

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ANGEL CASTRO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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CASE NO: 86310

APPELLANT'S REPLY BRIEF

Appeal From Denial of Post-Conviction Habeas Petition

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal. Luis Angel Castro is represented by Steven S. Owens, Esq, of Steven S. Owens, LLC, who is a sole practitioner and there are no parent corporations for which disclosure is required pursuant to this rule.

DATED this 13th day of June, 2023.

/s/ Steven S. Owens

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ARGUMENT

In its Order Affirming in Part, Reversing in Part and Remanding, the Court of Appeals identified the issue for remand and an evidentiary hearing as follows:

Castro claimed counsel was ineffective during plea negotiations for advising Castro's parents that the four defendants would be prosecuted separately and that Castro would receive a prison sentence of 15 to 25 years if he accepted his plea. Castro alleged that, based on these false assertions, his parents threatened to withdraw their support for him if he did not plead guilty, *which effectively coerced him* into doing so.

1 AA 160-161 [emphasis added]. As legal authority for such an issue, the Court of Appeals cited to *Iaea v. Sunn*, 800 F.2d 861, 863, 868 (9th Cir. 1986), which it summarized as “reversing and remanding to the district court to determine the *coercive impact* of petitioner's brother's threat to withdraw petitioner's bail after counsel ‘communicated her strong belief that Iaea should accept the plea bargain through Iaea's brother Christopher because she knew that Iaea relied on his brother for help and guidance.’ ” *Id.* [emphasis added].

In response to Appellant's argument on appeal that the district court misunderstood the remanded issue and utterly failed to appreciate or rule on the specific issue of coercion, the State in its Answering Brief asserts without any citation to the record that, “The district court found that Castro's parents did not coerce him into pleading guilty by threatening to withdraw support.” Answering Brief, p. 21. But such a finding is not found in either the district court's oral pronouncement of the ruling nor in its subsequent written order. 1 AA 247-249; 2

AA 254-263. In its Answering Brief, the State declines to apply *Iaea* because decisions of federal circuit courts of appeal are not binding precedent in Nevada. Answering Brief, pp. 19-20. That may be true in general, but not when the Nevada Court of Appeals specifically cites to the federal circuit precedent as the legal basis for the remand. 1 AA 161.

The State, as did the district court below, focuses most of its analysis on the accuracy of Geller's representations to the family members and faults the parents and the language barrier for any miscommunication. The State has even parsed out the issues on appeal into separate headings for counsel's proper advice to the parents regarding individualized sentencing and as to the range of years to be served. Central to the State and the district court's analysis is that Appellant himself understood the terms of the negotiation even if his parents did not. 1 AA 247-249. However, even the defendant in *Iaea* was properly and correctly canvassed as to the range of punishment. *Iaea v. Sunn, supra*. None of this rebuts the claim that the plea was coerced and involuntary. As in *Iaea*, when Appellant refused the plea offer, Geller circumvented his client and enlisted the help of the parents, whom Geller knew Appellant relied upon for emotional and financial support, to apply pressure to get Appellant to plead guilty. It is one thing if a defendant requests the advice of his family or friends in regards to a proposed plea bargain, but quite another when the defendant's own counsel unilaterally confides in those family members knowing

they will use their considerable influence to sway and pressure the client into accepting a guilty plea he has already rejected. It is not so much the amount of additional monies that were requested nor for what exact services. It is sufficient that Geller communicated to the parents that if they did not get Appellant to plead guilty, then they would need to eventually come up with more money for his defense which they did not have. Any inconsistencies noted by the district court and the State are of no significance to the ultimate issue of the coercive effect that counsel's interaction with the family had on the voluntariness of Castro's guilty plea. The district court's findings are not entitled to deference by this court as they are not supported by substantial evidence and are clearly wrong.

CONCLUSION

Wherefore, Castro respectfully requests this Court reverse the judgment of the district court below and direct that the petition for post-conviction relief be granted.

DATED this 13th day of June, 2023.

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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 Microsoft Word in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 700 words and 3 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 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 13th day of June, 2023.

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 13th, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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Chief Deputy District Attorney

/s/ Steven S. Owens
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