

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3
4 SIAOSI VANISI,

5 Appellant,

6 v.

7 THE SECOND JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF
10 WASHOE, AND THE HONORABLE
11 CONNIE J. STEINHEIMER,
12 DISTRICT JUDGE,

13 Respondents.

14 THE STATE OF NEVADA,

15 Real Party in Interest.

No. 34771

FILED

SEP 07 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

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OPPOSITION TO REQUEST FOR EMERGENCY
STAY OF PROCEEDINGS

27 COMES NOW, the State of Nevada, by and through counsel,
28 having been named as the real party in interest in this case, to
29 oppose petitioner's request for an emergency stay of proceedings.
30 This opposition is based upon the following points and
31 authorities and the records of this Court.

POINTS AND AUTHORITIES

32 Siaosi Vanisi has petitioned this court for a writ of
33 certiorari or mandamus by which he seeks a writ compelling
34 respondent Judge Steinheimer to grant a motion to withdraw filed
35 by the Washoe County Public Defender. This Court has not yet
36 ordered an answer and thus the issues before the Court are quite

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1 limited. If this Court were to order an answer, any number of
2 preliminary questions would arise. Those include whether Siaosi
3 Vanisi is the proper petitioner or if the proper petitioner would
4 be the Washoe County Public Defender. If the Court ordered an
5 answer, the identity of the real party in interest may also be
6 questioned because the State has an interest in seeing this
7 matter come to trial in a timely and economical fashion but has
8 no direct interest in the identity of Vanisi's counsel. If the
9 Court were to order an answer, the State would also question the
10 propriety of the request to turn this original action into some
11 sort of secret proceeding where one party is denied knowledge of
12 the evidence and arguments of the other. The State will contend
13 that the Star Chamber proceeding requested by petitioner is not
14 appropriate. As it is, though, those questions will arise only
15 if this Court orders the respondent or the putative real party in
16 interest to answer the petition.

17 As of this writing, the State is responding only to
18 that portion of the petition wherein the petitioner requests a
19 stay of proceedings. The State suggests that the petitioner has
20 failed to set forth issues of arguable merit and that therefore
21 no stay should issue.

22 The Washoe County Public Defender's motion in the
23 district court sought leave to withdraw from the representation
24 of Siaosi Vanisi, asserting some unidentified ethical quandary.
25 The Washoe County District Attorney has not been made aware of
26 the details of that quandary and, quite frankly, does not wish to

1 intrude on the attorney-client relationship between the Public
2 Defender and Vanisi. Those parties, however, have sought to air
3 their differences in a public forum by seeking relief from the
4 district court and from this Court.

5 The nature of the ethical quandary could take any
6 number of forms. For instance, it could be that Vanisi is
7 insisting on reviving the ancient argument that Nevada was never
8 properly admitted to the Union. He could be insisting on
9 presenting a defense based on some other incorrect theory of law.
10 For all the District Attorney can know, he is insisting on
11 asserting diplomatic immunity by virtue of being an ambassador
12 from the Kingdom of Vanisi or some other frivolous defense.

13 Whatever the nature of the conflict, the State suggests
14 that the decision to release or to refuse to release the Public
15 Defender from the case is a discretionary decision and that a
16 writ will not lie to correct a discretionary decision. See
17 Building and Const. Trades Council of Northern Nevada v. State ex
18 rel. Public Works Bd., 108 Nev. 605, 836 P.2d 633 (1992). SCR
19 166 provides that a lawyer must remain on a case when ordered to
20 do so by a court. Thus, it would seem that the ethical rules
21 envision that a trial court may, in its discretion, elect not to
22 relieve a lawyer of a perceived ethical problem but may instead
23 leave the lawyer to find another way to resolve the problem.

24 Everyone recognizes that a lawyer may on occasion have
25 a difficult client. Various court decisions provide guidance to
26 such a lawyer. See e.g., Nix v. Whiteside, 475 U.S. 157, 106

1 S.Ct. 988, 89 L.Ed.2d 123 (1986). Certain decisions belong to
2 the client alone. Generally, the client chooses the desired
3 outcome of the litigation, whether to have a jury trial, whether
4 to plead guilty and whether to testify. SCR 152. All other
5 decisions belong to the lawyer, after consultation with the
6 client. If, after consultation with client, the client insists
7 on a course that will increase the likelihood of conviction, then
8 of course reasonable counsel would advise the client against such
9 a course, but the mere fact that client may chose unwisely is not
10 of itself a reason why the district court must allow the attorney
11 to withdraw.

12 The attorney's response to the quandary will depend on
13 the nature of the problem. If the client insists on a course
14 where the decisions at issue belong to the lawyer, the lawyer may
15 merely refuse to do as instructed by the client. Of course, the
16 reasonable lawyer will also counsel the client. On the other
17 hand, where the client insists on a decision which belongs to the
18 client alone, then the lawyer must accede to the wishes of the
19 client but should not participate in an unethical manner. See
20 Nix v. Whiteside, supra. In the latter circumstance, of course,
21 the lawyer should also explain to the client his inability to
22 participate and advise the client of the practical ramifications
23 of such lack of participation.

24 As an example, suppose that a case involves a potential
25 for perjured testimony. If the client wishes to present perjured
26 testimony from a witness, the lawyer should refuse to do so. If

1 the client insists on presenting his own perjured testimony, the
2 lawyer cannot prevent the defendant from testifying, but must not
3 participate in the presentation of perjured testimony. The
4 reasonable lawyer, again, will counsel the client on the dangers
5 of proceeding in that fashion but if the client insists, the
6 lawyer must respond in a lawful and ethical manner. See Nix v.
7 Whiteside, supra.

8 If the conflict did not involve perjury but instead
9 some other problem, the lawyer can merely refuse to participate.
10 If, as a consequence of the lawyer's refusal, the client, in
11 turn, refuses to cooperate in his own defense or makes other
12 unwise decisions, then the lawyer should advise the client of the
13 hazards of such a course. When the client proposes to do
14 something unwise such as to refuse to cooperate in his defense,
15 that may make conviction more likely and may make the lawyer
16 profoundly uncomfortable, but it is the client's decision, not
17 the lawyer's. The State may be required to make competent
18 counsel available to a criminal defendant, but no force on earth
19 can compel a defendant to take advantage of that opportunity or
20 to make wise decisions.

21 In other words, assuming that there is indeed some sort
22 of conflict between Vanisi and his counsel, that is Vanisi's
23 problem, not the Public Defender's, even if the Public Defender
24 is profoundly uncomfortable.

25 It would seem that the district court when confronted
26 with a lawyer who wishes to withdraw based on some sort of

1 ethical quandary, may either grant the motion or deny it and
2 leave the lawyer to otherwise respond appropriately and
3 ethically. Because that decision seems like a discretionary
4 decision best left to the district court, this Court should
5 decline to order an answer or to issue a stay of the proceedings.

6 There is one other more practical reason why this Court
7 should not stay the proceedings in the district court. If the
8 writ issued and the Public Defender was allowed to withdraw, the
9 proper course for the district court would be to appoint
10 different counsel for Vanisi.¹ That new lawyer would presumably
11 face the same quandary that is now faced by the Public Defender.
12 If this Court rules that a lawyer facing the conflict now faced
13 by the Public Defender must move to withdraw and that the motion
14 must be granted, then there will never be a trial in this case.
15 Vanisi would be able to avoid trial forever by merely continuing
16 to do whatever he is doing now. The people of the State of
17 Nevada cannot live with a system that gives a criminal defendant
18 the absolute power to avoid trial indefinitely. The State has an
19 interest in the finality of judgments. Snow v. State, 105 Nev.
20 521, 779 P.2d 96 (1989). That necessarily implies that the State

21
22 ¹The district court has issued an order denying Vanisi's
23 motion for self-representation. See Exhibit "A." The court
24 essentially found that the motion was part of a plan to disrupt the
25 proceedings and thereby avoid a final judgment. The propriety of
26 that order is not now before this Court. If Vanisi is convicted,
then this Court may review that ruling on direct appeal. As it
stands now, however, if the Public Defender is allowed to withdraw,
then the district court will be required to appoint two new lawyers
who will undoubtedly, and appropriately, claim the need for
additional preparation time.

1 has an interest in being able to obtain a final judgment of
2 either conviction or acquittal. The instant action, if it
3 proceeds, will devastate that interest.

4 This Court should decline to order a stay and allow the
5 trial to proceed with the Public Defender as counsel for Vanisi.
6 If Vanisi refuses to take advantage of the competent counsel
7 afforded him, that is Vanisi's problem, not his lawyer's. For
8 these reasons, the motion for a stay should be denied.

9 DATED: September 7, 1999.

10 RICHARD A. GAMMICK
11 DISTRICT ATTORNEY

12 By 
13 TERRENCE P. MCCARTHY
14 Appellate Deputy
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THE HONORABLE CONNIE STEINHEIMER
District Court Judge, Department Four

JOHN REESE PETTY
Chief Appellate Deputy
Washoe County Public Defender's Office

Linda Jackling

1 CODE 3370

FILED

AUG 11 1999

4 AMY HARVEY
By: M. Stone
DEPUTY CLERK

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 *****

9 STATE OF NEVADA,

10 Plaintiff,

11 vs.

Case No. CR98-0516

12 SIAOSI VANISI,

Dept. No. 4

13 Defendant.
14 _____

15 ORDER

16 On August 5, 1999, Defendant, Siasoi Vanisi, filed a Motion for Self Representation that
17 was presented to the Court in its original hand-written form attached to a type written version
18 prepared by the Public Defender's office and submitted under seal. On August 5, 1999, this
19 Court reviewed the Motion and Ordered that it be unsealed and served upon opposing counsel
20 and that an evidentiary hearing on the Motion be scheduled for August 10, 1999. On August 9,
21 1999, the District Attorney's Office filed a Response to "Court Ordered Motion for Self
22 Representation". On August 10, 1999, the Court heard oral testimony upon the Motion and
23 took the matter under submission. After a careful review of all of the pleadings on file and
24 supporting documents as well as the history of the case, previous hearings in the case, and the
25 oral testimony presented, the Court makes its determination as discussed below.
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1 In Defendant's Motion, he articulated a desire to exercise his constitutional right to
2 represent himself. He stated that he understood the danger and disadvantages that may procure
3 from self representation. He further stated that if he conducted a defense to his detriment, he
4 would not complain on appeal.

5 In the State's Response to the Motion for Self Representation, the State points out that
6 the Nevada Supreme Court has addressed the issue of self representation, and further has
7 adopted Supreme Court Rule 253 which sets out specific guidelines for a canvas of questions
8 that a trial court judge should ask of any defendant seeking to assert the right to self
9 representation. The State also cited a few of the important Nevada Supreme Court cases on this
10 issue including Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), in which the Nevada
11 Supreme Court upheld the trial court's denial of the defendant's request for self representation
12 because the defendant was disruptive.

13 In its Response, the State then discusses concern that the request is untimely, the request
14 is made solely for the purpose of delay, and that the Defendant is abusing his right to self
15 representation by disrupting the judicial process. However, the State withheld its ultimate
16 position relative to the Motion until the inquiry and assessment was conducted by this Court.

17 The Nevada Supreme Court has held that criminal defendants have an "unqualified
18 right" to self representation, so long as there is a voluntary and intelligent waiver of the right to
19 counsel. See, Lyons v. State, 106 Nev. 438, 796 P.2d 210 (1990); Baker v. State, 97 Nev. 634,
20 637 P.2d 1217 (1981), citing Faretta v. California, 422 U.S. 806, 95 S.Ct. 2525, 45 L.Ed.2d 562
21 (1975). However, although the constitutional right of self representation is generally protected
22 by the court, courts have denied self representation where:

- 23 (1) the defendant's request for self representation is untimely;
- 24 (2) the request is equivocal;
- 25 (3) the request is made solely for the purposes of delay;
- 26 (4) the defendant abuses the right of self representation by disrupting the judicial
process;

- 1 (5) the case is especially complex, requiring the assistance of counsel; or
2 (6) the defendant is incompetent to voluntarily and intelligently waive his or her right to
3 counsel. Id.

4 In order to ensure that the Defendant has voluntarily and intelligently waived his Sixth
5 Amendment right to the assistance of counsel, the Nevada Supreme Court adopted Supreme
6 Court Rule 253, effective as of March 31, 1997. The purpose of the rule is to set out guidelines
7 for a canvas that is meant to be an in-depth inquiry into whether or not an individual fully
8 understands the disadvantages of self representation as well as an inquiry into the Defendant's
9 background and ability to represent himself. Once a court has asked these and other relevant
10 questions of the defendant, the defendant's right to represent himself may only be denied when
11 one or more of the relevant factors articulated in Lyons v. State, *supra*, is present.

12 At the end of all relevant inquiry in open court, the Public Defender's Office expressed
13 its position that Mr. Vanisi had satisfactorily answered all of the questions posed to him by the
14 Supreme Court Rule 253 canvas, and should be allowed to represent himself. Similarly, the
15 District Attorney's Office opined that Mr. Vanisi had satisfactorily answered the questions
16 posed to him, but continued to voice concerns about the timeliness of the Motion and whether
17 or not that would cause a delay in trial, as well as the possibility that the Motion was made to
18 disrupt the judicial process. Additionally, the State said that at times previous to the current
19 hearing, the Defendant had acted in a disruptive manner.

20 The Court believes that Mr. Vanisi was able to recite answers to the Court's inquiry
21 which revealed him to be a very intelligent person who had carefully reviewed some of the most
22 significant cases involving self-representation. However, inquiry as to whether to grant a
23 defendant's request to discharge counsel and represent himself does not stop with the basic
24 questions. The Court must assess many factors. Paramount to the Court's assessment must
25 always be that the defendant has a right to represent himself.
26

1 At the conclusion of the Supreme Court Rule 253 inquiry, this Court had serious
2 concerns about Mr. Vanisi's request to represent himself. First, although this request was
3 technically timely for purposes of Lyons v. State, *supra*, this Court believes the Motion was
4 made for the purpose of delay. Several factors enter into this Court's assessment of the
5 Defendant's motive for the Motion being for the purpose of delay. The Defendant has
6 previously verbally, without agreement of counsel, requested a continuance of the trial. Further,
7 the Defendant, in June of this year, requested that the Court appoint new counsel to represent
8 him. The Court denied that request. The Defendant then refused to cooperate with counsel
9 which in fact caused a delay to take place. All matters ceased to be litigated while the
10 Defendant was evaluated for competency. A reviewing court is directed to the sealed portions
11 of this case to see the assessments of the physicians who examined the Defendant. This Court
12 found the Defendant competent to proceed. Now, the Defendant has filed his Motion for Self
13 Representation. The inquiry of Mr. Vanisi revealed he had formed his intent to represent
14 himself on January 16, 1998, (the day of his arrest on this matter), but did not make a request to
15 do so until August 5, 1999, approximately one month prior to the commencement of the second
16 trial. Although the Defendant states he is not making this Motion for the purpose of delay, the
17 Court finds otherwise in light of his previous actions and requests in this case.

18 Next, this Court believes that Mr. Vanisi is abusing the right of self representation by
19 disrupting the judicial process. At previous hearings, Mr. Vanisi has blurted out statements in a
20 loud voice and interrupted this Court requiring this Court to caution Mr. Vanisi about his
21 conduct. During the Rule 253 inquiry by the Court, the Defendant exhibited difficulty in
22 processing information. He took an extremely lengthy period of time to respond to many of the
23 Court's questions, the courtroom proceedings stopping for two to three minutes at times while
24 he pondered his answer. The Court was asked to repeat the same question many times before
25 answering. In addition, the Defendant refused to answer the Court's question because he
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1 believed it to be an "incomplete sentence." He frequently asked the Court questions rather than
2 answering the Court's questions directly. Further, he spoke out loud to himself in such a
3 manner that it was at times difficult to determine if he was speaking for his own benefit or to the
4 courtroom audience or the Court. Further, Mr. Vanisi has previously been observed making
5 statements under his breath while others were speaking in court. Moreover, at past hearings,
6 Mr. Vanisi has been observed standing up and engaging in unsettling rocking motions, as well
7 as repeating himself over and over again. Based on this combination of words and gestures
8 during prior proceedings, this Court has concern about future disruptions during trial.

9 Further, the Defendant has a history of aggressive and disruptive behavior while at the
10 Nevada State Prison which required aggressive action on the part of the Prison guards, as well
11 as several incidents at the Washoe County Jail. Further, he has previously asked for
12 accommodation by the Court by way of ordering the security detail to provide a less restrictive
13 confinement of the Defendant while in the courtroom. The Court has diligently safeguarded the
14 Defendant's ability to function and not be presented in a compromising position to the jury,
15 while also safeguarding the safety of all participants in the courtroom. In response to the
16 Court's inquiry if the Defendant thought self representation would allow him full movement in
17 the courtroom, the Defendant's answer and demeanor was interpreted by the Court as yes, and if
18 the Court did not grant him that accommodation, the Defendant would be able to complain on
19 appeal that he was not afforded an equal opportunity to present his case as the prosecutor was
20 afforded. This reveals a "tactic" intended to disrupt the judicial process.

21 In the case of Tanksley v. State, 113 Nev. 997, 946 P.2d 148 (1997), the Nevada
22 Supreme Court stated that "if the district court decided that [the defendant's] pretrial activity
23 was a strong indication that [the defendant's] self-representation would disrupt the [trial], we
24 will not overturn that factual determination." Further, "This court will not substitute its
25 evaluation for that of the district court judge's own personal observations and impressions." Id.
26

1 Accordingly, this Court finds that Mr. Vanisi's Motion for Self Representation is made for the
2 purpose of disrupting the judicial process.

3 This Court must also consider the complexity of this case and whether the Defendant's
4 self representation would virtually deny him a fair trial.

5 This Court recognizes that a request for self-representation should not be denied
6 because the court considers that a defendant lacks reasonable legal skills. Lyons v. Nevada,
7 *supra*, and Tanksley v. State, *supra*. However, two Nevada Supreme Court cases have upheld
8 the trial court's decision to deny a defendant's request for self-representation when the case was
9 especially complex.

10 In the case of Lyons v. State, *supra*, the Nevada Supreme Court stated that "a court may
11 deny a defendant's request to represent himself when a case is so complex that the defendant
12 would virtually be denied a fair trial if allowed to proceed pro se". The Court in Lyons cited the
13 Florida case of Ashcroft v. Florida, 465 So.2d 1374 (Fla.App.1985) in which the District Court
14 of Appeal of Florida held that "self representation is not an absolute right and need not be
15 allowed when it would jeopardize a fair trial on the issues...The judge determined on the basis
16 of the nature of the evidence to be adduced at trial, his inquiries to defendant, and his
17 observations of defendant at prior hearings that defendant would not get a 'decent' trial. We
18 equate 'decent' with fair, especially in view of the trial court's contemplation of the technical
19 aspects to be involved at the trial, such as expert testimony involving fingerprints, serology, and
20 hair comparisons."

21 Recently, in the case of Meegan v. State, Nos. 29511, 29739, Supreme Court of Nevada
22 (November 25, 1998), the Court held that the murder defendant's request to represent himself
23 was properly denied due to the complexity of the case. Specifically, in Meegan, *supra*, the
24 court found "the district court asked Meegan a series of questions designed to determine
25 whether he knew anything about the law and procedure governing his case. Upon receiving
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1 answers which indicated that he knew virtually nothing about either, the district court denied his
2 request. The basis for the denial was that Meegan was incapable of representing himself in a
3 complex case which involved over thirty witnesses, and involved expert testimony on topics
4 such as DNA evidence and other medical topics. The district court determined that the trial
5 would be disrupted if Meegan were allowed to represent himself...Thus we hold that based on
6 the complexity of the case, the district court properly denied Meegan's request to represent
7 himself."

8 Both Lyons v. State, supra, and Meegan v. State, supra, are similar to this case. This
9 case is extremely complex. There are multiple charges against the Defendant. The Defendant
10 is charged with the murder and armed robbery of a police officer, the armed robbery of two
11 clerks in two different convenience stores, and the grand larceny of a motor vehicle from still
12 another person. There are going to be approximately 60 witnesses, many from multiple
13 jurisdictions. In addition, there will be expert witnesses presenting complex scientific
14 evidence. In addition, death penalty cases by their very nature are extremely complex, and thus
15 the Nevada Supreme Court has articulated in Nevada Supreme Court Rule 250 specific
16 procedural guidelines to ensure that Defendant's receive a fair trial. In addition to the legal
17 guidelines of Supreme Court Rule 250, the rule also requires that a criminal defendant facing
18 the death penalty be represented by two attorneys, one specifically trained and certified by the
19 District Court as a death penalty qualified attorney. In this case, Mr. Vanisi is seeking to
20 substitute himself in place of three competent attorneys, the Washoe County Public Defender
21 and two of his deputies.

22 The Court's concern about these complexities is compounded by Defendant Vanisi's
23 responses to this Court's questions about the charges against him. Mr. Vanisi could not name
24 the elements of all the crimes against him, nor the penalties attached to those crimes, nor the
25 lesser included offenses, nor the elements of the death penalty requirements, nor the maximum
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1 punishment possible for all of these crimes. He focused only upon the potential penalty of
2 death without being aware of all the other charges. Although the Court understands why this is
3 foremost in the Defendant's mind, the other charges and defense of those charges could
4 seriously impact the entire trial process. The Defendant was clearly unable to appreciate the
5 relationship of all the charges to each other. It is evident to the Court that the Defendant's
6 inability to relate to his entire case and subtle nuances of evidentiary issues presented by the
7 case's complexity would result in a denial of a fair trial, if the Court were to allow him to
8 represent himself.

9 In addition, as the prosecutor argued before the Court, the case is not one where it would
10 be fundamentally fair or result in a fair trial to allow a defendant with a high school education,
11 Mr. Vanisi's mental health issues, and current drug medications, to represent himself while
12 facing the potential of the death penalty. Accordingly, this Court finds that this particular death
13 penalty case is too complex for this particular Defendant, Siaosi Vanisi, to represent himself.

14 The Court has reviewed a videotape admitted as Exhibit "A" on August 10, 1999, and
15 specifically finds that it does not form the basis of the Court's determination that the Defendant
16 is making this request for the purpose of delay. It is, however, consistent with the Defendant's
17 demeanor and verbal behavior in previous hearings before the Court.

18 The Court does not believe the combination of drugs the Defendant is currently taking
19 affects his competency to stand trial or assist counsel. However, the side effect of drowsiness
20 could affect the Defendant's ability to effectively handle the complex issues involved in this
21 case.

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Based on the foregoing, and with good cause appearing,

IT IS HEREBY ORDERED that Defendant Siaosi Vanisi's Court Ordered Motion for
Self Representation is hereby DENIED.

DATED this 11 day of August, 1999.


DISTRICT JUDGE

CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 11th day of August, 1999, I personally hand delivered to the following individuals in the courtroom, a true copy of the attached document, addressed to:

Siaosi Vanisi, Defendant

Richard Gammick
David Stanton, Deputy
Washoe County District Attorney

Steve Gregory, Deputy
Jeremy Bosler, Deputy
Washoe County Public Defender's Office

