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IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Feb 15 2022 08:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

RAJ NARESH DUGGAL,

Appellant,

Case No. 83978

vs.

THE STATE OF NEVADA,

Respondent.

FAST TRACK RESPONSE

1. **Name of party filing this fast track response:** The State of Nevada.
2. **Name, law firm, address, and telephone number of attorney submitting this fast track response:** Deputy District Attorney, JEFFREY C. SLADE Office of the Elko County District Attorney, 540 Court Street, Second Floor, Elko, NV 89801, (775) 738-3101.
3. **Name, law firm, address, and telephone number of appellate counsel, if different from trial counsel:** N/A.

1 4. **Proceedings raising same issues:** None that the Respondent is aware of.

2 5. **Procedural history:** Respondent is satisfied with the procedural
3 history set forth in the fast track statement.

4 6. **Statement of facts:**

5 On October 8, 2021, Appellant, Duggal, plead no contest to conspiracy to
6 commit battery, a gross misdemeanor as defined by NRS 199.480 and NRS
7 200.481. Appellants Appendix(AA) 23. On December 10, 2021, Duggal was
8 sentenced to serve 364 days in jail. AA 23-24. At the sentencing hearing the
9 district court articulated the basis for its sentencing decision. *See* AA 42-44.

10 The district court made clear it was not putting much weight, if any, on the
11 reference in the presentence investigation report to Duggal committing similar
12 acts against other people. AA 42. The district court instead explained that what
13 was of concern was the alleged facts of this case alone. AA 42. The court found
14 the underlying facts “disturbing enough.” AA 42.

15 The lower court went on to describe exactly what about the facts was
16 disturbing. *See id.* Specifically, the district court pointed to singling out a
17 person, acquiring and attempting to use alcohol to reduce the inhibitions of the
18 person, putting the person in an untenable position, the person (victim)
19 expressing displeasure or lack of acceptance multiple times, attempts to cover-
20 up what happened by telling the victim not to disclose to her mother what

1 occurred. AA 42. The district court judge then explained, “I think this is a very
2 serious offense...”. AA 43:5.

3 The district court then explained that even in light of a defendant not
4 having any criminal history, the offense in and of itself can lend itself to serious
5 penalties. AA 43. The court then concluded that this was just such a case where
6 the serious nature of the offense itself required a serious penalty. AA 43. The
7 court made no reference to the State’s arguments as a basis for its decision
8 except that it was following the recommendation of 364 days in jail. *See* AA
9 42-44.

10 **7. Issues on appeal:**

11 The district court did not abuse its discretion when it relied on evidence it
12 found credible at the sentencing hearing and ordered a term of incarceration that
13 conforms with statutory law.

14 **8. Legal argument:**

15 District courts have wide discretion in sentencing decisions. *See Houk v.*
16 *State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379(1987). Such decisions are not
17 considered an abuse of discretion, “[s]o long as the record does not demonstrate
18 prejudice resulting from consideration of information or accusations founded on
19 facts supported only by impalpable or highly suspect evidence.” *Silks v. State*,
20 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).

1 Moreover, because the Legislature has determined the sentencing
2 limitations and alternatives that district courts may impose on criminals, it is
3 presumptively improper for a reviewing court to superimpose its own views on
4 sentences of incarceration lawfully pronounced by the sentencing judge. *Sims v.*
5 *State*, 107 Nev. 438, 440, 814 P.2d 63, 64 (1991).

6 In *Silks v. State*, Donald Silk challenged his sentence based on facts
7 contained in his PSI. *See Silks v. State*, 92 Nev. 91, 545 P.2d 1159 (1976).
8 Rejecting his challenge, the Nevada Supreme Court pointed out that nothing in
9 the presentence report contained information of a mendacious character, or in
10 other words untruthful, dishonest, or false. *Id.*

11 The Nevada Supreme Court illustrated in *Silks* the burden of an appellant
12 to show prejudice by pointing to the underlying facts in *U.S. v. Weston*, 448
13 F.2d 626(9th Cir. 1971), a case that Silks heavily relied on in his appeal. In
14 *Weston*, the weight afforded pernicious material contained in the PSI was
15 manifested when, before reviewing the presentence report, the sentencing court
16 expressed its inclination to impose the minimum sentence; then, after reviewing
17 the report, it imposed the maximum sentence. *Silks*, 92 Nev. 91, 93(1976).

18 In an attempt to meet this burden, Duggal argues that the State's
19 recommendation was based on highly suspect or impalpable information and
20 that the district court relied on this information. Fast Track Statement, 5-6.

1 Unfortunately, without the PSI as part of the record on appeal, the State cannot
2 substantively address the attack on the State's arguments at sentencing.
3 Regardless, the problem with Duggal's argument is the two and one-half pages
4 of transcript in which the district court makes quite clear that it was *not* the
5 information highlighted by the State that persuaded it to order the full 364 days.
6 Instead, it was the severity of the underlying facts of the offense itself. *See* AA 42-
7 44. Thus, Duggal's argument turns on an assumption that is belied by the
8 district court's own words at sentencing.

9 The standard laid out in Nevada case law makes clear that the district
10 court's sentence is presumptively valid. *See Silks*, 92 Nev. 91(1976). The
11 exception to this presumption is not based on what was argued by the State but
12 instead what the district court actually considered in deciding the penalty. *See*
13 *Smith v. State*, 112 Nev. 871, 920 P.2d 1002(1996)(Smith did not demonstrate
14 that the district court relied on the State's allegedly misleading characterization
15 of him). The district court in this case found the offense in and of itself very
16 serious and as such one that required serious penalties. AA 43. It gave little if
17 any weight to the arguments alleged by Duggal to have been based on highly
18 suspect or impalpable information. *See* AA 42:14-15.

19 **9. Preservation of issues:**
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1 Duggal's challenge of the sentencing decision in this matter does not
2 appear to raise a procedural bar based on preservation.

3 **10. Court of Appeals assignment statement pursuant to NRAP 17:**

4 This case involves a direct appeal from a Judgment of Conviction that does
5 not involve a conviction for any offense that is a category A or category B
6 felony. See NRAP 17(b)(1). As such, it appears this case will be presumptively
7 assigned to the Court of Appeals. The State does not contend that the Supreme
8 Court should retain this appeal.

1 VERIFICATION

2 I hereby certify that this fast track response complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6). This fast track response has
5 been prepared in a proportionally spaced typeface using Microsoft Office Word
6 2020, in size 14 point Times New Roman font.

7 I further certify that this fast track response complies with the type-volume
8 limitations of NRAP 3C(h)(2) because it contains 1057 words.

9 I recognize that pursuant to NRAP 3C I am responsible for filing a timely
10 fast track response and that the Supreme Court of Nevada may sanction an
11 attorney for failing to file a timely fast track response, or for failing to cooperate
12 fully with appellate counsel during the course of an appeal.

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1 I therefore certify that the information provided in this Fast Track
2 Response is true and complete to the best of my knowledge, information and
3 belief.

4 DATED this 7th day of February, 2022.

5
6 TYLER J. INGRAM
ELKO COUNTY DISTRICT ATTORNEY
7 540 COURT STREET, 2nd Floor
Elko, NV 89801
8 (775) 738-3101

9 By: _____


10 JEFFREY C. SLADE
Deputy District Attorney
11 State Bar Number: 13249
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1 CERTIFICATE OF COMPLIANCE

2 I hereby certify that this fast track response complies with the formatting
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5)
4 and the type style requirements of NRAP 32(a)(6). This fast track response has
5 been prepared in a proportionally spaced typeface using Microsoft Office Word
6 2020, in size 14 point Times New Roman font.

7 I further certify that this brief complies with the type-volume limitations of
8 NRAP 32(a)(7) because, excluding the parts of the fast track response exempted
9 by NRAP32(a)(7)(C), it contains 1057 words.

10 Finally, I further certify that I have read this fast track response, and to
11 the best of my knowledge, information, and belief, it is not frivolous or
12 interposed for any improper purpose. I further certify that this brief complies
13 with all applicable Nevada Rules of Appellate Procedure, in particular NRAP
14 28(e)(1), which requires every assertion in the response regarding matters in the
15 record to be supported by a reference to the page and volume number, if any, of
16 the transcript or appendix where the matter relied on is to be found.

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1 I understand that I may be subject to sanctions in the event that the
2 accompanying response is not in conformity with the requirements of the
3 Nevada Rules of Appellate Procedure.

4 DATED this 7th day of February, 2022.

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By: 

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