

FILED IN  
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HOUSTON, TX  
October 7, 2024  
DEBORAH .M YOUNG,  
CLERK OF THE COURT

ACCEPTED  
01-24-00482-CR  
FIRST COURT OF APPEALS  
HOUSTON, TEXAS  
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DEBORAH M. YOUNG  
CLERK OF THE COURT

**NO. 01-24-00482-CR**

**IN THE COURT OF APPEALS  
FOR THE FIRST SUPREME JUDICIAL DISTRICT  
OF TEXAS AT HOUSTON**

FILED IN  
1<sup>ST</sup> COURT OF APPEALS  
HOUSTON, TEXAS  
10/6/2024 5:08 PM  
DEBORAH M. YOUNG  
Clerk of The Court

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**NICHOLAS DARRIS MARSHALL  
APPELLANT**

**VS.**

**THE STATE OF TEXAS  
APPELLEE**

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**APPELLANT'S BRIEF**

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## **LIST OF PARTIES**

The Appellant is Nicholas Darris Marshall.

The Appellant's trial counsel is Marvin Lewis.

The Appellant's appellate counsel is Crespín Michael Linton.

The Trial Judge is Chad Bradshaw.

The appellate attorney representing the State is Trey Picard, Assistant District Attorney, Brazoria County, Texas.

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## **PRELIMINARY STATEMENT**

On June 17, 2024, Appellant, Nicholas Darris Marshall, pleaded guilty in the 300<sup>th</sup> District Court of Brazoria County, Texas, to the second degree felony charge of Possession of a Controlled Substance. He pleaded guilty without an agreed plea recommendation from the prosecutor, but with an agreement that the State waived both of his felony conviction enhancements for the plea, and he requested that the trial court sentence him. On June 18, 2024, the trial court conducted a punishment hearing and sentenced Marshall to 12 years in the Texas Department Of Criminal Justice. Appellant perfected his appeal on June 21, 2024.

## **STATEMENT OF FACTS**

On June 17, 2024, Marshall pleaded guilty to the felony charge of Possession of a Controlled Substance without an agreed plea recommendation from the prosecutor. (R.R. Vol. 2 at 4) On June 18, 2024, the trial court began Marshall's sentencing hearing. (R.R. Vol. 3 at 6)

## **A. State's Witnesses**

### **1. Clint Cooper**

Pearland Police Department Officer Clint Cooper testified that on July 27, 2021 he stopped a Hyundai Sonata for a defective brake lamp that was driven by Appellant who was its sole occupant. (R.R. Vol. 3 at 7-9) Cooper stated that he arrested Appellant based on an active State of Texas parole warrant. (R.R. Vol. 3 at 10) He described that during a search of Appellant's vehicle he found a marijuana joint in the driver's door pocket, more marijuana on the back seat floor board, and a box that contained one bag of Xanax pills and two bags of Ecstasy pills. (R.R. Vol. 3 at 13-14) Cooper testified that he also found a baby bottle that contained a purple liquid of codeine in the trunk of the vehicle. (R.R. Vol. 3 at 15) He stated that he took the seized items to the Brazoria County Crime Laboratory for analysis. (R.R. Vol. 3 at 17) On cross-examination, he admitted that Appellant was cooperative during the arrest.

### **2. Nathaniel Marin**

Pearland Police Department Detective Nathaniel Marin testified that he assisted Officer Cooper in the search of Appellant's vehicle and

verified that they found multiple illegal drugs in the vehicle. (R.R. Vol. 3 at 23-25) On cross-examination, he agreed that Appellant was compliant during the arrest. (R.R. Vol. 3 at 27)

### **3. Sebastian Frommhold**

Brazoria County Crime Laboratory drug analyst Sebastian Frommhold testified that the Ecstasy pills labeled as State's Exhibit No. 4 weighed 4.25 grams but contained only 2.1152 grams of Methamphetamine. (R.R. Vol. 3 at 29-32)

The State rested. (R.R. Vol. 3 at 35)

## **B. Defense's Witnesses**

### **1. Sheronda Gilbert**

Sheronda Gilbert testified that Appellant is her younger brother and that she supports him with her prayers. (R.R. Vol. 3 at 36-37)

Gilbert claimed that her brother had become a better man since he was released from prison a few years ago. (R.R. Vol. 3 at 38) She stated that Appellant has started his own mechanic's shop and has tried to help young men in the neighborhood. (R.R. Vol. 3 at 38) Gilbert testified that Appellant often takes their infirmed parents to their many doctor



appointments. (R.R. Vol. 3 at 39) She requested that the court be merciful in assessing Appellant's punishment. (R.R. Vol. 3 at 40)

## **2. Lakeshia Smith**

Lakeshia Smith testified that she is Appellant's older sister and explained that she has tried to support her brother even when he has gotten into trouble. (R.R. Vol. 3 at 41-42) Smith noted that since Appellant was released from jail that he has grown and become a great stepfather to his fiancé's two children. (R.R. Vol. 3 at 43) She asked the court to be lenient on its punishment of her brother. (R.R. Vol. 3 at 45) On cross-examination, Smith stated that Appellant admitted to her that he had drugs when he was arrested, but she conceded that she was not aware of all of the drugs found by the police in his vehicle. (R.R. Vol. 3 at 47-48) She admitted that she was aware of her brother's past criminal convictions as well as his pending cases in Navarro County for Felon in Possession of a Firearm and Tampering with Physical Evidence for which he was arrested in September of 2020. (R.R. Vol. 3 at 50)

## **3. Trelynn Robinson**

Trelynn Robinson testified that Appellant is his uncle and raised him since he was 6 years old. (R.R. Vol. 3 at 51) Robinson testified that

he in an officer with the Texas Department of Public Safety who works in its fugitive recovery section. (R.R. Vol. 3 at 52) He described how Appellant continued to care for him even after Appellant was released from prison. (R.R. Vol. 3 at 53) Robinson prayed that the court would be lenient on his uncle. (R.R. Vol. 3 at 55) On cross-examination, Robinson admitted that everyone deserves punishment for their crimes, but explained that the Court needs to take Appellant's good character in account when assessing its punishment. (R.R. Vol. 3 at 61)

#### **4. Nicholas Marshall**

Nicholas Marshall testified that his mother had to work hard to raise him because his father was a crack addict. (R.R. Vol. 3 at 63) Marshall noted that he even watched his father buy crack cocaine. (R.R. Vol. 3 at 63) He stated that his mother divorced his father when he was 11 or 12 years old and then she married a Harris County Constable named William Swanson. (R.R. Vol. 3 at 64) Marshall explained that he left home at the age of 17 when Swanson told him that if Appellant claimed that he was a grown man that he could hit the streets. (R.R. Vol. 3 at 65) He stated that he got arrested at the age of 21 for the crime of unlawfully carrying a weapon. (R.R. Vol. 3 at 65) Marshall

admitted that he loved to smoke marijuana like his father did. (R.R. Vol. 3 at 66)

Marshall testified that he was arrested for felonies during 2011 in Fort Bend County and then arrested again during 2012 in Harris County. (R.R. Vol. 3 at 70) He explained that after he served a 3 year prison sentence from Harris County that he was sent to Fort Bend County where he was sentenced to 10 years in prison for felony charges. (R.R. Vol. 3 at 71-72) Marshall noted that his father died during the time he was in continuous custody from 2012 through 2016. (R.R. Vol. 3 at 74) He stated that he began a mechanic's business and even took welding classes at Alvin Community College after his release from prison at the suggestion of his fiancé. (R.R. Vol. 3 at 78-79) Marshall testified that he takes his mother to her doctor appointments after she was diagnosed with cancer. (R.R. Vol. 3 at 81-82)

Marshall testified that the pills found in his car belonged to his fiancé and that he took them from her to keep her from abusing the drugs. (R.R. Vol. 3 at 83) He claimed that he had forgotten that he left the pills in his car when he got arrested. (R.R. Vol. 3 at 83) Marshall admitted that the marijuana found in his car was his marijuana. (R.R. Vol. 3 at 83) He explained that he put himself in harm's way to help his

fiancé. (R.R. Vol. 3 at 84) Marshall asked the court to be lenient with him. (R.R. Vol. 3 at 87)

On cross-examination, Marshall admitted that he is charged with the felonies of Felon in Possession of a Firearm and Tampering with Physical Evidence in Navarro County. (R.R. Vol. 3 at 88) He denied the Navarro County police officer's claim that he threw a gun out of his car window. (R.R. Vol. 3 at 89)

The Defense rested. (R.R. Vol. 3 at 91)

### **C. Trial Court's Sentence**

On June 18, 2024, the trial court sentenced Marshall to 12 years in the Texas Department of Criminal Justice. (R.R. Vol. 3 at 101) Appellant perfected his appeal on June 21, 2024. (TR. Vol. 1 at 35)

## **POINTS OF ERROR**

### **POINT OF ERROR ONE:**

The trial court erred by assessing a punishment which is grossly disproportionate to the crime committed.

## POINT OF ERROR NO. 1

### THE TRIAL COURT ERRED BY ASSESSING A PUNISHMENT WHICH IS GROSSLY DISPROPORTIONATE TO THE CRIME COMMITTED

Appellant contends that the sentence assessed against him was excessive and grossly disproportionate to the crime committed. “If the trial court assesses a punishment within the statutorily prescribed limits, the punishment is not cruel and unusual and generally will not be disturbed on appeal.” **Buerger v. State**, 60 S.W. 3d 358, 365 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2001, review ref’d). However, Appellant contends that the trial court’s punishment was disproportionate to the crime committed and did violate his constitutional right under the Eighth Amendment to the United States Constitution and Article I, Section Thirteen of the Texas Constitution. “Although a sentence may be within the range of permitted by statute, it may nonetheless run afoul of the Eighth Amendment prohibition against cruel and unusual punishment.” **Hicks v. State**, 15 S.W.3d 626, 632 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2000, review ref’d).

In deciding whether the punishment is disproportionate to the crime committed, “[w]e first make a threshold comparison of the offense against the severity of the sentence, judging the gravity of the offense in light of the harm caused or threatened to the victim or society and the culpability of the offender.” **Culton v. State**, 95 S.W.3d 401,403 (Tex. App. – Houston [1<sup>st</sup> Dist.] 2002, review ref’d). “Only if we infer that the sentence is grossly disproportionate to the offense, will we then consider the remaining factors of the **Solem** test and compare the sentence received to (1) sentences for similar crimes in the same jurisdiction, and (2) sentences for the same crime in other jurisdictions. **Baldrige v. State**, 77 S.W.3d 890, 893 (Tex. App. – Houston [14<sup>th</sup> Dist.] 2002, review ref’d)

Appellant acknowledges that the trial court’s sentence falls within the range of punishment which is prescribed by statute for the second degree felony of Possession of a Controlled Substance which is 2 years to 20 years in prison. However, Marshall contends that the trial court’s decision to sentence him to a 12-year prison sentence is grossly disproportionate to the crime for 4 reasons. First, almost 10 years have passed since Appellant’s last felony conviction in 2014 from Fort Bend

County, Texas. Second, Appellant took the Ecstasy pills from his fiancé to keep her from abusing the drugs but inadvertently left the drugs in his vehicle. Third, Marshall spent over 423 days in jail awaiting the resolution of his felony charge. Fourth, Marshall pleaded guilty to the felony charge of Possession of a Controlled Substance and accepted responsibility for his actions while asking the court to grant him a minimum sentence.

While Marshall admits that he should receive punishment for possession of Methamphetamine, he contends that his listed four reasons demonstrate that the trial court rendered a grossly disproportionate sentence for the crime committed for an offender who had not committed a felony crime in almost a decade. The trial court could easily have granted Marshall a lower prison sentence. By assessing a 12-year TDC sentence instead of sentencing Marshall from 2 to 5 years in prison, the trial court administered an excessive and grossly disproportionate sentence for the crime Appellant committed.

In addition, Marshall contends that a sentence for the crime of Possession of a Controlled Substance in Brazoria County and other Texas counties would have been significantly lower than the 12-year



sentence for a man who had not been in trouble in many years and who knowingly possessed drugs in his vehicle after taking the drugs from his fiancé to keep her from abusing the drugs.

## **CONCLUSION**

For the reasons stated, Marshall prays the Court to reverse and acquit or in the alternative to reverse and remand this cause for a new trial.

Respectfully submitted,

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that Appellant's Brief, as calculated under Texas Appellate Rule of Appellate Procedure 9.4, contains 2409 words as determined by the Word program used to prepare this document.

/s/ Crespin Michael Linton  
Crespin Michael Linton

## **CERTIFICATE OF SERVICE**

I do hereby certify that on this the 7<sup>th</sup> day of October 2024, a true and correct copy of the foregoing Appellant's Brief was served by E-service in compliance with Local Rule 4 of the Court of Appeals or was served in compliance with Article 9.5 of the Rules of Appellate Procedure delivered to the Assistant District Attorney of Brazoria County, Texas, 111 E. Locust, 4<sup>th</sup> Floor Angleton, Texas 77515 at [treyp@brazoriacountytx.gov](mailto:treyp@brazoriacountytx.gov).

/s/ Crespin Michael Linton  
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