

1 I recognize that I must personally serve a copy of this form on the above named court
2 reporter and opposing counsel, and that the above named court reporter shall have twenty (20)
3 days from the receipt of this notice to prepare and submit to the district court the transcript
4 requested herein. I further certify that the defendant is indigent and therefore exempt from
5 paying a deposit.

6 DATED this 21st day of October, 2015.

8 CARLING LAW OFFICE, PC

10 /s/ Matthew D. Carling

11 MATTHEW D. CARLING, ESQ.

12 Nevada Bar No.: 007302

13 1100 S. Tenth Street

14 Las Vegas, NV 89101

15 (702) 419-7330 (Office)

16 (702) 446-8065 (Fax)

17 CedarLegal@gmail.com

18 Court-Appointed Attorney for Defendant,

19 BRYAN O'KEEFE

21 **CERTIFICATE OF SERVICE**

22 I hereby certify that, on this 21st day of October, 2015, I sent a true and correct copy of
23 the above REQUEST FOR ROUGH DRAFT TRANSCRIPTS OF DISTRICT COURT
24 PROCEEDINGS to the following parties:
25

26 Steven B. Wolfson, Esq.

27 Clark County District Attorney

28 Post Conviction Unit

29 Jennifer.Garcia@clarkcountyda.com

30 I hereby certify that on October 21, 2015, I served a copy of the REQUEST FOR
31 ROUGH DRAFT TRANSCRIPTS OF DISTRICT COURT PROCEEDINGS to Dept. 17 Court
32 Reporter by mailing a copy via first class mail, postage thereon fully prepaid, to the following:
33

1
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6
Court Reporter
Dept. 17
200 Lewis Avenue
Las Vegas, Nevada 89101

Brian K. O'Keefe (#90244)
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Defendant,
BRYAN O'KEEFE


CLERK OF THE COURT

NOASC
Nevada Bar No. 007302
1100 S. Tenth Street
Las Vegas, NV 89101
Telephone: (702) 419-7330
Facsimile: (702) 446-8065
CedarLegal@gmail.com
Attorney for Petitioner/ Defendant
BRIAN O'KEEFE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630
Dept. No.: XVII

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

STEVEN B. WOLFSON, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
DEPARTMENT 17 OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that BRYAN O'KEEFE, presently incarcerated at the
Lovelock Correctional Center, appeals to the Supreme Court of the State of Nevada from the
an Order denying his Petition for a Writ of Habeas Corpus (Post-Conviction) entered on or about
March 13, 2013.

DATED this 21st day of October, 2015.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling

MATTHEW D. CARLING, ESQ.

Nevada Bar No.: 007302

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BRIAN K. O'KEEFE (#90244)	STEVEN B. WOLFSON, ESQ.
LOVELOCK CORRECTIONAL CENTER	CLARK COUNTY DISTRICT
1200 PRISON ROAD	ATTORNEY
LOVELOCK, NEVADA 89419	200 LEWIS AVENUE
	LAS VEGAS, NEVADA 89101

Executed on the 21st day of October, 2015.

/s/ Matthew D. Carling
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302


CLERK OF THE COURT

ASTA
Nevada Bar No. 007302
1100 S. Tenth Street
Las Vegas, NV 89101
Telephone: (702) 419-7330
Facsimile: (702) 446-8065
CedarLegal@gmail.com
Attorney for Petitioner/ Defendant
BRIAN O'KEEFE

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

Case No.: 08C250630

Dept. No.: XVII

vs.

BRIAN K. O'KEEFE,

Defendant.

CASE APPEAL STATEMENT
(NRAP 3(d)(4))

1. Name of appellant filing this case appeal statement:
Brian K. O'Keefe
2. Identify the judge issuing the decision, judgment, or order appealed from:
Judge Michael Villani.
3. Identify all parties to the proceedings in the district court:
Brian K. O'Keefe
The State of Nevada
4. Identify all parties involved in this appeal:
Brian K. O'Keefe

1 The State of Nevada

- 2
3 5. Name, law firm, address, and telephone number of all counsel on
4 appeal and party or parties whom they represent:
5

MATTHEW D. CARLING
Nevada Bar #007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330
Counsel for Appellant,
Brian K. O'Keefe

STEVEN B. WOLFSON
District Attorney
Nevada Bar #001565
P.O. Box 552212
Las Vegas, NV 89101-2212
Counsel for Appellee,
State of Nevada

- 6 6. Indicate whether appellant was represented by appointed or retained
7 counsel in the district court: Appointed
8
9 7. Indicate whether appellant is represented by appointed or retained
10 counsel on appeal: Appointed
11
12 8. Indicate whether appellant was granted leave to proceed in forma
13 pauperis, and the date of entry of the district court order granting such
14 leave: N/A
15
16 9. Indicate the date the proceedings commenced in the district court:
17

18 Indictment filed December 19, 2008.
19

20 Dated this 20th day of October, 2015.
21

22 CARLING LAW OFFICE, PC
23

24 /s/ Matthew D. Carling
25

26 MATTHEW D. CARLING, ESQ.
27 Nevada Bar No.: 007302
28 *Court-Appointed Attorney for Defendant,*
29 BRAIN K. O'KEEFE
30

1 **CERTIFICATE OF SERVICE**

2
3 I hereby certify that, on this 20th day of October, 2015, I sent a true and correct copy
4 of the above CASE APPEAL STATEMENT to the following parties:

5 Steven B. Wolfson, Esq.
6 Clark County District Attorney
7 Post Conviction Unit
8 Jennifer.Garcia@clarkcountynvda.com
9

10 CARLING LAW OFFICE, PC

11 /s/ Matthew D. Carling
12 MATTHEW D. CARLING, ESQ.
13 *Court-Appointed Attorney for Defendant,*
14 BRIAN K. O'KEEFE
15


CLERK OF THE COURT

1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)
13)

CASE NO. 08C250630

DEPT. XVII

14 BEFORE THE HONORABLE JAMES BIXLER, DISTRICT COURT JUDGE

15 TUESDAY, OCTOBER 20, 2015

16 **ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:**

17 **MATTHEW D. CARLING'S MOTION TO WITHDRAW AS ATTORNEY OF RECORD FOR**
18 **DEFENDANT**
19

20 **APPEARANCES:**

21 For the State:

MICHELLE SUDANO, ESQ.,
Deputy District Attorney

23 For the Defendant:

MATTHEW D. CARLING, ESQ.,

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 20, 2015

2 [Proceeding commenced at 8:42 a.m.]

3
4 THE COURT: State of Nevada versus Brian Kerry O'Keefe. It's
5 your motion to withdraw. There was no opposition. It appears that
6 the Defendant indicated he did not mind you withdrawing and he
7 wants to do whatever he's going to do at this point in pro per.

8 MR. CARLING: My -- my only concern is the notice of appeal
9 has not yet been filed and it tolls this week. I -- I hope he
10 calls me so I can remind him. I sent him a letter a long time ago
11 reminding him of the date. I have everything ready, but I also --

12 THE COURT: I think -- I think -- if that's the situation, I
13 think -- I think you need to file the notice.

14 MR. CARLING: And if I do, I'll be stuck filing an opening
15 brief. It was a timeliness issue is what all it is. It's not any
16 of the merits that he wanted presented. It's whether his petition
17 was timely. I can handle that. And then I can withdraw under the
18 appellate rules after I submit the opening brief. And I've
19 explained that to him because I did all the petition in the
20 District Court. But I'm afraid that he'll forget again to file
21 something timely.

22 THE COURT: I hate to do this to you, but you really should
23 file your appeal and do opening brief and then withdraw after
24 you've done that. If that doesn't get done, he'll be SOL.

25 MR. CARLING: Yeah. And it'll be my fault. So I -- I'm

1 prepared to do that. I've explained the situation to him. I said
2 even if the District Court allows me to withdraw at your request
3 'cause he requested it, the Supreme Court's going to say, hey,
4 trial counsel, you did all the petition under rule C -- 3C you've
5 got to file an opening brief and a petition to withdraw at the
6 Supreme Court, and I will do that.

7 THE COURT: You should do it like that.

8 MR. CARLING: Okay.

9 THE COURT: Do it like that. Just cover yourself. There
10 won't be any issues. If you do it like that, then there won't be
11 any problems. And you'll be able to withdraw and be off the case
12 by then. At least it preserves his appellate position.

13 MR. CARLING: Will do.

14 THE COURT: Yes.

15 MR. CARLING: Okay.

16 THE COURT: Okay.

17 MR. CARLING: Your Honor, I will inform him. Thank you.

18 THE COURT: Thank you. Thank you very much. Appreciate it.

19 [Proceeding concluded at 8:44 a.m.]

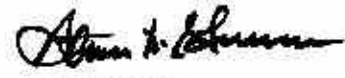
20 * * * * *

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

23 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
24 acknowledge that this is a rough draft transcript, expeditiously prepared, not
25 proofread, corrected or certified to be an accurate transcript.

Michelle Ramsey
Michelle Ramsey
Court Recorder/Transcriber

1 RTRAN


CLERK OF THE COURT

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA
7

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 vs.)

11 BRIAN KERRY O'KEEFE,)

12 Defendant.)
13)

CASE NO. 08C250630

DEPT. XVII

14 BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

15 FRIDAY, SEPTEMBER 4, 2015

16 **ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:**

17 **DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)**
18

19 **APPEARANCES:**

20 For the State:

CHRISTOPHER J. LALLI, ESQ.,
Assistant Deputy District Attorney

22 For the Defendant:

MATTHEW D. CARLING, ESQ.,

24
25 RECORDED BY: MICHELLE L. RAMSEY, COURT RECORDER

1 LAS VEGAS, NEVADA; FRIDAY, SEPTEMBER 4, 2015

2 [Proceeding commenced at 9:38 a.m.]

3
4 THE COURT: We have Mr. Carling. We have Mr. Lalli.

5 MR. LALLI: Good morning, Your Honor.

6 THE COURT: There was -- through the briefs -- I don't know if
7 there's some disagreement as to when the remittitur was issued. I
8 think the defense was saying it was -- bear with me here -- I think
9 it was August or September I think the defense is saying that of
10 2014.

11 MR. CARLING: Correct.

12 THE COURT: Okay. And State's saying no, it was July 2013.

13 MR. LALLI: I'm wondering if the defense having now looked at
14 it a little closer they're ready to concede that the State's right
15 on that.

16 THE COURT: And we -- I pulled it up this morning matter of
17 fact. And I have July 6th, 2013 remittitur from the Supreme Court
18 on this docket number which is 61631.

19 MR. LALLI: Right. So I think they were looking at perhaps
20 the wrong remittitur.

21 Mr. O'Keefe files an awful lot of things and appeals an
22 awful lot of things.

23 THE COURT: Mr. Carling.

24 MR. CARLING: And I believe on this one he -- and I don't know
25 where he learned to do this, but he moved to stay the remittitur in

1 the case and there was some discussion at the Supreme Court about
2 that. And -- and on appeal on this matter he did have appellate
3 counsel. And there he tried to get rid of appellate counsel. He
4 tried to do things on his own while counsel was still on the record
5 and he couldn't. So that's the reason that if -- if the Court
6 doesn't find that it was timely filed, that there is good cause
7 'cause he tried and the Supreme Court wouldn't let him do it
8 because counsel was still on.

9 It's been well briefed, Your Honor, in that respect. I
10 will note that the State's response was just on a time bar issue
11 that didn't look at any of the merits. I filed a reply that
12 specifically looks at this and I'd like to remind the State that
13 when the defense has the burden of proof, there's no sur response.
14 I get the last word on the pleadings. I will submit on the
15 pleadings because it's been well briefed.

16 THE COURT: Well, jurisdiction is jurisdiction. I mean,
17 whether it's timely or untimely, I don't have jurisdiction to hear
18 this. Again, that's the bottom line saying the Supreme Court said
19 if you don't file notice of appeal within timeframe, there's
20 nothing you can really do about it.

21 And I do find the notice of remittitur like I said was
22 July 2013. And the petition was filed September 24th, '14. And I
23 think, Mr. Carling, I think the problem here was he filed so many
24 motions, gave him different names, if I recall, you know,
25 regurgitated some of the same motions and he appealed ever single

1 denial. And we probably have three or four remittiturs from the
2 Supreme Court on this particular case.

3 But I do find that he is time barred under 34.726. Good
4 cause is not shown. And so -- and also I'm going to deny the
5 request for evidentiary hearing on this matter because like I said
6 it's a jurisdictional bar on this particular matter. So, Mr.
7 Lalli, can you please prepare the appropriate order for today and
8 get it over to Mr. Carling. And then see if there's the next go
9 around.

10 MR. LALLI: Yes. We'll do that.

11 MR. CARLING: Okay. Appreciate it.

12 THE COURT: And, Mr. Carling, are you seeking to be appointed
13 to appeal today's decision?

14 MR. CARLING: You know, I don't know if Mr. O'Keefe wants me
15 on the case. Let me -- let me discuss that with him. If he wants
16 me to pursue that, then I will let the Court know.

17 THE COURT: I think you can just contact Drew's office, but
18 that's going to be -- I mean --

19 MR. CARLING: Well, the problem is that --

20 THE COURT: Actually, it'll come through me or I don't know.

21 MR. CARLING: -- it happened in another case. I get off the
22 case in District Court. The Defendant appeals it and the Supreme
23 Court throws me on because I'm trial counsel and I'm fighting that
24 at the Supreme Court right now because the Defendant doesn't want
25 me. So I'll -- I'll let the Court know.

1 THE COURT: Well --

2 MR. CARLING: And I'll let Mr. Christensen know.

3 THE COURT: -- if you -- if it has to come through me for an
4 order, submit the order.

5 MR. CARLING: Okay.

6 THE COURT: If it goes through Drew, then go through Drew.

7 MR. CARLING: Okay.

8 THE COURT: Mr. Lalli will prepare the order for today.

9 MR. LALLI: Yes. Thank you.

10 THE COURT: And just for the record, I am adopting the
11 procedural history as set forth in the State's briefs.

12 MR. LALLI: Thank you.

13 THE COURT: All right. Thank you everybody. Have a good
14 weekend.


15 MR. LALLI: Thank you.

16 [Proceeding concluded at 9:43 a.m.]

17 * * * * *

18
19 ATTEST: I hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
23 an accurate transcript.

24 
Michelle Ramsey
25 Court Recorder/Transcriber

ANOA

FILED

OCT-29-2015

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLERK OF COURT

Brian KERRY O'KEEFE,
Appellant,

Supreme No. 69036
District Court Case No. C250630

vs.

THE STATE OF NEVADA,
Respondent, et al.

- AMENDED NOTICE OF APPEAL
TO COMPLY WITH NRAP Rule 4(2)(7)
TO AMEND APPEAL TO BE CHARACTERIZED
AS APPEAL PURSUANT N.R.A.P. 4(6)
(see Rye 4(e)) (IF APPLICABLE)

(3 pages)

(see Affidavit attached)

Comes Now, petitioner Brian O'Keefe as appellant, to file this AMENDED NOTICE OF APPEAL pursuant Rule 4(2)(7) to correctly characterize appeal to be made pursuant NRAP, rule 4(6) and/or N.R.S. 34.575. (Judge Villani issued P.P.O.W. on October 15, 2014, Jurisdictional claim NRS 34.340) This appeal is made pursuant the filing of a Petition for Habeas Corpus¹ pursuant, under, N.R.S. 34.340 which properly challenged the "want of jurisdiction" and/or abuse of the trial court's discretion in proceeding to trial while an (right not to be tried) INTERLOCUTORY APPEAL was pending under 28 U.S.C. § 1291 with the Ninth Circuit Court of Appeals, case number 12-1527, raising a double jeopardy violation; being "colorable" thereby vesting subject-matter jurisdiction which can never be waived, forfeited and raised at any time, even on appeal thereby precluding any time bar including any procedural bar.

By: *[Signature]*
(NRS 208.105) *[Signature]* - 90244
Brian K. O'Keefe

005565



RECEIVED

NOV 16 2015

CLERK OF THE COURT



RECEIVED
NOV 24 2015
CLERK OF THE COURT
DEPUTY CLERK

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☐ Motion: _____

☐ Petition: _____

☒ Other: AMENDED NOTICE OF APPEAL ... NRAP 4(b)

to the below address(es) on this 27th day of October, 2015, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

Supreme Court of Nevada
Attn: Linda Hamilton Office of the Clerk
201 S. Carson St. Suite 201

Carson City, Nevada 89701-4702

Attorney for _____

☐ and _____

_____, Nevada 89____

B. K. O'Kell
Bureau of Prisons
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner Appellant In Pro Se

Pursuant X/RS 208.165 and 28 U.S.C.A. § 1746

Supreme Court of Nevada Case No. 69036

AFFIDAVIT OF Brian Barry O'Hare

Dist Case C260630

STATE OF NEVADA)
) SS:
COUNTY OF Pershing)

1. Brian Barry O'Hare, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Brian O'Hare.

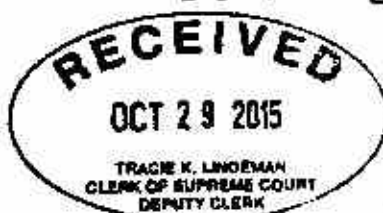
2. I am over 18 years of age. I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

3. The Clark County District Attorney's Office and Court is failing to recognize that a notice was received from the clerk of the United States Supreme Court clerk that they had filed certiorari review requested, docket case no. 13-6031 which was denied October 15, 2013, from Nevada Supreme Court direct review affirmance in case no. 61631. Solicitor General C. Wayne Hawke filed proper notice of appearance on behalf of State of Nevada. (see Supreme Court Docket Sheet for case # 61631) (ENTERED MARCH 6, 2015)

4. The NED entered by order electronically filed 10-6-2015 omits this fact with my remittitur already issued when right to appeal, request, was pending. See NEAP RULES ONE (2); FORTY-NINE (41 (2)); FORTY-SIX (46)

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 29 U.S.C.A. § 1746 as I am a prisoner to state custody.

Dated this October 18 day of 2015.



RECEIVED

NOV 16 2015

CLERK OF THE COURT

By Brian O'Hare 90294
Brian O'Hare

005567

Brian O'Keefe - #90244
L.C.C.
1200 Prison Road
Calellock, NV. 89419

INMATE LEGAL
MAIL CONFIDENTIAL

Clark Supreme Court of Nevada
Office of the clerk
201 So Carson St., Suite 201
Carson City, NV. 89701-4702
~~Address of Linda~~
Buss Slip No. 204236



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MAILED FROM ZIP CODE 89419



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Case No. 08C250630

Dept. No. XVII-(17)

Alvin L. Johnson
CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

BRIAN KERRY O'KEEFE

Petitioner

-vs-

THE STATE OF NEVADA

Respondent

NOTICE OF APPEAL

FORWARD N.R.A.P. 4.1.3
OF JUDGE BIXLER'S
DENIAL OF COUNSEL'S

MOTION TO WITHDRAW HELD
OCTOBER 20, 2015

NOTICE IS GIVEN that Petitioner, Brian Kerry O'Keefe, is
pro-se, hereby appeals to the Nevada Supreme Court the
denial of "Motion" to withdraw as counsel held October
20, 2015 in which Judge Bixler sat in for Judge Villani.

● Additionally, appointed counsel, Matthew D. Corling, Esq.,
instantly rushed and filed an unauthorized Notice of Appeal
manifesting an absolute bogus case (petition) denial
date, i.e. - March 13, 2013, when no petition existed,
coupled with a fake case appeal statement rule, i.e. -
(N.R.A.P. 3(d)(4)) with also a deficient case appeal statement
pursuant correct rule, i.e. - Rule 3(f)(3) Contents (A) to (L),
which attorney omits Rule 3(f)(3) (2), (5), (6).

Prior timely NOA, pro-se, filed 10/20/2015 vests jurisdiction of case.
Matters appeal filed 10/21/2015 of Matthew D. Corling, Esq.

CLERK OF THE COURT

NOV 03 2015 9:10:26 AM NOV 03 2015 9:10:26 AM

RECEIVED

RECORDED

CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Notice of Appeal . . . October 20, 2015 to the below address(es) on this 27th day of October 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b): ~~Bureau of Prisons~~

ORIGINAL #1 Linda Hamilton, Deputy Clerk Supreme Court of Nevada
Office of the Clerk
201 S. Carson Street, Suite 201
Carson City, Nevada 89701-4702

Copy #2 Steven Greisen Clerk of the Court
Attention Heather Ungerman / Appeals Dept.
Clark County District Court
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89105

(Pursuant NRS 208.165) Brian L. O'Leary
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Relitigates In Pro Se

AFFIRMATION PURSUANT TO NRS 219B.030

The undersigned does hereby affirm that the preceding Notice of Appeal . . . October 20, 2015 filed in District Court Case No. 00 CE 50630 does not contain the social security number of any person.

Dated this 27th day of October, 2015.

NRS 208.165 Brian L. O'Leary
Relitigates In Pro Se

Brian O'Leary - 492241

L.C.C.

1200 Prison Road

Conduct, NY 89419

Officer

Sterea Emerton, Clerk of Court

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NOV 02 2015

CLERK OF THE COURT



Attn: Heather Chapman / Appeals Dept.

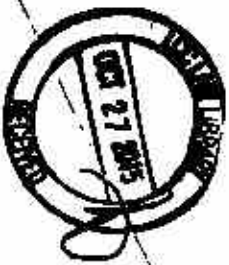
Clark County Dist. Ct.

200 Lewis Ave., 3rd Floor

Las Vegas, NV

INMATE LEGAL
ALL CONFIDENTIAL

8910156300



1 ASTA


CLERK OF THE COURT

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

Case No: 08C250630

12 vs.

Dept No: XVII

13 BRIAN K. O'KEEFE,

14 Defendant(s),
15
16

17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Brian K. O'Keefe

19 2. Judge: Michael Villani

20 3. Appellant(s): Brian K. O'Keefe

21 Counsel:

22 Brian K. O'Keefe #90244
23 1200 Prison Rd.
24 Lovelock, NV 89419

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A

4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A

6 6. Appellant Represented by Appointed Counsel In District Court: Yes

7 7. Appellant Represented by Appointed Counsel On Appeal: N/A

8 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9 9. Date Commenced in District Court: December 19, 2008

10 10. Brief Description of the Nature of the Action: Criminal

11 Type of Judgment or Order Being Appealed: Misc. Order

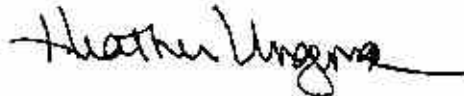
12 11. Previous Appeal: Yes

13 Supreme Court Docket Number(s): 53859, 58109, 61631, 65217, 65436, 66416, 66956,
14 68560, 68623, 68739, 69036

15 12. Child Custody or Visitation: N/A

16 Dated This 4 day of November 2015.

17 Steven D. Grierson, Clerk of the Court

18 
19

20 Heather Ungermann, Deputy Clerk
21 200 Lewis Ave
22 PO Box 551601
23 Las Vegas, Nevada 89155-1601
24 (702) 671-0512

25 cc: Brian K. O'Keefe
26
27
28


CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHELLE SUDANO
6 Deputy District Attorney
7 Nevada Bar #013260
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
14 Plaintiff,

15 -vs-

16 BRYAN OKEEFE,
17 aka Brian Kerry Okeefe, #1447732
18 Defendant.

CASE NO: 08C250630
DEPT NO: XVII

19 ORDER DENYING MATTHEW D. CARLING'S MOTION TO WITHDRAW AS
20 ATTORNEY OF RECORD FOR DEFENDANT

21 DATE OF HEARING: OCTOBER 20, 2015
22 TIME OF HEARING: 8:30 A.M.

23 THIS MATTER having come on for hearing before the above entitled Court on the
24 20th day of October, 2015, the Defendant not being present, REPRESENTED BY
25 MATTHEW D. CARLING, Esq., the Plaintiff being represented by STEVEN B. WOLFSON,
26 District Attorney, through MICHELLE SUDANO, Deputy District Attorney, and the Court
27 having heard the arguments of counsel and good cause appearing therefor,

28 ///

///

///

///

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NOV - 4 2015

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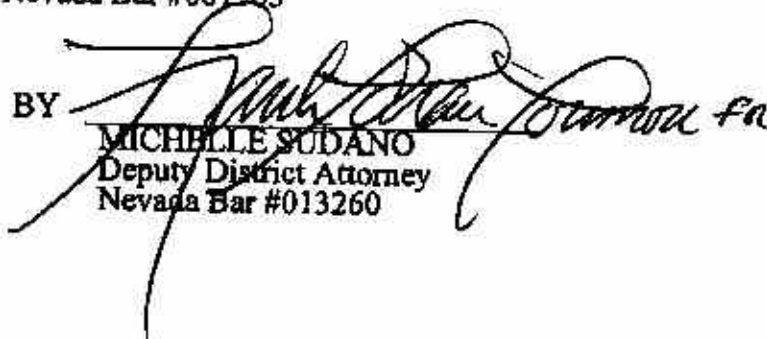
1 IT IS HEREBY ORDERED that the Matthew D. Carling's Motion to Withdraw as
2 Attorney of Record for Defendant, shall be, and it is DENIED.

3 DATED this 13 day of November, 2015.

4 
5 _____
6 DISTRICT JUDGE

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

10 BY

11 
12 MICHELLE SUDANO
13 Deputy District Attorney
14 Nevada Bar #013260

15
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27
28 rj/M-1


CLERK OF THE COURT

1 **RPLY**

2 **MATTHEW D. CARLING, ESQ.**

3 Nevada Bar No. 007302

4 1100 S. Tenth Street

5 Las Vegas, NV 89101

6 Telephone: (702) 419-7330

7 Facsimile: (702) 446-8065

8 CedarLegal@gmail.com

9 *Attorney for Petitioner/ Defendant*

10 **BRIAN O'KEEFE**

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630

Dept. No.: XVII

EVIDENTIARY HEARING REQUESTED

15
16 **REPLY IN SUPPORT OF SUPPLEMENTAL PETITION FOR WRIT OF**
17 **HABEAS CORPUS (POST-CONVICTION)**
18

19 COMES NOW Defendant Brian O'Keefe ("O'Keefe"), by and through counsel
20 Matthew D. Carling and, pursuant to NRS. Ann. § 34.724, hereby submits this *Reply in Support*
21 *of Supplemental Petition for Writ of Habeas Corpus* (the "**Reply Petition**"), which is supported by
22 the following:

23 **STATEMENT OF FACTS**

24 O'Keefe hereby incorporates the facts set forth in his Petition for Writ of Habeas
25 Corpus, Supplemental Petition and Supplement to the Supplemental Petition. He further
26 states the following:

27 1. On April 10, 2013 the NSC entered its *Order of Affirmance* (the "**Third Trial**
28 **Affirmance**") regarding these two arguments. The NSC faulted O'Keefe and found that

1 "the district court did not abuse its discretion by denying O'Keefe's request for an extended
2 continuance where the delay was his fault.... Because O'Keefe has not provided this court
3 with the instructions given at trial, he fails to demonstrate that the district court abused its
4 discretion by rejecting his proposed instruction." *O'Keefe v. State*, 2013 WL 1501038, NSC
5 Docket No. 61631 (April 10, 2013)(the "**Appeal**").

6 2. On June 25, 2013, O'Keefe filed pro per in the Appeal his *Notice and Motion to*
7 *Withdraw and Substitute Counsel* and his *Notice of and Leave to Appear and File Motions* with a
8 *Motion for Reconsideration En Banc* (the "**Reconsideration Motion**") attached.

9 3. On June 28, 2013, the NSC directed the clerks to file O'Keefe's pro per
10 motions; however, it filed its order denying these pro per motions presumably on the basis
11 that O'Keefe was represented by counsel, indicating that appellant's counsel would have 10
12 days from the date of the order to file the petition for en banc reconsideration if warranted.

13 4. On July 16, 2013, O'Keefe filed his pro per *Motion to Stay Mandate in the S.C.N.*
14 *Pending Appellate's Petition for Certiorari to the United States Supreme Court* (the "**Motion to Stay**");
15 however, the Nevada Supreme Court directed by order entered that same date that the clerk
16 to return such Motion to Stay to O'Keefe unfiled indicating that O'Keefe is to proceed
17 through his counsel of record.

18 5. O'Keefe's counsel did not re-file the Reconsideration Motion nor the Motion
19 to Stay on O'Keefe's behalf.

20 6. On July 23, 2013, the Nevada Supreme Court issued its *Remittitur* for the direct
21 appeal docket #61631.

1 7. However, on August 19, 2013, O'Keefe filed a petition for writ of certiorari to
2 proceed in forma pauperis in the United States Supreme Court with regard to the Third Trial
3 Affirmance, in Case No. 13-6031, which was denied October 15, 2013. *O'Keefe v. Nevada*, 134
4 S.Ct. 444, 187 L.Ed.2d 297 (Case No. 13-6031; October 15, 2013)(the "**Certiorari Denial**").

5 8. On December 6, 2013, O'Keefe filed his pro per *Petition for a Writ of Mandamus*
6 *or, in the Alternative, Writ of Coram Nobis* (the "**First Petition**"). O'Keefe also filed his a similar
7 petition in his other case number C202793.

8 9. On January 28 2014, the court entered its *Order Denying Defendant's petition for*
9 *Writ of Mandamus or, in the Alternative, Writ of Coram Nobis; Order Denying Defendant's Motion to*
10 *Waive Filing Fees for Petition for Writ of Mandamus; and Order Denying Defendant's Motion to Appoint*
11 *Counsel* indicating that, "[t]he allegations complained of in Defendant's Petition relate to Case
12 Number C202793; therefore, the Petition and the Motions were filed under the wrong case
13 number and Defendant will need to re-file said pleadings in Department XXIII so they may
14 be heard before the appropriate Judge." The First Petition was thereby denied without
15 prejudice.

16 10. On January 27, 2014, O'Keefe filed his *Motion to Modify and/or Correct Illegal*
17 *Sentence* (the "**Modification Motion**").

18 11. On February 24, 2014, the State filed the *State's Opposition to Defendant's Pro Per*
19 *Motion to Modify and/or Correct Illegal Sentence* (the "**Modification Response**").

20 12. On March 4, 2014, O'Keefe filed his *Pro Se "Reply" to State's Opposition to*
21 *Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence* (the "**Modification Reply**").

denied, the remittitur shall issue 25 days after entry of the order denying the petition, unless the time is shortened or enlarged by order.

...

(3) Application for Certiorari to the United States Supreme Court.

(A) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari. The motion must be served on all parties.

(B) The stay shall not exceed 120 days, unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court of the United States.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

(D) The clerk of the Supreme Court shall issue the remittitur immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.

As it pertains to the showing of "good cause" as required by NRS 34.726(1) under the first requirement, "a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." *State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d 91, 94-95 (2012) quoting *Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503 (2003) (citing *Lozada v. State*, 110 Nev. 349, 353, 871 P.2d 944 (1994)). This may be demonstrated by showing "that the factual or legal basis for a claim was not reasonably available to counsel, or that some interference by officials, made compliance impracticable." *Id.* quoting (*Murray v. Carrier*, 477 U.S. 478, 488, 106 S.Ct. 2639, 91 L.Ed.2d 397 (1986)). "Petitioner must show that errors in the proceedings underlying the judgment worked to the petitioner's actual and substantial disadvantage." *State v. Huebler*, 128 Nev. Adv. Op. 19, 275 P.3d 91, 94-95 (2012) quoting *Hogan v. Warden*, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993).

1 If a petitioner cannot show sufficient good cause "to overcome the bars to an
2 untimely petition, habeas relief may still be granted if the petitioner can demonstrate that a
3 constitutional violation has probably resulted in the conviction of one who is actually
4 innocent." *Mitchell v. State*, 2006, 149 P.3d 33, 122 Nev. 1269, 1274. "Actual innocence means
5 factual innocence, not mere legal insufficiency." *Id.* If the procedural bar will result in a
6 fundamental miscarriage of justice then the petitioner is entitled to raise an untimely petition.
7 *State v. Bennett*, 2003, 81 P.3d 1, 119 Nev. 589.

8 Malice aforethought is an essential element of "Murder." NRS ' 200.010. Every
9 element of an offense charged must be in the jury instructions. Failure to do so violates a
10 defendant's due process rights and results in constitutional error. *Ho v. Carey*, 332 F.3d 587,
11 392 (9th Cir., 2003) and *Cordova v. State*, 116 Nev. 664, 666, 6 P.3d 481, 483 (2000).

12 O'Keefe timely sought both reconsideration and stay of the remittitur before the
13 Nevada Supreme Court in the Appeal; however, the Court failed to acknowledge them given
14 that he was represented by counsel at the time. However, O'Keefe's counsel failed to re-file
15 these pleadings on O'Keefe's behalf. Thus, the *Remittitur* issued July 23, 2013.

16 The First Petition was filed December 6, 2013; however, it mistakenly addressed only
17 items pertaining to a companion case for O'Keefe and denial *without prejudice* entered January
18 28, 2014.

19 On January 27, 2014, O'Keefe filed his Modification Motion arguing that the court
20 had lacked jurisdiction to proceed on the Third Trial due to the pending case before the 9th
21 Circuit. O'Keefe's arguments therein were focused on the idea that his sentence was illegal

1 due to the Third Trial being held without jurisdiction. The Modification Denial entered
2 March 25, 2014, finding that the sentence itself was not illegal.

3 On September 15, 2014, the Second Petition was filed challenging the same issue
4 raised in the Modification Motion, only instead seeking habeas relief for a violation of his
5 constitutional rights. Although the Second Petition was filed fourteen (14) months after the
6 Nevada Supreme Court's *Remittitur* issued, it was only eleven (11) months after Certiorari
7 Denial in the United States Supreme Court, and only six (6) months following the
8 Modification Denial. Additionally, O'Keefe had attempted to stay the *Remittitur* and was
9 only unsuccessful since he was represented by counsel (although a request to substitute and
10 for withdrawal had also been filed and denied for being submitted pro per), and that counsel
11 rendered ineffective assistance by never re-filing them as directed by the Nevada Supreme
12 Court.

13 NRS 34.726(1) required that O'Keefe's habeas corpus petition be filed within 1 year
14 after the Nevada Supreme Court issued its remittitur under the rules of appellate procedure
15 governing such. However, an appellant planning to seek certiorari review in the United
16 States Supreme Court, such as O'Keefe did, can seek a stay of the remittitur so as to avoid
17 remitting jurisdiction to the trial court during such process. NRAP 41(b). O'Keefe timely
18 sought stay of the remittitur prior to its entry, but did so pro per. The relationship between
19 O'Keefe and his counsel had diminished, as evidenced by O'Keefe's request to allow such
20 counsel to withdraw and allow him to proceed pro per. This request was also denied, and his
21 counsel thereafter failed to perfect the filing of both the Reconsideration Motion and the
22 Motion to Stay prior to issuance of the *Remittitur* foreclosing such matters. Had counsel

1 acted diligently in protecting O'Keefe's rights, the timeliness of the Second Petition would
2 not be at issue since the remittitur would not have issued until after decision on the
3 Reconsideration Motion or after entry of the Certiorari Denial. NRAP 41(b)(1) and (3)(D).
4 Thus, the Second Petition having been filed on September 15, 2014, would have been
5 deemed timely within the one year requirement of NRS 34.726.

6 O'Keefe's appellate counsel's ineffectiveness at failing to re-file the Motion to Stay or
7 Reconsideration Motion is sufficient "good cause" to excuse the delay in the filing of the
8 Second Petition. The delay was not O'Keefe's fault since he timely filed the Reconsideration
9 Motion, the Motion to Stay, and proceeded to file for certiorari with the United States
10 Supreme Court in forma pauperis. NRS 34.726(1)(a). Clearly his state appellate counsel did
11 not continue to represent O'Keefe after the Appeal issued in the Nevada Supreme Court
12 due to the breakdown in their relationship, evident by the fact that O'Keefe filed for
13 certiorari without counsel. Dismissal of this Second Petition would thus be unduly
14 prejudicial in that it will deprive O'Keefe of the opportunity to be heard on the merits of the
15 issues contained therein based solely on the breakdown in his relationship with appellate
16 counsel, even though he attempted to have him removed and filed the proper pleadings to
17 protect his rights in this regard. NRS 34.726(1)(b).

18 Appellate counsel's failures were an impediment external to O'Keefe preventing him
19 from complying with NRS 34.726. *Huebner* at 94-95 *quoting Hutbayay*, 119 Nev. at 252 (*citing*
20 *Lozada*, 110 Nev. at 353. The legal basis for the claim was not reasonably available to
21 O'Keefe, and interference by his counsel made compliance impracticable. *Id. quoting Murray*,
22 477 U.S. at 488, 106 S.Ct. 2639. The Nevada Supreme Court's rejection of his

1 Reconsideration Motion and Motion for Stay based only on his pro per status when he has
2 requested removal of his attorney, worked to O'Keefe's actual and substantial disadvantage.
3 *Huebler*, 275 P.3d at 94-95 *quoting Hogan*, 109 Nev. at 959-60.

4 Alternatively, O'Keefe's First Petition was filed December 6, 2013; however, it
5 mistakenly addressed only items pertaining to a companion case for O'Keefe and denial
6 *without prejudice* entered January 28, 2014. This constitutes fifty-three (53) days where the time
7 for filing may have been stayed given that a petition was timely before the court. This would
8 extend the deadline for filing for habeas relief to September 15, 2014, to allow the Second
9 Petition to be considered timely. Given that the denial of the First Petition was without
10 prejudice, the merits of the Second Petition should be entertained.

11 As a second alternative, on January 27, 2014, O'Keefe filed his Modification Motion
12 arguing that the court had lacked jurisdiction to proceed on the Third Trial due to the
13 pending case before the 9th Circuit. O'Keefe's arguments therein were focused on the idea
14 that his sentence was illegal due to the Third Trial being held without jurisdiction. The
15 Modification Denial entered March 25, 2014, finding that the sentence itself was not illegal.
16 O'Keefe raises a similar issue in the Second Petition that could be considered timely filed
17 from that denial rather than from the initial conviction or the remittitur in the Appeal,
18 allowing this Court to reach the merits of the issues raised in the Second Petition.

19 Should this Court deem that there exists good cause to entertain the Petition filed by
20 the Defendant, the State should be afforded the opportunity to address the merits of the
21 original Petition and Supplement.

1 **WHEREFORE**, Brian O'Keefe prays that the court will conduct an evidentiary
2 hearing and grant habeas corpus relief to which he may be entitled in this proceeding.

3 **DECLARATION AND VERIFICATION**

4 I, Matthew Carling, am an attorney licensed to practice law in the State of Nevada
5 who was duly appointed to represent the Petitioner, Brian O'Keefe, in the preparation and
6 filing of the above Reply in Support of Petition for Writ of Habeas Corpus (Post-
7 Conviction), and that I filed the foregoing document at the specific instruction of the
8 Petitioner, and based on the order of appointment by the Court.

9 Respectfully submitted this 24th day of August, 2015.

10 CARLING LAW OFFICE, PC

11 /s/ Matthew D. Carling

12 MATTHEW D. CARLING, ESQ.

13 Nevada Bar No.: 007302

14 1100 S. Tenth Street

15 Las Vegas, NV 89101

16 (702) 419-7330 (Office)

17 (702) 446-8065 (Fax)

18 CedarLegal@gmail.com

19 Court Appointed Attorney for Petitioner,

20 BRIAN O'KEEFE
21
22
23
24
25
26
27
28
29
30

1 **CERTIFICATE OF SERVICE**
2

3 I hereby certify that, on this 24th day of August, 2015, I sent a true and correct copy of the
4 above Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)
5 to the following parties:

6 Steven B. Wolfson, Esq.
7 Clark County District Attorney
8 Post Conviction Unit
9 jenniter.Garcia@clarkcountynvda.com

10 CARLING LAW OFFICE, PC
11

12 /s/ Matthew D. Carling
13 MATTHEW D. CARLING, ESQ.
14 Nevada Bar No.: 007302
15 1100 S. Tenth Street
16 Las Vegas, NV 89101
17 (702) 419-7330 (Office)
18 (702) 446-8065 (Fax)
19 CedarLegal@gmail.com
20 Court Appointed Attorney for Petitioner.
21 BRIAN O'KEEFE
22


CLERK OF THE COURT

1 **RSPN**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **RYAN J. MACDONALD**
6 **Deputy District Attorney**
7 **Nevada Bar #012615**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: 08C250630

12 **BRYAN O'KEEFE, aka,**
13 **Brian Kerry O'Keefe, #1447732,**

DEPT NO: XVII

14 Defendant.

15 **STATE'S RESPONSE TO DEFENDANT'S REPLY IN SUPPORT OF SUPPLEMENTAL**
16 **POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS**

17 **DATE OF HEARING: September 4, 2015**
18 **TIME OF HEARING: 9:30 A.M.**

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
20 District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and hereby
21 submits the attached Points and Authorities in Response to Defendant's Supplement to
22 Supplemental Post-Conviction Petition for Writ of Habeas Corpus.

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

26 ///

27 ///

28 ///

///

1 **POINTS AND AUTHORITIES**

2 **ARGUMENT**

3 In the State's Response to Defendant's Supplemental Petition, the State contended once
4 again that Defendant's Petition was untimely. Remittitur from Defendant's direct appeal in
5 the case at hand issued on July 23, 2013, and thus Defendant's Petition filed on September 15,
6 2014, was untimely. In the instant Reply in Support of the Supplemental Petition, Defendant
7 contends "good cause" under NRS 34.726 and also cites Mitchell v. State, 122 Nev. 1269,
8 1274, 149 P.3d 33 (2006), regarding the ability to overcome untimely bars through
9 demonstration of a constitutional violation resulting in his conviction when good cause cannot
10 be shown.

11 **a. Defendant Has Not Shown Good Cause To Overcome The Procedural Bars**

12 Although Defendant's Reply in Support of the Supplemental Petition, includes the
13 appropriate provision under NRS 34.726 for "good cause," Defendant then re-states the claims
14 that consideration of his Pro Per Motion for Stay of the Remittitur would make his Petition
15 timely.

16 NRS 34.726(1) provides:

17 Unless there is good cause shown for delay, a petition that
18 challenges the validity of a judgment or sentence must be filed
19 within 1 year of the entry of the judgment of conviction or, if an
20 appeal has been taken from the judgment, within 1 year after
the Supreme Court issues its remittitur. For the purposes of this
subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 21 (a) That the delay is not the fault of the petitioner;
and
22 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner.

23 (emphasis added). As Defendant's Petition was filed more than a year after Remittitur from
24 his direct appeal issued on July 23, 2013, his Petition is untimely and must be dismissed absent
25 a showing of good cause.

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1 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
2 burden of pleading and proving specific facts that demonstrate good cause for his failure to
3 present his claim in earlier proceedings or comply with the statutory requirements. See Hogan
4 v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 715-16 (1993); Phelps v. Nevada Dep't of
5 Prisons, 104 Nev. 656, 659, 764 P.2d 1303, 1305 (1988).

6 "To establish good cause, appellants must show that an impediment external to the defense
7 prevented their compliance with the applicable procedural rule." Clem v. State, 119 Nev. 615,
8 621, 81 P.3d 521, 525 (2003) (emphasis added); see Hathaway v. State, 119 Nev. 248, 251, 71
9 P.3d 503, 506 (2003); Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001). Such
10 an external impediment could be "that the factual or legal basis for a claim was not reasonably
11 available to counsel, or that 'some interference by officials' made compliance impracticable."
12 Hathaway, 74 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645
13 (1986)); see also Gonzalez, 118 Nev. at 595, 53 P.3d at 904 (citing Harris v. Warden, 114 Nev.
14 956, 959-60 n.4, 964 P.2d 785 n.4 (1998)). Any delay in filing of the petition must not be the
15 fault of the petitioner. NRS 34.726(1)(a).

16 The Nevada Supreme Court has clarified that, "appellants cannot attempt to manufacture
17 good cause[.]" Clem, 119 Nev. at 621, 81 P.3d at 526. To find good cause there must be a
18 "substantial reason; one that affords a legal excuse." Hathaway, 119 Nev. at 251, 71 P.3d at
19 506; (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Excuses such
20 as the lack of assistance of counsel when preparing a petition, as well as the failure of trial
21 counsel to forward a copy of the file to a petitioner have been found not to constitute good
22 cause. See Phelps, 104 Nev. at 660, 764 P.2d at 1306, superseded by statute on other grounds
23 as recognized in Nika v. State, 120 Nev. 600, 607, 97 P.3d 1140, 1145 (2004); Hood v. State,
24 111 Nev. 335, 890 P.2d 797 (1995).

25 Additionally, in order to demonstrate prejudice to overcome the procedural bars, a
26 defendant must show "not merely that the errors of [the proceeding] created possibility of
27 prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state
28 proceedings with error of constitutional dimensions." Hogan v Warden, 109 Nev. 952, 960,

1 860 P.2d 710, 716 (1993) (internal quotation omitted); Little v. Warden, 117 Nev. 845, 853,
2 34 P.3d 540, 545.

3 Defendant has not demonstrated good cause for failing to file his Petition in a timely
4 manner. Defendant's only attempt to do so is his contention that this Court find that ineffective
5 assistance of post-conviction counsel amounts to good cause to overcome the defaulted nature
6 of the instant petition. See Argument section of Defendant's Reply in Support of Petition, p.
7 6, 8. However, this claim is misguided. The Nevada Supreme Court has plainly held that, in
8 Nevada, the ineffectiveness of post-conviction counsel does not constitute good cause under
9 NRS 34.726 and NRS 34.810. Brown v. McDaniel, 130 Nev. ___, ___, 331 P.3d 867,869
10 (2014).

11 Defendant makes no other attempt to establish good cause, and has thus failed to overcome
12 the procedural bars applicable to his untimely Petition. Accordingly, the Petition must be
13 summarily dismissed pursuant to NRS 34.726 and NRS 34.810.

14 Next, Defendant claims that under Mitchell v. State, 122 Nev. at 1274, 149 P.3d at 33,
15 Defendant does not need to show good cause to overcome the time bar if a showing of
16 constitutional violation which resulted in the conviction of one who is actually innocent is
17 made. The only support Defendant offers is a statement that malice is an essential element of
18 "murder," and that every element of an offense charged must be in the jury instructions, yet
19 no reference to the record, nor further argument is made in support of the claim. Thus,
20 Defendant fails to overcome the procedural bar to his untimely petition.

21 **b. The Defendant is Not Entitled to an Evidentiary Hearing**

22 Defendant is not entitled to an evidentiary hearing in this matter. NRS 34.770 determines
23 when a defendant is entitled to an evidentiary hearing. It reads:

24 1. The judge or justice, upon review of the return, answer and
25 all supporting documents which are filed, shall determine whether
26 an evidentiary hearing is required. A petitioner must not be
27 discharged or committed to the custody of a person other than the
28 respondent unless an evidentiary hearing is held.

2. If the judge or justice determines that the petitioner is not
entitled to relief and an evidentiary hearing is not required, he shall
dismiss the petition without a hearing.

1 3. If the judge or justice determines that an evidentiary
2 hearing is required, he shall grant the writ and shall set a date for
3 the hearing.

4 The Nevada Supreme Court has held that if a petition can be resolved without
5 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
6 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
7 defendant is entitled to an Evidentiary Hearing if his petition is supported by specific factual
8 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
9 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove v. State, 100
10 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that "[a] defendant seeking post-
11 conviction relief is not entitled to an Evidentiary Hearing on factual allegations belied or
12 repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by
13 the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at
14 1230 (2002).

15 In the instant case, Defendant's request for an Evidentiary Hearing is premature. This
16 court has not yet determined whether Defendant's writ has merit. See NRS 34.770.
17 Furthermore, as demonstrated above, Defendant's Post-Conviction Writ of Habeas Corpus
18 may be resolved without an expansion of the record, as the petition is time barred and thus
19 does not necessitate an Evidentiary Hearing. Therefore, this court should deny Defendant's
20 request for an Evidentiary Hearing.

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1 CONCLUSION

2 Based on the foregoing, the State requests Defendant's post-conviction Petition for Writ
3 of Habeas Corpus and all following supplements be DENIED.

4 DATED this 3rd day of September, 2015.

5 Respectfully submitted,


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

9 BY 
10 RYAN J. MACDONALD
11 Deputy District Attorney
12 Nevada Bar #012615


13 CERTIFICATE OF FACSIMILE TRANSMISSION

14 I hereby certify that service of State's Response to Defendant's Reply in Support of
15 Supplemental Post-Conviction Petition for Writ of Habeas Corpus, was made this 3rd day of
16 September, 2015, by facsimile transmission to:

17 MATTHEW CARLING, ESQ.
18 FAX #702-446-8065

19 BY 
20 Theresa Dodson
21 Secretary for the District Attorney's Office
22
23
24
25
26
27
28

no/RJM/td/dvu


CLERK OF THE COURT

MOT
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)
CedarLegal@gmail.com
Court-Appointed Attorney for Defendant.
BRIAN K. O'KEEFE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630

Dept. No.: XVII

**NOTICE OF MOTION AND
MOTION TO WITHDRAW AS ATTORNEY OF RECORD**

COMES NOW, MATTHEW D. CARLING, ESQ., of the Carling Law Office, PC, and
move this Honorable court for an order allowing counsel to withdraw as attorney of record for
the Defendant, BRIAN K. O'KEEFE, in the above-captioned matter.

This motion is made and based on the pleadings and papers on file herein, the attached
Affidavit of Matthew D. Carling, Esq., in support thereof, and any oral arguments as may be
presented at the hearing in this matter.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Defendant,

Brian K. O'Keefe

1
2 **NOTICE OF MOTION**

3 TO: STATE OF NEVADA, Plaintiff; and

4 TO: STEVEN B. WOLFSON, Clark County District Attorney

5 Please take notice that the undersigned will bring the Motion to Withdraw as Attorney of
6 Record on for hearing before this Court in Department XVII on the 6 day of Oct.,
7 2015, at the hour of 8 : 30 am o'clock or as soon thereafter as counsel can be heard.

8 CARLING LAW OFFICE, PC

9
10 /s/ Matthew D. Carling

11 MATTHEW D. CARLING, ESQ.

12 *Court-Appointed Attorney for Defendant,*

13 Brian K. O'Keefe

14
15 **AFFIDAVIT OF MATTHEW D. CARLING, ESQ.**

16
17 STATE OF UTAH)
18) ss:
19 COUNTY OF IRON)
20

21 MATTHEW D. CARLING, ESQ., being first duly sworn, deposes and says:

- 22
23 1. That your Affiant is currently the attorney of record for BRIAN K. O'KEEFE, the
24 Defendant in the instant case.
- 25 2. That your Affiant contacted the Defendant *via* mail on September 8, 2015, to discuss the
26 instant case. In a postmarked September 15, 2015, the Defendant indicated that he does
27 not want appointed counsel and desires to proceed on his own.
- 28 3. That your Affiant understands that should this appeal be subject to the provisions of
29 NRAP 3C that the Nevada Supreme Court may not allow me to withdraw in any
30 subsequent appellate matter. I understand that counsel of record for district court
31 proceedings continues to have obligations under NRAP 3C(b)(2). See NRAP 3c(b)(3).

1 4. That your Affiant withdrawing in this matter will not adversely effect Mr. O'Keefe's
2 interests.

3 5. That the last know address of the Defendant, Brian K. O'Keefe is as follows:
4

5 Brian K. O'Keefe (#90244)
6 Lovelock Correctional Center
7 1200 Prison Road
8 Lovelock, Nevada 89419
9

10 6. That a copy of this Motion is being sent to the Defendant at the above address.
11

12
13 *Matthew D. Carling*
14 MATTHEW D. CARLING, ESQ.

15 SUBSCRIBED and SWORN to before
16 me this 21st day of September, 2015.

17
18 *Heidi Anderson*
19 NOTARY PUBLIC



22 **CERTIFICATE OF MAILING**

23
24 I hereby certify that on the ___ day of September, 2015, I caused to be served by first
25 class mail, a copy of the foregoing **MOTION TO WITHDRAW AS ATTORNEY OF**
26 **RECORD** with postage fully prepaid thereon, by depositing the same with the U.S. Postal
27 Service or official depository for use thereof, addressed as follows:

28 Brian K. O'Keefe (#90244)
29 Lovelock Correctional Center
30 1200 Prison Road
31 Lovelock, Nevada 89419

32
33 Clark County District Attorney's Office
34 200 Lewis Avenue
35 Las Vegas, Nevada 89155-2215

36
37 *Matthew D. Carling*
38 MATTHEW D. CARLING, ESQ.

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN O'KEEFE, A/K/A BRIAN KERRY
O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68560
District Court Case No. C250630

FILED

SEP 28 2015

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

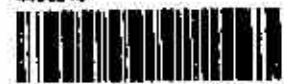
Judgment, as quoted above, entered this 25th day of August, 2015.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
September 21, 2015.

Tracie Lindeman, Supreme Court Clerk

By: Sally Williams
Deputy Clerk

08C250630
CCJIT
NV Supreme Court Clerks Certificate/Judge
4498210



IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN O'KEEFE, A/K/A BRIAN
KERRY O'KEEFE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 68560

FILED

AUG 25 2015

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

ORDER DISMISING APPEAL

This is an appeal from an order denying a "motion to withdraw counsel for conflict and failure to present claims when IAC claims must be raised per statute in the first petition pursuant to chapter 34." Eighth Judicial District Court, Clark County; Michael Villani, Judge.

The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. *State v. Shade*, 110 Nev. 57, 63, 867 P.2d 393, 396 (1994); *Mazzan v. State*, 109 Nev. 1067, 1075, 863 P.2d 1035, 1039-40 (1993). No statute or court rule allows for an appeal from an order denying a motion for withdrawal of counsel. Accordingly, we

ORDER this appeal DISMISSED.¹

[Signature] J.
Saitta

[Signature] J.
Gibbons

[Signature] J.
Pickering

¹Although appellant has not been granted permission to file documents in this matter in proper person, see NRAP 46(b), we have received and considered appellant's proper person documents.

cc: Hon. Michael Villani, District Judge
Bryan O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in my office.

DATE: September 21st 2015

Supreme Court Clerk, State of Nevada

By Dale H. Williams Deputy

005523

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRYAN O'KEEFE, A/K/A BRIAN KERRY
O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 68560
District Court Case No. C250630

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: September 21, 2015

Tracie Lindeman, Clerk of Court

By: Sally Williams
Deputy Clerk

cc (without enclosures):

Hon. Michael Villani, District Judge
Bryan O'Keefe
Clark County District Attorney
Attorney General/Carson City

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on SEP 28 2015

HEATHER UNGERMANN
Deputy District Court Clerk

RECEIVED

SEP 24 2015

CLERK OF THE COURT


CLERK OF THE COURT

MOT
MATTHEW D. CARLING, ESQ.
Nevada Bar No.: 007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)
CedarLegal@gmail.com
Court-Appointed Attorney for Defendant,
BRIAN K. O'KEEFE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630

Dept. No.: XVII

**NOTICE OF MOTION AND
MOTION TO WITHDRAW AS ATTORNEY OF RECORD**

COMES NOW, MATTHEW D. CARLING, ESQ., of the Carling Law Office, PC, and
move this Honorable court for an order allowing counsel to withdraw as attorney of record for
the Defendant, BRIAN K. O'KEEFE, in the above-captioned matter.

This motion is made and based on the pleadings and papers on file herein, the attached
Affidavit of Matthew D. Carling, Esq., in support thereof, and any oral arguments as may be
presented at the hearing in this matter.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Defendant,
Brian K. O'Keefe

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NOTICE OF MOTION

TO: STATE OF NEVADA, Plaintiff; and

TO: STEVEN B. WOLFSON, Clark County District Attorney

Please take notice that the undersigned will bring the Motion to Withdraw as Attorney of Record on for hearing before this Court in Department XVII on the 20th day of October, 2015, at the hour of 8:30 o'clock or as soon thereafter as counsel can be heard.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Defendant,
Brian K. O'Keefe

AFFIDAVIT OF MATTHEW D. CARLING, ESQ.

STATE OF UTAH)
) ss:
COUNTY OF IRON)

MATTHEW D. CARLING, ESQ., being first duly sworn, deposes and says:

1. That you Affiant is currently the attorney of record for BRIAN K. O'KEEFE, the Defendant in the instant case.
2. That your Affiant contacted the Defendant via mail on September 8, 2015, to discuss the instant case. In a postmarked September 15, 2015, the Defendant indicated that he does not want appointed counsel and desires to proceed on his own.
3. That your Affiant understands that should this appeal be subject to the provisions of NRAP 3C that the Nevada Supreme Court may not allow me to withdraw in any subsequent appellate matter. I understand that counsel of record for district court proceedings continues to have obligations under NRAP 3C(b)(2). See NRAP 3c(b)(3).

1 4. That your Affiant withdrawing in this matter will not adversely effect Mr. O'Keefe's
2 interests.

3 5. That the last know address of the Defendant, Brian K. O'Keefe is as follows:
4

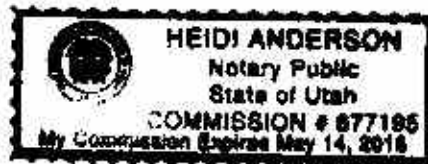
5 Brian K. O'Keefe (#90244)
6 Lovelock Correctional Center
7 1200 Prison Road
8 Lovelock, Nevada 89419
9

10 6. That a copy of this Motion is being sent to the Defendant at the above address.
11

12
13 *Matthew D. Carling*
14 MATTHEW D. CARLING, ESQ.

15 SUBSCRIBED and SWORN to before
16 me this 21st day of September, 2015.

17
18 *Heidi Anderson*
19 NOTARY PUBLIC



22 CERTIFICATE OF MAILING


23
24 I hereby certify that on the ___ day of September, 2015, I caused to be served by first
25 class mail, a copy of the foregoing MOTION TO WITHDRAW AS ATTORNEY OF
26 RECORD with postage fully prepaid thereon, by depositing the same with the U.S. Postal
27 Service or official depository for use thereof, addressed as follows:

28 Brian K. O'Keefe (#90244)
29 Lovelock Correctional Center
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31 Lovelock, Nevada 89419

32
33 Clark County District Attorney's Office
34 200 Lewis Avenue
35 Las Vegas, Nevada 89155-2215
36
37
38

Matthew D. Carling
MATTHEW D. CARLING, ESQ.

1 **FCL**
2 **STEVEN B. WOLFSON**
3 Clark County District Attorney
4 Nevada Bar #001565
5 **CHRISTOPHER LALLI**
6 Assistant Clark County District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff


CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

12 **BRYAN O'KEEFE,**
13 aka Brian Kerry O'Keefe, #1447732
14 Defendant.

CASE NO: 08C250630
DEPT NO: XVII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: SEPTEMBER 4, 2015
TIME OF HEARING: 9:30 AM

18 THIS CAUSE having come on for hearing before the Honorable VILLANI, District
19 Judge, on the 4th day of September, 2015, the Petitioner not being present, REPRESENTED
20 BY CARLING, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through CHRISTOPHER LALLI, Assistant Clark County District
22 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments
23 of counsel, and documents on file herein, now therefore, the Court makes the following
24 findings of fact and conclusions of law:

25 //

26 //

27 //

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RECEIVED BY
DEPT 17 ON
SEP 25 2015

1 **FINDINGS OF FACT. CONCLUSIONS OF LAW**

2 BRYAN O'KEEFE, aka Brian Kerry O'Keefe's " (hereinafter "Defendant"), was
3 charged by way of Information on December 19, 2008 with one count of Murder with Use of
4 a Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).¹

5 Defendant proceeded to trial on March 17, 2009. On March 20, 2009, the jury returned
6 a verdict of guilty on the charge of Second Degree Murder with Use of a Deadly Weapon.
7 Defendant appealed to the Nevada Supreme Court and on April 7, 2010, this Court reversed
8 and remanded his case for a new trial due to a jury instruction issue; Remittitur issued May 3,
9 2010.

10 Defendant proceeded to trial for a second time on August 23, 2010. On September 2,
11 2010, this Court declared a mistrial on account of a hopelessly deadlocked jury at a 10 to 2
12 vote.

13 On October 3, 2011, Defendant filed a Motion to Dismiss Appointed Counsel and for
14 a Faretta Hearing. This Court conducted the Faretta Canvass on December 16, 2011, and
15 dismissed Defendant's counsel, thus allowing Defendant to represent himself. Lance Maningo
16 was appointed as stand-by counsel.

17 On May 9, 2012, the federal court denied Defendant's Motion to Stay the State court
18 Proceedings. The federal court denied Defendant's renewed Motion on June 5, 2012.
19 Defendant proceeded to trial for a third time on June 11, 2012. On June 15, 2012, the jury
20 returned a guilty verdict to Second Degree Murder With Use of a Deadly Weapon (Category
21 A Felony – NRS 200.010, 200.030, 193.165).

22 On August 28, 2012, this Court sentenced Defendant as follows: a minimum of one
23 hundred twenty to a maximum of three hundred months, plus a consecutive term of 8 to 20
24 years for use of a deadly weapon, with 1,394 days credit for time served.

25 Defendant filed a Pro Per Notice of Appeal on August 31, 2012. The Judgment of
26 Conviction was filed September 5, 2012. Lance Maningo, Esq., was confirmed as appellate
27 counsel on September 6, 2012, and filed a Notice of Appeal on September 13, 2012. The
28

¹ An Amended Information was also filed February 10, 2009, containing the same charge.

1 Supreme Court affirmed on April 10, 2013, and Defendant was denied rehearing on June 13,
2 2013. Remittitur issued July 23, 2013.

3 On December 6, 2013, Defendant filed a Petition for Writ of Mandamus or, in the
4 Alternative, Writ of Coram Nobis and a Motion to Appoint Counsel. The State filed its
5 Response on December 31, 2013. This Court denied the Petition and Motion without prejudice
6 as the allegations therein related to another of Defendant's cases, Case Number 04C202793.
7 The written Order was filed on January 28, 2014.

8 On January 13, 2014, Defendant filed an Ex-Parte Motion for Production of
9 Documents, (Specific) Papers, Pleadings and Tangible Property of Defendant. The State did
10 not file an opposition. At the February 4, 2014, hearing, this Court granted in part Defendant's
11 motion as it pertained to his request for his file from previous counsel but denied in part the
12 motion without prejudice as it pertained to Defendant's specific requests as Defendant failed
13 to demonstrate any reason why the documents were needed.

14 On January 21, 2014, Defendant filed an (Ex-Parte) "Motion for Reimbursement of
15 Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma
16 Pauperis." The State filed its Opposition on February 7, 2014. This Court denied the motion
17 at a hearing on February 11, 2014.

18 On January 27, 2014, Defendant filed a Motion to Modify and/or Correct Illegal
19 Sentence. The State filed the Opposition on February 24, 2014. This Court denied
20 Defendant's Motion to Modify and/or Correct Illegal Sentence on February 27, 2014. On
21 March 4, 2014, Defendant filed an untimely Reply. This Court denied the Motion on March
22 25, 2014.

23 On July 23, 2014, Defendant filed a "Motion for Relief from Judgment Based on Lack
24 of Jurisdiction for U.S. Court of Appeals has Not Issued any Remand, Mandate or Remittitur."
25 The State filed a Response on August 7, 2014. The Motion was denied on August 14, 2014.
26 The Order was entered on September 4, 2014.

27 Defendant filed a Notice of Appeal on the denial of his "Motion for Relief from
28 Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals has Not Issued any

1 Remand, Mandate or Remittitur" on August 29, 2014. Defendant's appeal was dismissed on
2 September 24, 2014, pursuant to an Order from the Nevada Supreme Court.

3 On August 28, 2014, Defendant filed a Pro Per Motion to "Chief Judge to Reassign
4 Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding
5 in Clear 'Want of Jurisdiction' Thereby Losing Immunity, Absolutely!" On August 29, 2014,
6 Defendant filed a notice of Motion and "Motion for Leave of Court to File Motion for
7 Rehearing - Pursuant to EDCR, Rule 2.24." The State filed Oppositions to both motions on
8 September 12, 2014. Defendant's Pro Per Motion to "Chief Judge to Reassign Case to Jurist
9 of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear 'Want
10 of Jurisdiction' Thereby Losing Immunity, Absolutely!" was referred to Judge Jennifer
11 Togliatti and denied by Order on October 6, 2014.

12 Defendant filed a Post-Conviction Petition for Writ of Habeas Corpus on September
13 15, 2014, as well as Motion to Appoint Counsel. On October 3, 2014, Defendant filed an
14 Amended Petition and Accompanying Exhibits. The State's Response and Motion to Dismiss
15 to the Post-Conviction Petition for Writ of Habeas Corpus, Amended Petition and
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18 On October 27, 2014, Defendant filed a Reply. On November 6, 2014, the Court appointed
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5 Matter Pursuant." The State's response was filed on July 9, 2015.

6 **I. Defendant's Petition is Time Barred**

7 The Court finds Defendant's Petition for Writ of Habeas Corpus is time barred pursuant
8 to NRS 34.726(1):

9 Unless there is good cause shown for delay, a petition that
10 challenges the validity of a judgment or sentence must be filed
11 within 1 year of the entry of the judgment of conviction or, if an
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20 The one-year time limit for preparing petitions for post-conviction relief under NRS
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25 This Court finds that the Notice of Remittitur was issued from Defendant's timely direct
26 appeal on July 23, 2013. Thus, the one-year time bar began to run from that date. Defendant's
27 Post-Conviction Writ of Habeas Corpus was filed on September 15, 2014, over one year after
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1 the date of Remittitur and in excess of the one-year time frame. Thus, Defendant's claim is
2 denied as it is untimely in violation of NRS 34.762(1).

3 **II. Defendant Has Not Shown Good Cause to Overcome the Procedural Bars**

4 Defendant's Reply in Support of the Supplemental Petition, includes the appropriate
5 provision under NRS 34.726 for "good cause," and Defendant re-states the claims that
6 consideration of his Pro Per Motion for Stay of the Remittitur would make his Petition timely.

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14 (emphasis added). As Defendant's Petition was filed more than a year after Remittitur from
15 his direct appeal issued on July 23, 2013, his Petition is untimely and must be dismissed absent
16 a showing of good cause.

17 To avoid procedural default under NRS 34.726 and NRS 34.810, a defendant has the
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27 Defendant makes no other attempt to establish good cause, but claims that under
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4 the jury instructions, yet no reference to the record, nor further argument is made in support
5 of the claim. Thus, Defendant has failed to overcome the procedural bars applicable to his
6 untimely Petition. Accordingly, this Court finds the Petition is time barred, pursuant to NRS
7 34.726(1), and good cause has not been shown.

8 **III. The Defendant is Not Entitled to an Evidentiary Hearing**

9 Defendant is not entitled to an evidentiary hearing in this matter. NRS 34.770
10 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 11 1. The judge or justice, upon review of the return, answer and
12 all supporting documents which are filed, shall determine whether
13 an evidentiary hearing is required. A petitioner must not be
14 discharged or committed to the custody of a person other than the
15 respondent unless an evidentiary hearing is held.
- 16 2. If the judge or justice determines that the petitioner is not
17 entitled to relief and an evidentiary hearing is not required, he shall
18 dismiss the petition without a hearing.
- 19 3. If the judge or justice determines that an evidentiary
20 hearing is required, he shall grant the writ and shall set a date for
21 the hearing.

22 The Nevada Supreme Court has held that if a petition can be resolved without
23 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
24 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
25 defendant is entitled to an Evidentiary Hearing if his petition is supported by specific factual
26 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
27 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove v. State, 100
28 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that "[a] defendant seeking post-
conviction relief is not entitled to an Evidentiary Hearing on factual allegations belied or
repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by
the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at
1230 (2002).

//

1 This Court orders Defendant's request for an Evidentiary Hearing be denied because
2 there is a jurisdictional bar on this particular matter.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
5 and Request for Evidentiary Hearing shall be, and are, hereby denied.

6 DATED this 1 day of September, 2015.

7 *od*
8 *WMM*
9 DISTRICT JUDGE
10 JS

11 STEVEN B. WOLFSON
12 Clark County District Attorney
13 Nevada Bar #001365

14 BY *Christopher Lalli*
15 CHRISTOPHER LALLI
16 Assistant Clark County District Attorney
17 Nevada Bar #005398

18 **CERTIFICATE OF SERVICE**

19 I certify that on the 25th day of September, 2015, I e-mailed a copy of the foregoing
20 proposed Findings of Fact, Conclusions of Law, and Order to:

21 MATTHEW D. CARLING, Esq.
22 cedarlegal@gmail.com

23 BY *R. Johnson*
24 R. JOHNSON
25 Secretary for the District Attorney's Office

26
27
28 NO/CL/rj/M-1

Allen L. Johnson

CLERK OF THE COURT

1 NEO

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4 BRIAN K. O'KEEFE,

5
6 Petitioner,

Case No: 08C250630

Dept No: XVII

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

10 NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER

11 PLEASE TAKE NOTICE that on October 2, 2015, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
mailed to you. This notice was mailed on October 6, 2015.

15 STEVEN D. GRIERSON, CLERK OF THE COURT

16 *Mary Kielty*

17 Mary Kielty, Deputy Clerk

18
19 CERTIFICATE OF MAILING

20 I hereby certify that on this 6 day of October 2015, I placed a copy of this Notice of Entry in:

21 ☒ The bin(s) located in the Regional Justice Center of:
22 Clark County District Attorney's Office
Attorney General's Office - Appellate Division-

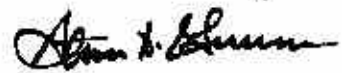
23 ☒ The United States mail addressed as follows:

24 Brian K. O'Keefe # 90244
1200 Prison Road
25 Lovelock, NV 89419

Matthew D. Carling, Esq.
1100 S. Tenth Street
Las Vegas, NV 89101

26 *Mary Kielty*

27 Mary Kielty, Deputy Clerk


CLERK OF THE COURT

1 FCL
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 CHRISTOPHER LALLI
6 Assistant Clark County District Attorney
7 Nevada Bar #005398
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: 08C250630
DEPT NO: XVII

12 BRYAN O'KEEFE,
13 aka Brian Kerry O'Keefe, #1447732
14 Defendant.

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: SEPTEMBER 4, 2015
TIME OF HEARING: 9:30 AM

18 THIS CAUSE having come on for hearing before the Honorable VILLANI, District
19 Judge, on the 4th day of September, 2015, the Petitioner not being present, REPRESENTED
20 BY CARLING, the Respondent being represented by STEVEN B. WOLFSON, Clark County
21 District Attorney, by and through CHRISTOPHER LALLI, Assistant Clark County District
22 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments
23 of counsel, and documents on file herein, now therefore, the Court makes the following
24 findings of fact and conclusions of law:

25 //

26 //

27 //

28 //

RECEIVED BY
DEPT 17 ON
SEP 25 2015

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 BRYAN O'KEEFE, aka Brian Kerry O'Keefe's " (hereinafter "Defendant"), was
3 charged by way of Information on December 19, 2008 with one count of Murder with Use of
4 a Deadly Weapon (Open Murder) (Felony - NRS 200.010, 200.030, 193.165).¹

5 Defendant proceeded to trial on March 17, 2009. On March 20, 2009, the jury returned
6 a verdict of guilty on the charge of Second Degree Murder with Use of a Deadly Weapon.
7 Defendant appealed to the Nevada Supreme Court and on April 7, 2010, this Court reversed
8 and remanded his case for a new trial due to a jury instruction issue; Remittitur issued May 3,
9 2010.

10 Defendant proceeded to trial for a second time on August 23, 2010. On September 2,
11 2010, this Court declared a mistrial on account of a hopelessly deadlocked jury at a 10 to 2
12 vote.

13 On October 3, 2011, Defendant filed a Motion to Dismiss Appointed Counsel and for
14 a Faretta Hearing. This Court conducted the Faretta Canvass on December 16, 2011, and
15 dismissed Defendant's counsel, thus allowing Defendant to represent himself. Lance Maningo
16 was appointed as stand-by counsel.

17 On May 9, 2012, the federal court denied Defendant's Motion to Stay the State court
18 Proceedings. The federal court denied Defendant's renewed Motion on June 5, 2012.
19 Defendant proceeded to trial for a third time on June 11, 2012. On June 15, 2012, the jury
20 returned a guilty verdict to Second Degree Murder With Use of a Deadly Weapon (Category
21 A Felony - NRS 200.010, 200.030, 193.165).

22 On August 28, 2012, this Court sentenced Defendant as follows: a minimum of one
23 hundred twenty to a maximum of three hundred months, plus a consecutive term of 8 to 20
24 years for use of a deadly weapon, with 1,394 days credit for time served.

25 Defendant filed a Pro Per Notice of Appeal on August 31, 2012. The Judgment of
26 Conviction was filed September 5, 2012. Lance Maningo, Esq., was confirmed as appellate
27 counsel on September 6, 2012, and filed a Notice of Appeal on September 13, 2012. The
28

¹ An Amended Information was also filed February 10, 2009, containing the same charge.

1 Supreme Court affirmed on April 10, 2013, and Defendant was denied rehearing on June 13,
2 2013. Remittitur issued July 23, 2013.

3 On December 6, 2013, Defendant filed a Petition for Writ of Mandamus or, in the
4 Alternative, Writ of Coram Nobis and a Motion to Appoint Counsel. The State filed its
5 Response on December 31, 2013. This Court denied the Petition and Motion without prejudice
6 as the allegations therein related to another of Defendant's cases, Case Number 04C202793.
7 The written Order was filed on January 28, 2014.

8 On January 13, 2014, Defendant filed an Ex-Parte Motion for Production of
9 Documents, (Specific) Papers, Pleadings and Tangible Property of Defendant. The State did
10 not file an opposition. At the February 4, 2014, hearing, this Court granted in part Defendant's
11 motion as it pertained to his request for his file from previous counsel but denied in part the
12 motion without prejudice as it pertained to Defendant's specific requests as Defendant failed
13 to demonstrate any reason why the documents were needed.

14 On January 21, 2014, Defendant filed an (Ex-Parte) "Motion for Reimbursement of
15 Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma
16 Pauperis." The State filed its Opposition on February 7, 2014. This Court denied the motion
17 at a hearing on February 11, 2014.

18 On January 27, 2014, Defendant filed a Motion to Modify and/or Correct Illegal
19 Sentence. The State filed the Opposition on February 24, 2014. This Court denied
20 Defendant's Motion to Modify and/or Correct Illegal Sentence on February 27, 2014. On
21 March 4, 2014, Defendant filed an untimely Reply. This Court denied the Motion on March
22 25, 2014.

23 On July 23, 2014, Defendant filed a "Motion for Relief from Judgment Based on Lack
24 of Jurisdiction for U.S. Court of Appeals has Not Issued any Remand, Mandate or Remittitur."
25 The State filed a Response on August 7, 2014. The Motion was denied on August 14, 2014.
26 The Order was entered on September 4, 2014.

27 Defendant filed a Notice of Appeal on the denial of his "Motion for Relief from
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2 September 24, 2014, pursuant to an Order from the Nevada Supreme Court.

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4 Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding
5 in Clear 'Want of Jurisdiction' Thereby Losing Immunity, Absolutely!" On August 29, 2014,
6 Defendant filed a notice of Motion and "Motion for Leave of Court to File Motion for
7 Rehearing - Pursuant to EDCR, Rule 2.24." The State filed Oppositions to both motions on
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8 **III. The Defendant is Not Entitled to an Evidentiary Hearing**

9 Defendant is not entitled to an evidentiary hearing in this matter. NRS 34.770
10 determines when a defendant is entitled to an evidentiary hearing. It reads:

- 11 1. The judge or justice, upon review of the return, answer and
12 all supporting documents which are filed, shall determine whether
13 an evidentiary hearing is required. A petitioner must not be
14 discharged or committed to the custody of a person other than the
15 respondent unless an evidentiary hearing is held.
- 16 2. If the judge or justice determines that the petitioner is not
entitled to relief and an evidentiary hearing is not required, he shall
dismiss the petition without a hearing.
- 17 3. If the judge or justice determines that an evidentiary
hearing is required, he shall grant the writ and shall set a date for
the hearing.

18 The Nevada Supreme Court has held that if a petition can be resolved without
19 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
20 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
21 defendant is entitled to an Evidentiary Hearing if his petition is supported by specific factual
22 allegations, which, if true, would entitle him to relief unless the factual allegations are repelled
23 by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove v. State, 100
24 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that "[a] defendant seeking post-
25 conviction relief is not entitled to an Evidentiary Hearing on factual allegations belied or
26 repelled by the record"). "A claim is 'belied' when it is contradicted or proven to be false by
27 the record as it existed at the time the claim was made." Mann, 118 Nev. at 354, 46 P.3d at
28 1230 (2002).

//

1 This Court orders Defendant's request for an Evidentiary Hearing be denied because
2 there is a jurisdictional bar on this particular matter.

3 **ORDER**

4 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief
5 and Request for Evidentiary Hearing shall be, and are, hereby denied.

6 DATED this 1 day of September, 2015.

7 *02*
8 *10/09/15*
9 DISTRICT JUDGE
10 J5

11 STEVEN B. WOLFSON
12 Clark County District Attorney
13 Nevada Bar #001365

14 BY *Christopher Lalli*
15 CHRISTOPHER LALLI
16 Assistant Clark County District Attorney
17 Nevada Bar #005398

18 **CERTIFICATE OF SERVICE**

19 I certify that on the 25th day of September, 2015, I e-mailed a copy of the foregoing
20 proposed Findings of Fact, Conclusions of Law, and Order to:

21 MATTHEW D. CARLING, Esq.
22 cedarlegal@gmail.com

23 BY *R. Johnson*
24 R. JOHNSON
25 Secretary for the District Attorney's Office
26
27
28

NO/CL/rj/M-1

1 ASTA


CLERK OF THE COURT

2
3
4
5
6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 BRIAN K. O'KEEFE,

14 Defendant(s),
15

Case No: 08C250630

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Brian K. O'Keefe

20 2. Judge: Michael Villani

21 3. Appellant(s): Brian K. O'Keefe

22 Counsel:

23 Brian K. O'Keefe #90244
24 1200 Prison Rd.
Lovelock, NV 89419

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes
Permission Granted: N/A

6. Appellant Represented by Appointed Counsel In District Court: Yes
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
9. Date Commenced in District Court: December 19, 2008
10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Post-Conviction Relief

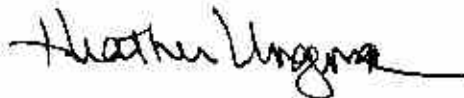
11. Previous Appeal: Yes

Supreme Court Docket Number(s): 53859, 58109, 61631, 65217, 65436, 66416, 66956,
68560, 68623, 68739

12. Child Custody or Visitation: N/A

Dated This 20 day of October 2015.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

cc: Brian K. O'Keefe


CLERK OF THE COURT

REQT

Nevada Bar No. 007302
1100 S. Tenth Street
Las Vegas, NV 89101
Telephone: (702) 419-7330
Facsimile: (702) 446-8065
CedarLegal@gmail.com
Attorney for Petitioner/ Defendant
BRIAN O'KEEFE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630
Dept. No.: XVII

TO: COURT REPORTER - DEPARTMENT NO. 17

BRYAN O'KEEFE, Defendant named above, requests preparation of a rough draft transcript of certain portions of the proceedings before the district court, as follows:

DATE	JUDGE	PORTION	ORIGINAL PLUS ¹
09/04/15	Villani, Michael	All	2
10/06/15	Villani, Michael	All	2
10/20/15	Villani, Michael	All	2

This notice requests a transcript of only those portions of the District Court proceedings which counsel reasonably and in good faith believes are necessary to determine whether appellate issues are present. Voir dire examination of jurors, opening statements and closing arguments of trial counsel, and the reading of jury instructions shall not be transcribed unless specifically requested above.

¹ Original Rough Draft to be filed with the District Court, two certified copies to be served on Mr. Carling, and original certificate of service to be filed with the Nevada Supreme Court. NRAP 3C(3)(E).

1 14. I remain a servant of the Court and will do whatever this Court desires as it relates
2 to this case.

3 FURTHER YOUR AFFIANT SAYETH NAUGHT.

4 DATED this 29th day of June, 2015.

5 CARLING LAW OFFICE, PC

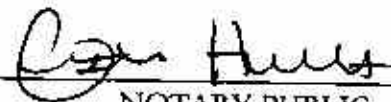
6
7 
8

9 MATTHEW D. CARLING

10 *Court-Appointed Attorney for Petitioner/Defendant.*

11 BRIAN K. O'KEEFE

12
13 SUBSCRIBED and SWORN before me
14 this 29 day of June, 2015.
15

16
17 
18

19 NOTARY PUBLIC
20



FROM:

Matthew D. Carling, Esq.
51 East 400 North, Bldg. #1, Cedar City, UT 84720

BILL TO:

Clark County Manager's Office
6th Floor
500 S. Grand Central Pkwy
Las Vegas, NV 89155

Re: State v. Brian K. O'Keefe
Case No.: 08C250630
Dept. No.: XVII (Villani)
Rate: \$100/hour

STATEMENT OF CHARGES

OUT-OF-COURT TIME

Date	Description	Time
11/19/14	Review of Documents	0.25
11/20/14	Prepare Order of Appointment	0.25
	Pull Register of Actions from Clerk's Office; Pull Petition for Writ of Habeas Corpus; Amended Petition, Response and Reply	0.25
	Prepare letter to client informing him of my appointment in place of Cynthia Dustin and to update him on the status of his appeal at the Nevada Supreme Court	0.50
11/24/14	Telephone call from Defendant for purposes of discussing the status of his federal case and the status of his motions in the District Court	0.50
	Prepare letter to Defendant	0.50
11/25/14	Reviewed Petition for Writ of Habeas Corpus	0.25
12/01/14	Prepare Notice of Voluntary Withdrawal of Appeal for Defendant; Forward the same to the Defendant	0.50
01/05/14	Review of Case	0.75
01/07/15	Drafting Petition for Writ of Habeas Corpus; Review of Transcripts	5.00
01/09/15	Telephone call from Defendant	0.25
	Review of Transcripts	5.00
01/13/15	Receipt and review multiple letters from Defendant; Draft correspondence to the Defendant	0.75
01/21/15	Review of Transcripts	5.00
01/22/15	Drafting of Supplemental Writ of Habeas Corpus	0.25
01/26/15	Review of Transcripts	5.00
02/04/15	Telephone call from Ryan Norwood, Federal Public Defender	0.25
02/05/15	Prepare memo regarding conversation with Ryan Norwood	0.25
	Receipt and review 3 letters from the Defendant; Review Docket and Fast Track documents; Prepare letter to Defendant	2.75
	Telephone call from Defendant	0.50
02/09/15	Telephone call from Ryan Norwood, FPD, for purposes of discussing the case	0.25
02/10/15	Prepare memo regarding conversation with federal public defender	0.50
02/17/15	Scan Letters from Client; Drafting of Supplemental Petition	0.50
02/20/15	Scanning Legal Documents	0.75
02/28/15	Review of Record for Supplemental Petition for Writ of Habeas Corpus	1.00
03/02/15	Receipt and review 2 letters from the Defendant	0.50
03/03/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	1.25
03/05/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	5.50
03/06/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus; Review of Transcripts	5.75

03/07/15	Review of Transcripts	5.00
03/09/15	Receipt and review 2 multiple page letters from Defendant again	0.50
03/10/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	1.75
03/11/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus; Review of Transcripts	4.75
03/12/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus; Review of Transcripts	8.00
03/13/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	7.50
03/14/15	Review of Transcripts	8.00
03/15/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	7.00
03/17/15	Review of Transcripts; Research	8.00
03/20/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	2.00
03/21/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	1.00
03/23/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	5.50
03/24/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus; Strategy for Issues	4.00
03/26/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	8.00
03/27/15	Researching and Drafting Supplemental Petition for Writ of Habeas Corpus	2.25
04/03/15	Drafting of Supplemental Writ of Habeas Corpus	2.00
04/06/15	Drafting of Supplemental Writ of Habeas Corpus and Petition	2.75
04/07/15	Receipt and review 5 letters from defendant; Prepare correspondence to Defendant	1.50
	Drafting of Supplemental Petition	4.00
04/08/15	Finalize Supplement; Format the same for e-filing	3.00
04/10/15	Prepare Letter to Defendant	0.10
04/20/15	Receipt and review Memo from District Court Clerk regarding papers filed by the Defendant; Review pro se Judicial Notice of Supplemental Authority dated March 22, 2015	0.25
04/22/15	Receipt and review another lengthily letter from the Defendant; Research additional issues presented; Prepare lengthy correspondence for purposes of responding to the same	3.00
04/25/15	Receipt and review correspondence from Defendant	0.25
04/27/15	Telephone call from Thomas O'Keefe regarding a letter he got from the Defendant; Thomas requested a copy of the Supplemental Petition	0.10
05/05/15	Receipt and review Affidavit from Defendant; Receipt and review 6 page correspondence from Defendant; Respond to the same	1.00
	TOTAL OUT-OF-COURT TIME	134.20

IN-COURT TIME

11/20/14	Appearance of associate counsel for purposes of confirming as counsel	0.50
	TOTAL IN-COURT TIME	0.50

COSTS & EXPENSES

11/20/14	Postage (Letter to Defendant)	\$0.49
11/24/14	Postage (Letter to Defendant)	\$0.49
12/01/14	Postage (Letter to Defendant)	\$0.49
01/13/15	Postage (Letter to Defendant)	\$0.49
02/05/15	Postage (Letter to Defendant)	\$0.49
02/18/15	Postage (Packet to Defendant with his file)	\$5.75
04/07/15	Postage (Letter to Defendant)	\$0.49
04/08/15	E-Filing Fee (Supplemental Petition)	\$3.50
04/10/15	Postage (Supplement to Defendant)	\$2.87
04/22/15	Postage (Letter to Defendant)	\$0.49
04/27/15	Postage (Supplemental Petition)	\$2.66

05/05/15	Postage (Letter to Defendant)	0.49
	TOTAL COSTS & EXPENSES	\$18.70
	TOTAL	\$13,488.70

Please make all checks payable to **Matthew D. Carling, Esq.**
Total due in 15 days. Overdue accounts subject to a service charge of 1½ % per month.

THANK YOU FOR YOUR BUSINESS!

05453



CLERK OF THE COURT

CSERV
Matthew D. Carling
Nevada Bar No. 007302
1100 S. Tenth Street
Las Vegas, NV 89101
(702) 419-7330 (Office)
(702) 446-8065 (Fax)
CarlingLegal@gmail.com
Court-appointed Attorney for Petitioner/ Defendant
BRIAN O'KEEFE

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

Case No.: 08C250630

Dept. No.: XVII

vs.

BRIAN K. O'KEEFE,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that, on this 29th day of June, 2015, I sent a true and correct copy of the
above ***AFFIDAVIT OF MATTHEW D. CARLING, ESQ.*** to the following parties:

Steven B. Wolfson, Esq.
Clark County District Attorney
Post Conviction Unit
jennifer.garcia@clarkcountynvda.com

Brian K. O'Keefe (#90244)
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling
MATTHEW D. CARLING, ESQ.
Court-appointed Attorney for Petitioner/ Defendant
BRIAN O'KEEFE


CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
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-

BRYAN O'KEEFE,
aka Brian Kerry O'Keefe, #1447732

Defendant.

CASE NO: 08C250630

DEPT NO: XVII

STATE'S RESPONSE TO DEFENDANT'S PRO PER SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS AND EVIDENTIARY HEARING REQUEST, "MOTION FOR LEAVE TO FILE SUPPLEMENTAL PETITION ADDRESSING ALL CLAIMS IN THE FIRST INSTANCE REQUIRED BY STATUTE FOR JUDICIAL ECONOMY WITH AFFIDAVIT," "REPLY TO STATE'S RESPONSE TO DEFENDANT'S PRO PER POST CONVICTION PETITION FOR HABEAS CORPUS," AND "SUPPLEMENT WITH NOTICE PURSUANT NRS 47.150(2); NRS 47.140(1), THAT THE UNITED STATES SUPREME COURT HAS DOCKETED (#14 - 10093) THE PRETRIAL HABEAS CORPUS MATTER PURSUANT 28 USC 2241(C)(3) FROM THE MOOTING OF PETITIONER'S SECTION 2241 BASED ON A SUBSEQUENT JUDGMENT OBTAINED IN WANT OF JURISDICTION WHILE APPEAL PENDING"

DATE OF HEARING: JULY 10, 2015
TIME OF HEARING: 9:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) and Evidentiary Hearing Request, "Motion for Leave to File Supplemental Petition Addressing All Claims in the First Instance Required by Statute for Judicial Economy with Affidavit," "Reply to State's Response to Defendant's Pro

1 Per Post-Conviction Petition for Habeas Corpus," and "Supplement with Notice Pursuant NRS
2 47.150(2); NRS 47.140(1), that the United States Supreme Court has Docketed (#14 - 10093)
3 the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(C)(3) from the Mooting of
4 Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in Want of Jurisdiction
5 While Appeal Pending."

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

9 **POINTS AND AUTHORITIES**

10 **STATEMENT OF THE CASE**

11 The State incorporates by reference the Statement of the Case contained in its Response
12 and Motion to Dismiss Defendant's Post-Conviction Petition for Writ of Habeas Corpus,
13 Amended Petition and Accompanying Exhibits, the State's Opposition to Request for
14 Evidentiary Hearing, and the State's Opposition to Defendant's Motion to Appoint Counsel as
15 filed on October 10, 2014. On October 27, 2014, Defendant filed a Reply. On November 6,
16 2014, the Court appointed counsel and set a supplemental briefing schedule. Oddly, Defendant
17 filed a notice of appeal from the denial of his Petition on November 21, 2014. As the Petition
18 was not denied, the Nevada Supreme Court dismissed Defendant's appeal on March 12, 2015.

19 On April 8, 2015, Defendant filed a Supplemental post-conviction Petition for Writ of
20 Habeas Corpus. The State's filed its Response on June 2, 2015.

21 On June 8, 2015, Defendant filed a pro per Motion to Withdraw Counsel. The State
22 filed its Opposition on June 25, 2015. On June 30, 2015, the Court denied Defendant's Motion.

23 On June 15, 2015, Defendant filed a pro per Supplemental Petition for Writ of Habeas
24 Corpus (Post-Conviction) and Evidentiary Hearing Request and "Motion for Leave to File
25 Supplemental Petition Addressing All Claims in the First Instance Required by Statute for
26 Judicial Economy with Affidavit." On June 16, 2015 he filed a pro per "Reply to State's
27 Response to Defendant's Pro Per Post Conviction Petition for Habeas Corpus," and on June
28 17, 2015, filed a pro per "Supplement with Notice Pursuant NRS 47.150 (2); NRS 47.140 (1),

1 That the United States Supreme Court has Docketed (#14 -10093) the Petrial Habeas Corpus
2 Matter Pursuant." The State's response to these Motions is as follows.

3 **ARGUMENT**

4 Under EJDRC 7.40(a), each of Defendant's aforementioned motions filed between June
5 15, 2015 and June 17, 2015, are fugitive documents because Defendant is represented by
6 Matthew D. Carling, Esq.; therefore, the instant motions must be stricken. While Defendant
7 filed a Motion to Withdraw Counsel, the Court denied that motion on June 30, 2015, based on
8 counsel's representations in the form of an affidavit filed on June 29, 2015. Pursuant to
9 EJDRC 7.40(a):

10 When a party has appeared by counsel, the party cannot thereafter
11 appear on the party's own behalf in the case without the consent
12 of the court. Counsel who has appeared for any party must
13 represent that party in the case and shall be recognized by the court
and by all parties as having control of the case. The court in its
discretion may hear a party in open court although the party is
represented by counsel.

14 Similarly, EJDRC 3.70 provides that a defendant represented by counsel may not file
15 papers in court on his own behalf:

16 Except as may be required by the provisions of NRS 34.730 to
17 34.830, inclusive, all motions, petitions, pleadings or other papers
18 delivered to the clerk of the court by a defendant who has counsel
19 of record will not be filed but must be marked with the date
received and a copy forwarded to that attorney for such
consideration as counsel deems appropriate. This rule does not
apply to applications made pursuant to Rule 7.40(b)(2)(ii).

20 In this case, Matthew D. Carling, Esq. has been confirmed as counsel since November
21 20, 2014, for the specific purpose of pursuing all available post-conviction remedies.
22 Accordingly, the instant pro per motions are improper and fugitive documents under EJDRC
23 3.70 and 7.40(a) and must be stricken.

24 **CONCLUSION**

25 Based on the foregoing reasons, the State asks that Defendant's Pro Per Supplemental
26 Petition for Writ of Habeas Corpus (Post-Conviction) and Evidentiary Hearing Request,
27 "Motion for Leave to File Supplemental Petition Addressing All Claims in the First Instance
28 Required by Statute for Judicial Economy with Affidavit," "Reply to State's Response to

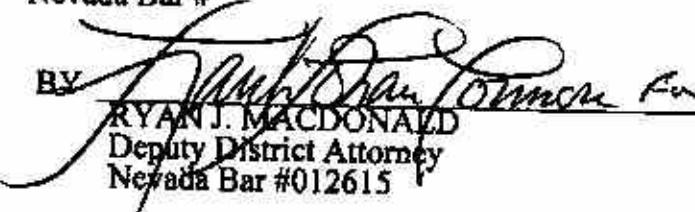
1 Defendant's Pro Per Post-Conviction Petition for Habeas Corpus," and "Supplement with
2 Notice Pursuant NRS 47.150(2); NRS 47.140(1), that the United States Supreme Court has
3 Docketed (#14 - 10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(C)(3) from
4 the Mooting of Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in Want
5 of Jurisdiction While Appeal Pending" be DENIED.

6 DATED this 9th day of July, 2015.

7 Respectfully submitted,

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

11 BY


12 RYAN J. MACDONALD
13 Deputy District Attorney
14 Nevada Bar #012615

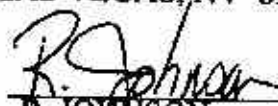
15 CERTIFICATE OF MAILING

16 I hereby certify that service of the above and foregoing was made this 9th day of July,
17 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:


18 BRIAN O'KEEFE,
19 aka Brian Kerry O'Keefe #90244
20 LOVELOCK CORRECTIONAL CENTER
21 1200 PRISON ROAD
22 LOVELOCK, NV 89419

23 MATTHEW D. CARLING, Esq.
24 1100 S. TENTH ST.
25 LAS VEGAS, NV 89101

26 BY


27 R. JOHNSON
28 Secretary for the District Attorney's Office

GC/RJM/tj/M-1


CLERK OF THE COURT

SUPPL

Matthew D. Carling

Nevada Bar No. 007302

1100 S. Tenth Street

Las Vegas, NV 89101

(702) 419-7330 (Office)

(702) 446-8065 (Fax)

CedarLegal@gmail.com

Court-appointed Attorney for Petitioner/Defendant

BRIAN O'KEEFE

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BRIAN K. O'KEEFE,

Defendant.

Case No.: 08C250630

Dept. No.: XVII

**SUPPLEMENT TO SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS
(POST-CONVICTION)**

In its Response filed June 2, 2015, the State argues that the Defendant's Petition filed on September 15, 2014, is time barred. The Defendant's Petition is not time barred pursuant to NRS 34.726(1) as evidenced by the following timeline of the instant matter:

Date	Pleading	Balance of Days
09/05/12	Judgment of Conviction	364
09/13/12	Notice of Appeal (61631)	355
04/10/13	Order of Affirmance (61631)	
08/02/13	Remittitur (61631)	354
01/28/14	Notice of Appeal (64878)	174
02/20/14	Notice of Appeal (65040)	
03/13/14	Notice of Appeal (65217)	
04/11/14	Notice of Appeal (65436)	
05/14/14	Appeal Dismissed (65436)	
06/12/14	Order of Affirmance (64878)	
06/18/14	Appeal Dismissed (65436)	
06/24/14	Remittitur (65436)	174
07/23/14	Order of Affirmance (65040)	

	Order of Affirmance (65217)	
08/29/14	Notice of Appeal (66416)	
09/15/14	Petition for Writ of Habeas Corpus (Post-Conviction)	174
10/10/14	State's Response and Motion to Dismiss	
09/22/14	Notice of Appeal (66554)	
09/24/14	Appeal Dismissed (66416)	
10/28/14	Notice of Appeal (66785)	
11/06/14	Remittitur (66416)	
12/01/14	Notice of Appeal (66956)	
12/05/14	Appeal Dismissed (66785)	
12/08/14	Remittitur (64878)	
	Remittitur (65040)	
01/16/15	Remittitur (66785)	
01/21/15	Order of Affirmance (66554)	
01/30/15	Remittitur (65217)	
02/11/15	Appeal Dismissed (66956)	
03/03/15	Remittitur (66554)	
03/17/15	Remittitur (66956)	
04/08/15	Supplemental Petition for Writ of Habeas Corpus	
06/02/15	State's Response to Supplemental Petition	
	Remittitur Issued (65097)	
	Findings of Fact, Conclusions of Law and Order	173

DATED this 9th day of July, 2015.

CARLING LAW OFFICE, PC

/s/ Matthew D. Carling,

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Petitioner/ Defendant,

BRIAN K. O'KEEFE

CERTIFICATE OF SERVICE

I hereby certify that, on this 13th day of July, 2015, I sent a true and correct copy of the above NOTICE OF APPEAL to the following parties:

Steven B. Wolfson, Esq.

Clark County District Attorney

Post Conviction Unit

Jennifer.Garcia@clarkcountvda.com

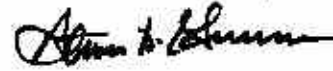
CARLING LAW OFFICE, PC

/s/ Matthew D. Carling,

MATTHEW D. CARLING, ESQ.

Court-Appointed Attorney for Petitioner/ Defendant,

BRIAN K. O'KEEFE


CLERK OF THE COURT

ORDER
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
ERIKA L. WIBORG
Deputy District Attorney
Nevada Bar #012520
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

CASE NO: 08C250630

DEPT NO: XVII

BRYAN O'KEEFE,
aka Brian Kerry O'Keefe, #1447732

Defendant.

**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
14
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1 CERTIFICATE OF SERVICE

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

3 to:

4 BRYAN O'KEEFE,
5 aka Brian Kerry O'Keefe #90244
6 LOVELOCK CORRECTIONAL CENTER
7 1200 PRISON ROAD
8 LOVELOCK, NV 89419

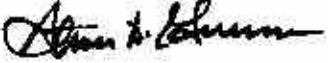
9 MATTHEW D. CARLING, Esq.
10 1100 S. TENTH ST.
11 LAS VEGAS, NV 89101

12 BY



13 R. JOHNSON
14 Secretary for the District Attorney's Office
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28 rj/M-1


CLERK OF THE COURT

1 **ORDR**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACOB VILLANI
6 Deputy District Attorney
7 Nevada Bar #011732
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
FOR LEAVE TO FILE SUPPLEMENTAL PETITION ADDRESSING
ALL CLAIMS IN THE FIRST INSTANCE REQUIRED BY STATUTE
FOR JUDICIAL ECONOMY WITH AFFIDAVIT

DATE OF HEARING: JULY 10, 2015
TIME OF HEARING: 9:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
10th day of July, 2015, the Defendant not being present, REPRESENTED BY MATTHEW
D. CARLING, Esq., the Plaintiff being represented by STEVEN B. WOLFSON, District
Attorney, through JACOB VILLANI, Deputy District Attorney, based on the pleadings and
good cause appearing therefor,

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DEPT 17 ON
JUL 14 2015

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005464


1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Leave to File
2 Supplemental Petition Addressing all Claims in the First Instance Required by Statute for
3 Judicial Economy with Affidavit, shall be, and it is DENIED as a fugitive document.

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 JACOB VILLANI
12 Deputy District Attorney
13 Nevada Bar #011732
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1 CERTIFICATE OF SERVICE

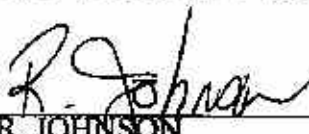
2 I certify that on the 15th day of July, 2015, I mailed a copy of the foregoing Order

3 to:

4 BRYAN O'KEEFE,
5 aka Brian Kerry O'keefe #90244
6 LOVELOCK CORRECTIONAL CENTER
7 1200 PRISON ROAD
8 LOVELOCK, NV 89419

9 MATTHEW D. CARLING, Esq.
10 1100 S. TENTH ST.
11 LAS VEGAS, NV 89101

12 BY

13 
14 R. JOHNSON

15 Secretary for the District Attorney's Office
16
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28 rj/M-1

CARLING MATCHW

20

NOAS
BRIAN KERRY O'KEEFE # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Electronically Filed
07/31/2015 12:36:19 PM

Defendant In Pro Se

Ann L. Schuman

CLERK OF THE COURT

EIGHTH JUDICIAL
DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA, et al.

Plaintiff,

Case No. 08 0250630

-vs-

Dept. No. XVII

BRIAN KERRY O'KEEFE

see COPY OF ORDER ATTACHED

Defendant

NOTICE OF APPEAL

NOTICE IS GIVEN that Defendant, Brian Kerry O'Keefe,
in pro se, hereby appeals to the Nevada Supreme Court the
ORDER DENYING DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL ... CHAPTER 34
as filed/entered on the 15th day of JULY, 2015;
(complete if applicable) and the N/A

as filed/entered on the day of
20, in the above-entitled Court.

Dated this 27th day of JULY, 2015.

Brian Kerry O'Keefe
Brian Kerry O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

Defendant

FORM 17.31

CLERK OF THE COURT

JUL 31 2015

RECEIVED

005467

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 27th day of JULY, 2015, by placing same in the U.S. Mail via prison law library staff: Box Slip No. 1962149

Steve Giverson, Clerk of Court

200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, Nevada 89155-1160

Brian L. O'Keefe
Brian L. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. 08 C250630 does not contain the social security number of any person.

Dated this 27th day of JULY, 2015.

Brian L. O'Keefe
Brian L. O'Keefe # 90244

Petitioner In Pro Se

005468


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

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

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

24 THIS MATTER having come on for hearing before the above entitled Court on the
25 30th day of June, 2015, the Defendant not being present, IN PROPER PERSON, the Plaintiff
26 being represented by STEVEN B. WOLFSON, District Attorney, through ERIKA L.
27 WIBORG, Deputy District Attorney, without argument, based on the pleadings and good
28 cause appearing therefor,

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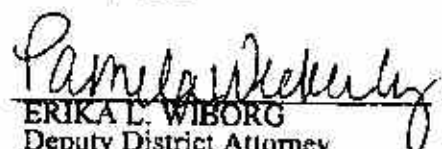
1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Withdraw Counsel
2 for Conflict and Failure to Present Claims when I.A.C. Claims Must be Raised Per Statute in
3 the First Petition Pursuant to Chapter 34, shall be, and it is DENIED, without prejudice.

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

Erin O'Keefe #90244
L.C.C.
1200 Prison Road
Lawrence AL 39419

INMATE LEGAL
MAIL CONFIDENTIAL

LEGAL MAIL

Steven Brecken, Clerk of Court
200 Lewis Avenue, 3rd Floor
128 Legas, AL 39155-1160
Att: Notice of Arrest - Case 630

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CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
RYAN J. MACDONALD
Deputy District Attorney
Nevada Bar #012615
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-

BRYAN O'KEEFE,
aka Brian Kerry O'Keefe, #1447732

Defendant.

CASE NO: 08C250630

DEPT NO: XVII

STATE'S RESPONSE TO DEFENDANT'S SUPPLEMENT TO SUPPLEMENTAL
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: SEPTEMBER 4, 2015
TIME OF HEARING: 9:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Supplement to Supplemental Petition for Writ of Habeas Corpus (Post-Conviction).

This response 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 ARGUMENT

3 In the State's Response to Defendant's Supplemental Petition, the State contended once
4 again that Defendant's Petition was untimely. In the instant Supplement to the Supplemental
5 Petition, Defendant contends that Remittitur in the case at hand issued on June 24, 2014, and
6 thus Defendant's Petition filed on September 15, 2014, was timely. This is incorrect.

7 In Defendant's Supplement to the Supplemental Petition, he contends that Remittitur
8 from NSC Docket #65436 issued on June 24, 2014. However, this is not the Remittitur issued
9 from Defendant's direct appeal. Remittitur from Defendant's direct appeal is NSC Docket
10 #61631, which issued on July 23, 2013. The Remittitur cited to by Defendant is from a pro
11 per Motion to consolidate Defendant's appeals. NRS 34.726(1):

12 Unless there is good cause shown for delay, a petition that
13 challenges the validity of a judgment or sentence must be filed
14 within 1 year of the entry of the judgment of conviction or, **if an**
15 **appeal has been taken from the judgment, within 1 year after**
16 **the Supreme Court issues its remittitur.** For the purposes of this
17 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 18 (a) That the delay is not the fault of the petitioner; and
19 (b) That dismissal of the petition as untimely will
20 unduly prejudice the petitioner.

21 (emphasis added). As Defendant's Petition was filed more than a year after Remittitur from
22 his direct appeal issued on July 23, 2013, his Petition is untimely and must be dismissed. It is
23 clear that Defendant is simply confused as to the proper Remittitur to be considered based on
24 the multiple filings in both of his cases.

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1 **CONCLUSION**


2 Based on the foregoing, the State requests Defendant's post-conviction Petition for Writ
3 of Habeas Corpus and all following supplements be DENIED.

4 DATED this 31st day of July, 2015.

5 Respectfully submitted,

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

9 BY

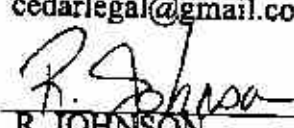

10 RYAN J. MACDONALD
11 Deputy District Attorney
12 Nevada Bar #012615

13 **CERTIFICATE OF SERVICE**

14 I certify that on the 31st day of July, 2015, I e-mailed a copy of the foregoing State's
15 Response to Defendant's Supplement to Supplemental Petition for Writ of Habeas Corpus
16 (Post-Conviction), to:

17 MATTHEW D. CARLING, Esq.
18 cedarlegal@gmail.com

19 BY


20 R. JOHNSON
21 Secretary for the District Attorney's Office
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1 ASTA


CLERK OF THE COURT

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6 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
7 **STATE OF NEVADA IN AND FOR**
8 **THE COUNTY OF CLARK**
9

10 STATE OF NEVADA,

11 Plaintiff(s).

12 vs.

13 BRIAN K. O'KEEFE.

14 Defendant(s).
15

Case No: 08C250630

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**
18

19 1. Appellant(s): Brian Kerry O'Keefe

20 2. Judge: Michael Villani

21 3. Appellant(s): Brian Kerry O'Keefe

22 Counsel:

23 Brian Kerry O'Keefe #90244
24 1200 Prison Rd.
Lovelock, NV 89419

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

2 5 Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A

4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A

6 6 Appellant Represented by Appointed Counsel In District Court: Yes

7 7 Appellant Represented by Appointed Counsel On Appeal: N/A

8 8 Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9 9 Date Commenced in District Court: December 19, 2008

10 10 Brief Description of the Nature of the Action: Criminal

11 Type of Judgment or Order Being Appealed: Misc. Order

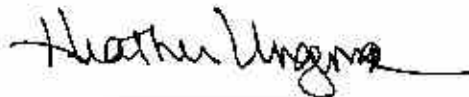
12 11 Previous Appeal: Yes

13 Supreme Court Docket Number(s): 53859, 58109, 61631, 65217, 65436, 66416, 66956

14 12 Child Custody or Visitation: N/A

15 Dated This 4 day of August 2015.

16 Steven D. Grierson, Clerk of the Court

17
18 

19
20 Heather Ungermann, Deputy Clerk
21 200 Lewis Ave
22 PO Box 551601
23 Las Vegas, Nevada 89155-1601
24 (702) 671-0512

25 cc: Brian Kerry O'Keefe
26
27
28

Case No. 08C250630

Dept. No. XVII

Alvin L. Shuman

CLERK OF THE COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * * *

BRIAN KELLY O'KEEFE

Petitioner,

-vs-

THE STATE OF NEVADA

Respondent.

NOTICE OF APPEAL

NOTE: COPY OF ORDER ATTACHED

NOTICE IS GIVEN that Petitioner, Brian O'Keefe
in pro se, hereby appeals to the Nevada Supreme Court the
Findings of Fact, Conclusions of Law and Order denying /
dismissing (SUTHERLAND) Petition for Writ of Habeas Corpus, which was filed /
entered on the 15th day of JULY, 2015.

Dated this 5th day of AUGUST, 2015.

Brian L. O'Keefe
Brian L. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

RECEIVED LCC 11 FORM 26-066

AUG 11 2015

CLERK OF THE COURT

05478

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 5th day of August, 2018, by placing same in the U.S. Mail via prison law library staff: Prison Slip No. 1962161

Steven Gracison, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89105-1160

Brian E. O'Leary
Brian E. O'Leary # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

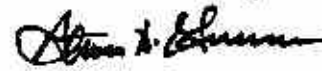
AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. 08CZ50630 does not contain the social security number of any person.

Dated this 5th day of August, 2018.

Brian E. O'Leary
Brian E. O'Leary
Petitioner In Pro Se

005479



CLERK OF THE COURT

1 **ORDER**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JACOB VILLANI
6 Deputy District Attorney
7 Nevada Bar #011732
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BRYAN O'KEEFE,
14 aka Brian Kerry O'keefe, #1447732

15 Defendant.

CASE NO: 08C250630

DEPT NO: XVII

16 ORDER DENYING DEFENDANT'S PRO PER MOTION
17 FOR LEAVE TO FILE SUPPLEMENTAL PETITION ADDRESSING
18 ALL CLAIMS IN THE FIRST INSTANCE REQUIRED BY STATUTE
19 FOR JUDICIAL ECONOMY WITH AFFIDAVIT

20 DATE OF HEARING: JULY 10, 2015
21 TIME OF HEARING: 9:30 A.M.

22 THIS MATTER having come on for hearing before the above entitled Court on the
23 10th day of July, 2015, the Defendant not being present, REPRESENTED BY MATTHEW
24 D. CARLING, Esq., the Plaintiff being represented by STEVEN B. WOLFSON, District
25 Attorney, through JACOB VILLANI, Deputy District Attorney, based on the pleadings and
26 good cause appearing therefor,

27 ///

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RECEIVED BY
DEPT 17 ON
JUL 14 2015

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005480

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Leave to File
2 Supplemental Petition Addressing all Claims in the First Instance Required by Statute for
3 Judicial Economy with Affidavit, shall be, and it is DENIED as a fugitive document.

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 JACOB VILLANI
12 Deputy District Attorney
13 Nevada Bar #011732
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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

Steven Crimerson, Clerk of the Court
200 Lewis Avenue, 3RD Floor
Las Vegas, NV. 89155-1160

INMATE LEGAL
MAIL CONFIDENTIAL

LEGAL MAIL

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CLERK OF THE COURT

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7 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE**
8 **STATE OF NEVADA IN AND FOR**
9 **THE COUNTY OF CLARK**

10 STATE OF NEVADA,

11 Plaintiff(s),

12 vs.

13 BRIAN K. O'KEEFE,

14 Defendant(s).
15

Case No: 08C250630

Dept No: XVII

16
17 **CASE APPEAL STATEMENT**

18 1. Appellant(s): Brian K. O'Keefe

19 2. Judge: Michael Villani

20 3. Appellant(s): Brian K. O'Keefe

21 Counsel:

22 Brian K. O'Keefe #90244
23 1200 Prison Rd.
24 Lovelock, NV 89419

25 4. Respondent: The State of Nevada

26 Counsel:

27 Steven B. Wolfson, District Attorney
28 200 Lewis Ave.
Las Vegas, NV 89101

1 (702) 671-2700

2 5. Appellant(s)'s Attorney Licensed in Nevada: N/A
3 Permission Granted: N/A

4 Respondent(s)'s Attorney Licensed in Nevada: Yes
5 Permission Granted: N/A

6 6. Appellant Represented by Appointed Counsel In District Court: Yes

7 7. Appellant Represented by Appointed Counsel On Appeal: N/A

8 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9 9. Date Commenced in District Court: December 19, 2008

10 10. Brief Description of the Nature of the Action: Criminal

11 Type of Judgment or Order Being Appealed: Misc. Order

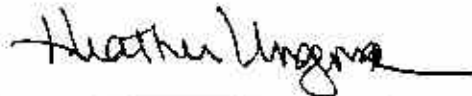
12 11. Previous Appeal: Yes

13 Supreme Court Docket Number(s): 53859, 58109, 61631, 65217, 65436, 66416, 66956,
14 68560

15 12. Child Custody or Visitation: N/A

16 Dated This 12 day of August 2015.

17 Steven D. Grierson, Clerk of the Court

18 

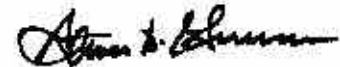
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20 Heather Ungermann, Deputy Clerk
21 200 Lewis Ave
22 PO Box 551601
23 Las Vegas, Nevada 89155-1601
24 (702) 671-0512

25
26 cc: Brian K. O'Keefe
27
28

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 NICOLE J. CANNIZZARO
6 Deputy District Attorney
7 Nevada Bar #011930
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 BRYAN O'KEEFE,
14 aka Brian Kerry O'Keefe, #1447732

15 Defendant.

CASE NO: 08C250630

DEPT NO: XVII

16 ORDER DENYING DEFENDANT'S EX PARTE MOTION
17 TO EXTEND PRISON COPYWORK LIMIT

18 DATE OF HEARING: JULY 30, 2015
19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 30th day of July, 2015, the Defendant not being present, REPRESENTED BY ALISSA
22 ENGLER, Esq., appearing on behalf of MATTHEW CARLING, Esq, the Plaintiff being
23 represented by STEVEN B. WOLFSON, District Attorney, through NICOLE J.
24 CANNIZZARO, Deputy District Attorney, without argument, based on the pleadings and
25 good cause appearing therefor,

26 COURT represented that since the Defendant is dealing with the prison system, there
27 are rules and regulations he must follow. This is an issue for the Attorney General's office;
28 therefore, his motion should have been sent to them. Additionally, Defendant has counsel.

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1 Therefore, COURT ORDERED, Motion DENIED, without prejudice. If Mr. Carling
2 believes the Motion has merit, he can refile it with the Court.

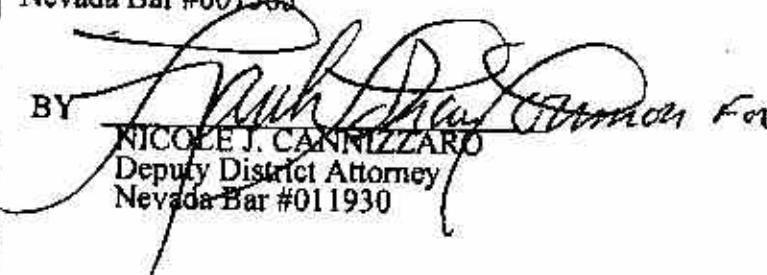
3 DATED this 10 day of August, 2015.

4 

5 DISTRICT JUDGE 

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

9 BY


10 NICOLE J. CANNIZZARO
11 Deputy District Attorney
12 Nevada Bar #011930

1 CERTIFICATE OF SERVICE

2 I certify that on the 13th day of August, 2015, I mailed a copy of the foregoing Order
3 to:

4 BRYAN O'KEEFE,
5 aka Brian Kerry O'Keefe #90244
6 LOVELOCK CORRECTIONAL CENTER
7 1200 PRISON ROAD
8 LOVELOCK, NV 89419

9 MATTHEW D. CARLING, Esq.
10 1100 S TENTH ST
11 LAS VEGAS, NV 89101

12 BY

13 
14 R. JOHNSON

15 Secretary for the District Attorney's Office
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RPLY

Case No. 08CZ50630

Dept. No. XVII

08CZ50630
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Reply
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FILED

AUG 24 2015

John L. O'Keefe
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLACK

THE STATE OF NEVADA et al.

Plaintiff
RESPONDENT

-vs-

BRIAN KERRY O'KEEFE

DEFENDANT
PETITIONER

CASE NO. 08CZ50630

DEPT. NO. XVII

REPLY TO STATE'S RESPONSE
TO DEFENDANT'S SUPPLEMENTAL
PETITION FOR WRIT OF
HABEAS CORPUS

• See EXHIBITS "A" and "B"

DATE OF HEARING: SEPTEMBER 4, 2015

TIME OF HEARING: 09:30 AM

COMES NOW, Brian O'Keefe, proper person, who hereby
submits the attached Points and Authorities in Reply
to to the State's Response filed electronically 07/31/2015.

This Reply is made timely, having received the
state's response on August 17, 2015, verified by attached
"Affidavit", along with all the papers and pleadings
on file herein, the attached points and authorities in
support thereof and any oral argument at time of hearing
if deemed necessary by this Court.

Dated: August 14, 2015

Respectfully,
BY: *John L. O'Keefe*
49244-105488

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CLERK OF THE COURT

AFFIDAVIT OF Brian Kerry O'Keefe

STATE OF NEVADA

COUNTY OF Perkins

SS:

1. Brian Kerry O'Keefe, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Brian K. O'Keefe.

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

3.) That I received a state's response on August 7 2015.

4.) That the State fails to recognize certiorari was filed on direct appeal docket # 61631 and said denial was entered on October 15, 2013 making my petition not time barred.

5.) That NRS 41(2) applies and the law guarantees a right to file for certiorari.

6.) Court appointed counsel for direct appeal # 61631 (3rd trial) caused any remittitur issue which I claim my U.S. Certiorari Case No. 13-6031 overrides.

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this 14th day of August, 2015

Brian K. O'Keefe
Brian K. O'Keefe #90294

I.

STATEMENT OF CASE

The state continually ignores the fact that on petitioner's "3rd unlawful trial", in want of jurisdiction, that in fact a right to file an appeal was legally invoked by petitioner.

In fact, the clerk of the United States Supreme Court properly notified the clerk of the Supreme Court of Nevada that a timely, proper certiorari request had been received, accepted, and filed as case no. 13-6031 and decided October 15, 2013. (See again EXHIBIT "A" attached - OPINION 134 S.Ct. 444; 137 L.Ed.2d 297; 2013 U.S. LEXIS 7559; 82 U.S.L.W. 3215) (Brian Kerry O'Heete, Petitioner v. Nevada - Supreme Court U.S.)

This notification was properly logged on the very same Nevada Supreme Court Docket # 61631 that the state complains of in his "response" filed in want of jurisdiction. (see State's Response id at page 2)

II.

POINTS AND AUTHORITY / ARGUMENT

There is a right -- although not a duty -- to appeal to the U.S. Supreme Court (USSC) following the upholding of the conviction by the state's highest court. A petitioner, as state prisoner, seeks review in the USSC by filing a "Petition for Certiorari". Most important is the state conviction does not become final until that appeal is decided.

A petitioner's access to the Court's is guaranteed by the 1st Amendment of the U.S. Constitution and better enforceable by the 14th U.S. Amendment among the states. (see Benton v. Maryland, 395 U.S. 784 (1969))

As here, in the instant case, a direct appeal was filed by appointed counsel. (Supreme Court of Nevada #61631)

Not only did petitioner file his own motion pursuant NRAP 46 (b) and properly requested to file his own stay request, Court appointed attorney, on direct appeal, failed to file any stay of the remittitur or Certiorari itself for petitioner.

This is clearly a violation which triggers the two prongs of "Strickland." (infra)

IN U.S. v. Scott, 243 F. Supp. 2d 97 (D. Del. 2003). (Failure to file petition for writ of certiorari upon request by indigent client.) constituted an I.A.C. claim.

Moreover, current appointed counsel fails to raise this claim also that my court appointed counsel, for direct appeal, caused any stay of the remittitur, in the first instance in which the state now complains of.

NRAP 41 clearly states in 41(b)(3)(A) ... A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of Certiorari. Here, petitioner did this also himself which was my given right by the USSC!

NRAP 41 (2) also states that if an appeal is pursued a remittitur cannot be issued.

Now we are faced with Court appointed counsel on habeas, Mr. Matthew Carling, who has failed to raise in the First instance that my direct appeal attorney also could have not been ineffective, as in the jury instructions omission, by filing certiorari or a stay of the remittitur.

Direct appeal counsel ineffective per Smith v. Robbins, 528 U.S. 259 (2000) coupled now with habeas counsel, which was Court appointed, not raising this defense per Martinez v. Ryan 132 S.Ct. 1309 (2012) in pointing out direct appeal counsel caused all problems in the initial direct appeal filed which one is absolutely entitled to effective counsel on direct appeal.

III. Conclusion

Petitioner's habeas petition is not time barred. Any cause and prejudice clearly is by direct appeal appointed counsel. Cause was external force. Prejudice is the wrongful remittitur date of July 23, 2015. Remittitur must be the soonest as date of denial of certiorari review; i.e. October 15, 2013. The two prongs of Strickland v. Washington, 466 U.S. 668 (1984) are clearly met thereby deeming direct appeal counsel ineffective.

The state also ignores the fact that any and all jurisdictional claims can never be procedurally defaulted. (see Harris v. U.S. 149 F.3d 1304).
See also Lockett v. Puckett, 988 F. Supp 1019.

Here in the instant case, petitioner's initial ground is just this, i.e. jurisdictional violation!

Moreover, the district court already granted a PPOW on this very claim. The (court) ordered the state to respond to this claim pursuant NLS 24-430 on October 15, 2014.

To this day the state has failed to answer this ground.

- (see EXHIBIT "B" - PPOW ORDER FIRED October 15, 2014).
- See Polk v. State, 126 Nev. 19 (June 2010) (Constitutional violation)

Lastly, any effort to try and time bar is improper. Subject matter jurisdiction can be raised at anytime, even on appeal for first time.

Request state's request be denied in attempting to time bar petitioner noting the Court himself is afforded to determine himself if more than a good cause has been demonstrated in proceeding with Mr. O'Keefe's petition.

Dated
August 14, 2015

(5)

Respectfully
Submitted
Dr. L. O'Keefe
9/22/15 1105494

1 PPOW

FILED

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

John A. [Signature]
CLERK OF THE COURT

5 Brian Kerry O'Keefe,
6 Petitioner,

7 vs.

8 Warden Robert LeGrard,
9 Respondent,

Case No: C250630
Dept No: 17

10 ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

11 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
12 September 15, 2014. The Court has reviewed the petition and has determined that a response would
13 assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty,
14 and good cause appearing therefore,

15 IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's
19 Calendar on the 28th day of October, 2014, at the hour of

22 8:15 o'clock for further proceedings.

25 *[Signature]*

26 District Court Judge

[Signature]

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SEP 17 2014

Erica Kerry Orsello, Petitioner v. Nevada
 Supreme Court of the United States
 134 B. Ct. 444; 187 L. Ed. 3d 367; 2013 U.S. LEXIS 7186; 12 U.S.L.W. 3718
 No. 12-5031
 October 15, 2013 Decided

Substantive Information: Prior History

Orsello v. Burg, 2013 Nev. Unpub. LEXIS 608 (2013)
 Justice: Roberts, Scalia, Kennedy, Thomas, Ginsburg, Sotomayor, Alito, Kagan

Opinion

Petition for writ of certiorari to the Supreme Court of Nevada denied.

SCOTXOT

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CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Reply... Habras Corpus to the below address(es) on this 14th day of August, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b): Grass Slip No. 1962189

1.) Steven Grossin Clerk of the Court
200 Lewis Ave. 3rd Floor
Las Vegas NV 89155-1161

2.) Steven Wolfson, District Attorney
200 Lewis Ave.
P.O. Box 352212
Las Vegas NV 89155-2212

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner and knows contents and believes to be true pursuant NRS 208.165.

B. L. O'Leary
Brian O'Leary # 902441
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Defendant
Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 219B.010

The undersigned does hereby affirm that the preceding Reply... Habras Corpus filed in District Court Case No. 08 CR51630 does not contain the social security number of any person.

Dated this 14th day of August, 2015.

B. L. O'Leary 902441
Brian O'Leary
Petitioner In Pro Se

Bryan O'Keefe #90204
L.C.C.
1200 Prison Road
Lorelock, NV. 89419

INMATE LEGAL
MAIL CONFIDENTIAL

LEGAL MAIL

05498



Base Slip No. 1912189

Steven Grierson, Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas NV 89155-1160

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PRESERVE



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ENVELOPES
Quality Park Products Item #90076

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

2
3 BRIAN K. O'KEEFE,
4 Appellant,
5 vs.
6 THE STATE OF NEVADA
7 Respondent.

Supreme Court No.:
District Court Case No.: 08C250630

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Dec 17 2015 08:48 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

8 **APPELLANT'S APPENDIX – VOLUME XXVII – PAGES 5400-5575**

9 MATTHEW D. CARLING
10 51 East 400 North, Bldg. #1
11 Cedar City, Utah 84720
12 (702) 419-7330 (Office)
13 Attorney for Appellant

STEVEN B. WOLFSON
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
Counsel for Respondent

CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
Counsel for Respondent

INDEX
O'Keefe, Brian

Document	Page No.
(Ex Parte) Motion to Appoint Counsel filed on 12/06/13	4698-4700
"Amended" Exhibits to "Amended Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 10/03/14	5008-5036
"Evidentiary Hearing Request" (Amended Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since) filed on 10/03/14	4995-5007
"Reply" to State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 filed on 10/27/14	5052-5061
"True Pretrial Detainee's" Reply to State's Opposition(s) Admitting the State has a Jurisdictional Defect by the Aung of a Notice of Appeal Which Divests Jurisdiction of the Matter Appealed: i.e., O'Keefe's Pretrial Habeas Matter Appealed to the 9 th Circuit on the Subject Matter of the Amended Information Already Named a Double Jeopardy Violation filed on 10/01/14	4989-4994
Affidavit of Matthew D. Carling, Esq. filed on 06/29/15	5447-5453
Affidavit of the Honorable Michael P. Villani filed on 09/24/14	4981-4983
Amended Information filed on 02/10/09	0175-0177
Amended Notice of Appeal filed on 10/29/15	5565-5568
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Case Appeal Statement filed on 05/21/09	0334-0336
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1	Certificate of Service filed on 06/29/15	5454
2	Clerks Certificate Judgment Reversed and Remanded filed on 05/06/10	1023-1027
3	Criminal Bindover filed on 12/26/08	0004-0020
4	Criminal Order to Statistically Close Case filed on 07/31/13	4662
5	Defendant O'Keefe's Opposition to Motion in Limine to Admit Evidence of Other Bad Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence Pursuant to 48.061 filed on 01/18/11	2877-2907
6	Defendant's Brief on Admissibility of Evidence of Alleged Victim's History of Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation (With Knives and Scissors), and Erratic Behavior filed on 03/20/09	0293-0301
8	Defendant's Motion to Require Court to Advise the Prospective Jurors as to the Mandatory Sentences Required if the Defendant is Convicted of Second Degree Murder filed on 03/04/09	0196-0218
9	Defendant's Motion to Settle Record filed on 03/24/09	0317-0322
10	Defendant's Proposed Jury Instructions filed on 03/20/09	0302-0316
11	Defendant's Proposed Jury Instructions filed on 08/23/10	1335-1393
12	Defendant's Submission to Clark County District Attorney's Death Review Committee filed on 12/31/08	0021-0027
13	Defendant's Supplemental Proposed Jury Instructions filed on 03/20/09	0290-0292
14	Defendant's Supplemental Notice of Witnesses filed on 08/16/10	1294-1296
14	District Court Amended Jury List filed on 03/19/09	0245
15	District Court Jury List filed on 03/16/09	0239
16	Ex Parte and/or Notice of Motion and Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit 3:14-CV-00385-RCJ-WGC Against Judge Michael Villani for proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity. Absolutely filed on 08/28/14	4903-4912
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18	Ex Parte Application for Order Requiring Material Witness to Post Bail filed on 03/10/09	0232-0236
19	Ex Parte Motion for an Order Shortening Time filed on 08/16/10	1292-1293
20	Ex Parte Motion for Appointment of Counsel Pursuant to NRS 34.750 filed on 09/15/14	4950-4952
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22	Ex Parte Motion for Production of Documents (Specific) Papers, Pleadings and Tangible Property of Defendant filed on 01/13/14	4714-4720
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24	Ex Parte Motion for Release of Medical Records filed on 04/08/11	3041-3042
25	Ex Parte Motion to Extend Prison Copywork Limit filed on 06/24/15	5438-5441
26	Exhibits to Petition for Writ of Habeas Corpus by a True Pretrial Detainee filed on 09/15/14	4954-4980
27	Ex-Parte Motion for Reimbursement of Incidental Costs Subsequent the Court Declaring Defendant Indigent and Granting Forma Pauperis filed on 01/21/14	4722-4747
28		

1	Ex-Parte Motion to Extend Prison Copywork Limit filed on 01/28/14	4764-4767
2	Filing in Support of Motion to Seal Records as Ordered by Judge filed on 04/19/12	3438-3441
3	Findings of Fact, Conclusion of Law and Order filed on 10/02/15	5528-5536
4	Information filed on 12/19/08	0001-0003
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6	Instructions to the Jury filed on 03/20/09	0246-0288
7	Judgment of Conviction (Jury Trial) filed on 09/05/12	4623-4624
8	Judgment of Conviction filed on 05/08/09	0327-0328
9	Judicial Notice Pursuant NRS 47.140(1)-NRS 47.150(2) Supporting Pro-Se Petition Pursuant NRS 34.360 filed on 03/12/15	5082-5088
10	Jury List filed on 06/12/12	3456
11	Jury List filed on 08/25/10	1396
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13	Motion by Defendant O'Keefe filed on 08/19/10	1329-1334
14	Motion for Complete Rough Draft Transcript filed on 04/03/12	3430
15	Motion for Judicial Notice the State's Failure to File and Serve Response in Opposition filed on 02/24/14	4800-4809
16	Motion for Judicial Ruling filed on 05/24/10	1028-1030
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19	Motion to Continue Trial filed on 06/01/12	3450-3455
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21	Motion to Modify and/or Correct Illegal Sentence filed on 01/27/14	4749-4759
22	Motion to Place on Calendar filed on 10/26/11	3169-3182
23	Motion to Place on Calendar filed on 11/28/11	3184-3192
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26	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 Chapter 34 filed on 06/08/15	5148-5153
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4	Notice of Defendant's Witnesses filed on 03/06/09	0224-0227
5	Notice of Entry of Findings of Fact, Conclusion of Law and Order filed on 10/06/15	5537-5546
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7	Notice of Motion and Motion by Defendant O'Keefe for a Reasonable Bail filed on 09/24/10	1441-1451
8	Notice of Motion and Motion by Defendant O'Keefe for Discovery filed on 08/02/10	1211-1219
9	Notice of Motion and Motion by Defendant O'Keefe for Evidentiary Hearing on Whether the State and CCDC have Complied with Their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/02/10	1220-1239
10	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 07/21/10	1064-1081
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12	Notice of Motion and Motion by Defendant O'Keefe to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/02/10	1199-1210
13	Notice of Motion and Motion by Defendant O'Keefe to Dismiss on Grounds of Double Jeopardy Bar and Speedy Trial Violation and, Alternatively, to Preclude State's New Expert Witness, Evidence and Argument Relating to the Dynamics or Effects of Domestic Violence and Abuse filed on 01/07/11	2785-2811
14	Notice of Motion and Motion by Defendant O'Keefe to Preclude Expert Testimony filed on 08/16/10	1284-1291
15	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1047-1063
16	Notice of Motion and Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 07/21/10	1082-1098
17	Notice of Motion and Motion by defendant O'Keefe to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/03/11	1682-2755
18	Notice of Motion and motion by Defendant O'Keefe to Suppress his	

1	Statements to Police, or, Alternatively, to Preclude the State from	
2	Introducing Portions of his Interrogation filed on 08/02/10	1152-1198
3	Notice of Motion and Motion for Leave of Court to File Motion for	
4	Rehearing – Pursuant to EDCR, Rule 2.24 filed on 08/29/14	4914-4921
5	Notice of Motion and Motion in Limine to Admit Evidence of Other Bad	
6	Acts Pursuant to NRS 48.045 and Evidence of Domestic Violence	
7	Pursuant to 48.061 filed on 01/06/11	2762-2784
8	Notice of Motion and Motion to Admit Evidence of Other Crimes filed on	
9	02/02/09	0150-0165
10	Notice of Motion and Motion to Admit Evidence of Polygraph	
11	Examination Results filed on 03/29/12	3412-3415
12	Notice of Motion and Motion to Dismiss based Upon Violation(s) of the	
13	Fifth Amendment Component of the Double Jeopardy Clause,	
14	Constitutional Collateral Estoppel and, Alternatively, Claiming Res	
15	Judicata, Enforceable by the Fourteenth Amendment Upon the States	
16	Precluding State's Theory of Prosecution by Unlawful Intentional	
17	Stabbing with Knife, the Alleged Battery Act Described in the Amended	
18	Information filed on 03/16/12	3201-3224
19	Notice of Motion and Motion to Seal Records filed on 03/22/12	3416-3429
20	Notice of Motion and Motion to Waive Filing Fees for Petition for Writ of	
21	Mandamus filed on 12/06/13	4695-4697
22	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
23	09/23/15	5517-5519
24	Notice of Motion and Motion to Withdraw as Attorney of Record filed on	
25	09/29/15	5525-5527
26	Notice of Motion filed on 01/13/14	4721
27	Notice of Motion filed on 01/21/14	4748
28	Notice of Motion filed on 01/27/14	4760
	Notice of Motion filed on 02/24/14	4810
	Notice of Motion filed on 03/04/14	4833
	Notice of Motion filed on 06/08/15	5154-5160
	Notice of Motion filed on 07/23/14	4890
	Notice of Motion filed on 08/29/14	4922
	Notice of Motion filed on 09/15/14	4953
	Notice of Witness and/or Expert Witnesses filed on 02/03/09	0166-0167
	Notice of Witnesses and/or Expert Witnesses filed on 02/17/09	0178-0179
	NV Supreme Court Clerks Certificate/ Judgment Affirmed filed on	
	02/06/15	5072-5081
	NV Supreme Court Clerks Certificate/Judgment Affirmed filed on	
	07/26/13	4653-4661
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	06/18/14	4866-4870
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	
	03/12/15	5089-5093
	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on	

1	09/28/15	5520-5524
2	NV Supreme Court Clerks Certificate/Judgment Dismissed filed on 10/29/14	5062-5066
3	O'Keefe's Reply to State's Opposition to Motion to Admit Evidence Showing I.V.M.P.D. Homicide Detectives have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/13/10	1256-1265
4	Opposition to State's Motion to Admit Evidence of Other Bad Acts filed on 02/06/09	0169-0172
5	Order Authorizing Contact Visit filed on 03/04/09	0219-0220
6	Order Authorizing Contact Visit filed on 08/12/10	1253-1254
7	Order Denying Defendant's Ex Parte Motion to Extend Prison Copywork Limit filed on 08/13/15	5486-5488
8	Order Denying Defendant's Ex-Parte Motion for Reimbursement of Incidental Costs Declaring Defendant Indigent and Granting Forma pauperis filed on 03/11/14	4840-4842
9	Order Denying Defendant's Motion for Relief From Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issues any Remand. Mandate or Remittature filed on 09/04/14	4927-4929
10	Order Denying Defendant's Motion to Dismiss filed on 04/11/12	3434-3435
11	Order Denying Defendant's Motion to Seal Records and Defendant's Motion to Admit Evidence of Polygraph Examination filed on 05/24/12	3448-3449
12	Order Denying Defendant's Petition for Writ of Mandamus or in the Alternative Writ of Coram Nobis; Order Denying Defendant's Motion to Waive Filing Fees for Petition for Writ of Mandamus; Order Denying Defendant's Motion to Appoint Counsel filed on 01/28/14	4761-4763
13	Order Denying Defendant's Pro Per Motion for Judicial Notice- The State's Failure to File and Serve Response in Opposition filed on 04/01/14	4855-4857
14	Order Denying Defendant's Pro Per Motion for Leave to File Supplemental Petition Addressing all Claims in the First Instance Required by Statute for Judicial Economy with Affidavit filed on 07/15/15	5464-5466
15	Order Denying Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 03/25/14	4852-4854
16	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 filed on 07/15/15	5461-5463
17	Order Denying Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 11/19/15	5574-5575
18	Order Denying Motion to Disqualify filed on 10/06/14	5037-5040
19	Order filed on 01/30/09	0149
20	Order filed on 11/06/10	1462-1463
21	Order for Petition for Writ of Habeas Corpus filed on 10/15/14	5051
22	Order for Production of Inmate Brian O'Keefe filed on 05/26/10	1032-1033
23	Order for Return of Fees filed on 11/10/11	3183

1	Order for Transcripts filed on 04/30/12	3442
2	Order Granting and Denying in Part Defendant's Ex-Parte Motion for Production of Documents (Specific) Papers, Pleadings, and Tangible Property of Defendant filed on 02/28/14	4818-4820
3	Order Granting Ex parte Motion for Defense Costs filed on 07/01/10	1044-1045
4	Order Granting Request for Transcripts filed on 01/20/11	2966-2967
5	Order Granting Request for Transcripts filed on 04/27/11	3043
6	Order Granting Request for Transcripts filed on 09/14/10	1430-1431
7	Order Granting Request for Transcripts filed on 09/16/10	1438-1439
8	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe for Discovery filed on 08/23/10	1394-1395
9	Order Granting, in Part, and Denying, in Part, Motion by Defendant O'Keefe to Preclude the State from Introducing at Trial Other Act or Character Evidence and Other Evidence Which is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 09/09/10	1427-1429
10	Order Granting, in Part, the State's Motion to Admit Evidence of Other Bad Acts filed on 03/13/12	3199-3200
11	Order Releasing Medical Records filed on 04/08/11	3039-3040
12	Order Requiring Material Witness to Post Bail or be Committed to Custody filed on 03/10/09	0230-0231
13	Order Shortening Time filed on 08/16/10	1283
14	Petition for a Writ of Mandamus or in the Alternative Writ of Coram Nobis filed on 12/06/13	4663-4694
15	Petition for Writ of Habeas Corpus or in the Alternative Motion to Preclude Prosecution from Seeking First Degree Murder Conviction Based Upon the Failure to Collect Evidence filed on 01/26/09	0125-0133
16	Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive 1 Based On Subject-Matter of Amended Information Vested in Ninth Circuit by notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since filed on 09/15/14	4940-4949
17	Petitioner's Supplement with Exhibit of Oral Argument Scheduled by the Ninth Circuit Court of Appeals for November 17, 2014, Courtroom #1 filed on 10/01/14	4984-4988
18	Pro Se "Reply to State's Opposition to Defendant's Pro Se Motion to Modify and/or Correct Illegal Sentence filed on 03/04/14	4821-4832
19	ProSe "Reply" to State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/24/14	4792-4799
20	Receipt of Copy filed on 01/03/11	2761
21	Receipt of Copy filed on 01/12/11	2812
22	Receipt of Copy filed on 01/12/11	2813
23	Receipt of Copy filed on 01/18/11	2876
24	Receipt of Copy filed on 01/27/09	0134
25	Receipt of Copy filed on 01/30/09	0146
26	Receipt of Copy filed on 02/06/09	0168

1	Receipt of Copy filed on 03/04/09	0221
2	Receipt of Copy filed on 03/24/09	0323
	Receipt of Copy filed on 05/24/10	1031
3	Receipt of Copy filed on 06/13/11	3163
	Receipt of Copy filed on 06/30/10	1036
4	Receipt of Copy filed on 08/02/10	1240
	Receipt of Copy filed on 08/02/10	1241
5	Receipt of Copy filed on 08/02/10	1242
	Receipt of Copy filed on 08/02/10	1243
6	Receipt of copy filed on 08/13/10	1255
7	Receipt of Copy filed on 09/14/10	1432
8	Rceipt of Copy filed on 09/17/10	1433
	Receipt of Copy filed on 09/21/10	1440
9	Receipt of File filed on 07/01/10	1046
10	Reply in Support of Supplemental Petition for Writ of Habeas Corpus (Post-Conviction) filed on 08/25/15	5500-5510
11	Reply to State's Response to Defendant's Pro Per Post-Conviction Petition for Habeas Corpus filed on 06/16/15	5423-5432
12	Reply to State's Response to Defendant's Supplemental Petition for Writ of Habeas Corpus filed on 08/24/15	5489-5499
13	Requeust for Rough Draft Transcripts filed on 10/21/15	5549-5551
14	Request for Rough Draft Transcripts filed on 07/17/12	3458-3460
	Request for Certified Transcript of Proceeding filed on 09/09/09	0772-0723
15	Request for Rough Draft Transcript filed on 05/21/09	0329-0331
16	Request for Rough Draft Transcripts filed on 11/20/12	4629-4631
	Return to Writ of Habeas Corpus filed on 01/29/09	0135-0145
17	Second Amended Information filed on 08/19/10	1326-1328
18	State's Opposition to Defendant's (Ex-Parte) "Motion for Reimbursement of Incidental Costs Subsequent the Courts Declaring Defendant Indigent and Granting Forma Pauperis" filed on 02/07/14	4768-4791
19	State's Opposition to Defendant's Motion for a Reasonable Bail filed on 09/27/10	1452-1461
20	State's Opposition to Defendant's Motion for Judicial Notice - The State's Failure to File and Serve the Response in Opposition filed on 03/10/14	4834-4839
21	State's Opposition to Defendant's Motion to Dismiss filed on 03/21/12	3407-3411
22	State's Opposition to Defendant's Motion to Preclude the State from Introducing at Trial Improper Evidence and Argument filed on 01/12/11	2814-2871
23	State's Opposition to Defendant's Motion to Seal Records filed on 04/05/12	3431-3433
24	State's Opposition to Defendant's Motion to Suppress his Statements to Police, or, Alternatively, to Preclude the State from Introducing Portions of his Interrogation filed on 08/17/10	1306-1319
25	State's Opposition to Defendant's Motion to Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be	
26		
27		
28		

1	Raised Per Statute in the First Petition Pursuant to Chapter 34 filed on 06/25/15	5442-5446
2	State's Opposition to Defendant's Pro Per Motion for Leave of Court to File Motion. . .Rule 2.4 filed on 09/12/14	4935-4939
3	State's Opposition to Defendant's Pro Per Motion to Chief Judge to Reassign Case to Jurist of Reason Based on Pending Suit Against Judge Michael Villani for Proceeding in Clear "Want of Jurisdiction" Thereby Losing Immunity. Absolutely filed on 09/12/14	4930-4934
4	State's Opposition to Defendant's Pro Per Motion to Modify and/or Correct Illegal Sentence filed on 02/24/14	4811-4817
5	State's Opposition to Motion for Evidentiary Hearing on Whether the State and CCDC have Complied with their Obligations with Respect to the Recording of a Jail Visit Between O'Keefe and State Witness Cheryl Morris filed on 08/10/10	1244-1247
6	State's Opposition to Motion to Admit Evidence Pertaining to the Alleged Victim's Mental Health Condition and History, Including Prior Suicide Attempts, Anger Outbursts, Anger Management Therapy, Self-Mutilation and Erratic Behavior filed on 08/16/10	1277-1282
7	State's Opposition to Motion to Admit Evidence Showing LVMPD Homicide Detectives Have Preserved Blood/Breath Alcohol Evidence in Another Recent Case filed on 08/10/10	1248-1252
8	State's Opposition to Motion to Dismiss and, Alternatively, to Preclude Expert and Argument Regarding Domestic Violence filed on 01/18/11	2908-2965
9	State's Opposition to Motion to Preclude Expert Testimony filed on 08/18/10	1320-1325
10	State's Response and Motion to Dismiss Defendant's Motion for Relief from Judgment Based on Lack of Jurisdiction for U.S. Court of Appeals had not Issued any Remand, Mandate or Remittature of filed on 08/07/14	4891-4902
11	State's Response and Motion to Dismiss to Defendant's Pro Per Petition for Writ of Habeas Corpus Pursuant to NRS 34.360 Exclusive based on Subject-Matter of Amended Information Vested in Ninth Circuit by Notice of Appeal Then "COA" Granted on a Double Jeopardy Violation with No Remand Issued Since (Post Conviction). Amended Petition and Accompany Exhibits, Opposition to Request for Evidentiary Hearing, and Opposition to Pro Per Motion to Appoint Counsel filed on 10/10/14	5041-5050
12	State's Response to Defendant's Motion to Preclude the State from Introducing at Trial Other Bad Acts or Character Evidence and Other Evidence that is Unfairly Prejudicial or Would Violate his Constitutional Rights filed on 08/16/10	1268-1276
13	State's Response to Defendant's Petition for a Writ of Mandamus or in the Alternative Writ of Coram and Response to Motion to Appoint Counsel filed on 12/31/13	4708-4713
14	State's Response to Defendant's Pro Per Post-Conviction Petition for Writ of Habeas Corpus filed on 06/02/15	5145-5147
15	State's Response to Defendant's Pro Per Supplemental Petition for Writ	

1	of Habeas Corpus and Evidentiary Hearing Request. "Motion for Leave to	
2	File Supplemental Petition Addressing all Claims in the First Instance	
3	Required by Statute for Judicial Economy with Affidavit," "Reply to	
4	State's Response to Defendant's Pro Per Post Conviction Petition for	
5	Habeas Corpus," and "Supplement with Notice Pursuant NRS 47.150(2);	
6	NRS 47.140(1), that the United States Supreme Court has Docketed (#14-	
7	10093) the Pretrial Habeas Corpus Matter Pursuant 28 USC 2241(c)(3)	
8	from the Mooting of Petitioner's Section 2241 Based on a Subsequent	
9	Judgment Obtained in Want of Jurisdiction While Appeal Pending" filed	
10	on 07/09/15	5455-5458
11	State's Response to Defendant's Reply in Support of Supplemental Post-	
12	Conviction Petition for Writ of Habeas Corpus filed on 09/03/15	5511-5516
13	State's Response to Defendant's Supplement to Supplemental Petition for	
14	Writ of Habeas Corpus (Post-Conviction) filed on 07/31/15	5473-5475
15	State's Supplemental Opposition to Motion to Seal Records filed on	
16	04/17/12	3436-3437
17	Stipulation and Order filed on 02/10/09	0173-0174
18	Substitution of Attorney filed on 06/29/10	1034-1035
19	Supplement to Supplemental Petition for Writ of Habeas Corpus (Post-	
20	Conviction) filed on 07/13/15	5459-5460
21	Supplement with Notice Pursuant NRS 47.150 (2); NRS 47.140 (1). That	
22	the United State's Supreme Court has Docketed (#14-10093) The Pretrial	
23	Habeas Corpus Matter Pursuant 28 U.S.C. § 2241 ©(3) From the Mooting	
24	of Petitioner's Section 2241 Based on a Subsequent Judgment Obtained in	
25	Want of Jurisdiction While Appeal Pending filed on 06/17/15	5433-5437
26	Supplemental Appendix of Exhibits to Petition for a Writ of Habeas	
27	Corpus Exhibits One (1) Through Twenty Five (25) filed on 06/12/15	5161-5363
28	Supplemental Notice of Defendant's Expert Witnesses filed on 07/29/10	1117-1151
	Supplemental Notice of Expert Witness filed on 05/17/12	3443-3447
	Supplemental Notice of Expert Witnesses filed on 01/03/11	2756-2760
	Supplemental Notice of Expert Witnesses filed on 08/13/10	1266-1267
	Supplemental Notice of Expert Witnesses filed on 08/16/10	1297-1305
	Supplemental Notice of Witnesses filed on 01/14/11	2872-2875
	Supplemental Notice of Witnesses filed on 03/10/09	0228-0229
	Supplemental Notice of Witnesses filed on 03/11/09	0237-0238
	Supplemental Petition for Writ of Habeas Corpus (Post Conviction) filed	
	on 04/08/15	5094-5144
	Supplemental Petition for Writ of Habeas Corpus filed on 06/15/15	5364-5419
	Verdict filed on 03/20/09	0289
	Verdict filed on 06/15/12	3457
	Verdict Submitted to the Jury but Returned Unsigned filed on 09/02/10	1397-1398
	Writ of Habeas Corpus filed on 01/30/09	0147-0148

TRANSCRIPTS

Document	Page No.
Transcript - All Pending Motions and Calendar Call filed on 02/04/11	2996-3038
Transcript - All Pending Motions filed on 07/10/09	0351-0355
Transcript - All Pending Motions filed on 08/30/12	3461-3482
Transcript - All Pending Motions filed on 11/23/10	1464-1468
Transcript - All Pending Motions on 07/10/09	0348-0350
Transcript - Calendar Call filed on 02/04/11	2968-2973
Transcript - Calendar Call filed on 08/30/12	3520-3535
Transcript - Continued Hearing: Motion in Limine to Present Evidence of Other Bad Acts filed on 08/30/12	3483-3509
Transcript - Defendant's Petition for Writ of Habeas Corpus (Post Conviction) filed on 10/29/15	5560-5564
Transcript - Defendant's Pro Per Motion to Dismiss Based Upon Violation(s) filed on 08/30/12	3510-3519
Transcript - Defendant's Motion to Settle Record filed on 07/10/09	0342-0345
Transcript - Entry of Plea/Trial Setting filed on 07/10/09	0356-0358
Transcript - Jury Trial - Day 1 filed on 10/14/09	0724-1022
Transcript - Jury Trial - Day 1 filed on 07/10/09	0582-0651
Transcript - Jury Trial - Day 1 filed on 07/10/09	0652-0721
Transcript - Jury Trial - Day 1 filed on 09/04/12	4278-4622
Transcript - Jury Trial - Day 1 filed on 11/23/10	1579-1602
Transcript - Jury Trial - Day 2 filed on 07/10/09	0515-0581
Transcript - Jury Trial - Day 2 filed on 11/23/10	1603-1615
Transcript - Jury Trial - Day 2 on 09/04/12	4001-4227
Transcript - Jury Trial - Day 3 filed on 07/10/09	0462-0514
Transcript - Jury Trial - Day 3 filed on 11/23/10	1616-1738
Transcript - Jury Trial - Day 3 on 09/04/12	3779-4000
Transcript - Jury Trial - Day 4 filed on 07/10/09	0408-0461
Transcript - Jury Trial - Day 4 filed on 11/23/10	1739-2032
Transcript - Jury Trial - Day 4 on 09/04/12	3600-3778
Transcript - Jury Trial - Day 5 filed on 07/10/09	0359-0407
Transcript - Jury Trial - Day 5 filed on 09/04/12	3538-3599
Transcript - Jury Trial - Day 5 filed on 11/23/10	2033-2281
Transcript - Jury Trial - Day 6 filed on 11/23/10	2282-2507
Transcript - Jury Trial - Day 7 filed on 11/23/10	2508-2681
Transcript - Jury Trial - Day 8 filed on 11/23/10	1469-1470
Transcript - Jury Trial - Day 9 filed on 11/23/10	1471-1478
Transcript - Matthew D. Carling's Motion to Withdraw as Attorney of Record for Defendant filed on 10/29/15	5557-5559
Transcript - Motions Hearing - August 17, 2010 filed on 11/23/10	1479-1499
Transcript - Motions Hearing - August 19, 2010 filed on 11/23/10	1500-1536
Transcript - Motions Hearing - August 20, 2010 filed on 11/23/10	1537-1578

1	Transcript -- Notice of Motion and Motion by Defendant O'Keefe to	
2	Preclude the State from Introducing at Trial Improper Evidence and	
3	Argument filed on 02/04/11	2974-2989
4	Transcript -- Partial Transcript of the Jury Trial - Day 2 filed on 03/18/09	0240-0244
5	Transcript -- Petrocelli Hearing filed on 05/19/11	3049-3162
6	Transcript -- Proceedings filed on 01/02/09	0028-0124
7	Transcript -- Sentencing August 16, 2012 filed on 12/03/12	4632-4635
8	Transcript -- Sentencing August 28, 2012 filed on 12/03/12	4636-4652
9	Transcript -- Sentencing filed on 07/10/09	0337-0341
10	Transcript -- Status Check: Availability of Dr. Benjamin for Trial filed on	
11	02/04/11	2990-2995

hearing resolving the dispute. see Taylor v. Madrox, 300 F.3d 992 (9th Cir. 2001)

Any unreasonable determination of the facts, then denying proffered instruction relating 14th, is ripe for review under Section 2254(d)(2).

Denial of a defense jury instruction, where the court constitutionally deprived Petitioner of the right to instructions violates a fair trial by jury under the 5th and 6th Amendments to the U.S. Constitution thereby violating ones Due process enforceable by the 14th.
see Matthews v. U.S., 495 U.S. 58 (1990).

1st Conclusion of
grand (F.) petition incorporates by reference all exhibits 1-22 attached, with all points, authorities, misapplied arguments, correct legal arguments, opinions, decisions, which are now hereby repleated in their entirety into this grand (F.).

• PRAYER

Whereby, petitioner prays
this honorable court will grant an evidentiary hearing if needed,
and appoint counsel that will assist in bringing professionally
and communicate, granting relief from this immediate action.
Constantly pointing out the law library
allows no direct access and is an inadequate system.

Concluding with this; entire action remains fixed to the very
core of the initial pretrial habeas matter filed pursuant 28 U.S.C.
§ 2241(c)(3) raising a double jeopardy claim which is now pending
Certiorari review by the U.S. Supreme Court in which petitioner
mailed his rightful attempt to be reviewed on May 20, 2015.

Ground 9
9) The district court denied petitioner his state and federal constitutional rights to present evidence concerning his defense by denying evidence within petitioner's knowledge concerning alleged victim's mental health, condition and history ongoing, including prior suicide attempt(s), anger outbursts, inter-alia, documented in EXHIBIT 22 attached, thereby violating petitioner's 5th, 14th, Amendments. see Washington v. Texas, 388 U.S. 14 (1967) see also Benton v. Maryland, supra.

The trial court denied petitioner to present his "Complete Defense" violating his constitutional rights in the "First" trial, which is the ultimate and most important time. This is based on clear common sense.

Without any evidence allowed, forced Mr. O'Keefe to take the stand.

Without this prima facie, state approved evidence, to support petitioner's testimony, with the jury being offered a variety of degrees, charged by Open malice murder, this allowed the jury to absolutely pick a higher degree of homicide.

Now, petitioner must fight from a higher degree returned. Again, common sense dictates that even though the jury returned a second-degree murder verdict, the Nevada Supreme Court reversed, saying the evidence didn't support second degree murder.

Wrongfully, the state recharged second-degree violating the 5th. The point is, if the jury would have heard this evidence, POINTING OUT petitioner had a right then, for the jury to hear, this ultimate Complete Defense, could have acquitted or should have been an involuntary manslaughter conviction at most.

In Conclusion, when a person is charged with a crime, wrongfully or not, the U.S. Constitution and Nevada's own constitution allow one to have a fair trial.

All petitioner wanted was the joy to hear the WHOLE story in the first instance with professional attorneys.

STATE again got it both ways.

First, got to wrongfully charge me with OPEN murder.
Second, got to deny my right to defend with verified evidence.

Preclusion of this evidence also violated petitioner's statutory rights NRS 48.045(1)(b); NRS 48.055(1). These statutes require that an accused, who claims an accident in self defense, be permitted to present evidence of the character of an alleged victim when it tends to prove the (alleged) victim was the likely aggressor. See Petty v. State, 116 Nev. 321, 326-27, 997 P.2d 800, 802-03 (2000).

Denial of this crucial, ultimate, evidence denied Mr. C. Kute of his right to a fair trial, in the very first instance, thereby violating petitioner's due process and equal protection under the 5th, 14th.

• DENIAL

Petitioner hereby incorporates by reference all exhibits 1-22 attached, with all points, authorities, legal arguments which are now hereby repleaded in their entirety into this ground (g.) thereby be granted a evidentiary hearing and appointment of counsel and being granted complete habeas relief from this immediate detain in the end.

Ground B

h.) The Court violated Petitioners due process and equal protection rights under the 14th U.S. Amendment by allowing barred and illegal evidence of battery domestic violence misdemeanor third offense.

see Chambers v. Mississippi 410 U.S. 284; see Benton v. Maryland, supra
see NRS 32-095; Fed. Rule of Evidence 609(2)

The trial court allowed the state to present evidence in its "case-in-chief" that was barred for multiple reasons. One is this evidence was a third misdemeanor battery domestic violence that was "only" ~~enhanced~~ enhanced to a felony for punishment or sentencing purposes. This is against NRS 32-095 which mandates only true felonies can be used. This also violates Federal Rule of Evidence 609(2).

Second, the trial court allowed evidence that was not only "not charged" in the intended information as evidence, the mention of any felony battery was decided, barred by issue preclusion on first direct appeal. The court on direct appeal stated and re battery was alleged in the first instance.

Presentation of this battery was even ordered not to utilized but somehow became allowed even though simultaneously subject-matter jurisdiction was held by the 9th Circuit in case no. 12-15271.

Therefore, allowing a rehashing of evidence is illegal. This same evidence was part of the evidence deemed not sufficient to prove the state's second-degree felony set murder theory in S.I. No. 18(2). (exhibit 1)

Prior evidence of other crimes is not welcomed in Nevada as is elsewhere.

Therefore petitioner points out this was another cumulative error that wrongfully painted an improper picture.

Painting
out the state created the same scenario that was found
upon by the Nevada Supreme Court using evidence not
noticed.

Furthermore, petitioner had a standing objection
entered by Judge concerning the trial and all evidence.

The state brought in the police to give testimony
concerning a true misdemeanor event. This was wrong.

Thereby, the Court's order allowing case C207835 was
a violation of the rules and violated petitioner's due process
rights under the 8th, 6th and 14th Amendments to the U.S.
Constitution.

• Prayer

Petitioner incorporates
all prior grounds and by reference incorporates all exhibits 1-22
attached and thereby repeats all arguments, authorities and
points written into this ground (1) requesting the relief
entitled to under this immediate action. Petitioner also
prays an evidentiary hearing will be granted with appointment
of counsel who will communicate and not waste any ground
raised.

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//
//

(Ground 9) • The trial court provided only a "general intent instruction" and:
i.) The trial court failed to instruct on the essential element of the crime, "KNOWLEDGE" which is Constitutionally required. This violated defendant's due process pursuant the 5th and 14th Amendments of the U.S. Constitution and Nevada's Constitution. see Arthur Andersen LLP v. United States, 544 U.S. 696 (2005); see also Sandstrom v. Montana, 442 U.S. 510, 523-24, (holding that a jury instruction that relieved the state of its burden to prove the element of intent was unconstitutional.) see also Ho v. Cary, 332 F.3d 507

• The court is to provide complete jury instructions providing all the essential elements of an offense. Anything less is a "fundamental error," see United States v. King, 521 F.2d 61, 63 which cannot be cured by reference to the indictment [amended-information] or by reading the unexplained language of the statute, NRS 200.020(2), to the jury. see Collman v. State, 111 Nev. 687, 712-13, 716 (2000)

Even if the court adequately instructs on most of the elements of the crime, it "must" instruct on the ultimate, essential elements of the crime.

• see In re Winship v. U.S., 397 U.S. 358, 364

Mr. O'Keefe objected heavily to the "second" retrial again, a claimed no judicata form of jeopardy on the same statutory offense (57C.6.12) Petitioner also was provided a continuing objection to the entire trial proceedings with the court noting this in the court minutes preserving claim.

However, since the state ran roughshod overriding the protection afforded by the 5th and 14th Amendments and proceeded on the same offense, Mr. O'Keefe, only after being denied a stay, demanded the state provide the complete necessary instruction which all the essential elements that they are required to prove by law. The state convinced the court to commit a fundamental constitutional, - 14 - error!

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The truth being is that the state already gave the correct law on knowledge in the first trial J.I. No. 18(2) and are legally barred in giving it. (Exhibit 6, no. 18)

(mens rea -)

• First trial, J.I. 18(2) read:

2) "... which act is intentionally performed by a person who "KNOWS" that his conduct endangers the life of another, even though the person has not specifically formed an intention to kill.

• (see STAN, III S.Ct 2506) (malice shorthand consists of knowledge that an act... caused death.)

The law-of-the-first-trial was pronounced (Exhibit 1) that the state failed to prove this. Yet they proceeded, against objection, without providing this crucial element to the jury.

• Manifesting

the 3rd trial basic J.I.'s Nos. 1, 2, 3, 4, 5, 6, 7, 18 (Exhibit 23) with the jury verdict will reveal some constitutional errors.

First, state replaced all court personnel, the last day when verdict was returned. This was to prevent involving anyone person who actually participated in the first trial, under case C250630, when that verdict was returned on second degree murder, 3-22-89.

Replaced the prosecutors, Judge, judicial assistant, court reporter, bailiff.

Second, the state files the law of the case again under an erroneous case number preventing attending the original law of the case under the correct case number. Used wrong case number (250360). (Correct case number is C250630). The verdict also filed under wrong case number. (Exhibit 24) (Verdict form)

Third, state provided only a general intent instruction for second-degree implied malice. (Exhibit 24) (J.I. 18) Superimposing the two jury instructions, number 18, from first to third trial also shows

that the state properly, first trial S.I. #18, instructed on implied malice and that the third trial instructions are lacking proper definition of elements to be proven. The state gives no theory on second degree murder implied malice period. Actually, they cannot! There barred. see (exhibit 15, pg 57)

14. Conclusion, ground (2), the failure of the trial court to properly instruct the jury in this implied malice murder charge, resulted in a conviction based on a "fundamental error" which must be reversed. This is a complete Constitutional Due Process error in violation of the 5th and 14th U.S. Amendments. Additionally, the 9th Circuit ruled in He v. Grey, 332 F.3d 587, 592 (9th Cir. 2003)

(1) Jury instruction, omitting element of petitioner's specific "KNOWLEDGE" that act threatened life and his conscious disregard of such threat, violated due process. (see exhibit 23, S.I. 18)

• PRAYER

Petitioner incorporates all prior grounds a.)-h.) into this ground i.), including all exhibits one(1)- to twenty (24) which are hereby incorporated by reference and repleaded in their entirety including all argument, authorities, inter alia, thereby requesting relief, reversal, entitled by this immediate action, including any evidentiary hearing, if required and appointment of counsel to assist professionally and communicate.

Highlighting this entire petition relates back to the original pretrial habeas corpus petition filed pursuant to 2241 which is now seeking Certiorari review by the U.S. Supreme Court. Mailed 5-28-15 (HARRIS over to law library supervisor)

Ground 10

J) Appellate counsel was ineffective for failing to provide the Appellate Court with Jury Instructions, filed under wrong case number, resulting in appellate court's inability to reach merits of district court's omission of a jury instruction providing the essential element of "Knowledge". This violated petitioner's right to counsel pursuant the 6th and 14th Amendments of the U.S. Constitution thereby violating Petitioner's Constitutional Due Process and Equal Protection under 5th 14th.

• see Strickland v. Washington, supra; see also Sandstrom v. Montana, supra

Court appointed counsel failed to provide jury instructions and raise correct arguments. Strickland's two prong test, adopted by Nevada, is satisfied by first prong #1) failing to provide essential portion of record supporting issue(s) raised. see Thurston v. State, 120 Nev. 37, 43 n.4, 83 P.3d 816 (2002) quoting NRSAP 30(6)(3); see also Greene v. State, 91 Nev. 555, 558, 612 P.2d 686, 688 (1980) ("The burden to make a proper record (appellate) rests on appellant.") The requirement of prong 1) is satisfied by counsel's subpar representation in failing to provide proper record for appellate court review, which resulted in the appellate court's inability to render a meritorious decision.

This cause arose by an external force which thereby violated petitioner in having a proper direct review years ago, Fin. Stat! Prong #2) is already satisfied on its face. The instructions now provided (exhibit 23) manifest the court instructed the jury in alleviating the state in proving the correct elements of the alleged crime. This allowed the jury no proper instructions defining the elements. This also allowed instructions to be given that were barred. Anything to do with malice aforethought, implied malice, and abandoned and malignant heart were barred by law of case. Moreover, the state provided only a general intent for second degree implied malice murder.

The Nevada Supreme Court's ORDER of AFFIRMANCE (exhibit 14)
(page 3 bottom to top of page 4) (O'Keefe does not identify which
instructions he contends were erroneously given.)

These two are identical

as Nos 3, 4, 5, 6, 18.

The challenge to the instructions and omission had high reasonable probability by jurists of
reason. In fact, it's legally absolute in being correct,
not just a high probability. A different outcome, Reversal,
would have rightfully already been pronounced, VERDICT 1600

A effective meaningful direct appeal was not filed thereby not heard.
IN Conclusion, petitioner hereby incorporates by reference all
prior grounds (i.) to (ii.) and all exhibits attached, 1-24
and thereby repleaded in their entirety including all authorities,
arguments, inter alia.

• PRAYER

Petitioner prays this Court
will grant him relief entitled by this immediate action including
any evidentiary hearing and appointment of counsel to professionally
assist and communicate.

Repeating, this action is tied
to the very core of the still pending 28 C.J.R. § 2241(C)(3)
now on Certiorari review to the U.S. Supreme Court,
which was marked 5-28-15.

Ground II

k.) Appellate counsel failed to present all "collateral estoppel claims" raised in petitioner's motion to the appellate court on direct appeal. This violates petitioner's right to counsel as guaranteed by the 6 and 14 U.S. Amendments to the Constitution - see Strickland v. Washington, supra. Petitioner's dbl. jeopardy rights and due process with equal protection were thereby violated. see Yeager v. U.S., 129 S.Ct. 2310 (2009)

Petitioner had filed a pro se Motion to Dismiss based on Collateral Estoppel... Enforceable by the 14th U.S. Amendment, inter alia. This motion was filed on 3-13-2012 and heard on 3-29-2012 with the trial court denying on the merits.
see (exhibit 25) (Pro se Motion to Dismiss)

This motion was part of the trial court record, which was therefore ripe for review, upon conviction with direct appeal filed by way of the Fast Track Statement.

Counsel appointed raised the "same offense" doctrine of the Double Jeopardy Clause, only.

Clearly, failure to raise, meets Strickland's prong.
Failure to raise, caused by an external factor, is below an acceptable standard of performance by an attorney set by Strickland.

Here, had attorney presented, this specific operative doctrine of double jeopardy, would have made the appellate court more aware of the alleged unlawful act as battery, being NES 200.020, harmonious with molester, NES 200.020, see Barton v. State, supra; see also CRAWFORD, supra; EMPHASIS SEE CRAWFORD, 112 Nev. 1502, 914 P.2d 1340 (NES 200.020 and NES 200.020 are harmonious; unlawful act, implied motive)

The state's charging document was a constitutionally sound document that the state is held to. Malice "Open" murder by this actus reus is undisputed and binding. The various means was sought by state as implied malice, mans rea, by the abandoned and malignant heart.

Failure to present this claim denied an entitled review by direct appeal causing great prejudice to petitioner. Petitioner raised his collateral estoppel and due process affected by Benton v. Maryland, supra entered by the U.S. 14th Constitution Amendment without, purposely, being raised for review. This claim was a viable valid claim.

IN (Conclusion of this grand K.) petitioner incorporates all prior grounds a.) to j.) into this ground and interprets by reference all exhibits attached, 1-28, emphasis on exhibit 25, thereby and hereby repeated all argument in its entirety into this ground.

Prayer

Petitioner prays this court will grant him relief entitled by this immediate action and grant an evidentiary hearing, to meet and appoint counsel who will zealously argue and communicate with petitioner and develop claim.

Once again, pointing out this (Claim K. absolutely, is tied to the very core of petitioner's pretrial habeas corpus petition filed under § 2241 (c)(3) which is still pending Certiorari review, petition mailed 5-28-15.

1.) Appellate counsel on first direct appeal failed to raise claims of constitutional magnitude concerning specific discovery request and destroying blood/breath travel and that J.T. 18 (2) was nothing more than the single concept of implied malice. This violated my right to effective counsel pursuant to the 6th and 14th Amendments of the U.S. Constitutional provisions. This violated my 5th, 14th due process by cumulative error. see Chambers v. Mississippi, 401 U.S. 274 (1971)

see Strickland v. Washington, 466 U.S. 668 (1984)

Petitioner asserts that on first direct appeal appellate counsel appointed failed to raise compelling violations addressed by trial counsel, and placed in the record of the trial. Three(3) examples are as follows:

- 1.) Police committed perjury in denying existence of use of force form.
- 2.) Police destroyed exculpatory evidence, blood/breath travel.
- 3.) Improperly argued that in any event, felony, argument, murder or malice murder, J.T. 18 (2) argument failed to explain it was nothing more than the single concept of malice and that regardless, felony murder and malice murder equal out, one crime.

• Pursuant #2, appellate attorney only addressed in Exhibit 16 pg 4, lines 17-20 statement of facts.

• Pursuant #1, trial attorney Motioned for Dismissal based on specific discovery request and Brady violation, but appellate counsel fails to even comment. (ORAL Motion 3-19-2019) (ms Palm)

• Pursuant #3, attorney raises extensively in issue "B" of F.T.S.!

However, attorney completely fails to bring out that J.I. 18(2) is really nothing more than the factors amounting to notice, implied, and that NRS 200.020 defines implied, NRS 200.070 and 200.010 are harmonious in cases where the act tends to destroy and is dangerous.

Petitioner asserts that failure to raise these claims violated his due process and amount to additional cumulative effect prejudicing petitioner.

This is a classic example of an attorney needed to properly break down and develop said claims 1, 2, 3.

In conclusion, petitioner raises again that he request an attorney, based on the no physical access to law library, with no trained staff. The U.S. District Court ruled in Koerschner v. Warden, N.S.P., etd. 567 F. Supp. 2d 849 (D. Nev. 2007) that a segregation unit deemed having a law library system, like, considered insufficient is grounds for appointment of counsel.

Concluding this ground (I.), petitioner incorporates all grounds 2.) to K.), by reference and also incorporates all exhibits 1-25, by reference and hereby repeats all argument, authorities, inter-alia into ground (I.)

• Prayer

Petitioner prays this Honorable Court will grant relief by way of an evidentiary hearing and appointment counsel in pursuit of ultimate relief by way of this immediate petition.

This petition relates back to case petition filed under 28 U.S.C. § 2241. (Exhibit 12)

Ground B

- m.) The U.S. Court appointed attorney, on direct appeal, was ineffective in presenting, jurisdiction claim, pursue stay denial to U.S. Supreme, and expand on CofA with uncertified issues offering I.A.C. claim of court appointed attorney not raising all doctrines and operative facts of the double jeopardy violation in the first instance considering state appointed attorney filed a Motion on Double Jeopardy excluding proper operative facts. This violated Petitioner's right to counsel as guaranteed by the 6th and 14th U.S. Amendments. • see Strickland v. Washington, supra; • see Martinez v. Ryan 132 S.Ct. 1309 (2012) thereby violating petitioner's due process and equal protection pursuant the 5th, 6th, 14th Amendments.

Petitioner asserts that counsel committed several errors that ultimately had no effect to any, arguable, exhaustion requirement under 28 U.S.C. § 2241(c)(3).

Again, three (3) constitutional errors manifest themselves with said counsel, appointed by the express direction of the 9th Circuit Court of Appeals.

These claims clearly meet both prongs of Strickland. Failure to #1.) Challenge summary denial of stay by way of direct review to the U.S. Supreme Court;

- #2.) Failed to expand CofA with uncertified issues manifesting there the cause to any exhaustion was at the hands of another prior state court appointed attorney. This attorney filed a double jeopardy motion to dismiss, but filed on the wrong operative facts;

#3.) Failed to challenge the State trial Court in jurisdiction being automatically diverted by colorable double jeopardy claim supported by U.S. District Judge Navarro, when petitioner filed his Notice of Appeal alone.

Petitioner again expresses para #2.) of stockland is not prejudiced by the state court proceeding in absent of jurisdiction while appeal was and is still pending.

Concluding, grand m.) speaks for itself State Courts are charged with protecting petitioner's U.S. Constitutional rights first. This was not done when competency was ignored.

• See Cook v. Hart, 146 U.S. 183 (charged... protect... constitutional rights).

• PRAYER

Petitioner now incorporates by reference all prior grounds 2.) through 2.), plus original grand filed on Sept 15, 2014, amended petition filed 10/20/14, all exhibits attached 1-25 hereby now being repleaded in their entirety to this grand 2.)

Petitioner humbly prays this honorable court will grant relief by way of this immediate state petition and grant an evidentiary hearing, appoint attorney to help develop this grand ultimately granting petitioner relief by way of reversal with prejudice or second-degree INFLUENCE MAJOR MURDER.

ALAN and FRANK, this grand and actually, entire petition relate back to the very CORE of their initial habeas relief sought on Dec. 29, 2011. See (exhibit 12 & 13)

(See EXHIBITS 5:13)

- 18 (2) -

Sir, Respectfully Submitted
6-7-2015 - R. K. K. 103415

1 See all grounds 1 through 13 also identified as such; e.g.
2 Ground 1 (a); Ground 2 (b); Ground 3 (c); ... to Ground 13 (m).
3
4

5 (c) Ground three: _____
6

7 Supporting FACTS (Tell your story briefly without
8 citing cases or law.):
9
10
11
12
13

14 (d) Ground four: _____
15

16 Supporting FACTS (Tell your story briefly without
17 citing cases or law.):
18
19
20
21

22 WHEREFORE, petitioner prays that the court grant petitioner
23 relief to which he may be entitled in this proceeding.

24 EXECUTED at Lovelock Correctional Center on the 9th day of
25 the month of June of the year 2015.

26 *Brian K. O'Keefe*
27 *Brian K. O'Keefe* # 90244
28 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

Brian K. O'Keefe
Brian K. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, Brian K. O'Keefe, hereby certify, pursuant to N.R.C.P. 5(b), that on this 9th day of the month of June of the year 2015, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Bass Slip No. 1957840
Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada

Stephen Borjesson
Clerk of Court
200 Lewis Ave. 3rd Floor
Las Vegas, Nevada 89101

Catherine Cortez Masto
Nevada Attorney General
100 No. Carson Street
Carson City, Nevada

N.R.C.P. 5(b) All registered parties of the appellate electronic filing system will be served by the clerk using that perspective system.

David Roger
Clark County District Attorney
P.O. Box 552211
Las Vegas, Nevada 89155-2211

Brian K. O'Keefe
Brian K. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

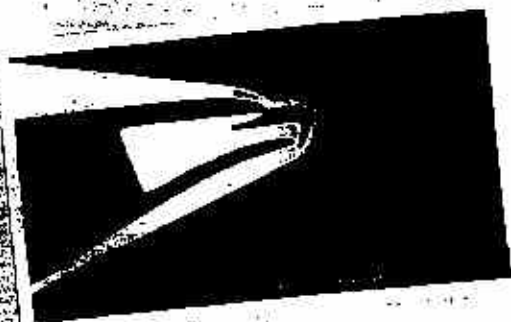
Petitioner In Pro Se

AFFIRMATION

This supplement contains no social security number of a person.

Pursuant NRS 239 B. 030

Brian K. O'Keefe
90244



Brass Slip No. 1957840

Steven Brisson, Chief of the Coast
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155-1160
CONFIDENTIAL

John L. Blum
CLERK OF THE COURT

DA
PP
MC
ADR

Math
Carling

1 MTN
2 Brian O'Keefe # 90244
3 Lovelock Correctional Center
4 1200 Prison Road
5 Lovelock, Nevada 89419
6
7 Petitioner In Pro Se

8 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CLARK

10 Brian KERRY O'Keefe

11 Petitioner

12 -vs-

13 STATE OF NEVADA, et al.

14 Respondent

Case No. 080250630

Dept. No. XVII

Affidavit enclosed, (i)
Hearing 7/10/15
2:30 AM

MOTION FOR LEAVE TO FILE SUPPLEMENTAL
PETITION ADDRESSING ALL CLAIMS IN
THE FIRST INSTANCE PERMITTED BY
STATUTE FOR JUDICIAL ECONOMY
WITH AFFIDAVIT.

15 Comes Now Petitioner, Brian O'Keefe, in pro se, and submits
16 his Motion for Leave to File Supplemental Petition for Writ of Habeas
17 Corpus. This Motion is made and based upon all pleadings
18 and documents of file herein and the following points and authorities.
19 Supplement following this motion.

20 • Points and Authorities

21 NReap 15(d) allows and would be harmonious with dismissal of
22 Counsel. Petitioner has constructed his supplemental petition following
23 Complete, adding all grounds for adjudication in the first instance.
24 Counsel appointed failed to raise said claims.

25 June 7, 2015

By: Brian K. O'Keefe
Brian K. O'Keefe 005420

RECEIVED
JUN 15 2015

RECEIVED
JUN 12 2015

CLERK OF THE COURT

CLERK OF THE COURT

AFFIDAVIT OF Brian O'Keefe

STATE OF NEVADA

COUNTY OF Terlingua

SS:

I, Brian K. O'Keefe, the undersigned, do hereby swear that all the following statements are true and correct, to the best of my own knowledge and of my own volition.

1. My name is Brian O'Keefe.

2. I am over 18 years of age, I reside at Lovelock Correctional Center, 1200 Prison Road, Lovelock, Nevada 89419. I am fully competent to make this affidavit and I have personal knowledge of the facts stated herein.

3. Counsel appointed by court failed to file rightful claims.

4. Petitioner wrote multiple letters, demanding same, suggesting others.

5. Counsel responded denying and suggested I move to dismiss him.

6. Constitutional errors, due process, equal protection, trial court error and B.A.C. claims were constructed and attached in supplemental petition.

7. Counsel would not pick up the phone to communicate with attorney filing a fugitive supplemental petition telling an untruth that he was filing said claim, at my express direction in which I assert is not true.

I declare under penalty of perjury that the foregoing is true and correct, and that this document is executed without benefit of a notary pursuant to NRS 208.165 and/or 28 U.S.C.A § 1746 as I am a prisoner to state custody.

Dated this 17th day of June, 2013

Brian K. O'Keefe

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR LEAVE TO FILE SUPPLEMENTAL ... ECONOMY to the below address(es) on this 7th day of JUNE, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b): Pass Slip No. 1957840

Brian L. O'Kub
Brian O'Kub # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 219B.030

The undersigned does hereby affirm that the preceding MOTION FOR LEAVE ... ECONOMY filed in District Court Case No. 08 0250630 does not contain the social security number of any person.

Dated this 7th day of June, 2015.

Brian L. O'Kub # 90244
Brian L. O'Kub
Petitioner In Pro Se

005422

DA
PP

Electronically Filed
06/16/2015 04:41:12 PM

9

RPLY
Brian Kerry O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Allen L. Johnson
CLERK OF THE COURT

Petitioner In Pro Se

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

Brian Kerry O'Keefe

Petitioner

Case No. 08 CR50630

Dept. No. XVII

WARDEN ROBERT LeGRAND, et al.

Respondent

SEE (2) EXHIBITS (SUPREME COURT U.S. LETTER
(TOTAL 4 PGS.) AND N.S.C. Docket #6131)

REPLY TO STATE'S RESPONSE TO DEFENDANT'S
PRO PER PET CONVICTION PETITION
FOR HABEAS CORPUS

Comes Now, Brian O'Keefe in proper person, to submit to
this honorable court his reply justifying the filing date.

This reply is made and based with the now attached
exhibits, all prior papers and pleadings on file herein, the
attached points and authorities in support thereof and oral
argument at the hearing scheduled July 10, 2015.

Dated June 9, 2015.

By: Brian O'Keefe - 90244
Brian L. O'Keefe

RECEIVED

JUN 16 2015

CLERK OF THE COURT

LCC 11 FORM 24.014

CLERK OF THE COURT

JUN 15 2015

RECEIVED

0054230

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

June 5, 2015

Scott S. Harris
Clerk of the Court
(202) 479-3011

Mr. Brian K. O'Keefe
Prisoner ID #90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

Re: Brian Kerry O'Keefe
v. Joseph Lombardo, Sheriff, Las Vegas Metropolitan Police
Department, et al.
No. 14-10093

Dear Mr. O'Keefe:

The petition for a writ of certiorari in the above entitled case was filed on May 29, 2015 and placed on the docket June 5, 2015 as No. 14-10093.

A form is enclosed for notifying opposing counsel that the case was docketed.

*see Service
by Rule 29*

Sincerely,

Scott S. Harris, Clerk

by



Andrew Downs
Case Analyst

Enclosures

005424

Nevada Supreme Court Docket Sheet

Docket: 61631 O'KEEFE (BRIAN) VS. STATE

Page 1

BRIAN KERRY O'KEEFE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 61631

Consolidated with:

Counsel

Bellon & Maningo, Ltd., Las Vegas, NV \ Lance A. Maningo, as counsel for Appellant, Brian Kerry O'Keefe

Attorney General/Carson City, Carson City, NV \ Catherine Cortez Masto, as counsel for Respondent, The State of Nevada

Clark County District Attorney, Las Vegas, NV \ Steven S. Owens, as counsel for Respondent, The State of Nevada

Case Information

Panel: NNP13

Panel Members: Hardesty/Parraguirre/Cherry

Disqualifications:

Case Status: Remittitur Issued/Case Closed

Category: Criminal Appeal

Type: Fast Track

Subtype: Direct

Submitted:

Date Submitted:

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Supreme Court Cases: 53859, 58109, 65217, 65436, 66416, 66958

District Court Case Information

Case Number: C250830

Case Title: STATE VS. BRIAN K. O'KEEFE

Judicial District: Eighth

Division:

County: Clark Co.

Sitting Judge: Michael Villani

Replaced By:

Notice of Appeal Filed: 08/31/12 Appeal
09/13/12 Appeal

Judgment Appealed From Filed: 09/05/12

Docket Entries

Date	Docket Entries	
09/05/12	Appeal Filing fee waived. Criminal.	
09/05/12	Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.	12-28000
09/18/12	Filed Notice of Appeal/Fast Track. Filed certified copy of notice of appeal. (Fast Track Notice issued to counsel for appellant.) (Second NOA).	12-29532
09/18/12	Issued Notice to Request Rough Draft Transcripts. Due date: 10 days.	12-29534
09/19/12	Received Proper Person Notice of Change of Address.	12-29623

Tuesday, December 02, 2014 03:45 PM

005425

Nevada Supreme Court Docket Sheet

Docket: 61631 O'KEEFE (BRIAN) VS. STATE

Page 2

09/28/12	Filed Request for Rough Draft Transcript(s). Transcripts requested: 12/16/11, 2/17/12, 3/29/12, 6/05/12, 8/11/12, 6/12/12, 8/13/12, 8/14/12 & 6/15/12. Court Reporter: Michelle Ramsay. Filed in district court on: 7/17/12.	12-30817
11/01/12	Filed Order Granting Telephonic Extension. Fast track statement and appendix due November 5, 2012.	12-34489
11/01/12	Issued Notice of Deficient Fast Track Statement and Certificate of Compliance. Corrected Fast Track Statement and Certificate of Compliance due: 10 days.	12-34493
11/01/12	Filed Appendix to Fast Track Statement Vols 1 thru 5 with CD-ROM included.	12-34501
11/02/12	Filed Amended Fast Track Statement.	12-34658
11/26/12	Filed Fast Track Response.	12-37196
12/07/12	Filed Notice from Court Reporter Michelle L. Ramsey stating that the requested transcripts were delivered. Dates of transcripts: 8/16/12 and 8/28/12.	12-38557
12/11/12	Filed Reply to Fast Track Response.	12-38852
12/11/12	Filed Appellant's Supplemental Appendix.	12-38855
12/11/12	Fast Track Briefing Completed.	
04/10/13	Filed Order of Affirmance. "ORDER the judgment of conviction AFFIRMED." NNP13-JH/RP/MC	13-10505
04/26/13	Filed Appellant's Petition for Rehearing.	13-12342
04/26/13	Rehearing Filing fee waived.	
06/13/13	Filed Order Denying Rehearing. "Rehearing Denied." NRAP 40(c).	13-17458
06/25/13	Received Proper Person Motion (Notice and Motion to Withdraw and Substitute Counsel). (FILED PER ORDER OF 6/28/13).	13-18718
06/25/13	Received Proper Person Motion (Notice of and Leave to Appear and File Motions). Motion for Reconsideration. En Banc attached. (FILED PER ORDER OF 6/28/13).	13-18717
06/28/13	Filed Order Denying Motions. The clerk of this court shall file the proper person documents received on Jun 25, 2013. We decline to grant appellant permission to file documents in proper person. Therefore, we deny the motions. No action will be taken on the proper person petition for en banc reconsideration attached to the motion to file documents in proper person. Appellant's counsel shall have 10 days from the date of this order to file a petition for en banc reconsideration, if deemed warranted.	13-19063
06/28/13	Filed Proper Person Motion. Notice and Motion to Withdraw and Substitute Counsel.	13-18716
06/28/13	Filed Proper Person Motion. (Notice of and Leave to Appear and File Motions). Motion for Reconsideration En Banc attached.	13-18717
07/08/13	Received Proper Person Letter. Letter informing the court that appellant will be sending his judicial notice.	13-19744
07/12/13	Received Proper Person Motion to Stay Mandate in the S.C.N., Pending Appellate's Petition for Certiorari to the United States Supreme Court. (RETURNED, UNFILED, PER ORDER OF 7/16/13).	
07/16/13	Filed Order. Appellant has submitted a proper person motion to stay the remittitur pending his petition for a writ of certiorari to the United States Supreme Court. The clerk of this court shall return, unfiled, the proper person motion received on July 12, 2013. Appellant shall proceed by and through his counsel of record.	13-20758
07/23/13	Issued Remittitur.	13-21571
07/23/13	Remittitur Issued/Case Closed	

Tuesday, December 02, 2014 03:45 PM

005426

Nevada Supreme Court Docket Sheet

Docket: 61631 O'KEEFE (BRIAN) VS. STATE

Page 3

08/01/13	Filed Motion To Withdraw as Counsel.	13-22673
08/02/13	Filed Remittitur. Received by District Court Clerk on July 26, 2013.	13-21571
08/05/13	Filed Order. On August 1, 2013, appellant's counsel filed a motion to withdraw as counsel in this appeal. Because appellant's counsel has fulfilled his obligations in this appeal and nothing remains pending in this court, no action will be taken on the motion.	13-22844
09/04/13	Filed Notice from US Supreme Court/Certiorari Filed. A petition for a writ of certiorari was filed 8/19/13 and placed on the docket as Case No. 13-6031.	13-26049

Tuesday, December 02, 2014 03:45 PM

005427

STATEMENT - POINTS AND AUTHORITIES

Directly attacking the state's untimely argument, petitioner submits the Court issued the PPNV (ORDER), Filed October 15, 2014, 2:20 PM ordering the state to respond to Mr. O'Keefe's initial, "want of jurisdiction" claim.

Moreover, enclosed is the Nevada Supreme Court Docket sheet, No. 60601 which pertains to this instant action. (This is the 3rd trial direct appeal.) (Case 0250630)

• The state fails to mention that because of Ineffective Assistance of Counsel, as the cause, petitioner did all he could to get the N.S.C. to hold off the remittitur.

6/25/13 • (See) docket entries 13-18716 (PROPER PERSON MOTION - NOTICE TO WITHDRAW COUNSEL, dated 06/25/13.) 13-18716 and 18717

6/25/13 • PROPER PERSON MOTION NOTICE AND LEAVE TO APPEAR AND FILE MOTIONS 13-18717

6/26/13 • (See) NOTICE AND MOTION TO WITHDRAW AND SUBSTITUTE COUNSEL.

6/26/13 • ANOTHER MOTION FOR LEAVE TO FILE MOTIONS.

7/16/13 • PROPER PERSON MOTION TO STAY REMITTITUR PENDING CERTIORARI

REVIEW TO THE UNITED STATES SUPREME COURT. 13-20758

07/04/13 • NOTICE FILED "FROM" UNITED STATES SUPREME COURT that Certiorari Filed. Filed 8/19/13 as U.S. Case No. 13-6031 (Docket entry 13-20049. See DOCKET ATTACHED - 3 pages.)

IS NOT DIRECT APPEAL TO THE U.S. SUPREME COURT STILL PART OF THE DIRECT APPEAL, GUARANTEED BY LAW, PROCESS?

U.S. Certiorari review ~~was~~ not denied until October 13, 2013.

Now, to add insult to the young district attorney at hand, Mr. O'Keefe's "pretrial" section 2241 involving the right to even go to the third trial, which the state clearly did in want of jurisdiction, has just been again docketed in the United States Supreme Court as of June 5, 2015.

● Possibly a wrong case number¹ but still filed on May 29, 2015 and docketed on June 5, 2015 as U.S. Case No. 14-10093.

● See enclosed letter from Clerk of U.S. SUPREME COURT DATED June 5, 2015 enclosed.

SIMPLY,
direct appeal has not even concluded from the initial petition FILED PRECEDING the third trial.

Nothing additionally in the conclusion the state repeats his request for evidentiary hearing and appointment of counsel be denied. He must not realize, we are past that stage.

IF the Court, State and all cannot be reasonable and admit I have tried to do everything using more than due diligence to get this matter resolved, then there is no justice.

MY CASE was caused by attorneys in the first instance.

Concluding, the court should appoint new counsel to address all issues in the just mailed pro se supplemental.

(Encl: Mr. O'Keefe has written U.S. SUPREME COURT CLERK ADDRESSING IT AS Year-Writing) - 3 -

005429

Argument - Jurisdiction

The state fails to address the jurisdictional claim of federal constitutional magnitude in the first instance.

The law provides that this is to be construed as an omission of error.

Mr. O'Keefe's due process and equal protection of the law pursuant the 5th and 14th Amendment of the U.S. Constitution was violated by the mere proceeding while colorable double jeopardy claim was pending appeal.

The law says the timely filing of a Notice of Appeal from a colorable double jeopardy claim without Judge's certification claim is to involve substantially diverse jurisdiction of the subject matter.

Conclusion

Request this Honorable Court, stop up and be exactly that, "A JURY OF REASON" and allow my supplement and if needed then appoint counsel to communicate and professionally brief, typed nicely for your honor.

Yours sincerely, Respectfully
Be L O'Keefe 90000

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Reply - - - Coenst to the below address(es) on this 9th day of June, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCF 5(b): PEASE SLIP No.

NOTE TO CLERK: All registered parties of the appellate electronic filing system, CM/ECF, will be served by the clerk using that perspective system.

B. L. O'Keefe
Brian O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Reply - - - Coenst filed in District Court Case No. 080250630 does not contain the social security number of any person.

Dated this 9th day of June, 2015.

B. L. O'Keefe
In Pro Se

NOT NEW COUNTRY

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DA

SUPP
Brian Barry O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Alvin L. Johnson
CLERK OF THE COURT

Petitioner In Pro Se

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

Brian Barry O'Keefe
Petitioner
-vs-
STATE OF NEVADA, et al.
Respondent

Case No. CB 0250630
Dept. No. XVII

see two (2) Exhibits Notes and Writing
attached.

SUPPLEMENT WITH NOTICE PURSUANT
NRS 47.150(2); NRS 47.140(1), THAT THE
UNITED STATES SUPREME COURT HAS BOOKED (# 14-10093)
THE PETITION. HADEN (CIVIL MATTER) PRESENTLY
28 U.S.C. § 2241 (c)(3) FROM THE MOTION
OF PETITIONER'S SECTION 2241 BASED ON A
SUBSEQUENT JUDGMENT OBTAINED IN
WANT OF JUDGMENT WHILE APPEAL PENDING.

COMES NOW, Brian O'Keefe, petitioner pro-se, do humbly
mandate the district court notice the United States Supreme
Court checking his request for certiorari review, by providing
said document under federal law (NRS 47.140(1)) which
mandates that supplying document mandates review. (NRS 47.150(2))
Direct review of his pretrial double jeopardy violation.

June 10, 2015

By: Respectfully
Brian O'Keefe 90244

CLERK OF THE COURT

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Supreme Court of the United States

Brian Kerry O'Keefe
(Petitioner)

v.

No. 14-10093

Joseph Lombardo, Sheriff, Las Vegas Metropolitan Police Department, et al.
(Respondent)

To STEVEN S. OWENS, C.D.A. Counsel for Respondent:

X
NOTICE IS HEREBY GIVEN pursuant to Rule 12.3 that a petition for a writ of certiorari in the above-entitled case was filed in the Supreme Court of the United States on May 29, 2015, and placed on the docket June 5, 2015. Pursuant to Rule 15.3, the due date for a brief in opposition is Monday, July 06, 2015. If the due date is a Saturday, Sunday, or federal legal holiday, the brief is due on the next day that is not a Saturday, Sunday or federal legal holiday.

Unless the Solicitor General of the United States represents the respondent, a waiver form is enclosed and should be sent to the Clerk only in the event you do not intend to file a response to the petition.

Only counsel of record will receive notification of the Court's action in this case. Counsel of record must be a member of the Bar of this Court.

Mr. Brian K. O'Keefe
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

MAILED SEPARATE NOTICE SPECIFICALLY to Mr. Steven Owens

NOTE: This notice is for notification purposes only, and neither the original nor a copy should be filed in the Supreme Court.

005434

WAIVER

Supreme Court of the United States

No. 14-10093

Brian Kerry O'Keefe

(Petitioner)

v.

Joseph Lombardo, Sheriff, Las Vegas
Metropolitan Police Department, et al.
(Respondents)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate boxes:

- ☐ Please enter my appearance as Counsel of Record for all respondents.
- ☐ There are multiple respondents, and I do not represent all respondents. Please enter my appearance as Counsel of Record for the following respondent(s):

- ☐ I am a member of the Bar of the Supreme Court of the United States.
- ☐ I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member.

Signature _____

Date: _____

(Type or print) Name _____

☐ Mr.

☐ Ms.

☐ Mrs.

☐ Miss

Firm _____

Address _____

City & State _____

Zip _____

Phone _____

SEND A COPY OF THIS FORM TO PETITIONER'S COUNSEL OR TO PETITIONER IF PRO SE. PLEASE INDICATE BELOW THE NAME(S) OF THE RECIPIENT(S) OF A COPY OF THIS FORM. NO ADDITIONAL CERTIFICATE OF SERVICE IS REQUIRED.

Cc: ^{Attor} STEVEN S. OWENS, C.D.D.A

pursuant NES 202.165

Office of C.D. District Attorney
200 Lewis Ave

PO Box 557212

Las Vegas, NV 89155-1212

Obtain status of case on the docket. By phone at 202-479-3034 or via the internet at <http://www.supremecourtus.gov>. Have the Supreme Court docket number available.

005435

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing Supplement ... Appeal Pending to the below address(es) on this 10th day of June, 2015, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCF 5(b): Bras Slip No. 1957844

Note: All registered parties of the CM/EF electronic filing system will be served by the clerk using that perspective system.

B. K. O'Kell
Brian O'Kell # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Ref. to In Pro Se

AFFIRMATION PURSUANT TO NRS 219B.030

The undersigned does hereby affirm that the preceding Supplement ... Appeal Pending filed in District Court Case No. 08CE30630 does not contain the social security number of any person.

Dated this 10th day of June, 2015.

B. K. O'Kell
Brian K. O'Kell
Ref. to In Pro Se

C. E. A.

1200 Pm
East

Lovell, Mr. 89419

**INMATE LEGAL
MAIL CONFIDENTIAL**

LEIGH MARIL

0029301250

Steven Branstetter
Overk of Court
200 Lewis Ave., 3RD Floor
Las Vegas, NV. 89155-1160

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Brian O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada

Alvin L. Shuman
CLERK OF THE COURT

Petitioner In Pro Se

EIGHTH JUDICIAL
IN THE ~~UNITED STATES~~ DISTRICT COURT
STATE
FOR THE ~~DISTRICT~~ OF NEVADA,
CLARK COUNTY

BRIAN KERRY O'KEEFE

Case No. 08 C250630

Petitioner,

-vs-

EX PARTE
MOTION TO EXTEND PRISON
COPYWORK LIMIT

THE STATE OF NEVADA et al.,

7-16-15 @ 8:30am

Respondents.

COMES NOW, Petitioner, Brian O'Keefe, in pro se,
and submits his Motion to Extend Prison Copywork Limit, moving
the Court to order the Nevada Department of Corrections ("NDOC")
to extend his copywork limit for the narrow purposes of the
instant habeas corpus proceedings.

This motion is based upon NDOC Administrative Regulation
("AR") 722; all papers and documents on file herein; and the
following points and authorities.

POINTS AND AUTHORITIES

Petitioner is an indigent prisoner, as demonstrated by the
Motion for Leave to Proceed In Forma Pauperis on record herein.
NDOC AR 722.12(4) allows Petitioner to accrue a \$100.00 debt
against his account towards legal copywork which, once reached,
prevents him from accumulating any further indebtedness for

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JUN 23 2015

CLERK OF THE COURT

CLERK OF THE COURT

JUN 24 2015

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1 such copywork. "Exceptions to this rule would be a court order
2 received directly from the courts..." Id. The AR therefore
3 gives this Court authority to issue an order allowing Petitioner
4 to exceed his copywork limit.

5 Petitioner has reached or exceeded the \$100.00 limit of AR
6 722.12. As such, NDOC has prohibited him at this time from
7 receiving any further legal copywork in the instant proceeding
8 unless the Court issues an order allowing him to do so.

9 Petitioner's grounds have merit. As such, he is entitled
10 to relief in the instant habeas proceedings; however, he
11 requires copywork services in order to litigate his instant
12 petition. In addition to his originals of all pleadings,
13 motions and other documents in this case, he will need copies to
14 serve upon Respondents per FRCP 5, LR 5-1 and LR 7-2.
15 Additionally, he will require a copy of same for his own
16 records. See e.g. Gluth v. Kangas 951 F.2d 1504, 1510 (9th Cir.
17 1991) (a reasonable amount of copywork for prisoners is found in
18 that required to file, serve opponents and maintain copy for
19 inmate's records).

20 Petitioner does not herein seek a blanket order for
21 unlimited copywork, but seeks only a reasonable allowance of
22 copywork for documents relevant to the instant proceeding,
23 including, but not limited to, supplemented/amended pleadings,
24 motions, responses, replies, notices, etc. Id.

25 As Petitioner's liberty is at the heart of these
26 proceedings, he should be provided an extension of his copywork
27 limitation in order to render him reasonably capable of fairly
28 litigating this habeas action.

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CONCLUSION

For the reasons set forth above, the Court should direct the NDOC to extend Petitioner's copywork limitations towards the allowance of receiving copies of documents pertinent to the instant habeas proceedings, increasing \$100.00 allowable.

Dated this 16th day of June, 2015.

Brian L. O'Keefe
Brian L. O'Keefe # 90244
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing to the below address on this 16 day of June, 2015, by placing same in the hands of prison law library staff for posting in the U.S. Mail:

~~Attorney For Respondents~~

Brian L. O'Keefe # 90244
Brian L. O'Keefe

Petitioner In Pro Se

Brian O'Sheeh #90244
L.C.E.
120 Priggs Road
Cokeroot, NV 89419

INMATE LEGAL
MAIL CONFIDENTIAL

LEGAL MAIL

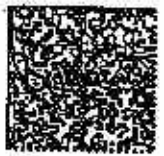
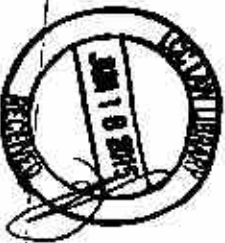
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CLERK OF THE COURT

1 **OPPS**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **RYAN J. MACDONALD**
6 **Deputy District Attorney**
7 **Nevada Bar #012615**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 **BRIAN O'KEEFE,**
13 **aka Brian Kerry O'Keefe, #1447732**

14 Defendant.

CASE NO: 08C250630

DEPT NO: XVII

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW COUNSEL
16 FOR CONFLICT AND FAILURE TO PRESENT CLAIMS WHEN I.A.C. CLAIMS MUST
17 BE RAISED PER STATUTE IN THE FIRST PETITION PURSUANT TO CHAPTER 34

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

20 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
21 District Attorney, through RYAN J. MACDONALD, Deputy District Attorney, and hereby
22 submits the attached Points and Authorities in Opposition to Defendant's "Motion to
23 Withdraw Counsel for Conflict and Failure to Present Claims When I.A.C. Claims Must be
24 Raised Per Statute in the First Petition Pursuant Chapter 34."

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

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 BRIAN O'KEEFE, aka Brian Kerry O'Keefe (hereinafter "Defendant"), was charged
4 by way of Information on December 19, 2008 with one (1) count of Murder with Use of a
5 Deadly Weapon (Open Murder) (Felony – NRS 200.010, 200.030, 193.165).¹

6 Defendant proceeded to trial on March 17, 2009. On March 20, 2009, the jury returned
7 a verdict of guilty on the charge of Second Degree Murder with Use of a Deadly Weapon.
8 Defendant appealed to the Nevada Supreme Court and on April 7, 2010, the Court reversed
9 and remanded his case for a new trial due to a jury instruction issue; Remittitur issued May 3,
10 2010.

11 Defendant proceeded to trial for a second time on August 23, 2010. On September 2,
12 2010, this Court declared a mistrial on account of a hopelessly deadlocked jury at a ten (10) to
13 two (2) vote.

14 On October 3, 2011, Defendant filed a Motion to Dismiss Appointed Counsel and for
15 a Faretta Hearing. This Court conducted the Faretta Canvass on December 16, 2011, and
16 dismissed Defendant's counsel, thus allowing Defendant to represent himself. Lance Maningo
17 was appointed as stand-by counsel.

18 On May 9, 2012, the federal court denied Defendant's Motion to Stay the State court
19 Proceedings. The federal court denied Defendant's renewed Motion on June 5, 2012.
20 Defendant proceeded to trial for a third time on June 11, 2012. On June 15, 2012, the jury
21 returned a guilty verdict to Second Degree Murder With Use of a Deadly Weapon (Category
22 A Felony – NRS 200.010, 200.030, 193.165).

23 On August 28, 2012, this Court sentenced Defendant as follows: a minimum of 120 to
24 a maximum of 300 months, plus a consecutive term of 8 to 20 years for use of a deadly weapon,
25 with 1,394 days credit for time served.

26 Defendant filed a Pro Per Notice of Appeal on August 31, 2012. Defendant's Judgment
27 of Conviction was filed September 5, 2012. Lance Maningo was confirmed as appellate
28

¹ An Amended Information was also filed February 10, 2009, containing the same charge.

1 counsel on September 6, 2012, and filed a Notice of Appeal on September 13, 2012. The
2 Supreme Court affirmed on April 10, 2013, and Defendant was denied rehearing on June 13,
3 2013. Remittitur issued July 23, 2013.

4 Defendant filed a Post-Conviction Petition for Writ of Habeas Corpus on September
5 15, 2014, as well as Motion to Appoint Counsel. On October 3, 2014, Defendant filed an
6 Amended Petition and Accompanying Exhibits. The State's filed its Response and Motion to
7 Dismiss to the Post-Conviction Petition for Writ of Habeas Corpus, Amended Petition and
8 Accompanying Exhibits, the State's Opposition to Request for Evidentiary Hearing, and the
9 State's Opposition to Defendant's Motion to Appoint Counsel on October 10, 2014.
10 Defendant filed a Reply on October 27, 2014. On November 6, 2014, the court appointed
11 counsel, stating that it is the court's policy to appoint counsel on a first petition.

12 On November 21, 2014, Defendant filed a Notice of Appeal of the alleged denial of his
13 Petition. The Supreme Court dismissed the appeal, finding that no decision on the Petition had
14 been made.

15 On April 8, 2015, Defendant's counsel filed a Supplemental Petition. The State
16 responded on June 2, 2015. Defendant then filed the instant Motion to Withdraw Counsel. The
17 State's opposition is as follows.

18 ARGUMENT

19 Defendant argues that his post-conviction counsel was ineffective for filing only one
20 claim of ineffective assistance of appellate counsel in his Supplemental Petition, as well as
21 failing to include the various claims suggested by Defendant. As the State argued in their first
22 response to Defendant's pro per post-conviction Petition for Writ of Habeas Corpus,
23 Defendant is not entitled to counsel on this matter. Defendant was appointed counsel by this
24 court, and now complains that his counsel is ineffective because he disagrees with his
25 counsel's approach to the Supplemental Petition.

26 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court
27 observed that "[t]he Nevada Constitution . . . does not guarantee a right to counsel in post-
28 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision

1 as being coextensive with the Sixth Amendment to the United States Constitution." McKague
2 specifically held that with the exception of NRS 34.820(1)(a) [entitling appointed counsel
3 when petition is under a sentence of death], one does not have "[a]ny constitutional or statutory
4 right to counsel at all" in post-conviction proceedings. 112 Nev. at 164, 912 P.2d at 258. The
5 Court further found in Brown v. McDaniel that, "there is no constitutional or statutory right to
6 the assistance of counsel in noncapital post-conviction proceedings, and '*[w]here there is no*
7 *right to counsel there can be no deprivation of effective assistance of counsel.*'" 331 P.3d
8 867, 870 (Nev. 2014) (quoting McKague, 112 Nev. at 164-65, 912 P.2d at 258).
9 Notwithstanding counsel's decision to file only one claim in the Supplemental Petition,
10 Defendant's Motion must be denied.

11 Additionally, Defendant contends that the Supplemental Petition is a fugitive document
12 as "this 'Supplement' was not filed at the specific instruction of petitioner, Fin!" Motion to
13 Withdraw Counsel (MWC), June 8, 2015, p. 2. This misstates the law, as EJDRC 7.40(a) and
14 EJDRC 3.70 provide that a defendant may not represent himself or file motions to the court
15 when counsel has been appointed. In fact, Defendant requests that his pro-per Supplement,
16 which was filed on June 15, 2015, be allowed to stand in place. However, the pro per
17 Supplement a fugitive document under the EJDRC and must be stricken.

18 CONCLUSION

19 Based on the foregoing arguments, the State respectfully requests that Defendant's
20 Motion to Withdraw Counsel be denied.

21 DATED this 25th day of June, 2015.

22 Respectfully submitted,

23 STEVEN B. WOLFSON
24 Clark County District Attorney
25 Nevada Bar #

26 BY

27 RYAN J. MACDONALD
28 Deputy District Attorney
Nevada Bar #012615

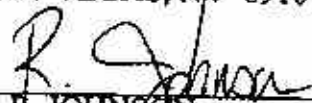
1 CERTIFICATE OF MAILING

2 I hereby certify that service of the above and foregoing was made this 25th day of June,
3 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

4 BRIAN O'KEEFE,
5 aka Brian Kerry O'Keefe #90244
6 LOVELOCK CORRECTIONAL CENTER
7 1200 PRISON ROAD
8 LOVELOCK, NV 89419

9 MATTHEW D. CARLING, Esq.
10 1100 S. TENTH ST.
11 LAS VEGAS, NV 89101

12 BY

13 
14 R. JOHNSON

15 Secretary for the District Attorney's Office
16
17
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28

GC/RJM/rj/M-1


CLERK OF THE COURT

1 **AFFT**
2 **Matthew D. Carling**
3 Nevada Bar No. 007302
4 1100 S. Tenth Street
5 Las Vegas, NV 89101
6 (702) 419-7330 (Office)
7 (702) 446-8065 (Fax)
8 CedarLegal@gmail.com
9 *Court-appointed Attorney for Petitioner/ Defendant*
10 **BRIAN O'KEEFE**

11
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

STATE OF NEVADA,

Plaintiff,

Case No.: 08C250630
Dept. No.: XVII

vs.

BRIAN K. O'KEEFE,

Defendant.

15
16 **AFFIDAVIT OF MATTHEW D. CARLING, ESQ.**
17

18 STATE OF UTAH)
19) ss.
20 COUNTY OF IRON)
21

22 **MATTHEW D. CARLING**, being first duly sworn on oath, deposes and says:
23

24 1. I am an attorney licensed to practice law in the State of Nevada. That I have read
25 the Defendants' Motion to Withdraw Counsel for Conflict.

26 2. I received Notice of the pending Motion to Withdraw Counsel for Conflict on or
27 about June 12, 2015. Unfortunately, I will be out of the jurisdiction at the Maple Dell Scout Camp
28 in Payson, Utah, from June 29th through June 2, 2015. As such, I submit this Affidavit in Response
29 to the Defendant's current motion.

30 3. This District Court appointed me to assist the Defendant with his Post Conviction
31 matter on November 20, 2014.

005447

1 4. The Defendant is incarcerated at Lovelock Correction Center in Lovelock, Nevada.

2 5. According to my records, I drafted correspondence to the Defendant upon my
3 appointment on November 20, 2014. Thereafter, I corresponded with the Defendant regularly.
4 (*See* Exhibit "A", Invoice No. 150505.)

5 6. According to my records, I received telephone calls from the Defendant on
6 November 24, 2014, January 9, 2015, April 27, 2015. This may not reflect every call as sometimes I
7 received calls while I am out of the office on my cell phone and failed to record the same.

8 7. On November 24, 2014, the Defendant informed me of his pending federal matter
9 and that he had a Federal Public Defender, Ryan Norwood. I contacted Ryan Norwood on
10 February 4, 2015, and February 9, 2015, to discuss the merits of the Defendant's Federal matter.
11 During those conversations I learned of the Defendant's Double Jeopardy argument. While
12 granting the Defendant some relief on procedural grounds, ultimately, the Federal Court would
13 dismiss the substantive portions of the Defendant's argument.

14 8. I reviewed all 3 trial transcripts in this matter to better understand the procedural
15 history. The Defendant was represented by Patricia Palm in the first 2 trials. It appears that the
16 Defendant's first trial was reversed due to a bad jury instruction.¹ The second trial resulted in a
17 hung jury. The Defendant represented himself in the third trial which resulted in a conviction. The
18 focus of the current petition for writ of habeas corpus was the 3rd trial. I cannot argue ineffective
19 assistance of counsel in the 3rd matter because the Defendant waived counsel and represented
20 himself—*Strickland* does not apply. As such, it appeared that the only ineffective assistance of
21 counsel claim I could make was related to appellate counsel, Lance Maningo, Esq., on the 3rd trial.

¹ The two-page Reversal Order (No. 53859) dated April 7, 2010, simply states that the District Court erred by giving an incorrect jury instruction.

1 9. In the Direct Appeal, Lance Maringo, Esq., argued the Defendant's Double
2 Jeopardy issue. (See Case No. 61631.)

3 10. The Defendant is a very prolific writer and corresponded with my office on a
4 monthly, sometimes weekly, basis. I attempted to respond to the Defendant's arguments and
5 requests.

6 11. Upon filing the Supplemental petition, the Defendant demanded that I include a
7 multitude of additional substantive issues stemming from all three trials, foremost, the Double
8 Jeopardy issue. I continued to research the same and determined that many of the issues lacked
9 merit, were *res judicata*, or were unrelated to the 3rd trial and appellate counsel's performance. On
10 April 22, 2015, I wrote an extensive letter to the Defendant explaining my conclusions. I broke the
11 letter down to reply to each and every argument/allegation the Defendant made in multiple letters I
12 received from the Defendant in April 2015.

13 12. In my legal opinion, the Defendant continues to present arguments that either lack
14 merit or are unrelated to the instance case (3rd trial). As such, I cannot in good conscience assert
15 claims before this court that I believe are meritless and/or frivolous. (See Nevada Rule of
16 Professional Conduct 3.1.)

17 13. I express no ill-will towards the Defendant. He has presented himself as very
18 articulate and passionate about his current legal proceeding. It appears that the Defendant would
19 best be served by allowing me to withdraw so that he may present his arguments before this Court
20 as he deems fit.

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