

IN THE SUPREME COURT OF THE STATE OF NEVADA

---

NORMAN KEITH FLOWERS,  
Appellant,

v.

THE STATE OF NEVADA,  
Respondent.

Electronically Filed  
Nov 03 2015 03:24 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

Case No. 68140

**RESPONDENT'S APPENDIX**

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Counsel for Respondent

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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 3<sup>rd</sup> day of November, 2015. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT  
Nevada Attorney General

JAMES A. ORONoz, ESQ.  
Counsel for Appellant

CHRISTOPHER BURTON  
Deputy District Attorney

*/s/ j. garcia*

---

Employee, Clark County  
District Attorney's Office

CFB/Kelsey Einhorn/jg


ORIGINAL FILED

SEP 12 12 39 PM '12

*Agustin L. Llanos*  
CLERK OF THE COURT

MOT  
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Nevada Bar No. 6769  
THOMAS A. ERICSSON, ESQ.  
Nevada Bar No. 4982  
ORONOZ & ERICSSON, L.L.C.  
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Attorneys for Petitioner

DISTRICT COURT  
CLARK COUNTY, NEVADA

06C228755  
MOT  
Motion  
1957461  


NORMAN FLOWERS,  
Petitioner,  
vs.  
STATE OF NEVADA  
Respondents.

CASE NO: C228755  
DEPT NO: IX

MOTION TO OBTAIN A COMPLETE COPY OF DISCOVERY FROM THE STATE

Petitioner NORMAN FLOWERS hereby moves this Court for an Order to Obtain a Complete Copy of Discovery From the State in the above referenced case, which is crucial to a full and fair development of the material facts in this case. This motion is made and based upon the attached memorandum of points and authorities, all pleadings on file herein, and oral argument made by counsel at the hearing set in this matter.

DATED this 12<sup>th</sup> day of September, 2012.

*Thomas A. Ericsson*  
THOMAS A. ERICSSON, ESQ.  
Nevada Bar No. 4982  
700 SOUTH 3RD STREET  
Las Vegas, Nevada 89101  
Telephone (702) 878-2889

CLERK OF THE COURT  
RECEIVED  
SEP 12 2012

10

**MEMORANDUM OF POINTS AND AUTHORITIES**  
**STATEMENT OF RELEVANT FACTS**

On October 24, 2008, the district court adjudicated the Petitioner, Norman Flowers ("Flowers"), guilty of First Degree Murder as well and three other offenses. The court sentenced Flowers to Life Without the Possibility of Parole on the Murder charge. On January 26, 2009, Flowers filed a Notice of Appeal. On September 28, 2011, the Nevada Supreme Court dismissed Flowers' appeal (53159) pursuant to a Guilty Plea Agreement in case number C216032. That same day, the Supreme Court issued its Remittitur. Accordingly, pursuant to NRS 34.726 the one-year deadline for Flowers to file a Post-Conviction Petition for Writ of Habeas Corpus is September 28, 2012.<sup>1</sup>

On June 8, 2012, the district court appointed defense counsel, James A. Oronoz, Esq., to represent Flowers in post-conviction relief proceedings. That same day, the district court set a thirty (30) day status check on receipt of Flowers' case file. On June 15, 2012, counsel contacted the Special Public Defender's (SPD) Office, who represented the Petitioner through trial and appeal, to obtain a copy of the Petitioner's file.<sup>2</sup> On June 22, 2012, Deputy Special Public Defender Randall Pike informed counsel that his office mailed the original case file to Flowers and therefore could not provide a copy of the file to counsel.<sup>3</sup> On July 9, 2012, counsel contacted the State in an attempt to obtain a copy of discovery in the instant case. That same

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<sup>1</sup> NRS 34.780(1) provides in pertinent part: Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year after entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its Remittitur.

<sup>2</sup> See Correspondence attached hereto as Exhibit A

<sup>3</sup> See Letter from Randall Pike attached hereto as Exhibit B.

1 day, the State informed counsel that pursuant to NRS 34.780(2), the State would not provide  
2 discovery until after a Post-Conviction Petition for Writ of Habeas Corpus had been granted.<sup>4</sup>  
3 On July 13, 2012, the district court directed counsel to obtain the file from Flowers, who is  
4 currently an inmate at Ely State Prison. In addition, the district court advised the State to  
5 provide counsel with any missing discovery.  
6

7 On August 27, 2012, counsel informed the district court that obtaining the file from  
8 Flowers was problematic because Flowers only received a portion of the file. According to  
9 Flowers, the prison would not give him any documents that contained social security numbers.  
10 Flowers believed that the remainder of the file was returned to the Special Public Defender's  
11 Office. Upon inquiry by counsel, the Special Public Defender's office denied receiving any  
12 portion of the file back from Ely State Prison. After informing the Court of this dilemma, the  
13 Court signed an Order that required the State to turn over a complete copy of the discovery in its  
14 immediate and constructive possession. However, rather than comply with this Court's Order,  
15 the State directed its Discovery Division to withhold the discovery from counsel. On August 31,  
16 2012, the State issued a setting slip requesting a hearing on "Clarification of Discovery."  
17  
18

19 On September 10, 2012, the State orally opposed providing Flowers a copy of the  
20 discovery on the basis that it did not have a chance to oppose counsel's request. The Court  
21 stated that it had signed the discovery Order under the belief that the State did not object to  
22  
23  
24  
25

---

26  
27 <sup>4</sup> NRS 34.780(2) provides: After the writ has been granted and a date set for the hearing, a party  
28 may invoke any method of discovery available under the Nevada Rules of Civil Procedure if, and  
to the extent that, the judge or justice for good cause shown grants leave to do so.

1 providing the discovery. The district court then vacated the Discovery Order and set forth a  
2 briefing schedule on the matter.<sup>5</sup>

### 3 ARGUMENT

#### 4 **A. Flowers Requests A Complete Copy of Discovery In Order To Investigate And** 5 **Develop His Post-Conviction Claims.**

6  
7 Petitioner cannot investigate and develop the facts supporting his claims without a  
8 complete copy of discovery. NRS 34.780, which governs the granting of discovery in a state  
9 post-conviction proceeding, provides that a party may conduct discovery "to the extent that, the  
10 judge or justice for good cause shown grants leave to do so." There are no reported Nevada  
11 cases defining good cause or what circumstances constitute "good cause." Although NRS  
12 34.780(2) allows a party to conduct discovery under the Nevada Rules of Civil Procedure, the  
13 statute presupposes that the defendant initially has enough information to file a post-conviction  
14 Petition for Writ of Habeas Corpus. At this point, counsel for Flowers does not have the case  
15 file and therefore cannot develop and substantiate any of Flowers' claims.  
16

17 Flowers is facing a term of Life Without the Possibility of Parole and the deadline for  
18 filing his Post-Conviction Petition for Writ of Habeas Corpus is less than two months away.  
19 Counsel has made several good-faith efforts to obtain the information that is necessary to argue  
20 the merits of the Petitioner's claims. However, obtaining a complete copy of the original file  
21 from the Petitioner is problematic. Counsel simply cannot verify the completeness of the file.  
22 Further, because the Special Public Defender's Office cannot produce a copy of the file,  
23 obtaining discovery from the State is the only viable option of ensuring counsel receives a  
24 complete set of materials used in Flowers' prosecution. Accordingly, there is good cause for this  
25  
26

---

27 <sup>5</sup> The Court also extended the filing deadline for Flowers' post-conviction Petition for Writ of  
28 Habeas Corpus by thirty (30) days.

1 Court to issue an Order directing the Clark County District Attorney's Office to provide the  
2 Petitioner with a complete copy of discovery.

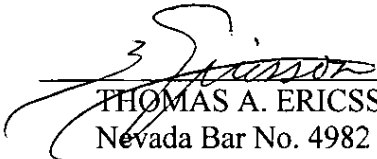
3 Lastly, counsel submits that under the Sixth Amendment of the United States  
4 Constitution and Article I § 8 of the Constitution of the State of Nevada, he will be ineffective  
5 in this matter unless he is given a complete copy of discovery in order to develop and prove  
6 Flowers' claims. Accordingly, Flowers must have access to a complete copy of the discovery in  
7 the State's possession.  
8

9 **II.**

10 **CONCLUSION**

11 For the above stated reasons, good cause exists for this Court to issue an Order directing  
12 the Clark County District Attorney's Office to provide the Petitioner with a complete copy of  
13 discovery in its possession as the requested information will have a bearing on the claims in his  
14 forthcoming post-conviction Petition for Writ of Habeas Corpus.  
15

16 DATED this 12<sup>th</sup> day of September, 2012.

17   
18 THOMAS A. ERICSSON, ESQ.  
19 Nevada Bar No. 4982  
20 700 SOUTH 3RD STREET  
21 Las Vegas, Nevada 89101  
22 Telephone: (702) 878-2889  
23  
24  
25  
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27  
28



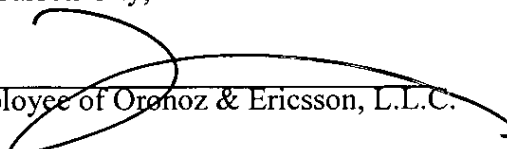
CERTIFICATE OF SERVICE

The undersigned hereby certifies that he is an employee Oronoz & Ericsson, L.L.C. and is a person of such age and discretion as to be competent to serve papers.

That on September 12, 2012, he served a copy of the foregoing by personally mailing said copy to:

STEPHEN B. WOLFSON  
Clark County District Attorney  
PAMELA WECKERLY  
Chief Deputy District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
Respondent

CATHERINE CORTEZ MASTO  
Nevada Attorney General  
100 N. Carson Street  
Carson City, Nevada 89701-4714

  
An Employee of Oronoz & Ericsson, L.L.C.

# **EXHIBIT A**

RA 000007



**ORONoz ERICSSON**  
T R I A L   L A W Y E R S

700 S. 3rd Street Las Vegas, NV 89101 • (phone) 702.878.2889 • (fax) 702.522.1542 • oronozlawyers.com • oronozinjurylawyers.com

June 15, 2012

Office of the Special Public Defender  
Attn: David Schieck  
330 South Third St. #800  
Las Vegas, NV 89155  
Fax: 702-455-6273

*VIA FACSIMILE*

Re: Case file for Norman K. Flowers  
Case: C288755 (PCR)

Mr. Schieck,

On June 8, 2012, the district court appointed me to represent Norman K. Flowers in the above referenced case. It is my understanding that your office represented Mr. Flowers at trial and on appeal. Please contact my office as soon as possible to discuss how I can obtain a copy of Mr. Flowers' file. Please be aware that the court has scheduled a status check regarding the receipt of the file for July 13, 2012. Thank you in advance for your assistance.

Sincerely,

James A. Oronoz, Esq.

cc: File.

Enclosures: None.

RA 000008

# **EXHIBIT B**

RA 000009



A CENTURY OF SERVICE

COMMISSIONERS  
Susan Brager, Chair  
Tom Collins  
Chris Giunchigliani  
Lawrence Weekly  
Larry Brown  
Mary Beth Spow  
Steve Sisolak, Vice-Chair

COUNTY MANAGER  
Don Burnette

SPECIAL PUBLIC DEFENDER  
David M. Schleck  
ASST. SPECIAL PUB. DEF.  
Randall H. Pike

## Office of the Special Public Defender

330 S. Third Street, Ste. 800, Las Vegas NV 89155-2316

(702) 455-6265

Fax: (702) 455-6273

Family Defense Division (702) 455-6266

Family Defense Division Fax (702) 380-6948

June 22, 2012

James A. Oronoz, Esq.  
700 South Third Street  
Las Vegas NV 89101

Re: Flowers adv. State, Case No. 228755

Dear Mr. Oronoz,

We are in receipt of your letter dated June 15, 2012 regarding the above referenced matter. In that regard, please be advised that Mr. Flowers requested we send him his case files after we withdrew as attorney of record. On March 22, 2012, we provided Mr. Flowers 4 banker boxes containing his entire case file in Case No. C228755 and Case No. 216032. He received permission from the prison to be allowed to have his photographs and the CD's in the case. We had to have the Court send the CD's directly to him. Department 8 did this for us.

Sincerely,

A handwritten signature in black ink, appearing to be "Randy H. Pike", written over a horizontal line.

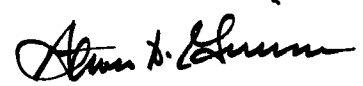
RANDY H. PIKE  
Deputy Special Public Defender

RHP:kf

RA 000010

1 **MOT**  
2 JAMES A. ORONoz, ESQ.  
3 Nevada Bar No. 6769  
4 ORONoz & ERICSSON, L.L.C.  
5 700 SOUTH 3RD STREET  
6 Las Vegas, Nevada 89101  
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8 Facsimile: (702) 522-1542  
9 jim@oronozlawyers.com  
10 *Attorney for Petitioner*

Electronically Filed  
10/31/2012 03:03:20 PM



CLERK OF THE COURT

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

11 NORMAN FLOWERS

12 Petitioner,

13 vs.

14 THE STATE OF NEVADA

15 Respondent.

CASE NO: C228755  
DEPT. NO: IX

Date of Hearing:  
Time of Hearing:

17  
18 **MOTION TO PLACE ON CALENDER TO SUPPLEMENT DEFENDANT'S**  
19 **PETITION FOR WRIT OF HABEAS CORPUS**

20 COMES NOW, the defendant, NORMAN FLOWERS, by and through his  
21 attorney, JAMES A. ORONoz, ESQ. of ORONoz & ERICSSON, L.L.C., and hereby  
22 requests that the above-entitled matter be placed on the Court's calendar for the purposes  
23 of setting a briefing schedule for filing of Mr. Flowers' Supplemental Brief in support of  
24 his Petition for Writ of Habeas Corpus (Post-Conviction).

25 ///

26 ///

27 ///

1 This motion is made and based on pleadings and papers on file herein, the  
2 affidavit of counsel attached hereto, as well as any oral arguments of counsel adduced at  
3 the time of hearing.

4 DATED this 31st day of October, 2012.

5 ORONOZ & ERICSSON, L.L.C.

6  
7 By: /s/ James Oronoz  
8 JAMES A. ORONOZ, ESQ.  
9 Nevada Bar No. 6769  
10 700 South 3rd Street  
11 Las Vegas, Nevada 89101  
12 *Attorney for Petitioner*

13 **NOTICE OF MOTION**

14 TO: Steven Wolfson, District Attorney Clark County, Nevada;

15 MOTION TO PLACE ON CALENDER TO SUPPLEMENT DEFENDANT'S  
16 PETITION FOR WRIT OF HABEAS CORPUS

17 will be heard on the 14 day of NOV . , 2012 at 9 : 0 0 a.m./p.m. in  
18 Department IX.

19  
20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 The Nevada Supreme Court has indicated that Petitioners are allowed to liberally  
22 supplement their post-conviction pleadings. In State of Nevada v. Kitrich Powell, 122  
23 Nev. 175; 138 P.3d 453 (2006) the Court considered the issue of Supplemental pleadings  
24 on post-conviction:

25 In February 1998, Powell timely filed in proper person a post-conviction petition  
26 for a writ of habeas corpus. Various attorneys filed a total of four supplemental  
27 pleadings on Powell's behalf in December 1998, July 1999, November 2000, and  
28 October 2001.

1 After a careful analysis the Court found “[w]e nevertheless resolve the issue in  
2 this case and conclude that Powell’s claim was not untimely.” The Nevada Supreme  
3 Court also noted,

4  
5 We have stated that the latter subsection “vest[s] the district court with broad  
6 authority to order supplemental pleadings in post-conviction habeas cases.”  
7 Moreover, we recently held in *Barnhart v. State* that a district court has the  
8 discretion to permit a habeas petitioner to assert new claims even as late as the  
9 evidentiary hearing on the petition

10 Id. at 758.

11 NRS 34.726(1) requires “a *petition* that challenges the validity of a judgment or  
12 sentence” to be filed within one year after entry of the judgment of conviction or  
13 after this court issues its remittitur. (Emphasis added.) Likewise, the provisions  
14 regarding laches facially apply to petitions. NRS 34.800(1) provides that “[a]  
15 petition may be dismissed if delay in the filing of the *petition*” prejudices the  
16 State in responding to the petition, unless the petitioner could not reasonably have  
17 known the grounds for the petition before the prejudice occurred, or in conducting  
18 a retrial, unless a fundamental miscarriage of justice occurred in the trial or  
19 sentencing. (Emphasis added.) And NRS 34.800(2) provides for a rebuttable  
20 presumption of prejudice to the State if more than five years passes between a  
21 judgment of conviction, a sentence, or a decision on direct appeal “and the filing  
22 of a *petition* challenging the validity of a judgment of conviction.” (Emphasis  
23 added.)

24 Id. at 757.

25 Here, consistent with Powell, the Petitioner should be allowed to supplement his  
26 post-conviction Petition for Writ of Habeas Corpus. Unfortunately, counsel has yet to  
27 receive the Petitioner’s file or a complete copy of discovery from the State. It is counsel’s  
28 understanding that the Petitioner’s file is voluminous, consisting of at least four (4)  
banker’s boxes of material.<sup>1</sup> Understandably, counsel cannot accurately predict how

---

1 On June 22, 2012, Petitioner’s trial counsel, Randall Pike, informed defense counsel  
that his office mailed the case file, consisting of four bankers boxes, to the Petitioner in  
prison.



1 much time will be required to file Petitioner's supplemental post-conviction Petition for  
2 Writ of Habeas Corpus. Out of an abundance of caution, counsel requests one hundred  
3 and twenty (120) days to file a supplemental brief. This request takes into account the  
4 time needed to obtain a copy of discovery, investigate and research any potential issues,  
5 and draft a supplemental brief.  
6

7 **CONCLUSION**

8 The Petitioner prays that this Honorable Court grant the instant Motion and allow  
9 counsel to supplement Petitioner's post-conviction Petition for Writ of Habeas Corpus as  
10 necessary.  
11

12 DATED this 31<sup>st</sup> day of October, 2012.

13  
14 ORONOZ & ERICSSON, L.L.C.

15 By: /s/ James Oronoz  
16 JAMES A. ORONOZ, ESQ.  
17 Nevada Bar No. 6769  
18 700 South 3rd Street  
19 Las Vegas, Nevada 89101  
20 *Attorney for Petitioner*  
21  
22  
23  
24  
25  
26  
27  
28

[illegible]

1. That I am an attorney duly licensed to practice before all the Courts of the state of Nevada, and am appointed counsel for the petitioner, NORMAN FLOWERS, herein;

3. That the undersigned is requesting the additional time in order to obtain a complete copy of discovery, investigate and research any potential issues, and draft the Petitioner's supplemental brief.

5. Further your affiant sayeth naught.

  
JAMES A. ORONOS, ESQ.

Cheri M. B.  
NOTARY PUBLIC

1 **CERT**  
2 JAMES A. ORONoz, ESQ.  
3 Nevada Bar No. 6769  
4 ORONoz & ERICSSON, L.L.C.  
5 700 SOUTH 3RD STREET  
6 Las Vegas, Nevada 89101  
7 Telephone: (702)878-2889  
8 Facsimile: (702) 522-1542  
9 jim@oronozlawyers.com  
10 *Attorney for Petitioner*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 NORMAN FLOWERS

14 Petitioner,

15 vs.

16 THE STATE OF NEVADA

17 Respondent.

CASE NO: C228755  
DEPT. NO: IX

18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 31<sup>st</sup> day of October, 2012, I served a true and correct  
20 copy of the foregoing MOTION TO PLACE ON CALENDER TO SUPPLEMENT  
21 DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS on the following:

22 STEVE WOLFSON, Clark County District Attorney  
23 200 Lewis Avenue  
24 Las Vegas, Nevada 89101  
25 PDMotions@CCdanv.com

26 /s/ Alicia Oronoz  
27 An employee of Oronoz & Ericsson L.L.C.  
28

  
CLERK OF THE COURT

**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163  
200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

NORMAN HAROLD FLOWERS III,  
#1179383  
  
Defendant.

CASE NO: 06C228755

DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S MOTION  
TO OBTAIN COMPLETE COPY OF DISCOVERY FROM THE STATE

DATE OF HEARING: DECEMBER 17, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Obtain Complete Copy of Discovery from the State.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 13, 2006, a Grand Jury issued an indictment on NORMAN HAROLD  
4 FLOWERS III (hereinafter "Defendant") for the following: COUNT 1 – Burglary, COUNT  
5 2 – Murder, COUNT 3 – Sexual Assault and COUNT 4 – Robbery. On January 11, 2007 the  
6 State issued a Notice of Intent to Seek the Death Penalty. On October 15, 2008, an  
7 Amended Indictment was filed.

8 After a jury trial, the jury verdict was entered into judgment on October 22, 2008.  
9 The Jury found the Defendant guilty of COUNT 1 – Burglary, COUNT 2 – Murder in the  
10 First Degree and COUNT 3 – Sexual Assault. The Jury also found the Defendant not guilty  
11 of COUNT 4 – Robbery. On October 24, 2008, the Jury rendered a special verdict finding  
12 mitigating circumstances and a sentence of Life Without The Possibility Of Parole for  
13 COUNT 2. On October 30, 2008, Defendant filed a motion for new trial. The Court denied  
14 this motion on November 12, 2008.

15 On January 13, 2009, Defendant was sentenced as follows: as to COUNT 1, to a  
16 maximum of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of  
17 Corrections with a minimum parole eligibility of FORTY-EIGHT (48) MONTHS; as to  
18 COUNT 2, to Life Without The Possibility Of Parole, to run consecutive to COUNT 1; as to  
19 COUNT 3, to Life With The Possibility Of Parole after ONE HUNDRED TWENTY (120)  
20 MONTHS, to run consecutive to COUNT 2. The Judgment of Conviction was filed on  
21 January 16, 2009, erroneously noting as to COUNT 3 a sentence of Life *Without* The  
22 Possibility Of Parole, with a minimum parole eligibility of ONE HUNDRED TWENTY  
23 (120) MONTHS. On January 29, 2009, Defendant appeared in court with counsel pursuant  
24 to the State's request for clarification of the sentence. An Amended Judgment of Conviction  
25 was filed February 12, 2012 to reflect the true sentence of Life *With* The Possibility Of  
26 Parole with a minimum parole eligibility of ONE HUNDRED TWENTY (120) MONTHS.

27 On January 26, 2009, Defendant filed a Notice of Appeal from the Judgment of  
28 Conviction. On February 20, 2009, Defendant filed an Amended Notice of Appeal.

1 On March 3, 2010, Defendant filed a Motion for New Trial Based Upon Newly  
2 Available Evidence, Specifically the Conviction of George Brass for Murder. The State  
3 opposed the motion on March 9, 2010. At a court hearing on March 17, 2010, the State  
4 argued that although the defense tried to blame Mr. Brass and another individual, the  
5 Defendant went to trial knowing that the trial of Mr. Brass was pending and that Mr. Brass  
6 had an alibi. The District Court denied the Motion for New Trial. On April 1, 2010,  
7 Defendant filed a Notice of Appeal from the Court's denial of his motion for a new trial.

8 On June 10, 2011, pursuant to negotiations, Appellant entered a plea of by way of  
9 Alford to an Amended Information in District Court Case Number 05C216032 (Dept. 8),  
10 charging Appellant with two (2) counts of murder.<sup>1</sup> Pursuant to the plea negotiations,  
11 Defendant additionally agreed to withdraw his appeals in this case before the Nevada  
12 Supreme Court for Docket 53159 (Appeal from the Judgment of Conviction, 06C228755)  
13 and 55759 (Appeal from the District Court's order denying Defendant's motion for new trial,  
14 06C228755). On June 13, 2011, Defendant filed the agreed-upon Motion to Voluntarily  
15 Dismiss his Appeal with the Nevada Supreme Court for Docket 53159 (Appeal from the  
16 Judgment of Conviction, 06C228755) and 55759 (Appeal from the District Court's order  
17 denying Defendant's motion for new trial, 06C228755).

18 The Supreme Court issued an Order Dismissing Appeals (53159 and 55759) on  
19 September 28, 2011. That order stated that "[b]ecause no remittitur will issue in this matter,  
20 see NRAP 42(b), the one-year period for filing a post-conviction habeas corpus petition  
21 under NRS 34.726(1) shall commence to run from the date of this order."

22 On February 3, 2012, Defendant filed a motion to withdraw counsel. On February 15,  
23 2012, the motion was granted. On May 16, 2012, Defendant filed a Motion for the  
24 Appointment of Counsel and Request for Evidentiary Hearing. The Court granted the  
25

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26 <sup>1</sup> Prior to sentencing in Case Number 05C216032 (Dept. 8), Defendant moved to withdraw his Alford plea. The court denied the  
27 motion and sentenced Appellant to Life Without The Possibility Of Parole (COUNT 1) and Life With The Possibility Of Parole after  
28 TWENTY-FIVE (25) YEARS (COUNT 2), COUNT 2 to run concurrent with COUNT 1 and both to run consecutive to the sentence  
imposed in Case Number 06C228755. Defendant appealed the Judgment of Conviction, arguing that the district court abused its  
discretion by denying his presentence motion to withdraw his guilty plea. On December 13, 2012, the Nevada Supreme Court  
affirmed the judgment of the district court, finding no abuse of discretion. Norman K. Flowers v. Nevada, Order of Affirmance, case  
no. 59250. Remittitur has not yet issued as of the filing of this opposition.

1 motion on May 30, 2012 and appointed James A. Oronoz as post-conviction counsel on June  
2 8, 2012.

3 On July 13, 2012, post-conviction counsel unsuccessfully attempted to file a Motion  
4 for Leave to Conduct Discovery and for Court Order to Obtain Requested Documents and  
5 Discovery, which the State did not receive. On August 27, 2012, post-conviction counsel  
6 presented the court with an Order which was signed in open court ordering the District  
7 Attorney's Office to provide Defendant with a copy of discovery.

8 On September 10, 2012, before the time to file the Petition would expire on  
9 September 28, 2012 in this case, the parties appeared in court at the State's request for a  
10 clarification of the discovery order. That day, post-conviction counsel acknowledged that  
11 any post-conviction petition must be filed by September 28, 2012: "The problem we have  
12 here is that the petition in this case is due on September 28th . . . [i]t's due from the – when  
13 the remittitur issued, and that was September 28, 2011 of last year." 09-10-12 Transcript of  
14 Proceedings at 4-5. Notwithstanding his acknowledgment of the deadline, post-conviction  
15 counsel "ma[de] an oral motion to extend the timeline for the filing of [Defendant's] post-  
16 conviction petition for writ of habeas corpus." 09-10-12 Transcript of Proceedings at 7. The  
17 court agreed and purported to extend the time to file by thirty (30) days. Because the court  
18 had not known there would be an objection by the State, the court vacated the discovery  
19 order signed on August 27, 2012 and ordered briefing on the matter.

20 On September 12, 2012, Defendant's post-conviction counsel filed the instant Motion  
21 to Obtain a Complete Copy of Discovery from the State, which the State opposes as follows.

22 On October 9, 2012, Defendant filed a Petition for Writ of Habeas Corpus (Post-  
23 Conviction) with the aid of counsel, which the State moved to dismiss as untimely on  
24 October 30, 2012. On October 31, 2012, Defendant's post-conviction counsel filed a Motion  
25 to Place on Calendar to Supplement Defendant's Petition for Writ of Habeas Corpus, which  
26 the State opposed. On November 23, 2012, post-conviction counsel filed a Reply to State's  
27 Opposition to Defendant's Motion to Place on Calendar to Supplement Defendant's Petition  
28 for Writ of Habeas Corpus.

1 **ARGUMENT**

2 In the November 23, 2012 Reply to State's Opposition to Defendant's Motion to  
3 Place on Calendar to Supplement Defendant's Petition for Writ of Habeas Corpus,  
4 Defendant argues that the parties stipulated to an extension of the time to file the original  
5 post-conviction Petition. This assertion is incorrect and has a direct bearing on the Motion  
6 for Discovery. NRS 34.780(2) provides that post-conviction discovery only becomes  
7 available after the writ has been granted and upon a showing of good cause:

8 2. *After the writ has been granted* and a date set for the  
9 hearing, a party may invoke any method of discovery available  
10 under the Nevada Rules of Civil Procedure if, and to the extent  
that, the judge or justice for good cause shown grants leave to do  
so.

11 Id. (emphasis added.) Defendant's petition has not yet been granted – and indeed it should  
12 not be because it is untimely and Defendant has failed to show good cause to overcome the  
13 procedural bar. Defendant is therefore not entitled to discovery. As set out below, no party  
14 has the power to stipulate to extend the statutory deadline for filing an original Petition for  
15 Writ of Habeas Corpus, and a district court relying on such a stipulation or representation by  
16 the parties errs.

17 “[T]he statutory rules regarding procedural default are mandatory and cannot be  
18 ignored when properly raised by the State.” State v. Dist. Ct. (Riker), 121 Nev. 225, 233, 112  
19 P.3d 1070, 1075 (2005). NRS 34.726 provides that a petition “must be filed within one-year  
20 after entry of the judgment of conviction or, if an appeal has been taken from the judgment,  
21 within one-year after the supreme court issues its remittitur.” NRAP 42(b) provides an  
22 exception to this rule. Gonzales v. State, 118 Nev. 590, 595 n.18, 53 P.3d 901, 904 n.18  
23 (2002). The Nevada Supreme Court does not issue remittiturs in appeals that are voluntarily  
24 dismissed. NRAP 42(b). In this case, the Supreme Court dismissed the appeal on  
25 September 28, 2011, noting that because no remittitur would issue, the one-year period for  
26 filing a post-conviction habeas corpus petition would run from the date of the order, or  
27 September 28, 2011. NRAP 42(b). Consequently, Defendant had until September 28, 2012  
28 to file his post-conviction habeas petition as it pertains to his conviction. Defendant filed the



1 instant petition on October 9, 2012. This is over the one-year time limitation which must be  
2 applied by the District Court, and therefore Defendant's petition must be dismissed.

3 Any stipulation by the State to waive the procedural bars is without effect. In State v.  
4 Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003), the Nevada Supreme Court held  
5 that, "a stipulation by the parties cannot empower a court to disregard the mandatory  
6 procedural default rules." There, the State and Defendant entered into a stipulation allowing  
7 the Defendant to raise issues on the merits that were barred by mandatory procedural bars.  
8 The Defendant relied to his detriment on that stipulation. Nevertheless, the Court held that  
9 any stipulation to waive the procedural bars is a nullity.

10 Despite post-conviction counsel's representation in the Petition that he overlooked the  
11 footnote in the Nevada Supreme Court order (Pet. at 12-13), counsel represented in court on  
12 September 10, 2012 – before the running of the deadline on September 28, 2012 – that he  
13 was aware of the September 28, 2012 deadline. "The problem we have here is that the  
14 petition in this case is due on September 28th . . . [i]t's due from the – when the remittitur  
15 issued, and that was September 28, 2011 of last year." 09-10-12 Transcript of Proceedings at  
16 4-5. When post-conviction counsel made the oral motion to extend the timeline for the filing  
17 of the petition, the State mistakenly recalled the appeal pending in the companion case  
18 05C216032 (Dept. 8), NSC no. 59250 which had not yet been affirmed and asserted that the  
19 deadline had not yet started running. 09-10-12 Transcript of Proceedings at 7. The court  
20 then held:

21 I agree with you. I'll extend it 30 days. If the District Attorney  
22 is correct and it hasn't started ticking yet, then there's zero  
23 prejudice to the District Attorney in me extending that deadline  
30 days. So, your oral request is granted.

24 09-10-12 Transcript of Proceedings at 8.

25 Pursuant to Haberstroh's ruling that "a stipulation by the parties cannot empower a  
26 court to disregard the mandatory procedural default rules," any representations made by the  
27 parties regarding the statutory deadline and relied on by the court should be disregarded.  
28 Defendant's time to file a petition expired on September 28, 2012, and for all of the reasons

1 set out in the State's October 30, 2012 Response and Motion to Dismiss Defendant's Petition  
2 For Writ Of Habeas Corpus (Post-Conviction), which the State hereby incorporates by  
3 reference, Defendant failed to demonstrate the good cause and prejudice necessary to  
4 overcome the mandatory procedural bars.

5 To the extent the Motion seeks discovery with which to file a Supplemental Petition,  
6 the mandatory provisions of NRS 34.726 dictate that the Petition was untimely filed. A  
7 Supplemental Petition timely filed under a briefing schedule set by the court does not save  
8 an untimely original Petition. See State v. Powell, 122 Nev. 751, 757, 138 P.3d 453, 457  
9 (2006) (a supplement to a timely petition is considered timely). Before the State may be  
10 compelled to produce voluminous discovery and waste taxpayer resources, the underlying  
11 procedural bar issue must be addressed. The following language from the Nevada Supreme  
12 Court case is particularly relevant here:

13 Particular in this case where the claims are so numerous and  
14 the requests for discovery so extensive, judicial economy and  
15 sound judicial administration militate for granting relief:  
16 determining the applicability of procedural bars may eliminate  
the need for or narrow the scope of any discovery or evidentiary  
hearing.

17 Riker, 121 Nev. at 234-35, 112 P.3d at 1076.

18 Further, Defendant makes no showing of good cause required by NRS 34.780(2) to  
19 obtain discovery. He does not show that the discovery boxes possessed by the Defendant  
20 himself are missing any material relevant to issues counsel wishes to brief in a potential  
21 Supplemental Petition. Defendant alleges the prison would not give him any discovery with  
22 a social security number, but Defendant does not allege what had a social security number  
23 that is so crucial to the desired Supplemental Petition. Because Defendant's Petition is time-  
24 barred, anything he might now seek discovery for is frivolous and by its nature fails to rise to  
25 the level of good cause. Defendant's petition must be dismissed and the State should not  
26 first be required to turn over discovery for a fruitless fishing expedition. Defendant has not  
27 met the threshold requirement and should be denied discovery at state expense.

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**CONCLUSION**

In light of the foregoing, the State respectfully requests that Defendant's Motion to Obtain a Complete Copy of Discovery from the State be denied.

DATED this 14th day of December, 2012.

Respectfully submitted,

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ Pamela Weckerly  
PAMELA WECKERLY  
Chief Deputy District Attorney  
Nevada Bar #006163

**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that service of State's Opposition To Defendant's Motion To Obtain Complete Copy Of Discovery From The State, was made this 14th day of December, 2012, by facsimile transmission to:

THOMAS A. ERICSSON, Esq.  
522-1542

BY: /s/ R. Johnson  
R. JOHNSON  
Secretary for the District Attorney's Office

EM/PW/rj/M-1

  
CLERK OF THE COURT

**OPPS**

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
PAMELA WECKERLY  
Chief Deputy District Attorney  
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200 Lewis Avenue  
Las Vegas, Nevada 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
  
Plaintiff,

-vs-

NORMAN HAROLD FLOWERS III,  
#1179383

Defendant.

CASE NO: 06C228755

DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO PLACE ON CALENDAR TO  
SUPPLEMENT DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: NOVEMBER 14, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Place On Calendar To Supplement Defendant's Petition For Writ Of Habeas Corpus.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On December 13, 2006, a Grand Jury issued an indictment on NORMAN HAROLD  
4 FLOWERS III (hereinafter "Defendant") for the following: COUNT 1 – Burglary, COUNT  
5 2 – Murder, COUNT 3 – Sexual Assault and COUNT 4 – Robbery. On January 11, 2007 the  
6 State issued a Notice of Intent to Seek the Death Penalty. On October 15, 2008, an  
7 Amended Indictment was filed.

8 After a jury trial, the jury verdict was entered into judgment on October 22, 2008.  
9 The Jury found the Defendant guilty of COUNT 1 – Burglary, COUNT 2 – Murder in the  
10 First Degree and COUNT 3 – Sexual Assault. The Jury also found the Defendant not guilty  
11 of COUNT 4 – Robbery. On October 24, 2008, the Jury rendered a special verdict finding  
12 mitigating circumstances and a sentence of Life Without The Possibility Of Parole for  
13 COUNT 2. On October 30, 2008, Defendant filed a motion for new trial. The Court denied  
14 this motion on November 12, 2008.

15 On January 13, 2009, Defendant was sentenced as follows: as to COUNT 1, to a  
16 maximum of ONE HUNDRED TWENTY (120) MONTHS in the Nevada Department of  
17 Corrections with a minimum parole eligibility of FORTY-EIGHT (48) MONTHS; as to  
18 COUNT 2, to Life Without The Possibility Of Parole, to run consecutive to COUNT 1; as to  
19 COUNT 3, to Life With The Possibility Of Parole after ONE HUNDRED TWENTY (120)  
20 MONTHS, to run consecutive to COUNT 2. The Judgment of Conviction was filed on  
21 January 16, 2009, erroneously noting as to COUNT 3 a sentence of Life *Without* The  
22 Possibility Of Parole, with a minimum parole eligibility of ONE HUNDRED TWENTY  
23 (120) MONTHS. On January 29, 2009, Defendant appeared in court with counsel pursuant  
24 to the State's request for clarification of the sentence. An Amended Judgment of Conviction  
25 was filed February 12, 2012 to reflect the true sentence of Life *With* The Possibility Of  
26 Parole with a minimum parole eligibility of ONE HUNDRED TWENTY (120) MONTHS.

27 On January 26, 2009, Defendant filed a Notice of Appeal from the Judgment of  
28 Conviction. On February 20, 2009, Defendant filed an Amended Notice of Appeal.

1 On March 3, 2010, Defendant filed a Motion for New Trial Based Upon Newly  
2 Available Evidence, Specifically the Conviction of George Brass for Murder. The State  
3 opposed the motion on March 9, 2010. At a court hearing on March 17, 2010, the State  
4 argued that although the defense tried to blame Mr. Brass and another individual, the  
5 Defendant went to trial knowing that the trial of Mr. Brass was pending and that Mr. Brass  
6 had an alibi. The District Court denied the Motion for New Trial. On April 1, 2010,  
7 Defendant filed a Notice of Appeal from the Court's denial of his motion for a new trial.

8 On June 10, 2011, pursuant to negotiations, Appellant entered a plea of by way of  
9 Alford to an Amended Information in District Court Case Number C216032, charging  
10 Appellant with two (2) counts of murder. Pursuant to the plea negotiations, Defendant  
11 additionally agreed to withdraw his appeals in Nevada Supreme Court for Docket 53159  
12 (Appeal from the Judgment of Conviction) and 55759 (Appeal from the District Court's  
13 order denying Defendant's motion for new trial). In Case Number C216032, the court  
14 sentenced Appellant to Life Without The Possibility Of Parole (COUNT 1) and Life With  
15 The Possibility Of Parole after TWENTY-FIVE (25) YEARS (COUNT 2), COUNT 2 to run  
16 concurrent with COUNT 1 and both to run consecutive to the sentence imposed in Case  
17 Number C228755. On June 13, 2011, Defendant filed the agreed-upon Motion to  
18 Voluntarily Dismiss his Appeal with the Nevada Supreme Court for Docket 53159 (Appeal  
19 from the Judgment of Conviction) and 55759 (Appeal from the District Court's order  
20 denying Defendant's motion for new trial).

21 The Supreme Court issued an Order Dismissing Appeals on September 28, 2011.  
22 That order stated that "[b]ecause no remittitur will issue in this matter, see NRAP 42(b), the  
23 one-year period for filing a post-conviction habeas corpus petition under NRS 34.726(1)  
24 shall commence to run from the date of this order."

25 On February 3, 2012, Defendant filed a motion to withdraw counsel. On February 15,  
26 2012, the motion was granted. On May 16, 2012, Defendant filed a Motion for the  
27 Appointment of Counsel and Request for Evidentiary Hearing. The Court granted the  
28

1 motion on May 30, 2012 and appointed James A. Oronoz as post-conviction counsel on June  
2 8, 2012.

3 On October 9, 2012, Defendant filed a Petition for Writ of Habeas Corpus (Post-  
4 Conviction) with the aid of counsel, which the State moved to dismiss as untimely on  
5 October 30, 2012. On October 31, 2012, Defendant's post-conviction counsel filed the  
6 instant "Motion to Place on Calendar to Supplement Defendant's Petition for Writ of Habeas  
7 Corpus," which the State opposes as follows.

### 8 ARGUMENT

9 Pursuant to NRS 34.750(4), a Defendant has fifteen (15) days during which to  
10 respond to any motion to dismiss filed by the State. The State filed a motion to dismiss on  
11 October 30, 2012, so any reply is due by November 14, 2012. Defendant's counsel now  
12 essential seeks one-hundred and twenty (120) days to respond to the motion to dismiss. The  
13 language of the statute is mandatory: "The petitioner *shall respond* within fifteen (15) days  
14 after service to a motion by the State to dismiss the action." Id. (emphasis added).  
15 Moreover, the State notes that Defendant did make various good cause arguments that were  
16 addressed by the State, and his instant Motion fails to demonstrate how any materials he now  
17 seeks would aid in that argument.

18 To the extent the Motion seeks leave to file a Supplemental Petition, as argued in the  
19 State's Response to Defendant's Petition, the mandatory provisions of NRS 34.726 dictate  
20 that the Petition was untimely filed. State v. Eighth Judicial Dist. Court, 121 Nev. 225, 233,  
21 112 P.3d 1070, 1075 (2005); Gonzales v. State, 118 Nev. 590, 593, 590 P.3d 901, 902  
22 (2002). A supplement to an untimely Petition is still untimely. See State v. Powell, 122 Nev.  
23 751, 757, 138 P.3d 453, 457 (2006) (a supplement to a timely petition is considered timely)<sup>1</sup>.  
24 Although the Petition authored and filed by counsel was untimely, counsel now seeks to  
25 delay the proceedings by a full one hundred twenty (120) days during which to file a  
26  
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28 <sup>1</sup> Defendant's counsel cites Powell, but Powell is distinguishable. In Powell, the defendant filed a *timely* pro per petition, which was thereafter supplemented by counsel. Here, counsel seeks to file both an untimely petition and an untimely supplement.

1 supplemental brief. It would be a far more efficient use of time and resources to first  
2 determine whether the Petition is timely filed before allowing supplements thereto.

3 Moreover, because the original Petition was authored and filed by counsel, a  
4 supplement thereto is beyond the scope of NRS 34.750:

5 3. *After appointment by the court, counsel* for the petitioner  
6 may file and serve supplemental pleadings, exhibits, transcripts  
and documents within 30 days after:

7 (a) The date the court orders the filing of an answer and a  
8 return

9 Except for those pleading statutorily allowed, all others are prohibited except by order of the  
10 court. NRS 34.750(5). Here, Defendant's Motion for Appointment of Counsel was granted  
11 May 30, 2012, and current counsel was appointed June 8, 2012. Counsel filed the Petition on  
12 October 9, 2012. NRS 34.750 contemplates the common situation wherein a defendant files  
13 an original petition and contemporaneously moves for the appointment of counsel. When  
14 counsel is appointed, the court benefits from counsel's supplemental briefing, which  
15 illuminates the issues in the original petition and briefs issues potentially overlooked by a  
16 defendant untrained in the law. See Calvin v. McDaniels, 635 F. Supp. 2d 1197, 1204 (D.  
17 Nev. 2009) (NRS 34.750 permits only counsel, not defendants, to file supplements to a  
18 petition).

19 Because the Petition was untimely and because the time sought in which to respond to  
20 a motion to dismiss is far in excess of the time allowed per NRS 34.750(4), the Motion  
21 should be denied.

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1 **CONCLUSION**

2 In light of the foregoing, the State respectfully requests that Defendant's Motion to  
3 Place on Calendar to Supplement Defendant's Petition for Writ of Habeas Corpus be denied.

4 DATED this 2nd day of November, 2012.

5 Respectfully submitted,

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
8 Nevada Bar #001565

9 BY /s/ Pamela Weckerly

10 PAMELA WECKERLY  
11 Chief Deputy District Attorney  
12 Nevada Bar #006163

13 **CERTIFICATE OF FACSIMILE TRANSMISSION**

14 I hereby certify that service of State's Opposition To Defendant's Motion To Place  
15 On Calendar To Supplement Defendant's Petition For Writ Of Habeas Corpus, was made  
16 this 2nd day of November, 2012, by facsimile transmission to:

17 JAMES A. ORONoz, Esq.  
18 522-1542

19 BY: /s/ R. Johnson

20 R. JOHNSON  
21 Secretary for the District Attorney's Office  
22  
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28 EM/PW/rj

  
CLERK OF THE COURT

**RPLY**  
JAMES A. ORONoz, ESQ.  
Nevada Bar No. 6769  
THOMAS A. ERICSSON, ESQ.  
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jim@oronozlawyers.com  
*Attorney for Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

NORMAN FLOWERS

Petitioner,

vs.

THE STATE OF NEVADA

Respondent.

CASE NO: C228755  
DEPT. NO: IX

Date of Hearing: November 26, 2012  
Time of Hearing: 9:00 a.m.

**DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S  
MOTION TO PLACE ON CALENDAR TO SUPPLEMENT DEFENDANT'S  
PETITION FOR WRIT OF HABEAS CORPUS.**

COMES NOW, the defendant, NORMAN FLOWERS, by and through his attorney, JAMES A. ORONoz, ESQ. of ORONoz & ERICSSON, L.L.C., and submits his Reply to State's Opposition to Defendant's Motion to Place on Calendar to Supplement Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

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1 This opposition is made and based upon all the papers and pleadings on file  
2 herein, the attached points and authorities in support thereof, and oral argument at the  
3 time of hearing.

4  
5 DATED this 23rd day of November, 2012.

6 ORONOZ & ERICSSON, L.L.C.

7 By: /s/ James Oronoz  
8 JAMES A. ORONOZ, ESQ.  
9 Nevada Bar No. 6769  
10 700 South 3rd Street  
11 Las Vegas, Nevada 89101  
12 *Attorney for Petitioner*

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **STATEMENT OF FACTS**

15 **Pertinent Procedural Background**

16 On October 22, 2008, the district court adjudicated the Petitioner, Norman  
17 Flowers ("Flowers"), guilty of: Count 1 – Burglary; Count 2 – Murder in the First  
18 Degree; and Count – 3 Sexual Assault. On January 13, 2009, the court sentenced Flowers  
19 as follows: as to Count 1, one hundred twenty (120) months in the Nevada Department of  
20 Corrections with a minimum parole eligibility of forty-eight (48) months; as to Count 2,  
21 Life Without the Possibility of Parole, to run consecutive to Count 1; as to Count 3, Life  
22 With the Possibility of Parole with a minimum parole eligibility of one hundred twenty  
23 (120) months, to run consecutive to Count 2.

24  
25 On January 26, 2009, Flowers filed a Notice of Appeal. On September 28, 2011,  
26 pursuant to negotiations in case number C216032, whereby Flowers entered a plea  
27 pursuant to North Carolina v. Alford, 400 US 25, 91 S.Ct. 160 (1970), the Nevada  
28 Supreme Court dismissed Flowers' appeal (53159) in the instant case. In its Order

1 Dismissing Appeals, the Nevada Supreme Court stated: “Because no remittitur will issue  
2 in this matter, *see* NRAP 42(b), the one-year period for filing a post-conviction habeas  
3 corpus petition under NRS 34.726(1) shall commence to run from the date of this order.  
4 Flowers v. State, 53159, 2011 WL 4527339 (Nev. Sept. 28, 2011). Therefore, pursuant to  
5 the Order, Flowers had until September 28, 2012, to file a post-conviction Petition for  
6 Writ of Habeas Corpus (“Petition”). However, on September 10, 2012, this Court granted  
7 an additional thirty (30) day extension to file the Petition. On October 9, 2012, Flowers’  
8 filed his Petition well within the thirty (30) day extension granted by the Court.  
9

#### 10 **Defense Inability to Obtain Case File**

11  
12 On June 8, 2012, the court appointed James A. Oronoz, Esq. (“Counsel”) to  
13 represent Flowers in post-conviction relief proceedings. That same day, the Court set a  
14 thirty (30) day status check on receipt of Flowers’ file. On June 15, 2012, counsel  
15 contacted the Special Public Defender’s (“SPD”) office, which represented Flowers  
16 during pretrial and appellate proceedings, to obtain a copy of Flowers’ file. On June 22,  
17 2012, Deputy Special Public Defender Randall Pike informed counsel that his office had  
18 mailed the original case file to Flowers in Ely State Prison and therefore could not  
19 provide counsel with a copy of Petitioners’ file.  
20

21  
22 On July 9, 2012, counsel contacted the State in an attempt to obtain a copy of  
23 discovery in the instant case. Chief Deputy District Attorney, H. Leon Simon, informed  
24 counsel that pursuant to NRS 34.780(2), the State would not provide any discovery until  
25 after Flowers’ Petition had been granted. On July 13, 2012, counsel informed the Court  
26 of the issues that had arisen pertaining to Flowers’ file. Counsel explained to the Court  
27 that obtaining a copy of the file from Flowers would be problematic because Flowers’  
28

1 had removed or written on certain documents. The Court directed counsel to obtain the  
2 file from Flowers and advised the State provide counsel with any missing discovery.

3       On August 27, 2012, counsel informed the Court that in addition to Flowers'  
4 removal of documents, prison officials had removed documents from the file because  
5 they contained social security numbers and addresses of individuals involved in the case.<sup>1</sup>  
6 Counsel then contacted the Special Public Defender's office and learned that no portion  
7 of the file had been returned to them by the prison. After Thomas Ericsson explained to  
8 the Court the aforementioned issues, the Court ordered the State to provide the Petitioner  
9 with a complete copy of discovery.  
10

11  
12 **Order Extending Deadline to File Petition**

13       Seeking to prevent the defense from receiving a copy of Discovery in the case, on  
14 August 31, 2012, the State submitted a Setting Slip to the Court requesting a hearing on  
15 "Clarification of Discovery." On September 9, 2012, at the State's request, the Court  
16 vacated its discovery Order to allow the State to oppose Flowers' discovery request in  
17 writing. Accordingly, the Court set a briefing schedule on the discovery issue with the  
18 final brief (Flowers' Reply) being due on September 26, 2012. Counsel informed the  
19 Court that the briefing schedule presented a problem because Flowers' Petition had to be  
20 filed by September 28, 2012. The State indicated that the issue was premature because  
21 the Nevada Supreme Court failed to issue a remittitur and therefore the Court did not  
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28 <sup>1</sup> Upon inquiry, prison officials informed counsel that they did not have the missing documents in their possession.

1 have jurisdiction over the case.<sup>2</sup> Additionally, the State argued that the Court should  
2 delay its decision on the discovery issue until after the Nevada Supreme Court  
3 determined whether Flowers' guilty plea in case number C216032 (appeal 59250) was  
4 valid. At that point, counsel reiterated his concern regarding the deadline for filing  
5 Flowers' Petition and made an oral motion to extend the filing deadline. The State did not  
6 oppose the motion. The Court granted counsel's motion and extended the deadline for  
7 filing Flowers' Petition by thirty (30) days.

9 **Parties Stipulation Regarding Discovery**

10 On September 12, 2012, Flowers filed his Motion To Obtain A Complete Copy of  
11 Discovery From The State. On September 21, 2012, *both* parties were under the mistaken  
12 belief that the Nevada Supreme Court's remittitur was forthcoming and that the Court  
13 lacked jurisdiction over the instant case. The parties entered into a Stipulation to take the  
14 discovery issue off calendar.<sup>3</sup> The Stipulation and Order could not be more clear that the  
15 parties only intended to vacate the briefing schedule and hearings pertaining to the  
16 discovery issue. Shortly thereafter, counsel became aware that even though no remittitur  
17 had issued, the Nevada Supreme Court had established a deadline for filing Flowers'  
18 Petition. The Nevada Supreme Court's Order indicated the deadline was September 28,  
19 2012. On October 9, 2012, despite not having obtained the file, Counsel filed Flowers'  
20 Petition, well within the time limits specified in this Court's Order extending the  
21 deadline.  
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26 <sup>2</sup> Clearly both parties were mistaken and overlooked the footnote in the Order that  
27 established a deadline for filing the Petition in lieu of the issuance of a remittitur, which  
28 is the usual mechanism that triggers the statutory filing deadline.

<sup>3</sup> See Stipulation and Order attached hereto as Exhibit D.

1 **Motion to Supplement**

2       On October 30, 2012, the State filed its Response and Motion to Dismiss  
3 Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) ("Motion to  
4 Dismiss"). The Certificate of Facsimile Transmission indicates that the State faxed the  
5 Motion to Dismiss to Thomas Ericsson at 702-658-2502. Counsel submits that he was  
6 never served with the Motion to Dismiss because Mr. Ericsson has not used or had access  
7 to that facsimile account for the last seven (7) months. As such, counsel was not made  
8 aware that the State had filed its Motion to Dismiss until November 2, 2012.  
9

10       On October 31, 2012, Flowers filed his Motion to Place on Calendar to  
11 Supplement Defendant's Petition for Writ of Habeas Corpus ("Motion to Supplement").  
12 On November 2, 2012, the State filed its State's Opposition to Defendant's Motion to  
13 Place on Calendar to Supplement Defendant's Petition for Writ of Habeas Corpus  
14 ("Opposition to Motion to Supplement"). The timing of these pleadings is significant  
15 because the State has incorrectly asserted that Flowers' filed his Motion to Supplement in  
16 response to the State's Motion to Dismiss. The State's assertion is incorrect given that  
17 Flowers filed his Motion to Supplement without any knowledge that the State had filed  
18 its Motion to Dismiss.  
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1 ARGUMENT

2 NRS 34.750 provides in pertinent part:

3  
4 3. After appointment by the court, counsel for the petitioner may file and  
5 serve supplemental pleadings, exhibits, transcripts and documents within  
6 30 days after:

7 (a) The date the court orders the filing of an answer and a return; or

8 (b) The date of counsel's appointment,  
9 whichever is later. If it has not previously been filed, the answer by the  
10 respondent must be filed within 15 days after receipt of the supplemental  
11 pleadings and include any response to the supplemental pleadings.

12 4. The petitioner shall respond within 15 days after service to a motion by  
13 the State to dismiss the action.

14 **5. No further pleadings may be filed except as ordered by the court.**

15 NRS 34.750 (Emphasis added)

16 In State of Nevada v. Kitrich Powell The Nevada Supreme Court indicated that  
17 Petitioners are allowed to liberally supplement their post-conviction pleadings. *See* 122  
18 Nev. 751; 138 P.3d 453 (2006). In considering the issue of supplemental pleadings in  
19 Powell, the Court noted:

20 In February 1998, Powell timely filed in proper person a post-conviction petition  
21 for a writ of habeas corpus. Various attorneys filed a total of four supplemental  
22 pleadings on Powell's behalf in December 1998, July 1999, November 2000, and  
23 October 2001.

24 Id. at 451.

25 Further, in reference to NRS 34.750(5), the Nevada Supreme Court noted,

26 We have stated that the latter subsection "vest[s] the district court with **broad  
27 authority to order supplemental pleadings in post-conviction habeas cases.**"

28 Moreover, we recently held in *Barnhart v. State* that a district court has the  
discretion to permit a habeas petitioner to assert new claims even as late as the  
evidentiary hearing on the petition

Id. at 758 (emphasis added).



1 Here, contrary to the State's assertion, Flowers is not seeking one hundred twenty  
2 (120) days to respond to the State's Motion to Dismiss. Flowers timely filed his response  
3 on November 14, 2012. *See* Defendant's Opposition to State's Response and Motion to  
4 Dismiss Defendant's Petition for Writ of Habeas Corpus (post-conviction). Therefore,  
5 Flowers is in complete compliance with NRS 34.750(4). Furthermore, as argued within  
6 the aforementioned pleading, Flowers' Petition is not untimely.

7 In its Opposition to Motion to Supplement, the State incorrectly argues that the  
8 supplemental pleading requested by Flowers is beyond the scope of NRS 34.750. In  
9 referencing the statute, the State glosses over subsection five (5), which, pursuant to  
10 Powell, gives this Court broad authority to order supplemental pleadings. Powell clearly  
11 stands for the proposition that counsel may supplement a Petition past the thirty (30) day  
12 time period specified in NRS 34.750(3)(a), if granted leave to do so by the court. In  
13 Powell, the Nevada Supreme Court found no error in the district court authorizing a  
14 variety of attorneys to file four separate supplemental pleadings over a period of four  
15 years. Id. at 455.<sup>4</sup> As such, the State is simply incorrect that Flowers' cannot supplement  
16 his Petition if granted leave to do so by this Court.

17 Because Flowers' Petition is timely and this Court has broad authority to order  
18 supplemental pleadings, Flowers' Motion to Supplement should be granted.

19 ///

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---

26 <sup>4</sup> "Various attorneys filed a total of four supplemental pleadings on Powell's behalf in  
27 December 1998, July 1999, November 2000, and October 2001." In July 2002, State v.  
28 Powell, 122 Nev. 751, 754, 138 P.3d 453, 455 (2006).

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**CONCLUSION**

The Petitioner prays that this Honorable Court allows the Petitioner leave to supplement the Petition for Writ of Habeas Corpus (post-conviction) as necessary.

DATED this 23<sup>rd</sup> day of November, 2012.

ORONoz & ERICSSON, L.L.C.

By: /s/ James Oronoz  
JAMES A. ORONoz, ESQ.  
Nevada Bar No. 6769  
700 South 3rd Street  
Las Vegas, Nevada 89101  
*Attorney for Petitioner*

**CERT**  
JAMES A. ORONoz, ESQ.  
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Facsimile: (702) 522-1542  
jim@oronozlawyers.com  
*Attorney for Petitioner*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

NORMAN FLOWERS

Petitioner,

vs.

THE STATE OF NEVADA

Respondent.

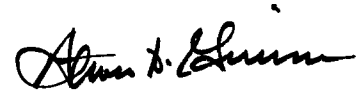
CASE NO: C228755  
DEPT. NO: IX

**CERTIFICATE OF SERVICE**

I hereby certify that on the 23<sup>rd</sup> day of November, 2012, I served a true and correct copy of the foregoing DEFENDANT'S REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO PLACE ON CALENDAR TO SUPPLEMENT DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS on the following:

STEVE WOLFSON, Clark County District Attorney  
200 Lewis Avenue  
Las Vegas, Nevada 89101  
PDMotions@CCdanv.com

/s/ Alicia Oronoz  
An employee of Oronoz & Ericsson L.L.C.



CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS aka  
NORMAN HAROLD FLOWERS III,

Defendant.

CASE NO. C228755

DEPT. IX

***BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE***

***MONDAY, AUGUST 27, 2012  
TRANSCRIPT OF PROCEEDINGS***

**STATUS CHECK: RECEIPT OF FILE**

**APPEARANCES:**

For the State:

PATRICK BURNS, ESQ.  
Deputy District Attorney

For the Defendant:

LUCAS GAFFNEY, ESQ.  
THOMAS ERICSSON, ESQ.

Also Present:

CLARK PATRICK, ESQ.  
Special Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER

1 Las Vegas, Nevada, Monday, August 27, 2012 at 9:37 a.m.

2  
3 THE COURT: State versus Norman Flowers, C228755. The record should  
4 reflect he is not present. He's in the Nevada Department of Corrections, and the  
5 Court declined to transport him for this simple status check.

6 MR. ERICSSON: Good morning, Your Honor. This is a status check on us  
7 getting the entire file, and here is where we're at, and we're hoping to get an order  
8 signed by you.

9 Mr. Flowers had been represented by the Special Public Defender's  
10 Office at trial. It's my understanding they had -- we contacted them to try to get the  
11 file. They said they had sent everything up to Mr. Flowers in prison. We contacted  
12 him, and we were informed that he was told by the prison that he had received  
13 materials up there, but there were social security numbers and things within the  
14 materials, and so they wouldn't give it to him, and they had sent it back. We then  
15 contacted the Special Public Defender's Office, they said they hadn't received  
16 anything back, and so we are in this loop of not being able to get this material. The  
17 order that I have drafted is, is ordering that the District Attorney's Office prepare a  
18 copy of the entire file so that we can make sure we have everything for his post-  
19 conviction assignment.

20 THE COURT: So, what do you want to do?

21 MR. ERICSSON: I brought an order -- last time we were in court, we had  
22 asked for that, and we were told well if the client is getting it, go get it from him.  
23 We've tried to do that, and he hasn't received everything.

24 THE COURT: What do you have there? What does that say?

25 MR. ERICSSON: Pardon me?

1 THE COURT: Let me see the order and I'll --

2 MR. ERICSSON: This also includes records from Metro so --

3 THE COURT: Okay. Well I don't -- I don't think -- okay, the second  
4 paragraph, I have a problem with. Number one, the custodian of records at the  
5 Metropolitan Police Department does not keep records consistent with our case  
6 number.

7 MR. ERICSSON: The case number.

8 THE COURT: You need an event number or a series of event numbers, and  
9 the other thing is, I -- the standard course is to do a subpoena and do an order to  
10 show cause when they don't honor the subpoena, so I'll -- if you want to get started,  
11 I will --

12 MR. ERICSSON: Strike -- strike out that second paragraph.

13 MR. ERICSSON: -- strike the second paragraph and sign it as to the first. I  
14 need you to copy State the file, I mean all reason -- we gotta do it in my lifetime, and  
15 all reasonable efforts it sounds like, I mean, I don't really understand. I mean you --  
16 I would think the Special Public Defender's Office, Mr. Patrick, keeps a copy of the  
17 file. They don't just send the whole thing to the Defendant.

18 MR. PATRICK: I'm sorry, Your Honor, this was on Mr. Flowers?

19 THE COURT: Yes.

20 MR. PATRICK: Judge, the last I remember, we sent most of our files to Mr.  
21 Oronoz, when he took over for us on the PCR.

22 MR. GAFFNEY: Your Honor, Lucas Gaffney. I'm here for Jim Oronoz. I  
23 spoke to Randy Pike concerning the file, and he said it was Special Public Defender  
24 policy that if it's not a death case, they don't keep the file, and this is -- we actually  
25 have two PCR cases with Norman --

1 MR. PATRICK: Correct.

2 MR. GAFFNEY: -- so he may be referring to the other one, which we did get  
3 the file.

4 MR. PATRICK: Yeah, the second file, we had a complete file, so we'd send a  
5 copy to Mr. Oronoz and we'd keep one for ourselves on the death case.

6 THE COURT: Do you keep your work product? Like what about when you  
7 have to testify later at a writ? How do you remember what you -- do you keep your  
8 work product?

9 MR. PATRICK: Yes Judge we do.

10 THE COURT: Okay.

11 MR. ERICSSON: And if I may approach, Mr. Gaffney has a cleaner copy that  
12 doesn't have that second paragraph.

13 THE COURT: Oh nice. Yeah, I prefer that one. Well here's what I suggest.  
14 Since -- why don't you see what the DA has. Maybe meet with Mr. Flowers and  
15 then issue a subpoena if you think. I mean, I see a lot of duplication of a lot of  
16 things that might not be necessary if you get a copy --

17 MR. BURNS: And Your Honor --

18 THE COURT: That's a copy by the way, a copy of their file. What does the  
19 language on there say?

20 MR. ERICSSON: With all materials and its immediate and instructive  
21 possession.

22 THE COURT: Can I --

23 MR. BURNS: Your Honor, that language seems a little bit broad; this  
24 wouldn't obviously apply to any of our work product or file notes things such as that.

25 THE COURT: All right, I changed the language to a copy of discovery, which

1 obviously your work product is not discoverable. Okay?

2 MR. BURNS: Thank you.

3 THE COURT: I agree it was overly broad as materials. So why don't we pass  
4 it 30 days. I don't know how big the file is. I don't know how long it'll take the  
5 District Attorney to make a copy. I don't know how long it'll take you to meet Mr.  
6 Flowers. I don't know much. So what do you think? 30 days?

7 MR. ERICSSON: Yes, Your Honor. That should be sufficient.

8 THE COURT: All right. The matter is passed 30 days for status check on  
9 receipt of file.

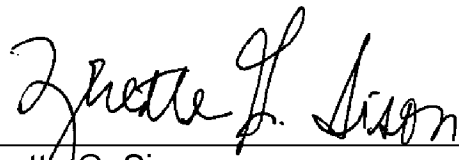
10 THE CLERK: September 24<sup>th</sup> at 9 a.m.

11 MR. ERICSSON: Thank you, Your Honor.

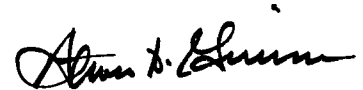
12 THE COURT: Thank you.

13 [Proceedings concluded at 9:43 a.m.]  
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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video  
21 proceedings in the above-entitled case to the best of my ability.

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23 \_\_\_\_\_  
24 Yvette G. Sison  
25 Court Recorder/Transcriber





CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

8  
9 NORMAN KEITH FLOWERS aka  
10 NORMAN HAROLD FLOWERS, III,

11 Defendant.  
12

CASE NO. C228765

DEPT. VII

13 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
14 FRIDAY, JULY 13, 2012

15 **RECORDER'S TRANSCRIPT OF**  
16 **STATUS CHECK -- RECEIPT OF FILE**

17 APPEARANCES:

18 For the State:

MARC SCHIFALACQUA, ESQ.  
Chief Deputy District Attorney

21 For the Defendant:

THOMAS A. ERICSSON, ESQ.  
LUCAS GAFFNEY, ESQ.

24 RECORDED BY: PATRICIA SLATTERY, COURT RECORDER  
25 Friday, July 13, 2012 -- 9:02 a.m.

1 THE COURT: Do you know if Mr. Oronoz is coming or are you going to  
2 handle Flowers for him?

3 MR. ERICSSON: Your Honor, we're here on that. And will that still be in --  
4 in Department 7 on that date?

5 THE COURT: No, we won't be handling this criminal calendar after August  
6 6.

7 MR. ERICSSON: Okay. So do we know what the department number is  
8 going to be at that time?

9 THE COURT: No.

10 MR. ERICSSON: No? Okay. Your Honor, I am here with Luke Gaffney on  
11 Norman Flowers.

12 THE COURT: Okay. Page 2, State of Nevada versus Norman Flowers,  
13 Case Number C228755. Mr. Flowers is in the Nevada Department of Corrections  
14 represented by Mr. Gaffney, Mr. Ericsson. State represented by Mr. Schifalacqua.  
15 This is on to ensure that the file was received and that Mr. Oronoz had the  
16 opportunity to meet with Mr. Flowers.

17 MR. GAFFNEY: Your Honor, we haven't obtained the file. We contacted  
18 the SPDs, and they had given the file to the client, who is incarcerated.

19 THE COURT: Has he met with Mr. Flowers yet?

20 MR. GAFFNEY: We've talked to him over the phone.

21 THE COURT: Has he met with Mr. Flowers yet?

22 MR. GAFFNEY: No, he hasn't.

23 THE COURT: Okay. How long is it going to take to do that?

24 MR. GAFFNEY: We are starting a trial Monday, and it's expected to go  
25 approximately three to four weeks.

1 THE COURT: Okay.

2 MR. GAFFNEY: So somehow --

3 THE COURT: So I'll pass this 45 days.

4 MR. ERICSSON: Thank you, Your Honor.

5 THE COURT: Thank you. Hold on just a second. There's a motion --

6 [Court and Clerk confer]

7 MR. GAFFNEY: Your Honor, the situation was that while we were unable  
8 to get the file from the SPD's Office, we contacted the District Attorney to see if we  
9 could obtain discovery, and their office policy is they don't give discovery pursuant  
10 to Statute NRS 34.178.

11 THE COURT: Okay. Well, under --

12 MR. SCHIFALACQUA: I've never seen this motion or this order, Judge.

13 THE COURT: No, I don't --

14 MR. SCHIFALACQUA: Was it filed today or --

15 THE COURT: It wasn't -- I mean, we stamped it, but the Clerk hasn't  
16 signed it yet. I'm going to return this to you so that you can electronically file it  
17 because I don't think this is the kind of thing we really need to file in open court.

18 Yeah, just mark that out.

19 THE COURT: And, obviously, under the circumstances --

20 MR. SCHIFALACQUA: We have a response --

21 THE COURT: -- if the District Attorney could please cooperate with  
22 counsel, I would appreciate that greatly. I understand that the office doesn't want  
23 to go to the additional expense of providing discovery that --

24 MR. SCHIFALACQUA: Perhaps counsel would --

25 THE COURT: -- hopefully would be in the chain of discovery. They don't

1 keep a file at the Special Public Defender's Office?

2 MR. GAFFNEY: I guess their policy is if it's not a capital case --

3 THE COURT: I see.

4 MR. GAFFNEY: -- they give it to the client --

5 THE COURT: They just give it to the client. So, first, I think you should try  
6 to obtain what you can from the client, and then anything missing, let the D.A.  
7 know, and they'll fill in the gaps.

8 MR. GAFFNEY: Okay.

9 THE COURT: Okay.

10 MR. GAFFNEY: We were going to do that anyway. Just for the record, we  
11 thought that that would be problematic because he's had the file for a while. We  
12 don't know what he's taken out, what he's put in --

13 THE COURT: Well, but, I mean, you'll know if he has all of the trial  
14 transcripts. You know, it's just -- just go through what he has, and whatever is  
15 missing get from the D.A.

16 MR. SCHIFALACQUA: Thank you.

17 MR. GAFFNEY: Okay.

18 MR. SCHIFALACQUA: Thank you, Judge.

19 THE COURT: 45 days.

20 ///

21 THE CLERK: August 27, 9:00 a.m.

22 [Proceeding concluded at 9:05 a.m.]

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2 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
3 audio-visual recording of the proceeding in the above entitled case to the  
4 best of my ability.

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7 \_\_\_\_\_ Renee Vincent, Court Recorder/Transcriber  
8 (702) 671-4339  
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## STATE OF NEVADA,

Plaintiff,

**VS.**

CASE NO. C228765

DEPT. VII

NORMAN KEITH FLOWERS aka  
NORMAN HAROLD FLOWERS, III,

Defendant.

BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE  
FRIDAY, JUNE 8, 2012

**RECORDER'S TRANSCRIPT OF  
APPOINTMENT OF COUNSEL**

APPEARANCES:

For the State:

JEFFREY ROGAN, ESQ.  
Deputy District Attorney

For the Defendant:

LUCAS GAFFNEY, ESQ.

RECORDED BY: RENEE VINCENT, COURT RECORDER  
Friday, June 8, 2012 -- 9:00 a.m.

1 THE COURT: Page 1, State of Nevada versus Norman Flowers, Case  
2 Number C228755. Mr. Flowers is in the Nevada Department of Corrections. He's  
3 not present this morning. He's represented by --

4 MR. GAFFNEY: Lucas Gaffney appearing for James Oronoz.

5 THE COURT: And the State is represented by Mr. Rogan. This is on for  
6 appointment of counsel. Is Mr. Oronoz going to be able to confirm on this?

7 MR. GAFFNEY: Yes, Your Honor.

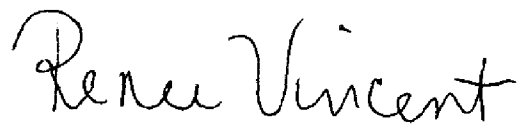
8 THE COURT: And I'm going to set this for a status check in 30 days for Mr.  
9 Oronoz to get the file and see Mr. Flowers. Thank you.

10 MR. GAFFNEY: I have another matter on page 18.

11 THE CLERK: July 13, 8:45.

12  
13  
14 [Proceeding concluded at 9:01 a.m.]

15  
16 TTEST: I do hereby certify that I have truly and correctly transcribed the  
17 audio-visual recording of the proceeding in the above entitled case to the  
18 best of my ability.

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21 \_\_\_\_\_  
22 Renee Vincent, Court Recorder/Transcriber  
23 (702) 671-4339  
24  
25

  
CLERK OF THE COURT

RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

NORMAN KEITH FLOWERS aka  
NORMAN HAROLD FLOWERS III,

Defendant.

CASE NO. C228755

DEPT. IX

BEFORE THE HONORABLE JENNIFER P. TOGLIATTI, DISTRICT COURT JUDGE

**MONDAY, SEPTEMBER 10, 2012**  
**TRANSCRIPT OF PROCEEDINGS**

**CLARIFICATION OF DISCOVERY**

**APPEARANCES:**

For the State:

PAM WECKERLY, ESQ.  
Deputy District Attorney

For the Defendant:

LUCAS GAFFNEY, ESQ.

Also Present:

CLARK PATRICK, ESQ.  
Special Public Defender

RECORDED BY: YVETTE SISON, COURT RECORDER



1 Las Vegas, Nevada, Monday, September 10, 2012 at 9:23 a.m.

2  
3 THE COURT: Weckerly signed in on Flowers. Ms. Weckerly for the DA's  
4 Office on page 3. Do we have -- hi --

5 MR. GAFFNEY: Morning, Your Honor. Lucas Gaffney for Jim Oronoz on  
6 behalf of Norman Flowers.

7 THE COURT: Yes, this is bottom of page 3, C228755, clarification regarding  
8 discovery.

9 MR. GAFFNEY: The State's

10 MS. WECKERLY: This is our clarification, Your Honor. It looks like the  
11 Defense had a motion for -- to open discovery in this case filed on -- or actually they  
12 didn't file it. They brought it to court on July the 13<sup>th</sup>. The Court at that time directed  
13 them to file the motion. They didn't do so. On August the 27<sup>th</sup>, this Court issued an  
14 order for us to produce discovery in this case. We've never been served with an  
15 order. The other thing -- or a motion to open up discovery.

16 THE COURT: Wait, can you back up?

17 MS. WECKERLY: Sure.

18 THE COURT: Is this -- when you say the 14<sup>th</sup>, are you talking about July?

19 MS. WECKERLY: July 13<sup>th</sup>, they had a motion to conduct discovery in this  
20 case, and the minutes reflect that the Court directed them to file the motion  
21 electronically obviously, so we could have a chance to respond.

22 On the 27<sup>th</sup>, the matter was on calendar again, and at that time, the  
23 Court signed an order for us to produce discovery in this case, without us having the  
24 motion.

25 The other thing I would add is this case proceeded to trial and was

1 actually argued on appeal. Mr. Flowers had another case that proceeded to was  
2 coming up for trial later. He ended up pleading guilty in that case. As a condition of  
3 his plea, he had to withdraw his pending appeal in this case. He's now moved to  
4 withdraw his appeal in the other case. In the event he's successful --

5 THE COURT: In the other case or this case? I'm sorry when you say this  
6 case, other case --

7 MS. WECKERLY: He went to trial in this case --

8 THE COURT: Yes.

9 MS. WECKERLY: -- we argued it in front of the Nevada Supreme Court.  
10 While it was pending decision, he entered a plea in another murder case.

11 THE COURT: Okay.

12 MS. WECKERLY: As a condition of that plea, he had to withdraw his pending  
13 appeal in this case. He's now moving to withdraw his appeal -- or withdraw his  
14 guilty plea in the other case.

15 THE COURT: Okay.

16 MS. WECKERLY: So even if he's successful --

17 THE COURT: Uhuh.

18 MS. WECKERLY: -- what will happen is, this case will be back in front of the  
19 Nevada Supreme Court on appeal, meaning there's no jurisdiction for discovery in  
20 this case at all.

21 THE COURT: So, you're saying that the plea agreement would cause his  
22 appeal time to toll or --

23 MS. WECKERLY: This case was on appeal --

24 THE COURT: -- I see.

25 MS. WECKERLY: -- and he withdrew it.

1 THE COURT: He withdrew it.

2 MS. WECKERLY: So, even if he's successful in withdrawing his plea, this  
3 case would be in front of the Nevada Supreme Court, not this Court.

4 THE COURT: Well, let me ask you this. Who was appellate counsel when  
5 this deal was done?

6 MR. GAFFNEY: On this case?

7 THE COURT: Yes.

8 MS. WECKERLY: The SPD represented him in both cases, and then he  
9 moved to withdraw his plea with Mr. Oronoz.

10 THE COURT: I'm glad Clark Patrick is here. So, who was his appellate  
11 counsel in this case when it was pending, before we were moving to -- not we, they  
12 were moving to withdraw the appeal was who?

13 MR. PATRICK: I believe it was Ms. Thomas, Your Honor. Jonell Thomas.

14 THE COURT: Ms. Thomas. Because I would need Ms. Thomas here to  
15 figure out -- has he been allowed to withdraw his plea or he's moving to withdraw --

16 MR. PATRICK: Your Honor --

17 MS. WECKERLY: It's withdrawn.

18 THE COURT: It's withdrawn? Okay.

19 MS. WECKERLY: The appeal is withdrawn. So, if he's successful in his  
20 other case, his appeal will be revived in front of the Nevada Supreme Court.

21 THE COURT: Why would he give up that right?

22 MR. GAFFNEY: Your Honor, if I might?

23 THE COURT: Sure.

24 MR. GAFFNEY: The problem we have here is that the petition in this case is  
25 due on September 28<sup>th</sup>. The reply in the case that's currently on appeal in regards

1 to whether or not his appeal here would be reinstated, the reply isn't even due until  
2 September 24<sup>th</sup>. And so, this case takes precedence, and we were appointed back -

3 -

4 THE COURT: This is the same case. This is one case.

5 MR. GAFFNEY: Well, I'm sorry, what Ms. Weckerly is saying is currently  
6 there's an appeal in another case, and that appeal is on the sole issue of whether or  
7 not he could withdraw his guilty plea. If he's successful in withdrawing his guilty  
8 plea in that case, this case would be back in front of the Supreme Court. They're  
9 actually two separate cases. As part of his guilty plea agreement in the other case,  
10 he agreed to dismiss this case which was currently on appeal at that time.

11 And so, what I'm trying to say is that the decision in whether or not he  
12 will successfully withdraw his plea is going to take place -- we don't even know. I  
13 mean, the briefing isn't even done at this point, but his petition in this case is due  
14 September 28. We're -- the clock is running.

15 THE COURT: Well, it's due a year from the time that the appeal is finally  
16 decided. So --

17 MR. GAFFNEY: It's due from the -- when the remittitur issued, and that was  
18 September 28, 2011 of last year. We were appointed in June of this year, and  
19 we've been struggling to get this file ever since. When we were in front of Judge  
20 Bell on the 13<sup>th</sup>, we attempted to file a discovery motion in Open Court. It was filed  
21 and then she rejected it saying; well, why don't you get a copy of the file from the  
22 client, and then she advised the State to cooperate with us to provide any discovery  
23 that was missing. We talked to the client. We've had a -- he had part of it, and  
24 apparently, Ely State Prison may have a part of it. It's scattered to the four winds.  
25 It's problematic for us to get the file from the client, and so when we came back here

1 on I think it was the 27<sup>th</sup> in front of you when I was here with Mr. Ericsson, that's  
2 what prompted us to have the Court sign an order to turn over a copy of the  
3 discovery. And here we are, a week later, and we still don't have the file, and the  
4 deadline for petition is only three weeks away.

5 THE COURT: Okay but -- so weeding through everything you just said to me,  
6 I'm still not hearing that there is not a -- that there is a possibility that this appeal will  
7 be -- because he was allowed to withdraw his plea. As of right now, his plea is  
8 withdrawn in the other case, yes or no?

9 MS. WECKERLY: Nope.

10 THE COURT: I thought you said it was.

11 MS. WECKERLY: He's moved to. It was denied, and he's appealed that.

12 THE COURT: Oh. I thought you said it was withdrawn.

13 MS. WECKERLY: No.

14 THE COURT: Okay.

15 MS. WECKERLY: No. That's -- I mean we're not even there. We've had a  
16 hearing on that, and it was denied.

17 THE COURT: Was that motion to withdraw the plea, pre or post sentencing?  
18 Post?

19 MR. GAFFNEY: Pre.

20 MS. WECKERLY: Pre, and he's --

21 MR. GAFFNEY: Pre-sentencing.

22 THE COURT: Okay.

23 MR. GAFFNEY: Your Honor just -- if we are -- have to wait for the Supreme  
24 Court to make a decision on whether or not his appeal is granted or denied, we're  
25 going to have file an untimely petition.

1 THE COURT: I understand.

2 MR. GAFFNEY: Okay.

3 THE COURT: I heard you the first time you said it.

4 MR. GAFFNEY: Okay. Thank you.

5 THE COURT: State, I'm going to -- I mean, setting aside the appeal issues,  
6 I'm not waiting for the Supreme Court, because I could be in PERS by then, and  
7 quite frankly, I'm going to presume that whoever denied the motion made the right  
8 legal decision, and his appeal will be denied.

9 So, as far as the request for discovery, normally if I had any inclination  
10 at the time that there was going to be an objection by the State, I wouldn't have just  
11 signed an order. I've inherited, I don't know, 400 active cases from Judge Bell, and I  
12 had the impression at the time that I sent the order that this had already kind of been  
13 -- that the road had been laid for this, so I had a misunderstanding. So the extent  
14 you want me to vacate the order and you want to litigate it, I'm happy to do that. I'm  
15 happy to allow you to do that since I didn't apparently allow you to do that the first  
16 time.

17 MS. WECKERLY: Thank you. We'd like to litigate it.

18 THE COURT: Okay.

19 MR. GAFFNEY: Your Honor, at this point, can I make an oral motion to  
20 extend the timeline for the filing of his post-conviction petition for writ of habeas  
21 corpus. If we put a motion on --

22 THE COURT: He doesn't have the file.

23 MS. WECKERLY: His deadline hasn't even started ticking yet, because  
24 there's no appeal.

25 MR. GAFFNEY: That's not correct, Your Honor. It --

1 THE COURT: Listen, listen. I understand the issues okay. I've been doing  
2 this a really long time. I don't need you to say it five times. I agree with you. I'll  
3 extend it 30 days. If the District Attorney is correct and it hasn't started ticking yet,  
4 then there's zero prejudice to the District Attorney in me extending that deadline 30  
5 days. So, your oral request is granted. You'll need to prepare an order for that.

6 In the meantime, I guess there was no motion filed. I have nothing in  
7 the minutes about how they'll be a motion filed, and so I'm vacating the early order --  
8 earlier order for production of discovery because I had a misunderstanding that this  
9 was going to be litigated or that the State objected, and so when can you have that  
10 done?

11 MR. GAFFNEY: I'll have it submitted by today or by tomorrow.

12 THE COURT: Okay. So, if I set this clarification of discovery status check  
13 over three weeks, you'll have plenty of time to have a motion, an opposition, and a  
14 reply. Okay. So the motion is due Wednesday by 5 o'clock. The opposition is --  
15 and so that would be the 12<sup>th</sup>. The opposition is due the 19<sup>th</sup> by 5 o'clock. Any reply  
16 is due the 26<sup>th</sup> by 5 o'clock with a hearing on October 1<sup>st</sup> at 9 o'clock.

17 MS. WECKERLY: Thank you.

18 THE COURT: I guess I should say 4 o'clock. You all e-file anyway right?

19 MR. GAFFNEY: No we don't.

20 THE COURT: Okay 4 o'clock. Clerk's Office closes at 4 o'clock. I keep  
21 forgetting that.

22 MR. GAFFNEY: Got it.

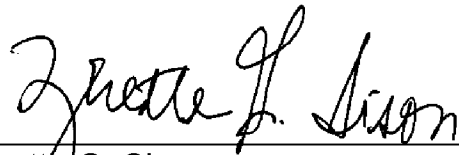
23 THE COURT: Doesn't matter to you, but it matters to him. They  
24 electronically file. Okay. Thank you very much.

25 MS. WECKERLY: Thank you.

[Proceedings concluded at 9:33 a.m.]

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

  
\_\_\_\_\_  
Yvette G. Sison  
Court Recorder/Transcriber