

IN THE SUPREME COURT OF THE STATE OF NEVADA

Frank M. Peck  
Appellant,  
vs.  
STATE OF NEVADA  
Respondent.

Supreme Court No. 72849  
District Court No. CR.96-2687

**FILED**

JUL 18 2017

**APPELLANT'S INFORMAL BRIEF**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY J. Hendrix  
DEPUTY CLERK

**INSTRUCTIONS:** If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

**HOW TO FILL OUT THIS FORM:** This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

**WHERE TO FILE THE BRIEF:** You may file your brief in person or by mail.

**To file your brief in person:** Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop-Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00

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JUL 17 2017  
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
Informal-Brief Form October 2015

17-23824

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
4-7-17	ORDER DISMISSING SUCCESSIVE HABEAS (POST CONVICTION)

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: April 17, 2017

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
CR062560	PECK V STATE	WASHOE
CV1300580	PECK V WASHOE CRIMELAB	"

**Pro Bono Counsel.** Would you be interested in having pro bono counsel assigned to represent you in this appeal?

Yes       No

**NOTE:** If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

Petitioner/Appellant was convicted in 1998 of two counts 200366 SEX ASSAULT because he declined pleading guilty to 1 count, as life in prison didn't sound like much of a DEAL. However, through "creative Police report writing" and despite specific testimony that Digital penetration NEVER occurred, nor did the VICTIM EVER say digital penetration occurred until the second jury trial and after leading questions did the VICTIM say "IT FELT LIKE IT WENT IN."  
"Digital penetration NEVER occurred," nor was it alleged by the victim herself"

and was in fact the product of creative police report writing. per Dennis Eugene Widdis Esq my old friend and attorney, Mr Pecks case has been prejudiced by NRS CHAPTER 34 in that evidentiary hearings are heard many years later as baliff Earl Walling was already in his late 60's when Mr Pecks trial occurred when Dennis provided an affidavit he attached to his MOTION to dismiss (CT-1) digital penetration that Earl had told him that the jury acquitted Mr Peck on (CT-1) Then, at evidentiary hearing, he couldn't remember remembering saying that. This delay prejudiced Mr Peck to the tune of an entire life sentence. Further, "at evidentiary hearing Dennis said the he even admitted his ineffectiveness (that) HE WOULD HAVE POLLED THE JURY IF HE HAD IT TO DO OVER AGAIN" He said but the judge did nothing. This claim could not have been raised sooner because Dennis said if he had said this to Mr Peck he could have lost his licence to practice law and is therefore external to the Defense and the jurisdictional claim could not have been brought sooner as the enclosed documents / exhibits are "not available to inmates" and were denied by the Archives and the secretary of state, and are also therefore external to the Defense. Further, the lower court misconstrues that the Statutes of Nevada contain the laws with the enacting clauses required by the Nevada Constitution when Mr Peck's argument is that "SENATE and ASSEMBLY Concurrent Resolution File No 1 and No 2 DO NOT CONTAIN THE ENACTING CLAUSE SEE AGO 85 7-25-1951 and therefore NRS 200 366 is NOT VALID LAW" Jurisdictional defects are not waivable and may be brought at any time despite any procedural obstacles under habeas corpus per NRS 34.360 through 34.830" Kelly v. United States 29 F 3d 1107, 1112 (7th Cir 1994)

US v Ceballos, 302 F.3d 679 690 (7th Cir 2002); Chambers v US 23 F3d 939 945 (9th Cir 1994) ("Whatever the scope of the Cause and Prejudice requirement, it clearly does not bar [habeas] review when a defendant raised a jurisdictional claim, such as the invalidity of the statute which gave the court its jurisdiction),

**Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

Mr. Peck may bring A jurisdictional claim At ANY TIME.

Until now, All official Documents supporting this claim have been concealed by the State Archives and the secretary of state and Governor Brian Sandoval.

IN Mr Pecks case NRS 200.366 is unconstitutional, as it (SB-2) was bootstrapped to Senate Concurrent Resolution No 1 - Committee on Judiciary File No 1 and Assembly Concurrent Resolution No 1 - Committee on Judiciary File No 2 (1-25-1957)

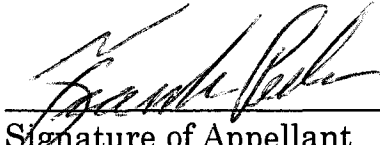
"And [That] Resolution" does not contain the enacting clause required on every law and is a fatal defect which prevents it from being a law as intended by the Constitution. This form prevents Mr Peck from exhibiting Here (EX-1) Joint Senate and Assembly Resolution File No 1-2. (EX-2) AGO 85 (7-25-1951) & (EX-3) NHP v STATE, 107 NEV 549 (1991) at 549 Held, Resolution, like other similar concurrent resolutions does NOT HAVE THE FORCE AND EFFECT OF NEVADA LAW. ALSO AT 815 P2d 610. (NRS 220 120 was repealed) further NRS 200,366 was is unconstitutional in that it was ~~adopted~~ <sup>ENACTED</sup> in violation of the single subject rule and is void ab initio nor was ~~enacted~~ enactment followed by democratic vote. further, it was the "4th branch of government" ("Revision Commission") that "decided" to ~~adopt~~ <sup>ENACT</sup> the NRS's. The commission concluded that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action. NRS 200.366 enacted en mass as SB-2 bootstrapped to Joint Concurrent Resolution at the 48th session of the legislature is void ab initio. Every subject matter in the entire NRS 1.010 to 710.590 was enacted en mass. Dennis' knowledge that his objection would be futile based on his experience that the judge would deny it anyway should be seen as an external impediment to the defense that only came to light when Dennis told Mr Peck prior to this filing. This fact intentionally withheld by counsel should not be held against Mr Peck.

Further, the state makes only bald, bare, naked assertions backed by nothing more than DICTA, no contrary factual documentary evidence supporting the states position only the contrary exists however this form and NKAP 31(i) prevent Mr Peck from presenting his documentary EVIDENCE/EXHIBITS as conclusive proof. Mr Peck hereby motions this honorable court for leave to file these critical exhibits herein. It should be noted that all efforts by Mr Peck to obtain these documents have and continue to be impeded, frustrated and prevented by the respondents and should serve as an "external impediment" excusing any delay. Mr. Peck has many many unanswered requests for information from Sec of State, legislators and archives, who have stated that they has sent everything they have! It is ironic that the record from Mr Peck's "First Trial" clearly showed that the Jury "REACHED VERDICTS ON the substantive counts 1-2", and "that fact was discounted" because of the voluntariness question that was immaterial. The Facts show Jeopardy attached and that VERDICT<sup>(S)</sup> WERE REACHED. The Trial Court had no discretion to NOT ACCEPT a valid verdict from a jury unless there was insufficient evidence to sustain the charge. Hence, The trial Court had no jurisdiction to even retry the case. Even if the VERDICTS were inconsistent double jeopardy would apply "after conviction or acquittal." Judge Kosach knew the jury had reached VERDICTS on the substantive counts, The jury said so! This Court decided this issue without the minutes or transcript from the First Trial! Judge Kosach committed the ultimate act of bias against Mr Peck when he knew the evidence/ testimony of the victim did not support a conviction on CT-1,

by calling a mistrial on both counts prejudicing Mr Peck's defense  
and subsequent leading questions that directly caused two convictions  
not just one. Mr Peck was prejudiced by the leading questions and  
Dennis' failure to object as well as Mr Peck's Dir Appeal Counsel failing  
to supply the Minutes and transcripts from the 1st Trial in No. 32031  
Even a Evidentiary hearing Dennis Admitted his ineffectiveness that had  
he the chance to do it over. He "WOULD HAVE POLLED THE JURY". Even  
this is beside the Point that the "Jury Reached VERDICTS" it matters  
not what those verdicts were as either way Double Jeopardy  
prevents RE-TRIAL. What was in Mr Widdis' CONSCIENCE WAS  
certainly not available to Mr Peck until disclosed by confession of  
Dennis Eugene Widdis Esq. STOW V MURASHIGE 389 F3D 660 (9th Cir 2004)  
Ohio v Johnson, 467 US 493 498 (1984) THE VOLUNTARINESS QUESTION WAS IM-  
material to a NOT GUILTY VERDICT once the voluntariness verdict was accepted  
Jurisdiction for retrial was dependant of VERDICTS REACHED. Also to  
determine manifest necessity.

Reversal is required

DATED this 8<sup>th</sup> day of July, 2017.

  
Signature of Appellant

Frank Peck  
Print Name of Appellant




**CERTIFICATE OF SERVICE**

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- By personally serving it upon him/her; or
- By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

DDA TERRANCE Mc CARTHY ESQ.  
75 COURT STREET  
RENO NV 89501

DATED this 12<sup>th</sup> day of July, 2017.

  
\_\_\_\_\_  
Signature of Appellant

Frank Peck  
\_\_\_\_\_  
Print Name of Appellant

ADSP Box 650  
\_\_\_\_\_  
Address

Indian Springs NV 89070  
\_\_\_\_\_  
City/State/Zip

\_\_\_\_\_  
Telephone