

FILED

JUN 18 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY: *D. Richards*  
DEPUTY CLERK

Frank Herring  
Appellant,

vs.

State of Nevada  
Respondent.

Supreme Court No. 78791

District Court No. A-19-790102-W

**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.

RECEIVED  
JUN 17 2019  
ELIZABETH A. BROWN  
DEPUTY CLERK

CLERK OF SUPREME COURT  
October 2017

19-26252

**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
12-30-13	(J.O.C) Judgment of Conviction

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: April 15, 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
C-13-291159-1	Murder w/ use of Deadly Weapon	District <del>Court</del> 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.)

From the beginning myself (Appellant) was denied my right(s) by Detectives and Crime Scene Analyst Experts by their failure to perform appropriate investigative duties as promised to (All) United States Citizens under the U.S. Constitution. Detectives and Crime Scene Analyst Experts failed to perform forensic testing on shell casings located on the south of another

another (6) spent cartridge casings, Detectives failed to properly perform forensic testing based solely on what witnesses described hearing. This violates Appellants rights to due process under the Constitution's 14<sup>th</sup> Amendment. Furthermore, had the proper investigative duties been performed the testing of, locate and/or processing of evidence would have or could have exonerated Appellant from charged crimes. Appellants retained seasoned Counsel failed to make reasonable decision that would have made using private investigator unnecessary this failure by retained seasoned Counsel prejudiced Appellant's rights under the Constitution's 14<sup>th</sup> Amendment. Seasoned retained Counsel intentionally withheld favorable material information from Appellant which denied Appellant effective assistance of Counsel this evidence could have exonerated Appellant even after Appellants numerous request for (All) records/Court Case documents. Retained Counsels failure to use private investigator of his office violated Appellants due process rights had seasoned Counsel done so private investigator would have found unyielding reasonable doubt such as; inconsistency statements regarding identification, no physical evidence linking Appellant, no weapon, (2) different caliber of shell casings located on crime scene, A failure by the Las Vegas Metro-

police department's Detectives and Crime Scene Analyst experts to collect, process mitigating evidence which would have suggested someone else committed the crime of Murder w/ use of a deadly weapon and could have exonerated Appellant from such criminal activity, this failure by Detectives and Crime Scene ~~Analyst~~ Analyst to thoroughly process Crime Scene and/or evidence deprived Appellant a Constitutional right and as a result prejudiced Appellant

**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.)

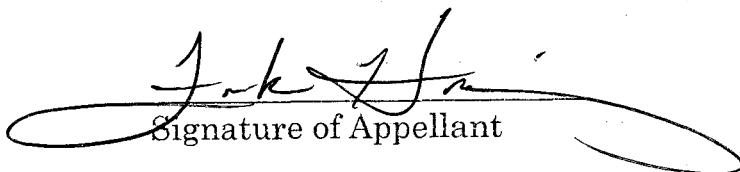
The District Court erred when they failed to construe Appellant's Motion to Withdraw Guilty Plea Motion as post-conviction; Appellant was well within the 1yr deadline which would not time bar Appellant from seeking post-conviction relief see: Charles B. Harris v. State of Nevada 329 P.3d 619; 2014 Nev.

Appellant's seasoned Counsel failed to use private investigator to make reasonable lines of defense, or reasonable determination(s) that would have made this investigation not necessary. see *Fisher v. Gibson*, 282 F.3d 1283 (2002). Instead Trial Counsel based Appellant's defense solely on the prosecution's record for this reason Trial Counsel was ineffective during a serious criminal proceeding(s) for his failure to have a strategy of pointing out holes in the evidence. Trial Counsel's representation of Appellant was unreasonable under professional norms therefore prejudice ensued. Had Trial Counsel not made such unprofessional errors the result would have undoubtedly differed these deficiencies in the performance of Appellant's Trial Counsel(s) undermined confidence in the outcome of Appellant's, as well as throughout Appellant's proceedings. Appellant's Trial Counsel never consulted or consulted with Appellant regarding strategies for defense even after numerous attempts by Appellant as well as family(s) attempts to contact Trial Counsel. Trial Counsel failed to disclose with Appellant and present any defense of or on behalf of Appellant. Appellant's Counsel was ineffective for failing to disclose evidence that could have completely exonerated

Appellant by (one) not investigating into a second set of shell casings at the crime scene, not requesting to have these casings tested; and Secondly, not challenging the sufficiency of the evidence with regard to the Appellant (defendant). Detectives refused to do forensic testing of 9mm shell casings because this fact would have created so much reasonable doubt that Appellant defendant would have been completely exonerated, Appellant believes that retained Counsel was aware of this fact and failed to work in favor of the Appellant (defendant) nor disclose this evidence to defendant and instead chose to purposely conceal this mitigating evidence, favorable evidence from Appellant, (a Brady violation.) No weapon was ever recovered by detectives. The weight of this evidence was never tested by counsel on behalf of (defendant) See *U.S. v. McKenzie*, 768 F.2d 602, 4005-5<sup>th</sup> Cir. (1985) Had Counsel done (any) investigation(s) on behalf of Appellant he would have found the evidence Constitutionally insufficient for a conviction Counsel would have also found that there was no evidence to support a criminal conviction

tion. This level of ineffectiveness are the result of incompetent assistance and fall below reasonable professional judgement. Counsel failed to investigate eyewitness after misidentification of ~~APPellant~~ defendant in photo-line-up + his fact prejudiced Appellant, see Anderson v. Johnson, 338 F.3d 382 (CA 5 2003) The failure by Detective and Crime Scene Analyst Experts to locate and/or test (forensic evidence) prejudiced Appellant (under Brady Rule) Appellant request a Sentence Modification at the very least this evidence relates to factual guilt and/or innocents. These elements and/or facts violated Appellants rights under the 14<sup>th</sup> Amendment to due process.

DATED this 11<sup>th</sup> day of ~~June~~ June, 2019.

  
Signature of Appellant

Frank Herring  
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):

Supreme Court of Nevada  
Office of the Clerk  
201 S. Carson Street, Suite 201  
Carson City, NV 89701

DATED this 11<sup>th</sup> day of June, 2019.



Signature of Appellant

Frank Hearing

Print Name of Appellant

P.O. Box 4007 (W.S.C.C.)  
Carson City, NV

Address

Carson City, NV 89702  
City/State/Zip

N/A  
Telephone