

● ORIGINAL ●

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP J. KOHN,  
CLARK COUNTY SPECIAL PUBLIC DEFENDER,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, COUNTY OF  
CLARK, THE HONORABLE JEFFREY R. SOBEL,  
DISTRICT COURT JUDGE,

Respondent,

DONTE JOHNSON aka JOHN WHITE,

Real Party in Interest.

Case No. 36461  
(Dist. Ct. No. C153154)

**FILED**

JUL 21 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

PETITION FOR WRIT OF MANDAMUS AND  
EMERGENCY MOTION FOR STAY OF PROCEEDINGS

PHILIP J. KOHN  
CLARK COUNTY, NEVADA  
SPECIAL PUBLIC DEFENDER  
Nevada Bar #0556  
JOSEPH S. SCISCENTO  
Nevada Bar #4380  
DAYVID J. FIGLER  
Nevada Bar #4264  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155-2316

Attorney for Appellant

STEWART L. BELL  
CLARK COUNTY, NEVADA  
DISTRICT ATTORNEY  
Nevada Bar #0477  
200 South Third Street  
Las Vegas, Nevada 89155  
(702) 455-4711

FRANKIE SUE DEL PAPA  
Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717  
(702) 486-3420

Counsel for Respondent

**RECEIVED**

JUL 21 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
DEPUTY CLERK

SPECIAL PUBLIC  
DEFENDER

CLARK COUNTY  
NEVADA

00-12610

IN THE SUPREME COURT OF THE STATE OF NEVADA

PHILIP J. KOHN,  
CLARK COUNTY SPECIAL PUBLIC DEFENDER,

Case No.  
(Dist. Ct. No. C153154)

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, COUNTY OF  
CLARK, THE HONORABLE JEFFREY R. SOBEL,  
DISTRICT COURT JUDGE,

Respondent,

DONTE JOHNSON aka JOHN WHITE,

Real Party in Interest.

PETITION FOR WRIT OF MANDAMUS AND  
EMERGENCY MOTION FOR STAY OF PROCEEDINGS

COMES NOW the Petitioner, PHILIP J. KOHN, Clark County Special Public Defender, by and through JOSEPH S. SCISCENTO and DAYVID J. FIGLER, Deputy Special Public Defenders, and pursuant to NRS 34.320 et. seq., respectfully petitions this Honorable Court to declare the Three Judge Panel unconstitutional based on the recent United States Supreme Court decision in Appendi v. New Jersey, \_\_\_ U.S. \_\_\_ 2000 WL 807189 (June 26, 2000), mandate imposition of a life sentence and/or stay the penalty hearing in the above-entitled matter.

This Petition is based upon the Memorandum of Points and Authorities and portions of the record relevant to the determination

// //

// //

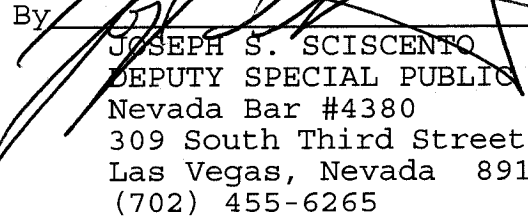
// //

// //

1 of this Petition and any argument should this Honorable Court order  
2 a hearing on this matter.

3 DATED this 20th day of July, 2000.

4 PHILIP J. KOHN  
5 CLARK COUNTY SPECIAL PUBLIC DEFENDER

6 By   
7 JOSEPH S. SCISCENTO  
8 DEPUTY SPECIAL PUBLIC DEFENDER  
9 Nevada Bar #4380  
309 South Third Street, 4th Floor  
Las Vegas, Nevada 89155-2316  
10 (702) 455-6265

11  
12 VERIFICATION

13 STATE OF NEVADA           )  
14                                ) ss:  
15 COUNTY OF CLARK         )

16 JOSEPH S. SCISCENTO, being first duly sworn, deposes and  
17 states as follows:

18 1. That he is an attorney duly licensed to practice law in  
19 the State of Nevada and one of the Deputy Special Public Defenders  
20 assigned to represent Donte Johnson.

21 2. That MR. JOHNSON, has authorized and directed Mr.  
22 Sciscento, to file the foregoing Writ of Mandamus;

23 3. That MR. SCISCENTO, has read the foregoing Writ of  
24 Mandamus and knows the contents therein and as to those matters they  
25 are true and correct and as to those matters based on information and  
26 belief he is informed and believes them to be true;

27 4. That MR. JOHNSON has no other remedy at law available  
28 to him and that the only means to address this problem is through this  
writ;

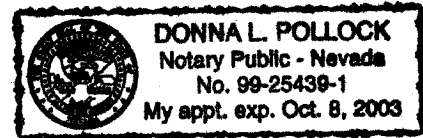
1           5. That MR. SCISCENTO signs this Verification on behalf of  
2 MR. JOHNSON, under his direction and authorization and further that  
3 MR. JOHNSON is currently in custody of the authorities of the Clark  
4 County Detention Center.

5           FURTHER YOUR AFFIANT SAITH NAUGHT.

6  
7  
8           JOSEPH S. SCISCENTO

9  
10          SUBSCRIBED AND SWORN to before  
11 me this 20th day of July, 2000.

12          Donna L. Pollock  
13          NOTARY PUBLIC in and for  
14 said County and State.



15  
16                   POINTS AND AUTHORITIES

17                   I.

18                   STATEMENT OF THE ISSUES

19           1. Whether the District Court erred in denying the  
20 Defendant's Motion for Imposition of Life Without the Possibility of  
21 Parole Sentence; or, in the Alternative, Motion to Empanel Jury for  
22 Sentencing Hearing and/or for Disclosure of Evidence Material to  
23 Constitutionality of Three Judge Panel Procedure.

24           2. Whether the three-judge panel as applied in Nevada is  
25 unconstitutional in light of Apprendi v. New Jersey, \_\_\_ U.S. \_\_\_ 2000  
26 WL 807189 (June 26, 2000) thus mandating imposition of a life  
27 sentence.

28          // //

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

II.

STATEMENT OF THE CASE

Defendant, Donte Johnson, was found guilty of murder by a jury on June 9, 2000. The State is seeking the death penalty against the Defendant. After the penalty hearing, the jury was unable to agree on a sentence and District Court has requested that the Nevada Supreme Court appoint a three-judge panel to impose sentence. NRS 175.556. Defendant submitted that imposition of a sentence by a three-judge panel would deprive him of equal protection, due process, effective assistance of counsel and a reliable sentence under the State and Federal constitutions. Briefs were submitted, no oral argument was allowed and the District Court denied the motion (see attached Order filed on July 20, 2000). Accordingly, Defendant submits that the District Court should have imposed a sentence of life in prison without the possibility of parole.

In the alternative, Defendant submits by way of Writ of Mandamus that this Court declare the Three Judge Panel unconstitutional based on the recent United States Supreme Court decision in Apprendi v. New Jersey, \_\_\_ U.S. \_\_\_ 2000 WL 807189 (June 26, 2000), mandate imposition of a life sentence and/or stay the penalty hearing in the above-entitled matter until such a time as the Nevada Supreme Court can rule on this issue on the merits.

III.

ARGUMENT

1. The relief requested by the Petitioner should be properly granted by this Court.

This court may issue a writ of mandamus in order "to compel the performance of an act which the law especially enjoins as a duty resulting from

1 an office, trust or station." NRS 34.160.  
2 Generally, a writ of mandamus may issue only when  
3 there is no plain, speedy, and adequate remedy at  
4 law. See NRS 34.170. However, where  
5 circumstances reveal urgency or strong necessity,  
6 this court may grant extraordinary relief. See  
7 Jeep Corp. v. District Court, 98 Nev. 440, 443,  
8 652 P.2d 1183, 1185 (1982). Moreover, "where an  
9 important issue of law needs clarification and  
10 public policy is served by this court's  
11 invocation of its original jurisdiction, our  
12 consideration of a petition for extraordinary  
13 relief may be justified." Business Computer  
14 Rentals v State Treas., 114 Nev. 63, 67, 953 P.2d  
15 13, 15 (1998).

16 It is Petitioner's position that after the decision of  
17 Apprendi v. New Jersey, supra, the Nevada three judge panel is  
18 unconstitutional and manifests a structural error. (See discussion  
19 infra.) This is certainly an area of law never before addressed by  
20 the Nevada Supreme Court and in light of the utmost seriousness  
21 attached to the imposition of the death penalty on an individual under  
22 the present national and international debate on the subject that the  
23 public interest can only be served by analysis of our Nevada Supreme  
24 Court before another person is sentenced to death under an  
25 unconstitutional system. Not only is a placement of an individual on  
26 death row manifestly unjust when structural error exists, but the  
27 public confidence in a state where execution is allowed will be  
28 forever lost if the Nevada Supreme Court refuses to even consider the  
issue of structural error of the three-judge panel when clearly it is  
called into question by new United States Supreme Court precedent.  
There can be no argument that this is not an important issue of law  
which needs clarification and which serves the public policy. As  
such, the Petitioner implores this Court to stay these  
unconstitutional proceedings for time to consider the Petitioner's  
request for writ and imposition of life sentence.

1           2.     The Three-Judge Panel Procedure For Imposing A  
2                   Sentence Of Death Is Unconstitutional Under The  
3                   Due Process Guarantee Of The Federal Constitution  
                  pursuant to new precedent set forth by the United  
                  States Supreme Court.

4           The three-judge panel procedure prescribed by Nev. Rev.  
5 Stat. § 175.556(1) cannot be followed in this case because it violates  
6 the due process clause of the Fourteenth Amendment to the United  
7 States Constitution. In Apprendi v. New Jersey, \_\_\_ U.S. \_\_\_ 2000 WL  
8 807189 (June 26, 2000) (a copy of which is attached), the United  
9 States Supreme Court unequivocally held: "Other than the fact of a  
10 prior conviction, any fact that increases the penalty for a crime  
11 beyond the prescribed statutory maximum must be submitted to a jury  
12 and proven beyond a reasonable doubt." Id. at \*13. Citing its  
13 previous decision in Jones v. United States, 526 U.S. 227 (1999), the  
14 Court held:

15                   With that exception [of the fact of a prior  
16 conviction], we endorse the statement of the rule  
17 set forth in the concurring opinions in that  
18 case: "[I]t is unconstitutional for a legislature  
19 to remove from the jury the assessment of facts  
20 that increase the prescribed range of penalties  
21 to which a criminal defendant is exposed. It is  
22 equally clear that such facts must be established  
23 by proof beyond a reasonable doubt." 526 U.S. at  
24 252-253, 119 S.Ct. 1215 (opinion of STEVENS, J.);  
25 see also id., at 253, 119 S.Ct. 1215 (opinion of  
26 SCALIA, J.).

27 Id. (footnote omitted).

28           The concurring opinions of the Court's most conservative  
justices were equally unequivocal:

                  What ultimately demolishes the case for the  
dissenters is that they are unable to say what  
the right to trial by jury does guarantee if, as  
they assert, it does not guarantee - - what it  
has been assumed to guarantee throughout our  
history - - the right to have a jury determine  
those facts that determine the maximum sentence

1        the law allows.

2        . . . . .

3                [T]he guarantee that "[i]n all criminal  
4 prosecutions, the accused shall enjoy the right  
5 to ... trial, by an impartial jury" has no  
6 intelligible content unless it means that all the  
facts which must exist in order to subject the  
defendant to a legally prescribed punishment must  
be found by the jury.

7   Id. at \*17 (Scalia, J., concurring) (emphasis supplied).

8                In order for an accusation of a crime  
9 (whether by indictment or some other form) to be  
proper under the common law, and thus proper  
10 under the codification of the common-law rights  
in the Fifth and Sixth Amendments, it must allege  
11 all elements of that crime; likewise, in order  
for a jury trial of a crime to be proper, all  
12 elements of the crime must be proved to the jury.

13        . . . . .

14                [A] "crime" includes every fact that is by  
15 law a basis for imposing or increasing punishment  
(in contrast with a fact that mitigates  
16 punishment). Thus, if the legislature defines  
some core crime and then provides for increasing  
17 the punishment of that crime upon a finding of  
some aggravating fact - - of whatever sort,  
including the fact of a prior conviction - - the  
18 core crime and the aggravating fact together  
constitute an aggravated crime, just as much as  
19 grand larceny is an aggravated form of petit  
larceny. The aggravating fact is an element of  
20 the aggravated crime. Similarly, if the  
legislature, rather than creating grades of  
21 crime, has provided for setting the punishment of  
a crime based on some fact - - such as a fine  
22 that is proportional to the value of stolen goods  
- - that fact is also an element. No multi-  
23 factor parsing of statutes, of the sort that we  
have attempted since McMillan v. Pennsylvania,  
24 477 U.S. 79 (1986)], is necessary. One need only  
look to the kind, degree, or range of punishment  
25 to which the prosecution is by law entitled for  
a given set of facts. Each fact necessary for  
26 that entitlement is an element.

27   Id. at \*18-19 (Thomas, J., concurring).

28                Under this analysis, there can be no doubt that the



1 aggravating circumstances prescribed by Nev. Rev. Stat. § 200.033 are  
2 "elements" of capital murder. Nev. Rev. Stat. § 200.030 defines the  
3 degrees of murder and prescribes the maximum punishments allowed.<sup>1</sup>  
4 First degree murder is punishable by various terms of imprisonment,  
5 § 200.030(4)(b), but it is punishable by death "only if one or more  
6 aggravating circumstances are found and any mitigating circumstance  
7 or circumstances which are found do not outweigh the aggravating  
8 circumstance or circumstances...." § 200.030(4)(a) (emphasis  
9 supplied). The crucial role of aggravating circumstances as elements  
10 of capital-eligible first degree murder is further demonstrated by the  
11 last sentence of § 200.030(4): "A determination of whether aggravating  
12 circumstances exist is not necessary to fix the penalty at  
13 imprisonment for life with or without the possibility of parole."

14 Thus under state law both the existence of aggravating  
15 factors, and the determination that the aggravating factors are not  
16 outweighed by the mitigating factors, are necessary elements of death  
17 eligibility and are necessary to increase the maximum punishment  
18 provided for first degree murder from the various possible sentences  
19 of imprisonment to death. Under Apprendi, the due process guarantee  
20 of the federal Constitution requires those elements to be decided by

---

21  
22 <sup>1</sup> Nev. Rev. Stat. § 200.030(4) provides:

23 A person convicted of murder of the first degree is guilty of a category A felony and shall  
24 be punished:

25 (a) By death, only if one or more aggravating circumstances are found and any mitigating  
26 circumstance or circumstances which are found do not outweigh the aggravating circumstance or  
27 circumstances; or

28 (b) By imprisonment in the state prison;

(1) For life without the possibility of parole;

26 (2) For life with the possibility of parole, with eligibility for parole beginning  
27 when a maximum of 20 years has been served; or

28 (3) For a definite term of 50 years, with eligibility for parole beginning when a  
minimum of 20 years has been served.

A determination of whether aggravating circumstances exist is not necessary to fix the penalty  
at imprisonment for life with or without the possibility of parole.

1 a jury. Accordingly, the three-judge panel procedure, which would  
2 allow judges to make those findings, is unconstitutional.

3 The unconstitutionality of the Nevada procedure is further  
4 demonstrated by the distinction drawn in Apprendi between its holding  
5 and the holding in Walton v. Arizona, 497 U.S. 639 (1990). In  
6 Apprendi, the Court distinguished Walton, holding that the rule it  
7 announced would not "render invalid state capital sentencing schemes  
8 requiring judges, after a jury verdict holding a defendant guilty of  
9 a capital crime, to find specific aggravating factors before imposing  
10 a sentence of death." Id. at \*16 (citation omitted; emphasis added).  
11 The court relied on the reasoning in Justice Scalia's opinion in  
12 Almendarez-Torres v. United States, 523 U.S. 224, 257 n. 2 (Scalia,  
13 J., dissenting):

14 "Neither the cases cited, nor any other case,  
15 permits a judge to determine the existence of a  
16 factor which makes a crime a capital offense.  
17 What the cited cases hold is that, once a jury  
18 has found the defendant guilty of all the  
19 elements of an offense which carries as its  
20 maximum penalty the sentence of death, it may be  
left to the judge to decide whether that maximum  
penalty, rather than a lesser one, ought to be  
imposed.... The person who is charged with  
actions that expose him to the death penalty has  
an absolute entitlement to jury trial on all the  
elements of the charge."

21 Apprendi at \*16 (emphasis supplied). Under the Arizona scheme at  
22 issue in Walton, the statute provides that the maximum penalty for  
23 first degree murder is death. Ariz. Rev. Stat. § 13-1105(C) ("First  
24 degree murder is a class 1 felony and is punishable by death or life  
25 imprisonment as provided by § 13-703"); Walton v. Arizona, 497 U.S.  
26 at 643.

27 By contrast, under Nevada law the penalty of death is not  
28 the maximum penalty for first degree murder simpliciter: the statute

1 itself provides that the penalty is not available for first degree  
2 murder unless additional elements - - the existence of aggravating  
3 circumstances, and the failure of mitigating circumstances to outweigh  
4 the aggravating circumstances - - are found. See Appendi at \*29  
5 (Thomas, J., concurring) ("If a fact is by law the basis for imposing  
6 or increasing punishment - - for establishing or increasing the  
7 prosecution's entitlement - - it is an element.") Simply put, a  
8 jury's verdict of first degree murder under Nevada law is not "a jury  
9 verdict holding a defendant guilty of a capital crime," id. at \*16,  
10 because the statute itself provides that the punishment of death is  
11 not available simply on the basis of that verdict, but can be imposed  
12 "only if" further findings are made to increase the available maximum  
13 punishment.

14 Under Appendi, this Court cannot constitutionally proceed  
15 to make the findings in this case - - the existence of aggravating  
16 factors and the failure of mitigating factors to outweigh aggravating  
17 factors - - which are necessary to increase the maximum punishment for  
18 the offense to a death sentence. Since findings of these elements of  
19 capital murder can constitutionally be made only by a jury, the three-  
20 judge panel procedure allowed by Nev. Rev. Stat. § 175.556(1) cannot  
21 be given effect under the due process clause.

22 This Court's previous decisions upholding the three-judge  
23 panel procedure do not control resolution of this issue. Prior  
24 decisions did not address or resolve the issue decided in Appendi.  
25 See, e.g., Williams v. State, 113 Nev. 1008, 1017-1018 and nn. 5, 6  
26 (1997); Kirksey v. State, 112 Nev. 980, 1001, 923 P.2d 1102 (1996);  
27 Paine v. State, 110 Nev. 609, 617 877 P.2d 1025 (1994); Redmen v.  
28 State, 108 Nev. 227, 235-236, 828 P.2d 395 (1992). Since the Nevada

1 this Court's decisions relating to the three-judge panel issue did not  
2 address the issue decided in Apprendi, they do not control this  
3 Court's resolution of the issue here. E.g., Sakamoto v. Duty Free  
4 Shoppers, Ltd., 764 F.2d 1285, 1288 (9th Cir. 1985) (decisions not  
5 controlling authority on issues not decided); Vegas Franchise v.  
6 Culinary Workers, 83 Nev. 422, 424, 433 P.2d 263 (1967) (overruling  
7 language in previous decision resting upon "false premise"); Jackson  
8 v. Harris, 64 Nev. 339, 183 P.2d 161 (1947) (cases not authority on  
9 points "that may be found lurking in the record" when issue not placed  
10 before court).<sup>2</sup>

11 Further, the major principle relied on in the Nevada Supreme  
12 Court's decision - - that the federal constitution does not require  
13 capital sentences to be imposed by juries, see Hill v. State, 102 Nev.  
14 377, 379-380, 724 P.2d 734 (1986) - - does not affect the issue  
15 decided in Apprendi: even if a capital sentence can constitutionally  
16 be imposed by a judge, under Apprendi all of the elements of a capital  
17 crime must be decided by a jury. Since a verdict of guilty of first  
18 degree murder does not expose the defendant to the death sentence  
19 without findings of additional qualifying factors, those factors are  
20 elements of the capital crime and must be found by a jury, whatever  
21 the ultimate sentencing body may be.

22  
23 <sup>2</sup> Even if those decisions were on point, the doctrine of stare decisis does not apply when "an  
24 intervening Supreme Court decision undermines an existing precedent of the [court] and both cases are  
25 closely on point." United States v. Lancelloti, 761 F.2d 1363, 1366 (9th Cir. 1985); accord Spinelli v.  
26 Gaughan, 12 F.3d 853, 855 n. 1 (9th Cir. 1993); Leggett v. Badger, 798 F.2d 1387, 1389, 1390 (11th  
27 Cir. 1986) (district court correctly declined to follow mandate of court of appeals in light of intervening  
28 Supreme Court authority). See also Litteral v. State, 97 Nev. 503, 505-508, 634 P.2d 1226 (1981)  
(upholding district court's refusal to instruct on specific intent element of robbery based on language  
of statute, despite Supreme Court decisions requiring instruction on that element, and disapproving prior  
decisions). "In such a case, to continue to follow the earlier case blindly until it is formally overruled  
is to apply the dead, not the living, law." Norris v. United States, 677 F.2d 899, 904 (9th Cir. 1982) (per  
Posner, J.) The intervening Supreme Court decision in Apprendi, which the Nevada Supreme Court has  
not yet addressed, prescribes the analysis that this Court must conduct under the Fourteenth Amendment.

1 Finally, this Court is bound to follow Appendi under the  
2 supremacy clause of the United States Constitution:

3 This Constitution, and the Laws of the  
4 United States which shall be made in Pursuance  
5 thereof; and all Treaties made, or which shall be  
6 made, under the Authority of the United States,  
7 shall be the supreme Law of the Land; and the  
Judges in every State shall be bound thereby, any  
Thing in the Constitution or Laws of any State to  
the Contrary notwithstanding.

8 U.S. Const. Art. VI; Powell v. Nevada, 511 U.S. 79 (1994) (state court  
9 cannot refuse to apply federal constitutional retroactivity doctrine);  
10 Nev. Const. Art. 1 § 2.

11 Because the three-judge panel cannot constitutionally make  
12 the findings of elements necessary to impose a death sentence, this  
13 Court should proceed to mandate the imposition of a life sentence, or  
14 in the alternative, stay any further proceedings until the issues are  
15 evaluated on their merits. See Nev. Rev. Stats. § 175.556(2) ("In a  
16 case in which the death penalty is not sought, if a jury is unable to  
17 reach a unanimous verdict upon the sentence to be imposed, the trial  
18 judge shall impose the sentence."); cf. 1977, Nev. Stats. Ch. 585 ("If  
19 the punishment of death is held to be unconstitutional by the court  
20 of last resort, the substituted punishment shall be imprisonment in  
21 the state prison for life without possibility of parole.")

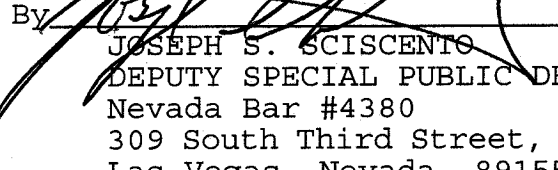
#### 22 CONCLUSION

23 Petitioner prays and it would be in the best interest of the  
24 public, to not induce the waste of judicial resources and public  
25 confidence that would result from holding a full sentencing proceeding  
26 before three district judges, when any findings as to the elements  
27 making the offense capital - eligible will necessarily be void under  
28 Appendi.

1           The Statute provides that the default after a directive of  
2 unconstitutionality must and can only be a sentence of life without  
3 the possibility of parole. Petitioner again requests that this  
4 sentence be mandated by way of this writ, or in the alternative, that  
5 the penalty hearing be stayed so that this very important issue can  
6 be resolved and guidance given to all district courts.

7                               Respectfully submitted,

8                               PHILIP J. KOHN  
9                               CLARK COUNTY SPECIAL PUBLIC DEFENDER

10                              By   
11                               JOSEPH S. SCISCENTO  
12                               DEPUTY SPECIAL PUBLIC DEFENDER  
13                               Nevada Bar #4380  
14                               309 South Third Street, 4th Floor  
15                               Las Vegas, Nevada 89155-2316  
16                               (702) 455-6265

1 **ORDR**

2 PHILIP J. KOHN

3 CLARK COUNTY SPECIAL PUBLIC DEFENDER

4 Nevada Bar #0556

5 JOSEPH S. SCISCENTO

6 Deputy Special Public Defender

7 Nevada Bar #4380

8 DAYVID J. FIGLER

9 Deputy Special Public Defender

10 Nevada Bar #4264

11 309 South Third Street, 4th Floor

12 Las Vegas, Nevada 89155

13 Attorneys for Donte Johnson

FILED

JUL 20 9 39 AM '00

*Shirley S. Pangione*  
CLERK

9 **DISTRICT COURT**  
10 **CLARK COUNTY, NEVADA**

11 THE STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 DONTE JOHNSON, aka

15 John White, ED# 1586283,

16 Defendant.

Case No. C153154

Dept. No. V

17 **ORDER**

18 This matter having come before this Honorable Court on the 20th day of July,  
19 2000, and good cause appearing therefor,

20 IT IS HEREBY ORDERED that Defendant's Motion for Imposition of Life  
21 Without the Possibility of Parole Sentence; or, in the Alternative Motion to Empanel Jury

22 // //

23 // //

24 // //

25 // //

26 // //

27 // //

28 // //

EXHIBIT "1"

1 for Sentencing Hearing and/or for Disclosure of Evidence Material to Constitutionality of  
2 Three Judge Panel Procedure is hereby denied.

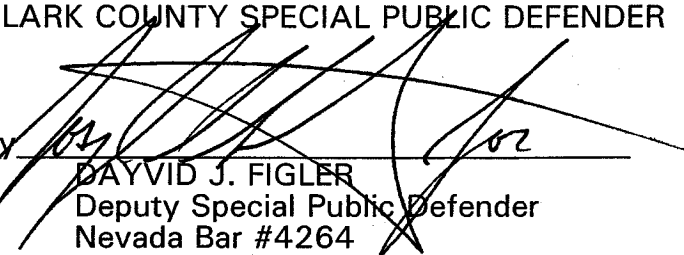
3 DATED this 20th day of July, 2000.

4  
5 **JEFFREY D. SOBEL**

6 JEFFREY D. SOBEL

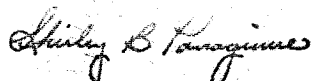
7  
8 PHILIP J. KOHN  
9 CLARK COUNTY SPECIAL PUBLIC DEFENDER

10  
11 By

12   
13 DAYVID J. FIGLER  
14 Deputy Special Public Defender  
15 Nevada Bar #4264  
16 309 South Third Street, 4th Floor  
17 Las Vegas, Nevada 89155

18  
19  
20  
21  
22  
23  
24  
25 CERTIFIED COPY  
26 DOCUMENT ATTACHED IS A  
27 TRUE AND CORRECT COPY  
28 OF THE ORIGINAL ON FILE

2000 JUL 20 A 4 40

  
CLERK

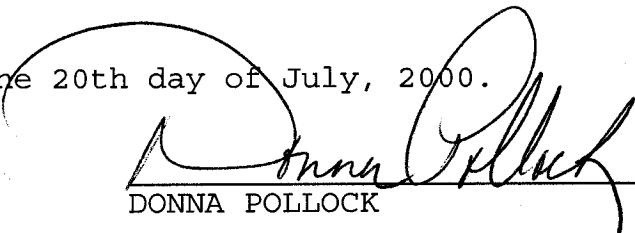


1                                    DECLARATION OF FACSIMILE AND MAILING

2                    DONNA POLLOCK, an employee with the Clark County Special  
3 Public Defender's Office, hereby declares that she is, and was when  
4 the herein described mailing took place, a citizen of the United  
5 States, over 21 years of age, and not a party to, nor interested in,  
6 the within action; that on the 20th day of July, 2000, declarant  
7 deposited in the United States mail at Las Vegas, Nevada, a copy of  
8 the Petition for Writ of Mandamus and Emergency Motion for Stay of  
9 Proceedings in the case of Philip J. Kohn, Petitioner vs. The Eighth  
10 Judicial District Court of the State of Nevada, County of Clark, the  
11 Honorable Jeffrey R. Sobel, District Court Judge, Respondent, Donte  
12 Johnson, Real Party in Interest, Case No. C153154, enclosed in a  
13 sealed envelope upon which first class postage was fully prepaid,  
14 addressed to Frankie Sue Del Papa, Attorney General, 100 North Carson  
15 Street, Carson City, Nevada 89701-4717; Judge Michael R. Griffin,  
16 District Court Judge, 885 East Musser Street, Carson City, Nevada  
17 89701, Department 1, Suite 3061, Fax (775) 887-2272; Judge Steven P.  
18 Elliott, P.O. Box 30083, Reno, Nevada 89520, Fax (775) 328-3829; that  
19 there is a regular communication by mail between the places of mailing  
20 and the places so addressed.

21                    I declare under penalty of perjury that the foregoing is  
22 true and correct.

23                    EXECUTED on the 20th day of July, 2000.

24                      
25                    DONNA POLLOCK

1                    RECEIPT OF A COPY of the foregoing **Petition for Writ of**  
2 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
3 acknowledged this 20th day of July, 2000.

4                    STEWART L. BELL  
5                    CLARK COUNTY DISTRICT ATTORNEY

6                    By *Madeline Mulkey*  
7

8  
9                    RECEIPT OF A COPY of the foregoing **Petition for Writ of**  
10 **Mandamus and Emergency Motion for Stay of Proceedgins** is hereby  
11 acknowledged this 20th day of July, 2000.

12                    JEFFREY R. SOBEL  
13                    DISTRICT COURT JUDGE, DEPARTMENT V

14                    By *Elana Pizarro*  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28