

IN THE SUPREME COURT OF THE STATE OF NEVADA

Justin D. Porter

Appellant,

vs.

The State of Nevada

Respondent.

Supreme Court No. 70206District Court No. C174954

FILED

MAY 12 2016

APPELLANT'S INFORMAL BRIEF

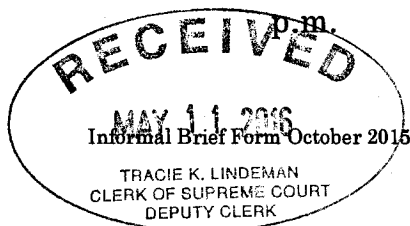
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INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal 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



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
03/14/2016	Findings of Fact, conclusions of Law and order.
03/03/2016	Defendants motion to Reply to States Response.
04/05/2016	Motion For Reconsideration/Rehearing.

Notice of Appeal. Give the date you filed your notice of appeal in the district court: April 14, 2016

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.)

This pro se Appellant's Informal Brief should not be held to the same standards as a Attorney Brief. This is based pursuant to HUGHES V. ROWE, 449 U.S. 5, 66 LEd 2d 163, 101 S. Ct. 173. And not dismissed for Failure to state a claim that would entitle him relief. Haines V. Kerner, 404 US 519, 30 LEd 2d 652, 92 S Ct 594, reh den 405 US 948, 30 LEd 2d 819,

1 The petitioner, Justin Porter is ~~Factual~~ ^{actually} innocent of
2 Second degree FELONY MURDER. Pursuant to Ramirez v. State,
3 235 P.3d 619, 126 Nev. Adv. Rep. 22, 2010 Nev. And the Finding of Facts
4 are in the evidence and Justice of the Law, and of the injustice of
5 the case. The Court ordered the state to Respond within 45 days
6 to the petitioner Habeas Corpus, the state exceed the ^{days} ~~days that~~
7 was ordered by the court, and not call to account for it.
8 Petitioner should have had 15 days to Reply, but because of the
9 state's delay, petitioner only had 2 days to Reply before the
10 hearing for the Habeas Corpus. The court erred when not
11 holding the state to account, and not given petitioner the
12 15 days. See NRS 34.750. Petitioner Filed the Reply anyway,
13 in the Reply, ^{Factual} ~~Factual~~ ^{actually} innocent is acknowledge,
14 the court did not take the Reply in consideration at the
15 Habeas Corpus hearing. Petitioner Filed a motion for Rehearing
16 and do not know what happen with it, the court erred when
17 not allowing petitioner present U.S. v. Hayman, 342 U.S. 205
18 (1942). (see Response, Reply also motion for Rehearing).
19 Observing that the purpose of Felony-murder Rule is to deter
20 Felons from Killing negligently or accidentally by holding
21 them strictly responsible for the killings that are the
22 result of a Felony or an attempted one. See Payne v.
23 State, 81 Nev. 503, 506, 406 P.2d 922, 924 (1965). Petitioner was
24 charged with count 1-Burglary with Deadly Weapon, and
25 the Jury acquitted. count 2-Attempt Robbery with Deadly
26 weapon, and ~~acquitted~~ acquitted. And on count 3-Murder with
27 use of weapon (open murder) in violation of NRS 200.010,

1 200.030, 193.165. The Jury acquitted the First degree murder,
2 but found petitioner guilty of second degree murder. As
3 this verdict concerns petitioner because it's a Felony
4 murder, without a Felony inherently dangerous that
5 foresees the death or injury resulting from the
6 commission of the Felony. This verdict is a injustice
7 verdict, there is no support to a application for Felony
8 murder. Ramirez v. State, 235 P.3d 619, 126 Nev. Adv. Rep. 22,
9 2010 Nev. LEXIS 27 (Nev. 2010). In the instruction to the Jury
10 it holds the petitioner STRICTLY RESPONSIBLE under
11 the Felony-murder theory (see Instructions to Jury). The
12 Jury Instructions do not elaborate what a Felony murder
13 Rule is, to not allow the Jury to Fully understand is to
14 not measure up to sufficiency of evidence, burden of
15 Proof, reasonable doubt. see SCHLUP v. DELO, 513 U.S. 298,
16 130 L. Ed.2d 808, 115 S.Ct 851. Petitioner is actually innocent
17 of the second degree murder, because of the injustice
18 verdict, there is no immediate direct causal relationship
19 between action of the petitioner, that proved the victims
20 demis. Ramirez v. State, 235 P.3d 619, 126 Nev. Adv. Rep. 22, 2010
21 Nev. 27 (Nev 2010). Thus, to say petitioner is actual innocent of
22 Felony murder, and showing cause and actual prejudice
23 to overcome the procedural bar. see Mitchell v. State, 114
24 Nev. 1417, 971 P.2d 813, 1998 Nev. LEXIS 164 (1998); Also Pellegrini
25 v. State, 104 Nev. 625, 764 P.2d 484, 1988 Nev. LEXIS 98 (1988).
26 Because petitioner is showing a colorable merit, the supreme
27 court, also recognized that the "cause and prejudice" requirement

1 has an "actual innocence" exception, known by other names as
2 "Fundamental miscarriage of justice" exception. See SCHUPP V.
3 DELO, 513 U.S. 298, 130 L.Ed.2d 808, 115 S.Ct. 851. The petitioner
4 was charged with an open murder complaint. A defendant
5 cannot be charged with open murder, without having a
6 preliminary Examination First at Justice Court. And then
7 have a magistrate determine the weight of if a defendant
8 could be held on an open murder charge. See Miner V.
9 Lamb, 86 Nev. 54, 464 P.2d 454, 1970 Nev. LEXIS 454 (Nev. 1970).
10 An open murder complaint charges murder in the First-
11 degree and all necessarily included offenses, such as
12 manslaughter, where less than all the elements of First
13 degree murder are present. See Utrenn V. Sheriff, Clark
14 County, 87 Nev. 85, 482 P.2d 289, 1971 Nev. LEXIS 354 (Nev. 1971).
15 After trial at Jury Instruction Request, petitioner did not
16 receive the NECESSARY lesser included offense, which
17 is manslaughter, the instructions did not retain manslaughter.
18 The district court made a plain error when not allowing
19 manslaughter in the instructions to the jury, when the jury
20 may convict of a necessarily lesser included offense. See
21 NRS 175.501; Also Lisby V. State, 82 Nev. 183, 414 P.2d 592, 1966 Nev.
22 Also Rosas V. State, 122 Nev. 1258, 147 P.3d 1101, (Nev. 2006). IN
23 representing a criminal defendant, counsel owes the client
24 a duty of loyalty, a duty to avoid conflict of interest,
25 a duty to advocate the defendant's CAUSE. ^{The} Counsel's
26 MR. Brown and MR. Ahood, knew that a open murder complaint
27 allowed manslaughter as a necessary lesser offense.

1 Counsel's Requested voluntary manslaughter, the Judge denied
2 it. Counsel's did not advocate for involuntary manslaughter
3 instructions for petitioner's CAUSE, and did not object to
4 not having the necessary lesser offense being in the Jury
5 instructions. When the state elicited at trial detective
6 LaRochelle testimony, that petitioner confessed, his intentions
7 weren't to do any crimes OR kill anyone (see testimony of
8 LaRochelle). Petitioner should OF had the Jury instructed on
9 the lesser included offense. See *Rosas v. State*, 122 Nev. 1258,
10 147 P.3d 1101, 122 Nev. Adv. Rep 106, 2006. Failure to instruct on
11 theory totally removes it from the Jury consideration. is a
12 reversible error. *Allen v. State*, 98 Nev. 354, 647 P.2d 389 (1982);
13 *Also Williams v. State*, 99 Nev. 530, 665 P.2d 260, 1983 Nev. 431.
14 The Counsel's plain error was so serious as to deprive
15 the petitioner of a fair trial because of the reasonable
16 probability that, if Counsel's would have advocated for the
17 lesser offense of involuntary manslaughter, petitioner would
18 be absolve from the guilt of the greater offense. See
19 *NRS 175.501*; *Also Rosas v. State*, 122 Nev. 1258, 147 P.3d 1101, 122
20 Nev. Adv. Rep 106, 2006. It's clear that Counsel's did not
21 advocate petitioner's cause, and violated petitioner's Sixth
22 Amendment, and the Factfinder is not a reasonable
23 doubt respecting guilt. See *Strickland v. Washington*, 466
24 U.S. 668, 684 (1984). Because of the verdict it's clear that
25 every element of the offense of Felony murder was
26 not made, and petitioners conviction cannot be fairly
27 characterized as sufficient beyond a reasonable

1 doubt guilt, there for petitioners Fourteenth Amendment
2 is violated. see JACKSON V. VIRGINIA, 443 U.S. 307, 319, 61 L. Ed.
3 2d 560, 99 S. Ct. 2781 (1979). Because every element of the
4 offense of Felony murder was not made, petitioners is
5 Factual / actually innocent of second degree Felony murder,
6 and because the burden of proof was not made in this
7 injustice of a case. see SCHLUP V. DELO, 513 U.S. 298, 130
8 L. Ed. 2d 808, 115 S. Ct. 851. IF the petitioner would have had
9 the necessarily lesser included offense, in his Jury
10 Instructions, it is more likely than not that no reasonable
11 Juror would have Found the petitioner guilty beyond a
12 reasonable doubt. And for that reason the petitioner is
13 actually innocent of Second degree Felony murder.
14 Appellate Counsel MR. Brooks Failure to Advocate
15 for petitioners actually innocent of second degree
16 Felony murder, Prejudice the petitioner and Violated
17 his Sixth Amendment. see STRICKLAND V. WASHINGTON,
18 466 U.S. 668, 687 (1984). Counsel MR. Brooks should have
19 raise these grounds the petitioners raising, in the
20 petitioners direct Appeal that this conviction
21 cannot be Fairly Characterized as Felony murder.
22 The petitioner Pro se complaint should not be held by
23 the same standards as a Lawyers formal pleading
24 drafted, and should not be dismissed for Failure
25 to state a Claim that would entitle him relief,
26 unless he can prove no set of Facts. see HUGHES V.
27 ROUE, 449 U.S. 5, 66 L. Ed. 2d 163, 101 S. Ct. 173.

CONCLUSION

1 There is a presumption of rectitude and
2 integrity in those serving as adjudicators, and
3 not be recreant when it come to Justice.
4 Because of Counsel's Ineffectiveness and the
5 errors of the Court, the Jury was deprived
6 of critical evidence. And the higher Court
7 should hold the lower Court to the Justice
8 bar. It's evident this conviction should be
9 reversed, it's a must be reverse.

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):

SUPREME COURT OF NEVADA
Office of the Clerk
201 S. Carson Street, Suite 201
Carson City, Nevada 89701

DATED this 7 day of May, 2016.

Justin Porter
Signature of Appellant

Justin D. Porter
Print Name of Appellant

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