

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER TRUSCA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Jan 17 2022 03:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 83853

**REPLY TO STATE’S OPPOSITION TO MOTION FOR BAIL PENDING
APPEAL**

COMES NOW, Appellant Christopher Trusca, by and through counsel, Jamie Resch, Esq., and hereby files this brief reply to the State’s opposition to the motion for bail pending appeal.

Mr. Trusca has no particular objection to the State’s motion to transmit the psychosexual report. As largely a sentencing appeal, that document is likely relevant anyway. But it will assist the Court with the pending motion as well. Nowhere in the psychosexual report does the examiner state that Mr. Trusca is a danger to the community.

In fact, the report largely identifies the factors stated in the motion – the issues relevant to this prosecution arose following the death of Mr.

Trusca's brother, which led to drug addiction problems. The report's conclusions all but presume Mr. Trusca could be supervised in the community.

The State make several references to the issues and briefing in this appeal. This Court has already set a briefing schedule, so the State should not be surprised no brief or appendix have been filed. If the State wanted to better know what issues might be raised, it could avail itself of the filed docketing statement.

The State's position that this appeal is waived or that Mr. Trusca cannot file an opening brief deserves special mention. That position is wrong for at least two reasons. The State's contention seems to be based on the guilty plea agreement. Opposition, p. 4.

First, the term relied on by the State in the guilty plea agreement is illegal and is unenforceable. Under state law, a guilty plea "must" be in substantially the form set forth in the statute. NRS 174.063. Here, the State has changed the statutory language substantially, because the statute reserves to the defendant the right to a direct appeal on constitutional or

other grounds. The State's revision to the agreement, which naturally only favors the State, conflicts with the required language and cannot be enforced.

Second, even if the State's altered language were permissible, it overlooks the fact that the errors challenged here arose after entry of plea, primarily at the time of sentencing. This Court has already determined in the post-conviction context that statutes which purport to bar claims under similar circumstances do not apply to sentencings. Gonzales v. State, 137 Nev. Adv. Rep. 40, 492 P.3d 556, 560 (2021) (noting that sentencing claims are "...naturally not known at the time the guilty plea is entered").

Mr. Trusca enjoyed a constitutional right to effective counsel at the time of sentencing. Id. It would result in an absurdity if defendants could challenge counsel's performance at sentencing but not errors by district court or prosecutor. This is why the far better result is to conclude first that the State's attempt to modify the plea agreement was illegal and contrary to law. But secondarily, given the "spirit, subject matter and public policy"

of sentencings as well as NRS 174.063, defendants may always appeal errors made by the district court at the time of sentencing. Id.

The State's response largely mentions these issues in passing, so presumably the question of whether Mr. Trusca waived his appeal merely foreshadows a battle yet to come. To the extent that the State passes off its waiver argument as proof this appeal is frivolous, that argument should be rejected for the reasons set forth above.

In conclusion, the psychosexual exam adheres to the arguments set forth in the motion for bail. Mr. Trusca was never identified as a danger to the community, in fact remained in that same community with no supervision even after being sentenced to prison. He could have been supervised had the trial court granted probation. Mr. Trusca should be granted reasonable bail while this appeal proceeds.

DATED this 17th day of January, 2022.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: / s / Jamie J. Resch
JAMIE J. RESCH
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 17th day of January, 2022.

Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

STEVEN WOLFSON
Clark County District Attorney
Counsel for Respondent

AARON FORD
Nevada Attorney General

By: /s/ Jamie Resch
An Employee of RESCH LAW, PLLC
d/b/a Conviction Solutions