

STEVEN FLOYD VOSS #52094
High Desert State Prison
Post office Box # 650
Indian Springs, Nevada 89070-

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 Washoe
COUNTY

No. 74227

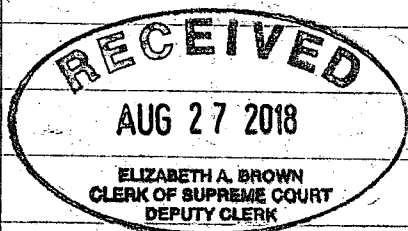
FILED

AUG 27 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *J. Andrews*
DEPUTY CLERK

PETITION FOR REHEARING

COMES NOW Petitioner, and hereby
submits the instant Petition For Rehearing
The instant Petition is made and
predicated upon the attached memorandum
of points and authorities, and all papers
and pleadings on file in the instant action.



18-901943

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Petition:

Through the instant Petition the Petitioner seeks rehearing of his Petition for Extraordinary Relief writ, and the Court's amendment of its August, 15, 2018 Order Granting Petition, where, the Court has overlooked or misapprehended substantial material facts and law in rendering its decision.

II. Discussion:

Clearly, the Petitioner does not object to the Court's granting of a writ of Mandamus. However, the Petitioner believes that this Court's determination that a Judgment of Conviction should be entered by the District Court, and that a Judgment of Acquittal is not appropriate, is erred.

III. Argument:

A. This Court has failed to consider the fact that the District Court no longer maintains jurisdiction to enter an -

1 Amended Judgment of Conviction, due to
2 the Petitioner's completion and discharge
3 from the six (6) sentences imposed pursuant
4 to the decidedly invalidated November 27,
5 1996 Judgment of Conviction.
6

7 Because the Petitioner had served to
8 completion and discharge each of the
9 six (6) decidedly "onerous" sentences
10 imposed via the November 27, 1996 Judgment
11 of Conviction on March 4, 2018; the
12 District Court is divested of jurisdiction
13 to enter an Amended Judgment of Conviction
14 in this case. Thus, the entry of such
15 an amended judgment would be an
16 ultra vires action by the District Court,
17 rendering such an amended judgment to be
18 coram non iudice and void; and the
19 entry of such an amended judgment
20 would violate the Double Jeopardy Clause
21 of the Fifth Amendment to the United States
22 Constitution.

23 Therefore, because NRS 176.105 requires
24 that a Judgment be entered in a
25 criminal case following a trial, the
26 only available remedy remaining is the
27 remedy of a Judgment of Acquittal
28

1 Additionally, pursuant to NRS 176.015(1),
2 the "sentence must be imposed without
3 unreasonable delay." Thus, the presumptively
4 prejudicial delay of some Seventeen (17) plus
5 years in the imposition of a fair and
6 proportionate sentence violates due process
7 of law under NRS 176.015(1) and Article 1 § 8
8 of the Nevada State Constitution; as well as
9 the Petitioners independent state and federal
10 rights to speedy Trial. See, Pollard v. -
11 United States, 352 U.S. 354, 361-362 (1957),
12 (the right to a speedy imposition of
13 sentence is guaranteed under the Sixth
14 Amendments Speedy Trial Clause).

15 Nonetheless, the entry of an Amended
16 Judgment of Conviction at this juncture
17 would deprive the Petitioner of Appellate
18 and Habeas Corpus Review, state or federal,
19 from any sentence which would be rendered
20 pursuant to such an amended judgment.
21 Whereas, at this juncture the only possible
22 amended sentence which the court could
23 impose would clearly be "time served".
24 Of course a sentence of "time served"
25 would increase the sentence imposed beyond
26 the sentences imposed via the 1996 Judgment
27 of Conviction, which once again would
28 violate the Petitioner's rights against double

1 jeopardy; and would function to effectuate
2 the very disproportionate sentence which
3 the District Court has already disapproved
4 in the prior 2001 Habeas Corpus Proceedings,
5 and such judgment which has been affirmed
6 by the Nevada Supreme Court in the context
7 of Case No. 38373.

8 This Court gives undue deference to the
9 District Court's finding on the original
10 habeas petition that the six (6) convictions
11 were not invalidated by that Court. The
12 fact that the District Court had effectively
13 upheld the 1996 conviction within its
14 2001 Findings of Fact, Conclusions of Law, and
15 Judgment, is effectively rendered to be
16 a moot issue in deciding the instant
17 Petition. Because, despite such fact the
18 2001 Habeas Court had contemplated that
19 the Petitioner would receive relief from
20 his decidedly "onerous" sentences. That
21 court clearly did not contemplate that the
22 Petitioner would be deprived of the relief
23 the court had granted, and that the
24 Petitioner would be deprived of all
25 meaningful appellate and post-conviction
26 relief from any new sentences imposed.

27 Therefore, the jurisdictional defect
28 aforementioned has resulted in an imposs

1 which cannot be legally overcome except by
2 the entry of a Judgment of Acquittal. Because
3 same is the only form of Judgment which
4 the District Court maintains jurisdiction
5 in Case No. CR96-1581, subsequent to
6 March 4, 2018.

7 Nonetheless, this Court's adherence
8 to its prior Order directing the District
9 Court to enter an Amended Judgment of
10 Conviction, functions to embrace the
11 State's unconscionable bad faith and
12 neglect which has cheated the Petitioner
13 of the benefit of the remedy which
14 was contemplated by the Post-Conviction
15 Court's August 9, 2001 Judgment and
16 Order. Which functions to undermine
17 not only the State of Nevada's
18 judicial process and confidence in
19 the reliability thereof; but also to
20 undermine the Petitioner's Fifth
21 Amendment right against Double Jeopardy,
22 Sixth Amendment right to the speedy
23 culmination of the trial proceedings by
24 the entry of a fair and proportionate
25 sentence, and to his Fourteenth
26 Amendment rights to Equal Protection
27 and Due Process of Law. Therefore,
28 even assuming that the District Court

1 when imposing sentence will actually
2 enter a Judgment setting out proportionate
3 sentences as contemplated by the
4 Post-Conviction Court, those sentences
5 would merely be a token Judgment
6 when entered subsequent to the Petitioner's
7 respective completion and discharge
8 from the prior sentences, and same
9 would not be either fair or truly
10 proportionate due to the Petitioner's
11 prior discharge therefrom.

12
13 However, if this Court is unwilling
14 to amend its Order Granting Petition
15 and Writ of Mandamus, to direct
16 the District Court to file a Judgment
17 of Acquittal not only in equity but
18 also due to jurisdictional defect; then
19 the matters should be left to the
20 District Court to decide. Whereas,
21 the District Court regardless of
22 this Court's orders is required to convince
23 it-self of proper jurisdiction before acting,
24 and perhaps that Court may be in a
25 better position to evaluate the reasons
26 why the Re-Sentencing proceedings were
27 not undertaken previously, and to
28 thereafter determine the proper form

1 of Judgment to be entered by
2 that Court.

3 In this regard the Petitioner
4 identifies that he has filed a
5 Petition For Writ Of Error Coram Nobis
6 in the District Court, and said
7 Court has directed the State to
8 respond to said Petition. In fact,
9 the State's Response to the Petition
10 is due to be filed in the District
11 Court on this very day.

12 The Petitioner submits that such
13 Petition is clearly a proper vehicle
14 for relief given the Petitioner's
15 March 9, 2018 completion and
16 discharge of the prior sentences
17 and given this Court's determination
18 that there exists no valid Judgment
19 of Conviction in Case No. CR96-1581.

20 Therefore, the Petitioner requests
21 that this Court take Judicial Notice
22 of the Petitioner's Petition For Writ Of
23 Error Coram Nobis and its amendment
24 on May 10, 2018, and that said
25 Petition raises claims which draw the
26 reliability of the Jury's Guilty Verdicts
27 into question, and support the
28 reasonableness of the entry of a

1 Judgment of Acquittal. Whereas, such
2 claims are supported by clear and
3 convincing evidence which appears
4 within the Trial Record. Therefore,
5 because habeas corpus will not be
6 available to the Petitioner to challenge
7 and Judgment entered by the District
8 Court, the failure of this Court to
9 amend its Order and Writ, the
10 Petitioner will be precluded from having
11 his clearly meritorious claim heard
12 upon their merits.

13 Thus, the granting of a rehearing
14 of the Instant Petition and the
15 Court's amendment of its Order and
16 Writ is warranted.

17 The Petitioner offers his apology
18 to the Court and the State for any
19 spelling errors and the unusual
20 sloppy form of this Petition For
21 Rehearing. Whereas, I am at present
22 functionally blind. In fact that is the
23 reason I was transferred to my present
24 place of confinement, so that I can
25 receive vision restoring surgery.

1 IV. Verification:

2
3 I, STEVEN FLOYD VOSS, do hereby
4 verify that I have read the content of
5 the foregoing document and that same is
6 true and correct of my own personal
7 information, knowledge and belief.

8 DATED this 23rd day of August 2018 -

9 By: 
10 STEVEN FLOYD VOSS,
11 Petitioner, in pro. per.

12
13 CERTIFICATE OF SERVICE VIA U.S. MAIL

14
15 I, STEVEN FLOYD VOSS, do hereby certify
16 that on this 23rd day of August 2018,
17 that I mailed a true and correct
18 copy of the foregoing Petition for Rehearing,
19 addressed to:

20 TERRENCE P. Mc CARTHY, ESQ (DDA)
21 % Washoe County District Attorney
22 Post Office Box # 11130
23 Reno, Nevada 89520-0027

24
25 By: 
26 STEVEN FLOYD VOSS
27
28