

DANIEL SALDANA,	)	NO. 84029
	)	Electronically Filed
Appellant,	)	Jul 12 2022 04:17 p.m.
	)	Elizabeth A. Brown
vs.	)	Clerk of Supreme Court
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	
	)	

(Appeal from Judgment of Conviction)

Attorney for Appellant

**AARON FORD**  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1265

Docket 84029 Document 2022-21959

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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DANIEL SALDANA,	)	NO. 84029
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Appellant,	)	
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	
	)	

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**APPELLANT'S OPENING BRIEF**

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEF.  
309 South Third Street, #226  
Las Vegas, Nevada 89155-2610  
(702) 455-4685

Attorney for Appellant

STEVEN B. WOLFSON  
CLARK COUNTY DA  
200 Lewis Avenue, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89155  
(702) 671-2700

AARON FORD  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701  
(775) 684-1265

Counsel for Respondent

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**APPELLANT’S OPENING BRIEF**

**JURISDICTIONAL STATEMENT**

Appellant, Daniel Saldana (“Saldana”), appeals from a final judgment under Nevada Rule of Appellate Procedure 4(b) and NRS 177.015. The district court filed the Amended Judgment of Conviction on December 27, 2021. Appellant’s Appendix (“AA”) Vol. I 41-43. Saldana filed his Proper Person Notice of Appeal on December 28, 2021. Id. at 44-46.

**ROUTING STATEMENT**

Saldana’s case is presumptively assigned to the Nevada Court of Appeals because he is appealing a judgment of conviction based upon a guilty plea. See Nevada Rules of Appellate Procedure (“NRAP”) 17(b)(1).

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## **ISSUES PRESENTED FOR REVIEW**

- I. The District Court Abused Its Discretion by Revoking Saldana's Probation and Imposing Saldana's Suspended Sentence.

## **STATEMENT OF THE CASE**

The State filed a criminal complaint in the Henderson Justice Court charging Saldana with one count Burglary,<sup>1</sup> one count Possession of Document or Personal Identifying Information,<sup>2</sup> and one count Attempt Theft.<sup>3</sup> AA I 1-2. Saldana made his first appearance in the Justice Court on July 26, 2018. Id. at 4. On July 30, 2018, the Justice Court set Saldana's bail at \$14,000.00 cash or surety. Id.

On August 6, 2018, the Justice Court conducted Saldana's initial arraignment. Id. The court appointed the Clark County Public Defender's Office to represent Saldana and scheduled a preliminary hearing for August 20, 2018. Id. At the time set for the preliminary hearing, Saldana unconditionally waived his right to a hearing pursuant to a plea agreement with the State. Id. at 3.

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<sup>1</sup> NRS 205.060.

<sup>2</sup> NRS 205.465

<sup>3</sup> NRS 205.0832, 205.0835.4, 193.330.

On August 29, 2018, Saldana pleaded guilty in the district court to one count Burglary. Id. at 7. In exchange, the State agreed not to oppose probation at Saldana's sentencing. Id. The court scheduled Saldana's sentencing hearing for January 10, 2019. Id. At Saldana's sentencing hearing the district court sentenced imposed 36 to 96 months in the Nevada Department of Corrections, suspended, with a probationary period not to exceed five (5) years. Id. at 48.

On October 9, 2019, the district court issued a warrant for Saldana's arrest for violating probation. Id. at 20. Saldana appeared for his revocation hearing in the district court on February 2, 2021. Id. at 80. However, the court continued the hearing to February 23, 2021, at the Public Defender's request. Id. at 81-82. At the continued hearing the court reinstated Saldana's probation with the added condition that Saldana successfully complete the Eighth Judicial District Court's Drug Court program. Id. at 91.

Saldana began drug court on February 25, 2021. Id. at 53. Drug Court terminated Saldana on October 28, 2021. Id. at 161-62. On November 15, 2021, prior to Saldana's probation revocation hearing, attorney Benjamin Scroggins substituted as Saldana's counsel. Id. at 25. The district court ultimately revoked Saldana's probation and imposed the suspended sentence without modification. Id. at 181. The court filed the

Amended Judgment of Conviction on December 27, 2021. Id. at 41. Saldana timely filed a proper person notice of appeal the next day.<sup>4</sup> Id. at 44.

### **STATEMENT OF PERTINENT FACTS**

According to the criminal complaint, on July 26, 2018, Saldana entered Henderson Chevrolet and used a California identification card containing false information while attempting to purchase a vehicle. See Id. at 1-2. Thus, the State charged Saldana with Burglary (entering Henderson Chevrolet with the intent to commit felony theft), Possession of Document or Personal Identifying Information (the ID card), and Attempt Theft (trying to purchase a vehicle). Id.

Rather than contest the allegations at a preliminary hearing, Saldana decided to enter into a plea agreement with the State. See Id. at 3. Pursuant to the agreement, Saldana pleaded guilty the Burglary count and the State dismissed the other counts and agreed not to oppose probation at Saldana's sentencing hearing in the district court. Id. at 8. On January 10, 2019, the district court followed the parties' agreement and sentenced Saldana to a 36

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<sup>4</sup> On remand from this Court the district court re-appointed the Clark County Public Defender's Office to represent Saldana on direct appeal even though Scroggins never filed a motion to withdraw in this Court or the district court. See Id. at 75.



to 96 month suspended sentence and probation not to exceed five (5) years with both standard and special conditions. See Id. at 48-49.

On October 2, 2019, the district court issued a bench warrant for Saldana's arrest for violating the terms of his probation. Id. at 20. At Saldana's probation revocation hearing on February 23, 2021, the district court reinstated Saldana's probation with an additional requirement that Saldana enter and successfully complete the district court's drug court program. Id. at 91.

Between February 25, 2021, and July 2, 2021, Saldana was generally compliant with all drug court directives. See Id. at 53-60. At a status check hearing on July, 23, 2021, drug court noted that Saldana failed to attend a scheduled Moral Reconciliation Therapy session on July 7, 2021. Id. at 135. At a status check hearing on August 13, 2021, drug court noted that Saldana missed a scheduled urinalysis on August 1, 2021. Id. at 142. At some point after August 2021, the Department of Parole and Probation arrested Saldana. Id. at 150. After Saldana's arrest, drug court set a termination hearing for September 30, 2021. Id. at 151. The court eventually continued the termination hearing to October 28, 2021. See Id. at 156.

At Saldana's termination hearing, officer Russell Larsen from the Nevada Department of Parole and Probation ("P&P") testified Saldana was

arrested on September 2, 2021, for violating the terms of his probation. Id. at 159. Larson advised that P&P invoked Saldana's search clause and upon searching Saldana's apartment officers discovered methamphetamine, marijuana edibles, a Nevada license plate that did not belong to Saldana, and assorted drug paraphernalia. Id. at 157. However, Larson also testified that he did not know whether Saldana was the only individual registered to live at the apartment. Id. at 158. The State also alleged, without presenting any documentary or testimonial evidence, that other persons in the drug court program were arrested in Saldana's vehicle after a police chase.<sup>5</sup> Id. at 156. Based upon these allegations the State urged the court to terminate Saldana. Id. at 159-60. Saldana noted the State did not file any criminal charges related to the drugs supposedly discovered at Saldana's apartment and requested he be allowed to continue in drug court with a 90 day stay at an in-patient drug treatment facility. Id. at 161. The court chose to terminate Saldana and refer his case back to the originating sentencing department. Id. at 162.

On December 16, 2021, the district court conducted a probation revocation hearing. Id. at 174. Saldana stipulated to the alleged violations, rather than cross-examine witnesses against him. Id. at 175. The State

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<sup>5</sup> According to Saldana, one person arrested after the alleged police chase was reinstated in drug court after the arrest. Id. at 160.

argued Saldana's probation should be revoked. Id. at 177. Saldana argued against revocation and requested reinstatement with intensive inpatient drug treatment. Id. at 179-80. The district court refused Saldana's suggestion and instead revoked his probation and imposed Saldana's underlying 36 to 96-month sentence. Id. at 181.

The next day Saldana filed a proper person Notice of Appeal asserting his sentence violated both the United States and Nevada constitutions.<sup>6</sup> Id. at 44-45. On remand from this Court the district court appointed the Clark County Public Defender's Office to represent Saldana on direct appeal. Id. at 75.

### **SUMMARY OF THE ARGUMENT**

Saldana believes this district court violated his constitutional rights by imposing a 36 to 96 month suspended sentence after the court terminated Saldana from drug court and revoked Saldana's probation.

### **ARGUMENT**

#### **I. The District Court Abused Its Discretion by Revoking Saldana's Probation and Imposing Saldana's Suspended Sentence.**

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<sup>6</sup> Saldana cannot challenge his sentence from his January 10, 2019, sentencing hearing in this direct appeal. See Whitter v. State, 135 Nev. 412, 416-17 (2019) (scope of appeal filed after an amended judgment of conviction is limited to issues arising from an amended judgment).

Revoking probation is within “the trial court's broad discretionary power and such an action will not be disturbed in the absence of a clear showing of abuse of that discretion.” Lewis v. State, 90 Nev. 436, 438 (1974). The district court may revoke probation so long as, the evidence and facts “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.” Id. Importantly however, “[d]ue process requires, at a minimum, that a revocation be based upon verified facts.” Anaya v. State, 96 Nev. 119, 122 (1980) (Internal citation and quotation omitted)). The decision to revoke probation is within “the trial court's broad discretionary power and such an action will not be disturbed in the absence of a clear showing of abuse of that discretion.” Lewis, 90 Nev. at 438. “An abuse of discretion occurs if the district court's decision is arbitrary or capricious or if it exceeds the bounds of law or reason.” Crawford v. State, 121 Nev. 744, 748 (2005).

NRS 176A.630 provides the district court with numerous options other than probation revocation. Consistent with NRS 176A.630's spirit, Saldana requested intensive inpatient treatment as an added condition of his probation after he had been terminated from drug court. See AA I 179-80. Saldana noted the drugs recovered from his apartment by probation officers

represented a small amount akin to personal use. Id. at 180. Saldana also noted that the State did not file criminal charges regarding anything recovered from his apartment by probation officers. Id.

Nevertheless, the court chose to revoke Saldana – rather than employ graduated sanctions as outlined in NRS 176A.630 – based solely upon an allegation that probation officers recovered fake identification and credit cards from Saldana’s apartment. See AA I 178 (“But the problem I have is the fake ID’s and the credit cards, to be honest with you.”); AA I 181 (“Maybe if he didn't have the credit cards.”). However, Officer Larson from the department of parole and probation never mentioned that he recovered credit cards or fake identification cards when he testified at Saldana’s termination hearing in drug court. See Id. at 157-58. No member of the department of parole and probation testified at Saldana’s revocation hearing. Accordingly, the court appears to have revoked Saldana’s probation based upon “unverified facts.” Anaya, 96 Nev. at 122. This decision was an arbitrary and capricious abuse of discretion. Therefore, Saldana respectfully requests this Court reverse the district court’s decision to revoke his probation.

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## CONCLUSION

Based upon the foregoing arguments, Saldana respectfully requests this Court reverse his conviction.

Respectfully submitted,

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By: /s/ William M. Waters  
WILLIAM M. WATERS, #9456  
Deputy Public Defender  
309 South Third Street, #226  
Las Vegas, Nevada 89155-2610  
(702) 455-4685

## **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 Times New Roman in 14 size font.

2. I further certify that this brief complies 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 is either:

Proportionately spaced, has a typeface of 14 points or more and contains 10 pages which does not exceed the 30 page limit.

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 12<sup>th</sup> day of July, 2022.

DARIN F. IMLAY  
CLARK COUNTY PUBLIC DEFENDER

By /s/ William M. Waters  
WILLIAM M. WATERS, #9456  
Deputy Public Defender  
309 South Third Street, Suite #226  
Las Vegas, Nevada 89155-2610  
(702) 455-4685



### CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12<sup>th</sup> day of July, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD

WILLIAM M. WATERS

ALEXANDER CHEN

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

DANIEL SALDANA  
NDOC No. 1251961  
c/o High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89018

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