## IN THE SUPREME COURT OF THE STATE OF NEVADA

Donté Johnson

Petitioner

VS.

The State of Nevada

Respondent

Dist Court case No. 45456

Nev. Sup. C+ case No. 51306

FILED

MAR 2 4 2008

TRACIE K. LINDEMAN
CLERIK OF SUPREME COURT
BY U U U U U U U U U O O O
DEPUTY CLERK

Extraordinary Writ

Petitioner, Donté Johnson appearing prosé, Submits His

request for Extraordinary Relief pursuant to N.R.S. 34. Et. seq.

This request for extraordinary relief is made and based upon the

attached points and authorities, arguments, affidavit of Donté

Johnson (see Exhibit\*4), and all papers and pleadings on files herein

related to case.

A manifest injustice has occurred and Petitioner Currently has no adequate, speedy, or effective remedy available to him. Further, in the interest of insuring public confidence in the justice systems ability to recognize and correct errors of the magnitude expressed and shown herein (relief pursuant NRS.34. Et. seq. is required).

Points And Authorities

NRS 34 ET. Seg., Arizona V. California, 460 U.S. 605, SCR 250 (5) (a), Lepez

V. State, PRECENTER P. 2d 1276, 1287 (1989), Bennett V. Eighth Judicial Dist. Ct.

21 P.3d 605

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(Page 1 of 3)

08-07168

.Introduction: on 12/18/02 this court issued an opinion in case no. 45456 in affirming guilt phase issues. The court opined: "According to Johnson, the District court beld fifty-nine conferences off the record. He claims that this violated SCR 250(5)(a) and his right to meaningful appellate review. Johnson's trial attorney did not object to these off-the-record conferences or try to make them a part of the record. Thus, Johnson did not preserve the issue for appeal, and he fails to show that any plain error occurred." This finding was manifestly wrong, directly affected this courts review of His fairness of proceedings and effectively excused enforcement of SCR 250 (5) (a), all in violation of Petitioners State and Federal constitutional rights to due process and fair appeal. Argument -Petitioner did object to off-the-record conferences (see Exhibit #2 at 1628: 1-10 of transcript). Petitioner was further denied and deprived of his substantial rights by counsel's object failure to maintain the objection in the record to this improper conduct over petitioners repeated insistance that he do so (see Exhibit #1 at 1:7 and Exhibit #3 at 14:20 pages 957 and 395 of transcript). In addition to counsel failing to raise this issue before this court and to support it with the record evidence that was repeatedly pointed out by Petitioner (see Exhibit #4 Affidavit of Donté Johnson). These collective acts of deficient and prejudicial performances by counsel violated Petitioners substantial rights effectively generating no complete record upon which an appeal

(Page 2 of 5)

1. Could be taken on the myraid of evidentiary disputes resolved during these secret rulings and meetings. "Meaningful, effective appellate review depends upon the availability of an accurate record covering lower court proceedings relevant to the issues on appeal. Failure to provide an adequate record on appeal handicaps appellate review and triggers possible Due process violations" see, Lopez V. State, 105 Nev. 68,769 P. 2d 1276, 1287 (1989). It is axiomatic that an incomplete record equally handicups the Petitioner in any post-conviction habeas corpus petition. Petitioner does not have access to his full record. Thus, the fairness of the entire appellate process was skewed substantially affecting the fairness of subsequent district court proceedings in response to the court's 12/18/02 opinion. Petitioner is not currently represented by counsel and asks that counsel be appointed by this court in the interest of justice. The issue that this writ raises directly puts into question this courts prior ruling on appeal. conclusion Accordingly, in the interest of justice, the writ should issue either vacating the prior appeal, or via the court revisiting this issue and enforcing SCR 250 (5) (a) by ordering a new and fair trial-Dated the 20 day of March, 2008. 26 27 Respectfully Submitted, Donte Johnson #66858 Donté Johnson Ely State Prison Donte Johnson P.O. BOX 1989 Ely, Nevada 89301 (Page 3 of 3)

# Donte Johnson (Exhibit ##)

On repeated occasions I asked appointed counsel to keep all proceedings on the record and each time my requests were ignored or brushed off. And when they began to grow tired of my making these request, they would then try to assure me that I would have a complete record. I tried to take preventative measures by requesting that motions be filed for full recordation of all proceedings (see Exhibit "1 at 1:7 page 957 of transcript). Still I was ignored in my request. There were a total of 59 off-the-record conferences that the record can reflect these does not include the countless meetings in Chambers. Again, there is a clear violation to SCR 250 (5) (a) in this case and through the write herein I would like to point this court to my recorded objections.

## Verification

Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing writ and Affidavit. And to the best of his knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

Dated the 20 day of March, 2008.

Respectfully Submitted,

Donté Johnson

Donte Johnson

Donté Johnson #66858

Ely State Prison

P.O. BOX 1989

Ely, Nevada

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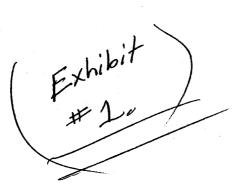
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ponto Johnson

VS

State of Nevada

Maintiff



Dept. No. Spilar CLERK

Memorandum To

The court For requested

Motions to Be filed By Counsels

comes now Defendant, Donte Johnson, through and by himself, with this memorandum to the court, making record of Defendants request to defense attorney's.

Through this Memorandum defendant is requesting that the following motions be filed:

#1. Motion for change of Venue. Reason being. As a result of nature pertainin the amount of media and news coverage in this matter, and the number of person in the Las Vegas area regularly reading, viewing, and hearing the news media in proportion to the area's total population, it appears that virtually every household in Las Vegas, and thus virtually every prospective juror, has been exposed to a constant barrage of inflammatory accounts, detailing in a manner highly prejudicial to defendant every accounts, detailing in a manner highly prejudicial to defendant avery accounts.

1 2. Motion for full recordation of all proceedings. This motion should contain 1 a respectfull request to direct the court reporter to record and transcribe all of the proceedings in all of the phase's, including pre-trial hearings, legal 4 arguments, voir Dire, selection of jury, in chambers, at bench confrances, 5 any discussions regarding jury instructions and all matters during trial. This will insure the rights to full review on appeal and assistance of counsel in post-conviction. \*3. Motion in limine to har improper prosecutional arguments. This motion 1) should as requested contain the court to enter an order in limine 10 prohibiting the state from engaging in improper arguments before the il dury and from violating my constitutional rights in the ways discussed 12 listed below or any way that may prejudice the defendant# hefore the 13 Jury or the court. This should stop undue attention to my counsel by making numerous objections during the opening statement and clasing argument. 15 Defendant also ask that attorney's of record request to the court they be allowed to make formal objections to any misconduct outside the presence of the Jury at every appropriately. The defendant prays that this attorney's of ir record also include relevant law and argument in the following areas to protect his rights under the 65th 8th and 14th amendments A. Misleading the Desse jury as to the law. B. Misstating the law on intent. C. Misstating the law concerning the corrabation of accomplice testimony. D. arguing facts not in evidence.

#4. Motion in limine to preclude state from introducing evidence of any uncharged misconduct. Also to protect the defendant by being notified in advance to prepare for a petrocelli hearing. In addition, to allow the state to inform any and all

Referring to Defendants right to a freedom of any prosecutional misconduct.

witnesse's from ingaging in this misconduct.

#5. Motion and notice for the prosecution to produce Grand dury records to assure
that the Grand Jury was not selected in a discriminatory manner. The defendant prays
the attorney's of record will make this request to the court for the state to produce
the records concerning the gender and racial make-up of the Grand sum duries selected
to sit for the years of 1985-1999 clark county Grand duries. As well as those who
were potential jurors not selected through the same years. The defendant request
this under the equal protection clauses, the due process clauses of the U.S.C.
and the 6th amendment as well.

4 & Motion for disclosure of juvenile records of the states witnesse's. This motion would be beneficial for thousand research and preparation for effective cross
11 examination of the states witnesse's. NRS 62.860 governs the release of those records for this purpose.

13 2007. Motion for disclosure of any possible basis for disqualification of the District

Attorney the defendant would ask the attorney's of record pursuant to the 4th,

15 5th 6th, 8th, and 14th amendments of the U.S.C., article 1 of Nevada's State constitution and the Nevada Supreme court Bules, that a request be made to order the

10 clark county District Attorney to reveal on record any and all possible basis

11 for his recusal or his office. This being a capital case, exact standards are

12 to be met to provide a fair trial and prosecution with due process of the

The Defendant request the attorney's of record pursuant to NRS. 174. 235 Et. section 9, article 1 of the Nevada State Constitution, the 6th, 8th and 14th amendments to the U.S.C. and relevant case law, that the attorney's of record will outline and file this motion in order to be fully prepared, informed, aware and vividly effective on Defendants case arguments and pleadings from expotion to conclusion.

The 9. Motion for list of names and addresse's of persons who may have evidence favorable to the Defendant and for disclosure of all other discovery material. The Attorney's of record should request this order requiring the prosecution to search and furnish documents, files, names, and addresses of persons known to them which may be favorable to the Defendant or present any incosistencies to the prosecution's theory in this case.

10. Respectfully request Motion to filed to have state's witnesses evaluated for prior inconsistant statement's, Drug addiction, and prior felony arrest. This Motion should be filed pursuant to Rule 26.2 discovery request.

11. Respectfully request that a Motion be filed to control prejudicial publicity, this Motion should have been filed so that anyone related to the prosecution would be prohibited from releasing any information in any way, shape, or form concerning this case. Pursuant to the 4th, 5th, bth, and 8th Amendments, "Not to forget article 1 of the Nevada State Constitution along with the 14th Amendment."

12. Request counsel file Motion for disclosure of juvenile records of state's witnesses, which could be beneficial for thorough research and preparation for effective cross-examination of the states witnesses. NRS 62:360 governs the release of those records for this purpose.

13. Defendant request that counsel correct altered voluntary statements. Required pursuant to witnesses) Line (3).

14. Request that counsel provide personant with a copy of "all" transcripts and documented evidence. Personant to NRS. 171. 198 for counsel not to comply with NRS. 171.198 would be at a clear violation to supreme count (Rule 151) professional conduct. Not to forget (Rule 154) it quotes that "A lawyer shall keep a client reasonably informed about status of matter promptly comply with resonable request for information."

(5.) of 5 pages

### Note

These Motions should contain relevant case law so that the Defendant's rights are protected under the U.S.C. and Nevada's State Constitution and laws. These motions will insure a fair trial and total awareness of all possible circumstances and scenarios surrounding the crimes that the Defendant is Charged with.

Prayer and Conclusion

Defendant, Donte Johnson, prays that by expressing his request to the court and his Attorney's of record, that it shall be recognized that his best interests has been filed with the court within this Memorandum. Also, that he request that all of the above listed motions be filed in a timely manner and on his behalf to insure all of his rights are protected under the law so he may recieve a fair and unprejudiced trial with due process of the law.

Respectfully Submitted, Donte Johnson

Donte Johnson

Attorney's

Joseph S. Sciscento

É

Dayvid Figler

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Dated this 11-4-99

-1-FILED

Donte Johnson Defendant

State of Nevada

<u>Plaintiff</u>

FEB 2 10 51 AM '00

EXhibit CLERK

<u>Case NO: C153154</u> <u>Dept. No: V</u>

pocket NO: H

#1

Memorandum To

Comes now defendant, Donte Johnson, by and through this Memo. to B. the Court. Giving rise and making record of defendants request to counsels, or Dayvid Figler and Joseph S. SciScento, to file a motion pursuing the disgoal-ification of the Honorable Jeffrey Soble as trial judge.

Judge Soble is clearly, extremely, prejudice against the defendant, Donte Johnson.

By numerous decisions and unfair comments during different court proceedings; prior court proceeding transcripts would show and prove the unfairness
and of many comments made by Judge Soble. Also the record could reflect the many
unfair decision.

Attached hereto is an article of Judge sobles decision granting the prosecutions motion, in request to make the videotaped deposition of Charla Severs live fastimony MECEIVED

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COUNTY CLERK

es against

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Charla Severs was in custody under a material witness bond. Charla was arrested in Ney York under a material witness warrant, in the case of Torrell Young and "not" Donte Johnson. The state filed a motion to videotape the deposition of Charla Severs. which was granted by Judge Jeffrey Sable. (see exhibit A for saticle). The motion was clearly granted out of the courts fear that Charla Savers live testimony may not be available for trial if she was released from custo-ty. The court took no pains to force the state to prove theat the witness was not going to on could not appear at the trial.

Also attached is an article of Floyd's simular situation. Tracie Rose Carter, 21, was released from custody, simular to Charla Severs, Carter was released with restrictions, such as to call authorities once a week. Carter was released sed in August after pledging to remain in contact with prosecutors in the capital murder case. Later in the time of November, Tracie Rose Carter was again, unable to be found by authorities. After disappearing on two occasions, 15 Carter was again located and taken into custody.

Prior to her release the third time, Prosecutors asked Judge, Jaffrey Solele, for permission to take the videotaped deposition of carter.

In denying the request, sobie soid; "videotoped depositions are properly reserved for more direcircumstances, such as a serious illness that prevents a person from attending a court proceeding." Which I would like to point out for the record, was not the case at all with Charla Severs. (See exhibit B for Floyd's article).

This is merely one of the many prejudice situations that I would like to make record of on the behalf of the defendant, Donte Johnson.

The defendant believes that in an advasary proceeding, the discharge of counsels, Dayvid Figler and Joseph S. Sciscento's duties required that they

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call to the court's attention the possible unconscious resolution of the factual and legal matters by 10 the court, which in defendants opinion has interfered with fundamental due process.

upon bringing this matter to the courts attention, the conduct of Judge, Jeffrey soble, has resolved all doubt in the mind of the defendant as to the possibility of having a fair trial.

The State is seaking the Death Penalty. Since this is to be a capital prosecution exacting Standards must be met to assure that it is Pair. "The Fundamental respect for humanity underlying the 8th Amendment's prohibition against Cruel and unusual punishment gives rise to a special Need Por reliability in the determination that death is the appropriate punishment in any capital case." Johnson Vs. Mississippi, 486 Us. 578, 594 (1988) Genoting Gardner Vs. Florida, 430 U.S. 349, 4363-64 (1977) Cquoting woodson Vs. North Carolina, 428 U.S. 280, 305 (1976) (white, U., concurring))).

Dated :



On the date of 12.13-19 a masting was held between both parawhing Prosecuting attempore, counsel's of the defendant (Dayvid Figler) and Joseph S. Sciscanto) and Jeffrey Soble, in Soblas Chaimbers. This meeting was off the record and out of the presence of the defendant, (Donte Johnson). Although counsel, (Dayvid Figler) assured me that it was only a Small meeting parawhing about a motion, Although I was assured that it was it was a harmless meeting, I would still like to object for the record, to the unrecorded meeting that was held between both District Attorneys, Judge Soble, and the Attorneys of the defendant in this case. Attorneys being ibseph S. Sciscento and Dayvid Figler.

pated: 1 - 22 - 2000

Even the possibility of prejudice on the "part of the Judge....is to high to be constitutionally tolerable." withrow -VS: United States, 255 U.S. 22, 33-34 (1921);

Potashnick -VS: Port City construction Ca, 609 F. 2d 1101, 1111 (5th Cir. 1980) ("Any question of a Judge's impartiality threatens the purity of the Judicial process and its institutions."); Health Services Acquisition corp. VS. Liljeberg, 796 F. 2d 196,800 (5th Cir. 1986); Chimtacha Tribe -VS: Harry L. Laws Co., 690 F. 2d. 1157, 1165 (5th Cir. 1982); King-VS: State, 271 S.E. 2d 630, 634 (Ga. 1980)

Pated: 1-28-2000

\*

Respectfully Submitted,
Donte Johnson
Desendant

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Shirting B. Pragines

Donte Johnson #1586283 330 s. Cabino center 9-C-7 Las Vegas, New 89101

Mar 23 12 01 PH '99

Case No - 4/53154

State of Nevada Donte Johnson

Dept. No: V Docket No: H

Memorandum The Court

Exhibit #3

comes Now, the defendant, Donte Johnson in this above cited case through this memo to the court making a record and giving rise to the district Court to take notice of the Attorney's of Record failure to file the defendants following motions. The motions contained here listed athrum are fundamental motions that defendant Johnson has forwarded to his Attorney's of Record and thus were the center of attention of on 3-13-99 on the above case number. The Defendant now prays that the motions listed and spoke of on record Cwhich counsel has copies of) will now diligently be filed on the Defendants behalf to insure his rights are protected as well as he recieve a fain and unprediced trial with due process of the law.

CERT

1. The Defendant Respectfully request that the Attorney's of record file the following motions to preserve his legal rights.

A. Motion for permission to file other motions. The request is pursuant to the 4th, 5th, 6th, 8th, and 14th Amendment's of the U.S.C. and article 1 of the Nevada constitution. These motions will be needed as issues arise and for new legal precedent is established or made Known.

B. Motion to reveal any identities of informant's and reveal any deals, promise's or inducements. This request should be a full approximation of the revealing of any and all threats or inducements. This motion should also contain the definition of all state organizations as well as county agencies and all entitie's involved. A hearing should also be requested. This motion will insure due process pursuant to the 6th, 8th, and 14 th amendments of the U.S.C.

C. Motion for full recordation of all proceedings. This motion should contain a respectfull request to direct the court reporter to record and transcribe all of the proceedings in all of the phase's, including pre-tria hearings, legal arguments, Voir Dire, selection of jury, in chambers, at bonch confrences, any discussions regarding jury instructions and all matters during trial. This will insure the right's to full review on appeal and assistance of counsel in post -conviction

D. Motion in limine to bar improper prosecutional arguements. This motion should as requested contain the courts to enter an order in limine 2) prohibiting the state from engaging in improper argument before the jury and from violating my constitutional rights in the ways discussed 25 listed below or any way that may prejudice the Defendant before the jury or the court. This should stop undue attention to my counsel by making numerous objections during the opening statement and closing argument.

Defendant also ask that attorney's of record request to the court they be allowed to make formal objections to any misconduct outside the presence of the jury at every opportunity. The Defendant prays that his attorney's of record also include relevant law and argument in the following areas to protect his rights under the 6th sta and 14th amendments. 1. Misleading the jury as to the law. 2. Misstating the law on intent. 3. Misstating the law concerning the corrabation of accomplice testimony. 4. Reducing the state's burden of establishing guilt beyond a reasonable doubt. 5. Inflaming the passions and prejudices of the jury. 6. Victim impact argument. 7. conscience of the community. 8. all inflamatory arguments. 9. Misleading the jury as to responsibility. 10. arguing facts not in evidence. 11. Commenting - expressly or by implication - on the defendants failure to testify and call witnesse's. Passerting prasecutorial expertise. 13. - expressing personal opinions. 14. Orgaing deterrance. 15. General appeals to prejudice. 16. Claims of intimidation. 17. Referring to Defendants Right to a trial free of any prosecutional misconduct.

E. Motion in limine to preclude state from interior introducing evidence of any uncharged misconduct. Also to protect the Defendant by being notified in advance to prepare for a petrocelli hearing. In addittion, to allow the state to inform any and all witnesse's from engaging in this misconduct.

20 E. Motion and notice for the prosecution to produce Grand jury records to assure that the Grand Jury was not selected in a discriminatory manner.

The Robendant prays the attorney's of record will make this request to the court for the state to produce the records concerning the gender and racial make-up of the Grand jurors selected to sit for the years of 1985-1999 Clark county Grand Juries. As well as those who were potential jurars not selected through the same years. The Defendant request this under the equal protection clauses, The due process clauses of the U.S.C.

and the 6th amendment as well.

G. Motion to dismiss states notice of intent to seek Death Penalty because

Nevada's Death Penalty is uncanstitutional. The Defendant prays his attorneys

research Nevada's Death Penalty statutory scheme and realize that it fails

to marginally narrow the categories of persons eligible. Therefore, concluding that

it is unconstitutional. Nevada's Death Penalty Scheme is unconstitutional due

to its lack to areate meaningful distinction between 1st degree and 2nd

degree murder also, the Death Penalty is cruel and unusual punishment and

is prohibited by the 8th amendment of the U.S.C. as well as article 1,

Section 6 of the Nevada State constitution.

H. Notice of assertion of right to be present:

The Defendant gives notice to the afterney's of record to file this notice invoking his right to be present every step of the way of his trial.

Pursuant to the 5th, 6th, 8th and 14th amendments of the U.S.C. and articles

15 I.and 8 of the Nevad State Constitution.

I. Motion to compall state to disclosure of witnesse's. (List) This motion is pursuant to the 4th, 5th, and 6th amendments of the U.S.C. and through the 14th amendment of Nevada's State constitution to disclose all witnesse's for trial and any Known rebuttal.

J. Motion to control prejudical publicity.

The Defendant pray that his attorney's research and produce case law to enter this motion to protect the trial from anymore publicity that may taint or prejudice potential jurors as was done before the Grand Jury indictment.

This motion should be made so that anyone related to the prosecution should be prohibited from releasing any information in any way, shape, or form concerning this case. Pursuant to the 4th 5th, 6th, 8th, and 14th amendments of the U.S.G. and article 1: Of the Nevada State constitution.

K. Motion for disclosure of jovenile records of the state's witnesse's. This motion would be beneficial for memory thourough research and preparation for effective cross-examination of the state's witnesse's. NRS 62.360 governs the release of those records for this purpose.

L. Motion for disclosure of any possible basis for disqualification of the District attorney the Defendant would ask the attorney's of record pursuant to the 4th, 5th, 6th, 8th, and 14th amendments of the U.S.C., article 1 of Nevada's state constitution and the Nevada supreme court Rules, that a request be made to order the clark county District attorney to reveal on record any and all possible basis for his recusal or his office. This being a capital case, exact standards are to be met to provide a fair trial and prosecution with due process of the law.

M. Motion for discovery of institutional records and all files Necessary to a fair trial. The Defendant request the attorney's of record pursuant to NRS. 174.235 Et section 9, article 1 of the Nevada State constitution, the 6th, 8th, and 14th amendments to the U.E.C. and relevant case law, that the attorney's of record will outline and file this motion in order to be fully prepared, informed, aware and Vividly effective on Defendants case arguments and pleadings from expotion to conclusion.

N. Motion for list of name's and addresse's of persons who may have evidence favorable to the Defendant and for disclosure of all other discovery material. The attorney's of record should request this order requiring the prosecution to search and furnish documents, files, names, and addresse's of persons known to them which may be favorable to the Defendant or present any incosistencies to the prosecution's theory in this case.

2 3 4	This motion should contain relevant case law so that the defendant's rights are protected under the U.S.C. and Nevada's state constitution and laws. This motion will insure a fair trial and total awareness of all possible circumstances and scenarios surrounding the crimes that the Defendant is charged with.
3	and laws. This motion will insure a fair trial and total awareness of all possible circumstances and scenarios surrounding the crimes that
4.	all possible circumstances and scenarios surrounding the crimes that
6	The Derendant is Charged with,
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	In conclusion, Defendant, Donte Johnson, prays that by expressing
7	his request to the court and his attorney's of record, that it shall
•	be recognized that his best interests has been filed with the court
	within this memorandum. Also, that he request that all of the above
	listed motions be filed on his behalf to insure all of his rights
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	are protected under the law so he may recieve a fair and
2	unprejudiced trial with due process of the law.
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15	Respectfully Submitted,
K	Donte Johnson
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17.	Donte Johnson
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#### SUPREME COURT OF THE STATE OF NEVADA OFFICE OF THE CLERK

DONTE JOHNSON, Petitioner, VS. THE STATE OF NEVADA, Respondent.

Supreme Court No. 51306

District Court Case No. C153154

#### **RECEIPT FOR DOCUMENTS**

TO: Donte Johnson #66858

Attorney General Catherine Cortez Masto/Carson City

Clark County District Attorney David J. Roger

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

03/24/08

Filing Fee Waived: Criminal.

03/24/08

Filed Proper Person Petition for Writ.

Extraordinary Writ.

DATE: March 24, 2008

Tracie Lindeman, Clerk of Court

**Deputy Clerk**