

IN THE SUPREME COURT OF THE STATE OF NEVADA

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DARNELL BUCHANAN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 82869

**RESPONDENT'S ANSWERING BRIEF**

**Appeal From Judgment of Conviction pursuant to a Guilty Plea  
Eighth Judicial District Court, Clark County**

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Eighth Judicial District Court, Clark County**

**ROUTING STATEMENT**

Pursuant to NRAP 17(b)(1), this case is presumptively assigned to the Nevada Court of Appeals because it is an appeal from a judgment of conviction based on a guilty plea.

**STATEMENT OF THE ISSUE**

Whether Appellant’s sentence, that is within statutory limits and the exact sentence he stipulated to in a Guilty Plea Agreement, violates the Eighth Amendment prohibition against cruel and unusual punishment.

**STATEMENT OF THE CASE**

On October 24, 2018, Darnell Buchanan (hereinafter “Appellant”) was charged by way of Criminal Complaint with the following: Count 1 – Conspiracy to Commit Robbery (Category B Felony – NRS 200.380, 199.480); Counts 2 and 3 –

First Degree Kidnapping with Use of a Deadly Weapon (Category A Felony – NRS 200.310, 200.320, 193.165); Counts 4, 5 and 8 – Robbery with Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165); Count 6 – Burglary (Category B Felony – NRS 205.060); Count 7 – Grand Larceny Auto (Category B Felony – NRS 205.228.3); Count 9 – Possession of Stolen Vehicle (Category B Felony – NRS 205.273.4). Appellant’s Appendix (“AA”) at 12-14.

On December 3, 2021, a signed Guilty Plea Agreement (“GPA”) was filed in open court. Pursuant to the GPA, Appellant agreed to plead guilty to one count of Robbery, and both parties stipulated to a sentence of three (3) to ten (10) years in the Nevada Department of Corrections (“NDC”). AA at 01. On December 4, 2020, pursuant to the negotiation, the State filed an Information charging Appellant with one count of Robbery. AA 07-08. On April 5, 2021, Appellant was sentenced to a maximum of one hundred twenty (120) months with a minimum parole eligibility of thirty-six (36) months in the NDC with seventeen (17) days credit for time served. AA at 57-58. The Judgment of Conviction was filed on April 6, 2021. AA at 57-58.

Appellant filed his Notice of Appeal on April 30, 2021. AA 60-61. On November 3, 2021, Appellant filed his Opening Brief.

### **STATEMENT OF THE FACTS<sup>1</sup>**

The Presentence Investigation Report (“PSI”) summarized the facts as follows:

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<sup>1</sup>The State has filed a motion to transmit the Presentencing Investigation Report.

On October 6, 2018, officers responded to a robbery with a deadly weapon, car jacking and assault with a deadly weapon call at a local apartment complex.

Upon arrival, officers and detectives made contact with victim 1 and victim 2. The victims advised they parked in their assigned parking spot in the apartment complex parking lot when four males approached them. One of the males pointed a gun at them and demanded their money, keys and phones while the other three males acted as lookouts. The male with the gun had the victims get out of the car, get on their knees and give him their money. Victim #2 gave the males his phone and victim #1 gave the suspects her money but hid her phone. The male with the gun asked victim #2 for his phone's passcode but victim #2 does not speak English and the [sic] did not understand the question. The male became upset and threw the phone back at victim #2 and victim #1 gave the male her car keys. All four male suspects got into her car and drove out of the apartment complex. Victim #1 and victim #2 ran away from the area and both stated they heard one gun shot fired by the suspects.

While on scene, detectives were notified another robbery had taken place and officers located the victim #1's vehicle registration and other personal items. The officers stated the victim on that robbery (victim #3) had his cellphone stolen. Detectives responded to that scene and interviewed victim #3. He stated he arrived home at his apartment complex and parked in his assigned parking spot. When victim #3 exited his car, he saw three males standing next to victim #1's vehicle. The three males approached victim #3, one holding a gun, and demanded money. Victim #3 gave the males his money and his cellphone. Detectives sent a text message to victim #3's cellphone asking for the cellphone in hopes to make contact with the suspects. One of the suspects responded so detectives told him he would pay \$200 for the cellphone back and they scheduled a time and place to meet.

A few hours later, detectives and officers met with three males at a local business. The suspects arrived in victim #1's vehicle and another vehicle (later determined

to have been stolen). When detectives started to approach the vehicles, they observed three of the males exit the vehicles and ran away. Detectives were able to apprehend the two of the males and identify as juveniles [*sic*]. One of the juvenile males was searched and the key fob to the stolen vehicle was found in his front pocket. He also confirmed a firearm was inside one of the vehicles. Victim #1 confirmed the juvenile males were two of the suspects involved in the robbery. The two juvenile males were taken into custody.

Detectives interviewed one of the juvenile males who confirmed he ran because he knew the vehicle he had been in was stolen; however, he denied he was present at either of the robberies.

The third suspect who ran was not located; however, a search of the stolen vehicle was conducted and detectives found a phone with a picture of the third suspect and a firearm. Through their investigation, detectives were able to identify the third suspect as the defendant Darnell Buchanan. All victims met with detectives and confirmed that Mr. Buchanan was present during the robberies.

A warrant of arrest was requested for Darnell Buchanan on October 24, 2018.

On June 8, 2020, Mr. Buchanan was arrested and transported to Clark County Detention Center, where he was booked accordingly.

PSI 5-6.

### **SUMMARY OF THE ARGUMENT**

Appellant's sentence is not cruel or unusual. Appellant received the exact sentence to which he agreed. His sentence was not grossly disproportionate to the crime and it was within the statutory limits.

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## **ARGUMENT**

### **II. APPELLANT’S SENTENCE IS NOT CRUEL AND UNUSUAL PUNISHMENT.**

Appellant argues the district court abused its discretion in sentencing Appellant to a maximum of 120 months with a minimum parole eligibility of 36 months for Robbery. Appellant’s Opening Brief (“AOB”) 7. Appellant claims this amounts to cruel and unusual punishment because Appellant

was only 20 years old at the time he was sentenced, and a young 18-year-old at the time of the crime. He had never been in serious trouble with law enforcement. Mr. Buchanan ultimately confessed to the crime and then was cooperative with the police where he took responsibility for his wrongdoing and demonstrated empathy while continuing to do so.

AOB 7. Appellant’s claim fails as it is devoid of any sound factual or legal basis.

The Eighth Amendment to the United States Constitution, as well as Article 1, Section 6 of the Nevada Constitution, prohibits the imposition of cruel and unusual punishment. This Court has stated that “[a] sentence within the statutory limits is not ‘cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.’” Allred v. State, 120 Nev. 410, 420, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996)) (quoting Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979)). “The Eighth Amendment of the United States Constitution does not require

strict proportionality between crime and sentence but forbids only an extreme sentence that is grossly disproportionate to the crime.” Chavez v. State, 125 Nev. 328, 347-48, 213 P.3d 476, 489 (2009). As long as the sentence is within the limits set by the legislature, a sentence will normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 349, 871 P.2d 950, 953 (1994).

Additionally, this Court has granted district courts “wide discretion” in sentencing decisions, which will not be disturbed “[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence.” Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976)). A district court's sentencing determination will not be disturbed on appeal absent an abuse of discretion. Randell v. State, 109 Nev. 5, 846 P.2d 278 (1993) (citing Deveroux v. State, 96 Nev. 388, 610 P.2d 722 (1980)). “[A] district court does not abuse its discretion by imposing a sentence in excess of the State’s recommendation.” Dunham v. State, 134 Nev. 563, 569, 426 P.3d 11, 15 (2018) (citing Goodson v. State, 98 Nev. 493, 495, 654 P.2d 1006, 1007 (1982)). It is not an abuse of discretion for a court to impose a sentence that exceeds the recommendation of the Department of Parole and Probation, because such a recommendation is not binding. Dunham, 134 Nev. at 569, 426 P.3d at 15 (quoting Etcheverry v. State, 107 Nev. 782, 786, 821 P.2d 350, 352 (1991)).

Here, Appellant's sentence does not amount to cruel and unusual punishment. Appellant was sentenced to 120 months with parole eligibility of 36 months for the crime of Robbery. AA 57-58. This sentence does not exceed what is allowed by statute. Pursuant to NRS 200.380, a person convicted of Robbery is guilty of a "category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years." Appellant's sentence is well within the statutory range prescribed by law as he was sentenced to three (3) to ten (10) years. NRS 200.380 is not unconstitutional nor did the district court rely on unfounded information in imposing the sentence. The sentence is also not disproportional to the crime. The crime deals with a string of robberies where Appellant and three other individuals robbed victims at gun point at the parking lots of the victims' homes. PSI 5-6. Therefore, the district court did not abuse its discretion in imposing such sentence.

It is unfortunate Appellant was 20 years-old at sentencing. Being a young adult, however, does not make a sentence cruel and unusual punishment. As Appellant states, he confessed to the robberies (AOB 7) and such dangerous and serious actions have consequences.

Additionally, Appellant was fully apprised of the potential sentencing ranges in his GPA, which he freely and voluntarily signed. AA at 1-2, 5. The GPA specifically set out the sentencing range as to Robbery, reading:

I understand that as a consequence of my plea of guilty the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than two (2) years and a maximum term of not more than fifteen (15).

...

I have not been promised or guaranteed any particular sentence by anyone. I know that my sentence is to be determined by the Court within the limits prescribed by statute.

GPA 2-3.

The district court sentenced him to the stipulated sentence.

Moreover, the Nevada Supreme Court has recently held that a defendant cannot challenge his sentence as cruel and unusual on appeal when the defendant received a sentence he agreed to. Burns v. State, 137 Nev. \_\_, \_\_, 495 P.3d 1091, 1102-03 (2021). Since Appellant received the exact sentence he agreed to in the GPA, his claim must be denied.

### **CONCLUSION**

Based on the foregoing, the State respectfully requests Appellant's Judgment of Conviction be affirmed.

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Dated this 24th day of November, 2021.

Respectfully submitted,

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BY */s/ Karen Mishler*

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## **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 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 1,857 words and does not exceed 30 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 24th day of November, 2021.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 24, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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