

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Apr 19 2013 03:42 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

LUIS A, HIDALGO, III.

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO. 54272

MOTION TO RECALL REMITTUR

COMES NOW, Appellant, Luis A. Hidalgo, III, by and through his counsel of record, John L. Arrascada, Esq., of the law firm of Arrascada & Aramini Ltd., and respectfully requests this Court recall the remittitur it issued on April 10, 2013 and reinstate the prior stay pending resolution of Mr. Hidalgo's petition for writ of certiorari in the United States Supreme Court.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Legal Standard

Nevada Rules of Appellate Procedure 41(b) provides as follows:

(b) Stay of Remittitur Pending Application for
Certiorari.

(1) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari. The motion must be served on all parties.

(2) The stay shall not exceed 120 days, unless the period is ended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court

of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States.

(3) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

(4) The court shall issue the remittitur immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.

NEV. R. APP. P. 41(b).

B. Relevant Factual History

On November 13, 2012, this Court entered its Order Denying En Banc Reconsideration. Three (3) days later, on November 16, 2012, Mr. Hidalgo filed a Motion to Stay Remittitur pursuant to Nevada Rule of Appellate Procedure 41. This Court then entered an Order Staying Remittitur on November 30, 2012. In the Order, this Court stayed issuance of the remittitur until April 9, 2013 and noted that the “stay shall continue in effect until final disposition of the certiorari proceedings” if Mr. Hidalgo had filed a petition for writ of certiorari.

On February 11, 2013, Mr. Hidalgo filed his petition for a writ of certiorari with Luis Hidalgo, Jr., in the United States Supreme Court. See Letter from United States Supreme Court’s Office of the Clerk, a true and correct copy of which is attached hereto as Exhibit 1. [Counsel confirmed with the United States

Supreme Court that this letter also applies to Hidalgo, III.] Furthermore, the petition for a writ of certiorari was placed on the United State Supreme Court docket on March 12, 2013 as Docket No. 12-1104 and currently remains pending before the United States Supreme court. *See id.*

C. Legal Argument

As evidenced by the information above, the November 30, 2012 stay should have remained effective because Mr. Hidalgo timely filed a petition for a writ of certiorari in the United States Supreme Court. The petition was filed well before this Court April 9, 2013 deadline and was placed on the Supreme Court's docket on March 12, 2013. The petition currently remains pending and therefore Nevada Rule of Appellate Procedure 41(b)(2) mandates that the stay continue until a final disposition is entered by the United States Supreme Court.

D. Conclusion

Mr. Hidalgo respectfully requests that this Court recall the remittitur and reinstate the prior stay pursuant to Nevada Rule of Appellate Procedure 41(b)(2) pending resolution of Mr. Hidalgo's petition for writ of certiorari in the United States Supreme Court.

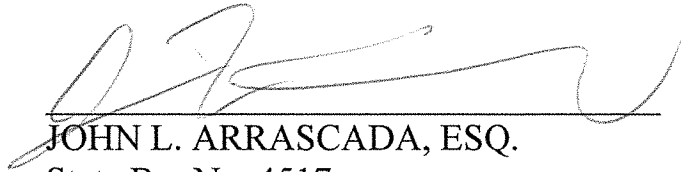
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Dated this 19 day of April, 2013.

ARRASCADA & ARAMINI Ltd.

A handwritten signature in dark ink, appearing to read 'J. Arrascada', is written over a horizontal line.

JOHN L. ARRASCADA, ESQ.

State Bar No. 4517

145 Ryland St.

Reno, Nevada 89501

(775) 329-1118

Attorneys for Appellant

CERTIFICATE OF SERVICE

The undersigned, an employee of Arrascada & Aramini, Ltd., hereby certifies that on the 19 day of April, 2013, he served a copy of the Motion to Recall Remittitur, by Electronic Service, in accordance with the Master Service List as follows:

Steven S. Owens
Chief Deputy District Attorney
Nancy A. Becker
Chief Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155


John L. Arrascada, Esq.
ARRASCADA & ARAMINI, LTD.

EXHIBIT “1”

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

William K. Suter
Clerk of the Court
(202) 479-3011

March 12, 2013

Mr. Dominic P. Gentile
3960 Howard Hughes Parkway
9th Floor
Las Vegas, NV 89169

Re: Luis Hidalgo, Jr., aka Luis A. Hidalgo
v. Nevada
No. 12-1104

Dear Mr. Gentile:

The petition for a writ of certiorari in the above entitled case was filed on February 11, 2013 and placed on the docket March 12, 2013 as No. 12-1104.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,

William K. Suter, Clerk

by 

Clayton Higgins
Case Analyst

Enclosures

Supreme Court of the United States

Luis Hidalgo, Jr., aka Luis A. Hidalgo
(Petitioner)

v.

No. 12-1104

Nevada
(Respondent)

To _____ Counsel for Respondent:

NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on February 11, 2013, and placed on the docket March 12, 2013. Pursuant to Rule 15.3, the due date for a brief in opposition is Thursday, April 11, 2013. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Mr. Dominic P. Gentile
3960 Howard Hughes Parkway
9th Floor
Las Vegas, NV 89169
(702) 796-5555

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

W A I V E R

Supreme Court of the United States

No. 12-1104

Luis Hidalgo, Jr., aka Luis A. Hidalgo
(Petitioner)

v.

Nevada
(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check one of the following boxes:

- ☐ Please enter my appearance as Counsel of Record for all respondents.
- ☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

I certify that I am a member of the Bar of the Supreme Court of the United States (Please explain name change since bar admission):

Signature _____

Date: _____

(Type or print) Name _____
☐ Mr. ☐ Ms. ☐ Mrs. ☐ Miss

Firm _____

Address _____

City & State _____ Zip _____

Phone _____

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF *PRO SE*. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc:

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at <http://www.supremecourtus.gov>. Have the Supreme Court docket number available.