

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH GROW,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

) CASE NO. 84138

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) **FAST TRACK STATEMENT**

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Electronically Filed
Mar 01 2022 12:14 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

1. Name of party filing this fast track statement:

The name of the party filing this fast track statement is William Joseph Grow.

2. Name, law firm, address, and telephone number of attorney submitting this fast track statement:

The attorney filing this fast track statement is Benjamin C. Gaumond of the Ben Gaumond Law Firm, PLLC. His address is 495 Idaho Street, Suite 209, Elko, Nevada 89801. His telephone number is (775)388-4875.

///

1 **3. Name, law firm, address, and telephone number of**
2 **appellate counsel if different from trial counsel:**

3 Appellate counsel and trial counsel are the same.

4 **4. Judicial district, county, and district court docket number**
5 **of lower court proceedings:**

6
7 This is an appeal from the Fourth Judicial District Court, in and
8 for the County of Elko, State of Nevada, Department 3. The docket
9 number in the lower court is DC-CR-21-290.
10

11 **5. Name of judge issuing decision, judgment, or order**
12 **appealed from:**

13 The Honorable District Court Judge Mason Simons issued the
14 Judgment of Conviction in this case.
15

16 **6. Length of trial. If this action proceeded to trial in the**
17 **district court, how many days did the trial last?**

18
19 This case did not proceed to trial.

20 ///

21 ///

1 **7. Conviction(s) appealed from:**

2 William Joseph Grow was convicted of Burglary of a Business, a
3 category C felony as defined by NRS 205.060.
4

5 **8. Sentence for each count:**
6

7 William Joseph Grow was sentenced to serve sixteen to forty (16-
8 40) months in the Nevada Department of Corrections with credit for
9 zero (0) days served. This sentence was ordered to be served
10 consecutively with the sentences imposed in case numbers DC-CR-21-
11 255 and DC-CR-21-266.
12

13 **9. Date district court announced decision, sentence, or order**
14 **appealed from:**
15

16 The district court announced the sentence on December 15, 2021.
17

18 **10. Date of entry of written judgment or order appealed from:**
19

20 The district court entered the judgment of conviction on December
21 16, 2021.
22

23 ///

1 **11. If this appeal is from an order granting or denying a**
2 **petition for a writ of habeas corpus, indicate the date**
3 **written notice of entry of judgment or order was served by**
4 **the court:**

5 This appeal does not involve a petition for a writ of habeas corpus.

6 **12. If the time for filing the notice of appeal was tolled by a**
7 **post-judgment motion.**

8 There is no post-judgment motion that would toll the time for
9
10 filing the notice of appeal.

11 **13. Date notice of appeal filed:**

12 The notice of appeal was filed on January 14, 2022.

13
14 **14. Specify statute or rule governing the time limit for filing**
15 **the notice of appeal, e.g., NRAP 4(b), NRS 34.560, NRS**
16 **34.575, NRS 177.015, or other:**

17 The rule governing the time limit for filing the notice of appeal for
18 this case is NRAP 4(b)(1)(A).

19 **15. Specify statute, rule or other authority which grants this**
20 **court jurisdiction to review the judgment or order**
21 **appealed from:**

22 This court has jurisdiction under NRS 177.015(3).
23
24
25

1 **16. Specify the nature of disposition below, e.g., judgment**
2 **after bench trial, judgment after jury verdict, judgment**
3 **upon guilty plea, etc.:**

4 This is an appeal from the judgment of conviction upon a plea of
5 guilty.

6
7 **17. Pending and prior proceedings in this court. List the case**
8 **name and docket number of all appeals or original**
9 **proceedings presently or previously pending before this**
10 **court which are related to this appeal (e.g., separate**
11 **appeals by co-defendants, appeal after post-conviction**
12 **proceedings):**

13 Grow v. State, Nevada Supreme Court Case Number 84137.

14 **18. Pending and prior proceedings in other courts. List the**
15 **case name, number and court of all pending and prior**
16 **proceedings in other courts which are related to this**
17 **appeal (e.g., habeas corpus proceedings in state or federal**
18 **court, bifurcated proceedings against co-defendants):**

19 Counsel is not aware of any proceedings in other courts which are
20 related to this appeal.

21 ///

22 ///

23 ///

1 **19. Proceedings raising same issues. List the case name and**
2 **docket number of all appeals or original proceedings**
3 **presently pending before this court, of which you are**
4 **aware, which raise the same issues you intend to raise in**
5 **this appeal:**

6 Counsel is not aware of any appeals or proceedings pending
7 presently before this court which raise the same issues as this appeal.

8 **20. Procedural history. Briefly describe the procedural history**
9 **of the case (provide citations for every assertion of fact to**
10 **the appendix, if any, or to the rough draft transcript):**

11 The criminal information was filed in the Fourth Judicial District
12 Court on October 25, 2021 wherein William Joseph Grow was charged
13 with Burglary of a Business, a category C felony. *Joint Appendix 1.*
14 Mr. Grow entered into a plea agreement to plead guilty to that charge.
15 *Joint Appendix 4-12.* Mr. Grow entered that plea in open court. *Joint*
16 *Appendix 84.*

17
18 The sentencing was held on December 15, 2021. *Joint Appendix*
19 *13-58.* Later that day, a status hearing was held to determine if Mr.
20 Held was going to receive any credit for time served. *Joint Appendix*
21 *58-73.*

1 The judgment of conviction was filed on December 16, 2021. *Joint*
2 *Appendix 84*. The notice of appeal was filed on Mr. Grow's behalf on
3 January 14, 2022. *Joint Appendix 87*.

4 **21. Statement of facts. Briefly set forth the facts material to**
5 **the issues on appeal:**

6 In the Presentence Investigation Report that was prepared on
7 November 8, 2021, the Division of Parole and Probation tabulated credit
8 for time served at sixty-two (62) days – from October 15, 2021 to
9 December 15, 2021. *Presentence Investigation Report 11*.¹ In an
10 unrelated case (with case number ending with “266”), the district court
11 imposed a sentence of forty-eight to one hundred twenty (48-120)
12 months in the Nevada Department of Corrections with credit for one
13 hundred twenty-nine (129) days of time served. *Joint Appendix 55-56*.
14 Initially, the district court sentenced Mr. Grow to sixteen to forty (16-
15 40) months in the Nevada Department of Corrections with credit for
16
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22 ¹ An order directing the Elko County Clerk to transmit the Presentence
23 Investigation Report was entered in the instant matter on February 28,
24 2022.

1 sixty-two (62) days of time served to run consecutively with the matter
2 ending in case number “266” as well as the matter ending in case
3 number “255”. *Joint Appendix 54-57*. The aggregate sentence for all
4 three matters was one hundred forty-four (144) months to three
5 hundred sixty (360) months. *Joint Appendix 56-57*.

7 During the status hearing as to credit for time served, the State
8 cited NRS 176.035 for the proposition “that the Court pronounce the
9 aggregate sentence across all the cases that are being adjudicated - - -
10 which [the district court judge] did with the 144 months to 360 months
11 aggregate.” *Joint Appendix 60*. The State went on to say that the
12 “credit for time served then should be applied to that aggregate, not to
13 the individual cases piecemeal.” *Joint Appendix 60*. Moreover, the
14 State said that if the defense argues for credit for time served be
15 awarded in the instant case when the instant sentence is to be served
16 consecutively with two other sentences, then the defense is “asking to
17 triple dip.” *Joint Appendix 62-63*.

22 When addressing the issue of case law from this Court, the State
23 cited White-Hughley v. State, 495 P.3d 82 (2021).

1 The district court disagreed with the defense and sided with the
2 State by ruling that the total amount of time served in the aggregate
3 over the three cases is one hundred twenty-nine (129) days. *Joint*
4 *Appendix 72, 85.*
5

6 **22. Issues on appeal. State concisely the principal issue(s) in**
7 **this appeal:**

- 8 1) Did the district court commit reversible error in denying sixty-two
9 days of credit for time served in the instant case?

10 **23. Legal argument, including authorities:**
11

12 **1) The district court committed reversible error in denying**
13 **sixty-two days of credit for time served in the instant case.**

14 NRS 176.035(1)-(2) prescribes the manner in which consecutive
15 sentences are aggregated:
16

- 17 1. Except as otherwise provided in subsection 3, whenever
18 a person is convicted of two or more offenses, and sentence
19 has been pronounced for one offense, the court in imposing
20 any subsequent sentence may provide that the sentences
21 subsequently pronounced run either concurrently or
22 consecutively with the sentence first imposed. Except as
23 otherwise provided in subsections 3 and 4, if the court makes
24 no order with reference thereto, all such subsequent
25 sentences run concurrently. For offenses committed on or
after July 1, 2014, if the court imposes the sentences to run

consecutively, the court must pronounce the minimum and maximum aggregate terms of imprisonment pursuant to subsection 2, unless the defendant is sentenced to life imprisonment without the possibility of parole or death.

2. When aggregating terms of imprisonment pursuant to subsection 1:

(a) If at least one sentence imposes a maximum term of imprisonment for life with the possibility of parole, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment, and the maximum aggregate term of imprisonment shall be deemed to be imprisonment in the state prison for life with the possibility of parole.

(b) If all the sentences impose a minimum and maximum term of imprisonment, the court must aggregate the minimum terms of imprisonment to determine the minimum aggregate term of imprisonment and must aggregate the maximum terms of imprisonment to determine the maximum aggregate term of imprisonment.

NRS 176.055 governs how credit for time served is awarded and states as follows:

1. Except as otherwise provided in subsection 2, whenever a sentence of imprisonment in the county jail or state prison is imposed, the court may order that credit be allowed against the duration of the sentence, including any minimum term or minimum aggregate term, as applicable, thereof prescribed by law, for the amount of time which the defendant has actually spent in confinement before conviction, unless the defendant's confinement was pursuant to a judgment of conviction for another offense. Credit

1 allowed pursuant to this subsection does not alter the date
2 from which the term of imprisonment is computed.

3 2. A defendant who is convicted of a subsequent offense
4 which was committed while the defendant was:

5 (a) In custody on a prior charge is not eligible for any
6 credit on the sentence for the subsequent offense for time the
7 defendant has spent in confinement on the prior charge,
8 unless the charge was dismissed or the defendant was
9 acquitted.

10 (b) Imprisoned in a county jail or state prison or on
11 probation or parole from a Nevada conviction is not eligible
12 for any credit on the sentence for the subsequent offense for
13 the time the defendant has spent in confinement which is
14 within the period of the prior sentence, regardless of
15 whether any probation or parole has been formally revoked.

16 In White-Hughley v. State, 495 P.3d 82, 86 (2021), this Court
17 concluded “that where a defendant simultaneously serves time in
18 presentence confinement for multiple cases and the resulting sentences
19 are served concurrently, credit for time served must be applied to each
20 case.” Additionally, this Court explained that it has “therefore
21 previously held that NRS 176.055 requires district courts to award
22 credit for time served in presentence confinement despite the
23 discretionary language used in the statute.” Id. at 85, citing Poasa v.
24 State, 435 P.3d 387, 389 (Nev. 2019).

1 Even more emphatically, this Court declared that “NRS
2 176.055(1) must be construed in favor of application of presentence
3 credit for time served unless there is an express statutory provision
4 precluding application of such credit.” Id. at 85, citing Poasa v. State,
5 435 P.3d 387 (Nev. 2019); Kuykendall v. State, 112 Nev. 1285, 926 P.2d
6 781 (1996); Johnson v. State, 120 Nev. 296, 89 P.3d 669 (2004).

7
8 To start with, the State’s reliance on White-Hughley is inapposite.
9
10 White-Hughley does not approach the issue of whether there should be
11 credit for time served applied to multiple consecutive sentences when
12 said time is served simultaneously. The reach of this Court’s decision
13 was limited to **concurrent** sentences entailing a defendant serving
14 presentence confinement on multiple cases at the same exact time.
15

16 What provision of the Nevada Revised Statutes prohibits Mr.
17 Grow from receiving credit for time served on multiple cases when his
18 presentence confinement is served on those cases simultaneously?
19 None. The State did not point to one during the sentencing hearing or
20 the status hearing and the defense understands why.
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As such, Mr. Grow's position is clear. When a criminal defendant in actuality serves time in presentence confinement on two or more cases simultaneously and the sentences in those cases are ordered to be served consecutively, he/she/they must be credited with said presentence confinement on each and every one of those cases. Any other result would require the radical alteration of precedent in this State – even White-Hughley.

24. Preservation of issues. State concisely how each enumerated issue on appeal was preserved during trial. If the issue was not preserved, explain why this court should review the issue:

The defense argued against the State's position that Mr. Grow should receive zero (0) days of credit for time served in the instant matter. *Joint Appendix 69-70, 72*. As such, this matter was preserved for appellate review.

25. Issues of first impression or of public interest. Does this appeal present a substantial legal issue of first impression in this jurisdiction or one affecting an important public interest: If so, explain:

This appeal presents an issue of first impression. No case that the

1 defense is aware of reaches the issue of credit for time served as it
2 pertains to multiple consecutive sentences wherein a criminal
3 defendant has presentence confinement that he/she/they served on
4 those matters simultaneously.
5

6
7 **26. Routing statement pursuant to NRAP 17:**

8 This case involves a direct appeal from a judgment of conviction
9 based upon a plea of guilty. Under NRAP 17(b)(1), this case is
10 presumptively assigned to the Court of Appeals.
11

12 However, NRAP 17(a)(11) states that this Court “shall hear and
13 decide . . . [m]atters raising as a principal issue a question of first
14 impression involving the United States or Nevada Constitutions or
15 common law.” Since this appeal raises an issue of first impression,
16 William Joseph Grow asks that this Court retain the instant appeal.
17

18 **VERIFICATION**
19

20 1. I hereby certify that this fast track statement complies with the
21 formatting requirements of NRAP 32(a)(4), the typeface requirements of
22 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6)
23

1 because this fast track statement has been prepared in a proportionally
2 spaced typeface using Microsoft Word in size 14 Century Schoolbook
3 font.

4 2. I further certify that this fast track statement complies with the
5 page- or type-volume limitations of NRAP 3C(h)(2) because it is either:
6

7 ☒ Proportionately spaced, has a typeface of 14 points or more,
8 and contains 2,716 words; or
9

10 ☐ Monospaced, has 10/5 or fewer characters per inch, and
11 contains ____ words or ____ lines of text; or
12

13 ☐ Does not exceed 16 pages.

14 3. Finally, I recognize that pursuant to NRAP 3C, I am responsible
15 for filing a timely fast track statement and that the Supreme Court of
16 Nevada may sanction an attorney for failing to file a timely fast track
17 statement, or failing to raise material issues or arguments in the fast
18 track statement, or failing to cooperate fully with appellate counsel
19 during the course of an appeal.
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1 4. I therefore certify that the information provided in this fast track
2 statement is true and complete to the best of my knowledge,
3 information and belief.

4 DATED this 1st day of March, 2022.

5
6 BEN GAUMOND LAW FIRM, PLLC

7
8
9 By: 

10 BENJAMIN C. GAUMOND, ESQ.
11 Nevada Bar Number 8081
12 495 Idaho Street, Suite 209
13 Elko, Nevada 89801
14 (775)388-4875 (phone)
15 (800)466-6550 (facsimile)

16 CERTIFICATE OF SERVICE

17 (a) I hereby certify that this document was electronically filed
18 with the Nevada Supreme Court on the 1st day of March, 2022.

19 (b) I further certify that on the 1st day of March, 2022, electronic
20 service of the foregoing document shall be made in accordance with the
21 Master Service List to Aaron Ford, Nevada Attorney General; Tyler J.

1 Ingram, Elko County District Attorney; and Walter F. Fick, Deputy
2 Elko County District Attorney.

3 (c) I further certify that on the 1st day of March, 2022, I delivered
4 one (1) copy via U.S. Mail with postage prepaid to William Joseph Grow,
5 NDOC # 1199093, Northern Nevada Correctional Center, P.O. Box 7000,
6 Carson City, NV 89702.
7

8 DATED this 1st day of March, 2022.
9

10 
11

12 Benjamin C. Gaumond, Owner
13 Ben Gaumond Law Firm, PLLC
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