

IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL SALDANA,)	NO. 84029
)	
Appellant,)	Electronically Filed
)	Aug 10 2022 04:28 p.m.
vs.)	Elizabeth A. Brown
)	Clerk of Supreme Court
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
)	

APPELLANT'S REPLY BRIEF

(Appeal from Judgment of Conviction)

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, 3rd 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

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT'S REPLY 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, 3rd 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

TABLE OF CONTENTS

	<u>PAGE NO.</u>
TABLE OF AUTHORITIES.....	ii
REPLY ARGUMENT.....	1
I. Saldana Correctly Requested That This Court Reverse His Conviction.....	1
II. The District Court Relied Upon Unverified Facts in Revoking Saldana’s Probation.....	2
III. Saldana Requested “Graduated Sanctions.”.....	4
CONCLUSION.....	5
CERTIFICATE OF COMPLIANCE.....	6
CERTIFICATE OF SERVICE.....	8

TABLE OF AUTHORITIES

PAGE NO.

Cases

<u>Anaya v. State</u> , 96 Nev. 119, 122 (1980).....	4
<u>Castillo v. State</u> , 106 Nev. 349, (1990).....	2
<u>Witter v. State</u> , 135 Nev. 412, 416 (2019).....	2

Statutes

NRS 176A.630.	4
NRS 176A.660.	4
NRS 177.015	2

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

APPELLANT’S REPLY BRIEF

REPLY ARGUMENT

I. Saldana Correctly Requested That This Court Reverse His Conviction.

The State asserts Saldana incorrectly requested this Court reverse his conviction when Saldana only challenged the district court’s decision to revoke Saldana’s probation on direct appeal. Respondent’s Answering Brief (RAB) 5 n. 1. Thus, the State claims Saldana “has set forth no basis for this Court to **vacate** his conviction.”¹ Id. (emphasis added). The State is incorrect, as the goal

¹ Saldana never requested this Court “vacate” his judgment of conviction, as the State claims.

of any appeal is to reverse the conviction from which the defendant appealed.

Pursuant to NRS 177.015(3), “The defendant only may appeal from a final judgment or verdict in a criminal case.” See also Castillo v. State, 106 Nev. 349, (1990) (“An appeal in a criminal case lies from the final judgment of the district court, not from an order finally resolving an issue in a criminal case.”). Here, after the district court revoked Saldana’s probation it filed an “Order for Revocation of Probation and **Amended judgment of conviction.**” AA I 41 (emphasis added). Appellant then filed his notice of appeal. Id. at 44. This amended judgment of conviction is substantively appealable under NRS 177.015(3). See Witter v. State, 135 Nev. 412, 416 (2019). Should this Court grant Saldana’s requested relief on appeal, the effect would be to **reverse** the Order for Revocation of Probation and Amended Judgment of Conviction. Therefore, Saldana correctly requested this Court “reverse” his conviction.

II. The District Court Relied Upon Unverified Facts in Revoking Saldana’s Probation.

Next, the State argues Saldana’s claim that no one from the department of parole and probation testified as to any violations **at**

Saldana's probation revocation hearing is belied by the record. RAB 5-6 (citing AOB 9). The State asserts a probation officer did testify "regarding Appellant's probation violations on October 28, 2021." *Id.* at 5 (citing AA I 155). However, the October hearing was for termination from drug court, not the probation revocation hearing. Compare AA I 154 with AA I 174.² The hearing on Saldana's termination from drug court occurred before a different district court judge than the one who conducted Saldana's probation revocation hearing. *Id.* No one testified at Saldana's revocation hearing.

Additionally, although Probation Officer Larson testified at the drug court termination hearing, he did not testify that police recovered forged credit cards or fake identification cards from Saldana's home.

² In his Opening Brief, Saldana explicitly made the distinction between the drug court termination hearing and the probation revocation hearing by noting:

"...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. [] 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." [].

AOB 9 (internal citations omitted).

Id. at 157-58. The recovery of the alleged credit cards and alleged fake identification cards was the basis for Saldana's probation revocation. Id. at 181. There is no indication in the record that the judge who conducted Saldana's probation revocation hearing was present at or read transcripts from Saldana's drug court termination hearing where Larson testified. Thus, to the extent the judge who revoked Saldana's probation learned about the alleged fake identification cards and credit cards through a police report or some other document, those alleged "facts" were unverified. See Anaya v. State, 96 Nev. 119, 122 (1980) ("[w]e therefore hold that a probationer has a due process right to confront and question witnesses giving adverse information at the formal revocation hearing[.]").

III. Saldana Requested "Graduated Sanctions."

Finally, the State argues Saldana did not request graduated sanctions below and therefore is not entitled to relief without demonstrating plain error. RAB 7. This is incorrect. Although Saldana did not say the words "graduated sanctions," he did ask for "long-term, in-house supervised [drug] rehabilitation." AA I 179. Thus, Saldana did – in effect – ask for a graduated sanction as understood in NRS 176A.630 and 176A.660. Nevertheless, Saldana

did not argue in his opening brief that he was entitled to graduated sanctions. Rather, Saldana argued the court erred in revoking his probation because it did not exercise discretion by exploring options other than revocation, and it relied upon unverified facts. AOB 8-9.

CONCLUSION

Based upon the foregoing arguments, Saldana respectfully requests this Court reverse his Judgement of Conviction and remand his case to the district court for further proceedings.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ William M. Waters
WILLIAM M. WATERS, #9456
Chief 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 5 pages which does not exceed the 15 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 10th day of August, 2022.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ William M. Waters
WILLIAM M. WATERS, #9456
Chief Deputy Public Defender
309 South Third Street, #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 10th day of August, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON FORD
KAREN MISHLER
ALEXANDER CHEN

WILLIAM M. WATERS

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