

1 **MOT**

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Tracie K. Lindeman
Clerk of Supreme Court

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

11 STATE OF NEVADA)

Supreme Court Case No.69981

District Court No. C-14-303022-1

12 Plaintiff,)

13 vs.)

14 TONY LEE HOBSON, et al,)

15 Defendant/Movant/Appellant)

16 **MOTION SHOWING CAUSE**

17
18 Defendant, TONY LEE HOBSON, by and through his attorney,
19 RICHARD E. TANASI, ESQ. of TANASI LAW OFFICES, moves this
20 Honorable Court to show cause as to why this Honorable Court should not deny
21 Mr. HOBSON's underlying appeal for lack of jurisdiction. Mr. HOBSON
22 respectfully requests this Honorable Court act on this Motion before Calendar
23 Call in this matter, which is set for April 20, 2016.

24 DATED this 1 day of April, 2016.

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26 

27 Richard E. Tanasi, Esq.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**
3 **RELEVANT FACTS AND PROCEDURE**

4 Mr. Hobson's appeal is based upon Mr. Hobson's Petition for Writ of
5 Habeas Corpus (under NRS 34.700), which was filed on, March 18, 2015. See,
6 Defendant's Petition, attached to the State's/Respondent's Opposition to
7 Appellant's Motion to Stay as Exhibit "1." The Petition sought to dismiss all
8 eighty-two (82) counts, including but not limited to the kidnapping counts
9 alleged, which carry life sentences.
10

11 On May 18, 2015, the Honorable Judge Kephart verbally denied
12 Defendant Hobson's Petition for Writ of Habeas Corpus. When this Motion
13 was filed, the Written Order reflecting the May 18, 2015 verbal denial had not
14 been entered.
15

16 On March 14, 2016, Defendant Hobson filed a Notice of Appeal with this
17 Honorable Court, challenging the Honorable Judge Kephart's denial. On March
18 17, 2016, Defendant Hobson filed a Motion to Stay/Continue Trial in District
19 Court. On March 23, 2016, the Honorable Judge Kephart denied Defendant
20 Hobson's Motion to Stay/Continue.
21

22 Calendar Call is set for April 20, 2016. Trial is set for April 25, 2016.
23 Defendant Hobson's Appeal seeks to effectively dismiss all or some of the
24 counts against him. As a result, if Mr. Hobson's appeal is not decided before his
25

1 trial, he could be tried on charges that this Honorable Court may have
2 dismissed. More importantly, to avoid waiving his challenge to the impropriety
3 of the Honorable Judge Kephart's Order (as was the case in Nix v. State, 91
4 Nev. 613, 541 P.2d 1 (1975)), Mr. Hobson has shown cause as to why this
5 Honorable Court should not dismiss the instant appeal for lack of jurisdiction.
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8 II. 9 LEGAL ARGUMENT FOR CAUSE

10 A. The Nevada Supreme Court Has Jurisdiction Over Mr. Hobson's 11 Appeal Under the Waiver Established by Nix v. State, 91 Nev. 12 613, 541 P.2d 1 (1975)

13 Generally, a defendant's proper course of action is to appeal from the
14 order denying the petition for a writ of habeas corpus, pursuant to the provisions
15 of NRS 34.380(3).¹ Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 1-2 (1975). By
16 failing to avail himself of this remedy, a defendant has waived any impropriety
17 in the trial court's order. Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 1-2 (1975)
18 citing George v. State, 89 Nev. 47, 505 P.2d 1217 (1973); Oberle v. Fogliani, 82
19 Nev. 428, 420 P.2d 251 (1966). The undersigned's research prior to filing the
20 instant notice of appeal revealed that Nix, interpreting NRS 34.380(3), has no
21 negative case history. Therefore, based upon the Nevada Supreme Court's
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27 ¹ NRS 34.380(3) was replaced by NRS 34.710 in 1985. See, Table of NRS
28 Chapters Repealed, Expired or Replaced and Lexis Research attached hereto as
Exhibit "A."

1 ruling in Nix, Mr. Hobson's appeal was filed in an abundance of caution, so as
2 not to waive challenging the trial court's order.

3
4 Moreover, the Nevada Supreme Court, in Gray, held as follows:

5 A defendant charged with having committed a public offense may
6 challenge probable cause to hold him to answer through a petition for a
7 writ of habeas corpus. ***If unsuccessful, he thereafter may challenge the***
8 ***state's case at trial, and on appeal from conviction if conviction occurs.***
9 An order denying pretrial habeas relief is not a final adjudication of his
10 guilt. On the other hand, an order granting such a petition for relief before
11 trial possesses the quality of a final judgment.[Emphasis Added]

12 Gary v. Sheriff, Clark Cty., 96 Nev. 78, 80, 605 P.2d 212, 214 (1980).

13 The Gray Court held a Defendant ***may*** challenge the state's case at trial,
14 or on appeal following a conviction. Conversely, the Gray Court did not hold a
15 Defendant ***must/shall*** challenge the state's case at trial, or on appeal following a
16 conviction. Therefore, based upon the Nevada Supreme Court's ruling in Nix,
17 Mr. Hobson's appeal was filed in an abundance of caution, so as not to waive
18 challenging the trial court's order.

19
20 Further, in Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135
21 (1990), the Nevada Supreme Court held, on the appeal of an order transferring a
22 case back to juvenile court, the right to appeal is statutory; where no statutory
23 authority to appeal is granted, no right to appeal exists. Here, this case is not an
24 appeal of an order transferring a case back to juvenile court. Therefore, based
25 upon the Nevada Supreme Court's ruling in Nix, Mr. Hobson's appeal was filed
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1 in an abundance of caution, so as not to waive challenging the trial court's
2 order.
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4 **III.**
5 **CONCLUSION**

6 Therefore, based upon the foregoing, if Mr. Hobson's appeal is not
7 decided before his trial, he could be tried on charges that this Honorable Court
8 may have dismissed. More importantly, to avoid waiving his challenge to the
9 impropriety of the Honorable Judge Kephart's Order (as was the case in Nix v.
10 State, 91 Nev. 613, 541 P.2d 1 (1975)), Mr. Hobson has shown cause as to why
11 this Honorable Court should not dismiss the instant appeal for lack of
12 jurisdiction.
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16 DATED this 1 day of April, 2016.

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19 Richard E. Tanasi, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 1 day of April, 2016, I served a true and correct copy of the foregoing **MOTION SHOWING CAUSE**, addressed to the following counsel of record at the following address(es), as follows:

X **VIA U.S. MAIL:** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on service list below in the United States mail at Las Vegas, Nevada.

Tony Lee Hobson	Adam Paul Laxalt
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201 S. Carson Street
Carson City, NV 89701
(702) 486-9300

X **VIA ELECTRONIC SERVICE:** by emailing the address(es) below.

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An employee of **TANASI LAW OFFICES**

EXHIBIT A

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EXHIBIT A

TABLE OF NRS CHAPTERS REPEALED AND SECTIONS REPEALED, EXPIRED OR REPLACED

The following table is composed of all chapters and sections of Nevada Revised Statutes which have been repealed or replaced in revision since its enactment in 1957.

The two columns under "Statutes of Nevada" specify the year the NRS section or chapter was repealed and the page of the Statutes of Nevada where the repeal appears. For example: NRS 1.160 was repealed at page 91 of the 1965 Statutes of Nevada; NRS chapter 79 was repealed as a chapter rather than as individual sections at page 945 of the 1965 Statutes of Nevada.

By authority of NRS 220.120, the Legislative Counsel may in the process of compiling supplements to Nevada Revised Statutes assign new numbers to existing NRS sections to effectuate the orderly and logical arrangement of the statutes. For NRS sections which have been replaced in revision, the entry under the column "Statutes of Nevada" indicates the year in which the section was moved, and under the year lists the new location for that section in NRS. An example is NRS 130.270, for which NRS 130.209 was substituted in revision without change in content.

1.110	1995	Replaced by NRS 1.500
1.160 Repealed	1965	Page 91
1.220 Repealed	1979	Page 311
1.240 Repealed	1981	Page 320
1.280 Repealed	1979	Page 1496
1.290 Repealed	1971	Page 9
1.300 Repealed	1967	Page 1341
1.420 Repealed	1981	Page 378
1.429 Repealed	2009	Page 1350
1.4685 Repealed	2009	Page 1350
1.4693 Repealed	2009	Page 1350
1.470 Repealed	2011	Page 2526
1.480 Repealed	2011	Page 2526
1A.380 Repealed	2001 17th SS	Page 103
2.080 Repealed	1981	Page 176
2.100 Repealed	1981	Page 176
2.193 Repealed	2007	Page 422
2.285 Repealed	1989	Page 328
2.390 Repealed	2005	Page 1094
2.500 Repealed	1981	Page 265
3.0265 Repealed	2001	Page 3114
3.050 Repealed	1985	Page 326
3.190 Repealed	1981	Page 176
3.200 Repealed	1981	Page 176
3.210 Repealed	1981	Page 176
3.290 Repealed	2001	Page 753
3.295 Repealed	2001	Page 753
3.330 Repealed	1973	Page 1323
3.390 Repealed	1973	Page 398
3.400 Repealed	1973	Page 398
3.410 Repealed	1973	Page 398
3.420 Repealed	1973	Page 398
3.430 Repealed	1973	Page 398
3.440 Repealed	1973	Page 398
3.450 Repealed	1973	Page 398
4.070 Repealed	1969	Page 411
4.210 Repealed	1971	Page 8
4.3768	1999	Replaced by NRS 4.372
4.380	1999	Replaced by NRS 4.365
5.079	1995	Replaced by NRS 5.052
6.105 Repealed	1981	Page 334
6.170 Repealed	1967	Page 1472

7.010 Repealed	1963	Page 385
7.020 Repealed	1963	Page 385
7.035	1975	Replaced by NRS 7.105
7.040 Repealed	1963	Page 385
7.050 Repealed	1963	Page 385
7.060 Repealed	1963	Page 385
7.070 Repealed	1963	Page 385
7.080 Repealed	1963	Page 385
7.090 Repealed	1963	Page 385
7.100 Repealed	1963	Page 385
7.110 Repealed	1963	Page 385
7.120 Repealed	1963	Page 385
7.130 Repealed	1963	Page 385
7.140 Repealed	1963	Page 385
7.150 Repealed	1963	Page 385
7.160 Repealed	1963	Page 385
7.170 Repealed	1963	Page 385
7.180 Repealed	1963	Page 385
7.190 Repealed	1963	Page 385
7.200 Repealed	1963	Page 385
7.210 Repealed	1963	Page 385
7.220 Repealed	1963	Page 385
7.230 Repealed	1963	Page 385
7.240 Repealed	1963	Page 385
7.250	1975	Replaced by NRS 7.045
7.260	1975	Replaced by NRS 7.125
7.270 Repealed	1963	Page 385
7.280 Repealed	1963	Page 385
7.290 Repealed	1963	Page 385
7.300 Repealed	1963	Page 385
7.310 Repealed	1963	Page 385
7.320 Repealed	1963	Page 385
7.330 Repealed	1963	Page 385
7.340 Repealed	1963	Page 385
7.350 Repealed	1963	Page 385
7.360 Repealed	1963	Page 385
7.370 Repealed	1963	Page 385
7.380 Repealed	1963	Page 385
7.390 Repealed	1963	Page 385
7.400 Repealed	1963	Page 385
7.410 Repealed	1963	Page 385
7.420 Repealed	1963	Page 385
7.430 Repealed	1963	Page 385
7.440 Repealed	1963	Page 385
7.450 Repealed	1963	Page 385
7.460 Repealed	1963	Page 385
7.470 Repealed	1963	Page 385
7.480 Repealed	1963	Page 385
7.490 Repealed	1963	Page 385
7.500 Repealed	1963	Page 385
7.510 Repealed	1963	Page 385
7.520 Repealed	1963	Page 385
7.530 Repealed	1963	Page 385
7.540 Repealed	1963	Page 385
7.550 Repealed	1963	Page 385
7.560 Repealed	1963	Page 385
7.570 Repealed	1963	Page 385
7.580 Repealed	1963	Page 385
7.590 Repealed	1963	Page 385
7.600 Repealed	1963	Page 385
10.020	1985	Replaced by NRS 10.155
10.030	1985	Replaced by NRS 10.165
10.040	1985	Replaced by NRS 10.175
11.050 Repealed	1957	Page 661
11.230 Repealed	1963	Page 363
11.240 Repealed	1969	Page 502
11.400	1977	Replaced by NRS 41A.097
12.060 Repealed	1979	Page 1172
12.090 Repealed	1979	Page 459
13.025 Repealed	1969	Page 67

14.150 Repealed	1971	Page 145
15.020 Repealed	1971	Page 812
17.180 Repealed	1965	Page 650
17.210 Repealed	1973	Page 1305
17.215 Repealed	1979	Page 1357
17.220 Repealed	1973	Page 1305
17.230 Repealed	1973	Page 1305
17.240 Repealed	1973	Page 1305
17.250 Repealed	1973	Page 1305
17.260 Repealed	1973	Page 1305
17.270 Repealed	1973	Page 1305
17.280 Repealed	1973	Page 1305
17.290 Repealed	1973	Page 1305
17.300 Repealed	1973	Page 1305
17.315 Repealed	1979	Page 1357
17.325 Repealed	1979	Page 1357
18.040 Repealed	1977	Page 777
18.045 Repealed	1977	Page 777
18.100 Repealed	1977	Page 777
19.015 Repealed	1985	Page 326
19.120 Repealed	1969	Page 270
19.130 Repealed	1969	Page 270
19.140 Repealed	1969	Page 270
19.150 Repealed	1969	Page 270
19.160 Repealed	1969	Page 270
19.170 Repealed	1969	Page 270
19.180 Repealed	1969	Page 270
19.190 Repealed	1969	Page 270
19.200 Repealed	1969	Page 270
19.210 Repealed	1969	Page 270
19.220 Repealed	1969	Page 270
19.230 Repealed	1969	Page 270
19.240 Repealed	1969	Page 270
	1969	Page 346
19.250 Repealed	1969	Page 270
19.260 Repealed	1969	Page 270
19.270 Repealed	1969	Page 270
19.280 Repealed	1969	Page 270
21.114 Repealed	2011	Page 1908
21.116 Repealed	1991	Page 503
31.080 Repealed	1973	Page 1189
31.090 Repealed	1973	Page 1189
31.230 Repealed	1973	Page 1189
31.250 Repealed	1973	Page 1189
31.315 Repealed	1973	Page 1189
31.430 Repealed	1973	Page 1189
31.440 Repealed	1973	Page 1189
31.463 Repealed	1985	Page 1434
31.465 Repealed	1985	Page 1434
31.467 Repealed	1985	Page 1434
31.468 Repealed	1985	Page 1434
31.860 Repealed	1973	Page 1152
31A.020 Repealed	1989	Page 677
31A.023	2005	Replaced by NRS 31A.013
31A.170 Repealed	1991	Page 1339
31A.200	1987	Replaced by NRS 125B.170
31A.210 Repealed	1997	Page 2351
31A.220 Repealed	1997	Page 2351
31A.230 Repealed	1997	Page 2351
31A.240 Repealed	1997	Page 2351
31A.260 Repealed	1997	Page 2351
31A.340 Repealed	1999	Page 909
34.375	1985	Replaced by NRS 34.700
34.380	1985	Replaced by NRS 34.710
34.460 Repealed	1985	Page 1237
34.490 Repealed	1967	Page 1472
34.690 Repealed	1967	Page 1472
34.725 Repealed	1991	Page 92
34.815 Repealed	1991	Page 92
37.190 Repealed	2007	Page 338

38.010 Repealed	1969	Page 799
38.015 Repealed	2001	Page 1286
38.017 Repealed	2003	Page 39
38.020 Repealed	1969	Page 799
38.025 Repealed	2001	Page 1286
38.030 Repealed	1969	Page 799
38.035 Repealed	2001	Page 1286
38.040 Repealed	1969	Page 799
38.045 Repealed	2001	Page 1286
38.050 Repealed	1969	Page 799
38.055 Repealed	2001	Page 1286
38.060 Repealed	1969	Page 799
38.065 Repealed	2001	Page 1286
38.070 Repealed	1969	Page 799
38.075 Repealed	2001	Page 1286
38.080 Repealed	1969	Page 799
38.085 Repealed	2001	Page 1286
38.087 Repealed	2001	Page 1286
38.090 Repealed	1969	Page 799
38.095 Repealed	2001	Page 1286

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Nevada Revised Statutes Annotated **Title 3. Remedies; Special Actions and Proceedings.** **Chapter 34. Writs: Certiorari; Mandamus; Prohibition; Habeas Corpus.** **Habeas Corpus** **General Provisions**

34.380. Transferred.

▼ Annotations

Notes**Editor's note.**

This section is now compiled as **NRS 34.710**.

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