

FILED

MAR 28 2024

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa Feller*
DEPUTY CLERK

BRIAN KERRY O'KEEFE,
Appellant,

SCN CASE No. 49329

vs.

THE STATE OF NEVADA,
Respondent.

APPELLANT'S MOTION FOR CONFESSION OF ERROR

WHERE NO OPPOSITION TO MOTION TO RECALL THE REMITTITUR

FILED MARCH 07 2024 WAS SUBMITTED BY STATE

Comes now, Brian O'Keefe, Appellant, hereby moves this Honorable

Court to regard no opposition as mitigating circumstance to

the motion to recall the remittitur based on Constitutional Error,

where this motion is based on the following points and authorities.

RECEIVED
Dated MAR 23 2024
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Respectfully Submitted,
pursuant NRS 208.165 by: *Brian K. O'Keefe*

Brian K. O'Keefe
LOVELOCK, CORR. CTR.
1200 PRISON ROAD
LOVELOCK, Nevada 89419
PO-SE # 90244

24-11149

I. STATEMENT OF THE CASE;
POINTS AND AUTHORITIES

A. STATEMENT OF THE CASE

Appellant O'Keefe pled "not guilty", case C202793, to information charging 6 felony counts, where count 6 was burglary, with a jury acquitting O'Keefe of any intent to commit a felony where counts 1, 2, 3, 4 and 5 resulted in an undisputed "not guilty" verdict. Despite finding O'Keefe of misdemeanor simple battery on Count 1, lesser, the intent to commit a felonious crime was not found despite Count 6 (F) Burglary - AS DRAFTING IN THE INFORMATION - required feloniously entering, in my own home! This overt, open, plain and clear error constitutes ineffective assistance of counsel as "announced" in LEEDS v. RUSSELL; ATTORNEY GENERAL FOR THE STATE OF NEVADA, 75 F. 4th 1009 (9th Cir. 2023) where said counsel's failure to argue that a person cannot burglar his own home, warranted the issuance of the Great Writ on ground 2.

O'Keefe had filed a timely habeas corpus petition, required by Nevada law, to address "IAC" for violation of my SIXTH AMENDMENT. Where O'Keefe had raised said claim, this court now can recall and address said GROUND 9, in the interest of justice, where the State also by acquiescence provides passive acceptance and files no opposition to O'Keefe's motion filed March 7, 2024 as a confession of error complimenting the "HOLDING" of "LEEDS" concerning U.S. Constitutional violations, which is controlling law on this specific issue.

INT This court affirmed the district court's denial of my GROUND 9 on March 24, 2025, SEN No. 49329 which mirrored GROUND 2 in LEEDS!

1 B.) POINTS AND AUTHORITIES

2
3 The 9th Circuit upheld the federal district court and concluded
4 that simply failing to argue that a person cannot burglarize
5 their own home constitutes "IAC" under Strickland v.
6 Washington, 466 U.S. 688, 689 (1984).

7 Structural error is automatic
8 reversal. Moreover, the Clark County District Attorney's undisputed
9 "judicial admission," that police were once again called to
10 the couple's residence and Defendant left for a cooling off period,
11 cannot be disputed as a matter of law.

12 This moreover,
13 is only one of many admissions, made by officers of the
14 court, that up to the time that police were summoned,
15 for this event, O'Keefe still lived there holding occupancy /
16 rights which was provided as a STATEMENT OF FACT.

17
18 A confession of error here is based on no opposition to
19 motion to recall remittitur filed under NRAP 27(a)(3)(A).
20 • see State DMV v. Stone, 94 Nev. 775, 587 P.2d 1325 (1978) where,
21 in addition to respondent's previous omissions, she has neither
22 opposed the motion to reverse, nor tendered any reason for her
23 failure to do so, respondent's conduct is treated as a confession
24 of error.)

25 II. CONCLUSION

26 Invoke supreme authority
27 exercising the power to issue order granting motion confessing error.

CERTIFICATE OF SERVICE

I do certify that I mailed the original copy to the Office of the Clerk, Nevada Supreme Court, 201 S. Carson Street, Suite # 201 Carson City, Nevada - 89701.

• Invoke NEFCR 9(d), 9(e): Service List:

Nevada Attorney General
Aaron S. Ford
100 N. Carson St.
Carson City, Nev. 89701
Attn: M. Donzard

Dated this 25th day of March 2024 by:

Brian K. O'Keefe
Brian K. O'Keefe
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Pro se # 90244

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