

No. 83864

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IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown  
Clerk of Supreme Court

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**Jermiah Dewight Thornburg,**

Appellant,

v.

**State of Nevada,**

Respondent.  
\_\_\_\_\_

Direct Appeal from a Judgment of Conviction  
Eighth Judicial District Court  
The Honorable Jerry A. Wiese, District Court Judge  
District Court Case No. C-20-348507-1

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**Appellant's Opening Brief**

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## **I. JURISDICTIONAL STATEMENT**

This is an appeal from a judgment of conviction following a guilty plea to one count of attempt sexual assault with a minor under fourteen years of age. 1 App. 59–60. The judgment of conviction was filed on November 1, 2021. *Id.* at 59. A timely notice of appeal was filed on November 24, 2021. *Id.* at 69. An Amended Judgment of Conviction and Amended Notice of Appeal were filed December 27, 2021. *Id.* at 72–75. This Court has jurisdiction over this appeal pursuant to NRS 177.015.

## **II. ROUTING STATEMENT**

This appeal is presumptively assigned to the Court of Appeals because it is an appeal based on a plea of guilty. *See* NRAP 17(b)(1).

## **III. STATEMENT OF THE ISSUES**

The district court erred when it imposed extradition costs and attorney’s fees at sentencing in disregard of Thornburg’s debts and ability to pay.

## **IV. STATEMENT OF THE CASE**

On May 26, 2020, the State of Nevada charged Jermiah Thornburg by way of Information with one count of attempt sexual assault with a minor under fourteen years of age. 1 App. 1–2. The State later amended

its Information to include lewdness with a child under the age of fourteen, sexual assault with a minor under fourteen years of age, open or gross lewdness in the presence of a child or vulnerable person, and lewdness with a child under the age of sixteen. *Id.* at 3–5. On August 10, 2021, Thornburg entered into a guilty plea to a single charge of attempt sexual assault with a minor under fourteen years of age. *Id.* at 17–27. The parties stipulated to an 8-to-20 year sentence, dismissal of justice court case number 18F02416X, concurrent time with Thornburg’s federal case, and credit for time served beginning April 15, 2020. *Id.* Thornburg was sentenced as stipulated on October 21, 2021. *Id.* at 35–37.

Subsequently, Thornburg filed a Motion to Clarify and/or Amend Judgment of Conviction reflecting that Thornburg would serve his time concurrent to his federal case. *Id.* at 45–46. The district court granted that motion and an Amended Judgment of Conviction issued on December 27, 2021. *Id.* at 68, 72–73. Thornburg filed a timely Notice of Appeal on November 24, 2021, and then an Amended Notice of Appeal on December 27, 2021. *Id.* at 69–70, 74–75.

## **V. STATEMENT OF THE FACTS**

Thornburg was in federal custody in Atlanta, Georgia on an unrelated matter at the inception of this case, and he was extradited to Las Vegas, Nevada to answer for these charges. PSI 5. The PSI reported that extradition costs were owing in the amount of \$5184.00. *Id.* at 7–8. At sentencing, Thornburg objected to the imposition of extradition costs, arguing that Thornburg is indigent and in child support arrears of ten-to-fifteen thousand dollars. 1 App. 37–38; PSI 3. Despite this information, the district court imposed the stipulated 8-to-20 year sentence along with \$5184.00 in extradition fees and costs and an indigent defense civil assessment of \$250.00 for attorney’s fees. 1 App. 40–43.

## **VI. SUMMARY OF THE ARGUMENT**

The district court erred when it assessed extradition costs and attorney’s fees without regard for Thornburg’s outstanding debts and ability to pay. Thornburg owes a significant amount of back child support, and the imposition of extradition costs and an indigent defense civil assessment constitute an undue financial burden, rendering the district court’s order an abuse of discretion.

## VII. ARGUMENT

### **A. This Court reviews sentencing determinations for an abuse of discretion.**

A “sentencing judge has wide discretion in imposing a sentence, and that determination will not be overruled absent a showing of abuse of discretion.” *Houk v. State*, 103 Nev. 659, 664, 747 P.2d 1376, 1379 (1987); *see also Chavez v. State*, 125 Nev. 328, 348, 213 P.3d 476, 490 (2009). The district court also has the discretion to order a defendant to pay expenses incurred by the county in providing indigent defense services. *Taylor v. State*, 111 Nev. 1253, 1258–59, 903 P.2d 805, 809 (1995), *overruled on other grounds by Gama v. State*, 112 Nev. 833, 836, 920 P.2d 1010, 1012–13 (1996).

### **B. The district court abused its discretion in assessing extradition costs of \$5184.00.**

At sentencing, Thornburg objected to the imposition of extradition costs based on an inability to pay. 1 App. 37–38. Despite the objection, the district court ordered \$5184.00 in extradition costs. *Id.* at 40–41. The court noted that it was “only fair that the State gets paid back that.” *Id.* at 40.



Nevada Revised Statute 179.225(2) provides that a district court shall conduct an investigation of the financial status of the defendant to determine their ability to make restitution payments. Part of that investigation depends on whether the defendant has unpaid child support. NRS 179.225(2)(a). “The court shall not order the person to make restitution if payment of restitution will prevent the person from paying any existing obligations described in subsection 2.” NRS 179.225(3). In this context, restitution includes the costs of extradition. NRS 179.225(2).

The district court should have recognized Thornburg’s inability to pay restitution. The court itself noted that Thornburg’s custody status likely precluded him from making payments on his child support.<sup>1</sup> That the district court then assessed the fee constituted an abuse of discretion in light of Thornburg’s indigent status and outstanding child support obligations. For those reasons, Thornburg’s sentence should be vacated and he should be re-sentenced without the imposition of extradition costs.

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<sup>1</sup> “Well, I guess the fact that he’s 15 to 20 thousand dollars in arrears on child support indicates that he wasn’t paying that anyway . . .” 1 App. 39.

**C. The district court abused its discretion in ordering an indigent defense civil assessment of \$250.00.**

Pursuant to NRS 171.188, an indigent defendant may request the appointment of an attorney to represent him. It is the public defender's office who is charged with the representation of indigent criminal defendants, which representation must be "without charge." NRS 260.030; NRS 260.050; *see also Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (recognizing that "in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him"). The district court must appoint the public defender to represent indigent criminal defendants unless they are disqualified. NRS 7.115. When the public defender is disqualified, the court is permitted to appoint another attorney to represent the defendant as long as such appointment complies with the county plan for the provision of indigent defense services. *Id.*

An initial determination that a defendant is indigent, however, is not "set in stone" and a defendant may be ordered to pay part or all of the

attorney fees, if he becomes able, during the pendency of the action. As indicated in NRS 7.165:

If at any time after the appointment of an attorney or attorneys the magistrate or the district court finds that money is available for payment from or on behalf of the defendant so that the defendant is financially able to obtain private counsel or to make partial payment for such representation, the magistrate or the district court may:

. . . .

Direct that such money be paid to:

. . . .

The clerk of the district court for deposit in the county treasury, if all of the compensation and expenses in connection with the representation of such defendant were paid from the county treasury, and remittance to the office of the state public defender, if such compensation and expenses were paid partly from moneys appropriated to the office of the state public defender and the money received exceeds the amount of compensation and expenses paid from the county treasury.

The district court has the responsibility to continually assess a defendant's ability to pay for his attorney. While the district court has the discretion to order a defendant to pay all or part of the attorney's fees,

the district court may do so only after assessing a defendant's ability to pay. Specifically, NRS 178.3975 states, in pertinent part, that:

The court may order a defendant to pay all or any part of the expenses incurred by the county, city or state in providing the defendant with an attorney which are not recovered pursuant to NRS 178.398. The order may be made at the time of or after the appointment of an attorney and may direct the defendant to pay the expenses in installments.

The court shall not order a defendant to make such payment unless the defendant is or will be able to do so. In determining the amount and method of payment, the court shall take account of the financial resources of the defendant and the nature of the burden that payment will impose.

While NRS 178.395 gives the district court the discretion to require the partial repayment of funds expended by the county for attorney's fees, the statute mandates that the defendant's financial resources be assessed first. As this Court indicated in *Taylor v State*:

“[O]nly those who actually become capable of repaying the State will ever be obliged to do so. Those who remain indigent or for whom repayment would work ‘manifest hardship’ are forever exempt from any obligation to pay.”

111 Nev. 1253, 1259, 903 P.2d 805, 809 (1995) *overruled on other grounds* by *Gama v. State*, 112 Nev. 833, 836, 920 P.2d 1010, 1012–13 (1996) (quoting *Fuller v. Oregon*, 417 U.S. 40, 52–53 (1974)) (cleaned up).

Here, the district court was required to take into account Thornburg's financial resources and ability to pay before assessing him a fee of \$250.00 for attorney's fees. This, the district court failed to do. The district court, therefore, abused its discretion in assessing such fees.

Thornburg was found indigent, and counsel was appointed for him. His PSI revealed that he had fifteen to twenty thousand dollars in child support obligations. PSI 3. Furthermore, Thornburg was in federal custody prior to his time in state court. PSI 7. During his lengthy incarceration, Thornburg had no opportunity to earn money, nor did he have any ability to pay for an attorney.

Given these facts, the district court abused its discretion in assessing attorney's fees to Thornburg as part of his sentence. As a result, Thornburg's sentence should be reversed, and this case remanded for re-sentencing.

### VIII. CONCLUSION

Thornburg respectfully submits that the district court abused its discretion when it ordered him to pay extradition costs and an indigent defense civil assessment. For that reason, he would ask this Court to vacate his sentence and remand this matter for re-sentencing.

DATED this 18th of May, 2022.

Respectfully submitted,

JoNell Thomas  
Clark County Special Public Defender

*/s/ Julian Gregory*

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Julian Gregory  
Deputy Special Public Defender

## 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 in Century Schoolbook, 14 point font.

2. I further certify that this brief does comply with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(c), it contains 1745 words.

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 18th of May, 2022.

Respectfully submitted,

JoNell Thomas  
Clark County Special Public Defender

/s/ Julian Gregory

Julian Gregory  
Deputy Special Public Defender

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2022, a copy of the Opening Brief (and appendix) was served as follows:

By Electronic Filing to

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