IN THE SUPREME COURT OF THE STATE OF NEVADA

JOAN KATHRYN WENGER,
Appellant,

Electronically Filed

Case No. \$4069 2022 12:06 p.m.

Elizabeth A. Brown

Clerk of Supreme Court

VS.

ΓHE STATE OF NEVADA,				
	Respondent.			
		/		
	4.0			

APPELLANT'S REPLY BRIEF FIRST JUDICIAL DISTRICT COURT, CARSON CITY

Nevada State Public Defender

SALLY DESOTO Chief Appellate Deputy Bar I.D. No. 8790 511 E. Robinson St Carson City, NV 89701 (775) 684-1080

LEGAL ARGUMENT

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2	The State argued in its Answering Brief that "[a]s the defense did, the State
3	argued that for this defendant, a sentence of 10 to 25 years would likely be the
4	same as a life sentence and therefore the 10 to 25 sentence was appropriate in this
5	case." Respondent's Brief at pp. 3-4. However, that was not defense counsel's
6	argument at all. Defense counsel argued:
7	We are asking the Court to sentence her to ten to 25 years. She is 66
8	years old, Your Honor. Actually—excuse me—she's 67 now, I believe. If the Court sentenced her to ten to 25, she won't be able to parole until at the earliest she's 76 years of age and can be held until
9	she's 91 years of age. If the Court sentences her to 25 to life, she won't be eligible for parole until she's 91 years old. It's essentially a
10	life without parole sentence given her health and her circumstances, Your Honor.
11	AA at 17:22-18:7.
12	What defense counsel was arguing was that on a sentence of 25 to life,
13	Appellant would not be eligible for parole until she was 91 and would possibly die
14	before she was granted parole. However, it should be noted that 25 to life was not
15	one of the sentencing choicesAppellant could be sentenced to either a term of (1)
16	10 to 25 years or (2) 10 years to life. NRS 484C.440(1).
17	
18	The State also argues that Appellant failed to "make any argument that the
19	alleged errors prejudiced her." RB at p. 6. The prejudice is clearly that Appellant
20	
	Hereinafter "RB."

was sentenced to a more severe sentence than had been negotiated by the State. The State then argued that the prosecutor reading the victim's letter could not prejudice the defendant. "In fact, it is quite reasonable to believe that the victim trying to read an emotional letter at sentencing, possibly through tears and pauses of becoming choked up with emotion would have been more detrimental to the defendant than the prosecutor reading the letter would." RB at 6. The only possible reason to read the letter was to make an plea based on emotion for a longer sentence. The remaining arguments are submitted on the briefs.

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2	CERTIFICATE OF COMPLIANCE
3	1. I hereby certify that this reply brief complies with the formatting
4	requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and
5	the type style requirements of NRAP 32(a)(6) because:
6	This reply has been prepared in a proportionally spaced typeface using
7	Microsoft Word 2000, Version 9.0 in Times New Roman 14 pt.
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9	type-volume limitations of NRAP 28(a)(1)-(2) and NRAP 32(a)(7) because it is
10	either:
11	[] Proportionately spaced, has a typeface of 1 points or more, and
12	contains 1317 words; or
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14	words or lines of text; or
15	[X] Does not exceed 15 pages.
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19	
20	//

1	3. Finally, I recognize that pursuant to NRAP 3C, I am responsible
2	for filing a timely reply brief I therefore certify that the information provided in
3	this reply brief is true and complete to the best of my knowledge, information and
4	belief.
5	DATED this 28th day of July 2022.
6	/s/ SALLY DESOTO
7	Chief Appellate Deputy Nevada Bar I.D No. 8790
8	511 E. Robinson St., Suite 1 Carson City, Nevada 89701
9	(775) 684-1080
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5	AARON FORD NEVADA ATTORNEY GENERAL
6 7	SALLY DESOTO CHIEF APPELLATE DEPUTY PUBLIC DEFENDER
Ü	MARK JACKSON DOUGLAS COUNTY DISTRICT ATTORNEY
9	I further certify that I have mailed a copy of this document to the
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11	ionowing by o.s. man, addressed to the following.
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	JOAN WENGER #1250827, FMWCC
	4370 SMILEY RD. LAS VEGAS, NV 89115
15	
16	DATED this 28h day of July 2022.
17	SIGNED: /s/ Dawn Wholey
18	Employee of Nevada State Public Defender
19	
20	

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