

FILED

SEP 03 1999

BY JANETTE M. BLOOM
 CLERK OF SUPREME COURT
 DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
 COURT OF THE STATE OF NEVADA,
 IN AND FOR THE COUNTY OF
 WASHOE, AND THE HONORABLE
 CONNIE J. STEINHEIMER,
 DISTRICT JUDGE,

Respondents.

THE STATE OF NEVADA,

Real Party In Interest.

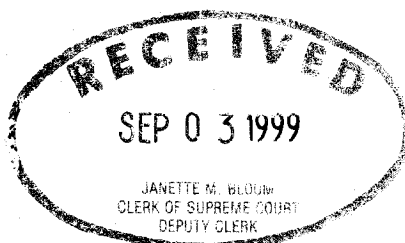
Docket No. 34771

Emergency request for Stay
 of Trial -- Preliminary
 Jury selection is set for
 Monday, September 13, 1999;
 Trial is set to commence on
 Monday, September 20, 1999.

ORIGINAL PETITION FOR WRIT OF CERTIORARI OR MANDAMUS
 AND REQUEST FOR EMERGENCY STAY OF TRIAL
 PENDING RESOLUTION OF THE ISSUES PRESENTED HEREIN

MICHAEL R. SPECCHIO
 Washoe County Public
 Defender

JOHN REESE PETTY
 Chief Deputy



99-08303

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PETITION FOR WRIT
OF CERTIORARI OR MANDAMUS
AND EMERGENCY REQUEST
FOR STAY OF TRIAL

VS.

Respondents.

Real Party In Interest.

COMES NOW the Petitioner, Siaosi Vanisi, by and through his counsel of record, the Washoe County Public Defender's Office, and hereby respectfully petitions this Court for the issuance of a Writ of Certiorari or, in the alternative a Writ of Mandamus against the Second Judicial District Court for the State of Nevada and the Honorable Connie J. Steinheimer in that criminal action entitled: STATE OF NEVADA vs. SIAOSI VANISI, district court case number CR98-0516, department no. 4.

1

1 that this Court direct the Respondent Connie J. Steinhiemer,
2 district judge, to vacate her "Order Under Seal" filed on August
3 30, 1999, and enter a new order "under seal" granting defense
4 counsels' "Ex-Parte (Nevada Supreme Court Rule 172) Motion to
5 Withdraw" that was filed on August 18, 1999. Petitioner also
6 requests that this Court enter a stay of the proceedings below
7 pending resolution of the issues presented in this Petition.
8 Petitioner believes that the issues presented by the instant
9 Petition are of significant interest and, as such, warrants
10 consideration and guidance from this Court.

11 In support of this petition, counsel for the Petitioner
12 alleges as follows:

13 I.

14 By an Information filed on February 26, 1998, in the Second
15 Judicial District Court in case number CR98-0516, the State of
16 Nevada charged Petitioner, Siaso Vanisi with one (1) count of
17 Murder in the First Degree, a violation of NRS 200.010 and NRS
18 200.030 and NRS 193.165; one (1) count of Robbery with the use of
19 a Deadly Weapon, a violation of NRS 200.380 and NRS 193.165; two
20 (2) counts of Robbery with the use of a Firearm, each a violation
21 of NRS 200.380 and NRS 193.165; and one (1) count of Grand
22 Larceny. A violation of NRS 205.220. (See Exhibit "A" attached
23 hereto)¹.

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25 ¹ All documents attached hereto are matters of public record.
26 Some pleadings have "Ex-Parte" or "Sealed" language in their
headings, but in each instance Judge Steinheimer ordered them

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II.

By a Notice of Intent to Seek the Death Penalty filed on February 26, 1998, in this action, the Real Party In Interest gave Notice to Petitioner that if convicted of first degree murder it would seek the death penalty in this action. (See Exhibit "B" attached hereto).

III.

On August 12, 1999, Petitioner's counsel filed a pleading entitled "Under Seal Ex-Parte Motion to Reconsider [Petitioner's request for] Self-Representation." (See Exhibit "C" attached hereto). By that ex-parte motion counsel sought to have Judge Steinheimer reconsider her earlier order denying Petitioner's own *Faretta* motion to allow him to represent himself. Counsel first explained that Petitioner's inability to fully articulate why he wished to represent himself during a hearing on the motion was due to their (counsels') instruction not to reveal his defense in open court. Counsel then explained to the court that Petitioner has elected a defense that counsel cannot present at trial and

published and a copy delivered to the Real Party In Interest. However, the "Order Under Seal" is not attached because it is not a matter of public record. The same is true of the transcript of the in-camera hearing held before Judge Steinheimer on August 26, 1999; it is not a matter of public record. In an accompanying motion to this Petition, Petitioner is requesting that this Court order the district court to provide the sealed transcript and the sealed order to this court for its review. Petitioner also seeks other orders from this Court in that motion which are designed to aid this Court in its appellate review and provide an opportunity for Petitioner to explain to this Court (without violating the district court's order) why Judge Steinheimer's analysis and

1 that Petitioner has refused to cooperate in the defense suggested
2 by counsel. Counsel noted that the defense chosen by Petitioner
3 and the defense proposed by counsel are incompatible.

4 IV.

5 In an Order filed on August 12, 1999, Judge Steinheimer
6 ordered counsels' motion (discussed above) to be "unsealed" and
7 further ordered that a copy be provided to the Real Party In
8 Interest for its response. (See Exhibit "D" attached hereto).

9 V.

10 In an Order filed on August 18, 1999, Judge Steinheimer
11 denied the motion for reconsideration. (See Exhibit "E" attached
12 hereto).

13 VI.

14 On August 18, 1999, Petitioner's counsel filed their
15 pleading entitled "Ex-Parte (Nevada Supreme Court Rule 172)
16 Motion to Withdraw." (See Exhibit "F" attached hereto). By that
17 motion counsel put the court on notice that Petitioner
18 categorically refused counsel permission to present their defense
19 and refused to cooperate in that defense while at the same time
20 insisting on a defense that was not supported by the evidence.
21 Counsel further explained that that to present the defense sought
22 by Petitioner would constitute a violation of Supreme Court Rule
23 166 and Supreme Court Rule 172.

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26 conclusions are in error.

1 VII.

2 On August 24, 199, Petitioner's counsel filed their "Ex-
3 parte Request for Hearing." (See Exhibit "G" attached hereto).
4 By this pleading counsel sought an in-camera hearing before the
5 district court, pursuant to Supreme Court Rule 172(4), in order
6 fully inform the court of the basis for the Motion to Withdraw.

7 VIII.

8 By an Order filed on August 24, 1999, Judge Steinheimer
9 first noted that she had delivered to the Real Party In Interest
10 both the motion to withdraw and the request for the in-camera
11 hearing. (See Exhibit "H" attached hereto). Judge Steinheimer
12 then set a hearing on the motion to be held on August 26, 1999.

13 IX.

14 On August 26, 1999, Petitioner, Petitioner's counsel and
15 counsel for the Real Party In Interest appeared before Judge
16 Steinheimer, in open court, for a hearing on whether an in-
17 camera hearing of counsels' motion was appropriate. (See Exhibit
18 "I" attached hereto). Following comments from the court,
19 Petitioner's counsel and counsel for the Real Party In Interest,
20 Judge Steinheimer recognized that Supreme Court Rule 172 did
21 require an in-camera hearing in this matter, ordered everyone not
22 connected with the defense, her staff and the staff serving the
23 courtroom, i.e. security, to be excused from the courtroom and
24 ordered the remaining portion of the hearing sealed.

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2 X.

3 On August 30, 1999, Judge Steinheimer issued her Order Under
4 Seal denying the motion to withdraw.² At the same time Judge
5 Steinheimer issued an Order continuing the trial in this matter.
6 Later, on the same day, Judge Steinheimer issued a "Corrected
7 Order" setting preliminary jury selection for Monday, September
8 13, 1999 with trial set to commence on Monday, September 20,
9 1999. (See Exhibit "J" attached hereto).

10 XI.

11 Respondent Second Judicial District Court in and for the
12 County of Washoe is the court in which the subject action is
13 pending.

14 XII.

15 Respondent, the Honorable Connie J. Steinheimer is the
16 district judge who is presiding over and has exercised judicial
17 functions in connection with the subject action.

18 XIII.

19 The Real Party In Interest to this Petition is the State of
20 Nevada.

21 XIV.

22 Petitioner, Siaosi Vanisi, has no plain, speedy, adequate
23 remedy at law, other than the relief sought in this petition.

24
25 ² As noted in footnote 1, *supra*, that Order is not attached to
26 this Petition because it remains under the seal of the Second
Judicial District Court.

1 **WHEREFORE**, Petitioner prays as follows:

2 1. That a Writ of Certiorari or a Writ of Mandamus be
3 issued by this Court: directing the Respondent Connie J.
4 Steinheimer, district judge, to vacate her "Order Under Seal"
5 filed on August 30, 1999, and enter a new order "under seal"
6 granting defense counsels' "Ex-Parte (Nevada Supreme Court Rule
7 172) Motion to Withdraw" that was filed on August 18, 1999;

8 2. That a Stay be issued by this Court staying the
9 proceedings below pending resolution of the issues presented
10 herein; and,

11 3. For such other and further relief as the Court may
12 deem just and proper.

13 RESPECTFULLY SUBMITTED this 2nd day of September, 1999.

14 MICHAEL R. SPECCHIO
15 Washoe County Public
16 Defender

17 By: 

18 JOHN REESE PETTY
19 Chief Deputy
20 State Bar Number 00010
21 P.O. Box 30083
22 Reno, Nevada 89520

23 (775) 328-3475

24 **VERIFICATION**

25 **STATE OF NEVADA**

26 **COUNTY OF WASHOE**

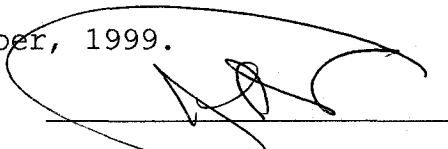
 JOHN REESE PETTY, being first duly sworn, deposes and says:

1 That affiant represents the Petitioner in the above-entitled
2 matter; that he is familiar with the facts and circumstances set
3 forth in the attached Petition for Writ of Certiorari and Writ of
4 Mandamus and knows the contents to be true, except to those
5 matters stated upon information and belief, and as to those
6 matters he believes them to be true.

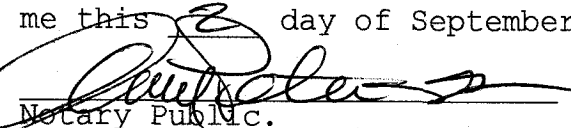
7 That affiant makes this verification pursuant to NRS
8 15.010(1) because the facts stated in the Petition are solely
9 within the knowledge of Petitioner's attorney, and the Petitioner
10 herself has no personal knowledge of most of the facts set forth
11 in the Petition.


12 I, John Reese Petty, do hereby swear under penalty of
13 perjury that the assertions of this affidavit are true.

14 DATED this 2nd day of September, 1999.

15 
16 JOHN REESE PETTY

17 Subscribed and sworn to before
18 me this 2nd day of September, 1999.

19 
Notary Public.

20  AMY A. PETERSON
21 Notary Public - State of Nevada
Appointment Recorded in Washoe County
22 No. 96-0224-2 EXPIRES DEC 8 1999
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF PETITION FOR WRIT OF CERTIORARI OR MANDAMUS

23 A.

24 1.

25 A writ of certiorari or, in the alternative, a writ of
26

1 mandamus is an appropriate procedure for review of the
2 proceedings below and the relief requested herein.

3 A writ of certiorari is a writ of review. NRS 34.010. "A
4 writ of certiorari is an extraordinary remedy and the decision to
5 entertain a petition for writ of certiorari lies within the
6 discretion of this court." *Zamarripa v. District Court*, 103 Nev.
7 638, 640, 747 P.2d 1386 (1988) (citing *Schumacher v. District*
8 *Court*, 77 Nev. 408, 365 P.2d 646 (1961)). Nonetheless, a writ of
9 certiorari "is granted in all cases where an inferior tribunal,
10 board or officer exercising judicial functions has exceeded its
11 jurisdiction and there is no appeal nor plain, speedy and
12 adequate remedy. NRS 34.020(2)." *Zamarripa*, 103 Nev. At 640.
13 In the case of *Public Land Access v. Humboldt Co.*, 111 Nev. 749,
14 895 P.2d 640 (1995), this Court said:

15 [a] petition for a writ of certiorari is
16 properly granted when (1) an inferior
17 tribunal has exceeded its jurisdiction; (2)
18 no means of appeal exist; (3) and no plain,
speedy, and adequate remedy at law is
available. NRS 34.020(2).

19 111 Nev. At 751.

20 The instant Petition challenges an order issued by Judge
21 Steinheimer denying a motion to withdraw as counsel. Further,
22 that order purports to give guidance to defense counsel on how to
23 resolve their ethical concerns which fails to address (other than
24 to acknowledge) counsels' concerns and which relies on authority
25 that can be distinguished from the instant case. Thus the
26

1 instant petition for writ of certiorari is properly before this
2 Court and properly seeks this Court's review of the proceedings
3 below.

4 2.

5 Alternatively, a writ of mandamus "is available to compel
6 the performance of an act which the law requires as a duty
7 resulting from an office, trust or station, [NRS 34.160], or to
8 control an arbitrary or capricious exercise of discretion."
9 *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336
10 (1989), citing, *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev.
11 601, 637 P.2d 534 (1981). See also, *Barnes v. District Court*,
12 103 Nev. 679, 682, 748 P.2d 483 (1987). In *Koza v. District*
13 *Court*, 99 Nev. 535, 541, 665 P.2d 244 (1983), this Court
14 recognized jurisdiction to grant a writ of mandamus when the
15 petitioner is able to show that the lower tribunal has acted
16 arbitrarily or capriciously. In *Russell v. Thompson*, 96 Nev.
17 830, 619 P.2d 537 (1980), the Court noted that while mandamus may
18 not be used to review discretionary acts of a trial court, it
19 will lie to correct judicial abuses of discretion. Moreover,
20 where circumstances exist under which a trial court's discretion
21 can be exercised in only one way, mandamus may be invoked. *Morse*
22 *v. District Court*, 65 Nev. 275, 280, 195 P.2d 199 (1948).

23 The instant Petition challenges an order issued by Judge
24 Steinheimer denying a motion to withdraw as counsel. Further,
25 that order purports to give guidance to defense counsel on how to
26

1 resolve their ethical concerns which fails to address (other than
2 to acknowledge) counsels' concerns and which relies on authority
3 that can be distinguished from the instant case. Moreover, the
4 order denying the motion to withdraw constitutes a judicial abuse
5 of discretion which can be reviewed by way of writ of mandamus.
6 *Russell v. Thompson, supra.* Thus the instant petition for writ
7 of mandamus is properly before this Court and properly seeks this
8 Court's review of the proceedings below and seeks this Court's
9 order reversing Judge Steinheimer's Order Under Seal.

10 B.

11 The Order Under Seal is the subject matter of this Petition.
12 But because it is under seal Petitioner cannot discuss its
13 contents, the authorities cited, or the district court's analysis
14 in this Petition without violating the Order. Similarly, the
15 transcript of the in-camera hearing is under seal. Petitioner
16 cannot cite to the contents thereof without violating the
17 district court's order. (Indeed, counsel for the Petitioner does
18 not even have a copy of that portion of the transcript because it
19 was filed under seal).

20 Accordingly, Petitioner is filing together with this
21 Petition a motion designed to have the Order Under Seal and the
22 sealed portion of the transcript of the hearing on the motion to
23 withdraw ordered up by this Court for its review. Additionally,
24 the motion requests that this Court direct the district court to
25 provide Petitioner's counsel only, a copy of the sealed
26

1 transcript. Finally, the motion requests authorization to file
2 in this Court in-camera points and authorities in support of this
3 Petition (and against the reasoning in the Order Under Seal), and
4 seeks guidance from the Court on the best procedures to
5 accomplish this task while keeping the sealed portions of the
6 record sealed and out of public view.

7 CONCLUSION

8 It is respectfully requested that given the serious issues
9 raised in this Petition, this Court should grant the Petition and
10 issue the requested writ.

11 Additionally, it is respectfully submitted, that in order to
12 give this Court an opportunity to fully review what took place
13 below, a stay of the proceedings below is warranted and must be
14 issued. Not even the initial steps of jury selection can be
15 accomplished under the procedures suggested by Judge Steinheimer
16 in her Order Under Seal.

17 It is respectfully suggested that this Court needs the Order
18 Under Seal filed on August 30, 1999, as well as the sealed

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1 portion of transcript of the hearing held on August 26, 1999, in
2 order for Petitioner to be able to adequately explain why this is
3 so.

4 RESPECTFULLY SUBMITTED this 22 day of September, 1999

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

7 By: 

8 JOHN REESE PETTY
9 Chief Deputy
10 State Bar Number 00010
11 P.O. Box 30083
12 Reno, Nevada 89520

13 (775) 328-3475
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FILED

DA #159523

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RPD 019114-98

Case No. CR98-0516

JUDICIAL CLERK
J. Berchem
BY _____
DEPUTY

Dept. No. 4

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

INFORMATION

SIAOSI VANISI,
also known as
"PE",
also known as
"GEORGE",

Defendant.

RICHARD A. GAMMICK, District Attorney within and for
the County of Washoe, State of Nevada, in the name and by the
authority of the State of Nevada, informs the above entitled
Court that SIAOSI VANISI, also known as "PE", also known as
"GEORGE", the defendant above named, has committed the crimes of:
COUNT I. MURDER IN THE FIRST DEGREE, a violation of
NRS 200.010 and NRS 200.030 and NRS 193.165, a felony, in the
manner following:

That the said defendant on the 13th day of January A.D.
1998, or thereabout, and before the filing of this Information,

1 at and within the County of Washoe, State of Nevada, did
2 willfully, unlawfully, and with malice aforethought,
3 deliberation, and premeditation, kill and murder SERGEANT GEORGE
4 SULLIVAN, a human being, by means of repeated blows to the head
5 and face with a hatchet, and/or other implement(s), and/or other
6 blunt force trauma inflicted to the head and upper torso thereby
7 inflicting mortal injuries upon the said SERGEANT GEORGE SULLIVAN
8 from which he died on January 13, 1998; or

9 That the said defendant during the course of, and in
10 furtherance of an armed robbery, did willfully and unlawfully
11 murder SERGEANT GEORGE SULLIVAN in that the said defendant on or
12 about January 13, 1998, did kill and murder SERGEANT GEORGE
13 SULLIVAN, a human being, in the perpetration and/or the
14 furtherance of an armed robbery at the University of Nevada,
15 Reno, at or near the information kiosk, with the use of a deadly
16 weapon, to wit, a hatchet, and/or other implement(s); or

17 That the said defendant on or about January 13, 1998,
18 did kill and murder SERGEANT GEORGE SULLIVAN, a human being, by
19 lying in wait, in that the said defendant did watch, wait and
20 conceal himself from SERGEANT GEORGE SULLIVAN, with the intention
21 of killing SERGEANT GEORGE SULLIVAN, in that he hid and waited
22 until SERGEANT GEORGE SULLIVAN completed a traffic stop, then
23 observed and followed SERGEANT GEORGE SULLIVAN to a location
24 where he was alone and then ambushed SERGEANT GEORGE SULLIVAN
25 inflicting mortal injuries to his person from which he died on
26 January 13, 1998.

1 COUNT II. ROBBERY WITH THE USE OF A DEADLY WEAPON, a
2 violation of NRS 200.380 and NRS 193.165, a felony, in the manner
3 following:

4 That the said defendant on the 13th day of January A.D.
5 1998, or thereabout, and before the filing of this Information,
6 at and within the County of Washoe, State of Nevada, did
7 willfully and unlawfully take personal property, to wit: a Glock
8 .45 caliber handgun; Glock "magazines"; a flashlight; and
9 handcuffs from the person of SERGEANT GEORGE SULLIVAN, at or near
10 the information kiosk located at the University of Nevada, Reno
11 campus, Washoe County, Nevada, against his will, and by means of
12 force or violence to his person and with the use of a hatchet,
13 and/or other implement(s), which the said defendant used to
14 strike SERGEANT GEORGE SULLIVAN repeatedly in the head and face,
15 and/or other blunt force trauma inflicted to the head and upper
16 torso.

17 COUNT III. ROBBERY WITH THE USE OF A FIREARM, a
18 violation of NRS 200.380 and NRS 193.165, a felony, in the manner
19 following:

20 That the said defendant on the 13th day of January A.D.
21 1998, or thereabout, and before the filing of this Information,
22 at and within the County of Washoe, State of Nevada, did
23 willfully and unlawfully take personal property, to wit: U.S.
24 currency from the person of PATRICIA MISITO, the clerk at the 7-
25 11 Store located at 710 Baring Boulevard, Washoe County, Nevada,
26 against her will, and by means of force or violence or fear of

1 immediate or future injury to her person and with the use of a
2 large caliber handgun which the said defendant displayed to the
3 victim and demanded money.

4 COUNT IV. ROBBERY WITH THE USE OF A FIREARM, a
5 violation of NRS 200.380 and NRS 193.165, a felony, in the manner
6 following:

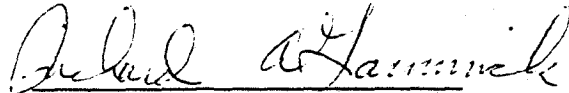
7 That the said defendant on the 13th day of January A.D.
8 1998, or thereabout, and before the filing of this Information,
9 at and within the County of Washoe, State of Nevada, did
10 willfully and unlawfully take personal property, to wit: U.S.
11 currency from DIANA LYNN SHOUSE, the clerk at said establishment,
12 at the Jackson Food Mart located at 2595 Clearacre Lane, Washoe
13 County, Nevada, against her will, and by means of force or
14 violence or fear of immediate or future injury to her person and
15 with the use of a large caliber handgun which the said defendant
16 displayed to the victim and demanded money.

17 COUNT V. GRAND LARCENY, a violation of NRS 205.220, a
18 felony, in the manner following:

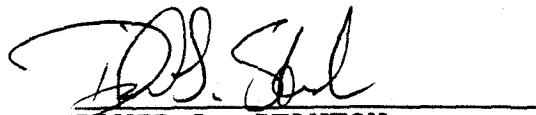
19 That the said defendant on the 13th day of January A.D.
20 1998, or thereabout, and before the filing of this Information,
21 at and within the County of Washoe, State of Nevada, did
22 willfully and unlawfully steal, take and drive away the personal
23 property of LOUIS D. HILL, to wit: a certain black four door
24 1993 Toyota Camry bearing Nevada license plate 029 HPY, with the
25 intent then and there to permanently deprive the owner thereof.

26 ///

1 All of which is contrary to the form of the Statute in
2 such case made and provided, and against the peace and dignity of
3 the State of Nevada.

4 

5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

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9 DAVID L. STANTON
10 Chief Deputy District Attorney
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1 The following are the names and addresses of such
2 witnesses as are known to me at the time of the filing of the
3 within Information:
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5 SALT LAKE COUNTY SHERIFF'S DEPARTMENT

6 DETECTIVE BRENT ADAMSON
7 INVESTIGATOR JEFF ITAMI
8 GARY LUCIER
9 JERRY TOWNSEND

10 RENO POLICE DEPARTMENT

11 DETECTIVE GREG BALLEW
12 DETECTIVE JOE DEPCZYNSKI
13 DETECTIVE RON DREHER
14 DETECTIVE JOHN DOUGLAS
15 DETECTIVE JIM DUNCAN
16 DETECTIVE DAVE JENKINS
17 DETECTIVE MOHAMAD RAFAQAT

18 UNIVERSITY OF NEVADA POLICE DEPARTMENT

19 SERGEANT LOUIS LEPERA
20 OFFICER CARL SMITH

21 WASHOE COUNTY SHERIFF'S OFFICE CRIME LAB

22 TONI LEAL
23 WILLIE STEVENSON

24 SCOTT ALBIN, 1555 Sky Valley Drive, Apartment C-104, Reno, Nevada

25 CAROL DIANA ARROYO, 5785 Conti Circle, Sun Valley, Nevada

26 MATHEW DONALD BANTA, Nye Hall, Room #863, Reno, Nevada

KALEB LEE BARTLEHEIM, 5034 Pleasant View Drive, Sparks, Nevada

LEMONT BONNER, University Inn, Room #729, Reno, Nevada

GUSTAVO MARTIN CERON, 943 Bell Street, Apartment #2, Reno, Nevada

ANDREW GUY "DREW" CIOCCA, 1316 Buena Vista Avenue, Apartment B,
Reno, Nevada

ELLEN G.I. CLARK, MD, Forensic Pathologist

1 PRISCILLA LUPE ENDEMANN, 930 Manhattan, Apartment #3, Reno,
Nevada
2
3 JESSIE JAMES GARLAND, JR., 805 Kuenzli, Apartment #225, Reno,
Nevada
4 CHAITRA MICHELLE HANKE, 2860 Brittania Curt, Reno, Nevada
5 LOUIS D. HILL, 6075 Bankside Drive, Reno, Nevada
6 NATHAN DOUGLAS HUNT, 345 Ralston, Apartment G, Reno, Nevada
7 MAKALETA KAVAPALU
8 DAVID KINIKINI, 1665 South Riverside Drive, Salt Lake City, Utah
9 VAINGA IMONA KINIKINI, 1665 South Riverside Drive, Salt Lake
City, Utah
10 NIA KOFUTUA
11 GABRIEL PHILLIP KNOX, 835 Evans Avenue (S.A.E. Fraternity House,
12 Reno, Nevada
13 CORINA SALOTE LOUIS, 1098 North Rock Boulevard, Apartment A,
Sparks, Nevada
14 MARIA LOSA LOUIS, 1098 North Rock Boulevard, Apartment A, Sparks,
15 Nevada
16 DANIELLE MALLEY
17 BRENDA MARTINEZ, 720 Robinhood Drive, #218, Reno, Nevada
18 MELE MAVENI
19 PATRICIA MARY MISITO, 472 Emerson Way, Sparks, Nevada
20 MANAMOUI PEAUA, 1645 Sterling Way, Reno, Nevada
21 RENEE NANCY PEAUA, 1645 Sterling Way, Reno, Nevada
22 SHOMARI KAMU ROBERTS, 1966 Bishop Street, Reno, Nevada
23 DIANA LYNN SHOUSE, 7900 North Virginia Street, #121, Reno, Nevada
24 GAR SOWLE
25 SATEKI TAUKEUEVEA, 230 Booth Street, Apartment A, Reno, Nevada
26 ///

1 METUISELA TAUVELI, 1098 Rock Boulevard, Apartment A, Sparks,
Nevada or 280 East Eighth Avenue, Sun Valley, Nevada

2 NAMOA STEPHANOTIS TUPOU, 2712 Star Meadows Loop, Reno, Nevada

3 SIVAKUMAR UTHIRAM, 830 North Center Street, #11, Reno, Nevada


4 RONALD THOMAS VIETTI

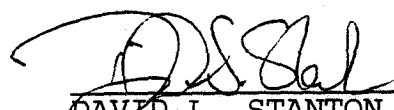
5 DARLENE GAY WILSON, 850 North Virginia Street, #106, Reno, Nevada

6 JACK GRANT WOOD, 810 'H' Street, Sparks, Nevada

7 JULIE MICHELLE WOOD, 810 'H' Street, Sparks, Nevada

8 JAMES BYONG YIM, 1647 Wedekind Road, #23C, Reno, Nevada

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18 RICHARD A. GAMMICK
District Attorney

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21 DAVID L. STANTON
22 Chief Deputy District Attorney

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24
25 PCN 88877081

26 02251114

'98 FEB 26 A9:04

JUDI BAILEY, CLERK

BY J. Berchem
DEPUTY

1 Case No. CR98-0516

2 Dept. No. 4

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

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

12 SIAOSI VANISI,
13 also known as
14 "PE",
also known as
"GEORGE",

15 Defendant.

16
17 NOTICE OF
18 INTENT TO SEEK
19 DEATH PENALTY

20 COMES NOW, the State of Nevada, by and through RICHARD
21 A. GAMMICK, District Attorney of Washoe County, and DAVID L.
22 STANTON, Chief Deputy District Attorney, and hereby gives Notice
23 to the Court, counsel, and the defendant, SIAOSI VANISI, also
24 known as "PE", also known as "GEORGE", of the following:

25 YOU ARE HEREBY NOTIFIED that the State of Nevada by and
26 through the Office of the Washoe County District Attorney intends
to seek the death penalty as punishment against SIAOSI VANISI,

///

///

1 also known as "PE", also known as "GEORGE", upon his conviction
2 for Murder of the First Degree as set forth in Count I.

3 YOU ARE HEREBY FURTHER NOTIFIED that the State intends
4 to produce and present evidence concerning aggravating
5 circumstances relevant to the offense, defendant, victim and/or
6 other matters relevant to conviction and sentence to allow a jury
7 or panel of three judges to set the penalty for the conviction of
8 Murder of the First Degree at death. NRS 200.030, NRS 200.033,
9 NRS 175.552; NRS 175.556, Payne v. Tennessee, 501 U.S. 808, 111
10 S.Ct. 2597 (1991).

11 In addition to seeking the death penalty against
12 defendant SIAOSI VANISI, also known as "PE", also known as
13 "GEORGE", based upon the aggravating nature of the offense
14 itself, the State intends to present the following aggravating
15 circumstances as it relates to Count I, NRS 200.033(4a)(7)
16 (8)(11).

17 The evidence which the State intends to present in
18 support of one or more of the following statutory aggravating
19 circumstances pursuant to NRS 200.033 as allowed by NRS 175.552
20 as it relates to Count I, Murder of the First Degree of Sergeant
21 GEORGE SULLIVAN includes:

22 1. Evidence that the murder of Sergeant GEORGE
23 SULLIVAN was committed by the defendant, SIAOSI VANISI, also
24 known as "PE", also known as "GEORGE", in the commission of or
25 attempting to commit the crime of Robbery With the Use of a
26 Deadly Weapon. NRS 200.033(4)(a).

1 2. Evidence that the murder of Sergeant GEORGE
2 SULLIVAN was committed by the defendant, SIAOSI VANISI, also
3 known as "PE", also known as "GEORGE", upon a peace officer or
4 who was killed while engaged in the performance of his official
5 duty or because of an act performed in his official capacity, and
6 the defendant knew or reasonably should have known that the
7 victim was a peace officer. NRS 200.033(7); NRS 289.350.

8 3. Evidence that the murder of Sergeant GEORGE
9 SULLIVAN was committed by the defendant, SIAOSI VANISI, also
10 known as "PE", also known as "GEORGE", involved torture or the
11 mutilation of the victim. NRS 200.033(8); Jones v. State, 113
12 Nev., Advance Opinion 48 (1997).

13 4. Evidence that the murder of Sergeant GEORGE
14 SULLIVAN was committed by the defendant, SIAOSI VANISI, also
15 known as "PE", also known as "GEORGE", upon a person because of
16 the actual or perceived race, color or national origin of that
17 person. NRS 200.030(11).

18 The State also intends to present evidence against the
19 defendant at the penalty hearing pursuant to NRS 175.552, in
20 addition to the aggravating circumstances outlined above, to
21 include all relevant character evidence as well as the
22 circumstances of the particular offenses. NRS 175.552; Flanagan
23 v. State, 107 Nev. 243, 810 P.2d 759 (1991); Robins v. State, 106
24 Nev. 611, 798 P.2d 558 (1990); Biondi v. State, 101 Nev. 252, 699
25 P.2d 1062 (1985); and Allen v. State, 99 Nev. 485, 665 P.2d 238
26 (1983).

1 The State will rebut any defense allegations claiming
2 mitigating circumstance(s) as listed in NRS 200.035.

3 If the defendant intends to present any evidence in
4 support of mitigating circumstances, as allowed by NRS 200.035,
5 the State should have prior notice pursuant to the Discovery
6 Order in this case. In any case, the State will address and
7 rebut any alleged mitigating circumstance(s), the nature of which
8 may not be known until the presentation of those mitigating
9 circumstance(s) by the defense. At that time, the State will be
10 prepared to and will disclose to the defendant and his counsel in
11 a timely fashion any additional evidence to contradict any claim
12 of mitigating circumstance(s).

13 The State asserts that the documented aggravating
14 circumstances are not outweighed by any mitigating
15 circumstance(s) and, thus, the death penalty is just and
16 appropriate.

17 Moreover, if additional evidence of aggravating
18 circumstances as set forth in NRS 200.033 becomes apparent prior
19 to the commencement of the penalty hearing, notice will be
20 provided to counsel and the defendant as required by NRS 200.033
21 and NRS 175.552.

22 Thus, based on the foregoing and upon the conviction of
23 the defendant, SIAOSI VANISI, also known as "PE", also known as
24 "GEORGE", for the charge of Murder in the First Degree as set
25 forth in Count I, it is submitted that all relevant evidence
26 concerning this Notice is to be presented to the jury or the

1 three judge panel to allow death verdicts to be returned against
2 the defendant, SIAOSI VANISI, also known as "PE", also known as
3 "GEORGE", in compliance with the law.

4 Dated this 25TH day of FEBRUARY, 1998.

5 
6

7 RICHARD A. GAMMICK
8 District Attorney
9 Washoe County, Nevada

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12 DAVID L. STANTON
13 Chief Deputy District Attorney
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Sarah H. Johnson

1 1670
2 MICHAEL R. SPECCHIO
3 BAR# 1017
4 WASHOE COUNTY PUBLIC DEFENDER .
5 P.O. BOX 30083
6 RENO NV 89520-3083
7 (775) 328-3464
8 ATTORNEY FOR: DEFENDANT

FILED
99 AUG 12 A9:47

AP. CLERK
BY T. White

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

8
9 THE STATE OF NEVADA,
10 Plaintiff,
11 vs.

Case No. CR98-0516

12 SIAOSI VANISI,

Dept. No. 4

13 Defendant.

14 UNDER SEAL

15 EX-PARTE MOTION TO RECONSIDER SELF-REPRESENTATION

16 COMES NOW the Defendant, by and through counsel, STEPHEN
17 GREGORY and JEREMY BOSLER, and moves this Court to reconsider
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26 ///

1 It's Order denying the Defendant's request to represent himself
2 in these proceedings. This motion is based on the following
3 points and authorities.

4 DATED this _____ day of August, 1999.

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

7 By: _____
8 STEPHEN GREGORY
9 Chief Deputy Public Defender

10 MICHAEL R. SPECCHIO
11 Washoe County Public Defender

12 By: _____
13 JEREMY BOSLER
14 Deputy Public Defender

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POINTS AND AUTHORITIES

Upon receipt of this Court's written Order it was apparent that this Court based It's decisions wholly, or in part, on the Defendant's inability to articulate "why" he wanted to represent himself and his "tactical" reasons for doing so.

The Defendant had been instructed by his counsel to not reveal his defense in open court. Counsel did not believe that the "whys" or the "tactics" of the Defendant's request to exercise his Constitutional right were required under Faretta or its progeny, or Nevada Supreme Court Rule 253.

The Defendant has embraced a defense that his counsel refuses to present at trial. More importantly, the Defendant has refused since March 1999, and continues to refuse to embrace the proffered defense suggested by counsel. The defenses are incompatible.

///

///

1 The Defendant requests an in-camera hearing to discuss
2 with the Court privileged communications between the Defendant
3 and his counsel, as soon as possible to prevent any delay to
4 the start of the trial set for September 7, 1999.

5 DATED this ____ day of August, 1999.

6 MICHAEL R. SPECCHIO
7 Washoe County Public Defender

8 By: _____
9 STEPHEN GREGORY
Chief Deputy Public Defender

10 MICHAEL R. SPECCHIO
11 Washoe County Public Defender

12 By: _____
13 JEREMY BOSLER
14 Deputy Public Defender
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FILED

AUG 12 1999

AMIT DAVEY, CLERK
By: J. J. [illegible]
ADMIN. ASST

1 Code 3370

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5
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 ORDER16 The Court has been notified that the Defendant has filed an Ex Parte Motion to
17 Reconsider Self-Representation. The Court has not authorized ex parte communication
18 nor has the Court authorized the filing of a Motion for Reconsideration. Absent specific
19 statutory authority or the granting of a motion for leave to file a motion under seal there
20 is no provision in the State of Nevada to allow the filing of a Motion such as has been
21 filed by counsel for the Defendant.22 Further, the Court has reviewed the above listed Motion. There is nothing in the
23 content of the Motion that requires the Motion to be filed under seal.

24 The Court hereby finds that the Motion was inappropriately sealed.

25 IT IS HEREBY ORDERED that the Clerk of the Court shall unseal the Motion for
26 Self Representation.

1 IT IS HEREBY FURTHER ORDERED that the Defendant's counsel shall serve
2 opposing counsel with the said Motion.

3 IT IS HEREBY FURTHER ORDERED that the State shall have five (5) days within
4 which to answer the said Motion, and the Defendant shall have three (3) days to
5 respond to the State's Answer. Subsequently, either party may submit the Motion for
6 reconsideration and motion for hearing to the Court for a decision.

7 DATED this 12 day of August, 1999.

8
9 Connie I. Stunhumer
10 DISTRICT JUDGE
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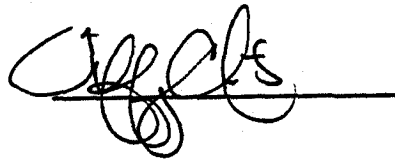
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE
STEINHEIMER, and that on the 12 day of August, 1999, I delivered a true copy of
the attached document, addressed to:

Richard Gammick,
Washoe County District Attorney
David Stanton,
Deputy District Attorney
Via Hand-Delivery

Steven Gregory,
Jeremy Bosler,
Deputies Public Defender
Via Hand-Delivery

A handwritten signature in cursive script, appearing to read 'Connie Steinheimer', is written over a horizontal line.

FILED

CODE 3370

AUG 18 1999

AMY H. [signature]

By: [signature]
ADMIN. ASST.

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.

ORDER

On August 12, 1999, an Under Seal, Ex-Parte Motion to Reconsider Self-Representation was filed by the Defendant, Siasos Vanisi, by and through counsel, Chief Deputy Public Defender, Stephen Gregory, and Deputy Public Defender, Jeremy Bosler. On August 12, 1999, this Court issued an Order unsealing the Motion and further ordering that the Motion should be served on opposing counsel and that opposing counsel would have five (5) days to answer and then Defendant would have three (3) days to respond. On August 16, 1999, a Response to Under Seal Ex-Parte Motion to Reconsider Self Representation was filed by counsel for the State, by and through Richard A. Gammick, Washoe County District Attorney, and David Stanton, Chief Deputy District Attorney. On August 17, 1999, counsel for the Defendant filed a Reply to Response to Motion to Reconsider Self-Representation (Request for Hearing).

1 After reviewing all of the pleadings on file, supporting documents, testimony presented
2 in open court, as well as the current motions, this Court finds that there is no error of fact or law
3 which would provide the basis for a reconsideration of its Order issued August 11, 1999,
4 deciding the motion for self representation. If counsel wishes to make a separate motion on a
5 related issue and request a hearing, counsel should do so, and articulate points and authorities to
6 support said motion.

7 Based on the foregoing, and with good cause appearing,

8 IT IS HEREBY ORDERED that Defendant Siaso Vanisi's Motion to Reconsider Self-
9 Representation is hereby DENIED.

10 DATED this 18 day of August, 1999.

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13 Connie J. Steinheimer
14 DISTRICT JUDGE
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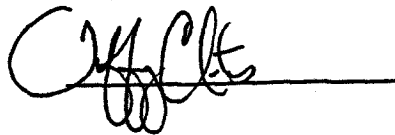
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE
STEINHEIMER, and that on the 18 day of August, 1999, I personally hand delivered a true
copy of the attached document, addressed to:

Richard Gammick
David Stanton, Deputy
Washoe County District Attorney

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



FILED

1 1670

2 MICHAEL R. SPECCHIO

3 BAR# 1017

4 WASHOE COUNTY PUBLIC DEFENDER

5 P.O. BOX 30083

6 RENO NV 89520-3083

7 (775) 328-3464

8 ATTORNEY FOR: DEFENDANT

AUG 18 1999

AMY HARVEY, CLERK

By: P. Meagham DEPUTY

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

Case No. CR98-0516

14 SIAOSI VANISI,

Dept. No. 4

15 Defendant.

16 EX-PARTE (NEVADA SUPREME COURT RULE 172) MOTION TO WITHDRAW

17 COMES NOW the Defendant, by and through his counsel,

18 STEPHEN D. GREGORY, and JEREMY BOSLER, and moves to withdraw as

19 counsel for the Defendant. This Motion to Withdraw is

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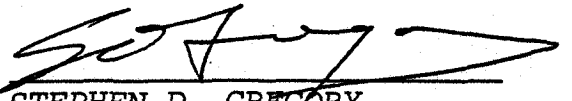
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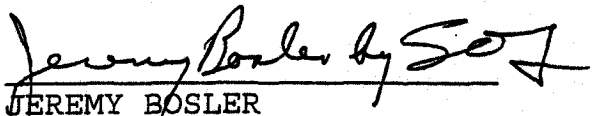
1 supported by the following points and authorities herein, an
2 Affidavit of Counsel (attached hereto as Exhibit "A"), and Rule
3 172 on NSCR (attached hereto as Exhibit "B").

4 DATED this 18th day of August, 1999.

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

7
8 By: 
9 STEPHEN D. GREGORY
Chief Deputy Public Defender

10
11 MICHAEL R. SPECCHIO
12 Washoe County Public Defender

13
14 By: 
15 JEREMY BOSLER
16 Deputy Public Defender
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1 POINTS AND AUTHORITIES IN SUPPORT OF EX-PARTE MOTION TO
2 WITHDRAW AS COUNSEL

3 Nevada Supreme Court Rule 166 reads as follows:

4 **Rule 166. Declining or terminating representation.**

5 1. Except as stated in subsection 3, a lawyer shall not
6 represent a client or, where representation has
7 commenced, shall withdraw from the representation of a
8 client if:

9 (a) the representation will result in violation of
10 the rules of professional conduct or other law;

11 (b) the lawyer's physical or mental condition
12 materially impairs the lawyer's ability to
13 represent the client; or

14 (c) the lawyer is discharged.
15

16 2. Except as stated in subsection 3, a lawyer may
17 withdraw from representing a client if withdrawal can
18 be accomplished without material adverse effect on the
19 interest of the client, or if:

20 (a) the client persists in a course of action
21 involving the lawyer's services that the lawyer
22 reasonably believes is criminal or fraudulent;

23 (b) the client has used the lawyer's services to
24 perpetrate a crime or fraud;

25 (c) a client insists upon pursuing an objective that
26 the lawyer considers repugnant or imprudent;

- 1 (d) the client fails substantially to fulfill an
2 obligation to the lawyer regarding the lawyer's
3 services and has been given reasonable warning
4 that the lawyer will withdraw unless the
5 obligation is fulfilled;
- 6 (e) the representation will result in an
7 unreasonable financial burden on the lawyer or
8 has been rendered unreasonably difficult by the
9 client; or
- 10 (f) other good cause for withdrawal exists.
- 11

12 X 3. When ordered to do so by a tribunal, a lawyer shall
13 continue representation notwithstanding good cause for
14 terminating the representation.

15 4. Upon termination of representation, a lawyer shall
16 take steps to the extent reasonably practicable to
17 protect a client's interests, such as giving
18 reasonable notice to the client, allowing time for
19 employment of other counsel, surrendering papers and
20 property to which the client is entitled and refunding
21 any advance payment of fee that has not been earned.
22 The lawyer may retain papers relating to the client to
23 the extent permitted by other law. (added 1-27-86,
24 eff. 3-28-86.)

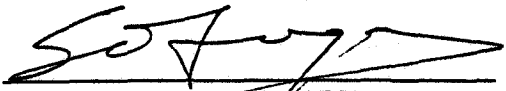
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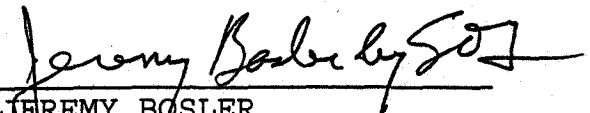
1 Counsel conducted a telephonic conversation with counsel
2 for the State Bar of Nevada concerning a hypothetical
3 representation of a defendant who insists on counsel proffering
4 a defense that violates Rule 166 of the Nevada Supreme Court.
5 Counsel was advised by the State Bar to immediately submit a
6 motion to withdraw as counsel. Furthermore, the State Bar
7 advised counsel to comply with Supreme Court Rule 172 (attached
8 hereto as Exhibit "B") as soon as the Court deems it
9 appropriate to inquire into the matters covered by Rule 172.

10 DATED this 18th day of August, 1999.

11 MICHAEL R. SPECCHIO
12 Washoe County Public Defender

13
14 By: 
15 STEPHEN D. GREGORY
16 Chief Deputy Public Defender

17 MICHAEL R. SPECCHIO
18 Washoe County Public Defender

19 By: 
20 JEREMY BOSLER
21 Deputy Public Defender
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AFFIDAVIT OF COUNSEL

STATE OF NEVADA)
) ss
County of Washoe)

I, STEPHEN D. GREGORY , do hereby affirm that the
assertions of this affidavit are true:

1. That I am a duly licensed attorney assigned to
represent the Defendant, SIAOSI VANISI;
2. That I have suggested a defense to the Defendant in
February, 1999, that the Defendant categorically
refuses to allow me to represent to the Court and
Jury since March, 1999;
3. That this defense is supported by the evidence;
4. That this defense does not violate the prohibitions
embodied in Nevada Supreme Court Rule 166;
5. That the Defendant insists on a defense that is not
supported by the evidence;
6. That counsel has been advised by counsel for the
State Bar that the presentation of the Defendant's
defense will result in a violation of Supreme Court
Rule 166;

///

///

1 7. That counsel will, according to the State Bar,
2 violate Rule 172 of the Supreme Court if counsel is
3 ordered to present the Defendant's theory of the
4 case;

5 8. FURTHER AFFIANT SAYETH NOT.

6 DATED this 18th day of August, 1999.

7
8 
9 STEPHEN D. GREGORY

10 SUBSCRIBED and SWORN to this 18th day of August, 1999.

11
12 
13 NOTARY PUBLIC

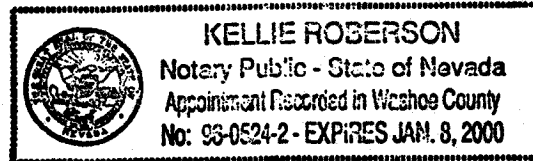


EXHIBIT "A"

Rule 172. Candor toward the tribunal.

1. A lawyer shall not knowingly:
- (a) make a false statement of material fact or law to a tribunal;
 - (b) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;
 - (c) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
 - (d) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures.
2. The duties stated in subsection 1 continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 156.
3. A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
4. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer which will enable the tribunal to make an informed decision, whether or not the facts are adverse. (Added 1-27-86, eff. 3-28-86.)

Thickland

Editor's Note. — Former Rule 172 was repealed effective March 28, 1986.

FILED

AUG 24 1999

AMY HARVEY, CLERK

By: Meacham DEPUTY

1 1665
2 MICHAEL R. SPECCHIO
3 BAR# 1017
4 WASHOE COUNTY PUBLIC DEFENDER :
5 P.O. BOX 30083
6 RENO NV 89520-3083
7 (775) 328-3464
8 ATTORNEY FOR: DEFENDANT

9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

10 IN AND FOR THE COUNTY OF WASHOE

11 THE STATE OF NEVADA,
12 Plaintiff,

13 vs.

Case No. CR98-0516

14 SIAOSI VANISI,

Dept. No. 4

15 Defendant.
16 _____/

17 EX-PARTE REQUEST FOR HEARING

18 Pursuant to SCR 172(4), counsel for the above-named
19 Defendant request a hearing in chambers to inform the Court of
20 all material facts known to counsel in order to enable the
21 Court to make an informed decision regarding the Motion to
22 Withdraw filed on August 18, 1999. Since Defendant will not be
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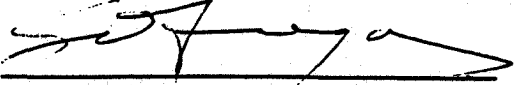
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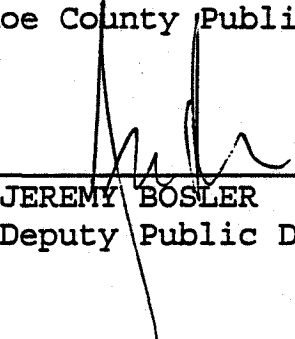
1 present during this hearing, counsel requests that, pursuant to
2 SCR 250 IVB, this matter be given priority over all other
3 matters pending before the Court.

4 DATED this 25th day of August, 1999.

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

7
8 By: 
9 STEPHEN D. GREGORY
Chief Deputy Public Defender

10
11 MICHAEL R. SPECCHIO
12 Washoe County Public Defender

13
14 By: 
15 JEREMY BOSLER
16 Deputy Public Defender
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ORIGINAL

FILED

AUG 24 1999

AMY HARVEY, CLERK

By:
ADMIN. ASST.

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.
_____ORDER

The Defendant's counsel, Washoe County Public Defender, Michael R. Specchio, Esq., by and through Chief Deputy Public Defender Stephen Gregory and Deputy Public Defender Jeremy Bosler, on August 24, 1999, moved for an in chambers hearing on a previously filed Ex Parte Motion to Withdraw. This matter has just come to the Court's attention. The Court has served the Washoe County District Attorney this date with defense counsel's Ex Parte Motion to Withdraw and Ex Parte Request for Hearing.

Supreme Court Rule 172 (4) requires an ex parte proceeding where a lawyer shall inform the court of all material facts known to the lawyer which will enable the court to make an informed decision whether or not the facts are adverse and justify

1 the lawyer's withdrawal as counsel. Supreme Court Rule 250 requires that the
2 Defendant be present and the request be given priority.

3 Good cause appearing, the parties and counsel shall appear at 7:00 a.m. on
4 the 26th day of August, 1999, to argue whether the hearing should in fact take place
5 in chambers as requested by Defendant's counsel or ex parte in the Defendant's
6 presence with a sealed transcript. Any hearing on the matter that the Court allows
7 will take place immediately upon the conclusion of the above arguments.

8 DATED this 24th day of August, 1999.

9
10 Conrad J. Steinberg
11 DISTRICT JUDGE
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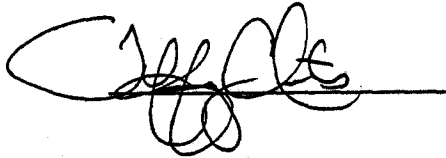
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCP 5 (b), I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 24 day of August, 1999, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, and sent via facsimile, a true copy of the attached document, addressed to:

VIA FACSIMILE 785-4587
Richard Gammick
David Stanton, Deputy
Washoe County District Attorney
VIA INTERCOUNTY MAIL

VIA FACSIMILE 328-3596
Stephen Gregory
Jeremy Bosler
Deputies Public Defender
VIA INTERCOUNTY MAIL

A handwritten signature in black ink, appearing to be 'J. Gammick', written over a horizontal line.

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 THE HONORABLE CONNIE STEINHEIMER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA,)	
)	
Plaintiff,)	Case No. CR98-0516
)	
vs.)	Dept. No. 4
)	
SIAOSI VANISI,)	
)	
Defendant.)	
)	

REQUEST FOR HEARING ON EX PARTE MOTION TO WITHDRAW
 AUGUST 26, 1999
 RENO, NEVADA

APPEARANCES:

For the Plaintiff:	RICHARD GAMMICK District Attorney DAVID STANTON Deputy District Attorney Washoe County Courthouse Reno, Nevada
For the Defendant:	MICHAEL R. SPECCHIO Public Defender STEVE GREGORY JEREMY BOSLER Deputies Public Defender One S. Sierra Street Reno, Nevada
The Defendant:	SIAOSI VANISI
Reported by:	ERIC V. NELSON, CCR No. 57

1 RENO, NEVADA, THURSDAY, AUGUST 26, 1999, 7:03 A.M.

2 -oOo-

3 THE COURT: This is the time set for motion to
4 withdraw from counsel, as counsel. At this time there is a
5 request to have -- the request is couched in the terms of an
6 ex parte hearing. I think the defense wants the hearing
7 pursuant to the rules that would be a sealed proceeding ex
8 parte, and counsel requested that to be in chambers.
9 Because of Mr. Vanisi's circumstances, the Court would not
10 entertain that request. But I might entertain a request to
11 do it in the courtroom. So I gave everyone notice, and if
12 anyone has a position to give me, please do so now.

13 MR. GREGORY: Our position is, Your Honor, as
14 long as it is on the record, we don't really care, as long
15 as it's in camera.

16 THE COURT: Okay. Thank you. Mr. Stanton.

17 MR. STANTON: Is the Court inquiring whether or
18 not there is a preference of in camera, in chambers or in
19 the courtroom at this juncture?

20 THE COURT: No, I'm requesting if you know of
21 any reason why we should not have an in camera hearing with
22 defense counsel regarding the substance of the motion.

23 MR. STANTON: Well --

24 MR. GREGORY: Well, I'm going to object.
25 Mr. Stanton has no standing to even be in this courtroom

1 considering this issue.

2 THE COURT: Thank you, Mr. Gregory. You may be
3 seated.

4 MR. GREGORY: Thank you.

5 THE COURT: Mr. Stanton.

6 MR. STANTON: Thank you, Your Honor. Reviewing
7 the documentation and the authority that is apparently
8 relied on by defense counsel, the State would submit that
9 the answer to the question doesn't require an ex parte
10 hearing at all.

11 Specifically there are two pieces of authority
12 that the State is able to determine that the defense is
13 relying on, specifically Supreme Court Rule 166 and Supreme
14 Court Rule 172. Review of both of those authorities I think
15 answer the question, the request, number one, and number
16 two, by answering that question, they also answer the
17 question of whether or not this proceeding again needs to
18 be, or in this case, again needs to be in camera without the
19 State present.

20 First of all, citing to Rule 166, subsection 3,
21 "When ordered to do so by a tribunal, a lawyer shall
22 continue representation notwithstanding good cause for
23 terminating the representation."

24 And in subsection -- Supreme Court Rule 172,
25 subsection 3, I think the answer to the question lies there,

1 "A lawyer may refuse to offer evidence that the lawyer
2 reasonably believes is false."

3 As I understand it from the motions, that there
4 is a conflict between counsel and the defendant as to the
5 type of defense to proffer in this case. If that is
6 indeed what occurs, I don't think there needs to be any in
7 camera secret hearing to determine what are the details of
8 that conflict, save and except for the important issue to
9 this Court, is there is a conflict. I don't think that is a
10 unique situation in the annals of criminal justice.

11 The core determination from the State's
12 perspective is that at this juncture, inside of a month away
13 from a capital trial, and for the reasons that this Court
14 outlined at length regarding the defendant's motion to
15 proceed pro per, this is not the time that if this conflict
16 existed to then uncork counsel and have either new counsel
17 appointed, which is obviously going to be one remedy, or
18 have the defendant proceed pro per. If indeed there is a
19 conflict, whatever that conflict may be, the defense has to
20 make the decision within their ethical rules and in
21 presenting evidence that they know they should not pursuant
22 to the ethical rules. That's what the State is going to
23 request.

24 Unless some additional representation, beyond
25 what's in the written documents, is offered about why this

1 case should be in camera, the State can't see it. I mean,
2 obviously, the general statement is, well, I'm going to talk
3 about the theories of defense and the State shouldn't be
4 privy to that.

5 Well, that's probably true. But I don't think
6 that's really -- what type of conflict do you need to hear?
7 Just to say there is a conflict. I think that's the issue.
8 Thank you, Your Honor.

9 THE COURT: Okay. Mr. Gregory.

10 MR. GREGORY: Your Honor, I'm not going to
11 address these issues in front of the prosecutor or in the
12 public courtroom. I'm going to ask this matter be held in
13 camera.

14 THE COURT: We're talking about now whether or
15 not it should be held in camera.

16 MR. GREGORY: The Supreme Court Rule 172
17 requires this Court to hold an ex parte hearing, and that's
18 what I'm going to ask for. I'm not going to get into an
19 argument with Mr. Stanton.

20 THE COURT: Although you are inviting me,
21 Mr. Gregory, to do something that would probably not be in
22 the best interests of your client, I'm going to decline from
23 doing it.

24 Mr. Bosler, do you have anything to offer on
25 the request to seal the hearing?

1 MR. BOSLER: Nothing, Your Honor.

2 THE COURT: Does anyone present have anything
3 to offer on the request to seal the hearing?

4 MR. HENDERSON: Yes, Your Honor.

5 THE COURT: Do you have counsel?

6 MR. HENDERSON: No, Your Honor. We did not
7 receive notice of the hearing. We also do not know the
8 reason for the request for a sealed hearing. I would
9 request a continuance of this proceeding until I have an
10 opportunity to be represented by counsel.

11 THE COURT: Well, Mr. Henderson, it's nice to
12 see you so early in the morning, but you must have had
13 enough notice to be here yourself. So I don't know why you
14 didn't have enough notice to get your counsel. But we
15 haven't made a decision on your request to have
16 continuances, and so at this stage in the proceeding I'm
17 going to deny your request. But thank you.

18 MR. STANTON: Your Honor, just for the record,
19 that was Mike Henderson, a reporter for the Reno Gazette.
20 Thank you.

21 THE COURT: Thank you, Mr. Stanton.

22 Okay. I previously have received motions from
23 Mr. Gregory and Mr. Bosler in this case that have been vague
24 in their content and have allowed for sealing of hearings
25 and documents based upon their vagueness because I assumed

1 counsel was going down a road that was appropriate to have
2 an ex parte hearing. In at least one instance my assumption
3 was incorrect. Counsel did not have a basis to request such
4 an ex parte hearing.

5 At this time Mr. Stanton on behalf of the State
6 of Nevada is requesting that counsel make it clear whether
7 or not an ex parte hearing is essential for the
8 determination of the hearing. Now my question for defense
9 counsel is, number one, I do not want you to discuss the
10 reasons why you filed your motion. If in fact there is a
11 discussion between the Court and counsel on the basis for --
12 the actual facts that form the basis for you filing this
13 motion, the Court agrees that Supreme Court Rule 172
14 requires that that be ex parte, and because ex parte must be
15 in camera in this case, that is clear from the Supreme Court
16 rule. However, Mr. Stanton has argued that no matter what
17 the conflict between counsel and Mr. Vanisi at this stage in
18 the proceedings, there is no basis to withdraw as counsel.

19 Now the Court has done some research, and I
20 understand that there may be a right to put on the record
21 the disagreement between counsel and Mr. Vanisi, even if it
22 would not rise to the level of the Court granting the motion
23 to be relieved. Is that your request, Mr. Gregory?

24 MR. GREGORY: We request an in camera hearing,
25 Your Honor.

THE COURT: For what purpose, Mr. Gregory?

MR. GREGORY: So that we can disclose certain privileged communications that we have had with our client.

THE COURT: Court is in recess.

(Recess taken.)

THE COURT: The Court has taken a recess considering the statements and comments of counsel. Supreme Court Rule 172 does require that the Court allow for an ex parte proceeding, and the purpose of that is really in this Court's opinion to give counsel an opportunity to put on the record whatever their ethical considerations are. As I understand, this is probably in most cases not a basis for relief as counsel of record, but it is an issue that should be handled with regard to the ethical considerations of counsel. And it's important to the Court for the -- for the Court to be able to manage the proceedings if in fact there is a concern of defense counsel.

For those reasons the Court at this time will allow for a sealed proceeding, it will be on the record, sealed and in camera. Everyone who is not connected with the defense of this case and my staff and the staff serving in the courthouse will be excused from the courtroom.

(Whereupon hearing adjourned to continue
in closed proceedings.)

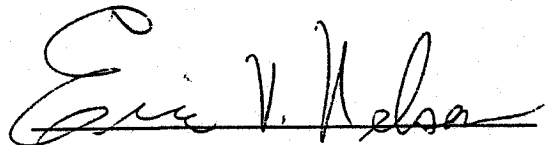
STATE OF NEVADA,)
)
COUNTY OF WASHOE.)

I, ERIC V. NELSON, Certified Shorthand Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify:

That I was present in Department No. 4 of the above-entitled Court and took stenotype notes of the proceedings entitled herein, and thereafter transcribed the same into typewriting as herein appears;

That the foregoing transcript is a full, true and correct transcription of my stenotype notes of said proceedings.

DATED: At Reno, Nevada, this 27th day of August, 1999.

A handwritten signature in cursive script that reads "Eric V. Nelson". The signature is written in dark ink and is positioned above the printed name and CCR number.

ERIC V. NELSON, CCR No. 57

FILED

CODE 3370

AUG 30 1999

AMY HARVEY, CLERK

By: RLT
ADMIN. ASST.

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

STATE OF NEVADA,

Plaintiff,

vs.

Case No. CR98-0516

SIAOSI VANISI,

Dept. No. 4

Defendant.

CORRECTED ORDER

The Court has filed an Order on this date under seal denying Defendant's Counsel's Ex-Parte (Nevada Supreme Court Rule 172) Motion to Withdraw. The Court believes that Counsel for the Defendant may disagree with the Court's findings and conclusions. In order to give Counsel an opportunity to seek a different opinion or become fully prepared to go forward with the defense of the Defendant as ordered by this Court in the sealed order, the Defendant's trial is continued for two weeks.

Preliminary jury selection and questionnaire distribution that was to begin this morning at 10:00 a.m. shall occur Monday, September 13, 1999, at 10:00 a.m. Trial is continued from September 7, 1999, at 10:00 a.m. to September 20, 1999, at 10:00 a.m.

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1 Defense counsel is informed by this Order that the Court expects Counsel to be fully
2 prepared to proceed with the Defendant's defense on the above dates absent a stay in the
3 proceedings from the Nevada Supreme Court.

4 DATED this 30 day of August, 1999.

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6 Connie J. Steinheimer
7 DISTRICT JUDGE
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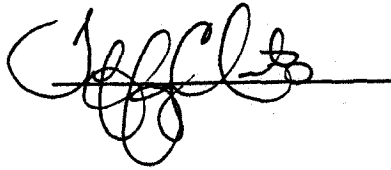
CERTIFICATE OF MAILING

Case No. CR98-0516

Pursuant to NRCp 5 (b), I certify that I am an employee of JUDGE CONNIE
STEINHEIMER, and that on the 30 day of August, 1999, I hand delivered a true
copy of the attached document to the following:

Richard Gammick
David Stanton, Deputy
Washoe County District Attorney

Stephen Gregory
Jeremy Bosler
Deputies Public Defender

A handwritten signature in black ink, appearing to read "Jeff C. Bosler", is written over a horizontal line. The signature is stylized with loops and a long horizontal stroke at the end.

CERTIFICATE OF SERVICE

I certify that I am an employee of the Washoe County Public Defender and that on the 3rd day of September, 1999, I served a copy of the foregoing PETITION FOR WRIT OF CERTIORARI OR MANDAMUS AND EMERGENCY REQUEST FOR STAY OF TRIAL by mailing it by first class mail with sufficient postage prepaid to the following address:

FRANKIE SUE DEL PAPA
Attorney General, State of Nevada
100 No Carson Street
Carson City, NV 89701

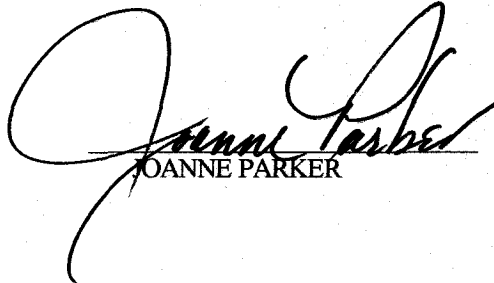
and served a copy by inter-office mail to:

THE HONORABLE CONNIE STEINHEIMER
JUDGE OF THE SECOND JUDICIAL DISTRICT COURT
Department Four

And

RICHARD A. GAMMICK
WASHOE COUNTY DISTRICT ATTORNEY

Dated this 3rd day of September, 1999.


JOANNE PARKER