IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSHUA GIPSON, Appellant, v. THE STATE OF NEVADA, Respondent.	Case No. 90163

Electronically Filed
Jun 10 2025 02:49 PM
Elizabeth A. Brown
Clerk of Supreme Court

MOTION FOR LIMITED REMAND TO DISTRICT COURT

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JOHN AFSHAR, and moves this Court for a limited remand of Gipson's case to district court for the purposes of resentencing. This Motion is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 10th day of June, 2025.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Afshar*
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney

MEMORANDUM

Appellant Joshua Gipson has filed a direct appeal challenging his judgment of conviction. After Gipson filed his notice of appeal, he raised an issue related to the State's argument at sentencing and the district court's imposition of a habitual sentence pursuant to NRS 207.012 enhanced by the deadly weapon enhancement statute, NRS 193.165. See Exhibit One 1-4.

This Court has explained that, before a district court may amend a judgment of conviction or resentence a defendant while an appeal is pending, a district court must certify its intention to do so and a party may thereafter request a limited remand to the district court. See e.g. Foster v. Dingwall, 126 Nev. 49, 52–53, 228 P.3d 453. 454–55 (2010); Buffington v. State, 110 Nev. 124, 126. 868 P.2d 643, 644 (1994).

Gipson and the State jointly requested that the district court resentence Gipson, and based on the stipulation between the parties the district court has certified its intention to resentence Gipson. See Exhibit Two 5-8.

Accordingly, the State requests, pursuant to Foster and the district court's certification, limited remand of Gipson's case to district court for the purposes of resentencing.

/ / /

/ / /

Dated this 10th day of June, 2025.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John T. Afshar*
JOHN T. AFSHAR
Chief Deputy District Attorney

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 10th day of June, 2025. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

WILLIAM H. BROWN, ESQ.
Counsel for Respondent

JOHN AFSHAR
Chief Deputy District Attorney

/s/ J. Hall
Employee, Clark County
District Attorney's Office

JA//jh

EXHIBIT 1

EXHIBIT 1

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01/23/2025 7:22 PM
CLERK OF THE COURT

JOC

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA LAMAR GIPSON,
#2760079

Defendant.

CASE NO. C-23-377839-1

DEPT. NO. XX

JUDGMENT OF CONVICTION

(JURY TRIAL)

The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.153, 193.165, COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481; COUNT 3 – DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE, AIRCRAFT, OR WATERCRAFT (Category B Felony) in violation of NRS 202.285; COUNT 4 - DISCHARGING FIREARM AT OR INTO OCCUPIED STRUCTURE, VEHICLE AIRCRAFT, OR WATERCRAFT (Category B Felony) in violation of NRS 202.285; and COUNT 5 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; and the matter having been tried before a jury and the Defendant having been

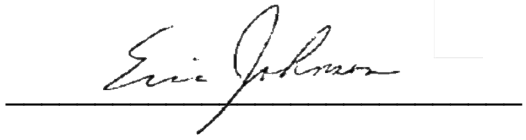
Statistically closed: E. USJR - CR - Jury Trial - Conviction (USCJTC)

found guilty of the crimes of COUNT 1 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.010, 200.030, 193.153, 193.165; COUNT 2 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 200.481; COUNT 3 – DISCHARGING FIREARM AT OR INTO OCCUPIED VEHICLE (Category B Felony) in violation of NRS 202.285; COUNT 4 - DISCHARGING FIREARM AT OR INTO OCCUPIED VEHICLE (Category B Felony) in violation of NRS 202.285; and COUNT 5 – OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (Category B Felony) in violation of NRS 202.360; thereafter, on the 16th day of January, 2025, the Defendant was present in court for sentencing with counsel, THOMAS D. BOLEY, Esq., and good cause appearing,

THE DEFENDANT IS HEREBY ADJUDGED guilty of said offenses as set forth in the Jury's verdict under the HABITUAL Felon Statute, in addition to the $25.00 Administrative Assessment Fee, $8,685.26 Restitution payable to Victims of Crimes (VC #700000), plus $3.00 DNA Collection Fee, the Defendant is SENTENCED to the Nevada Department of Corrections (NDC) as follows: **COUNT 1** – LIFE with a MINIMUM parole eligibility of TEN (10) YEARS, plus a CONSECUTIVE term of a MAXIMUM of TWENTY (20) YEARS with a MINIMUM parole eligibility of EIGHT (8) YEARS for the Deadly Weapon Enhancement; **COUNT 2** - a MAXIMUM of FIFTEEN (15) YEARS with a MINIMUM parole eligibility of SIX (6) YEARS, CONCURRENT with COUNT 1; **COUNT 3** - a MAXIMUM of TEN (10) YEARS with a MINIMUM parole eligibility of FOUR (4) YEARS, CONCURRENT with COUNT 1 and 4; **COUNT 4** - a MAXIMUM of TEN (10) YEARS with a MINIMUM parole eligibility of FOUR (4) YEARS, CONCURRENT with COUNT 1 and 3; and **COUNT 5** - a MAXIMUM of SEVENTY-TWO (72) MONTHS with a

MINIMUM parole eligibility of TWENTY-EIGHT (28) MONTHS, CONSECUTIVE to COUNT 1; with FOUR HUNDRED SEVENTY-NINE (479) DAYS credit for time served. The AGGREGATE TOTAL sentence is LIFE with a MINIMUM Parole Eligibility of TWENTY (20) YEARS - FOUR (4) MONTHS. As the $150.00 DNA Analysis Fee and Genetic Testing has been previously imposed, the Fee and Testing in the current case are WAIVED.

Dated this 23rd day of January, 2025



734 531 8A5A 5D4C
Eric Johnson
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-23-377839-1
vs	DEPT. NO. Department 20
Joshua Gipson	

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Judgment of Conviction was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 1/23/2025

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Dept Law Clerk	dept08lc@clarkcountycourts.us
Thomas Boley	t.boley@bandafirm.com
Michael Allmon	michael.allmon@clarkcountydanv.gov

EXHIBIT 2

EXHIBIT 2

Electronically Filed
05/15/2025 1:09 PM
CLERK OF THE COURT

SAO
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FAX: (702) 868-2412
DAInfo@clarkcountydanv.gov
Attorney for the Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JOSHUA GIBSON, #2760079

Defendant.

CASE NO. **C-23-377839-1**

DEPT NO. **XX**

JOINT STIPULATION AND CERTIFICATE OF INTENT FOR RESENTENCING

IT IS HEREBY STIPULATED AND AGREED by and between the above-named parties, through their undersigned counsel of record hereby stipulate to re-sentence the Defendant.

Following a jury verdict, a judgment of conviction was entered on January 23, 2025. The Defendant filed a Case Appeal Statement on February 20, 2025 in District Court. The Defendant filed a Notice of Appeal February 21, 2025 in the Supreme Court, resulting in Gipson v. State, Docket no. 90163.

For a party to remand the case to District Court from the Supreme Court, the party must first seek a certification from the District Court that it is inclined to grant the relief requested. Foster v. Dingwall, 126 Nev. 49, 53, 228 P.3d 453, 455 (2010). The moving party must then file a motion with the Supreme Court, attaching the District Court's certification of its intent to grant relief. Id.

Here, the State and Defense[1] are both requesting that the Court re-sentence the Defendant based on the prosecutor's error in sentencing argument. The State requested a sentence of 18 years to Life for the charge of Attempted Murder with use of a Deadly Weapon, enhancing the Attempted Murder Charge to 10 years to Life, with a consecutive term of 8-20 years for the deadly weapon enhancement.

The State's request was likely in contradiction to Odoms v. State. In Odoms, the Supreme Court held that the habitual criminal statute, NRS 207.010, does not constitute a substantive offense, but is an enhancement. Odoms v. State, 102 Nev. 27, 34, 714 P.2d 568, 572 (1986). A sentence imposed pursuant to NRS 207.010, the habitual criminal statute, cannot be further enhanced pursuant to NRS 193.165, the deadly weapon enhancement. Although the Defendant was sentenced under NRS 207.012, the habitual felon statue, the State believes the result would be the same.

For these reasons, the State and Defense are requesting that this Court certify that it intends to re-sentence the Defendant so that the parties may file a motion or stipulation with the Supreme Court to remand the case for re-sentencing.

SO STIPULATED:

DATED this 14th day of May, 2025.

STEVEN B. WOLFSON
DISTRICT ATTORNEY
Nevada Bar #.1565

/s/ Michael Allmon
MICHAEL ALLMON
Deputy District Attorney
Nevada Bar #15169

DATED this 14th day of May, 2025.

ATTORNEY FOR DEFENDANT

/s/ William Brown
WILLIAM BROWN
Nevada Bar #7623
Brown Mishler, PLLC
Attorney for Joshua Gipson

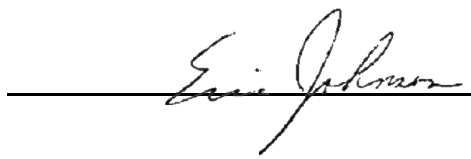
[1] Counsel for Defendant's appeal is William Brown. Thomas Boley was trial Counsel and argued the sentencing for the Defendant. Appellate Counsel is requesting that trial Counsel be re-appointed for the limited purpose of re-sentencing.

ORDER

Based on the Joint Stipulation of the parties, and good cause appearing therefor, IT IS CERTIFIED that the Court intends to re-sentence the Defendant.

IT IS SO CERTIFIED.

Dated this 15th day of May, 2025



BB3 1DA 0228 AB49
Eric Johnson
District Court Judge

MA/hjc/SVU

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

State of Nevada	CASE NO: C-23-377839-1
vs	DEPT. NO. Department 20
Joshua Gipson	

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William Brown	WBrown@BrownMishler.com