

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

2
3 DUSTIN BARRAL)

4 Appellant,)

5 vs.)

6 THE STATE OF NEVADA,)

7 Respondent.)

8 CASE NUMBER: 74288 Electronically Filed
9 (District Court Case No. C2018-0005) JUN 05 2018 9:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

10 **APPELLANT'S REPLY BRIEF**

11 (APPEAL FROM JUDGMENT OF CONVICTION)

12 MICHAEL L. BECKER, ESQ.

13 Nevada Bar #8765

14 MICHAEL V. CASTILLO, ESQ.

15 Nevada Bar#11531

16 2970 W. Sahara Avenue

17 Las Vegas, Nevada 89102

18 (702) 331-2725

19 *Attorneys for Appellant*

STEVE WOLFSON, ESQ.

CLARK COUNTY, NEVADA

Nevada Bar #1565

STEVEN S. OWENS, ESQ.

Nevada Bar#4352

Chief Deputy District Attorney

200 South Third Street

Las Vegas, Nevada 89155

(702) 671-2500

ADAM P. LAXALT, ESQ.

NEVADA ATTORNEY GENERAL

Nevada Bar #12426

100 North Carson Street

Carson City, Nevada 89701-4717

(702) 486-3420

Attorneys for Respondent

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 _____

3 DUSTIN BARRAL)

4 Appellant,)

5 vs.)

6 THE STATE OF NEVADA,)

7 Respondent.)

CASE NUMBER: 74288

NRAP 26.1 DISCLOSURE

10 The undersigned counsel of record certifies that the following are persons
11 and entities as described in NRAP 26.1(a) and must be disclosed. These
12 representations are made in order that the judges of this Court may evaluate
13 possible disqualification or recusal.
14

15
16 **Attorney(s) of record for Appellant:** Michael L. Becker, Esq. and Michael V.
17 Castillo, Esq.
18

19 **Corporation:** Las Vegas Defense Group, LLC.

20 No publically held company associated with this corporation.
21

22 **Law Firm(s) appearing in District Court:** Las Vegas Defense Group, LLC.

23 Dated this 4th day of June, 2018.
24

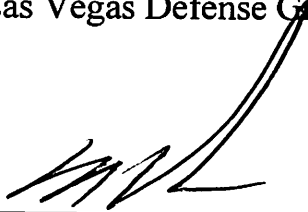
25 
26 _____
27 MICHAEL V. CASTILLO, ESQ.
28 Nevada Bar Number 11531
Attorneys for Appellant

TABLE OF CONTENTS

RULE 26.1 DISCLOSURE STATEMENT.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	iv
ARGUMENT.....	1
I. THE COURT BELOW ABUSED ITS DISCRETION BY RELYING ON SUSPECT EVIDENCE IN THE IMPOSITION OF SENTENCE.....	1
II. THE SENTENCE IMPOSED BY THE COURT BELOW VIOLATED THE EIGHTH AMENDMENT TO THE UNITED STATES CONSTITUTION.....	2
CONCLUSION.....	3
CERTIFICATE OF COMPLIANCE.....	4
CERTIFICATE OF SERVICE.....	6

TABLE OF AUTHORITIES

CASES CITED:

PAGE NO.

Allred v. State, 120 Nev. 410, 420, 92 P. 3d 1246, 1253
(2004).....3

Hargrove v. State, 100 Nev. 498, 502, 686 P. 2d 222, 225 (1984)..... 1

Silks v. State, 92 Nev. 91, 94, 545 P.2d 1159, 1161 (1976).....2

STATUTES CITED:

PAGE NO.

NRS 176.015 2

ARGUMENT

I. THE COURT BELOW ABUSED ITS DISCRETION BY RELYING ON SUSPECT EVIDENCE IN THE IMPOSITION OF SENTENCE

The Respondent argues in Answering Brief that the court below did not rely on suspect evidence in the imposition of sentence because “there is nothing in the record to indicate that the District Court improperly considered the impact statement of J.C.’s grandfather” after he read remarks into the record from an unverified blog from the Department of Justice. *See* Respondent’s Answering Brief at p. 6 and Appellant’s Appendix (hereinafter “AA”) at p. 89-90, Volume I.

In support of its position the Respondent cites primarily to Hargrove v. State, 100 Nev. 498, 502, 686 P. 2d 222, 225 (1984) for the proposition that naked assertions are flatly insufficient to warrant relief. It should be noted that in Hargrove, the Nevada Supreme Court was referring to claims in the context of a post conviction motion to withdraw his plea and request for an evidentiary hearing. Hargrove, 100 Nev. at 502, 686 P. 2d at 225. Further, the Appellants contention that the court below specifically relied on the unsupported and unverified blog posting on sexual recidivism rates is supported by the transcript of the sentencing where following the Appellant’s objection to the blog being introduced at sentencing, the Court approvingly said to J.C.’s grandfather “Go ahead.” *See* AA at p. 090, Volume I. At no point does the court below clarify that it drew any distinctions between the grandfather’s views on the crime, the person responsible

1 and the impact of the crime on the named victim which is allowable under NRS
2 176.015(3)(b) and the unsupported sexual recidivism statistics which is not
3 permitted under NRS 176.015. Instead, the Court thanks J.C.'s grandfather for his
4 testimony and then promptly sentenced him to the maximum sentence shortly
5 thereafter. *See* AA at p. 91, Volume I.
6

7
8 By allowing victim impact testimony other than that of a general nature as
9 contemplated by NRS 176.015 and then sentencing the Appellant to the maximum
10 sentence without clarifying that it was not relying on the suspect evidence admitted
11 in violation of the above referenced statute, the court below relied on impalpable or
12 highly suspect evidence in sentencing. *See Silks v. State*, 92 Nev. 91, 94, 545 P.
13 2d 1159, 1161 (1976). Therefore, the district court abused its discretion and
14 reversal is required.
15
16
17

18 **II. THE SENTENCE IMPOSED BY THE COURT BELOW VIOLATED**
19 **THE EIGHTH AMENDMENT TO THE UNITED STATES**
20 **CONSTITUTION**

21 In its reply, the Respondent takes the position that since the Appellant was
22 sentenced within the statutory range, the sentence imposed did not constitute cruel
23 and unusual punishment. (*See generally* Appellant's Reply Brief at p. 13-14).
24 However, this response ignores the numerous factors pointed out Appellant in his
25 opening brief, including Parole and Probation's sentencing recommendations, the
26 Appellant's complete lack of a criminal history, extensive family support and two
27
28

1 favorable evaluations certifying that he did not represent a high risk to reoffend.

2
3 See Appellant's Opening Brief at p. 4 and AA at p. 49, 52-54, Volume I.

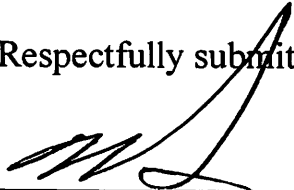
4 Under these circumstances, although the sentence was within the statutory
5 limits, it was so unreasonably disproportionate to the offense as to shock the
6 conscious given the mitigating circumstances present. See Allred v. State, 120
7 Nev. 410, 420, 92 P. 3d 1246, 1253 (2004).
8

9
10 **CONCLUSION**

11 Based on the Points and Authorities herein contained and in the Appellant's
12 Opening Brief, it is respectfully requested that the conviction and sentence of the
13 Appellant DUSTIN BARRAL be set aside and for a new sentencing date to be set.
14

15 Dated this 4th day of June, 2018.

16
17 Respectfully submitted:

18
19 
20 MICHAEL V. CASTILLO, ESQ.
21 Nevada Bar Number 11531
22 2970 W. Sahara Avenue
23 Las Vegas, Nevada 89102
24 (702) 331-2725
25 Attorneys for Appellant
26
27
28

1 4. I understand that I may be subject to sanctions in the event that the
2
3 accompanying brief is not in conformity with the Nevada Rules of
4 Appellate Procedure.

5 Dated this 4th day of June, 2018.
6

7
8 By:

9
10 

11 MICHAEL V. CASTILLO, ESQ.
12 Nevada Bar Number 11531
13 2970 W. Sahara Avenue
14 Las Vegas, Nevada 89102
15 (702) 331-2725
16 Attorneys for Appellant
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

STEVEN S. OWENS, ESQ.
Chief Deputy District Attorney
Nevada Bar#4352
200 S. Third Street
P.O. Box. 552212
Las Vegas, NV 89155
(702) 382-5815-Fax
Counsel for the Respondent

ADAM P. LAXALT, ESQ.
NEVADA ATTORNEY GENERAL
Nevada Bar #12426
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 486-3768-Fax


An employee of Las Vegas Defense Group, LLC.

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8

Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing is true and correct.

Beverly Canaya
An employee of Las Vegas Defense Group, LLC.