

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARK SIMS,)	No. 84717	
)		
Appellant,)	E-File	Electronically Filed
)		Jul 25 2022 03:02 p.m.
vs.)		Elizabeth A. Brown
)		Clerk of Supreme Court
)		
THE STATE OF NEVADA,)		
)		
Respondent.)		
)		

FAST TRACK REPLY

1. Legal argument, including authorities:

A. The State’s Response failed to address Appellant’s core argument that he can legally stipulate to a particular technical violation, that the Court exceeded its authority by imposing the underlying sentence without exhausting all of the graduated sanctions, and that, in the alternative, the Rule of Lenity should apply.

The State’s Response postulates that N.R.S 176A.630(2) “provide[s] some leeway for probationers when they commit technical violations while still holding them responsible” and that the statute “gives the district court discretion to set the length of imprisonment and limits that discretion.” State’s Response at 11. The State further concludes that “the number of

violations guides the district court with the length of imprisonment it can impose.” State’s Response at 12. Appellant essentially concurs with this basic statutory analysis.

But then the State misconstrues Appellant’s argument as “the length of imprisonment prescribed in... [N.R.S 176A.630(2) determines] the number of technical violations.” Id. The State further misstates the Appellant’s argument when it claims that he assumes the District Court must impose “fixed terms.” Id. These inaccurate summarizations of the Appellant’s argument provided in the State’s Response do not cite directly to any particular section of in the Appellant’s Fast Track Statement.

Appellant’s argument in his Fast Track Statement is clearly focused on whether he has legal authority to negotiate for a particular technical violation number in probation hearings and whether the Court violated its authority by imposing the underlying sentence without exhausting all of the graduated sanctions. See Appellant’s Fast Track Statement. This is the core issue that the State only addresses as a brief aside in the second section of its Response detailing the Rule of Lenity as it applies here. See State’s Response at 15-17. There, the State summarily concludes that the Appellant’s position regarding his right to negotiate and stipulate to a particular violation is without merit.

State's Response at 17. But the State provides no analysis to demonstrate that supposition's validity. Id. The Response merely refers back to the Appellant's "admission to the violations, police reports, and jail calls demonstrating his violations." Id.

To the contrary, the record provided indicates that neither the State nor the District Court questioned or clarified Appellant's original supposition that he was negotiating for another second violation. See Appellant's Fast Track Statement Appendix at 54-67. Nor did the District Court or the State adequately respond the Appellant's arguments at the final probation revocation hearing regarding his position. See Appellant's Fast Track Statement Appendix at 68-73. Now, the State's Response largely ignores the Appellant's actual argument that he is legally authorized to stipulate to a particular technical violation and that the District Court violated its authority by imposing the underlying sentence without exhausting all of the graduated sanctions. See Appellant's Fast Track Statement. The State's Response also summarily brushes off the Appellant's argument regarding the Rule of Lenity with a brief citation to the record. State's Response at 17.

Thus, the State's Response has failed to adequately address the Appellant's core argument that he may to stipulate to a particular technical violation, that the District Court violated his right to that negotiation in the final probation revocation hearing, and that given the apparent ambiguity regarding this situation the Rule of Lenity should apply.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Robert J. Schmidt
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VERIFICATION

1. I hereby certify that this fast track reply 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 fast track reply has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this fast track reply complies with the page or type-volume limitations of NRAP 3C(h)(2) because it is either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 4 pages, which does not exceed the 5 page limit.

3. Finally, I recognize that pursuant to NRAP 3C I am responsible for filing a timely fast track reply and that the Supreme Court of Nevada may sanction an attorney for failing to file a timely fast track reply, or failing to raise material issues or arguments in the fast track reply, or failing to cooperate fully with appellate counsel during the course of an appeal. I therefore certify that the information provided in this fast track

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reply is true and complete to the best of my knowledge, information and belief.

DATED this 25th day of July, 2022.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Robert J. Schmidt
ROBERT J. SCHMIDT, #14611
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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 25th day of July, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

ROBERT J. SCHMIDT

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

MARK SIMS
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c/o High Desert State Prison
P.O. Box 650
Indian Springs, NV 89070

BY /s/ Carrie Connolly
Employee, Clark County Public Defender's Office