

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTURO MANUEL VALDEZ,

Appellant

vs.

STATE OF NEVADA

Respondent

Supreme Court No. 83961

District Court No.

Electronically Filed
CR 21-7252
Jan 27 2022 03:22 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

FAST TRACK STATEMENT

1. Name of party filing this fast track statement: Arturo Manuel Valdez.
2. Name, law firm, address, and telephone number of attorney submitting this fast track statement: Matt Stermitz, Humboldt County Public Defender, Drawer 309, Winnemucca, Nevada 89446, 775-623-6550.
3. Name, law firm, address, and telephone number of appellate counsel if different from trial counsel: N/A.
4. Judicial district, county and district court docket number of lower court proceedings: CR 21-7252, In the Sixth Judicial District Court, Humboldt County, State of Nevada.
5. Name of judge issuing decision, judgment, or order appealed from: The Honorable Michael Montero.
6. Length of trial. None.

- 1 7. Convictions appealed from: Judgment of Conviction entered the 24th
2 day of November, 2021. AA, p. 15
- 3 8. Sentence on each count: The District Court sentenced Arturo Valdez
4 to a minimum term of nineteen months and a maximum term of forty-
5 eight months in the Nevada Department of Corrections. AA, p. 16.
6
- 7 9. Date district court announced decision, sentence, or order appealed
8 from: The district court announced the sentence on the 16th day of
9 November, 2021. AA, p. 16.
10
- 11 10. Date of entry of written judgment or order appealed from: The District
12 court entered a written judgment of conviction on the 24th day of
13 November, 2021. AA, p. 15.
14
- 15 11. If this appeal is from an order granting or denying a petition for a writ
16 of habeas corpus, indicate the date written notice of entry of judgment
17 or order was served by the court: Not applicable. (a) Specify
18 whether service was by delivery or by mail. Neither.
19
- 20 12. If the time for filing the notice of appeal was tolled by a post judgment
21 motion, specify the type of motion, date of filing of motion and the
22 date of entry of the written order resolving the motion. None of that
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1 pertains to this appeal.

2 13. Date notice of appeal filed. Arturo Valdez filed his notice of appeal on
3 the 16th day of December, 2021.
4

5 14. Specify statute or rule governing the time limit for filing the notice of
6 appeal: Nevada Rule of Appellate Procedure 4.
7

8 15. Specify statute, rule or other authority which grants this court
9 jurisdiction to review the judgment or order appealed from: Nevada
10 Revised Statute 177.015.
11

12 16. Specify the nature of disposition below. Arturo Valdez plead no
13 contest to one count of possession of a controlled substance, in
14 violation of NRS 453.336. AA, p. 5. Arturo Valdez filed an
15 application for diversion, i.e., an assignment to a program of
16 treatment for alcohol or other substance abuse, pursuant to NRS
17 176A.230 – 176A.245. AA, p. 11. The district court entered a
18 judgment of conviction and sentenced Arturo Valdez to a minimum
19 term of nineteen months and a maximum term of forty-eight months
20 in the Nevada Department of Corrections, an so on. AA, p. 39.
21

22 17. Pending and prior proceedings in this court. None.
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24 18. Pending and prior proceedings in other courts. None.
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26 19. Proceedings raising same issue. None are known.
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1 20. Procedural history. A judgment of conviction was entered. AA, p.
2 15. Arturo Valdez appealed from the conviction. AA. p. 19.

3 21. Statement of facts. Arturo Valdez plead no contest to one count of
4 possession of a controlled substance, in violation of NRS 453.336.
5 AA, p. 5. Arturo Valdez filed an application for diversion, i.e., an
6 assignment to a program of treatment for alcohol or other substance
7 abuse, pursuant to NRS 176A.230 – 176A.245. AA, p. 11. The
8 district court entered a judgment of conviction and sentenced Arturo
9 Valdez to a minimum term of nineteen months and a maximum term
10 of forty-eight months in the Nevada Department of Corrections. AA,
11 p. 39.

12 22. Issues on appeal. The district court acted arbitrarily and capricious
13 and failed to consider the individualized circumstances of Arturo
14 Valdez when imposing sentence.

15 23. Legal argument, including authorities.

16 If an offender suffers from a substance use disorder, the court
17 may without entering a judgment of conviction suspend or defer
18 further proceedings, place the offender on probation and assign the
19 offender to a treatment program established pursuant to NRS
20 176A.230.
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1 Arturo Valdez suffered from a substance use disorder. AA, p.
2 23 – 41.

3 After pleading no contest to one count of felony possession of a
4 controlled substance, Arturo Valdez filed an application for diversion,
5 i.e., an assignment to a program of treatment for alcohol or other
6 substance abuse, pursuant to NRS 176A.230 – 176A.245. AA, p. 5,
7 and p. 11.
8

9 The district court, while remaining silent on the application for
10 diversion filed herein, entered a judgment of conviction and
11 sentenced Arturo Valdez to a minimum term of nineteen months and
12 a maximum term of forty-eight months in the Nevada Department of
13 Corrections. AA, p. 39.
14

15 Arturo Valdez did not deserve that.
16

17 The eighth amendment's cruel and unusual punishment clause
18 prohibits both torturous and disproportionate sentences. See U.S. v.
19 Lai, 944 F.2d 143 (1991), citing Solm v. Helm, 463 U.S. 277, 284
20 (1983).
21

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

5 The district court failed to take into consideration the individual
6 circumstances of Arturo Valdez.
7

8 The district court sentence was arbitrary and capricious.
9 Crawford v. State, 121 Nev. 744, 748, (2005).
10

11 The conviction should be reversed. The matter should be
12 remanded for a new sentencing hearing where at the district court
13 considers the individualized circumstances in mitigation and rules on
14 the application for diversion.
15

16 24. Preservation of issues: State concisely how each enumerated issue
17 on appeal was preserved during trial. If the issue was not preserved,
18 explain why this court should review the issue. An illegal sentence
19 can be corrected at any time. NRS 176.555.
20

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22 25. Issues of first impression or of public interest. No.
23

24 26. Routing Statement: Pursuant to Appellate Rule 17(b)(1) an appeal of
25 a judgment of conviction resulting from a guilty plea shall be assigned
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1 to the Court of Appeals.

2 Dated this 27th day of January, 2022.

3
4 Matt Stermitz

5 Matt Stermitz NSB # 3610
6 Humboldt County Public Defender
7 Drawer 309
8 Winnemucca, Nevada 89445
9 775-623-6550

10 VERIFICATION

- 11 1. I hereby certify that this fast track statement complies with the
12 formatting requirements of NRAP 32(a)(4), the typeface
13 requirements of NRAP 32(a)(5) and the type style requirements of
14 NRAP 32(a)(6) because this fast track statement has been
15 prepared in a proportionally spaced typeface using Microsoft Word
16 in type face of 14 point and Arial type face.
17
18 2. I further certify that this fast track statement complies with the
19 page or type-volume limitations of NRAP 3C(h)(2) because it does
20 not exceed 15 pages.
21
22 3. Finally, I recognize that pursuant to NRAP 3C I am responsible for
23 filing a timely fast track statement and that the Supreme Court of
24 Nevada may sanction an attorney for failing to raise material
25 issues or arguments in the fast track statement, or failing to
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27
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1 cooperate fully with appellate counsel during the course of an
2 appeal. I certify the information provided in this fast track is true
3 and complete to the best of my knowledge, information and belief.
4

5 Dated this 27th day of January, 2022.

6
7 Matt Stermitz
8 Matt Stermitz NSB # 3610
9 Humboldt County Public Defender

10
11 CERTIFICATE OF SERVICE ON APPELLANT

12 Pursuant to applicable appellate rules, on the 27th day of
13 January, 2022, the undersigned mailed a copy of the foregoing
14 addressed to Arturo Manuel Valdez # 1171954, NNCC, P.O. Box
15 7000, Carson City, NV 89702.
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18 Matt Stermitz
19 Matt Stermitz
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