

EXHIBIT “1”

1 **CODE 2540**

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5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **THE STATE OF NEVADA,**

9 **Petitioner,**

Case No: C78-1052

10 **vs.**

11 **MARLIN THOMPSON,**

Dept. No: 4

12 **Respondent.**
13 _____/

14 **NOTICE OF ENTRY OF ORDER**
15

16 PLEASE TAKE NOTICE that on March 23, 2018, the Court entered a decision or
17 order in this matter, a true and correct copy of which is attached hereto.

18 You may appeal to the Supreme Court from the decision or Order of the Court. If
19 you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within
20 thirty-three (33) days after the date this notice is mailed to you.
21

22 Dated March 26, 2018.
23

24 **JACQUELINE BRYANT**

25 **Clerk of the Court**

26 **/s/ SM Wolfe**

27 **Deputy Clerk**
28

1 **CERTIFICATE OF SERVICE**

2 Case No. **C78-1052**

3 Pursuant to NRCP 5 (b), I certify that I am an employee of the Second
4 Judicial District Court; that on March 26, 2018, I electronically filed the Notice of Entry of
5 Order with the Court System which will send a notice of electronic filing to the following:
6

7 DIV. OF PAROLE & PROBATION

8 TERRENCE MCCARTHY, ESQ. for STATE OF NEVADA

9 KATHLEEN BRADY, ESQ. for NEVADA STATE BOARD OF PAROLE COMMISSIONERS
10 et al
11

12 I further certify that on March 26, 2018, I deposited in the Washoe County
13 mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a
14 true copy of the attached document, addressed to:
15

16 Attorney General's Office
17 100 N. Carson Street
18 Carson City, NV 89701-4717

19 MARLIN THOMPSON
20 194 WYE STREET
YERINGTON, NV 89447

21 The undersigned does hereby affirm that pursuant to NRS 239B.030 and NRS 603A.040, the preceding
22 document does not contain the personal information of any person.

23 Dated March 26, 2018.

24
25 /s/ SM Wolfe
26 Deputy Clerk
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1 CODE No.
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5 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
6
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

Case No. C78-1052

12 MARLIN THOMPSON,

Dept. No. 4

13 Defendant.
14 _____/

15 ORDER DENYING PETITION

16 Currently before this court is a "Petition for Modification of Sentence" filed by the State
17 Board of Parole Commissioners, seeking an order from this court to modify the sentence of
18 Defendant Marlin Thompson.

19 Thompson was convicted of murder and attempted murder in 1979. He has expired the
20 sentence for the attempted murder. For the murder, he was sentenced to a term of life
21 imprisonment, with the opportunity for parole after ten years. He was paroled from that life
22 sentence in 1992.

23 Now, on September 11, 2017, the Board of Parole Commissioners has petitioned this
24 court to modify the sentence. NRS 176.033(2) does indeed allow for such a petition, and
25 provides this court with authority to modify certain sentences. However, the final line of that
26 statute provides that the maximum term may not be reduced below the minimum allowed by

1 statute for that crime. The relevant sentencing statute is the statute in force at the time of the
2 crime. *State v. District Court (Pullin)*, 124 Nev. 564, 188 P.3d 1079 (2008). The statute in
3 effect at the time of the crime, NRS 200.030, allowed for only two sentences for first-degree
4 murder. See 1977 Statutes of Nevada at 864, 1541, 1627. Those were life without parole and
5 life with the possibility of parole after ten years. That is, the only available sentence was life
6 imprisonment. As NRS 196.033(2) prohibits reducing the maximum term to less than life
7 imprisonment, the petition must be denied. The court voices no opinion on the merits of the
8 petition, or on the merits of some future petition for clemency from the Pardons Board. The
9 court merely holds that the remedy sought by the State Board of Parole Commissioners is not
10 available through this court and so the petition is denied.

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12 DATED this 22 day of March, 2018.

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14 Connie I. Steinheimer
15 DISTRICT JUDGE
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I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

 X Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the efile User Agreement:

Kathleen Brady, Esq.
Deputy Attorney General

Placed a true copy in a sealed envelope for service via: _____

Inter-Office Mail – [NONE]

Manderson

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF NEVADA, BOARD OF
PAROLE COMMISSIONERS

Appellants,

vs.

STATE OF NEVADA,

Respondent.

Supreme Court Case No. 75799

District Court Case No. C78-1052

Electronically Filed
Jun 26 2018 03:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' RESPONSE TO ORDER TO SHOW CAUSE

On June 8, 2018, this Court issued an Order to Show Cause and Suspend Briefing. In that Order, this Court provided for briefing on two issues: (1) whether Appellants are an aggrieved party, and (2) whether the appeal was timely filed.

First, regarding whether Appellants are an aggrieved party pursuant to NRS 177.015(3), Appellants have provided in their Motion to Hold Appeal in Abeyance that they are likely not a "party" to the underlying criminal proceeding and have also filed a writ petition through which this legal issue may be adjudicated in Case No. 76024.

However, Appellants may be considered a party because they were statutorily required to file their Petition for Modification of Sentence in the underlying criminal case. *See* NRS 176.033(2). This statutory requirement arguably made Appellants a party to the underlying criminal case, and provided them with standing to appeal from the decision of the Court. Appellants also are an

“aggrieved” party pursuant to NRS 177.015 because they have “legal rights that are adversely affected.” Black’s Law Dictionary, aggrieved (10th ed. 2014). Appellants’ rights are adversely affected when their statutory duty contained in NRS 176.033(2) to file the Petition for Modification of Sentence is constrained.

Second, concerning whether the appeal was timely filed, the Order provided that the District Court entered the order denying the Petition on March 23, 2018.¹ However, this date is inaccurate. A Notice of Entry of Order was filed by the Clerk of the Court on March 26, 2018. Therein, the Clerk of the Court noted that should an appeal be sought, it must be filed within “thirty-three (33) days after the date this notice is mailed to you.” *See* Exhibit 1 attached hereto; *see also* NRS 178.482. Because the 33rd day was Saturday, April 28, 2018, this appeal was timely filed on Monday, April 30, 2018.

RESPECTFULLY SUBMITTED this 30th day of June, 2018.

ADAM PAUL LAXALT
Attorney General

By: /s/ Kathleen Brady
Kathleen Brady
Deputy Attorney General
Nevada Bar No. 11525
555 Wright Way
Carson City, Nevada 89711
KBrady@ag.nv.gov
Attorneys for Appellants

¹ This Court also used this date in making the determination to dismiss the appeal filed by Mr. Thompson in Case No. 75737.

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document in accordance with this Court's electronic filing system and consistent with NEFCR 9 on June 26, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system as follows:

Jennifer Noble, Esq.
Terrence McCarthy, Esq.
Deputy District Attorney
P.O. Box 11130
Reno NV 89520-0027

I further certify that some of the participants in the case are not registered as electronic users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

Marlin Thompson
194 Wye Street
Yerington NV 89447

/s/ Barbara D. Cozens
An employee of the Office of
The Attorney General