

1 IN THE COURT OF APPEALS OF THE STATE OF NEVADA

2 NICHOLAS CHARLES LANZALACA,)

3)
4 Appellant,)

5 v.)

6 THE STATE OF NEVADA,)

7)
8 Respondent.)
9

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Apr 03 2022 05:29 p.m.
83780 COA
Elizabeth A. Brown
Clerk of Supreme Court

10 **MOTION FOR FULL BRIEFING**

11
12 The Appellant above-named, NICHOLAS CHARLES
13 LANZALACA, by and through his counsel of record, BENJAMIN C.
14 GAUMOND, ESQ. of the BEN GAUMOND LAW FIRM, PLLC, hereby
15 moves for an order directing full briefing in the above-entitled matter.
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1 This motion is made and based upon the pleadings and papers on
2 file herein, the Points and Authorities attached, and such other evidence
3 as this Court deems just and proper.
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5 DATED this 3rd day of April, 2022.

6 BEN GAUMOND LAW FIRM, PLLC

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9 BENJAMIN C. GAUMOND, ESQ., OWNER
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14 MEMORANDUM OF POINTS AND AUTHORITIES

15 **A. FACTUAL AND PROCEDURAL BACKGROUND**

16 The State, on page 5 of its Fast Track Response, said that
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18 “[c]ontrary to the contentions of Lanzalaca, there was nothing in the
19 [plea] agreement about diversion under NRS 176.211 for the charge to
20 which Lanzalaca pled.”
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1 The plea agreement that the State is referring to was filed on Mr.
2 Lanzalaca's case on August 5, 2021. *Joint Appendix 7*. In that
3 agreement, Mr. Lanzalaca agreed to plead guilty to Attempted
4 Possession of a Schedule I or II Controlled Substance, a category E
5 felony or a gross misdemeanor. *Joint Appendix 7*. This agreement
6 stated that this offense was "IN VIOLATION OF NRS 453.336 and NRS
7 193.330." *Joint Appendix 7*.

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10 NRS 176.211 was referenced in this plea agreement. *Joint*
11 *Appendix 8*. The exact reference is, "In accordance with NRS 176.211, if
12 **this** case is adjudicated as a category E felony, for a first or second
13 offense of NRS 453.336, the court shall defer judgment upon my
14 consent." *Joint Appendix 8*. (Emphasis added.)

15 **B. LEGAL ANALYSIS**

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18 NRAP 3C(k)(2)(A) allows for a party to seek leave of this Court "to
19 remove an appeal from the fast track program and direct full briefing.
20 A motion for full briefing shall be granted unless it is filed solely for
21 purposes of delay. It may be filed in addition to or in lieu of the fast
22 track pleading."
23

1 NRAP 3C(k)(2)(B) gives guidance on what this type of motion
2 must include:

3 The motion must identify specific reasons why the appeal is
4 not appropriate for resolution in the fast track program.
5 Such reasons may include, but are not limited to, the
6 following circumstances:

7 (i) The case raises one or more issues that involve
8 substantial precedential, constitutional, or public policy
9 questions; and/or

10 (ii) The case is legally or factually complex.

11 The matter of “mutual mistake of law” was discussed in Rojas v.
12 State, 52 Md. App. 440, 450 A.2d 490 (1982). In that case, a provision of
13 the plea agreement required Mr. Rojas, as a condition of probation, to
14 “leave the county within ninety days, and if the immigration authorities
15 are intent on deporting him, then he will not oppose deportation, and
16 that he will never return.” Id. at 441, 491. That court eventually
17 rescinded the plea agreement, asserting the following:
18

19 it may be unfair to hold the parties to an agreement the material
20 terms of which have been vacated. Appellant pled guilty in reliance
21 on the expectation that he would avoid imprisonment. The State
22 reduced the charges against appellant in reliance on the expectation
23 that the public of this State would be free of his depredations
24 forever. Resentencing appellant to a prison term on the reduced
25 charges would frustrate both parties' expectations. To avoid this, we

1 find that the fairest remedy is to rescind the entire plea agreement,
2 including the guilty plea. This places the parties in their original
3 positions, unprejudiced by the mistake of law.

4 Id. at 446, 494 (internal citations omitted).

5 By the State claiming that NRS 176.211 does not apply to
6 attempts to possess controlled substances (contrary to the plain
7 language of the plea agreement), the State has opened the door to a
8 discussion regarding whether this promise to Mr. Lanzalaca that he
9 would get diversion (assuming there was a felony adjudication) was
10 void. As such, this has made this appeal more legally complex. Full
11 briefing is appropriate to address this issue that the State has raised.

12
13 This case involves “substantial precedential, constitutional, or
14 public policy questions.” There is no case regarding mutual mistake of
15 law in the criminal context in this jurisdiction that undersigned counsel
16 is aware of. This issue needs to be clarified – especially when Mr.
17 Lanzalaca suffered a felony conviction after materially relying on the
18 plain terms of the plea agreement.
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1 This motion is not for the purpose of delay. There is no reason for
2 Mr. Lanzalaca to desire a delay tactic – especially when it may prolong
3 his status as a felon. It is more important for these issues to be fully
4 briefed than for there to be an expeditious disposal of this case.
5

6 CONCLUSION

7 This case involves a legally complex matter of mutual mistake of
8 law that has never been settled in Nevada jurisprudence – at least in
9 the realm of criminal law. This involves an important issue of
10 precedent. Hence, the instant motion for full briefing should be
11 granted.
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14 DATED this 3rd day of April, 2022.

15 BEN GAUMOND LAW FIRM, PLLC
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UNSWORN DECLARATION PURSUANT TO NRS 53.045

I, Benjamin C. Gaumond, do hereby declare the following:

(1) I am the attorney of record for Appellant NICHOLAS
CHARLES LANZALACA.

(2) All facts in this MOTION FOR FULL BRIEFING are true and
correct to the best of my knowledge and belief.

(3) This motion is made in good faith and is not done for any
purpose of delay.

(4) I have executed this declaration in the City of Elko, County of
Elko, State of Nevada.

(5) I declare under the penalty of perjury that the foregoing is true
and correct.

(6) FURTHER DECLARANT SAYETH NAUGHT.

DATED this 3rd day of April, 2022.

BEN GAUMOND LAW FIRM, PLLC



BENJAMIN C. GAUMOND, ESQ.
NEVADA STATE BAR NUMBER 8081

CERTIFICATE OF SERVICE

I, Benjamin C. Gaumond, certify that I am the owner/founder of the Ben Gaumond Law Firm, PLLC and that on the 3rd day of April, 2022, I served a copy of the foregoing MOTION FOR FULL BRIEFING by:

- (a)electronically serving said document to the Clerk of the Supreme Court, the Office of the Elko County District Attorney, and the Office of the Nevada Attorney General; and
- (b)e-mailing a copy to Nicholas Charles Lanzalaca.

DATED this 3rd day of April, 2022.



Benjamin C. Gaumond, Esq.