

original

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEVIN BROOKS
Appellant,
vs.
STATE OF NEVADA
Respondent.

Supreme Court No. 74415

District Court No. C-093713-2

FILED

FEB 26 2018

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY D. Richards
DEPUTY CLERK

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 submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

18-07515

CLERK OF THE COURT

FEB 12 2018

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
10-25-2017	ORDER DENYING Defendant's Pro Per motion
	FOR CORRECTION OF ILLEGAL SENTENCE.

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 11-2-2017

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? Co-counsel Please.

☒ 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.)

ON AUGUST 3, 1990, THE STATE FILED A "MEMORANDUM AND
EXHIBITS IN SUPPORT OF HABITUAL CRIMINAL SENTENCE", AND
ON AUGUST 7, 1990, THE STATE FILED A "SUPPLEMENTAL
EXHIBITS NO. 9 AND 10 IN SUPPORT OF HABITUAL CRIMINAL
SENTENCE." IN THE AUGUST 7, 1990, SUPPLEMENTAL, THE
STATE POINTED OUT PRIOR CONVICTION NUMBER:
1) CONVICTED ON MARCH 29, 1978, FOR BURGLARY IN CASE
NO. A522769,

And in The August 3, 1990, memorandum, The State Pointed out Prior Convictions number:

2) Convicted on May 14, 1980, Burglary in case No. OCR6775.

3) Convicted on June 19, 1980, For Receiving Stolen Property in case no. AS24694.

4) convicted on July 15, 1980, For Forgery in case no. AS25003.

5) convicted on June 18, 1982, For Burglary in case no. C49023.

6) convicted on August 8, 1983, For Failure To Return in case no. AS19432, And

7) convicted on January 8, 1986, For Burglary in case no. AS31523.

ON October 12, 1984, The Sentence Reform Act of 1984, Title 18 USCS § 4A1.1, Criminal History (Background), Became effective, which states in Part,

"Prior convictions may represent convictions in the Federal system, Fifty state system, The District of Columbia, Territories, and Foreign, Tribal, and military courts." See, also Career Criminal Amendment Act of 1986.

ON September 24, 1990, The District Court Adjudicated Brooks AS A Habitual Criminal, Based on The Above Prior convictions, and Sentenced him To Life without The Possibility of Parole.

ON October 5, 1990, The Formal Judgment of Conviction was entered.

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.)

The District Court Errored By Refusing To correct BROOKS
Illegal Sentence, Based upon The Contents of The original
Correction of Illegal Sentence motion, And The Following
Brief.

One, At The Time That Brooks was convicted of All,
But one, of The Prior convictions used to Adjudicate Him
As A Habitual criminal, California Did Not Have a
Life without The Possibility of Parole Sentence For
Habitual criminals. Therefore, Brooks never Believed
He was eligible For A Life without Parole Sentence, and

Thus, Fair notice was never given. EALES V. BOARD OF CLARK COUNTY COMM'RS, 96 Nev. 922, 620 P2d 1248, (Nev. 1980); 1980 Nev. Lexis 737 (1980).

Two, All of The Prior convictions used to Adjudicate Brooks as a Habitual Criminal were Plea Bargains, The only exception was The 1978 Conviction. The Federal courts construe Plea Agreements according to what The Defendant Reasonably understood when The Defendant entered The Plea. UNITED STATES V. JIMENEZ, 928 F2d 356, at 366 (10th Cir 1990).

In This case, Brooks Had A Reasonable understanding That under The Laws of California, He was only Vulnerable to A Habitual Criminal Enhancement of one year Per Each Prior.

Three, All of Brooks Prior convictions occurred Before The Sentence Reform Act of 1984, Title 18 USC § 3551 et seq., and The Career Criminal Amendment Act of 1986, which made it legal to use Prior convictions from all 50 states. Therefore, Brooks Prior convictions, all occurring Before The 1984 change in law, could not Be used in any state other than The convicting state of California without violating The ex Post Facto clause of The U.S. Constitution, Article I § 9, Ch 3. See, STEVENS V. IGNACIO, 114 Nev. 1217, 969 P2d 945 (Nev. 1998); and Weaver V. Graham, 450 U.S. 24, 67 L.Ed.2d 17, 101 S.Ct. 960 (1981).

BROOKS, ASK This Honorable Court to
Remand This case Back to The District Court
For Re-sentencing.

Lined area for text entry.

DATED this 4th day of February, 2018.

Kevin Brooks
Signature of Appellant

Kevin Brooks
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):

DATED this 4th day of February, 2018.

Kevin Brooks

Signature of Appellant

KEVIN BROOKS

Print Name of Appellant

P.O. Box 650

Address

Indian Springs, NV 89020

City/State/Zip

N/A

Telephone