

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES MONTELL CHAPPELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 49478

**FILED**

DEC 16 2009

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ORDER DENYING REHEARING AND AMENDING ORDER

This petition for rehearing challenges an order entered by this court on October 20, 2009, affirming appellant James Chappell's sentence of death. Although we deny rehearing, Chappell justifiably complains of an error in the order of affirmance, and we therefore amend the order of affirmance to remove the challenged passage.

In the order of affirmance, this court denied Chappell's claim that a written statement made during a presentence interview with his probation officer was obtained in violation of Miranda v. Arizona, 384 U.S. 436 (1966), concluding that Miranda did not apply at that stage of the proceedings. We also stated that the Nevada statutes permitted admission of the evidence at a capital sentencing hearing even if it was obtained in violation of Miranda. That statement was erroneous. See NRS 175.552(3) ("No evidence which was secured in violation of the Constitution of the United States or the Constitution of the State of Nevada may be introduced."). However, the erroneous statement was not necessary to our disposition of the claim given our conclusion that Miranda did not apply.

Therefore, we direct the clerk of this court to strike the following language from page 18, lines 4-9, of the order of affirmance:

Moreover, NRS 175.552(3) states that a district court has discretion to admit any evidence "which the court deems relevant to sentence, whether or not the evidence is ordinarily admissible." Thus, even if Chappell's statement was normally inadmissible due to the failure to give Miranda warnings, it was relevant and admissible evidence at the penalty hearing.

It is so ORDERED.<sup>1</sup>

Hardesty, C.J.  
Hardesty

Parraguirre, J.  
Parraguirre

Cherry, J.  
Cherry

Saitta, J.  
Saitta

Gibbons, J.  
Gibbons

Pickering, J.  
Pickering

<sup>1</sup>On November 4, 2009, this court received proper person documents from Chappell. However, Chappell is represented by counsel and we have not granted him leave to proceed in proper person. See NRAP 46(b). Accordingly, we decline to consider Chappell's proper person documents and direct the clerk of this court to return them, unfiled, to Chappell.

cc: Hon. Douglas W. Herndon, District Judge  
Special Public Defender David M. Schieck  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger  
Eighth District Court Clerk  
James Montell Chappell