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Elizabeth A. Brown  
Clerk of Supreme Court

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Case No. CR20-7222

Dept. No. II

FILED  
2021 MAY 14 PM 4:55  
TAMARA SPETO  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

-o0o-

THE STATE OF NEVADA,

Plaintiff,

vs.

STATE'S SENTENCING MEMORANDUM

STEPHEN ALLEN FREDERICK,

Defendant.

COMES NOW, the State of Nevada, Plaintiff, by and through Anthony R. Gordon, Humboldt County Deputy District Attorney, and files the State's Sentencing Memorandum with this Court. This memorandum is based upon the attached Points and Authorities and all the pleadings and papers on file herein.

Pursuant to NRS 239B.030., the undersigned hereby affirms this document does not contain the social security number of any person.

DATED this 14<sup>th</sup> day of May, 2021.

  
ANTHONY R. GORDON,  
Deputy District Attorney

I. FACTS

On September 24, 2020 at approximately 12:40 p.m. Winnemucca Police Department Officer Salvador Ochoa was on patrol when he observed a gold GMC Envoy, being driven by an individual he knew as the Defendant, Stephen Frederick, traveling towards the intersection of Winnemucca Blvd and Baud Street, in Winnemucca, Humboldt County, State of Nevada, when he observed that the driver's side brake light was out after the driver applied his brakes.<sup>1</sup> After the gold GMC Envoy turned right onto Winnemucca Blvd heading east, Officer Ochoa turned his vehicle around in an attempt to catch up with the Defendant, who then accelerated with black smoke coming out of his vehicle, which then turned right onto Reinhardt Street.

After seeing dust coming out of an alley between Winnemucca Blvd. and Fourth Street, Officer Ochoa eventually located the Defendant's then abandoned gold GMC Envoy parked in the driveway of an unrelated third party with the driver's side door open. The defendant was later located in the same block by Winnemucca Police Department Detective Rodriguez hiding in the weeds, where he was then arrested for Felony Eluding an Officer, in violation of NRS 484B.550(3), Resisting a Public Officer, a Misdemeanor in violation of NRS 199.280 and for Stop Lights Required, a

<sup>1</sup> The factual context of this case can be found in the reports from the Winnemucca (NV) Police Department Reports, as well as future testimony to be produced before this Court if warranted. Additionally, pursuant to NRS 53.045, the State will sign this motion under the penalty of perjury to establish the factual basis herein.

1 Misdemeanor in violation on NRS 484D.125, and eventually was  
2 transported to the Humboldt County Detention Center. Since the  
3 Defendant had abandoned his vehicle at an unrelated residence, it  
4 was then secured by evidence tape and then towed from the crime  
5 scene to the Winnemucca Police Department and placed in a secure  
6 facility in order to secure a search warrant for the vehicle.  
7 Prior to applying for a search warrant for the vehicle, Officer  
8 Ochoa asked Winnemucca Police Department K-9 Officer Jimmi Santos  
9 on the following day, September 25, 2020, to conduct an outside  
10 canine sniff of the Defendant's gold GMC Envoy, whereupon Officer  
11 Santos's trained narcotic canine alerted for the odor of illicit  
12 controlled substances at the front passenger door of the  
13 Defendant's gold GMC Envoy. Thereafter, Officer Ochoa applied for  
14 and was granted a search warrant for the Defendant's gold GMC  
15 Envoy by the Union Township Justice Court in Humboldt County,  
16 Nevada, where 97.189 grams of methamphetamine and 12.220 grams of  
17 Heroin were found within the vehicle in zip lock bags. The  
18 Defendant was later charged with Transportation of a Schedule 1  
19 Controlled Substance-Methamphetamine, in violation of NRS  
20 453.321(1)(a), a Category C Felony.

21  
22  
23 Subsequently, pursuant to a Plea Agreement in this case, on  
24 March 29, 2021, the Defendant entered a guilty plea to a Third  
25 Amended Information filed on March 29, 2021, charging the  
26 Defendant with one count of Transporting a Controlled Substance -  
27  
28

1 a Schedule 1 Controlled Substance Heroin, a Category C Felony, in  
2 violation of NRS 453.321(2)(A). The Plea Agreement noted that the  
3 State will not seek a habitual Offender Enhancement against the  
4 Defendant, and that the parties will agree that the sentence in  
5 this case against the Defendant will run consecutive to the  
6 sentence imposed in case CR 20-7199 before this Court. Otherwise,  
7 both sides will be free to argue at sentencing for the  
8 appropriate sentence in this matter.  
9

## 10 II. LAW

11 The Nevada Supreme Court has previously ruled that the  
12 sentencing judge has wide discretion in imposing a sentence, and  
13 that this determination will not be overruled absent a showing  
14 of abuse of discretion, *Norwood v. State*, 112 Nev. 438, 915 P.2d  
15 177 (1996), citing *Houk v. State*, 103 Nev. 659, 664, 747 P.2d  
16 1376, 1379 (1987). Furthermore, a sentencing court is also  
17 privileged to consider facts and circumstances which would  
18 clearly not be admissible at trial. *Silks v. State*, 92 Nev. 91,  
19 93-94, 545 P.2d 1159, 1161 (1976). See also *Deveroux v. State*,  
20 96 Nev, 388, 610 P.2d 338 (1980) where the Court noted that the  
21 trial judge has wide discretion in imposing a prison term and,  
22 in the absence of a showing of abuse of such discretion, this  
23 court will not disturb the sentence. *Deveroux Supra* at 723.  
24 Finally, the Nevada Supreme Court has noted that regardless of  
25 its severity, "[a] sentence within the statutory limits is not  
26  
27  
28

1 'cruel and unusual punishment unless the statute fixing  
2 punishment is unconstitutional or the sentence is so  
3 unreasonably disproportionate to the offense as to shock the  
4 conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P2d 282,  
5 284(1996)(quoting *Culverson v. State*, 95 Nev, 433, 435 596 P.2d  
6 220, 221-222(1979); see also *Harmelin v. Michigan*, 501 U.S.A. 957,  
7 1000-1001(1991)(plurality opinion) (explaining the Eighth  
8 Amendment does not require strict proportionality between crime  
9 and sentence; it forbids only an extreme sentence that is  
10 grossly disproportionate to the crime). *Id.* See also *Schmidt v.*  
11 *State*, 94 Nev. 695, 697. (1978), *United States v. Johnson*, 507  
12 F.2d 826 (7th Cir. 1974), *Cert. den.* 421 U.S. 949, 95 S.Ct.  
13 1682, 44 L.Ed.2d 103 (1975).

### 14 III: SENTENCING CALCULATION:

15  
16 For his guilty plea to one count of Transporting a  
17 Controlled Substance - Heroin, a Category C Felony, in violation  
18 of NRS 453.321(2)(A), the Defendant faces imprisonment in the  
19 Nevada Department of Corrections for a minimum term of not less  
20 than one (1) year and a maximum term of not more than five (5)  
21 years, and a fine of not more than \$10,000.00. Pursuant to the  
22 plea agreement in this case, both sides are free to argue at the  
23 time of sentencing, with the sentence to run consecutive to the  
24 sentence imposed in case CR 20-7199 before this Court. The Nevada  
25 Department of Public Safety/Division of Parole and Probation no  
26  
27  
28

1 longer makes sentencing recommendations in their Presentence  
2 Investigative Report (PSI), but noted in their Presentence  
3 Investigation Report filed in this case on April 15, 2021, that  
4 the Defendant will have credit for time served of ninety-six  
5 (96) days, as of May 18, 2021.

6 **III: THE FACTS IN THIS CASE WARRANT THAT THE DEFENDANT RECEIVE A**  
7 **SIGNIFICANT TERM OF IMPRISONMENT DUE TO HIS PAST CRIMINAL HISTORY**  
8 **AND THE SIGNIFICANT AMOUNT OF CONTROLLED SUBSTANCES IN HIS**  
9 **POSSESSION:**

10 ***A: Acceptance of Personal Responsibility:***

11 In the present case, the Defendant accepts the fact  
12 that he had controlled substances in this possession at the time  
13 of his arrest by stating

14 "I was on Drugs. And I was able to Buy Big  
15 amounts because I had a good JOB. I was doing way  
16 to[sic] much.

17 The circumstances were I had Drugs and I had to  
18 much. I Figured its Better to Buy in Bulk. Kind a  
19 like, its better to Buy Soda From "Cosco"[sic], than  
20 to Buy Soda out of a machine. (See Presentence  
21 Investigation Report filed April 15, 2021, page 21).

22 The Defendant's statement, as noted above, is telling and  
23 forth right, and he should be commended for being honest with the  
24 Court, but the rest of his statement tempers what he wrote in his  
25 first two paragraphs of his statement, and reads more like the  
26 fact that he was sorry that he was caught transporting controlled  
27 substances instead, as shown by his use of words in his statement  
28 that:



1 "I'm ashamed of myself For getting That Far out on  
2 Dope."

3 "I've Had to pay so much in Bail and other  
4 expenses. I don't ever want to Disappoint my Family and  
5 Kids." (See Presentence Investigation Report filed  
6 April 15, 2021, page 21).

7 Nevertheless, whatever the Defendant's state of mind  
8 currently is before this Court, one thing remains clear, that his  
9 use of methamphetamine has not stopped or even slowed down since  
10 his arrest in this case, as he admitted himself, as recorded in  
11 his Presentence Investigation Report, that he last used  
12 methamphetamine on April 1, 2021, a little over a month ago from  
13 the date of sentencing in this case. (See Presentence  
14 Investigation Report filed April 15, 2021, page 3).

15 Furthermore, the Presentence Investigation Report filed in  
16 this case on April 15, 2021, indicates that the Defendant has a  
17 total of twenty-two (22) criminal convictions, with ten (10) of  
18 these being for felony offenses, with thirteen (13)  
19 incarcerations and five (5) prison terms. Additionally, of the  
20 thirty-seven (37) arrests that the Defendant incurred going  
21 back twenty-six (26) years since 1995, spanning two states,  
22 thirteen (13) appear to be drug related, and range from a simple  
23 Possession of a Controlled Substance arrest in California in  
24 violation of California Health and Welfare Code §11377(A) in  
25 1996, to the more severe Trafficking in a Controlled Substance-  
26 Methamphetamine, in violation of NRS 453.3385 (3)(a), in  
27  
28

1 Humboldt County, Nevada on January 29, 2020. (See Presentence  
2 Investigation Report filed April 15, 2021, pages 3-8). It is  
3 noteworthy that the Defendant's prior arrest in case CR 20-7199  
4 before this Court occurred before his arrest in this case, where  
5 the Defendant here had significantly more methamphetamine, in  
6 terms of weight, than in his arrest in Humboldt County, Nevada  
7 in January of 2020, before the trafficking laws changed as to  
8 weight in Nevada, which were effective on July 1, 2020.  
9 Moreover, the Presentence Investigation Report, indicates that  
10 the Defendant had been arrested specifically on at least four (4)  
11 occasions in Central and Northern California dating back to 1995,  
12 and as late as 2014, for being a Felon in Possession of a  
13 Firearm, in violation of California Penal Code §29800.

14  
15 Finally, the Defendant was again arrested as late as March  
16 of 2021 in Modesto, California, for among other offenses,  
17 Possession of Stolen Property in violation of California Penal  
18 Code 10851. (See Presentence Investigation Report filed April 15,  
19 2021, pages 3-8).

20  
21 As a result, the facts of this case speak loudly for  
22 themselves, that the Defendant's criminal history has  
23 progressively gotten more severe over the past twenty-six (26)  
24 years and a significant period of time in the Nevada Department  
25 of Corrections in warranted in this case.  
26  
27  
28

**B: The "Fast Moving Dope Office" Evidence:**

As was indicated in the filed Presentence Investigation Report before this Court dated April 15, 2021, and from the Winnemucca Police Department crime reports in this case, the Defendant evaded law enforcement, abandoned his vehicle, and fled on foot, where he was later took cover and was captured in heavy willow overgrowth, only after he was ordered to crawl out of by law enforcement officers. Subsequently, a search warrant was obtained for the Defendant's gold GMC Envoy by the Union Township Justice Court in Humboldt County, Nevada, where a "grocery store" or "dope office" of controlled substances were found, namely, 97.189 grams of methamphetamine and 12.220 grams of Heroin were found within the vehicle in zip lock bags.<sup>2</sup> (See Presentence Investigation Report filed April 8, 2021, page 9).

**C: State's Sentencing Recommendation:**

While for plea negotiation purposes, the Defendant was allowed to plea to one of two charges of Transportation of a Schedule 1 Controlled Substance, in violation of NRS 453.321(1)(a), a Category C Felony, with the Felony Eluding an Officer, in violation of NRS 484B.550 (3) being dropped at

<sup>2</sup> The fact that the controlled substances were found here in the same location as "narcotics distribution paraphernalia," to cash, was relevant to the 9<sup>th</sup> Circuit Court of Appeals in *United States v. Bernal*, 719 F.2d 1475 (9th Cir. 1983), as the Court there found that the existence of such equipment has been held to be "more of than only slightly" probative of intent and state of mind to enter upon a "narcotics distribution scheme," citing *United States v. Bermudez*, 526 F.2d 89, 95-96 (2d Cir.1975), cert. denied, 425 U.S. 970, (1976), and that this evidence is thus "relevant to both conspiracy and attempt" [to enter upon a narcotics distribution scheme]. (*Emphasis added*). *Bernal*, supra 719 F.2d at 1178.

1 sentencing, the State retained the right to comment on  
2 Defendant's crimes and past conduct, with the fact that what he  
3 was arrested for, and was initially charged with, along with his  
4 past criminal conduct in Central and Northern California, should  
5 be also considered by this Court for sentencing purposes, as  
6 well as to what the Defendant actually plead guilty to. As a  
7 result, based on the totality of the circumstances in this case,  
8 in light of the large amount of multiple controlled substances  
9 found in the fast moving "dope office" in his vehicle that the  
10 Defendant was driving alone in, as well as the Defendant's  
11 significance criminal history, even in light of the Defendant's  
12 acceptance of responsibility for the drug offense he plead  
13 guilty to, and under the applicable case law, a significant  
14 period of imprisonment in this case is warranted, and the State  
15 would recommend a sentence with the maximum term of sixty 60)  
16 months, and a minimum term of twelve (12) months in the Nevada  
17 Department of Corrections, and a fine of \$10,000.

#### 20 CONCLUSION

21 WHEREFORE, the Plaintiff respectfully asks that this Court  
22 impose a significant sentence in line with the facts in his  
23 case, which resulted from a finding, and removal of, a  
24 significant amount of illegal controlled substances, namely  
25

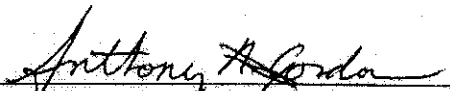
26 ///

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HUMBOLDT COUNTY DISTRICT ATTORNEY  
P.O. Box 909  
Winnemucca, Nevada 89446

heroin and methamphetamine, from the local community.

DATED this 14<sup>th</sup> day of May, 2021.

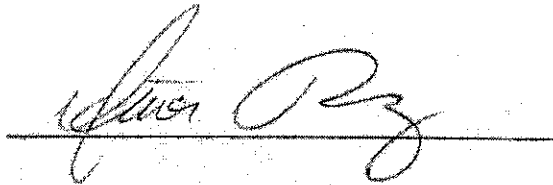
  
ANTHONY R. GORDON ..  
Deputy District Attorney

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Humboldt County District Attorney's Office and that on this 14 day of May, 2021, I deposited a true copy of the forgoing STATE'S SENTENCING MEMORANDUM to:

MATT STERMITZ  
Humboldt County Public Defender  
50 W. Fifth St.  
Winnemucca, NV 89445

- ☐ U.S. Mail  
☐ Certified Mail  
☐ Hand-delivered  
☒ Placed in DCT Box  
☐ Via Facsimile



Case No. CR 20-7199, CR20-7222✓

Dept. No. II

FILED

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RECEIVED  
JULY COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF HUMBOLDT.

-oOo-

THE STATE OF NEVADA,

Plaintiff,

vs.

STATE'S SUPPLEMENTAL  
SENTENCING MEMORANDUM


STEPHEN ALLEN FREDERICK,

Defendant.

COMES NOW, the State of Nevada, Plaintiff, by and through Anthony R. Gordon, Humboldt County Deputy District Attorney, and files the State's Supplemental Sentencing Memorandum with this Court. This memorandum is based upon the attached Points and Authorities and all the pleadings and papers on file herein.

Pursuant to NRS 239B.030., the undersigned hereby affirms this document does not contain the social security number of any person.

DATED this 10<sup>th</sup> day of November, 2021.

  
ANTHONY R. GORDON  
Deputy District Attorney

I.INTRODUCTION

This Supplemental Sentencing Memorandum updates the previous one filed by the State on May 14, 2021 in Case. No. CR20-7222, due in part to the Defendant having failed to attend his sentencing before this Court on May 18, 2021; his subsequent arrest on two failure to appeal warrants in October of 2021 in Clackamas County, Oregon, and finally, adds facts and arguments to deal with Defendant's current case drug case in #CR 20-7199.

II.FACTS**A: District Court Case #CR20-07199:**

On January 28, 2020, at approximately 4:50 p.m., the Defendant was in a detox cell at the Humboldt County (NV) Detention Center in Winnemucca, Nevada, on unrelated charges, where he underwent a change of clothes prior to being placed in an assigned detention cell. It was at this time, that three individual plastic bags of a white crystallin substance were retrieved from his person and clothing, which were later field tested presumptive positive for the presence of methamphetamine. Thereafter, on January, 29, 2021, the three individual bags of the white crystallin substance retrieved from the Defendant the day prior, and field tested positive for the presence of methamphetamine, were weighed and determined to have in the first



1 bag, an approximate weight of nine (9) grams; in the second bag  
2 an approximate weight of forty-nine (49) grams; and in the third  
3 bag an approximate weight of sixty-five (65) grams; for a total  
4 approximate weight of one hundred-twenty three (123) grams of  
5 suspected methamphetamine that was found on the Defendant in the  
6 Humboldt County (NV) Detention Center.<sup>1</sup> The Defendant was later  
7 charged with Trafficking in a Schedule 1 Controlled Substance-  
8 Methamphetamine, Level III, in violation of NRS 453.321(1)(c), a  
9 Category A Felony, and pursuant to his Plea Agreement in District  
10 Court Case #CR20-7199, which the Defendant entered on March 29,  
11 2011, the Defendant pled non-contest plea to a Second Amended  
12 Information filed on March 29, 2021, charging the Defendant with  
13 one count of Trafficking in a Schedule 1 Controlled Substance-  
14 Methamphetamine, Level II, in violation of NRS 453.321(1)(b), a  
15 Category B Felony.  
16

17  
18 The Plea Agreement in District Court Case #CR20-7199 noted  
19 that the State will not seek a habitual Offender Enhancement  
20 against the Defendant, and that the parties will agree that the  
21 sentence in this case against the Defendant will run consecutive  
22 to the sentence imposed in District Court Case #CR 20-7122 before  
23 this Court. Otherwise, both sides will be free to argue at  
24 sentencing for the appropriate sentence in this matter.  
25

26  
27 <sup>1</sup> The factual context of this case can be found in the reports from the Winnemucca (NV) Police Department  
28 Reports, as well as future testimony to be produced before this Court if warranted. Additionally, pursuant to NRS  
53.045, the State will sign this motion under the penalty of perjury to establish the factual basis herein.

1  
2  
3 **B: District Court Case #CR20-7222:**

4 On September 24, 2020 at approximately 12:40 p.m. Winnemucca  
5 Police Department Officer Salvador Ochoa was on patrol when he  
6 observed a gold GMC Envoy, being driven by an individual he knew  
7 as the Defendant, Stephen Frederick, traveling towards the  
8 intersection of Winnemucca Blvd and Baud Street, in Winnemucca,  
9 Humboldt County, State of Nevada, when he observed that the  
10 driver's side brake light was out after the driver applied his  
11 brakes.<sup>2</sup> After the gold GMC Envoy turned right onto Winnemucca  
12 Blvd heading east, Officer Ochoa turned his vehicle around in an  
13 attempt to catch up with the Defendant, who then accelerated with  
14 black smoke coming out of his vehicle, which then turned right  
15 onto Reinhardt Street.  
16  
17

18 After seeing dust coming out of an alley between Winnemucca  
19 Blvd. and Fourth Street, Officer Ochoa eventually located the  
20 Defendant's then abandoned gold GMC Envoy parked in the driveway  
21 of an unrelated third party with the driver's side door open. The  
22 defendant was later located in the same block by Winnemucca  
23 Police Department Detective Rodriguez hiding in the weeds, where  
24  
25

26 <sup>2</sup> The factual context of this case as well, can be found in the reports from the Winnemucca (NV) Police  
27 Department Reports, as well as future testimony to be produced before this Court if warranted. Additionally,  
28 pursuant to NRS 53.045, the State will sign this motion under the penalty of perjury to establish the factual basis  
herein.

1 he was then arrested for Felony Eluding an Officer, in violation  
2 of NRS 484B.550(3), Resisting a Public Officer, a Misdemeanor in  
3 violation of NRS 199.280 and for Stop Lights Required, a  
4 Misdemeanor in violation on NRS 484D.125, and eventually was  
5 transported to the Humboldt County Detention Center. Since the  
6 Defendant had abandoned his vehicle at an unrelated residence, it  
7 was then secured by evidence tape and then towed from the crime  
8 scene to the Winnemucca Police Department and placed in a secure  
9 facility in order to secure a search warrant for the vehicle.  
10  
11 Prior to applying for a search warrant for the vehicle, Officer  
12 Ochoa asked Winnemucca Police Department K-9 Officer Jimmi Santos  
13 on the following day, September 25, 2020, to conduct an outside  
14 canine sniff of the Defendant's gold GMC Envoy, whereupon Officer  
15 Santos's trained narcotic canine alerted for the odor of illicit  
16 controlled substances at the front passenger door of the  
17 Defendant's gold GMC Envoy. Thereafter, Officer Ochoa applied for  
18 and was granted a search warrant for the Defendant's gold GMC  
19 Envoy by the Union Township Justice Court in Humboldt County,  
20 Nevada, where 97.189 grams of methamphetamine and 12.220 grams of  
21 Heroin were found within the vehicle in zip lock bags. The  
22 Defendant was later charged with Transportation of a Schedule 1  
23 Controlled Substance-Methamphetamine, in violation of NRS  
24 453.321(1)(a), a Category C Felony.  
25  
26  
27  
28

1 Subsequently, pursuant to a Plea Agreement in District Court  
2 Case #CR20-7222, entered on March 29, 2021, the Defendant entered  
3 a guilty plea to a Third Amended Information filed on March 29,  
4 2021, charging the Defendant with one count of Transporting a  
5 Controlled Substance - a Schedule 1 Controlled Substance Heroin,  
6 a Category C Felony, in violation of NRS 453.321(2)(A). The Plea  
7 Agreement in District Court Case #CR 20-7122 also noted that the  
8 State will not seek a habitual Offender Enhancement against the  
9 Defendant, and that the parties will agree that the sentence in  
10 the ~~latter case against the~~ Defendant will run consecutive to the  
11 sentence imposed in Case #CR20-7199 before this Court. Otherwise,  
12 both sides will be free to argue at sentencing for the  
13 appropriate sentence in this matter.  
14  
15

16 III.

17 LAW

18 The Nevada Supreme Court has previously ruled that the  
19 sentencing judge has wide discretion in imposing a sentence, and  
20 that this determination will not be overruled absent a showing  
21 of abuse of discretion. See *Norwood v. State*, 112 Nev. 438, 915  
22 P.2d 177 (1996), citing *Houk v. State*, 103 Nev. 659, 664, 747  
23 P.2d 1376, 1379 (1987). Furthermore, a sentencing court is also  
24 privileged to consider facts and circumstances which would  
25 clearly not be admissible at trial. *Silks v. State*, 92 Nev. 91,  
26 93-94, 545 P.2d 1159, 1161 (1976). See also *Deveroux v. State*,  
27  
28

1 96 Nev, 388, 610 P.2d 338 (1980) where the Court noted that the  
2 trial judge has wide discretion in imposing a prison term and,  
3 in the absence of a showing of abuse of such discretion, this  
4 court will not disturb the sentence. *Deveroux supra* at 723.  
5 Finally, the Nevada Supreme Court has noted that regardless of  
6 its severity, "[a] sentence within the statutory limits is not  
7 'cruel and unusual punishment unless the statute fixing  
8 punishment is unconstitutional or the sentence is so  
9 unreasonably disproportionate to the offense as to shock the  
10 conscience.'" *Blume v. State*, 112 Nev. 472, 475, 915 P2d 282,  
11 284(1996) (quoting *Culverson v. State*, 95 Nev, 433, 435 596 P.2d  
12 220, 221-222(1979); see also *Harmelin v. Michigan*, 501 U.S.A. 957,  
13 1000-1001(1991) (plurality opinion) (explaining the Eighth  
14 Amendment does not require strict proportionality between crime  
15 and sentence; it forbids only an extreme sentence that is  
16 grossly disproportionate to the crime). *Id.* See also *Schmidt v.*  
17 *State*, 94 Nev. 695, 697. (1978), *United States v. Johnson*, 507  
18 F.2d 826 (7th Cir. 1974), *Cert. den.* 421 U.S. 949, 95 S.Ct.  
19 1682, 44 L.Ed.2d 103 (1975).

22 IV.

23 SENTENCING CALCULATION

24 For his no-contest plea in District Court Case #CR20-7199  
25 to one count of Trafficking in a Schedule 1 Controlled Substance-  
26 Methamphetamine, Level II, in violation of NRS 453.321(1)(b), a  
27 Category B Felony, the Defendant faces imprisonment in the Nevada  
28

1 Department of Corrections for a minimum term of not less than  
2 two (2) years and a maximum term of not more than fifteen (15)  
3 years, and a fine of not more than \$100,000.00.<sup>3</sup> Furthermore, for  
4 a guilty plea in District Court Case #CR20-7222 to one count of  
5 Transporting a Controlled Substance - Heroin, a Category C  
6 Felony, in violation of NRS 453.321(2)(A), the Defendant faces  
7 imprisonment in the Nevada Department of Corrections for a  
8 minimum term of not less than one (1) year and a maximum term of  
9 not more than five (5) years, and a fine of not more than  
10 \$10,000.00. Pursuant to the plea agreement in both the above  
11 cases, both sides are free to argue at the time of sentencing,  
12 with the sentence to run consecutive to each other. The Nevada  
13 Department of Public Safety/Division of Parole and Probation no  
14 longer makes sentencing recommendations in their Presentence  
15 Investigative Report (PSI), but noted in their Presentence  
16 Investigation Report in District Court Case #CR20-7199, filed on  
17 April 15, 2021, that the Defendant will have credit for time  
18 served of thirty-two (32) days in District Court Case #CR20-  
19 7199, and in their Presentence Investigation Report in District  
20 Court Case #CR20-7222, filed on April 15, 2021, the Defendant

21  
22  
23  
24  
25 <sup>3</sup> The Defendant's Presentence Investigation Report prepared by the Nevada Department of Public Safety, Division  
26 of Parole and Probation, in Case #CR20-7199, filed on April 15, 2021, page 1, incorrectly lists a minimum term of  
27 not less than one (1) year and a maximum term of not more than six (6) years in the Nevada Department of  
28 Corrections and a fine of not more than \$50,000 for one count of Trafficking in a Schedule 1 Controlled Substance-  
Methamphetamine, Level II, in violation of NRS 453.321(1)(b).

1 will have credit for ninety-six (96) days, as of May 18, 2021  
2 in both cases.

3 III: THE FACTS IN BOTH CASES WARRANT THAT THE DEFENDANT RECEIVE  
4 A SIGNIFICANT TERM OF IMPRISONMENT DUE TO HIS PAST CRIMINAL  
5 HISTORY AND THE SIGNIFICANT AMOUNT OF MULTIPLE SCHDEULE ONE  
6 CONTROLLED SUBSTANCES IN HIS POSSESSION.

7 **A: Acceptance of Personal Responsibility:**

8 In the present cases, the Defendant accepts the fact  
9 that he had controlled substances in this possession at the time  
10 of his arrest in both cases by stating

11 "I was on Drugs. And I was able to Buy Big  
12 amounts because I had a good JOB. I was doing way  
13 to[sic] much.

14 The circumstances were I had Drugs and I had to  
15 much. I Figured its Better to Buy in Bulk. Kind a  
16 like, its better to Buy Soda From "Cosco"[sic], than  
17 to Buy Soda out of a machine. (See Presentence  
18 Investigation Report in Case. No. CR20-7199, filed  
19 April 15, 2021, page 21), and Presentence  
20 Investigation Report in Case. No. CR20-7222, filed  
21 April 15, 2021, page 21).

22 The Defendant's statement, as noted above, is telling and  
23 forth right, and he should be commended for being honest with the  
24 Court, but the rest of his statement tempers what he wrote in his  
25 first two paragraphs of his statement, and reads more like the  
26 fact that he was sorry that he was caught transporting controlled  
27 substances instead, as shown by his use of words in his statement  
28 that:

"I'm ashamed of myself For getting That Far out on  
Dope."

1 "I've Had to pay so much in Bail and other  
2 expenses. I don't ever want to Disappoint my Family and  
3 Kids." (See Presentence Investigation Report in Case  
4 No. CR20-7222, filed April 15, 2021, page 21).

5 Nevertheless, whatever the Defendant's state of mind  
6 currently is before this Court, one thing remains clear, that his  
7 use of methamphetamine has not stopped or even slowed down since  
8 his arrest in his last case in Humboldt County Nevada, as he  
9 admitted himself, as recorded in his Presentence Investigation  
10 Report, that he last used methamphetamine on April 1, 2021, a  
11 little over a month ago from his date of sentencing in this case,  
12 which he failed to appear for. (See Presentence Investigation  
13 Report in Case No. CR20-7222, filed April 15, 2021, page 3).

14 Furthermore, the Presentence Investigation Report filed in  
15 both Case #CR20-7199 and Case #CR20-7222 on April 15, 2021,  
16 indicates that the Defendant has a total of twenty-two (22)  
17 criminal convictions, with ten (10) of these being for felony  
18 offenses, with thirteen (13) incarcerations and five (5) prison  
19 terms. Additionally, of the thirty-seven (37) arrests that the  
20 Defendant incurred going back twenty-six (26) years since 1995,  
21 spanning two states, thirteen (13) appear to be drug related,  
22 and range from a simple Possession of a Controlled Substance  
23 arrest in California in violation of California Health and  
24 Welfare Code §11377(A) in 1996, to the more severe Trafficking in  
25 a Controlled Substance-Methamphetamine, in violation of NRS  
26 453.3385 (3)(a), in Humboldt County, Nevada on January 28, 2020.  
27  
28



1 (See Presentence Investigation Report in Case No. CR20-7222  
2 filed April 15, 2021, pages 3-8). It is noteworthy that the  
3 Defendant's prior arrest in Case No. CR 20-7199 before this Court  
4 occurred before his arrest in this case, where the Defendant  
5 there had also had a large amount of methamphetamine (one  
6 hundred twenty-three (123) grams in terms of approximate gross  
7 weight in his arrest in Humboldt County, Nevada in January of  
8 2020, before the trafficking laws changed as to weight in  
9 Nevada, which were effective on July 1, 2020. Moreover, the  
10 Presentence Investigation Report in Case No. CR20-7222 indicates  
11 that the Defendant had been arrested specifically on at least  
12 four (4) occasions in Central and Northern California dating back  
13 to 1995, and as late as 2014, for being a Felon in Possession of  
14 a Firearm, in violation of California Penal Code §29800.  
15

16 Additionally, the Defendant was arrested as late as March of  
17 2021 in Modesto, California, for among other offenses, Possession  
18 of Stolen Property in violation of California Penal Code 10851.  
19 (See Presentence Investigation Report, Case No. #CR20-7222,  
20 filed April 15, 2021, pages 3-8). Finally, the Defendant had  
21 failed to appear for his sentencing on May 18, 2021 in both Case  
22 No. CR20-7199 and Case CR 20-7222 before this Court, failed to  
23 turn himself in to authorities or show back voluntary in  
24 Humboldt County, Nevada, and which resulted in his subsequent  
25  
26  
27  
28

1 arrest on two failure to appeal warrants out of this Court in  
2 October of 2021, in Clackamas County, Oregon.

3 As a result, the facts in both of these cases speak loudly  
4 for themselves, that the Defendant's criminal history has  
5 progressively gotten more severe over the past twenty-six (26)  
6 years and a significant period of time in the Nevada Department  
7 of Corrections in warranted in these cases.

8 **B: The "Fast Moving Dope Office" Evidence:**  
9

10 As was indicated in the filed Presentence Investigation  
11 Report in Case No. CR20-7222, filed April 15, 2021, and from the  
12 Winnemucca Police Department crime reports in this case, the  
13 Defendant in the latter case evaded law enforcement, abandoned  
14 his vehicle, and fled on foot, where he was later took cover and  
15 was captured in heavy willow overgrowth, only after he was  
16 ordered to crawl out of by law enforcement officers.  
17 Subsequently, a search warrant was obtained for the Defendant's  
18 gold GMC Envoy by the Union Township Justice Court in Humboldt  
19 County, Nevada, where a "grocery store" or "dope office" of  
20 controlled substances were found, namely, 97.189 grams of  
21 methamphetamine and 12.220 grams of Heroin were found within the  
22 vehicle in zip lock bags.<sup>4</sup> (See Presentence Investigation Report  
23  
24

25 <sup>4</sup> The fact that the controlled substances were found here in the same location as "narcotics distribution  
26 paraphernalia," to cash, was relevant to the 9<sup>th</sup> Circuit Court of Appeals in *United States v. Bernal*, 719 F.2d 1475  
27 (9th Cir. 1983), as the Court there found that the existence of such equipment has been held to be "more of than  
28 only slightly" probative of intent and state of mind to enter upon a "narcotics distribution scheme," citing *United States v. Bermudez*, 526 F.2d 89, 95-96 (2d Cir.1975), cert. denied, 425 U.S. 970, (1976), and that this evidence is

1 in Case No. CR20-7222, filed April 15, 2021, page 9).

2 **C: State's Sentencing Recommendation:**

3 While for plea negotiation purposes in Case No. CR20-  
4 7199, the Defendant was allowed to plea No-Contest to one count  
5 of Trafficking in a Schedule 1 Controlled Substance-  
6 Methamphetamine, Level II, in violation of NRS 453.321(1)(b), a  
7 Category B Felony, and as to District Court Case No. CR20-7222,  
8 the Defendant was allowed to Plea Guilty to one of two charges  
9 of Transportation of a Schedule 1 Controlled Substance, in  
10 violation of ~~NRS 453.321(1)(a)~~, a Category C Felony, with the  
11 Felony Eluding an Officer, in violation of NRS 484B.550 (3) being  
12 dropped at sentencing, in both of the above cases, the State  
13 retained the right to comment on Defendant's crimes and past  
14 conduct, with the fact that what he was arrested for, and was  
15 initially charged with, along with his past criminal conduct in  
16 Central and Northern California, should be also considered by  
17 this Court for sentencing purposes, as well as to what the  
18 Defendant actually pled guilty to.  
19  
20

21 As a result, based on the totality of the circumstances in  
22 both of these case, in light of the large amount of multiple  
23 controlled substances found on his person in a controlled  
24 environment on January 28, 2020; in light of the fast moving  
25  
26

27 thus "*relevant to both conspiracy and attempt*" [to enter upon a narcotics distribution scheme]. (*Emphasis added*).  
28 *Bernal, supra* 719 F.2d at 1178.

1 "dope office" in his vehicle that the Defendant was driving  
2 alone in, on September 24, 2021, as well as the Defendant's  
3 significance criminal history, even in light of the Defendant's  
4 acceptance of responsibility for the drug offense he plead No-  
5 Contest and Guilty to, and under the applicable case law, a  
6 significant period of imprisonment in both cases are warranted,  
7 and the State would recommend a sentence in District Court Case  
8 No CR20-7199 of a maximum term of one hundred-eighty (180)  
9 months and a minimum term of ninety-six (96) months, and a fine  
10 of \$100,000 to run consecutive to District Court Case No. CR20-  
11 7222 to a recommended sentence of a maximum term of sixty (60)  
12 months, and a minimum term of twenty-four (24) months in the  
13 Nevada Department of Corrections, and a fine of \$10,000.  
14

15 V.

16 CONCLUSION

17 WHEREFORE, the Plaintiff respectfully asks that this Court  
18 impose a significant sentence in line with the facts in both of  
19 the present cases against the Defendant, which resulted from a  
20 finding, and removal of, a significant amount of illegal  
21 controlled substances, namely a total of 135.22 grams of  
22 methamphetamine, and 12.220 grams of Heroin from the local  
23 community.  
24

25 DATED this 10<sup>th</sup> day of November, 2021.

26 Anthony R. Gordon  
27 ANTHONY R. GORDON  
28 Deputy District Attorney

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Humboldt County District Attorney's Office and that on this 10<sup>th</sup> day of November, 2021, I deposited a true copy of the forgoing **STATE'S SUPPLEMENTAL SENTENCING MEMORANDUM** to:

MATT STERMITZ  
Humboldt County Public Defender  
50 W. Fifth St.  
Winnemucca, NV 89445

- ( ) U.S. Mail  
( ) Certified Mail  
( ) Hand-delivered  
(X) Placed in DCT Box  
( ) Via Facsimile

*Anthony D. Gordon*

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Sh. Quad