

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 MAZEN ALOTAIBI,

3 Appellant,

No. 67380

4 vs.

5 THE STATE OF NEVADA,

6 Respondent.

Electronically Filed
Jun 18 2015 08:50 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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8 **MOTION TO STAY DIRECT APPEAL AND FOR REMAND TO PERMIT**
9 **PREDICATE FILING OF PETITION FOR POSTCONVICTION RELIEF**
10 **AND EVIDENTIARY HEARING THEREON**

11 **COMES NOW**, the Appellant, MAZEN ALOTAIBI, by and through his
12 attorneys, DOMINIC P. GENTILE, ESQ., and VINCENT SAVARESE III, ESQ.,
13 of the law firm of GENTILE CRISTALLI MILLER ARMENI & SAVARESE,
14 and hereby moves the Court to stay the instant appeal and remand this matter to the
15 district court in order to permit the Defendant/Appellant to file a predicate petition
16 for post-conviction relief pursuant to Nevada Revised Statutes (“NRS”) §§ 34.720,
17 et seq. on grounds of ineffective assistance of counsel at trial and obtain an
18 evidentiary hearing and ruling thereon in advance of this Court’s consideration of
19 Appellant’s issues on appeal.
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23 This Motion is based upon and supported by the following Memorandum of
24 Points and Authorities and the pleadings and papers on file herein.

25 In support of this Motion, Appellant respectfully assigns the following:

26 1. That among the issues to be presented for review in this case is “whether
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1 the Defendant was deprived of the effective assistance of counsel for his
2 defense at trial.” Appellant’s Docketing Statement in a Criminal Appeal
3 p. 4, ¶ 18C;
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5 2. That the question of whether the Defendant was deprived of effective
6 assistance of counsel at trial is the principal issue to be presented for
7 review in this case;
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9 3. That an evidentiary hearing on Appellant’s claims of ineffective
10 assistance of trial counsel has not yet been conducted in the district court;
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12 4. That in order to permit Appellant to perfect his claims of ineffective
13 assistance of trial counsel for review on direct appeal, this case should be
14 remanded to the district court in order that he may present his claims of
15 ineffective assistance of trial counsel pursuant to NRS §§ 43.720 et seq.
16 and obtain an evidentiary hearing thereon in advance of this Court’s
17 consideration of his issues on appeal; and
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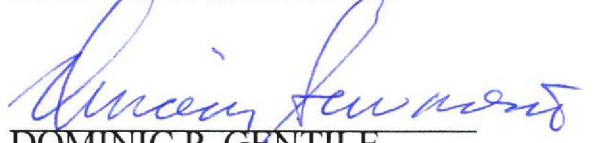
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1 5. That the remand requested herein is in the interest of judicial economy.
2 Dated this 17th day of June, 2015.
3

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5 ARMENI & SAVARESE

6 
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14 Attorneys for Appellant

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **STATEMENT OF RELEVANT FACTS**

14 Defendant/Appellant Mazen Alotaibi has timely appealed from the
15 Judgment of Conviction and sentence entered against him by the district court on
16 January 28, 2015 and February 2, 2015 pursuant to guilty verdicts returned
17 following a 10 day jury trial. Appellant's principal contention on direct appeal is
18 that he was deprived of the effective assistance of counsel at trial. However,
19 Appellant's claims of ineffective assistance of trial counsel have not been perfected
20 for review on direct appeal because an evidentiary hearing thereon has not yet been
21 conducted in the district court.
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II.

LEGAL ARGUMENT

**THIS CASE SHOULD BE REMANDED TO THE DISTRICT
COURT IN ORDER TO PERMIT A PREDICATE
EVIDENTIARY HEARING ON APPELLANT'S CLAIMS OF
INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL.**

Citing this Court's decisions in *Feazell v. State*, 111 Nev. 1446, 1449, 906 P.2d 727, 729 (1995), and *Mazzan v. State*, 100 Nev. 74, 80, 675 P.2d 409, 413 (1984), the United States District Court for the District of Nevada explained in *Echavarria v. Baker*, No. 3:98-CV-00202-MMD, 2013 WL 1181951, at *16 (D. Nev. Mar. 20, 2013), that "in Nevada, claims of ineffective assistance of counsel may be raised on direct appeal." However, as the *Echavarria* court pointed out this is generally more appropriate where "there has already been an evidentiary hearing or where an evidentiary hearing would be unnecessary." *Id.*

Nevertheless, in an appropriate case, nothing prohibits this Court from remanding a case to the district court in order to permit an evidentiary hearing on a criminal defendant's claims of ineffective assistance of trial counsel so that such claims may be perfected for review on direct appeal. And such procedure is further in the interests of judicial economy.

This is an appropriate case in which to allow such a procedural route. Indeed, in this case Appellant's principal issues for review are his claims of ineffective assistance of trial counsel.

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III.

CONCLUSION

THEREFORE, Appellant respectfully requests that the Court stay the instant appeal and remand this case to the district court in order to permit Appellant to perfect his claims of ineffective assistance of trial counsel at an evidentiary hearing so as to enable him to present such claims on direct appeal.

Dated this 17th day of June, 2015.


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