

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 RAJ N. DUGGAL,

4 Appellant,

5 vs.

Electronically Filed
Feb 14 2022 08:58 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 83978

6 THE STATE OF NEVADA,

7 Respondent.

8
9 FAST TRACK STATEMENT

10 1. Name of party filing this fast track statement: Raj N. Duggal,
11 Appellant.

12 2. Name, law firm, address, and telephone number of attorney
13 submitting this fast track statement: Sherburne M. Macfarlan, III, Lockie &
14 Macfarlan, Ltd., 919 Idaho Street, Elko, Nevada 89801, (775) 738-8084.

15 3. Appellate counsel is same as trial counsel.

16 4. Judicial district, county, and district court docket number of
17 lower court proceedings: Fourth Judicial District Court of the State of

1 Nevada, in and for the County of Elko, Case No. DC-CR-21-248.

2 5. Name of judge issuing decision, judgment, or order appealed from:

3 Honorable Mason E. Simons.

4 6. This action did not proceed to trial.

5 7. Conviction appealed from: Conspiracy to Commit Battery, a
6 Gross Misdemeanor as defined by NRS 199.480 and NRS 200.481.

7 8. Sentence for each count: 364 days in the Elko County Jail, credit
8 for zero (-0-) days previously served, and a \$2,000 fine.

9 9. Date district court announced decision, sentence, or order
10 appealed from: December 10, 2021.

11 10. Date of entry of written judgment or order appealed from:
12 December 13, 2021.

13 11. N/A.

14 12. N/A.

15 13. Date notice of appeal filed: December 16, 2021.

16 14. N.R.A.P. 4(b) governs the time limit for filing the Notice of
17

1 Appeal.

2 15. The statute granting this Court jurisdiction to review the
3 judgment appealed from is NRS 177.015.

4 16. Specify the nature of disposition below: Judgment after plea of no
5 contest pursuant to a Memorandum of Plea Agreement.

6 17. There are no pending or prior proceedings in this court. List the
7 case name and docket number of all appeals presently pending before this
8 court which are related to this appeal: N/A

9 18. Pending and prior proceedings in other courts: N/A.

10 19. Proceedings raising the same issues: N/A.

11 20. Procedural History:

12 A Criminal Complaint charging Appellant with OPEN OR GROSS
13 LEWDNESS, A GROSS MISDEMEANOR AS DEFINED BY NRS 201.210
14 was filed on June 11, 2021. Appellant's Appendix (hereinafter A.A.), p. 1.

15 A Criminal Information charging Appellant with CONSPIRACY TO
16 COMMIT BATTERY, A GROSS MISDEMEANOR AS DEFINED BY NRS

1 199.480 AND NRS 200.481 was filed on September 8, 2021. A.A., p. 6. A
2 Memorandum of Plea Agreement was filed on September 15, 2021, and
3 Appellant entered a plea of no contest on October 8, 2021. A.A., pp. 9, 30.
4 Appellant was sentenced on December 10, 2021. A.A., p. 30.

5 21. Statement of Facts.

6 At the sentencing hearing, both parties indicated there were no errors
7 or omissions in the presentence investigation report. A.A., pp. 30-31. The
8 State asked for the maximum sentence of 364 days in jail and a \$2,000 fine.
9 A.A., p. 31. In justifying its recommendation, the State argued that another
10 person had seen defendant propositioning “another underage child.” A.A.,
11 p. 32. The victim in the case was in fact 19 years of age. A.A., p. 18. The
12 State also argued that, even though Appellant had no prior criminal history,
13 he was a predator who simply had not been previously caught. A.A., p. 32.
14 Finally the State suggested Appellant had already received leniency in the
15 case since he wasn’t convicted of a felony. A.A., pp. 32-33.

16 ///

1 Defense counsel argued there was zero evidence before the court of
2 Appellant being involved in prior criminal conduct. A.A., p. 33. Counsel
3 also pointed out that the original charge was not a felony, but rather a gross
4 misdemeanor. *Id.* Ultimately the court sentenced Appellant to the maximum
5 sentence. A.A., pp. 43-44.

6 22. Issues on Appeal.

7 A. Did the trial court err in relying on highly suspect or impalpable
8 information in sentencing Appellant.

9 23. Legal Argument.

10 A. The case should be remanded because the trial court relied on
11 highly suspect or impalpable information in sentencing
12 Appellant.

13 Normally a sentence will not be disturbed on appeal unless the lower
14 court relies on highly suspect or impalpable information. Smith v. State, 112
15 Nev. 871, 873 (1996). In the instant case, the State based its recommendation
16 on just such information. First it suggested to the trial court that Appellant
17

1 preyed on underage children, even though the victim was over the age of
2 majority. Further, that he was a predator who simply had not been previously
3 caught. This argument was made even though Appellant had no prior adverse
4 contact with the criminal justice system. The lower court, prior to imposing
5 the sentence, did state, "I'm really not putting much weight, if any, on any
6 such comments." A.A., p. 42. Presumably the court was referencing the
7 suggestion that Appellant was a predator.

8 However, the ultimate sentence clearly indicates the lower court did
9 rely on the State's highly suspect information. Although Appellant had
10 previously never run afoul of the criminal justice system, the court still
11 imposed the maximum sentence allowed by law.

12 24. Preservation of Issues:

13 The issue in this case was properly preserved by defendant's timely
14 filing of notice of appeal.

15 25. Issues of First Impression.

16 This appeal does not present legal issues of first impression in this
17

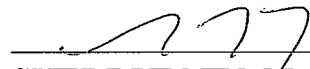
1 jurisdiction.

2 26. Routing Statement:

3 Pursuant to Rule 17(b)(1) this matter should be presumptively
4 assigned to the Court of Appeals as it involves a direct appeal from a
5 judgment of conviction based on a plea of nolo contendere.

6 DATED this 14 day of February, 2022.

7 LOCKIE & MACFARLAN, LTD.

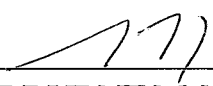
8
9 
10 SHERBURNE M. MACFARLAN, III
11 Nevada Bar # 3999
12 919 Idaho Street
13 Elko, Nevada 89801
14 (775) 738-8084
15
16
17

1 VERIFICATION

2 I recognize that pursuant to NRAP 3C, I am responsible for filing a
3 timely Fast Track Statement and that the Supreme court of Nevada may
4 sanction an attorney for failing to file a timely Fast Track Statement, or
5 failing to raise material issues or arguments in the Fast Track Statement, or
6 failing to cooperate fully with appellate counsel during the course of an
7 appeal. I therefore certify that the information provided in this Fast Track
8 Statement is true and complete to the best of my knowledge, information and
9 belief.

10 DATED this 11 day of February, 2022.

11 LOCKIE & MACFARLAN, LTD.

12
13 
14 SHERBURNE M. MACFARLAN, III
15 Nevada Bar # 3999
16 919 Idaho Street
17 Elko, Nevada 89801
(775) 738-8084

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a proportionally spaced typeface using Word Perfect X5 in 14 point Times New Roman Regular; triple spaced.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is :

Proportionately spaced, has a typeface of 14 points or more, and

Does not exceed the page limit as set forth in NRAP 32(a)(7)(D).

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

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

6 DATED this 16 day of February, 2022.

7
8 
9 SHERBURNE M. MACFARLAN, III
Nevada Bar No. 3999
10 LOCKIE & MACFARLAN, LTD.
919 IDAHO STREET
11 ELKO, NEVADA 89801
(775) 738-8084
12
13
14
15
16
17

CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of February, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:


Nevada Attorney General

Sherburne M. Macfarlan, III

Elko County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid to the following address(es):

Raj N. Duggal
2682 Outlook Ct.
Elko NV 89801


Georgia Jordan