IN THE SUPREME COURT OF THE STATE OF NEVADA

PAOLA ARMENI, JONAH HORWITZ, and DEBORAH CZUBA,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA; and THE HONORABLE MICHAEL P. VILLANI,

Respondents,

and

TIMOTHY FILSON, Warden, ADAM PAUL LAXALT, Attorney General, and THE STATE OF NEVADA,

Real Parties in Interest.

Supreme Court Case No. 73462

Underlying Case: Clark County Dist. Ct. No. 81C053867

PETITIONERS' REPLY IN SUPPORT OF MOTION TO CONSOLIDATE

In the State's ten-page opposition to consolidation, filed July 18, 2017 (hereinafter "Opposition" or "Oppo."), a total of two sentences address the issue before the Court, which is whether to consolidate. Those two sentences read as follows: "Petitioners' request for consolidation is premature. This Court has yet to even determine whether to order an answer." Oppo., at 3. The State offers no

authority or explanation for this proposition, and it is both inconsistent with the Court's well-reasoned practice and illogical on its face.

To begin with the Court's practice, it has in similar circumstances consolidated cases in the same order in which it directed the respondent to answer the mandamus petition. *Pub. Emps. Ret. Sys. of Nev. v. Gitter*, Nev. S. Ct. No. 69208, Order, filed Apr. 14, 2016 (unpublished). Clearly, the Court considers consolidation at the same time as it considers whether to call for an answer and it is therefore appropriate for litigants to address both at once. The Court's prior approach is eminently sensible. Whether to consolidate and whether to require an answer are both threshold case-management questions. They can both be made on the basis of a preliminary review of the initial pleadings, and it is consequently most economical for them to be answered simultaneously.

Because the State's only responsive argument is bereft of authority, flies in the face of this Court's established practice, and conflicts with common sense, it should be rejected out of hand. Once it is discarded, there is nothing to prevent consolidation. Notably, the State does not dispute that the two cases are inextricably intertwined, which is ultimately the strongest basis for dealing with them jointly, *see* Mot. to Consolidate, filed July 17, 2017 (hereinafter "Motion" or "Mot."), at 1.

In the alternative, if there is merit to the State's citation-free theory, the Court should still combine the cases. For in that circumstance, the Court can announce now, without difficulty, that an answer is justified, and it can at the same time merge the cases. A "heightened appellate concern and scrutiny" attach "when a trial court imposes monetary sanctions on counsel for a client facing the death penalty." *Young v. Ninth Jud. Dist. Ct.*, 107 Nev. 642, 650, 818 P.2d 844, 849 (1991) (per curiam). The summary denial pursued by the State is the exact opposite of such heightened concern and scrutiny, and the Court need do no more than read the controlling language from *Young*—conveniently omitted from the State's Opposition—before ordering an answer.

Delving into the facts of the case in more detail, undersigned counsel rely upon the mandamus petition itself to show that their claims cannot be summarily denied, as it spells out at length why the district court's sanctions were egregiously inappropriate. For purposes of the motion at hand, it suffices to briefly rebut the weak and misleading defense of the sanctions offered by the State in its Opposition.

First, the State reiterates its bizarre conspiracy theory that undersigned counsel were complicit in a massive plot by multiple Federal Defender offices to obstruct executions. Its only "evidence" is that multiple offices filed post-conviction petitions for Nevada death row inmates seeking relief on the basis of

Hurst v. Florida, 136 S. Ct. 616 (2016), around their one-year deadline. Oppo., at 5–7. The State glosses over the critical facts that the *Hurst* petition filed in this case, Pet. App., Vol. 1, at 22, was presented more than three months *before* that deadline and more than three months *before* every single one of the other *Hurst* petitions listed in its Opposition, Oppo., at 5–7. If the fantastical scheme dreamed up by the State existed, Samuel Howard was not a part of it. Undersigned counsel have also not pursued a stay in their federal habeas action, which is what would actually postpone an execution. Pet. App., Vol. 1, at 219. Moreover, undersigned counsel made an uncontroverted record below of their diligent effort to raise Mr. Howard's *Hurst* claim as quickly as they could. *Id.*, Vol. 2, at 424–25. Lastly, if an attorney commits misconduct by waiting until a deadline to file a pleading, virtually the entire bar would be eligible for sanctions.

The remainder of the State's Opposition is devoted to a cursory and highly distorted recitation of the events leading up to the sanctions. Oppo., at 7–8. Undersigned counsel refute the State's account at length in their mandamus petition. To summarize that refutation, the State is now saying counsel were rightfully sanctioned for "demanding reconsideration" without seeking leave, *id.* at 8, when (1) they were not filing a motion for reconsideration at all, but a motion to amend; (2) they *did* seek leave (to amend); and (3) they were filing a motion the State and the Court had *required* them to file to exhaust their claim. Pet., at 14–34.

The State's confusing and misguided attempt to validate the sanctions succeeds only in showing how tenuous the trial judge's order was. Indeed, the State does not even acknowledge—let alone engage with—entire elements of counsel's challenge to the sanctions that are distinct and compelling. Pet., at 34–49 (explaining, inter alia, that the trial judge failed to provide any notice or an opportunity to be heard, failed to invoke any authority for the sanctions, and improperly had them paid directly to the District Attorney). The State's opposition does not come remotely close to demonstrating that the mandamus petition can be denied without an answer, and such an answer should be required as part of the consolidated proceedings that undersigned counsel respectfully request.

DATED this 24th day of July 2017.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on July 24, 2017. Electronic service of the document shall be made in accordance with the Master Service List to:

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In addition, I mailed the foregoing document to:

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