| MOT |
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| RICHARD E. TANASI, ESQ. |
| Nevada Bar No. 9699 |
| TANASI LAW OFFICES (01 S. Secondo Street, 2nd Floor Electronically Filed |
| Apr 01 2016 03:14 p.m. |
| Las Vegas, NV 89101 Tracie K. Lindeman Telephone: (702) 906-2411 Clerk of Supreme Court |
| Facsimile: (866) 299-5274 |
| Attorney for Defendant/Movant/Appellant HOBSON |
| |
| IN THE SUPREME COURT OF THE STATE OF NEVADA |
| CTATE OF NEWADA |
| STATE OF NEVADA) Supreme Court Case No.69981 |
| District Court No. C-14-303022-1 |
| Plaintiff, |
| vs. |
| |
| TONY LEE HOBSON, et al, |
| Defendant/Movant/Appellant) |
|) |
| |
| MOTION SHOWING CAUSE |
| D.C. 1. TONIN I.E. HODGON by and through his attorney |
| Defendant, TONY LEE HOBSON, by and through his attorney, |
| RICHARD E. TANASI, ESQ. of TANASI LAW OFFICES, moves this |
| Honorable Court to show cause as to why this Honorable Court should not deny |
| Mr. HOBSON's underlying appeal for lack of jurisdiction. Mr. HOBSON |
| respectfully requests this Honorable Court act on this Motion before Calendar |
| Call in this matter, which is set for April 20, 2016. |
| DATED this day of April, 2016. |
| |
| Richard E. Tanasi, Esq. |
| Richard D. Tanasi, 254 |
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MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT FACTS AND PROCEDURE

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

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

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

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

dismissed. More importantly, to avoid waiving his challenge to the impropriety of the Honorable Judge Kephart's Order (as was the case in Nix v. State, 91 Nev. 613, 541 P.2d 1 (1975)), Mr. Hobson has shown cause as to why this Honorable Court should not dismiss the instant appeal for lack of jurisdiction.

II. LEGAL ARGUMENT FOR CAUSE

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

Generally, a defendant's proper course of action is to appeal from the order denying the petition for a writ of habeas corpus, pursuant to the provisions of NRS 34.380(3). Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 1-2 (1975). By failing to avail himself of this remedy, a defendant has waived any impropriety in the trial court's order. Nix v. State, 91 Nev. 613, 614, 541 P.2d 1, 1-2 (1975) citing George v. State, 89 Nev. 47, 505 P.2d 1217 (1973); Oberle v. Fogliani, 82 Nev. 428, 420 P.2d 251 (1966). The undersigned's research prior to filing the instant notice of appeal revealed that Nix, interpreting NRS 34.380(3), has no negative case history. Therefore, based upon the Nevada Supreme Court's

¹ NRS 34.380(3) was replaced by NRS 34.710 in 1985. <u>See</u>, Table of NRS Chapters Repealed, Expired or Replaced and Lexis Research attached hereto as Exhibit "A."

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

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

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

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

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

Further, in <u>Castillo v. State</u>, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990), the Nevada Supreme Court held, on the appeal of an order transferring a case back to juvenile court, the right to appeal is statutory; where no statutory authority to appeal is granted, no right to appeal exists. Here, this case is not an appeal of an order transferring a case back to juvenile court. Therefore, based upon the Nevada Supreme Court's ruling in <u>Nix</u>, Mr. Hobson's appeal was filed

in an abundance of caution, so as not to waive challenging the trial court's order.

III. CONCLUSION

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

DATED this day of April, 2016.

Richard E. Tanasi, Esq.

| 2 | CERTIFICATE OF SERVICE |
|-----|--|
| 3 | I hereby certify that on the day of, 20_16, I |
| 4 | in the second se |
| . 5 | served a true and correct copy of the foregoing MOTION SHOWING |
| | CAUSE, addressed to the following counsel of record at the following |
| 6 | address(es), as follows: |
| 7 | \underline{X} VIA U.S. MAIL: by placing a true copy thereof enclosed in a sealed |
| 8 | envelope with postage thereon fully prepaid, addressed as indicated on |
| 9 | service list below in the United States mail at Las Vegas, Nevada. |
| 10 | Tony Lee Hobson Adam Paul Laxalt |
| 11 | #05992420 Las Vegas Office: |
| 12 | Clark County Detention Center Office of the Attorney General |
| 13 | 330 South Casino Center Blvd. Grant Sawyer Building |
| | Las Vegas, NV 89101 555 E. Washington Avenue, Suite 3900 Las Vegas, NV 89101 |
| 14 | Las vegas, ivv 65101 |
| 15 | Supreme Court Clerk |
| 16 | Supreme Court Building |
| 17 | 201 S. Carson Street Carson City, NV 89701 |
| 18 | (702) 486-9300 |
| 19 | |
| 20 | \underline{X} VIA ELECTRONIC SERVICE: by emailing the address(es) below. |
| 21 | Elizabeth Mercer, Esq. |
| | Chris Burton, Esq. Lance Maningo, Esq. |
| 22 | Clark County District Attorney's Office Belon and Maningo |
| 23 | 200 Lewis Avenue 732 South Sixth Street, #102 Las Vegas, NV 89155 Las Vegas, NV 89101 |
| 24 | elizabeth.mercer@clarkcountyda.com lam@belonandmaningo.com |
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| 26 | chris.burton@clarkcountyda.com |
| 27 | Li Cit |
| 28 | 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.

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| ▼ Annotations | | <u> </u> |
| Notes | | |
| Editor's note. | | , |
| This section is now compiled as NRS 34.71 | <u>u</u> . | |
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