

IN THE SUPREME COURT OF THE STATE OF NEVADA

DOMONIC RONALDO MALONE,
Appellant
vs.
THE STATE OF NEVADA
Respondent

Supreme Court No. 74859
District Court Case No. C224572

FILED

MAR 07 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
CHIEF DEPUTY CLERK

APPELLANT'S OPENING BRIEF

Appellants Opening Brief is based upon all documents on file and before this Court, Appellant shall direct said Court to the issues that are contained in said Brief in accordance to the Rules that Govern these procedures, Appendix, Table of Contents and Exhibits where the material may be found herein.

[Signature]
Damon R. Malone

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BRIEFING OF THE CASE

On or about 11/21/2017 I, DOMONIC RONALDO MALONE, the Appellant filed in the EJDC MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE Heard on 12/12/2017 at the time 8:30am and DENIED on the same 12/12/2017.

ISSUES RAISED IN BRIEFING AS FOLLOWS

- I. DISTRICT COURT JUDGE FAILURE TO INTERPRET THE STATUE NRS 193.165 is a necessary element of the crime to constitute the offense of USE OF A DEADLY WEAPON. The underlined offense is (2) COUNTS OF FIRST DEGREE MURDER NRS 200.010, 200.030. And (2) COUNTS OF ROBBERY NRS 200.380. The element of enhancement was necessary to complete the act therefor can not be applied as an additional penalty which is a violation of Appellants Constitutional Rights under 14th Amendment of double jeopardy by the Appellant being inflicted with the additional sentences it violates the Appellants U.S. 8th Amendment Constitutional Right to be free from Cruel and unusual Punishment. _____ See pg. App # 4 of 8. (See JOC)
- II. THE EIGHTH JUDICIAL DISTRICT COURT JUDGE MISCOMPREHENSION OF THE STATUE NRS 193.165 Additional penalty: Use of deadly weapon or tear gas in commission of crime; restriction on Probation lack the ability to defer to the jury for deliberation, Thus, placing the Appellant in the position that greater harm has been inflicted upon him that is prescribed under the Statue NRS 200.010, 200.030 FIRST DEGREE MURDER and NRS 200.380 ROBBERY, Appellant stands upon statue 193.165 Sub Sec (4):
- ... Do not apply where the use of a firearm, other deadly weapon or tear gas is a necessary element of such crime.
- (A) The EIGHTH JUDICIAL COURT can not separate one continuous act as an objective to complete said offense create additional penalty from said act. See NRS 193.165 Sub. Sec. (4) Appellant raised and preserved said issue before Eighth Judicial District Court within MOTION TO MODIFY AND/OR CORRECT ILLEGAL SENTENCE, on pg. 4. (See JOC pg. 10-14)

POINTS AND AUTHORITIES

"Motion to modify sentence" is limited in scope to sentences based on mistaken assumptions about defendant's criminal record which work to defendant's extreme detriment, while " Motion to correct illegal sentence " addresses only facial legality of sentence. State v. District Court, 100 nev. 90, 97, 677 p.2d 1044 1048 (1984), and Edwards v. State, 918 p.2d 321 (nev. 1996).

Further N.R.S 176.555 Motion to Modify and/or Correct a sentence, may be filed at any time.

Defendant herein alleges that his sentence should be modified and/or corrected pursuant to the following facts.

ON MAY 2006 I DOMONIK RONALDO MALONE WAS CHARGED WITH (1) COUNTS OF FIRST DEGREE MURDER WITH THE USE OF A DEADLY WEAPON & (2) COUNTS OF ROBBERY WITH THE USE OF A DEADLY WEAPON.
ON OR ABOUT JANUARY 2012, I DOMONIK RONALDO MALONE WENT TO TRIAL AND WAS FOUND GUILTY BY JURY ON OR ABOUT FEBRUARY 2012 & SENTENCE ON OR ABOUT APRIL 2012. Specific to COUNTS 13 & 14 FIRST DEGREE MURDER WITH USE OF A DEADLY WEAPON (CATEGORY A FELONY) IN VIOLATION OF NRS 200.010, 200.030, 193.165 TO LIFE in the Nevada Department of Corrections (NDC) without the possibility of Parole plus a CONSECUTIVE term of LIFE in the Nevada Department of Corrections (NDC) without the possibility of Parole for Use of a Deadly Weapon COUNT 14 to run CONSECUTIVE to COUNT 13; & also
Specific to COUNT 15 & 16 ROBBERY WITH USE OF A DEADLY WEAPON (Category B Felony) in violation of NRS 200.380, 193.165 TO A MAXIMUM OF ONE HUNDRED EIGHTY (180) MONTHS with a MINIMUM Parole Eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of ONE HUNDRED EIGHTY (180) MONTHS MAXIMUM and FORTY-EIGHT (48) MONTHS MINIMUM for Use of Deadly

-CONT-

Weapon COUNT 16 to run CONSECUTIVE to COUNT 15;

ARGUMENT

I DOMONIC RONALDO MALONE SPECIFICALLY ALLEDGE THIS: Because of the manner of which the victims in my case, MAGHEE & CAMBADO Died "BLUNT FORCE TRAUMA (golf club as seen in States exhibit) & "SHARP FORCE TRAUMA" (knife as seen in States exhibit) were a necessary element of the COUNTS of which I was sentence under NRS 193.165.

However, NRS 193.165 Sub. Sec. 4 clearly states that:

"The provision of subsection 1, 2, and 3 do not apply where the use of a firearm, other deadly weapon or tear gas is a necessary element of such crime
emphasis added

Therefore in regards to COUNTS 13 through 16 See case no. 06-C-224572-2 I, DOMONIC RONALDO MALONE should not have been sentence to an equally & CONSECUTIVE sentence Because the States expert witness Chief Medical Examiner Dr. Piotr Kubiczek stated the manner in which MAGHEE & CAMBADO died which was BLUNT FORCE TRAUMA & SHARP FORCE TRAUMA this making the weapons used to commit these crimes (golf club & knife) a necessary element.

And therefore under sub sec. 4 of NRS 193.165 makes the currently sentence that I am under illegal and therefore must be corrected.

Also under the "inherently dangerous" test the golf club should not been considered a weapon under NRS 193.165 because when used in the ordinary manner contemplated by their design or construction, golf clubs do not cause bodily harm nor are they designed for that purpose. *Hutchins v. State* 110 Nev. 103, 867 P.2d 1136.

Dominic R. Malone

DOMONIC RONALDO MALONE # 69418
Defendent/ In Proper person

Thereby, pursuant to the facts and the law stated herein,
Defendant, request that his sentence be modified/corrected as
follows: In regards to COUNTS 13 & 14 FIRST DEGREE MURDER WITH USE OF A DEADLY
WEAPON "that the CONSECUTIVE term of LIFE without the possibility of Parole for the Use
of a Deadly Weapon" be dismissed with prejudice.

In regards to COUNTS 15 & 16 ROBBERY WITH USE OF A DEADLY WEAPON "that the
CONSECUTIVE FORTY-EIGHT (48) to ONE HUNDRED EIGHTY (180) MONTHS" to be dismissed
with prejudice.

Dated; this 9th DAY OF NOVEMBER, 2017.

Dominic R. Malone

DOMINIC DONALDO MALONE # 69418
Defendant/propria person

CERTIFICATE OF SERVICE BY MAILING

I, DOMONIC RONALD MALLONE, hereby certify, pursuant to NRCP 5(b), that on this 9th
day of NOVEMBER, 2017, I mailed a true and correct copy of the foregoing, "MOTION TO
MODIFY AND/OR CORRECT JUDGMENT SENTENCE"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clerk of the Court
200 Lewis Avenue, 3rd Floor
Las Vegas, NV 89155-1160

CC: FILE

DATED: this 9th day of November, 2017.

Domonic R. Mallone
DOMONIC RONALD MALLONE # 67418
/In Propria Personam
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO

MODIFY AND/OR CORRECT ILLEGAL SENTENCE
(Title of Document)

filed in District Court Case number 06-C-224572-2

☐ Does not contain the social security number of any person.

-OR-

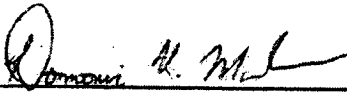
☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.


Signature

11/9/2017
Date

DOMINIC A. MALONE
Print Name

Proper Person
Title

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