

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

NORMAN KEITH FLOWERS, )  
Appellant, )  
v. )  
THE STATE OF NEVADA, )  
Respondent. )

---

Electronically Filed  
Apr 25 2018 03:05 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No. 53153  
55759

**STATE'S OPPOSITION TO FLOWER'S MOTION  
TO REINSTATE APPEALS 53159 AND 55759**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Deputy, CHARLES THOMAN, and files this Opposition to Flower's Motion to Reinstate Appeals 53159 and 55759. This opposition is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

Dated this 25<sup>th</sup> day of April, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Charles Thoman*

---

CHARLES THOMAN  
Deputy District Attorney  
Nevada Bar #012649  
Office of the Clark County District Attorney

## STATEMENT OF THE CASE

### **1. Case 06C228755: the Murder and Sexual Assault of Sheila Quarles**

On December 13, 2006, Norman Keith Flowers was charged by way of Indictment of committing the following crimes against Sheila Quarles: Count 1 - BURGLARY; Count 2 - MURDER; Count 3 - SEXUAL ASSAULT; and Count 4 - ROBBERY. Appellant's Appendix, Vol. 1 (NSC Case No. 55759) ("1 AA (NSC 55759)" at 1-7.

On January 11, 2007, the State filed a Notice of Intent to Seek Death Penalty in case 05C216032. (1 AA 30-34).

The jury trial began on October 15, 2008. 3 AA (NSC 55759) at 654. On October 22, 2008, the jury found Flowers guilty of Burglary, Murder and Sexual Assault. 3 AA (NSC 55759) at 657. The jury found the Flowers not guilty of Robbery. Id. Per the Special Verdict form, Flowers was found guilty of Felony-Murder. 3 AA (NSC 55759) at 183. On October 23, 2008, the penalty hearing began for the first degree murder conviction. 3 AA (NSC 55759) at AA 658. The jury found several mitigating circumstances for the Flowers. 3 AA (NSC 55759) at 184-85. On October 24, 2008, the jury returned a verdict of LIFE in the Nevada State Prison Without the Possibility of Parole. 3 AA (NSC 55759) at 659.

On October 30, 2008, Flowers filed a Motion for a New Trial. I AA 10-14; 1 AA (NSC 55759) at 187-190. The State filed an Opposition on November 10, 2008.

1 AA (NSC 55759) at 236-247. On November 12, 2008, the District Court denied Flowers' Motion. Id. at 248-249; I AA 58-59.

On January 13, 2009, Flowers was sentenced to the Nevada Department of Corrections as follows: Count 1- to a maximum of one hundred twenty (120) months with a minimum parole eligibility of forty-eight (48) months; Count 2- LIFE Without the Possibility of Parole, to run consecutive to Count 1; and Count 3- LIFE Without the Possibility of Parole with a minimum parole eligibility of one hundred twenty (120) months to run consecutive to Count 2. 3 AA (NSC 55759) at 661. Defendant received seven hundred sixty one (761) days credit for time served. 2 AA (NSC 55759) at 250-51. A Judgment of Conviction was filed on January 16, 2009. I AA 60-61. An Amended Judgment of Conviction was filed on February 12, 2009. I AA 64-65.

On December 21, 2009, Defendant filed an Opening Brief in NSC No. 53159. I AA 68-118. The State filed an Answering Brief on February 19, 2010. I AA 119-164. Flowers filed a Reply Brief on May 3, 2010. I AA 181-201.

On March 4, 2010, Flowers filed a second Motion for New Trial. I AA 165-68. The State filed an Opposition on March 9, 2010. 4 AA (NSC 55759) at 667-78. On March 17, 2010, the District Court denied Flowers' motion. I AA 169-73, 179-80. Flowers filed a Notice of Appeal on April 1, 2010, from the denial of his Motion (NSC No. 55759). I AA 174-75.

On April 19, 2010, Flowers filed a Motion to Consolidate Appeals for Decision and Use of the Appendix. This Court granted his Motion on May 21, 2010, and consolidated the two appeals. I AA 202. Flowers filed an Opening Brief on the consolidated cases on May 27, 2010, with the only claim being that the District Court erred in denying his Motion for a New Trial. I AA 203-14. The State filed an Answering Brief on July 1, 2010. I AA 215-33. Flowers filed a Reply Brief on August 2, 2010. I AA 234-42.

Pursuant to negotiations leading to a Guilty Plea Agreement in District Court Case No. 05C216032, Flowers filed a Motion to Voluntarily Dismiss Appeals on June 13, 2011. II AA 272-84. This Court granted Flowers' Motion and filed an Order Dismissing Appeals on September 28, 2011. II AA 287-88.

Flowers filed his first, procedurally barred, Petition for Writ of Habeas Corpus (Post-Conviction) on October 9, 2012, to which the State responded on October 30, 2012; Flowers filed his Opposition to the State's Response on November 14, 2012.<sup>1</sup> See II AA 301-16. Flowers then filed, through counsel, a "Supplemental Opposition to State's Response and motion to Dismiss Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)."<sup>2</sup> The State filed a Renewed Response to Flowers'

---

<sup>1</sup> Flowers has omitted the State's response to his First Petition and his Opposition to the State's Response in his Appendix.

<sup>2</sup> Again, Flowers has omitted this pleading from his Appendix.

Petition on March 5, 2015.<sup>3</sup> On March 20, 2013, the District Court ordered Supplemental Briefing on Flowers' Petition. Flowers filed his Supplemental Petition for Writ of Habeas Corpus on July 7, 2014. II AA 318-52. The State filed its Response on August 25, 2014. II AA 354-74. Flowers filed a Reply on November 10, 2014. II AA 376-94. On April 29, 2015, the District Court denied Flowers' Petition and Supplemental Petition for Writ of Habeas Corpus on the merits, and filed its Findings of Fact, Conclusions of Law, and Order on May 28, 2015. II AA 397-405. Flowers filed a Notice of Appeal on June 3, 2015, and on April 19, 2016, the Nevada Supreme Court affirmed the District Court's denial of Flowers' Petition and Supplemental Petition. Flowers v. State, Docket No. 68140 (Order of Affirmance, March 16, 2016). Remittitur issued on April 19, 2016.

**2. Case 05C216032: The Murders and Sexual Assaults of Marilee Coote and Rena Gonzalez**

On October 14, 2005, Flowers was charged by way of Indictment as follows:  
COUNT 1 - Burglary; COUNT 2 - Murder; COUNT 3 - Sexual Assault; COUNT 4 - Burglary While In Possession Of A Deadly Weapon; COUNT 5 - Murder With Use Of A Deadly Weapon; COUNT 6 - Robbery; COUNT 7 - Sexual Assault With Use Of A Deadly Weapon; COUNT 8 - Unlawful Sexual Penetration Of A Dead Human Body - COUNT 9: Robbery With Use Of A Deadly Weapon. Appellant's

---

<sup>3</sup> See supra n.3.

Appendix, NSC 59250, Vol. 2 (“2 AA (NSC 59250)”) at 123. The State filed a Notice of Intent to Seek the Death Penalty on November 8, 2005. 3 AA (NSC 59250) at 10-14.

On June 10, 2011, pursuant to negotiations, Flowers entered a plea of by way of Alford v. North Carolina to an Amended Indictment, which charged Flowers with two counts of murder. II AA 243-49, 250-51; Appellant’s Appendix, NSC 59250, Vol. 2 (“3 AA (NSC 59250)”) at 61-62. Flowers additionally agreed to withdraw his appeals in Case Nos. 53159 and 55759. 4 AA (NSC 59250) at 19. The District Court sentenced Flowers as follows: as to Count 1 - to LIFE without the possibility of parole; as to Count 2 - to LIFE with the possibility of Parole with a minimum parole eligibility of twenty-five (25) years, to run concurrent with Count 1; and the sentence to run to consecutive to Flowers’ instant 2008 murder conviction in District Case No. 06C228755 5 AA (NSC 59250) at 30-31.

On June 28, 2011, Flowers filed a pro per Motion to Dismiss Counsel and Motion to Withdraw Guilty Plea. 3 AA (NSC 59250) at 74-90. On July 10, 2011, the State filed an Opposition to Defendant’s Motion to Withdraw Guilty Plea. 4 AA (NSC 59250) at 1. An Evidentiary Hearing on Defendant’s Motion to Withdraw Plea was held on July 27, 2011. Id.; II AA 407-08. The court denied the Motion. 4 AA (NSC 59250) at 91. On August 23, 2011, the court filed its Findings of Fact,

Conclusions of Law and Order Denying Appellant's Motion to Withdraw Plea. 5 AA (NSC 59250) at 1.

On August 23, 2011, Flowers filed a Motion to Reconsider Motion to Withdraw Plea. Id. at 10-19. The State filed an Opposition to Defendant's Motion for Reconsideration on August 25, 2011. Id. at 20-29. On October 25, 2011, the court denied Defendant's Motion. Id. at 41-42. The court filed a Judgment of Conviction on September 20, 2011. 4 AA (NSC 59250) at 30.

After several pleadings and briefs, this Court reversed and remanded Flowers' conviction for the District Court to hold an evidentiary hearing on the sole issue of whether or not there had been a Cripps<sup>4</sup> violation at Flowers' entry of plea in District Court, wherein the judge had made certain comments that "*may* reasonably be viewed as having been a material factor affecting Flowers' decision to plead guilty." Flowers v. State, Docket No. 70933 (Order of Reversal and Remand, July 12, 2017) at 4-5 (emphasis added); II AA at 477-78.

Pursuant to this Order, the District Court held an evidentiary hearing on March 19, 2018, and found that there had been a Cripps violation at Flowers' entry of plea, and granted Flowers' Motion to Withdraw Plea. III AA 479, 480-501. The State noted its intent to re-file the original charges and to file an Amended Notice of Intent

---

<sup>4</sup> Cripps v. State, 122 Nev. 764, 137 P.3d 1187 (2006).

to Seek the Death Penalty. Id. at 500. The State filed its Second Amended notice of Intent to Seek Death Penalty on April 2, 2018. At the status check for trial setting on April 11, 2018, the parties reset the trial, and Calendar Call is currently set for April 9, 2020.

Flowers filed the instant Motion to Reinstate Appeals on April 18, 2018. The State responds herein.

### **ARGUMENT**

#### **FLOWERS IS NOT ENTITLED TO REINSTATE HIS APPEAL AS HE WAIVED THAT RIGHT BY FILING HIS MOTION TO VOLUNTARILY DISMISS APPEALS.**

In his instant Motion, Flowers moves to reinstate two appeals; however, he fails to cite to any legal authority whatsoever that would support this Court reinstating two appeals it already dismissed in September 2011 – almost seven years ago. See generally Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (“It is appellant’s responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court.”)

Flowers’ claim is without merit, as he waived his right to reinstate his appeals when he moved to dismiss them. Nevada Rule of Appellate Procedure (NRAP) 4(b)(6) reads:

If an appellant no longer desires to pursue an appeal after the notice of appeal is filed, counsel for appellant shall file with the clerk of the Supreme Court a notice of withdrawal of appeal. The notice of withdrawal of appeal shall



*substantially comply with Form 8 in the Appendix of Forms.*

(Emphasis added). Form 8, with which the defendant must substantially comply, requires a Notice of Withdrawal to be filed, in which defense counsel must:

Explain[] and inform[] [Appellant] of the legal effects and consequences of this voluntary withdrawal of this appeal, ***including that [Appellant] cannot hereafter seek to reinstate this appeal and that any issues that were or could have been brought in this appeal are forever waived.*** Having been so informed, [Appellant] hereby consents to a voluntary dismissal of the above-mentioned appeal

(Emphasis added).

Here, the record demonstrates that defense counsel, on June 9, 2011, – the day before Flowers took the plea deal – “discussed the consequences of waiving his appeals should he plead guilty and the consequences of dismissing the consolidated appeals in the instant matter.” II AA 273. Trial counsel also wrote Flowers a “letter setting forth the issues involved with dismissing the appeal.” *Id.* As such, the record demonstrates that Flowers was informed that he would not be able to reinstate the consolidated appeals if he entered into a Guilty Plea Agreement. By filing his Motion to Withdraw Appeals, Flowers thus advised this Court that he understood the legal ramifications of dismissing the appeals, including that he could not later seek to reinstate said appeals – as he is nonetheless trying to do in the instant Motion.

Moreover, this Court has determined that “a knowing and voluntary waiver of the right to appeal made pursuant to a plea bargain is valid and enforceable.”

Cruzado v. State, 110 Nev. 745, 747, 879 P.2d 1195, 1195 (1994). While a defendant may not waive his rights to post-conviction remedies as part of a plea bargain, “a defendant *can* waive his right to maintain a pending appeal from a previous conviction.” Blalark v. State, 112 Nev. 795, 796-97, 918 P.2d 1314, 1315 (1996); see also Hood v. State, 111 Nev. 335, 890 P.2d 797 (1995); Atlas Sanitation Co. v. State, 595 A.2d 380, 380-81 (Del. 1991) (denying defendant’s request to reinstate appeals from first conviction due to his not receiving benefit of the guilty plea agreement in a subsequent case and finding that there was no procedural or jurisdictional basis for reinstating the appeals). This was the situation in Flowers’ case: he was convicted following a jury trial for the rape and murder of Sheila Quarles in the instant case, and pursuant to his plea deal in case 05C216032, he subsequently dismissed the two appeals at issue here, NSC Nos. 53159 and 55759.

Finally, reinstating the appeals at this point would greatly prejudice the State, as over nine years have passed since Flowers’ Judgment of Conviction was filed, and as extensive habeas litigation has taken place. The District Court denied Flowers’ postconviction Petition for Writ of Habeas Corpus on the merits, and the Nevada Supreme Court affirmed that denial on March 16, 2016, finding Flowers’ Petition procedurally barred, as it was filed over one year after the Supreme Court’s Order dismissing Flowers’ Appeals, but also affirming the District Court’s findings on the merits. Flowers v. State, Docket No. 68140 (Order of Affirmance, March 16,

2016). Should Flowers' dismissed appeals be reinstated at this late time, post-conviction litigation could restart anew after Remittitur issued, and issues already adjudicated on the merits and deemed final by the State would likely need to be readdressed.

Accordingly, since Flowers voluntarily waived his right to reinstate his appeals, considering this Court's precedent and the Nevada Rules of Appellate Procedure, and given the prejudice the State would suffer should these appeals be reinstated, the State respectfully requests that this Court deny Flowers' motion.

### **CONCLUSION**

WHEREFORE, based on the foregoing, the State respectfully requests that Flowers' Motion to Reinstate Appeals be DENIED.

Dated this 25<sup>th</sup> day of April, 2018.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY */s/ Charles Thoman*

---

CHARLES THOMAN  
Deputy District Attorney  
Nevada Bar #012649  
Office of the Clark County District Attorney  
Regional Justice Center  
200 Lewis Avenue  
Post Office Box 552212  
Las Vegas, Nevada 89155  
(702) 671-2500

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on April 25, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

C. B. KIRSCHNER  
Assistant Federal Public Defender

CHARLES THOMAN  
Deputy District Attorney

BY /s/ E.Davis  
Employee, District Attorney's Office

CT/Melanie Marland/ed