

IN THE SUPREME COURT OF THE STATE OF NEVADA

NICHOLAS CHARLES LANZALACA,) CASE NO. 83780

Appellant,)

v.)

THE STATE OF NEVADA,)

Respondent.)

Electronically Filed
Jan 29 2022 08:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

REPLY TO FAST TRACK

RESPONSE

**1)Undersigned counsel did not misrepresent facts on this
appeal.**

The State, with a palpable lack of restraint, accuses opposing counsel of “blatantly and frivolously mischaracterizes the facts and the agreement in his argument” on page 6 of its Fast Track Response. The defense did no such thing. The plea agreement is in the Joint Appendix. *Joint Appendix 7-15*. This Court can readily review the plea agreement as it was written.

The defense wishes to remind the State of Nevada that NRS 176.211 was referenced in the plea agreement in the following passage:

1 “In accordance with NRS 176.211, if this case is adjudicated as a
2 category E felony, for a first of second offense of NRS 453.336, the court
3 shall defer judgment upon my consent.” *Joint Appendix 8.*

4 On page 5 of the Fast Track Response, the State claims that
5
6 “Contrary to the contentions of Lanzalaca, there was nothing in the
7 agreement about diversion under NRS 176.211 for the charge to which
8 Lanzalaca pled.” Given the plain language of the plea agreement, what
9
10 charge did the State think the penalty range articulated in the plea
11 agreement pertained to? And why did the State stipulate to that
12 language being included to the plea agreement just to have the State
13 deny that it is applicable? If the State thought that such language was
14 inapplicable, it could have refused to sign the plea agreement.
15
16 Opposing counsel signed the plea agreement. *Joint Appendix 13-14.*

17
18 Later on in page 5 of the Fast Track Response, the State says that
19
20 “There was no mention of NRS 176.211 in either the plea canvas or
21 sentencing, thus Lanzalaca’s argument that he was notified regarding
22 diversion ‘in no uncertain terms’ is belied by the record.” The State is
23 correct that there was no mention of NRS 176.211 during the plea
24
25

1 canvas or sentencing. However, the State's implication that Lanzalaca
2 was not notified about NRS 176.211 is the State's invitation to this
3 Court to disregard the plain language of the plea agreement. This is
4 not fair to Mr. Lanzalaca in the least bit. The judge did not need to
5 canvas Mr. Lanzalaca about mandatory diversion because it was
6 already in the plea agreement.
7

8 On page 7 of the Fast Track Response, the State indicates that it
9 "was free to argue against any diversionary treatment, had such a
10 request been made by Lanzalaca." The State would have a point if it
11 were allowed to argue against the law that was indicated in the plea
12 agreement – which, of course, it is not allowed to do.
13
14

15 **2)The State has broken the plea agreement on this appeal.**
16

17 The State, in yet another instance of misstating the facts, claims
18 on page 6 of its Fast Track Response that Mr. Lanzalaca "argue[d] that
19 the State violated the plea agreement by recommending that Lanzalaca
20 be sentenced to suffer a felony conviction without regard for NRS
21 176.211." The defense never argued that the State broke the plea
22
23
24
25

1 agreement at the district court level, so there is no need to respond to
2 that assertion.

3 What the defense did say was that the State would be violating
4 the plea agreement if it claimed that Mr. Lanzalaca could have been
5 given an adjudicated conviction for a felony against Mr. Lanzalaca's
6 consent. That is exactly what the State did on this appeal.
7

8 In response, the State on page 6 of the Fast Track Response
9 claims that "Nowhere in the plea agreement was there a provision that
10 the State shall recommend that the court defer judgment under NRS
11 176.211." That would be unnecessary because the parties stipulated to
12 the applicable law on mandatory diversion. It would be absurd to have
13 the State "recommend" that the court follow the law that the State
14 **stipulated** applied to Mr. Lanzalaca's case.
15
16
17

18 The State has said one thing in the plea agreement and another
19 thing on this appeal. If the State is allowed to engage in this type of
20 conduct, the State will not be held to "the most meticulous standards of
21 both promise and performance." Nevada case law requires that the
22 State be held to this high standard.
23

1 **3)The State has incorrectly stated that the issue of**
2 **jurisdiction does not apply.**

3 The State claims on page 4 of its Fast Track Response that the
4 defense’s argument about mandatory diversion was “waived” and that it
5 was a matter of discretion, not jurisdiction. Moreover, the State alleged
6 that the argument was not made at the district court level.
7

8 Given the plain language of the plea agreement, the State simply
9 cannot stipulate to mandatory diversion language and then claim that
10 diversion is not “mandatory” as a means of getting around the issue of
11 jurisdiction. This is yet another instance of the State not maintaining a
12 consistent position as to the plea agreement.
13
14

15 **VERIFICATION**

16
17 1. I hereby certify that this reply to fast track response complies
18 with the formatting requirements of NRAP 32(a)(4), the typeface
19 requirements of NRAP 32(a)(5) and the type style requirements of
20 NRAP 32(a)(6) because this reply to fast track response has been
21 prepared in a proportionally spaced typeface using Microsoft Word in
22 size 14 Century Schoolbook font.
23

1 2. I further certify that this reply to fast track response complies with
2 the page- or type-volume limitations of NRAP 3C(h)(2) because it is
3 either:

4 [x] Proportionately spaced, has a typeface of 14 points or more,
5 and contains 1,185 words; or
6

7 [] Monospaced, has 10/5 or fewer characters per inch, and
8 contains ____ words or ____ lines of text; or
9

10 [] Does not exceed 5 pages.

11 3. Finally, I recognize that pursuant to NRAP 3C, the Supreme
12 Court of Nevada may sanction an attorney for failing to raise material
13 issues or arguments in the reply to fast track response, or failing to
14 cooperate fully with appellate counsel during the course of an appeal.
15

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

1 4. I therefore certify that the information provided in this reply to
2 fast track response is true and complete to the best of my knowledge,
3 information and belief.

4 DATED this 29th day of January, 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 29th day of January, 2022.

19 (b) I further certify that on the 29th day of January, 2022,
20 electronic service of the foregoing document shall be made in accordance
21 with the Master Service List to Aaron Ford, Nevada Attorney General;
22
23
24
25

1 Tyler J. Ingram, Elko County District Attorney; and Justin M.
2 Barainca, Deputy Elko County District Attorney.

3 (c) I further certify that on the 29th day of January, 2022, I
4 emailed a copy of this document to Nicholas Charles Lanzalaca.
5

6 DATED this 29th day of January, 2022.

7
8 

9
10 Benjamin C. Gaumond, Owner
11 Ben Gaumond Law Firm, PLLC
12
13
14
15
16
17
18
19
20
21
22
23
24
25