

FILED

DEC 01 2016

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY / /
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRILL T. VOLPICELLI, ^{XXX}

PETITIONER - ~~APPELLANT~~, CASE NO. 70126

VS.

STATE OF NEVADA,
RESPONDENT - ~~APPELEE~~

MOTION TO TAKE
JUDICIAL NOTICE

PETITIONER ~~APPELLANT~~ FERRILL T. VOLPICELLI (VOLPICELLI) MOVES THE NEVADA SUPREME COURT TO TAKE JUDICIAL NOTICE OF THE JURISDICTIONAL IMPLICATIONS OF THE DISTRICT COURT'S ORDERS OF AUGUST 2, 2007, APRIL 14, 2008 AND MARCH 8, 2016 WITHIN THE WRIT OF HABEAS CORPUS (POST-CONVICTION) DATED NOVEMBER 9, 2005 (2005 WRIT). THIS INCLUDES, BUT IS NOT LIMITED TO, THE LACK OF SUBJECT MATTER JURISDICTION FOR THE NEVADA SUPREME COURT TO REVIEW ALL OF VOLPICELLI'S DISPOSED OF GROUNDS UNTIL NOW BASED UPON THE DISTRICT COURT'S FINAL ORDER/JUDGMENT ON MARCH 8, 2016 AND HIS TIMELY APPEAL THERETO ON APRIL 1, 2016.

THIS MOTION IS BASED UPON THE RECORDS OF THE NEVADA COURTS, AS WELL AS THE APPLICABLE RULES OF APPELLATE PROCEDURE, AND THE FOLLOWING ARGUMENTS.

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16-37245

ARGUMENTS

VOLPICELLI ASSERTS JURISDICTIONAL IMPLICATIONS CONCERNING THE STATE DISTRICT COURT'S ORDERS UPON REVIEW OF THE 2005 WRIT.

THE DISTRICT COURT FOUND GOOD CAUSE TO ISSUE ITS MARCH 8, 2016 ORDER WHICH CANNOT BE CONSTRUED AS ANYTHING BUT THE FINAL ORDER. NRS 34.830(1) ESSENTIALLY ADDRESSES FINALITY OF A REVIEW OF WRIT OF HABEAS CORPUS (POST-CONVICTION) CLAIMS RELEVANT TO VOLPICELLI'S SITUATION; ANY ORDER THAT FINALLY DISPOSES OF A PETITION, WHETHER OR NOT AN EVIDENTIARY HEARING WAS HELD, MUST CONTAIN THE REQUIRED SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUPPORTING THE DECISION[S] OF THE COURT. (EMPHASIS ADDED) THIS IS CLEARLY A PROCEDURAL REQUIREMENT OF A JURISDICTIONAL MAGNITUDE FOR THE FINALITY OF THE ENTIRE PETITION, NOT JUST ITS INDIVIDUALIZED GROUNDS. SUCH PROCEDURAL REQUIREMENTS ARE STRICTLY CONSTRUED.

SEE STATE VS. DISTRICT COURT (RIKER), 112 P3D 1070, 1075 (2005) (HOLDING THAT THE STATUTORY RULES IN HABEAS CORPUS ARE MANDATORY AND CANNOT BE IGNORED.)

VOLPICELLI FURTHER ASSERTS THAT BOTH OF THE DISTRICT COURT'S PRIOR ORDERS TO THAT OF MARCH 8, 2016, SPECIFICALLY ON AUGUST 2, 2007 AND APRIL 14, 2008

DISMISSING NUMEROUS GROUNDS DID NOT CONTAIN THE REQUIRED SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH RESPECT TO THE ARTICULATION OF GROUND 23. HENCE, THE ENTIRE PETITION, EXCLUDING CERTAIN PROPERLY DISPOSED OF GROUNDS, WAS NOT FINALLY DISPOSED OF PURSUANT TO NRS 34.830(1). THIS REPRESENTS A JURISDICTIONAL DEFECT AS THE TWO (2) AFOREMENTIONED ORDERS PRIOR TO THE MARCH 8, 2016 ORDER/JUDGMENT COULD NOT LAWFULLY BE FINAL TO BASE AN APPEAL. LIKEWISE, THE TWO (2) AFOREMENTIONED ORDERS PRIOR TO THE MARCH 8, 2016 ORDER/JUDGMENT ARE NOT LAWFULLY FINAL AND THEREFORE CANNOT BE USED AS A LAWFUL SOURCE OF PRECLUSION TO PROCEDURALLY BAR THE REVIEW OF ALL CLAIMS PUT FORTH BY VOLPICELLI WITHIN THIS INSTANT APPEAL. NRS 34.575(1) PROVIDES THE BASIS FOR THE NEVADA SUPREME COURT TO HAVE JURISDICTION OVER AN APPEAL IN A HABEAS CASE IF A NOTICE OF APPEAL IS FILED WITHIN THIRTY (30) DAYS OF BEING SERVED WITH THE FINAL ORDER/JUDGMENT BEING APPEALED FROM. A NOTICE OF APPEAL FILED AFTER THE ENTRY OF A NON-FINAL ORDER WOULD BE A PREMATURE APPEAL DEPRIVING THE NEVADA SUPREME COURT OF ALL JURISDICTION FROM INCEPTION. SOUTHERN NEVADA HUMBUNDERS ASSOCIATION, ET AL. VS CITY OF LAS

VEGAS, 913 P2d 1276 (1996) (DISTRICT COURT RETAINS JURISDICTION ON ANY AND ALL PREMATURE APPEALS TO THAT OF THE FINAL ORDER, INCLUDING, BUT NOT LIMITED TO ENTRY OF SAID FINAL ORDER BY THE COURT CLERK.)

HAD VOLPICELLI FILED A PREMATURE NOTICE OF APPEAL CONCERNING THE DISTRICT COURT'S ORDER OF AUGUST 2, 2007 (THE FINDINGS OF FACTS AND DISMISSAL OF THE MAJORITY OF POSED GROUNDS IN VOLPICELLI'S PETITION) SURELY THE STATE WOULD HAVE ARGUED A LACK OF SUBJECT MATTER JURISDICTION. SIMILARLY, THE NEVADA SUPREME COURT WOULD HAVE ISSUED AN ORDER DISMISSING THE APPEAL UNTIL THE DISTRICT COURT ISSUED ITS FINAL ORDER DISPOSING OF ALL ISSUES; THEREBY LEAVING NOTHING FURTHER FOR THE DISTRICT COURT'S CONSIDERATION. ALPER VS POSEN, 363 P2d 502 (1961) (FINALITY ORDER LEAVES NOTHING FURTHER FOR THE DISTRICT COURT'S CONSIDERATION).

THIS, A PREMATURE APPEAL DOES NOT GIVE THIS COURT SUBJECT MATTER JURISDICTION BECAUSE THE DISTRICT COURT RETAINS JURISDICTION UNTIL THE FINAL ORDER CONCERNING THE REQUIRED SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW ON ALL ISSUES PRESENTED FOR REVIEW. THAT MEANS THE NEVADA SUPREME COURT LACKED PROPER SUBJECT MATTER JURISDICTION TO REVIEW ANY GROUNDS WITHIN VOLPICELLI'S 2005 WRIT

UNTIL THE MARCH 8, 2016 FINAL ORDER, MERELY BECAUSE VOLPKELL NAIVELY FILED A PREMATURE NOTICE OF APPEAL DUE TO THE DISTRICT COURT'S MISLEADING ORDER ON APRIL 14, 2008 AS TO ITS PERCEIVED FINALITY OF ITS REVIEW IS OF NO CONSEQUENCE. MOREOVER, NO PARTY CAN CONFER A COURT'S SUBJECT MATTER JURISDICTION. ON THE LEGISLATURE CAN. IN ADDITION, THIS JURISDICTIONAL DEFECT CLAIM CANNOT BE WAIVED OR PROCEDURALLY BARRED, AND CAN BE RAISED AT ANY TIME. LANDRETH v MALIK, 251 P3d 163, 166 (NEV. 2011) (WHETHER A COURT LACKS SUBJECT MATTER JURISDICTION CAN BE RAISED BY THE PARTIES AT ANY TIME... AND CANNOT BE CONFERRED BY THE PARTIES) (EMPHASIS ADDED), COLWELL v STATE, 59 P3d 463, 467 (NEV. 2003) (SUBJECT MATTER JURISDICTION IS NOT WAIVABLE.) (EMPHASIS ADDED.)

AS SUCH, THIS COURT MUST NOW ENTERTAIN ALL GROUNDS POSED WITHIN VOLPKELL'S INSTANT APPEAL AS IF FOR THE FIRST TIME AS HAVING PROPER JURISDICTION, AND NO APPEARANCE OF HAVING ANY PROCEDURAL LIMITATIONS UNDER NRS 34 ET SEQ.

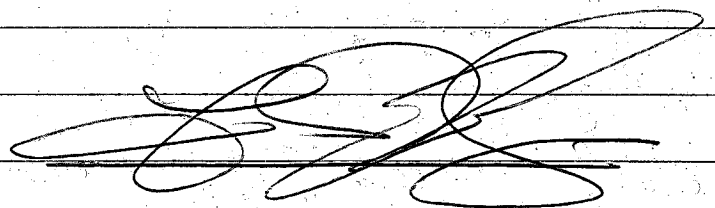
CONCLUSION

THIS COURT IS PRESENTED WITH A UNIQUE SITUATION AND FORTUITOUS OPPORTUNITY TO CORRECT THE MANIFEST INJUSTICE IN VOLPKELL'S

CASE. A CASE WHICH HAS BEEN UNDOLY PROTRACTED IN LITIGATION, FACED WITH STATE AND COURT ERRORS, AS WELL AS INEFFECTIVE ASSISTANCE OF COUNSEL THROUGHOUT THE PROCEEDINGS. IT IS IMPERATIVE THIS COURT TAKE JUDICIAL NOTICE THAT VOLPICELLI'S HABEAS PETITION FILED IN 2005 WAS NOT LAWFULLY ADJUDICATED AS FINAL UNTIL MARCH 8, 2016 PURSUANT TO NRS 34.830(1), AND THEREFORE ALL ITS GROUNDS WHICH ARE NOW BEFORE THIS COURT ARE NOT SUBJECT TO THE PROCEDURAL LIMITATIONS OF NRS CHAPTER 34 et seq.

BASED ON THE FOREGOING, AS WELL AS THE CONSTITUTIONAL CLAIMS VOLPICELLI HAS PRESENTED ON APPEAL, THIS COURT SHOULD GRANT THE RELIEF REQUESTED IN HIS 2005 HABEAS PETITION.

DATED THIS 28 DAY
OF NOVEMBER, 2016



FERN J. VOLPICELLI
79565 @ LCC
1200 PRISON ROAD
LOVELOCK, NV 89419

PETITIONER - APPELLANT IN PRO SE

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION TO TAKE JUDICIAL NOTICE to the below address(es) on this 28 day of NOVEMBER, 2016, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY
DISTRICT ATTORNEY
75 COURT ST
RENO, NV 89501

FERRIS VOLPKE #78965
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Apparatus In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to Take Judicial Notice filed in NSC 70126 District Court Case No. CR03-1263 does not contain the social security number of any person.

Dated this 28 day of NOVEMBER, 2016.

FERRIS VOLPKE
Apparatus In Pro Se