

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

AUG 28 2017

DOMONIC RONALDO MALONE

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

Supreme Court No. 73000

District Court No. C224572-2

**APPELLANT'S INFORMAL BRIEF**

**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 p.m.

RECEIVED

JUL 05 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

17-28726

**To file your brief by mail:** Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

**CAUTION:** Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

**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                          |
|------------|----------------------------------------------------|
| 5-5-2017   | FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER     |
|            | FROM HABEAS HEARING HELD ON MARCH 8, 2017 @ 10 AM. |
|            |                                                    |

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: 5-3-17 @ 11:22 AM

**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          |
|---------------|---------------------------------------------------|------------------------|
| A-15-728462-C | MALONE v. Allen (Civil)                           | District Court LV. NV. |
| 70984         | MALONE v. Allen esq. (Appeal civil)               | NV. Sup. Ct.           |
| 17A001812     | MALONE v. Eddie Larue, Ron Gilbert, Age Detective | Justice Court LV. NV.  |

**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.)

I BELIEVE THAT THE COURT IS ASKING ME FOR: ON ~~AUGUST~~ February 1, 2012, the jury returned its verdict. The jury found Appellant (me) Guilty of: Count 1 - Battery with Substantial Bodily Harm; Count 2 - Conspiracy to Commit Kidnapping; Count 3 - First Degree Kidnapping; Count 4 - Battery without Substantial Bodily Harm; Count 7 - Conspiracy to Commit Burglary; Count 8 - Conspiracy to Commit Kidnapping; Count 9 - Conspiracy to Commit Murder; Count 11 - First Degree Kidnapping; Count 12 - First Degree Kidnapping; Count 13 - First Degree Murder with Use of a Deadly Weapon;

COUNT 14-First Degree Murder with Use of a Deadly Weapon; COUNT 15-Robbery with Use of a Deadly Weapon; and COUNT 16-Robbery with use of a Deadly Weapon. The jury found Appellant (me) not guilty on COUNT 5-Robbery; COUNT 6-Pandering; and COUNT 10-Burglary. On February 19, 2012, the jury returned with a Special Verdict as to COUNTS 13 & 14, Murder of the First Degree with use of a Deadly Weapon, finding that the aggravating circumstances outweighed any mitigating circumstances, and imposed a sentence of Life without the Possibility of Parole as to both Counts.

On April 24, 2012, Pettibaker was sentenced as to COUNT 1-19 to 48 months in the Nevada Department of Corrections ("NDC"); COUNT 2-24 to 60 months, in the NDC, consecutive to COUNT 1; COUNT 3-5 to life served in the NDC, concurrent with COUNT 2; COUNT 4-6 months in the Clark County Detention Center ("CCDC"), concurrent with COUNT 3; COUNT 7-12 months in the CCDC, consecutive to COUNT 3; COUNT 8-maximum of 60 months and a minimum of 24 months in the NDC, concurrent with COUNT 7; COUNT 9-maximum of 120 months and a minimum of 48 months in the NDC, consecutive to COUNT 8; COUNTS 11 & 12-Life without the Possibility of Parole for each count in the NDC, consecutive to COUNTS 9 & 11 respectively; COUNTS 13-14-Life without the Possibility of Parole in the NDC, plus a consecutive term of Life without the Possibility of Parole for use of a deadly weapon for each count, consecutive to COUNTS 12 & 13 respectively; COUNT 15-a maximum of 180 months and a minimum of 48 months in the NDC, plus a consecutive term of a maximum of 180 months and a minimum of 48 months for use of a deadly weapon, concurrent with COUNT 14; COUNT 16-a maximum of 180 months and a minimum of 48 months in the NDC, plus a consecutive term of 180 months and a minimum of 48 months for use of deadly weapon, consecutive to COUNT 15. Petitioner (Appellant) received 6 consecutive terms of Life without the Possibility of Parole. Appellant (me) received 2,148 days credit for time served. The Judgement of Conviction was filed on May 8, 2012.

A timely Notice of Appeal was filed by the SPO office on behalf of Appellant on

JUNE 5, 2012. The Supreme Court (this Court) affirmed judgement on December 18, 2013, and issued a Remittitur on January 15, 2014. On August 13, 2014 Appellant filed a Post-Conviction Petition for Writ of Habeas Corpus.

On November 9, 2016, Petitioner submitted a Supplemental Memorandum of Points and Authorities in support of Amended Supplemental Petition for Writ of Habeas Corpus ("Supplement"). On February 9, 2017, the State filed its Response to Petitioner's February 18, 2016 Amended Supplemental Petition for Writ of Habeas Corpus ("Petition") and to the Supplement.

Following argument by State & the Appellant on March 8, 2017, the Court deferred its decision on this matter and ultimately denied the Appellant without evidentiary hearing. And therefore is the sole reason why Appellant is here before the Court this day...

**Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

I BELIEVE THAT THE DISTRICT COURT WAS WRONG IN ITS DECISION BECAUSE THE NV. SUP. CT. WHEN IT STATED THAT "A conviction obtained by the knowing use of perjured testimony is fundamentally unfair and must be set aside... if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury. The truth seeking function of the trial is corrupted by such perjury whether encourage by the prosecutor or occurring without his knowledge; if the character of material evidence is false, due process inevitably is denied the accused. *Riley v. State*, 93 Nev. 461, 567 P.2d 495, 1977 Nev. Lexis 593 (Nev. 1977)." WAS VERY CLEAR AND THEREFOR SHOULD HAVE NOT TAKEN PLACE IN MY CASE, HOWEVER, IT DID SO I RAISED PERJURY & MISCHARACTERIZATION OF MATERIAL EVIDENCE WHICH THE STATE KNEW TO BE FALSE OR SHOULD HAVE KNOWN. WITHIN MY SUPP. MEMO. IN SUPPORT OF PCR. (POST-CONVICTION)

" Appellant rights were denied because during closing arguments, the prosecutor mis-characterized the evidence by telling the jury that i.e. "we know that there was a struggle in apartment 222... and... we know this from the evidence found inside, "There was a dumped out purse," in the room" What the jury did not hear from the prosecution is that they deliberately and knowingly presented this false evidence before the Court in order to retard the judicial process. As the prosecution has always been in possession of the actual audio recording where the Henderson Police Department Detective illicit Rosalyn Tate to dump out the purse, and the same detectives then took a picture of the same purse, after Tate had dumped it out" It should be noted by this Court that (6) yrs. prior to trial the prosecution was/is fully aware of what took place in room 222 under the guidance of the HND Detectives which amounts to Prosecutorial Misconduct. see Greaves 5 pg. 5

- PERJURY BY STATES ONLY EYE WITNESS - "Prior to the State witness Sarah Matthews ever testified in the Appellants trial the State illicit her to testify untruthful by the DA's OFFICE Deputy LAWL. So, but you knew that there was a prior trial, because you and I met before (witness 8/29/30) she admits that her memory of the events that happen in May of 2006 would have been better in June of 2006, as opposed to her testimony in January 2012. In 2006 Ms. Matthew never told the police that she had see the Appellant with a golf club, that he went down to room 222, & that she saw Appellant grab Contado & Magee, that he walked down the steps took the victims into a green saturn. It wasn't until "AFTER" she met with District Attorney LAWL that her story severely changes" to suit the prosecution case on January 2012 as stated in her testimony when asked "You never told them anything about that you testified today essentially, correct? Her answer was Yes. So the State knew (1) She was not with Red and Christina nor did she take them to Court around 10:30 AM because Christina wanted to go see a friend of hers (2) She did not witness any crimes that the State allege that the Appellant had done during the days of Tuesday or Wednesday in the after noon day time hours of 2006." The State was well aware that Ms. Matthew could not have witness the events she testified to and again, not withstanding whether or not defense Counsel's failure to raise this constituted deficient performance, the State was/is under a duty to set the record straight so that any conviction in this case would not be the result of perjury." The State does nothing to correct their witness Sarah Matthews

false testimony. However, instead LAU on recess further illustrates Matthews false testimony. The State violated appellants Due Processive Right because they knew that without Matthews perjured testimony the jury would not have found the Petitioner guilty. See Juvor question concerning Matthews eye-witness testimony. "Because in the States opening they constantly refer to their cell phone tower demonstrative. Specifically "The last time it chirped was about 12:35am Funny, where it chirped was right there at [Indiscernible], right next to the South Cove Apartments, right where Sarah Matthew's says he is, and right where those girls were taken from. All you had to do is put those cell phones in front of you and find out, are they telling the truth. Sarah Matthew testified that the all edge crimes happen on May 16, 17th & 19th 2006 @ approximately 12:00 pm in the Afternoon. So during my Habeas arguments when I stated O.K. lets put the phone records together and you'll see I'm right the State goes on to suggest to the Court that he knows what evidence they used to convict me...in fact there is no such evidence for I'm actually innocent of these crimes I thought that this was the purpose of a PCR (Post-conviction)

- NOTE TO SUP. CT. NV. - I'VE NEVER RECEIVED A COMPLETE COPY OF MY ENTIRE CASE FILE. I REQUESTED THE MARCH 8th 2017 HABEAS HEARING TRANSCRIPT WAS DENIED REQUEST AND SENT COURT MINUTES INSTEAD; REQUESTED PRIVATE INVESTIGATOR TO PROVE MY POINTS OF HABEAS DUE TO ELEMENTS OF MY CLAIMS REQUIRE ADDITIONAL OUTSIDE INVESTIGATION WAS DENIED; FILE A TOTAL OF 3 to 4 times FOR CASE FILE AND FOR THE COURT TO ENFORCE ITS ORDER TO PRODUCE CASE FILE COURT REFUSED TO ENTERTAIN/DENIED... "I do not know what else to do all the pieces of paper work I did have I showed the Court during the hearing. So the language you will read in its finding of facts in regards to Ms. TATE is false request Habeas Hearing Audio & Transcripts. Also in regards to cell phone records regarding my actual innocence and the states use of perjury are in the States possession"

" THESE ARE THE ACTIONS I WANT THE SUPREME COURT TO TAKE: (1) REVERSE AND REMAND THE LOWER COURTS DECISION AND SEND IT BACK DOWN FOR EVIDENTIARY HEARING. (2) ALLOW ME AN ATTORNEY FOR THIS HEARING ALONG WITH PRIVATE INVESTIGATOR "I have a Request for Pro Bono attorney on file specific "Michael H. Schwarz" (3) ORDER all PARTIES

INVOLVE INCLUDING THE COURT TO HAND OVER THE CASE FILE IN ITS ENTIRETY TO ME/MY COUNSEL ONCE YOU THE SUP. CT. GRANT IT. (4) TO REMOVE SITTING JUDGE VILLANI FROM CASE FOR HE HAS PUT IN HIS FINDING OF FACTS ELEMENTS THAT WAS NOT TRUE AND I WANT TO PRESERVE THE RIGHT TO QUESTION HIM UNDER OATH TO PRESERVE RIGHTS UNDER FED IF IT GOES THAT FAR. AND YOU CAN NOT QUESTION A SITTING JUDGE I BELIEVE (5) ORDER COURT TO TURN OVER TRIAL VIDEO AND PENALTY PHASE VIDEO TO APPELLANT/HIS COUNSEL. (6) FOR THIS COURT TO PROTECT MY 14TH Amendment Right of the US/ NV. Const. and allow me an Evidentiary Hearing for I will prevail in proving my case as I stated my belief in the beginning "That the Sup. Ct. of NV. got it right in Riley v. State that you can not knowingly put anybody on the stand to lie or mischaracterize the evidence of which you should have known to be false...

NOTE: That my case is complex in ways I can't even begin to understand all I have is the truth, is this is not why we have trials for? For the truth right?

I hope I've answered your questions and followed your instructions in the way you wanted me to if not, please forgive me for I'm not an attorney...

DATED this 26th day of JUNE, 2017.

Domonic R. Malowe  
Signature of Appellant

DOMONIC RONALDO MALOWE  
Print Name of Appellant

## 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):

CLERK of the Supreme Court of Nevada  
201 South Carson Street  
Carson City, Nevada 89701

DATED this 26th day of JUNE, 2017.

Domonic R. Maldwe

Signature of Appellant

DOMONIC R. MALDWE

Print Name of Appellant

HDSP P.O. Box 650

Address

Indian Springs, NV. 89070

City/State/Zip

N/A Inmate

Telephone