

IN THE SUPREME COURT OF THE STATE OF NEVADA

Alec Dave,

Appellant,

VS.

The State of Nevada,

Respondent

))))))))

Supreme Ct No. 84165

District Ct No. 21-7272

Electronically Filed
Apr 26 2022 05:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appellant's Brief

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

**Humboldt County Public Defender
Matt Stermitz, NSB # 3610
Drawer 309
Winnemucca, Nevada 89445
775-623-6550**

Humboldt County DA
Michael Macdonald
Drawer 909
Winnemucca, Nevada 89445
775-623-6363

TABLE OF CONTENTS

Table of Authorities.....	i
Jurisdictional Statement.....	ii
Routing Statement.....	ii
Statement of Issues.....	1
Statement of the Case.....	1
Statement of the Facts.....	1
Summary of Argument.....	2
Argument.....	2
Conclusion.....	3
Certificate of Compliance.....	4
Certificate of Service.....	5

TABLE OF AUTHORITIES

Cases

<u>U.S. v. Lai</u> , 944 F.2d 1434, (1991)	2
<u>Solm v. Helm</u> , 463 U.S. 277, 284 (1983).....	2
<u>U.S. v. Borrero-Isaza</u> , 887 F.2d 1349, 1352 (9 th Cir.1989).....	3
<u>United States v. Brady</u> , 895 F.2d 538 (9 th Cir. 1990).....	3
<u>United States v. Barker</u> , 771 F.2d 1362 (9 th Cir. 1985).....	3

Statutes

1	NRS 176.0131.....	3
2	NRS 177.015(3).....	ii
3	NRS 201.230(2).....	1
4	NRAP 4.....	ii
5	NRAP 17(b)(1).....	ii
6	NRAP 28	4
7	NRAP 32... ..	5
8	Constitution	
9	8 th Amendment U.S. Constitution.....	2

JURISDICTIONAL STATEMENT

A judgment of conviction was entered on the 21st day of January, 2022. Appellant Appendix, hereinafter AA, page 18. The notice of appeal was filed on the 27th day of January, 2022. AA, page 17. Within the time allowed by NRAP 4.

NRS 177.015(3) grants this court jurisdiction to review the judgment of conviction appealed from.

ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals, pursuant to NRAP 17(b)(1).

STATEMENT OF ISSUES

Issue: The district court abused its discretion at sentencing. The district court failed to consider the individualized circumstances of Alec Dave before imposing four consecutive life sentences.

STATEMENT OF THE CASE

Alec Dave plead guilty to 4 counts of lewdness with a child under 14 years of age, a category B felony, as defined by NRS 201.230(2). AA, p. 6.

The district court sentenced Alec Dave to a life term with eligibility for parole beginning when a minimum of ten years has been served on each count. AA, p. 14. The district court ran the sentences consecutive. AA, p. 14. Rather than concurrent. AA, p. 14.

Alec Dave appeals. AA, p. 14.

STATEMENT OF THE FACTS

Alec Dave, a twenty-four year old life-long resident of McDermitt, Nevada, plead guilty to four counts of lewdness with a child under 14 years of age, a category B felony, as defined by NRS 201.230(2). AA, p. 6. The district court sentenced Alec Dave to a life term with eligibility for parole beginning when a minimum of ten years has been served on each count. AA, p. 14. The district court ran the sentences consecutive. AA, p. 14.

SUMMARY OF ARGUMENT

The conviction should be reversed. Without comment the district court ran Alec Dave's sentences consecutive. AA, p. 14. Making it unlikely Alec Dave will ever see the light of day outside the confines of the Nevada Department of Corrections in less than 40 years.

The matter should be remanded for a new sentencing hearing in front of a new judge willing to consider the individualized circumstances of Alec Dave.

ARGUMENT

Before imposing a sentence, the district court did not address mitigating factors - Alec Dave's age, lack of criminal history, remorse or even aggravating factors. AA, p. 18 – 29. Nor, did the district court address aggravating factors. AA, p. 28-29.

The district court made no factual finding that consecutive sentences were warranted, rather than concurrent sentences. AA, p. 28 -29.

The district court's reasoning remains a mystery.

The eighth amendment's cruel and unusual punishment clause prohibits both torturous and disproportionate sentences. See U.S. v. Lai, 944 F.2d 1434, (1991), citing Solm v. Helm, 463 U.S. 277, 284 (1983).

1 Although trial judges are accorded unfettered discretion in sentencing
2 defendant, the 9th circuit insists on individualized sentencing that takes the
3 individual as well as the crime into account. See Lai citing U.S. v. Borrero-
4 Isaza, 887 F.2d 1349, 1352 (9th Cir.1989); United States v. Brady, 895 F.2d
5 538 (9th Cir. 1990); United States v. Barker, 771 F.2d 1362 (9th Cir. 1985).
6
7

8 The people of Nevada have declared that sentencing policies should
9 embody fairness and opportunity. NRS 176.0131(1). The people of
10 Nevada have declared that a continuum of sentencing options should be
11 available with community programs for diversion and supervision of
12 offenders. NRS 176.0131. The people of Nevada have declared that
13 strategies to reduce crime should involve prevention, treatment, health and
14 labor. NRS 176.0131(1).
15
16

17 The matter should be remanded for a new sentencing hearing. In
18 front of a new judge. A judge willing to consider the individual
19 circumstances of Alec Dave, and a judge willing to articulate the reasoning
20 behind whatever sentence the judge chooses to impose.
21
22

23 CONCLUSION

24

25 The matter should be reversed and remanded for a new sentencing
26 hearing.
27
28

1 Dated this 26th day of April, 2022.

2 Matt Stermitz

3 Matt Stermitz
4 Humboldt County Public Defender
5 Bar # 003610
6 Drawer 309
7 Winnemucca, Nevada 89445
8 775-623-6550

9 ATTORNEY CERTIFICATE OF COMPLIANCE

10 I hereby certify that this brief complies with the formatting
11 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
12 32(a)(5) and the type style requirements of NRAP 32(a)(6) because This
13 brief has been prepared in a proportionally spaced typeface using Microsoft
14 Word in type face of 14 point and Arial type face.
15

16 I further certify that this brief complies with the page- or type-volume
17 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
18 exempted by NRAP 32(a)(7)(C), it does not exceed 6 pages.
19

20 Finally, I hereby certify that I have read this appellate brief, and to the
21 best of my knowledge, information, and belief, it is not frivolous or
22 interposed for any improper purpose. I further certify that this brief complies
23 with all applicable Nevada Rules of Appellate Procedure, in particular
24 NRAP 28(e)(1), which requires every assertion in the brief regarding
25
26
27
28

1 matters in the record to be supported by a reference to the page and
2 volume number, if any, of the transcript or appendix where the matter relied
3 on is to be found. I understand that I may be subject to sanctions in the
4 event that the accompanying brief is not in conformity with the
5 requirements of the Nevada Rules of Appellate Procedure.
6

7
8 Dated this 26th day of April, 2022.

9
10 Matt Stermitz

11 Matt Stermitz
12 Humboldt County Public Defender
13 Bar # 003610
14 Drawer 309
15 Winnemucca, Nevada 89445
16 775-623-6550

17 CERTIFICATE OF SERVICE

18 Pursuant to applicable appellate rules, on the 26th day of April,
19 2022, the undersigned mailed a true and correct copy of the foregoing
20 addressed to Alec Dave # 1252965, NNCC, Box 7000, Carson City, NV
21 89702.

22 Matt Stermitz

23 Matt Stermitz
24
25
26
27
28