

In the Court of Appeals of the State
of Nevada

FILED

FEB 23 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Petition for Writ of Habeas Corpus

ADDENDUM II (two)

In the Matter of the Application of
James H Hayes (Pro Se)

for a Writ of Habeas Corpus
State of Nevada

Court No. 73436

Dist. Court No. C315718

Comes Now, the petitioner proceeding Pro Se in
the forma pauperis with the assistance of the jail
house lawyer whose activities are protected by law see
Johnson v. Avery 393 US 483, 21 L Ed 2d 718, 89 S.Ct 747 (1969)
and Wolf v. McDonnell 418 US 538 (1974) the movant is not
trained in the letter of the law, and thus the petitioner
prays to this court for wide latitude. see Higgs v. State 222 P.
3d 648, 653 Nevada (2010). As a pro se petitioner see both Hollis v.
State, 96 Nev 664 (1979) and Bringold v. Writ in Wild Nev. 2d, 113
Nev 967, and that treatment for this writ of Habeas Corpus
constitutes a cognizable claim and shall be liberally
construed see Balistrieri v. Pacific Police Dept 901 F.2d 696,
11 F.3d 1199 (9th Cir 1994) and the U.S Supreme Court on less stringent
standards than formal pleadings drafted by lawyers. see

(1) ONE

18-07194

Hughes v. Rowe, 449 U.S. 5, 9 (1980) and Haines v. Kerner et al,
404 U.S. 519, 92 S.Ct. 594 (1971)

THE PETITIONER (DEFENDANT) waives the 10 day limitation
for bringing the accused to trial.

If the petition is not decided within 15 days before
the date set for trial, the petitioner consents that the
court may, without notice or hearing continue the trial
indefinitely or to a date designated by the court.

Points and Authorities

PETITIONER contends that the evidence by the state
at the preliminary hearing was not sufficient to satisfy
the burden of probable cause, and that the petitioner
participated in a burglary was insufficient evidence
for a magistrate to bind over defendant for trial on
that charge. NEV. REV. STAT. § 34.500, EX PARTE BALIS, 71 NEV. 276,
288 P.2d 450, EX PARTE KLINE, 71 NEV. 124, 282 P.2d 367.

WHEREAS, the above crime was said to have
taken place on or about the 9th day of April 2013, at
Excelsior hotel and casino room 17151 that was registered
to guests Misty Mustafa, Daisy Ramirez, Jessica Ortiz Jarvis,
and Joshua Jarvis.

WHEREAS, the petitioner contends that there was no

(2) Two

other proof of the corpus delicti or the venue of the action. In which, the state did not present all registered guests of said room 17151 giving statements or testimony that the petitioner did not have their consent to be in said room.

Whereas, the state only introduced Joshua Jarvis at preliminary hearing that stated he was awake by petitioner then took picture of petitioner and his drivers license at 7:08AM with petitioners consent and there was no sign of disturbance of breaking into the room. That ask petitioner to leave the room and stated as petitioner was leaving with consent that if anything is missing when he wakes that he was calling the police.

Whereas, the state did not prove cause that petitioner willfully, unlawfully, and feloniously enter, with intent to commit larceny said room 17151 when hotel lock integrity showed that door was showed left open at 4:23AM and closed at 7:06AM, and the room was devoid of wrongful entry Robert O. Hutchanson 76 Nev. 478, 357 P.2d 587, 1960 Nev Lexis 141

Whereas, the state's charging information was the crime(s) of Burglary (category B felony NRS. 205.060) and Attempt Grand Larceny (NRS. 205.222) the state drop

(3) three

the latter charge. Petitioner contends that there was no intent to commit larceny. A criminal intent formulated after a lawful entry will not satisfy the statute. State v. The Adams, 94 Nev. 503, 581 P.2d. 868, 1978 Nev. Lexis 599. One of the essential elements of burglary is the entry of a building with the "intent to commit grand or petit larceny, or any felony" NRS. 205.200 subsection 1. The state has predicated the necessary intent to commit "any felony" on the charge of attempted grand larceny. Since the state dropped the grand larceny count, the count of burglary as it is presently drafted is fatally defective and too must be dropped. Simpson v. District Court, 88 Nev. 654, 503 P.2d. 1225 (1972). The district attorney failed to prove that a crime was committed under the information filed, as there is no independent evidence of the corpus delicti or that the crime was committed within the jurisdiction.

Whereas, the states witness Joshua Jarvis testimony was filled with hearsay and secondary evidence that was contradictory from police report day of alleged event took place to detectives investigation to his preliminary hearing testimony. Witness must testify to the evidentiary facts

(4) Your

AND NOT TO HIS CONCLUSIONS, OPINION, OR INFERENCES
HAS BEEN SO LONG AND SO WELL RECOGNIZED BY THIS
AND ALL OTHER COURTS IN THE COUNTRY AS NOT TO
REQUIRE DISCUSSION § 283 P.2d. 614 § NRS. 172.260(2)
COMMANDS THAT THE JURY CAN RECEIVE NONE BUT
LEGAL EVIDENCE AND THE BEST EVIDENCE IN DEGREE,
TO THE EXCLUSION OF HEARSAY OR SECONDARY EVIDENCE
JOSHUA JARVIS TESTIMONY WAS CONTRARY TO THE LAW.

WHEREAS, PETITIONER CONTENDS THAT THE DISTRICT
COURT IS WITHOUT JURISDICTION TO PROCEED FURTHER
WITH THE TRIAL SINCE IT IS THE ABSENCE OF EVIDENCE
THAT SUPPLIES THE CAUSE FOR THE CHALLENGE VIA
HEBEC.

2-13-18

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

DEAR CLERK OF THE COURT, I, JAMES H HAYES CASE NO. 23436 ask that you file my habeas corpus "ADDENDUM II (two)" and send me back a date stamped filed copy.

I beg of this court to rule on the merits of my filed copies of habeas corpus as the 21 days to file this said habeas corpus in District Court has long expired and this said court has many times over^{and} that the writ of habeas will issue to the end whereas, in Nevada the writ of habeas corpus will issue to the end that a petitioner will not be compelled to undertake the burden of a trial where the evidence before the committing magistrate is legally insufficient to indicate that he is guilty of any offense. So I pray upon this said court through the N.R.A.P Chapter 34 and the Nevada constitution Article I subsection 8 that this "Writ of Habeas Corpus" be entertained in this said court "Court of Appeals for the State of Nevada".

RECEIVED

FEB 16 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Thanks
James H Hayes

WHEREFORE, petitioner prays that the court grant petitioner relief to which petitioner may be entitled in this proceeding.

EXECUTED at High Desert State Prison on the 13 day of the month of Feb, 2018

James H. Hayes

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

VERIFICATION

Under penalty of perjury, the undersigned declares that the undersigned is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of the undersigned's own knowledge, except as to those matters stated on information and belief, and as to such matters the undersigned believes them to be true.

James H. Hayes

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

AFFIRMATION (Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceeding PETITION FOR WRIT OF HABEAS CORPUS filed in Supreme Court District Court Case Number 46-318712-1 Does not contain the social security number of any person.

James H. Hayes 73436

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

CERTIFICATE OF SERVICE BY MAIL

James H. Hayes, hereby certify pursuant to N.R.C.P. 5(b), that on this 13 day of the month of February, 2018 I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

D.W. Neven, Warden High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070

Attorney General of Nevada
100 North Carson Street
Carson City, Nevada 89701

Clark County District Attorney's Office
200 Lewis Avenue
Las Vegas, Nevada 89155

James H. Hayes *1175077

*
High Desert State Prison
Post Office Box 650
Indian Springs, Nevada 89070
Petitioner in Proper Person

* Print your name and NDOC back number and sign

1-23-18

Deed, Clerk of the Court

I, James H Hayes # 1175077 ask that you please file my prose Writ of Habeas Corpus with this said court. Also I ask of a big favor as I am unavailable to make copies to forward to the following so I beg of you at this time to please make copies and forward

Thanks and God Bless
James H Hayes

JAMES H. HAYES # 1175077

H.B.S.P

P.O. Box 650

Tuscan Springs, NV 89070

cc: Clark County Dist Att

208 LEWIS AVE

Las Vegas, NV 89155

Atty General of Nevada

100 North Carson Street

Carson City, NV 89701

RECEIVED

JAN 29 2018

CLERK OF THE COURT

CLERK OF THE COURT

FEB 07 2018

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