IN THE SUPREME COURT OF THE STATE OF NEVADA

DAIMON MONROE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 72944

ANSWER TO PETITION FOR REVIEW

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, STEVEN S. OWENS, and files this Answer to Petition for Review pursuant to this Court's Order Directing Answer to Petition for Review, filed April 27, 2018.

This petition is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 11th day of May, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY */s/ Steven S. Owens*
STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar # 004352
Office of the Clark County District Attorney

MEMORANDUM
POINTS AND AUTHORITIES

On February 13, 2018, the Court of Appeals affirmed the denial of Monroe's untimely and successive habeas petition for lack of good cause. Monroe then filed the instant pro se petition for review on February 27, 2018. Two months later, by Order filed on April 27, 2018, this Court directed the State to answer the petition for review within 15 days.

Pursuant to NRAP 40B, a party aggrieved by a decision of the Court of Appeals may file a petition for review with the clerk of the Supreme Court within 18 days. The petition must state the question presented for review and the reason review is warranted. Supreme Court review is not a matter of right but of judicial discretion. The following, while neither controlling nor fully measuring the Supreme Court's discretion, are factors that will be considered in the exercise of that discretion: 1) Whether the question presented is one of first impression of general statewide significance; 2) Whether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; or 3) Whether the case involves fundamental issues of statewide public importance. NRAP 40B(a). The petition shall succinctly state the precise basis on which the party seeks review by the Supreme Court and may include citation of authority in support of that contention.

In seeking this Court's review, Monroe appears to be making two arguments: 1) that Judge Silver is biased against him, and 2) that he has new evidence of corruption and fraud that undermines the search warrant in this case. Neither of these issues are of first impression or of general statewide significance, nor involve fundamental issues of statewide public importance. Because this Court has not identified its specific concern with the lower court's ruling and the State cannot discern which of Monroe's two issues this Court might be interested in, the State must respond to both.

1. Alleged Bias of Judge Silver

Monroe claims for the first time in this petition for review that Judge Silver on the Court of Appeals was biased against him because her husband's business was one of the burglary victims in Monroe's criminal case. He alleges that in justice court previously, Judge Silver threatened him that he better never come to her court. Dispositive of this issue is that even if the allegations are true, Monroe did not seek to disqualify Judge Silver and has waived the issue.

Pursuant to NRAP 35, a request to disqualify a judge of the Court of Appeals must be made by written motion within 60 days after docketing of the appeal, with proof of service on all the parties including the challenged judge. The failure to file such a timely motion "shall be deemed a waiver of the moving party's right to object

to a justice's or judge's participation in a case." NRAP 35(a)(1); Allum v. Valley Bank, 112 Nev. 591, 915 P.2d 895 (1996); Snyder v. Viani, 112 Nev. 568, 916 P.2d 170 (1996) (untimely motion constitutes a waiver).

In the present case, no such motion to disqualify has ever been filed. Even though Monroe had actual knowledge and was served with a notice of transfer of the case to the Court of Appeals filed on November 15, 2017, he had three months in which to seek disqualification before the Court of Appeals decided the appeal and still Monroe did not raise any allegation against Judge Silver. Now, for the first time, he makes his allegations of bias to this Court but has deprived the parties, including Judge Silver who has a right to respond, NRAP 35(b)(2), of any specific details to corroborate or which can be used to disprove his allegations, such as the business name, dates, or case numbers. This fails to satisfy the requirement to allege "specific facts" or even the date on which he became aware of the grounds for disqualification. NRAP 35(2); *see also* NRS 1.225(4). Because the issue was not timely raised below and has not been pled with sufficient specificity to refute, it appears the allegations are spurious, have been waived, and should not be considered for the first time in a petition for review to this Court.

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2. Alleged New Evidence Regarding Search Warrant

There is nothing "new" about Monroe's purported evidence of corruption or fraud in the execution of a search warrant at his house at 1504 Cutler Drive, which issue has been raised and litigated *ad nauseam* and is demonstrably frivolous and without merit. Basically, Monroe claims there was no search warrant for the November 6, 2006, search of his residence because he has a photograph of a November 23, 2006, search warrant, which he alleges the police and district attorney tried to pass off as authorizing the search on November 6, 2006. Monroe claims he was denied the opportunity to bring the photograph to court. Such is belied by the record and contrary to law of the case.

These claims are not "new" but are identical to what has already been raised and rejected repeatedly by this Court and the Court of Appeals in no less than nine different appeals stemming from four criminal cases.[1] The litigation on this issue has been staggering. Why the Court now would countenance the delusional claims of a vexatious litigant who is mentally ill and hopelessly fixated on this conspiracy

[1] Those cases are: 1) C228581 giving rise to SC# 52916, and 60190,
2) C228752 giving rise to SC# 52788, 65827, and 72944 (instant appeal)
3) C237052 giving rise to SC# 70556,
4) C241570 giving rise to SC# 58171, 66661, and 74943 (pending)

theory when the Court has seen and rejected the issue so many times before, is unknown. [2]

On direct appeal in the present case, this Court reviewed the search warrants at issue and concluded they were supported by probable cause and described the items with sufficient particularity. SC# 52788[3]; *see also* SC# 52916 (same ruling). In the direct appeal in this case, counsel for Monroe acknowledged that a search warrant for Monroe's residence at 1504 Cutler Drive was applied for by Detective Nickell and was signed by Judge Stew Bell on November 6, 2006. *See* Opening Brief, SC# 52788. The search warrant itself, as well as several other search warrants used in the case, were included in the Appendix prepared by Monroe's counsel and were filed with this Court in that direct appeal. SC# 52788 – 1 AA 1-50. The date on the search warrant appearing in the record is November 6, 2006, not November 23, 2006, as Monroe alleges from his misreading of a blurry photograph. His claim that there was no search warrant for November 6, 2006, is delusional and belied by the record.

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[2] Monroe has been sent to Lake's Crossing and declared a vexatious litigant in several cases.

[3] The instant case is a pro se appeal and the State has not been served nor does it have access to the Record on Appeal filed in this case but has been ordered to respond within 15 days. Accordingly, the State will have to cite to documents filed by case number, document description, and file date, in order to timely comply with the Court's Order.

In the first postconviction proceedings Monroe, claimed he had "new" evidence that there was no search warrant for the November 6, 2006, search of his home and that there was a conspiracy among the police, the district attorney, and district judge Stew Bell to sign and backdate a search warrant after-the-fact. C228752 - Petition for Writ of Habeas Corpus, filed July 7, 2011. Monroe was even appointed counsel for this first postconviction proceeding and for the subsequent appeal. SC# 65827. Judge Tao, sitting as the habeas judge in district court, denied the claims without an evidentiary hearing as barred by law of the case and for lack of evidentiary support and this Court affirmed on appeal. SC# 65827 – Order of Affirmance filed October 16, 2015. In the Opening Brief in that appeal, counsel framed Monroe's longstanding dispute about the search warrant:

> It is and has been the Appellant's position before, during and after trial that no search warrant was ever presented at the Appellant's residence when the search was conducted. The only thing that was provided to the Appellant or the residents of the Appellant's home was the return, listing the property that had been taken. After the Appellant began asserting that there was no search warrant served on the date of the search ***a photograph appeared during the Appellant's trial that showed a search warrant on the coffee table at his residence***. It is the Appellant's position that this is a photograph that was taken at some date after the search was executed.

SC# 65827 – Opening Brief, p. 5. This Court affirmed the denial of the first postconviction proceedings and specifically noted in its Order that Monroe was in

possession of a photograph of one of the search warrants which purportedly showed that it was fraudulently obtained after-the-fact:

> Appellant argues that trial counsel was ineffective because he failed to investigate and challenge a photograph of a search warrant. Appellant claims that the photograph of the search warrant lying on his coffee table was taken as long as a year after the search was conducted.

SC# 65827 – Order of Affirmance filed October 16, 2015, p. 2. Monroe has had the blurry photograph of the search warrant since at least the trial in this case in 2008. Not only was this "new" evidence the subject of the first postconviction proceedings, it is now offered again as good cause to justify the instant untimely and successive habeas petition. It stands to reason that evidence that was available at trial and was raised in first postconviction proceedings cannot provide good cause for another round of habeas years later.

Monroe, himself, admits that at least two other judges have already viewed his "new" photograph evidence, namely Judge Smith and Judge Delaney. C228752 – Motions filed July 22, 2016, and October 18, 2016. Indeed, appellate records confirm that Judge Delaney allowed Monroe to come to court and present his blurry photographs of the search warrant, but the judge could not determine the date on the warrant. SC# 70556 – 4 AA 804.[4] The Court of Appeals affirmed because the judge

[4] The State requests this Court take judicial notice of the determinations in this and all other related appeals because of their close relationship to the instant case where

had reviewed all the evidence and concluded that Monroe's claim was belied by the record. SC# 70556 – Order of Affirmance, filed September 13, 2017.

Monroe's delusional obsession with the search warrant issue appears premised upon several misunderstandings of the law from which he cannot be dissuaded. First, he was not personally served with a copy of the search warrant at the time of its execution because the law only requires that a copy and receipt be left at the place from which the property was taken, which is what happened in this case. NRS 179.075(2). Also, because the affidavits were sealed, they were incorporated by reference and by court order were ***not*** to be left at the scene. State v. Gameros-Perez, 119 Nev. 537, 78 P.3d 511 (2003). The law does not require that police photograph a copy of the search warrant left at the location. For this reason, the absence of a photograph of any particular warrant does not undermine the filed returns in this case which all indicate they were left at the scene. A blurry and unreadable photograph of a search warrant does not create a dispute of fact regarding the existence, authenticity, or date of a search warrant, the best evidence of which is the original search warrant itself, and a copy of which is a public record on file with the clerk of the court. In this case, the actual search warrant plainly shows that Judge

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the facts and parties are the same. NRS 47.130; Occhiuto v. Occhiuto, 97 Nev. 143, 145, 625 P.2d 568, 569 (1981).

Stew Bell signed a search warrant for 1504 Cutler Drive on November 3, 2006, it was executed three days later on November 6, 2006, and then returned and file-stamped with the district court clerk's office on November 15, 2006. None of Monroe's allegations, even if accepted as true, undermine the validity of this warrant.

Unless an evidentiary hearing is ordered, nothing in NRS 34 entitles Monroe to be transported to court to make his argument or present his evidence in person in a habeas proceeding. *See* Gebers v. State, 118 Nev. 500, 50 P.3d 1092 (2002). Contrary to Monroe's belief, he does not have a constitutional right to discovery from the State in a post-conviction habeas proceeding. DA's Office v. Osborne, 557 U.S. 52, 69-70, 129 S.Ct. 2308, 2320-21 (2009). Indeed, even in the more liberal federal system, "[a] habeas petitioner, unlike the usual civil litigant in federal court, is not entitled to discovery as a matter of ordinary course." Bracy v. Gramley, 520 U.S. 899, 904, 117 S.Ct. 1793, 1796-97 (1997); see also NRS 34.780(2). Given that Monroe's trial counsel had all of this discovery including the search warrants which are a publicly available record filed with the district court, the State is not obligated to research and copy the search warrants yet again for Monroe, especially in the context of an untimely and successive habeas petition.

The Court of Appeals correctly affirmed the denial of Monroe's petition because it was without good cause and barred by law of the case. Nothing in the petition for review presents an issue of first impression or of general statewide

significance, nor a fundamental issue of statewide public importance. At most, the petition presents the rantings of a mentally disturbed and vexatious litigant who would rather believe in vast conspiracy theories than accept reality. This Court's review under NRAP 40B is unwarranted as the legal standard has not been met here.

WHEREFORE, the State respectfully requests that the petition for review be denied.

Dated this 11th day of May, 2018.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this petition for review or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the type-volume limitations of NRAP 40, 40A and 40B because it is proportionately spaced, has a typeface of 14 points and contains 2,349 words.

Dated this 11th day of May, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on May 11, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ADAM PAUL LAXALT
Nevada Attorney General

STEVEN S. OWENS
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

DAIMON MONROE, #38299
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P,O, Box 650
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BY */s/ E. Davis*
Employee, District Attorney's Office

SSO//ed