

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

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Elizabeth A. Brown
Clerk of Supreme Court

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 REPLY BRIEF

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

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

Attorney for Appellant

Attorneys for Respondent

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ARGUMENT

**(1) The State's analysis as to the issue of dissatisfaction
with the sentence is incomplete.**

The State's analysis of why it believes Mr. Cooke did not express dissatisfaction with the sentence of eight to twenty (8-20) years of imprisonment consists of it stating that (1) Mr. Cooke did not engage in any "outbursts" in Court to show such dissatisfaction, and (2) Mr. Cooke did not file any motion to withdraw his plea. *Respondent's Answering Brief 6*. Such analysis is woefully inadequate.

The State is right to cite Davis v. State, 115 Nev. 17 (1999) for the citation that "[t]he burden is on the client to indicate to his attorney that he wishes to pursue an appeal." Not only did the defense meet that burden, but the State's own witness, Brian Green, bolstered the defense position that Mr. Cooke was dissatisfied with his sentence.

The State uses selective wording in its analysis. This is shown in the following sentence from its brief: "The only evidence proffered by Cooke in support of his writ was the copy of the letter allegedly sent to his attorney and his testimony." *Respondent's Answering Brief 6*. Of

1 course, there was plenty of support in the record from Mr. Green's
2 testimony that Mr. Cooke was dissatisfied with the sentence. In that
3 regard, the State sidesteps the fact that Mr. Green's testimony supports
4 Mr. Cooke's position and hence, evidence that the State proffered
5 supports Mr. Cooke's position.
6

7 In that regard, Mr. Green said that Mr. Cooke was "not pleased"
8 with the eight to twenty (8-20) year sentence and that Mr. Green
9 recognized that after that sentence was handed down. *Joint Appendix*
10 *(Vol. 2) 209.*
11

12 However, the copy of the letter to his counsel as well as his
13 testimony were not the only things that Mr. Cooke proffered to support
14 the idea that he was dissatisfied with the prison sentence. The record
15 was abundantly clear that a plea bargain between the State and Mr.
16 Cooke had to be redrawn due to this satisfaction on Mr. Cooke's part.
17 *Joint Appendix (Vol. 2) 159-161.*
18
19

20 When did that dissatisfaction with an eight to twenty (8-20) year
21 sentence subside? Never. Not even the State could proffer one shred of
22 evidence that Mr. Cooke's ceased his dissatisfaction with such a high
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1 amount of time. The State had to resort to pointing to what is not in
2 the record – going as far as to assert that Mr. Cooke did not engage in
3 some outburst that he wanted an appeal. Mr. Cooke does not need to
4 engage in an outburst of any sort in open court when he could express
5 his dissatisfaction in a much more civilized fashion – an expression of
6 dissatisfaction that even Brian Green acknowledges happened!
7

8
9 It is no surprise that the State just simply avoids the issue of
10 Brian Green conceding under oath that he felt that Mr. Cooke was
11 dissatisfied with the sentence following the pronouncement of sentence.
12 The State would rather point to its skepticism of Mr. Cooke's veracity
13 without questioning the veracity of Brian Green – its own witness.
14

15 CONCLUSION

16
17 Even if this Court were to discount every single assertion that Mr.
18 Cooke made at the evidentiary hearing, there was overly abundant
19 evidence that Mr. Cooke was dissatisfied with the eight to twenty (8-20)
20 year sentence based on (1) the fact that the plea agreement had to be
21 rewritten as a direct result of such dissatisfaction, and (2) his former
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1 attorney Brian Green agreed that such dissatisfaction existed following
2 the pronouncement of sentence.

3 Under a clear error analysis, this Court should rule that the
4 district court clearly erred in ruling that Mr. Cooke did not express such
5 dissatisfaction that triggered the need to appeal.
6

7 Under a de novo review, this Court should rule that the district
8 did not follow the law – which clearly states that a defense attorney
9 must appeal when there is an expression of dissatisfaction with the
10 sentence. Had the Court correctly followed the law, it would have ruled
11 differently.
12

13
14 DATED this 20th day of September, 2023.

15
16 BEN GAUMOND LAW FIRM, PLLC

17
18 By: _____/s/
19 BENJAMIN C. GAUMOND, ESQ.
20 Nevada Bar Number 8081
21 495 Idaho Street, Suite 209
22 Elko, Nevada 89801
(775)388-4875 (phone)
(800)466-6550 (facsimile)

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CERTIFICATE OF COMPLIANCE

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

2. I further certify that this Reply 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 695 words; or

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

☒ Does not exceed 15 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

1 this brief complies with all the applicable Nevada Rules of Appellate
2 Procedure, in particular NRAP 28(e)(1), which requires every assertion
3 in the brief regarding matters in the record to be supported by a
4 reference to the page and volume number, if any, of the transcript or
5 appendix where the matter relied on is found.
6

7 I understand that I may be subject to sanctions in the event that
8 the accompanying brief is not in conformity with the requirements of
9 the Nevada Rules of Appellate Procedure.
10

11 DATED this 20th day of September, 2023.
12

13 BEN GAUMOND LAW FIRM, PLLC
14

15
16 By: _____ /s/
17 BENJAMIN C. GAUMOND, ESQ.
18 Nevada Bar Number 8081
19 495 Idaho Street, Suite 209
20 Elko, Nevada 89801
21 (775)388-4875 (phone)

22 CERTIFICATE OF SERVICE
23

24 (a) I hereby certify that this document was electronically filed
25 with the Nevada Supreme Court on the 20th day of September.

1 (b) I further certify that on the 20th day of September, 2023,
2 electronic service of the foregoing document shall be made in accordance
3 with the Master Service List to Aaron Ford, Nevada Attorney General;
4 and Tyler J. Ingram, Elko County District Attorney; and Chad B.
5 Thompson, Deputy Elko County District Attorney.
6

7 (c) I further certify that on the 20th day of September, 2023, this
8 brief shall be mailed with postage prepaid to Daniel Charles Cooke,
9 NDOC # 1178337, Lovelock Correctional Center, 1200 Prison Road,
10 Lovelock, NV 89419.
11

12 DATED this 20th day of September, 2023.
13
14

15 _____ /s/
16 Benjamin C. Gaumond, Owner
17 Ben Gaumond Law Firm, PLLC
18
19
20
21
22
23
24
25