IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR MOORE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 82747

RESPONDENT'S ANSWERING BRIEF

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

DAN M. WINDER, ESQ.
Nevada Bar #001569
3507 W. Charleston Blvd.
Las Vegas, Nevada 89102
(702) 878-6000

Counsel for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500
State of Nevada

AARON D. FORD
Nevada Attorney General
Nevada Bar #007704
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1265

Counsel for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page Number:

Cases

Statutes

IN THE SUPREME COURT OF THE STATE OF NEVADA

ARTHUR MOORE, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 82747

RESPONDENT'S ANSWERING BRIEF

Appeal from Judgement of Conviction
Eighth Judicial District Court, Clark County

ROUTING STATEMENT

This appeal is appropriately retained by the Supreme Court as it involves a challenge to a Judgement of Conviction for a Category A felony. NRAP 17(b)(3).

STATEMENT OF THE ISSUE

Whether the district court erred when it denied the Appellant's Motion to Withdraw his Guilty Plea.

STATEMENT OF THE CASE

On July 7, 2016, Arthur Moore (Hereinafter "Appellant") was charged by way of Indictment with one (1) count of MURDER WITH USE OF A DEADLY WEAPON (Category A Felony- NRS 200.010, 200.030, 193.165- NOC 50001); one (1) count of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony- NRS 200.010, 200.030, 193.330, 193.165- 50031); three (3)

counts of ASSAULT WITH A DEADLY WEAPON (Category B Felony- NRS 200.471- NOC 50201); one (1) count of CONSPIRACY TO COMMIT ROBBERY (Category B Felony- NRS 200.380, 199.480- NOC 50147); and two (2) counts of ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony- NRS 200.380, 193.165- NOC 50138). Appellant's Appendix ("AA") at 000001-000010. On July 13, 2016, the Appellant pled not guilty to all charges. Respondent's Appendix Vol. I ("I RA") at 000194.

On January 28, 2020, the Appellant through counsel requested a settlement conference. Id. at 000196. On February 7, 2020, a settlement conference was held with Judge Bluth. Id. at 000197. As the State noted in the district court below and Appellant did not challenge, the settlement conference was attended by the State, defense, and the victim's family. Respondent's Appendix Vol. II ("II RA") at 000225. The parties met for approximately 8 hours and no settlement was reached. Id. The parties met again for a second 8-hour settlement conference on February 21, 2021. Id. While there was still no settlement reached, there were extensive negotiations between the parties, and an offer was made by the State that is consistent with the now filed Guilty Plea Agreement. Appellant's Opening Brief ("AOB") at 4.

At the Appellant's Calendar Call on March 3, 2020, Appellant's counsel stated that trial would not go forward as Appellant was prepared to enter a guilty

plea. I RA at 000199. The negotiations are reflected in the Guilty Plea Agreement. AA at 000011-000021. Both parties agreed to stipulate to a sentence of 10-25 years on Count 1: Second-Degree Murder. AA at 000011. Both parties agreed the State would retain the right to argue as to the sentences for Count 2: Conspiracy to Commit Robbery and Count 3: Robbery. Id. Finally, both parties stipulated that the Count 2: Conspiracy to Commit Robbery would run consecutive to the Count 1: Second-Degree Murder and the Count 3: Robbery would run concurrent to Count 2: Conspiracy to Commit Robbery. Id. The Appellant signed the Guilty Plea Agreement and was properly canvased by the Court. II RA at 000234-000240. The Court accepted the Appellant's plea, finding that the plea was entered freely and voluntarily, and that the Appellant understood the nature of the charges and the consequences of his plea. Id. at 000255.

On May 28, 2021, while awaiting sentencing, the Appellant filed an Emergency Motion to Dismiss Counsel and Appoint Conflict Free Counsel for the possible purpose of withdrawing his Guilty Plea. I RA at 000200. On July 17, 2020, the Court referred the case to the Office of Appointed Counsel to have an attorney appointed to review the Appellant's request to withdraw his Guilty Plea. Id. at 000206. On August 14, 2020, Arnold Weinstock accepted appointment. Id. at 000207.

On January 14, 2021, Appellant through counsel filed a Motion to Withdraw his Guilty Plea. Id. at 000208-000222. The State filed their Opposition on February 11, 2021. II RA at 000223-000255. Appellant filed a Reply to the State's Opposition on February 12, 2021. Id. at 000256-000259. On February 19, 2021, a hearing was held on the Motion, and after brief argument the Court denied the Motion to Withdraw Guilty Plea and the matter was set for sentencing. AA at 000030.

On March 25, 2021, Appellant was sentenced as follows: COUNT 1 - a MAXIMUM of TWENTY-FIVE (25) YEARS with a MINIMUM Parole Eligibility of TEN (10) YEARS; COUNT 2 – a MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM Parole Eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to COUNT 1; and COUNT 3 – a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM Parole Eligibility of SIX (6) YEARS, CONCURRENT with COUNT 2 and CONSECUTIVE to COUNT 1; with ONE THOUSAND SEVEN HUNDRED FIFTY-NINE (1,759) DAYS credit for time served. The AGGREGATE TOTAL sentence is FORTY (40) YEARS MAXIMUM with a MINIMUM of SIXTEEN (16) YEARS. AA at 000022-000023. A Judgement of Conviction reflecting the same was filed on April 1, 2021. Id.

On April 6, 2021, the Appellant filed a Notice of Appeal. AA at 000025-000026.

STATEMENT OF THE FACTS

On February 20, 2009, Aric Brill, Terrell Moore, Joseph Bentley, and Angelo Gilbert, all classmates attending Global Community High School, met with Shannon Williams-Sutton and went to 65 Beesley Drive, Las Vegas, NV 89110 to attend a party. I RA at 000007-000010. As the five adolescents approached the wall in front of the property line, they heard multiple guns being racked. Id. at 000013. They turned and saw 4-5 men sitting on a concrete wall. Id. One of the men told the group of adolescents that if they ran, the men would shoot them. Id. One of the assailants then ripped the chain around Angelo Gilbert's neck that held his phone and took it. Id. at 000075. At that point, Joseph Bentley, Aric Brill, and Shannon Williams-Sutton began to run away. Id. at 000015. One or two of the assailants begin shooting at Joseph Bentley and Aric Brill while they were running away. Id. Well over 10 shots were fired at Aric Brill and Joseph Bentley. Id. at 000015. Joseph Bentley suffered multiple gunshot wounds including gunshot wounds to his elbow and his chest, causing a collapsed lung. Id. at 000042. Bentley survived his injuries but was in the hospital for over a week. Id. Angelo Gilbert saw the group of men that had just robbed and shot the group of teens run and enter a mid-2000's blue, black, or purple Chevrolet Malibu or Impala and flee the scene. Id. at 000085-000086.

As the assailants were fleeing into the Chevrolet sedan, Terrell Moore was walking backwards and tripped over Aric Brill's body. Id. at 000019. Terrell Moore

then cradled Aric Brill as Aric Brill was shaking. Id. Terrell Moore saw a large amount of blood but could not determine where the blood was coming from. Id. at 000019-000020. Angelo Bentley recalled seeing Aric Brill run and then saw Aric Brill fall over. Id. at 000084. After seeing the assailants flee in the Chevrolet, Bentley ran to Aric. Id. at 000085. Aric was now convulsing. Id. at 000086. After the shooting, Tatiana Jackson, the resident of the home where the party was taking place, exited her house and saw Aric's body. Id. at 000132. Aric Brill died as a result of a perforating gunshot wound to his neck, the manner of his death was homicide. Id. at 000168. Aric Brill was 16 years old when was killed. Id.

In February of 2016, Las Vegas Metropolitan Police Department (LVMPD) Detective Darin Cook was asked to review the murder of Aric Brill. Id. at 000143. As part of his investigation, Detective Cook interviewed Appellant. Id. at 000156. When confronted with the facts from the shooting at 65 Beesley, Appellant immediately broke down crying saying that he was going to go to prison. Id. at 000161. Appellant then proceeded to tell Detective Cook about that day and even drew a picture of the crime scene. Id. Appellant drew the house and the wall that he and his co-Defendants were sitting on just prior to the robbery. Id. at 000162. Appellant said he saw five individuals walking up the street. Id. Appellant stated he got off the wall and began to rob the five individuals. Id. At that time Appellant stopped the interview. Id.

SUMMARY OF THE ARGUMENT

The District Court correctly denied Appellant's Motion to Withdraw his Guilty Plea after considering the totality of the circumstances. Appellant's plea was knowingly and voluntarily entered, he understood the terms of the plea, he understood the consequences of pleading guilty, and he failed to demonstrate any substantial reason to withdraw his guilty plea.

ARGUMENT

II. The District Court Properly Denied Appellant's Motion to Withdraw his Guilty Plea

Appellant claims the District Court erred in denying his Motion to Withdraw his Guilty Plea. AOB 5-7. Specifically, Appellant argues that the terms of the negotiation were not fully and adequately explained to him, and as a result he misunderstood the terms of the negotiation. Id. at 6-7. These are arguments are belied by the record.

A. Standard of Review

On appeal from a district court's determination, a reviewing court will presume that the lower court correctly assessed the validity of the plea and will not reverse the district court's determination absent a clear showing of an abuse of discretion. Mitchell v. State, 109 Nev. 137, 138, 848 P.2d 1060, 1060 (1993). "An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason." Jackson v. State, 117 Nev. 116, 120, 17

P.3d 998, 1000 (2001). Deference must be given to factual findings made by the district court in the course of a motion to withdraw a guilty plea. Little v. Warden, 117 Nev. 845, 854, 34 Pd. 3d 540, 546 (2001).

A defendant who has pled guilty, but has not been sentenced, may petition the district court to withdraw his plea. NRS 176.165. "A district court may, in its discretion, grant a defendant's [presentence] motion to withdraw a guilty plea for any substantial reason if it is fair and just. Id. However, the district court must also look to the totality of the circumstances and the entire record." Woods v. State, 114 Nev. 468, 469, 958 P.2d 91, 91 (1998); See State v. Second Judicial Dist. Court (Bernardelli), 85 Nev. 381, 385, 455 P.2d 923, 926 (1969).

A plea of guilty is presumptively valid, particularly where it is entered on the advice of counsel. Jezierski v. State, 107 Nev. 395, 397, 812 P.2d 355, 356 (1991). The defendant has the burden of proving that the plea was not entered knowingly or voluntarily. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986); Wynn v. State, 96 Nev. 673, 615 P.2d 946 (1980); Housewright v. Powell, 101 Nev. 147, 710 P.2d 73 (1985). In determining whether a guilty plea is knowingly and voluntarily entered, the court will review the totality of the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at 367. The proper standard set forth in Bryant requires the trial court to personally address a defendant at the time he enters his plea in order to determine whether he understands the nature of the

charges to which he is pleading. Id. at 271; State v. Freese, 116 Nev. 1097, 1105, 13 P.3d 442, 448 (2000). The guidelines for voluntariness of guilty pleas "do not require the articulation of talismanic phrases." Heffley v. Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973). It requires only "that the record affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly and voluntarily." Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct. 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

Specifically, the record must affirmatively show the following: 1) the defendant knowingly waived his privilege against self-incrimination, the right to trial by jury, and the right to confront his accusers; 2) the plea was voluntary, was not coerced, and was not the result of a promise of leniency; 3) the defendant understood the consequences of his plea and the range of punishment; and 4) the defendant understood the nature of the charge, i.e., the elements of the crime. Higby v. Sheriff, 86 Nev. 774, 781, 476 P.2d 950, 963 (1970).

Stevenson v. State, 354 P.3d 1277, 131 Nev., (2015), held that the statement in Crawford v. State, 117 Nev. 718, 30 P.3d 1123 (2001), which focuses the "fair and just" analysis solely upon whether the plea was knowing, voluntary, and intelligent is narrower than contemplated by NRS 176.165. The Nevada Supreme Court therefore disavowed Crawford's exclusive focus on the validity of the plea and affirmed that the district court must consider the totality of the circumstances to

determine whether permitting withdrawal of a guilty plea before sentencing would be fair and just. However, the Court also held that Stevenson had failed to present a fair and just reason favoring withdrawal of his plea and therefore affirmed his judgment of conviction. Stevenson, 131 Nev., 354 P.3d at 1281. The Court made clear that one of the goals of the fair and just analysis is to allow a hastily entered plea made with unsure heart and confused mind to be undone, not to allow a defendant to make a tactical decision to enter a plea, wait several weeks, and then obtain a withdrawal if he believes that he made a bad choice in pleading guilty. Id. at 598, 605, 354 P.3d at 1281-1282. The Court found that considering the totality of the circumstances, they had no difficulty in concluding that Stevenson failed to present a sufficient reason to permit withdrawal of his plea, finding that permitting Stevenson to withdraw his plea under the circumstances would allow the solemn entry of a guilty plea to become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim, which the Court cannot allow. Id. at 598, 605, 354 P.3d at 1282. In applying the totality of circumstances test, the most significant factors for review include the plea canvass and the written guilty plea agreement. See, Hudson v. Warden, 117 Nev. 387, 399, 22 P.3d 1154, 1162 (2001).

B. Appellant Knowingly and Voluntarily Pled Guilty

Appellant knowingly and voluntarily signed a Guilty Plea Agreement on March 3, 2020, and in doing so he affirmed that he was fully aware of the terms of

the plea agreement. The section of the Guilty Plea Agreement entitled "Voluntariness of Plea" delineates the following statements that the Appellant acknowledged with his signature as true:

> I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.
> I understand that the State would have to prove each element of the charge(s) against me at trial.
> I have discussed with my attorney any possible defenses, defense strategies and circumstances which might be in my favor.
> All of the foregoing elements, consequences, rights, and waiver of rights have been thoroughly explained to me by my attorney.
> I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest
> I am signing this agreement voluntarily, after consultation with my attorney, and I am not acting under duress or coercion or by virtue of any promises of leniency, except for those set forth in this agreement.
> I am not now under the influence of any intoxicating liquor, a controlled substance or other drug which would in any manner impair my ability to comprehend or understand this agreement or the proceedings surrounding my entry of this plea.
> My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney.

AA 000015-000016.

After Appellant signed the Guilty Plea Agreement and it was filed in open court, the Court orally canvassed him regarding whether his plea was free and voluntary. II RA at 000246-000255. The oral representation of the negotiation was consistent with the Guilty Plea Agreement and Appellant told the Court he understood the deal:

> MS. STRAND: Your Honor, yeah, it's on for calendar call, that's going to be called off. Mr. Moore is going to be entering a guilty plea today. The negotiations are as follows: Mr. Moore is going to be pleading guilty to Count 1, murder in the second degree; guilty to Count 2, conspiracy to commit robbery; and guilty to Count 3, robbery. The parties are stipulating to 10 to 25 years in the Nevada Department of Corrections on the second-degree murder. The State is going to retain the right to argue on Counts 2 and 3, but the parties do stipulate that Count 2 will run consecutive to Count 1 and Count 3 will run concurrent with Count 2.
>
> *THE COURT: Okay. I didn't know. Is that your understanding of the negotiations, Mr. Moore?*
> *THE DEFENDANT: Yes, ma'am.*
> *THE COURT: And that's what you want to do today?*
> *THE DEFENDANT: Yes, ma'am.*

Id. at 000247. (emphasis added)

Appellant affirmed that it was his desire to enter a guilty plea directly after he was explicitly reminded of the terms of the agreement. The Court went on to ask in no uncertain terms if his plea was being entered freely and voluntarily:

> *THE COURT: Are you entering into this plea today freely and voluntarily?*
> *THE DEFENDANT: Yes, ma'am.*

Id. (emphasis added)

Accordingly, any claim that Appellant's plea was not knowingly or voluntarily entered is belied by the record. As such, the court below appropriately denied the Motion to Withdraw. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

/ / /

/ / /

C. Appellant was able to fully discuss the terms of the plea agreement with his attorneys.

Appellant's attorney, Ozzie Fumo, affirmed as an officer of the Court that he fully explained the Guilty Plea Agreement when he executed a "Certificate of Counsel" which acknowledged the following:

> 1. I have fully explained to the Defendant the allegations contained in the charge(s) to which guilty pleas are being entered.
> 2. I have advised the Defendant of the penalties for each charge and the restitution that the Defendant may be ordered to pay.
> 3. I have inquired of Defendant facts concerning Defendant's immigration status and explained to Defendant that if Defendant is not a United States citizen any criminal conviction will most likely result in serious negative immigration consequences including but not limited to:
>   a. The removal from the United States through deportation;
>   b. An inability to reenter the United States;
>   c. The inability to gain United States citizenship or legal residency;
>   d. An inability to renew and/or retain any legal residency status; and/or
>   e. An indeterminate term of confinement, by with United States Federal Government based on the conviction and immigration status.
>
> Moreover, I have explained that regardless of what Defendant may have been told by any attorney, no one can promise Defendant that this conviction will not result in negative immigration consequences and/or impact Defendant's ability to become a United States citizen and/or legal resident.
> 4. All pleas of guilty offered by the Defendant pursuant to this agreement are consistent with the facts known to me and are made with my advice to the Defendant.
> 5. To the best of my knowledge and belief, the Defendant:
>   *a. Is competent and understands the charges and the consequences of pleading guilty as provided in this agreement,*

b. Executed this agreement and will enter all guilty pleas pursuant hereto voluntarily, and

c. Was not under the influence of intoxicating liquor, a controlled substance or other drug at the time I consulted with the Defendant as certified in paragraphs 1 and 2 above.

AA 000017. (emphasis added)

In addition to Mr. Fumo affirming to the Court that he had fully explained the terms of the plea agreement to the Appellant, Appellant also affirms multiple times that he had the opportunity to speak to his attorney and that his attorney had answered all his questions:

> THE COURT: You received a copy of the second amended indictment in this case charging you in Count 1 with murder in the second degree, and Count 2 conspiracy to commit robbery, and Count 3 robbery?
> THE DEFENDANT: Yes, ma'am.
> THE COURT: You understand those charges?
> THE DEFENDANT: Yes, ma'am.
> *THE COURT: And you had a chance to discuss them with your lawyers?*
> *THE DEFENDANT: Yes, ma'am.*
> …
>
> THE COURT: I have before me a guilty plea agreement, is that your signature on page 6?
> THE DEFENDANT: Yes, Your Honor.
> THE COURT: You had a chance to read it before you signed it?
> THE DEFENDANT: Yes, Your Honor.
> THE COURT: Okay. And this is your signature on page 6?
> THE DEFENDANT: Yes, Your Honor.
> *THE COURT: Okay. And you had a chance to discuss it with your lawyer prior to signing it?*
> *THE DEFENDANT: Yes, ma'am.*

THE COURT: And all your questions were answered to your satisfaction prior to signing it?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Do you have any questions of the Court?

THE DEFENDANT: No, ma'am.

RA at 000251-000252. (emphasis added)

In addition to both Appellant and his attorney making it abundantly clear that Appellant had been explained the terms of the agreement and that he understood them, these terms had been discussed in depth over two separate settlement conferences. AOB at 4. As noted by the State and undisputed by Appellant, each settlement conference lasted 8 hours, and was attended by the State, the Defense, and the victim's family. II RA at 000226. These extensive settlement conferences would have provided ample time for discussion between Mr. Fumo and Appellant.

As such, any argument that Appellant did not have the opportunity to speak with Mr. Fumo and instead only spoke to "two inexperienced attorneys" is belied by the record. Additionally, any argument that Mr. Fumo did not fully explain the Guilty Plea Agreement to the Appellant is belied by Mr. Fumo's own Certificate of Counsel and Appellant's own affirmations during his canvas. As such, the court below appropriately denied the Motion to Withdraw. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

/ / /

/ / /

D. Appellant understood the difference between the words "concurrent" and "consecutive".

Appellant confirmed during his canvas that he understood that he would be sentenced to consecutive, not concurrent, time. He explicitly stated that he understood what consecutive meant, and that he did not have any questions about what it meant:

> THE COURT: Okay. And you understand "consecutive" means you have to do the first one and then the second one?
>
> THE DEFENDANT: Yes, ma'am.
>
> THE COURT: Okay. Do you have any questions about that?
>
> THE DEFENDANT: No, Your Honor.

RA at 000251.

The State, seemingly attempting to address the very issues raised in this appeal, made it a point to clarify the sentencing stipulation agreed to by all parties during the Appellant's canvas:

> MR. PALAL: And, Your Honor, just to clarify, so, it's not explicitly clear, so I want to make it explicitly clear, Count 2 is running consecutive to Count 1, Count 3 is running concurrent to Count 2, but Count 3 would run consecutive to Count 1.
> THE COURT: Okay. Thank you.
> MR. PALAL: That was our understanding, I just wanted to –
> MR. FUMO: For 3, yes.
> MR. PALAL: We didn't -- we didn't write it down explicitly, and as we stand here I didn't want there to be any confusion as to what the resolution was.
> MR. FUMO: 2 and 3 will be consecutive to -- concurrent -- consecutive to 1.
> THE COURT: Okay.
> THE DEFENDANT: So they'll be together, but against Count 1?

MR. PALAL: Yes.
MR. FUMO: Consecutive to
Id. at 000250-000251.

Clearly all parties understood that Counts 2 and 3 would be concurrent to each other, but they will be consecutive to Count 1. Appellant even clarifies this on the record stating, "they'll be together" referring to Counts 2 and 3, "but against Count 1" acknowledging that Counts 2 and 3 are "together" with each other but are separate and will be treated differently, or "against", Count 1. Id. After Appellant verbally clarifies his own understanding that Counts 2 and 3 will be consecutive to, or "against", Count 1, the State affirms this interpretation by stating "Yes" and Appellant's attorney further clarifies Appellant's word "against" to mean "consecutive to". Id. Appellant reiterated in his own words the terms of the agreement. Id. The Court then explains what consecutive means again and asks Appellant if he has any questions. Id. Appellant says no. Id. Appellant cannot now feign ignorance and argue that he did not understand the terms of the agreement.

Accordingly, any argument that Appellant did not understand the meaning of the words "consecutive" and "concurrent" or did not understand the terms of the deal that he made is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

E. There is no evidence in the record to suggest that Appellant was incapable of understanding the difference between the words "consecutive" and "concurrent" due to his "remedial IQ" or special needs.

Specifically, Appellant failed to present evidence of his "remedial IQ" or special needs. "Bare" and "naked" allegations are not sufficient to warrant relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002). Appellant affirmed the following during his canvas:

> THE COURT: Your true and full name for the record?
> THE DEFENDANT: Arthur Ernest Moore, II.
> THE COURT: How old are you?
> THE DEFENDANT: 31.
> THE COURT: How far did you go in school?
> THE DEFENDANT: I graduated high school.
> THE COURT: Do you read write and understand the English language?
> THE DEFENDANT: Yes, ma'am.

II RA at 000247-000248.

Appellant is a 31-year-old high school graduate, who attested that he could read, write, and understand the English language. Id. The Court would have absolutely no reason to believe that Appellant's mental capabilities were too deficient to understand the meaning of the words "consecutive" and "concurrent". Appellant meaningfully participated in two extensive settlement conferences

regarding these negotiations and was able to answer the Court's questions without issue. Appellant's level of understanding is especially evident when, as noted above, he confirmed that he understood the difference between "consecutive" and "concurrent" and stated he had no questions regarding the meaning of the words. II RA at 000251.

As such, any argument that Appellant was unable to understand the terms of the agreement due to a "remedial IQ" or special needs is belied by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

CONCLUSION

For the foregoing reasons, this Court should AFFIRM the district court's denial of the Appellant's Motion to Withdraw his Guilty Plea.

Dated this 23rd day of November, 2021.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

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 4,431 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 23rd day of November, 2021,

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155-2212
(702) 671-2500

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 23, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

DAN M. WINDER, ESQ.
Counsel for Appellant

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

/s/ E. Davis
Employee, Clark County
District Attorney's Office

JEV/Glenn Anderson/ed