IN THE SUPREME COURT OF THE STATE OF NEVADA

APRIL PARKS,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 84612

RESPONDENT'S ANSWERING BRIEF

Appeal From Amended Judgment of Conviction
Eighth Judicial District Court, Clark County

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ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(1) because it is an appeal from a judgement of conviction based on a plea of guilty (Alford) and pursuant to NRAP 17 (b)(3) because the offenses are not Category A felonies.

STATEMENT OF THE ISSUE(S)

1. Whether Parks can appeal the district court's restitution order as to plain error.
2. Whether the district court abused its discretion in calculating and ordering restitution.
3. Whether Parks received a cruel and unusual sentence.

STATEMENT OF THE CASE

On March 8, 2017, Appellant April Parks was charged by way of Indictment with Two Hundred and Seventy (270) Counts including: Racketeering (Category B

Felony – NRS 207.400 – NOC 53190); Theft (Category B Felony – NRS 205.0832, 205.0835.4 – NOC 55991); Exploitation of an Older Person (Category B Felony – NRS 200.5092, 200.5099 – NOC 50304); Exploitation of an Older Person/Vulnerable Person (Category B Felony – NRS 200.5092, 200.5099 – NOC 55984); Theft (Category C Felony – NRS 205.0832, 205.0835.3 – NOC 55989); Offering False Instrument for Filing or Record (Category C Felony – NRS 239.330 – NOC 52399); and Perjury (Category D Felony – NRS 199.120 – NOC 52971). II Appellant's Appendix ("AA") 227–349.

On November 5, 2018, Parks pleaded guilty pursuant to North Carolina v. Alford, 400 U.S. 25, 91 S. Ct. 160 (1970), to: Two (2) Counts of Exploitation of an Older Person/Vulnerable Person (Category B Felony – NRS 200.5092, 200.5099 – NOC 55984); Two (2) Counts of Theft (Category B Felony – NRS 205.0832, 205.0835.4 – NOC 55991); and One (1) Count of Perjury (Category D Felony – NRS 199.120 – NOC 52971). II AA 375–89.

Parks was sentenced on January 4, 2019. III AA 443–565. On January 10, 2019, the Judgement of Conviction was filed, stating Parks was sentenced to an aggregate total of four hundred eighty (480) months maximum with a minimum of one hundred ninety-two (192) months and a total of $559,205.32 restitution to be paid jointly and severally with co-defendants. III AA 568–70. On February 4, 2019,

an Amended Judgment of Conviction was filed to correct the total restitution to $554,397.71 because one victim was originally named twice. III AA 576–578.

On December 27, 2019, Parks filed a Petition for Writ of Habeas Corpus. III AA 585–97. On September 30, 2020, Parks filed a Supplemental Petition for Writ of Habeas Corpus. III AA 598–634. The Attorney General filed an Answer to the Petition on December 31, 2020. III AA 635–IV AA 775. Parks filed a Reply to the Answer on January 25, 2021. IV AA 782. On February 22, 2021, the district court denied grounds one and two and granted an evidentiary hearing as to ground three of the Petition. IV AA 784–796. The evidentiary hearing was held on March 18, 2021. IV AA 797–848. On April 12, 2021, the district court entered an order denying the Petition for Writ of Habeas Corpus. IV AA 851–57. Parks appealed the decision commencing case no. 82876 in the Nevada Supreme Court. IV AA 870–V AA 941. On March 4, 2022, the Nevada Court of Appeals issued an order affirming in part and reversing in part. V AA 1018–031. The Nevada Court of Appeals concluded that the district court erred by finding that counsel did not have a duty to pursue a direct appeal and remanded the matter back to district court to comply with NRAP 4(c). V AA 1028.

On April 22, 2022, Parks filed a Notice of Appeal. V AA 1072–073.

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STATEMENT OF THE FACTS

This statement of facts is taken from the Presentence Investigation Report ("PSI") filed on December 10, 2018:

> In April 2015, the Attorney General's Office (AG) investigated a series of complaints regarding April Parks, the defendant, alleging misconduct in her guardianship cases. The AG's Office further discovered that the Las Vegas Metropolitan Police Department (LVMPD) had received some of the same complaints and jointly investigated the matter.
>
> They discovered Parks, who had been a professional guardian for approximately l2 years and failed to comply with the law in filing statutory financial legal documents with the court. She had been appointed guardian in hundreds of cases in Clark County, including a probate administrator. Parks was certified as a registered legal guardian and a nationally certified guardian. It was discovered that in 2011 she formed A Private Professional Guardian, LLC.
>
> On September l, 2015, the AG's Office and the LVMPD executed search warrants for Parks' business and her home. With her consent they searched storage units that held property belonging to wards and some older case files. They reviewed extensive financial records and medical records for medical services that most of her wards received and reviewed documents related to third party caregiver services that Parks conducted business with.
>
> April Parks had been operating a criminal enterprise where through the use of filing false documents with the court she concealed a criminal enterprise, racketeering and fraudulently billed her wards for services she did not render.

It was determined that Mark Simmons, the co-defendant was Parks assistant and officer manager. He was also a certified and nationally certified guardian and he made the day-to-day decisions, to include banking and billing.

Gary Taylor, another co-defendant, performed a series of errands for Parks and was paid $20 an hour until July 2014, when he was given a monthly salary of $3,200.

Parks fraudulently billed wards for services rendered and filed false documents with the court. She made false misrepresentations that enabled her to take authority over a ward's assets when she had no right to do so. She also changed the beneficiary of a $25,000 life insurance policy and took the money to pay herself and her attorneys and then failed to provide an annual final accounting for the victim. Parks and Simmons billed an elderly woman $120 an hour for daily visits, she was this victim's guardian for 36 days. Parks received guardianship for another victim, but failed to inform the victim's son. She hired a professional estate sale company and the estate sale lasted three days. She billed the victim for ten hours daily; however, it was later discovered she was not at the estate sale for ten hours on those three days. In another case, she was appointed guardian of a victim on June 6, 2012, the victim died two days later. Parks withdrew his $4,807.61 from his bank account after his death. She paid herself for services she rendered to him after his death. She routinely filed Social Security applications and billed travel to the Social Security offices. She billed six victims a total of two hours to be at the Social Security Office for an interview and claimed she was at the office for 12 hours.

Simmons deposited checks for the wards at a local bank which was located within minutes from Parks office. He billed each person 30 minutes for performing these tasks. Bank records revealed that he took less than 30 minutes and he made deposits for multiple wards, sometimes as many as 20. He increased his hourly professional rate and billed between $60 and $75 for this half hour service.

When these records were investigated he reported ten hours to complete these check deposits.

Taylor was tasked to drive to the courthouse wait in line and have court clerks file court documents. Parks and Simmons had e-filing accounts with the courts and could e-file the same court documents in minutes from their offices. However, when Taylor performed this task he filed paperwork for multiple wards and billed the wards excessively and multiple billed and reported it took him between 90 minutes to two hours each to do this task. He would represent it took him 12 hours to be at court filing paperwork on behalf of a small group of wards.

On Halloween of 2013, Taylor picked up the cremated remains of four wards at a local mortuary and overbilled representing this task too him several hours. On the same day, he billed nine wards who lived at the same assisted living facility in Boulder City approximately $90 each to drop off toiletries. For the hours he worked that day he billed $1,405.20.

In December 18, 2013, Simmons billed 48 wards $30 each to drop off a Christmas gift. Parks and Simmons performed one service that benefited multiple wards but all the wards were billed for the entire duration of the service. Parks and Simmons fraudulently billed serves that were not necessary. Parks failed to notify those with power of attorney of the dates of the hearings and they were unable to challenge the petitions and the Guardianship superseded the Power of Attorney.

This extensive investigation revealed that Ms. Parks along with the co-defendants exploited the older victims, (victims 1 through 20) by using guardianships and converting their money, assets or property intending to permanently deprive them of the ownership, use, benefit, or possession of these victims money, assets, or property valued at more than $5,000 while working as the guardian and fiduciary, overbilled visits, social security visits,

> shopping trips, court filings and banking visits, and/or billed for unnecessary services or services not performed, thereby exploiting them in the amount of approximately $263,506.45.
>
> Ms. Parks directly committed this crime and/or aided or abetted in the commission of this crime and provided counsel and/or encouragement and entered into a course of conduct whereby she acted as the guardian and overcharged ward visits, shopping trips, bank deposits, and/or other tasks on behalf of a Private Professional Guardian LLC, that did not benefit the victims or did not occur and directed Mark Simmons and Gary Neal Taylor, to do the same.
>
> Ms. Parks used the services or property of another person entrusted to her, or placed in her possession having a value of $3,500 or more by working in her role as guardian and fiduciary, overbilled for visits, social security visits, shopping trips, court filings, and banking visits, and/or billed for unnecessary services or services not performed and unlawfully converted money belonging to victims (21 through 39) in the amount of approximately $149,435.57.

PSI at 4–6.[1]

SUMMARY OF THE ARGUMENT

Parks argues the restitution order was inaccurate constituting plain error and the district court abused its discretion ordering it. However, counsel did not object at the trial level, waiving the issue. In addition, the restitution is correct as counsel fails to recognize Parks' other case. Furthermore, Parks alleges that her sentence

[1] Appellant has filed a Motion to Transmit Presentence Investigation Report, Respondent now joins said Motion.

constitutes cruel and unusual punishment. However, Parks' sentence is within the legal framework mandated by statute. Because the restitution order is appropriate and was agreed to, and the sentence is not cruel and unusual punishment, this Court should affirm Parks' Amended Judgment of Conviction.

ARGUMENT

I. PARKS HAS NOT DEMONSTRATED PLAIN ERROR TO OVERCOME WAIVER

a. Restitution issues are waived due to failure to object.

During the duration of this case, defense counsel never objected to the amount of restitution. "A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal." Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). Therefore, the issue of the amount of restitution is not preserved and only reviewable for plain error. See Jeremias v. State, 134 Nev. 46, 55, 412 P.3d 43, 52 (2018) ("Because the objection below was on a different basis than the claim asserted on appeal, we review for plain error.").

Parks "agreed to pay full restitution in an amount of $559,205.32, jointly and severally between myself . . ." in her signed Guilty Plea Agreement, which defense counsel never objected to. II AA 376. In addition, Parks orally agreed to the same amount when entering her plea, which defense counsel never objected to. II AA 354–

55. Again, Parks was ordered to pay the same amount at sentencing, which defense counsel never objected to.[2] III AA 564.

b. Parks has not demonstrated plain error.

Parks argues the alleged plain error of the restitution amount affected her substantial rights. Appellant's Opening Brief ("AOB") at 10–13. Parks admits that

[2] Parks previously appealed the denial of her Petition for Writ of Habeas Corpus where the Nevada Court of Appeals ruled counsel was not ineffective for failing to challenge the restitution amount at the sentencing hearing.

> Second, Parks claimed her counsel was ineffective for failing to challenge the restitution amount at the sentencing hearing. In the guilty plea agreement, Parks agreed to be responsible for paying more than $500,000 in restitution for this case and a separate criminal case. At the sentencing hearing, counsel acknowledged that the restitution agreed to in the plea agreement encompassed this case and Parks' additional case. The sentencing court subsequently imposed restitution in accordance with the guilty plea agreement. In light of the guilty plea agreement, Parks did not demonstrate that her counsel's performance fell below an objective standard of reasonableness by failing to challenge the restitution amount at the sentencing hearing. Parks also failed to demonstrate a reasonable probability of a different outcome had counsel objected to the restitution amount. Therefore, we conclude that the district court did not err by denying this claim without considering it at the evidentiary hearing.

Order Affirming in Part, Reversing in Part and Remanding Case No. 82876-COA. V AA 1021.

she failed to timely object so the challenge to the restitution order is waived and is subject only to plain error review. AOB at 10. Plain error review asks:

> "To amount to plain error, the 'error must be so unmistakable that it is apparent from a casual inspection of the record.'" Vega v. State, 126 Nev. __, __, 236 P.3d 632, 637 (2010) (quoting Nelson, 123 Nev. at 543, 170 P.3d at 524). In addition, "the defendant [must] demonstrate [] that the error affected his or her substantial rights, by causing 'actual prejudice or a miscarriage of justice.'" Valdez, 124 Nev. at 1190, 196 P.3d at 477 (quoting Green v. State, 119 Nev. 542, 545, 80 P.3d 93, 95 (2003))). Thus, reversal for plain error is only warranted if the error is readily apparent and the appellant demonstrates that the error was prejudicial to his substantial rights.

Martinorellan v. State, 131 Nev. 43, 49, 343 P.3d 590, 593 (2015).

At a casual inspection of the record, there is no error regarding the amount of restitution. First and most importantly, Parks alleges $141,454.69 excess was awarded without any explanation or support. AOB at 12. This is belied by the record. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). At sentencing the district court judge asked to clarify if the restitution was an aggregate total of both of Parks' cases, as the other (C-18-329886-2 - Sealed) was to run concurrent to the instant case. III AA 455; II AA 376. Defense counsel then agreed that the "500 and something thousand dollars" would satisfy the whole restitution. III AA 455. Additionally, as noted in footnote 2, the Nevada Court of Appeals

recognized the amount of restitution that was agreed to in the plea agreement encompassed this case and Parks' additional case. V AA 1021.

Second, counsel never objected to the restitution amount after having worked on the case for nearly two (2) years. Third, the Indictment states each amount stolen from each victim extensively through the two hundred and seventy (270) counts listed in accordance with NRS 176.033(3). II AA 227–348. NRS 176.033(3) provides the Court's authority to order restitution: "The restitution provision contained in NRS 176.033 authorizes courts, when sentencing defendants convicted of offenses for which imprisonment is required or permitted by statute, to 'set an amount of restitution for each victim of the offense.'" Erickson v. State, 107 Nev. 864, 866, 321 P.2d 1042, (1991). Fourth, "[A] defendant may be ordered to pay restitution only for an offense that he has admitted, upon which he has been found guilty, or upon which he has agreed to pay restitution." Id. As argued *supra* Section I (a), Parks "agreed to pay full restitution in an amount of $559,205.32, jointly and severally between myself . . ." in her signed Guilty Plea Agreement. II AA 376. In addition, Parks orally agreed to the same amount when entering her plea. II AA 354–55. Last, the district court called a Clarification of Restitution Hearing to amend the Judgment of Conviction as to restitution because one victim had been named twice. III AA 573. In addition, at this hearing it was stated:

> THE COURT: Okay. So we will strike the second order of restitution for Mr. William Flewellen so that would make

> the total of restitution that is owed by each defendant $412,943.02 and that will be jointly and severally between all the defendants and it's ordered in all the cases.
> MR. GOLDSTEIN: Your Honor, could we approach.
> THE COURT: Yes.
> (Bench conference.)
> THE COURT: Okay. So the Court was wrong in their calculation. So the new restitution figure that is owed by the defendants is $554,397.71 to be paid jointly and severally by all the defendants in all of the cases.

III AA 573–74. Therefore, even when the district court attempted to bring the restitution down to more in line with the arguments of the AOB, Parks' attorney called a bench conference to correct the court. III AA 574. It can be assumed that her attorney was reminding the court of her other case. Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing appellate court with portions of the record necessary to resolve claims on appeal); M&R Investiment Company, Inc. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987) ("It is [Appellant's] … responsibility…to make and transmit an adequate appellate record to this court. When evidence upon which the lower court's judgment rests in not included in the record, it is assumed that the record supports the district court's decision."); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). In addition, counsel for the co-defendants never objected as well. III AA 572–74. Concluding, there is no plain error.

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c. The amount of restitution did not result in prejudice.

Parks argues, ". . . because the State used this 'extremely large amount' of restitution to justify the 'maximum' prison sentence, this error also arguably affected the length of Parks' incarceration. By this logic, a larger restitution figure reflects greater harm caused by the defendant, thus necessitating harsher punishment." AOB at 13. However, Parks then admits, "Whether the State's argument influenced the district court's decision cannot be proven. . ." AOB at 13. But then goes onto say, ". . . but the court clearly found the State persuasive as it adopted the restitution amount the State provided and ordered a much longer sentence than what PSI Report recommended." AOB at 13. This argument is belied by the record.

First, the court did not "adopt" the restitution amount the State provided. While the state calculated the amount, Parks agreed to pay it in her Guilty Plea Agreement, and so the court went with her signed agreement. II AA 376. In addition, as stated before, the court clarified the amount at sentencing and it was stipulated to. III AA 455, 464.

Last, the court did consider the recommendation of Parole and Probation in Parks' PSI, and found it to be "not accurate." III AA 563. In fact the court said,

> These people that have Scotch tapped their shoes together, these people that are being charged for getting Christmas gifts, these people that don't have food to eat, how is that not bringing harm to them. And to hear from the people who actually are able to be present today is just absolutely shocking to me that you continued in this

> behavior. And you went to court and these documents were filed and at no point did anything occur to you until this investigation happened that this is absolutely not appropriate. The actions that you took in this case are just downright offensive. I have no idea how parole and probation only thinks that you deserve 64 months on the bottom, because that is absolutely not accurate and that is absolutely what is not about to happen today.

III AA 563. Clearly, the amount of prison time was not determined by the amount of restitution, it was determined by the "downright offensive" actions of Parks. Therefore, the amount of restitution did not result in prejudice as the amount was agreed to and the court made its decision based on Parks' actions in this case and the other. III AA 563–65.

II. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION

a. The "excess" restitution amount.

Parks argues there is an unexplained $141,454.69 in the restitution order. AOB at 15–17. As argued above, this amount goes to a global negotiation within Parks' two cases. At sentencing the district court judge asked to clarify if the restitution was an aggregate total of both of Parks' cases, as the other (C-18-329886-2 - Sealed) was to run concurrent to the instant case. III AA 455; II AA 376. Defense counsel then agreed that the "500 and something thousand dollars" would satisfy the whole restitution. III AA 455. Additionally, as noted in footnote 2, the Nevada Court of Appeals recognized the amount of restitution that was agreed to in the plea

agreement encompassed this case and Parks' additional case. V AA 1021. The agreement in case C-18-329886-2 cannot be discussed as it is sealed.

b. The silent record supports the district court's restitution order.

Further, Appellant's failure to make a record and include the material in the record by making a proffer, asking that they be made an exhibit or by filing them justifies summary denial of the claim. Thomas v. State, 120 Nev. 37, 43 & n.4, 83 P.3d 818, 822 & n.4 (2004) (appellant is ultimately responsible for providing appellate court with portions of the record necessary to resolve claims on appeal); M&R Investiment Company, Inc. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987) ("It is [Appellant's] … responsibility…to make and transmit an adequate appellate record to this court. When evidence upon which the lower court's judgment rests in not included in the record, it is assumed that the record supports the district court's decision."); Greene v. State, 96 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper appellate record rests on appellant."). In this case, to have a proper argument against the $141,454.69 from Parks' other case, it was her duty to motion that the agreement be unsealed and included in the record of this case, rather than not taking a proper look at the record to recognize this number does in fact have "rationale or justification."

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c. The restitution calculation.

Parks argues that two of the victims' restitutions were not calculated correctly. AOB at 18. Regarding Ms. Trumbich, Parks alleges that $50,000 was repaid to her estate prior to this case. AOB at 18. However, that is not entirely accurate. Parks fraudulently took guardianship over Ms. Trumbich and took control of her assets amounting to $167,204.49. I AA 96. In the short three (3) months that Parks had guardianship over Ms. Trumbich before her death, Parks paid herself around $117,000. I AA 96–97. "When the guardianship concluded April Parks ultimately sent a check for around $50,000 back to [Ms. Trumbich's] estate *once it went to probate court*." I AA 97 (emphasis added). Parks provides no evidence of a check, and if it does exist it was only returned to the estate after Ms. Trumbich's death when the probate court would have noticed it was gone. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Hargrove at 502, 686 P.2d at 225.

Regarding Mr. Burns, Parks alleges there is evidence that an $8,529.84 return had already been received by victim Mr. Burns. AOB at 18. However, Parks only cites to a prior Appellant's Opening Brief written by another attorney. The statement of an attorney is not evidence. Rudin v. State, 120 Nev. 121, 138, 86 P.3d 572, 583 (2004). In addition, Parks does not provide such evidence of payment and the failure to do so is fatal because a silent record is presumed to support the decision

below. M&R Investment Company, Inc. v. Mandarino, 103 Nev. 711, 718, 748 P.2d 488, 493 (1987); Schouweiler v. Yancey Co., 101 Nev. 827, 712 P.2d 786 (1985); Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 476, 635 P.2d 276, 277 (1981); Raishbrook v. Bayley, 90 Nev. 415, 416, 528 P.2d 1331, 1331 (1974); Kockos v. Bank of Nevada, 90 Nev. 140, 143, 520 P.2d 1359, 1361 (1974). Parks again asserts an insufficient "bare" and "naked" allegation. Hargrove at 502, 686 P.2d at 225.

Thus, the restitution order was calculated correctly. Additionally, as argued above, Parks agreed to the restitution in her Guilty Plea Agreement. II AA 376.

III. PARKS' SENTENCE DOES NOT CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT

Parks argues that her prison sentence constitutes cruel and unusual punishment. AOB at 19–24. The Eighth Amendment to the United States Constitution as well as Article 1, Section 6 of the Nevada Constitution prohibit the imposition of cruel and unusual punishment. The Nevada Supreme Court has stated that "[a] sentence within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Allred v. State, 120 Nev. 410, 92 P.2d 1246, 1253 (2004) (quoting Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting Culverson v. State, 95 Nev. 95 Nev. 433, 435, 596 P.2d 220, 221-22 (1979).

Additionally, the Nevada Supreme Court has granted district courts "wide discretion" in sentencing decisions, and these are not to be disturbed "[s]o long as the record does not demonstrate prejudice resulting from consideration of information or accusations founded on facts supported only by impalpable or highly suspect evidence." Allred, 120 Nev. at 410, 92 P.2d at 1253 (quoting Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976). A sentencing judge is permitted broad discretion in imposing a sentence and, absent an abuse of discretion, the district court's determination will not be disturbed on appeal. Randell v. State, 109 Nev. 5, 8, 846 P.2d 278, 280 (1993) (citing Deveroux v. State, 96 Nev. 388, 390, 610 P.2d 722, 723-724 (1980). As long as the sentence is within the limits set by the Legislature, a sentence will normally not be considered cruel and unusual. Glegola v. State, 110 Nev. 344, 348, 871 P.2d 950, 593 (1994).

A sentence will not be deemed cruel and unusual if it is within the statutory range unless the statute fixing the punishment is unconstitutional, or the sentence is so unreasonably disproportionate to the offense as to shock the conscience. Chavez v. State, 125 Nev. 328, 348, 213 P.3d 476, 489 (2009); Allred, 120 Nev. at 420, 92 P.2d at 1253. A punishment is considered "excessive" and unconstitutional if it: '"(1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime."' Pickard v. State, 94

Nev. 681, 684, 585 P.2d 1342, 1344 (1978) (quoting Coker v. Georgia, 433 U.S. 584, 592, 97 S. Ct. 2861, 2865 (1977).

In Houk v. State, the defendant was convicted of three (3) counts of "issuance of no account check" and two counts of uttering forged instrument. Houk v. State, 103 Nev. 659, 747 P.2d 1376 (1987). Houk received a total of five (5) ten (10) year sentences, all consecutive, and appealed her sentence as disproportionate. The Nevada Supreme Court reinforced Nevada guidelines that "[o]rdinarily, a sentence of imprisonment that is within the statutory limits is not considered cruel and unusual punishment." Houk at 664, 747 P.2d at 1378 (citing Schmidt v. State, 94 Nev. 665, 584 P.2d 695 (1978). Recognizing the substantial deference owed the legislature and sentencing courts, the Houk Court concluded that the maximum allowable penalty on each crime, each running consecutively, was proportionate to the defendant's crimes. Id. at 664, 747 P.2d at 1379.

This Court has consistently echoed its standard of review for claims of excessive criminal sentences. Recently, this Court was clear regarding the applicable standard for such claims in Harte v. State, 132 Nev. 410, 373 P.3d 98 (2016). Specifically, the Harte Court explained:

> Regardless of its severity, a sentence, that is "within the statutory limits is not 'cruel and unusual punishment unless the statute fixing punishment is unconstitutional or the sentence is so unreasonably disproportionate to the offense as to shock the conscience.'" Blume v. State, 112 Nev. 472, 475, 915 P.2d 282, 284 (1996) (quoting

> Culverson v. State, 95 Nev. 433, 435, 596 P.2d 220, 221–22 (1979)); *see also* Harmelin v. Michigan, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (plurality opinion) (explaining that "[t]he Eighth Amendment does not require strict proportionality between crime and sentence[;] ... it forbids only extreme sentences that are 'grossly disproportionate' to the crime" (citation omitted)).

Id. at 414, 373 P.3d at 102. The Harte Court also expressly stated, "we do not review nondeath sentences for excessiveness." Id.

Parks complains her sentence is cruel and unusual because of her age, and age at parole eligibility. AOB at 22–23. These are not grounds for a sentence to be deemed cruel and unusual punishment. Parks' sentence is within the legal framework mandated by statute and is not out of proportion to the severity of the crime. The district court sentenced Parks to a minimum of one hundred and ninety-two (192) months and a maximum of four hundred eighty (480) months in the Nevada Department of Corrections. Pursuant to NRS 200.5099(3), at the time of Parks' sentencing, "any person who exploits an older person or a vulnerable person shall be punished: for a Category B felony by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 20 years" and NRS 205.0835, "a person who committed the theft is guilty of a Category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years." Thus,

Parks' sentence is not unconstitutional as her sentence is within the statutory limits of the penalty range for the offenses for which she was convicted.

In addition, it is important to note the original Indictment contained two hundred and seventy (270) counts. II AA 227–349. Parks allegedly committed crimes against approximately one hundred and fifty (150) victims of elderly age and vulnerable status. II AA 228–29. She betrayed the trust of the victims and the public. Additionally, she betrayed the trust of the court by filing fraudulent documents. III AA 563. The sentence she received was at the benefit of her GPA and not the original charges and therefore more lenient.

CONCLUSION

Wherefore, the State respectfully requests that Parks' Amended Judgment of Conviction be AFFIRMED.

Dated this 29th day of November, 2022.

Respectfully submitted,

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BY */s/ Jonathan E. VanBoskerck*
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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 Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and 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, contains 5,200 words and does not exceed 30 pages.
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 record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 29th day of November, 2022.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 29, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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