



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

October 19, 2021

Valentina Monee Knight
Inmate ID: 1228728
Florence McClure Women's Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

Re: Knight (Valentina) vs. State, Case No. 82316

Dear Ms. Knight:

We are returning, unfiled, the "Petition for Rehearing" received in this office on October 19, 2021, in the above-entitled matter.

Pursuant to NRAP 40 (a)(1), a petition for rehearing may be filed within eighteen (18) days after the filing of the court's decision pursuant to Rule 36 unless the time is shortened or enlarged by order. The three day mailing period set forth in Rule 26(c) does not apply to the time limits set by this Rule.

Sincerely,

M. Mercier
Deputy Clerk

IN THE COURT OF APPEALS
OF THE STATE OF NEVADA

RETURNED
UNFILED

OCT 19 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY _____
DEPUTY CLERK

NO. 82316-COA

ALENTINA MONEE KNIGHT
Plaintiff-Appellant,

STATE OF NEVADA
Defendant-Appellee.

PETITION FOR REHEARING
STATEMENT OF THE ISSUES

I. Is rehearing appropriate when this Court concluded that petitioner was time barred when filing writ "more than three years after entry of judgement of conviction" when a petitioner is erroneously convicted under an inapplicable statute that is illegal on its face and outside of statutory limits, do procedural bars still apply?

II. Is rehearing appropriate when this court concluded that petitioner did not have good cause for delay in bringing the writ of Habeas Corpus but per the trial record there is clear evidence of petitioner's interest in appealing by requesting to withdraw guilty plea prior to sentencing and in a motion to Reconsider Revocation of Probation immediately following the judgement of conviction?

III. Is rehearing appropriate when petitioner's counsel shows clear abandonment after filing a motion to Reconsider Revocation of Probation then not advising client of further options to appeal, also is it not evident based on abandonment of counsel and ineffectiveness of said counsel did not argue or object to erroneous conviction or prosecutorial misconduct, but further caused harm by reciting same comments and allowing trial court to believe petitioner

RECEIVED
OCT 15 2021
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

TABLE OF CONTENTS

Statement of the Issues	1
Argument	2
Issue I	2
Is rehearing appropriate when this court concluded that petitioner was time barred when filing writ "more than three years after entry of judgement of conviction" when a petitioner is erroneously convicted under an inapplicable statute that is illegal on its face and outside of statutory limits, do procedural bars still apply?	
Issue II	3
Is rehearing appropriate when this court concluded that petitioner did not have good cause for delay in bringing the writ of Habeas Corpus but per the trial record there is clear evidence of petitioners interest in appealing by requesting to withdraw guilty plea prior to sentencing and in a motion to reconsider Revocation of Probation immediately following the judgement of conviction?	
Issue III	5
Is rehearing appropriate when petitioners counsel shows clear abandonment after filing a motion to Reconsider Revocation of Probation then not advising client of further options to appeal, also is it not evident the abandonment of counsel and ineffectiveness of said counsel when counsel did not argue or object to erroneous conviction or prosecutorial misconduct, but further caused harm by reciting same comments and allowing trial court to believe petitioner carried illegal cards and not her co-defendant?	
CONCLUSION	9

TABLE OF AUTHORITIES

Cases

<u>Osborn v. Fogliani</u>	, 82 Nev. 300; 417 P.2d 148; 1966 Nev. LEXIS 235....	3
<u>State v. District</u>	, 100 Nev. 90, 97, 697 P.2d 1044, 1045 (1984).....	3
<u>Mitchell v. State</u>	, 109 Nev. 137; 848 P.2d 1060; 1993 LEXIS 23.....	4
<u>Strickland v. Washington</u>	, 466 U.S. 668 (1984).....	7
<u>Cross v. Smith</u>	, 73 F. 3d 1383 (9th Cir 1996).....	7
<u>Warden v. Peters</u>	, 83 Nev. 298; 429 P.2d 549; 1967 Nev. LEXIS 279.....	8

I. Rehearing is necessary when this court concluded that Petitioner was time barred but did not consider that petitioner was convicted erroneously under an inapplicable statute that is illegal on its face.

On September, 13 2021 this honorable Court Affirmed the District Courts decision to deny Petitioners Writ of Habeas Corpus on the grounds that the writ was procedurally barred due to it being untimely filed. However, because petitioner was erroneously convicted under an inapplicable statute that charged me-petitioner, in excess of the statutory limits, in such instances procedural bars typically do not apply. Petitioner was convicted of a Burglary under NRS 205.060 on April, 12 2017. The charging Statute read "The Crime of burglary does not include the act of entering a commercial establishment during business hours with the intent to commit petit larceny unless the person has previously been convicted: (a) two or more times for committing petit larceny within the immediately preceding 7 years or (b) of a felony." The restitution and loss of the Bellagio Hotel (the victim in this case) was \$557,76. My co-defendant presented the card on file for a prepaid reservation for a "security deposit." Also at the time of the conviction and commission of above stated crime I had no record at all. In conclusion and per the facts of this case the court went beyond its authority by imposing a sentence and conviction in excess and outside of the statutory range provided. per my record and the loss of the hotel, coupled with my minor role as party to my co-defendant, I did not and should not have, per statute language be charged with a burglary.

In Osborn v. Fogliani, 82 Nev. 300; 417 P. 2d 148; 1966 Nev. LEXIS 235

it states "The Supreme Court of Nevada has repeatedly held that a person should be discharged via the writ of habeas corpus where it is clear and undisputed that he is held by reason of the commission of an act which the law does not prohibit or penalize." Additionally in Osborn v. Fogliani it cites "In re Perez, 48 Cal. Rptr. 809 (1966), petitioner was improperly charged with and sentenced for the crime of escape while serving a sentence for a felony, rather than properly charging him with escape while serving a sentence for a misdemeanor. The petitioner pleaded guilty and the time for filing a notice of appeal had elapsed after the error was discovered. The California court held that "a Defendant is entitled to habeas corpus if there is no material dispute as to the facts relating to his conviction and if it appears that the statute under which he was convicted did not prohibit his conduct

Id. at 811. Lastly in State v. District, 100 Nev. 90, 97, 677 P. 2d 1044, 1048 (1984) "The imposition of an extra statutory sentence is constitutionally affirm as a denial of due process, and thus is, by definition illegal. The sentencing court retains inherent power to correct an unlawful sentence at any time." Although my claims were technically time barred, the nature of the claims if not addressed will result in a miscarriage of justice.

II. Rehearing is necessary when this court concluded that petitioner did not have good cause for delay but abandonment and ineffective counsel is evident in Petitioner's Motion to withdraw guilty plea prior to sentencing as well as in a Motion to Reconsider Revocation of Probation immediately after judgement of conviction. Rehearing is also appropriate when this court erroneously concludes that petitioner did not pursue direct appeal.

This honorable court stated petitioner "did not pursue a direct appeal." However I expressed interest in and requested Counsel Gallo to

appeal my conviction on the very day the judgement of conviction was entered. On April, 24, 2017 Mr. Gallo entered a "Motion to Reconsider Revocation of Probation." That very motion is what my then attorney expressed to be an appeal. Gallo also stated that because I was out of custody, that the appeal could take "some time". I was aware that ~~my~~ ^{Counsel} entered an appeal but could not have known that Gallo did not appeal in the full capacity as I was requesting of counsel. Counsel was clearly aware of my request on meritorious claims of appeal. In the motion he entered to reconsider it states "the sentence of 4-10 years is extreme, considering Ms. Knight's lack of criminal record and lack of involvement in the crime in question. If not for Counsel's neglect and abandonment my claims would have been timely appealed and filed. No reasonable person would accept a conviction that their criminal record excludes them from accepting because absent the conviction of burglary the crime in question would only constitute a misdemeanor penalty. That only holds up to 6 months of possible county jail time. Further it is evident of my wishes to appeal because of a request entered by Counsel to withdraw the guilty plea before sentencing. I asked to withdraw the plea because of my minor role in the crime and because I did not enter the hotel with felonious intent. Additionally it is abundantly clear that I wished to appeal by requesting to withdraw said guilty plea because a guilty plea can not be brought to question in a direct appeal, that request was my way of appeal. In Mitchell v. State 109 Nev. 137; 848 P.2d 1060; 1993 Nev. LEXIS 23 it states "The Nevada courts do not

Permit a defendant to challenge the validity of a guilty plea on direct appeal from the judgement of conviction. Instead, a defendant must raise a challenge to the validity of his or her guilty plea in the district court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post conviction proceeding under Nev. Rev. Stat § 34,360 or § 197,315. It shall then be the duty of the trial court to review the entire record to determine whether the plea was valid, either by reason of the plea canvass itself or under a totality of the circumstances approach". If court, at district level had reviewed the canvass and had a hearing, the excessive charge of burglary that exceeded statutory limits may have been found. It was an abuse of discretion to deny appellants motion to withdraw guilty plea. on 3/29/17 the motion to withdraw guilty plea can be found.

III: Rehearing is appropriate when counsels failure to object to erroneous conviction, failure to object to prejudicial statements and failure to advise client of further appeal is not recognized as clear good cause for delay and clear ineffectiveness of counsel.

Because Counsel Perente did not object to prejudicial statements made by the prosecutor stating that 'petitioner carried brown bag that carried all fraudulent identities and credit cards', when in fact per witness statements it was co-defendant who possessed and presented any credit cards. This allowed the courts to presume that my role in the crime was more ~~severe~~ ^{severe} than it was. If counsel had objected and pointed to the witness

Statements that clarified that "Knight was carrying a white purse" and co-defendant "Dioubaite carried a tan leather book bag" that possessed all fraudulent credit cards. If counsel would have objected to prosecutorial harmful assessments of the evidence, the outcome would have been different. Perente further prejudiced petitioner by repeating the statement that the brown bag that contained all the the fraudulent cards belonged to petitioner in a Motion to Suppress in the memorandum it stated "These Security guards searched a brown leather bag belonging to Ms. Knight. They discovered it allegedly contained various credit cards they suspect were fraudulent". When in fact the statement from the Security Guard stated "I did a safety check of both a white purse, belonging to Ms. Knight, and a tan Mc Backpack belonging to Mr. Dioubaite. Inside the backpack and in the small pockets on the outside of the backpack I found approximately 26 credit cards under three different names." At the time my then attorney Perente made those prejudicial statements myself and co-defendant shared the same counsel. Because I believed that because of the immigration concern of my co-defendant was of more priority to our shared attorney, I hired Gallo to represent me separately. Gallo did not object to prejudicial claims on record, ultimately in a letter dated ~~8/~~ 9/22/20, well after my writ of Habeas Corpus was entered, ~~the~~ Gallo claims to have not represented petitioner until after sentencing.

Ultimately on the day of conviction I was unrepresented.
Mr. Gallo claims to have not represented petitioner until after sentencing and to have only have represented petitioner for her first "probation revocation hearing". It is clear I was abandoned. If objections would have been made to prejudicial statements from the state, the trial court would have been made aware that petitioner's role in the crime was very minor. Instead trial court was made to believe that petitioner's role was more severe, that petitioner carried the bag containing all fraudulent credit cards and that petitioner presented fraudulent cards to hotel staff. Additionally the state charged petitioner by way of information with grand larceny when the loss of the hotel/victim was \$557.76, the amount of a petit larceny. So the state also erred in charging petitioner of grand larceny and burglary because grand larceny was \$1200.00 and above. Ultimately I was charged outside of statutory limits as well as charged incorrectly. In Wardens v. Peters, 83 Nev. 298; 429 P.2d 544; 1967 Nev. Lexis 279 it states "The underlying purpose in this case is to redress an injury done to a defendant who pleaded guilty to a crime he did not commit. The attempt here was an offense separate and distinct from the burglary and was charged in the information as such. The court in which a trial is had upon the issue of fact, has power to grant a new trial where a verdict has been rendered against the defendant upon his application, in the following cases only: "1. When the verdict is contrary to law or evidence, but if the evidence shows the defendant to be not guilty of the degree of the crime of which he was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the judgement accordingly with out granting or ordering a new trial, and this power shall extend to any court to which the cause may be appealed". Because it is clear and undisputed that a petit larceny and grand larceny holds

different penalties and when charged with a burglary if one is correctly charged with a petit larceny then the penalties are also different. Because I-petitioner lacked a record and played a minor role in this offense the court erred in convicting petitioner with a burglary.

CONCLUSION

Petitioner Knight requests a rehearing of the appeal on the issues outlined above. The proper relief on Issues I, II and III is to vacate the convictions and remand for a new trial, or to dismiss with ~~out~~ prejudice as petitioner was only party of her co-defendant and did not participate in the crime of Burglary.

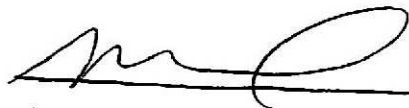
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 4th day of October, 2021, I served a true and correct copy of the foregoing: Petition for Rehearing upon:

Court of Appeals
408 East Clark Ave
LV. NV 89101

Attorney General
100 N. Carson Ave
Carson City NV
89410

by submitting to a designated civilian employee of the Florence McClure Womens Correctional Center for prompt processing and mailing by authorized prison personnel within the facility mailroom, with sufficient first class postage.



Valentina Knight, Plaintiff-Appellant, pro:
1228728
Florence McClure Womens Correctional
Center.
4370 Smiley RD
Las Vegas, Nevada 89115