

1 DAVID R. FISCHER, ESQ.
2 Nevada Bar No. 010348
3 THE LAW OFFICE OF DAVID R. FISCHER
4 400 S. 4th Street, Suite 500
5 Las Vegas, NV 89101
6 (702) 547-3944
7 (702) 974-1458 (Fax)
8 Counsel for Appellant *Darnell Buchanan*

Electronically Filed
Jan 11 2022 04:04 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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 REPLY
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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***iii TABLE OF CONTENTS**

Disclosure Statement.....	i
Table of Contents	iii
Legal Argument	1
A. Standard of Review	1
B. Did 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 constitute a violation of defendant’s right to be free from cruel and unusual punishment under the facts and circumstances of the case?	1
Conclusion.....	3
Attorney Certificate.....	6
Certificate of Service	7

1 **I. LEGAL ARGUMENT**

2 **A. Standard of Review**

3 This Court reviews appeals from a judgment of conviction looking for an
4 abuse of discretion. *Parrish v. State*, 116 Nev. 982, 989, 12 P.3d 953, 957 (2000).
5
6 Therefore, on appeal, “in the absence of a showing of abuse of such discretion, we
7 will not disturb the sentence.” *Id.* quoting *Deveroux v. State*, 96 Nev. 388, 390, 610
8 P.2d 722, 724(1980).

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

14 Appellant argues in his opening brief that the district court abused its
15 discretion in sentencing Appellant to a maximum of 120 months with a minimum
16 parole eligibility of 36 months for Robbery. Appellant’s Opening Brief (“AOB”) 7.
17 It is worth restating here that the trial court judge may be endowed with wide
18 discretion in imposing a term of imprisonment pursuant to a judgment of conviction.
19 *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376,1379 (1987); *see also Deveroux*,
20 96 Nev. at 390, 610 P.2d at 723. But even so, the court’s discretion is not without
21 limits. *Parrish*, 116 Nev. at 989, 12 P.3d at 957. The punishment imposed can be
22 found to be cruel and unusual, or an abuse of the sentencing judge’s discretion, under
23 several circumstances.

1 Furthermore, the precise limits which define “cruel and unusual punishment”
2 are not spelled out in either the State or Federal Constitutions. In *Thompson v.*
3 *Oklahoma*, 487 U.S. 815, 821 108 S.Ct. 2687, 2691, 2691 (1988), the United States
4 Supreme Court confirmed that the drafters of the Constitution imposed a categorical
5 prohibition against the imposition of cruel and unusual punishment. In making this
6 statement, however, the Court did not create a litmus test to determine what
7 constitutes “cruel and unusual punishment.” Rather, the Supreme Court intimated
8 that the definition of “cruel and unusual punishment” is, and should be, a flexible
9 concept, to be molded at the hands of future judges, guided by the principles of
10 “evolving standards of decency that mark the progress of an evolving society.” *Trop*
11 *v. Dolis*, 356 U.S. 86, 101, 78 S.Ct. 590, 598 (1958) (Plurality Opinion).

14 Moreover, in *Naovarath v. State*, 105 Nev. 525, 529-30, 772 P.2d 944, 947
15 (1989), the Nevada Supreme Court spoke with respect to the concepts which are
16 intended to guide a court in making its determination of whether a particular
17 punishment should be deemed “cruel and unusual.” In addressing this issue, the
18 Nevada Supreme Court quotes from former United States Supreme Court Justice
19 Frank Murphy, who wrote in an unpublished Supreme Court opinion as follows:

21 More than any other provision in the Constitution the prohibition
22 of cruel and unusual punishment depends largely, if not entirely,
23 upon the humanitarian instincts of the judiciary. We have nothing
24 to guide us in defining what is cruel and unusual apart from our
consciences. A punishment which may be considered fair today
may be considered cruel tomorrow. And so we are not dealing here

1 with a set of absolutes. Our decisions must necessarily spring from
2 the mosaic of our beliefs, our backgrounds and the degree of our
3 faith and the dignity of the human personality.

4 Respondent argues that as long as the sentence is within the limits set by the
5 legislature, a sentence will normally not be considered cruel and unusual.

6 Respondent's Answering Brief. ("RAB") 6. The Respondent also argues that the
7 sentence is also not disproportional to the crime because the crime deals with a
8 string of robberies where Appellant and three other individuals robbed victims at
9 gun point at the parking lots of the victims' homes, and therefore, the district court
10 did not abuse its discretion in sentencing Appellant to a maximum of 120 months
11 with a minimum parole eligibility of 36 months for Robbery. RAB 7. But the
12 Respondent is describing conduct that Appellant has neither pled guilty to nor been
13 convicted for.
14

15 Considering the single count of Robbery in the instant case, it remains the
16 Appellant's contention that the Eighth Judicial District Court Judge, Judge Erika
17 Ballou, abused her discretion when she sentenced Mr. Buchanan to a maximum of
18 one hundred twenty (120) months with a minimum parole eligibility of thirty-six
19 (36) months sentence for the crime. AA Vol. I pp. 57-58.
20

21 **II. CONCLUSION**

22 In accordance with the foregoing, Defendant, Darnell Buchanan, would
23 respectfully urge this Honorable Court to reverse and remand this matter to the
24

District Court for reconsideration of the sentence entered in this matter, as being violative of the ban against cruel and unusual punishment.

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 11th day of January, 2022
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
3rd Floor
Las Vegas, NV 89155

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

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