

56

FILED

APR 02 2010

No. C-93713

Dept. No. 18

Tracie K. Lindeman
CLERK OF COURT

Electronically Filed
Apr 06 2010 03:25 p.m.

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

KEVIN BROOKS

Petitioner/Plaintiff,

v.

E.K. McDANIELS

Respondent/Defendant.

NOTICE OF APPEAL

Notice is hereby given that KEVIN BROOKS, Petitioner/Defendant above named,
hereby appeals to the Supreme Court of Nevada from the final judgment/order
(DENYING PETITION FOR WRIT OF HABEAS CORPUS.)
entered in this action on the 10th day of MARCH, 2000.

Dated this 30 day of MARCH, 2000.

Kevin Brooks

Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED

APR -2 2010

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I, KEVIN BROOKS, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 30 day of MARCH, 2000, I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

CLARK COUNTY DIST. COURT.
200 Lewis AVE 3rd Floor
Las Vegas, NV. 89155-1160

Signature

Kevin Brooks

Print Name

KEVIN BROOKS

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301-1989

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

NOTICE OF APPEAL
(Title of Document)

filed in District Court Case No. C-93713

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

Kevin Brooks
(Signature)

3-30-2010
(Date)

FILED

APR 06 2010

Alan J. Johnson
CLERK OF COURT

1 ASTA

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,

8 Plaintiff(s),

9 vs.

10 KEVIN BROOKS,

11 Defendant(s),
12

) Case No: C93713

) Dept No: XVIII
)
)
)
)
)
)
)
)
)
)

13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): KEVIN BROOKS

16 2. Judge: DAVID BARKER

17 3. Appellant(s): KEVIN BROOKS

18 Counsel:

19 Kevin Brooks #33384
20 P.O. Box 1989
21 Ely, NV 89301

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

1 8. Appellant Granted Leave to Proceed in Forma Pauperis: Yes

2 9. Date Commenced in District Court: March 28, 1990

3 10. Brief Description of the Nature of the Action: Criminal

4 Type of Judgment or Order Being Appealed: Post-Conviction Relief

5 11. Previous Appeal: Yes

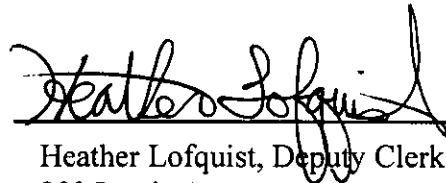
6 Supreme Court Docket Number(s): 21722, 22285, 26131, 34575, 40941, 43621, 46807,
7 48343, 48747

8 12. Child Custody or Visitation: N/A

9
10 Dated This 6 day of April 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Lofquist, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
20
21
22
23
24
25
26
27
28

DATE: 04/06/10
CASE NO. 90-C-093713-C

I N D E X

TIME 10:38 AM
JUDGE: Barker, David

STATE OF NEVADA

[] vs Burney, Fred W

[E]

0001 D1 Fred W Burney

Pro Se

0003 D Kevin Brooks

Pro Se

P O Box 1989

Ely, NV 89301-1989

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	03/28/90	ARRN/INITIAL ARRAIGNMENT		AL		04/03/90	
0005	05/22/90	SENT/SENTENCING		0001	GR	05/25/90	
0007	12/11/90	PET /PROPER PERSON MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD		0003		12/24/90	
0008	12/11/90	AFFT/AFFIDAVIT		0003			
0009	12/19/90	NOTC/NOTICE OF TRANSCRIPTS		AL			
0010	01/08/91	ORDR/ORDER DENYING MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD		0003		01/08/91	
0011	01/11/91	PET /PROPER PERSON MOTION TO ACT AS HIS OWN COUNSEL		0003		01/29/91	
0012	01/22/91	CASO/CASE (RE)ACTIVATED ON					
0013	02/07/91	PET /PROPER PERSON MOTION TO PROCEED IN FORMA PAUPERIS		0003	DF	03/04/91	
0014	02/07/91	PET /PROPER PERSON MOTION FOR POST CONVICTION RELIEF		0003	DN	03/04/91	
0015	04/05/90	INFO/AMENDED INFORMATION		0003		04/05/90	
0016	12/26/90	PET /PROPER PERSON MOTION FOR SUBSTITUTION AND REMOVAL OF ATTORNEY OF RECORD			DN	12/26/90	
0018	03/06/91	MOT /MOTION TO WITHDRAW AS COUNSEL AND ALLOW DEFENDANT TO PROCEED IN FORMA PAUPERIS		0001		03/18/91	
0019	03/06/91	AFFD/AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS		0001			
0020	03/06/91	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS					
0021	03/06/91	MEMO/MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE JUDICIAL NOTICE FOR WITHDRAWAL OF ATTORNEY OF RECORD					Y
0022	03/06/91	MOT /ALL PENDING MOTIONS (3-4-91)		0003		03/04/91	
0023	03/13/91	ORDR/ORDER DISMISSING MOTION FOR POST-CONVICTION RELIEF ETC		AL		03/12/91	
0024	03/14/91	RSPN/RESPONSE TO MOTION TO WITHDRAW AS COUNSEL AND TO ALLOW DEFENDANT TO PROCEED IN FORMA PAUPERIS, AND MOTION TO WITHDRAW PLEA		S			Y
0025	03/18/91	MOT /ALL PENDING MOTIONS (3/18/91)				03/18/91	
0026	03/22/91	ORDR/ORDER re WITHDRAWAL OF ATTORNEY AND PLEA		0001		03/22/91	
0027	03/29/91	MOT /PRO PER MOTION TO PROCEED IN FORMA PAUPERIS (DEPT VIII)		0003	DN	04/10/91	
0028	03/28/91	NOTC/NOTICE OF APPEAL		0001			
0029	04/12/91	ORDR/ORDER re MOTION TO PROCEED IN FORMA PAUPERIS		0001		04/11/91	
0030	04/17/91	PET /PROPER PERSON PETITION FOR POST CONVICTION RELIEF		0001	DN	05/20/91	
0031	04/18/91	PET /PROPER PERSON MOTION TO PROCEED IN FORMA PAUPERIS		0001	DN	05/20/91	

(Continued to page 2)

90-C-093713-C		(Continuation	Page	2)
NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC SCH/PER C
0032	04/17/91	MEMO/MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF POST CONVICTION RELIEF	0001 0001	
0034	05/09/91	MOT /ALL PENDING MOTIONS (05-8-91)	0001	05/20/91
0035	05/10/91	PET /PROPER PERSON MOTION TO APPOINT COUNSEL	0001	DN 05/20/91
0036	05/09/91	ANSW/ANSWER IN OPPOSITION TO PETITION FOR POST-CONVICTION RELIEF	S S	
0037	05/21/91	MOT /ALL PENDING MOTIONS 5/20/91	0001	DN 05/20/91
0038	10/17/91	PET /PETITION FOR POST CONVICTION RELIEF LTR 10-15-91	0003 0003	12/16/91
0039	10/18/91	MOT /PRO PER MOTION FOR SUBSTITUTION OF COUNSEL OF RECORD	0003 0003	GR 11/13/91
0040	10/18/91	MOT /PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0003 0003	GR 11/13/91
0041	10/18/91	PET /PRO PER MOTION FOR TRANSFER OF RECORDS	0003	GR 11/13/91
0042	10/18/91	PET /PRO PER MOTION FOR ORDER TO STAY PENDING POST CONVICTION RELIEF	0003 0003	DN 10/28/91
0043	10/22/91	ORDR/ORDER FINDINGS OF FACT AND CONCLUSIONS OF LAW	0001 0001	10/22/91
0044	10/24/91	NOTC/NOTICE OF ENTRY OF ORDER	0001	10/24/91
0045	10/25/91	ANSW/STATES ANSWER IN OPPOSITION TO DEFENDANTS PETITION FOR POST CONVICTION RELIEF AND MOTION TO STAY POST CONVICTION RELIEF	S S	10/25/91
0046	10/29/91	MOT /ALL PENDING MOTIONS 10/28/91	0003	10/28/91
0047	10/25/91	JUDG/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - REVERSED AND REMANDED	0003 0003	09/30/91
0048	11/14/91	MOT /ALL PENDING MOTIONS 11/13/91	0003	11/13/91
0049	11/14/91	OCAL/FURTHER PROCEEDINGS	0003	12/11/91
0050	12/13/91	MOT /ALL PENDING MOTIONS 12/16/91	0003	12/16/91
0051	12/18/91	HEAR/HEARING: PETITION FOR POST CONVICTION HEARING	0003 0003	03/09/92
0052	01/31/92	JUDG/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED OR REVERSED	0003 0003	12/20/91
0053	03/04/92	PET /PRO PER EX PARTE MOTION FOR ENLARGEMENT OF TIME	0003 0003	03/09/92
0054	03/09/92	MOT /ALL PENDING MOTIONS 3/9/92	0003	03/09/92
0055	03/09/92	HEAR/HEARING JUDGE'S DECISION	0003	DN 03/16/92
0056	11/10/93	CASO/CASE (RE)ACTIVATED ON		
0057	11/10/93	ASSG/REASSIGNMENT OF JUDGE CHRISTENSEN TO JUDGE MAUPIN		
0058	11/10/93	PET /PROPER PERSON MOTION FOR PRODUCTION OF TRANSCRIPTS	0003 0003	OC 11/22/93
0059	12/03/93	PET /PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0003 0003	GR 12/20/93
0060	12/03/93	AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS		12/20/93
0061	12/03/93	CRTF/FINANCIAL CERTIFICATE		12/20/93
0062	12/03/93	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND SUPPORTING DECLARATION		12/20/93
0063	06/29/94	HEAR/AT REQUEST OF DEFENDANT	0003	GR 07/08/94
0064	07/21/94	ORDR/ORDER	0003	
0065	08/12/94	NOAS/DESIGNATION OF RECORD ON APPEAL	0003	
0066	08/12/94	NOTC/NOTICE OF APPEAL	0003	AP

(Continued to page 3)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0067	12/01/94	NSCO/NEVADA SUPREME COURT JUDGMENT / ORDERED	0003	GR	12/01/94		
		APPEAL DISMISSED	0003				
0068	03/30/90	INFO/INFORMATION	AL		03/30/90		
0071	04/09/99	MEMO/SUPPLEMENTAL MEMORANDUM	0003				
0072	04/09/99	AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO	0003				
		PROCEED IN FORMA PAUPERIS	0003				
0073	04/09/99	CRTF/FINANCIAL CERTIFICATE	0003				
0074	04/20/99	CASO/CASE (RE)ACTIVATED ON					
0075	04/20/99	ASSG/REASSIGNMENT OF JUDGE Maupin TO JUDGE					
		Pavlikowski					
0076	04/09/99	PET /DEFT'S PRO PER PETITION FOR WRIT OF	0003	DN	06/22/99		
		HABEAS CORPUS	0003				
0077	04/09/99	MOT /DEFT'S PRO PER MOTION FOR LEAVE TO	0003	GR	06/22/99		
		PROCEED IN FORMA PAUPERIS	0003				
0078	04/20/99	ORDR/ORDER	0003		06/22/99		
0079	05/24/99	RSPN/STATES RESPONSE TO DEFENDANT KEVIN	0003				Y
		BROOKS PETITION FOR WRIT OF HABEAS	0003				
		CORPUS POST CONVICTION					
0080	06/15/99	MOT /DEFT'S PRO PER MOTION FOR EXTENSION OF	0003	DN	06/22/99		
		TIME	0003				
0081	06/15/99	MOT /DEFT'S PRO PER MOTION FOR CLARIFICATION	0003	DN	06/22/99		
0082	06/25/99	MOT /ALL PENDING MOTIONS 6/22/99	0003		06/22/99		
0083	07/19/99	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW	0003		07/19/99		
		AND ORDER	0003				
0084	07/21/99	NOTC/NOTICE OF ENTRY OF ORDER	0003		07/21/99		
0085	07/23/99	NOAS/NOTICE OF APPEAL	0003	AP			
0086	07/23/99	NOAS/DESIGNATION OF RECORD ON APPEAL	0003				
0087	07/23/99	STAT/CASE APPEAL STATEMENT	0003				
0088	09/23/99	ASSG/Reassign Case From Judge Pavlikowski TO					
		Judge Gibbons					
0089	12/07/99	PET /PETITION FOR WRIT OF HABEAS CORPUS	0003				
0090	12/07/99	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA	0003				
		PAUPERIS	0003				
0091	12/07/99	CRTF/FINANCIAL CERTIFICATE	0003				
0092	12/07/99	AFFD/AFFIDAVIT IN SUPPORT OF MOTION TO	0003				
		PROCEED IN FORMA PAUPERIS	0003				
0093	12/07/99	MEMO/SUPPLEMENTAL MEMORANDUM	0003				
0094	12/07/99	ORDR/ORDER TRANSFERRING HABEAS PETITION TO	0003				
		COURT OF CONVICTION	0003				
0095	12/07/99	PET /DEFT'S PRO PER PETITION FOR WRIT OF	0003	DN	02/08/00		
		HABEAS CORPUS	0003				
0096	12/07/99	MOT /DEFT'S PRO PER MTN FOR LEAVE TO PROCEED	0003	GR	02/08/00		
		IN FORMA PAUPERIS	0003				
0097	12/08/99	ORDR/ORDER RE PETITION FOR WRIT OF HABEAS	0003	HG	02/08/00		
		CORPUS	0003				
0098	01/14/00	OPPS/STATES OPPOSITION TO DEFENDANTS WRIT OF	0003				
		HABEAS CORPUS POST CONVICTION	0003				
0099	04/03/90	INFO/AMENDED INFORMATION	0001		04/03/90		
0100	04/04/90	REQT/MOTION AND NOTICE OF MOTION TO AMEND	0003		04/05/90		
		INFORMATION	0003				
0101	04/05/90	ORDR/ORDER TO AMEND INFORMATION	0003		04/05/90		
0102	04/13/90	ORDR/ORDER FOR TRANSCRIPT	0001		04/12/90		

(Continued to page 4)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0103	05/29/90	REQT/MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT	0003		06/12/90	
0104	05/29/99	NOTC/NOTICE OF MOTION	0003		06/12/90	
0105	05/30/90	ROC /RECEIPT OF COPY	0003			
0106	06/25/90	JUDG/JUDGMENT OF CONVICTION - PLEA	0001		06/25/90	
0107	06/28/90	ORDR/ORDER FOR PRODUCTION OF INMATE	0003		06/28/90	
0108	07/03/90	LIST/JURY LIST	0003			
0109	07/09/90	INST/INSTRUCTIONS TO THE JURY	0003			
0110	07/09/90	VER /VERDICT - COUNT I	0003		07/09/90	
0111	07/09/90	VER /VERDICT - COUNT II	0003		07/09/90	
0112	08/03/90	REQT/MOTION AND NOTICE OF MOTION TO AMEND INFORMATION	0003		08/15/90	
0113	08/03/90	MEMO/MEMORANDUM AND EXHIBITS IN SUPPORT OF HABITUAL CRIMINAL SENTENCE	0003			
0114	08/07/90	SUPP/SUPPLEMENTAL EXHIBITS NO. 9 AND 10 IN SUPPORT OF HABITUAL CRIMINAL SENTENCE	0001			
0115	08/15/90	INFO/SECOND AMENDED INFORMATION	0003		08/15/90	
0116	09/12/90	OPPS/DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND INFORMATION	0003			
0117	09/13/90	ROC /RECEIPT OF COPY	0003			
0118	10/03/90	NOAS/NOTICE OF APPEAL	0003			
0119	10/03/90	ROC /RECEIPT OF COPY	0003			
0120	10/03/90	NOTC/NOTICE OF MOTION	0003		10/15/90	
0121	10/03/90	REQT/MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR DEFENDANT	0003		10/15/90	
0122	10/03/90	ROC /RECEIPT OF COPY	0003			
0123	10/05/90	JUDG/JUDGMENT OF CONVICTION JURY TRIAL	0003		10/05/90	
0124	10/18/90	ORDR/ORDER FOR TRANSCRIPT	0003		10/17/90	
0125	10/29/90	ORDR/ORDER	0003		10/24/90	
0126	10/22/90	NOAS/DESIGNATION OF CONTENTS OF RECORD ON APPEAL	0003			
0127	10/24/90	ORDR/ORDER	0003		10/23/90	
0128	10/24/90	ORDR/ORDER	0003		10/23/90	
0129	10/24/90	EXPT/EX PARTE MOTION TO EXTEND TIME TO SUBMIT RECORD ON APPEAL	0003			
0130	11/09/90	SUBT/DEFENDANTS CONSTITUTIONAL RIGHT TO ACT AS HIS OWN COUNSEL	0003			
0131	05/10/91	REQT/REQUEST FOR SUBMISSION	0001			
0132	05/10/91	NOTC/NOTICE OF MOTION	0001		05/15/91	
0133	04/17/91	AFFD/AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS	0001			
0134	01/31/00	RSPN/PETITIONERS RESPONSE TO STATES OPPOSITION TO PETITIONERS WRIT OF HABEAS CORPUS GENERAL PROVISIONS PURSUANT TO NRS 34.500	0003			Y
0135	02/08/00	MOT /ALL PENDING MOTIONS 2-8-00	0003		02/08/00	
0136	02/28/00	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER	0003	HG	02/28/00	
0137	03/01/00	NOTC/NOTICE OF ENTRY OF ORDER	0003		03/01/00	
0138	12/02/00	ASSG/Reassign Case From Judge Gibbons To Judge Saitta				
0139	04/10/01	JMNT/REMITTITUR AFFIRMED	0003		04/11/01	

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90-C-093713-C		(Continuation	Page	5)
NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC SCH/PER C
0140	01/15/03	MOT /DEFT'S PRO PER MTN VACATE/CORRECT ILLEGAL SENTENCE/47	0003 0003	DN 01/27/03
0141	01/22/03	RSPN/STATES RESPONSE TO DEFENDANTS MOTION TO VACATE OR CORRECT ILLEGAL SENTENCE	0001 0001	
0142	02/03/03	ORDR/ORDER DENYING DEFENDANTS MOTION TO VACATE OR CORRECT ILLEGAL SENTENCE	0003 0003	GR 02/03/03
0143	02/11/03	NOAS/NOTICE OF APPEAL	0003	AP 02/11/03
0144	02/11/03	STAT/CASE APPEAL STATEMENT	0003	
0145	06/13/03	CASO/CASE (RE)OPENED	0003	06/13/03
0146	04/12/90	TRAN/REPORTER'S TRANSCRIPT OF MARCH 20, 1990 PRELIMINARY HEARING	AL AL	03/20/90
0147	04/25/90	TRAN/REPORTER'S TRANSCRIPT OF APRIL 5, 1990 ARRAIGNMENT	0001 0001	
0148	06/13/90	TRAN/REPORTER'S TRANSCRIPT OF APRIL 5, 1990 ARRAIGNMENT	0003 0003	04/05/90
0149	08/15/90	TRAN/REPORTER'S TRANSCRIPT OF MAY 25, 1990 SENTENCING	0001 0001	
0150	12/07/90	TRAN/REPORTER'S TRANSCRIPT SEPTEMBER 21, 1990 SENTENCING	0003 0003	09/21/90
0151	12/19/90	TRAN/REPORTER'S TRANSCRIPT OF JULY 2, 1990 VOLUME I	0003 0003	
0152	12/19/90	TRAN/REPORTER'S TRANSCRIPT OF JULY 3, 1990 VOLUME II	0003 0003	07/03/90
0153	12/19/90	TRAN/REPORTER'S TRANSCRIPT OF JULY 5, 1990 VOLUME III	0003 0003	07/05/90
0154	12/19/90	TRAN/REPORTER'S TRANSCRIPT OF JULY 6, 1990 VOLUME IV	0003 0003	07/06/90
0155	12/19/90	TRAN/REPORTER'S TRANSCRIPT OF JULY 9, 1990 VOLUME V	0003 0003	07/09/90
0156	12/20/90	TRAN/REPORTER'S TRANSCRIPT OF AUGUST 15, 1990	0003	08/15/90
0157	02/02/04	APCL/APPEAL TO SUPREME COURT: CLOSED 40941	0003	GR 01/28/04
0158	03/31/04	PET /PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0003 0003	
0159	04/05/04	PET /DEFT'S PRO PER PTN FOR WRIT OF HABEAS CORPUS /48	0003 0003	MT 06/21/04
0160	04/05/04	CASO/CASE (RE)OPENED		04/05/04
0161	04/05/04	PPOW/ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS	0003 0003	SH 06/21/04
0162	04/16/04	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0003	04/20/04
0163	04/16/04	JMNT/CLERK'S CERTIFICATE REHEARING DENIED	0003	04/20/04
0164	04/16/04	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED/REHEARING DENIED	0003 0003	04/16/04
0165	05/17/04	MOT /STATE'S MTN TO DISMISS PTN FOR WRIT/49	0003	GR 06/21/04
0166	05/27/04	RPLY/REPLY TO STATES MOTION TO DISMISS DEFENDANTS PRO PER PETITION FOR WRIT OF HABEAS CORPUS	0003 0003	Y
0167	06/22/04	MOT /ALL PENDING MOTIONS 6/21/04	0003	06/21/04
0168	06/28/04	JUDG/FINDINGS OF FACTS, CONCLUSIONS OF LAW AND ORDER DISMISSING DEFENDANTS PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION	0003 0003	GR 06/28/04 Y
0169	07/06/04	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0003	06/28/04
0170	07/07/04	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0003	06/28/04

(Continued to page 6)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0171	07/12/04	NOAS/NOTICE OF APPEAL	0003	AP	07/12/04	
0172	07/12/04	NOAS/DESIGNATION OF RECORD ON APPEAL	0003			
0173	07/13/04	STAT/CASE APPEAL STATEMENT	0003			
0174	09/29/04	CASO/CASE (RE)OPENED - RECORD ON APPEAL	0003		09/29/04	
0175	11/09/04	APCL/APPEAL TO SUPREME COURT: CLOSED 43621	0003	GR	11/03/04	
0176	12/03/04	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0003		12/06/04	
0177	12/03/04	CCJA/NEVADA SUPREME COURT CLERKS CERTIFICATE/ JUDGMENT - AFFIRMED	0003		12/03/04	
0178	12/21/05	CASO/CASE (RE)OPENED			12/20/05	
0179	12/20/05	MOT /DEFT'S PRO PER MTN FOR PRODUCTION OF FAVORABLE EVIDENCE/51	0003	DN	02/08/06	
0180	12/20/05	MOT /DEFT'S PRO PER MTN TO DISMISS PROSEC & JUDGMN OF CONV DUE TO LACK OF INFO/52	0003	DN	02/08/06	
0181	01/04/06	OPPS/STATES OPPOSITION AND MOTION TO DISMISS DEFENDANTS MOTION TO DISMISS	0003			Y
PROSECUTION AND JUDGMENT OF CONVICTION DUE TO LACK OF INFORMATION						
0182	01/04/06	RSPN/STATES RESPONSE TO DEFENDANTS MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE	0003			
0183	01/09/06	MOT /ALL PENDING MOTIONS 1-09-06	0003		01/09/06	
0184	01/24/06	ORDR/ORDER FOR PRODUCTION OF INMATE KEVIN BROOKS	0003	SH	02/01/06	
0185	02/08/06	MOT /ALL PENDING MOTIONS 2-08-06	0003		02/08/06	
0186	02/15/06	STAT/CASE APPEAL STATEMENT	0003			
0187	02/15/06	NOAS/NOTICE OF APPEAL	0003	AP	02/15/06	
0188	02/16/06	STAT/CASE APPEAL STATEMENT	0003			
0189	02/24/06	MOT /DEFT'S PRO PER MOTION FOR RECONSIDERATION /55	0003	DN	03/08/06	
0190	02/24/06	NOAS/NOTICE OF APPEAL	0003	AP	02/24/06	
0191	02/24/06	STAT/CASE APPEAL STATEMENT	0003			
0192	03/02/06	OPPS/STATES OPPOSITION TO DEFENDANTS PRO PER MOTION FOR RECONSIDERATION	0003			
0193	03/15/06	ORDR/ORDER DENYING DEFENDANTS PRO PER MOTION FOR RECONSIDERATION	0003	HG	03/08/06	
0194	03/28/06	CASO/(RE)OPENED RECORD ON APPEAL			03/28/06	
0195	04/26/06	ORDR/ORDER DENYING DEFENDANTS PRO PER MOTION TO DISMISS PROSECUTION AND JUDGMENT OF	0003	HG	02/08/06	Y
CONVICTION AND MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE						
0196	05/26/06	IAPD/CASE INACTIVE PER DEPARTMENT			05/26/06	
0197	06/13/06	MOT /DEFT'S PRO PER MTN FOR WRITTEN JUDGMENT OR FINDINGS PURSUANT TO NRS 34.830 /56	0003	DN	06/28/06	
0198	06/21/06	OPPS/STATES OPPOSITION TO DEFENDANTS PRO PER MOTION FOR WRITTEN JUDGMENT OR FINDINGS	0003			
0199	08/10/06	APCL/APPEAL TO SUPREME COURT: CLOSED 46807		AP	07/14/06	
0200	08/10/06	JMNT/CLERK'S CERTIFICATE JUDGMENT AFFIRMED	0003		08/11/06	
0201	09/21/06	MOT /DEFT'S PRO PER MOTION FOR WRITTEN JUDGMENT OR FINDINGS/57	0003	DN	10/11/06	
0202	09/28/06	OPPS/STATES OPPOSITION TO DEFENDANTS PRO PER MOTION FOR WRITTEN JUDGMENT OR FINDINGS	0003			
0203	10/06/06	RPLY/REPLY TO STATES OPPOSITION TO DEFENDANTS MOTION FOR WRITTEN JUDGMENT	0003			Y
OR FINDINGS						
0204	10/14/06	CSCL/CASE CLOSED			10/11/06	

(Continued to page 7)

NO.	FILED/REC CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0205	10/26/06	NOAS/NOTICE OF APPEAL	0003		AP	10/26/06
0206	10/26/06	STAT/CASE APPEAL STATEMENT	0003			
0207	10/30/06	STAT/CASE APPEAL STATEMENT	0003			
0208	10/31/06	ORDR/ORDER DENYING DEFENDANTS PRO PER MOTION FOR WRITTEN JUDGMENT OR FINDINGS	0003		HG	10/11/06
0209	12/07/06	APCL/APPEAL TO SUPREME COURT: CLOSED 48343	0003		AP	12/05/06
0210	01/10/07	STAT/CASE APPEAL STATEMENT	0003			01/10/07
0211	01/10/07	NOAS/NOTICE OF APPEAL (SC 48747)	0003		AP	01/10/07
0212	01/11/07	STAT/CASE APPEAL STATEMENT	0003			
0213	02/05/07	JMNT/CLERK'S CERTIFICATE APPEAL DISMISSED	0003			02/06/07
0214	02/05/07	JMNT/CLERK'S CERTIFICATE REHEARING DENIED	0003			02/06/07
0215	02/09/07	ASSG/REASSIGNMENT OF JUDGE Saitta TO JUDGE Halverson				
0216	02/09/07	OCAL/STATUS CHECK: STATE'S ORDER RE 3/16/92 DECISION	0003		OC	02/26/07
0217	02/15/07	ORDR/ORDER DENYING DEFENDANTS PRO PER EX PARTE PETITION FOR ENLARGEMENT OF TIME	0003		HG	03/16/92
0218	03/29/91	APPL/APPLICATION FOR ORDER TO HAVE DIRECT APPEALS HELD IN ABEYANCE	0003			
0219	03/31/04	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0003			
0220	03/31/04	CRTF/FINANCIAL CERTIFICATE	0003			
0221	03/06/07	CASO/CASE (RE)OPENED RECORD ON APPEAL			AP	03/06/07
0222	03/08/07	ORDR/ORDER DENYING DEFENDANTS PRO PER PETITION FOR POST CONVICTION RELIEF	0003		HG	03/16/92
0223	03/12/07	NOED/NOTICE OF ENTRY OF DECISION AND ORDER	0003			03/08/07
0224	03/27/07	MOT /DEFT'S PRO PER MTN FOR RECONSTRUCTION/59	0003		DN	04/11/07
0225	03/27/07	CRTF/CERTIFICATE OF SERVICE	0003			
0226	04/09/07	RSPN/STATES RESPONSE TO DEFENDANTS MOTION FOR RECONSIDERATION	0003			
0227	04/09/07	STAT/CASE APPEAL STATEMENT	0003			
0228	04/10/07	STAT/CASE APPEAL STATEMENT	0003			
0229	04/09/07	NOAS/NOTICE OF APPEAL (SC 48747)	0003		AP	04/09/07
0230	04/24/07	OPPS/MOVANTS OPPOSITION TO STATES RESPONSE TO DEFENDANTS MOTION FOR RECONSIDERATION	0003			
0231	04/29/07	ASSG/Reassign Case From Judge Halverson To Judge Barker				
0232	07/06/07	APCL/APPEAL TO SUPREME COURT: CLOSED 48747				07/03/07
0233	09/13/07	JMNT/CLERK'S CERTIFICATE/JUDGMENT AFFIRMED	0003			09/14/07
0234	09/13/07	JMNT/CLERK'S CERTIFICATE/REHEARING DENIED	0003			09/14/07
0235	12/30/09	AFFD/AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS	0003			
0236	12/30/09	SUPP/SUPPLEMENT TO PETITION FOR WRIT OF HABEAS CORPUS	0003			
0237	12/30/09	REQT/MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	0003			
0238	01/06/10	CASO/CASE (RE)OPENED				01/06/10
0239	01/06/10	PET /PTN FOR WRIT OF HABEAS CORPUS	0003		MH	03/10/10
0240	01/06/10	PPOW/ORDER FOR PETITION FOR A WRIT OF HABEAS CORPUS	0003			
0241	12/30/09	PET /PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION	0003			

(Continued to page 8)

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0242	02/03/10	MOT	/STATE'S RESPONSE AND MTN TO DISMISS PTN FOR WRIT OF HABEAS CORPUS/61	0003	MH	03/10/10	
0243	02/25/10	RPLY	/PETITIONERS REPLY TO STATES RESPONSE	0003			
0244	02/25/10	PTAT	/POINTS AND AUTHORITIES IN SUPPORT OF REPLY	0003			
0245	03/10/10	MOT	/ALL PENDING MOTIONS 3/10/10	0003	MH	03/10/10	
0246	03/11/10	CCPD	/CASE CLOSED PER DEPARTMENT	AL		03/11/10	
0247	03/29/10	FFCO	/FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	0003	HG	03/10/10	
0248	03/30/10	NOED	/NOTICE OF ENTRY OF DECISION AND ORDER	0003			
0249	04/12/10	NOAS	/NOTICE OF APPEAL	0003	AP		

ORIGINAL

FILED

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **AGNES BOTELHO**
6 **Deputy District Attorney**
7 **Nevada Bar #011064**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

MAR 29 8 52 AM '10

CLEF. COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

KEVIN BROOKS, aka,
Ralph Kevin Clark, #1061223
Defendant.

CASE NO: C093713

DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: MARCH 10, 2010
TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable DAVID BARKER, District Judge, on the 10th day of March, 2010, the Petitioner not being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through AGNES M. BOTELHO, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On March 30, 1990, Defendant, KEVIN BROOKS, aka, Ralph Kevin Clark ("Defendant") was charged by way of Information with two (2) counts of Burglary. On April 5, 1990, an Amended Information was filed in open court charging the Defendant with the

1 same offenses but also putting him on notice that State was pursuing habitual offender
2 treatment pursuant to NRS 207.010. A Second Amended Information was filed on August
3 15, 1990.

4 2. Defendant was found guilty of both offenses by a jury. Defendant was adjudicated a
5 habitual offender and sentenced to two (2) concurrent terms of Life without the possibility of
6 parole on both counts.

7 3. The Judgment of Conviction was filed on October 5, 1990.

8 4. Defendant's direct appeal was dismissed by the Nevada Supreme Court on December
9 20, 1991. Remittitur was issued on January 8, 1992.

10 5. On February 7, 1991, Defendant filed a petition for post-conviction relief pursuant to
11 the former NRS 177.315. On March 13, 1991, the district court denied the petition without
12 prejudice to be re-filed after the direct appeal had been resolved. Defendant appealed the
13 decision. The Nevada Supreme Court vacated the district court's ruling and remanded the
14 petition back to the district court for consideration on its merits (Brooks v. State, Docket No.
15 22285). On March 16, 1992, the district court orally denied the petition. A written order
16 memorizing the decision was filed on March 8, 2007. The Nevada Supreme Court affirmed
17 the district court's decision on July 3, 2007. The Remittitur was issued on September 11,
18 2007.

19 6. On April 19, 1999, Defendant filed a Petition for Writ of Habeas Corpus with the
20 district court. On July 19, 1999, the district court denied Defendant's Petition. Defendant
21 appealed the denial. On February 22, 2001, the Nevada Supreme Court affirmed the district
22 court's denial. Remittitur was issued on March 20, 2001.

23 7. On March 31, 2004, Defendant filed another Petition for Writ of Habeas Corpus with
24 the district court. On May 17, 2004, the State filed a Motion to Dismiss Defendant's Pro Per
25 Petition for Writ of Habeas Corpus. On June 21, 2004, the district court granted the State's
26 motion and dismissed Defendant's Petition. Defendant appealed the dismissal. On December
27 3, 2004, the Nevada Supreme Court affirmed the district court's order. The Remittitur was
28 issued on November 30, 2004.

1 8. On December 30, 2009, Defendant filed the instant Petition for Writ of Habeas
2 Corpus nearly eighteen (18) years after the original Remittitur from his direct appeal was
3 issued. On February 3, 2010, the State filed a Response and Motion to Dismiss the Petition.
4 On March 10, 2010, the district court denied Defendant's Petition.

5 9. Defendant's instant Petition was not timely filed.

6 10. Defendant's instant Petition is successive.

7 11. Defendant has failed to show good cause and prejudice for filing a late and successive
8 petition.

9 12. Defendant did not timely assert the new ruling regarding an appropriate jury
10 instruction on vicarious liability for an aider and abettor.

11 13. Defendant's argument made in Ground Two of the instant Petition is barred by the
12 doctrine of law of the case.

13 14. Defendant's applications of Federal Criminal Procedures rules are inappropriate for a
14 State habeas corpus action.

15 15. The State has pled laches and Defendant has not overcome the presumption that his
16 delay of nearly eighteen (18) years in filing the instant Petition has prejudiced the State.

17 CONCLUSIONS OF LAW

18 1. NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that
19 challenges the validity of a judgment or sentence *must* be filed within one (1) year after entry
20 of the judgment of conviction or, if an appeal has been taken from the judgment, within one
21 (1) year after the Supreme Court issues its remittitur." (Emphasis added).

22 2. The Nevada Supreme Court interprets NRS 34.726 very strictly. In Gonzales v. State,
23 118 Nev. 590, 53 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas
24 petition, pursuant to the mandatory provisions of NRS 34.726(1), that was filed a mere two
25 days late. Gonzales reiterated the importance of filing the petition within the mandatory
26 deadline, absent a showing of "good cause" for the delay in filing. 118 Nev. at 590, 53 P.3d
27 at 902.

28 //

1 3. NRS 34.810(2) reads:

2 "A second or successive petition *must* be dismissed if the judge or
3 justice determines that it fails to allege new or different grounds for
4 relief and that the prior determination was on the merits or, if new
5 and different grounds are alleged, the judge or justice finds that the
6 failure of the petitioner to assert those grounds in a prior petition
7 constituted an abuse of the writ." (Emphasis added).

8 4. Second or successive petitions are petitions that either fail to allege new or different
9 grounds for relief and the grounds have already been decided on the merits or that allege new
10 or different grounds but a judge or justice finds that the petitioner's failure to assert those
11 grounds in a prior petition would constitute an abuse of the writ.

12 5. In Lozada v. State, the Nevada Supreme Court stated: "Without such limitations on
13 the availability of post-conviction remedies, prisoners could petition for relief in perpetuity
14 and thus abuse post-conviction remedies. 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). In
15 addition, meritless, successive and untimely petitions clog the court system and undermine
16 the finality of convictions." Id. The Nevada Supreme Court recognizes that "[u]nlike initial
17 petitions which certainly require a careful review of the record, successive petitions may be
18 dismissed based solely on the face of the petition." Ford v. Warden, 111 Nev. 872, 882, 901
19 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available
20 with reasonable diligence, it is an abuse of the writ to wait to assert it in a later petition.
21 McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Second or successive petitions will only
22 be decided on the merits if the petitioner can show good cause and prejudice. NRS
23 34.810(3); Lozada, 110 Nev. at 358, 871 P.2d at 950.

24 6. The Nevada Supreme Court has found that "application of the statutory procedural
25 default rules to post-conviction habeas petitions is mandatory." State v. Eighth Judicial Dist.
26 Court ex rel. County of Clark (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005)
27 (citing State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003)). "Habeas corpus
28 petitions that are filed many years after conviction are an unreasonable burden on the
criminal justice system. The necessity for a workable system dictates that there must exist a

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1 time when a criminal conviction is final.” Riker, 121 Nev. at 231, 112 P.3d at 1074 (quoting
2 Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

3 7. “To establish good cause, appellants *must* show that an impediment external to the
4 defense prevented their compliance with the applicable procedural rule. A qualifying
5 impediment might be shown where the factual or legal basis for a claim was not reasonably
6 available at the time of default.” (Emphasis added) Clem v. State, 119 Nev. 615, 621, 81
7 P.3d 521, 525 (2003). The Nevada Supreme Court continued, “appellants cannot attempt to
8 manufacture good cause[.]” Id. at 621, at 526. The Court explained that in order to establish
9 prejudice, the defendant must show “not merely that the errors of [the proceedings] created
10 possibility of prejudice, but that they worked to his actual and substantial disadvantage, in
11 affecting the state proceedings with error of constitutional dimensions.” Hogan v. Warden,
12 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

13 8. In Sharma v. State, 118 Nev. 648, 655, 56 P.3d 868, 872 (2002), the Nevada Supreme
14 Court held that in order for a person to be held accountable for the specific intent crime of
15 another under an aiding or abetting theory of principal liability, the aider or abettor must
16 have knowingly aided the other person with the intent that the other person commit the
17 charged crime. In Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006), which was decided
18 on December 31, 2006, the Supreme Court of Nevada retroactively applied the Sharma
19 decision. There, the Court had previously upheld the defendant’s conviction, which was
20 based on the natural and probable consequences doctrine under an aiding and abetting
21 theory. After the Court issued its decision in Sharma, it reversed Mitchell’s murder
22 conviction, holding that its previous approval of the natural and probable consequences
23 doctrine was error, because the case law set forth a clear logical inference that in order to be
24 guilty under an aiding and abetting theory, the defendant had to specifically intend to aid the
25 principal and specifically intend the victim to be killed. Id. Thus, the Court held that Sharma
26 could be retroactive because it was only clarifying the law rather than setting forth a new
27 rule.

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1 9. Where an issue has already been decided on the merits by the Nevada Supreme Court,
2 the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State,
3 117 Nev. 860, 34 P.3d 519 (2001); see McNelton v. State, 115 Nev. 396, 990 P.2d 1263,
4 1276 (1999); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see also
5 Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev.
6 952, 860 P.2d 710 (1993).

7 10. The law of a first appeal is the law of the case in all later appeals in which the facts
8 are substantially the same; this doctrine cannot be avoided by more detailed and precisely
9 focused argument. Hall, supra; see also McNelton, supra; Hogan, supra.

10 11. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
11 exceeding five years [lapses] between the filing of a judgment of conviction, an order
12 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
13 conviction and the filing of a petition challenging the validity of a judgment of
14 conviction..." The Nevada Supreme Court observed in Groesbeck v. Warden, "petitions that
15 are filed many years after conviction are an unreasonable burden on the criminal justice
16 system. The necessity for a workable system dictates that there must exist a time when a
17 criminal conviction is final." 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the
18 presumption, the statute requires the State plead laches in its motion to dismiss the petition.
19 NRS 34.800(2).

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED MAR 26 2010.



DISTRICT JUDGE

es

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY Agnes Botelho
Agnes Botelho
Deputy District Attorney
Nevada Bar #011064

MS/AB/rj

ORIGINAL

FILED

MAR 30 2010

Ann Lofquist
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 KEVIN BROOKS aka Ralph Kevin Clark,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: C93713

Dept No: XVIII

10 NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on March 29, 2010, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on March 30, 2010.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Heather Lofquist*

18 Heather Lofquist, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 30 day of March 2010, I placed a copy of this Notice of Entry of Decision and
21 Order in:

22 The bin(s) located in the Office of the District Court Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division

24 ☒ The United States mail addressed as follows:

25 Kevin Brooks # 33384
26 P.O. Box 1989
Ely, NV 89301

27 *Heather Lofquist*
28 Heather Lofquist, Deputy Clerk

ORIGINAL

FILED

1 ORDER

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 AGNES BOTELHO
6 Deputy District Attorney
7 Nevada Bar #011064
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

MAR 29 8 52 AM '10

CLERK

CURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

KEVIN BROOKS, aka,
Ralph Kevin Clark, #1061223
Defendant.

CASE NO: C093713

DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: MARCH 10, 2010
TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable DAVID BARKER, District Judge, on the 10th day of March, 2010, the Petitioner not being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through AGNES M. BOTELHO, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On March 30, 1990, Defendant, KEVIN BROOKS, aka, Ralph Kevin Clark ("Defendant") was charged by way of Information with two (2) counts of Burglary. On April 5, 1990, an Amended Information was filed in open court charging the Defendant with the

1 same offenses but also putting him on notice that State was pursuing habitual offender
2 treatment pursuant to NRS 207.010. A Second Amended Information was filed on August
3 15, 1990.

4 2. Defendant was found guilty of both offenses by a jury. Defendant was adjudicated a
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7 3. The Judgment of Conviction was filed on October 5, 1990.

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19 6. On April 19, 1999, Defendant filed a Petition for Writ of Habeas Corpus with the
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2 Corpus nearly eighteen (18) years after the original Remittitur from his direct appeal was
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4 On March 10, 2010, the district court denied Defendant's Petition.

5 9. Defendant's instant Petition was not timely filed.

6 10. Defendant's instant Petition is successive.

7 11. Defendant has failed to show good cause and prejudice for filing a late and successive
8 petition.

9 12. Defendant did not timely assert the new ruling regarding an appropriate jury
10 instruction on vicarious liability for an aider and abettor.

11 13. Defendant's argument made in Ground Two of the instant Petition is barred by the
12 doctrine of law of the case.

13 14. Defendant's applications of Federal Criminal Procedures rules are inappropriate for a
14 State habeas corpus action.

15 15. The State has pled laches and Defendant has not overcome the presumption that his
16 delay of nearly eighteen (18) years in filing the instant Petition has prejudiced the State.

17 **CONCLUSIONS OF LAW**

18 1. NRS 34.726(1) states that "unless there is good cause shown for delay, a petition that
19 challenges the validity of a judgment or sentence *must* be filed within one (1) year after entry
20 of the judgment of conviction or, if an appeal has been taken from the judgment, within one
21 (1) year after the Supreme Court issues its remittitur." (Emphasis added).

22 2. The Nevada Supreme Court interprets NRS 34.726 very strictly. In Gonzales v. State,
23 118 Nev. 590, 53 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas
24 petition, pursuant to the mandatory provisions of NRS 34.726(1), that was filed a mere two
25 days late. Gonzales reiterated the importance of filing the petition within the mandatory
26 deadline, absent a showing of "good cause" for the delay in filing. 118 Nev. at 590, 53 P.3d
27 at 902.

28 //

1 3. NRS 34.810(2) reads:

2 "A second or successive petition *must* be dismissed if the judge or
3 justice determines that it fails to allege new or different grounds for
4 relief and that the prior determination was on the merits or, if new
5 and different grounds are alleged, the judge or justice finds that the
6 failure of the petitioner to assert those grounds in a prior petition
7 constituted an abuse of the writ." (Emphasis added).

8 4. Second or successive petitions are petitions that either fail to allege new or different
9 grounds for relief and the grounds have already been decided on the merits or that allege new
10 or different grounds but a judge or justice finds that the petitioner's failure to assert those
11 grounds in a prior petition would constitute an abuse of the writ.

12 5. In Lozada v. State, the Nevada Supreme Court stated: "Without such limitations on
13 the availability of post-conviction remedies, prisoners could petition for relief in perpetuity
14 and thus abuse post-conviction remedies. 110 Nev. 349, 358, 871 P.2d 944, 950 (1994). In
15 addition, meritless, successive and untimely petitions clog the court system and undermine
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19 P.2d 123, 129 (1995). In other words, if the claim or allegation was previously available
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21 McClesky v. Zant, 499 U.S. 467, 497-498 (1991). Second or successive petitions will only
22 be decided on the merits if the petitioner can show good cause and prejudice. NRS
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//

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2 Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984).

3 7. "To establish good cause, appellants *must* show that an impediment external to the
4 defense prevented their compliance with the applicable procedural rule. A qualifying
5 impediment might be shown where the factual or legal basis for a claim was not reasonably
6 available at the time of default." (Emphasis added) Clem v. State, 119 Nev. 615, 621, 81
7 P.3d 521, 525 (2003). The Nevada Supreme Court continued, "appellants cannot attempt to
8 manufacture good cause[.]" Id. at 621, at 526. The Court explained that in order to establish
9 prejudice, the defendant must show "not merely that the errors of [the proceedings] created
10 possibility of prejudice, but that they worked to his actual and substantial disadvantage, in
11 affecting the state proceedings with error of constitutional dimensions." Hogan v. Warden,
12 109 Nev. 952, 960, 860 P.2d 710, 716 (1993).

13 8. In Sharma v. State, 118 Nev. 648, 655, 56 P.3d 868, 872 (2002), the Nevada Supreme
14 Court held that in order for a person to be held accountable for the specific intent crime of
15 another under an aiding or abetting theory of principal liability, the aider or abettor must
16 have knowingly aided the other person with the intent that the other person commit the
17 charged crime. In Mitchell v. State, 122 Nev. 1269, 149 P.3d 33 (2006), which was decided
18 on December 31, 2006, the Supreme Court of Nevada retroactively applied the Sharma
19 decision. There, the Court had previously upheld the defendant's conviction, which was
20 based on the natural and probable consequences doctrine under an aiding and abetting
21 theory. After the Court issued its decision in Sharma, it reversed Mitchell's murder
22 conviction, holding that its previous approval of the natural and probable consequences
23 doctrine was error, because the case law set forth a clear logical inference that in order to be
24 guilty under an aiding and abetting theory, the defendant had to specifically intend to aid the
25 principal and specifically intend the victim to be killed. Id. Thus, the Court held that Sharma
26 could be retroactive because it was only clarifying the law rather than setting forth a new
27 rule.

28 //

1 9. Where an issue has already been decided on the merits by the Nevada Supreme Court,
2 the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v. State,
3 117 Nev. 860, 34 P.3d 519 (2001); see McNelton v. State, 115 Nev. 396, 990 P.2d 1263,
4 1276 (1999); Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99 (1975); see also
5 Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); Hogan v. Warden, 109 Nev.
6 952, 860 P.2d 710 (1993).

7 10. The law of a first appeal is the law of the case in all later appeals in which the facts
8 are substantially the same; this doctrine cannot be avoided by more detailed and precisely
9 focused argument. Hall, supra; see also McNelton, supra; Hogan, supra.

10 11. NRS 34.800 creates a rebuttable presumption of prejudice to the State if "[a] period
11 exceeding five years [lapses] between the filing of a judgment of conviction, an order
12 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
13 conviction and the filing of a petition challenging the validity of a judgment of
14 conviction..." The Nevada Supreme Court observed in Groesbeck v. Warden, "petitions that
15 are filed many years after conviction are an unreasonable burden on the criminal justice
16 system. The necessity for a workable system dictates that there must exist a time when a
17 criminal conviction is final." 100 Nev. 259, 679 P.2d 1268 (1984). To invoke the
18 presumption, the statute requires the State plead laches in its motion to dismiss the petition.
19 NRS 34.800(2).

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ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED MAR 26 2010



DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY Agnes Botelho
Agnes Botelho
Deputy District Attorney
Nevada Bar #011064

MS/AB/rj

90-C-093713-C STATE OF NEVADA vs Brooks, Kevin

Y

Y

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CUSTODY (NSP)

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 001

10/28/91 09:00 AM 00 ALL PENDING MOTIONS 10/28/91

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA SMITH, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 000101 Henry, William P.

Y

HEARING: PETITION FOR POST CONVICTION RELIEF

DEFENDANT'S PRO PER MOTION FOR SUBSTITUTION OF COUNSEL OF RECORD

DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

DEFENDANT'S PRO PER MOTION FOR TRANSFER OF RECORDS

DEFENDANT'S PRO PER MOTIN FOR ORDER TO STAY PENDING POST CONVICTION RELIEF

Mr. Henry advised Court that defendant's motion has already been filed and requested Court deny defendant's Motion for Order To Stay. COURT stated that defendant as indicated he needs to review all the records to properly prepare his case. COURT ORDERED: Motion for Order To Stay is denied and matter continued for hearing on defendant's remaining motions.

CUSTODY (NSP)

11/13/91 @9A.M. - DEFENDANT'S PRO PER MOTIONS

11/13/91 09:00 AM 00 ALL PENDING MOTIONS 11/13/91

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA SMITH, Court Clerk
PARTIES: 000101 Henry, William P.

Y

0003 D Brooks, Kevin
PUBDEF Public Defender
001231 Dejulio, Douglas P.

Y

Y

Y

HEARING: PETITION FOR POST CONVICTION RELIEF

DEFENDANT'S PRO PER MOTION FOR SUBSTITUTION OF COUNSEL OF RECORD

DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

DEFENDANT'S PRO PER MOTION FOR TRANSFER OF RECORDS

Mr. Henry stated that defendant does not cite any reason why he is requesting a stay and is not entitled to an Evidentiary Hearing. Mr.

CONTINUED ON PAGE: 003

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 002

DeJulio advised Court all the necessary papers will be forwarded to defendant. COURT ORDERED: Defendant's Pro Per Motions are granted except Petition For Post Conviction Relief. The Public Defender's Office may withdraw as counsel and matter continued. Defendant is not required to be present.

CUSTODY (NSP)

12/11/91 @9A.M. FURTHER PROCEEDINGS - HEARING: PETITION FOR POST CONVICTION RELIEF

12/11/91 09:00 AM 00 ALL PENDING MOTIONS 12/16/91

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: LEONE DUMIRE, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 000738 Berrett, Bill A.

COURT ORDERED: MATTER IS CONTINUED FOR HEARING.

CUSTODY NSP

12/16/91 @ 9 AM - HEARING: PETITION FOR POST CONVICTION RELIEF

CONTINUED TO: 12/16/91 09:00 AM 01

12/16/91 09:00 AM 01 ALL PENDING MOTIONS 12/16/91

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA SMITH, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 003649 Kephart, William D.

0003 D Brooks, Kevin
PRO SE Pro Se

FURTHER PROCEEDINGS / HEARING: PETITION FOR POST CONVICTION RELIEF

Defendant has requested a 90 day continuance and COURT ORDERED: Matter continued.

CUSTODY (NSP)

3/9/92 @9A.M. - HEARING: PETITION FOR POST CONVICTION RELIEF

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 003

03/09/92 09:00 AM 00 ALL PENDING MOTIONS 3/9/92

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA BROUGH, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 000101 Henry, William P.

0003 D Brooks, Kevin

PRO SE Pro Se

HEARING: PETITION FOR POST CONVICTION RELIEF....DEFENDANT'S PRO PER EX PARTE
MOTION FOR ENLARGEMENT OF TIME

State advised they have responded to deft.'s motions; the Court has continued four times per deft.'s request so he may reply to their opposition; and requests any motions for continuance be denied. COURT ORDERED, matter continued for one week for the Court's decision.

NSP....3/16/92 @ 9:00 A.M. DECISION: DEFENDANT'S PETITION FOR POST CONVICTION RELIEF.....DECISION: DEFENDANT'S PRO PER EX PARTE MOTION FOR ENLARGEMENT OF TIME

03/16/92 09:00 AM 00 HEARING JUDGE'S DECISION

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA BROUGH, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 003186 James, Karen M.

0003 D Brooks, Kevin

PRO SE Pro Se

DECISION: DEFENDANT'S PETITION FOR POST-CONVICTION RELIEF....PRO PER EX
PARTE MOTION FOR ENLARGEMENT OF TIME

Court FINDS the allegations in the petition are without merit, a justice of the peace does not have to be a lawyer by Statute and ORDERED deft.'s Petition for Post-Conviction Relief, DENIED. FURTHER this Court doesn't find there was ineffective assistance of counsel, deft.'s major contention is that he didn't get a copy of the preliminary hearing transcript; however deft.'s counsel was cognizant of all the facts, had the transcript in his possession and wasn't required to show it to the deft. and therefore ORDERED deft.'s Pro Per ExParte Motion for Enlargement of Time, DENIED. State to prepare Findings of Fact and Conclusions of Law.

NSP

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 004

11/22/93 08:45 AM 00 PROPER PERSON MOTION FOR PRODUCTION OF
TRANSCRIPTS

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: DOROTHY KELLY, Relief Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 003814 Holthus, Mary Kay

Y

Court advised Court Reporter to inquire as to what defendant wants, and
ORDERED, matter off calendar.

CUSTODY (NDP)

12/20/93 08:45 AM 00 PRO PER MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: SANDRA BROUGH, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 004748 Siegel, Jay L.

Y

0003 D Brooks, Kevin
PRO SE Pro Se

N
Y

Deft. not present and in custody at the Nevada Department of Prisons.

State advised no objection. COURT ORDERED, Deft.'s Pro Per Motion for Leave
to Proceed in Forma Pauperis, GRANTED.

NSP

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 005

07/08/94 08:45 AM 00 AT REQUEST OF DEFENDANT

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: LINDA GROVES, Court Clerk
YVONNE VALENTIN, Reporter/Recorder

PARTIES: 004353 Pace, Barter G.

0003 D Brooks, Kevin
PRO SE Pro Se

Defendant not present and in custody at the Nevada Dept of Prisons. Mr. Pace stated he doesn't know why this case is on calendar. Colloquy regarding the case. COURT ORDERED, motion for transcripts DENIED. Defendant to be specific as to transcripts needed and the reasons why.

NDP

06/22/99 08:30 AM 00 ALL PENDING MOTIONS 6/22/99

HEARD BY: Joseph S. Pavlikowski, Senior Judge; Dept. VJ30

OFFICERS: LINDA SKINNER, Court Clerk
JAMES HELLESO, Reporter/RecorderPARTIES: STATE OF NEVADA
006240 Brown, Philip H.

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS...DEFT'S PRO PER MOTION FOR EXTENSION OF TIME...DEFT'S PRO PER MOTION FOR CLARIFICATION

COURT ORDERED, based on State's response, Deft's Pro Per Petition for Writ of Habeas Corpus; Deft's Pro Per Motion for Extension of Time and Deft's Pro Per Motion for Clarification are DENIED. FURTHER, Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis is GRANTED. Court directed Mr. Brown to prepare the Order.

NDP

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 006

02/08/00 09:00 AM 00 ALL PENDING MOTIONS 2-8-00

HEARD BY: Mark Gibbons, Chief Judge

OFFICERS: TINA HURD, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
005927 De La Garza, Melisa
0003 D Brooks, Kevin
PRO SE Pro SeY
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YDEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS...COURT
ORDERED, motion GRANTED.DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS...Court advised he has
reviewed the petition and the return. COURT ORDERED, petition DENIED as 1)
it is time-barred, 2) it is successive with deft's other petitions and 3)
this issue was raised on direct appeal and was rejected. Court stated he
believes this petition was also denied by Judge Pavlikowski on June 22.

NDP

01/27/03 09:00 AM 00 DEFT'S PRO PER MTN VACATE/CORRECT
ILLEGAL SENTENCE/47

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Amber Farley, Court Clerk
Kristine Cornelius, Reporter/RecorderPARTIES: STATE OF NEVADA
005734 Pandukht, Taleen R.Y
YCourt stated this motion is improper procedurally, and that the issue has
already been determined to lack merit. Motion DENIED in its entirety.

NDC

CLERK'S NOTE: A copy of this minute order mailed to the Defendant via the
address as listed in the pleadings. /af

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 007

06/21/04 09:00 AM 00 ALL PENDING MOTIONS 6/21/04

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Amber Farley, Court Clerk
Debra Vanblaricom, Reporter/RecorderPARTIES: STATE OF NEVADA
003202 Stanton, David L.Y
Y

STATE'S MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS

The Court noted the State has argued that the petition is successive under Chapter 34, and the COURT SO FINDS. The COURT ORDERED, Motion is GRANTED and Petition is DISMISSED. The State may also include in their order that, based on the history of the pleadings in this case, the State does not have to respond to any additional filings unless ordered to do so by this Court.

DEFT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS

As the Court granted the State's motion to dismiss the petition, the petition is now moot.

NDC

01/09/06 09:00 AM 00 ALL PENDING MOTIONS 1-09-06

HEARD BY: Joseph S. Pavlikowski, Senior Judge; Dept. VJ30

OFFICERS: Kristen Brown, Court Clerk
Jo Anne Pierpont, Reporter/RecorderPARTIES: STATE OF NEVADA
007295 Saragosa, Melissa A.Y
Y

DEFT'S PRO PER MOTION TO DISMISS PROSECUTING AND JUDGMENT OF CONVICTION DUE TO LACK OF INFORMATION...DEFT'S PRO PER MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE

COURT ORDERED, matter CONTINUED for the deft. to be transported.

NDC

CONTINUED TO: 2/01/06 9:00 AM

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 008

02/08/06 09:00 AM 00 ALL PENDING MOTIONS 2-08-06

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Kristen Brown, Court Clerk
Jo Anne Pierpont, Reporter/RecorderPARTIES: STATE OF NEVADA
009210 Tomsheck, Joshua L.
0003 D Brooks, Kevin
PRO SE Pro SeY
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DEFT'S PRO PER MOTION TO DISMISS PROSECUTION AND JUDGMENT OF CONVICTION DUE TO LACK OF INFORMATION...DEFT'S PRO PER MOTION FOR PRODUCTION OF FAVORABLE EVIDENCE

Court stated that it doesn't see any new grounds; motions are restatements that have already been denied. Argument by the deft. Mr. Tomsheck argued motions are time barred by statute. Court stated its findings and ORDERED, Motions DENIED.

NDC

03/08/06 09:00 AM 00 DEFT'S PRO PER MOTION FOR
RECONSIDERATION /55

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Kristen Brown, Court Clerk
Jo Anne Pierpont, Reporter/RecorderPARTIES: STATE OF NEVADA
007480 Pate, SusanY
Y

Court noted the deft. is asking for additional time; Court has already heard the writs filed by the deft. and the State's position is this motion is not properly before the Court because the deft. did not seek leave of the Court. Court stated the deft. needs to follow the procedures as set forth in EDCR 2.24(a), therefore, ORDERED, Motion DENIED.

NDC

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 009

06/28/06 09:00 AM 00 DEFT'S PRO PER MTN FOR WRITTEN JUDGMENT
OR FINDINGS PURSUANT TO NRS 34.830 /56

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Carole D'Aloia, Relief Clerk
Jo Anne Pierpont, Reporter/Recorder

PARTIES: STATE OF NEVADA
009210 Tomsheck, Joshua L.

Y

Y

Court noted the absence of the Defendant as he is currently serving his sentence in the Nevada Department of Corrections (NDC) and, ORDERED, Defendant's presence WAIVED this date. Regarding Defendant's pro per motion, Court advised the Judgment has already been entered and if Defendant wants a copy, he needs to request it from the Clerk of the Courts and, ORDERED, motion DENIED, Mr. Tomsheck to prepare and submit appropriate Order.

NDC

CLERK'S NOTE: A COPY OF THIS MINUTE ORDER MAILED TO: KEVIN BROOKS, #33384,
P.O. BOX 1989, ELY, NV 89301 ON 7/5/06. cd

10/11/06 09:00 AM 00 DEFT'S PRO PER MOTION FOR WRITTEN
JUDGMENT OR FINDINGS/57

HEARD BY: Nancy M Saitta, Judge; Dept. 18

OFFICERS: Kristen Brown, Court Clerk
Deniece Lopez, Reporter/Recorder

PARTIES: STATE OF NEVADA
009662 Rickert, David J.

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Submitted by Mr. Rickert. Court stated it appears the deft. has already filed this motion two times and it's not clear what the deft. is requesting, ORDERED, Motion DENIED as there is no legally cognizable reason to grant the motion.

NDC

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 010

02/12/07 09:00 AM 00 STATUS CHECK: STATE'S ORDER RE 3/16/92
DECISION

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: Sharon Coffman/sc, Court Clerk
Linda Smith, Relief Clerk
Sonia Riley, Reporter/Recorder

PARTIES: STATE OF NEVADA
007595 Bawa, Ravindar N.

Y
Y

Court referred to an Order for the Supreme Court requesting a written Order from State for the March 16, 1992 decision on Defendant's Petition. Mr. Bawa undertook to have the Order prepared. COURT ORDERED, matter continued for status check.

NDC

CONTINUED TO: 02/26/07 09:00 AM 01

02/26/07 09:00 AM 01 STATUS CHECK: STATE'S ORDER RE 3/16/92
DECISION

HEARD BY: Lee A Gates, Judge; Dept. 8

OFFICERS: Sharon Coffman/sc, Court Clerk
Linda Smith, Relief Clerk
Sonia Riley, Reporter/Recorder

PARTIES: STATE OF NEVADA
008610 Pieper, Danielle K.

Y
Y

State's Order having been filed, COURT ORDERED, matter OFF CALENDAR

NDC

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Brooks, Kevin

CONTINUED FROM PAGE: 011

04/11/07 08:30 AM 00 DEFT'S PRO PER MTN FOR RECONSTRUCTION/59

HEARD BY: Elizabeth Halverson, Judge; Dept. 23

OFFICERS: Pamela Humphrey, Court Clerk
Richard Kangas, Reporter/RecorderPARTIES: STATE OF NEVADA
007842 Nelson III, Roy L.0003 D Brooks, Kevin
PRO SE Pro SeY
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Deft. not present and in the custody of Nevada Department of Corrections.
After Court's review of the pleadings and documents on file, COURT ORDERED,
Motion DENIED.

NDC

03/10/10 08:15 AM 00 ALL PENDING MOTIONS 3/10/10

HEARD BY: David Barker, Judge; Dept. 18

OFFICERS: Melissa Benson, Court Clerk
Richard Kangas, Reporter/RecorderPARTIES: STATE OF NEVADA
011064 Botelho, Agnes M.Y
Y

PETITION FOR WRIT OF HABEAS CORPUS...STATE'S RESPONSE AND MOTION TO DISMISS
PETITION FOR WRIT OF HABEAS CORPUS

Court stated it is not entertaining any argument as Deft. is not present and
ruling is being made, based upon the merits. COURT ORDERED, both motions
DENIED as case was time barred and this is a successive petition.

NDC

CLERK'S NOTE: A COPY OF THIS MINUTE ORDER WILL BE MAILED TO DEFT. 3/11/10.
MB 3/10/10

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA vs Burney, Fred W

03/18/91 09:00 AM 00 ALL PENDING MOTIONS (3/18/91)

HEARD BY: Carl J. Christensen, Visiting Judge; Dept. VJ15

OFFICERS: NANCY DORMAIER, Relief Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: 000795 Van De Pol, Karen L.

0001 D1 Burney, Fred W
PUBDEF Public Defender
003374 Brooks, Howard S.

Y

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PUBLIC DEFENDER'S MOTION TO WITHDRAW AS COUNSEL AND ALLOW DEFENDANT TO
PROCEED IN FORMA PAUPERIS

DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

Mr. Brooks advised he had no opposition to any of the motions. Ms. Van De
Pol asked if the Court had received the State's opposition to withdraw.
COURT ORDERED, Defendant's motion to withdraw guilty plea is denied making
the other motions moot.

CUSTODY (NSP)

05/08/91 09:00 AM 00 ALL PENDING MOTIONS (05-8-91)

HEARD BY: Carl J. Christensen, Visiting Judge; Dept. VJ15

OFFICERS: ELIZABETH D'ANGIOLELLA, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: 003700 Christensen, Drew R.

0001 D1 Burney, Fred W
PUBDEF Public Defender
001656 Christiansen, Peter J.

Y

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DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS
DEFENDANT'S PRO PER PETITION FOR POST-CONVICTION RELIEF

Mr. Christensen stated the response is being typed and requested a
continuance. COURT ORDERED, continued.

CUSTODY, NSP

CONTINUED TO: 05/15/91 09:00 AM 01

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Burney, Fred W

CONTINUED FROM PAGE: 001

05/15/91 09:00 AM 01 ALL PENDING MOTIONS (05-8-91)

HEARD BY: Carl J. Christensen, Visiting Judge; Dept. VJ15

OFFICERS: ELIZABETH D'ANGIOLELLA, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: 000370 Ponticello, Frank M.

0001 D1 Burney, Fred W

PUBDEF Public Defender

001656 Christiansen, Peter J.

Y

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DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED INFORMA PAUPERIS
DEFENDANT'S PRO PER PETITION FOR POST-CONVICTION RELIEF
DEFENDANT'S PRO PER MOTION TO APPOINT COUNSEL-----
Mr. Christiansen stated he has not receive copies of all motions. Mr.
Ponticello furnished Mr. Christiansen with a copy of pro per motion. COURT
ORDERED, continued.

CUSTODY, NSP

CONTINUED TO: 05/20/91 09:00 AM 02

05/20/91 09:00 AM 00 ALL PENDING MOTIONS 5/20/91

HEARD BY: Carl J. Christensen, Visiting Judge; Dept. VJ15

OFFICERS: SANDRA SMITH, Relief Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: 003700 Christensen, Drew R.

0001 D1 Burney, Fred W

PUBDEF Public Defender

003076 Hillman, Ralph R.

Y

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Y

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DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

DEFENDANT'S PRO PER PETITION FOR POST-CONVICTION RELIEF

DEFENDANT'S PRO PER MOTION TO APPOINT COUNSEL

Mr. Hillman advised Court this case is being handled by Howard Brooks, DPD
who was unable to be present. Mr. Christensen stated that defendant fully
and freely plead guilty and the sentence was commensurate with his prior
record. In addition, there was no prejudice in this matter and State moves
for denial of the Petition. COURT ORDERED: Defendant's motions are denied
and State to prepare the order.

CRIMINAL COURT MINUTES

90-C-093713-C STATE OF NEVADA

vs Burney, Fred W

CONTINUED FROM PAGE: 002

CUSTODY (NSP)

Certification of Copy

State of Nevada } **SS:**
County of Clark }

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF
ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES;

STATE OF NEVADA,

Plaintiff(s),

VS.

KEVIN BROOKS,

Defendant(s),

Case No: C93713

Dept No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office; Las Vegas, Nevada
This 6 day of April 2010.

Steven D. Grierson, Clerk of the Court

Heather Lofquist, Deputy Clerk