

IN THE SUPREME COURT OF THE STATE OF NEVADA

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SIAOSI VANISI,

Petitioner,

vs.

RENEE BAKER, WARDEN et. al.,

Respondents.

No. 65774

Motion to Transmit Select DVDs
Filed as Exhibits with
Appellant's Petition for Writ of
Habeas Corpus

Electronically Filed
Jan 14 2015 04:03 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

Appellant Siasosi Vanisi hereby moves this Court to direct the Second Judicial District Court Clerk to transmit to this Court select exhibits in appellant's appendix that are in DVD format. NRAP 27. This motion is brought pursuant to NRAP 30(d), and is made and based on the following points and authorities and the entire file herein.

DATED this 14th day of January, 2015.

Respectfully submitted,
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POINTS AND AUTHORITIES

Concurrently, with the submission of Mr. Vanisi's opening brief, counsel mailed a notice of manual filing seven DVDs on January 7, 2015 (Exs. 146, 154, 16AA3974, 17AA4069). These DVDs were exhibits to the Petition for Writ of Habeas Corpus which Mr. Vanisi filed with the Second Judicial District Court, Department 4 (Honorable Judge Connie J. Steinheimer) on May 5, 2011. Mr. Vanisi now files this motion pursuant to NRAP 30(d) requesting this Court to direct the district court clerk to transmit the original DVD exhibits to this Court.

In his opening brief, Mr. Vanisi argues that he has been incompetent since his arrest, and has suffered from his mental illness since he was a child. Opening Brief at 95-110; 20AA4858 ("Based on all the information available to me, it is my opinion that Mr. Vanisi has been mentally ill since well before the onset of the crime in question, with increasing deterioration of mental/psychiatric functions in the years preceding the homicide."). One of the exhibits that Mr. Vanisi requests be transmitted, Exhibit 146, consists of DVDs containing videos depicting Mr. Vanisi's psychotic behavior while in custody prior to his trial, and supports this argument. 16AA3975. Specifically, this

evidence supports that Mr. Vanisi was psychotic during his offense, and incompetent during his proceedings, and that trial and habeas counsel were ineffective by failing to conduct an adequate investigation which would have revealed this evidence. Strickland v. Washington, 466 U.S. 668 (1984).

In his opening brief, Mr. Vanisi also argues that his appellate and habeas counsel were ineffective by failing to challenge the admission of improper victim impact testimony. Opening Brief at 136-48. Mr. Vanisi seeks admission of Exhibit 154 (17AA4069), a DVD containing a video of the victim's holiday celebrations with his children and wife. Over Mr. Vanisi's objection, prosecutors presented this video evidence, along with the testimony of the victim's wife and his friend and co-worker, Stephen Sauter, in their quest for a death penalty. See 16AA3951-54; 6SA1279-86; 6SA1295-1325. In order to consider and evaluate whether the victim-impact evidence in Mr. Vanisi's trial was so inflammatory as to violate due process, and determine whether it was a veiled plea for the death penalty which was prohibited by the Supreme Court in Booth v. Maryland, 482 U.S. 496, 509 (1987), this Court should view the same evidence which was before Mr. Vanisi's jury. Opening Brief at 147-48;

see also Payne v. Tennessee, 501 U.S. 808, 830 n.2 (1991) (victim witness may not express their views on appropriate punishment).

Thus, Mr. Vanisi moves this Court to order the clerk of the district court to transmit petition exhibits 146 and 154, in order to ensure this Court has a complete record of the information that was before the district court when it denied Mr. Vanisi's habeas petition.

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Conclusion

Exhibits 146 and 154 are videos which were attached to Mr. Vanisi's petition for writ of habeas corpus and before the district court. The exhibits are relevant to the issues raised in Mr. Vanisi's appeal and are necessary to the determination of those issues. NRAP 30(d). Mr. Vanisi therefore asks the Court to direct the district court clerk to transmit the original exhibits for consideration in these proceedings.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that pursuant to NRCP 5(b)(2)(D), this document was filed electronically with the Nevada Supreme Court on the 14th day of January, 2015. Electronic Service of the foregoing Motion to Transmit Selected DVDs Filed as Exhibits with Appellant's Petition for Writ of Habeas Corpus shall be made in accordance with the Master Service List as follows:

Terrence McCarthy, Deputy District Attorney

Adam Laxalt, District Attorney

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