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IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,

vs.

STATE OF NEVADA,
Respondent.

Supreme Court No. 69049

District Court No. CP 94-0345

FILED

DEC 15 2015

APPELLANT'S INFORMAL BRIEF

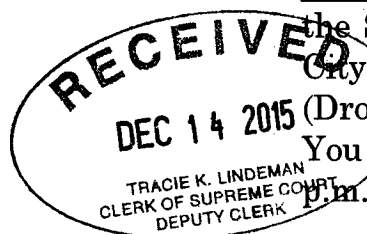
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00 p.m.



To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
10/7/2015	ORDER DENYING MOTION TO AMEND JUDGMENT OF CONVICTION TO COMPLY WITH NRS 176.105

Notice of Appeal. Give the date you filed your notice of appeal in the district court: OCTOBER 20, 2015

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

ON AUGUST 25, 2015, APPELLANT FILED A MOTION IN THE SECOND JUDICIAL DISTRICT COURT, WASHOE COUNTY, TITLED "DEFENDANT'S MOTION TO AMEND JUDGMENT OF CONVICTION OF 5/17/1994 TO COMPLY WITH NRS 176.105."

APPELLANT'S MOTION SEEMS FROM THE STATUTORY PROVISIONS OF NRS 176.105(1) a-d, JUDGMENT IN CRIMINAL ACTION, WHICH WERE OMISSIONS IN THE ORIGINAL JUDGMENT OF CONVICTION. THE JUDGMENT

REVEALS SEVERAL ERRORS IN THE APPELLANT'S WRITTEN JUDGMENT. A REVIEW OF THE RECORD JUXTAPOSITION TO THE JUDGMENT REVEALS SEVERAL ERRORS. THE REQUIRED CONTENTS ARE SET FORTH BY STATUTE, AND ARE RELIED UPON BY OTHER COURTS AND ADMINISTRATIVE AGENCIES LONG AFTER THE PROCEEDINGS IN THE DISTRICT COURT HAVE PASSED.

APPELLANT SOUGHT TO AMEND THE JUDGMENT OF CONVICTION TO HAVE CRITICAL AND ACCURATE INFORMATION IN THIS ESSENTIAL DOCUMENT, WHICH INCLUDED: APPELLANT'S PLEA, VERDICT(S) OF THE FINDINGS, ADJUDICATION, SENTENCE IMPOSED BY STATUTE WITH MINIMUM TERMS, RESTITUTION AMOUNT DEFINED, AND REFERENCED STATUTES OF SENTENCES NOT REFLECTED TO DETERMINE FUTURE PAROLE ELIGIBILITY. LIFE-TIME SUPERVISION IS NOT APPLICABLE TO APPELLANT'S JUDGMENT OF CONVICTION.

NEITHER THE NEVADA DEPARTMENT OF CORRECTIONS (NDOC), NOR THE NEVADA STATE BOARD OF PAROLE COMMISSIONERS (NSBPC) CAN GLEAN A PAROLE ELIGIBILITY DATE FROM ANY OF APPELLANT'S IMPOSED COUNTS IN THE WRITTEN JUDGMENT.

APPELLANT'S CONTENTIONS SET FORTH IN HIS MOTION FILED IN THE DISTRICT COURT ARE SUPPORTED BY THE STATUTORY PROVISIONS OF THE MANDATORY LANGUAGE IN NRS 176.105.

SEVERAL WEEKS AFTER THE FILING AND SERVICE OF THE MOTION UPON THE RESPONDENTS, APPELLANT FILED AND SERVED HIS "REQUEST FOR SUBMISSION OF MOTION." NO RESPONSIVE PLEADING WAS FILED BY THE RESPONDENTS, IN WHICH APPELLANT SOUGHT TO HAVE TREATED AS MELITORIOUS AND A CONSENT TO GRANT. SEPTEMBER 11, 2015.

ON OCTOBER 7, 2015, THE DISTRICT COURT ERRONEOUSLY TREATED

APPELLANT'S MOTION AS A CHALLENGE TO THE VALIDITY OF APPELLANT'S JUDGMENT AND SENTENCE UNDER NRS 34.724 (2)(b). SUBSEQUENT TO THIS ASSERTION, THE COURT THEN MOVES APPELLANT'S MOTION AS ONE CONSTRUCTING A MODIFICATION OR CORRECTION OF AN ILLEGAL SENTENCE. THESE POSTURES UNDER ANY OF THE FASHIONED CONTEXTUAL MIS-ASSERTIONS BY THE DISTRICT COURT ARE CLEARLY MIS-PLACED, OVER-LOOKED, OR ARE MISAPPREHENDED. APPELLANT IS NOT ATTACKING THE JUDGMENT, SENTENCE, OR ARGUING THE FACIAL ILLEGALITY(IES) OF SAME. THE DISTRICT COURT'S WRITTEN FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER IS IN APPASITE TO APPELLANT'S POSTURE BEFORE THE DISTRICT COURT BELOW. APPELLANT BELIEVES THAT BASED UPON THIS STATEMENT OF FACTS, AND A NON-RESPONSIVE PLEADING BY THE RESPONDENT. APPELLANT'S MOTION IS MERITORIOUS.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

THE DISTRICT COURT ERRONEOUSLY ADDRESSED THE TRUE MERITS AND CONTENTIONS OF APPELLANT'S MOTION TO AMEND JUDGMENT OF CONVICTION TO COMPORT WITH THE LEGAL STANDARDS OF NRS 176.105.

ON DECEMBER 1, 2015, THIS COURT ENTERED AN ORDER FOR THE TRANSMISSION OF THE RECORD BELOW, FINDING THAT REVIEW OF THE RECORD WAS WARRANTED. APPELLANT'S MOTION FILED AUGUST 25, 2015, WITH SUPPORTING LEGAL MEMORANDUM AND APPENDED EXHIBITS FORMS THE BASIS FOR THE DISTRICT COURT'S ASSIGNMENT OF ERRORS.

NRS 176.105 CONTAINS MANDATORY LANGUAGE, WHICH CLEARLY PROVIDES:

1. "IF A DEFENDANT IS FOUND GUILTY AND IS SENTENCED AS PROVIDED BY LAW, THE JUDGMENT OF CONVICTION 'MUST' SET FORTH:

(a) THE PLEA;

(b) THE VERDICT OR FINDINGS;

(c) THE ADJUDICATION AND SENTENCE, ... TERM OF IMPRISONMENT... REFERENCE TO THE STATUTE... TO DETERMINE ELIGIBILITY, IF APPLICABLE...;

(d) EXACT AMOUNT OF CREDIT GRANTED...

SEE, "WADSWORTH V. O'CONNELL," 71 N.W. 756, 524 P.2d 1376 (1975). THE WORD "MUST" IS OPERATIVE AND MAKES THE STATUTE'S USE MANDATORY LANGUAGE; SEE ALSO, "EX PARTE LEH," 25 N.W. 346, 60 P. 217 (Nov. 1900).

1. APPELLANT'S JUDGMENT IS PURSUANT TO A JURY TRIAL. THE JUDGMENT DOES NOT REFERENCE A GUILTY VERDICT UPON A JURY TRIAL, AS APPELLANT MAINTAINED HIS INNOCENCE UNDER THE ALLEGATIONS.

2. NRS 176.033(1)(b) REQUIRES THAT A SENTENCE OF IMPRISONMENT INCLUDE A MINIMUM AND MAXIMUM TERM FOR FELONIES. NONE OF THE COUNTS, IN WHICH APPELLANT WAS SENTENCED INCLUDE A MINIMUM TERM. THE SENTENCES IMPOSED STATES "THAT HE BE PUNISHED BY IMPRISONMENT IN THE NEVADA STATE PRISON TO A TERM OF LIFE WITH THE POSSIBILITY OF PAROLE..." APPELLANT'S JUDGMENT, LIKEWISE, IS SILENT AS TO A CONSECUTIVE OR CONCURRENT TERM BEING APPLIED TO COUNT IV. THE JUDGMENT OF CONVICTION APPLIES A CONCURRENT OR CONSECUTIVE TERMS, AS TO ALL THE OTHER REMAINING COUNTS. SEE NRS 176.105(C)

3. NEITHER THE NUCO OR NSBPG ARE ABLE TO DETERMINE APPELLANT'S PAROLE ELIGIBILITY TERMS ON ANY OF APPELLANT'S COUNTS. AT THE TIME OF APPELLANT'S SENTENCING IN 1994, THE MINIMUM

Term For The Allegations Charged Reflected A Minimum
Prison Eligibility Term Of Five Years.

4. THE JUDGMENT OF CONVICTION, LIKEWISE, PURSUANT TO RULES
200.364; 200.366, FAILS TO DETERMINE WHETHER (1) IF SUBSTANTIAL
BODILY HARM TO THE ALLEGED VICTIM RESULTED; OR (2) IF NO SUBSTAN-
TIAL BODILY HARM TO THE ALLEGED VICTIM WAS DETERMINED BY THE TRIAL
RECORD.

5. THE TERMS OF THE RESTITUTION IMPOSED BY THE SENTENC-
ING COURT IS NOT REFLECTED IN THE WRITTEN JUDGMENT OF CONVIC-
TION. RESTITUTION EXPENSES FOR VICTIM, AND TO VICTIM, SAID EXPENSES
ARE TO BE PAID MUST BE STATED IN THE WRITTEN JUDGMENT OF
CONVICTION. "ERICKSON V. STATE," 107 Nev. 864, 821 P.2d 1092 (1991)
(RESTITUTION ONLY APPLIED TO GUILTY VERDICTS BY JULY); "GREENWALD V.
Y. STATE," 112 Nev. 57, 915 P.2d 258 (1996). APPELLANT HAD A GUILTY
ACQUITTAL ON COUNT I; AND A HUNG JURY ON COUNT II. NEVERTHELESS,
THE COURT IMPOSED RESTITUTION ON COUNTS I AND II.

COLLECTIVELY, THESE ERRORS ARE FATAL AND WARRANT AN
AMENDED JUDGMENT OF CONVICTION, BASED UPON THE LEGAL ANALYSIS.
THERE ARE TWO ESSENTIALS TO A VALID JUDGMENT OF CONVICTION, AND
THE PROCESS OF COMMITMENT ISSUED THEREON. (1) THE STATEMENT OF
THE OFFENSE; AND (2) THE STATEMENT DEFINING THE PUNISHMENT.
"EX ARTE LELA, SYRA."

THIS COURT HAS OPINED IN A PUBLISHED OPINION, "LEDBETTER V.
STATE," 122 Nev. 252, 129 P.3d 671 (2006) THAT "THE WRITTEN JUDGMENT
OF CONVICTION IS AN ESSENTIAL DOCUMENT IN A CRIMINAL PROCEEDING
BECAUSE IT MEMORIALIZES A DEFENDANT'S CONVICTION, HIS CRIME, AND
THE TERMS OF HIS SENTENCE," CITING "CARL V. STATE," 121 P.3d 592, 599

(2005). THE REQUIRED CONTENTS ARE SET FORTH BY STATUTE. NRS 176.105. THE JUDGMENT OF CONVICTION IS RELIED UPON BY OTHER COURTS LONG AFTER THE PROCEEDINGS ARE CLOSED IN THE DISTRICT COURT. THE NICE RELIES HEAVILY ON AN OFFENDER'S JUDGMENT OF CONVICTION WHEN ASSESSING CLASSIFICATION PURPOSES, E.G., WHETHER AN OFFENDER PLEADS GUILTY OR NOT, WHETHER THERE WAS SUBSTANTIAL HARM, DETERMINING OFFENDER'S MINIMUM PRISON ELIGIBILITY BEFORE THE USBC'S.

APPELLANT RESPECTFULLY REQUESTS THAT THIS HONORABLE COURT DETERMINE THAT THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING APPELLANT'S MOTION TO AMEND JUDGMENT OF CONVICTION; AND WHETHER DISTRICT COURT COMMITTED REVERSIBLE ERROR BY TREATING APPELLANT'S MOTION IN THE CONTEXT OF A HABEAS PETITION, AND A MODIFICATION OR COLLECTION OF AN ILLEGAL SENTENCE. THE MATTER SHOULD BE REMANDED FOR THE ISSUANCE OF AN AMENDED JUDGMENT OF CONVICTION FORTHWITH. THANK YOU.

DATED this 11 day of DECEMBER, 2015.

Charles J. Maki
Signature of Appellant

CHARLES J. MAKI
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

*MR. CHRISTOPHER J. HICKS, ESQ.
WASHOE COUNTY DISTRICT ATTORNEY
1 SOUTH SIERRA STREET, 7TH FLOOR
RENO, NEVADA 89502*

DATED this 11 day of ~~DECEMBER~~ DECEMBER, 20 15.

Charles J. Maki
Signature of Appellant

CHARLES J. MAKI, #42820
Print Name of Appellant

WARM SPRINGS CORRECTIONAL CENTER
Address
3301 EAST FIFTH STREET / ABB 200
CARSON CITY, NEVADA 89702-7007
City/State/Zip

N/A
Telephone