

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILLIAM JOSEPH GROW,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

) CASE NO. 84138

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) **REPLY TO FAST TRACK**

) **RESPONSE**

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Apr 17 2022 09:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**1)The State’s analysis about credit for time served should
be rejected.**

On page 5 of the Fast Track Response, the State has chosen to use sensationalistic themes to try to describe Mr. Grow’s position on this appeal. Such examples are the use of the phrase “triple credit for time served” as well as “credit for 319 days for the 129 days he actually spent in custody.” On page 6 of the Fast Track Response, the State repeats itself by stating that Mr. “Grow claims that the district court erred by not awarding him a total aggregate credit of 319 days for the 129 days he actually served in jail.”

1 While the State feels the compelling need to use the number “319”
2 in its brief, the fact is that this Court already awards credit for time
3 served on multiple cases in the context of concurrent sentences. The
4 case of White-Hughley v. State, 495 P.3d 82, 86 (Nev. 2021),
5 underscores this principle and this Court stated “that where a
6 defendant simultaneously serves time in presentence confinement for
7 multiple cases and the resulting sentences are served concurrently,
8 credit for time served must be applied to each case.”
9

11 As such, if a criminal defendant receives five (5) concurrent
12 sentences wherein he/she/they serves 100 days in jail on all five (5)
13 charges simultaneously, a prosecutor could just as easily say that the
14 defense is asking for “500 days credit for 100 days actually served.”
15

17 As applied to the instant case, Mr. Grow simply asks that this
18 Court apply the same principle for consecutive sentences has it has
19 already done for concurrent sentences last year. The law should trump
20 the lofty language used in the Fast Track Response.
21

22 But the State goes to the extreme of stating that Mr. Grow’s
23 “argument is contrary to Nevada law and common sense.” If either side
24

1 is making an argument contrary to Nevada law and common sense, it is
2 the District Attorney's Office of the County of Elko.

3 As the State did in the Fast Track Response on page 7, the defense
4 will cite the pertinent passage from NRS 176.055:
5

6 1. Except as otherwise provided in subsection 2, whenever a
7 sentence of imprisonment in the county jail or state prison is
8 imposed, the court may order that credit be allowed against
9 the duration of the sentence, including any minimum term
10 or minimum aggregate term, as applicable, thereof
11 prescribed by law, for the amount of time which the
12 defendant has actually spent in confinement before
13 conviction, unless the defendant's confinement was pursuant
14 to a judgment of conviction for another offense. Credit
15 allowed pursuant to this subsection does not alter the date
16 from which the term of imprisonment is computed.

17 2. A defendant who is convicted of a subsequent offense
18 which was committed while the defendant was:

19 (a) In custody on a prior charge is not eligible for any
20 credit on the sentence for the subsequent offense for time the
21 defendant has spent in confinement on the prior charge,
22 unless the charge was dismissed or the defendant was
23 acquitted.

24 (b) Imprisoned in a county jail or state prison or on
25 probation or parole from a Nevada conviction is not eligible
for any credit on the sentence for the subsequent offense for
the time the defendant has spent in confinement which is
within the period of the prior sentence, regardless of
whether any probation or parole has been formally revoked.

(Emphasis added.)

1 The operative word in NRS 176.055 is “actually.” Mr. Grow
2 “actually” served 62 days in custody at the time of the sentencing in the
3 instant case. *Presentence Investigation Report 11*. To claim that he was
4 not “actually” serving 62 days on the instant case is to deny reality.
5

6 What part of NRS 176.055 would prohibit awarding this credit of
7 62 days to Mr. Grow? None. Instead of restricting its legal argument to
8 case law and statutory language, the State resorts to the use of
9 language that is inflammatory.
10

11 As to this inflammation, the examples in the Fast Track Response
12 include: (1) on page 11, characterizing Mr. Grow’s actions from the year
13 2021 as his “summer crime spree,” (2) on page 4, noting that it was
14 forbearing prosecution on “myriad charges,” (3) on page 4, highlighting
15 that Mr. Grow “beat[] his girlfriend and then drew a knife when her
16 ‘kids’ intervened to protect her,” (4) on page 4, averring that Mr. Grow
17 “stabbed his nephew and his nephew’s uncle,” (5) on page 4, proclaiming
18 that Mr. Grow “then made various attempts to intimidate or
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1 manipulate victims and witnesses to not testify or to change their
2 story,”¹ and (6) on page 5, labeling the “acts underlying the four
3 charges” as “brazen and violent.” Do any of these assertions have any
4 germaneness to the issue of credit for time served? No.
5

6 Between the State’s reliance on inflammation and Mr. Grow’s
7 reliance on clearly defined case law and the plain text of NRS 176.055,
8 Mr. Grow’s position should prevail.
9

10 Mr. Grow asks that the word “actually” not be redefined and that
11 he be awarded credit for time served of 62 days before his sentencing
12 that he “actually” served.
13

14 VERIFICATION

15
16 1. I hereby certify that this reply to fast track response complies
17 with the formatting requirements of NRAP 32(a)(4), the typeface
18 requirements of NRAP 32(a)(5) and the type style requirements of
19 NRAP 32(a)(6) because this reply to fast track response has been
20

21
22
23 ¹ The fact that Mr. Grow was never found guilty of Intimidating a
24 Witness makes such a remark that much more inflammatory.
25

1 prepared in a proportionally spaced typeface using Microsoft Word in
2 size 14 Century Schoolbook font.

3 2. I further certify that this reply to fast track response complies with
4 the page- or type-volume limitations of NRAP 3C(h)(2) because it is
5 either:
6

7 [x] Proportionately spaced, has a typeface of 14 points or more,
8 and contains 1,272 words; or
9

10 [] Monospaced, has 10/5 or fewer characters per inch, and
11 contains ____ words or ____ lines of text; or
12

13 [] Does not exceed 5 pages.

14 3. Finally, I recognize that pursuant to NRAP 3C, the Supreme
15 Court of Nevada may sanction an attorney for failing to raise material
16 issues or arguments in the reply to fast track response, or failing to
17 cooperate fully with appellate counsel during the course of an appeal.
18

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22 ///

1 4. I therefore certify that the information provided in this reply to
2 fast track response is true and complete to the best of my knowledge,
3 information and belief.

4 DATED this 17th day of April, 2022.

5
6 BEN GAUMOND LAW FIRM, PLLC

7
8
9 By: 

10 BENJAMIN C. GAUMOND, ESQ.

11 Nevada Bar Number 8081

12 495 Idaho Street, Suite 209

13 Elko, Nevada 89801

(775)388-4875 (phone)

(800)466-6550 (facsimile)

14 CERTIFICATE OF SERVICE

15 (a) I hereby certify that this document was electronically filed
16 with the Nevada Supreme Court on the 17th day of April, 2022.

17 (b) I further certify that on the 17th day of April, 2022, electronic
18 service of the foregoing document shall be made in accordance with the
19 Master Service List to Aaron Ford, Nevada Attorney General; Tyler J.
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23
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1 Ingram, Elko County District Attorney; and Walter F. Fick, Deputy
2 Elko County District Attorney.

3 (c) I further certify that on the 18th day of April, 2022, this
4 document shall be mailed to William Joseph Grow, NDOC # 1199093,
5 N.N.C.C., P.O. Box 7000, Carson City, NV 89702.
6

7 DATED this 17th day of April, 2022.

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11 Benjamin C. Gaumond, Owner
12 Ben Gaumond Law Firm, PLLC
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