

IN THE SUPREME COURT OF THE STATE OF NEVADA

Jack Leal
Appellant,
vs.
Serry Howell, Warden, Southern Desert Correctional Center,
Respondent.

Supreme Court No. 79243

District Court No. C222664
FILED

DEC 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

APPELLANT'S INFORMAL BRIEF

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 submit your brief for filing in person or by mail.

~~To file your brief in person:~~ Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

19-52402

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
6-21-2019	Order denying Petition For Writ of Habeas Corpus

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 7-19-2019

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

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.)

Leal had been involved in the Real Estate Field since 2009 without any issues. In September of 2016 the Nevada Attorney General's (A.G.) office filed a civil complaint for forfeiture. Jessica Garcia (Garcia) who is Leal's co-defendant immediately retained counsel Michael Pariente (Pariente) to represent both defendants in the civil matter. Leal was only aware of this civil complaint since there were no criminal charges filed at this point. Apparently at some point the A.G. decided to pursue criminal charges against Leal and Garcia and made a formal offer letter (which was contingent on both Defendants acceptance, a "package plea deal") to Pariente. Garcia somehow accepted the offer on behalf of herself and Leal, without Leal consenting to or even being aware of such offer at the

time, as it greatly benefited her by leaving her with only a misdemeanor conviction. Due to Garcia's acceptance of the offer, the A.G. then filed criminal charges. On November 25th 2016 Leal found out that Garcia had been in contact with Pariente without Leal's knowledge so Leal attempted to contact Pariente directly and Garcia became irate and physically attacked Leal. Garcia was subsequently arrested for domestic battery against Leal. This was the beginning of a series of events against Leal including 4 separate arrests, 5 orders of protections, and numerous threats all of which lead to Leal's eventual conviction and the current issues relating to him entering a coerced and involuntary guilty plea. At this point in November of 2016 Pariente refused to further represent both Defendants.

Garcia then retained Jason Weiner (Weiner) to represent both Defendants. At this time Leal was still unaware that criminal charges had been filed although Garcia was apparently aware. When Leal became aware that there were criminal charges against him ^{and} the severity of the charges, he immediately confronted Garcia who made numerous threats about Leal not saying or doing anything about it. On April 20th 2017 Leal made his first personal appearance in court and planned to tell the court about the violence and threats against him and plead not guilty so Weiner requested a continuance. The court date was continued to April 24th 2017 and Leal again planned to plead not guilty but as Leal was leaving his house for court that morning, Garcia showed up and literally attacked him and made threats that he would never see his kids again if he did not sign the guilty plea in court that day. Leal being completely distressed and having been just physically attacked and threatened only hours earlier ended up signing the guilty plea that day but under complete duress and with the fear that him not doing so would put him in immediate danger.

On August 17th 2017 Leal had a court date for sentencing. Weiner was aware of all the actual conflicts between the Defendants which is shown by the record as he attempted to withdraw as counsel due to what had become an unresolvable conflict. The court was unaware of the totality of the situation since Weiner could not simply tell the court the complete story since Garcia was also his client. Weiner had informed Leal that he was simply there to withdraw as counsel and that the court would appoint Leal independent counsel which Leal believed would help him withdraw his involuntary plea but instead the court went forward with sentencing, despite Weiner's attempts to withdraw, and sentenced Leal to 72 to 180 months in prison.

Leal filed a direct appeal which the Court of Appeals (C.O.A.) affirmed. Leal believes the C.O.A. was unaware of the actual conflicts and instead states the conflict was "conflicting defenses as to why they did not pay the restitution" and later that "Leal failed to demonstrate there was a conflict of interest because the fact that his co-defendant did not also

pay the restitution was not a defense" which is not at all what Leal was alleging. However Weiner's failure to disclose the actual conflicts to the court meant it was not on the record for review but has since been presented to the court both in several subsequent filings and also in Leal's Petition which is the subject of this appeal.

On March 11th 2019 Leal filed his Petition for Writ of Habeas Corpus. His 1st ground states that the charging document failed to provide notice of the actual charges against him. The information does not in any way show Leal's limited involvement, and most importantly, does not specify which Defendant made which false or untrue statements to which victims leaving Leal and the court left to make blind assumptions which Leal believes was a strong factor as to his sentencing hearing. Leal's 2nd ground states that his counsel, Weiner, was ineffective in representing him. One issue is the fact that both Defendants had Weiner representing them from the time criminal charges were filed on November 29th 2016 through April 10th 2017, the time in which Weiner was negotiating a plea agreement, without any conflict of interest waiver ever being presented to or signed by Leal during this 4 month period. Garcia made numerous threats to coerce Leal to enter a guilty plea against his free will all while Weiner continued to represent both Defendants. Weiner then refused to disclose to the court the actual conflicts to protect Garcia while simply not providing Effective Assistance of Counsel to Leal.

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.)

The first error Leal brings is about his first claim which is that the Information by which he was charged failed to put him on notice of the charges against him. Leal states his plea was entered into both unknowingly and involuntarily. A plea cannot be truly voluntary unless the Defendant receives real notice of the charges against him and the Information here is clearly vague and ambiguous and therefore lacks specificity. It actually does not state any specifics such as the place of the alleged crime, the specific dates of any events of the crime, the method that said false statements were made (phone, in person, email) or by which Defendant the false statements were made, and lastly, it does not allege any specific acts committed by Leal involving specific victims. It also clearly does not state which Defendant is alleged to have done what or which Defendant allegedly made which false or untrue statements to which victims and therefore does not show each and every element of the crime charged. It is known that the charging document must contain "(1) each and

every element of the crime charged and (2) the facts showing how the Defendant allegedly committed each element of the crime charged." Leal cites "Hancock 114 Nev. 161" which is almost identical in that the Information here simply lumps the Defendants together making it very difficult to decipher who is alleged to have done what. The Information also fails to show that two separate transactions actually occurred instead it simply shows two or victims but more importantly it fails to show that Leal himself actually had any involvement in two or more (multiple) transactions involving fraud which is exactly what he is currently incarcerated for. Here Leal's guilty plea is invalid and should be vacated and declared as void since the factual basis was not specifically stated with information about the Defendant's actual involvement. The charging document here fails to show the particular acts alleged to have been committed by Leal and that he was actually involved or committed any crime at all. Also, a guilty plea does not waive any jurisdictional defects such as omission or failure to state the essential material elements of the offense which are missing from the said Information. For this error Leal requests that the Information used here should therefore be declared as insufficient and void and the present charges dismissed. Should the state then desire, Leal should be charged by means of a new charging document which clearly identifies the charges against him. At a minimum, Leal believes he should be re-sentenced with the sentencing court being made fully and specifically aware of his actual involvement. Leal respectfully requests that this court reverse and remand for one of the above options.

The next error Leal raises is that Weiner was representing both Defendants without any conflict waiver whatsoever for the period between November of 2016 and April of 2017 (over 4 months). This was a critical time as this is the period in which all of the issues between the Defendants, including threats and actual physical violence against Leal, began. This was also the period when the plea was being negotiated so during this time without a conflict waiver, Leal was not being properly represented. Weiner was aware of the actual conflicts (the threats and violence against Leal) between the Defendants as shown by his attempt to withdraw at Leal's sentencing. At the time Leal was unaware of, both his right to independent counsel, and also of his right to be appointed counsel since rights were never disclosed to him by Weiner or by the court. Had Leal known of these rights he could have proceeded to trial with the proper representation. For these errors Leal requests that he be appointed independent counsel by the court and be allowed to plead anew free from any actual conflicts, threats or coercion of any kind. Also with regard to this claim, the court simply

states it sees no problems with the waiver that was signed (Transcripts at 10:19-22) but does not address the fact that there was no waiver at all in place for the 4 month period prior to that time and that Leal's signing of the Waiver was coerced, both of which are Leal's actual argument. The court also several times refers to the C.O.A. Finding where they state "Leal failed to demonstrate there was a conflict of interest" but it appears they based their decision on restitution issues as the domestic violence issues were not on the record until Leal's independent appellate counsel raised them. Leal would ask the C.O.A. to revisit their previous decision in light of the actual conflicts and additional information now available and before them. Regardless of the determination as to if the conflict waiver was valid, Leal's claim that Garcia "visited domestic violence upon the Petitioner" needs to be further examined as the court here determined that the "Petitioner signed the plea agreement freely and voluntarily and entered his plea of his own free will and free from threats" (Order denying Petition at 4:4-7) which is clearly contradicted by the claims made here and on the record.

The court next discusses the disparity between the Defendant's sentences (transcripts at 10:22-24). Leal in his claim argued prejudice in the punishment's "negotiated" where Garcia would end up with only a misdemeanor conviction but the court only discusses the sentences "actually received". Even so, Leal received 72-180 months in prison which is significantly longer than Garcia's 48-120 month sentence especially given Garcia's numerous recent arrests and her failure to appear for sentencing in this case so this issue is not moot as the court states. This was prejudicial as Leal was forced to enter his plea in order for Garcia to benefit from the plea and a reduced sentence. Leal requests that the court reverse and remand and Leal be sentenced to 48-120 months or less as was given to Garcia to eliminate the current disparity between Leal and Garcia's sentences.

Leal's third argument where he claims an error is about Package Plea Deals (Transcripts at 9:3-9) which is when one Defendant's plea is contingent upon another Defendant's acceptance of the plea deal. Since there is a greater possibility of threats and coercion, the court is required to know if there is a joint plea at the entry of plea hearing so that the court may conduct a more thorough canvass to ensure one Defendant is not pleading against their will and to prevent exactly what was happening here to Leal by Garcia. The more detailed canvass was not conducted here so Leal requests that the court reverse and remand to provide Leal with a full hearing to determine whether Leal entered his plea due to threats or pressures by Garcia due to the package plea deal.

As to Leal's claim of coercion against him, his plea was entered into without effective assistance of counsel and was not

voluntary. By the time Leal entered his guilty plea on April 24th 2017, he had already been subjected to several threats and instances of actual violence against him due to his desire to not go along with the plea negotiations, so at that point it is shown that the plea was obtained by both actual and threatened physical harm to Leal which stripped the plea of a voluntary act since his will was overborne. Both Weiner and the A.G. knew, or should have known and alerted the court, of the existence of coercion and of an actual conflict between the Defendants as Garcia's arrests for Battery against Leal were in her P.S.I. at sentencing. Garcia's last arrest prior to the charges in this case was on 10-23-2009 which shows a direct correlation with the timeline of this case and the threats and violence against Leal. The court briefly addresses the coercion claim (Transcripts at 5:22-24) but then moves on and later re-addresses the coercion issue (Transcripts at 8:3-5) by inquiring if Leal entered his plea based upon coercion by Garcia. Being that coercion is one of the main claims throughout the entire petition, and by the court's inquiries, it appears that the court is aware that it is possible that Leal's plea was coerced and that Leal simply never informed the court due to his fear that doing so would result in further violence against him. Leal requests that the plea entered here be declared as void since it was induced by threats and since the coercion made it involuntary and against Leal's free desire and wishes. At a minimum Leal requests an evidentiary hearing as it is the only way to fully address this claim and to determine if Leal's guilty plea was entered into freely and voluntarily or if in fact there was coercion and the plea was entered into only due to fear and under duress.

DATED this 20th day of December _____, 2019.



Signature of Appellant

Jack Leal

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):

Jerry Howell
Warden, Southern Desert Correctional Center
90825 Cold Creek Road
P.O. Box 208
Indian Springs, NV 89070

Steven Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, NV 89101

Aaron Ford
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

DATED this 20th day of December, 2019.



Signature of Appellant

Jack Leal

Print Name of Appellant

P.O. Box 208

Address

Indian Springs, NV 89070

City/State/Zip

N/A

Telephone