

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 82896

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Elizabeth A. Brown
Clerk of Supreme Court

JARELL WASHINGTON

Appellant,

v.

THE STATE OF NEVADA

Respondent.

Appeal from a Judgment of Conviction
Eighth Judicial District Court, Clark County
The Honorable Tierra Jones, District Court Judge
District Court Case No. C-19-341380-1

APPELLANT'S REPLY BRIEF

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1 **I. NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons
3
4 and entities as described in NRAP 26.1(a), and must be disclosed. These
5 representations are made in order that the judges of this Court may evaluate
6 possible disqualifications or recusal.
7

8 **NONE**

9 Attorney of Record for Jarell Washington:
10

11 /s/ James A. Oronoz_____

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1 **III. TABLE OF AUTHORITIES**

2 Page(s)

3 **Cases**

4

5 *Brady v. United States*,

6 397 U.S. 742, 90 S. Ct. 1463, 25 L. Ed. 2d 747 (1970).....3

7 *Doe v. Woodford*,

8 508 F.3d 563 (9th Cir. 2007).....3

9 *Stevenson v. State*,

10 131 Nev. 598, 354 P.3d 1277 (2015)3

11 **Rules**

12 NRAP 26.1 ii, iii

13 NRAP 26.1(a)..... ii

14 NRAP 28(e)(1).....9

15 NRAP 32(a)(4)-(6).....9

16 NRAP 32(a)(6).....9

17 NRAP 32(a)(7).....9

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1 IV. ARGUMENT

2 **The Trial Court Erred in Denying Appellant Washington's Motion to**
3 **Withdraw Guilty Plea**

4 Mr. Washington lists and addresses the State's arguments below. The State's
5 arguments are italicized for identification.
6

7 1. *Respondent states Appellant's plea was freely and voluntarily entered.*

8
9 Here, Appellant was faced with the choice of going forward with a murder
10 trial without any trust in his attorney's level of preparation or his own level of
11 preparation; without feeling that he had a complete understanding of the evidence
12 and witnesses he would be facing; and without the full knowledge of being
13 adequately prepared for trial with an attorney who rarely communicated with him.
14 Here, Appellant was presented with the unconstitutional dilemma of either
15 ignorantly taking a plea agreement, at the urging of his counsel, or subjecting himself
16 to a jury trial with an obviously ineffective, unprepared, and entirely indifferent
17 lawyer representing him.
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21 2. *Respondent states: 1. Appellant had more than sufficient time to*
22 *consider the State's offer before accepting it; 2. appellant received the State's offer*
23 *more than a month prior to pleading guilty; 3 appellant's argument that he was*
24 *presented with the State's offer for the first time on the morning of trial is incorrect*
25 *and completed misconstrues the record.*
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1 Appellant states that he only received the State's offer on the first day of trial.
2 The record reflects that affirmation. At the Status Conference/Trial Readiness
3 hearing on January 7, 2020, Mr. Kocka advised the court, "We did get an offer on
4 Friday from Mr. Portz. And Mr. Portz and I were actually outside just further having
5 discussions on that offer. **I did not get a chance to go over and see my client**
6 **yesterday – getting the offer on Friday. My plan is to see him either Wednesday**
7 **or Thursday of this week with the offer."** Emphasis added. I AA 161.

8
9
10 On February 10, 2020, the morning of trial, the District Attorney requested an
11 Entry of Plea Hearing. At this hearing, Mr. Kocka put into the record the following:

12
13 Mr. Kocka: And, Judge, I met with Mr. Washington yesterday afternoon.
14 After my meeting I did reach out to the District Attorney with my client's
15 desire to negotiate the case. They did prepare the guilty plea agreement.

16 The Court: Okay.

17 Mr. Kocka: I met with my client **this morning, presented him with the**
18 **guilty plea agreement. He, at this point, wants to renew his motion that**
19 **was brought at calendar call to have me dismissed as counsel.** I explained
20 to him how it's probably gonna work this morning. Counsel for the State's
21 been kind enough to pending your motion - - your decision on his motion - -
22 to keep the offer open for a few minutes, so. (Emphasis added.) II AA 180.

23 The record is abundantly clear that Mr. Washington was only presented with
24 the guilty plea agreement on the very morning he entered the plea and that he
25 renewed his motion to continue the trial and have new counsel appointed. When his
26 renewed motion to continue the trial and have new counsel appointed was denied,
27 he was threatened with the imminent prospect of going to trial on a murder case with
28

1 an attorney he felt was wholly unprepared for trial and without the opportunity to
2 review all the evidence and witnesses the State planned to present against him at
3 trial. This Court in *Stevenson v. State*, 131 Nev. 598, 604, 354 P.3d 1277, 1281
4 (2015), held that “undue coercion occurs when `a defendant is induced by promises
5 or threats which deprive the plea of the nature of a voluntary act” (citing *Doe*
6 *v. Woodford*, 508 F.3d 563, 570 (9th Cir. 2007). Here, Mr. Washington repeatedly
7 told the trial court that he had not received all his discovery or been told by his trial
8 counsel of all the witnesses the State, at calendar call, announced would be presented
9 at trial. When presented with the Guilty Plea Agreement on the morning of trial, Mr.
10 Washington felt trapped and coerced into signing the agreement. Upon returning to
11 his cell, he immediately began writing his motion for new counsel to allow him to
12 go to trial on the charges.

13
14 As held by the U.S. Supreme Court over fifty years ago, “the record must
15 affirmatively disclose that a defendant who pleaded guilty entered his plea
16 understandingly and voluntarily.” *Brady v. United States*, 397 U.S. 742, 747, 90 S.
17 Ct. 1463, 25 L. Ed. 2d 747 (1970). Here, the record does not do so, and Mr.
18 Washington should be allowed to withdraw his unduly coerced plea and proceed to
19 trial in this matter.

20
21 3. *Respondent argues the fact that Appellant pled guilty in the face of an*
22 *impending trial is not a fair and just reason to withdraw his plea. Additionally,*
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1 *Appellant insisted on proceeding to trial on multiple occasions with defense counsel*
2 *prepared to proceed.*

3
4 While from all appearances, trial counsel represented to the court multiple
5 times that they were ready for trial, it is clear from the record that the Defendant did
6 not share that belief. On August 1, 2019, trial counsel advised the Court that “We
7 should be able after the first of the year be ready to go.” I AA 150. Trial was set for
8 February 10, 2020. On October 3, 2019, Mr. Kocka appeared for a Trial Readiness
9 hearing. It should be noted that Appellant had been delayed in transport and so was
10 unable to attend the hearing at the scheduled time. Mr. Kocka advised the court, “We
11 just got the DNA report last night, we are set for trial. Everything should be fine for
12 the February date that’s already standing.” I AA 157. Judge Adair advised Mr.
13 Kocka that she would let Appellant know what transpired when he arrived. I AA
14 158-159.

15
16 At the Calendar Call of February 6, 2020, trial counsel stated the following:

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19 Mr. Kocka: Judge, we announced ready. We have the courtroom of
20 Judge Herndon. Spoke to my client this morning. I visited with him
21 yesterday. He asked me this morning if I could get this continued. This
22 is the first time he’s requested that of me, Judge. I told him we have a
23 courtroom, we’re good to go so I’m just making the request on behalf
24 of my client. Both counsel and I worked the case up and we are ready
25 to go.

26 The Court: “All right. Well, Mr. Washington, what’s your issue with wanting
27 the case continued?”
28

1 Defendant: "I just haven't had the chance to look over the full discovery,
2 and I just feel like I just need more time to look over everything. I don't feel
3 like - - I feel like I want to just push it back." I AA 168.

4 On March 12, 2020, less than thirty days after signing the Plea Agreement, a
5 hearing was held regarding Appellant's Motion to Dismiss Counsel, again in front
6 of Judge Herndon. The following discussion took place:
7

8 Defendant: I just feel like I was misled and I was coerced. I didn't
9 even know what was going on with my case. I was promised my
10 discovery; I never got it by [Judge] Tierra Jones. And then it was just
11 like up to trial he only came to see me three times. I'm fighting for my
12 life and I feel like it's not right for me to go to trial or to sign the deal
13 that I can't even study my case. This is my life up on the line. I didn't
14 even want to sign the deal. I felt like because he said I was going to
15 lose in trial. So I'm not going to see daylight.

16 The Court: Well, so here's the thing, I mean, essentially what you're
17 moving for is to withdraw your plea, right?

18 Defendant: Yes. Because he said he wasn't going to listen to me. And
19 I was scared." II AA 191-192.

20 As outlined in his opening brief, Appellant believed himself to be under duress
21 when he entered his plea on the morning of trial. It is axiomatic that a plea made
22 under duress is invalid.

23 4. *Respondent argues Appellant was provided all discovery to which he*
24 *was entitled prior to accepting his plea. He was permitted to have in jail GJ*
25 *transcripts as well as all police reports.*

26 February 6, 2020, Calendar Call hearing, Appellant testified that "I just
27 haven't had the chance to look over the full discovery, and I just feel like I just need
28

1 more time to look over everything. I don't feel like - - I feel like I want to just push
2 it back." I AA 168.

3
4 Judge Tierra Jones denied both Appellant's motion to dismiss trial counsel
5 and for the trial to be continued.

6
7 On February 10, 2020, the morning of trial, the Deputy District Attorney
8 requested an Entry of Plea Hearing. At this hearing, trial counsel stated:

9 Mr. Kocka: I just want to make sure that we make a clear record here.
10 Mr. Washington has indicated to me this morning, Judge, that he does
11 not feel comfortable with being, one, prepared for this trial, and two,
12 having me prepared him for the trial. He indicates that he's not
received a full copy of his discovery...

13 He maintains this morning that he doesn't feel comfortable not having
14 every piece of documentation, although we've prepared it. That is the
15 basis for his request at this point to have me removed.

16 The Court: All right. State?

17 Mr. Portz: And obviously, the State's going to object. This would
18 cause a delay. Mr. Kocka made these representations at the calendar
19 call when it was - when this issue was raised by Mr. Washington, and
20 it was denied. II AA 181-182.

21 At this same time, Judge Herndon told Appellant, "More importantly, that
22 issue and any displeasure with your attorney, these are way tardy. I'm not
23 entertaining that the morning or the very day that we're starting trial. And I'm not
24 going to revisit what Judge Adair already put in place. These were litigated. The case
25 was ready for trial. I took it to try it today at 1:30 and that's what we're going to do.
26 So, I'm going to deny the motion to have counsel removed." II AA 183-184.
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1 On February 10, 2020, as soon as Appellant was returned to his cell, he began
2 drafting a New Motion to Dismiss Counsel so a new attorney could undo the plea he
3 believed he had been coerced into signing. In drafting this motion, Appellant noted
4 that on this same date, he heard the Deputy District Attorney stated that they had
5 twenty-five (25) witnesses that would be testifying. Up to this point in time, Mr.
6 Kocka had only told him about two witnesses for the prosecution. II AA 224.
7

9 It is clear from the record that Appellant was not aware of all the evidence
10 and witnesses the State planned to bring against him at trial. He made several
11 requests to continue the trial and obtain new counsel prior to his last second
12 coerced plea entry. He only entered to the plea to prevent what he believed to be
13 the more dangerous alternative of proceeding to trial with Mr. Kocka. The record
14 supports his claim that he acted under duress and should be allowed to withdraw
15 his plea and proceed to trial.
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Respectfully submitted this 10th day of January 2022.

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I further certify that this brief complies with the type volume limitations of NRAP 32(a)(7) because it is proportionately spaced, has a typeface of 14 points or more and contains 1926 words. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Respectfully submitted,

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