

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

FILED

MAR 22 2018

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

In re Brian Kerry O'Keefe,
petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,
Respondent.

Case No. 74878

PETITION FOR REHEARING AND/OR RECONSIDERATION

- FROM COURT OF APPEALS ORDER DENYING PETITION
ON MARCH 14 2018

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COURT OF APPEALS
IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

In re BRIAN KERRY O'KEEFE,

Case No. 74878

Petitioner,

-VS-

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK,

Respondent.

PETITION FOR REHEARING RULE 40

AND/OR RECONSIDERATION
(AND/OR FOR NRCP RULE 59(e))

COMES NOW Brian O'Keefe, pro per petitioner, to humbly move this COURT OF APPEALS for an equitable ruling based on the mere fact that which also truly amounts to a question of law, demonstrated in the single appendix page (COURT MINUTES DATED DEC-20, 2017 DEPT. XVII, Case C250630) attached to the MANDAMUS (74878) filed January 12, 2018; this fact being the sentence adjudicated was (9) months thereby being a non-tenure; question of law that this court should recognize as being already answered authoritatively thereby so a court may not answer it as a matter of its discretion. • (SEE ARGUMENT FOLLOWING, page 2-3) (WITH APPENDIX OF EXHIBITS)

Additionally, petitioner has provided the attached exhibit(s) manifesting complete deliberate indifference, intentionally, by the trial court subsequent a specific evidentiary hearing with petitioner's then defense counsel raising noting based on only (9) month sentence, WITH the state stipulations, (after reviewing "Defendant's Entry of Sentence and related documents as well as relevant Ohio law, State agrees ... do not meet criteria...").

FN1: SEE ATTACHED EXHIBITS A, B, C; (State Motion; Defense Motion; Ohio Entry of Sentence).

I.

STATEMENT OF CASE

Despite the state, first trial (0750630 MARCH 16-20, 2009), wrongly impeaching O'Keefe with - Gross Misdemeanor - petitioner's complaint that (2) Counts Not support Ohio Revised Code 2919.21 are not adjudicated as felonies is finally heard and respected.

Defense Counsel files Motion (SEE APPENDIX APPENDIX ("AA") AA 03-04) on January 3, 2011 prior 3rd trial. Counsel argues sentence adjudicated by court in Ohio made it a gross misdemeanor, sentence of 9 months, therefore not felony with the state stipulating on Record - SEE ALSO NRS 50.095(1) (... crime is admissible but only if the crime was punishable by death or imprisonment for more than (1) years under the law under which ... convicted).

State again stipulates (see AA 02) (lines 8-11: After reviewing the Defendant's Entry of Sentence and related documents as well as relevant Ohio Law, the state agrees [AS FINAL POLICYMAKER] with the defendant that these convictions do not meet the criteria of NRS 50.095(1) [sic]) This is because these not felonies by law.

II.

POINTS AND AUTHORITIES (LEGAL ARGUMENT)

The same court that denied O'Keefe to have his P.D.I. - mailed is the SAME COURT who heard this Motion above on 1/13/2011. This amounts to nothing less than intentional deliberate indifference with reckless disregard to O'Keefe's federal rights to DUE PROCESS.

The law is clear that a "simple misdemeanor" can be adjudicated by a court from 1 to 180 days; "gross misdemeanors" - 181 to 365 days; felony one year and one day up to death.

A wobbler is a crime that can be adjudicated by a court to either any type misdemeanor or felony. The key is by the Judgment of (savior) known in Ohio is a ENTRY OF SENTENCE. (see AA-05 - 9 months) However the sentence adjudicated is the key, as here by 9 months. Any Judgment of Conviction is governed by Fed. R. Crim. P. 32(d)(1) which consists of the PLEA; the VERDICT or FINDINGS; the ADJUDICATION; and the SENTENCE, pronounced!

III. FACT AND QUESTION OF LAW OVERLOOKED
WAS (9) MONTH SENTENCE PRONOUNCED

IN THE Court minutes, attached to the Petition for Writ of HABEAS FIDEL in the Supreme Court of Alaska (No. 74878) 1/17/2018, the lower trial court verified that the sentence pronounced was in fact only (9) months - WHICH WAS THE KEY.

Additionally, O'Keefe has provided better exhibits in the appendix to aid this Court's decision granting rehearing.

IV. CONCLUSION

GRANT REHEARING: O'Keefe needs an emergency order out to have P.S.I. retested only as true Gross Misdemeanors. O'Keefe is going to board (projected JULY 2018) and daily points are counted against me prejudicing me with higher risk score.

CERTIFICATE OF COMPLIANCE

1) I hereby certify that this petition for rehearing/reconsideration of answer complies with the formatting requirements of NRAP 32(2)(4), the typeface requirements of NRAP 32(2)(5) and the type style requirement of NRAP 32(2)(6) because:

it has been handwritten by a pro se litigant, without access to a typewriter, with no more than 12 characters per inch.

2) I further certify it complies with page limitation of 10 pages because petition submitted ~~has~~ only 4 pages with less than 1050 words.

SEPARATE APPENDIX OF EXHIBITS AA 01-02, AA 03-04, and AA 05 provided which are exact true copies pursuant NR 208.165 and 28 U.S.C. § 1746.

Dated MARCH 20, 2018 by Brian K. O'Keefe
Brian K. O'Keefe
#90244 Pro Se

● NOTE: ON JAN 22 2018, (Case No. 74078) filed pursuant Douglas C.F. the filing fee has been waived based on criminal case and IN FORMA PAUPERAS already have been granted.

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☐ Motion: _____

☒ Petition: FOR PETITIONING (CASE NO 74878)

☐ Other: _____

to the below address(es) on this 20th day of MARCH, 2018, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25: By Brass Slip No. 2280846

Clerk OF COURT

NEVADA SUPREME COURT

201 S. CARSON ST.

Suite 201

Carson City, Nevada 89761

Attorney For _____

☒ and

Attorney General of Nevada

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Carson City, Nevada 89761-4117

Attorney for State

Pursuant NRS 208.165

and 28 USC § 1746 by

Don K. O'Keefe
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Petitioner Pro Per (In Pro Se)