

IN THE SUPREME COURT OF THE STATE OF NEVADA

MACK MASON,
APPELLANT.

VS

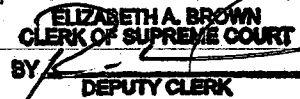
THE STATE OF NEVADA,
WARDEN, JO GENTRY,
RESPONDENT.

Supreme Court No. 71296

District Court Case No. C161426

FILED

NOV 07 2016

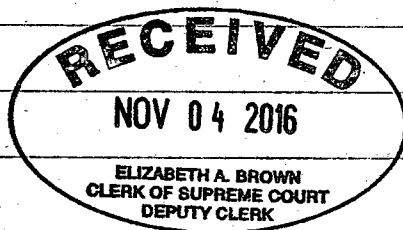
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

MOTION TO STAY AND HOLD IN ABEYANCE
REVIEW OF APPELLANT'S BRIEF

NOW COMES, MACK MASON, APPELLANT IN DISTRICT COURT
CASE NUMBER C161426, NOW BEFORE THE NEVADA SUPREME COURT
FOR REVIEW, AND BRIEFING FILED ON OCTOBER, 2016, WITH
THE NOTICE OF APPEAL FILED ON SEPTEMBER 14, 2016.

APPELLANT MASON HEREBY MOVES THIS HONORABLE COURT
FOR A STAY AND ABEYANCE ON THE REVIEW OF THIS APPEAL.
THIS FOREGOING MOTION IS MADE BASED UPON ALL PAPERS,
PLEADINGS, AND MOTIONS ON FILE WITH THIS COURT AND THE
MEMORANDUM OF POINTS AND AUTHORITIES INCLUDED HERE-
IN.

DATED THIS 1st DAY OF November 2016



By Mack Mason

MACK MASON #69060
APPELLANT IN PROPER PERSON

16-34651

STATEMENT OF FACTS

APPELLANT MASON FILED WITH THE EIGHTH JUDICIAL DISTRICT COURT, A PLEADING THAT WAS A PETITION FOR A WRIT OF HABEAS CORPUS, BUT THE DISTRICT COURT CONSTRUED AS A MOTION.

THE PLEADING SUMMARILY TOUCH UPON TWO ISSUES WHICH WERE: 1. A CLAIM OF ACTUAL INNOCENCE, AND 2. INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL. THE DISTRICT COURT BELOW DISPATCHED OF THE WRIT RATHER QUICKLEY AND WITHOUT APPOINTMENT OF ANY COUNSEL TO ASSIST PETITIONER IN FORMULATING THE ISSUES AND PRESENTING THEM TO THE COURT IN AN ADEQUATE FASHION. WE RECOGNIZE THAT NEVADA, UNDER STATE LAW DOES NOT RECOGNIZE MARTINEZ V. RYAN, 132 S. Ct 1309 (2012), BUT FEDERAL COURT DOES, AND BEARING UPON THE FACT THAT WITHOUT ASSISTANCE OF APPELLATE COUNSEL TO FLESH OUT THE ISSUES OF APPELLANT(S) ACTUAL INNOCENCE CLAIM, THE PETITIONER HAD LESS THAN A 1% CHANCE AT HAVING AN OPPORTUNITY TO PRESENT CLAIMS, EVEN VALID, MERITORIOUS ONES, TO THE COURT TO HAVE THEM HEARD.

ARGUMENT

UNDER SMITH V. CLARK COUNTY SCHOOL DISTRICT, 727 F.3d 950 (9th Cir. 2013). "RECONSIDERATION OF A PRIOR ORDER IS APPROPRIATE IF THE COURT #1: IS PRESENTED WITH NEW EVIDENCE, #2: COMMITTED CLEAR ERROR OR THE INITIAL DECISION WAS MANIFESTLY UNJUST, OR #3: THERE IS AN INTERVENING CHANGE IN CONTROLLING LAW. See U.S. V. GYPSUM CO., 333 U.S. 364 AND FOR AN INTERVENING CHANGE IN CONTROLLING LAW; See HINTON V. ALABAMA, 134 S. Ct 1081 (2014).

THE STATE, AT TRIAL, USED EVIDENCE FROM A SEPARATE CASE, A BURGLARY

1 WHICH WAS COMMITTED ON THE 10TH OF MAY, 1999, ALLEGED TO
2 HAVE TAKEN PLACE AT 916 LAUREY STREET, AND ANOTHER BURGLARY
3 WHILE IN POSSESSION OF A FIREARM OF A SECOND RESIDENCE,
4 ALLEGEDLY, AT 903 D STREET; APARTMENT 3.

5 THE FRUITS OF THAT FIRST BURGLARY WAS A FIREARM, AN
6 38 REVOLVER, AND ANOTHER WEAPON WAS INVOLVED ALSO, A 12
7 GAUGE MOSSBERG SHOTGUN. THE WEAPON OF SIGNIFICANCE IS
8 THE 38 REVOLVER BECAUSE THAT PARTICULAR WEAPON, ALTHOUGH
9 IT CAME FROM A SEPARATE CASE THAT WAS CONSOLIDATED
10 AND TRIED WITH THE OTHER COUNTS THAT MR MASON WAS
11 CHARGED WITH, I.E. A SECOND DEGREE KIDNAPPING AND A
12 MURDER WITH THE USE OF A DEADLY WEAPON. THE CHARGE
13 OF BURGLARY WHERE THE WEAPON, THE 38 REVOLVER CAME FROM,
14 AND MR. MASON WAS FOUND "NOT GUILTY" OF. THE STATE USED
15 THAT SAME WEAPON TO PREJUDICE AND INFLAME JURORS WITH
16 A PRESENTATION OF PRIOR BAD ACTS EVIDENCE WHICH SHOULD
17 HAVE NOT BEEN PUT FORTH TO THE JURY ESPECIALLY SINCE MR.
18 MASON RECEIVED AN ACQUITTAL ON THE VERY BURGLARY THAT
19 THE MURDER WEAPON CAME FROM. MORE SO SINCE NO PROOF
20 OF CONSTRUCTIVE POSSESSION OF THE MURDER WEAPON WAS
21 PRESENTED, EVEN CIRCUMSTANCIAL IN THE FORM OF D.N.A.
22 OR BIOLOGICAL MATTER CONNECTING IT TO MR. MASON.

23 IN CONCLUSION

24 PETITIONER MASON SUBMITS THAT UNDER NRAP 8 (a) (1) (c)
25 "AN ORDER SUSPENDING, MODIFYING, RESTORING OR GRANTING AN
26 INJUNCTION WHILE AN APPEAL OR ORIGINAL PETITION IS PENDING."

27 PETITIONER MASON ALSO SUBMITS THAT UNDER NRAP 8 (2) (A) (i)
28 "MOVING IN DISTRICT COURT WOULD BE IMPRACTICABLE",

1 RELEVANT PARTS OF THE RECORD ARE INCORPORATED BY REFERENCE
2 UNDER N RAP 8(2)(B)(iii) WHICH ARE THE ORDER OF FINDINGS OF
3 FACTS AND CONCLUSIONS OF LAW, HEARD ON JULY 5TH, 2016, PAGE
4 3. LINES 19 THROUGH 24 WHERE THE STATE PROOFFERS THAT THE CLAIMS
5 OF ACTUAL INNOCENCE COULD HAVE BEEN PRESENTED IN AN EARUER
6 PROCEEDING. MR. MASON SUBMITS THAT HE COULD NOT HAVE PUT
7 FORTH THOSE CLAIMS IN AN EARUER PROCEEDING, ESPECIALLY SINCE
8 NONE OF HIS PRIOR PETITIONS) WERE EVER SERIOUSLY ENTERTAINED
9 BY THE LOWER DISTRICT COURT WHERE ALL HEARINGS WERE HELD
10 WITHOUT HIS PRESCENCE IN THE COURTROOM FOR ANY HEARING, OR
11 WHERE HIM BEING ABSENT, HAD NO LEGAL REPRESENTATIVE ON BEHALF
12 OF HIS INTERESTS. I QUESTION, AS ANY QUALIFIED JURIST SHOULD,
13 THAT IF A MAN SUFFERS A FAULTY CONVICTION BASED ON BOTH, ERRORS
14 THAT ARE PROCEDURAL AND STRUCTURAL IN NATURE, HOW CAN THAT
15 CONVICTION BE ALLOWED TO STAND AND REMAIN A MANIFEST INJUSTICE
16 AND THE ONLY JUSTIFICATION IS A TIMEBAR, OR LACHES, OR AN UNTIMELY
17 FILED PETITION?

18 SO FOR THE FORE GOING REASONS, AND THE FACT THAT APPELLANT
19 MASON HAS AN ACTIVE POST- CONVICTION HABEAS PETITION FOR A WRIT
20 OF HABEAS CORPUS IN THE EIGHTH JUDICIAL DISTRICT COURT, CLARK
21 COUNTY, NEVADA, WHERE HE IS EXHAUSTING ON THE ISSUE(S) OF,
22 BOTH, ACTUAL INNOCENCE AND INEFFECTIVE ASSISTANCE OF TRIAL
23 COUNSEL. AND FOR THOSE REASONS, THIS APPELLANT PRAYS OF
24 THIS COURT FOR AN ORDER STAYING THE PROCEEDINGS AND AN
25 ABEYANCE UNTIL THE APPELLANT EXHAUSTS IN DISTRICT COURT.

26 RESPECTFULLY SUBMITTED.

27 Mack Mason

28 #69060

CERTIFICATE OF SERVICE BY MAILING

I, MACK MASON, HEREBY CERTIFY, PURSUANT TO NRCP 5(b) THAT ON THIS DAY OF NOVEMBER, 2016, I MAILED A TRUE AND CORRECT COPY OF THE FORE GOING "MOTION FOR A STAY AND ABBEYANCE OF THE PROCEEDINGS IN THE NEVADA SUPREME COURT PENDING EXHAUSTION IN DISTRICT COURT, CLARK COUNTY, NEVADA. BY PLACING DOCUMENT IN A SEALED PRE-PAID POSTAGE ENVELOPE AND DEPOSITED SAID MAILING IN THE UNITED STATES MAIL ADDRESSED TO THE FOLLOWING :

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. CARSON STREET #201
CARSON CITY, NEVADA 89701

CLARK COUNTY DISTRICT ATTORNEY
c/o STEVEN S. OWENS Chief Dep. DA.
200 LEWIS AVENUE
LAS VEGAS, NEVADA 89101

Signed this 1st Day of November, 2016 under the penalties of perjury pursuant to NRS 208.165

Mack Mason

MACK MASON # 69060

Appellant in pro per

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION FOR

AN ORDER OF STAY AND ABeyANCE OF PROCEEDINGS
(Title of Document)

filed in District Court Case number 99 C161426

☒ 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.

Mack Mason
Signature

11-1-2016
Date

Mack Mason
Print Name

Appellant
Title