

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH GROW,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

CASE NO. 84138
Electronically Filed
Mar 01 2022 12:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, County of Elko
The Honorable Mason Simons, District Court Judge

APPELLANT'S APPENDIX

BENJAMIN C. GAUMOND
Ben Gaumond Law Firm, PLLC
495 Idaho Street
Suite 209
Elko, NV 89801
(775)388-4875

Attorney for the Appellant WILLIAM JOSEPH GROW

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DATED this 1st day of March, 2022.

BEN GAUMOND LAW FIRM, PLLC

By: 

BENJAMIN C. GAUMOND, Owner

Nevada Bar Number 8081

495 Idaho Street

Suite 209

Elko, NV 89801

(775)388-4875

ben@bengaumondlawfirm.com

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CERTIFICATE OF SERVICE

I, BENJAMIN C. GAUMOND, certify that I am an employee of the Elko County Public Defender's Office and that on the 1st day of March, 2022, I served a copy of the foregoing APPELLANT'S APPENDIX by:

(a) sending a copy via electronic service to the Clerk of the Supreme Court, the Elko County District Attorney's Office (Tyler J. Ingram and Walter F. Fick), and the Nevada Attorney General's Office (Aaron D. Ford); and

(b) mailing one (1) copy with postage prepaid to William Joseph Grow, NDOC #1199093, Northern Nevada Correctional Center, P.O. Box 7000, Carson City, NV 89702.

DATED this 1st day of March, 2022.


BENJAMIN C. GAUMOND, Owner
BEN GAUMOND LAW FIRM, PLLC

clerk

CASE NO. DC-CR-21-290

DEPT. NO. 3

Affirmation Pursuant to NRS 239B.030

SSN Does Appear _____

SSN Does Not Appear _____ TDS_

FILED
2021 OCT 25 AM 10:53
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY 18

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM JOSEPH GROW,

Defendant.

CRIMINAL INFORMATION

(Filed Pursuant to Plea

Agreement)

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 7th day of August, 2021, at or near the location of the City of Elko, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

**BURGLARY OF A BUSINESS, A CATEGORY C FELONY AS DEFINED BY
NRS 205.060. (NOC 61938)**

That the Defendant did willfully and unlawfully enter or remain in any business structure, to wit: Southside Laundry, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, to wit: with the intent to steal an ATM machine, including the cash contained therein, belonging to Nevada Bank & Trust.

1 All of which is contrary to the form of the Statute in such cases made and provided,
2 and against the peace and dignity of the State of Nevada.

3 Dated: October 22, 2021.

4 TYLER J. INGRAM
5 Elko County District Attorney

6 
7 WALTER F. FICK
8 Deputy District Attorney
9 State Bar Number: 14193

10 Witnesses' names and addresses known to the District Attorney at the time of filing
11 the above Criminal Information, if known, are as follows:

12 NECIA LYNN ANDERSON: 5737 JUSTIN DRIVE ELKO, NV 89801

13 LACRISHNA PAGE BODLEY: 610 S. 12TH STREET APT C-101 ELKO, NV 89801

14 JASON CHECKETTS: 1448 SILVER STREET ELKO, NV 89801-3924

15 KYLE CRAIG: 1448 SILVER STREET ELKO, NV 89801-3924

16 JOHN CLIFTON ELLISON: P.O. BOX 683 ELKO, NV 89803

17 GLOBAL MINING: 400 FRONT STREET ELKO, NV 89801

18 CHRISTOPHER JOHN HEATHMAN: 62 GARCIA LANE ELKO, NV 89801

19 BARBARA MORAN: 398 HOT SPRINGS ROAD ELKO, NV 89801

20 NEVADA BANK & TRUST, RECORDS CUSTODIAN: 852 IDAHO STREET ELKO, NV
21 89801

22 KLINT RATLIFF: 775 WEST SILVER STREET ELKO, NV 89801

23 SOUTHSIDE LAUNDRY: 438 S. 5TH STREET #3 ELKO, NV 89801

24 GORDON WADSWORTH: 210 FRONT STREET / NEVADA BANK & TRUST CALIENTE,
25 NV 89008

26
27
28
CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON-FILE

25 day of Oct, 2021

Kristine Jakubowski

CLERK

Page 2 of 3

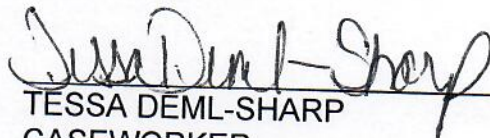
1
2
3 CERTIFICATE OF SERVICE

4 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
5 Elko County District Attorney's Office, and that on the 25th day of October, 2021, I hereby
6 served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or causing to
7 be delivered, faxed, or mailed, a copy of said document to the following:

8 By delivering to:

9 HONORABLE DISTRICT COURT JUDGE
10 FOURTH JUDICIAL DISTRICT COURT
11 ELKO COUNTY COURTHOUSE
12 ELKO, NV 89801

13 BENJAMIN GAUMOND
14 ATTORNEY AT LAW
15 495 IDAHO ST, SUITE 209
16 ELKO, NV 89801

17 
18 TESSA DEML-SHARP
19 CASEWORKER
20
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DA # F-21-02211

1 CASE NO.: DC-CR-21-290

2 DEPT. NO.: 3

FILED

2021 NOV -4 AM 11:56

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY 10

3
4
5 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF ELKO
7

8 THE STATE OF NEVADA,

9 Plaintiff,

10 VS.

11 WILLIAM JOSEPH GROW,

12 Defendant.
13

GUILTY PLEA AGREEMENT

14 I hereby agree to plead guilty to: COUNT 1, BURGLARY OF A BUSINESS, a
15 category C felony as more fully alleged in the Criminal Information that was filed
16 on October 25, 2021.
17

18 My decision to plead guilty is based upon the plea agreement in this case
19 which is as follows: the State will forebear prosecution on the original charges of
20 PRINCIPAL TO GRAND LARCENY, CONSPIRACY TO COMMIT GRAND
21 LARCENY, and PRINCIPAL TO WILLFUL INJURY TO OR DESTRUCTION OF
22 PROPERTY. The State will file no further charges arising out of facts related to
23 this incident, now known to the Elko County District Attorney's Office, either by a
24 new complaint or indictment and shall forebear upon any right it may otherwise
25 have to proceed against Defendant under NRS 207.010 et seq.
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1 In the instant case, the parties stipulate in that case for Mr. Grow to pay one
2 thousand dollars (\$1,000.00) restitution to Southside Laundry and pay three
3 thousand five hundred dollars (\$3,500.00) restitution to Nevada Bank & Trust.

4 Moreover, Mr. Grow agrees to plead guilty or no contest to two counts
5 BATTERY WITH A DEADLY WEAPON in case number DC-CR-21-255 in this
6 Court; and the State will forebear prosecution on all other charges in that case, the
7 State will file no further charges arising out of facts related to that incident, now
8 known to the Elko County District Attorney's Office, either by a new complaint or
9 indictment, and the State shall forebear upon any right it may otherwise have to
10 proceed against Defendant under NRS 207.010 et seq.

11 Moreover, Mr. Grow agrees to plead guilty to DOMESTIC VIOLENCE, WITH
12 A PRIOR FELONY CONVICTION FOR DOMESTIC VIOLENCE, a category B
13 felony in case number DC-CR-21-266 in this Court; and the State will forebear
14 prosecution on all other charges in that case, the State will file no further charges
15 arising out of facts related to that incident, now known to the Elko County District
16 Attorney's Office, either by a new complaint or indictment, and the State shall
17 forebear upon any right it may otherwise have to proceed against Defendant under
18 NRS 207.010 et seq.

19 Moreover, Mr. Grow agrees to plead guilty or no contest to CARELESS
20 DRIVING in case number EL-JC-CR-M-21-3250 in Elko Justice Court; and the
21 State shall forebear prosecution on all the other charges in that case and will file no
22 further charges arising out of facts related to that incident, now known to the Elko
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1 County District Attorney's Office, either by a new complaint or indictment. The
2 parties further stipulate in that case for Mr. Grow to pay one thousand dollars
3 (\$1,000.00) restitution to David Wiggins.
4

5 The State shall forebear prosecution on the following cases in Elko Justice
6 Court: EL-JC-CR-M-21-3249 (Battery charge), EL-JC-CR-M-21-3376 (Harassment,
7 Destruction of Property, and Disturbing the Peace charges), EL-JC-CR-M-21-3364
8 (Resisting, Driving Without a Valid License, and Drug Paraphernalia charges), EL-
9 JC-CR-M-21-3497 (two Driving Without a Valid License charges), EL-JC-CR-F-21-
10 3549 (Possession of a Controlled Substance charge), and EL-JC-CR-F-21-4951
11 (Attempted Dissuasion of a Witness charge). The State agrees that it shall dismiss
12 these cases after Mr. Grow has been sentenced in DC-CR-21-266, DC-CR-21-255,
13 EL-JC-CR-F-21-5806, and EL-JC-CR-M-21-3250.
14

15 The State shall forebear prosecution on the following matters that have not
16 been filed in a court yet: DA F-21-01722 (Burglary of a Structure anticipated charge
17 and Grand Larceny anticipated charge), and DA F-21-01760 (Battery with
18 Substantial Bodily Harm anticipated charge and Conspiracy to Commit Battery
19 with Substantial Bodily Harm anticipated charge).
20

21 At the time of the sentencings in the felony cases, the State shall agree to cap
22 its aggregate recommendation to twelve to thirty (12-30) years of incarceration in
23 the Nevada Department of Corrections and be otherwise free to argue at the
24 sentencings. Further, at the time of the misdemeanor sentencing in EL-JC-CR-M-
25 21-3250, the State shall agree to recommend that any sentence be imposed
26
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1 concurrent to the sentences in the felony cases. The defense shall be otherwise free
2 to argue at the time of the sentencings.
3

4 Both sides waive attachment of the criminal information to this guilty plea
5 agreement.
6

7 CONSEQUENCES OF THE PLEA

8 I understand that by pleading guilty I admit the facts which support all the
9 elements of the offenses to which I now plead as set forth in the criminal
10 information.
11

12 I understand that as a consequence of my plea of guilty in this case, I may be
13 imprisoned for a period of one to five (1-5) years in the Nevada Department of
14 Corrections and I may be fined up to ten thousand dollars (\$10,000.00). Under the
15 forty percent (40%) rule, I shall be sentenced to a range of punishment and that the
16 low end of incarceration cannot exceed forty percent of the high end of
17 incarceration. I understand that the law requires me to pay an administrative
18 assessment fee.
19

20 I understand that, pursuant to the terms of this guilty plea agreement, I will
21 be ordered to make restitution to the victim of the offenses to which I am pleading
22 guilty and to the victim of any related offense which is being dismissed or not
23 prosecuted pursuant to this agreement. I will also be ordered to reimburse the
24 State of Nevada for expenses relating to my extradition, if any.
25
26

27 I understand that, although I am eligible for probation for the offense to which
28 I am pleading guilty in this case, I am not eligible for probation for the offense to
29

1 which I am pleading guilty in case DC-CR-21-266. I understand that the question
2 of whether I receive probation in this case is in the discretion of the sentencing
3 judge. I understand that regardless of whether I receive probation in this case, a
4 sentence of imprisonment in the Nevada Department of Corrections is mandatory
5 in case DC-CR-21-266.
6

7
8 I understand that if more than one sentence of imprisonment is imposed and I
9 am eligible to serve the sentences concurrently, the sentencing judge has the
10 discretion to order the sentences served concurrently or consecutively.
11

12 I understand that information regarding charges not filed, dismissed charges
13 or charges to be dismissed pursuant to this agreement may be considered by the
14 judge at sentencing.
15

16 I have not been promised or guaranteed any particular sentence by anyone. I
17 know that my sentence is to be determined by the court within the limits prescribed
18 by statute. I understand that if my attorney or the State of Nevada or both
19 recommend any specific punishment to the court, the court is not obligated to accept
20 the recommendation; and, so long as the sentence is within the limits prescribed by
21 statute, the court may impose a sentence that exceeds the aggregate sentence
22 recommendation, which the State of Nevada has agreed to in this guilty plea
23 agreement.
24

25
26 I understand that the Division of Parole and Probation of the Department of
27 Public Safety may or will prepare a report for the sentencing judge before
28 sentencing. This report will include matters relevant to the issue of sentencing,
29

1 including my criminal history. I understand that this report may contain hearsay
2 information regarding my background and criminal history. My attorney and I will
3 each have the opportunity to comment on the information contained in the report at
4 the time of sentencing.
5

6
7 WAIVER OF RIGHTS

8 By entering my plea of guilty, I understand that I have waived the following
9 rights and privileges:

10 1. The constitutional privilege against self-incrimination, including the right
11 to refuse to testify at trial, in which event the prosecution would not be allowed to
12 comment to the jury about my refusal to testify.
13

14 2. The constitutional right to a speedy and public trial by an impartial jury,
15 free of excessive pretrial publicity prejudicial to the defense, at which trial I would
16 be entitled to the assistance of an attorney, either appointed or retained. At trial,
17 the State would bear the burden of proving beyond a reasonable doubt each element
18 of the offense charged.
19

20 3. The constitutional right to confront and cross-examine any witnesses who
21 would testify against me.
22

23 4. The constitutional right to subpoena witnesses to testify on my behalf.
24

25 5. The constitutional right to testify in my own defense.
26

27 6. The right to appeal the conviction, with the assistance of an attorney,
28 either appointed or retained, unless the appeal is based upon reasonable
29 constitutional, jurisdictional or other grounds that challenge the legality of the

1 proceedings. If I wish to appeal, I must notify my attorney as soon as possible
2 because the notice of appeal must be filed no later than 30 days after the filing date
3 of the judgment of conviction.
4

5 VOLUNTARINESS OF PLEA

6 I have discussed the elements of all the original charges against me with my
7 attorney and I understand the nature of these charges against me.
8

9 I understand that the State would have to prove each element of the charge
10 against me at trial.

11 I have discussed with my attorney any possible defenses and circumstances
12 which might be in my favor.
13

14 All of the foregoing elements, consequences, rights and waiver of rights have
15 been thoroughly explained to me by my attorney.
16

17 I believe that pleading guilty and accepting this plea bargain is in my best
18 interest and that a trial would be contrary to my best interest.

19 I am signing this agreement voluntarily, after consultation with my attorney
20 and I am not acting under duress or coercion or by virtue of any promises of
21 leniency, except for those set forth in this agreement.
22

23 I am not now under the influence of intoxicating liquor, a controlled substance
24 or other drug which would in any manner impair my ability to comprehend or
25 understand this agreement or the proceedings surrounding my entry of this plea.
26
27
28
29

1 My attorney has answered all my questions regarding this guilty plea
2 agreement and its consequences to my satisfaction and I am satisfied with the
3 services provided by my attorney.
4

5 DATED this 4TH day of NOVEMBER, 2021.
6
7

8 Wil. Grow
9 WILLIAM JOSEPH GROW
10 Defendant

11 AGREED TO this 4th day of November 2021.
12

13 TYLER J. INGRAM
14 ELKO COUNTY DISTRICT ATTORNEY

15 Walter F. Fick
16 WALTER F. FICK, Deputy District Attorney
17 Nevada State Bar Number 14193
18 540 Court Street, Second Floor
19 Elko, NV 89801
20 (775)738-3101

21 CERTIFICATE OF COUNSEL

22 I, the undersigned, as the attorney for the Defendant named herein and as an
23 officer of the court hereby certify that:

24 1. I have fully explained to the Defendant the allegations contained in the
25 charges to which guilty pleas are being entered.

26 2. I have advised the Defendant of the penalties for each charge and the
27 restitution that the Defendant may be ordered to pay.
28

29 3. All pleas of guilty offered by the Defendant pursuant to this agreement

1 are consistent with all the facts known to me and are made with my advice to the
2 Defendant and are in the best interest of the Defendant.
3

4 4. To the best of my knowledge and belief, the Defendant:

5 (a) Is competent and understands the charges and the consequences of
6 pleading guilty or guilty but mentally ill as provided in this agreement.
7

8 (b) Executed this agreement and will enter all guilty or guilty but
9 mentally ill pleas pursuant hereto voluntarily.

10 (c) Was not under the influence of intoxicating liquor, a controlled
11 substance or other drug at the time of the execution of this agreement.
12

13 DATED this 7th day of NOVEMBER, 2021.
14

15 BEN GAUMOND LAW FIRM, PLLC

16
17
18 By: 

19 BENJAMIN C. GAUMOND
20 Nevada Bar Number 8081
21 495 Idaho Street, Suite 209
22 Elko, Nevada 89801
23 (775)388-4875 (phone)
24 (800)466-6550 (facsimile)
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FILED

2022 FEB 23 PM 2:25

ELKO CO. DISTRICT COURT

CLERK DEPUTY

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
BEFORE THE HONORABLE MASON SIMONS, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,

Plaintiff,

Case No. DC-CR-21-290

V.

Dept. No. 3

WILLIAM JOSEPH GROW,

Defendant.

COPY

Rough Draft

Transcript of Proceedings

Sentencing and Status Hearing

December 15, 2021

Elko, Nevada

Transcribed By: Julie Rowan - (775) 745-2327

13

A P P E A R A N C E S

For the Plaintiff: Walter Fick, Esq.
Elko County District Attorney's
Office
540 Court Street, 2nd Floor
Elko, NV 89801

For the Defendant: Benjamin Gaumond, Esq.
Ben Gaumond Law Firm, PLLC
495 Idaho Street, Suite 209
Elko, NV 89801

-oOo-

I N D E X

WITNESSES ON BEHALF OF THE PLAINTIFF:	<u>Page</u>
BRIAN MCSWAIN	
Direct by Mr. Fick.....	21
Cross by Mr. Gaumond.....	31
Witness excused.....	32
JOHN ELLISON	
Direct by Mr. Fick.....	34
Cross by Mr. Gaumond.....	36
Witness excused.....	37
WITNESSES ON BEHALF OF THE DEFENSE:	
None	
STATUS HEARING	46
EXHIBITS:	<u>Admitted</u>
DX-1 Letter	15

14

1 DECEMBER 15, 2021, ELKO, NEVADA

2 -oOo-

3 THE COURT: Okay. The time is 8:12 a.m. It
4 is December 15th, 2021. We're now on the record in
5 three separate cases; DC-CR-21-255, DC-CR-21-266, and
6 DC-CR-21-290. Each of these cases is captioned State of
7 Nevada versus William Joseph Grow.

8 The Defendant -- we originally had intended
9 on having Mr. Grow present here in the courtroom, but we
10 were informed of a possible COVID exposure so we're
11 doing the sentencing today via Zoom from -- with
12 Mr. Grow present at the Elko County Jail. His counsel,
13 Mr. Gaumond, is here in the courtroom on his behalf, and
14 we do have Mr. Fick here from the District Attorney's
15 Office.

16 Are the parties ready to proceed?

17 MR. FICK: Yes, Your Honor.

18 MR. GAUMOND: The Defense is ready on all
19 three cases.

20 THE COURT: Okay. In Case No. 255, on
21 October 15th, 2021, the Defendant pled guilty to two
22 counts of battery with a deadly weapon, a category B
23 felony; in Case 266, on October 15th, the Defendant
24 entered a plea of guilty to one count of domestic
25 violence with a prior felony conviction for domestic

15

1 violence; a category B felony, and then in Case No. 290,
2 on October 15th, the Defendant pled guilty to one count
3 of burglary of a business, a category C felony.

4 This is the time set for entry of judgment
5 and the imposition of sentence. The Court has received
6 three presentence investigation reports. They were all
7 prepared on November 8th, 2021. The Court has reviewed
8 those documents.

9 Any corrections to note to the presentence
10 investigation reports, Mr. Gaumond?

11 MR. GAUMOND: On all three cases?

12 THE COURT: Yes, all three of them.

13 MR. GAUMOND: I'll start with 21 slash 255.
14 We have no corrections on that particular one.

15 THE COURT: Okay, 255 no corrections.

16 MR. GAUMOND: On Case 21 slash 266, we have
17 one minor correction to note on page 9.

18 THE COURT: Page 9 of 266?

19 MR. GAUMOND: Yes.

20 THE COURT: Okay.

21 MR. GAUMOND: On the third line, it states
22 that officers were dispatched to a domestic violence
23 call to Qual, that's Q-U-A-L, Run. That should say
24 Quail Run.

25 THE COURT: Any objection to correcting that

1 by interlineation, Mr. Fick?

2 MR. FICK: No, Your Honor.

3 THE COURT: We'll make that correction on
4 that page.

5 Any other corrections?

6 MR. GAUMOND: Not on that particular report.

7 THE COURT: Okay. Let's move over to 290.

8 MR. GAUMOND: We have one correction to note
9 on page 9.

10 THE COURT: Page 9 of 290, okay.

11 MR. GAUMOND: On the third paragraph, which
12 would be the third line -- all the third paragraph, it
13 has a sentence starting, quote, Mr. Grow is seen waking
14 up to the ATM and appears to put a card in to get some
15 money. That should say walking.

16 THE COURT: Any objection to correcting that,
17 Mr. Fick?

18 MR. FICK: No, Your Honor.

19 THE COURT: I've made that correction. Any
20 other corrections on 290, Mr. Gaumond?

21 MR. GAUMOND: No, Your Honor.

22 THE COURT: Mr. Grow, are you aware of any
23 error -- other errors or omissions in these three
24 reports that need to be corrected other than what's
25 already been noted by Mr. Gaumond?

17

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Thank you, Mr. Grow.

3 Mr. Fick, did you have any errors or
4 omissions in any of the three reports to correct?

5 MR. FICK: I don't think they need to be
6 corrected, but just for the record, the plea agreement
7 did not reference the restitution that's owed in a
8 companion misdemeanor case. I don't think that's needed
9 to be formally put in this, but I just -- I want to make
10 sure that we have a record that at least the State is
11 recognizing the global plea agreement did include
12 restitution in the misdemeanor. And then --

13 THE COURT: Do you know the amount, what that
14 amount was and who it was owed to?

15 MR. FICK: I believe it was \$1,000. And let
16 me double-check the gentleman who it was owed to.

17 THE COURT: Is that the South Side Laundry
18 amount?

19 MR. FICK: No, this was from a hit-and-run.

20 THE COURT: Oh, okay.

21 MR. FICK: And, unfortunately, we just
22 received new laptops yesterday and so...

23 THE COURT: Figuring them out.

24 MR. GAUMOND: I have --

25 MR. FICK: Yes.

18

1 MR. GAUMOND: -- a copy of the agreement. I
2 believe this is referencing the careless driving.

3 MR. FICK: Yes.

4 MR. GAUMOND: I can share this with Mr. Fick.

5 MR. FICK: It was \$1,000 to David Wiggins
6 (phonetic).

7 THE COURT: David Wiggins, okay.

8 MR. FICK: Thank you, Mr. Gaumond.

9 MR. GAUMOND: You're welcome.

10 THE COURT: Anything else to correct?

11 MR. FICK: The only other thing, which the
12 State would note, is under the gang activity slash
13 affiliation, on all of them, Mr. Grow is merely saying
14 that he socializes with this particular gang. The State
15 can't prove but, certainly, the State has received
16 information that he is a member of other white power
17 gangs, and the State would also --

18 The one thing the State would note, and
19 perhaps it would be worth adding to the PSI, is if you
20 look at the tattoos, which is on page 2 of each of them,
21 you'll see it references an iron cross and a pride
22 tattoo, which are consistent with being a member of or
23 very heavily involved with white power gangs.

24 THE COURT: Okay. Any other corrections from
25 any of the parties?

19

1 MR. GAUMOND: Not from the Defense.

2 MR. FICK: No, Your Honor.

3 THE COURT: Okay. So Mr. Fick, what's the
4 State's position on sentencing in these three cases?

5 MR. FICK: Your Honor, this is a Defendant
6 who has a very consistent history of violence and is a
7 very dangerous individual in Elko and in any community
8 that he's in. Certainly, the State understands the
9 Defense is going to argue that this is all driven by
10 drugs, but, respectfully, Your Honor, when you look at
11 this history and you look at the acts in these cases,
12 that is simply trying to come up with an excuse for his
13 consistent violent behavior and his violent character.

14 When you look at -- just going through the
15 criminal history, you see the very first time that he's
16 ever arrested, at least as an adult, is false
17 imprisonment with violence. And then from there on,
18 there is a consistent over and over and over again being
19 arrested for violent felonies. So that was in 2007.

20 Later in 2007, felony evading from police;
21 2009, robbery; 2012, this isn't necessarily violent but
22 with burglary tools, again a felony; 2012, again, felony
23 domestic violence; 2016, felony domestic violence; 2017,
24 ex-felon in possession and burglary; 2017, again, you
25 see battery on an officer; 2018 -- and Your Honor is

20

1 familiar with this. I don't need to repeat all of it,
2 but you see this very consistent pattern.

3 When he is not in prison, he is committing
4 violent offenses, and he has had so many opportunities
5 since 2007 in all of these interactions with the
6 criminal justice system. If this was really just a drug
7 issue and if, in his mind, he wanted to address that, he
8 has had countless opportunities, but he is simply
9 choosing not to because ultimately this isn't a drug
10 issue. This is -- he is a violent and dangerous gang
11 member. And you see that even in the facts of these
12 cases.

13 So on -- starting with the domestic violence
14 case, you see the underlying facts of that. He's
15 beating his girlfriend. Her, quote/unquote, kids, who
16 they're not biological kids, but the people who she was
17 helping to raise -- and they're now 18 -- at the time,
18 they try to intervene to protect her. His response is
19 to draw a knife.

20 Then you turn to the next case with battery
21 with a deadly weapon. He breaks into the trailer where
22 he used to be, essentially, squatting in, when the
23 homeowner, his nephew, Mr. McSwain, who I believe is
24 going to give a victim impact statement at the very end,
25 comes home to confront him. They -- the Defendant

21

1 starts fighting him and then, ultimately, draws a knife
2 from the kitchen, stabs Mr. McSwain, and then stabs the
3 uncle and Tina Focal (phonetic), who also had come home
4 with Mr. McSwain. And then, of course, he flees.

5 Also, now, there are at least allegations
6 that he stole a firearm, which would be consistent with
7 when you look at his criminal history over and over and
8 over again, you're seeing he's stealing firearms or he's
9 being in possession of a firearm, even though he is an
10 ex-felon.

11 And then, finally, on the burglary case, even
12 though this was not necessarily violent, this was a very
13 brazen theft. Going, breaking into the laundromat,
14 stealing the ATM in front of witnesses, in front of
15 security cameras and everything, just jacking it out of
16 the floor. And then the other thing the State -- I
17 think it's very important for the State to bring up is
18 the related history of the Defendant threatening
19 witnesses and victims in these cases.

20 So as part of the global plea agreement, the
21 State dismissed all of the witness tampering charges,
22 but this was one of the very core issues and core
23 concerns for the State in these cases because what you
24 saw, even in the PSI, and I think 255, where it's
25 talking -- you see some of the phone calls, which police

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1 recorded, where the Defendant is threatening that he's
2 going to go and have guys come and talk to McSwain.
3 He's saying that I'm about to lose it.

4 And then you add to that -- in numerous jail
5 calls after that, you have various attempts by the
6 Defendant to threaten Mr. McSwain to try to get in
7 contact with Ms. Bodely (phonetic), who was the domestic
8 violence victim, try to manipulate her children into
9 recanting.

10 And so you see this consistent pattern. If
11 he -- the Defendant is using his well-earned reputation
12 in the community and among those who know him for being
13 an extraordinarily violent individual and a gang member,
14 to go and suppress witnesses and try to prevent himself
15 from being held accountable.

16 And, ultimately, Your Honor, that's what this
17 sentencing is about, two things. First, it's about
18 holding the Defendant accountable. Through all the
19 excuses that you're going to hear from the Defense, the
20 one thing the Defendant is not doing is taking
21 accountability.

22 And you see that even in some of the jail
23 calls where he's talking about his drug use, and the way
24 that he phrases it to Ms. Bodely is, I warned you, I
25 turn into the devil when I'm under the influence. Even

23

1 there he is not taking responsibility, and it's, well, I
2 warned you, so you shouldn't have provoked me. The
3 Defendant has to be held accountable for his violence.
4 It is absolutely essential in this community that that
5 happens.

6 And second, Your Honor, this is ultimately
7 about incapacitation. You've seen his record. Clearly,
8 if there's going to be any deterrents, if there's going
9 to be any rehabilitation, it would have happened by now.
10 At this point, the question, Your Honor, is how can we
11 keep these individuals and the community in Elko safe
12 from Mr. Grow? And the only answer is to incapacitate
13 him for a prolonged period of time.

14 Hopefully, when he gets out, he'll have
15 changed. Honestly, Your Honor, the State doesn't have
16 high hopes for that, but all we have in our criminal
17 justice system right now, when we have previously thrown
18 everything we can at him, is to incapacitate him for as
19 long as possible.

20 So given all that, the State has the
21 following recommendation. You saw in the plea agreement
22 the State is only recommending an aggregate of 12 to 30
23 years in prison. The State agreed to that because the
24 underlying facts of these, none of them are the most
25 egregious example necessarily of a domestic violence

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1 incident or battery with a deadly weapon, but certainly,
2 given his criminal history and just this plethora of
3 violent acts in a very short period -- very short period
4 of time, it is more than appropriate to give him that
5 lengthy sentence.

6 And so the way the State would recommend
7 breaking this down, on the domestic violence with prior
8 felony, 48 to 120 months in prison; on each of the two
9 counts of battery with a deadly weapon, 40 to 100
10 months; and then for the burglary, 16 to 40 months. And
11 the State would ask that each of these be served
12 consecutively.

13 Consecutive is certainly more than warranted
14 given the multiple victims and the unrelated cases, not
15 to mention his criminal history, and this is -- this is
16 what is necessary to keep Elko safe and to hold this
17 Defendant accountable.

18 The last thing the State would note is that
19 John Ellison had repeatedly told the State that he
20 intended to be here. We heard from his family earlier
21 this week that he was going to be here. Obviously, he
22 hasn't made it this morning. I'm not aware of any
23 communication with him so I don't know if he had some
24 kind of car trouble, but he was going to come and speak
25 and ask this Court to give the highest possible sentence

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1 because he has seen just in kind of the surrounding area
2 around South Side Laundry and the property that he owns,
3 the Defendant consistently victimizing people there,
4 including his own business.

5 And in terms of whatever you hear from
6 Mr. McSwain, just, Your Honor, keep in the back of your
7 mind the numerous threats which the Defendant has made
8 towards him, which the State expects will influence his
9 testimony today as a victim to be more favorable to the
10 Defendant than under other circumstances.

11 Thank you.

12 THE COURT: Has anyone attempted to reach out
13 to Mr. Ellison by phone to see if --

14 MR. FICK: Not this morning.

15 THE COURT: -- we could track him down?

16 MR. FICK: Not this morning. If you would
17 like to, Your Honor, the State would be happy to do
18 that.

19 THE COURT: Well, why don't we give a chance
20 first to Mr. Gaumond and the Defendant, and then we can
21 try to reach out to Mr. Ellison and see if we can reach
22 him just to see if there's a problem.

23 Okay. Mr. Gaumond, did you have anything for
24 the Court?

25 MR. GAUMOND: Yes. I want to start with an

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1 exhibit. I have what's marked as Exhibit 1. I provided
2 a copy to the State yesterday. It's a letter from
3 Deborah Rich, who is my client's mother.

4 THE COURT: Okay. If you can bring that up
5 to us. Any objection to that being admitted?

6 MR. FICK: No, Your Honor.

7 THE COURT: Okay. Why don't you just bring
8 that up to me, Mr. Gaumond.

9 MR. GAUMOND: Okay.

10 THE COURT: So Exhibit 1 for the Defense will
11 be admitted. I'll take a moment to review it.

12 (Whereupon, Defense Exhibit 1 admitted)

13 THE COURT: Okay, Ms. Clerk.

14 Okay. Anything else, Mr. Gaumond?

15 MR. GAUMOND: Yes. Ms. Rich is here in
16 support of her son. And in terms of the State's
17 anticipation of the Defense excusing this through drug
18 usage, that's not our plan is to say that we have an
19 excuse on all of these three cases. While Mr. Grow
20 certainly can benefit from continued drug treatment, by
21 no means are we saying this is the drugs and not
22 Mr. Grow.

23 With respect to the battery with a deadly
24 weapon matter, this was a situation of two individuals
25 on one. I know that the State characterizes as Mr. Grow

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1 squatting. Mr. Grow would not characterize it as
2 squatting. He was given permission to be there. So
3 there is some discrepancy there in terms of how the
4 State's framing this and how Mr. Grow knows this to be
5 the case.

6 In terms of who the primary aggressor was, it
7 was not Mr. Grow. When we look at the Defense synopsis,
8 we see that one of the victims had started to throw
9 punches at Mr. Grow, and Mr. Grow reacted. Was a knife
10 excessive? I'm not here to say otherwise, but that
11 issue, the primary aggressor, is heavily mitigating.

12 If this were a situation where Mr. Grow is
13 coming in and the two are there, and Mr. Grow is
14 starting off with stabbing, obviously, that would be of
15 the utmost of aggregation -- aggravation, I should say,
16 but that's not what we have here whatsoever. But in
17 terms of the State saying that Mr. Grow is not taking
18 accountability, he certainly has by taking this
19 agreement. So, as such, he's not arguing that he had
20 perfect self-defense in that case.

21 With respect to the domestic violence matter,
22 once again there's an issue of who the primary aggressor
23 is. Mr. Grow has stated that while Ms. Bodely was the
24 primary aggressor, certainly, the reaction that Mr. Grow
25 had exceeded the line. So we're not saying that

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1 Mr. Grow's level of force was proportionate to the
2 threat he faced. So we believe a low-end sentence, 2 to
3 5 years in prison would be appropriate. It's mandatory
4 prison.

5 In terms of State saying that Mr. Grow didn't
6 take accountability, Mr. Grow took accountability with
7 the officers. He took accountability at the 72-hour
8 hearing. I mean, he confessed at the 72-hour hearing.
9 So he took accountability well before negotiations even
10 began on any of these three cases. So we would make
11 that point quite clear for the record.

12 And then with respect to the business
13 burglary matter, Mr. Grow absolutely took
14 accountability. In some cases where you're dealing with
15 people who are potential co-defendants, one co-defendant
16 may try to just shift all the blame onto the other
17 co-defendant. Mr. Grow is not doing that here
18 whatsoever. He takes full accountability, not partial
19 accountability.

20 So, Your Honor, we're going to ask that he
21 receive low-end sentences on all the four counts
22 concurrent with one another, but if the Court is not
23 inclined to give him the minimum sentence in all four of
24 the counts, we'd ask at the bare minimum, he receive
25 concurrent sentences on all the four charges. He has

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1 taken accountability.

2 And I would comment on some of Mr. Fick's
3 observations with respect to incapacitation. Certainly,
4 we're not arguing against that. We're not arguing for
5 probation. So there's no debate there about
6 incapacitation. However, the State made an interesting
7 observation that, hopefully, Mr. Grow will change. So
8 even the State has some hope there. So I think that
9 justifies concurrent sentences in all four of the
10 counts.

11 THE COURT: Okay. Mr. Grow, you do have an
12 opportunity to make a statement to the Court. You're
13 not required to make a statement, but if you would like
14 to make a statement, this is your opportunity to do so.
15 If you're going to make a statement, please stand.

16 THE DEFENDANT: Yes, Your Honor, I do.

17 THE COURT: Go ahead.

18 THE DEFENDANT: Yes, Your Honor. We are here
19 today. I ask that you not be only fair to the State,
20 but you be fair to me as well. I know you've got some
21 questions that are concerning, and by the expressions on
22 your face, sir, I can see, yes, you are being fair.
23 Thank you.

24 THE COURT: Okay. So, I mean, I guess the
25 question I would pose to you, Mr. Grow, is you've --

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1 you've heard Mr. Fick basically describe you as a -- a
2 violent individual who has, essentially, shown over the
3 course of your criminal history to have a track record
4 of not only violent behavior but also behavior that
5 involves intimidating witnesses, attempting to suppress
6 people who might testify against you. I mean, what is
7 your response to that description?

8 THE DEFENDANT: I -- I hold myself
9 accountable for everything I've done. I truly
10 apologize. Every day I just work on myself and try to
11 become a better person. I want to get back into
12 society. I want to give back to the community. I feel
13 very bad for what I've done, sir, but like I said, every
14 day it's just another day of me becoming a better
15 person.

16 THE COURT: Okay. You're not attempting to
17 blame someone else for this behavior? You're saying it
18 was your -- your fault?

19 THE DEFENDANT: No, Your Honor. I take -- I
20 take full accountability for my actions.

21 THE COURT: Okay. Okay. Before we go on to
22 the victim -- victim impact testimony, Mr. Fick, I just
23 wanted to verify again your sentencing recommendations.
24 I think you said 40 to 100 months is what you're
25 recommending on 255 on both counts?

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1 MR. FICK: Yes.

2 THE COURT: Forty-eight to 120 on the 266
3 case and 24 -- or, excuse me, 16 to 40 on the 290 case?

4 MR. FICK: Yes.

5 THE COURT: For an aggregate sentence of 140
6 to 360 months, 12 to --

7 MR. FICK: I believe it should be 144.

8 THE COURT: 144, yeah, 144. Okay.

9 Okay. Did you have -- so why don't we take
10 the victim impact testimony of the person you have here,
11 and then once we get to that point, we'll take a break
12 and try to reach Mr. Ellison by phone and see --

13 MR. FICK: That's fine, Your Honor, and --

14 THE COURT: And if he wants, maybe we can
15 have him just testify by phone if he'd like.

16 MR. FICK: Okay. And for the record, I have
17 texted him, and I've also texted my office to ask them
18 to call him.

19 THE COURT: Okay.

20 MR. FICK: So hopefully he responds.

21 THE COURT: Perfect. Okay.

22 MR. FICK: Mr. McSwain, if you would like to
23 come forward.

24 THE COURT: Mr. McSwain, if you'll please
25 come up here to the witness stand, but before you take

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1 the stand, please face the court clerk and raise your
2 right hand to be sworn, please.

3 THE CLERK: Do you solemnly swear that the
4 testimony you're about to give in this matter is the
5 truth, the whole truth, and nothing but the truth, so
6 help you God?

7 MR. MCSWAIN: Yes.

8 THE COURT: Go ahead and have a seat there,
9 if you would. Okay, if you'll please state your full
10 name and spell your first and last name for the record,
11 please.

12 THE WITNESS: Brian McSwain. My first name
13 is B-R-I-A-N, last name M-C-S-W-A-I-N.

14 THE COURT: Okay, thank you. Go ahead,
15 Mr. Fick.

16 BRIAN MCSWAIN

17 (Sworn as a witness, testified as follows)

18 DIRECT EXAMINATION

19 BY MR. FICK:

20 Q. Would you please tell Judge Simons what you would
21 like him to consider as far as sentencing.

22 A. As far as sentencing, honestly, you know, with the
23 altercation that happened with me, at the end of the
24 day, he's my family. It was a family matter. I -- I've
25 never even wanted to press charges. I'm not here to put

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1 him away.

2 You know, it was self-defense. I did -- he did live
3 there with me. I was -- I was pissed off because I had
4 two younger kids that lived with me, and I do not want
5 drugs around my house. And I told him multiple times
6 about that. But I was just upset, you know, and my
7 anger got to me, and I did start fighting Mr. Grow, and
8 I knocked him out to the point where he was unconscious
9 to the point where he didn't even probably know who was
10 hitting on him. So that's the point where I got
11 stabbed.

12 You know, and that's the honest truth. I'm not here
13 to lie. I'm just stating what I stated at the time. I
14 was upset with him. I told the officers I was upset. I
15 have spoke with the District Attorney and the attorney
16 right here. We have talked about this back in, I
17 believe, his last couple of court dates it was.

18 You know, so like I said, man, he's my family. I'm
19 not a gang member. I've never been in trouble. I have
20 two younger kids that look up to me. I -- I have no
21 criminal history. I don't look on that side. I'm not
22 here trying to actually give back to society and be in
23 law enforcement myself, but I'm giving myself a couple
24 years to do that.

25 I've talked to detectives about becoming, you know,

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1 eventually an officer here in the town because I know
2 the force needs it, but don't let my tattoos or anything
3 describe me, making me look like a criminal because I'm
4 not. I have family that have histories of it, but that
5 doesn't mean that I'm involved in it.

6 Like I said, I'm here to take full responsibility
7 for my actions. The only reason why I did call the
8 police that night is because my father was the other
9 person that was in the house with me, and he was
10 bleeding out. I was scared that he wasn't going to make
11 it. So I called the ambulance, you know, but -- and
12 like I said, I was also upset at Mr. Grow because I
13 didn't expect anything like that to happen.

14 He is my family, you know. We -- when he first got
15 out of prison, I offered him to stay at my house because
16 I wanted him to do good in society. But the moment he
17 started messing around with that girl, that's when the
18 whole drug issue came in. So she has to -- she has a
19 lot to do with it as well.

20 And like I told Mr. Grow, you know, hey, you know,
21 I'm here to help you, bro. I'm not here to, you know,
22 make you go homeless or live on the streets, you know,
23 I'm here to do what I can, but I ask you just to respect
24 my household and my children because I don't go down
25 that road -- road where, you know, drugs are involved.

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1 You know, I'm not a perfect person, Your Honor. You
2 know, I have my flaws in life, and I do admit that, but
3 I'll never be a criminal, you know. And my grandmother
4 right here, Deborah, she doesn't got long to live, and
5 that's her son. Her other son's already in prison for
6 murder, and he ain't getting out until 2029.

7 So with her having her other son go to prison for a
8 certain amount of time, you know, what if she, you know,
9 ends up passing away? And I know that's part of life,
10 but, you know, I want my uncle to at least be able to
11 see his mother and be -- be with her, you know, if that
12 time happens.

13 He's not a bad person. Drugs do, you know, have a
14 lot to do with it. He lived out in California. We
15 moved out here to better ourselves, but, obviously,
16 everywhere you go there is going to be drugs and people
17 that do them. So, I mean, once you get around those
18 type of people, you understand that, you know, everybody
19 gets back into those situations, you know.

20 I come from California myself. I -- I was getting
21 into gang-banging when I was younger. My aunt moved us
22 out here, you know, and I had my kids out here. I
23 changed my life around, you know, because I seen the
24 good in me, and once I had my kids, that matured me to
25 be a father.

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1 I never had a father in my life. My father was
2 always incarcerated, just like he is right now, you
3 know. And he's the other individual that was in the
4 household that got stabbed, and he never wanted to
5 testify against Mr. Grow or press charges against
6 Mr. Grow either, and I'm not here to do that as well.

7 And I already talked to the District Attorney about
8 it, and, yeah, I did say at first, you know, I was
9 pissed off, I was upset that this happened to me. But
10 at the end of the day, I was just upset that he was in
11 my household, you know, when he was on drugs, and I told
12 him previous times I didn't want that there.

13 I got upset, Your Honor, and I did, you know, you
14 know, defend my household. He did not break in. He
15 lived there. He has proof of address that he did live
16 there. He had his clothes there. He was there to
17 change. But like I said, I let my anger get to me, and
18 I started fighting with him, and I hit Mr. Grow really
19 hard.

20 I mean, I'm a small guy, but, you know, I got a lot
21 of power behind me, and I hit him to the point where he
22 fell, and he just kind of like came back to
23 consciousness, but I don't think he knew what was going
24 on because after the stabbing, he did realize like, oh,
25 my God, what just happened, you know.

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1 I'm here to be honest. I ain't here to, you know --
2 yeah, I know you guys got a job to do, and that's
3 understandable, but I'm just here, you know, stating the
4 facts. You know, and I have talked to him on the phone
5 previous times. He does call me. I do help him out
6 with packages here and there because, you know, like I
7 said, he's my family and, you know, family do stick
8 together, you know.

9 And I'm -- and I -- I did vote for you too,
10 Mr. Mason, you know, because I like the way you work
11 here -- here, you know, with your job. And, you know,
12 like I said, I want to be a good person to society and
13 show my kids, you know, that there's more out there, you
14 know, and to having a father in their life because, like
15 I said, I never had one in my life.

16 I'm not a criminal. I never would be, you know, and
17 I come from a lot. I have a lot of knowledge. I was
18 actually going to work for the juvenile hall in 2019,
19 but Heather Plager, she -- I actually got arrested just
20 for some minor tickets and stuff. I never paid for
21 them, but it wasn't anything like criminal or anything
22 like that --

23 THE COURT: Right.

24 THE WITNESS: -- but she stated that I
25 couldn't work there until a five-year period or

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1 something that you guys have.

2 THE COURT: Uh-huh.

3 THE WITNESS: But she insisted on me applying
4 again to work with the children there because of the
5 knowledge that I have, you know, since growing up in a
6 community where I've seen gang-banging, drugs,
7 shootouts. I've seen people die in front of me. You
8 know, so I have a lot of the past I've been through, you
9 know, a lot of trauma too.

10 But I'm just here, you know, because I love
11 my uncle to death. You know, at one point he was my
12 best friend, you know what I mean? He still is, but I
13 understand that, you know, the actions that you do, you
14 know, there's consequences behind them. But I'm not
15 here to put him away in prison for the rest of his life.
16 I'm not here to put him away until my grandma passes
17 away.

18 I just, you know, I think the guy just needs
19 rehab and mandatory rehab and maybe, you know -- you
20 know, doing some time in the County, you know, do --
21 have mandatory, you know, talking with the probation or
22 whatever, but as far as prison, I don't think that helps
23 anybody because I think people get out, and they just --
24 they sit there and go back to their same ways because
25 the society and the people they're around, you know.

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1 If they really want to change, they'll
2 change. But, you know, that's just an everyday thing.
3 I've seen it year after year, man. I've seen people do
4 15, 18 years of prison, get out, can't even stay in
5 society because they're so used to being, you know,
6 institutionalized, and it's just like, you know, it -- I
7 don't think it helps.

8 I just think, honestly, you just -- you sit
9 there and think about your actions, yeah, but once you
10 get out here, it's just like, you know, some people
11 ain't use to it so they just go back because that's all
12 they're used to. But as far as my uncle, I know he's
13 made some mistakes, I know he's done wrong, but I don't
14 want him to be put away, you know.

15 I'm not a gang member. You know, yeah, he is
16 what he is, but he's -- my kids are a mix. My kids are
17 Mexican and white. He loves them, you know, to the
18 fullest. You know what I mean? And I don't see him as
19 being a racist individual. And, you know, like I said,
20 I talked to the DA, and I told him, you know, I don't
21 want to press no charges. He's a good man. He's here
22 to do his job so I respect him for that. You know, like
23 I said, everybody, you know, is here to do their job.
24 You know, I'm just basing, you know, the facts.

25 THE COURT: Okay. Any other questions, 40

1 Mr. Fick?

2 MR. FICK: Just a couple of follow-ups --

3 THE COURT: Sure.

4 MR. FICK: -- from what you were telling the
5 Judge.

6 BY MR. FICK:

7 Q. In your talking about just you're not -- you not
8 being a gang member but you know others who are and
9 you've been around it.

10 A. Yep.

11 Q. You've seen (indiscernible) in that life-style?

12 A. Yep.

13 Q. Is it your belief that Mr. Grow is involved in
14 gangs?

15 A. He's -- he's not in -- I wouldn't say involved
16 because there's -- I mean, yeah, he's in a gang, but he
17 does not have associates out here that are in that gang.
18 They're all back in California, things like that. Like
19 I said, we moved out here to get away from all that.
20 But sometimes, you know, things just follow you, drugs,
21 you know, things like that.

22 Q. And then you were talking somewhat about the facts
23 of the case. When you were talking to Detective
24 Marshowsky at the scene, did you show him any damage to
25 your front door?

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1 A. That damage was previously there.

2 Q. Did you tell Detective Marshowsky that it was new
3 damage at the time?

4 A. I honestly -- you know, there was damage to my door
5 because I've had my house broken into. I had my AR
6 stolen from me. So that could have been from that. But
7 at the time, like I said, I was mad. I was upset. I,
8 honestly, don't remember, but, you know, I don't think
9 that damage was from Mr. Grow.

10 Q. But it -- in your mind, it's plausible that you did
11 actually tell --

12 A. Yeah, it could --

13 Q. -- Detective Marshowsky that.

14 A. -- it could -- it could have been possible that I
15 did tell him.

16 Q. And was it possible that you also told detectives
17 that Mr. Grow threw the first punch when you were trying
18 to open the door and that he was initially blocking the
19 door?

20 A. Yeah, I did say that, but I'm here to base the
21 facts. I did say -- you know, I did throw the first
22 punch because I was upset about him being in my house
23 when I wasn't there.

24 Q. And the last question: Did you also tell detectives
25 that your landlord had said that he couldn't be around

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1 your house and that he had to be evicted?

2 A. Well, my landlord -- there was a different situation
3 to that, but he -- he -- he didn't like my uncle. He
4 didn't want him around my house, yes.

5 MR. FICK: That's all I have, Your Honor.

6 THE COURT: Okay. Any questions,
7 Mr. Gaumond, of the witness?

8 MR. GAUMOND: Yes.

9 CROSS-EXAMINATION

10 BY MR. GAUMOND:

11 Q. Mr. McSwain, are you feeling any pressure to
12 testify?

13 A. No, I'm not feeling no pressure, sir. I'm just
14 being completely honest. He ain't pressured me to do
15 anything. I'm a man. I face my consequences or
16 whatever, but, you know, nobody ever presses me, you
17 know.

18 Q. So the minimum sentence that Mr. Grow can face is 2
19 to 5 years. Do you -- do you see any reason to go
20 higher than 2 to 5 years of incarceration for him in
21 this case?

22 A. You know what, I mean, for my incident or just in --
23 for everything?

24 Q. Just speaking of your incident.

25 A. I don't even think, like I said, prison helps

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1 people. I've seen it year after year, man. I've been
2 around people that have done 18, 15, 30, still get out.
3 It's back to the same crap, you know. But I do feel
4 like Mr. Grow, if you give him another chance, he will
5 come out and change society. And like I said, I want to
6 get into law enforcement myself so, you know, maybe I
7 can, you know, help him with that path.

8 MR. GAUMOND: I'll pass the witness.

9 THE COURT: Any other questions?

10 MR. FICK: No, Your Honor.

11 THE COURT: Okay. Thank you, sir. You can
12 go ahead and step down. We appreciate it.

13 Did you have any other witnesses that are
14 present, Mr. Fick?

15 MR. FICK: If we may take a 60-second recess
16 so I can call Mr. Ellison. He texted me that he was
17 told not to show up, which I know our office -- my
18 understanding is our office was telling him to show up,
19 but it's possible there was some --

20 THE COURT: A miscommunication.

21 MR. FICK: -- confusion over what was going
22 on last night as far as Mr. Grow being COVID positive.

23 THE COURT: Then I'll happily delay the
24 proceeding to allow Mr. Ellison a chance to get over
25 here if he would like to be here. So let's go ahead and

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1 just take a brief recess, okay.

2 THE CLERK: All rise.

3 (Whereupon, court recessed)

4 THE COURT: Court is back in session, please
5 be seated. Okay, the time is 8:53 a.m., December 15th,
6 2021. We're back on the record in three matters
7 involving Mr. William Joseph Grow; DC-CR-21-255,
8 DC-CR-21-266, and DC-CR-21-290.

9 Mr. Grow is present at the Elko County Jail
10 where he is in custody. He's participating in this
11 proceeding remotely by -- via Zoom from the jail.
12 Mr. Gaumond, his counsel, is here in the courtroom on
13 his behalf. Mr. Fick is here from the District
14 Attorney's Office. We had taken a brief recess to allow
15 Mr. Fick an opportunity to reach out to Mr. Ellison in
16 connection with the case he's involved in.

17 Where are we at, Mr. Fick?

18 MR. FICK: Your Honor, apparently, there had
19 been some miscommunication with Mr. Ellison regarding
20 whether the sentencing was going to go forward this
21 morning, but he asked if he could appear by phone --

22 THE COURT: That's fine. Okay.

23 MR. FICK: -- and I think we have him on
24 speaker phone right now.

25 THE COURT: Mr. Ellison, can you hear us

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1 okay?

2 MR. ELLISON: Yes, sir, I can.

3 THE COURT: Perfect. If I can get you to
4 please raise your right hand to be sworn by the court
5 clerk.

6 THE CLERK: Do you solemnly swear --

7 MR. ELLISON: I'm ready.

8 THE CLERK: Do you solemnly swear that the
9 testimony you are about to give in the matter is the
10 truth, the whole truth, and nothing but the truth, so
11 help you God?

12 MR. ELLISON: I do.

13 THE COURT: Thank you, Mr. Ellison.

14 If I can get you to please state your full
15 name and spell your first and last name for the record,
16 please.

17 THE WITNESS: John Ellison; J-O-H-N,
18 E-L-L-I-S-O-N.

19 THE COURT: Thank you. Go ahead, Mr. Fick.
20 Did you have any questions of Mr. Ellison?

21 JOHN ELLISON

22 (Sworn as a witness, testified as follows)

23 DIRECT EXAMINATION

24 BY MR. FICK:

25 Q. Mr. Ellison, can you tell Judge Simons what you

1 would like him to consider as far as the sentencing this
2 morning.

3 A. Well, you know, we've had a lot of issues just
4 recently, and what I'd like to see that -- you know, one
5 thing, I don't know what the bank has put in, but it --
6 it's about \$4,000 that was in damage to the -- the ATM
7 machine and then the damage to the wall and the power
8 system and the phone system, which wasn't very much for
9 us, about anywhere from a thousand to 1500. I'm not at
10 the shop but -- but, you know, these guys have got to
11 start being forced to making restitution for the damage
12 they're doing.

13 THE COURT: Okay. Any other questions,
14 Mr. Fick?

15 BY MR. FICK:

16 Q. So, Mr. Ellison, this is a mandatory prison case
17 because of one of the charges. The minimum sentence is
18 2 to 5 years. The maximum sentence, if everything was
19 run consecutive, would be 16 to 40 years. Do you have
20 any opinion about what kind of a prison sentence you
21 believe would be appropriate?

22 A. Well, I think the longest as possible. Number one,
23 I've had issues with this individual -- one of the
24 individuals and -- and we caught him on surveillance
25 doing that also. So, I mean, it -- it's -- you know, at

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1 which point in time is a criminal, you know, continuous,
2 and this guy here is -- he just -- they just don't stop.
3 So I think the longer incarceration you can get the
4 better off we are as a public.

5 MR. FICK: Those are the only questions I
6 had, Your Honor.

7 THE COURT: Mr. Gaumond, did you have any
8 questions of Mr. Ellison?

9 MR. GAUMOND: Yes.

10 CROSS-EXAMINATION

11 BY MR. GAUMOND:

12 Q. Mr. Ellison, is it important to have Mr. Grow pay
13 restitution sooner rather than later?

14 A. I'd rather see him in jail for a while, quite a
15 while. And the reason that is is, I mean, apparently,
16 it's a repeat, repeat, repeat, and maybe if he's in
17 there long enough, then -- then maybe he might come out
18 and figure that he -- he's got to be part of the society
19 or not. And that's my personal feelings.

20 Q. So you would be relying on Mr. Grow to reimburse you
21 for your damage, correct?

22 A. Well, I'd rather see him be in prison for quite a
23 while than restitution. But, you know, we -- there's
24 got to be a balance here, and we've never received
25 restitution ever on burglary or robbery or damage.

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1 MR. GAUMOND: I'll pass the witness.

2 THE COURT: Any other questions, Mr. Fick, of
3 Mr. Ellison?

4 MR. FICK: No, Your Honor.

5 THE COURT: Thank you, Mr. Ellison. You're
6 welcome to stay on the line if you'd like to stay on the
7 line or if you want to hang up, you can, whatever you
8 prefer to do.

9 MR. ELLISON: Yeah, I'm waiting for the Elko
10 PD to call me back. If you don't mind, I will get off.

11 THE COURT: Okay. Thank you for making
12 yourself available. You can go ahead and hang up then
13 at this time. Thank you.

14 MR. ELLISON: Okay, and thank you for the
15 court system.

16 THE COURT: No problem. Thank you.

17 MR. FICK: The last thing, Your Honor, the
18 State would just put on the record, and it was already
19 covered in the PSI and the plea agreement, the
20 stipulated restitution in this case, which I guess is
21 the 290, was 1,000 to South Side Laundry, which would be
22 Mr. Ellison, and then 3,500 to Nevada Bank and Trust.
23 And that was -- that was something that the State had
24 spoken to the interested parties, and we worked out
25 this, essentially, kind of a compromise on just using

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1 these as the figures for restitution.

2 THE COURT: So that is the restitution amount
3 in 290. Were there any other restitution amounts owed
4 in 255 or 266?

5 MR. FICK: No, Your Honor. The State spoke
6 to what victims the State could get a hold of, and those
7 victims did not ask for any restitution in those two
8 cases.

9 THE COURT: Okay. And then I believe there
10 was one notation in one of the presentence investigation
11 reports about a mandatory fine. Is that your
12 understanding, that there was a mandatory fine in one of
13 these cases?

14 MR. FICK: I believe there may have been in
15 the 260 case.

16 THE COURT: Let's look here. The 260 -- 255
17 case notes on page 12 no mandatory fine, and the 266
18 case --

19 MR. FICK: Court's indulgence while I look
20 up --

21 THE COURT: So it looks like it's a fine of
22 between 2,000 and \$5,000 required on that one.

23 MR. GAUMOND: Yes, that would be on page 4 of
24 the plea agreement.

25 THE COURT: Okay.

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1 MR. FICK: Yes, and this is NRS 200.485,
2 subsection (3)(c).

3 THE COURT: So that's the DV charge?

4 MR. FICK: Yes.

5 THE COURT: And that's a 2,000 to \$5,000
6 fine?

7 MR. FICK: Yes.

8 THE COURT: And then on the burglary of a
9 business charge, it also notes on page 12 a mandatory
10 fine, but I didn't think that was actually true. Maybe
11 that was a holdover from the other PSI. They didn't
12 take it out or something. If you look on page 12, it
13 does say mandatory fine, yes, but I -- but then when we
14 look at the penalties spelled out on page 1, it says a
15 fine may be further punished by a fine of up to \$10,000,
16 but it's may language.

17 MR. FICK: Yes. I'm looking at --
18 double-checking the statute right now, and I'm not
19 seeing anything where that is a mandatory.

20 THE COURT: Okay.

21 MR. FICK: The only reference in 205.060 to a
22 fine is discussing the category B version of this and
23 saying it could be up to a \$10,000 fine, but as far as
24 burglary of a structure -- or burglary of business, I'm
25 sorry, it's just a strict category C with no mandatory.

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1 THE COURT: Okay. Well, what's troubling
2 here for the Court is, obviously, some things that have
3 already been addressed by Mr. Fick in his arguments to
4 the Court, and that is we have a rather lengthy criminal
5 history here that goes on for multiple pages.

6 I think that just the criminal history alone
7 is five pages long, multiple felony -- prior felony
8 convictions, six prior felony convictions according to
9 what's noted in the PSI on page 4, three prior stints in
10 prison, one gross misdemeanor conviction. He's had --
11 had a -- his probation revoked on a prior instance.

12 And more concerning than just a lot of
13 criminal history, which seems to be, you know, that --
14 let's see, this will be approximately a 15-year period
15 of criminal history that started off, as Mr. Fick noted,
16 with allegations of violence, and we seem to be
17 escalating here. Obviously, now we're dealing with
18 stabbings and the like.

19 But even -- I would say even probably perhaps
20 more concerning is what appears to be insinuations here
21 in the record of witness intimidation, trying to
22 suppress people's testimony from coming forward and
23 implicating him in criminal behaviors. All of that is
24 very concerning.

25 Every person has a worth. I'm not of a

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1 belief that people are necessarily inherently bad
2 people. There's a worth in everyone. However, at the
3 same time there have to be consequences so when a person
4 engages in behavior that endangers people, harms
5 people -- and this is pretty brazen behavior, right?

6 I mean, the, you know, talking about the
7 property crime here, in terms of burglarizing the
8 business, it doesn't get much more brazen than going in
9 and just right in full view of video surveillance
10 cameras ripping out an ATM machine in full sight of, you
11 know, of surveillance cameras, as if there would be no
12 consequence for that sort of behavior.

13 And the battery with deadly weapon charges, I
14 mean, this is stuff that potentially could have been
15 fatal for the people involved. Mr. McSwain described
16 his father as nearly bleeding out, right? This is why
17 he called the police. Now, obviously, his recitation
18 now perhaps complicates the analysis about culpability,
19 perhaps, but there's no taking away the fact that it's
20 Mr. Grow who stabbed the two victims, right? There may
21 have been things that led up to that, but this
22 potentially could have been catastrophic.

23 And then we have violent behavior towards an
24 intimate partner or a former intimate partner of some
25 kind and with a prior history of engaging in just this

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1 sort of behavior. So in other words, there's a
2 suggestion to the Court that Mr. Grow isn't learning
3 from his past mistakes, right? So he has a prior
4 conviction for domestic -- a felony conviction for
5 domestic violence, and he's getting more convictions for
6 it. He's not learning and stopping his behavior.

7 I recognize that there's -- there's
8 involvement of drugs and alcohol in nearly every case,
9 and it -- this causes people to have involvement with
10 the criminal justice system. But at the end of the day,
11 if a person commits criminal acts while they're
12 intoxicated or high or whatever, you're still
13 responsible for your behaviors.

14 And if you become a monster when -- a devil,
15 as described, when you're either high or intoxicated,
16 then, you know, and you're not addressing the underlying
17 problem of your drug or alcohol problem, then it's even
18 more concerning to me because then I can't prevent -- I
19 have very little power to prevent bad things from
20 happening to the community when you are out using drugs
21 and alcohol, right?

22 So anyway, this is how the Court is going to
23 proceed then. So let's start with Case 255. A judgment
24 of conviction will be entered adjudicating the Defendant
25 guilty of the two counts noted in the criminal



1 information, battery with a deadly weapon, and Count 2,
2 the same, battery with a deadly weapon.

3 You will be ordered to pay the fees outlined
4 on page 12 of the presentence investigation report,
5 specifically a \$25 administrative assessment and a \$3
6 DNA administrative assessment.

7 The Court believes the State's recommendation
8 is appropriate in this case, and so the Court will
9 follow that recommendation. The Court will order a
10 sentence of 40 to 100 months in the Nevada Department of
11 Corrections on each count with those two counts running
12 consecutive to one another. In terms of credit for time
13 served, there's zero days credit for time served in this
14 case.

15 Jumping over to Case 266, the Court will
16 order that a judgment of conviction be entered against
17 the Defendant, adjudicating him guilty of Count 1,
18 domestic violence with a prior felony conviction for
19 domestic violence. He's ordered to pay the fines and
20 fees outlined on page 11, specifically a \$25
21 administrative assessment, \$3 DNA administrative
22 assessment, and a \$2,000 fine.

23 The Court will also follow the State's
24 sentencing recommendation on this count as well. That's
25 48 to 120 months in the Nevada Department of Corrections

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1 with this sentence running consecutive to the other ones
2 that were previously imposed as well. The credit for
3 time served on this case is 129 days. So he'll be given
4 credit for that from today's date.

5 Jumping over to Case 290, the Court will
6 order that a judgment of conviction be entered
7 adjudicating the Defendant guilty of Count 1, burglary
8 of a business, a category C felony. He's ordered to pay
9 the fines and fees outlined in the presentence
10 investigation report, which include a \$25 administrative
11 assessment, \$3 DNA administrative assessment.

12 Plus, he'll pay restitution in the amount of
13 \$1,000 to John Ellison and \$3,500 to Nevada Bank and
14 Trust. He'll sign a civil confession of judgment in
15 those amounts in favor of both of those parties.

16 The Court will also follow the State's
17 sentencing recommendation on this case as well and order
18 a sentence of 16 to 40 months in the Nevada Department
19 of Corrections with credit for 62 days previously
20 served.

21 So that's an aggregate sentence of 144 to 360
22 months.

23 Anything that I failed to address?

24 Ms. Bailiff, you had --

25 THE BAILIFF: This is consecutive, concurrent

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1 --

2 THE COURT: They're all -- all of them will
3 run consecutive to one another. So the total aggregate
4 will be the 144 to 360.

5 MR. FICK: On the credit for time served --

6 THE COURT: Uh-huh.

7 MR. FICK: -- I'm wondering if the -- on the
8 290 case, if that is duplicative of part of the credit
9 for time served on 266?

10 THE COURT: So you're saying give credit --
11 credit should only be given to one case or the other,
12 not both of them?

13 MR. FICK: I think so, but I know there was
14 also a recent Nevada Supreme Court case, an opinion on
15 this, which I read, and, truthfully, I'm blanking on how
16 they're handling this. So perhaps if -- this is
17 something I can read -- review that case and then review
18 the jail records to see exactly when he was booked in,
19 and then if there does need to be any revision, I can
20 talk to Mr. Gaumond and see if we can reach a
21 stipulation on that.

22 THE COURT: Mr. Gaumond, did you have
23 anything you wanted to say on that?

24 MR. GAUMOND: Just that I'll confer with
25 Mr. Fick about that.



1 THE COURT: Okay. I'm just -- for now, I'll
2 prepare a JOC that reflects the numbers in the PSIs, but
3 if the parties determine that that's improper for
4 whatever reason, then we can, obviously, address it. If
5 you want to submit a stipulation to amend it or request
6 a hearing or something, we can do that, if necessary.

7 MR. FICK: Okay, thank you, Your Honor.

8 THE COURT: Okay. If there's nothing further
9 then, we're now adjourned.

10 Thank you.

11 MR. FICK: Thank you, Your Honor.

12 (Whereupon, court recessed)

13 STATUS HEARING

14 THE COURT: 4:08 p.m., December 15th, 2021.
15 We're here on three different cases involving
16 Mr. William Joseph Grow; Case DC-CR-21-255,
17 DC-CR-21-266, and DC-CR-21-290. Mr. Grow is present at
18 the Elko County Jail where he's in custody. He's
19 participating remotely in this proceeding via video
20 conference from the jail. Mr. Gaumond, his counsel, is
21 here in the courtroom on his behalf, and Mr. Fick is
22 present from the District Attorney's Office.

23 There was a request following his sentencing
24 this morning to set this matter for a status hearing to
25 follow up, I believe, on some questions regarding credit

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1 for time served. Mr. Fick, did you have anything for
2 the Court at this time?

3 MR. FICK: Yes, Your Honor. Essentially,
4 where the dispute lies is -- so just kind of factually
5 for you. So Mr. Grow was arrested on August 9th. This
6 was for the domestic violence charge, which was Case
7 ending 266, and the following day he was arrested on a
8 warrant for the battery with a deadly weapon because the
9 State filed that new case. And so he was formally
10 booked into the jail on that case --

11 THE COURT: On August 10th?

12 MR. FICK: -- on August 10th.

13 And then I believe it was October 15th, if
14 I'm remembering correctly, is when he was booked in on
15 the ATM. All of these were committed prior to the
16 domestic violence case that he was actually physically
17 arrested at that time on. It simply took the State a
18 matter of time to go and have law enforcement complete
19 the investigation and then, ultimately, the warrant
20 issued and then the jail books him in.

21 THE COURT: Okay.

22 MR. FICK: Given all of that, the State's
23 position, looking at NRS 176.055, subsection 1 -- and if
24 you'd like, Your Honor, I have the section
25 highlighted --

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1 THE COURT: Perfect.

2 MR. FICK: -- that I'm referencing if I can
3 approach or...

4 THE COURT: Sure. That would be fine, sure.

5 MR. FICK: It's just what I showed you.

6 MR. GAUMOND: Oh, okay.

7 MR. FICK: So the statute specifically
8 references applying the credit for time served to the
9 minimum term or minimum aggregate term as applicable.

10 THE COURT: Okay.

11 MR. FICK: And so the State's interpretation
12 of that, under 176.035, obviously, it's statutorily
13 required that the Court pronounce the aggregate sentence
14 across all the cases that are being adjudicated --

15 THE COURT: Uh-huh.

16 MR. FICK: -- which Your Honor did with the
17 144 months to 360 months aggregate.

18 THE COURT: Okay.

19 MR. FICK: The credit for time served then
20 should be applied to that aggregate, not to the
21 individual cases piecemeal. And, essentially, the
22 way -- just to play out a couple of hypotheticals to
23 kind of help --

24 THE COURT: Right.

25 MR. FICK: -- illustrate my thinking. So

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1 let's say on the ATM case, the 290, where there's the
2 62 days that is listed on the PSI, hypothetically, he
3 was arrested on that, and then after 62 days he bails
4 out or he's OR'd. Somehow he's released, and then after
5 that, there's some period of time, and then he gets
6 arrested on the new charges with the DV.

7 The State's interpretation would be you take
8 the 62 plus the 129, and you apply all of that as the
9 aggregate to the aggregate sentence, just because under
10 035, we are aggregating everything together as one
11 sentence, therefore, the credit for time served
12 should --

13 THE COURT: Can I stop you for one second on
14 the aggregate question?

15 MR. FICK: Yes.

16 THE COURT: Am I required to aggregate only
17 in a -- in one case in which there are multiple charges
18 within the same case, or do I have to aggregate it
19 across cases if they're sentenced at the same time?

20 MR. FICK: My interpretation, Your Honor, is
21 it has to be across all counts in all cases. That was
22 something I was actually looking into since it was a
23 question that I had had in my head.

24 And looking at 176.035, subsection 1, it
25 says, except as otherwise provided in subsection 3, 61

1 whenever a person is convicted of two or more offenses,
2 and sentence has been pronounced for one offense, the
3 Court in imposing any subsequent sentence may provide
4 concurrent or consecutive.

5 And because it's using the word offense and
6 not count or case, the State's interpretation is that
7 applies to multiple counts within one case or multiple
8 cases with one count each, or as we've got here, some
9 cases have one count, some have two counts, but it's
10 just all offenses are aggregated.

11 THE COURT: Because they're being sentenced
12 simultaneously?

13 MR. FICK: Yes. And it may even raise an
14 interesting issue of when somebody's already previously
15 been sentenced, and we're doing like two separate
16 sentencing hearings, but I think that -- that we can
17 figure out on another day, but, certainly, it seemed
18 clear that when you have -- we're sentencing on four
19 different offenses on one day, you have to pronounce the
20 aggregate across all four sentences and then apply the
21 aggregate credit for time served.

22 Also, just kind of rationally, this makes
23 sense because, essentially, what seems like the Defense
24 position is, and I don't want to speak for Mr. Gaumont
25 or what he's going to argue, but it appears to be,

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1 essentially, asking to triple dip.

2 So the PSI, actually on the 255, listed zero
3 credit for time served, and it referenced 176.055. We
4 didn't address that this morning. Mr. Gaumond didn't
5 object, but the actual time that he was incarcerated on
6 that is 128 days since he's booked on the 10th, the day
7 after the DV.

8 And so really this is asking to triple dip
9 just because it happens to be that these offenses were
10 listed as three separate cases versus clearly --
11 obviously, if this was four counts in one case, there's
12 no question you can't triple dip just because one day
13 later the State files an amended complaint and now lists
14 Count 4 -- or Count 3, and then two months later, the
15 State adds Count 4, and the Defendant, ultimately,
16 pleads to all four of those.

17 You have -- he's been in custody for 129
18 days. That's the maximum -- that's the first time he
19 was arrested. He's been continuously in jail ever since
20 then, and so that should just be applied to the
21 aggregate. And --

22 THE COURT: So because -- because some of the
23 days that are listed are the same days, right?

24 MR. FICK: Exactly. They were --

25 THE COURT: If you were given credit towards

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1 each case and that certain number of days, you would be
2 getting credit for more days than he really spent in
3 jail.

4 MR. FICK: Exactly, Your Honor.

5 THE COURT: I see.

6 MR. FICK: He would be getting triple credit
7 per day that he --

8 THE COURT: So your contention is that, to
9 sum it up, essentially --

10 MR. FICK: Yes.

11 THE COURT: -- is that the aggregate
12 sentence, obviously, is the 144 to 360, and that he
13 should have credit for time served between the cases --

14 MR. FICK: Yes.

15 THE COURT: -- aggregated 129 days?

16 MR. FICK: Yes, Your Honor. And the way that
17 the State would recommend that this is done in the JOC
18 is simply -- so my understanding is currently the JOC
19 has a line saying, for example, in Case 255, on Count 1,
20 40 to 100 months, on Count 2, 40 to 100 months
21 consecutive and consecutive to 266 and 290.

22 THE COURT: Uh-huh.

23 MR. FICK: Then the State would suggest a
24 line underneath that that says the aggregate sentence in
25 Case Numbers 255, 266, 290 is 144 --

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1 THE COURT: 144 --

2 MR. FICK: -- to 360 months.

3 THE COURT: -- to 360.

4 MR. FICK: The credit for time served is 129
5 days. And then --

6 THE COURT: Aggregated --

7 MR. FICK: -- aggregated --

8 THE COURT: -- between all three cases.

9 MR. FICK: Yes. And then not have any
10 reference to the credit for time served on the line --

11 THE COURT: In the individual case.

12 MR. FICK: Yes, exactly.

13 THE COURT: I assume you disagree,

14 Mr. Gaumond?

15 MR. GAUMOND: Well, yes. I think one thing
16 that just came to my mind is how is this going to work
17 if Mr. Grow elects not to aggregate in terms of getting
18 to his parole date? Because he can elect to aggregate
19 all three sentences when he gets to the prison in terms
20 of setting his parole date later than earlier. I don't
21 think the State has actually conceptualized how that
22 would work. We're just having a straight 129 days of
23 credit and not having it necessarily to an individual
24 case. So that -- that's, I think, the logistical
25 difficulty.

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1 MR. FICK: So I'm not -- I have no clue how
2 NDOC would interpret this, but my -- the way I would
3 interpret this, if I were NDOC's attorney, is if he
4 chooses not to aggregate, then whatever is the first
5 case that he has the parole eligibility on, you just
6 apply the 129 --

7 THE COURT: Apply the whole thing to that.

8 MR. FICK: -- to that first case, and then it
9 doesn't apply to any of the others after that.

10 MR. GAUMOND: Which means he could get 129
11 days credit on the burglary case, and that -- that
12 wouldn't make sense. How would that happen? He -- I --
13 actually, he would be going to parole earliest on the
14 burglary case. NDOC is going to send a letter to
15 chambers easily if this goes the State's way. I mean,
16 the bottom line is -- and to clarify, yes, I do believe
17 it should be 128 days, I should have clarified, for
18 credit.

19 THE COURT: Twenty-eight or 129? Was it 28
20 or 29?

21 MR. GAUMOND: 129 on the -- the 21 point or
22 -- slash 266 case, but it's one day less, 128 on 21
23 slash 255.

24 THE COURT: And your -- and your contention
25 is that he should -- that specific number should be

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1 stated on each case? It sounds like there's discretion,
2 right? The Court can aggregate it or not aggregate it,
3 but the State's contention is if we don't aggregate it,
4 then he's getting credit for more time than he in
5 reality served. And what is your response to that?

6 MR. GAUMOND: Well, in -- there's two types
7 of aggregation. The Court can -- the Court would have
8 to in the JOC for each case say what the aggregate is
9 between all three cases because the Court elected to
10 make them all consecutive. What I was mentioning on the
11 prison is if Mr. Grow does not elect to aggregate where
12 to apply the 129 days and with what Mr. Fick said about
13 which case goes to parole eligibility first, it would
14 afford --

15 THE COURT: Does it matter in the end? If he
16 -- as long as he gets the 129 or 28 days, or whatever it
17 is, does it matter? As long as he gets the credit,
18 whichever case they apply it to, in the end, does it
19 have any real difference in the end?

20 MR. GAUMOND: It -- well, in the -- in terms
21 of when he goes to his first parole board, it would
22 matter perhaps. I mean, it would make -- it would get
23 him to the --

24 THE COURT: I mean, if they gave it all
25 towards his -- the burglary case, which is the one where

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1 he'd have parole eligibility first, it would actually
2 help him, right? He would have his parole hearing
3 quicker because he got the credit towards that case when
4 really he shouldn't have. Follow what I'm saying?

5 So if he was able, because we aggregated it
6 all, and he was going to separate them out, as you were
7 describing, I think that's the terminology you used, and
8 he got the 129 days applied to the 290 case, he would
9 actually get a -- an earlier parole hearing than
10 otherwise. Otherwise, he'd wait 129 additional days.

11 MR. GAUMOND: It could get him there
12 earlier --

13 THE COURT: So it might actually help him in
14 the end.

15 MR. GAUMOND: Again, the earlier, I'm -- I
16 just think it will create a snafu, and I think the NDOC
17 is --

18 THE COURT: Going to complain about it.

19 MR. GAUMOND: That's almost a guarantee.

20 THE COURT: Okay.

21 MR. GAUMOND: So it's not --

22 MR. FICK: If the only concern is how does
23 NDOC apply it, the easiest would be then to, in the
24 aggregate say -- add an extra sentence of this credit
25 for time served was originally earned in the 266 case.

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1 That is where he was in the longest time. Then he just
2 gets booked in later on the others. And so if that was
3 the concern, the Court could add that sentence. I'm not
4 sure that it's necessary, but that would seem to be the
5 simplest remedy to NDOC's concerns.

6 THE COURT: Make it clear which case it came
7 from?

8 MR. FICK: Yes. And then, ultimately,
9 though, the Court is still saying this is an aggregate
10 credit for time served, but at least it's giving some
11 guidance to NDOC.

12 THE COURT: Okay. Anything else?

13 MR. GAUMOND: Yes. And I think the next
14 issue is they may question when Mr. Grow spent time on
15 battery deadly weapon case, how that's (indiscernible)
16 as well as the burglary case. So that's where our
17 biggest difference is going to be is not so in the
18 timing of which sentence starts first, it's going to be,
19 ultimately, where it should be applied, and I think --
20 with the language that's in the statute that Mr. Fick
21 stated, I don't think that tends to thwart the other
22 part which says he gets credit for time he's actually
23 served and the other -- the two disqualifiers listed in
24 subsection 2, neither would apply because he wasn't
25 under a sentence of imprisonment -- or under a JOC that

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1 is. See, if he were serving time in the JOC then got
2 sentenced 30 days later, that's 30 days he wouldn't get.

3 THE COURT: It wouldn't count because he was
4 already under sentence of conviction.

5 MR. GAUMOND: Right. So since neither of the
6 two disqualifiers apply to Mr. Grow, he would get credit
7 for time that he served.

8 THE COURT: But is he entitled to get credit
9 if he's in jail at the same time? Is he entitled to get
10 double credit?

11 MR. GAUMOND: If he's serving on both cases.

12 MR. FICK: Not where the cases are
13 consecutive. That's really where -- so looking back
14 at -- now, I don't know if I already had discussed this,
15 but the White-Hughley case, which was what the Supreme
16 Court just came out with, is 495 P.3d 82, and this was
17 from September of this year.

18 In that case, procedurally, you have two --
19 two arrest warrants that are active. The Defendant gets
20 booked into Clark County Detention Center at the same
21 time on both of those warrants. There's then an
22 agreement to plead to one charge on each of those and
23 have both cases be concurrent to one another.

24 He goes to sentencing in the first case. He
25 gets 70 days credit for time served. He goes to

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1 sentencing about a month later in the second case, and
2 the Judge says, no, you're not getting any credit for
3 time served because you already received it in the first
4 case.

5 The issue is -- and the Supreme Court
6 correctly decided this, he did deserve the 70 days
7 credit for time served on both of those because really
8 what the sentence is -- and they're both identical 12-
9 to 30-month concurrent cases -- is in both of those, he
10 has a 12 to 30 with the 70 days that he served already.

11 Here, ultimately, the sentence is 144 to 360
12 months. That's even, if you look at the plea agreement,
13 what the agreement on the maximum aggregate term the
14 State was going to ask for. So the sentence the Court
15 is imposing is 144 to 360 months minus he's been in jail
16 for 129 days, and there's no basis to be giving him
17 triple credit for the days that he was serving all
18 those.

19 And the only last thing to say would
20 emphasize, I'm not sure it's necessary, but just the
21 language about minimum term or minimum aggregate term is
22 applicable really shows, by statute, it's drawing this
23 distinction and you only apply it there.

24 And, obviously, if these were all
25 concurrent -- so let's say Your Honor had gone with the

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1 Defense request of 2 to 5 minimum on the DV charge and
2 then everything else concurrent, he would get it across
3 the board because -- with that, but because it is
4 consecutive and consecutive requires aggregation, then
5 it only applies once.

6 THE COURT: Anything else?

7 MR. GAUMOND: Just that the case cited by the
8 concurrent sentences, it didn't reach this specific
9 issue. So we --

10 THE COURT: Okay. I will -- I am going to
11 aggregate it and just provide that there's 129 days
12 total credit for time served, and I -- I've had this
13 debate too about whether or not I'm supposed to
14 aggregate across cases or just within one case when you
15 have multiple counts, and I -- I had already drafted the
16 JOCs in these cases, and I had just aggregated within
17 the one case that had multiple counts, but I think it
18 does make sense to perhaps do it across the cases here.
19 So we'll -- I'll reflect that in the JOCs, that the
20 aggregate sentence across the cases is the 144 to 360
21 with an aggregate credit for time served of 129 days.

22 Anything else that we need to address before
23 we conclude?

24 MR. FICK: No, Your Honor, thank you.

25 MR. GAUMOND: The Defense has nothing

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1 further.

2 THE COURT: Okay. This matter is now
3 adjourned.

4 Thank you.

5 MR. GAUMOND: Thank you.

6 MR. FICK: Have a great evening, Your Honor.

7 THE COURT: Take care.

8 (Whereupon, proceeding concluded).
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C E R T I F I C A T I O N

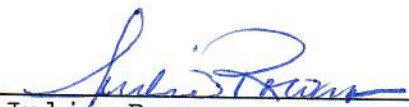
I, JULIE ROWAN, do hereby certify:

That on December 15, 2021, a sentencing hearing and status hearing was held in the within-entitled matter in the Fourth Judicial District Court, Department 3, within the State of Nevada, in and for the County of Elko;

That said hearing was recorded on a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 62, is a full, true, and correct transcript of said recording performed to the best of my ability.

Dated this 22nd day of February, 2022.


Julie Rowan

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4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY 1

1 CASE NO. DC-CR-21-290

2 DEPT. NO. 3

3
4 FOURTH JUDICIAL DISTRICT COURT
5 COUNTY OF ELKO, STATE OF NEVADA
6
7

8
9 THE STATE OF NEVADA,

10 Plaintiff,

JUDGMENT OF CONVICTION

11 vs.

12 WILLIAM JOSEPH GROW,

13 Defendant.
14

15 On November 5, 2021, Defendant, WILLIAM JOSEPH GROW, (Date of Birth: April 25,
16 1988; Place of Birth: Vancouver, Washington) entered a plea of guilty to the crime of **COUNT**
17 **1: BURGLARY OF A BUSINESS, A CATEGORY C FELONY AS DEFINED BY NRS**
18 **205.060 (NOC 61938)** which crime occurred on or about August 7, 2021, and sentenced
19 Defendant on December 15, 2021 as follows:

20
21 **IT IS HEREBY ORDERED that Defendant shall pay an administrative**
assessment fee of \$25.00 pursuant to NRS 176.062.

22 **IT IS FURTHER ORDERED that Defendant shall pay a DNA**
23 **administrative assessment fee of \$3.00 pursuant to NRS 176.0623.**

24 **IT IS FURTHER ORDERED that Defendant shall pay restitution in the**
25 **amount of \$1,000.00 to John Ellison, sign a civil confession of**
26 **judgment and pay the associated filing fee.**

27 **IT IS FURTHER ORDERED that Defendant shall pay restitution in the**
28 **amount of \$3,500.00 to Nevada Bank and Trust, sign a civil**
confession of judgment and pay the associated filing fee.

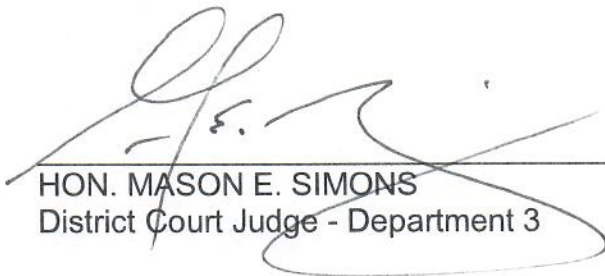
1 IT IS FURTHER ORDERED that for Count 1, Defendant shall be
2 imprisoned for a period of 16 to 40 months in the Nevada Department
3 of Corrections.

4 IT IS FURTHER ORDERED that the sentence of imprisonment imposed
5 in this case shall run consecutively to the sentences imposed in Case
6 No. DC-CR-21-255 and Case No. DC-CR-21-266. The sentences of
7 imprisonment imposed in all the three cases, as they have been
8 imposed consecutively, amount to an aggregate sentence of 144 to
9 360 months in the Nevada Department of Corrections. The Defendant
10 shall receive credit for 129 days previously served, aggregate between
11 the three cases (that credit having been earned in Case No. DC-CR-21-
12 266 specifically).

13 At the time Defendant entered his plea of guilty, and at the time he was sentenced, he
14 was represented by Benjamin Gaumond, Esq.

15 THEREFORE, the Clerk of the Court is directed to enter this Judgment of Conviction
16 as part of the record in the above-entitled matter.

17 DATED this 15 day of December 2021.

18 
19 HON. MASON E. SIMONS
20 District Court Judge - Department 3
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 3, and that on this _____ day of December, 2021, I served by hand delivery by placing a copy of said document in the agency box located in the Elko County Clerk's Office, a true copy of the foregoing document to:

Elko County District Attorney's Office
[Box in Clerk's Office]

Benjamin Gaumond, Esq.
[Box in Clerk's Office]

Elko County Sheriff's Office
[Box in Clerk's Office]

Nevada Div. of Parole and Probation
[Box in Clerk's Office]

Director, Nevada Department of Corrections
(copy to accompany Defendant at time of transport)
[Box in Clerk's Office]

Melissa Schnoor
Court Staff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 3, and that on this _____ day of December, 2021, I served by regular U.S. Mail, a true copy of the foregoing document to:

Nevada Department of Corrections
Offender Management Division,
Sentence Management
PO Box 7011
Carson City, NV 89702
[Via Regular U.S. Mail]

Melissa Schnoor
Court Staff

1 Case No. DC-CR-21-290

2 Dept. No. 3

FILED

2022 JAN 14 PM 3:56

4th JUDICIAL DISTRICT COURT
CLERK _____ DEPUTY _____

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4
5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 VS.

11 WILLIAM JOSEPH GROW,

12 Defendant.

NOTICE OF APPEAL

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14
15 TO: The Elko County District Attorney's Office.

16 NOTICE is hereby given that the above-named Defendant, WILLIAM
17 JOSEPH GROW, hereby appeals to the Supreme Court of Nevada from the
18 JUDGMENT OF CONVICTION entered in this action on December 16, 2021.

19
20 This appeal is to all issues of law and fact.

21 DATED this 14th day of January, 2022.

22
23 BEN GAUMOND LAW FIRM, PLLC

24
25
26 By: _____

27 BENJAMIN C. GAUMOND, ESQ.
28 Nevada Bar Number 8081
29 495 Idaho Street, Suite 209
Elko, Nevada 89801
(775)388-4875 (phone)
(800)466-6550 (facsimile)

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CERTIFICATE OF SERVICE

I hereby certify that I am the owner of BEN GAUMOND LAW FIRM, PLLC and that on the 14th day of January, 2022, I served the foregoing NOTICE by hand-delivering a copy of said document to the following:

Elko County District Attorney's Office
540 Court Street
Second Floor
Elko, NV 89801

Honorable Mason Simons
District Court Judge, Department #3
571 Idaho Street
Elko, NV 89801

CERTIFICATE OF MAILING

I hereby certify, pursuant to the provisions of NRAP 25(d), that I am the owner of BEN GAUMOND LAW FIRM, PLLC and that on this 14th day of January, 2022, I mailed, postage prepaid, the foregoing NOTICE to the following:

Aaron Ford
Nevada Attorney General
100 N. Carson Street
Carson City, Nevada 89701-4717