IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

LAMAR HARRIS,
Appellant,
v.
THE STATE OF NEVADA,
Respondent.

CASE NO: 70679

PETITION FOR REVIEW

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Petition for Review pursuant to Rule 40B of the Nevada Rules of Civil Procedure.

This petition is based on the following memorandum of points and authorities and all papers and pleadings on file herein.

Dated this 4th day of December, 2017.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ Jonathan E. VanBoskerck*
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Attorney for Respondent

MEMORANDUM
POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On June 24, 2011, the State filed an Information, charging Lamar Harris with Attempt Murder with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165) and Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Felony – NRS 200.480.2e). 1 Appellant's Appendix ("AA") 20-22. Harris' jury trial commenced on August 30, 2011, and ended on September 2, 2011, when the jury returned a verdict finding Harris guilty of Battery with a Deadly Weapon Resulting in Substantial Bodily Harm. 1 AA 179, 191; 2 AA 351; 3 AA 560, 704-07.

On November 21, 2011, Harris was sentenced to 70 to 175 months in the Nevada Department of Corrections and was given 182 days credit for time served. 1 AA 180-81. The Judgment of Conviction was entered on December 2, 2011. Id. On December 13, 2012, the Nevada Supreme Court issued an Order affirming the Judgment of Conviction. 3 AA 716-18. Remittitur issued on January 9, 2013. 3 AA 720.

On March 11, 2015, Harris filed a Petition for Writ of Habeas Corpus (Post-Conviction). 3 AA 727-49; 4 AA 750-814. The State filed its Response on May 8, 2015. 4 AA 820-29. On July 27, 2015, Harris filed a Supplemental Petition for Writ

of Habeas Corpus (Post-Conviction). 4 AA 831-55. The State filed its Response to this Supplemental Petition on August 12, 2015. 4 AA 856-64. On September 16, 2015, the Court denied the Petition. 4 AA 885-87.

On September 19, 2015, Harris filed a Notice of Motion and Motion for Reconsideration of Denial of Petition for Writ of Habeas Corpus (Post-Conviction). 4 AA 878-87. The State filed its Response on October 2, 2015. 4 AA 888-94.

The District Court granted the motion to reconsider on October 14, 2015, and then proceeded to conduct an evidentiary hearing on December 8, 2015. 4 AA 912, 929-73. On June 6, 2016, the District Court entered its Findings of Fact, Conclusions of Law and Order denying Harris' Petition. 4 AA 901-09. Harris filed a Notice of Appeal on June 22, 2016. 4 AA 923-25.

STATEMENT OF FACTS

Underlying Case

At around 12:00 A.M. on April 25, 2011, Darnella Lay visited the Seven Seas Restaurant located at 808 West Lake Mead Boulevard in Las Vegas. 2 AA 377. Eventually, Ms. Lay moved to the dance floor but, before doing so, left her purse at the bar. 2 AA 378. After she finished dancing, she headed back over to the bar to retrieve her purse. Id. In the process of retrieving her purse, she tried to get around Harris who was in her way. 2 AA 378-79, 381. After she indicated to Harris that she

needed to get past him in order to get her purse, he told her that she was interrupting him. 2 AA 379, 381. She nonetheless pushed through, bumping Harris with the right side of her body. 2 AA 410. Upset at this, Harris responded by pushing Ms. Lay over a barstool. 2 AA 379, 381. Ms. Lay got back up and then struck Harris in the face. 2 AA 382. Seeing this take place, security escorted Ms. Lay out of the establishment. Id.

After she is escorted outside, Ms. Lay comes into contact with Michael Thomas who had also been visiting the Seven Seas Restaurant that morning. 2 AA 383-84. Ms. Lay had known Mr. Thomas for about a year by virtue of his being a friend of her father's. 2 AA 376; 3 AA 532. After talking with Ms. Lay, Mr. Thomas went back inside the restaurant. 2 AA 384. Ms. Lay followed suit shortly thereafter in order to get her purse. Id. But after she reentered, she encountered Harris' girlfriend. 3 AA 385. Harris' girlfriend proceeded to throw a glass at Ms. Lay. 3 AA 385-86. In response, Ms. Lay told Harris' girlfriend to meet her outside. 3 AA 386. Harris' girlfriend, however, did not step outside alone; she was accompanied by Harris himself. 3 AA 388. Once outside, both of them proceeded to attack Ms. Lay. Id. At one point, Harris struck Ms. Lay on the face, which caused her to fall to the ground. 3 AA 388-89.

When Mr. Thomas went back outside, he saw Harris striking Ms. Lay. 1 AA 15-16; 3 AA 643. At that point, he decided to get involved. 1 AA 15-16. Harris then pulled a knife and stabbed Mr. Thomas in the cheek and in the chest. 1 AA 15-16; 2 AA 450, 462; 3 AA 529, 594-95, 615, 620-21.

Post-Conviction Proceedings: Evidentiary Hearing

At the evidentiary hearing held on December 8, 2015, the Court heard testimony from Leslie Park, who represented Harris on appeal, and from Harris. 4 AA 929-73. Ms. Park testified that she had been retained by Harris to represent him on his direct appeal only. 4 AA 933. She did, however, prepare a "bare bones" habeas petition after Harris expressed an interest in filing such a petition. Id. Ms. Park sent this petition to Harris for review but indicated that if Harris wanted her to file the petition, he would have to pay her what he owed her for representing him on his direct appeal. Id. According to Ms. Park, she never did file the habeas petition. 4 AA 933, 936. The District Court pointed out, however, that the "bare bones" habeas petition was signed by Ms. Park. 4 AA 937. When asked by the judge why she would have signed the petition if she had no intention on filing it, Ms. Park responded that she did not know why. 4 AA 937-38.

Harris alleged that he believed Ms. Park had filed the petition. 4 AA 943. He spoke with Ms. Park shortly after the receiving the remittitur on his appeal in

January of 2013. 4 AA 942. After receiving the remittitur, he contacted Ms. Park and indicated that he wanted to pursue a habeas petition. Id. Eventually he received a copy of a habeas petition that Ms. Park prepared. 4 AA 943. After it was brought to his attention that the habeas petition was addressed to the Nevada Supreme Court (as opposed to the District Court), he got in contact with Ms. Park and told her this. 4 AA 944. According to Harris, Ms. Park told him that "she would fix it and then send [him] a copy." Id. He never received any updated version. Id. Harris allegedly tried to get in contact with Ms. Park. 4 AA 944-45. Sometime in December of 2014, Harris wrote to both the Nevada Supreme Court and the District Court, inquiring about the status of his petition. 4 AA 954-55. Harris then filed a pro per petition on March 11, 2015. 4 AA 955-56.

ARGUMENT

The published opinion of the Court of Appeals ignores controlling and longstanding authority of this Court in order to fundamentally undermine Nevada's procedural bars based upon nothing more than a naked belief that an impediment external to the defense must mean more than it does.

A judgment of the Court of Appeals is a final decision that may not be examined by this Court except on a petition for review. NRAP 40(B)(a). In exercising such supervisory authority this Court considers "[w]hether the question

presented is one of first impression of general statewide significance; … [w]hether the decision of the Court of Appeals conflicts with a prior decision of the Court of Appeals, the Supreme Court, or the United States Supreme Court; … [and/or] [w]hether the case involves fundamental issues of statewide public importance." NRAP 40(B)(a)(1)-(3).

The Court of Appeals concluded that "counsel's affirmative misrepresentation regarding filing a postconviction petition and subsequent abandonment of the petitioner can be an impediment external to the defense to satisfy cause for the delay under NRS 34.726(1)(a) for filing an untimely petition." Harris v. State, 133 Nev. Adv. Op. 85, p. 2 (Nev. App. 2017). The Court reached this outcome through the unbridled expansion of Hathaway v. State, 119 Nev. 248, 71 P.3d 503 (2003). The published opinion concludes that since this Court held in Hathaway that appellate counsel's unfulfilled promise to file an appeal amounted to an impediment external to the defense sufficient to ignore a procedural default that Appellant's default must also be excused because his post-conviction counsel failed to file a habeas petition. Harris, 133 Nev. Adv. Op. 85, p. 8.

In reaching this conclusion, the Court of Appeals ignored the foundation upon which Hathaway was premised. This Court's analysis in Hathaway began by noting that "[i]n order to demonstrate good cause, a petitioner must show that an

impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway, 119 Nev. at 252, 71 P.3d at 506. This Court went on to explain that an impediment external to the defense could be "that the factual basis for a claim was not reasonably available … or that some interference by officials made compliance impracticable … [or] ineffective assistance of counsel … if counsel was so ineffective as to violate he Sixth Amendment." Id. (footnotes, punctuation and quotation marks omitted).

The Court of Appeals relied exclusively upon the ineffective assistance of counsel impediment. Harris, 133 Nev. Adv. Op. 85, p. 8. The Court of Appeals believed that since the appellant in Hathaway established good cause due to appellate counsel's failure to file an appeal that Appellant has also established an impediment external to the defense because his habeas counsel failed to file a petition. Id. What renders Hathaway inapplicable is that Hathaway had a right to the effective assistance of counsel where Appellant does not. Hathaway was deprived of a direct appeal because counsel promised to file an appeal but did not so. Hathaway, 119 Nev. at 254, 71 P3.d at 507. A criminal defendant has the right to the effective assistance of counsel on direct appeal. Halbert v. Michigan, 545 U.S. 605, 610, 125 S.Ct. 2582, 2587 (2005) (citing, Ross v. Moffitt, 417 U.S. 600, 610-12, 94 S.Ct.

2437, 2437 (1974); Douglas v. California, 372 U.S. 353, 357, 83 S.Ct. 814, 814 (1963)).

The Court of Appeals acknowledged that "Harris was not entitled to the effective assistance of postconviction counsel and he could not establish good cause to excuse the delay in filing his petition based a claim of ineffective assistance of counsel." Harris, 133 Nev. Adv. Op. 85, p. 6 (citing, Brown v. McDaniel, 130 Nev. __, __, 331 P.3d 867, 870 (2014)). However, the published opinion goes on to create "a distinction between a claim of ineffective assistance of counsel for purposes of habeas relief and a good cause claim that counsel's actions interfered with or created an impediment that prevented a petitioner from filing a postconviction petition with the procedural time limits." Id. This distinction was premised upon the view that "there is an 'essential difference between a claim of attorney error, however egregious, and a claim that an attorney had essentially abandoned his client.'" Id. at 7 (quoting, Maples v. Thomas, 565 U.S. 266, 282, 132 S.Ct. 912, 923 (2012).

The false distinction between good cause ineffectiveness and habeas relief ineffectiveness has never been endorsed by this Court and does not find support in this Court's precedents. In Brown this Court faced a claim that "the ineffectiveness of … prior post-conviction counsel provides cause and prejudice to excuse … [a] failure to comply with Nevada's procedural rules governing post-conviction habeas

petitions." Brown, 130 Nev. at __, 331 P.3d at 870. This Court dismissed such a contention:

> Our case law clearly forecloses Brown's contention. *We have consistently held that the ineffective assistance of post-conviction counsel in a noncapital case may not constitute "good cause" to excuse procedural defaults*. See, McKague, 112 Nev. at 163-65, 912 P.2d at 258; cf. Crump, 113 Nev. at 303 & n. 5, 934 P.2d at 253 & n. 5; Mazzan v. Warden, 112 Nev. 838, 841, 921 P.2d 920, 921-22 (1996). This is because there is no constitutional or statutory right to the assistance of counsel in noncapital post-conviction proceedings, and "[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel." McKague, 112 Nev. at 164-65, 912 P.2d at 258.

Brown, 130 Nev. at __, 331 P.3d at 870 (footnote omitted, brackets in original, emphasis added).

The Court of Appeals did nothing to distinguish Brown and instead has effectively overruled it. Brown involved a habeas petitioner who "argued that he had good cause to excuse the procedural default because his first post-conviction counsel had provided ineffective assistance by failing to present … claims in his first post-conviction petition[.]" Id. at __, 331 P.3d at 869. This Court found that such a claim could not amount to good cause to excuse the procedural defaults of NRS 34.726 and NRS 34.810 because "there is no right to the assistance of counsel in noncapital post-conviction proceedings, and '[w]here there is no right to counsel there can be no deprivation of effective assistance of counsel.'" Id. at __, 331 P.3d at 870 (quoting, McKague v. Warden, 112 Nev. 159, 164-65, 912 P.2d 255, 258

(1996)). Accord, Lay v. State, 2016 Nev. Unpub. LEXIS 234, *3-4, 2016 WL 1567148 (Nev. 2016) ("the district court properly concluded that [appellant] did not overcome NRS 34.726(1)'s one-year time-bar because he had no constitutional or statutory right to counsel when [counsel] represented him, and therefore, [appellant] did not have a right to the effective assistance of counsel.").

Brown's reliance upon McKague is particularly instructive. The appellant in McKague argued that his attorney's failure to timely file an appeal from the denial of a post-conviction petition amounted to good cause and prejudice to excuse the abuse of the writ bar found in NRS 34.810(2). McKague, 112 Nev. at 162-63, 912 P.2d at 256-57. This Court rejected the argument because:

> McKague has no federal constitutional, state constitutional or statutory right to counsel, or effective assistance of counsel, in a post-conviction proceeding, McKague cannot demonstrate "good cause" for filing a successive petition based on an ineffective of post-conviction counsel claim. NRS 34.810(3). *Where there is no right to counsel there can be no deprivation of effective assistance of counsel and hence, "good cause" cannot be shown based on an ineffective of post-conviction counsel claim*. Cf. Coleman, 501 U.S. at 752-54 (clarifying that attorney error can be "cause" only if it constitutes ineffective assistance of counsel violative of the Sixth Amendment.

McKague, 112 Nev. at 164-65, 912 P.2d at 258 (emphasis added).

The Court of Appeals offers no logical explanation as to why Brown and McKague are still good law. Brown rejected a finding of good cause premised upon an ineffectiveness allegation that counsel failed to present claims in a prior petition.

McKague declined to find good cause premised upon an ineffectiveness claim alleging the failure to file an appeal. Those complaints are indistinguishable from Appellant's contention that the failure to file a habeas petition amounts to good cause. The Court of Appeals offers nothing more than a false "distinction between a claim of ineffective assistance of counsel for purposes of habeas relief and a good cause claim that counsel's actions interfered with or created an impediment that prevented a petitioner from filing a postconviction petition within the procedural time limits." Harris, 133 Nev. Adv. Op. 85, p. 6.

Further, the Court of Appeals' skullduggery must fail because such an exception would swallow the rule. If ineffectiveness can establish an impediment sufficient to excuse a procedural default where there is no right to effective assistance, how can ineffectiveness without a right to effective assistance be said to be insufficient to demonstrate good cause. There is no distinction between an impediment and good cause because an impediment is the manner in which good cause is established. Elevating an impediment from the means of establishing good cause to a stand-alone method of excusing a procedural default is nothing more than a disingenuous attempt to eviscerate this Court's longstanding good cause precedents. Brown, 130 Nev. at __, 331 P.3d at 870; Hathaway, 119 Nev. at 252, 71 P.3d at 506; Crump, 113 Nev. 293, 303, footnote. 5, 934 P.2d 247, 253, footnote

5 (1997); Mazzan v. Warden, 112 Nev. 838, 841, 921 P.2d 920, 921-22 (1996); McKague, 112 Nev. at 163-65, 912 P.2d at 258. The Court of Appeals opinion simply cannot square with McKague, how can the failure to appeal from the denial of a habeas petition in McKague not amount to good cause if the failure to file a habeas petition in this case does establish cause. The answer is that it cannot.

The Court of Appeals decided that it could ignore this Court's longstanding precedent because of an allegedly "'essential difference between a claim of attorney error, however egregious, and a claim that an attorney had essentially abandoned his client.'" Harris, 133 Nev. Adv. Op. 85, p. 7 (quoting, Maples, 565 U.S. at 282, 132 S.Ct. at 923. The difficulties with this position are legion. This Court has never endorsed Maples as applying to Nevada's statutory post-conviction system. In Brown, the appellant relied upon Martinez v. Ryan, 566 U.S. 1, 132 S.Ct. 1309 (2012), to argue that Crump and McKague were no longer valid because the United States Supreme Court had ruled that "'a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance … if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.'" Brown, 130 Nev. at __, 331 P.3d at 871 (quoting, Martinez, 565 U.S. at 17, 132 S.Ct. at 1320). This Court rejected this contention:

> First, Martinez did not announce a constitutional right to counsel in post-conviction proceedings. Rather, the Court created an equitable exception to its decision in Coleman v. Thompson, 501 U.S. 722, 111 S. Ct. 2546, 115 L. Ed. 2d 640 (1991), "that an attorney's negligence in a postconviction proceeding does not establish cause" so that a federal court may review a state prisoner's defaulted claim. Martinez, 566 U.S. at __, 132 S. Ct. at 1319. Second, the Martinez decision is limited to the application of the procedural default doctrine that guides a federal habeas court's review of the constitutionality of a state prisoner's conviction and sentence. See, e.g., id. at __, 132 S. Ct. at 1313 (describing the question presented as "whether a federal habeas court may excuse a procedural default"). It says nothing about the application of state procedural default rules. Thus, Martinez does not call into question the validity of NRS 34.750(1), which provides for the discretionary appointment of counsel to represent noncapital habeas petitioners, nor does it mandate a change in our case law holding that noncapital petitioners have no right to the effective assistance of counsel in post-conviction proceedings and that the ineffectiveness of counsel representing a noncapital petitioner does not constitute good cause to excuse a state procedural bar.

Brown, 130 Nev. at __, 331 P.3d at 871-72. Indeed, this Court went further and not only found that Martinez was inapplicable but "decline[d] Brown's invitation to adopt an equitable exception to the general rule in Nevada that the ineffective assistance of post-conviction counsel does not establish cause for a habeas petitioner's procedural default … unless the appointment of post-conviction counsel was mandated by statute." Id. at __, 331 P.3d at 872.

All of these reasons apply equally to Maples. Nowhere did the Supreme Court indicate that Maples applied to state proceedings. Instead, the Court limited itself to determining whether an alleged abandonment could demonstrate cause in federal

habeas. Maples, 565 U.S. at 280, 132 S.Ct. at 922. As with Martinez, the decision in Maples was a matter of equity. Perez v. Stephens, 745 F.3d 174, 179-80 (5th Cir. 2014) (noting that in Maples the Supreme Court was applying principles of equity); Sneed v. Shinseki, 737 F.3d 719, 728 (Fed. Cir. 2013) ("the Supreme Court did not base its decisions in Maples and Holland on the right to effective assistance of counsel, but rather on 'equitable principles' in general"). As such, the mere fact that Brown was addressing Martinez and not Maples does not justify the Court of Appeals decision to ignore this Court's controlling precedent.

Even if this Court adopts Maples, Appellant is still not entitled to relief. The Court of Appeals' new rule is inapplicable unless counsel severs "the principal-agent relationship and abandon his client without notice[.]" Harris, 133 Nev. Adv. Op. 85, p. 7 (quoting, Maples, 565 U.S. at 281, 132 S.Ct. at 922). Here, it was Appellant who severed the agency relationship by failing to meet his financial obligations to counsel and did so fully knowing that no petition for post-conviction relief would be filed. Post-conviction counsel testified at the evidentiary hearing that:

> I spoke with him at the prison regarding that. He wanted to know what I would put in the writ. There is a fee agreement for the appeal which I never was finished being paid for. What I had indicated to Mr. Harris and his wife was that if he wanted to do the writ I needed to be paid for the rest of the appeal and they needed to do a fee agreement for the writ and make some sort of a down payment for that. So I did prepare a bare bones, what I would intend to put in the writ, that I sent to Mr. Harris to review.

9 Appellant's Appendix (AA) 933. Counsel made it clear that she never gave any indication to Appellant that the bare bones sample petition had been filed with any court. 9 AA 934-35. Counsel explicitly informed Appellant and his wife that she needed to be paid before any petition would be filed. 9 AA 936.

Appellant was clearly informed that he needed to pay his attorney in order to get his petition filed and he did nothing. There never was an agency relationship regarding a writ; or, to the extent that one existed, Appellant severed it by failing to meet his financial obligations to counsel. See, Lambert v. Ky. Parole Bd., 2015 U.S. Dist. LEXIS 152043 (2015) (rejecting good cause claim premised upon an attorney's failure to file an appeal where "this attorney was not appointed to represent Lambert and … Lambert refused to pay him"); Williams v. Crew, 2014 U.S. Dist. LEXIS 133755, p. 11 (2014) (rejecting Maples abandonment claims where "Petitioner did not pay collateral counsel's fees"). Since Appellant severed any agency relationship with his attorney, it was his burden to file an initial habeas petition and seek appointment of counsel. NRS 34.724(1); NRS 34.750(1); Sneed v. McDonald, 819 F.3d 1347, 1355 (Fed. Cir. 2016) ("Unlike the prisoner in Maples, she received notice of the filing deadline. Unlike the prisoner in Holland, she did nothing to ensure that the person she had asked to represent her was acting to make the necessary filing."); Price v. State, 422 S.W.3d 292 (Mo. 2014) (failure of counsel to

timely file initial motion for post-conviction relief did not amount to abandonment as rule required inmate to file initial motion for post-conviction review).

Finally, the Court of Appeals attacks this Court for ignoring alleged distinctions between the prejudice necessary to overcome the procedural bars of NRS 34.726 and NRS 34.810. Harris, 133 Nev. Adv. Op. 85, p. 9-14. While these complaints are mere dicta since the Court of Appeals conceded that it is bound by the precedents of this Court, the published opinion's views on prejudice must be repudiated in order to avoid confusion and misapplication of law by the district courts. Id. at p. 13-14. While the Court of Appeals may believe that multiple definitions of prejudice are required by the use of "actual" in one statute and "undue" in the other to modify "prejudice", such a contention is simply not supported by this Court's precedents. This Court has been clear that prejudice is prejudice in the post-conviction context. Byford v. State, 132 Nev. __, __, 385 P.3d 35, __ (2016), cert. denied, __ U.S. __, 137 S.Ct. 2274 (2017) ("To overcome the procedural defaults, Byford must demonstrate good cause and prejudice. NRS 34.726(1); NRS 34.810(3)."); Rippo v. State, 132 Nev. __, __, 368 P.3d 729, 742 (2016) , reversed on other grounds, __ U.S. __, __ S.Ct. __, 2017 U.S. LEXIS 1571 (2017) ("If a petitioner who seeks to excuse a procedural default based on ineffective assistance of counsel makes the showing of prejudice required by Strickland, he has also met

the actual prejudice showing required to excuse the procedural default"); State v. Boston, 131 Nev. __, __, 363 P.3d 453, 455 (2015) ("Boston's petition is procedurally barred absent a demonstration of good cause and actual prejudice. See NRS 34.726(1); NRS 34.810(1)(b); NRS 34.810(3)."); Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265, 270 (2006) (NRS 34.726(1) and NRS 34,810(1)(b) "procedural default is excused if a petitioner establishes both good cause … and prejudice. … Prejudice occurs where the errors worked to a defendant's 'actual and substantial disadvantage, infecting the entire trial with error of constitutional dimension."); Crump v. Warden, 113 Nev. 293, 304-05, 934 P.2d 247, 254 (1997) (error which rises to the level of ineffective assistance of counsel establishes cause and prejudice under NRS 34.810(1)(b)).

CONCLUSION

For the foregoing reasons, the State respectfully requests that the Petition for Review be granted.

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Dated this 4th day of December, 2017.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this petition for rehearing/reconsideration/review or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this petition complies with the type-volume limitations of NRAP 40 or 40A because it is proportionately spaced, has a typeface of 14 points and contains 4,209 words, 342 lines of text and 18 pages.

Dated this 4th day of December, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 4, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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