. AA, p. 12.
10

11 The district court rejected Stephen Allen Fredericks imploration. The
12 district court sentenced Stephen Allen Frederick to the maximum sentence
13 permitted by law – a minimum of twenty-four months and a maximum term
14 of sixty months in the Nevada Department of Corrections. AA, p. 17, p. 41.
15 The district court ordered the sentence to run consecutive to a sentence
16 imposed in CR 20-7199. AA, p. 17; AA, p. 41.
17
18

19 SUMMARY OF ARGUMENT

20 The conviction should be reversed. The matter remanded for a new
21 sentencing hearing where at the district court should consider
22 individualized circumstances in mitigation and articulate a rational for the
23 sentence.
24
25

26 ARGUMENT

27
28

1 The district court sentenced Stephen Allen Frederick to the maximum
2 sentence permitted by law – twenty-four months and a maximum term of
3 sixty months in the Nevada Department of Corrections. AA, p. 17, p. 41.
4 Without comment. AA, p. 17; AA, p. 41.
5

6 The district court abused its discretion and violated fifth amendment
7 guarantees of due process. The district court failed to follow the public
8 policy of the State of Nevada.
9

10 The eighth amendment's cruel and unusual punishment clause
11 prohibits both torturous and disproportionate sentences. See U.S. v. Lai,
12 944 F.2d 1434, (1991), citing Solm v. Helm, 463 U.S. 277, 284 (1983).
13
14

15 Although trial judges are accorded unfettered discretion in sentencing
16 defendant, the 9th circuit insists on individualized sentencing that takes the
17 individual as well as the crime into account. See Lai citing U.S. v. Borrero-
18 Isaza, 887 F.2d 1349, 1352 (9th Cir.1989); United States v. Brady, 895 F.2d
19 538 (9th Cir. 1990); United States v. Barker, 771 F.2d 1362 (9th Cir. 1985).
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22 The people of Nevada have declared that sentencing policies should
23 embody fairness and opportunity. NRS 176.0131(1). The people of
24 Nevada have declared that a continuum of sentencing options should be
25 available with community programs for diversion and supervision of
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1 offenders. NRS 176.031. The people of Nevada have declared that
2 strategies to reduce crime should involve prevention, treatment, health and
3 labor. NRS 176.0131(1).
4

5 CONCLUSION

6 The matter should be reversed for a new sentencing hearing where at
7 the district court is commanded to articulate the rationale behind the district
8 court's decision to ignore public policy and impose a maximum sentence
9 rather than grant probation and treatment¹.
10
11

12 Dated this 6th day of April, 2022.

13
14 Matt Stermitz

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21 "Come, gather 'round people, wherever you roam
22 And admit that the waters around you have grown
23 And accept it that soon you'll be drenched to the bone
24 If your time to you is worth saving
25 Then you better start swimmin' or you'll sink like a stone
26 For the times, they are a-changin'." Robert Zimmerman, Track 1, The
27 Times They Are A-Changin
28

1 ATTORNEY CERTIFICATE OF COMPLIANCE

2 I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
4 32(a)(5) and the type style requirements of NRAP 32(a)(6) because This
5 brief has been prepared in a proportionally spaced typeface using Microsoft
6 Word in type face of 14 point and Arial type face.
7
8

9 I further certify that this brief complies with the page- or type-volume
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
11 exempted by NRAP 32(a)(7)(C), it does not exceed 6 pages.
12

13 Finally, I hereby certify that I have read this appellate brief, and to the
14 best of my knowledge, information, and belief, it is not frivolous or
15 interposed for any improper purpose. I further certify that this brief complies
16 with all applicable Nevada Rules of Appellate Procedure, in particular
17 NRAP 28(e)(1), which requires every assertion in the brief regarding
18 matters in the record to be supported by a reference to the page and
19 volume number, if any, of the transcript or appendix where the matter relied
20 on is to be found. I understand that I may be subject to sanctions in the
21 event that the accompanying brief is not in conformity with the
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1 requirements of the Nevada Rules of Appellate Procedure.

2 Dated this 6th day of April, 2022.

3
4 Matt Stermitz

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10 CERTIFICATE OF SERVICE

11 Pursuant to applicable appellate rules, on the 7th day of April,
12 2022, the undersigned mailed a true and correct copy of the foregoing
13 addressed to Stephen Frederick, # 1250806, Warm Springs Correctional
14 Center, Box 7007, Carson City, NV 89702.
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17 Matt Stermitz

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