

IN THE SUPREME COURT OF THE STATE OF NEVADA

DEC 29 2015

TODD MITCHELL LEAVITT,

APPELLANT,

VS.

THE STATE OF NEVADA,

RESPONDENT.

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

SUPREME COURT NO. 69278

DISTRICT COURT CASE NO. C079346

APPELLANTS OPENING BRIEF

COMES NOW, TODD M. LEAVITT, APPELLANT, PRO SE, AND
HEREBY SUBMITS HIS OPENING BRIEF IN THE ABOVE ENTITLED APPEAL.

THIS BRIEF IS MADE AND BASED UPON ALL OF THE PAPERS AND
PLEADINGS ON FILE AS WELL AS THE RECORD ON APPEAL IN THIS MATTER.

ISSUES ON APPEAL:

1. THE JURY INSTRUCTION DEFINING THE ELEMENTS OF FIRST-DEGREE MURDER OMITTED THE ELEMENT OF DELIBERATION AND ERASED THE DISTINCTION BETWEEN FIRST AND SECOND-DEGREE MURDER.
2. THE DISTRICT COURT ERRED WHEN IT CITED A DIFFERENT CASE LAW THAN RELIED UPON BY APPELLANT AS THE BASIS FOR HER DENIAL IN VIOLATION OF THE DUE PROCESS CLAUSE OF THE U.S. CONSTITUTION.
3. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED MY PETITION WITHOUT A HEARING; OPPOSITION TO IT BY THE STATE AND WITHOUT ANY NOTICE OF A HEARING BEING CONDUCTED.

RECEIVED

DEC 28 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

15-39870

STATEMENT OF CASE

THIS CASE INVOLVES MORE THAN FIFTEEN YEARS OF POST-CONVICTION HISTORY. WHILE THIS STATEMENT IS ONLY A BRIEF OVERVIEW, APPEAL PETITIONER/APPELLANT CONSIDERS IT VITAL TO AN ANALYSIS OF THE CASE TO REVIEW THE RELEVANT PROCEDURAL HISTORY.

TODD MITCHELL LEAVITT ("APPELLANT") WAS CONVICTED PURSUANT TO A JURY VERDICT, IN THE EIGHTH JUDICIAL DISTRICT COURT ON MAY 26, 1988, ON ONE COUNT OF FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON.

APPELLANT WAS SENTENCED ON JUNE 15, 1988 TO TWO CONSECUTIVE LIFE SENTENCES WITHOUT THE POSSIBILITY OF PAROLE. HIS COURT APPOINTED TRIAL COUNSEL, JAMES W. ERBECK, WAS SUBSTITUTED BY COURT APPOINTED APPELLATE COUNSEL, CRAIG D. CREEL, TO HANDLE THE DIRECT APPEAL.

ON SEPTEMBER 28, 1989, THE NEVADA SUPREME COURT DISMISSED THE APPEAL (#19493). APPELLANT WAS NEVER PROVIDED COPIES OF RECORDS INCLUDING TRIAL TRANSCRIPTS, FROM BOTH TRIAL & APPELLATE COUNSEL. ON JUNE 17, 1992, APPELLANT FILED A PRO SE STATE PETITION FOR WRIT OF HABEAS CORPUS. LAS VEGAS ATTORNEY ANDREW MYERS WAS APPOINTED TO REPRESENT APPELLANT, BUT FOR UNRELATED REASONS, WITHDREW AND PATRICK E. McDONALD WAS APPOINTED.

ON MAY 31, 1996, AN EVIDENTIARY HEARING WAS HELD; JUDGE MICHAEL L. DOUGLAS PRESIDED. ON OCTOBER 2, 1996, THE JUDGE DENIED THE PETITION AND A SECOND APPEAL FOLLOWED. ON FEBRUARY 10, 1999, THE NEVADA SUPREME COURT DISMISSED THE APPEAL (#28987). ON JANUARY 19, 1999, APPELLANT, IN PRO SE, FILED A FEDERAL PETITION FOR WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 (CV-N-99-0031), RAISING VIOLATIONS OF HIS SIXTH AND FOURTEENTH AMENDMENT RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL, DUE PROCESS OF LAW, A FAIR TRIAL AND EQUAL PROTECTION OF THE LAWS. ON AUGUST 29, 2002, THE U.S. DISTRICT COURT DENIED THE HABEAS PETITION AND ALSO DENIED AN APPLICATION FOR COA ON JUNE 11, 2003. THE NINTH CIRCUIT COURT OF APPEALS RECEIVED A NOTICE OF APPEAL AND MOTION FOR RECONSIDERATION

ON JUNE 30, 2003, THE NINTH CIRCUIT GRANTED THE COA UPON FINDING THAT APPELLANT HAD DEMONSTRATED A DEBATABLE, NONCONSTITUTIONAL PROCEDURAL ISSUE IN WHICH APPELLANT HAD "FACALLY ALLEGED THE DENIAL OF A CONSTITUTIONAL RIGHT", IN LIGHT OF ITS HOLDING IN CAMBRIGHT V. STEWART, 220 F.3d 1022, 1026 (9TH CIR. 2000).

ON REVIEW OF HIS CASE BY THE NINTH CIRCUIT, THE OPENING BRIEF WAS FILED BY ATTORNEY DOUGLAS H. CLARK ON DECEMBER 15, 2003. ON DECEMBER 22, 2004, THE NINTH CIRCUIT FILED AN ORDER DISMISSING THE CASE (#03-16150) FOR FAILURE TO PROSECUTE AND SENT A CERTIFIED COPY OF THE ORDER TO THE DISTRICT COURT AS AND FOR THE MANDATE OF THE COURT. AFTERWARDS, DOUGLAS CLARK DID NOT REPLY TO ANY OF MY COMMUNICATIONS REGARDING THIS CASE UNTIL OVER FIVE (5) YEARS HAD PASSED BY. IN FACT, MY FAMILY HAD TO CONTINUOUSLY REQUEST CLARK TO TURN OVER RELEVANT APPELLATE DOCUMENTS AND RECORDS ON MY BEHALF. I WROTE NUMEROUS LETTERS FOR UPDATES AND STATUS OF MY CASE.

ON SEPTEMBER 10, 2015, APPELLANT LEARNED ABOUT A RECENT NINTH CIRCUIT COURT OF APPEALS DECISION IN RILEY V. MCDANIEL, 2015 WL 2262549 (C.A.9 (NEV) (MAY 15, 2015)). THE COURT HELD THAT NEVADA TRIAL COURT'S INSTRUCTION CONFLATING PREMEDITATION AND DELIBERATION ELEMENTS OF FIRST DEGREE MURDER VIOLATED DUE PROCESS AND THAT THE ERRONEOUS, UNCONSTITUTIONAL INSTRUCTION HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT. APPELLANT FILED A PETITION FOR WRIT OF HABEAS CORPUS IN THE STATE DISTRICT COURT ON OCTOBER 20, 2015. (EXH)

ON NOVEMBER 10, 2015, APPELLANT RECEIVED FACTS AND FINDINGS, CONCLUSIONS OF LAW AND ORDER DENYING MY PETITION, BASED ON POLK V. SANDOVAL (NOT RILEY V. MCDANIEL!), DATED NOVEMBER 3, 2015 AND SIGNED BY JUDGE MICHAELLE LEAVITT. NO HEARING. NO OPPOSITION FROM THE STATE. NO NOTICE OF HEARING. THIS APPEAL FOLLOWS.

1. IN MY PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION), ~~MADE~~ MADE INTO THE EIGHTH JUDICIAL DISTRICT COURT CLERKS OFFICE ON OCTOBER 14, 2015, I CHALLENGED THE USE OF AN UNCONSTITUTIONAL JURY INSTRUCTION COMMONLY REFERRED TO AS THE "KAZALYN" INSTRUCTION IN NEVADA.

THIS JURY INSTRUCTION DEFINED DELIBERATION AS A PART OF PREMEDITATION, RATHER THAN AS A SEPARATE ELEMENT. INSIDE OF MY PETITION, ON PAGE 6 OF THE PETITION AND ON PAGE 4 OF MY MEMORANDUM IN SUPPORT OF THE PETITION, ~~I~~ I CITED THE RECENTLY DECIDED 9TH CIRCUIT RULING IN Riley v. McDaniel, 2015 WL 2262549 (C.A.9 (NEV))), WHICH WAS FILED ON MAY 15, 2015, LESS THAN SIX (6) MONTHS BEFORE I FILED MY PETITION.

THE NINTH CIRCUIT COURT OF APPEALS HELD THAT THE USE OF THIS JURY INSTRUCTION CONFLATING PREMEDITATION AND DELIBERATION ELEMENTS OF FIRST DEGREE MURDER VIOLATED DUE PROCESS AND HAD A SUBSTANTIAL AND INJURIOUS EFFECT OR INFLUENCE IN DETERMINING THE JURY'S VERDICT.

IN MY CASE, THE INSTRUCTION GIVEN READ AS FOLLOWS:

PREMEDITATION IS A DESIGN, A DETERMINATION TO KILL, DISTINCTLY FORMED IN THE MIND AT ANY MOMENT BEFORE OR AT THE TIME OF THE KILLING.

PREMEDITATION NEED NOT BE FOR A DAY, AN HOUR OR EVEN A MINUTE.

IT MAY BE AS INSTANTANEOUS AS SUCCESSIVE THOUGHTS OF THE MIND, FOR IF THE JURY BELIEVES FROM THE EVIDENCE THAT THE ACT CONSTITUTING THE KILLING HAS BEEN PRECEDED BY AND HAS BEEN THE RESULT OF PREMEDITATION, NO MATTER HOW RAPIDLY THE PREMEDITATION IS FOLLOWED BY THE ACT CONSTITUTING THE KILLING, IT IS WILLFUL, DELIBERATE AND PREMEDITATED MURDER.

NO OTHER INSTRUCTION IN MY TRIAL GAVE AN INDEPENDENT MEANING TO "DELIBERATE". IT IS EXTREMELY CLEAR THAT, AT THE TIME OF MY TRIAL IN 1988 AND AT THE TIME MY CONVICTION BECAME FINAL IN 1988, DELIBERATION WAS A DISCRETE ELEMENT OF FIRST DEGREE MURDER IN NEVADA.

THE NEVADA SUPREME COURT HAD DECIDED IN HERN V. STATE, 635 P.2d 278 (1981) SEVEN YEARS BEFORE MY TRIAL, THAT ALL THREE ELEMENTS, WILLFULNESS, DELIBERATION AND PREMEDITATION, MUST BE PROVEN BEYOND A REASONABLE DOUBT BEFORE AN ACCUSED CAN BE CONVICTED OF FIRST DEGREE MURDER.

SINCE THE TRIAL COURT APPROVED THE USE OF THE UNCONSTITUTIONAL JURY INSTRUCTION, THIS ERROR RENDERED MY JURY TRIAL CONSTITUTIONALLY UNFAIR, ~~AND~~ REQUIRING REVERSAL OF MY FIRST DEGREE MURDER CONVICTION: SEE RILEY V. McDANIEL, 2015 WL 2262549 (C.A.9 (NEV.))).

I BELIEVE, FROM THE RECORD PROVIDED TO ME FROM THE CLERK'S OFFICE (8TH JUD. DIST. CT.), JUDGE MICHELLE LEAVITT DENIED MY PETITION WITHOUT GIVING THE PETITION A FULL AND FAIR REVIEW OF THE GROUND/CLAIMS WITHIN THAT DOCUMENT. IF THE JUDGE HAD DONE AN ADEQUATE REVIEW OF MY PETITION, SHE WOULD KNOW THAT THE BASIS OF MY CLAIM IN GROUND ONE WAS BASED ON THE RILEY DECISION WHICH WAS LESS THAN SIX MONTHS OLD AT THE TIME OF MY FILING THE PETITION. NRS 34.740 STATES: THE PETITION MUST BE EXAMINED EXPEDITIOUSLY BY THE JUDGE OR JUSTICE TO WHOM IT IS ASSIGNED.

NEVADA TRIAL COURT'S INSTRUCTION TO JURY THAT IF IT FOUND PREMEDITATION UNDER NEVADA'S FIRST DEGREE MURDER STATUTE, IT HAD NECESSARILY FOUND DELIBERATION, VIOLATED DEFENDANT'S DUE PROCESS RIGHT, SINCE NEVADA LAW TREATED DELIBERATION AS A DISTINCT ELEMENT OF FIRST-DEGREE MURDER AT THE TIME DEFENDANT WAS CONVICTED AND AT THE TIME HIS CONVICTION BECAME FINAL. U.S.C.A. CONST. AMEND. 14; WEST'S NRS 200.030, SUBD. 1 (A).

I MAINTAIN THAT THE OUTCOME OF THE TRIAL WOULD HAVE BEEN DIFFERENT IF THE JURY HAD BEEN PROPERLY INSTRUCTED AND THAT JUDGE MICHELLE LEAVITT DID NOT EXAMINE MY PETITION BEFORE SHE DENIED IT IN THE MANNER THAT SHE DID. I ASK THIS COURT FOR AN ORDER VACATING MY CONVICTION AND SENTENCE DUE TO THE CONSTITUTIONAL VIOLATION STATED IN THIS ISSUE.

2. I SUBMITTED MY PETITION FOR WRIT OF HABEAS CORPUS ON OCTOBER 15, 2015, TO THE DISTRICT COURT CLERKS OFFICE. LESS THAN THREE WEEKS LATER, IT APPEARS THAT JUDGE MIKELLE LEAVITT SIGNED A FACTS AND FINDINGS, CONCLUSIONS OF LAW, DATED NOVEMBER 3, 2015. I RECEIVED THE FACTS AND FINDINGS WITH ORDER ON NOVEMBER 10, 2015.

IN HER FACTS AND FINDINGS, THE JUDGE STATED THAT APPELLANT/PETITIONER CITED THE CASE OF POLK V. SANDOVAL, 503 P.2D 903 (9TH CIR. 2007) AS THE BASIS FOR MY PETITION AS A RECENT DECISION, WHICH IT WAS NOT A RECENT CASE.

JUDGE LEAVITT CHOSE TO NOTE POLK INSTEAD OF RILEY V. MCDANIEL, WHICH IS VERY RECENT (MAY 15, 2015) AND WAS CLEARLY NOTED AS THE BASIS OF MY ARGUMENT ON THE UNCONSTITUTIONAL JURY INSTRUCTION ON PAGE 6 OF THE PETITION AND AGAIN ON PAGE 4 OF THE MEMORANDUM SUPPORTING THE PETITION.

I DO NOT UNDERSTAND HOW THE JUDGE DID NOT SEE THIS CITING IF SHE EXAMINED THE PETITION PROPERLY, BUT CHOSE TO CITE A CASE INSIDE OF RILEY INSTEAD OF THE CORRECT CITING OF RILEY ITSELF. I BELIEVE THAT THE DISTRICT COURT ERRED IN REGARDS TO THIS UNUSUAL ASSESSMENT OF WHAT SHE READ IN HER DENIAL ORDER.

I BELIEVE THE DISTRICT COURT ERRED AND THAT MY CONVICTION AND SENTENCE SHOULD BE VACATED DUE TO THIS ERROR OR AN EVIDENTIARY HEARING CONDUCTED SO I CAN HAVE MY PETITION PROPERLY REVIEWED AND CONSIDERED BY ANOTHER JUDGE IN THIS MATTER.

3. THE DISTRICT COURT ABUSED ITS DISCRETION WHEN IT DENIED MY PETITION WITHOUT A HEARING CONDUCTED; NO OPPOSITION TO IT BY THE STATE AND WITHOUT ANY NOTICE OF A HEARING BEING CONDUCTED. I BELIEVE THE STATE COURT JUDGE SHOULD HAVE SET A DATE FOR THE PETITION TO BE HEARD AND ORDERED THE STATE OF NEVADA TO FILE AN OPPOSITION OR ANSWER TO THE ~~PETITION~~ PETITION IN A TIMELY MANNER.

IF THE DISTRICT COURT JUDGE HAD SCHEDULED A HEARING ON MY PETITION, THERE IS A VERY GOOD CHANCE THAT SHE WOULD NOT HAVE RELIED ON A CASE THAT WAS NOT THE BASIS FOR MY CLAIMS AND WOULD HAVE CONDUCTED A FULL AND FAIR REVIEW OF THE ARGUMENT SUPPORTED BY THE RECENT RILEY DECISION.

THE DISTRICT COURT JUDGE WAS UNREASONABLE IN HER DENIAL OF MY PETITION WITHOUT HEARING THE EVIDENCE OF VALUE TO MY CLAIM OF AN UNCONSTITUTIONAL JURY INSTRUCTION THAT WAS BEING USED BY NEVADA TRIAL COURTS DURING THE TIME OF MY TRIAL NEARLY 30 YEARS AGO.

I HAVE SUFFERED SUBSTANTIAL AND INJURIOUS EFFECTS FROM THE USE OF THIS UNCONSTITUTIONAL "KAZALYN" INSTRUCTION AS I WAS GIVEN A TERM OF TWO (2) CONSECUTIVE LIFE WITHOUT PAROLE EVEN THOUGH I DID NOT COMMIT THIS CRIME AND IT WAS NEVER PROVEN BEYOND A REASONABLE DOUBT THAT I WAS DIRECTLY OR INDIRECTLY INVOLVED IN THIS INCIDENT.

THE DECLARATION OF THE JURY FOREMAN IN MY TRIAL (EXHIBIT) DEMONSTRATES THE INJUSTICE AND FLAWED, UNCONSTITUTIONAL DIRECTIVES GIVEN TO THE JURY BY THE TRIAL COURT JUDGE. THE IMPACT AND TRUTH OF THE JURY FOREMAN'S AFFIDAVIT/DECLARATION CANNOT GO WITHOUT A FULL AND FAIR REVIEW OF ITS DEGREE OF TRUTHFULNESS. THIS IS VERY IMPORTANT TO MY DEFENSE BECAUSE, IF NOT FULLY REVIEWED, THEN A TRUE MISCARriage OF JUSTICE WILL CONTINUE TO GO UNCORRECTED AS IT SHOULD HAVE BEEN CORRECTED, RESOLVED, VACATED AND REMANDED DECADES AGO.

DUE TO THE RECENT DECISION IN RILEY V. MCDANIEL FROM THE NINTH CIRCUIT COURT OF APPEALS, I ASK THIS COURT TO CONSIDER AND REVIEW THE FACTS STATED WITHIN THE ISSUES ABOVE AND, IF TRUE, ORDER THE CONVICTION AND SENTENCES VACATED COMPLETELY IN THIS MATTER.

RESPECTFULLY SUBMITTED,

ON THIS DAY OF DECEMBER, 2015 BY: Todd M. Lennett
#26131 / PROSE APPELLANT

DECLARATION OF JEROLD D. STEGEMAN, Ph.D.

JEROLD D. STEGEMAN, Ph.D., pursuant to 28 U.S.C. 1746, declares as follows:

1. That I am competent to testify to the matters herein stated, and know of my own personal knowledge that the statements herein are true and correct, except as to those matters stated upon information and belief, and as to those matters, I believe them to be true.
2. That I am an Assistant Professor of Civil Engineering at Louisiana Tech University (a member of the University of Louisiana System) in the College of Engineering and Science. I hold an A.A.S. Degree in Civil Engineering Technology from Metropolitan State College (1979); a B.S. Degree in Civil Engineering from Colorado State University (1982); a M.S.E. Degree in Civil & Environmental Engineering from the University of Nevada Las Vegas (1993); and a Ph.D. in Civil & Environmental Engineering from the University Nevada Las Vegas (2001). I served as juror #3 in a criminal murder trial which took place in the Eighth Judicial District Court of Nevada, Department XI, in 1988, which was styled as "State of Nevada vs. Todd Mitchell Leavitt" in case number 87-C-079346-C. I served as the foreman of the jury in that case. I was working in North Las Vegas, and was a graduate student at the University of Nevada Las Vegas at the time of the trial.
3. That I do not now know Todd Mitchell Leavitt, nor have I ever known him outside of seeing him during the proceedings at the above-mentioned trial, nor do I know or have ever known any member of his family or any of his current or former friends or anyone closely associated with him. I make this Declaration freely and voluntarily, and for no hope or promise of any personal or pecuniary gain whatsoever. I have never been charged with, nor convicted of,

a felony, nor any crime of moral turpitude. I further make this Declaration under penalty of Perjury, pursuant to 28 U.S.C. 1746.

4. That I remember the facts and circumstances of the trial in case 87-C-079346-C quite well, in fact, as is sometimes said, "as if it were yesterday." The reason I remember the trial so vividly is because it was an extremely disturbing episode which I will remember for the rest of my life. To this day, I am struck with the lack of a compelling defense which was put on for the Defendant. When the deliberation process started, I am informed and believe that there were serious doubts in the jury as to whether the Defendant had committed the murder with which he was charged. However, Judge Addelmar "Dell" D. Guy III, the District Court judge who presided over that trial, specifically told the jury, after the close of evidence and prior to deliberations, that the jury did **not** have to find the Defendant guilty beyond a reasonable doubt in order to convict him, and that we could have reasonable doubt and still convict him. This may not be an exact quote, but it is clearly the meaning of what Judge Guy told us, and was relied upon heavily by the jury in reaching its verdict.

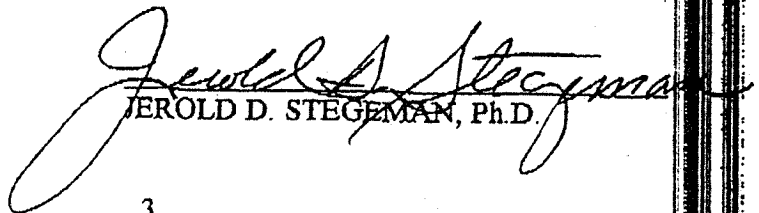
5. That to this day I am firmly and absolutely convinced that the Defendant's conviction in case number 87-C-079346-C was based primarily upon that verbal admonition to the jury by Judge Guy. I further firmly and absolutely believe that there was reasonable doubt as to the Defendant's guilt, and without that verbal admonition to the jury by Judge Guy, there would have been an acquittal, or at a minimum, a hung jury in case number 87-C-079346-C. The jury absolutely relied upon that statement. As the foreman of the jury in case number 87-C-079346-C, there was then, and is now, no question whatsoever in my mind, and those of other jurors, that a reasonable doubt did exist of the Defendant's guilt.

6. That after the verdict, the prosecutor for the State of Nevada, Michael O'Callaghan, held a debriefing with most all of the jurors that the alleged gun, of which there had been testimony that Defendant was allegedly seen throwing it into a lake, may not have even existed. O'Callaghan stated "we don't even know if he [the Defendant] threw a gun or some other object into the lake." There was evidence that the lake had been "dragged" but that no gun was ever found. Yet the jury was led to believe that the "murder weapon" gun had been disposed of by the Defendant's act of throwing it into the lake. To this day I am still troubled that the prosecutor led the jury to believe the validity of evidence which he himself may not have believed.

7. That after my involvement with in case number 87-C-079346-C, I lost a great deal of respect for the legal system. I am informed and believe, and thereon allege, that the trial in case number 87-C-079346-C was a mockery of justice, and that we, as jurors, were asked to decide a person's fate without adequate evidence to make such a momentous determination. I am further informed and believe that the jury did not see the Defendant as a real threat to society. Nevertheless, as the foreman of the jury in case number 87-C-079346-C, I am convinced that the jury heavily and absolutely relied upon the verbal admonition to the jury by Judge Guy which is set forth above in paragraph 4.

8. That pursuant to the provisions of 28 U.S.C. 1746, I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my recollection.

EXECUTED ON December 12, 2003 at Ruston, Louisiana.


JEROLD D. STEGEMAN, Ph.D.

General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 03-16150**Docketed:** 06/19/2003**Nature of Suit:** 2530 Habeas Corpus**Termed:** 12/22/2004

Leavitt v. McDaniels

Appeal From: U.S. District Court for Nevada, Reno**Fee Status:** IFP**Case Type Information:**

- 1) prisoner
- 2) state
- 3) habeas corpus

Originating Court Information:**District:** 0978-3 : CV-99-00031-DWH/RAM**Trial Judge:** David W. Hagen, Senior District Judge**Date Filed:** 01/20/1999**Date Order/Judgment:**

08/29/2002

Date NOA Filed:

09/23/2002

Prior Cases:

00-15765 **Date Filed:** 05/01/2000 **Date Disposed:** 05/31/2000
Disposition: Jurisdictional Defects - Judge Order

Current Cases:

None

TODD MITCHELL LEAVITT (#26131; Douglas Clark, Esquire, Attorney
 -: Reg# 26131) Direct: 702/388-1333

Petitioner - Appellant,

[COR LD NTC Please Select]

Suite 15

901 south Rancho Drive

Las Vegas, NV 89106-3815

Todd Mitchell Leavitt

Terminated: 08/25/2003

[COR LD NTC Pro Se]

HDSP - HIGH DESERT STATE
 PRISON (INDIAN SPRINGS)

P.O. Box 650
Indian Springs, NV 89070-0650

v.

E.K. MCDANIEL, Warden
Respondent - Appellee,

Victor-Hugo Schulze, II, Esquire, Senior
Deputy Attorney General
[COR LD NTC Dep State Atty Gen]
AGNV - OFFICE OF THE NEVADA
ATTORNEY GENERAL (LAS VEGAS)
555 East Washington Avenue
Las Vegas, NV 89101

TODD MITCHELL LEAVITT,

Petitioner - Appellant,

v.

E.K. MCDANIEL, Warden,

Respondent - Appellee.

06/19/2003	2	Filed request for a certificate of appealability. Date COA denied in DC: 6/9/03 Record on Appeal included (y/n): y. (STAFFATT) (CP) [Entered: 06/19/2003 03:03 PM]
06/19/2003	3	Received original District Court case file consisting of 1 volume of clerk's record and 1 volume of RT's. (records) (CP) [Entered: 06/19/2003 03:03 PM]
06/30/2003	4	Received Appellant Todd Mitchell Leavitt's motion address to distirct court re motion for reconsideration of the coa. STAFF [03-16150] (VT) [Entered: 07/01/2003 10:36 AM]
07/29/2003	6	Filed order (Edward LEAVY, Michael D. HAWKINS,): Aplt's "moiton for reconsideration," rec'd Jun. 30, 2003, is construed as a request for a coa ("COA", is deemed filed, and granted with respect to the following: Whether, in Light of Kelly v. Small, 315 F.3d 1063, 1070 (9th Cir.), cert.denied, 123 S. Ct. 2094, etc.

The opening brief is due Sept. 15, 2003; the answering brief is due Oct. 14, 2003; the optional reply brief is due within 14 days after service of the answering brief. Because there were no hearings in the district court, the clerk of that court shall forward the certificate of record immediately. [03-16150] (VT) [Entered: 07/29/2003 12:20 PM]

07/31/2003	8	District court casefile returned. 1 clerk's record, doc.#23 in expandofile. (JK) [Entered: 07/31/2003 11:29 AM]
08/06/2003	9	Filed certificate of record on appeal RT filed in DC na [03-16150] (FT) [Entered: 08/06/2003 04:16 PM]
08/25/2003	10	Filed notice of appearance of Douglas H. Clark, Esq. (Withdrew as counsel: attorney Todd Mitchell Leavitt for Todd Mitchell Leavitt [03-16150] (VT) [Entered: 08/26/2003 11:16 AM]
09/12/2003	11	Filed Appellant Todd Mitchell Leavitt's motion to extend time to file appellant's opening brief served on 9/11/03 WIP/PROMO [03-16150] (VT) [Entered: 09/15/2003 02:02 PM]
09/19/2003	13	Filed order (Appellate Commissioner) The appellant's late motion to ext the briefing scheduel is granted. The briefing schedule is as follows: the opening brief is now due Dec. 15, 2003; the answering brief is due Jan. 14, 2004; and the optional reply brief is due 14 days after service of the answering brief. (PROMO) [03-16150] (VT) [Entered: 09/19/2003 07:35 AM]
12/15/2003	15	Received Appellant Todd Mitchell Leavitt's brief in 15 copies 29 pages (Informal: no) deficient no excerpts of record: notified counsel. Served on 12/15/03 (VT) [Entered: 12/24/2003 08:30 AM]
12/22/2004	16	Order filed (Dep. Clk. vt) dismiss case for failure to prosecute (C.R. 42-1) A certified copy of this order sent to the district court shall act as and for the mandate of this court. (Procedurally Terminated Without Judicial Action; Default.) [03-16150] (VT) [Entered: 12/22/2004 10:39 AM]
08/10/2009	<u>17</u>	

		Received letter from pro se re: status report and copy of documents [7027548] (JFF) [Entered: 08/14/2009 10:37 AM]
04/01/2013	<u>18</u>	Received letter from pro se re: request docket sheet(sent copy) [8575284] (JFF) [Entered: 04/03/2013 11:01 AM]
07/03/2013	<u>19</u>	Received notice of change of address dated 06/30/2013 from. Todd Mitchell Leavitt Current new address: Southern Desert Correctional Center P.O.Box 208 Indian Springs NV 89018. [8692232] (JFF) [Entered: 07/05/2013 10:47 AM]
09/23/2015	<u>20</u>	Received Appellant Todd Mitchell Leavitt notice requesting a current update status of my federal appeal. (Docket sheet sent). [9695745] (RR) [Entered: 09/24/2015 08:12 PM]

CERTIFICATE OF SERVICE BY MAILING

I, TODD M. LEAVITT, hereby certify, pursuant to NRCP 5(b), that on this 23rd day of December, 2015, I mailed a true and correct copy of the foregoing, "Appellant's Opening Brief" by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. CARSON ST. SUITE 201
CARSON CITY, NV
89701

CC:FILE

DATED: this 23rd day of December, 2015.

Todd M. Leavitt # 26131
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: