

IN THE SUPREME COURT OF THE STATE OF NEVADA

BO DWIGHT HEGGE,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

} CASE NO. 83664
} Electronically Filed
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} Elizabeth A. Brown
} Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, County of Elko
The Honorable Kriston N. Hill, District Court Judge, Dept. 1

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NRS 177.015(3) provides this Court jurisdiction to review the judgment of conviction that Bo Dwight Hegge appeals.

This case involves a direct appeal from a judgment of conviction based on a plea of nolo contendere. As such, pursuant to NRAP 17(b)(1), this case is presumptively assigned to the Court of Appeals.

STATEMENT OF THE ISSUES

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1 (2) Did the district court abuse its discretion in sentencing Bo
2 Dwight Hegge to prison?
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5 STATEMENT OF THE CASE

6 Bo Dwight Hegge was arraigned in district court on April 12,
7 2021. *Joint Appendix 10.* Mr. Hegge signed a plea agreement wherein
8 he agreed to plead nolo contendere to Possession of a Firearm by a
9 Prohibited Person, a category B felony as defined by NRS 202.360.
10

11 *Joint Appendix 4-9.* The Elko County District Attorney's Office filed
12 that charge against Mr. Hegge on March 18, 2021. *Joint Appendix 1-3.*
13

14 At the arraignment, Mr. Hegge entered his nolo contendere plea to
15 Possession of a Firearm by a Prohibited Person in open court. *Joint*
16 *Appendix 13-14.* The district court accepted that plea. *Joint Appendix*
17 *22.*
18

19 On June 25, 2021, counsel for Mr. Hegge filed the "Motion to
20 Withdraw Plea of No Contest." *Joint Appendix 25.* The State opposed
21 said motion on July 2, 2021. *Joint Appendix 40.* The defense replied to
22 that opposition on July 15, 2021. *Joint Appendix 50.*
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1 Without the benefit of an evidentiary hearing, the district court
2 entered its "Order Denying Motion to Withdraw Plea of No Contest."
3 *Joint Appendix 57.*

4
5 Mr. Hegge was sentenced on September 27, 2021. *Joint Appendix*
6 *61.* The judgment of conviction was filed on October 4, 2021. *Joint*
7 *Appendix 76.* The notice of appeal was filed on October 12, 2021. *Joint*
8 *Appendix 79.* Undersigned counsel was appointed to represent Mr.
9 Hegge for the purposes of this appeal. *Joint Appendix 85.*

11 STATEMENT OF THE FACTS

12
13 In the "Motion to Withdraw Plea of No Contest," defense counsel
14 for Bo Dwight Hegge, Gary Woodbury, alleged that there was an issue
15 with the propriety of the pat down search that was conducted upon Mr.
16 Hegge. *Joint Appendix 26, 29.* Moreover, the defense alleged that, if
17 "the Court grants a hearing, Defendant will testify that until the time of
18 his arrest he was understood that because his prior conviction for a
19 felony was over 10 years old that the provision of the Nevada law
20 prohibiting him from possessing a firearm as an ex-felon no longer
21 applied to him. Defendant was not, therefore, aware or conscious of the
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1 fact he was committing an unlawful act by possessing a pistol.” *Joint*
2 *Appendix 26.*

3 Mr. Woodbury added that “although [Mr. Hegge’s] discussions
4 with trial counsel may have included him being informed of the
5 possibility of an acquittal based on him not having been aware of his
6 mistaken belief that he was entitled to possess a firearm, that if such
7 discussions occurred, he did not understand their significance.” *Joint*
8 *Appendix 26.*

9 Mr. Woodbury proceeded to assert that Mr. Hegge “will testify
10 that he has had two brothers who he believes have been murdered
11 within the last two years. His brother Dennis died in Winnemucca of
12 an apparent drug overdose on or about March 1, 2019. Defendant will
13 testify that he believes Dennis was injected with a drug or drugs by
14 third parties that caused his death.” *Joint Appendix 26.* Mr. Woodbury
15 added that part of Mr. Hegge’s brother Douglas’s remains was found in
16 June 2021. *Joint Appendix 27.* Moreover, the person that Mr.
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1 Woodbury characterized as Douglas's "common law wife" was found
2 dead in Elko County in September 2020.¹

3 On top of that, in a two-year period, Mr. Hegge was receiving
4 death threats and bought a firearm to give to the mother of his two
5 children, Christine Woolsey, for protection. *Joint Appendix 27.* Mr.
6 Woodbury averred that NRS 200.160 allows for "defense of others who
7 are in imminent danger" and provides a legal excuse. *Joint Appendix*
8 *27.*

11 Mr. Woodbury, changing courses, alleged that Mr. Hegge "believes
12 that the pat down search by Elko City police officer Pinkham was
13 illegal, and that the physical evidence of Defendant possessing a
14 firearm should have been suppressed." *Joint Appendix 27.* More
15 specifically, Mr. Woodbury proclaimed that Mr. Hegge "will testify that
16 he never understood that there were issues about whether officer
17 Pinkham's suspicions that Defendant was armed were objectively
18 reasonable." *Joint Appendix 28-29.*

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24 ¹ Nevada does not recognize common law marriage. NRS 122.010(1).

1 The State filed its opposition to Mr. Hegge's motion to withdraw
2 his no contest plea on July 2, 2021. *Joint Appendix 40*. The State
3 argued that a "Guilty Plea is not a Place Holder." *Joint Appendix 42*.
4 Thereafter, the State argued that issues of factual innocence and
5 ignorance of the law did not provide a basis for Mr. Hegge to withdraw
6 his plea of nolo contendere. *Joint Appendix 42-45*.
7

8 The State asserted that Mr. Hegge's attorney's "cryptically" made
9 claims "are an implicit challenge to the effectiveness of Mr. Woodbury's
10 work as Hegge's counsel." *Joint Appendix 45*. Counsel for the
11 prosecution elaborated that "[b]y putting at issue Mr. Woodbury's
12 discussions with the Defendant, Hegge has turned Mr. Woodbury into a
13 necessary witness should the Court decide to conduct an evidentiary
14 hearing." *Joint Appendix 46*. In no uncertain terms, Deputy District
15 Attorney Jeffrey Slade said that Mr. Hegge "now needs a new attorney
16 so that his constitutional right to the effective assistance of counsel is
17 not compromised." *Joint Appendix 46*.
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22 Later in the State's opposition to the motion to withdraw the plea
23 of no contest, Mr. Slade informed the district court as well as Mr.
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1 Woodbury that “[a] hearing on this Opposition is requested and a court
2 reporter is requested. It is estimated that one hour should be set aside
3 for the hearing on this Opposition.” *Joint Appendix 48*.

4
5 In its reply to this Opposition, Mr. Woodbury proclaimed that “the
6 evidence will establish that the State withheld information it received
7 about the principal witness against Defendant, Arthur Brasher, from
8 March 18, 2021 until June 24, 2021.” *Joint Appendix 51*. Moreover,
9 Mr. Woodbury characterized Mr. Slade’s comment about the plea
10 agreement being a place holder as “mak[ing] no sense.” *Joint Appendix*
11 *51*. Defense counsel expressed bafflement about his need to be “a
12 necessary witness.” *Joint Appendix 51*. Additionally, Mr. Woodbury
13 told the district court that Mr. Hegge “now realizes that he didn’t
14 understand counsel’s legal conclusions in their entirety, specifically that
15 he did not fully understand the concept of how fact finders are required
16 and permitted to weigh evidence.” *Joint Appendix 51*.

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21 Later in this reply, Mr. Woodbury informed the district court that
22 shortly after Mr. Hegge’s arrest, Mr. Hegge learned that Mr. Brasher
23 left Elko County and that Mr. Brasher has been in jail for criminal
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1 charges in Utah. *Joint Appendix 53*. Defense counsel accused the State
2 of withholding evidence that Mr. Brasher was in jail and that the State
3 had this information from March 18, 2021 (11 days before Mr. Hegge
4 signed the plea agreement) to June 24, 2021 (the day before the motion
5 to withdraw the plea was filed). *Joint Appendix 53*.

7 Despite the defense stating what the evidence would show if there
8 were an evidentiary hearing and the State asking for an evidentiary
9 hearing, District Court Judge Kriston Hill filed Her Honor's "Order
10 Denying Motion to Withdraw Plea of No Contest" on August 9, 2021
11 without an evidentiary hearing. *Joint Appendix 57*.

14 In said order, Judge Hill stated that there was a plea canvass and
15 the issue of mistake of law (as to whether Mr. Hegge could possess
16 firearm over 10 years after his felony conviction) and the potential
17 illegality of the pat down were discussed and Mr. Hegge waived those
18 issues. *Joint Appendix 57-58*. Judge Hill dismissed the issue that Mr.
19 Hegge bought the firearm for protection of others insofar as there was
20 evidence that Mr. Hegge was looking for a valuable coin that had been
21 stolen from him. *Joint Appendix 58*.

1 Absent from this order was any indication that the issue of the
2 knowingness, intelligence, and voluntariness of the no contest plea was
3 relevant to the analysis as it pertained to the withholding of evidence of
4 Mr. Brasher's incarceration in Utah. *Joint Appendix 57-59*. On top of
5 that, there was no indication in that order as to why the district court
6 denied an evidentiary hearing. *Joint Appendix 57-59*.

7
8 The sentencing hearing was held on September 27, 2021. *Joint*
9 *Appendix 61*. When asked if there were any omissions or errors in the
10 Presentence Investigation Report, Mr. Woodbury responded, "We did
11 not see errors of sufficient consequence to bring them to the court."
12 *Joint Appendix 63-64*. Yet later in the proceedings, Mr. Hegge notified
13 the court that there was an error in the PSI because he did not go into
14 the house in question. *Joint Appendix 66*. In response, Mr. Woodbury
15 told his client in open court, "Just Quit." *Joint Appendix 66*.

16
17 An "Updated Presentence Investigation Report" was prepared on
18 June 4, 2021. *Updated Presentence Investigation Report 1*. Mr. Hegge
19 had only one prior felony conviction and that was for Attempted
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1 Receiving, Possessing or Withholding Stolen Goods back on November
2 15, 2010. *Updated Presentence Investigation Report 4-5.*

3 At the time this report was prepared, Mr. Hegge had been in a
4 five-year relationship with Christine Woolsey and has two sons with
5 her. *Updated Presentence Investigation Report 2.* Mr. Hegge has a total
6 of four sons and one daughter. *Updated Presentence Investigation*
7 *Report 2.*

10 SUMMARY OF ARGUMENT

11 The district court committed reversible error in denying Bo
12 Dwight Hegge an evidentiary hearing on his motion to withdraw his
13 plea of no contest as well as in denying the motion. Such a hearing was
14 essential to show whether his plea was knowing, intelligent, and
15 voluntary. That showing could not be adequately made when the lower
16 court keeps Mr. Hegge defense attorney on the case – contrary to
17 Nevada case law. Mr. Woodbury became a witness in the case by his
18 filing of the motion on Mr. Hegge's behalf.

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1 Alternatively, Mr. Hegge alleges that the district court abused its
2 discretion in denying Mr. Hegge the opportunity for probation. Mr.
3 Hegge's limited record warranted a grant of probation.
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5 ARGUMENT

6 **(1) The district court committed reversible error in**
7 **denying Bo Dwight Hegge an evidentiary hearing on his**
8 **motion to withdraw his plea of no contest and in denying**
9 **the motion.**
10

11 The standard of review regarding a district court judge's decision
12 to deny a motion to withdraw a guilty or no contest plea is that such a
13 plea is presumptively valid and the appellant must show a clear abuse
14 of discretion to have such a plea invalidated. Mitchell v. State, 109,
15 Nev. 137, 140, 848 P.2d 1060, 1061 (1993), citing Bryant v. State, 102
16 Nev. 268, 272, 721 P.2d 364, 367-68 (1986).
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18 In Jezierski v. State, 107 Nev. 395, 396, 812 P.2d 355, 355 (1991),
19 this Court reversed a lower court's ruling that Mr. Jezierski should not
20 be allowed to withdraw his plea of guilty to a count of child abuse
21 resulting in substantial bodily harm when "[n]o public policy supports
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1 binding a defendant to his plea where the plea was made under
2 misconception, and where the State has not yet been prejudiced.”

3 The Ninth Circuit United States Court of Appeals has dealt with
4 the issue of a defense attorney litigating a motion that brings into
5 question that attorney’s ineffectiveness and has ruled that such a
6 scenario creates a conflict of interest. United States v. Del Muro, 87
7 F.3d 1078, 1080-81 (9th Cir. 1996), citing United States v. Miskinis, 966
8 F.2d 1263, 1268 (9th Cir. 1992); Cuyler v. Sullivan, 446 U.S. 335, 348-
9 50, 100 S. Ct. 1708, 64 L. Ed. 2d 333 (1980); Holloway v. Arkansas, 435
10 U.S. 475, 487-91, 55 L. Ed. 2d 426, 98 S. Ct. 1173 (1978) (holding that
11 the district court committed error by making defense counsel argue a
12 motion for a new trial based on defense counsel’s ineffective assistance
13 of counsel).

14 At the state level, this Court recognized the general rule that a
15 defense attorney cannot act as witness and advocate in the same
16 proceeding. Dimartino v. Eighth Judicial Dist. Court of Nev., 119 Nev.
17 119, 121-22, 66 P.3d 945, 946-47 (2003). This Court invoked the now
18 abrogated Nev. Sup. Ct. R. 178, which pertains to the prohibition of
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1 lawyers acting as advocates when those lawyers are likely to be a
2 necessary witness. Id. at 121, 946. The former Nev. Sup. Ct. R. 178 is
3 now found in substantially the same form in Nev. R. Prof. Cond. 3.7(a),
4 which states:
5

6 A lawyer shall not act as advocate at a trial in which the lawyer is
7 likely to be a necessary witness unless:

- 8 (1) The testimony relates to an uncontested issue;
9 (2) The testimony relates to the nature and value of legal services
10 rendered in the case; or
11 (3) Disqualification of the lawyer would work substantial hardship
12 on the client.

13 Here, the district court's error was twofold. Firstly, it was
14 incumbent upon the district court to hold an evidentiary hearing so that
15 Mr. Hegge can properly litigate his claim regarding the illegality of the
16 pat down. Secondly, and more crucially, the district court should
17 have never kept Gary Woodbury as the counsel of record for Mr. Hegge
18 when Mr. Woodbury's effectiveness was necessarily called into question
19 in Mr. Woodbury's motion to withdraw the plea of no contest.
20

21 Mr. Woodbury's motion mentions Mr. Hegge's misgivings about
22 the pat down and, more specifically, Mr. Hegge's lack of knowledge as to
23 whether the officer's belief that Mr. Hegge was armed was objectively
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1 reasonable. How Mr. Hegge could be left with such a belief after having
2 been advised by a seasoned criminal defense attorney required an
3 evidentiary hearing with Mr. Woodbury explaining himself.² Obviously,
4 if Mr. Woodbury's counseling of Mr. Hegge vis-à-vis the suppression
5 issue constitutes ineffectiveness of counsel, then there is no question
6 that Mr. Woodbury was likely (if not definitely) a witness on the very
7 same motion he filed.³ Not even the State disputed this much in its
8 opposition to said motion when it asserted that Mr. Hegge "now needs a
9 new attorney so that his constitutional right to the effective assistance
10 of counsel is not compromised."⁴

14 Mr. Woodbury's own words are quite telling. He informed the
15 district court that Mr. Hegge did not understand the significance of
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18 ² Gary Woodbury was admitted into the Nevada Bar on September 20,
19 1976.

20 ³ This is the same Gary Woodbury who was recently held to be
21 ineffective in a case out of Elko County involving the use of racial
22 invective during voir dire. Dean v. Narvaiza, 2022 Nev. LEXIS 2, 138
23 Nev. Adv. Rep. 2 (2022).

24 ⁴ Hopefully the State remains committed to that position on this appeal.
25

1 mistake of law after having been counseled by Mr. Woodbury to enter
2 his plea of no contest. That being the case, the district court needed to
3 jettison Mr. Woodbury from the case so new counsel could call Mr.
4 Woodbury to the stand regarding specifics as to why Mr. Hegge could
5 have such a view of the law after having been counseled by a veteran
6 criminal defense attorney. This goes to the heart of the matter as it
7 relates to ineffectiveness of counsel.
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10 As if that were not enough, Mr. Woodbury went on to say that Mr.
11 Hegge “did not fully understand the concept of how fact finders are
12 required and permitted to weigh evidence.” It is Mr. Woodbury’s job to
13 make sure that, before Mr. Hegge pleads to a felony that can send Mr.
14 Hegge to the Nevada Department of Corrections for up to six (6) years,
15 Mr. Hegge “fully understand[s] the concept of how fact finders are
16 required and permitted to weigh evidence.”⁵
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19 Yet notwithstanding the conflict of interest that was present,
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22 ⁵ NRS 202.360 prescribes this maximum penalty.
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1 Judge Hill failed to grant an evidentiary hearing for Mr. Hegge. In Her
2 Honor's order denying the motion to withdraw the plea of no contest,
3 Judge Hill invoked Stevenson v. State, 131 Nev. 598, 354 P.3d 1277
4 (2015). In that case, this Court held that a "district court must consider
5 the totality of the circumstances to determine whether permitting
6 withdrawal of a guilty plea before sentencing would be fair and just."
7 Id. at 603, 1281. This Court invoked NRS 176.165 in its opinion and
8 averred that this statute "says nothing about the *circumstances* in
9 which his motion should be granted." Id. at 601, 1279 (emphasis in
10 original). NRS 176.165 states, in its entirety:

14 Except as otherwise provided in this section, a motion to withdraw a
15 plea of guilty, guilty but mentally ill or nolo contendere may be
16 made only before sentence is imposed or imposition of sentence is
17 suspended. To correct manifest injustice, the court after sentence
18 may set aside the judgment of conviction and permit the defendant
19 to withdraw the plea.

20 When we consider what is "fair and just," at a bare minimum, it
21 would be to not lock in a criminal defendant into a plea of no contest
22 when he is thoroughly unknowledgeable about matters related to a
23 Fourth Amendment issue of pat downs after having been counseled by a

1 seasoned defense attorney. There is much in the way of evidence just in
2 the motion to withdraw the plea of no contest to warrant allowing Mr.
3 Hegge the opportunity to withdraw his plea of no contest. But the
4 suppression issue is not the only part of the analysis.
5

6 The other part of the analysis is the fact that Mr. Woodbury was
7 accusing the State of withholding Brady material from the defense for
8 slightly over three (3) months – including the eleven (11) days leading
9 up to the date that Mr. Hegge signed the no contest plea agreement. Is
10 such withholding of Brady material irrelevant to the analysis of
11 whether it is “just and fair” for the district court to allow Mr. Hegge the
12 opportunity to withdraw his plea of no contest? Of course not.
13
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15 Regarding Mr. Woodbury’s perplexity about being a necessary
16 witness, this heightened the need for Mr. Woodbury’s excusal as Mr.
17 Hegge’s defense counsel. On one hand, Mr. Woodbury has questioned
18 whether Mr. Hegge’s plea was knowingly and intelligently made. On
19 the other hand, he has questioned the need for his testimony. These
20 positions are mutually antagonistic.
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1 Understanding how Mr. Hegge had the lingering doubts about
2 whether he should have entered his plea necessitated Mr. Woodbury
3 taking the witness stand and explaining how he advised Mr. Hegge and
4 what Mr. Hegge was informed of. How else can the district court gauge
5 Mr. Hegge's knowledge and intelligence in entering his plea? Why was
6 Mr. Woodbury so opposed to having to take the witness stand to explain
7 himself? That position could only have weakened Mr. Hegge's position
8 on the motion to withdraw the plea of no contest.
9

11 At the sentencing, there could have been no clearer showing of
12 antagonism between defense attorney and client than the attorney
13 telling his client to "Just Quit" when the client wanted it clear that the
14 PSI did not have the correct recitation of facts. Under such a situation,
15 removal of a defense attorney is necessary.
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18 In Clark v. State, 108 Nev. 324, 326, 831 P.2d 1374, 1376 (1992),
19 citing Holloway v. Arkansas, 435 U.S. 475 (1978); Harvey v. State, 96
20 Nev. 850, 619 P.2d 1214 (1980); this Court articulated that "Every
21 defendant has a constitutional right to the assistance of counsel
22 unhindered by conflicting interests."
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1 This constitutional right was not afforded to Mr. Hegge. Mr.
2 Woodbury questioned his client's knowledge and intelligence in entering
3 his plea yet was steadfast in opposing the State's position that Mr.
4 Woodbury would thereby be a necessary witness. Mr. Hegge needed
5 counsel who was conflict-free and who would have questioned Mr.
6 Woodbury about the specifics of the illegality of the pat down as well as
7 the potential defense of mistake of law. Mr. Hegge did not have that
8 opportunity and his right to counsel was violated. Both Mr. Hegge and
9 the State of Nevada requested an evidentiary hearing. Judge Hill gave
10 zero (0) explanation as to why an evidentiary hearing was unnecessary.
11 An evidentiary hearing was necessary under the circumstances with
12 conflict-free defense counsel representing Mr. Hegge.
13

14 Pursuant to Nevada case law, Mr. Hegge should be allowed the
15 opportunity to withdraw his plea of no contest or, alternatively, be
16 granted an evidentiary hearing on his motion to withdraw his plea.
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1 **(2) The district court abused its discretion in denying Bo**
2 **Dwight Hegge the opportunity for community supervision.**

3 In Houk v. State, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987),
4 this Court held that the “sentencing judge has wide discretion in
5 imposing a sentence, and that determination will not be overruled
6 absent a showing of abuse of discretion.” See Deveroux v. State, 96
7 Nev. 388, 390, 610 P.2d 722, 723 (1980).
8

9
10 In Sims v. State, 107 Nev. 438, 440, 814 P.2d 63, 64 (1991), it was
11 held that it was presumptively invalid for an appellate court to
12 superimpose its view of what an appropriate sentence is when a trial
13 judge sentences a criminal defendant within the statutory parameters.
14 See Rummel v. Estelle, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382
15 (1980).
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18 In Sims, the late Nevada Supreme Court Justice Robert E. Rose
19 dissented from the affirmance of a sentence of life without the
20 possibility of parole for the non-violent crime of grand larceny. Sims at
21 441-46, 65-68. Justice Rose, in no uncertain terms, articulated that he
22 found “it disheartening that the part of the criminal process that has
23 found “it disheartening that the part of the criminal process that has
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1 the greatest ultimate effect on the defendant – the imposition of his or
2 her sentence – is the part we decline to review.” Id. at 442, 65. He went
3 on to say that “[s]ince the exercise of discretion in sentencing is an
4 integral part of the criminal judicial process, it should be subject to our
5 review.” Id. at 443, 66.

7 In another case from this Court, Justice Rose “urge[d] this court in
8 the future to reconsider its refusal to review criminal sentences for
9 excessiveness and to provide criminal defendants with the opportunity
10 to have the most important aspect of their criminal cases examined on
11 appeal.” Santana v. State, 122 Nev. 1458, 1465, 148 P.3d 741, 746
12 (2006).

15 In Santana, the appellant was sentenced to “five consecutive life
16 sentences without the possibility of parole for making sexually explicit
17 telephone calls while incarcerated and physically unable to actually
18 carry out any action described during the telephone calls.” Id. Justice
19 Rose, in light of such sentences, said that such a decision was an abuse
20 of the lower court’s discretion. Id.

1 The district court abused its discretion in sentencing Bo Dwight
2 Hegge to prison. He only had one (1) prior felony conviction that was
3 over ten (10) years old. He is a family man who is a father of five (5)
4 and has two (2) sons with his live-in girlfriend Ms. Woolsey. This Court
5 should overturn Mr. Hegge's prison sentence and allow him the
6 opportunity for community supervision.
7

8 CONCLUSION

9
10 The district court committed reversible error in denying Bo
11 Dwight Hegge's motion to withdraw his plea of no contest. Mr. Hegge's
12 own defense attorney conceded that Mr. Hegge had a lack of knowledge
13 about aspects of the law that put into question not only whether Mr.
14 Hegge's plea was knowingly and intelligently made, but also put into
15 question whether defense counsel was effective. Denying an
16 evidentiary hearing was in and of itself reversible error.
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1 Alternatively, this Court should overturn Mr. Hegge's prison
2 sentence. The district court abused its discretion in sentencing Mr.
3 Hegge to prison.
4

5 DATED this 26th day of February, 2022.

6 BEN GAUMOND LAW FIRM, PLLC
7

8
9 By: 

10 BENJAMIN C. GAUMOND, ESQ.
11 Nevada Bar Number 8081
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16 CERTIFICATE OF COMPLIANCE

17 1. I hereby certify that this Opening Brief complies with the
18 formatting requirements of NRAP 32(a)(4), the typeface requirements of
19 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6)
20 because this Opening Brief has been prepared in a proportionally
21 spaced typeface using Microsoft Word in size 14 Century Schoolbook
22 font.
23
24
25

1 2. I further certify that this Opening Brief complies with the page
2 or type-volume limitations of NRAP 32(a)(7) because, excluding the
3 parts of the brief exempted by NRAP 32(a)(7)(C), it is either:
4

5 ☒ Proportionately spaced, has a typeface of 14 points or more,
6 and contains 3,960 words; or

7 ☐ Monospaced, has 10/5 or fewer characters per inch, and
8 contains ____ words or ____ lines of text; or
9

10 ☒ Does not exceed 30 pages.

11 3. Finally, I hereby certify that I have read this appellate brief,
12 and to the best of my knowledge, information, and belief, it is not
13 frivolous or interposed for any improper purpose. I further certify that
14 this brief complies with all the applicable Nevada Rules of Appellate
15 Procedure, in particular NRAP 28(e)(1), which requires every assertion
16 in the brief regarding matters in the record to be supported by a
17 reference to the page and volume number, if any, of the transcript or
18 appendix where the matter relied on is found.
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1 I understand that I may be subject to sanctions in the event that
2 the accompanying brief is not in conformity with the requirements of
3 the Nevada Rules of Appellate Procedure.
4

5 DATED this 26th day of February, 2022.

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9 By: 

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16 CERTIFICATE OF SERVICE


17 (a) I hereby certify that this document was electronically filed
18 with the Nevada Supreme Court on the 26th day of February, 2022.

19 (b) I further certify that on the 26th day of February, 2022,
20 electronic service of the foregoing document shall be made in accordance
21 with the Master Service List to Aaron Ford, Nevada Attorney General;
22
23
24
25

1 and Tyler J. Ingram, Elko County District Attorney; and Jeffrey C.
2 Slade, Deputy Elko County District Attorney.

3 (c) I further certify that on the 26th day of February, 2022, this
4 brief shall be mailed with postage prepaid to Bo Dwight Hegge, NDOC
5 #1084187, High Desert State Prison, P.O. Box 650, Indian Springs, NV
6 89070-0650.
7

8 DATED this 26th day of February, 2022.
9

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