IN THE SUPREME COURT OF THE STATE OF NEVADA

DANIEL CHARLES COOKE,
Appellant,

v.

TIM GARRETT, WARDEN; AND CHARLES DANIELS, DIRECTOR OF NEVADA DEPARTMENT OF CORRECTIONS,
Respondents.

CASE NO. 86152

Appeal from the Order Denying Petitions for Writ of Habeas Corpus
Fourth Judicial District Court, County of Elko
The Honorable Mason Simons, District Court Judge, Dept. 3

APPELLANT'S OPENING BRIEF

Appellant's Counsel:
Ben Gaumond Law Firm, PLLC
Benjamin C. Gaumond, Owner
Nevada Bar Number 8081
495 Idaho Street
Suite 209
Elko, NV 89801
(775)388-4875

Respondents' Counsel:
Tyler J. Ingram
Elko Co. District Attorney
Nevada Bar Number 11819
540 Court Street, 2nd Floor
Elko, NV 89801
(775)738-3101

Chad B. Thompson, Deputy
Elko Co. District Attorney
Nevada Bar Number 10248
540 Court Street, 2nd Floor
Elko, NV 89801
(775)738-3101

Aaron D. Ford
Nevada Attorney General
Nevada Bar Number 7704
100 North Carson Street
Carson City, NV 89701
(775)684-1100

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Constitutional Amendment:

Court Rules:

Statutes:

STATEMENT OF JURISDICTION

This Court has jurisdiction over an order from the district court denying a post-conviction petition for writ of habeas corpus pursuant to NRS 34.575(1). Thirty (30) days from the service of such an order is the deadline to file an appeal. NRS 34.575(1).

The "Order Denying Petition for Post Conviction Relief" was entered on January 31, 2023. *Joint Appendix (Vol. 2) 241.* The "Notice of Entry of Decision or Order" was filed and served upon Daniel Charles Cooke's counsel on February 2, 2023. *Joint Appendix (Vol. 2) 247-254.*

The notice to appeal that order was filed and served upon opposing counsel on February 22, 2023. *Joint Appendix (Vol. 2) 255-256.*

Pursuant to NRAP 4(a)(1), a notice of appeal must be filed "no later than 30 days after the date that written notice of entry of the judgment or order appealed from is served" – mirroring the timeline articulated in NRS 34.575(1).

From the time the order denying the post-conviction petition for habeas corpus was served (February 2, 2022) to the date that Mr.

Cooke's legal counsel served his notice of appeal to opposing counsel for the State of Nevada (February 22, 2023) constitutes twenty (20) days.

As such, Mr. Cooke's legal counsel filed the notice of appeal in a timely manner. This Court has jurisdiction to consider the instant appeal.

ROUTING STATEMENT

Pursuant to NRAP 17(b)(3) and NRAP 17(b)(4), the two classes of post-conviction appeals that are presumptively assigned to the Court of Appeals of the State of Nevada are "appeals that involve a challenge to a judgment of conviction or sentence for offenses that are not category A felonies" and "appeals that involve a challenge to the computation of time served under a judgment of conviction, a motion to correct an illegal sentence, or a motion to modify a sentence."

Since the instant matter is an appeal that involves a challenge to a judgment of conviction and sentence that is not a category A felony (namely, Attempted Sexual Assault of a Child Under the Age of 16), this matter is presumptively assigned to the Court of Appeals. Mr. Cooke

does not object to a reassignment of the instant matter to the Court of Appeals, accordingly.

STATEMENT OF THE ISSUE

Did the district court commit reversible error in denying Daniel Charles Cooke's postconviction petition for writ of habeas corpus in its order that was filed on January 31, 2023?

STATEMENT OF THE CASE

Daniel Charles Cooke filed his "Petition for Writ of Habeas Corpus (Post-Conviction)" on April 9, 2018. *Joint Appendix (Vol. 1) 1.* A return to said petition was filed on December 1, 2020. *Joint Appendix (Vol. 1) 36.*

The district court denied Mr. Cooke's postconviction petition for a writ of habeas corpus on August 16, 2021 without the benefit of an evidentiary hearing. *Joint Appendix (Vol. 1) 127-128.* On August 26, 2021, the Fourth Judicial District Court Clerk entered her "Notice of Entry of Decision or Order" pertaining to the denial of Mr. Cooke's petition. *Joint Appendix (Vol. 1) 134.*

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Mr. Cooke's filed his "Notice of Appeal" from the order denying postconviction relief on September 24, 2021. *Joint Appendix (Vol. 1) 143.*

This Court issued an "Order of Limited Remand for Appointment of Counsel for the Appellant." *Joint Appendix (Vol. 1) 145.* As a result of this order, undersigned counsel was appointed to represent Mr. Cooke on the instant appeal. *Joint Appendix (Vol. 1) 145.*

In Nevada Court of Appeals Case Number 83578-COA, that Court overturned the district court's disallowance of an evidentiary hearing on the limited issue of Mr. Cooke's claims that he demanded an appeal and that his defense counsel did not file a notice of appeal.

Accordingly, an evidentiary hearing was held on December 19, 2022 before Fourth Judicial District Court Judge Mason E. Simons. *Joint Appendix (Vol. 2) 149.*

After that hearing, Judge Simons denied Mr. Cooke's petition for post-conviction relief as it pertained to the limited issue of Mr. Cooke's demand for an appeal and whether he was entitled to pursue a direct appeal. *Joint Appendix (Vol. 2) 241-246.*

On January 31, 2023, Judge Simons issued His Honor's "Order Denying Petition for Post Conviction Relief." *Joint Appendix (Vol. 2) 241-246.* Said order was served upon Mr. Cooke's legal counsel on February 2, 2023. *Joint Appendix (Vol. 2) 247-254.*

On February 22, 2023, Mr. Cooke's legal counsel filed the "Notice of Appeal" in the district court. *Joint Appendix (Vol. 2) 255-256.*

STATEMENT OF THE FACTS

In his post-conviction petition for writ of habeas corpus, Mr. Cooke explained that he told his counsel "to appeal the conviction in person and writing." *Joint Appendix (Vol. 1) 3.* More specifically, Mr. Cooke asked his counsel to appeal on the day of sentencing and told counsel to appeal in writing the very next week – all with no response from counsel. *Joint Appendix (Vol. 1) 5.* Mr. Cooke wrote a letter to Mr. Green that is part of the Joint Appendix. *Joint Appendix (Vol. 1) 20.* That letter was admitted at the evidentiary hearing as "Exhibit A." *Joint Appendix (Vol. 2) 165-166, 236-237.*

Later in this petition, Mr. Cooke averred that the plea agreement that was used "was not valid nor was what the petitioner had agreed

upon." *Joint Appendix (Vol. 1) 6.* Mr. Cooke also said that he never agreed to an 8-year minimum sentence. *Joint Appendix (Vol. 1) 8.* Mr. Cooke proceeded to say that his counsel provided "false documents all in attempts to force petitioner into his plea and sentence." *Joint Appendix (Vol. 1) 12.* Mr. Cooke added that his counsel was "submitting a bogus, wrong, plea agreement at sentencing that petitioner did not and would not agree to." *Joint Appendix (Vol. 1) 16.*

Attached to the Nevada Department of Corrections' "Return to Petition for Writ of Habeas Corpus" was the "Judgment of Conviction" that is the basis for this appeal. *Joint Appendix (Vol. 1) 36-41.* In this judgment of conviction, the Court stated that Mr. Cooke had pled to "Attempted Sexual Assault of a Child Who is Less Than 16 Years of Age, a Category B Felony." *Joint Appendix (Vol. 1) 39.* Mr. Cooke was sentenced to serve ninety-six to two hundred forty (96-240) months in the Nevada Department of Corrections. *Joint Appendix (Vol. 1) 39.*

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When the district court canvassed Mr. Cooke as to the plea agreement, Mr. Cooke confirmed that he signed page 11 of that document on February 9, 2017. *Joint Appendix (Vol. 1) 57.* Mr. Green confirmed that the charge that Mr. Cooke agreed to plead guilty to was "attempted sexual assault of a child who is less than 16 years of age, a category B felony, as defined by NRS 200.366 and NRS 199.330." *Joint Appendix (Vol. 1) 59.* Pertaining to the penalty range, Mr. Green asserted that "[a]t the time of sentencing, Mr. Cooke will stipulate to a maximum sentence of 20 years imprisonment in NDOC, but both sides remain free to argue for the minimum amount of time the Court would order that he must serve before being eligible for probation." *Joint Appendix (Vol. 1) 59.*

The judgment of conviction was filed on May 11, 2017 – fourteen (14) days after the sentencing hearing. *Joint Appendix (Vol. 1) 89-92.* Then District Court Judge Nancy Porter sentenced Mr. Cooke to the maximum sentence of eight to twenty (8-20) years in the Nevada Department of Corrections with credit for two hundred forty-four (244) days served. *Joint Appendix (Vol. 1) 90.*

At the evidentiary hearing, Mr. Cooke's legal counsel called Daniel Charles Cooke to the witness stand. *Joint Appendix (Vol. 2) 156.*

When originally offered a plea bargain that entailed a stipulated 8-20 year prison term, Mr. Cooke indicated he "wasn't happy with it" and rejected it. *Joint Appendix (Vol. 2) 159-161.* The matter was renegotiated and the deal that was struck entailed the defense being free to argue for the lowest end of the 2-20 year penalty range. *Joint Appendix (Vol. 2) 161-163.*

When the district court handed down the maximum sentence of 8-20 years, Mr. Cooke was not happy with it and informed Mr. Green, "now we can appeal it then." *Joint Appendix (Vol. 2) 164.*

Subsequently, Mr. Cooke wrote a letter to Mr. Green's then employer, the Public Defender's Office, regarding this case that was admitted into evidence as "Exhibit A." *Joint Appendix (Vol. 2) 165-166.* Mr. Cooke, on the witness stand, conceded that he put the wrong year (2016) on the letter and that the correct year of the letter was 2017. *Joint Appendix (Vol. 2) 166.* The letter was written "a week or so after the sentencing." *Joint Appendix (Vol. 2) 182.*

Mr. Cooke testified that he made one written demand for an appeal and two verbal demands for an appeal. *Joint Appendix (Vol. 2) 167.*

After Mr. Cooke rested, the State of Nevada called Brian Green to the witness stand. *Joint Appendix (Vol. 2) 190.*

He initially represented Mr. Cooke on the charge of sexual assault. *Joint Appendix (Vol. 2) 192.* He did not remember getting the letter from Mr. Cooke that was admitted into evidence. *Joint Appendix (Vol. 2) 197.* He did not recall Mr. Cooke mentioning anything to him about appealing the conviction at the time of the sentencing. *Joint Appendix (Vol. 2) 199-200.*

On cross-examination, Mr. Green said that he did not remember getting a phone call from Mr. Cooke after the sentencing. *Joint Appendix (Vol. 2) 202.*

Although lacking memory in some respects, Mr. Green had no lack of memory when testifying that Mr. Cooke expressed displeasure with the prospect of an 8-20 year prison sentence before the sentencing. *Joint Appendix (Vol. 2) 204, 207.* Mr. Green reconfirmed that on the

stand. *Joint Appendix (Vol. 2) 207-208.* Mr. Cooke did not change his position. *Joint Appendix (Vol. 2) 208.* Mr. Green agreed with Mr. Cooke's counsel at the evidentiary hearing that Mr. Green was on notice, when Mr. Cooke received the 8-20 year sentence, that Mr. Cooke was "not pleased." *Joint Appendix (Vol. 2) 209.*

In differentiating between an explicit demand for an appeal and an expression of displeasure as to a sentence, Mr. Green said that there would be a difference between the two. *Joint Appendix (Vol. 2) 209.* More specifically, in a hypothetical situation, if a defendant prospectively says to appeal if he/she is sentenced to 8-20 years in prison, Mr. Green would file the notice of appeal if that were the ultimate sentence. *Joint Appendix (Vol. 2) 209.* He would not believe that he must file the notice of appeal if the defendant prospectively says that he would be displeased with an 8-20 year sentence and that sentence were handed down. *Joint Appendix (Vol. 2) 209-210.*

Later on, Mr. Green would go on to say that an expression of displeasure with a sentence would not constitute a demand for an appeal. *Joint Appendix (Vol. 2) 214.*

After Mr. Green testified, Deputy District Attorney Chad B. Thompson moved for admission of an email from Elko County Public Defender Matthew Pennell indicating that they found no record of the letter that Mr. Cooke wrote in the JustWare program that that office utilizes to track cases. *Joint Appendix (Vol. 2) 214-216.* It was admitted over the objection of the defense and notwithstanding the fact that Mr. Pennell was not at the hearing to testify. *Joint Appendix (Vol. 2) 216.* The defense added that Mr. Pennell was not done with his search for said letter outside of the JustWare program. *Joint Appendix (Vol. 2) 216.*

The district court denied Mr. Cooke's petition for post-conviction relief. *Joint Appendix (Vol. 2) 241-246.*

In its recitation of the "factual background," the district court made no factual finding as to any displeasure of Mr. Cooke with an 8-20 year prison sentence and the conveying of said displeasure to Brian Green. *Joint Appendix (Vol. 2) 242-243.*

As for the fact that the sentence was handed down pursuant to a plea agreement, Judge Simons ruled that that fact weighed against

granting the petition because there was a partial waiver of the right to appeal. *Joint Appendix (Vol. 2) 243-244.*

As for Mr. Cooke twice using the phrase that "well we can just appeal," Judge Simons concluded that was merely a statement of Mr. Cooke's right to an appeal and was "not necessarily a statement of dissatisfaction about his conviction." *Joint Appendix (Vol. 2) 244.*

Judge Simons said that "Mr. Green testified that he never received any such letter" regarding Mr. Cooke's demand for an appeal. *Joint Appendix (Vol. 2) 244.* Judge Simons added that there were "serious credibility issues" as to the authenticity of said letter when Mr. Cooke had the wrong year on the date of the letter. *Joint Appendix (Vol. 2) 244.*

Going further, Judge Simons said that Mr. Cooke did not "express ***explicit*** dissatisfaction with the sentencing outcome" and that "[w]hen a defendant pleads guilty and receives a sentence within the bounds of the plea, an attorney is unlikely to find it necessary to discuss a possible appeal with the defendant without ***expressly*** being asked to do so." *Joint Appendix (Vol. 2) 245* (emphasis added).

SUMMARY OF ARGUMENT

The district court committed reversible error in denying Daniel Charles Cooke's post-conviction petition for writ of habeas corpus. Mr. Cooke made an explicit, written demand for an appeal. Mr. Cooke's expression of dissatisfaction with an 8-20 year sentence put his legal counsel, Brian Green, on notice to file an appeal.

ARGUMENT

(1) The district court committed reversible error in denying Daniel Charles Cooke's post-conviction petition for writ of habeas corpus.

NRS 34.724, which defines what a petition for writ of habeas corpus is in this jurisdiction, states:

> Any person convicted of a crime and under sentence of death or imprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the Constitution or laws of this State, or who, after exhausting all available administrative remedies, claims that the time the person has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a postconviction petition for a writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that the person has served.

The Sixth Amendment to the United States Constitution states the following:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

In Lader v. Warden, 121 Nev. 682, 686, 120 P.3d 1164, 1166 (2005), citing Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (1996), this Court stated that a "claim of ineffective assistance of counsel presents a mixed question of law and fact that is subject to independent review." This Court continued on, stating that "a district court's factual findings will be given deference by this court on appeal, so long as they are supported by substantial evidence and are not clearly wrong." Id., citing Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994).

To prevail on a claim of ineffective assistance of counsel, a petitioner (1) "must demonstrate that his trial or appellate counsel's

performance was deficient, falling below an objective standard of reasonableness," and (2) "must show prejudice." Id. at 686, 1166-67, citing Strickland v. Washington, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984); Kirksey at 987-88, 1107.

Pertaining to trial counsel, "prejudice is demonstrated by showing that, but for trial counsel's errors, there is a reasonable probability that the result of the proceedings would have been different." Id., citing Strickland at 694.

In Hargrove v. State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984), citing Grondin v. State, 97 Nev. 454, 634 P.2d 456 (1981), this Court held a "defendant seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations belied or repelled by the record."

In Toston v. State, 127 Nev. 971, 980, 267 P.3d 795, 801-02 (2011), this Court reversed a district court's decision to deny a postconviction petition for writ of habeas corpus and ordered the district court to conduct an evidentiary hearing on an appeal-deprivation claim. This Court went on to say that "[i]f the district court determines that Toston

was deprived of a direct appeal due to ineffectiveness of counsel, the district court shall provide Toston with the remedy set forth in NRAP 4(c)." Id.

In Toston, this Court gave clear guidance about trial counsel's "constitutional duty to file a direct appeal in two circumstances: when requested to do so and when the defendant expresses dissatisfaction with his conviction, and that the failure to do so in those circumstances is deficient for purposes of proving ineffective assistance of counsel." Id. at 978, 800 (citations omitted).

There are various factors that must be considered when deciding if defense counsel knew or should have known that his/her/their client wanted to appeal the conviction in the context of a guilty plea:

> relevant circumstances may include whether the defendant received the sentence he bargained for as part of the plea (it would be reasonable to conclude that a defendant who received the bargained-for sentence would be satisfied with that sentence), whether the defendant reserved certain issues for appeal (the reservation of an issue for appeal reasonably indicates the defendant's desire to appeal), whether the defendant indicated a desire to challenge his sentence within the period for filing an appeal, and whether the defendant sought relief from the plea before sentencing (the filing of a presentence motion to

withdraw a plea reasonably indicates dissatisfaction with the conviction).

Id. at 979-80, 801.

This Court concluded that it could not affirm the lower court's decision to deny Toston's appeal-deprivation claim when Toston had outbursts at sentencing indicating his clear dissatisfaction with the sentence. Id. at 980, 801.

(a) Misstatement of Fact in the Order Denying the Post-Conviction Petition for Habeas Corpus Relief

In the lower court's order denying Mr. Cooke's petition for writ of habeas corpus, Judge Simons stated that Mr. Cooke did not "express ***explicit*** dissatisfaction with the sentencing outcome." That is erroneous.

It is erroneous because Mr. Cooke made it abundantly clear that he did not want an 8-20 year prison sentence. Mr. Green agreed with that characterization. Mr. Cooke was so dissatisfied with that sentence, there had to be a restructuring of the plea agreement to assuage Mr. Cooke's concerns. Mr. Cooke would not stipulate to an 8-20 year prison

sentence. As such, Mr. Cooke's prospective dissatisfaction with the sentencing outcome is unquestionable.

As such, Mr. Cooke asks that this Court deem that factual determination of the lower court as clearly erroneous. All the evidence in the record indicates an express dissatisfaction with such a lengthy prison sentence.

(b) <u>Erroneous Legal Analysis of the District Court</u>

Firstly, Judge Simons provided flawed analysis as to the limited waiver of appeal. Specifically, Judge Simons stated that such a limited waiver goes against the conclusion that Mr. Cooke demanded an appeal in this case. Mr. Cooke disagrees.

Mr. Cooke made it abundantly clear that he did not want an 8-20 year sentence. The fact that Mr. Cooke waived other appellate issues is irrelevant to this analysis. Mr. Cooke never even implied that he would waive the issue of appealing the excessiveness of his sentence.

As for the lower court's assessment of the phrase "well we can just appeal," that is similarly flawed. There is only one reasonable conclusion as to Mr. Cooke's motivation for using that phrase and it is

most certainly ***not*** to tell an experienced attorney like Brian Green what the law is. Rather, the only reasonable connotation is that Mr. Cooke wanted to appeal. This is especially the case when that phrase was uttered after Mr. Cooke's clear message to Mr. Green that he did not want to serve an 8-20 year prison sentence and that he did not want to stipulate to such a prison sentence.

Brian Green, a witness for the State, not Mr. Cooke, provides ample basis for overturning Judge Simons' erroneous denial of the right to a direct appeal. Mr. Green admitted that Mr. Cooke was dissatisfied with an 8-20 year prison term. Mr. Green admitted that such dissatisfaction existed at the time of the pronouncement of the sentence. Under the controlling legal authority of this jurisdiction, that in and of itself required Mr. Green to file the appeal.

However, Mr. Green seems to have a view of his obligation to file an appeal that is amorphous and wholly inconsistent with controlling legal authority. Mr. Green would agree that Mr. Cooke could prospectively demand an appeal of an 8-20 year sentence by stating something along the lines of, "if I get an 8-20 year prison sentence, I

demand an appeal." However, Mr. Green would not agree that he was on notice to appeal Mr. Cooke's sentence when there is an ***explicit*** prospective expression of dissatisfaction with an 8-20 prison term. Is there any meaningful distinction between these hypothetical situations? No.

Toston v. State required Mr. Green to file the appeal. Mr. Cooke prospectively disagreed with the 8-20 prison sentence that he was ordered to serve. No where in Toston is Mr. Green afforded any leeway to simply not file the appeal. Mr. Green's failure to file the notice of appeal was unreasonable and *per se* constitutes ineffective assistance of counsel under that decision of this Court.

However, this case is perhaps more compelling than a case where a criminal defendant prospectively expresses dissatisfaction with a sentence and does not make any further statements after the sentencing. Mr. Cooke expressed dissatisfaction both before and after the sentencing pronouncement. Mr. Cooke's statement that "well we can just appeal" should not be viewed in the vacuum that the district court did. Rather, in considering the totality of the circumstances, such

a phrase dispelled any ambiguity as to Mr. Cooke's desire to have a direct appeal.

Further compounding the above erroneous analysis of the district court was this theme that Mr. Cooke was supposed to be more explicit with his desire to appeal. Insofar as the district court is enforcing some perceived requirement that Mr. Cooke make an explicit demand for an appeal, this requirement simply does not exist in the State of Nevada. An simple expression of dissatisfaction with a sentence is sufficient to put Brian Green or any other defense attorney in this state on notice of the requirement to appeal the conviction. That could be done quite pithily – such as a defendant saying, "I am dissatisfied with the sentence." Mr. Cooke went well above and beyond such a simple statement.

To enumerate the ways that Mr. Cooke conveyed his desire to appeal, he utilized three means to do that: (1) a written letter to Mr. Green, (2) the statement "well we can just appeal," and (3) numerous instances of Mr. Cooke telling the Public Defender's Office that he did not want a sentence of 8-20 years in the Nevada Department of

Corrections. Any of these three methods gave Brian Green ample enough notice to appeal. For the lower court to keep the door shut for appellate review to Mr. Cooke notwithstanding the ***culmination*** of these three methods is astounding.

Daniel Charles Cooke was not required to use talismanic precision in speaking with Mr. Green about his desire to appeal his conviction. For the district court to have done just that constitutes reversible error.

Hence, this Court should overturn the district court's denial of Mr. Cooke's right to appeal his sentence and order the district court to uphold Mr. Cooke's right in this regard. This is especially necessary when Mr. Cooke is facing the prospect of twenty (20) ***years*** in the Nevada Department of Corrections.

CONCLUSION

The district court committed reversible error by denying Daniel Charles Cooke's postconviction petition for writ of habeas corpus. Mr. Cooke expressed dissatisfaction with his lengthy prison sentence of 8-20 years before and after the pronouncement of the sentence. He wrote a letter to demand the appeal. He informed his attorney Brian Green,

"well we can just appeal." It would be hard to find another criminal defense attorney in this state who thinks that Mr. Green's conduct came close to the legal definition of effectiveness articulated in Strickland.

The district court incorrectly stated that Mr. Cooke did not explicitly express dissatisfaction with the 8-20 year sentence of imprisonment. Mr. Cooke was so extremely satisfied with an 8-20 year prison term that the parties had to renegotiate the plea agreement so that Mr. Cooke was not stipulating to such a draconian sentence. The lower court's mischaracterization of Mr. Cooke's position must be rejected.

If the State's position in the lower court holds, it will put a high bar on a lay person to exercise his rights. The legislature affords rights to a criminal defendant for good reason. The prosecution's position, which would serve to shut the door on appellate review of a lengthy prison sentence, is incongruent with Nevada law and incongruent with the United States Constitution.

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This Court should overturn the district court's erroneous denial of Mr. Cooke's right to appeal his sentence and order the district court to uphold Mr. Cooke's right in this regard.

DATED this 10th day of July, 2023.

BEN GAUMOND LAW FIRM, PLLC

By: _____

BENJAMIN C. GAUMOND, ESQ.
Nevada Bar Number 8081
495 Idaho Street, Suite 209
Elko, Nevada 89801
(775)388-4875 (phone)
(800)466-6550 (facsimile)

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opening 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 Opening Brief has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 Century Schoolbook font.

2. I further certify that this Opening 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:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 4,299 words; or

[ ] Monospaced, has 10/5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

[x] Does not exceed 30 pages.

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 the 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 found.

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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 July, 2023.

BEN GAUMOND LAW FIRM, PLLC

By: 

BENJAMIN C. GAUMOND, ESQ.
Nevada Bar Number 8081
495 Idaho Street, Suite 209
Elko, Nevada 89801
(775)388-4875 (phone)
(800)466-6550 (facsimile)

CERTIFICATE OF SERVICE

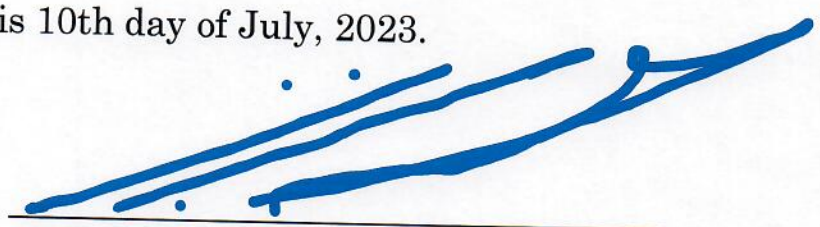
(a) I hereby certify that this document was electronically filed with the Nevada Supreme Court on the 10th day of July, 2023.

(b) I further certify that on the 10th day of July, 2023, electronic service of the foregoing document shall be made in accordance with the Master Service List to Aaron Ford, Nevada Attorney General; and Tyler

J. Ingram, Elko County District Attorney; and Chad B. Thompson, Deputy Elko County District Attorney.

(c) I further certify that on the 11th day of July, 2023, this brief shall be mailed with postage prepaid to Daniel Charles Cooke, NDOC # 1178337, Lovelock Correctional Center, 1200 Prison Road, Lovelock, NV 89419.

DATED this 10th day of July, 2023.



Benjamin C. Gaumond, Owner
Ben Gaumond Law Firm, PLLC