

Andre Boston
27846 NNCC 2A/7H
P.O. Box 7000
Carson City, NV 89702
Respondent

PROPER PERSON
RECEIVED/ENTERED

JUN 28 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

FILED

JUL 12 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

State of Nevada
Appellant

v.

Andre Boston
Respondent

No. 62931

OBJECTION TO THE STATE'S
APPEAL AS PURELY
DILATORY ACTION

Comes now, Andre Boston, Respondent
who hereby submits his Objection to the
Appeal undertaken by the State of Nevada
in the above cited case matter.

This Objection is being made and
presented only upon the good faith reasons
disclosed herein.

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DEPUTY CLERK

RELEVANT BACKGROUND

Jan. 2011, (more specifically Jan. 5, 2011)
Andre Boston, petitioner pro-per filed a
post conviction state habeas corpus petition,
+ 13-19181

in the Nevada Eighth Judicial District Court.

The Eighth Judicial District Court dismissed the petition as procedurally barred and barred by laches.

On appeal, this court reversed and remanded to appoint counsel and consider whether the U.S. Supreme Court's decision in Graham v. Florida 130 S.Ct. 2011 (2010) provided good cause for the filing of this/the purported untimely and successive petition and if so whether it provided a basis for relief therein.

On March 4, 2013 the Eighth Judicial District Court of Nevada held a hearing on the issues remanded from the Nevada Supreme Court. The court found that the issuance of the Graham decision by the U.S. Supreme Court provided good cause for the otherwise untimely and successive petition and that prejudice is demonstrated if Boston (respondent) is unable to raise the issues contained in the petition. The court further found the State's assertion of laches was sufficiently rebutted by Boston as he did not delay an unreasonable amount of time after issuance of Graham and it will not be unreasonably difficult for the State to hold a new sentencing hearing which does not require an entirely new

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trial. The court went on to grant the Petition in part holding that the sentences imposed on Boston are in violation of the Eighth Amendment because they do not provide a meaningful opportunity to obtain release. The court set aside the unconstitutional sentences and ordered a re-sentencing in accordance with the Eighth Amendment dictates - setting a new sentencing hearing.

On April 12, 2013, the State filed an appeal with this court re-raising the issues surrounding the application of Graham in this case.

Respondent hereby objects to the appeal in this matter based on the following points:

I

THE ISSUE SURROUNDING THE APPLICATION OF GRAHAM HAS BEEN SETTLED BY THE DISTRICT COURT.

In this case, it is this court who reversed the District Court and remanded the case for further proceedings on the applicability of Graham in this case. This court in its infinite wisdom decided to direct the lower court to address the Graham applicability to this case.

The District Court, after conducting a careful and deliberate hearing on the applicability of Graham to this case found a violation of the U.S. Constitution to exist and set forth to rectify the violation through vacating the unconstitutional sentence and setting a new sentencing hearing in accordance with Graham. To this extent the District Court discharged its duty in accordance with the direction from this court and administered impartial fairness and equity in the application of law in this case. The District Court addressed and settled the Graham issue in this case, at the behest of this court. Therefore an appeal to this court (who remanded the case to decide the issue directed in Graham) is inappropriate.

In this ^{CASE} ~~court~~ the respondent was a 16 yr. old minor when the case occurred. The respondent received a sentence (which even by this court's calculation exceeds 100 plus years) which means he will never be released, "ergo" a sentence of Life Without Parole. The case did not involve a homicide. The holding in Graham prohibits a Life without Parole sentence for non-homicide offenses where the offender was under the age of 18. Consequently the ruling in Graham is applicable in this case and in finding so the District Court

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settled the issue of Graham's applicability to this case.

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II.

THERE HAS BEEN NO INTERVENING CHANGE IN THE FACTS OF THE CASE OR APPLICABLE LAW WHICH WOULD WARRANT AN APPEAL.

Respondent asserts that there has been no intervening change in the facts of the case or applicable law which would warrant an appeal.

In this case, as previously noted above, the District Court carried out the judicial consideration and decision of this court. The District Court made its determination of relevant case factor and correct application of the law. This determination was exactly what this court had tasked the District Court to conduct a hearing on.

Since this determination by the court there has been no intervening changes in the facts of this case or applicable law. The holding in Graham has not changed nor been overruled/reversed. The factors of this case which make Graham applicable (as determined by the State District Court) have not changed and nor is there any change in the issue of whether or not

Graham was meant to apply to juvenile offenders who are under 18 and commit non homicide offenses but are sentenced to a Life without Parole sentence that provides no meaningful opportunity for release.

The appeal should be dismissed in this case.

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III

THE APPEAL IS BEING TAKEN
IN BAD FAITH AND FOR NO
OTHER REASON THAN DILATORY
PURPOSES.

Respondent asserts that the appeal in this matter is being undertaken for / in BAD FAITH and for no reasons other than dilatory purposes.

In this case the state is calling upon the Nevada Supreme Court to review a decision rendered in the State District Court at the behest of the Supreme Court. This conduct appears to be motivated by BAD FAITH on the behalf of the state. Even the issues raised for review by the state lack merit as they have already been settled by this court and the State District Court. For instance on the issue of whether multiple consecutive life sentences that equate to

the functional equivalent to a Life Without Parole sentence in violation of Graham, both this court and the State District Court have determined that respondent's sentences would require him to serve at "minimum" in excess of 100 years without being released. Thus the sentence under its current structure is the functional equivalent of a Life Without Parole sentence and clearly falls under the scope of Graham.

Because Nevada has yet to establish state case precedence in such a situation, the respondent's attorney provided to the State District Court a case authority from the sister state - "California" where the court was called upon to address a Graham issue on a "term of years" case.

In People v. Caballero 55 Cal. 4th 262 (2012) the California Supreme Court was left to determine whether a 110 years to life sentence imposed on a juvenile convicted of non homicide offenses contravened Graham's mandate against cruel and usual punishment under the Eighth Amendment; to which they concluded it did. "The gist of Graham is not only that life sentences for juveniles are unusual as a statistical matter, they are cruel as well because 'developments in psychology and brain science continue to show fundamental differences

between juvenile and adult minds." (Laballero 55 Cal. 4th at _____, concurring opinion, citing Graham, supra 560 U.S. at p. _____ [130 S. Ct. at 2026].)

Thus the State District Court's decision is an indication of not only Graham's applicability but also the national trend in regards to the issue(s) raised in the appeal.

The State has elected to ignore and disregard the holding in Graham, the national trend on unconstitutional sentences of Life Without Parole on juvenile offenders for non-homicide offenses and the administration of impartial equity and fairness by the State District Court. The State appears instead to be acting in BAD FAITH by substituting its subjective will, desire and purpose, for objective law and reason. Had the respondent not had his habeas petition partially granted the state would be rushing to dispose of the claim. Yet because the State did not get the decision they desired from the State District Court, the seemingly appropriate tactic in their own mind(s) is to prolong resolution of the case with a Dilatory motivated appeal. Therefore this appeal should be dismissed as purely suspect and dilatory state action, taken for no other apparent reason than undue delay in the proceedings, to impede and impair equitable law and justice in its normal course in this case.

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CONCLUSION

Based on the foregoing, the appeal in this matter should be dismissed.

Date: 6/26/13 /s/ Andre Boston
Andre Boston
Respondent

AFFIRMATION

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Date 6/26/13 /s/ Andre Boston
Andre Boston

VERIFICATION

Pursuant to NRS 208.145, the undersigned hereby declares under penalty of perjury that he has read the foregoing objection to the state's appeal as purely dilatory action and find the facts and matters stated therein to be true of his own personal knowledge except as to those averments of facts and matters, asserted therein based upon information and belief and affirm verities he believes them to be true also.

Date: 6/26/13 /s/ Andre Boston
Andre Boston

CERTIFICATE OF SERVICE

I, Andre Boston, hereby certify that a true copy of the foregoing "Objection To The States Appeal As Purely Dilatory Action" has been furnished to opposing Counsel by placing the same in a postage prepaid envelope and depositing them in the hands of prison officials for purposes of mailing and delivery by the U.S. Post Office Service at the Northern Nevada Correctional Center addressed to:

Jonathan E. VanBasterck
Office of the District Attorney
200 Lewis Avenue, 3rd Fl.
Las Vegas NV 89101

Executed this 26 day of June 2013

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Andre Boston