

James H. Hayes ID NO. 1175077

HIGH DESERT STATE PRISON
22010 COLD CREEK ROAD
P.O. BOX 650
INDIAN SPRINGS, NEVADA 89018

FILED

JUN 11 2018

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

Court of Appeals of the
State of Nevada

Motion for Reconsideration

James H. Hayes

petitioner

v.

State of Nevada

Respondent

CASE NO.: 75173

DEPT. NO.: _____

DOCKET: _____

Motion for Reconsideration

COMES NOW, petitioner James H. Hayes, herein above respectfully
moves this Honorable Court for an reconsideration of original
petition for a writ of habeas corpus

This Motion is made and based upon the accompanying Memorandum of Points and
Authorities.

DATED: this 4 day of June, 2018

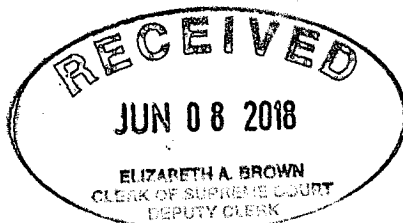
BY:

James H. Hayes

James H. Hayes

1175077

Defendant/In Proper Personam



18-901232

1 James H Hayes
2 / In Propria Personam
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

5 Court of Appeals of the
6 State of Nevada

7 James H. Hayes
8 petitioner

10 vs.

11 State of Nevada
12 respondent

Case No. 75173

Dept No. _____

Docket _____

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE, that** _____

17 will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
18 at the hour of _____ o'clock ____ M. In Department _____, of said Court.

20 CC:FILE

22 DATED: this 4 day of JUNE, 2018.

24 BY: James H Hayes
25 James H Hayes # 1175077
26 /In Propria Personam
27
28

Points and Authorities

I. PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS WAS PROCEDURALLY BARRED BY THE CLARK COUNTY DISTRICT COURT DEPT XIX CASE NO. C-16-315718-1 SEE ATTACH EXHIBIT 1

II. THIS SAID COURT "COURT OF APPEALS OF THE STATE OF NEVADA" HAS THE POWER TO ISSUE WRITS CHALLENGING PROBABLE CAUSE. NEV. CONST. ART 6 § 4

III. WITHOUT REACHING THE MERITS OF ANY CLAIMS WOULD BE A MISFEASANCE OF JUSTICE, WHERE THE PETITIONER CLAIMS ACTUAL INNOCENCE. NEV. REV. STAT. § 34.500(7)

IV. 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 THIS COURT IS LEGALLY INSUFFICIENT TO INDICATE THAT PETITIONER IS GUILTY OF ANY OFFENSE. ROBERT D. HATCHINSON 76 NEV. 478

V. NEV. CONST. ART 1 § 5 COMMANDS THAT

1 the writ of habeas corpus shall not be
2 suspended unless, in cases of rebellion or
3 invasion, the public safety may require its
4 suspension.

5
6 VI Nev. Rev. Stat § 34.500(7) explicitly
7 authorizes discharge from custody or
8 restraint if one is not committed upon
9 a criminal charge with reasonable or
10 probable cause.

11
12 VII. A pretrial writ of habeas corpus may
13 issue when the district attorney acts in
14 a willful or consciously indifferent ~~matter~~
15 manner with regard to a petitioner's
16 procedural rights.

17
18 VIII. The information shall be a plain concise
19 and definite written statement of the
20 essential facts constituting the offense
21 charged. U.S. Const. amend VI "No
22 principle of procedural due process is
23 more clearly established than that
24 notice of the specific charge. NRS. 173.075(1)

1 CONCLUSION

2
3 THE PETITIONER WROTE THIS MOTION AND
4 PRAYS THAT THIS COURT GRANTS IT TO WHICH
5 HE MAYBE ENTITLED IN THE PROCEEDING.
6

7 Dated this 4th day of JUNE, 2018

8
9 James H Hayes
10 JAMES H HAYES # 1175072
11 H.D.S.P.
12 P.O. Box 650
13 RICHEN SPRING, NV
14 89070
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CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 4th
day of JUNE, 2018, I mailed a true and correct copy of the foregoing, "Motion
for RECONSIDERATION"

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Court of Appeals
Office of the Clerk
201 S. Carson, 1st Fl. JTE 201
Carson City, NV
89201

CC:FILE

DATED: this 4th day of JUNE, 2018

James H. Hayes
JAMES H. HAYES

1175077

/In Propria Personam

Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Motion for Reconsideration

(Title of Document)

filed in Court of Appeals District Court Case number 75173

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

(State specific law)

-or-

B. For the administration of a public program or for an application
for a federal or state grant.

James H Hayes
Signature

6-4-2018
Date

JAMES H HAYES
Print Name

PRO PER
Title

Exhibit 1

Electronically Filed
4/25/2018 1:10 PM
Steven D. Grierson
CLERK OF THE COURT

Steven B. Wolfson

MOT

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr., #2796708

Defendant.

CASE NO: C-16-315718-1

DEPT NO: XIX

**STATE'S NOTICE OF MOTION
AND MOTION TO DISMISS DEFENDANT'S AMENDED COURTESY FILING OF
DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS**

DATE OF HEARING: May 9, 2018
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through MICHAEL R. DICKERSON, Deputy District Attorney, and files this Notice Of Motion And Motion To Dismiss Defendant's Amended Courtesy Filing Of Defendant's Pro Per Petition For Writ Of Habeas Corpus.

This Motion is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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DATED this 25TH day of April, 2018.

BY /s/ Michael R. Dickerson
MICHAEL R. DICKERSON
Deputy District Attorney
Nevada Bar #013476

On June 23, 2016, Defendant James Howard Hayes appeared in District Court for Initial Arraignment, his first appearance, in this case. At that time, the magistrate ordered "if the Preliminary Hearing Transcript has not been filed as of today, Counsel has 21 days from the filing of the Transcript." Thirty-six (36) days later, on July 29, 2016, the preliminary hearing transcript, entitled "Reporter's Transcript of Proceedings Preliminary Hearing 6/14/16," was filed.

Jury trial was initially scheduled for January 3, 2017, with Calendar Call set for December 27, 2018.

On November 18, 2016, Defendant filed Defendant's Motion For Discovery. On December 5, 2016, the State filed State's Response to Defendant's Motion for Discovery, and State's Request for Reciprocal Discovery. That Motion was ultimately adjudicated on December 8, 2016.

On December 12, 2016, the State filed Notice of Motion and Motion for Joinder of Case C315718 into Case C315125. That motion was adjudicated and denied in Case No. C315125.

1 Calendar Call was moved up to December 20, 2016. On December 20, 2016, at the
2 Calendar Call, Defendant requested a continuance due to pending motions and their request
3 for time to complete "additional investigation."

4 On December 16, 2016, the State filed Notice of Motion and Motion to Admit Evidence
5 of Other Acts. On December 20, 2016, Defendant filed Opposition To The State's Motion To
6 Admit Evidence Of Other Acts. That Motion was untimely heard and denied on January 12,
7 2017. On January 20, 2017, an Order Denying State's Motion To Admit Evidence Of Other
8 Acts was filed.

9 On January 26, 2017, trial was scheduled to begin on March 21, 2017.

10 On February 8, 2017, Substitution of Attorney. On February 9, 2017, recusal of the
11 court was ordered. On February 10, 2017, Notice of Department Reassignment issued
12 assigning this case to this Honorable Court.

13 On March 6, 2017, trial was scheduled by this Court to begin on March 27, 2018, with
14 Calendar Call on March 22, 2018. On March 22, 2018, at Calendar Call, the Defendant
15 requested trial be vacated and a status check be set for negotiation of the case. The State was
16 ready for trial, but did not oppose the request.

17 After a number of status checks, defense counsel filed Tony Abbatangelo, Esq's Motion
18 to Withdraw as Attorney of Record on May 31, 2017. After that Motion was granted, the
19 Public Defender re-confirmed on the case on July 10, 2017.

20 On August 30, 2017, Pretrial Conference was heard by this Court. On September 27,
21 2017, Calendar Call was held and Defendant advised there is an offer Defendant wants to
22 accept; however, Defendant filed an appeal which a decision has not been reached. Trial was
23 vacated and the case was set for a Status Check as to the Supreme Court Decision. On October
24 25, 2017. On October 25, 2017, Defendant asked for a new trial setting, stating that the Court
25 of Appeals dismissed his pro per writ petition. Trial was scheduled to begin on May 14, 2018.

26 On March 1, 2018, five-hundred-eighty (580) days after the filing of the preliminary
27 hearing transcript, Defendant filed Courtesy Filing Of Defendant's Pro Per Petition.
28

1 On April 6, 2018, six-hundred-sixteen (616) days after the filing of the preliminary
2 hearing transcript, Defendant filed Amended Courtesy Filing Of Defendant's Pro Per Petition
3 For Writ Of Habeas Corpus.

4 On April 11, 2018, Pretrial Conference was held.

5 On April 23, 2018, the Court heard Defendant's Amended Courtesy Filing Of
6 Defendant's Pro Per Petition For Writ Of Habeas Corpus and requested a written response
7 from the State. This matter is set to be heard on May 9, 2018.

8 Trial is scheduled to begin on May 14, 2018.

9 **POINTS AND AUTHORITIES**

10 **I. DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS IS**
11 **PROCEDURALLY BARRED**

12 Defendant has failed to properly file his petition for writ of habeas corpus. As such,
13 the Court lacks jurisdiction to consider the petition. NRS 34.700 is mandatory and states:

14 1. Except as provided in subsection 3, a pretrial petition for a writ
15 of habeas corpus based on alleged lack of probable cause or
16 otherwise challenging the court's right or jurisdiction to proceed
to the trial of a criminal charge may not be considered unless:

17 (a) The petition and all supporting documents are filed within 21
18 days after the first appearance of the accused in the district court;
and

19 (b) The petition contains a statement that the accused:

20 (1) Waives the 60-day limitation for bringing an accused to trial;
or

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

23 2. The arraignment and entry of a plea by the accused must not be
24 continued to avoid the requirement that a pretrial petition be filed
within the period specified in subsection 1.

25 3. The court may extend, for good cause, the time to file a petition.
26 Good cause shall be deemed to exist if the transcript of the
27 preliminary hearing or of the proceedings before the grand jury is
28 not available within 14 days after the accused's initial appearance
and the court shall grant an ex parte application to extend the time
for filing a petition. All other applications may be made only after
appropriate notice has been given to the prosecuting attorney.

1 (Emphasis Added).

2 Any petition which is not filed in conformance with NRS 34.700 is not cognizable and
3 cannot be considered by the Court. NRS 34.710. See also Gatlin v. State, 96 Nev. 303, 608
4 P.2d 1100, 1980 Nev. LEXIS 576 (Nev. 1980); Sheriff, Clark County v. Marshall, 96 Nev.
5 304, 608 P.2d 1101, 1980 Nev. LEXIS 577 (Nev. 1980). As such, the petition must be
6 dismissed. Sheriff, Clark County v. Jensen, 95 Nev. 595, 600 P.2d 222, 1979 Nev. LEXIS
7 690 (Nev. 1979); see also Sheriff v. Toston, 93 Nev. 394, 566 P.2d 411 (1977) (holding that a
8 pre-trial writ of habeas corpus that did not meet the requirements imposed on habeas
9 petitioners by the NRS was not cognizable in the district court); see also Sheriff of Washoe
10 County v. Chumphol, 95 Nev. 818, 603 P.2d 690 (Nev. 1979) (pre-trial petition for a writ of
11 habeas corpus not containing the consent required by subdivision 1(b) of this section and not
12 verified as required by statute was not cognizable in the district court); see also State v. Eighth
13 Judicial Dist. Court (Riker), 121 Nev. 225, 231-33, 112 P.3d 1070, 1074-75 (2005)
14 (“[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
15 mandatory,” and “cannot be ignored [by the district court] when properly raised by the State.”)
16 (emphasis added); see also Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002)
17 (post-conviction writ for petition of habeas corpus rejected by the Nevada Supreme Court filed
18 two days late, despite evidence presented by the defendant that he purchased postage through
19 the prison and mailed the notice within the one-year time limit).

20 A review of the Court’s electronic filing system shows that Defendant never sought an
21 extension of time for the filing of the petition, either ex parte or otherwise. As such, his time
22 for filing the petition ran on August 19, 2016, twenty-one (21) days after the filing of the
23 preliminary hearing transcript. Defendant filed the instant Petition five-hundred-ninety-five
24 (595) days late. Since no request was filed, and no extension was granted, the writ is
25 procedurally barred.

26 As the Court lacks jurisdiction to hear the writ, the State will not be responding to the
27 substantive allegations without further order of the Court.

28 ///

1 **CONCLUSION**

2 Based upon the foregoing, the Court should discharge the writ as being procedurally
3 barred.

4 DATED this 25th day of April, 2018.

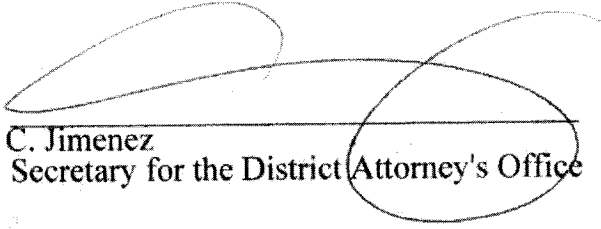
5 STEVEN B. WOLFSON
6 Clark County District Attorney
Nevada Bar #001565

7
8 BY /s/ Michael R. Dickerson
MICHAEL R. DICKERSON
9 Deputy District Attorney
Nevada Bar #013476

10
11
12
13
14 **CERTIFICATE OF ELECTRONIC FILING**

15 I hereby certify that service of STATE'S NOTICE OF MOTION AND MOTION TO
16 DISMISS DEFENDANT'S AMENDED COURTESY FILING OF DEFENDANT'S PRO
17 PER PETITION FOR WRIT OF HABEAS CORPUS, was made this 25th day of April,
18 2018, by Electronic Filing to:

19
20 JESSICA MURPHY, Deputy Public Defender
murphyjw@clarkcountynv.gov

21
22
23 
24 C. Jimenez
Secretary for the District Attorney's Office

25
26
27
28 MRD/cmj/L2