

IN THE SUPREME COURT OF THE STATE OF NEVADA

LEQUANA BROWN,

Appellant,

v.

STATE OF NEVADA,

Respondent.

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CASE NO: 84042

APPELLANT'S REPLY BRIEF

Appeal From Denial of Post-Conviction Habeas Petition

STEVEN S. OWENS, ESQ.
Nevada Bar #004352
Steven S. Owens, LLC
1000 N. Green Valley #440-529
Henderson, Nevada 89074
(702) 595-1171

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Appellant

Counsel for Respondent

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Lequana Brown is represented by Steven S. Owens, Esq, of Steven S. Owens, LLC, who is a sole practitioner and there are no parent corporations for which disclosure is required pursuant to this rule.

DATED this 19th day of May, 2022.

/s/ Steven S. Owens

STEVEN S. OWENS, ESQ.

Nevada Bar No. 4352

1000 N. Green Valley #440-529

Henderson, NV 89074

(702) 595-1171

Attorney for Appellant

TABLE OF CONTENTS

ARGUMENT	1
I. APPELLANT IS ENTITLED TO WITHDRAW HER GUILTY PLEA TO CORRECT A MANIFEST INJUSTICE	1
II. APPELLANT IS ENTITLED TO WITHDRAW HER PLEA BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL	3
CONCLUSION	5
CERTIFICATE OF COMPLIANCE	6
CERTIFICATE OF SERVICE	7

ARGUMENT

I. APPELLANT IS ENTITLED TO WITHDRAW HER GUILTY PLEA TO CORRECT A MANIFEST INJUSTICE

Appellant agrees that she made an oral request for release on house arrest prior to pleading guilty on January 3, 2020, and that such was not included as a term of the negotiations. 1 AA 134-144. The point is that it should have been and that was her understanding. Appellant's confusion is apparent at that hearing where she was represented not be her attorney of record, but by some stand-in counsel who left her alone to make the oral request for release from custody. *Id.* Appellant represented to the court that her counsel of record had assured her that such a written motion for release had been filed, but she was surprised to learn that it had not been filed. 1 AA 138-9; 2 AA 337. This is also part of the ineffective assistance of counsel claim below. The State responded to Appellant's misunderstanding and lack of adequate legal representation by revoking the offer for the second time ("but if the offers aren't being entered into today it will again be revoked"). 1 AA 141. This was a false threat designed to coerce and rush Appellant. True to form, the previously revoked offer was re-extended for a third time when the prosecutor almost immediately revoked it for a third time:

And, Your Honor, at this point, the State's going to revoke the offer. We have a pre-trial at 2:00 o'clock. We've already pre-trialed several people. If she wants to take it now, like I told Mr. Arnold earlier, she

can have it right now, otherwise its going to be revoked and there won't be any other offers made.

1 AA 150. Certainly, the State has authority to extend and revoke offers, but in this case it was a game and the State abused its power by strategically maneuvering and threatening Appellant into pleading guilty.

In regard to the filing of habitual notice to punish Appellant for not previously going through with negotiations, Appellant does not dispute that only two prior convictions for “any felony” in theory can support habitual adjudication. *Arajakis v. State*, 108 Nev. 976, 983, 843 P.2d 800, 805 (1992) (“NRS 207.010 makes no special allowance for non-violent crimes or for the remoteness of convictions; instead, these are considerations within the discretion of the district court.”). However, when one of those prior convictions is for drugs and is 17 years old, the State knew it stood no realistic chance of obtaining a habitual adjudication that would stand up on appeal, which implies it was only filed to apply further pressure or coercion to get Appellant to plead guilty.

As to the deadly weapon confusion, the State's argument highlights how the court misled Appellant when it told her, “as an aider and abettor, you understand that you're liable for everything they do and they're liable for what you do as well as part of the conspiracy to commit this crime?” 1 AA 160. Actually, the law in Nevada is that a defendant must have 1) knowledge of the firearm, and 2) benefit from its use before there is aiding and abetting liability of an armed defendant.

Nelson v. State, 123 Nev. 534, 170 P.3d 517 (2007). It is no wonder Appellant did not understand the plea as the information given to her was inaccurate.

The State indicates that the dismissal of another criminal case as part of a plea bargain is a mere “clerical” change in the plea agreement rather than anything substantive. However, the relative strength of the Henderson case with its exposure to additional prison time are serious factors Brown needed to consider in weighing her decision to plead or not in the present case. It was not extraneous to the decision-making process.

Finally, the State represents that because the Amended Guilty Plea Agreement was signed by Brown’s counsel pursuant to COVID-19 procedures, it was not necessary for Brown to have actually seen the document. However, the representations about what Brown had read to her and authorized her signature on concerned a prior “Guilty Plea Agreement,” not the “Amended” Guilty Plea Agreement, which effectively demonstrates the confusion in the proceedings below. 2 AA 250, 253.

II. APPELLANT IS ENTITLED TO WITHDRAW HER PLEA BASED UPON INEFFECTIVE ASSISTANCE OF COUNSEL

Appellant disagrees that new counsel was appointed to simply “investigate withdrawing Appellant’s plea.” Answering Brief, p. 24. Rather, Appellant unequivocally expressed her need and desire for alternate counsel specifically to withdraw her plea because it had been falsely induced:

I was under false and um – he gave me false information about me going to – I was supposed to start trial basically and then I had signed for a deal before this deal that I took. So I was under the impression that I was coming to court to finish that deal cause I had signed for it which that’s not what I went to court for. I didn’t know about me taking – this going to – get the 8 years –

1 AA 203. Prior counsel’s derelictions are set forth in much more detail in the pro se habeas petition filed on October 29, 2020. 2 AA 268-283.

Although new counsel represented on June 4, 2020, that Appellant was prepared to go forward with “sentencing,” Appellant herself was not present and was never actually asked whether she had changed her mind about wanting to withdraw her guilty plea. 1 AA 214. Instead, at the next court hearing on June 16, 2020, the court simply asked Appellant if she was prepared to go forward with “negotiations.” 1 AA 228-9. Certainly, Brown expressed a desire to go forward with negotiations and with sentencing, but upon what terms and of which negotiation? Did she intend to go forward with the previous negotiation or go forward with a new negotiation after withdrawing her plea? The record does not reveal. The fact remains that after appointment of new counsel, Appellant’s expressed desire to withdraw from her guilty plea was simply not addressed again on the record, which was the very purpose for which new counsel had been appointed.

Instead, counsel was ineffective in pushing Appellant back into a similar plea bargain agreement that exposed Brown to 8 to 20 years in prison, when the only plea

agreement Brown had ever actually seen and signed was only for 6 to 15 years in prison. 2 AA 381-2. But for counsel's failure to cure the confusion on this issue, Brown would not have entered the new plea.

CONCLUSION

Wherefore, Appellant requests that the judgment be vacated and the matter be remanded.

DATED this 19th day of May, 2022.

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, NV 89074
(702) 595-1171

Attorney for Appellant

CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 1,101 words and 5 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 19th day of May, 2022.

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.
Nevada Bar No. 4352
1000 N. Green Valley #440-529
Henderson, NV 89074
(702) 595-1171

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 19th, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
Nevada Attorney General

ALEXANDER CHEN
Chief Deputy District Attorney

/s/ Steven S. Owens
STEVEN S. OWENS, ESQ.