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IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND
FOR THE COUNTY OF WASHOE,

Respondent,

and

THE STATE OF NEVADA,

Real Party In Interest.

No. 74227

FILED

MAR 01 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

PETITIONER'S REPLY TO RESPONDENT'S ANSWER TO
PETITION FOR EXTRAORDINARY RELIEF WRIT

STEVEN FLOYD VOSS #52094	CHRISTOPHER J. HICKS, Esq.
Northern Nevada Correctional Center	Washoe County District Attorney,
Post Office Box #7000	and,
Carson City, Nevada 89702-7000	TERRENCE P. MCCARTHY (DDA)
Petitioner In Pro. Per.	Post Office Box # 11130
	Reno, Nevada 89520-0027
	Attorneys For Respondent

1 MEMORANDUM OF POINTS AND AUTHORITIES

2
3 I. Nature of Reply:

4
5 Through the instant Reply the Petitioner hereby
6 responds to the State's Answer To PETITION FOR
7 Extraordinary Relief filed on or about February 21,
8 2018, in response to the Court's Order Directing
9 Answer filed on January 23, 2018

10
11 II. Argument

12
13 A. The State's arguments are without merit,
14 moot, or subject to estoppel.

15
16 (i.) The state has answered the Petitioner's
17 Petition For Extraordinary Relief Writ. Within the
18 states Answer the state concedes that the
19 August 14, 2001 Findings of Fact, Conclusions of Law, And
20 Judgment appended as Exhibit # 2, to the instant
21 Petition are true and correct, that the re-sentencing
22 proceeding ordered by the district court within the
23 court's aforementioned Findings of Fact, Conclusions
24 of Law, And Judgment (Petitioner's Exhibit # 2), has not
25 been conducted. Thus, the state in effect concedes
26 that pursuant to such Judgment that no Amended-
27 Judgment of Conviction has been entered by the court
28 relative to Case No. CR96-1581 to present date, albeit

1 a rather indirect and convoluted concession
2 of such fact.

3 (2) however, the state alleges that the Court
4 ordered Re-Sentencing was not conducted, because
5 the Petitioner had appealed from the District Court's
6 partial denial of his March 9, 2000 Post-Conviction Petition
7 for writ of Habeas Corpus, such proposition which
8 is utterly ridiculous. The fact that the Petitioner
9 had undertaken such appeal, which did not
10 address the Court's granting of a writ of Habeas Corpus
11 relative to his Ground SIX claims. Certainly did
12 not prevent the Court from conducting the
13 previously ordered Re-Sentencing Proceeding or from
14 entering an Amended Judgment of Conviction within
15 the seventeen or so years following the Court's August
16 14, 2001 Judgment (writ of Habeas Corpus). In fact,
17 what had initially precluded the District Court from
18 conducting such Re-Sentencing Proceeding was the
19 state's filing of a Stipulation on August 1, 2001,
20 which was drafted by the state for purpose of
21 postponing the Re-Sentencing Proceeding in the
22 pendency of the Petitioner's anticipated appeal,
23 and in the pendency of Habeas Corpus Proceedings in
24 Case No. CR97-P-2077. Nonetheless, even though
25 the Petitioner's Post-Conviction Counsel, Scott W. Edwards,
26 Esq., had stipulated to the state's request, such
27 Stipulation was made without the Petitioner's prior
28 knowledge and consent, and to his substantial non-plus.

1 upon learning of said stipulation being filed
2 in the District Court, the Petitioner had
3 immediately contacted his court appointed
4 Post-conviction Counsel, (see, appended Exhibit # 9)
5 and the Petitioner in no uncertain terms had
6 adamantly voiced to said counsel his shock
7 and utter dissatisfaction with counsel's
8 stipulation to delay his Re-Sentencing, and he
9 had demanded that said counsel withdraw such
10 stipulation and schedule a re-sentencing proceeding,
11 asserting that a Re-Sentencing Proceeding was in
12 his best interest at that juncture. Said counsel
13 had responded to the Petitioner's aforementioned
14 demand (see, appended Exhibit # 10), wherein
15 counsel intimated that he would be withdrawing
16 as counsel relative to the court ordered
17 re-sentencing proceedings but made no attempt
18 to withdraw his unconsented stipulation, or
19 to effect the appointment of new Defense Counsel
20 to represent the Petitioner in regard to the
21 court ordered re-sentencing proceedings, in contravention
22 of the Rules of Professional Conduct as adopted by
23 the Nevada Supreme Court Rules. Under these
24 circumstances counsel's failure to abide by the
25 Petitioner's objectives of counsel's representation
26 not only violated the Rules of Professional Conduct, but
27 moreso, constituted objectively unreasonable
28 deficient performance of counsel, which was presumptively

1 unreasonable under Strickland v. Washington,
2 466 U.S. 668 (1984). Thus, the state's allegation
3 that the District Court's failure to conduct
4 Re-sentencing proceedings was attributable
5 to the Petitioner's invocation of his right to
6 appeal from the partial denial of his March 9,
7 2000 Post-Conviction Petition For writ of Habeas
8 Corpus is without merit and repelled by the
9 demonstratable facts. Therefore, even if the
10 Petitioner's taking of an appeal in case no. 38373,
11 could have had any effect of delaying the
12 Re-sentencing proceedings, following the Nevada
13 Supreme Court's Order of Affirmance in such
14 case, the state should have set a date for
15 the Petitioner's re-sentencing. Had the Petitioner's
16 appointed Post-Conviction Counsel acted upon his
17 duty to protect the Petitioner's interest in
18 receiving a Re-sentencing Proceeding and the
19 substantial benefits of such (as contemplated by
20 the Post-Conviction Court (District Judge, Steven P.
21 Elliott), by taking actions effective to cause
22 the Court's appointment of replacement defense
23 Counsel to represent the Petitioner at re-sentencing,
24 perhaps such replacement counsel might have taken
25 actions effective to cause the re-sentencing
26 proceedings to occur. of course the Trial Court
27 upon allowing Post-Conviction Counsel's withdrawal,
28 being aware of its August 14, 2001 Writ of Habeas Corpus

1 and the Re-sentencing Proceeding ordered thereby,
2 clearly should have ordered the appointment of
3 replacement Counsel, sua sponte, to represent the
4 indigent Petitioner at Re-sentencing. However, the
5 District Court's failure to conduct the Re-sentencing
6 Proceeding and to enter an Amended Judgment of
7 Conviction cannot reasonably be attributed to the Petitioner,
8 because he has absolutely no duty to see that he is
9 properly convicted and sentenced. See, State v. Loveless,
10 62 Nev. 17, 136 P. 2d 236 (1943). As the Prosecutor and
11 therefore Master of Case No. CR96-1581, the state, is thus,
12 burdened with achieving the culmination of the
13 prosecution "without unreasonable delay". See, NRS 176.105,
14 and Barker v. Wingo, 407 U.S. 514 (1972). In the instant
15 case, this means that the state was burdened with
16 causing the Court ordered Re-sentencing Proceeding to
17 occur, and an Amended Judgment of Conviction to be entered
18 to be entered "without unreasonable delay". Thus, the
19 failure of Court appointed Post-Conviction Counsel to undertake
20 actions effective to effectuate commencement of the
21 Re-sentencing Proceeding, and to secure the Petitioner's
22 rights to receive same are somewhat mooted; where
23 the ultimate duty to effectuate such proceedings and
24 the entry of a written and final Amended Judgment of
25 Conviction, falls upon the state. Likewise, due to such
26 burden and duty of the state, the failure of the
27 District Court to, sua sponte, actions to effectuate a
28 Judgment does not render the matter attributable to

1 the District Court. The state, clearly,
2 merely attempts to shift their burden and
3 duty to achieve the culmination of the
4 Trial Proceedings onto the Petitioner.

5 (3) the state, additionally, pleads the
6 Doctrine of Laches, as an affirmative defense.
7 However, in light of the state's clear burden
8 and duty to achieve the culmination of the
9 trial proceedings by the entry of a written
10 and final Amended Judgment of Conviction, the
11 Doctrine of Laches is completely inapplicable
12 to the instant Petition. Because there can be
13 no prejudice to the state, where the failure
14 to achieve a culmination of the trial proceedings
15 can only be attributable to the state itself.
16 Nonetheless, the state's allegation that the
17 Petitioner has effectively waived his re-sentencing
18 by his acquiescence is fatally flawed. Because,
19 neither the Petitioner or his counsel can concede
20 or waive the entry of an Amended Judgment of
21 Conviction where the November 27, 1996 Judgment
22 of Conviction has been found to be constitutionally
23 infirm, due to the disproportionate sentences
24 imposed thereby.

25 (4) the state next challenges the validity
26 of the District Court's August 14, 2001 Findings of
27 Fact, Conclusions of Law, And Judgment. Claiming
28 that the Court never should have granted the

1 Petitioner a Writ of Habeas Corpus, and thereby
2 the right to a Re-Sentencing Proceeding. However, the
3 State's argument is barred under principles of
4 Collateral and Judicial Estoppel, and Law of the Case
5 Doctrine. Whereas, the State never appealed from the
6 District Court's August 14, 2001 Judgment (Writ of Habeas Corpus).
7 Thus, the State has effectively waived all challenges to
8 the propriety of such Judgment, and that Court's exercise
9 of discretion. Therefore, where the District Court's
10 Findings of Fact, Conclusions of Law, And Judgment, has
11 been affirmed by the Nevada Supreme Court in the context
12 of Case No. 38373, the District Court's Judgment
13 constitutes Law of the Case, which must be followed in
14 all subsequent proceedings. See, Hall v. State, 91 Nev. 317,
15 535 P. 2d 797 (1975); Hogan v. Warden, 109 Nev. 952, 860 P. 2d
16 710 (1993); Lisle v. State, 131 Nev. Adv. Op. 31, 351 P. 3d 725
17 (2015); and Peck v. State, 2017 WL 1948575 (Nev. 2017)

18 (5) the State further complains that the
19 instant Petition for Extraordinary Relief Writ is not
20 appropriate. Claiming that the Petitioner should
21 have asked the Nevada Supreme Court for a Remand to
22 the District Court in the context of his appeal from
23 the partial denial of his March 9, 2000 Post-Conviction
24 Petition for Writ of Habeas Corpus in Case No. 38373.
25 Of course, at such juncture such a request for a
26 Remand would have been premature, where the State
27 did not appeal from the District Court's Judgment, and
28 where at such juncture the Petitioner still believed that

1 the Re-Sentencing Proceedings were eminent,
2 and that he would receive the substantial benefits
3 contemplated by the District Court's Judgment.
4 The State further argues that NRS 34-724
5 "comprehends and takes the place of all other
6 common law, statutory or other remedies which
7 have been available to challenge a conviction".
8 However, the State completely ignores the fact
9 that the November 27, 1996 Judgment of Conviction
10 has been vitiated by the District Court's
11 August 14, 2001 issuance of a Writ of Habeas Corpus,
12 which found the November 27, 1996 Judgment of
13 Conviction constitutionally infirm due to the
14 disproportionate sentences imposed thereby, and
15 that therefore the aforementioned Judgment of
16 Conviction is void. Clearly, in the instant
17 Petition the Petitioner did not challenge the
18 Jury's Verdicts or the District Court's authority
19 thereunder to adjudicate guilt and to impose
20 sentence. Therefore, in the context of the
21 instant Petition the Petitioner cannot be
22 construed as a Post-Conviction Petitioner. Because,
23 he is not restrained pursuant to a Judgment of
24 Conviction entered in Case No. CR96-1581, where the
25 November 27, 1996 Judgment of Conviction has been
26 effectively vitiated by the August 14, 2001 Writ of
27 Habeas Corpus issued by the District Court. Instead,
28 the Petitioner is only in state custody pursuant to

1 the Corrected Amended Judgment of Conviction entered
2 in Case No. CR97-2077 on January 30, 2004, entered
3 nunc pro tunc to July 8, 1998, and the Petitioner
4 does not challenge such Judgment in the course
5 of the instant Petition.

6 (6) lastly, the state argues that the
7 Petitioner should have first raised claims
8 for relief in the District Court, and not in
9 the first instance in this Court. Thus, the
10 state implies that the Petitioner has not raised
11 claims regarding the Re-sentencing Proceedings
12 in the District Court. Such claim which is repelled
13 by the District Court record in both Case No.
14 CR96-1581 and CR97-2077. (See, as example, appended
15 Exhibit # 11).

16
17 B. The State's Answer is insufficient in regard
18 to the relevant claims raised, and the relief
19 requested.

20
21 The state has not answered the Petitioner's
22 claims that: (1) the Nevada Supreme Court's Order
23 Dismissing Appeal (Direct Appeal) entered in Case
24 No 29873, is no longer equitable, and that the
25 November 27, 1996 Judgment of Conviction entered
26 in Case No. CR96-1581, is no longer deserving of
27 affirmance, and that the maintainance of such
28 affirmance violates the Petitioner's independent

1 State and Federal Constitutional guarantees to
2 Due Process and Equal Protection of Law; and (2)
3 that the Nevada Supreme Court was not vested
4 with Appellate Jurisdiction in the context of
5 Case No. 38373, to consider an appeal from the
6 District Court's partial denial of his March 9, 2000
7 Post-Conviction Petition For writ of Habeas Corpus,
8 where the in-custody requirement of NRS 34.726
9 precluded the court's review of such claims,
10 subsequent to the District Court's August 14, 2001
11 granting of a writ of Habeas Corpus effectively
12 vitiating the November 27, 1996 Judgment of Conviction

13 Additionally, the state has not argued against
14 the relief requested by the Petitioner.

15 Therefore, the state by their silence relative
16 to the Petitioner's substantive claims has effectively
17 made a "Confession of Error" and has admitted
18 and conceded the merits of the Petitioner's claims
19 for relief, and consented to the Court's granting
20 of the instant Petition. Whereas, Nevada Rules of
21 Appellate Procedure, Rule 31(d), provides that:

22 " ... The Failure of respondent to file [an Answer]
23 may be treated by the Court as a confession
24 of error and appropriate disposition of
25 the [Petition] therefore made. "

26 In the case of Polk v. State, 2010 Nev. LEXIS 20 (2010)
27 the Court held that because the state failed to
28 directly address the [Petitioner's] argument, the

1 state effectively confessed error under
2 Nevada Rules of Appellate Procedure, Rule 31(d);
3 and the judgment was reversed and remanded
4 to the district court. In the case of Summa Corp.
5 v. Brooks Rent-A-Car, 95 Nev. 779, 602 P.2d 192
6 (1979), the Court held that "the Supreme Court
7 [or Court of Appeals] will not comb the record to
8 ascertain matters which should have been set forth
9 in the respondent's [Answer], instead [the Court]
10 will elect to treat the respondents failure as a
11 confession of error."

12 Therefore, the Petitioner submits that the
13 Court should treat the State's failure to address
14 the Petitioners claims for relief as a confession
15 of error, and thereafter, make an appropriate
16 disposition of the instant Petition, granting the
17 Petitioner his requested relief.

18
19 C. Because, the Petitioner as of February
20 26, 2018, has served to completion and discharge
21 each of the six decidedly "onrours" sentences
22 imposed pursuant to the District Court's November 27,
23 1996 Judgment of Conviction, the Court should
24 Remand the matter to the District Court with
25 instructions to vacate said Judgment of Conviction
26 with prejudice, and to enter a Judgment of
27 Acquittal in regard to each of the six counts
28 charged.

1 The Judicially Noticable Fact that the
2 Petitioner has served to completion and
3 discharge each of the six decidedly "onerous"
4 sentences imposed pursuant to the District Court's
5 November 27, 1996 Judgment of Conviction is
6 documented with Nevada Department of Corrections
7 correspondence. See, appended Exhibit # 12.
8 The Petitioner identifies that the aforementioned
9 documentation is the only proof of discharge of
10 said six decidedly "onerous" sentences, which the
11 Petitioner has been provided by Prison officials.
12 As his Request to be provided with a
13 Certificate of Discharge relative to Case No.
14 CR96-1581 has been denied by Prison officials.
15 Therefore, should the documentation provided
16 (appended Exhibit # 12) be found by this Court
17 to be insufficient, the Petitioner hereby
18 requests that the Court enter an Order Directing
19 The State To File A Return, which specifies the
20 true cause of the Petitioner's present restraint.
21 Whereupon, this Court may take Judicial Notice
22 of the Petitioner's completion and discharge from
23 the decidedly "onerous" sentences imposed in
24 Case No. CR96-1581.

25 Nonetheless, due to the Petitioner's completion
26 of said sentences and his discharge therefrom by
27 the Nevada Department of Corrections, this Court
28 should grant the Petitioner equitable and

1 appropriate relief. The Petitioner submits
2 that the only equitable relief still available, at the
3 present juncture, is to vacate the November 27,
4 1996 Judgment of Conviction with prejudice, and
5 to grant the Petitioner a Judgment of Acquittal
6 relative to each of the six counts charged
7 and referenced within said 1996 Judgment of Conviction.
8 Because, the relief contemplated by the Post-Conviction
9 court was that the Petitioner would receive fair
10 and proportionate sentences in regard to each
11 of the six counts charged and which the jury
12 had returned Guilty Verdicts. But such remedy
13 is of course completely unavailable at present
14 juncture in regard to each and every one of
15 the six counts, due to the expiration and
16 discharge of same on February 26, 2018. Further,
17 there are collateral effects flowing from the
18 Petitioner's discharge from said sentences. Including
19 the fact that the District Court no longer
20 maintains jurisdiction to enter an Amended-
21 Judgment of Conviction in regard to any of the
22 aforementioned six counts. This fact profoundly
23 impacts the actions which must now transpire.
24 That is, because the November 27, Judgment of
25 Conviction is constitutionally defective and
26 void, where same reflects decidedly "onerous"
27 sentences. That Judgment of Conviction must
28 necessarily be vacated as a matter of Due Process,

1 and same must necessarily be vacated with
2 prejudice due to the aforementioned
3 jurisdictional defect. However, such action,
4 alone, is not sufficient to repair the
5 prejudice suffered by the Petitioner. Whereas,
6 due to the state's failure to cause Re-Sentencing
7 Proceedings to be commenced and fair and
8 proportionate sentences to be entered, the
9 Petitioner has been forced to serve his unlawful
10 disproportionate sentences to completion and
11 discharge. Thus, the only conceivable reparation
12 available which would have any substantial
13 effect of mitigating the prejudice suffered
14 by the Defendant by the state's, at minimum,
15 negligent conduct, is the remedy of the entry
16 of a Judgment of Acquittal relative to all
17 six counts. Because, even if it cannot be
18 determined that the state had acted in bad
19 faith, the magnitude of the state's neglect
20 and its effect of depriving the Petitioner of
21 Due Process and Equal Protection of Law, guaranteed
22 under independent state and Federal Constitutional
23 guarantees warrants the entry of a Judgment of
24 Acquittal allowing the Petitioner to avail himself
25 to a plea of former jeopardy in regard to each
26 of the aforementioned six counts, should the
27 need to do so ever arise, and pursuant to
28 NRS 176.105 following a Jury Trial a written Judgment

1 must be entered by the Trial Court. Whereas,
2 NRS 176.105, Judgment in a criminal action, provides
3 that:

4 " 1. If a defendant is found guilty and is sentenced
5 as provided by law (Emphasis added), the
6 judgment of conviction must set forth:

7 (a) The plea;

8 (b) The verdict or finding;

9 (c) The adjudication and sentence...;

10 and

11 (d) The exact amount of credit granted
12 for time spent in confinement
13 before conviction if any.

14
15 2. If the defendant is found not guilty, or for
16 any other reason is entitled to be discharged,
17 judgment must be entered accordingly.
18 (Emphasis added)

19
20 3. The judgment must be signed by the judge
21 and entered by the clerk. "

22 NRS 176.105, clearly contemplates that in every
23 criminal case that a written Judgment will be entered,
24 and where, for any reason whatsoever, that a Judgment
25 of Conviction cannot be entered, that an alternative
26 Judgment, such as a Judgment of Acquittal be entered.

27 Additionally, due to the State's inexcusable neglect
28 to cause the Re-sentencing Proceedings to be conducted

1 and to cause entry of a written Judgment of
2 Conviction, setting out fair and proportionate
3 sentences in regard to each of the six counts charged;
4 sanctions against the state are warranted.
5 Whereas, despite the state's present assertions
6 that the District Court's Findings of Fact, Conclusions
7 of Law, And Judgment, entered in Case No. CR96-P-1581,
8 on August 14, 2001, are erroneous, The state did
9 not avail it-self to an appeal, challenging the
10 validity of said Judgment. In fact, the state
11 had effectively conceded the validity of same
12 when the state sought and attained a written
13 stipulation to postpone the Re-Sentencing Proceedings
14 in the pendency of the Petitioner's appeal from the
15 partial denial of his March 9, 2000 Post-Conviction
16 Petition For writ of Habeas Corpus, and then filing
17 same in the District Court. However, the state
18 upon the Nevada Supreme Courts issuance of its
19 Remittitur in Case No. 38373, did not undertake
20 any actions effective to cause a date for the
21 Re-Sentencing Proceedings to be set, or same to
22 be conducted. The state has offered absolutely
23 no explanation for such failure. Further, within
24 dozens of pleadings filed by the Petitioner in the
25 State and Federal Court's which had continually
26 asserted his right pursuant to the District Court's
27 August 14, 2001 entry of a writ of Habeas Corpus to
28 a Re-Sentencing Proceeding, and complaining that

1 he had not received such Court ordered Re-Sentencing
2 Proceeding or the substantial benefits thereof.
3 The state on no occasion had answered the Petitioner's
4 allegations - complaints, to any degree. Nor did the
5 state, at any juncture, despite the Petitioner's
6 complaints take charge of their duty to attain
7 the culmination of the trial proceedings in
8 Case No. CR96-1581, by causing the Court ordered
9 Re-Sentencing Proceedings to be conducted and
10 an Amended Judgment of Conviction, setting out
11 fair and proportionate sentences, to be imposed.

12 Thus, the states sustained neglect implicates
13 bad faith and connivance on the part of the
14 state, and the state's dilatory purpose and intent.
15 Thus, substantial sanctions, such as the Court's
16 entry of a Judgment of Acquittal are due.

17 Furthermore, the state through their
18 aforementioned neglect and connivance had
19 effectively abandoned the prosecution of Case
20 No. CR96-1581 years ago. Whereas, pursuant to
21 NRS 176.015 the Petitioner is entitled to receive a
22 prompt sentencing proceeding. Specifically, said
23 statute provides that:

24 " Sentence must be imposed without
25 unreasonable delay. "

26 The Petitioner submits that a delay of some
27 Seventeen-years was presumptively prejudicial.
28 See, Barker v. Wingo, 407 U.S. 514, 531-532 (1972).

1 Moreover, such delay was inherently prejudicial
2 because it completely deprived the Petitioner
3 of the remedy granted him by the Post-Conviction
4 Court, causing the Petitioner to serve the
5 decidedly "onerous" sentences to completion and
6 discharge. Nonetheless, the state's failure to
7 cause the court ordered Re-sentencing Proceedings
8 to be conducted, and to cause an Amended
9 Judgment of Conviction to be entered, prior to
10 the Petitioner's serving to completion and discharge
11 each of the six sentences imposed pursuant to the
12 Court's November 27, 1996 Judgment of Conviction;
13 is effective to demonstrate the state's
14 abandonment of the prosecution of Case No. CR96-1581.
15 Because, the state's failure to cause the culmination
16 of the prosecution to occur, by attaining a
17 written, final Amended Judgment of Conviction,
18 prior to the expiration of the Trial Court's
19 jurisdiction, is clear evidence of constructive
20 abandonment of the prosecution. The state cannot
21 avail it-self to a claim that the District Court's
22 jurisdiction is maintained, due to the Court's
23 entry of its August 14, 2001 Judgment (writ of Habeas
24 Corpus), because, the sentences imposed pursuant
25 to the November 27, 1996 Judgment of Conviction
26 were never arrested, or vacated by said court.
27 Thus, the expiration of the sentences imposed pursuant
28 to said Judgment of Conviction were not tolled by

1 the District Court's August 14, 2001 entry of Judgment
2 (Writ of Habeas Corpus), such fact which is axiomatic.

3
4 III. Conclusion:

5
6 The State's arguments should be rejected by
7 the Court and the Petitioner's instant Petition and
8 the relief requested thereby should be granted.

9
10 IV. Verification:

11
12 Under penalty of perjury, I STEVEN FLOYD VOSS, do
13 hereby verify that I have read the content of the
14 foregoing Reply, and that same is true and correct
15 of my own personal information, knowledge and
16 belief.

17 The foregoing Reply does not contain the personal
18 information or social security number of any person.

19
20 DATED this 27th day of February 2018.

21 By: 

22 STEVEN FLOYD VOSS,
23 Petitioner, in pro. per.

24 ///

25 ///

26 ///

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28

CERTIFICATE OF SERVICE VIA U.S. MAIL

I, STEVEN FLOYD VOSS, do hereby certify that
on this 27th day of February 2018, that I
mailed a true and correct copy of the foregoing

Reply, addressed to:

TERRENCE P. MCCARTHY, Esq. (DDA)

% Washoe County District Attorney

Post Office Box # 11130

Reno, Nevada 89520-0027

By: 

STEVEN FLOYD VOSS

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5 IN THE COURT OF APPEALS OF THE STATE OF NEVADA
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7 STEVEN FLOYD VOSS,

No. 74227

8 Petitioner,

9 VS.

10 THE SECOND JUDICIAL DISTRICT COURT

11 OF THE STATE OF NEVADA, IN AND

12 FOR THE COUNTY OF WASHOE,

13 Respondent,

14 and,

15 THE STATE OF NEVADA,

16 Real Party In Interest.
17

18
19 PETITIONER'S SUPPLEMENTAL APPENDIX OF EXHIBITS IN
20 SUPPORT OF PETITIONER'S REPLY TO RESPONDENT'S ANSWER
21 TO PETITION FOR EXTRAORDINARY RELIEF WRIT
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SUPPLEMENTAL APPENDIX OF EXHIBITS


Exhibit # 9: LETTER, From STEVEN FLOYD VOSS, to
Attorney, SCOTT W. EDWARDS, Esq.,
dated August 31, 2001.

Exhibit # 10: LETTER, from SCOTT W. EDWARDS, Esq.,
to STEVEN FLOYD VOSS, dated
September 7, 2001.

Exhibit # 11: ORDER DENYING MOTION FOR BAIL,
Second Judicial District Court of the
State of Nevada, In And For The County
of Washoe, Case No. CR97-2077, filed
on February 11, 2014.

Exhibit # 12:

Respectfully submitted this 27th day of February 2018

By: 

STEVEN FLOYD VOSS,
Petitioner, in pro-per.

CERTIFICATE OF SERVICE VIA U.S. MAIL

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I, STEVEN FLOYD VOSS, do hereby certify that
on this 27th day of February 2018, that I mailed
a true and correct copy of the foregoing.

Supplemental Appendix of Exhibits, addressed to:

TERRENCE P. MCCARTHY, Esq. (DDA)

% Washoe County District Attorney

Post Office Box # 11130

Reno, Nevada 89520-0027

By: 

STEVEN FLOYD VOSS.

EXHIBIT #9

EXHIBIT #9

Steven Floyd Voss #52094

Nevada State Prison

P.O. Box 607

Carson City, NV 89702-0607

August 31, 2001

Scott W. Edwards
Attorney at Law
1030 Holcomb Avenue
Reno, Nevada 89502

Scott,

I have received a copy of the Notice of Appeal you filed in CR96-P-1581-A. Additionally, I have received a copy of the transcript of that Evidentiary Hearing. Unfortunately, many of the pages are cut off short by your copy machine, and it totally removed line 24 on most pages. Although not completely useless there are gaps in some crucial areas. Please send a true copy.

As we previously discussed, there are some things which I want presented in that Appeal. First of which is an additional ground resulting from the Evidentiary Hearing which is as follows: The Court errored and the Judge abused his discretion when the court failed to allow petitioner to make arguments in support of his Petition for Writ of Habeas Corpus at Evidentiary Hearing to consider said petition.

In essence what the Judge did was say: I don't see what this testimony is getting at. I am not going to spend any more time on this. I am going to order a Resentencing Hearing, but I am not going to bother with anything concerning the convictions themselves.

My point is either I am entitled to a full Evidentiary Hearing regarding my allegations or I am not. I believe that I am, and arguments are an integral part of presenting my petition. Further, your decision, or strategy if you will, not to supplement my petition further necessitated the importance of presenting arguments at the hearing. As a whole the Judge's actions amount to a Summary Dismissal. I believe that is an abuse of discretion. Additionally, the Judge's decision not to hear arguments has limited any future review of that record.

I have related to you that certain areas of my petition were not addressed to my satisfaction at the Evidentiary Hearing. For example, when the police went to the business office of the Western Village Inn and obtained from that location a copy of the telephone records for room #135, without any warrant, for the period of time in which I was staying in that room. These records were then admitted as States Exhibit #25 at trial. Further, once admitted the state argued that those very records established not only the time which Beverly Baxter was killed, but also that these records proved that I had killed her.

Scott, there is absolutely no doubt that these are confidential telephone records. There is no doubt that in regards to these records I have an objective and a subjective expectation of privacy inherent to these telephone records. There is also no doubt that police have a constitutional requirement to obtain a warrant before they can seize such records. Therefore, the State cannot lawfully admit such records as evidence at trial. However, when the State does admit such evidence at trial, an Appellate Court must reverse.

In regard to our last conversation where I voiced my concern that this fact was not discussed to any degree at the Evidentiary Hearing, and you claimed that it was. Scott, I have read the entire transcript, no where is this aspect mentioned at all. However, this fact is pleaded in my petition and I expect you will address this aspect to a great degree in the Appeal.

Further, I also related to you that several statements made by me were admitted at trial, and were utilized by the State to show untruths in those various statements to police. I also stated that the State is precluded from using those statements in that manner because I was not Mirandized prior to making those statements. To which you responded in essence, that the Court found that the statements were not the result of "Custodial Interrogation". Scott, it is true that much of Miranda deals with the issue of "Custodial Interrogation". However, the real or primary emphasis of Miranda is much more basic. What I am trying to say is this: If the State at trial utilizes any statement given by a defendant during questioning by police, custodial or not, for the purpose of showing an untruth in that statement or in any other statement from that defendant to police during any questioning, then in order to admit those statements for that purpose at trial the State is required prior to OBTAINING THOSE STATEMENTS to Mirandize the defendant. NO EXCEPTIONS! There are no doubt times that police may question a criminal defendant without admonishments and even admit those statements at trial. However, THIS IS NOT ONE OF THEM! In our last conversation you stated that the Judge found that there was no "Custodial Interrogation" and that my statements were "Voluntary in Nature". I agree with your assessment, clearly that was Judge Elliott's opinion. I disagree with his opinion, but irregardless, this argument does not require a finding that any of the interrogations were custodial. It only requires a finding of the following: (1) that the statements were made during some type of police questioning. (2) that any one or more of those statements was admitted at trial and used to show an untruth in any statement given to police during any type of questioning. (3) that I was not Mirandized prior to making those statements to police.

Scott, the records already shows that the statements resulted from police questioning, and that no Miranda warnings were given prior to questioning except for the typed statement given on June 17, 1996. Therefore all that is required in addition to the previous facts, is to show that the statements were in-fact used to demonstrate untruths in the statements admitted at trial. This is easily accomplished through the trial records, and the testimony of detectives Stacy Hill, Dale Pappas, Larry Canfield, and John Yaryan, as well as in Egan Walker's closing arguments.

Additionally regarding our conversation relative to this case, I related to you my dissatisfaction with you vacating the Evidentiary Hearing in CR97-2077 which was scheduled for August 24, 2001. Again, as I have held throughout your representation

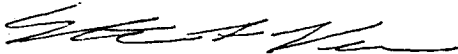
relative to this case, I do not wish to put this hearing off. I do not agree with your reasoning in this regard. We have discussed this before, and I have been clear. I did not and do not want to put this hearing off for any reason. Yet you take it upon yourself to disregard my very adamant wishes, and waive my right to that hearing without any discussion. As you may recall our last discussions ended with you stating that we have a conflict and that you would be putting forth a motion to withdraw as counsel in Case CR97-2077. I have since heard nothing further of this. If this is your intent, please do so immediately so that the Court can appoint new counsel, and I can get on with my petition. If you have changed your mind and now wish to stay on as counsel, fine, then reschedule the Evidentiary Hearing for the soonest possible date and let us go forward with my petition.

Next, I am again bringing up the Resentencing Hearing ordered by Judge Elliott. As I have previously mentioned to you, I wish to go forward with the resentencing at the court's next possible convenience. I understand that you have entered into some agreement with the State to put off this resentencing pending a decision from the Nevada Supreme Court as to the Appeal you intend to file. Again, this agreement was not entered into by me. You did this without my knowledge and without any discussion. Whatever you need to do to correct this mistake, you should do that now. I have no intention of waiving my right to that hearing. A resentencing is in my interest at this time. That is my strategy and that is what is important to me. To tell you the truth any strategy you claim to have can not matter to me. You have not even chosen to share any strategy with me. Strategy is not your providence in this petition. It is mine exclusively. That said, perhaps we again have a conflict and perhaps you will again determine that you will need to withdraw as counsel in this case CR96-F 1581-A. If so, then you should do that immediately so that the Court may appoint me new counsel and this petition can also continue.

Please respond to this correspondence ASAP so that I am aware of your intentions in these matters.

Additionally, I have not received the Finding of Fact Conclusions of Law and Order which you promised to send me. Please include this with your response.

Sincerely,



Steven Floyd Voss #52094

EXHIBIT #10

EXHIBIT #10

SCOTT W. EDWARDS
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September 7, 2001, 2001

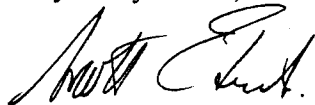
Steven F. Voss #52094
NSP
P.O. Box 607
Carson City, NV 89702

RE: Your post-conviction petition

Dear Mr. Voss:

Pursuant to your request, I am moving to withdraw as counsel for you in Department 3 proceedings. I also anticipate moving to withdraw as your counsel relative to the resentencing ordered in Department 10, but have not done so yet. With respect to the appeal from the denial of relief in Department 10, your case has been fast tracked and a fast track statement is due shortly. I will perform that as is my duty under Supreme Court rules, and I will send you a copy. I will also cooperate with you or if you get replacement counsel, your next attorney, in terms of exchanging case file materials. Needless to say, we disagree with each other as to the dictates of Miranda and the presentation of certain untruthful statements you made. We also disagree as to an attorney's prerogative to determine strategy. Nevertheless, despite this breakdown in our relationship, I wish you the best of luck in your pursuit of post-conviction relief.

Very Truly Yours,



Scott W. Edwards
Attorney at Law

Enc. Motion to withdraw

EXHIBIT #11

EXHIBIT #11

1 **CODE 3370**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **STEVEN F. VOSS,**
10 **Petitioner,**

Case No. CR97-2077

11 **vs.**

Dept. No. 3

12 **STATE OF NEVADA,**
13 **Respondent.**
14 _____/

15 **ORDER DENYING MOTION FOR BAIL**

16 Petitioner Voss filed a motion for bail arguing that during his trial at which he was convicted
17 of kidnapping and murder, the court illegally amended the Indictment rendering the trial process
18 void and arguing that his conviction must be vacated. He incorporates the argument of a previously
19 filed petition for post-conviction relief in support of his bail motion. That petition has not been
20 decided as yet but the Court will take it under submission and rule upon it shortly.
21

22 The State has opposed the motion based upon NRS 178.4871 and NRS 34.810. In his reply
23 Petitioner argues, in effect, that the State has failed to adequately rebut his argument that he is
24 entitled to release because the trial court violated his constitutional rights by amending the
25 Indictment and that his previously filed Petition for post-conviction relief will be granted. He also
26 argued that in another case, CR96-1581, a case from another judicial department in this Judicial
27 District, that his sentence had been vacated, hence there can be no prior conviction and there has
28


1 been no further action taken on that matter, hence he is entitled to be released on bail for that
2 reason.

3 The Court is not convinced by Petitioner's arguments. They smack of ineffective assistance
4 of counsel arguments which ought to have been presented much earlier in this history. However,
5 the Court is not deciding that petition at this juncture.
6

7 In any event, the Court will investigate the CR96-1581 matter and if Petitioner is accurate in
8 his representation, the Court will have the assigned department take up and conclude that matter or
9 will seek to have the case assigned to this department for proper resolution. Even if petitioner is
10 accurate about CR96-1581, he still stands convicted of murder one and kidnapping and until such
11 time as he is successful in setting them aside, bail will be denied him based upon his present
12 arguments.
13

14 Motion for bail is DENIED.

15 Done this 10th day of February, 2014.
16

17 
18 JEROME POLAHA
19 DISTRICT JUDGE
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CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 11 day of February, 2014, she mailed copies of the foregoing ORDER in Case No. CR97-2077 to the following:

Terrence McCarthy, Esq.
Appellate Division
Via E-filing

Steven Voss #52094
NNCC
P. O. Box 7000
Carson City, NV 89702

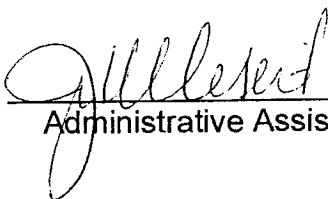

Administrative Assistant

EXHIBIT #12

EXHIBIT #12