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IN THE SUPREME COURT OF THE STATE OF NEVADA

SHAWN RUSSELL HARTE,

Appellant,

CASE NO. 43877

v.

District Court No. CR980074

THE STATE OF NEVADA,

Respondents.

FILED

JUL 25 2005

WANNETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

RESPONSE TO ORDER OF JULY 13, 2005

COMES NOW Appellant above-named, by and through his undersigned counsel, and hereby responds to this Court's previously entered Order of July 13, 2005, by providing the attached certified copies of Exhibits "A" through "L" as follows:

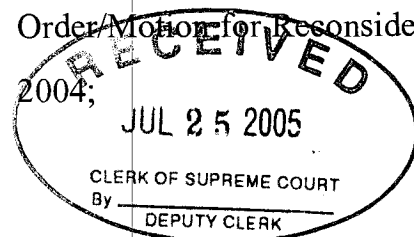
Exhibit "A": The original Petition for Post Conviction Habeas Corpus, filed on February 27, 2001;

Exhibit "B": The Supplemental Petition for Post-Conviction Writ of Habeas Corpus, filed by counsel on or about the 4th day of November, 2004.

Exhibit "C": The original Notice of Entry of Order, along with the original decision of Judge Steinheimer dated March 19, 2004;

Exhibit "D": The Motion for Relief from Order/Motion for Reconsideration filed by Appellant on the 26th day of March, 2004;

Exhibit "E": The Opposition to Motion for Relief from Order/Motion for Relief from Order/Motion for Reconsideration filed by Respondents on or about the 30th day of March, 2004;



1 Exhibit "F": Appellant's Response to Respondent's Opposition to Motion for Relief  
2 from Order/Motion for Reconsideration, filed on April 13, 2004;

3 Exhibit "G": Appellant's Objections to Findings of Fact, Conclusions of Law and  
4 Judgement, filed on April 26, 2004;

5 Exhibit "H": The Court's Order of April 28, 2004, wherein the Court granted  
6 Appellant's Motion for Reconsideration and granted Appellant 20 days to file formal objections  
7 to the proposed Findings of Fact submitted by the State, said order being filed on May 3, 2004;

8 Exhibit "I": Respondent's Response to Objections to Findings of Fact, Conclusions of  
9 Law and Judgment, filed on or about May 4, 2004;

10 Exhibit "J": Respondent's Response to Order Granting Motion for Reconsideration,  
11 filed on or about May 25, 2004; and

12 Exhibit "K": The Order formally denying the Objections to the Proposed Order, and  
13 ratifying the previously entered Order signed August 12, 2004, filed along with the Notice of  
14 Entry of that Order on August 24, 2004;

15 Exhibit "L": The Notice of Appeal filed by Appellant on the 25th day of August, 2004.

16 II.

17 ARGUMENT

18 In addition to the documents filed herewith, Appellant offers the following factual and  
19 legal argument, which is verified by undersigned counsel for Appellant, DONALD YORK  
20 EVANS, LTD.

21 Upon receipt of the Notice of Entry of Order on or about March 19, 2004, formally  
22 entering the Findings of Fact, Conclusions of Law in denying Petitioner's Post Conviction  
23 Habeas Petition (Exhibit "C"), counsel EVANS immediately filed a Motion for Relief from  
24 Judgment/Reconsideration, (Exhibit "D"), which clearly enunciated the fact that he had been  
25 denied the right to conduct a meaningful review based upon the unavailability of the transcripts  
26 of the hearing. Upon filing his Motion for Reconsideration/Relief from Judgment (Exhibit  
27 "D"), counsel for Appellant then sought a formal chambers conference with the Honorable  
28 Connie Steinheimer relative to the issue of being given the opportunity to object to the findings

1 proposed by the State. During this meeting, which was conducted *ex-parte* with the specific  
2 permission of Terry McCarthy, Esq., Deputy District Attorney, Appellate Division, for Washoe  
3 County, the Court specifically advised Appellant's counsel that she would in fact give him time  
4 to file formal objections to the proposed Order, which had already been formalized, based upon  
5 Appellant's counsel being denied timely access to the transcript of the Post-Conviction Hearing.  
6 The Court's Order of May 3 (Exhibit "H") granting Appellant's Motion for  
7 Reconsideration/Relief from Judgment in order to afford the Appellant his due process rights  
8 to have meaningful review of the proposed Order, which unfortunately had already been  
9 formally entered, is the result of that chambers conference.

10 Immediately after the chambers conference and pursuant to Judge Steinheimer's minute  
11 order at said chambers conference, counsel for Appellant filed his objections, (see Exhibit "G")  
12 which were finally rejected by the Court's August 24, 2004 Order (Exhibit "K"). I t i s  
13 therefore entirely appropriate and due process requires the Court acknowledge that Appellant  
14 has acted timely in every respect, and has never intentionally, deliberately or negligently  
15 allowed any statutory time period to run, but rather acted with due diligence to protect the due  
16 process rights of Appellant at every turn.

17 This narrative time line is submitted with the requested documents in order to emphasize  
18 that it was only after the District Court's final rejection of Appellant's attack on the proposed  
19 findings that the Judgment became final and subject to appeal. Accordingly, the Appellant's  
20 Notice of Appeal was timely filed and jurisdiction is vested in this Court.

21 Accordingly, Appellant, through counsel, respectfully requests the Court reconsider its  
22 previous Order of April 7, 2005 decision denying jurisdiction, and instead reverse said Order,

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1 establish jurisdiction in this Court, and proceed to issue a briefing schedule as this case  
2 addresses important legal issues which this Court must consider.

3 Respectfully Submitted this 22<sup>nd</sup> day of July, 2005.

4  
5  
6 DONALD YORK EVANS, LTD.

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10 for THOMAS QUALLS, ESQ.

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12 Attorneys For Appellant  
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**AFFIDAVIT OF ACKNOWLEDGMENT AND VERIFICATION**

STATE OF NEVADA       )  
                                  :SS.  
COUNTY OF WASHOE    )

I, DONALD YORK EVANS, ESQ., being first duly sworn, under penalty of perjury,  
depose and say:

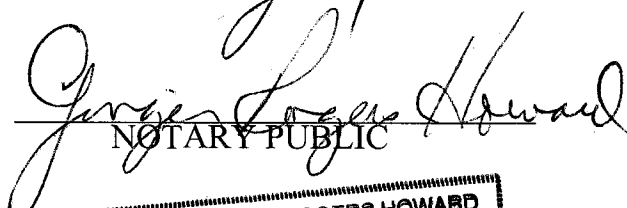
Affiant is counsel for Plaintiff in the above-referenced matter, he has read and hereby  
acknowledges the RESPONSE TO ORDER OF JULY 13, 2005, and that he understands said  
document and that said document is true and correct to the best of his knowledge, except those  
matters based on information and belief, and as to those matters Affiant reasonably believes  
them to be true.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED: This 22<sup>nd</sup> day of July, 2005.

  
DONALD YORK EVANS, ESQ.

Subscribed and Sworn to before me  
this 22<sup>nd</sup> day of July, 2005.

  
NOTARY PUBLIC



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CERTIFICATE OF SERVICE

I certify that I am an employee of DONALD YORK EVANS, ESQ., and that on this date

I

\_\_\_\_\_ deposited for mailing, via U.S. mail

\_\_\_\_\_ caused to be delivered, via Reno-Carson Messenger Service

\_\_\_\_\_ delivered via facsimile machine

\_\_\_\_\_ personally delivered

a true and correct copy of the foregoing document, addressed to:

Terrence McCarthy, Esq.  
Deputy District Attorney  
P.O. Box 30083  
Reno, NV 89520

DATED this 22<sup>nd</sup>, day of July, 2005.

  
GINGER ROGERS HOWARD

