

STEVEN ALLEN FREDERICK

VS.

Respondent.

Docket No. 87962
District Court No. CR 20-7222

Appeal from Judgment of Conviction
Sixth Judicial District Court, County of Humboldt
The Honorable Michael R. Montero

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1 JURISDICTIONAL STATEMENT

2 The Respondent does not object to Appellant's jurisdictional statement.

3 ROUTING STATEMENT

4 The Respondent does not object to Appellant's routing statement.

5 STATEMENT OF THE ISSUE

6 Respondent objects to Appellant's statement of the issue and notes the issue as
7 follows:
8

9 ISSUE I: Did the District Court abuse its discretion by sentencing the
10 Appellant to twenty-four (24) months to sixty months (60) months in the Nevada
11 Department of Corrections for one count of Transporting a Controlled Substance,
12 Heroin, a Schedule 1 Controlled Substance, a Category C Felony, in violation of NRS
13 453.321(2)(A)?
14

15 STATEMENT OF THE CASE

16 The Respondent does not object to Appellant's statement of the case.
17

18 STATEMENT OF FACTS

19 On March 29, 2021, Appellant entered a plea of guilty pursuant to a Third
20 Amended Information, which charged him with one count of Transporting a
21 Controlled Substance, Heroin, a Schedule I Controlled Substance, a Category C
22 Felony, in violation of NRS 453.321(2)(A). (See Appellant's Appendix pages 16 to 19).
23 The facts of this case arose out of circumstances where the Appellant on or about the
24 24th and/or the 25th of September, 2020, was arrested and in the possession of
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1 thirteen (13) grams of Heroin in Winnemucca, Humboldt County, Nevada. (*See*
2 *Appellant's Appendix pages 7 -10*)

3 4 STANDARD OF REVIEW

5 The Respondent argues that the standard of review for Issue 1 is an abuse of
6 discretion standard of review, as discussed below.

7 ARGUMENT

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9 ISSUE I: The District Court did not abuse its discretion by sentencing the
10 Appellant to twenty-four (24) months to sixty months (60) months in the Nevada
11 Department of Corrections for one count of Transporting a Controlled Substance,
12 Heroin, a Schedule I Controlled Substance, a Category C Felony, in violation of NRS
13 453.321(2)(A)?

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15 Under the Nevada law, this Court has previously ruled that the sentencing
16 judge has wide discretion in imposing a sentence, and that this determination will not
17 be overruled absent a showing of abuse of discretion, *Norwood v. State*, 112 Nev. 438,
18 915 P.2d 177 (1996), citing *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379
19 (1987). Additionally, a sentencing court is often privileged to consider facts and
20 circumstances which would clearly not be admissible at trial. *Silks v. State*, 92 Nev. 91,
21 93-94, 545 P.2d 1159, 1161 (1976). Moreover, it is a well-established law in Nevada
22 that the legislature, within Constitutional limits, is empowered to define crimes and
23 determine punishments and that the courts are not to encroach upon this domain
24 lightly. *Schmidt v. State*, 94 Nev. 695, 697. (1978). *See also Egan v. Sheriff*, 88 Nev. 611,
25

1 503 P. 2d 16 (1972); *Deveroux v. State*, 96 Nev. 288, 610 P.2d 722, 723. See also *State v.*
2 *Sala*, 63 Nev. 270, 169 P.2d 524 (1946). The degree to which a judge considers age
3 and the absence of a prior record of offenses is within this discretionary authority.
4
5 *Deveroux Supra* 610 P.2d at 723., and *Sheriff v. Williams*, 96 Nev. 22, 604 P.2d 800
6 (1980). There is also a general presumption in Nevada favoring the validity of statutes
7 which dictates a recognition of their constitutionality unless a violation of
8 Constitutional principles is clearly apparent. *Schmitz Supra* at 697. Similar to *Norwood*,
9 *supra*, the Court in *Deveroux, supra* noted that the trial judge has wide discretion in
10 imposing a prison term and, in the absence of a showing of abuse of such discretion,
11 this Court will not disturb the sentence. *Deveroux, supra* 610 P.2d at 723. See also *State v.*
12 *Sala*, 63 Nev. 270, 169 P.2d 524 (1946). The degree to which a judge considers age
13 and the absence of a prior record of offenses is within his discretionary authority.
14
15 *Deveroux, supra* 610 P.2d at 723.

17 Additionally, this Court has held that a sentence of imprisonment which is
18 within the limits of a valid statute, regardless of its severity, is normally not considered
19 cruel and unusual punishment in the Constitutional sense. *Schmidt Supra* at 665. *United*
20 *States v. Johnson*, 507 F.2d 826 (7th Cir. 1974), *Cert. denied*, 421 U.S. 949, 95 S.Ct. 1682,
21 44 L.Ed.2d 103 (1975), and that a sentencing proceeding is not a second trial and the
22 court is privileged to consider facts and circumstances that would not be admissible at
23 trial. *Silkes v. State*, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).
24
25

1 Finally, contrary to Appellant's assertions to the contrary, a district court is not
2 required to articulate its reasons for imposing a particular sentence. *See Campbell v.*
3 *Eight Judicial Dist. Court*, 114 Nev. 410, 414, 957 P.2d 1141, 1143 (1998).
4

5 In the present case, the District Court here was within its rights, based on all
6 the facts and circumstances presented to it at sentencing surrounding the Appellant
7 and his very extensive criminal history, to sentence the Appellant to twenty-four (24)
8 months to sixty months (60) months in the Nevada Department of Corrections for
9 one count of Transporting a Controlled Substance, Heroin, a Schedule 1 Controlled
10 Substance, a Category C Felony, in violation of *NRS 453.321(2)(A)*. Appellant does
11 not deny the fact that he actually committed the crime in question, absconded for six
12 months after his initial sentencing date in this matter where he was eventually arrested
13 in the State of Oregon, and that he has twenty-two (22) prior criminal convictions, ten
14 of those being felonies with a large significant portion of those dealing with drug
15 offenses. (*See Appellant's Appendix pages 28-29, and Respondent's Appendix pages 7 and 22*).
16
17

18 Additionally, Appellant inadequately assumes that the District Court did not
19 consider the "individualized circumstances" of the Appellant's guilty plea before it,
20 including both the aggravating and mitigating circumstances on this case. As the
21 record shows below, the Sentencing Court had a detailed Presentence Report on the
22 Petitioner before it, which it acknowledged receipt of, and had the opportunity to
23 offer any factual corrections, which he in fact did, as well as present additional
24 evidence, which he declined to do so in this case.. (*See Appellant's Appendix pages 4-7*).
25

1 To assert now, as Appellant does in his Opening Brief, that the District Court did not
2 consider the individual circumstances of this case that takes the individual and the
3 crime into mitigation is simply belied by the record below. *See U.S. v. Lai*, 944 F.2d.
4 1434, 1441 (9th Cir.1991) ([t]he district court may not consider improper, inaccurate,
5 or mistaken information, nor may it make groundless inferences in imposing
6 sentence), which is entirely consistent with *Denson v. State*, 112 Nev. 489, 915 P.2d
7 284,(1996)([t]his Court “will reverse a sentence if it is supported *solely* by impalpable
8 and highly suspect evidence”) (*Emphasis original*). *Denson, supra* 112 Nev. at 492, 915
9 P.2d. at 286. Furthermore, in the present case, Appellant does not now allege that the
10 District Court relied on impalpable or highly suspect evidence in sentencing him, only
11 that it did not take the “individualized circumstances” on this case into consideration,
12 which as noted above, is belied by sentencing transcript below. *See Denson, supra* and
13 *Appellant’s Appendix Pages 46 to 51*.

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17 In summary, in the present case, the District Court fashioned an appropriate
18 and legal sentence for the Appellant to serve twenty-four (24) months to sixty (60)
19 months in the Nevada Department of Corrections for one count of Transporting a
20 Controlled Substance, Heroin, a Schedule 1 Controlled Substance, a Category C
21 Felony, in violation of *NRS 453.321(2)(A)*, with one hundred-seventeen (117) days
22 credit for time served, where the imposed term of imprisonment in this case was
23 within the statutory limits of not less than twelve (12) months, and not more than
24 sixty (60) months in the Nevada Department of Corrections for one count of
25

1 Transporting a Controlled Substance, Heroin, a Schedule 1 Controlled Substance, a
2 Category C Felony, in violation of NRS 453.321(2)(A).

3 Finally, the sentence in this case was within the District Court's sound
4 discretion, as allowed under *Norwood v. State, Supra*, and *Silks v. State, Supra*, nor was
5 the sentence imposed here contrary to the Due Process Clause of the Fifth
6 Amendment of the United States Constitution to be considered cruel and unusual
7 punishment under *Schmidt, Supra* at 665 & *United States v. Johnson*, 507 F.2d 826 (7th
8 Cir. 1974), Cert. den. 421 U.S. 949, 95 S.Ct. 1682, 44 L.Ed.2d 103 (1975).

11 CONCLUSION

12 Based on the arguments above, the State of Nevada respectfully asks this
13 Court to affirm the sentence imposed upon Appellant in this case.

14 Dated this 6th day of May, 2022.

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1 **ATTORNEY CERTIFICATION OF COMPLIANCE**

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

8 I further certify that this brief complies with the page or type volume
9 limitations of *NRAP 32(a)(7)* because, excluding the parts of the brief exempted by
10 *NRAP 32(a)(7)(c)*, it does not exceed 30 pages.
11

12 Finally, I hereby certify that I have read the respondent brief and to the
13 best of my knowledge, information, and belief, it is not frivolous or interposed for an
14 improper purpose. I further certify that this brief complies with all the applicable
15 Nevada Rules of Appellate Procedure, in particular *NRAP 23(e)(1)*, which requires
16 every assertion in the brief regarding matters in the record to be supported by a
17 reference to the page and volume number, if any, of the transcript or appendix where
18 the mater relied on is to be found. I understand that I may be subject to sanctions in
19
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1 the event that the accompanying brief is not in conformity with the requirements of
2 the Nevada Rules of Appellate Procedure.

3 Dated this the 6th day of May, 2022.

4
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