

IN THE SUPREME COURT OF THE STATE OF NEVADA

ZANE MICHAEL FLOYD,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 51409

FILED

MAR 27 2009

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

ORDER GRANTING MOTIONS

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus in a death penalty case. Appellant's counsel has moved this court to take judicial notice of several documents, including a hearing memorandum from counsel to District Court Judge Jackie Glass (Exhibit 12).¹ Pursuant to NRS 47.130(2), a court may appropriately take judicial notice of facts generally known

¹The other documents of which counsel requests this court to take judicial notice include the opening and reply briefs filed in connection with appellant's appeal from his judgment of conviction, this court's opinion resolving appellant's direct appeal, this court's order denying rehearing of its opinion resolving appellant's direct appeal, appellant's motion for stay of the remittitur pending the filing of a petition for writ of certiorari in the United States Supreme Court, this court's order staying remittitur, appellant's motion to recall remittitur, this court's order recalling remittitur, appellant's opening and reply briefs filed in connection with his appeal from the denial of his first post-conviction petition for a writ of habeas corpus, this court's order affirming the district court's denial of post-conviction relief, and a copy of proposed Findings of Fact and Conclusions of Law relative to the instant petition.

within the jurisdiction or readily verifiable from sources of indisputable accuracy. We are particularly concerned about taking judicial notice of the hearing memorandum because no stamp or other evidence that Judge Glass received the memorandum appears on the document. However, because the document appears to have been prepared in connection with the proceedings that are the subject of this appeal and the State has not opposed appellant's motion to take judicial notice, we grant the motion. If in our review of this appeal we determine that any of the documents were not considered by the district court, we will disregard them. See Carson Ready Mix v. First Nat'l Bk., 97 Nev. 474, 635 P.2d 276 (1981) (recognizing that this court may not consider any matters that occurred after the appeal was filed or that are outside of the district court record on appeal); see also Tabish v. State, 119 Nev. 293, 312 n.53, 72 P.3d 584, 596 n.53 (2003).

Appellant has also moved this court for permission to file an opening brief in excess of the page limitation provided in NRAP 28(g). Cause appearing, the motion is granted. The clerk of this court shall file appellant's opening brief received on March 5, 2009. Respondent shall have 30 days from the date of this order within which to file an answering brief. SCR 250(7)(c); NRAP 31(a).

It is so ORDERED.

1. J. J. J., C.J.

cc: Federal Public Defender/Las Vegas
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger