

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

Henry Aparicio,  
Appellant,

vs.

The State of Nevada,  
Respondent.

) Supreme Court Case No.: 84300

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**APPELLANT'S REPLY BRIEF**

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## **MEMORANDUM OF POINTS AND AUTHORITIES**

The State first responds that the issues raised in Appellant's Opening Brief are largely related to the first sentencing, and is therefore not entitled to a third sentencing as a result. It is important for this Court to review the history as it pertains to the first sentencing, as it directly relates to the issues that arose at the second sentencing. Without that context, the Court could not adequately consider the issues raised in the instant appeal.

The instant appeal focuses on the second sentencing. Specifically, the District Court's consideration of the prior sentence that had been overturned on appeal based, in part, on the District Court's improper consideration of *numerous* victim impact statements given by individuals that did not meet the statutory definition of a "victim" as it is defined under Marsy's Law<sup>1</sup>. To that, the State responds that because the District Court has broad discretion at sentencing, it is free to consider "any reliable and relevant evidence at the time of sentencing" pursuant to NRS 176.015(6). Respondent's Answering Brief ["RAB"] at 9.

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<sup>1</sup> Marsy's Law codified at NRS 176.015(6).

Respectfully, how could a prior sentence, which was overturned because the District Court improperly considered victim impact statements which fell far beyond the definition of a victim, be considered “reliable”? The very foundation on which that prior sentence was supported was found to be improper and an abuse of discretion. Additionally, the District Court failed to conduct the proper analysis into the victim impact letters provided as required; The District Court simply stated “I feel like the three letters that I've reviewed are sufficient.” (Bates 368). Therefore, it was improper for the District Court here to consider the prior sentence.

### **CONCLUSION**

For these reasons, Appellant respectfully requests the matter remanded for a new sentencing hearing before a different Judge.

**VERIFICATION OF KELSEY BERNSTEIN, ESQ.**

1. I am an attorney at law, admitted to practice in the State of Nevada.
2. I am the attorney handling this matter on behalf of Appellant.
3. The factual contentions contained within the Reply Brief are true and correct to the best of my knowledge.

Dated this 23rd day of September, 2022.

NEVADA DEFENSE GROUP  
Respectfully Submitted By:

Alexis E. Minichini  
ALEXIS E. MINICHINI, ESQ.  
Attorney for Appellant

### **CERTIFICATE OF COMPLIANCE**

1. I 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 2007 with 14 point, double spaced Cambria font.
2. I further certify that this brief complies with the page-or-type-volume limitations of NRAP 32(a)(7)(A)(ii) because it is proportionally spaced, has a monospaced typeface of 14 points or more and contains 743 words.
3. 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(c), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanction in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 23rd day of September, 2022.

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(d), I hereby certify that on the 23rd day of September, 2022, I served a true and correct copy of the Opening Brief to the last known address set forth below:

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