SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
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Telephone
(775) 684-1600

April 13, 2018

Erick Brown
Inmate ID: 92713
Southern Desert Correctional Center
PO Box 208
Indian Springs, NV 89070

Re: BROWN (ERICK) VS. STATE, Supreme Court Case No. 47856

Dear Mr. Brown:

We are returning, unfiled, the "Petition for Panel Rehearing" received in this office on April 12, 2018 in the above-entitled matter.

A decision was filed in this case on September 13, 2007 and the remittitur issued on October 9, 2007. Therefore, this court no longer has jurisdiction over this matter. I am enclosing a copy of the final decision and a copy of the docket sheet for this case.

Sincerely,

D. Richards

D. Richards
Deputy Clerk

Enclosures

18-14221

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERICK M. BROWN,
Appellant,

vs.

THE STATE OF NEVADA,
Respondent.

No. 47856

RETURNED
UNFILED
APR 13 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

PETITION FOR PANEL REHEARING

COMES NOW, Appellant, ERICK M. BROWN (Appellant), by and through his proper person, and hereby submits for filing the foregoing "Petition For Panel Rehearing," (Petition).

The foregoing Petition is made and based upon all documents, papers, pleadings, and exhibit's filed with this court by Appellant on the 20 day of March, 2018.

The foregoing Petition is also made and based upon the Nevada Rules of Appellate Procedure (NRAP), Rule 40(a), and the accompanying Points and Authorities, argument of Appellant briefly stating with particularity the points of law and facts which in the opinion of Appellant the court has overlooked or misapprehended.

Additionally, this Petition is made pursuant to NRAP 27(c), the action of a single justice may be reviewed by the court.

Respectfully submitted
Dated this 6 day of April 2018

RECEIVED
APR 12 2018
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Erick M. Brown
APPELLANT PRO SE

POINTS AND AUTHORITIES

Appellant Filed with the court a Motion To Recall The Remittitur (Motion), on March 20, 2018, on the 29 day of March, 2018, Chief Justice Michael Douglas (Justice Douglas), FILED an Order Denying Motion.

Appellant states that the Motion is replete with GOOD CAUSE. Due to the "extraordinary circumstances," to which the Motion was submitted, and being consistent with Appellants reasons for the submission of this Petition the following is iterated, cited from Fernley v. State, 132 Nev. Adv. Rep. 4, 366 P.3d 699, 706 (2016), quoted at length with emphasis strongly added:

> "Although the statute of limitation may time-bar a claim, it does not prohibit this court from reviewing the constitutionality of an enacted statute. See Black v. Ball Janitorial Serv., Inc. 1986 OK 75, 730 P.2d 519, 515 (Okla. 1986) (reaching the merits of a special legislation constitutional challenge even after holding the statute of limitation had passed); see also State ex rel. State Bd. of Equalization v. Bakst, 122 Nev. 1403, 1409, 148 P.3d 717, 721 (2006) ("[W]e will declare a government action invalid if it violates the Constitution."); King v. Bd. of Regents of Univ. of Nev., 65 Nev. 533, 542, 200 P.2d 221, 225 (1948) ("It is undoubtedly the duty of courts to uphold statutes passed by the legislature, unless their unconstitutionality clearly appears, in which case it is equally their duty to declare them null." (quoting State v. Arrington, 18 Nev. 412, 4 P. 735, 737 (1884))).
> The Legislature has considerable law-making authority, but it is not unlimited Clean Water Coal., 127 Nev. at 309, 255 P.3d at 253 (interpreting the constitutionality of legislation under Nev. Const. art 4 §§ 20-21); We the People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 890 n.55, 192 P.3d 1166, 1177 n.55 (2008). "The Nevada Constitution is the 'supreme law of the state,' which 'control[s] over any conflicting statutory provisions.'" Thomas v. Nev. Yellow Cab. Corp., 130 Nev. Adv. Op. 52, 327 P.3d 518, 521 (2014) (quoting Clean Water Coal., 127 Nev. at 309, 255 P.3d at 253). "It is fundamental to our federal, constitutional system of government that a state legislature 'has not the power to enact any law conflicting with the federal constitution, the laws of congress, or the constitution of its particular State.'" Thomas, 130 Nev., Adv. Op. 52, 327 P.3d at 520-21 (quoting State v. Rhodes, 3 Nev. 240, 3 Nev. 247, 250 (1867)). While this court will try to construe statutes to be in harmony with the constitution, if the "statute is irreconcilably repugnant' to a constitutional amendment, the statute is deemed to have been

impliedly repealed by the amendment. Thomas, 130 Nev. Adv. 52, 327 P.3d at 521 (quoting Mengelkamp v. List, 88 Nev. 542, 545-46, 501 P.2d 1032, 1034 (1972))." Statutes are construed to accord with constitution, not vice versa." Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521. "If the Legislature could change the Constitution by ordinary enactment, no longer would the Constitution be superior paramount law, unchangeable by ordinary means. It would be on a level with ordinary legislative acts, and like other acts, alterable when the legislature shall please to alter it." Id. at 522 (internal quotations omitted). Therefore, "the principle of constitutional supremacy prevents the Nevada Legislature from creating exceptions to the rights and privileges protected by Nevada's Constitution." Id."

Appellant regards it as just and necessary to give fair warning to this court of the consequences of its failure to follow the Constitution of Nevada and uphold its oath and duty in this matter, Ternley, 132 Nev. Adv. Rep. 4, 366 P.3d at 706, as quoted above, being that it can result in this court committing acts of treason, usurpation, and tyranny. Such trepasses would be clearly evident to the public, especially in light of the clear and unambiguous provisions of the Constitution that are involved here which leave no room for construction, and in light of the numerous adjudications upon them as herein stated. The failure to uphold these clear and plain provisions of our Constitution cannot be regarded as mere error in judgment, yet "Deliberate USURPATION."

To assume jurisdiction, or to assume that the district court had jurisdiction, etc., in this case would result in TREASON. Chief Justice John Marshall once stated: We [judges] have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution. Cohens v. Virginia, 6 Wheat. (19 U.S.) 264, 404 (1821).

Should this court depart from the clear meaning of the Constitution King, 65 Nev. at 542, 565, it will be regarded as a blatant act of TYRANNY. Any exercise of power which is done without the support of law or beyond what the law allows is tyranny.

It has been said, with much truth, "Where the law ends, tyranny begins." Merritt v. Welsh, 104 U.S. 694, 702 (1881).

"An arbitrary or capricious exercise of discretion is one founded on prejudice or preference rather than on reason, or contrary to the evidence or established rules of law." State v. Eighth Judicial Dist. Court, (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011)(citation omitted)(internal quotations marks omitted).

That, pursuant to NRAP Rule 27(c), Appellant requests that the action of the single justice in denying the Motion be reviewed by the Court, as being repugnant to the Constitution of the State of Nevada (Const. of Nev.), provisions, Article (Art.), 15, §2, to uphold, defend the Const. of Nev., and the United States Constitution of America (U.S.C.A.).

The denial of the Motion is an arbitrary or capricious exercise of discretion, founded on prejudice or preference rather than on reason, contrary to the evidence and established rules of law. State v. Eighth Judicial Dist. Court, (Armstrong), 127 Nev. at 931-32, 267 P.3d at 780. Constituting to be "deliberate USURPATION," for the failure to uphold the clear and plain provisions of the Const. of Nev. set forth in the Motion.

In the opinion of Appellant, the single justice has overlooked or misapprehended a material question of law or overlooked, misapplied or failed to consider controlling authority to the following as set forth in the Motion:

1. Page 2 lines 21-22 reasons for the court to regain jurisdiction, see also lines 25-28 Wood v. State, 60 Nev. 139, 141, 104 P.2d 187, 188 (1940);

2. Page 3 lines 2-5 setting forth a fundamental miscarriage of justice. United States v. Olano, 507 U.S. 725, 736-37 (1993), United

States v. Atkinson, 297 U.S. 157, 160 (1936).

3. Page 3 lines 13 through 19 Subject Matter Jurisdiction can be raised at any time. Landreth v. Malik, 127 Nev. Adv. Rep. 16, 251 P.3d 163, 166 (Nev. 2011); Am. Fire & Gas Co. v. Finn, 341 U.S. 6, 17-18 (1951), additional citations omitted. Lines 20 through 28 Lack of Jurisdiction United States v. Cotton, 535 U.S. 625, 630 (2002); Louisville & Nashville R. Co. v. Mottley, 211 U.S. 149 (1908); Gschwind v. Cessna Aircraft Company, 232 F.3d 1342, 1347 (10th Cir. 2000); Valley v. Northern Fire & Marine Ins. Co., 254 U.S. 348, 353 (1920); Parke v. Raley, 506 U.S. 20, 30 (1992); Hooker v. Boles, 346 F.2d 285, 286 (4th Cir. 1965); Old Wayne Mut. L. Asso. v. McDonough, 204 U.S. 8, 16 (1907); William et ux. v. Berry, 8 HOWARD 459, 541 ( );

4. Page 5 lines 16-21, where a court makes a mistake in rendering a judgment which works to the extreme detriment of the defendant will not be allowed to stand, Warden, Nevada State Prison v. Peters, 83 Nev. 298, 301, 302, 429 P.2d 549, 551, 552 (Nev. 1967).

5. Page 6 lines 4 through 13 judgments and orders of the district court were in excess of its jurisdiction, cases cited previously in number 3;

6. Page 7 lines 23 through 28 determining constitutional questions, lack of Subject-Matter Jurisdiction, and "Actual Innocence," promoting substantial justice to Recall the Remittitur. Consolidated Generators v. Cummings Engine, 114 Nev. 1304, 971 P.2d 1251 (Nev. 1990);

7. Page 8 lines 4 through 10 the privilege of bringing every law to the test of the constitution belongs to the humblest citizen, who owes no obedience to any legislative act, which transcends the constitutional limits, Levingston v. Washoe

County By and Through Sheriff of Washoe County, 112 Nev. 479, 482, 916 P.2d 163, 165 (1996);

8 Page 8 lines 24 through 28, Page 9 lines 1 through 6 judgments of conviction obtained in the 8th Jud. Dist. Ct., were obtained under an unconstitutional legislative "Act," an Act that is "facially unconstitutional" (on its face), that is that it always operates unconstitutionally Wash. State v. Wash. State Republican Party, 552 U.S. 442, 449 (2008), that "no set of circumstances exists under which the Act would be valid, i.e. that the law, Act is unconstitutional in all its application." Whereby the same affects the foundation of the whole proceedings. Ex parte Siebold, 100 U.S. 371, 376-77 (1880);

9. Page 9 lines 7-11 the State of Nevada had no power to proscribe the conduct for which Appellant was imprisoned, it cannot constitutionally insist that he remain in jail. Desist v. United States, 394 U.S. 244, 261, n. 2 (1969);

10. Page 9 lines 12 through 28 Senate Bill No. 182-Committee on Finance CHAPTER 304 Statutes of Nevada 1951, Approved March 22, 1951 (S.B. No. 182), is a "facially unconstitutional legislative Act, an Act of fraud, a mistake of law; that no set of circumstances exists under which the Act S.B. No. 182 would be valid; i.e. the law is unconstitutional in all of its application, the Act, is void from its inception and cannot be applied constitutionally "under any circumstances." Wash. State Grange, 552 U.S. at 449; see also Bible v. Malone, 68 Nev. 32, 44, 231 P.2d 599, 603 (1951) (citing State ex rel Stevenson v. Tufly, 20 Nev. 27, 22 P. 1054; Norton v. Shelby County, 118 U.S. 425, 442 (1886)); nor can S.B. No. 182 be amended In The Matter of The Application of F.R.

Medeiros For A Writ of Habeas Corpus, 57 Nev. 301, 304, 64 P.2d 346 (1937);

11. Page 10 lines 17 through 28, page 11 lines 1-28, and Page 12 lines 1 through 6, Art. 6, §11, of the Const. of Nev. is a legislative Act of the people themselves in their sovereign capacity King, 65 Nev. at 556, Constitution controls over any conflicting statutory provision Robinson v. District Court, 73 Nev. 169, 313 P.2d 436 (1957); see also Wren v. Dixon, 40 Nev. 170, 187, 161 P. 722, 726 (1916), citing Oakland Paving Co. v. Hilton, 11 P. 3 (Cal. 1886).

12. Page 11 lines 2-4 provisions of the state constitution constitute supreme law of the state and must be enforced by courts in letter and spirit. State v. Duffy, 6 Nev. 138 (1870);

13. Page 12 lines 3 through 6 the commission was an office other than a judicial office, within the prohibited provision of Art. 6, §11, of the Const. of Nev. Mathews v. Murray, 70 Nev. 116, 121, 258 P.2d 982, 983 (1953);

14. Page 12 lines 7 through 28; Page 13 lines 1 through 28; Page 14 lines 1 through 3; Page 15 lines 1 through 28; Page 16 lines 1 through 18. Art. 3, §1, of the Const. of Nev. is a legislative Act of the people themselves, in their sovereign capacity. The commission was mandated to perform "functions" more appropriately performed by a different department. Art. 3, §1; Whitehead v. Comm'n on Jud. Discipline, 110 Nev. 874, 879, 878 P.2d 913 (1994); Galloway v. Truesdell, 83 Nev. 13, 18, 19, 422 P.2d 237 (1967); see also O'Bryan v. Eighth Judicial Dist. Court, 95 Nev. 386, 388, 594 P.2d 739 (1979); City of N. Las Vegas ex rel. Arndt v. Daines, 92 Nev. 292, 294, 550 P.2d 399 (1976); Dunphy v. Sheehan, 92 Nev. 259, 265, 549 P.2d 332 (1976); Sawyer v.

Dooley, 21 Nev. 390, 32 Pac. 437 (1893) cited Ormsby County v. Kearney, 37 Nev. 314, 341, 142 Pac. 803 (1914); King, 65 Nev. at 556;

15. Page 17 lines 17 through 20, the slightest interference with the ability of the Judicial branch to complete its constitutionally-ordained functions must be closely scrutinized. Nixon v. Administrator of General Services, 433 U.S. 425, 443 (1977);

16. Page 17 lines 21-28, either the Const. of Nev. is the supreme law of the State of Nevada, and S.B. No. 182 is a "facially unconstitutional legislative Act," and could not be amended see Wash. State Grange, 552 U.S. at 449; Robinson, 73 Nev. 169, 313 P.2d 436; Wren, 40 Nev. 170, 187, 161 P. 722, 726; Oakland Paving Co., 11 P. 3; Duffy, 6 Nev. 138; and In re Medeiros, 57 Nev. at 304, 64 P.2d 346; Or S.B. No. 182 is constitutional in all its application, the Constitution of the State of Nevada is a fraudulent document, not the supreme law of the State of Nevada; and

17. Page 19 lines 4 through 24 Recall of the Remittitur will promote substantial justice. McCleskey v. Zant, 449 U.S. 467, 494 (1991); Appellant is "Actually Innocent," Desist, 394 U.S. at 261, n.2; Siebold, 100 U.S. at 376-77; Bible, 68 Nev. at 44; 231 P.2d at 603; Stevenson, 20 Nev. 427, 22 P. 1054; and Norton, 118 U.S. at 442.

Its the opinion of Appellant that these seventeen (17), points of fact, points of law, the court has overlooked or misapprehended.

The court alleging No Good Cause Appearing, in essence is finding S.B. No. 182 to be "constitutional," lawfully, constitutionally approved by the Executive Department, and lawfully constitutionally acted upon by the Judicial Department in performing the function of "revising and compiling," Nevada law. Thus, thereby failing to apply well established decisions of this court as cited in Fernley, 132 Nev. Adv. Rep. 4,

366 P.3d at 706, which cite to and/or are in accord with decisions, opinions cited in Appellants Motion by this court, and the Supreme Court of the United States of America.

Due to the specific constitutional challenge of S.B. No. 182, this is an "extraordinary circumstance," calling for extreme flexability under the Due Process Clause of the Fourteenth (14th), Amendment Morrissey v. Brewer, 408 U.S. 471, 481 (1972); Burleigh v. State Bar, 98 Nev. 140, 145, 643 P.2d 1201, 1204 (Nev. 1982), thereby avoiding Malfeasance, Misfeasance, and Nonfeasance claims.

This court must not shy away, turn its back on its constitutional duty to declare S.B. No. 182, and subsequent enactments invalid, null etc. King, 65 Nev. at 542, 565, 200 P.2d 221; see also State v. Arrington, 18 Nev. 412, 4 P. 735, 737 (1884), due to an arbitrary or capricious exercise of discretion founded on prejudice or preference, etc., rather than on reason, contrary to the evidence or established rule of law. State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. at 931-32, 267 P.3d at 780 (citation omitted)(internal quotation marks omitted).

The "facial unconstitutionality" of S.B. No. 182, and subsequent acts clearly appear, thereby, it is the "duty of this court to declare them null." Arrington, 18 Nev. 412, 4 P. at 737.

Likewise its the duty of this court to also find S.B. No. 182 and subsequent enactments to be irreconcilably repugnant to a constitutional provision, amendment, deeming the same to have been impliedly repealed by the amendment. Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521, quoting Mengelkamp, 88 Nev. at 545-46, 501 P.2d at 1031.

Whereby, S.B. No. 182 being "facially unconstitutional," irreconcilably repugnant to a constitutional provision, admendment of the Const. of Nev., being repealed, impliedly re-

pealed Thomas, 130 Nev. Adv. Op. 52, 327 P.3d at 521, Mengelkamp, 88 Nev. at 545-46, 501 P.2d at 1034, S.B. No. 182 and subsequent enactments have no effect and the prior governing statute (Nevada Compiled Law (NCL's), are revived.)) See We the People Nev. ex rel. Angle v. Miller, 124 Nev. 874, 890 n. 55, 192 P.3d 1166, 1177 n. 55 (2008); Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886) (holding that laws that are administered with an "unequal hand" and an "evil eye" are unconstitutional), such is and has been S.B. No. 182, and the subsequent enactments.

Whereby, the ruling "no good cause appearing," must be found wanting, thereby reversed and relief provided to Appellant.

CONCLUSION

Appellant does respectfully request that the panel will reverse the ruling of "no good cause appearing," and find that Appellant has sufficiently set forth good cause, primarily that the district court lacked subject matter jurisdiction; whereby the State of Nevada did not have subject matter jurisdiction to arrest, try, or convict Appellant, and thereby cannot constitutionally insist that he remain in prison.

Respectfully submitted:

Dated this 6 day of April 2018.

Erick M. Brown

ERICK M. BROWN

APPELLANT PRO SE

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CERTFICATE OF SERVICE BY MAILING

I, ERICK M. BROWN, hereby certify, pursuant to NRCP 5(b), that on this 6 day of April, 2018, I mailed a true and correct copy of the foregoing, "Petition For Panel Rehearing" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

District Attorney,
Clark County, Nevada
200 Lewis Ave.
PO Box 552212
Las Vegas NV 89155-2212

Attorney General
State of Nevada
555 E. Washington Ave.
STE 3900
Las Vegas NV 89101

CC:FILE

DATED: this 6 day of April, 2018.

Erick M. Brown
ERICK M. BROWN #92713
APPELLANT /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: