

IN THE SUPREME COURT OF THE STATE OF NEVADA

Rafael Rosas Cardenas,)	Supreme Ct No. 84288
)	District Ct No. CR 19-7109
Appellant)	Electronically Filed
vs.)	Apr 27 2022 12:04 p.m.
)	Elizabeth A. Brown
The State of Nevada,)	Clerk of Supreme Court
)	
Respondent)	
_____)	

APPELLANT'S OPENING BRIEF

ATTORNEY FOR APPELLANT

Matt Stermitz, NSB # 3610
Humboldt County Public Defender
Drawer 309
Winnemucca, Nevada 89445
775-623-6550

ATTORNEY FOR RESPONDENT

Michael Macdonald
Humboldt County District Atty
Drawer 909
Winnemucca, Nevada 89445
775-623-6363

TABLE OF CONTENTS

Table of Authorities.....	i
Jurisdictional Statement.....	ii
Routing Statement.....	1
Statement of Issues.....	1
Statement of the Case.....	1
Statement of the Facts.....	2
Summary of Argument.....	2
Argument.....	2
Conclusion.....	4
Certificate of Compliance.....	4
Certificate of Service.....	6

TABLE OF AUTHORITIES

Cases

<u>U.S. v. Lai</u> , 944 F.2d 1434, (1991)	3
<u>Solm v. Helm</u> , 463 U.S. 277, 284 (1983).....	3
<u>U.S. v. Borrero-Isaza</u> , 887 F.2d 1349, 1352 (9 th Cir.1989).....	3
<u>United States v. Brady</u> , 895 F.2d 538 (9 th Cir. 1990).....	3
<u>United States v. Barker</u> , 771 F.2d 1362 (9 th Cir. 1985).....	3

Statutes

NRS 176.0131.....	3
NRS 177.015(3).....	ii
NRS 179D.0987(1)(g).....	1
NRS 200.508(1)(a)(2).....	1
NRAP 4.....	ii
NRAP 17(b)(1).....	ii
NRAP 28	4
NRAP 32.....	5

Constitution

8 th Amendment U.S. Constitution.....	3
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JURISDICTIONAL STATEMENT

A judgment of conviction was entered on the 10th day of February, 2022. Appellant Appendix, hereinafter “AA”, page 24. The notice of appeal was filed on the 23rd day of February, 2022. AA, page 28. Within the time allowed by NRAP 4.

NRS 177.015(3) grants this court jurisdiction to review the judgment of conviction appealed from.

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STATEMENT OF ISSUES

Issue: The district court abused its discretion at sentencing. The district court failed to consider the individualized circumstances of Mr. Rosas Cardenas at sentencing.

STATEMENT OF THE CASE

The State of Nevada charged Mr. Rosas Cardenas, by way of a second amended criminal information, with one count of child abuse, neglect, or endangerment, involving sexual exploitation, a category B felony, as defined by NRS 200.508(1)(a)(2) and NRS 179D.0987(1)(g). AA, p. 14.

The district court sentenced Mr. Rosas Cardenas to serve a minimum term of ninety-six months and a maximum term of two hundred-forty months in the Nevada Department of Corrections. AA, p. 25.

Mr. Rosas Cardenas appeals. AA, p. 14.

The district court sentenced Mr. Rosas Cardenas to serve a minimum term of ninety-six months and a maximum term of two hundred-forty months in the Nevada Department of Corrections. AA, p. 25.

Mr. Rosas Cardenas appeals. AA, p. 14.

STATEMENT OF THE FACTS

Mr. Rosas Cardenas plead guilty to one count of child abuse, neglect, or endangerment, involving sexual exploitation, a category B felony, as defined by NRS 200.508(1)(a)(2) and NRS 179D.0987(1)(g). AA, p. 17 - 23.

SUMMARY OF ARGUMENT

Tight-lipped the district court sentenced Mr. Rosas Cardenas to a minimum term of ninety-six months and a maximum term of two hundred-forty months in the Nevada Department of Corrections. AA, p. 24 - 26. Rather than grant Mr. Rosas Cardenas probation. AA, p. 24-26. Even though Mr. Rosas lived a squeaky-clean law-abiding life, and was found not to be a high risk to reoffend. AA, p. 36.

The matter should be reversed and remanded for a new sentencing hearing in front of a judge willing to consider the individualized circumstances of Mr. Rosas Cardenas and further willing to share the reasons behind his or her decision.

ARGUMENT

Before imposing a prison term, rather than a grant of probation, the district court did not acknowledge mitigating factors – Mr. Rosas Cardenas' age, lack of criminal history, remorse, favorable psychosexual evaluation,

1 and de minimis recidivism risk. AA, p. 36 - 39. Nor, did the district court
2 acknowledge the presence of any aggravating factors. AA, p. 42.

3 Instead, the district court, tight-lipped, imposed the maximum
4 sentence. AA, p. 42 – 43.

6 Leaving the parties clueless. AA, p. 42-43.

8 The eighth amendment's cruel and unusual punishment clause
9 prohibits both torturous and disproportionate sentences. See U.S. v. Lai,
10 944 F.2d 1434, (1991), citing Solm v. Helm, 463 U.S. 277, 284 (1983).

12 Although trial judges are accorded unfettered discretion in sentencing
13 defendant, the 9th circuit insists on individualized sentencing that takes the
14 individual as well as the crime into account. See Lai citing U.S. v. Borrero-
15 Isaza, 887 F.2d 1349, 1352 (9th Cir.1989); United States v. Brady, 895 F.2d
16 538 (9th Cir. 1990); United States v. Barker, 771 F.2d 1362 (9th Cir. 1985).

19 The people of Nevada have declared that sentencing policies should
20 embody fairness and opportunity. NRS 176.0131(1). The people of
21 Nevada have declared that a continuum of sentencing options should be
22 available with community programs for diversion and supervision of
23 offenders. NRS 176.0131. The people of Nevada have declared that
24 strategies to reduce crime should involve prevention, treatment, health and
25 labor. NRS 176.0131(1).
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1 The matter should be remanded for a new sentencing hearing. In
2 front of a new judge. A judge willing to consider the individual
3 circumstances of Mr. Rosas Cardenas and a judge willing to reveal the
4 reasoning behind whatever sentence the judge chooses to impose.
5

6 CONCLUSION
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8 The matter should be reversed and remanded for a new sentencing
9 hearing.
10

11 Dated this 27th day of April, 2022.

12 Matt Stermitz
13

14 Matt Stermitz
15 Humboldt County Public Defender
16 Bar # 003610
17 Drawer 309
18 Winnemucca, Nevada 89445
19 775-623-6550
20

21 ATTORNEY CERTIFICATE OF COMPLIANCE
22

23 I hereby certify that this brief complies with the formatting
24 requirements of NRAP 32(a)(4), the typeface requirements of NRAP
25 32(a)(5) and the type style requirements of NRAP 32(a)(6) because This
26 brief has been prepared in a proportionally spaced typeface using Microsoft
27 Word in type face of 14 point and Arial type face.
28

1 I further certify that this brief complies with the page- or type-volume
2 limitations of NRAP 32(a)(7) because, excluding the parts of the brief
3 exempted by NRAP 32(a)(7)(C), it does not exceed 6 pages.
4

5 Finally, I hereby certify that I have read this appellate brief, and to the
6 best of my knowledge, information, and belief, it is not frivolous or
7 interposed for any improper purpose. I further certify that this brief complies
8 with all applicable Nevada Rules of Appellate Procedure, in particular
9 NRAP 28(e)(1), which requires every assertion in the brief regarding
10 matters in the record to be supported by a reference to the page and
11 volume number, if any, of the transcript or appendix where the matter relied
12 on is to be found. I understand that I may be subject to sanctions in the
13 event that the accompanying brief is not in conformity with the
14 requirements of the Nevada Rules of Appellate Procedure.
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19 Dated this 27th day of April, 2022.
20

21 Matt Stermitz

22 Matt Stermitz
23 Humboldt County Public Defender
24 Bar # 003610
25 Drawer 309
26 Winnemucca, Nevada 89445
27 775-623-6550
28

CERTIFICATE OF SERVICE

Pursuant to applicable appellate rules, on the 27th day of April, 2022, the undersigned mailed a true and correct copy of the foregoing addressed to Rafael Rosas Cardenas, # 1253465, Northern Nevada Correctional Center, Box 7000, Carson City, NV 89702.

Matt Stermitz
Matt Stermitz