

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY DANIELS MORAGA

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Supreme Court No. 73349

District Court No. 092174

FILED

SEP 27 2017

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY J. Hendrix
DEPUTY CLERK

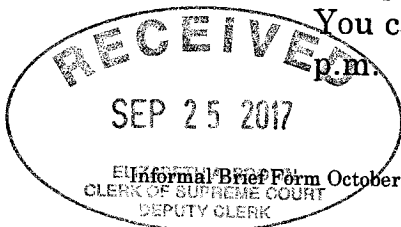
INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may file your brief in person or by mail.

To file your brief in person: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00

p.m.



17-32788

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
4-26-17	Barred by the LAW OF the CASE

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 6-27-17

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
42828.	See Attached	

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

ON JUNE 13, 1990 the petitioner WAS SENTENCED AND Adjudicated
as an habitual Criminal. This Adjudication WAS IN error because
the prior Felony CONVICTIONS relied on were IN NO WAY certified
or Authenticated Copies as required, instead the court Allowed the
district Attorney To Submit Faxed Copies of Supposed prior
Convictions which IN NO WAY indicated the requisite Facts.
The use of these UNAuthenticated priors Causes the petitioner's

Sentence and Adjudication to be illegal requiring this court to grant relief. "A Motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time." see Edwards v. State, 918 P.2d 37, (1996); citing NRS 176.555.

Argument

in the instant case, the court sentenced the petitioner to several life sentences and adjudicated him as a large habitual offender based solely on the statements of the district attorney. As shown in exhibit A the state did not provide true copies of his prior convictions, instead they simply referred to faxed copies which do not meet the standard necessary to adjudicate a person as an habitual offender. In Howard v. State, 422 P.2d 548 (1967) The court established "At a hearing of a person alleged to be a habitual criminal, two facts must be provided; (1) identity of the person, and (2) conviction of prior felonies; and the states proof under this section must be beyond a reasonable doubt. The states proof was in no way "beyond a reasonable doubt." The court has also made clear the methods of proving convictions. "Exemplified copies of the prior felony convictions and certified finger print cards from penal institutions where the defendant had been incarcerated both have been approved in habitual proceedings." Carry v. Slansky, 637 F.Supp. 947 (D. Nev. 1986). The proof provided or rather referenced, was not valid or exemplified, the court also stated "when the state seeks by introduction of prior

CONVICTION TO INVOKE THE HABITUAL OFFENDER ENHANCEMENT
STATE THERE MUST BE AN AFFIRMATIVE SHOWING THAT
THE DEFENDANT WAS REPRESENTED BY COUNSEL OR THAT HE
VALIDLY WAIVED HIS RIGHT TO COUNSEL IN THE PRIOR FELONY
PROCEEDINGS" BAYMON V. STATE, 580 P.2d 943 (1978)
THE FAXED COPIES REFERRED TO BY THE STATE SEE
EXHIBIT A SHOW NEITHER.

THEREFORE, BASED ON THE PREVIOUSLY DISCUSSED JURISDICTION,
THE ARGUMENTS, CASE LAW, AND ATTACHED EXHIBITS
THIS HONORABLE COURT SHOULD ACT TO CORRECT THE ILLEGAL
SENTENCE AND PROTECT THE PETITIONER FROM FURTHER
CONSTITUTIONAL DEPRIVATIONS.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

THE COURT HAS PREVIOUSLY BARRED THIS ACTION, CITING "LAW OF THE
CASE DOCTRINE" HOWEVER, LAW OF THE CASE DOES NOT BAR THIS COURT
FROM ADDRESSING THIS CLAIM FOR TWO REASONS, FIRST, SUBSEQUENT
PROCEEDINGS WILL PRODUCE SUBSTANTIALLY DIFFERENT EVIDENCE
THEN THAT REVIEWED BEFORE, AND SECOND, THE PRIOR DECISION, THIS
COURT CONTINUES TO RELY ON IS CLEARLY ERRONEOUS AND HAS RESULTED
IN A MANIFEST INJUSTICE, UNDER LAW OF THE CASE DOCTRINE
"THE LAW OR RULING OF A FIRST APPEAL MUST BE FOLLOWED IN
ALL SUBSEQUENT PROCEEDINGS" HSV V. COUNTY OF CLARK, 173
P3d 724, 728 (2007) HOWEVER, THE NEVADA SUPREME

Court has recognized that equitable considerations justify a departure from this doctrine. HSV At 726 The Court has noted three exceptions to the doctrine; (1) Subsequent proceedings produce substantially new or different evidence; (2) there has been an intervening change in controlling law; or (3) the prior decision was clearly erroneous and would result in manifest injustice if enforced. HSV At 729 Thus, Law of the case does not bar consideration of the petitioner's motion.

CERTIFICATE OF SERVICE

I the undersigned, certify that pursuant to NRCR rule 5(b) I mailed a true and correct copy of the foregoing: Appellant's informal Brief to the following address:

Office of the Attorney General

100 N. CARSON ST.

CARSON CITY, NV 89701-4717

Dated: 9-21-17

Roy D. Moya

EXHIBIT A

Sentencing Transcripts June 13, 1990 - 5pgs.

DISTRICT COURT

CLARK COUNTY, NEVADA

ORIGINAL

THE STATE OF NEVADA,

Plaintiff,

vs

ROY D. MORAGA,

Defendant.

CASE NO. C92174

DEPT. NO. VIII

DOCKET M

REPORTER'S TRANSCRIPT

OF

SENTENCING

BEFORE THE HONORABLE:

MICHAEL J. WENDELL DISTRICT JUDGE

WEDNESDAY, JUNE 13, 1990, 9:00 A.M.

APPEARANCES:

FOR THE STATE:

DEBORAH J. LIPPIS, ESQ.
Deputy District Attorney

FOR THE DEFENDANT:

R. ROGER HILLMAN, ESQ.
Deputy Public Defender

FOR THE DEPT. OF

PAROLE & PROBATION: JOY L. HUNDY-NEAL

REPORTED BY: PATSY K. SMITH, C.S.R. #190

PATSY K. SMITH, OFFICIAL COURT REPORTER

1 WEDNESDAY, JUNE 13, 1990, 9:00 A.M.

2 THE COURT: State of Nevada against Roy
3 Moraga.

4 The defendant is present with counsel,
5 Mr. Hillman. Representing the Department of Parole
6 & Probation?

7 MS. NEAL: Officer Joy Mundy-Neal.

8 THE COURT: And Ms. Lippin representing
9 the District Attorney's office.

10 Are you prepared to go forward with
11 sentencing this morning?

12 MR. HILLMAN: Yes, sir.

13 MS. LIPPIS: Your Honor, the State has
14 previously filed a notice of motion and motion to
15 amend the information to allege a habitual criminal.

16 THE COURT: Let's hear that. Any
17 objections to that motion, Mr. Hillman?

18 MR. HILLMAN: I know that I have it. I
19 don't seem to have it with me. Do you have an extra
20 copy?

21 MS. LIPPIS: Yes.

22 MR. HILLMAN: No, I have seen this
23 before, Judge.

24 THE COURT: At this time, then the Court
25 is granting the State's motion to amend the

1 Information.

2 MS. LIPPIS: May I file the Information,
3 your Honor?

4 THE COURT: You may and serve counsel.

5 MS. LIPPIS: I have one more set of
6 papers to be filed in support of the motion.

7 THE COURT: It's what?

8 MS. LIPPIS: Prior felony convictions of
9 the defendant.

10 THE COURT: Have you seen those, Mr.
11 Hillman?

12 MR. HILLMAN: I have seen them, yes, your
13 Honor.

14 THE COURT: Are they authenticated?

15 MS. LIPPIS: Yes, sir, they are.

16 THE COURT: They will be filed at this
17 time and made a part of the record.

18 THE COURT: The authenticated copies of
19 the prior felony convictions will be Exhibits 1, 2,
20 and 3.

21 MS. LIPPIS: Your Honor, for the record,
22 I should advise the Court one of the exhibits, while
23 it is certified as being true and correct, was faxed
24 to us from the Arizona Department of Corrections. I
25 have their letter to us attached to all the exhibits

1 as well for authenticity.

2 THE COURT: Any objections to that?

3 MR. HILLMAN: No.

4 MS. LIPPIS: For the record, your Honor,
5 that faxed copy is State's Exhibit No. 2.

6 The State is ready to proceed, your
7 Honor.

8 THE COURT: Does the Department of Parole
9 & Probation have any additions, deletions, or
10 corrections to the presentence report?

11 MS. HEAL: No, your Honor, we do not.

12 THE COURT: You may be seated, Mr. Moraga
13 and Mr. Hillman.

14 Do you wish to be heard, Ms. Lippis?

15 MS. LIPPIS: Thank you, your Honor.

16 Judge, as the Court is now aware, the
17 State is seeking that this defendant be sentenced as
18 a habitual criminal under N.R.S. 207.010, Subsection
19 2. Subsection 2 indicates that, "If any person
20 convicted in this state of any crime of which fraud
21 or intent to defraud is an element, or petit
22 larceny, or of any felony, who has previously been
23 three times convicted, whether in this state or
24 elsewhere, of any crime which under the laws of this
25 state of the crime or of this state would amount to

1 Moraga has apprised me of and that is that he believes that
2 Judge Wendell did in fact sentence him on each of the four
3 separate counts at issue, but that his final decision was that
4 they were to run consecutive -- or concurrent with each other.

5 THE COURT: Concurrent. I would just point out to you
6 that that is not possible for the simple reason that we
7 wouldn't be here had he done that, and the Supreme Court had
8 the entire transcript of the proceedings before Judge Wendell
9 before it when it made its determination. So there is no
10 doubt that Mr. Moraga is wrong on that and Ms. Lippis, you
11 were there and evidently Judge Wendell did not actually do
12 that.

13 MR. LIPPIS: No, he did not, Your Honor.

14 THE COURT: So I don't have the transcript but I know the
15 Supreme Court had it.

16 MR. GARCIA: Right.

17 THE COURT: And they would not have sent it back for
18 remand, they would not have remanded it had he done that, but
19 you may proceed. That's preserved.

20 MR. GARCIA: Your Honor, I'm simply doing that to
21 preserve the record.

22 THE COURT: Yes.

23 MR. GARCIA: Your Honor, we've gone over the report. No
24 doubt Mr. Moraga has had serious problems with law enforcement

EXhibit 1-A

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

DATED this 21st day of September, 2012.

Roy D. Mraz
Signature of Appellant

Raj D Moraga
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

DATED this _____ day of September, 2012.

Roy D. Moraga
Signature of Appellant

Roy D. Moraga
Print Name of Appellant

NNCC-P.O. Box 7000
Address

CARSON CITY, NV 89702
City/State/Zip

Telephone