

1 DAVID R. FISCHER, ESQ.  
2 Nevada Bar No. 010348  
3 THE LAW OFFICE OF DAVID R. FISCHER  
4 400 S. 4<sup>th</sup> Street, Suite 500  
5 Las Vegas, NV 89101  
(702) 547-3944  
(702) 974-1458 (Fax)  
Counsel for Appellant *Darnell Buchanan*

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6 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

7 DARNELL BUCHANAN.,

8 Appellant,

9 vs.

10 THE STATE OF NEVADA,

11 Respondent.

NO. 82869

**APPELLANT'S OPENING  
BRIEF**

12  
13 **\*i NRAP 26.1 DISCLOSURE OF APPELLANT'S COUNSEL, DAVID R.**  
14 **FISCHER, ESQ.**  
15

16 DAVID R. FISCHER, ESQ., Attorney for Appellant, DARNELL BUCHANAN, in  
17 compliance with his obligations imposed by NRAP 26, hereby makes the following  
18 statements for consideration by the court:

- 19 1. THE LAW OFFICE OF DAVID R. FISCHER is a professional limited liability  
20 company, wholly owned by the undersigned attorney, David R. Fischer, Esq.  
21  
22 2. There are no parent corporations or publicly traded corporations who own stock  
23 in the law firm The Law Office of David R. Fischer, as the undersigned is the sole  
24

1 stockholder and owner of the subject corporation.

2 3. To the best of my knowledge, the undersigned, DAVID R. FISCHER, ESQ. of  
3 THE LAW OFFICE OF DAVID R. FISCHER is the only attorney and law firm or  
4 corporation that has appeared for Appellant, DARNELL BUCHANAN, in this  
5 appellate matter.  
6

7 4. There are no known exceptions to the above.

8 \*ii 5. These representations are made in order that the judges of this Court may  
9 evaluate possible disqualification or recusal.  
10

11 THE LAW OFFICE OF DAVID R. FISCHER

12 BY: /s/ David R Fischer  
13 DAVID R. FISCHER, ESQ.  
14 Nevada Bar No. 10348  
Counsel for Appellant *DARNELL BUCHANAN*  
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## **JURISDICTIONAL STATEMENT**

This Court has jurisdiction pursuant to Nevada Rules of Appellate Procedure (“NRAP”) 3B and NRAP 3C(a)(1) because the District Court entered a Judgment of Conviction in this matter on April 5, 2021. Appellant’s Appendix (“AA”) Vol. I pp. 57-58. Pursuant to NRAP 4(b), this matter was timely filed for appeal on April 30, 2021. AA Vol. I p. 60.

### **I. ROUTING STATEMENT**

This matter should presumptively be assigned to the Court of Appeals under NRAP 17(b)(1), “Appeals from a judgment of conviction based on a plea of guilty, guilty but mentally ill, or nolo contender (Alford).”

### **II. STATEMENT OF THE ISSUE**

Whether the District Court’s imposition of this, maximum of one hundred twenty (120) months with a minimum parole eligibility of thirty-six (36) months, sentence constitutes a violation of defendant’s right to be free from cruel and unusual punishment under the facts and circumstances of the case. AA Vol. I pp. 57-58.

### **III. STATEMENT OF THE CASE**

This is an Appeal from a Judgment of Conviction entered on April 5, 2021. AA Vol. I pp. 57-58. On April 30, 2021, Defendant/Appellant Darnell Buchanan (hereinafter “Mr. Buchanan”) accepted negotiations from the State and entered a plea of guilty to the charge of Robbery (Category B Felony – NRS 200.380 – NOC

1 50137). AA Vol. I pp. 1-9. A warrant of arrest was issued for Mr. Buchanan on  
2 October 24, 2018. AA Vol. I p. 25. Mr. Buchanan entered a Guilty Plea Agreement  
3 with the State on December 3, 2020. AA Vol. I pp. 1-9. The District Court entered  
4 a Judgement of Conviction in this matter on April 6, 2021, and pursuant to NRAP  
5 4(b), this matter was timely filed for appeal on April 30, 2021. AA Vol. I pp. 57-61.  
6

#### 7 **IV. STATEMENT OF THE FACTS**

8 According to LVMPD records, officer responded to a robbery report on  
9 October 6, 2018. AA Vol. I pp. 47-51. While investigating, officers on the scene  
10 received a report of another robbery nearby. *Id.* The investigation led officers to  
11 arrest two male suspects driving one of the victim's cars. *Id.* Officers found evidence  
12 in the victim's vehicle which they believe linked Mr. Buchanan to the robbery. *Id.*  
13 A warrant of arrest was later issued for Mr. Buchanan on October 24, 2018. AA Vol.  
14 I p. 25. Mr. Buchanan entered a Guilty Plea Agreement with the State on December  
15 3, 2020. AA Vol. I pp. 1-9. The District Court entered a Judgement of Conviction in  
16 this matter on April 6, 2021, and pursuant to NRAP 4(b), this matter was timely filed  
17 for appeal on April 30, 2021. AA Vol. I pp. 57-61.  
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19

#### 20 **V. SUMMARY OF THE ARGUMENT**

21 The District Court's imposition of a maximum of one hundred twenty (120)  
22 months with a minimum parole eligibility of thirty-six (36) months sentence  
23 constitutes cruel and unusual punishment. When the District Court sentenced Mr.  
24

1 Buchanan to a maximum of one hundred twenty (120) months with a minimum  
2 parole eligibility of thirty-six (36) months sentence, despite the mitigating factors  
3 presented to the District Court, this constituted cruel and unusual punishment.  
4

## 5 **VI. LEGAL ARGUMENT**

### 6 **A. Standard of Review**

7 This Court reviews appeals from a judgment of conviction looking for an  
8 abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).  
9 Therefore, on appeal, “in the absence of a showing of abuse of such discretion, we  
10 will not disturb the sentence.” *Id.* quoting *Deveroux v. State*, 96 Nev. 388, 390, 610  
11 P.2d 722, 724(1980).  
12

### 13 **B. Did the District Court’s imposition of this maximum of one hundred** 14 **twenty (120 months with a minimum parole eligibility of thirty-six (36)** 15 **months sentence constitute a violation of defendant’s right to be free** **from cruel and unusual punishment under the facts and** **circumstances of the case?**

16 The Eighth Amendment to the United States’ Constitution, and Article I,  
17 Section 6 of the Nevada Constitution each apply a ban upon the Courts of the State  
18 of Nevada, precluding the Court from imposing a sentence that should be considered  
19 “cruel and unusual” punishment. The pertinent provision of the Nevada Constitution  
20 states as follows: “Excessive bail shall not be required, nor excessive fines imposed,  
21 nor shall cruel or unusual punishments be inflicted, nor shall witnesses be  
22 unreasonably detained.”  
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1           The Nevada Supreme Court has long held that a sentence which is within the  
2 limits prescribed by a particular statute is presumed to be valid. *Schmidt v. State*, 94  
3 Nev. 665, 668, 584 P.2d 685, 697 (1978). The trial court judge is endowed with wide  
4 discretion in imposing a term of imprisonment pursuant to a judgment of conviction.  
5 *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376,1379 (1987); *see also Deveroux*,  
6 96 Nev. at 390, 610 P.2d at 723. The court’s discretion, however, is not without  
7 limits. *Parrish*, 116 Nev. at 989, 12 P.3d at 957. The punishment imposed can be  
8 found to be cruel and unusual, or an abuse of the sentencing judge’s discretion, under  
9 several circumstances. One circumstance is where the statute that defines the crime  
10 and the punishment to be imposed is held to be unconstitutional. *Blume v. State*, 112  
11 Nev. 472, 475, 915 P.2d, 282, 284 (1996); *see also Culverson v. State*, 95 Nev. 433,  
12 435, 596 P.2d 220, 221-22 (1979). A second circumstance is a situation where the  
13 record underlying the sentence imposed demonstrates prejudice in the court, which  
14 resulted from its consideration of information or accusations which are founded on  
15 facts supported only by “impalpable or highly suspect evidence.” *Allred v. State*, 120  
16 Nev. 410, 420, 92 P.3d 1246, 1253 (2004); *see also Silks v. State*, 92 Nev. 91, 94,  
17 545 P.2d 1159,1161 (1976). A third situation where a sentence may be found to  
18 impose punishment which is cruel and unusual, and an abuse of discretion, is that  
19 situation in which the sentence imposed is so disproportionate to the crime for which  
20 it is inflicted that it “shocks the conscience, and offends fundamental notions of  
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1 human dignity.” *Schmidt*, 94 Nev. at 668, 584P.2d at 697; *see also DePasquale v.*  
2 *State*, 104 Nev. 338, 341, 757 P.2d 367, 369 (1988).

3 It is the domain of the legislature to define offenses which will constitute a  
4 crime in the State of Nevada and the punishments to be imposed under the terms of  
5 those laws. *Sherriff, Clark County v. Williams*, 96 Nev. 22, 24 604 P.2d 800, 801  
6 (1980). Where a trial court judge abuses his or her discretion in imposing a sentence,  
7 however, the Supreme Court is free to step in to disturb the sentence, and thereby  
8 correct a miscarriage of justice which might otherwise result. *State v. Sala*, 63 Nev.  
9 270, 169 P.2d 524 (1946).  
10

11 The precise limits which define “cruel and unusual punishment” are not  
12 spelled out in either the State or Federal Constitutions. In *Thompson v. Oklahoma*,  
13 487 U.S. 815, 821 108 S.Ct. 2687, 2691, 2691 (1988), the United States Supreme  
14 Court confirmed that the drafters of the Constitution imposed a categorical  
15 prohibition against the imposition of cruel and unusual punishment. In making this  
16 statement, however, the Court did not create a litmus test to determine what  
17 constitutes “cruel and unusual punishment.” Rather, the Supreme Court intimated  
18 that the definition of “cruel and unusual punishment” is, and should be, a flexible  
19 concept, to be molded at the hands of future judges, guided by the principles of  
20 “evolving standards of decency that mark the progress of an evolving society.” *Trop*  
21 *v. Dolis*, 356 U.S. 86, 101, 78 S.Ct. 590, 598 (1958) (Plurality Opinion).  
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1 In *Naovarath v. State*, 105 Nev. 525, 529-30, 772 P.2d 944, 947 (1989), the  
2 Nevada Supreme Court spoke with respect to the concepts which are intended to  
3 guide a court in making its determination of whether a particular punishment should  
4 be deemed “cruel and unusual.” In addressing this issue, the Nevada Supreme Court  
5 quotes from former United States Supreme Court Justice Frank Murphy, who wrote  
6 in an unpublished Supreme Court opinion as follows:  
7

8 More than any other provision in the Constitution the prohibition  
9 of cruel and unusual punishment depends largely, if not entirely,  
10 upon the humanitarian instincts of the judiciary. We have nothing  
11 to guide us in defining what is cruel and unusual apart from our  
12 consciences. A punishment which may be considered fair today  
13 may be considered cruel tomorrow. And so we are not dealing here  
14 with a set of absolutes. Our decisions must necessarily spring from  
15 the mosaic of our beliefs, our backgrounds and the degree of our  
16 faith and the dignity of the human personality.

17 In cases addressing the concept of cruel and unusual punishment in the State  
18 of Nevada, it has become clear that our State Supreme Court has accepted the  
19 propositions that the drafters of the Constitutions did, in fact, intend an absolute  
20 prohibition against the infliction of cruel and unusual punishments when they  
21 drafted Article I, Section 6 of the Nevada Constitution. It has further become clear  
22 that the Nevada Supreme Court has the inherent right to review the sentencing  
23 decisions of the District Court judges, to determine if they have abused their  
24 discretion in the impositions of sentences. Based upon the unique facts and  
circumstances of each individual case, the Nevada Supreme Court is vested with

1 the power and authority to enter its own determination of whether the judgments of  
2 conviction and sentencing impose punishment which is, in fact, cruel and unusual.

3 In this case, it is Mr. Buchanan's contention that the Eighth Judicial District  
4 Court Judge, Judge Erika Ballou, abused her discretion when she sentenced Mr.  
5 Buchanan to a maximum of one hundred twenty (120) months with a minimum  
6 parole eligibility of thirty-six (36) months sentence for the crime of Robbery. AA  
7 Vol. I pp. 57-58. Defendant, Darnell Buchanan, was only 20 years old at the time  
8 he was sentenced, and a young 18-year-old at the time of the crime. AA Vol. I pp.  
9 33-40. Mr. Buchanan ultimately confessed to the crime and then was cooperative  
10 with the police where he took responsibility for his wrongdoing and demonstrated  
11 empathy while continuing to do so. AA Vol. I pp. 1-9.

## 14 **VII. CONCLUSION**

15 In accordance with the foregoing, Defendant, Darnell Buchanan, would  
16 respectfully urge this Honorable Court to reverse and remand this matter to the  
17 District Court for reconsideration of the sentence entered in this matter, as being  
18 violative of the ban against cruel and unusual punishment.  
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1                    **NRAP 28.2 ATTORNEY’S CERTIFICATE OF COMPLIANCE**

2  
3            1. I hereby certify that this brief complies with the formatting requirements of  
4 NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style  
5 requirements of NRAP 32(a)(6) because:

6 This brief has been prepared in a proportionally spaced typeface using Microsoft  
7 Word Version 2108 in 14-point font Times New Roman.

8            2. 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 is either:

11 Proportionately spaced, has a typeface of 14 points or more, and contains 2638  
12 words; or

13 Does not exceed 15 pages.

14  
15            3. Finally, I hereby certify that I have read this appellate brief, and to the best  
16 of my knowledge, information, and belief, it is not frivolous or interposed for any  
17 improper purpose. I further certify that this brief complies with all applicable  
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires  
19 every assertion in the brief regarding matters in the record to be supported by a  
20 reference to the page and volume number, if any, of the transcript or appendix  
21 where the matter relied on is to be found. I understand that I may be subject to  
22  
23  
24

1 sanctions in the event that the accompanying brief is not in conformity with the  
2 requirements of the Nevada Rules of Appellate Procedure.

3  
4 Dated this 1st day of November, 2021

5  
6 THE LAW OFFICE OF DAVID R. FISCHER

7 BY: /s/ David R Fischer  
8 DAVID R. FISCHER, ESQ.  
9 Nevada Bar No. 10348  
Counsel for Appellant *DARNELL BUCHANAN*

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STEVEN B. WOLFSON, ESQ.  
District Attorney  
Clark County District Attorney's Office  
200 Lewis Avenue  
3<sup>rd</sup> Floor  
Las Vegas, NV 89155

DARNELL BUCHANAN  
ID No. 1244156  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

10