

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

In re BRIAN KERRY O'KEEFE,

Related
Supreme Case No.'s 68560 - 68623

Petitioner

District Case No. 08 0250630

FILED

-vs-

Dept. No. XVII

SEP 01 2015

EIGHTH JUDICIAL DISTRICT COURT;
THE HONORABLE MICHAEL P. VILLANI,
DISTRICT COURT JUDGE,

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

RESPONDENTS,

AND THE STATE OF NEVADA,
Real Party in Interest.

(see ORDER attached)

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Petitioner, Brian O'Keefe, pro per, and respectfully moves this Honorable Court to issue a Petition for Writ of Mandamus, being filed contemporaneously herewith, directing the district court, to reverse and vacate his order denying defendant's pro per motion to withdraw counsel for conflict, inter-alia, and to file pro per motion to supplement first post habeas action. (see above related cases)

This petition is made and based pursuant to the supporting Points and Authorities attached hereto, NRS 34.150 through NRS 34.310, N.R.A.P. Rule 21, as well as all papers, pleadings, and documents on file herein.

Respectfully Submitted,

By: [Signature] - 90244
Brian K. O'Keefe

Dated August 28, 2015

LCC 11 FORM 28.014

RECEIVED
SEP 01 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

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● FEDERAL CASES

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Nika v. State (NEVADA)	124 Nev 1272 (DEC. 31, 2008)	4
O'Keefe v. Nevada	134 S.Ct. 444, 187 L.Ed.2d 297 (#13-6031)	3
O'Keefe v. State	2013 WL 1501038 (#61631 N.S.C.-)	3
Polk v. Nevada	126 Nev.19, 233 P.3d 357 (2010)	6
State v. Second Judicial Dist. Ct. ex rel. Court of Washoe	11 P.3d 1209	3

II.

Parties - Procedural

Petitioner Brian Kerry O'Keefe is the defendant in the case of State v. O'Keefe, Eighth Judicial District Court, Case 08CZ50630, wherein he was wrongly charged with one theory of OPEN MURDER. After three trials, petitioner's opportunity to file his first post state habeas is being denied by ironically, court appointed counsel.

III.

(NRAP) Rule 17

This case involves a category "A" felony and is properly retained by the Supreme Court, of Nevada.

IV.

Relief Sought

Wherefore, based on the foregoing and the accompanying Points and Authorities, Petitioner O'Keefe respectfully requests that this court issue a Writ of Mandamus requiring respondent to grant O'Keefe's motion to dismiss counsel and proper person petition, supplemental to his habeas corpus petition to be filed post haste.

V.

LEGAL ARGUMENT

Petitioner O'Keefe, will suffer irreparable harm by the district court's appointed counsel's failure to raise valid claims,

and to properly manifest that a proper person certiorari was filed pursuant NRAP 41(a) thereby extending the one year timeline pursuant NRS 34.726(1), omitted by state.

- FROM see O'Keefe v. State, 2013 WL 1501038, NSC Docket No. 61631 (4-10-2013)
- SEE • (O'KEEFE v. NEVADA, 134 S.Ct. 444, 187 L.Ed.2d 297 (Case No. 13-6031; denied 10/15/2013))

Petitions for Extraordinary Writs are addressed to the sound discretion of the Supreme Court of Nevada and may issue when there is no plain, speedy, and adequate remedy at law. see State v. Second Judicial District Court ex. rel. Court of Washoe, 11 P.3d 1209, — Nev. — (2000).

Also, mandamus may issue to compel performance of an act which controls arbitrary and/or capricious exercise of discretion. see Barnes v. E.J.D.C., 103 Nev. 679.

Mandamus is the key appropriate vehicle for challenging contested orders entered by the district court. see Angel v. E.J.D.C. in and for the county of Clark, 839 P.2d 1329, 108 Nev. 923 (1992).

Here, in the instant case, court appointed counsel has failed multiple times to raise the overlooked certiorari filed, which clearly extends the final judgment date.

As opined in Colwell v. State, 118 Nev. 807, 820 (2002),

"a conviction becomes final when the judgment of conviction has been entered, the availability of appeal has been exhausted, and a petition to the U.S. Supreme Court has been denied, or the time for such

— a petition has expired." Noting with emphasis, that NRAP 41(2) "Clerk cannot issue remittitur until "denial" of certiorari is filed."

Pointing out that NRAP 1 states that (c)(8) explains "shall" is mandatory while "may" is permissive.

Here again, Mr. O'Keefe even filed pursuant NRAP 46(b) for leave of the court to file a stay of remittitur and said motion was filed only being ordered to be unfiled.

This was an abuse of discretion for the U.S. Supreme Court guarantees everyone the right to appeal from direct appeal in every criminal case. See Colewell v. Nevada, 118 Nev 887
• see U.S. 14th Amendment and 1st Amendment (due process)

Moreover, a U.S. Supreme Court proper person certiorari was actually filed, non-trivial, with the Solicitor General of Nevada C. Wayne Houck, filing himself a notice of appearance.

This activated NRAP 41(2) which requires that a petition actually be filed to stay.

The right to appeal has also been recognized in Nevada pursuant NIKA v. NEVADA, 124 Nev 1272 (Dec. 31, 2008)

Petitioner O'Keefe invoked this Federal Right therefore extending his time to file his state habeas pursuant NRS 34-726(1). Noting, any problem was caused by then court appointed attorney for direct appeal, No. 61631, excusing by external force.

Noting additionally, a conviction cannot become final until a filed certiorari is denied by the U.S. Supreme Court. see

- COFFEEY v. KENTUCKY, 479 U.S. 314, 321 n.c., 105 Ct. 28, 93 L.Ed. 2d 649

Also, both direct appeal counsel appointed and now appellate counsel also appointed, fail to raise this U.S. Case No. 13-6031 being filed.

This is a denial of counsel on direct appeal, see Douglas v. California, 372 U.S. 353 (1963) and appellate counsel now being ineffective. see also SMITH v. ROBBINS, 528 U.S. 259 (2000).

Again, petitioner is being hindered by court appointed counsel's failure to defend and raise all claims of I.A.C. in your first post conviction petition for writ of habeas corpus as again instructed by the Nevada Supreme Court in Colwell, Jr. v. Nevada, supra. see also Martinez v. Ryan 132 S.Ct. 1309 (2012)

Reminding also that Colwell, Jr. v. Nevada, supra, additionally explains the law of the FIRST APPEAL is the law of the case, in all later appeals.

The doctrine cannot be avoided by more detailed, beefed up or precisely focused argument when no more new evidence existed. see

- Benton v. State of Maryland 395 U.S. 784 (1969)

(14th Amendment protection of due process; equal protection applied to state courts)

Now, the court appointed counsel fails to communicate and has filed a supplemental habeas petition without consent failing to raise all claims of constitutional magnitude.

Therefore, after repeated attempts by phone and mail, attorney agrees to withdraw but the court then denies aiding the state.

Simply, the state does not want to have the proper arguments and issues addressed based on procedural misconduct.

By ignoring that they proceeded not only in want of jurisdiction, they omit that U.S. Certiorari request, #13-6031, was filed which is an omission of error pursuant ~~NRAP~~ ~~Rule~~ 31(d). see Polk v. Howard 126 Nev. 19, 233 P.3d 357 (2010)

VI.

Prayer of Relief / Conclusion

For all the foregoing reasons, Petitioner Brian O'Keefe respectfully requests that the following relief be granted and ordered;

- a.) grant motion to dismiss counsel;
- b.) order state district court to order proper person state supplemental habeas be filed ~~post~~ ~~haste~~ haste;
- c.) order state to address O'Keefe's U.S. pro-per Certiorari that was filed and denied on October 15, 2013 as Case No. 13-6031 and affecting ~~retroactive~~ how NRS 34.726(1);
- d.) order evidentiary hearing, if needed.
- e.) expedite being first ever post state habeas action.
- f.) Answer initial P.P.O.W. GRANTED October 2014.

Dated this 28th day of August 2015.

Pursuant N.R.S. 208-165

Brian K. O'Keefe
pro-per #902461

VII.

VERIFICATION

STATE OF NEVADA)

COUNTY OF PERSIMMON) ss.

Brian O'Keefe, pursuant NRS 202.165, deposes and says:

- 1.) That in proper person I constructed and read the foregoing Petition for Writ of Mandamus and believe the matter to be true and correct;
- 2.) That Mr. O'Keefe has no other speedy remedy at law available;

Further your Affiant Swears naught.

Dated August 28, 2015

Brian L. O'Keefe
Brian L. O'Keefe

VIII.

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Petition and it complies, with NRS 21, 28. August 28, 2015

Brian L. O'Keefe
Brian L. O'Keefe

IX.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of August 2015, he personally delivered the petition and copy to the law library supervisor at Lovelock Correctional Center for mailing; to The Honorable Michael P. Villani, RJC, 11th Floor, Department 17, 200 Lewis Ave., Las Vegas NV 89155, postage prepaid.

It is understood that counsel for Respondent will be served after issuing a document case number via the e-filing system by the Clerk. August 28, 2015

Brian L. O'Keefe 20241

X.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Writ,

Petition for Writ of HABEAS
(Title of Document)

filed in District Court Case No. 08 CZ50630

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

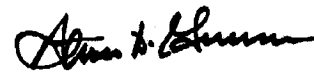
(State specific law)

-OR-

B. For the administration of a public program or
for an application for a federal or state grant.

[Signature]
(Signature)

8-28-2015
(Date)


CLERK OF THE COURT

1 **ORDR**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **ERIKA L. WIBORG**
6 **Deputy District Attorney**
7 **Nevada Bar #012520**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 **THE STATE OF NEVADA,**
13 **Plaintiff,**

14 **-vs-**

15 **BRYAN O'KEEFE,**
16 **aka Brian Kerry O'Keefe, #1447732**
17 **Defendant.**

CASE NO: 08C250630
DEPT NO: XVII

ORDER DENYING DEFENDANT'S PRO PER MOTION
TO WITHDRAW COUNSEL FOR CONFLICT AND FAILURE TO PRESENT
CLAIMS WHEN I.A.C. CLAIMS MUST BE RAISED PER STATUTE
IN THE FIRST PETITION PURSUANT TO CHAPTER 34

DATE OF HEARING: JUNE 30, 2015
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
30th day of June, 2015, the Defendant not being present, IN PROPER PERSON, the Plaintiff
being represented by STEVEN B. WOLFSON, District Attorney, through ERIKA L.
WIBORG, Deputy District Attorney, without argument, based on the pleadings and good
cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Withdraw Counsel
2 for Conflict and Failure to Present Claims when I.A.C. Claims Must be Raised Per Statute in
3 the First Petition Pursuant to Chapter 34, shall be, and it is DENIED, without prejudice.

4 DATED this 14 day of July, 2015.

5 
6 DISTRICT JUDGE 

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

10 BY


11 ERIKA L. WIBORG
12 Deputy District Attorney
13 Nevada Bar #012520

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CERTIFICATE OF SERVICE

I certify that on the 15th day of July, 2015, I mailed a copy of the foregoing Order

to:

BRYAN O'KEEFE,
aka Brian Kerry O'Keefe #90244
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

MATTHEW D. CARLING, Esq.
1100 S. TENTH ST.
LAS VEGAS, NV 89101

BY



R. JOHNSON
Secretary for the District Attorney's Office

rj/M-1