

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

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Elizabeth A. Brown
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STATE OF NEVADA,

Plaintiff,

vs.

STEVEN FLOYD VOSS,

Defendant.

Sup. Ct. Case No. 77505

Case No. CR96-1581

Dept. 1

RECORD ON APPEAL

VOLUME 12 OF 15

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DISTRICT CASE NO: CR96-1581
STATE OF NEVADA vs STEVEN FLOYD VOSS
DATE: JANUARY 25, 2019

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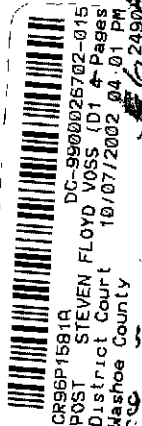
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IN THE SECOND JUDICIAL DISTRICT COURT OF STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

FILED
2002 OCT -7 PM 4:01

RONALD A. LONG JR.

CASE NO. CR96-1581A

BY [Signature] DEPUTY DEPT. NO. 10

STEVEN FLOYD VOSS,
petitioner,

VS.

STATE OF NEVADA,

respondent,

MOTION FOR WITHDRAW OF ATTORNEY FOR PETITIONER

COMES NOW, petitioner /movant, STEVEN FLOYD VOSS, in pro se and hereby moves this court for an order for withdraw of court appointed counsel, SCOTT W. EDWARDS, as counsel of record in this petition. Thus, allowing petitioner to proceed with his petition in pro se. This motion is predicated upon the following points and authorities and attached affidavit of petitioner:

POINTS AUTHORITIES

Supreme Court Rule 166 provides:

Rule 166. Declining or terminating representation.

1. Except as stated in subsection 3, a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(a) The representation will result in violation of the rules of professional conduct or other law;

(b) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

(c) The lawyer is discharged.

2. Except as stated in subsection 3, a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(a) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;

(b) The client has used the lawyer's services to perpetrate a crime or fraud;

(c) A client insists upon pursuing an objective that the lawyer considers repugnant or imprudent;

(d) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(e) The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(f) Other good cause for withdrawal exists.

3. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

4. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

[Added; effective March 28, 1986.]

Similarly, Nevada Supreme Court Rule 46 provides:

Rule 46. Withdrawal or change of attorney. The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.

2. Upon the order of the court or judge thereof on the application of the attorney or the client.

After judgment or final determination, an attorney may withdraw as attorney of record at any time upon the attorney's filing a withdrawal, with or without the client's consent.

As demonstrated in the attached affidavit, SCOTT W. EDWARDS was appointed as counsel for petitioner, STEVEN FLOYD VOSS, in the post-conviction proceedings relative to CR97-1581 held in department no.10 of the second judicial district. Following the

1 conclusion of the evidentiary hearing it has become clear that
2 petitioner and appointed counsel fundamentally disagree about
3 certain legal issues and the strategy for addressing them.
4 Given the stage of proceedings herein and the fact that the
5 relationship has broken down to the point that petitioner no
6 longer feels that the situation is conducive to effective
7 advocacy of his interests. Petitioner, has no objection to an
8 order removing appointed counsel from representing him in the
9 pending proceedings. Consistent with the dictates of S.C.R.166
10 and 46, an order permitting discharge of counsel will cause far
11 less prejudice to petitioner than if counsel's representation
12 was to continue.

13 WHEREFORE, on behalf of the interests of petitioner, this
14 court is respectfully requested to enter an order permitting
15 the withdrawal of SCOTT W. EDWARDS, as attorney of record for
16 petitioner, STEVEN FLOYD VOSS. In these proceedings.

17

18 DATED, this 2nd day of OCTOBER 2002.

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Steven F Voss
STEVEN FLOYD VOSS,
Petitioner,

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AFFIDAVIT

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

I, STEVEN FLOYD VOSS, under penalty of perjury affirms that the assertions in the affidavit are true.

1. SCOTT W. EDWARDS, was appointed as legal counsel for petitioner, STEVEN FLOYD VOSS, by order of this court for the purpose of assisting VOSS, in pursuit of relief from his Burglary, Forgery, Uttering and Attempted theft convictions by way of petition for writ of habeas corpus, post-conviction.

2. Proceedings upon the habeas petition in department 10 have now been concluded. Following evidentiary hearing, DISTRICT JUDGE, STEVEN P. ELLIOT presiding, granted relief in the form of a right to be re-sentenced and denied relief upon all other grounds (sentencing still pending).

3. Petitioner has discussed the case with counsel by telephone and by correspondence and is completely dissatisfied with appointed counsels representation in this matter past and present. Without divulging the exact terms of the communications between counsel and petitioner, he represents that there has arisen a fundamental disagreement about the legal validity and relevance of certain issues in the case as well as the

1 strategy to address these issues. Petitioner, and counsel
2 both view the others strategy as imprudent in
3 consideration of this disagreement petitioner
4 unequivocally expresses his desire that appointed
5 counsel be removed and further, that counsel has
6 represented to him that he has no objection to said
7 removal. Moreover, entry of an order terminating
8 counsels representation at this stage will cause little
9 if any material impact on petitioners interests in this
10 case.

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13 DATED, this 2nd day of OCTOBER 2002.

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15 Steven F Voss
16 STEVEN FLOYD VOSS,
17 Petitioner,
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CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b) that on this 2nd day of OCTOBER 2002. I, mailed
a true and correct copy of the forgoing motion for withdraw of
counsel for petitioner. Addressed to:

RICHARD A. GAMICK
WASHOE COUNTY, DISTRICT ATTORNEY
POST OFFICE BOX 11130
RENO, NEVADA 89520

FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701

DATED, this 2nd day of OCTOBER 2002.

Steven F Voss

STEVEN FLOYD VOSS,
Petitioner,

CR96P1581A DC-9900026702-023
 POST STEVEN FLOYD VOSS (D1 5 Pages
 District Court 10/07/2002 04:01 PM
 Washoe County 2490

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR WASHOE COUNTY

STEVEN FLOYD VOSS,

PETITIONER,

VS.

STATE OF NEVADA,

RESPONDENT,

RONALD A. ALLEN, JR.
 BY deputy no. 10
 DEPUTY

MOTION TO PRODUCE SPECIFICALLY REQUESTED DISCOVERY INFORMATION

COMES NOW, petitioner, STEVEN FLOYD VOSS, in pro se and hereby moves this court for an order requiring the state to produce certain specific discovery relevant to this case. In particular petitioner specifically request that the state provide him with copies of all "secret witness" reports and related communications regarding this case and all reports where the subject of report is the alleged victim in the instant offence one, BEVERLY ANN BAXTER. Petitioner, request this information from June of 1996 to present. Further, petitioner specifically request all documents and information concerning any payment of reward to any witness in this case #CR96-1581 or the related case #CR97-2077. Which were paid by but not limited to the washoe county sheriff, the reno police department, the washoe county district attorney's office, the "secret witness" program, the office of the attorney general of the state of nevada, aswell as any other agency of the state of nevada and any private person or interest known to the state of nevada. This motion is predicated upon the following points and

1 authorities and affidavit of petitioner.

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POINTS AND AUTHORITIES

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A criminal defendants independent state and federal constitutional guarantees to due process of law (Article I, section 8 of the Nevada constitution; fifth and fourteenth amendments to the United States constitution). Require, even in the absence of a specific request that the prosecution has an affirmative duty to disclose to the defense "evidence favorable to an accused when that evidence is material either to guilt or to punishment". Jimenez v. State, 112 Nev. 610, 617 (1996). Kyles v. Whitley, ____ U.S. ____ 115 S. Ct. 1555, 1565 (1995); Roberts v. State, 110 Nev. 1121, 1127 (1994); Brady v. Maryland, 373 U.S. 83, 87. 83 S. Ct. 1194, 1196 (1963).

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In accordance with discovery rules, District Court Judge, DEBORAH AGOSTI, ordered during arraignment proceedings held on July 19, 1996 that "full DISCOVERY TAKE PLACE PURSUANT TO TRIAL COUNSELS STIPULATION". However, the state did not fully comply with that order. In as much as the state failed to produce to the defense "secret witness" documents concerning one, EDWARD ANTHONY VILARDI. The state has conceded that they were in fact, in at least collective possession of those documents prior to trial of the instant case and that the documents were not divulged to the defense until after sentencing proceedings and after the filing of direct appeal. Further, the state's failure to produce is well documented and a matter of law.

1 Infact it is the law of this case that, "the states failure to
2 produce this information, this evidence, was wrong and violated
3 the discovery rules". This oversight bythe state wether
4 intentional or not lends itself well to the distinct possibility
5 that the state may have in it's collective posession additional
6 "secret witness" documents and related communications which
7 are relevant, material and exculpatory to the defense of the
8 instant case. The liklihood is furthered by statements of police
9 agents within their official reports. Wherein, police give
10 reference to certain information and persons which leads
11 petitioner to believe there exist additional "secret witness"
12 reports which have not been produced by the state in compliance
13 with the rules of discovery and the trial courts order of full
14 discovery. Petitioner asserts his belief that such information
15 does exist and that such information would have been relevant
16 material and exculpatory to trial aswell as to his now pending
17 re-sentencing proceedings. Therefor, petitioner request that
18 this court, in compliance with BRADY V. MARYLAND, and other
19 applicable state and federal authority ORDER, that the state
20 of Nevada immediatly produce to petitioner ledgible copies of
21 all "secret witness" documents and related communications aswell
22 as infomatio and documentation regarding any payment of monies
23 to any person as a reward or for compensation for their
24 assistance in the prosecution of the instant case or of the
25 related case #CR97-2077 which the state may have in it's actual
26 or collective posession.

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CONCLUSION

The courts failure to impose an order at this time and to mandate the states full compliance with such order would severely violate petitioners independent state and federal constitutional guarantees of due process of law.....Respectfully submitted,

DATED, this 2nd day of OCTOBER 2002.

Steven F Voss

STEVEN FLOYD VOSS,
Petitioner,

AFFIDAVIT

I, STEVEN FLOYD VOSS, under penalty of perjury declare that I, am the petitioner/movant named in the forgoing petition and motion and that I, know the contents thereof; and that the pleadings are true of my own knowledge except as to those matters stated on information and belief, and as to such matters I, believe them to be true,

DATED, this 2nd day of OCTOBER 2002.

Steven F Voss
STEVEN FLOYD VOSS,
Petitioner,

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b) that on this 2nd day of OCTOBER 2002. I, mailed
6 a true and correct copy of the forgoing motion to produce
7 specifically requested discovery information, addressed to:

8
9 RICHARD A. GAMICK
WASHOE COUNTY, DISTRICT ATTORNEY
10 POST OFFICE BOX 11130
RENO, NEVADA 89520

11
12 FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
13 100 NORTH CARSON STREET
CARSON CITY, NEVADA 89701

14
15 DATED, this 2nd day of OCTOBER 2002.

16
17 Steven F Voss
18 STEVEN FLOYD VOSS,
19 Petitioner,
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CR96P1581R DC-9500026702-022
 POST: STEVEN FLOYD VOSS (D1 4 Pages
 District Court 10/07/2002 04:04 PM
 2490
 WASHOE County
 NAME

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 2 IN AND FOR THE COUNTY OF WASHOE
 3 STEVEN FLOYD VOSS,
 4 PETITIONER,
 VS.
 STATE OF NEVADA,
 RESPONDENT,

FILED
 2002 OCT -7 PM 1:50
 CASE NO. CR96-1581R
 RONALD A. LONATIN, JR.
 DEPT. NO. 176
 BY
 DEPUTY

MOTION FOR PARTIAL STAY OF EXECUTION OF SENTENCE

COMES NOW ,STEVEN FLOYD VOSS, petitioner/movant in pro se
 and hereby moves this court for an order partially staying the
 execution of sentence in the instant case, but only as far as,
 the court ordered \$25.00 administrative assessment fee and
 \$750.00 assessment for attorney fees pending the final
 disposition of this petition. This motion is predicated upon
 the following points and authorities and affidavit of petitioner.

POINTS AND AUTHORITIES

Petitioner/movant/ STEVEN FLOYD VOSS, is currently
 detained as an inmate at the Nevada state prison located in
 Carson city, Nevada. Mr. Voss, is not prison employed in any
 capacity and is not eligible for any work privileges therein.
 Further, Mr. Voss does not enjoy any employment outside of
 prison and he does not possess any financial assets outside
 his prison inmate account. Mr. Voss, is wholly dependant upon
 his family to provide any assistance to him above the meager
 and rudimentary existance provided him by the Nevada department

1 of prisons. Nearly all of the financial assistance Mr. Voss
2 receives from his family is used to pay for medical and dental
3 co-payments for his in-custody treatment, for personal hygiene
4 items, dietary health supplements (such as vitamins, etc.) and
5 legal expenses (such as legal postage and copies, legal supplies
6 including paper, pens, pencils, envelopes, typewriter and ribbons
7 etc.). Mr. Voss, is not requesting that the financial
8 assessments be waived or forgiven, but only that this court
9 temporarily withhold the imposition of those assessments pending
10 the final outcome of proceedings relative to the instant case,
11 as well as proceedings relative to the associated case #CR97-2077.
12 Due to circumstances beyond Mr. Voss's control he finds
13 necessary to take charge of his own legal defense. These monies
14 are essential to those legal pursuits. Mr. Voss, asserts that
15 just because he is incarcerated and the Nevada department of
16 prisons now has custodial responsibility over him, that this
17 court, should not, assume that all his needs are necessarily
18 provided him by the state. Because such assumption is not true.
19 The fact is, departmental charges for such things as medical/
20 dental co-payments, legal supplies and materials, as well as any
21 monies to be paid toward court judgments are taken from the top
22 of any deposits to an inmates account. Further, 10% of all
23 monies sent are deposited into inmate trust fund and are not
24 available for use by an inmate. Thus, the combination of these
25 factors can leave an inmate without the financial means to acquire
26 certain legal supplies, dietary health supplements, and personal
27 hygiene items which are ONLY available through the prison
28 canteen, (Inmate store system).

AFFIDAVIT

STATE OF NEVADA)
) SS:
COUNTY OF WASHOE)

Under penalty of perjury, the undersigned declares that he is the petitioner / movant named in the forgoing petition and motion and knows the contents thereof; that the pleadings are true of his own knowledge except as to those matters stated on information and belief, and as to such matters he believes them to be true.

DATED, this 2nd day of OCTOBER 2002.

Steven F Voss

STEVEN FLOYD VOSS,
Petitioner,

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b), that on this 2nd day of OCTOBER 2002.

I, mailed a true and correct copy of the forgoing motion for
partial stay of execution of sentence, addressed to:

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
POST OFFICE BOX 11130
RENO, NEVADA 89520

FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89702

DATED, this 2nd day of OCTOBER 2002.

Steven F Voss
STEVEN FLOYD VOSS,
Petitioner,

petitioners return Copy

FILED

2002 NOV -7 PM 2:28

RONALD A. LINTON JR.

BY [Signature]
DEPUTY

1 STEVEN FLOYD VOSS
 2 DOC #52094
 3 N.S.P. Po. Box #607
 Carson City, Nv. 89702

CR96P1581A
 DC-9900026702-028
 POST: STEVEN FLOYD VOSS (D1 2 Pages
 District Court 11/07/2002 02:28 PM
 Washoe County 2515
 1A11

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,
 PETITIONER,

Case No. CR96-1581

Dept. No. 10

VS.

STATE OF NEVADA,
 RESPONDENT,

NOTICE OF APPEAL TO SUPREME COURT

COMES NOW, Petitioner, STEVEN FLOYD VOSS, IN Pro se and hereby
 appeals the district court denial of his motion to produce
 specifically requested discovery information and motion for
 partial stay in execution of sentence to the Supreme Court Of
 The State Of Nevada. Notice of entry of the Order denying
 motions was mailed October 28, 2002.

DATED this 4th day of November 2002.

Steven F Voss

STEVEN FLOYD VOSS,
 PETITIONER,

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b) that on this 4th day of November 2002.....

I, mailed a true and correct copy of the forgoing notice of
appeal, addressed to:

RICHARD A. GAMICK
WASHOE COUNTY, DISTRICT ATTORNEY
POST OFFICE BOX 11130
RENO, NEVADA 89520

and

FRANKIE SUE DEL PAPA
STATE OF NEVADA, ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89702

and

JANETTE M. BLOOM
CLERK, OF THE SUPREME COURT
SUPREME COURT BUILDING
CAPITAL COMPLEX
CARSON CITY, NEVADA 89710

DATED, this 4th day of November 2002.

Steven F Voss

STEVEN FLOYD VOSS,
PETITIONER,

FILED
NOV 12 2002
RONALD A. LONGTIN, JR., Clerk
By: Cathy Kepler
Deputy Clerk

1 CODE 1350
2
3

CR96P15819
DC-9900026702-031
POST: STEVEN FLOYD VOSS (D10 1 Page
District Court 11/12/2002 10:25 AM
Washoe County 1350
INM

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA

Plaintiff,

11 vs.
12

Case No. CR96-1581

Dept. No. 10

13 STEVEN FLOYD VOSS
14Defendant.
15

16 CERTIFICATE OF CLERK

17 I hereby certify that the enclosed documents are certified copies of the original
18 pleadings of file with the Second Judicial District Court, in accordance with the
19 Revised Rules of Appellant Procedure Rule D(1).
20
21
22

23 Dated: November 12, 2002
24

Ronald Longtin, Jr. Court Clerk

25 By: Cathy Kepler
26
27
28

Cathy Kepler, Deputy Clerk

CODE 1365

FILED

NOV 12 2002
RONALD A. LONGTIN, JR., ClerkBy Cathy Kepler
Deputy ClerkIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA

Plaintiff,

vs.

Case No. CR96-1581

Dept. No. 10

STEVEN FLOYD VOSS

Defendant.

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents (certified copies) we delivered to the Second Judicial District Court mail room system for transmittal to the Nevada Supreme Court.

Dated: November 12, 2002

Ronald Longtin, Jr., Court Clerk

By: Cathy Kepler

Cathy Kepler, Deputy Clerk

FILED
 NOV 12 2002
 RONALD A. LONGTIN, JR., Clerk
 By C. Kepler Deputy Clerk

1 CODE 1310
 2
 3

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA

Plaintiff,

vs.

STEVEN FLOYD VOSS

Defendant.

Case No. CR96-1581

Dept. No. 10

CASE APPEAL STATEMENT

1. Steven Floyd Voss is the appellant.
2. The appeal is from the Judgment filed on or about October 24, 2002, by the Hon. Steven Elliott.
3. The parties below consist of The State of Nevada, the plaintiff, and Steven Floyd Voss, the defendant.
4. The parties herein consist of: Steven Floyd Voss/appellant and the State of Nevada/respondent.
5. Counsel on appeal for appellant, consists of Steven Floyd Voss/pro per appellant, N.S.P. P.O. Box 607, Carson City, NV 89702. Counsel on appeal for respondent is Gary Hatlestad, Chief Appellant Deputy, Office of the District Attorney, P. O. Box 30083. Reno, NV 89520.
6. Appellant was represented by Scott W. Edwards, 1030 Holcomb Ave., Reno, NV 89502.
7. Appellant is represented in Proper Person in this appeal.
8. N/A in this case.
9. The information was filed on July 16, 1996.

Dated: November 12, 2002

Ronald Longtin, Jr. Court Clerk

By: C. Kepler

Cathy Kepler, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

2003 JAN 13 PM 3:34

Supreme Court No. 40510 DONALD A. LONGTIN, JR.

District Court Case No. CR961581

BY C. Kopler
DEPUTY

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 12th day of December, 2002.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 7th day of January, 2003.

Janette M. Bloom, Supreme Court Clerk

By:

J. Richards
Chief Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

2003 JAN 13 PM 3:34

No. 40510

RONALD A. LONGSTIN, JR.

BY

DEPUTY

FILED

DEC 12 2002

ORDER DISMISSING APPEAL

JANETTE H. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CLERK OF SUPREME COURT

This is a proper person appeal from an order of the district court denying appellant's motion to produce specifically requested discovery and motion for partial stay of execution of sentence. Our review of this appeal reveals a jurisdictional defect. The right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists.¹ No statute or court rule provides for an appeal from an order of the district court denying a motion to produce specifically requested discovery and motion for partial stay of execution of sentence. Accordingly, we

ORDER this appeal DISMISSED.

Young, C.J.
Young

Rose, J.
Rose

Agosti, J.
Agosti

¹Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990).

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Steven Floyd Voss
Washoe District Court Clerk

CERTIFIED COPY

This document is a full, true and correct copy of
the original on file and of record in the

DATE: January 7, 2003

Supreme Court Clerk State of Nevada

By J. Richards Clerk

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2003 JAN 13 PM 3:34

Supreme Court No. 40510

RONALD A. LONGTIN, JR.

District Court Case No. CR96158

DEPUTY

CR96P1581A
DC-990026702-033
POST: STEVEN FLOYD VOSS (D10 1 Page
District Court 01/13/2003 03:35 PM
Washoe County 4145
NAME

EVEN FLOYD VOSS,
ellant,
vs.
E STATE OF NEVADA,
spondent.

REMITTITUR

TO: Ronald A. Longtin Jr., Washoe District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: January 7, 2003

Janette M. Bloom, Clerk of Court

By: J. Richards
Chief Deputy Clerk

cc: Hon. Steven P. Elliott, District Judge
Attorney General/Carson City
Washoe County District Attorney
Steven Floyd Voss

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the

REMITTITUR issued in the above-entitled cause, on 1-13-03

Ronald Longtin Jr. C. Kepler
District Court Clerk

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR WASHOE COUNTY

2003 APR 14 PM 3:41

RONALD A. LONGTIN, JR.

CASE NO. CR96-P-1581-B

BY

DEPT. NO. 10

DEPUTY

STEVEN FLOYD VOSS,

PETITIONER,

VS.

THE STATE OF NEVADA,

RESPONDENT,

AFFIDAVIT IN SUPPORT OF REQUESTTO PROCEED IN FORMA PAUPERIS

I, STEVEN FLOYD VOSS, first being duly sworn, depose and say that I am the Petitioner in the above entitled action: that in support of my Motion for leave to proceed in Forma Pauperis without being required to pay fees, costs, or give Security therefore, I, state that because of my poverty, I am unable to pay the costs of said Proceeding or to give Security therefore: that I am entitled to relief.

I, STEVEN FLOYD VOSS, do request an attorney to be appointed I further swear that the responses which I have made to questions and instructions below are true and correct to the best of my knowledge.

(1). Are you presently employed ? : NO

a. NOT APPLICABLE

b. If the answer is "NO", state the date of last employment and the amount of salary or wages per month you received:
1995, amount of wages unknown.

(2). Have you received within the past twelve months any money from any of the following sources ? :

a. Business, Profession or form of Self-Employment ? : NO

CR96P1581A DC-9900326702-035
POST: STEVEN FLOYD VOSS (D1 2 Pages)
District Court 04/14/2003 03:41 PM
Washoe County 1030
TIME

1 b. Rent Payment, Interest or Dividends ? : NO

2 c. Pensions, Annuities or Life Insurance Payments ? : NO

3 d. Gifts or Inheritances ? : YES

4 e. Any other sources ? : NO

5 If the answer to any of the above is "YES" describe each
6 source of money, state the amount received from each during
7 the past twelve months: Cash gifts from family, estimated
8 total amount of gifts combined, approximately \$700.00

9 (3). Do you own cash or equivalent prison currency, or do you have
10 money in checking or savings account ? : YES

11 If the answer is "YES" state the total value of the items:

12 At times as a result of family gifts, I sometimes have an
13 amount of approximately \$50.00 to \$100.00 in credit to my
14 inmate account which is used for medical costs, hygiene items
15 legal supplies, etc.

16 (4). Do you own any Real Estate, Stocks, bonds, notes, Automobiles, or
17 other valuable property (excluding ordinary household furnishings
18 and clothing) ? : NO

19 (5). NOT APPLICABLE

20
21 Under the penalty of perjury, pursuant to NRS. 208.165 the
22 above affidavit is true and correct of affiants personal
23 knowledge.

24 DATED, this 8 day of April 2003.

25
26 Steven F Voss
27 STEVEN FLOYD VOSS #52094
28 ELY STATE PRISON
Po. Box 1989
Ely, Nevada 89301

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

RONALD A. LUKUTIN, JR.

STEVEN FLOYD VOSS,

PETITIONER,

VS.

THE STATE OF NEVADA,

RESPONDENT,

CASE NO. CR96-P-1581-B

DEPT. NO. 10

PETITION FOR WRIT OF HABEAS CORPUS

(Post-Conviction)

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty ? : ELY STATE PRISON, COUNTY OF WHITE PINE.
2. Name and location of the court which entered the judgment under attack ? ; THE SECOND JUDICIAL DISTRICT COURT OF NEVADA, IN AND FOR WASOE COUNTY, RENO, NEVADA.
3. Date judgment of conviction imposed ? : November 27, 1996.
4. Case number ? : CR96-1581.
5. Lenth of sentence ? : (SIX CONSECUTIVE COUNTS) COUNT ONE, 48-120 months; COUNT TWO, 16-48 months; COUNT THREE, 16-48 months; COUNT FOUR, 16-48 months; COUNT FIVE, 16-48 months; COUNT SIX, 16-48 months.
6. Are you presently serving a sentence for a conviction other than that under attack in this petition ? If "YES" list crime, case number and sentence being served at this time : Case number CR97-2077. Count One, MURDER WITH THE USE OF A DEADLY WEAPON; Count Two, KIDNAPPING IN THE FIRST DEGREE.

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DC-8960026702-036
POST STEVEN FLOYD VOSS (D 16 Pages
District Court 04/14/2003 03:41 PM
Washoe County 3586
TOWER

1 7. Nature of offenses involved in convictions being
2 challenged ? : Count One, BURGLARY; Count Two and Three,
3 UTTERING A FORGED INSTRUMENT; Counts Four and Five,
4 FORGERY; Count Six, ATTEMPTED THEFT.

5 8. What was your plea ? : NOT GUILTY.

6 9. NOT APPLICABLE.

7 10. If you were found guilty after a plea of not guilty, the
8 finding was made by ? : JURY.

9 11. Did you testify at trial ? : NO.

10 12. Did you appeal from the judgment of conviction ? : YES.

11 13. If you did appeal, answer the following :

12 (a) Name of the court : NEVADA SUPREME COURT.

13 (b) Case number or citation : No. 29783

14 (c) Result : ORDER DIS MISSING APPEAL.

15 (d) Date of result : March 11, 1999.

16 14. NOT APPLICABLE.

17 15. Other than a direct appeal from the judgment of conviction
18 and sentence, have you previously filed any petitions,
19 applications or motions with respect to this judgment in
20 any court, state or federal ? : YES.

21 16. If your answer to No. 15 was "YES", give the following
22 information :

23 (a) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT OF
24 THE STATE OF NEVADA, WASHOE COUNTY, RENO.

25 (2) Nature of proceedings : MOTION FOR A JUDGMENT OF
26 ACQUITTAL OR NEW TRIAL.

- 1 (3) Grounds raised : INSUFFICIENT EVIDENCE TO SUPPORT
2 GUILTY VERDICTS BEYOND A REASONABLE DOUBT, IMPROPER
3 JUROR CONDUCT.
- 4 (4) Did you receive an evidentiary hearing on your
5 petition, application or motion ? : YES.
- 6 (5) Result: MOTION DENIED.
- 7 (6) date of Result : november 27, 1996.
- 8 (7) If known, citations or any written opinion or date of
9 orders entered pursuant to such result : NONE.
- 10 (b) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT
11 OF THE STATE OF NEVADA, WASHOE COUNTY, RENO.
- 12 (2) Grounds raised : COUNT SIX, ATTEMPTED THEFT MUST BE
13 DISMISSED, IT IS NECESSARILY INCLUDED IN COUNT THREE,
14 UTTERING A FORGED INSTRUMENT.
- 15 (3) Nature of proceeding : MOTION TO DISMISS.
- 16 (4) Did you receive an evidentiary hearing on your
17 petition, application or motion : YES.
- 18 (5) Result: MOTION DENIED.
- 19 (6) Date of result: November 27, 1996.
- 20 (7) If known, citations or any written opinion or date of
21 orders entered pursuant to such result: NONE.
- 22 (c) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT OF
23 THE STATE OF NEVADA, WASHOE COUNTY, RENO.
- 24 (2) Nature of proceeding: MOTION TO SET ASIDE VERDICT.
- 25 (3) Grounds raised : THE STATE FAILED TO DISCLOSE
26 MATERIAL EXCULPATORY EVIDENCE.
- 27 (4) did you receive an evidentiary hearing on your
28 petition application or motion : YES.

1 (5) Result: NON CONCLUSIVE (INCOMPLETE)

2 (6) Date of result: NONE.

3 (7) If known, citations or any written opinion or date of
4 orders entered pursuant to such result: NO DECISION
5 WAS EVER RENDERED REGARDING THIS MOTION.

6 (c-X) (1) Name of court: THE SECOND JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, WASHOE COUNTY, RENO.

8 (2) Nature of proceedings: PETITION FOR WRIT OF HABEAS
9 CORPUS (Post-Conviction)

10 (3) Grounds raised:

11 (a) The State failed to disclose Material
12 Exculpatory Evidence.

13 (b) The Defendant was exposed to Inpaneled Jurors
in Prison Garb and in Restraints.

14 (c) Inpaneled Jurors were allowed to hear comments
15 concerning Defendant's In-Custody Status.

16 (d) Court erred when it failed to reach decision
regarding Motion to Set Aside Verdict.

17 (e) Counsel provided Ineffective Assistance, when
18 Counsel failed to consult with Client, to
conduct reasonable investigations, to file
19 Motion's to Suppress Evidence tainted by Illegal
20 Search and Seizure, and Statements which were
obtained by Custodial Interrogation.

21 (f) The Sentencing Court erred when it imposed
Sentence which was based in part upon allegations
22 of Murder which the defendant had not been tried
for.

23 (g) Trial court failed to suppress Defendant's written
24 and video recorded statements which were obtained
by Police through Custodial Interrogation and in
25 the absence of Miranda admonishments and waiver
of Defendants Rights.

26 (h) The State denied the Defendant a Fair Trial,
27 when the state included evidence on trial that
had been obtained without a valid search Warrant.
28

- 1 (i) The State denied the Defendddant a Fair Trial,
2 when The State failed to first demonstrate the
3 use of Procedural safeguards Effective to Secure
4 The Defendant's Privilege Against Self Incrimination
5 before including The Defendant's statements at
6 trial.
- 7 (4) Did you receive an evidentiary hearing on your
8 Petition,applicatio or Motion ? : YES.
- 9 (5) Result: PETITION WAS GRANTED, BUT ONLY SO FAR AS TO
10 ALLOW FOR A NEW SENTENCING PROCEEDING.
- 11 (6) Date of result: JUNE 8, 2001.
- 12 (7) If known, citations of any written opinion or date of
13 orders entered pursuant to such result: FINDINGS OF
14 FACT, CONCLUSIONS OF LAW AND JUDGMENT. FILED ON
15 AUGUST 9, 2001. Notice of entry of Order Filed on
16 AUGUST 14, 2001.
- 17 (c-XX) (1) Name of court: UNITED STATES DISTRICT COURT, DISTRICT
18 OF NEVADA, RENO, NEVADA.
- 19 (2) Nature of proceeding: Petition for Writ of Habeas
20 Corpus, by person in State custody, Pursuant to
21 28 U.S.C. § 2254.
- 22 (3) Grounds raised:
- 23 (a) The State failed to present competent evidence at
24 trial sufficient to prove the state's allegations
25 beyond a reasonable doubt. Violating 14th Amend.
- 26 (b) Court erred, defendant cannot be convicted of
27 both Count 3 and Count 6 as the offences are
28 necessarily included in each other. Violating
14th Amend.
- (c) The State failed to disclose Material Exculpatory
Evidence, the value of which was known to the
State before trial, and the value of which would
have played a significant roll to the defence of
the charges. Violating 14th Amend.
- (d) State denied Mr. Voss a Fair Trial when Jurors
were allowed to view him in Prison Garb and in
Physical Restraints during guilt phase of Trial.
Violating 14th Amend.
- (e) State denied Mr. voss a fair Trial, when Jurors
were allowed to hear comments concerning his
In-Custody Statis. Violating 14th Amend.

1 (f) Appointed counsel was ineffective and counsel's
2 performance fell below an objective standard of
3 reasonableness, when counsel failed to meet with
4 Mr. Voss and to engage in meaningful conversations
5 regarding the case. Therby, limiting his
6 ability to conduct reasonable investigations, to
7 locate potential defense witnesses and to prepare
8 a reasonably adequate defense to the charges,
9 counsel refused to allow Mr. Voss any input at
10 all into his defense which denied Mr. Voss the
11 defense of his choice, counsel failed to file
12 Motion's to suppress evidence tainted by illegal
13 search and seizure, written and recorded video
14 statements obtained by custodial interrogation,
15 without Miranda, admonishments or waiver of rights
16 counsel failed to object to the admission of the
17 above illegally obtained evidence and statements
18 at trial, counsel failed to represent Mr. Voss in
19 regard to his presentencing investigation and to
20 his statements given therein, counsel failed to
21 investigate and to present mitigating evidence
22 at sentencing. Violating 14th Amend.

23 (g) Mr. Voss was denied a Fair trial when the state
24 admitted statements at Trial obtained by Custodial
25 interrogation, without demonstration by the State
26 that Police had employed Procedural Safeguards
27 Effective to Secure Mr. Voss's rights against
28 Self-Incrimination and to the assistance of
legal Counsel before Custodial Interrogation, and
when statements were utilized by the State at
Trial for the purpose of showing untruths in
those statements given in custodial interrogation
Violating 14th Amend.

(h) Mr. Voss was denied a Fair Trial, when the State
included evidence at Trial which had been
obtained without valid Search Warrants or without
any Warrant at all. Violating 14th Amend.

(4) Did you receive an evidentiary hearing on your
petition, application or motion: NOT AS OF YET, THE
PETITION IS STILL PENDING.

(5) Result: N/A

(6) Date of result: N/A

(7) If Known, citations of any written opinion or date of
orders entered pursuant to such result: N/A.

1 16.(d) Did you appeal to the highest state or federal court having
2 jurisdiction, the result or action taken on any petition
3 application or motion ? :

4 (1) First petition, application or motion ? : YES.

5 (2) Second petition, application or motion , : YES

6 (3) Third petition, application or motion ? : NO.

7 (4) Fourth petition, application or motion ? : YES.

8 (5) Fifth petition, application or motion ? : NO.

9 16.(e) If you did not appeal from the adverse action on any
10 petition, application or motion, explain briefly why you
11 did not: IN REGARD TO THE THIRD MOTION FILED, MOTION TO SET
12 ASIDE VERDICT, COUNSEL FAILED TO FOLLOW UP ON MY REPEATED
13 REQUESTS FOR INFORMATION ON THIS MATTER, ASWELL AS TO
14 ADDRESS THE COURT REGARDING IT'S APPEARENT OVERSIGHT IN
15 RESPONDING TO THIS MOTION. THEN IN REGARD TO THE FIFTH,
16 FEDERAL PETITION FOR WRIT OF HABEAS CORPUS, THIS PETITION
17 IS STILL PENDING IN THE UNITED STATES DISTRICT COURT
18 DISTRICT OF NEVADA.

19
20 17. Has any ground being raised in this petition been previously
21 presented to this or any other court by way of petition
22 for writ of habeas corpus, motion, application or any
23 other post conviction proceeding ? If so identify: NONE
24 OF THE GROUNDS SUBMITTED HEREIN HAVE BEEN PREVIOUSLY
25 PRESENTED TO ANY COURT STATE OR FEDERAL.
26
27
28

1 18. If any of the grounds listed in No.23 (a), (b) and (c)
2 were not previously presented in any other court, state or
3 federal. List what grounds were not so presented, and
4 give your reasons for not presenting them:NONE OF THE
5 GROUND S PRESENTED HEREIN HAVE BEEN PREVIOUSLY PRESENTED
6 TO ANY COURT STATE OR FEDERAL, THESE ISSUES WERE NOT
7 PRESENTED IN DIRECT APPEAL OF THE JUDGMENT OF CONVICTION
8 AND SENTENCE DUE TO THE INEFFECTIVE REPRESENTATION OF
9 APPOINTED APPEALANT COUNSEL. SEE, GROUND THREE HEREIN.
10 THESE ISSUES WERE NOT PRESENTED IN PREVIOUS STATE PETITION
11 FOR WRIT OF HABEAS CORPUS BECAUSE PETITIONER DID NOT HAVE
12 ACCESS TO PRELIMINARY HEARING TRANSCRIPTS WHICH DELINIATE
13 PETITIONERS CLAIMS HEREIN DUE TO APPOINTED COUNSELS
14 FAILURES TO RESPOND TO PETITIONERS REPEATED REQUEST TO BE
15 PROVIDED WHITH COPIES OF THE TRANSCRIPTS OF ALL COURT
16 PROCEEDINGS. ASWELL AS BY THE FAILURE OF APPOINTED APPELANT
17 COUNSEL TO IDENTIFY AND RAISE THESE ISSUES IN A SUPPLEMENT
18 TO PETITIONER'S PROPER PERSON PETITION AS APPEALANT
19 COUNSEL COMPLETELY FAILED TO SUPLEMENT MR.VOSS'S PROPER
20 PERSON PETITION AS COUNSEL WAS ORDERED BY THIS COURT ON
21 MAY 10,2000. IN ORDER FOR EVIDENTIARY HEARING, APPOINTMENT
22 OF COUNSEL.

23 19. NOT APPLICABLE.

24 20. Do you have any petition or appeal now pending in any
25 court state or federal, as to the judgment under attack ? :
26 YES.

1 21. Give the name of each attorney who represented you in the
2 proceedings resulting in your conviction and on direct
3 appeal: COTTER C.CONWAY, MARY LOU WILSON, JENIFER LUNT.

4 22. Do you have any future sentences to serve after you
5 complete the sentence imposed by the judgment under
6 attack ? : YES.

7 23. State concisely every ground on which you claim you are
8 being held unlawfully:

9 (a) Ground one; The State committed Prosecutorial
10 Misconduct and denied Petitioner a Fair Trial in
11 violation of his Fourteenth Amendment Constitutional
12 Guarantees, when The State knowingly and intentionally
13 introduced evidentiary exhibits at trial, when The
State had specific knowledge that said exhibits were
tainted by a break in the official chain of evidence
custody prior to the admission of said exhibits at
trial of the instant case.

14 (b) Ground two; Appointed counsel committed Ineffective
15 Assistance of Counsel and denied Petitioner his Sixth
16 and Fourteenth Amendment Rights to Effective Assistance
17 of Counsel and to Fair Trial, when Counsel failed to
18 file a Defense Motion to Supress States Exhibit #1 and
19 States Exhibit #29, and when Counsel failed to object
to the States admission of said exhibits at trial
eventhough Counsel had express knowledge that said
exhibits had been tainted by a break in the official
chain of evidence custody prior to the States admission
of said exhibits at trial of the instant case.

20 (c) Ground three; Appointed Appellant Counsel committed
21 ineffective assistance of counsel and denied Petitioner
22 his Sixth and Fourteenth Amendment Rights to Effective
23 Assistance of Counsel and to Fair trial, when Counsel
24 failed to raise the issue of Prosecutorial Misconduct
relative to the States presentation of evidence at
trial which was tainted by a break in the official
chain of evidence custody, within Direct Appeal of the
conviction and sentence to the Nevada Supreme Court.

25 Supporting facts; On march 17,2003, petitioner received
26 Legal Service by U.S. Mail, from the State of Nevada
27 Attorney General's Office of a motion to dismiss (Federal)
28 Petition for Writ of Habeas Corpus, by persn in State

1 custody, pursuant to 28 U.S.C. § 2254. In addition to
2 said document was, one (1) large box containing an Index
3 of exhibits to support States Motion to Dismiss (Federal)
4 Petition for Writ of Habeas Corous, aswell as photo copies
5 of all fourty four (44) Exhibits filed by the State in
6 support of said Motion.

7 Upon review of the documents it soon became appearent
8 to Petitioner that he had been provided with certain
9 documents of which he had NOT previously seen or had any
10 opportunity to review. Including, a copy of the transcript
11 of Preliminary Examination, State of Nevada V. Steven Voss,
12 Case no. DA #138461, justice Court, Reno Township, washoe
13 County, Nevada. Dated June 27, 1996. While conducting a
14 review of that transcript petitioner observed that the
15 record indicated that cerain evidentiary exhibits had
16 been mishandled and misplaced prior to the Preliminary
17 Procedings in Justice Court. Thereby, breaking the official
18 chain of evidence custody in regard to two (2) of the
19 States evidentiary exhibits. Which are identified as,
20 State's Exhibit #A, one (1) Check #4842 drawn on the
21 checking account of Burgess North American Moving and
22 Storage Company, which was made out to Beverly Baxter, in
23 the amount of \$5,026.00 , and State's Exhibit #B, one (1)
24 Personal Check #563 drawn on the checking account of
25 Beverly Ann Baxter, made out in the amount of \$5,000.00 .
26 Said exhibits were left unattended and unsecured in an
27 unlocked Court Room #E, while Preliminary Proceeding were
28 conducted in Court Room #C of The Reno Justice Court.

1 Defense Counsel, cotter Conway failed to object to the
2 admission of States exhibits #A and #B during preliminary
3 hearing in the Justice Court of Reno Township. Even after
4 it became clearly appearent that the evidentiary exhibits
5 had been mishandled, misplaced and the chain of Official
6 Evidence Custody had been broken. Thus, tainting said
7 exhibits. Infact, Counsel did NOT even examine the
8 exhibits once they were presumably relocated to determine
9 the condition and authenticity of those exhibits, before
10 he stated, " I, am sure there is NO problem " and thereby
11 stipulating to the addmission of those exhibits. The
12 Transcribed Record of those proceedings support Petitioner's
13 claims regarding the break in the official chain of evidence
14 custody, aswell as Counsel's failure to address objection
15 to the addmission of State's Exhibits #A and #B, and
16 Counsels failure to inspect and to assess the Condition and
17 Authenticity of said Exhibits before stipulating to their
18 addmission.

19 In the Transcript of Preliminary Examination, of
20 July 15,1996, Page 106, Lines 22-25 and Page 107, Lines
21 1-14, the following exchanges occured:

22 MR.CONWAY: Can I see Exhibit-- I think it's Exhibit B ?

23 THE COURT: I think the State took possession of the two
24 items.

25 MR.WALKER: I don't believe I have them, Your Honor.

26 THE COURT: I believe one of the last witnesses handedd
27 them to you as I recall. I meant to ask you
28 back for them, because they were addmitted.

1 Unless they are in the other courtroom --

2 MR.WALKER: I don't have them in my paperwork, Your Honor.

3 MR.CONWAY: I can go about this another way, Your Honor.

4 THE COURT: Well, that concerns me.

5 MR.CONWAY: Well, it concerns me, too but I can procede
6 with this cross-examination for now --

7 Then on Page 109, Lines 7-12, the following:

8 MR.WALKER: Your Honor, with your permission how about
9 if I step over to C.

10 THE COURT: If we are ready for that, absolutely. In fact
11 I need to take a recess and see -- find out
12 If I left it on the bench.

13 (A break was taken)

14 Next on Page 110, Lines 5-20, the following:

15 MR.WALKER: Excuse me, Your Honor. Let me put something else
16 on the record.

17 I would indicate for the record at the last
18 break I walked over to courtroom C from
19 courtroom E, where I saw through the window
20 that the Exhibts A and B were sitting on the
21 counter, if you will, in front of the witness
22 stand where they had been left by the last
23 witness at the last proceeding.

24 I would ask at this time if there is any
25 question as to the authenticity of those
26 exhibits ?

27 THE COURT: No. Here is A and B. I retrieved them myself.

28 MR.CONWAY: I am sure there is no problem.(Looking)

1 Thank you.

2 **MR. WALKER:** Thank you, counsel.

3 **THE COURT:** They are acceptable to the defense procede.

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Further, prior to the trial of the instant case Counsel failed to put forth any motions what so ever to suppress any evidence which would be offered by the State including the previously discribed State Exhibit #A which was admitted at trial as State's Exhibit #1, and the previously discribed State's Exhibit #B which was admitted at trial as Exhibit #2. Counsel did not even object to the State's admission of these Exhibits at trial. Infact counsel actually stipulated to the admission of this highly prejudicial evidence at trial. These claims are supported by the trial transcripts. Of October 7 and 8, 1996. In the trial Transcript of October 7, 1996, Page 15, Lines 14-20 the following exchanges occured:

THE COURT: Okay. I have Exhibits 1 through 22 filed on behalf of the State; and Exhibits A and B, Which have previously been marked. Is there any objection to any of the State's Exhibits 1 through 22 ?

MR. CONWAY: I think there may be. I did not get a copy of this. I am not going to have objection to Exhibit 1. Exhibit 2.

Then in the trial transcript of October 7, 1996, Page 16, Line 13-16 the following:

THE COURT: Exhibits A and B are admitted, as are Exhibits 1 and 2. The rest of them we will deal with as they are offered.

Then in the trial transcript of October 8, 1996, Page 7,
lines 19-24 the following:

MR.WALKER: Miss Clerk, may I have what has been marked
for identification as Exhibit 29 please ?

BY MR. WALKER

Q. Your Honor, I'm going to approach the witness, and hand her what has been marked for identification as Exhibit 29.

and lastly, in the trial transcript of October 8, 1996,
Page 8, Lines 10-14, the following:

MR. WALKER: Move 29 into evidence.

MR. CONWAY: No objection, Your Honor.

THE COURT: Exhibit 29 is admitted.

(Whereupon, Exhibit 29 is admitted into evidence.)

Appointed Appealant Counsel, Mary Lou Wilson and Jenifer Lunt failed to present the above issue upon direct appeal of the conviction and sentence to the Nevada Supreme Court.

The combination of these acts and omissions on the part of the State, Trial Counsel and Appealant Counsel thereby denied Petitioner a Fair Trial, Due Process of Law and Effective Assistance of Trial and Appealant Counsel in violation of Petitioner's Sixth and Fourteenth Amendment Constitutional Guarantees.

WHEREFORE, Petitioner prays that this Honorable Court grant him the relief to which he may be entitled in this proceeding.

EXECUTED, at The Nevada State Prison, on this 8 day
of April, 2003.

Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
Po. Box #1989
Ely, Nevada 89301

VERIFICATION

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

STEVEN FLOYD VOSS

CERTIFICATE OF SERVICE BY MAIL

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I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5(b), that on the 8 day of April 2003, I mailed
a true and correct copy of the foregoing, Petition for Writ of
Habeas Corpus, addressed to:

E. K. McDANIEL, WARDEN
ELY STATE PRISON
PO.Box 1989
Ely, Nevada 89301

BRIAN SANDOVAL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

RICHARD GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
Po. Box 11130
Reno, Nevada 89520-0027

Steven F Voss

STEVEN FLOYD VOSS
ELY STATE PRISON
Po. Box 1989
Ely, Nevada 98301

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

2003 APR 14 PM 3:41

RONALD A. LONGTIN, JR.

STEVEN FLOYD VOSS,

CASE NO. CR96-P-1581-B

PETITIONER,

DEPT.NO. 10

DEPUTY

VS.

THE STATE OF NEVADA,

RESPONDENT,

CR96P1581A
DC-9500026702-037
POST STEVEN FLOYD VOSS (D 14 Pages)
District Court 04/14/2003 03:41 PM
Washoe County
NAC

MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE PETITION
FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

COMES NOW, Petitioner, STEVEN FLOYD VOSS in Properia Persona and hereby moves this Honorable Court for an Order granting the Petitioner leave to file a Successive Petition for Writ of Habeas Corpus (Post-Conviction). This Motion is predicated upon the attached Pleadings, Exhibits and Affidavit aswell as the Papers and Pleadings allready on file with this Court.

POINTS AND AUTHORITIES

NRS 34.724 Persons who may file petition;effect of filing.

1. Any person convicted of a crime and under sentence of death or inprisonment who claims that the conviction was obtained, or that the sentence was imposed, in violation of the Constitution of the United States or the constitution or laws of this state, or who claims that the time he has served pursuant to the judgment of conviction has been improperly computed, may, without paying a filing fee, file a post conviction petition for writ of habeas corpus to obtain relief from the conviction or sentence or to challenge the computation of time that he has served.

1 2. Such a petition:

- 2 (a) Is not a substitute for and does not affect any remedies
3 which are incident to the proceedings in the trial court
4 or the remedy of direct review of the sentence or
5 conviction.
6 (b) Comprehends and takes the place of all other common law,
7 statutory or other remedies which have been available for
8 challenging the validity of the conviction or sentence,
9 and must be used exclusively in place of them.
10 (c) Is the only remedy available to an incarcerated person to
11 challenge the computation of time that he has served
12 pursuant to a judgment of conviction.
13 (Added to NRS by 1991, 75)

9 **NRS 34.726 Limitations on time to file;stay of sentence.**

- 10 1. Unless there is good cause shown for delay, a petition that
11 challenges the validity of a judgment or sentence must be filed
12 within 1 year after entry of the judgment of conviction or,if an
13 appeal has been taken from the judgment, within 1 year after the
14 supreme court issues its remittiture. For the purposes of this
15 subsection good cause for delay exists if the petitioner
16 demonstrates to the satisfaction of the court:
17 (a) That the delay is not the fault of petitioner;and
18 (b) That the dismissal of the petition as untimely will unduly
19 prejudice petitioner.
20 2. The execution of a sentence must not be stayed for the period
21 provided in subsection 1 solely because petition may be filed
22 within that period. A stay of sentence must not be granted unless:
23 (a) A petition is actually filed;and
24 (b) The petitioner establishes a compelling basis for the stay.
25 (Added to NRS by 1991, 75)

20 **NRS 34.800 Dismissal of petition for delay in filing.**

- 21 1. A petition may be dismissed if delay in the filing of the
22 petition:
23 (a) Prejudices the respondent or the State of Nevada in
24 responding to the petition,unless the petitioner shows
25 that the petition is based upon grounds of which he could
26 not have had knowledge by the exercise of reasonable
27 diligence befor the circumstances prejudcial to the State
28 Occured;or
29 (b) Prejudices the State of Nevada in its ability to conduct
30 a retrial of the petitioner,unless the petitioner
31 demonstrates that a fundemental miscarage of justice has
32 occured in the proceedings resulting in the conviction or
33 sentence.
34 2. A period exceeding 5 years between the filing of a judgment
35 of conviction,an order imposing a sentence of inprisonment or a

1 decision on direct appeal of a judgment of conviction, and the
 2 filing of a petition challenging the validity of a judgment of
 3 conviction creates a rebuttable presumption of prejudice to the
 4 state. In a motion to dismiss the petition based on that
 5 prejudice, the respondent or the State of Nevada must specifically
 6 plead laches. The petitioner must be given the opportunity to
 7 respond to the allegations in the pleading before a ruling on the
 8 motion is made.

(Added to NRS by 1985,1231;A 1987,1219;1991,87)

7 NRS 34.810 Additional reasons for dismissal of petition.

8 1. The court shall dismiss a petition if the court determines
 9 that:

10 (a) The petitioner's conviction was upon a plea of guilty or
 11 guilty but mentally ill and the petition is not based
 12 on the allegation that the plea was involuntarily or
 13 unknowingly entered or that the plea was entered without
 14 effective assistance of counsel.

15 (b) The petitioner's conviction was the result of trial and
 16 the grounds for the petition could have been:

(1) Presented to the trial court;

(2) Raised in a direct appeal or a prior petition for
 writ of habeas corpus or post-conviction relief; or

(3) Raised in any other proceeding that the petitioner
 has taken to secure relief from his conviction and
 sentence, unless the court finds both cause for the
 failure to present the grounds and actual prejudice
 to petitioner.

17 2. A second or successive petition must be dismissed if the
 18 judge or justice determines that it fails to allege new or
 19 different grounds for relief and that the prior determinat-
 20 ion was on the merits or, if new and different grounds are
 21 alleged, the judge or justice finds that the failure of the
 22 petitioner to assert those grounds in a prior petition
 23 constituted an abuse of the writ.

24 3. Pursuant to subsections 1 and 2, the petitioner has the
 25 burden of pleading and proving specific facts that
 26 demonstrate:

(a) Good cause for the petitioner's failure to present the
 claim or for presenting the claim again; and

(b) Actual prejudice to petitioner. The petitioner shall
 include in the petition all prior proceedings in which
 he challenged the same conviction and sentence.

27 4. The court may dismiss a petition that fails to include any
 28 prior proceedings of which the court has knowledge through
 the record or through the pleading submitted by the respon-
 dent.

(Added to NRS by 1985,1232; A 1989,457; 1995,2465)

STATEMENT OF THE CASE

1
2 Petitioner, STEVEN FLOYD VOSS, was found guilty after a Jury
3 Trial and punished by imprisonment in The Nevada State Prison
4 for a Maximun Term of One Hundred Twenty (120) Months with a
5 Minimum Term of Fourty Eight (48) Months on Count I, Burglary; on
6 Count II, Uttering a Forged Instrument to a Maximum Term of Fourty
7 Eight (48) Months with a Minimum Term of Sixteen (16) Months,
8 consecutive to Count I; Count III, Uttering a Forged Instrument
9 to a Maximum Term of Fourty Eight (48) Months with a Minimum Term
10 of Sixteen (16) Months, consecutive to counts I and II; Count IV,
11 Forgery to a Maximum term of Fourty Eight (48) Months with a
12 Minimum of Sixteen (16) Months, consecutive to counts I, II and III;
13 Count V, Forgery to a Maximum term of fourty Eight (48) Months
14 with a Minimum of Sixteen Months, consecutive to counts I, II, III
15 and IV; Count VI, Attempted Theft to a maximum term of Fourty
16 Eight (48) Months with a Minimum of Sixteen (16) Months,
17 consecutive to all counts, with credit for One hundred Thirty
18 Seven (137) days time served. Mr. Voss was further ordered to
19 pay Seven Hundred Fifty Dollars (\$750.00) Attorney Fees and the
20 Statutory Administrative Assessment Fee of Twenty Five Dollars
21 (\$25.00). Mr. Voss filed a timely notice of Appeal, An order
22 dismissing Appeal was filed in the Nevada Sureme Court, Case No.
23 29783 on March 11, 1999. Mr. Voss filed a Proper Person Petition
24 for writ of Habeas Corpus (Post-Conviction) on March 9, 2000.
25 An Evidentiary Hearing was ordered and was held in Department 10
26 of the Second Judicial District Court of Nevada, In and For
27 Washoe County, Reno Nevada. Judge, Steven P. Elliot, presiding. On
28 June 8, 2001 The court granted the Writ, but only as far as for

1 allowing for a new sentencing hearing after determining that the
2 Sentencing Court had relied upon suspect and impalpable informat-
3 ion in determining sentence. A timely notice of Appeal was filed
4 and an Order of Affirmance was filed in the Nevada Supreme Court
5 on January 17, 2002. A Federal Petition for Writ of Habeas
6 Corpus, by a person in state custody, pursuant to 28 U.S.C. § 2254
7 was filed in The United States District Court, District of Nevada,
8 at Reno Nv. On November 19, 2002.

9
10 LEGAL ISSUES PRESENTED HEREIN

11
12 Ground One: THE STATE COMMITTED PROSECUTORIAL MISCONDUCT
13 AND DENIED PETITIONER A FAIR TRIAL IN VIOLATION OF HIS FOURTEENTH
14 AMENDMENT CONSTITUTIONAL GUARANTEES, WHEN THE STATE KNOWINGLY
15 AND INTENTIONALLY INTRODUCED EVIDENTIARY EXHIBITS AT TRIAL WHEN
16 THE STATE HAD SPECIFIC KNOWLEDGE THAT SAID EXHIBITS WERE TAINTED
17 BY A BREAK IN THE OFFICIAL CHAIN OF EVIDENCE CUSTODY PRIOR TO THE
18 ADMISSION OF SAID EXHIBITS AT TRIAL OF THE INSTANT CASE.

19
20 Ground Two: APPOINTED COUNSEL COMMITTED INEFFECTIVE ASSISTANCE
21 OF COUNSEL AND DENIED PETITIONER HIS SIXTH AND FOURTEENTH AMENDMENT
22 RIGHTS TO EFFECTIVE ASSISTANCE OF COUNSEL AND FAIR TRIAL, WHEN
23 COUNSEL FAILED TO FILE A DEFENSE MOTION TO SUPPRESS STATES EXHIBIT
24 NUMBER ONE (#1) AND STATES EXHIBIT NUMBER TWENTY NINE (#29) AND
25 WHEN COUNSEL FAILED TO OBJECT TO THE STATES ADMISSION OF SAID
26 EXHIBITS AT TRIAL EVENTHOUGH COUNSEL HAD EXPRESS KNOWLEDGE THAT
27 SAID EXHIBITS HAD BEEN TAINTED BY A BREAK IN THE OFFICIAL CHAIN
28 OF EVIDENCE CUSTODY PRIOR TO THE STATES ADMISSION OF SAID EXHIBITS

1 AT THE TRIAL OF THE INSTANT CASE.

2
3 **Ground Three: APPOINTED APPEALANT COUNSEL COMMITTED**
4 INEFFECTIVE ASSISTANCE OF COUNSEL AND DENIED PETITIONER HIS SIXTH
5 AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL, WHEN COUNSEL
6 FAILED TO RAISE THE ISSUE OF PROSECUTORIAL MISCONDUCT RELATIVE TO
7 THE STATES PRESENTATION OF EVIDENCE AT TRIAL WHICH WAS TAINTED BY
8 A BREAK IN THE OFFICIAL CHAIN OF EVIDENCE CUSTODY WITHIN DIRECT
9 APPEAL OF THE CONVICTION AND SENTENCE TO THE NEVADA SUPREME COURT.

10
11 **STATEMENT OF FACTS**
12

13 A direct Appeal to the conviction and sentencce was filed
14 in the nevada Supreme court on December 24,1996. by and through
15 The Washoe county Nevada,Public Defender's Office, Deputy Public
16 Defenders, Mary Lou Wilson and Jenifer Lunt. The Issues Presented
17 on behalf of Petitioner in said Appeal were as follows:

18
19 I. WHETHER THE STATE HAD SUFFICIENT EVIDENCE
20 TO CONVICT MR. VOSS OF ALL COUNTS IN THE
CRIMINAL INFORMATION.

21 II. MR.VOSS CAN BE CONVICTED OF EITHER COUNT III
22 OR COUNT VI OF THE INFORMATION.

23 and NO further issues were raised on Petitioners behalf.

24 However, On march 17,2003 Mr.Voss received Legal Service by
25 U.S. Mail from the State of Nevada Attorney General's office of a
26 Motion to Dismiss (Federal) Petition for Writ of Habeas Corpus,
27 By Person in State Custody.Pursuant to 28 U.S.C.§2254. In addition
28 to said document was One (1) large Box containing an Index of

1 Exhibits to support (States) motion to Dismiss (Federal) Petition
2 for Writ of Habeas Corpus, aswell as Photo Copies of all fourty
3 four (44) Exhibits filed by the State in support of said Motion.

4 Upon review of the Documents it soon became appearent to
5 petitioner that he had been provided with certain Documents of
6 which he had not previously seen or had opportunity to review.
7 Including, a copy of the Transcript of Preliminary Examination,
8 STATE OF NEVADA V. STEVEN VOSS, Case No. DA#138461, Justice Court,
9 Reno township, Washoe County, Nevada, dated June 27, 1996. While
10 conducting a review of the preliminary Hearing Transcripts
11 Mr. Voss observed that the record indicated that certain
12 Evidentiary Exhibits had been mishandled and misplaced prior to
13 the Preliminary Proceodings in Justice Court. Thereby, Breaking
14 the Official Chain of evidence Custody in regard to Two (2) of
15 the states Evidentiary Exhibits. Which are identified as,
16 State's Exhibit #A, One (1) Check drawn on the checking account
17 of Burgess North Amarican Moving and Storage, check number 4842
18 made out to Beverly Baxter, in the amount of \$5026.00 and State's
19 Exhibit #B, One Personal check drawn on the account of Beverly
20 Ann Baxter, check number 563, in the amount of \$5000.00 . Said
21 Exhibits were left unsecured and unattended in an unlocked Court
22 Room #E while Preliminary proceodings were conducted in Court Room
23 #C of Reno Justice Court.

24 Defense Counsel, Cotter Conway failed to object to the
25 admission of State's Exhibits #A and #B during Preliminary
26 Examination in the Justice Court, of Reno township. Even after
27 it became clearly appearent that said Evidentiary Exhibits had
28 been mishandled, misplaced and the Official Chain of Evidence

1 Custody had been broken. Thus, tainting said Exhibits. Infact,
2 Counsel did NOT even examine the exhibits once they were
3 presumably relocated. To determine the condition and the
4 authenticity of those exhibits, before he stated, " I, am sure
5 there is NO problem ". and thereby, stipulating to the admission
6 of said exhibits. The Transcribed Record of those proceedings
7 support Petitioner's claims regarding the break in the chain of
8 official evidence custody, aswell as counsel's failure to raise
9 objection to the State's admission of Exhibits #A and #B and
10 additionally, counsels failure to inspect and to assess the
11 condition and authenticity of said exhibits before stipulating
12 to their admission. In the Transcript of Preliminary Examination,
13 of July 15,1996, page 106, lines 22-25, the following exchanges
14 occured:

15 MR. CONWAY: Can I see Exhibit -- I think it's Exhibit B ?

16 THE COURT: I think the State took possession of the two items.

17 On page 107, lines 1-14,the following:

18 MR.WALKER: I don't believe I have them,Your Honor

19 THE COURT: I believe one of the last witnesses handed them to
20 you as I recall. I meant to ask you back for them,
21 because they were addmitted. Unless they are in the
22 other courtroom --

23 MR.WALKER: I don't have them in my paperwork, Your Honor.

24 MR. CONWAY: I can go about this another way, Your Honor.

25 THE COURT: Well, that concerns me.

26 MR.CONWAY: Well, it concerns me, too but I can procede with
27 this cross-examination for now --

28 On page 109, lines 7-12, the following:

1 MR.WALKER: Your Honor, with you permission how about if I
2 step over to C.

3 THE COURT: If we are ready for that, absolutly. In fact I
4 need to take a resess and see -- find out if I
5 left it on the bench.

6 (A break was taken)

7 On page 110, lines 5-20, the following;

8 MR.WALKER: Excuse me, Your Honor. Let me put something else
9 on the record. I would indicate for the record
10 at the last break I walked over to courtroom C
11 from courtroom E, where I saw through the window
12 that the Exhibits A and B were sitting on the counter
13 if you will, in front of the witness stand where
14 they had been left by the last witness at the last
15 proceeding. I would ask at this time if there is
16 any question as to the authenticity of those Exhibits?

17 THE COURT: No. Here is A and B. I retrieved them myself.

18 MR.CONWAY: I am sure there is no problem. (looking) Thank you.

19 THE COURT: They are acceptable to the defense, Proceede.
20

21 Further, prior to the trial of the instant case counsel
22 failed to put forth any motions what so ever to suppress any
23 evidence which would be addmitted by the state. Including the
24 previously described state's exhibit #A, which was addmitted at
25 trial as state's exhibit #1, and the previously described exhibit
26 #B, which was addmitted at trial as state's exhibit #2. Counsel
27 did not even object to the state's admission of these exhibits
28 at trial. Infact, counsel actually stipulated to the admission

1 of this highly prejudicial evidence at trial. These claims are
2 supported by the Trial Transcripts of October 7 and 8, 1996.
3 In the trial transcript of october 7,1996,page 15, lines 14-20,
4 the following exchanges occured:

5 **THE COURT:** Okay. I have Exhibits 1 through 22 filed on behalf of
6 the State; and Exhibits A and B,which have previously
7 been marked. Is there any objection to any of the
8 State's Exhibits 1 through 22 ?

9 **MR.CONWAY;** I think there might be. I did not get a copy of this.
10 I am not going to have objection to Exhibit 1.
11 Exhibit 2.

12 On page 16, lines 13-16, the following:

13 **THE COURT:** Exhibits A and B are admitted, as are Exhibits 1 and 2.
14 The rest of them we will deal with as they are offered.

15 In the Trial Transcript of October 8,1996, page 7, lines 19-
16 24, the following:

17 **MR.WALKER:** Miss Clerk, may I have what has been marked for
18 identification as Exhibit 29 please ?

19 **BY MR.WALKER**

20 Q. Your Honor, I'm going to approach the witness, and
21 hand her what has been marked for identification
22 as Exhibit 29.

23 On page 8, lines 10-14, the following:

24 **MR.WALKER:** Move 29 into Evidence.

25 **MR.CONWAY:** No objection, Your Honor.

26 **THE COURT:** Exhibit 29 is admitted.

27 (Whereupon, Exhibit 29 is admitted into Evidence)
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BURGESS NORTH AMERICAN
MOVING & STORAGE
P. O. BOX 28 PH. 909-682-4300
RIVERSIDE, CA 92502

5/8/96 19

THE SUM 5026 DOLLARS \$**5026.00**

PAY TO THE ORDER OF

BEVERLY BAXTER
PO BOX 5861
SPARKS, NV 89432

Jim Burgess



00000502600

0004842 1222096820 01147412001

RNB
P.O. Box 1279, Riverside, CA 92502

© 1994 - WE

This Check was admitted at Preliminary Examination as Exhibit #A.
This Check was later admitted at Trial as Exhibit #1

B. A. BAXTER P. O. BOX 5861 PH. 787-2054 SPARKS, NV 89432		563 16-7001/3220 3795086132
DATE <u>6-13-96</u>		
PAY TO THE ORDER OF <u>Steven Voss</u>		<u>\$ 5,000.00</u>
<u>Five Thousand + ^{no} / 100</u>		DOLLARS 
 CALIFORNIA FEDERAL BANK <small>Sparks Office 593 East Pryor Way Sparks, Nevada 89431</small>		
MEMO <u>B. A. Baxter</u>		
⑆322070019⑆0563 379 5086132⑈		

This Check was admitted at Preliminary Examination as Exhibit #B.

This Check was later admitted at Trial as Exhibit #29.

Additionally, Appointed Appealant Counsel, Mary Lou Wilson and Jenifer Lunt, failed to present the issue of Prosecutorial Misconduct relative to the admission and presentation of State's Exhibits #1 and #29 at Trial of the instant case, in Direct Appeal.

Conclusion

The combination of the acts and omissions on the part of the State, Trial Counsel and Appealant Counsel identified herein thereby, denied Petitioner a Fair Trial, Due Process of Law and Effective Assistance of Trial and Appealant Counsel. In violation of Petitioner's Sixth and Fourteenth Amendment Constitutional Guarantees.

A post-Conviction Petition for Writ of Habeas Corpus comprehends and takes the place of all other Common Law,

1 statutory or other remedies which have been available for
2 challenging the validity of the conviction or sentence, and must
3 be used exclusively in place of them. Petitioner asserts that
4 the delay in bringing these new Habeas Corpus Claims is not his
5 fault and that the petition is based upon grounds of which he
6 could not have had knowledge by the excersise of reasonable
7 diligence prior to this time, and therefore could not be included
8 within his previous Petition for Writ of Habeas Corpus post-
9 Conviction, and that the dismissal of his petition as untimely
10 will unduly prejudice him, as the issues preseted in his second
11 Petition for Writ of Habeas Corpus demonstrate a fundemental
12 miscarage of justice have occured in the proceedings which
13 resulted in his conviction and sentence. Petitioner, further
14 asserts that the Doctrine of Laches does not apply herein and
15 that therefore, there cannot be any presumption of prejudice
16 to the State relative to Petitioner's filing of a successive
17 Petition for writ of Habeas Corpus, Post- Conviction.

18 Wherefore, Petitioner prays that this honorable Court will
19 grant him his Motion for Leave to file a Successive Petition
20 for Writ of Habeas Corpus, Post-Conviction and that this Court
21 will further order an Evidentiary Hearing in this matter. As
22 failure to grant this Motion and to order an Evidentiary Hearing
23 would violate Petitioner's 14th Amendmnet Constitutional
24 Guarantees of Due Process of Law and Fair Trial, aswell as
25 Petitioner's Sixth Amandment Constitutional Guarantee to the
26 Effective Assistance of Counsel.

27 Respectfully Submitted,

28 STEVEN FLOYD VOSS #52094

Steven F. Voss April 8, 2003

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b), that on this 8 day of April 2003, I, mailed
a true and correct copy of the forgoing, Motion for leave to
file a successive Petition for Writ of Habeas Corpus, addressed
to:

BRIAN SANDOVAL
NEVADA ATTORNEY GENERAL
100 north Carson Street
Carson City, Nevada 89701-4714

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
Po. Box 11130
Reno, Nevada 89520-0027

Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
Po.Box 1989
Ely, Nevada 89301

1 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

2 IN AND FOR THE COUNTY OF WASHOE

3 STEVEN FLOYD VOSS,)

PETITIONER,)

VS.)

THE STATE OF NEVADA,)

RESPONDENT,)

2003 APR 14
RONALD A. LUTTEN JR.
CASE NO. CR96-P-1581-B

DEPT. NO. 10

MOTION FOR LEAVE TO PROCEED IN

FORMA PAUPERIS

4 COMES NOW, Petitioner, STEVEN FLOYD VOSS, in Properia
11 persona. Pursuant to NRS. 12.015 and respectfully moves this
12 Court for an order granting petitioner Leave to Proceed in the
13 above titled action in Forma Pauperis without requiring security
14 for the payment of costs of prosecuting this action.

15 This Motion is made and based upon the attached Affidavit
16 and Certificate of Inmates Institutional Account.

17 Respectfully Submitted,

18 By: Steven Floyd Voss

19 Steven F Voss

20 ELY STATE PRISON
21 Po. box 1989
22 Ely, Nevada 89301
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ESPv

V12. 546

0-10
4-21

CR96A581A

FILED

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF ELKO APR 21 PM 2:07

RONALD A. LONGTIN, JR.

STEVEN FLOYD VOSS,
PETITIONER,
VS.
THE STATE OF NEVADA,
RESPONDENT,

CASE NO. CR96P-1581-P
DEPT. NO. 10

CERTIFICATE OF INMATE'S
INSTITUTIONAL ACCOUNT

I, the undersigned, hereby certify that STEVEN FLOYD VOSS
Inmate #52094, Petitioner above named has a balance of 20.04
on account to his credit at ELY STATE PRISON, Ely, Nevada where he
is presently confined.

I, further certify that said petitioner owes departmental
charges in the amount of .00 and that he has no securities
to his credit according to our records.

DATED this 10TH day of APRIL 2003.

[Signature]
Institutional Officer's Signature and Title

Submitted by; Steven Floyd Voss

Signature: Steven F Voss

Date Submitted: 03/31/03

RECD IN SEP 2003

V12. 546

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

PETITIONER,

VS.

STATE OF NEVADA,

RESPONDENT,

FILED
2003 MAY 29 PM 3:59
CR96P1581B
CASE NO. CR96-P1581B
DEPT. NO. 10 BY W. J. ALONQTIN, JR.
DEPUTY

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

comes now, Petitioner, Steven Floyd Voss, in Properia Persona pursuant to NRS. 12.015 and respectfully resubmits Motion for leave of this court to procede in Forma Pauperis and respectfully moves this court for an order granting petitioner leave to procede in the above titled action in Forma Pauperis without requiring security for the payment of costs of procecuting this action.

This motion is made and predicated upon the attached Affidavit and the Certificate of Inmates Institutional Account previously filed with this Court on April 21 2003.

Respectfully submitted, this 23rd day of May 2003.

Steven F Voss
By: STEVEN FLOYD VOSS #52094
ELY STATE PRISON
Po. Box 1989
Ely, Nevada 89301

ORIGINAL

FILED

JUN 12 2003

RONALD A. LONGTIN, JR., CLERK

By: m. Shull
DEPUTY

✓ 1 3060

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CR96P1581A DC-9900026702-042
 POST STEVEN FLOYD VOSS (D1 3 Pages
 District Court 06/12/2003 03:01 PM
 Washoe County 3060
 1000

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

Case No. CR96-01581

vs.

Dept. No. 910

THE STATE OF NEVADA,

Respondent.

ORDER TO PROCEED IN FORMA PAUPERIS

Having read the Affidavit in Support of STEVEN FLOYD VOSS' Request to Proceed in Forma Pauperis, declaring that Affiant has insufficient income, property or resources to pay Court costs to proceed in the above-entitled action and good cause appearing therefore, pursuant to NRS 12.015,

IT IS HEREBY ORDERED that the Court allow said STEVEN FLOYD VOSS to bring such action without costs and file or issue any necessary writ, process, pleading or paper without charge.

IT IS FURTHER ORDERED that the Sheriff or any other appropriate officer

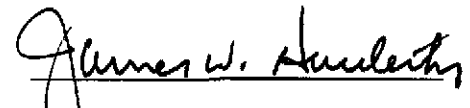
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1 within the state make personal service of any necessary writ, process, pleading or paper
2 without charge for STEVEN FLOYD VOSS.

3 Dated this 17 day of June, 2003.

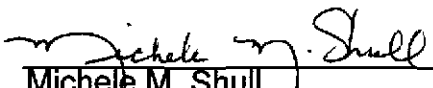
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6 
7 JAMES W. HARDESTY
8 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 12 day of June, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Steven Floyd Voss, #52094
Ely State Prison
P. O. Box 1989
Ely, Nevada 89301

Deputy Appellate District Attorney
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

2003 SEP 26 AM 8:26

STEVEN FLOYD VOSS,

CASE NO. CR96P1581A

PETITIONER,

DEPT. NO. 810

VS.

DEPUTY

CR96P1581A

STATE OF NEVADA,

RESPONDENT,

MOTION TO PRODUCE CASE RECORDS

COMES NOW, Petitioner, STEVEN FLOYD VOSS, and hereby respectfully requests this court for an order requiring former counsel, Deputy Public Defender, Cotter C. Conway to produce and deliver to Petitioner, all documents, papers, pleadings, letters or written Attorney-client communications, records of defense investigations, including all investigators written communications to counsel, investigators written notes and work product, counsel's work product and all tangible personal property in possession of former counsel and in the collective possession of the office of the Washoe County Public Defender, it's Deputy's employee's and Agents belonging to the above named client, including but not limited to all items specifically listed herein.

This motion is made and predicated upon District Court Rules, Rule 7.40 (b)(2)(ii), Nevada Revised Statutes, NRS 7.055, and supported by the following points and authorities, attached Letter requesting transfer of records and Petitioner's Affidavit.

POINTS AND AUTHORITIES

Petitioner, STEVEN FLOYD VOSS, in support of his MOTION TO PRODUCE CASE RECORDS, offers the following:

Nevada revised statutes, NRS 7.055(1) which deals with the duty of a discharged attorney, states:

"An attorney who has been discharged by his client shall, upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents pleadings and items of tangible personal property which belong to or were prepared for that client."

In the case at bar the petitioner does not owe any fees to Respondent. In fact respondent was appointed by the Court to represent Petitioner in Case No. CR96-1581 and Case No. CR97-2077 after the Court had determined petitioner's indigency.

NRS 7.055 (2) gives the Court jurisdiction and discretion to Order the Respondent to produce and to deliver to the Petitioner all of the documents and property belonging to the Petitioner, which is in respondent's possession. It further states that:

"A client who, after demand therefore and payment of the fees due from him, does not receive from his discharged attorney all papers, documents, pleadings and items of tangible property may, by a motion filed after at least 5 days notice to the attorney, obtain an order for the production of his papers, documents, pleadings and other property."

In numerous cases, Courts have held attorney's to a high degree of professional responsibility and integrity. this is carried from the time that an attorney is retained to and

1 through the attorney's termination of employment.

2 Supreme Court Rule 173, states clearly that a withdrawn
3 attorney owes his former client a "---prompt accounting of all
4 his client's---property in his possession."

5 this is echoed in Cannon 2, of the American Bar Association,
6 Code of professional responsibility. which states in pertinent
7 part (EC 2-32), as follows:

8 "A lawyer should protect the welfare of his client by---
9 delivering to his client all papers and property to which his
10 client is entitled---"

11 Again, in American bar association, Disiplinary Rule 2-110
12 (a)(2), which states the following:

13 "a withdrawn attorney must deliver to the client all papers
14 and comply with all applicable laws on the subject." (The ABA
15 Rules apply by adoption under Nevada Supreme Court Rules, Rule
16 150.)

17 In the cases of, In Re Yount, 93 Arizona 322, 380 P.2d 780
18 (1963), and State v. Alvey, 215 Kansas 460, 524 P.2d 747 (1974).
19 Both cases dealt with a factual situation involving a withdrawn
20 attorney refusing to deliver to a former client his documents
21 after being requested to do so by the client. The Court in
22 Yount Supra, ordered the attorney disbarred. While in Alvey-
23 Supra, the Court ordered the attorney censored.

24 While it is not the intention of the Petitioner to have his
25 former Counsel sanctioned. These cases do show a pattern in the
26 Courts in considering a counsels refusal to deliver to his
27 former client all of his documents and property after being
28

1 requested to so by said client, of which amounts to a serious
2 infraction of the law and of professional ethics. See, In Re-
3 Sullivan, 212 Kansas 233, 510 P.2d 1199 (1973).

4 In summary, this Court has the jurisdiction by way of
5 NRS 7.055 to Order The respondent to produce and to deliver unto
6 the Petitioner all documents and personal property in Respondents
7 possession belonging to Petitioner or which were prepared for
8 petitioner. The petitioner has fulfilled his applicable
9 obligations to counsel and has made the required request to
10 counsel for production and transfer of his records.

11 The respondent is in discord with cannon 2, of the ABA Code
12 of Professional responsibility, and nevada Supreme Court Rules
13 173, 176 and 203.

14 DATED, this 22nd day of September, 2003.

15 RESPECTFULLY SUBMITTED,

16 /s/ Steven F Voss
17 Steven Floyd Voss #52094
18 Petitioner,
19 Ely State Prison
20 P.O. Box #1989
21 Ely, Nevada 89301-9999

22 ///

23 ///

24 ///

STEVEN FLOYD VOSS #52094

Ely State Prison

P.O. Box #1989

Ely, Nevada 89301-9999

September 15, 2003.

TO: COTTER C.CONWAY (DPD)
Washoe County Public Defender's Office

SUBJ: Transfer of Case Records, All Files and Communications.

Mr.Conway, please be advised that your authority as Attorney of Record for Mr.Steven Floyd Voss, in the case of State of Nevada V. Steven Floyd Voss, Case No. CR96-1581 and Case No. CR97-2077, and all professional relations of Attorney and Client above named have ended.

Pursuant to NRS 7.055, I respectfully request that you deliver to me at the above address, all documents, papers, pleadings, client -attorney communications, records of defense investigations, investigators written communications to counsel, investigators written notes, work product and all tangible personal property that is in your possession belonging to the above named client.

Your prompt and immediate attention to this request will be most appreciated.

RESPECTFULLY,


Steven floyd Voss

CC. File
Clerk of Court
District Attorney
Attorney General

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

PETITIONER,

VS.

STATE OF NEVADA,

RESPONDENT,

Case No. CR96-P-1581-B

Dept. No. 10

AFFIDAVIT IN SUPPORT OF MOTION TO PRODUCE CASE RECORDS

STATE OF NEVADA)

) SS.

COUNTY OF WASHOE)

I, STEVEN FLOYD VOSS, being first duly sworn and under penalty of perjury, pursuant to NRS 208.165, do hereby depose and say that:

(1). I am the Petitioner in the above intitled action.

(2). On the 15 day of September 2003, I mailed a letter requesting the transfer of case records, to former counsel Cotter C. Conway (DPD) Washoe County.

(3). I received no response from Mr. Cotter C. Conway, or from the Washoe county public Defender's Office.

(4). On the 22nd day of September 2003, I petitioned this Court for an Order for the production of all case records, pursuant to NRS 7.055.

DATED, this 22nd day of September 2003.

RESPECTFULLY SUBMITTED,

/s/ Steven Floyd Voss
 Steven Floyd Voss #52094
 Petitioner,
 Ely State Prison
 P.O. Box #1989
 Ely, Nevada 89301-9999

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b), that on this 22nd day of September 2003, I mailed
a true and correct copy of the forgoing, Motion to Produce Case
Records, addressed to:

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North carson Street
Carson city, Nevada 89701-4714

Cotter C. Conway, Esq.
Deputy Public Defender
P.O. Box 11130
Reno, Nevada 89520-0027

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box #11130
Reno, Nevada 89520-0027

Steven F. Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

FILED

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

2003 SEP 26 11:58 AM

STEVEN FLOYD VOSS,

PETITIONER,

VS.

STATE OF NEVADA,

RESPONDENT,

RONALD A. LONG JR.
 CASE NO. CR95-11581-B

BY: *[Signature]*
 DEPT. NO. DEPUTY

REQUEST FOR SUBMISSION
OF PETITION

COMES NOW, Petitioner, STEVEN FLOYD VOSS, and hereby
 requests that his proper person PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION), which was filed on the 14th day of
 April 2003, in the above-entitled matter be submitted to the
 Court for evidentiary hearing.

the undersigned Petitioner certifies that a copy of the
 forgoing has been mailed to all counsel of record.

DATED, this 22nd day of September 2003.

Steven A. Voss
 STEVEN FLOYD VOSS #52094
 Ely State Prison
 P.O. Box #1989
 Ely, Nevada 89301-9999

CR96P1581A DC-9900026702-044
 POST: STEVEN FLOYD VOSS (D1 2 Pages
 District Court 09/26/2003 08:26 AM
 Washoe County 3860


CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b), that on this 22nd day of September 2003, I, mailed
a true and correct copy of the forgoing, REQUEST FOR SUBMISSION
OF PETITION, addressed to:

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 north Carson Street
Carson City, Nevada 89701-4714

and

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box #11130
Reno, Nevada 89502-0027


STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

2003 SEP 26 AM 8:26

STEVEN FLOYD VOSS,

CASE NO. CR96-P-1581-B
 RONALD A. LONGIN, JR.

PETITIONER,

DEPT. NO. 10

VS.

DEPUTY

STATE OF NEVADA,

REQUEST FOR SUBMISSION
OF MOTION

RESPONDENT,

COMES NOW, Petitioner, STEVEN FLOYD VOSS, and hereby requests that his proper person MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS, (POST-CONVICTION), which was filed on the 14th day of April 2003, in the above-entitled matter be submitted to the Court for decision.

The undersigned Petitioner certifies that a copy of the forgoing has been mailed to all counsel of record.

DATED, this 22nd day of September 2003.

Steven F Voss
 STEVEN FLOYD VOSS #52094
 Ely State Prison
 P.O. Box #1989
 Ely, Nevada 89301-9999

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5 (b), that on this 22nd day of September 2003, I mailed
a true and correct copy of the forgoing, REQUEST FOR SUBMISSION
OF MOTION, addressed to:

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

and

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box #11130
Reno, Nevada 89520-0027

Steven A. Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

ORIGINAL

FILED

OCT 13 2003

RONALD A. LONGTIN, JR. CLERK

By: *[Signature]*
DEPUTY

CODE: 2827

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

CASE NO: CR96-01581

vs.

DEPT. NO.: 10

STATE OF NEVADA,

Respondent.

**ORDER DENYING MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

The Court has read and considered Petitioner's Motion for Leave of Court to File A Successive Petition for Writ of Habeas Corpus, filed April 14, 2003, as well as other supporting and opposing documents in the record.

The Court finds that Petitioner has not complied with Nevada's limitations on time to file a petition for post-conviction writ of habeas corpus. In particular, NRS 34.726 (1) requires that a post-conviction petition for writ of habeas corpus be filed within one year after the entry of the judgment of conviction. Here, Petitioner first directly appealed his 1996 conviction in 1999; however, the Nevada Supreme Court dismissed the appeal on March 11, 1999. Thereafter, Petitioner filed a post-conviction petition for writ of habeas corpus on March 09, 2000, which was denied by this Court after an evidentiary hearing on

CR96P1581A
POST STEVEN FLOYD VOSS (D1 3 Pages)
District Court 10/13/2003 04:05 PM
Washoe County
2827

1 June 08, 2001. Subsequently, Petitioner appealed this Court's ruling on said petition to the
2 Nevada Supreme Court, which issued an Order of Affirmance on January 17, 2002.

3 Now, more than six years after his conviction at a jury trial, and more than a year
4 after the denial of his first post-conviction petition was affirmed by the Nevada Supreme
5 Court, Petitioner seeks to have this Court consider a second post-conviction petition for writ
6 of habeas corpus. The Court, pursuant to NRS 34.726 (1)(a-b), finds that there is no good
7 cause in the record for Petitioner's delay in presenting the current issues he wishes to
8 unveil during his 1999 direct appeal from the 1996 conviction, or in his March 2000 petition
9 for writ of habeas corpus. Thus, the Court denies Petitioner's Motion to Seek Leave of
10 Court to File A Successive Petition for Writ of Habeas Corpus, and thereby makes moot
11 Petitioner's Motion to Produce Case Records, as well as his request to have an evidentiary
12 hearing to consider his second petition for writ of habeas corpus.

13
14 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Motion to Seek
15 Leave of Court to File A Successive Petition for Writ of Habeas Corpus (Post-Conviction) is
16 DENIED.

17
18 **DATED** this 13 day of October, 2003.

19
20 
21 STEVEN P. ELLIOTT
22 District Judge
23
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13 day of October, 2003, I deposited for mailing a copy of the foregoing document addressed to:

STEVEN FLOYD VOSS

Ely State Prison

P.O. Box 1989

Ely, NV 89301

GARY HATLESTAD, Esq.

Washoe County District Attorney's Office

Appellate Division

P.O. Box 30083

Reno, NV 89520

(Interoffice Mail)

DATED this 13 day of October, 2003.



HEIDI HOWDEN

Administrative Assistant

ORIGINAL

FILED

CODE: 2535

2003 OCT 14 PM 4:11

RONALD S. LONGTIN, JR.

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS

Petitioner,

CASE NO: CR96P1581A

VS.

DEPT. NO.: 10

STATE OF NEVADA,

Respondent,

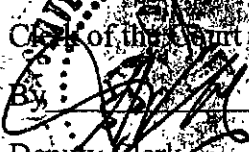
NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on October 13, 2003, the Court entered a decision or Order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of the Court. If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-Three (33) days after the date this notice is mailed to you. This notice was mail on October 14, 2003.

RONALD S. LONGTIN, JR.

Clerk of the Court

By 
Deputy Clerk

CR96P1581A
DC-990026702-047
POST STEVEN FLOYD VOSS (D1 5 Pages)
District Court 10/14/2003 04:11 PM
Washoe County 2540
Time

CODE: 2827

FILED

OCT 13 2003

RONALD A. LONGTIN, JR. CLERK
By: *[Signature]*
DEPUTYIN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

vs.

CASE NO: CR96-01581

DEPT. NO.: 10

STATE OF NEVADA,

Respondent.

**ORDER DENYING MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE
PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

The Court has read and considered Petitioner's Motion for Leave of Court to File A Successive Petition for Writ of Habeas Corpus, filed April 14, 2003, as well as other supporting and opposing documents in the record.

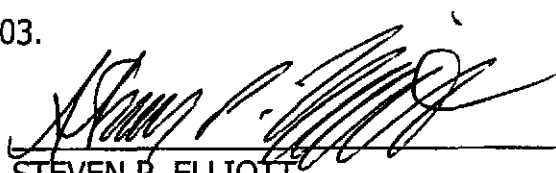
The Court finds that Petitioner has not complied with Nevada's limitations on time to file a petition for post-conviction writ of habeas corpus. In particular, NRS 34.726 (1) requires that a post-conviction petition for writ of habeas corpus be filed within one year after the entry of the judgment of conviction. Here, Petitioner first directly appealed his 1996 conviction in 1999; however, the Nevada Supreme Court dismissed the appeal on March 11, 1999. Thereafter, Petitioner filed a post-conviction petition for writ of habeas corpus on March 09, 2000, which was denied by this Court after an evidentiary hearing on

1 June 08, 2001. Subsequently, Petitioner appealed this Court's ruling on said petition to the
2 Nevada Supreme Court, which issued an Order of Affirmance on January 17, 2002.

3 Now, more than six years after his conviction at a jury trial, and more than a year
4 after the denial of his first post-conviction petition was affirmed by the Nevada Supreme
5 Court, Petitioner seeks to have this Court consider a second post-conviction petition for writ
6 of habeas corpus. The Court, pursuant to NRS 34.726 (1)(a-b), finds that there is no good
7 cause in the record for Petitioner's delay in presenting the current issues he wishes to
8 unveil during his 1999 direct appeal from the 1996 conviction, or in his March 2000 petition
9 for writ of habeas corpus. Thus, the Court denies Petitioner's Motion to Seek Leave of
10 Court to File A Successive Petition for Writ of Habeas Corpus, and thereby makes moot
11 Petitioner's Motion to Produce Case Records, as well as his request to have an evidentiary
12 hearing to consider his second petition for writ of habeas corpus.

13
14 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Motion to Seek
15 Leave of Court to File A Successive Petition for Writ of Habeas Corpus (Post-Conviction) is
16 DENIED.

17
18 **DATED** this 13 day of October, 2003.

19
20 
21 STEVEN P. ELLIOTT
22 District Judge
23
24
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 13 day of October, 2003, I deposited for mailing a copy of the foregoing document addressed to:

STEVEN FLOYD VOSS

Ely State Prison

P.O. Box 1989

Ely, NV 89301

GARY HATLESTAD, Esq.

Washoe County District Attorney's Office

Appellate Division

P.O. Box 30083

Reno, NV 89520

(Interoffice Mail)

DATED this 13 day of October, 2003.



HEIDI HOWDEN

Administrative Assistant


CERTIFICATE OF MAILING

Pursuant to NRCP 5 (b), I hereby certify that I am an employee of The Second Judicial District Court and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
APPELLATE DIVISION
(Inter-office mail)

ATTORNEY GENERAL'S OFFICE
100 N. CARSON STREET
CARSON CITY, NV 89701-4717

STEVEN FLOYD VOSS
ELY STATE PRISON
P.O. BOX 1989
ELY, NV 89301



GEORGE D. VELARDE
CRIMINAL CLERK
October 14, 2003.

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

ORIGINAL

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

2003 NOV -3 PM 4:12

STEVEN FLOYD VOSS,

Case No. CR96-01581

PETITIONER,

Dept. No. 10

Vs.

CASE APPEAL STATEMENT

STATE OF NEVADA,

RESPONDENT,

CR96P1581A DC-9900026702-051
POST: STEVEN FLOYD VOSS (D1 3 Pages
District Court 11/03/2003 02:12 PM
Washoe County 1310

1. Name of appellant filing this case appeal statement: Steven Floyd Voss.

2. Identify the judge issuing the decision, judgment, or order appealed from: Honorable Steven P. Elliot.

3. Identify all parties to the proceedings in the district court (the use of et al. to denote parties is prohibited): Steven Floyd Voss, Petitioner, VS. The State of Nevada, Respondent, represented by Washoe County District Attorney.

4. Identify all parties involved in this appeal (the use of et al to denote parties is prohibited): Steven Floyd Voss, Petitioner, VS. The State of Nevada, Respondent.

5. Set forth the name, law firm, address, and telephone number of all counsel on appeal and identify the party or parties whom they represent: Steven Floyd Voss, Ely State Prison, P.O. Box #1989, Ely, Nevada 89301-9999, (Telephone #N/A), Appellant, Pro Per. District Attorney of Washoe County, P.O. Box #30083, Reno, Nevada 89520-3083, (775)328-3200, represents Respondent.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court: Appellant was not represented by counsel in the district court.

1 7. Indicate whether appellant is represented by appointed or
2 retained counsel on appeal: Appellant is not represented by
3 counsel.

4 8. Indicate whether appellant was granted leave to proceed ~~in~~
5 forma pauperis, and the date of entry of the district court order
6 granting such leave: Appellant was granted leave to proceed in
7 forma pauperis on June 12, 2003.

8 9. Indicate the date the proceedings commenced in the district
9 court (e.g., date complaint, indictment, information, or petition
10 was filed): Petition for Writ of habeas Corpus (post-Conviction)
11 was filed on April 14, 2003. RESPECTFULLY SUBMITTED,

12
13 DATED this 31st day of October 2003.

14
15 By: Steven F Voss
16 STEVEN FLOYD VOSS,
17 Appellant, Pro Per,
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CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, Petitioner/Appellant in the instant action, certify pursuant to N.R.A.P. 25 (1)(d), that on this 31st day of october 2003, I mailed a true and correct copy of the forgoing, CASE APPEAL STATEMENT addressed to:

GARY HATLESTAD (DDA)
Washoe County District Attorney
Appellant Division
P.O. Box #11130
Reno, Nevada 89520-0027

DATED this 31st day of October 2003.

By: Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

ORIGINAL
 FILED

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

2003 NOV -3 PM 4:12

STEVEN FLOYD VOSS,

Case No. CR96-0158

PETITIONER,

Dept. No. 10 DEPUTY

Vs.

STATE OF NEVADA,

NOTICE OF APPEAL

RESPONDENT,

NOTICE IS HEREBY GIVEN, that STEVEN FLOYD VOSS, the
 Petitioner above named, hereby appeals to the Supreme Court of
 the State of Nevada from the Order entered in this action on
 October 13, 2003. RESPECTFULLY SUBMITTED,

DATED this 31st day of October 2003.

By: Steven F Voss
 STEVEN FLOYD VOSS,
 Petitioner Pro Per.

CR96P1581A
 DC-9900026702-04B
 POST STEVEN FLOYD VOSS (D1) 8 Pages
 District Court 11/03/2003 04:12 PM
 Washoe County
 2515
 JAME

CERTIFICATE OF SERVICE BY MAIL

I, STEVEN FLOYD VOSS, Petitioner/Appellant in the instant action, certify pursuant to N.R.A.P. 25 (1)(d), that on this 31st day of October 2003, I mailed a true and correct copy of the forgoing, NOTICE OF APPEAL addressed to:

GARY HATLESTAD (DDA)
Washoe County District Attorney
Appellant Division
P.O. Box #11130
Reno, Nevada 89520-0027

DATED this 31st day of October 2003.

By:

Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

ORIGINAL

FILED

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

2003 NOV -3 PM 4:12

STEVEN FLOYD VOSS,

Case No. CR98-01581

PETITIONER,

Dept. No. DEPUTY

Vs.

MOTION FOR TRANSCRIPT AT PUBLIC
EXPENSE AND SPECIFICATION
OF ERROR

STATE OF NEVADA,

RESPONDENT,

COMES NOW Petitioner, STEVEN FLOYD VOSS, In proper person on appeal of this Court's denial of Successive Petition for Writ of Habeas Corpus (Post-Conviction), Motion for leave to file Successive Petition for Writ of habeas Corpus (Post-Conviction) and Motion to Produce Case Records. Hereby, moves this honorable Court for an Order granting Petitioner certified copies of all Transcripts of Court proceedings and all Court Minutes of proceedings relative to the Courts denial of the aforesated Motions and Petition now on appeal to the Nevada Supreme Court. Notice of Appeal submitted for filing on October ,2003, in the Second Judicial District Court of the State of Nevada.

Petitioner, is not represented by Counsel in the instant petition, Petitioner cannot pay the cost of requested Transcript due to his indigency. Leave to proceed in forma pauperis was Ordered by this Court on June 12,2003.

Petitioner, requires these Transcripts to explore and to develop the following potential issues on appeal: Whether the District Court erred in denying Petitioner's MOTION FOR LEAVE TO FILE SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS (Post-Conviction) and Petitioner's MOTION TO COMPEL PRODUCTION OF CASE

CR98P1581A
DC-950026702-052
POST. STEVEN FLOYD VOSS (D1 3 Pages
District Court 11/03/2003 04:12 PM
Washoe County
2490
10/11/03

1 RECORDS FROM FORMER COUNSEL. Whether the District Court erred
2 in dismissing appeal without requiring the Respondent to answer
3 or otherwise respond to the instant Petition and without allowing
4 Petitioner to reply to such pleadings by Respondent before the
5 Court denied Petitioner's Motions and effectively dismissed
6 petition. **RESPECTFULLY SUBMITTED,**

7
8 DATED this 31st day of October 2003.

9
10 By: Steven F Voss
11 STEVEN FLOYD VOSS,
12 Petitioner/Appellant Pro Per,

13 CERTIFICATE OF SERVICE BY MAIL

14
15 I, STEVEN FLOYD VOSS, Petitioner/Appellant in the instant
16 action, certify pursuant to N.R.A.P. 25 (1)(d), that on this
17 31st day of October 2003, I mailed a true and correct copy of
18 the forgoing, MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE AND
19 SPECIFICATION OF ERROR addressed to:

20 GARY HATLESTAD (DDA)
21 Washoe County District Attorney
22 Appellant Division
23 P.O. Box #11130
24 Reno, Nevada 89520-0027

25 DATED this 31st day of October 2003

26 By: Steven F Voss
27 STEVEN FLOYD VOSS
28 Petitioner/Appellant Pro Per.

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,)	Case No. CR96-01581
)	
PETITIONER,)	Dept. No. 10
)	
Vs.)	
)	<u>REQUEST FOR SUBMISSION</u>
STATE OF NEVADA,)	<u>OF MOTION</u>
)	
RESPONDENT,)	
)	

COMES NOW, Petitioner, STEVEN FLOYD VOSS, and hereby requests that his proper person MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE AND SPECIFICATION OF ERROR, which was filed on the 31st day of october 2003, in the above entitled matter be submitted to the Court for decission.

The undersigned Petitioner certifies that a copy of the forgoing has been mailed to all Counsel of record.

RESPECTFULLY SUBMITTED, this 31st day of October 2003.

By: Steven F Voss
STEVEN FLOYD VOSS,
Petitioner, Pro per.

ORIGINAL

FILED

2003 NOV -4 PM 3: 09

RONALD A. LONGIN, JR.

BY Cathy Kepfer
DEPUTY

1 CODE 1350

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CR96P1581A
DC-9900026702-053
POST: STEVEN FLOYD VOSS (D10 1 Page
District Court 11/04/2003 03 09 PM
Washoe County 1350
11/04/2003 03 09 PM

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Appellant,

vs.

Case No. CR96P1581A

Dept. No. 10

THE STATE OF NEVADA,
Respondent,

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original pleadings on file with the Second Judicial District Court, in accordance with the Revised Rules of Appellant Procedure Rule D(1).

Dated: November 4, 2003

Ronald Longtin, Jr. Court Clerk

By: Cathy Kepfer

Cathy Kepfer, Deputy Clerk

Appeals Desk 328-3114

ORIGINAL

FILED

CODE 1365

2003 NOV -4 PM 3:09

RONALD A. LONGTIN, JR.

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Appellant,

vs.

Case No. CR96P1581A

Dept. No. 10

THE STATE OF NEVADA,

Respondent,

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents
(certified copies) were delivered to the Second Judicial District Court mailroom
system for transmittal to the Nevada Supreme Court.

Dated: November 4, 2003

Ronald Longtin, Jr., Court Clerk

By:

Cathy Kepler, Deputy Clerk

Appeals Desk 328-3114

ORIGINAL

SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 42307
District Court Case No. CR96P1581A
CR900158

BY Ronald A. Longtin, Jr.
DEPUTY

2003 NOV 10 AM 8:17

FILED

RECEIPT FOR DOCUMENTS

TO: Steven Floyd Voss #52094
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Ronald A. Longtin Jr., District Court Clerk

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

11/06/03 Filing Fee Waived: Criminal.
11/06/03 Filed Certified Copy of proper person Notice of Appeal.
Appeal docketed in the Supreme Court this day.

DATE: November 06, 2003

Janette M. Bloom, Clerk of Court

By: JMB
Deputy Clerk

ORIGINAL

FILED

NOV 12 2003

RONALD A. LONGTIN, JR., CLERK
By: *[Signature]*
DEPUTY

CODE: 2840

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

CASE NO: CR96P01581A

vs.

DEPT. NO: 10

STATE OF NEVADA,

Respondent.

**ORDER DENYING MOTION FOR TRANSCRIPT AT PUBLIC EXPENSE AND
SPECIFICATION OF ERROR**

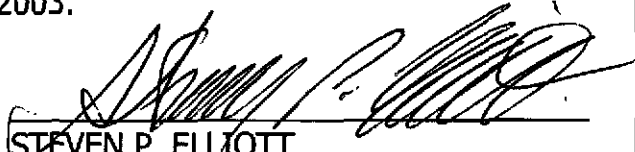
The Court has read and considered Petitioner's Motion for Transcript At Public Expense and Specification of Error, filed November 03, 2003, as well as all other relevant documents in the record.

This Court issued an Order Denying Petitioner's Motion for Leave of Court to File A Successive Petition for Writ of Habeas Corpus (Post-Conviction), filed October 13, 2003, based on Petitioner's non-compliance with NRS 34.726(1), and the lack of good cause for such non-compliance. This Court held no proceedings in reaching its decision in regard to said Order, thus no transcripts or court minutes exist for this Court to provide Petitioner at public expense.

CR96P1581A
POST STEVEN FLOYD VOSS (D1 3 Pages)
District Court 11/12/2003 04:56 PM
Washoe County 2840
JONES

1
2 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Petitioner's Motion for
3 Transcript At Public Expense and Specification of Error is DENIED.
4

5 **DATED** this 12 day of November, 2003.
6

7 
8 STEVEN P. ELLIOTT
9 District Judge
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CERTIFICATE OF MAILING

I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 12 day of November, 2003, I deposited for mailing a copy of the foregoing document addressed to:

STEVEN FLOYD VOSS, #52094
Ely State Prison
P.O. Box 1989
Ely, NV 89301

GARY HATLESTAD, Esq.
Washoe County District Attorney's Office
Appellate Division
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 12 day of November, 2003.



HEIDI HOWDEN
Administrative Assistant

ORIGINAL

CR96P1581A

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

2003 DEC -4 PM 2:18

RONALD A. LONGTIN JR.

No. 42307

BY

FILED

DEC 02 2003

No. 42308

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

No. 42335

STEVEN FLOYD VOSS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

JOSE ARTEAGA,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

MARY ROSE BONAPARTE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

ORDER DIRECTING TRANSMISSION OF RECORDS

Having reviewed the documents on file in these proper person appeals, this court has concluded that its review of the complete records is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have one hundred and twenty (120) days from the date of this order within which to transmit to the clerk of this court a certified copy of the complete trial court record in district court case numbers CR961581 (Docket No. 42307), CR98P1227 (Docket No. 42308), CR97P0838 (Docket No. 42335). See NRAP 11(a)(2) (each complete record shall contain every paper, pleading and other document filed, or submitted for filing, in the

district court, as well as any previously prepared transcripts of the district court proceedings).¹

It is so ORDERED.

Agosti

C.J.

cc: Steven Floyd Voss
Jose Arteaga
Mary Rose Bonaparte
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

¹The records shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The records shall also include any presentence investigation reports submitted in these matters. The clerk of the district court shall transmit the reports to this court in sealed envelopes identifying the contents and marked confidential. See NRS 176.156(5).

ORIGINAL

FILED

2003 DEC 12 AM 11:25

RONALD A. LONGTIN, JR.

BY C. Kepler
DEPUTY1 CODE 1350
2

CR96P1581A DC-9900026702-058
POST: STEVEN FLOYD VOSS (D10 1 Page
District Court 12/12/2003 11 25 AM
Washoe County 13503

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,
Appellant,
vs.

THE STATE OF NEVADA,
Respondent,

Case No. CR96P1581A

Dept. No. 10

CERTIFICATE OF CLERK

I hereby certify that the enclosed documents are certified copies of the original
pleadings on file with the Second Judicial District Court, in accordance with the
Revised Rules of Appellant Procedure Rule D(1).

Dated: December 12, 2003

Ronald Longtin, Jr., Court Clerk

By: C. Kepler

Cathy Kepler, Deputy Clerk

Appeals Desk 328-3114

ORIGINAL

FILED

CODE 1365

2003 DEC 12 AM 11:25

RONALD A. LONGTIN, JR.

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Appellant,

vs.

Case No. CR96P1581A

THE STATE OF NEVADA,
Respondent,

Dept. No. 10

CERTIFICATE OF TRANSMITTAL

I hereby certify that the enclosed Notice of Appeal and other required documents
(certified copies) were delivered to the Second Judicial District Court mailroom
system for transmittal to the Nevada Supreme Court.

Dated: December 12, 2003

Ronald Longtin, Jr., Court Clerk

By:

Cathy Kepler, Deputy Clerk

Appeals Desk 328-3114

ORIGINAL

FILED

MAR 11 2004

RONALD A. LONGTIN, JR. CLERK

By: R. Howde
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

CASE NO: CR96P01581A

vs.

DEPT. NO: 10

STATE OF NEVADA,

Respondent.

ORDER APPOINTING COUNSEL

The record reflects that pursuant to this Court's Findings of Fact, Conclusions of Law and Judgment, filed August 9, 2001, (and affirmed by the Nevada Supreme Court on January 17, 2002), a re-sentencing hearing was deemed appropriate in relation to the sentence Petitioner received in the case number cited above. To facilitate the re-sentencing hearing, this Court finds it necessary to appoint counsel for Petitioner.

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CR96P1581A
DC-9900026702-061
POST: STEVEN FLOYD VOSS (DT 3 Pages
District Court 03/11/2004 10:11 AM
Washoe County
2715
TOME

1 **NOW, THEREFORE, IT IS HEREBY ORDERED** that Richard F. Cornell, Esq., is
2 appointed to represent Petitioner at re-sentencing.

3 **IT IS FURTHER ORDERED** that counsel for Petitioner and State appear before the
4 Administrative Assistant for Department 10 within ten (10) days of this order to set a date
5 for re-sentencing.

6 **DATED** this 11 day of March, 2004.

7 
8 STEVEN P. ELLIOTT
9 District Judge

CERTIFICATE OF MAILING

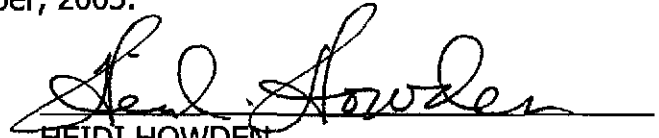
I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 11 day of March, 2004,

I deposited for mailing a copy of the foregoing document addressed to:

RICHARD F. CORNELL, Esq.
150 Ridge Street St., 2nd Floor
Reno, NV 89501

GARY HATLESTAD, Esq.
Washoe County District Attorney's Office
Appellate Division
P.O. Box 30083
Reno, NV 89520
(Interoffice Mail)

DATED this 11 day of November, 2003.


HEIDI HOWDEN
Administrative Assistant

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

FILED

2004 JUL 27 AM 9:16

RONALD A. LONGTIN, JR.

BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

VS.

E.K. McDANIEL, et al.,

Respondent's,

Case No. CR96-P-1581-A

Dept. No. 10

PETITIONER'S INDEX OF EXHIBIT IN SUPPORT OF MOTION FOR LEAVE
OF COURT TO FILE SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS,
AND ALTERNATE, PRESENTENCING MOTION TO SET ASIDE JURY VERDICT.

COMES NOW, Petitioner, STEVEN FLOYD VOSS, in proper person,
and hereby submits his Index of Exhibits in support of his Motion
For Leave To File A Successive Petition For Writ Of Habeas Corpus
(Post-Conviction) and his alternate, (Pre-Sentencing) Motion To
Set Aside Jury Verdict.

RESPECTFULLY SUBMITTED, this 19th day of July 2004.

By: [Signature]
STEVEN FLOYD VOSS,
Petitioner, pro per.

TABLE OF CONTENTS

Exhibit #1: Notice Of Entry Of Order; Findings Of Fact, Conclusions
Of Law And Judgment, Petition For Writ Of Habeas
Corpus (Post-Conviction) Case #CR96-P-1581-A.

Page 1

Exhibit #2: (Partial) Trial Transcript, (Motions In Limine)
Case #CR96-1581, October 7, 1996.

Page 11

Exhibit #3: Defendant's Motions In Limine, Case #CR96-1581

Page 28

Exhibit #4: State's Opposition To Motion In Limine, Case #CR-96-1581

Page 38

Exhibit #5: Sentencing Transcript, Case #CR96-1581, November 27, 1996

Page 44

CODE 2535

FILED

2001 AUG 14 PM 4:04

AMY HARVEY, CLERK

BY P. Meacham

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

vs.

Case No. CR96P1581

STATE OF NEVADA,

Dept. No. 10

Respondent.

NOTICE OF ENTRY OF DECISION OR ORDER

PLEASE TAKE NOTICE that on August 9, 2001, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a notice of appeal with the Clerk of this Court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on August 14, 2001.

AMY HARVEY
Clerk of the Court

By P. Meacham
Deputy Clerk

ORIGINAL

FILED

2001 AUG -9 AM 10:09

AMY HARVEY, CLERK

BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

STEVEN FLOYD VOSS,

Petitioner,

v.

Case No. CR96P1581

THE STATE OF NEVADA,

Dept. No. 10

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND JUDGMENT

This matter came before the court on Voss's Petition for Writ of Habeas Corpus (Post-Conviction). An evidentiary hearing on the petition has been held. The court, now being fully advised of the premises, denies the relief requested in part and grants the relief requested in part.

FINDINGS OF FACT

1. On or about June 28, 1996, Voss was arrested and charged with one count of burglary, two counts of forgery and two counts of uttering a forged instrument.

2. Following Voss's arrest, the Washoe County Public Defender's

1 Office was appointed to represent him.

2 a. Voss's defense was assigned to Deputy Public
3 Defender Cotter Conway, who represented Voss at all
4 relevant times.

5 b. Owing to his training and experience, Conway was
6 well qualified to represent Voss in this case.

7 3. After pleading not guilty to all charges, Voss's case was set
8 for trial in October of 1996.

9 4. Prior to trial, Conway conducted a reasonably complete
10 investigation of Voss's case.

11 a. Conway discussed the case with Voss in sufficient
12 depth and detail to formulate a defense consistent with
13 Voss's version of the events. Voss's testimony to the
14 contrary is not credible.

15 b. Conway received all requested and authorized
16 discovery from the prosecution, including Voss's
17 statements to the police, and discussed this matter
18 with Voss. Voss's testimony to the contrary is not
19 credible.

20 c. One item of information the defense did not receive
21 from the State was a secret witness report submitted by
22 Edward Villardi.

23 i. Villardi's report suggested that he had
24 seen the victim, Beverly Ann Baxter, with
25 another man, nearly 12 hours after Voss was
26 caught allegedly uttering forged instruments.

1 (It is undisputed that Ms. Baxter's body was
2 found many months later. Voss was charged
3 and convicted of her murder. Villardi
4 testified for the defense in the murder
5 trial. Given the guilty verdict in the murder
6 trial, it seems very clear that the jury did
7 not believe Villardi in any particular).

8 ii. No credible evidence was presented in
9 habeas proceeding proving that the prosecutor
10 was in possession of or withheld the secret
11 witness report, but it is clear that the
12 Washoe County Sheriff's Office did possess
13 it.

14 iii. Neither Conway nor any member of the
15 Washoe County Public Defender's Office
16 received this secret witness report until
17 Voss's murder trial was underway
18 approximately 18 months later.

19 iv. Villardi's secret witness report,
20 insofar as the guilt phase of Voss's case is
21 concerned, was neither material or
22 exculpatory.

23 v. Despite Conway's testimony with respect
24 to the perceived importance of Villardi's
25 secret witness report in the burglary,
26 forgery and uttering trial, the court is

1 confident that no reasonably competent trial
2 attorney would have had, at least, serious
3 reservations about premising Voss's defense
4 in this case on evidence that would clearly
5 open the door to a consideration of evidence
6 implicating his or her client in the Baxter
7 murder.

8 5. Prior to trial, Conway did not file and/or litigate a motion
9 to suppress Voss's statements to the investigating detective, but
10 this omission was reasonable under prevailing professional norms.

11 a. The record of the trial reveals that defense
12 counsel stipulated to admission of redacted versions of
13 Voss's pretrial statements. At the habeas proceeding,
14 Conway testified credibly that he perceived no
15 legitimate legal basis upon which to have the
16 statements suppressed. Neither the evidence presented
17 in the habeas proceeding or the applicable legal
18 standard draw Conway's conclusion into question.

19 b. At no relevant time was Voss subjected to custodial
20 interrogation without a Miranda warning, or where
21 applicable, did not knowingly, voluntarily or
22 intelligently waive his constitutional rights. Voss's
23 testimony to the contrary is not credible.

24 c. None of Voss's statements were obtained by duress
25 or coercion, nor can they be considered, as a matter of
26 law, involuntary. Voss's testimony to the contrary is

1 not credible.

2 6. At various times, both before and during trial, Voss was
3 dressed in jail garb and/or escorted while in plain clothes, by
4 uniformed court personnel employed by the Washoe County Sheriff's
5 Department.

6 a. Voss testified credibly that he arrived at the
7 courthouse on the morning of his trial in a jail van
8 along with several other prisoners, and that he was, at
9 that time, dressed in jail garb issued to him at the
10 jail.

11 i. His claim that he was seen by members of
12 his jury venire is not credible.

13 ii. Voss's testimony that he mentioned to
14 Conway that he had been seen by potential
15 juror members or actual seated jurors in jail
16 garb is not credible.

17 b. Voss testified credibly that he was routinely
18 escorted between the courthouse to the holding cell
19 and/or the elevator by a uniformed Sheriff's Deputy.

20 i. Voss's claim that he was seen by one of
21 the seated jurors while being escorted as the
22 juror was using a pay phone and/or that the
23 juror or potential juror had heard an
24 exchange between he and the deputy is not
25 credible.

26 ii. In the habeas proceeding, Voss called

1 Deputy Gary Clifford, but Clifford could not
2 remember any such incident(s) occurring
3 during his watch, and it is undisputed that
4 Clifford never reported the alleged incident.

5 iii. Voss did not report this incident to
6 counsel.

7 c. Neither of the jurors involved in the alleged.
8 instances testified in the habeas proceeding.

9 7. Voss's claim that his sentence was based, at least in part,
10 on Judge Stone's belief that Voss caused the murder or
11 disappearance of Beverly Baxter, has merit. It is supported by
12 the record. Even though Voss has not been charged for the murder
13 of Ms. Baxter, Judge Stone made reference in his rendition of
14 sentence, to his belief that she would not be found alive. He
15 then imposed the maximum sentence on Voss, a sentence clearly
16 outside the heartland of sentences for a person with Voss's
17 criminal record being sentenced for forgery offenses.

18 CONCLUSIONS OF LAW

- 19 1. Voss was not deprived of the effective assistance of counsel.
20 2. The State did not withhold exculpatory evidence within the
21 contemplation of either Brady or Kyles and their progeny.
22 3. Voss's right to due process as construed in Grooms v. State,
23 96 Nev. 142, 605 P.2d 1145 (1980), and similar cases condemning
24 convictions in which the accused was observed by potential jurors
25 or seated jurors in jail garb was not violated.
26 4. Because Judge Stone based Voss's onerous sentence, at least

1 in part, on the suspect and impalpable ground that Voss had
2 murdered Ms. Baxter, Voss is entitled to a new sentencing
3 hearing.

4 JUDGMENT

5 .It is hereby the judgment and order of this court that
6 Voss's Petition for Writ of Habeas Corpus (Post-Conviction) is
7 granted, but only insofar as allowing for a new sentencing
8 proceeding. In all other respects, the Petition is denied.

9 DATED this 6 day of August, 2001.

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12 DISTRICT JUDGE
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing through the U.S. Mail Service at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Scott W. Edwards, Esq.
1030 Holcomb Avenue
Reno, Nevada 89502

DATED: August 9, 2001.

Linda Jackling

CERTIFICATE OF MAILING

THE UNDERSIGNED HEREBY CERTIFIES THAT ON AUGUST 14, 2001, SHE
DEPOSITED FOR MAILING A COPY OF THE ATTACHED ORDER TO THE FOLLOWING:

WASHOE COUNTY DISTRICT ATTORNEY'S OFFICE
APPELLATE DIVISION
(INTEROFFICE MAIL)

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PAT MEACHAM
CRIMINAL CLERK

Case No. CR96-1581

'97 JAN 29 A8:15

Dept. No. 10

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
DEPUTY

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES A. STONE, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Plaintiff,

JURY TRIAL

Vs.

STEVEN FLOYD VOSS,

Defendant.)

=====

(Partial)

TRANSCRIPT OF PROCEEDINGS

October 7, 1996

Reno, Nevada

APPEARANCES:

For the State:

EGAN WALKER
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Deft:

COTTER C. CONWAY
Deputy Public Defender
75 Court Street
Reno, Nevada

Reported by:

RANDI LEE WALKER, CSR #137

Computer-Aided Transcription

ORIGINAL

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DEFT'S EXHIBITS

MARKED

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1 MONDAY, OCTOBER 7, 1996, 9:00 A.M.

2 //

3 THE COURT: Motions in limine -- Do you have
4 any objection to going forward without your client?

5 MR. CONWAY: No, I don't.

6 THE COURT: We will be on the record in Case
7 CR96-1581, the State of Nevada versus Steven Floyd Voss.

8 The record should reflect that Mr. Conway is
9 present in Court representing Mr. Voss.

10 The State is represented by Mr. Walker.

11 This is the time set by the Court for hearing
12 on several Motions in Limine which were offered on behalf
13 of the defense.

14 Motion in Limine number one asks that the
15 Court not allow any testimony by hearsay statements of
16 the victim.

17 There has been an opposition filed to that as
18 well as Motion in Limine number six, which tracks Motion
19 in Limine number one.

20 We will deal with those two first. And that
21 is Motion in Limine with reference to relevant evidence.

22 You presented some interesting questions for
23 the Court. However, my research clearly indicates that
24 under the facts of this case, as I understand them to be,

1 those Motions in Limine will be denied.

2 The State will be allowed to put on hearsay
3 statements of the victim, and will be allowed to put in
4 evidence concerning those statements, and the Court makes
5 a determination at this point in time that those are in
6 fact relevant.

7 Now if something comes up, Mr. Conway, that
8 you believe is outside the scope of this Court's ruling,
9 then you certainly will have the right to object.

10 MR. CONWAY: May I ask a question?

11 THE COURT: Yes.

12 MR. CONWAY: With respect to the scope, does
13 that mean you're dealing with her then existing intent
14 concerning the use of that check, and it's limited to
15 that?

16 THE COURT: Yes, it's limited to that.

17 MR. CONWAY: With respect to the other
18 relevant evidence objected to --

19 THE COURT: If it's not relevant, I am not
20 going to let it in. It should be handled as it's
21 offered, if it's offered.

22 MR. CONWAY: That's fine, I just think there
23 are things about it, for example, about their testimony
24 they are going to introduce concerning her disappearance

1 and things that have nothing to do with the forgery.

2 THE COURT: Which are not relevant to the
3 issues in this trial.

4 MR. WALKER: To cut to the chase of Mr.
5 Conway's concern, because he and I have had some kind of
6 glancing conversations about it, I can indicate to the
7 Court that I will intend to put in evidence of her
8 disappearance insofar as it provides an opportunity for
9 the commission of the crime.

10 Under 48.045 and 48.035, there is no way to
11 get around the fact that the last person she's seen alive
12 with is the defendant.

13 THE COURT: She may still be alive; nobody
14 knows.

15 MR. WALKER: Except, Your Honor, that I think
16 the evidence will show quite clearly she left everything
17 she owned in her house: Her car, all of her money,
18 etcetera. And all I intend to do is show that the last
19 person she is seen with -- I won't even use the word
20 "alive," in light of the Court's comments -- the last
21 person she's seen with is the defendant.

22 And in fact it becomes crucial, because the
23 defendant denies tht he ever saw her after he left her
24 house Thursday morning.

1 But there is a witness who saw him getting gas
2 in a place near where he says he got money to get gas,
3 with a woman in the car, who meets the general
4 description of the victim. And I think that goes
5 directly to the credibility and veracity of his own
6 comments to the detective.

7 So I just wanted to offer to the Court that's
8 where I will be driving with that.

9 THE COURT: If he testifies, I think that's
10 relevant. If he doesn't testify --

11 MR. WALKER: His statements will come in in
12 the case, the State's case in chief. He made statements
13 to the detectives denying that he was --

14 THE COURT: So you're going to try and bring
15 this in through the testimony of the detectives?

16 MR. WALKER: Actually an eyewitness. What
17 happens, Your Honor, is this, just so you have the facts
18 in terms of highlighting it in your mind.

19 I appreciate you will make the ruling you will
20 make at the time when it becomes relevant, but the
21 allegation is: Thursday morning, either at 8:00 or 9:00,
22 and it's unclear which, because Mr. Voss indicates both;
23 he and Miss Baxter leave her residence on West Fourth
24 Street close to the same time, within minutes, 10 to 15

1 minutes of one another.

2 He is then seen on an ATM Videotape a little
3 before 10:00 at the general area of the Albertson's on
4 Keystone near West Fourth Street.

5 And when confronted with that, says: Oh,
6 yeah, now I remember I was there. Yeah, I was at the
7 ATM, but I didn't see Miss Baxter.

8 Ironically the next day her car is discovered
9 abandoned in that parking lot, and an eyewitness will
10 testify that he saw the defendant, the defendant's truck,
11 with a woman in the passenger seat at a gas station very
12 near that location.

13 When the defendant was confronted about being
14 there, he said: I had gotten money to get gas.

15 THE COURT: I will deal with that as it comes
16 up during the course of the trial.

17 MR. CONWAY: I think that's been misstated.
18 He was not confronted with that. In fact when they asked
19 him what he was doing that day, and then they told him a
20 couple things, he said: Well, I did get money at an
21 ATM.

22 They asked him if he seen her, and he said:
23 No, I haven't seen her since I left the house, the
24 apartment.

1 Whatever probative value, which I don't think
2 there is any, certainly would be a hell of a lot more
3 prejudicial to him, far beyond that, and that's the
4 problem I have with that evidence.

5 If he wants to suggest to the jury that
6 somehow he was responsible for her disappearance, and
7 therefore he's guilty of these crimes, I don't think
8 that's appropriate.

9 You do not need to know that she disappeared
10 -- other than for the purpose of saying that that's why
11 she's not testifying.

12 But the fact that he was the last person to be
13 seen alive, which I think is not proved, per se, the fact
14 he might have been the last person has nothing to do with
15 the fact that he may or may not have formed the intent to
16 defraud and obtain money in the manner that he's been
17 accused of.

18 MR. WALKER: Except as it provides an
19 opportunity to commit the crime.

20 THE COURT: I will deal with it. I didn't
21 look at it from this standpoint. I will deal with it
22 when it comes up in the trial.

23 Motion in Limine number 2, in-custody
24 defendants are never presented to the jury in garb or

1 restraints.

2 I presume they will take him up to the fourth
3 floor and dress him out. Then you can go up and come
4 down with him.

5 MR. CONWAY: Yes, Your Honor, that's just a
6 standard request.

7 THE COURT: There will be no reference to his
8 in-custody status. Although, keep in mind if he should
9 take the stand, I can't tell you how many times I have
10 had somebody, a defendant, sitting on the witness stand
11 that says: Well, gees, I'm in jail.

12 MR. CONWAY: I understand.

13 THE COURT: I don't allow improper comments
14 and arguments as to the concluded Motion in Limine number
15 4. I will try and pull you up short if it happens. I
16 don't anticipate it; you are both competent people, and I
17 don't anticipate that's going to happen.

18 All you get to argue is what is in front of
19 the jury. You're not going to get to make up evidence at
20 the end of the trial if it isn't in front of the jury,
21 and everybody knows that. I don't think anybody will try
22 to do that.

23 Number six, we have already dealt with.

24 Number 7, prior bad acts are not relevant to

1 the issues in this trial, and will not be allowed unless
2 he takes the witness stand. And I don't know if he's got
3 any prior felony convictions or not.

4 MR. WALKER: I would represent, Your Honor,
5 just so it's a non issue, as an officer of the Court I
6 would represent I do not have in my possession any
7 certified copies of judgments of convictions for any
8 felonies regarding Mr. Voss.

9 Consequently, I will be making no such
10 reference.

11 THE COURT: Prior convictions is the same as
12 we just discussed. And since there are no certified
13 copies of prior felony convictions, there are no prior
14 convictions to put in front of the jury.

15 The Supreme Court has already stated that you
16 are allowed to present your theory of the case to the
17 jury, unless it's absolutely incredible, and I have
18 allowed some pretty incredible arguments.

19 Number 10, I am not sure exactly what this is
20 getting to, but if it's something that falls within the
21 attorney/client privilege, it's not going in front of the
22 jury unless you put it there.

23 MR. CONWAY: No, I don't intend at this time
24 to call my client as a witness in this trial. Mainly

1 because there are so many statements that are going to be
2 testified to, I am just asking for the standard, that the
3 Fifth Amendment Privilege not be commented on by the
4 State.

5 THE COURT: Well, it's not. I will inform the
6 jury he has a Fifth Amendment Privilege not to testify,
7 and they can draw no inference from that.

8 MR. CONWAY: I have provided those
9 instructions to the Court.

10 THE COURT: I think it's in the State's
11 instructions as well.

12 Number 11, the jury alone decides the
13 credibility of witnesses. You certainly both can argue
14 whether or not a witness should or should not be believed
15 in your opinion. But the final decision comes from the
16 jury, not from any of us.

17 And finally, number 12, the Rule of Exclusion
18 is asked for and granted, and there will be no witnesses
19 present in the courtroom during the testimony of any
20 other witness.

21 Anything else? Mr. Walker?

22 MR. WALKER: No. Thank you. I would
23 indicate, just as an officer of the Court, Mr. Voss's
24 mother is currently in the courtroom. I am anticipating

1 that she will be in the courtroom for the balance of the
2 trial. I may indeed seek to call her in my rebuttal
3 case, depending on how things wash. I have no objection,
4 however, if she remains in the courtroom.

5 THE COURT: If she's a proposed rebuttal
6 witness, she has the right to be here. And if you call
7 her, you call her.

8 MR. CONWAY: I don't intend to call her in my
9 case in chief, so therefore I am not asking her to be
10 excused.

11 THE COURT: The Rule of Exclusion does not
12 apply.

13 MR. CONWAY: Thank you, Your Honor.

14 THE COURT: Okay. Now the witness list, so
15 that everybody understands, I am going to inform the jury
16 that these are a list of potential witnesses, not all of
17 whom will necessarily be called.

18 It may be they will be called, but it's not
19 absolutely -- I am handing to my Clerk a copy of the
20 interlineated Information, and she will read that as it's
21 been interlineated to the jury, once they have been
22 selected.

23 MR. WALKER: Thank you, Your Honor.

24 MR. CONWAY: One other minor point. Do we

1 have more evidence to be --

2 MR. WALKER: Mr. Conway is referring, Your
3 Honor -- he and I met with your clerk, who was kind
4 enough to give us some of her time on Friday and mark
5 some of the evidence in this case. I requested at that
6 time that detectives from the Washoe County Sheriff's
7 Department be available. They were unable to come on
8 Friday. I requested they come first thing this morning
9 at 8:00 o'clock, to my office, and wires got crossed,
10 they weren't here.

11 I anticipate that Detective Canfield is
12 bringing all of the evidence which was collected in this
13 investigation to Court. So at some point we will need to
14 be marking that evidence, I think that's what --

15 THE COURT: Do you want to just mark it as you
16 introduce it?

17 MR. CONWAY: I think that's fine. We have
18 marked what we could on Friday.

19 THE COURT: Okay.

20 MR. CONWAY: There are two matters. I think
21 that we're going to have competing tapes that needs to be
22 decided on which one is properly to be introduced
23 concerning the statements.

24 I made my own this weekend.

1 THE COURT: I may let them both in.

2 MR. CONWAY: Well, they are both the same
3 thing, but I am including a little more than he is, but
4 at the same time I am also keeping out things like
5 references to polygraph and other material that's not
6 permissible in the trial.

7 And those tapes are coming to me at 9:00,
8 unfortunately, because that's when they got done.

9 MR. WALKER: I would indicate if Mr. Conway
10 gives me an opportunity to view where the tapes begin and
11 end --

12 THE COURT: Are they videotapes?

13 MR. CONWAY: Yes, of the statements.

14 THE COURT: What we could do, when we break
15 for lunch, if the tapes are here, we can take a look at
16 them.

17 MR. WALKER: Likely I will stipulate, Your
18 Honor, if I am guessing his tapes are a little bit more
19 inclusive than mine -- I cut my tape shorter than he
20 wanted, and I think wanted a little more information. If
21 that's the case, likely I think we will stipulate to
22 them.

23 THE COURT: Okay.

24 MR. CONWAY: That's fine. The only other

1 going to be objecting to pictures of the car, b
2 don't think it's relevant. I mean, there are s
3 are not relevant pictures, and I may object to
4 admissions on those grounds.

5 The pictures aren't in front of me,
6 judge them on that matter.

7 I will be objecting to ATM photos, t
8 to be 23.

9 THE COURT: All right, those I don't
10 my list here.

11 MR. WALKER: I have no objection, f
12 record, Your Honor, to defense proposed A and E

13 THE COURT: Exhibits A and B are ad
14 are Exhibits 1 and 2.

15 The rest of them we will deal with a
16 offered..

17 MR. CONWAY: Your Honor, I have a qu
18 with respect to A and B you just are admitted.
19 admit Exhibit B. I just marked it because I w
20 to make sure when I looked through the pictures
21 not offer it for admission.

22 I will offer A., yes.

23 THE COURT: A is admitted, and B we
24 with.

1 thing at this time, is there is going to be an answering
2 machine tape. I do have subpoenaed William Stevenson
3 from the Washoe County Sheriff's Office, and that may be
4 unnecessary because the State informed me it will
5 stipulate to the admission of that answering machine
6 tape.

7 MR. WALKER: That's correct, Your Honor. I
8 have indicated to Mr. Conway, and I will go ahead and put
9 it on the record now, that if Mr. Conway produces any
10 evidence collected, observed, gathered as a consequence
11 of the investigation of this case, I intend to stipulate
12 to that evidence.

13 The tape is one such piece of evidence.

14 THE COURT: Okay. I have Exhibits 1 through
15 22 filed on behalf of the State; and Exhibits A and B,
16 which have previously been marked. Is there any
17 objection to any of the State's Exhibits 1 through 22?

18 MR. CONWAY: I think there may be. I did not
19 get a copy of this. I am not going to have objection to
20 Exhibit 1. Exhibit 2.

21 I have already noted the objections to 3 and 4
22 with respect to I have my own videotapes, I think are
23 more appropriate.

24 I don't know all these photographs. I am

1 going to be objecting to pictures of the car, because I
2 don't think it's relevant. I mean, there are some that
3 are not relevant pictures, and I may object to those
4 admissions on those grounds.

5 The pictures aren't in front of me, so I can't
6 judge them on that matter.

7 I will be objecting to ATM photos, that seem
8 to be 23.

9 THE COURT: All right, those I don't have on
10 my list here.

11 MR. WALKER: I have no objection, for the
12 record, Your Honor, to defense proposed A and B.

13 THE COURT: Exhibits A and B are admitted, as
14 are Exhibits 1 and 2.

15 The rest of them we will deal with as they are
16 offered.

17 MR. CONWAY: Your Honor, I have a question
18 with respect to A and B you just are admitted. I may not
19 admit Exhibit B. I just marked it because I was trying
20 to make sure when I looked through the pictures. I may
21 not offer it for admission.

22 I will offer A., yes.

23 THE COURT: A is admitted, and B we will deal
24 with.

1 (Exhibit A, marked and admitted.)

2 (Exhibit B, marked for I.D.)

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: This is the time set for trial in
5 Case CR96-1581, the State of Nevada versus Steve Floyd
6 Voss.

7 The record should reflect that the defendant
8 is present in Court with his attorney, Mr. Conway.

9 The State is represented by Mr. Walker.

10 Are counsel ready to proceed? Mr. Conway on
11 behalf of the defendant?

12 MR. CONWAY: Yes, Your Honor.

13 THE COURT: Mr. Walker?

14 MR. WALKER: On behalf of the State, Your
15 Honor, I am prepared to proceed.

16 THE COURT: Thank you. At this time I am
17 going to ask the Clerk to call the roll of the jury
18 panel. As your name is called, if you will please answer
19 that you are here. If we mispronounce your name, and I
20 think I can promise you we will some of them, would you
21 please correct us.

22 (The Clerk called the roll of the jury panel.)

23 THE COURT: Let me introduce the attorneys
24 that will be handling this case.

No. CR96-1581

Dept. 3

SEP 25 1996 12:58

81

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

DEFENDANT'S

STEVEN FLOYD VOSS
Defendant.

MOTIONS IN LIMINE

COMES NOW, STEVEN FLOYD VOSS, by and through the
Washoe County Public Defender and Cotter C. Conway, Deputy
Public Defender, and presents the following Motions in Limine
in anticipation of October 7, 1996 trial:

1. MOTION IN LIMINE RE: HEARSAY STATEMENTS OF VICTIM

Hearsay evidence is evidence of a statement made
other than by a witness while testifying at the trial, which is
offered to prove the truth of the matter asserted. NRS 51.035.

Deutscher v. State, 95 Nev. 669 at 683 (1979). It is
inadmissible unless it comes within an exception. NRS 51.065.

The State intends to present the testimony of various
witnesses regarding statements made by the victim concerning a
certain Burgess North American Moving & Storage check. The
admission of such evidence will also violate Mr. VOSS' rights
under the confrontation clause because the victim is not

1 available for cross-examination. See California v. Green, 399
2 U.S. 149 (1970); see also Downey v. State, 103 Nev. 4 at 7
3 (1987); Corbin v. State, 97 Nev. 245 (1981).

4 Therefore, Mr. VOSS requests that this Court preclude
5 testimony of witnesses regarding hearsay statements made by the
6 victim.

7 2. MOTION THAT DEFENDANT NOT BE EXPOSED TO JURORS
8 WHILE IN PRISON GARB OR RESTRAINTS.

9 A criminal defendant clearly has the right to appear
10 before his jurors clad in the apparel of an innocent person.
11 Estelle v. Williams, 425 U. S. 501 (1976); Grooms v. State, 96
12 Nev. 142, 144 (1980). The presumption of innocence is
13 incompatible with the garb of guilt (handcuffs, leg restraints,
14 inmate clothing, etc.). Such an error is reversible. See
15 Grooms, supra.

16 Therefore, Mr. VOSS requests that this Court order
17 his custodians that he may not, at any time, be exposed in
18 prison garb and/or restraints to members of the jury panel.

19 3. MOTION TO PRECLUDE REFERENCE TO IN CUSTODY STATUS

20 The rule that one is innocent until proven guilty
21 means that a defendant is entitled to not only the presumption
22 of innocence, but also to indicia of innocence. Illinois v.
23 Allen, 397 U.S. 334 (1970); Haywood v. State, 107 Nev. 285
24 (1991). Informing the jury that a defendant is in jail raises
25 an inference of guilt. See Haywood, supra.

26 ///

1 Therefore, Mr. VOSS requests that this Court preclude
2 reference to his in custody status during the jury trial of
3 this case.

4 4. MOTION TO PRECLUDE IMPROPER COMMENTS AND ARGUMENT

5 An injection of personal beliefs into an argument
6 detracts from the "unprejudiced, impartial, and nonpartisan"
7 role that a prosecuting attorney assumes in the courtroom. By
8 stepping out of the prosecutor's role, which is to seek
9 justice, and by invoking the authority of his or her own
10 supposedly greater experience and knowledge, a prosecutor
11 invites undue jury reliance on the conclusions personally
12 endorsed by the prosecuting attorney. Howard v. State, 106 Nev.
13 713 (1990); Collier v. State, 101 Nev. 473 (1985). This would
14 include disparaging the defense counsel and/or his argument.
15 See Green v. State, 94 Nev. 731 (1978).

16 In addition, arguments asking the jury to place
17 themselves in the shoes of a party or the victim are improper.
18 McGuire v. State, 100 Nev. 153 (1984). It is equally improper
19 to ask the jury to vote in favor of future victims and against
20 the defendant. See Howard, supra; McGuire, supra.

21 5. MOTION TO PRECLUDE REFERENCE IN ARGUMENT TO
22 EVIDENCE NOT BEFORE THE JURY

23 Mr. VOSS requests that this Court preclude reference
24 in argument to evidence not properly before the jury. Jimenez
25 v. State, 106 Nev. 769 at 772 (1990); Ybarra v. State,
26 103 Nev. 8 at 15 (1987).

6. MOTION IN LIMINE RE: RELEVANT EVIDENCE

"Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. NRS 48.015. Pasgove v. State, 98 Nev. 434 at 436 (1982). Evidence which is not relevant is not admissible. NRS 48.025.

Even if this Court determines certain evidence offered by the State to be relevant, evidence is not admissible if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues or of misleading the jury. NRS 48.035.

Based upon a review of the discovery and an investigation into the facts of this case, Mr. VOSS will object to the testimony of the following witnesses: Claudette Andrews, Dave Boyd, Leon Marhanka, Tim Sturdavant, Teri Villaverde, Kelly Whitesell and Vernon Woodard. Their testimony is not relevant to any issue in this case. Absent some substantial connection between their testimony and the State's theory of the case, this Court should exclude the evidence. NRS 48.025(2); Abram v. State, 95 Nev. 352 (1979).

Mr. VOSS will also object to the testimony of the following witnesses: Barbara Jacobsen, Sophia Pantoja, Ed Park, Joyce Pea, Edward Prouse, Clay Robinson and Linda Weeks. Their testimony consists of hearsay statements of the victim and is otherwise not relevant to any issue in this case.

1 In addition, any probative value that these 14
2 witnesses may have at this trial will be substantially
3 outweighed by the danger of unfair prejudice, of confusion of
4 the issues or of misleading the jury. NRS 48.035.

5 Thus, Mr. VOSS requests that the State make an offer
6 of proof to this Court of the relevancy of their testimony
7 prior to presenting the witness (and his or her name) before
8 the jury.

9 7. MOTION IN LIMINE RE: PRIOR BAD ACTS

10 Evidence of other crimes, wrongs or acts is not
11 admissible to prove the character of a person in order to show
12 that he acted in conformity therewith. NRS 48.045. It may,
13 however, be admissible for other purposes.

14 Before evidence of a prior or subsequent bad act can
15 be admitted, the State must show, by plain, clear and
16 convincing evidence that the defendant committed the offense.
17 Kimberly v. State, 104 Nev. 336 (1988).

18 The proper procedure is as follows: 1) the State must
19 raise the issue of a collateral offense at a hearing outside
20 the presence of the jury; 2) the State must present its reasons
21 why the collateral offense is admissible pursuant to NRS
22 48.045(2); 3) the State must apprise the trial judge of the
23 quantum and quality of its evidence proving that the defendant
24 committed the prior or subsequent offense; and 4) the trial
25 judge must weigh the probative value of the proffered evidence

26 ///

1 against its prejudicial effect. Petrocelli v. State, 101 Nev.
2 46 (1985).

3 The fourth element, balancing the probative value
4 against the prejudicial effect, requires this Court to make a
5 specific ruling or finding that the probative value outweighs
6 the prejudicial impact of such evidence. Cirillo v. State,
7 96 Nev. 489 (1980). The reason for the rule is to prevent
8 improper consideration by the jury of matters not charged in
9 the information or indictment. As the Court in Nester v.
10 State, 75 Nev. 41 (1959), observed regarding the trial judge's
11 discretion to exclude otherwise relevant evidence if the
12 prejudicial effect outweighs its probative value:

13 [t]he trial judge should be recognized to have a
14 discretion to decide whether the probative weight of
15 the evidence outweighs its mere prejudice. ... he
16 should be allowed to say...whether it is the peg of
17 relevance or the dirty linen hung thereon, upon which
18 the jury is going to concentrate; and if in his
19 opinion, the peg is so small and the linen so bulky
20 and dirty that a jury will never see the peg, but
21 merely yield to indignation at the dirt, he should be
22 allowed to exclude it. Nester, supra, at 55 (citation
23 omitted).

24 Evidence of uncharged misconduct "should be received
25 with extreme caution, and if its relevancy is not clear, the
26 evidence should be excluded." McMichael v. State, 94 Nev. 184
at 190 (1978); Shults v. State, 96 Nev. 742 (1980). The Nevada
Supreme Court in Shults, supra, held:

Evidence of other crimes committed by a
criminal defendant is generally excluded due
to its highly prejudicial effect. A
defendant should not have to defend against
charges for which he is not on trial.

1 against its prejudicial effect. Petrocelli v. State, 101 Nev.
2 46 (1985).

3 The fourth element, balancing the probative value
4 against the prejudicial effect, requires this Court to make a
5 specific ruling or finding that the probative value outweighs
6 the prejudicial impact of such evidence. Cirillo v. State,
7 96 Nev. 489 (1980). The reason for the rule is to prevent
8 improper consideration by the jury of matters not charged in
9 the information or indictment. As the Court in Nester v.
10 State, 75 Nev. 41 (1959), observed regarding the trial judge's
11 discretion to exclude otherwise relevant evidence if the
12 prejudicial effect outweighs its probative value:

13 [t]he trial judge should be recognized to have a
14 discretion to decide whether the probative weight of
15 the evidence outweighs its mere prejudice. ... he
16 should be allowed to say...whether it is the peg of
17 relevance or the dirty linen hung thereon, upon which
18 the jury is going to concentrate; and if in his
19 opinion, the peg is so small and the linen so bulky
20 and dirty that a jury will never see the peg, but
21 merely yield to indignation at the dirt, he should be
22 allowed to exclude it. Nester, supra, at 55 (citation
23 omitted).

24 Evidence of uncharged misconduct "should be received
25 with extreme caution, and if its relevancy is not clear, the
26 evidence should be excluded." McMichael v. State, 94 Nev. 184
at 190 (1978); Shults v. State, 96 Nev. 742 (1980). The Nevada
Supreme Court in Shults, supra, held:

Evidence of other crimes committed by a
criminal defendant is generally excluded due
to its highly prejudicial effect. A
defendant should not have to defend against
charges for which he is not on trial.

1 The admission of uncharged evidence exposes a
2 defendant to the risk that the jury will be diverted from the
3 charge at hand and will convict on an improper basis. Nester,
4 supra. Admission of improper prior bad act evidence is
5 reversible error. Armstrong v. State, 110 Nev. 1322 (1994).

6 Thus, Mr. VOSS requests that the State disclose any
7 uncharged collateral or prior bad acts which it intends to
8 introduce during the trial and that a hearing pursuant to
9 Petrocelli be held prior to the trial.

10 8. MOTION IN LIMINE RE: PRIOR CONVICTIONS

11 For the purpose of attacking the credibility of a
12 witness, evidence that he has been convicted of a crime is
13 admissible but only if the crime was punishable by death or
14 imprisonment for more than 1 year under the law under which he
15 was convicted. NRS 50.095(1).

16 In addition, there can be only one irrefutable
17 documentation of the conviction and that is from the
18 exemplified copy of the judgment. Boley v. State, 85 Nev. 466
19 at 470 (1969). See also NRS 176.105; Miller v. Hayes, 95 Nev.
20 927 (1979) [Judgment of conviction must be signed by a judge];
21 Fairman v. State, 83 Nev. 287 (1967) [A verdict of a jury is
22 not a judgment of the court nor is it the final determination];
23 Revuelta v. State, 86 Nev. 224 (1970) [Failure to include the
24 penal sentence in the written judgment rendered it incompetent
25 at the time it was offered in evidence].

26 ///

1 Thus, the State must have exemplified copies of
2 convictions to offer into evidence. Further, in order to
3 introduce any prior convictions, the State must comply with NRS
4 50.095. If not, the this Court should preclude from
5 introduction into evidence any reference, either direct or
6 indirect, to any felony or other criminal conviction of Mr.
7 VOSS.

8 9. MOTION TO BE PERMITTED TO PRESENT INSTRUCTIONS TO
9 JURY ON DEFENSE THEORY OF CASE IF ANY EVIDENCE

10 Mr. VOSS requests that he be allowed to present jury
11 instructions on his theory of the case so long as there is some
12 evidence, no matter how weak or incredible, to support it. Earl
13 v. State, 111 Nev.Adv.Op. 148 (1995); McCraney v. State, 110
14 Nev. 250 (1994); Harris v. State, 106 Nev. 667 (1990). It is
15 reversible error not to instruct the jury as to a defendant's
16 theory of the case unless substantially covered by other
17 instructions. Earl v. State, supra; Harris v. State, supra.

18 10. MOTION TO PRECLUDE COMMENT UPON OR REFERENCE TO
19 MATTERS PRIVILEGED BY LAW

20 Mr. VOSS requests that this Court preclude reference
21 by the State or its witnesses to his fifth amendment privilege
22 or to his decision not to testify. Nev. Const. Art. 1, sec. 8;
23 Harkness v. State, 107 Nev. 800 (1991).

24 11. MOTION IN LIMINE TO PRECLUDE INVASION OF THE
25 PROVINCE OF THE JURY REGARDING CREDIBILITY OF
26 WITNESSES

 In Townsend v. State, 103 Nev. 113 (1987), the Nevada
Supreme Court ruled:

1 "it is generally inappropriate for either a
2 prosecution or defense expert to directly
3 characterize a putative victim's testimony as
4 being truthful or false."

5 The Court reasoned that such testimony invades "the
6 prerogative of the jury to make unassisted factual
7 determinations where expert testimony is unnecessary."

8 12. MOTION FOR RULE OF EXCLUSION

9 Mr. VOSS requests pursuant to NRS 50.155 that this
10 Court enter an order excluding all potential witnesses from the
11 courtroom until called to testify. See also Givens v. State,
12 99 Nev. 50 (1983).

13 CONCLUSION

14 Mr. VOSS respectfully requests the preceding motions
15 be granted based upon the authority given and pleadings and
16 papers on file in this case.

17 DATED this 25th day of September, 1996.

18 MICHAEL R. SPECCHIO
19 Washoe County Public Defender

20 By Cotter C. Conway
21 COTTER C. CONWAY
22 Deputy Public Defender
23
24
25
26

Case No. CR96-1581

Dept. No. 3

FILED

'96 OCT -2 22:45



IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

vs.

OPPOSITION TO MOTION
IN LIMINE

STEVEN FLOYD VOSS,


Defendant.

COMES NOW the State of Nevada by and through RICHARD A. GAMMICK, District Attorney of Washoe County, and EGAN WALKER, Deputy District Attorney, and opposes the Defendant's first Motion in Limine filed on September 25, 1996.

This Opposition is based upon the attached Points and Authorities and all of the papers and pleadings on file with the Court to date.

DATED this 2ND day of October, 1996.

RICHARD A. GAMMICK
District Attorney

By: 
EGAN WALKER
Deputy District Attorney

POINTS AND AUTHORITIESFACTS

The evidence in this case will show that Beverly Baxter was last seen on June 13, 1996, in the presence of the Defendant. When interviewed about her disappearance, the defendant claims he received a five thousand dollar "loan" from Beverly Baxter that same day which was to be used to buy a mobile home. He claims the "loan" was accomplished by delivery of a personal check in the amount of five thousand dollars drawn by Ms. Baxter on her own account, on which she deliberately left the payee line blank. According to the defendant, he then signed his own name to the payee portion of that check and attempted to negotiate it at two different branches of Ms. Baxter's bank the next day. The defendant told at least one bank official he needed the funds because Baxter was repaying a loan she had received from him. He, nonetheless, later told detectives he needed the money for a down payment on a mobile home.

The evidence will further show that the defendant had previously deposited a five thousand and twenty-six dollar check, (the "settlement" check), which he endorsed with the signature "B A Baxter," into Ms. Baxter's account on June 12, 1996. That check was issued the month before to Ms. Baxter and represented the proceeds of a forced sale of her personal property which had been stored at a storage unit business in California.

Every one of Ms. Baxter's friends, family, and coworkers will testify that her stated intention, even as late as the night before her disappearance, was to never deposit or

1 negotiate that check because she feared that act would be seen as
2 an accord and satisfaction of her claim against the storage
3 company which auctioned her property.

4 At least one co-worker and friend, Linda Weeks, recalls
5 that Baxter mentioned authoring a check which the defendant was
6 to use in order to retain an attorney. She recalls that
7 conversation took place at approximately 2:30 p.m. on June 12,
8 1996. Another friend, Gary Plank, will testify that as late as
9 9:00 p.m. on the same day, Baxter indicated that she and the
10 defendant were going to meet an attorney, that evening, that the
11 defendant had contacted on Baxter's behalf regarding the
12 settlement check.

13 ARGUMENT

14 I. HEARSAY TESTIMONY ABOUT BEVERLY BAXTER'S INTENT REGARDING A
15 SETTLEMENT CHECK FALLS WITHIN A FIRMLY ROOTED EXCEPTION TO
16 THE HEARSAY RULE AND DOES NOT VIOLATE THE CONFRONTATION
17 CLAUSE

18 It is well established in American Jurisprudence that
19 declarations of intent by unavailable witnesses to prove their
20 action or non-action in conformity with their stated intent are
21 admissible at trial. Mutual Life Insurance Co. v. Hillmon, 145
22 U.S. 285 (1892).

23 The Hillmon doctrine has been frequently applied in the
24 criminal arena in cases where the intent of an unavailable victim
25 is a relevant issue in the case. The Court of Appeals for the
26 Ninth Circuit has instructed in such cases, that where a hearsay
27 declarant is not present for cross-examination at trial, the
28 Confrontation Clause of the sixth amendment usually requires a

1 showing that the declarant is unavailable for trial. See
2 Terrovona v. Kincheloe, 852 F.2d 424 (C.A.9 (Wash.) 1988), citing
3 (Ohio v. Roberts, 448 U.S. 56, 66, (1980). If that showing is
4 made, the unavailable declarant's statement is admissible when it
5 bears "indicia of reliability." United States v. Miller, 830
6 F.2d 1073, 1077 (9th Cir.1987), cert. denied --- U.S. ---, 108
7 S.Ct. 1592 (1988). Reliability can be inferred without more in a
8 case where the evidence falls within a firmly rooted hearsay
9 exception." Roberts, 448 U.S. at 66.

10 When evidence falls within a "firmly rooted" exception
11 to the hearsay rule, the declarant is unavailable, and the
12 performance or non-performance of a particular act is a relevant
13 issue in a case, therefore, hearsay can be admitted to show an
14 individual's stated intention (state of mind) to perform or not
15 perform that act. United States v. Pheaster, 544 F.2d 353, 376
16 (9th Cir.1976), cert. denied 429 U.S. 1099 (1977).

17 In Nevada, the doctrine discussed above has been
18 recognized and applied in criminal cases through NRS 51.105. In
19 order for the "state of mind" exception to the hearsay rule to
20 apply in Nevada, the declarant's state of mind must be a relevant
21 issue, the relevance must be weighed against the prejudice to the
22 defendant, and a proper limiting instruction must be given to the
23 jury about their ability to use the evidence. Shults v. State,
24 96 Nev. 742 (1980).

25 The issue of Ms. Baxter's intent vis-a-vis the
26 "settlement" check is central to this case. If, as the
27 defendant maintains, she intended to deposit the settlement check
28

1 and loan him five thousand dollars, he committed no crime. If,
2 however, Baxter had no such intention, then the defendant's
3 assertions about her intentions must be false, and the intent to
4 defraud necessary for the bulk of the criminal charges lodged in
5 this case is present.

6 Statements Baxter made to her friends, co-workers and
7 relatives, in close proximity to her disappearance, that she had
8 no intention of cashing the "settlement" check, are clearly
9 relevant to refute the defendant's "explanation" and to prove up
10 the necessary intent to defraud. For example, at least one co-
11 worker and friend recalls that Baxter told her at 2:30 p.m. on
12 June 12, 1996, that the defendant had requested that she provide
13 him with a check which was to be used as a retainer for an
14 attorney the defendant had contacted on behalf of Baxter in
15 California. If believed, that intent directly refutes the
16 defendant's claims.

17 All of Ms. Baxter's actions and all of her out of court
18 statements about her intent, therefore, are contrary to the
19 assertions of the defendant. They are all probative on the issue
20 of the lawfulness of the defendant's actions, which is a central
21 issue in the case. They are also prejudicial only to the extent
22 that they tend to show his guilt, as opposed to inflaming the
23 passions of the jury or reflecting negatively on the defendant's
24 character.

25 The defendant's motion in limine should be denied as to
26 paragraph 1, consequently. Likewise, the defendant's argument in
27 paragraph 6 of his Motion to Suppress is largely a reiteration of
28

1 the argument in paragraph 1, and it, too, should be denied.

2 The remainder of the defendant's arguments are either
3 premature, or simply restate the rules of evidence or theories of
4 law which control in every criminal case. The State does not
5 offer argument or opposition to those assertions at this time,
6 therefore, but reserves the right to do so when they may become
7 an issue in the case or for the Court.

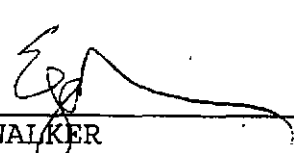
8 CONCLUSION

9 Hearsay statements attributable to Beverly Baxter are
10 relevant to issue of her intent with regard to the use and/or
11 non-use of a large settlement check which the defendant
12 effectively attempted to cash. She is unavailable, her
13 statements are relevant, their relevance outweighs any
14 prejudicial effect, and they are probative to a central issue in
15 the case.

16 For all of the reasons stated above, therefore, the
17 State respectfully requests that the defendant's Motion in Limine
18 be denied as to paragraphs 1 and 6, and that the remainder of the
19 legal assertions be decided on their merits when the are ripe for
20 consideration.

21 DATED this 2nd day of October, 1996.

22 RICHARD A. GAMMICK
23 District Attorney

24
25
26 By: 
27 EGAN WALKER
28 Deputy District Attorney

Dept. No. 10

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES A. STONE, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Plaintiff,

Vs.

STEVEN FLOYD VOSS,

Defendant.

SENTENCING

TRANSCRIPT OF PROCEEDINGS

November 27, 1996

~~Reno, Nevada~~

APPEARANCES:

For the State:

DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Deft:

COTTER CONWAY
Deputy Public Defender
75 Court Street
Reno, Nevada

Reported by:

RANDI LEE WALKER, CSR #137

Computer-Aided Transcription

ORIGINAL

1
2 WEDNESDAY, NOVEMBER 27, 1996, 8:30 A.M.

3 //

4 THE COURT: This is Case Number CR96-1581, the
5 State of Nevada versus Steven Floyd Voss.

6 The record should reflect the defendant is
7 present in Court with his attorney, Mr. Conway.

8 The State is represented by Mr. Stanton.

9 The Division by Mr. Lorang.

10 This is the time set for sentencing.

11 Before we do that, there has been a motion
12 filed on behalf of the defendant with which the Court
13 must deal first.

14 Do you have anything you want to add to your
15 motion, Mr. Conway?

16 MR. CONWAY: Briefly, Your Honor, I would note
17 there are actually two motions that have been filed.
18 There was a previous motion filed concerning -- asking
19 for a judgement of acquittal on some or all of the
20 counts; in addition to motion to dismiss Count 6 related
21 to Merger.

22 THE COURT: Do you have anything to add?

23 MR. CONWAY: Your Honor, the only thing I
24 would -- at this point I would just submit it with what

1 is on the brief, unless the Court has any questions
2 related to what I put forth in the motions.

3 THE COURT: Mr. Stanton?

4 MR. STANTON: Your Honor, I believe Mr. Walker
5 adequately addressed the argument relative to the
6 judgement of acquittal. That's basically an argument
7 that insufficient evidence was presented to convict on
8 all the counts.

9 I would submit it to the jury's verdict and
10 the Court's recollection of the facts and Mr. Walker's
11 opposition, which I think is clearly set forth in the
12 legal standard and the attendant facts as to each count.

13 As to the recently-filed motion to dismiss,
14 the only thing I would add to Mr. Walker's opposition
15 is: The analysis I believe the Court must undergo
16 relative to the doctrine of double jeopardy of Merger;
17 and that is that the elements are separate and distinct
18 and not by necessity lesser included. They do not merge
19 for purposes of sentencing.

20 I think Mr. Walker adequately sets forth the
21 factual basis as to why the requested count of attempted
22 -- I believe the last count, Count 6, attempted theft,
23 does not merge with either the forgery or the uttering,
24 since it's a separate and distinct act, and by necessity

1 could have been committed by one individual without
2 committing the other, which I think is the test this
3 Court has in the doctrine of Merger.

4 MR. CONWAY: Briefly with respect to what the
5 District Attorney said about the motion to dismiss. He
6 states precisely what the standard is; that necessarily
7 included act.

8 I put forth that the act of uttering a forged
9 instrument, say of \$5,000, is the same act as attempting
10 to get the \$5,000 by uttering a forged instrument. They
11 are necessarily included in each other, under these
12 facts. And that is what is supposed to be required under
13 the Merger, the statute that I set forth in the motion to
14 dismiss.

15 Your Honor, we would ask since those are the
16 same acts -- they are identical, Your Honor -- to punish
17 him for the same act twice would violate double jeopardy,
18 and we would ask the motion to dismiss be granted.

19 THE COURT: The motion for acquittal or new
20 trial is denied.

21 The Court has reviewed the motion to dismiss
22 and the opposition. The Court is of the opinion they are
23 two separate and distinct offenses, and do not merge, and
24 therefore the motion to dismiss Count 6 is also denied.

1 On October 10, 1996, the jury convicted Mr.
2 Voss on Count 1, of burglary; Counts 2 and 3 of uttering
3 a forged instrument; and Counts 4 and 5 of forgery; and
4 Count of attempted theft.

5 Judgment will enter based upon the jury's
6 verdict and the Court's rulings this morning.

7 I have received a copy of the Presentence
8 Investigation, and I've had an opportunity to read it.
9 I, of course, sat through the trial and am well familiar
10 with the facts of this case and I'm prepared to listen to
11 any arguments as regard sentencing.

12 Mr. Conway?

13 MR. CONWAY: Thank you, Your Honor. I would
14 note one correction, however, in reviewing the
15 Presentence Investigation Report with Mr. Voss last
16 night. I would note that he does not have any prior
17 felony convictions.

18 The felony that's put forth on page 3 in 1990,
19 practicing electrical contract without a license, that's
20 a misdemeanor.

21 I would note, however, it had been charged as
22 a felony larceny, and it was reduced due to the fact he
23 was practicing without a license that had expired, Your
24 Honor. However, that is a misdemeanor, not a felony.

1 Therefore, he has no prior felony
2 convictions. These are his first convictions.

3 With respect to sentencing, we're asking the
4 Court not to follow the recommendation. I think it's
5 quite clear that but for the tenor of this trial and some
6 of the outlying things, I don't think a request for any
7 prison time would have been requested.

8 However, I would note that a normal person
9 under these circumstances would probably be given the
10 grant of probation.

11 I would note for the record that the concerns
12 of the Division of Parole & Probation with respect to his
13 prior criminal history, they are all misdemeanors, as I
14 have pointed out, they also say he has a lack of
15 stability.

16 I will note, and I think it's quite clear,
17 that he was burned out of his apartment that he and his
18 mother were residing in prior to this incident.

19 He's otherwise always remained in the company
20 of his mother and resided with his mother, and has always
21 been locatable during this investigation.

22 He was never one they couldn't find. In fact
23 at one point he called them and told them where he had
24 moved to. So I think he's very stable in the community.

1 I think his criminal history speaks for itself
2 with respect to misdemeanors. Under normal circumstances
3 this would be a probationary term for a first-time felony
4 conviction.

5 If the Court is considering imposing any
6 prison time, the events of this thing were one
7 transaction. There may have been a number of crimes
8 committed during that transaction, but it's one
9 transaction. And any prison time should be minimum and
10 should run concurrent to all counts.

11 Thank you.

12 THE COURT: Mr. Stanton?

13 MR. STANTON: Well, I don't know where Mr.
14 Conway assesses that this case -- or what he bases his
15 assessment on that but for some other facts this would be
16 a probation case.

17 To begin with that analysis, page 2 of the
18 PSI, which is at this juncture uncontroverted save and
19 except for the felony conviction.

20 A review of that shows that the defendant has
21 had 12 arrests, six convictions, he has four outstanding
22 warrants from no less than three different states.

23 So his criminal record -- and now I guess
24 we're at a point where defense counsel begins to argue to

1 this Court: Well, he's got a criminal record and he's
2 wanted from three different states for four outstanding
3 warrants. But guess what, Judge,? They are only
4 misdemeanors.

5 What kind of misdemeanors are they? Because
6 the type of his conduct, the past history of the
7 defendant's I think is very important for this Court to
8 consider in his statement to the Court about the type of
9 character this man is, and the truthfulness and veracity
10 of his underlying claims to this Court, and the
11 protestations of innocence in this matter.

12 All of the offenses, save and except for the
13 first DUI in 1987 out of Wanette County, in Georgia,
14 every single offense deals with someone, particularly
15 this man, committing a fraud.

16 And yet this man wants to assert facts to this
17 Court, to take it as gospel, that he's an innocent man
18 without any attendant facts to support it.

19 He's a chronic, habitual criminal, and he's a
20 chronic and habitual, untruthful person.

21 In the PSI on page 4, we have strikingly
22 similar conduct committed by the defendant in
23 Hillsborough County in Florida in November of 1991.

24 Then we have at the bottom of page 4 a listing

1 of outstanding and undocumented criminal offenses, all
2 again have indicated a propensity to commit fraud and to
3 steal money. He was a thief. And he's been a thief for
4 over a decade and a half.

5 At the bottom, we have on page 4, receiving
6 back as early as 1979, receiving stolen property;
7 embezzlement in '81; vehicle theft; prowling in '83; and
8 spousal battery in 1990.

9 One of the things that I was waiting with
10 baited breath this morning for counsel and the defendant
11 to address is his DUI in July of 1996, in Washoe County.
12 And I did not hear any comment to the Court about that
13 offense.

14 And I think when the Court hears the attendant
15 facts of that case, you will know why you did not hear
16 anything about it.

17 That conviction was originally had under the
18 name Allen Voss, the defendant's brother. And he went
19 through the entire Court proceedings in Washoe County
20 using his brother's name, so his brother had a conviction
21 for DUI, until it was finally caught and this man was
22 properly convicted under his true and correct name.

23 That tells you the character of this man and
24 the ability for him to tell the truth. To use his own

1 brother and sustain conviction on his own brother and go
2 through the entire Court process, lying all the way.

3 Another insight into Mr. Voss is on page 7 of
4 the PSI. Not in his formal written statement to the
5 Department, but apparently in his interview with the
6 Department officials.

7 Mr. Voss has an excuse why he is convicted,
8 wrongfully so, according to him, and that is because of
9 many things. Number one, the District Attorney in this
10 case has an ego and bad blood problem between him and Mr.
11 Walker.

12 Well, last time I checked, a jury trial
13 doesn't occur where the District Attorney stands in front
14 of a jury and testifies as to what they think the
15 evidence is. And I am sure that didn't happen in this
16 courtroom.

17 He also attributes his problems to be an
18 election year. I fail to see the logic of connecting the
19 election year to his conviction.

20 THE COURT: If this case was supposed to do me
21 any good, it didn't.

22 MR. STANTON: And I think the logic doesn't
23 fall on the Court either, or at least compel the Court to
24 understand that.

1 Page 8, this is a good one. At the bottom of
2 page 8, the defendant, semi truthfully, tells the
3 Department: I have child support.

4 Well, of course the Department knows he has an
5 outstanding warrant for failing to pay child support.
6 But read his explanation. The defendant advises that
7 he's not followed through with required payments,
8 primarily due to the fact the child's mother will not
9 maintain contact with him, and will further not provide a
10 current address.

11 When is the last time this Court has ever
12 heard of a woman who needs child support, refusing to
13 give her address or location to the parent who owes
14 money? In all 50 states in the United States, payment is
15 -- payments can and usually is collected either by the
16 State Attorney General, or by the local District
17 Attorney's Office.

18 So there is absolutely no requirement
19 whatsoever for a woman, if there were some reason she did
20 not want to provide her address, and there certainly are
21 occasions where that's appropriate, but there is
22 absolutely no reason why the system cannot have a
23 location for the defendant to pay child support
24 payments.

1 And I think that statement speaks volumes of
2 Mr. Voss. And that is, frankly, Your Honor, he is a
3 chronic and habitual liar.

4 It's proven fact after fact, time after time.
5 Not only in this case, but in his criminal history and
6 his statements to the Division of Parole & Probation.

7 On page 9, his present employer -- well, I
8 know he's incarcerated, but prior to his arrest in this
9 matter and his incarceration, odd jobs, down on debts.
10 \$30,000 in debt, related to medical bills, loans,
11 foreclosures and something called legal fees.

12 All, I think, showing a pattern and a history
13 of what Mr. Voss's situation was when he decided to steal
14 money from Miss Baxter.

15 He did not have any income coming in from his
16 jobs. And he was, by his own admission, seriously in
17 debt.

18 The question, I think, as it comes to the
19 Court, contrary to Mr. Conway's's evaluation that this is
20 but for some other attendant facts, and I am not sure
21 what he's driving at, but I am sure it's probably obvious
22 to the Court, he didn't articulate what are the obvious
23 outside facts, other than the victim in this case is
24 still to this date missing.

1 A woman who was punctual socially and
2 professionally, all of a sudden vanishes from the face of
3 the earth at precisely the same time that the defendant
4 begins stealing significant quantities of money from
5 her.

6 Is that a fact that is hanging over this case?
7 Absolutely. And in my comments in just a moment, the
8 State would recommend how this Court should take that
9 fact into consideration.

10 Number one, and I think the two important
11 things that a Court appropriately addresses in sentencing
12 is the character and the history and the criminal
13 behavior of the defendant, and the attendant facts of
14 this case.

15 I have already addressed the character and the
16 criminal behavior of this defendant. While certainly
17 they are not felony convictions, what difference does it
18 make in this particular case, when you look at the
19 pattern of this man's criminal history? It runs
20 unabated, at least according to his arrest and formal
21 interaction with the system from 1980 -- actually 1979,
22 and every single year for over a decade and a half this
23 man is interacting practically with the law in a negative
24 fashion for a formal arrest or formal conviction.

1 His repeated attempts or comments to this
2 Court and to the Department, that are clearly based upon
3 the facts, lies.

4 Now the facts of this case: Should the Court,
5 when it looks at the parameters of the minimum and the
6 maximum of, say, for instance, Count 1, consider what is
7 the most aggravated burglary, and what is the most
8 mitigated burglary as far as time goes to give this
9 defendant?

10 Well, certainly we have addressed the criminal
11 history. But how about the aggravated and mitigated
12 section of the facts of this case?

13 Regardless, and putting aside the defendant's
14 criminal history and character, let's just look at the
15 facts of the crime itself, and what type of burglary does
16 this indicate to the Court as far as degree of
17 offensiveness?

18 This woman, Beverly Baxter, has vanished. The
19 evidence before this Court in the trial is that contrary
20 to what the defendant told the police, and his comments
21 in here in his written comments to the Court that he was
22 always truthful to the police -- I will get to that in a
23 moment, because he wasn't -- specifically his
24 untruthfulness to the police was when he was with Miss

1 Baxter.

2 And that's precisely at the time, as the Court
3 remembers, Mr. Voss in his pickup truck outside the ATM,
4 which is now recorded, as far as the time he was there at
5 Fourth and Keystone, 10:00 a.m., withdrawing money.

6 And the testimony was that in his truck was a
7 woman that entirely matched the description of Beverly
8 Baxter. The last time that she's seen alive, it's with
9 this man, right at the time that he is stealing money
10 from her.

11 And so when the Court considers the
12 aggravation and the facts, the State cannot present a
13 more aggravated set of thefts, cases to this Court, based
14 upon that fact alone, as to this woman, who by all the
15 testimony, was punctual both in her professional and
16 social life.

17 And this man, wanting and needing money, all
18 of a sudden gets some from the victim, who can't be found
19 anymore.

20 That is, as the State has indicated
21 previously, one of the most aggravating factors of a
22 burglary, of an uttering of a forged instrument, a
23 forgery and attempted theft.

24 In his written statement, as I know the Court

1 has read, he concludes several times that he was truthful
2 to the police.

3 Well, as the Court recollects the facts of
4 this case, he lied to the detectives about his
5 whereabouts on Thursday morning.

6 And he also, as the Court recalls, what his
7 version of events was that he told each of the bank
8 tellers when he attempted to pass this check. The
9 stories were inconsistent with one another. He didn't
10 tell Teller 1 that he had -- or didn't tell Teller 2 that
11 he had tried to attempt to pass a check to Teller 1 at a
12 different branch.

13 So for him to come in here and tell the Court,
14 that, hey, look, I'm a truthful person and I cooperated
15 with the police, is a flat out lie based upon the
16 evidence this Court heard during trial.

17 I think the process of the final DUI, using
18 his brother's name all the way through the conviction,
19 and representing to the court that he indeed is Allen
20 Voss, is once again something that if the Court hasn't
21 already viewed anything that Mr. Voss would say either by
22 himself, or through counsel to this Court, it should be
23 viewed with grave suspicion, unless there is absolute
24 facts to corroborate it.

1 And based upon all his statements and
2 allegations and his comments to the Department or
3 comments to the Court, not one of them is corroborated by
4 any independent evidence. Not one.

5 Based upon the two primary considerations from
6 the State's perspective of Mr. Voss; that is, his
7 character, his criminal history and attendant facts of
8 the instant offenses, the State's recommendation to the
9 Court is that these are all on the upper tier of
10 aggravation; therefore, the State's recommendation to the
11 Court is not only that probation is not viable, which I
12 believe my comments make obvious, but that his sentence
13 relative to Count 1 should indeed be the maximum.

14 The State would recommend to the Court that it
15 be 120 months as a maximum, 48 as the minimal. I concur
16 with the recommendation on Counts 2, 3 and 4, especially
17 relative to consecutive nature of those offenses.

18 I would recommend, however, that Count 4 and
19 5, the forgeries, because of the attendant nature and
20 elements of those counts, that that is indeed an
21 aggravated forgery, and that they should also be maximum
22 in nature.

23 My calculations show 48 months on the maximum.
24 for counts 4 and 5; 19 months -- or actually I calculated

1 it at 19.2 months as the minimum on Counts 4 and 5. All
2 those to be consecutive in nature to Count 1, which the
3 State has indicated should be 120 to 48. That's the
4 recommendation from the State.

5 I have nothing further to add unless the Court
6 has specific questions.

7 Thank you, Your Honor.

8 THE COURT: Mr. Lorang, does the Division have
9 anything to add?

10 THE DIVISION: Nothing, Your Honor, except for
11 the disposition of the felony conviction. That's the
12 information we received from the Florida officials, and
13 we stand by that.

14 THE COURT: Mr. Voss, do you have anything you
15 want to say?

16 THE DEFT: I believe Mr. Conway has pretty
17 much addressed our side.

18 MR. CONWAY: I have a couple points I want to
19 address, if I may.

20 With respect to the character on record, that
21 certainly stands for what is in the Presentence Report,
22 except for what has been reported as a prior felony, that
23 we have tried to correct.

24 With respect to requesting the recommendation

1 the State requested with respect to the sentence they are
2 asking for, I would only point out the aggravated
3 circumstance that they are doing is based on speculation,
4 conjecture.

5 They are trying very hard to add a number of
6 years to this man's sentence based on something they
7 believe happened to this victim.

8 The problem is, is that if they knew that
9 happened, they would have charged. This is not the time
10 to punish him for what they think or what they speculate
11 would have happened.

12 The crime that occurred, as I pointed out, all
13 six counts relate to one transactional event. And I
14 think the most important thing to note, is even if the
15 Court doesn't find that Count 6 and I believe 3, which is
16 the uttering and attempted theft, may not fit under the
17 Merger statute, they certainly are the same event. These
18 are the same crime.

19 Your Honor, I believe that there is -- other
20 than the fact that his character may not allow him to be
21 a probationary candidate, it certainly -- there is
22 nothing in this case, this particular case, that warrants
23 anything above the minimums, or anything above running
24 them anything but concurrent.

1 And we would ask the Court to impose it in
2 that manner.

3 THE COURT: I have reviewed the Presentence
4 Investigation, and I have thought about this case a great
5 deal. All of us are human beings, and there is just no
6 way in the world that we can pretend that Miss Baxter was
7 here and that she testified. We know that's not true.

8 The last person she was seen with was Mr.
9 Voss.

10 It's says in his letter and his comments that
11 when she shows up alive, she will say that all of these
12 things are not true.

13 But to be very honest with you, I don't think
14 she's ever going to show up alive.

15 The jury listened to this case, the jury made
16 the decisions, and the jury convicted him on all six
17 counts.

18 When I look at his Presentence Investigation,
19 I see somebody who has, for the last 17 years, done
20 everything under his power to evade responsibilities for
21 his actions.

22 And his conduct, quite frankly, has been
23 escalating. When you combine that with the fact his most
24 recent encounter with the law, after this case arose, was

1 a driving-under-the-influence charge in this county.

2 And in order to evade responsibility, he lied
3 about who he was, and attempted to pass the blame off on
4 somebody else.

5 I think Mr. Voss is a menace. He's a menace
6 to society, a menace to this community. And because I
7 believe that way, I am going to sentence him as follows:

8 In addition to the \$25.00
9 administrative-assessment fee and \$750.00 in attorney's
10 fees, probation will be denied, and the defendant, Steven
11 Floyd Voss, is sentenced as follows on Count 1, burglary,
12 to a maximum term of 120 months, and a minimum parole
13 eligibility of 48 months in the Nevada Department of
14 Prisons.

15 Count 2, uttering a forged instrument, to a
16 maximum term of 48 months, and a minimum parole
17 eligibility of 16 months in the Nevada Department of
18 Prisons, consecutive to Count 1.

19 In Count 3, uttering a forged instrument, to a
20 maximum term of 48 months, with a minimum parole
21 eligibility of 16 months in the Nevada Department of
22 Prisons, consecutive to Counts 1 and 2.

23 On Count 4, to a maximum term of 48 months and
24 a minimum parole eligibility of 16 months in the Nevada

1 Department of Prisons, consecutive to Counts 1, 2 and 3.

2 On Count 5, forgery, to a maximum term of 48
3 months, and a minimum parole eligibility of 16 months in
4 the Nevada Department of Prisons, consecutive to Counts
5 1, 2, 3 and 4.

6 On Count 6, attempted theft, to a maximum term
7 of 48 months, with a minimum parole eligibility of 16
8 months in the Nevada Department of Prisons, consecutive
9 to all of the previously-entered counts.

10 With credit for 137 days time served.

11 That's the Court's order.

12 Mr. Voss, the law requires me to advise you
13 that you have the right to appeal this conviction, if you
14 chose to do so, you let Mr. Conway know and he will file
15 the proper notices.

16 You have 30 days from today's date to do
17 something.

18 THE DEFT: Yes, I'm aware of that. Thank
19 you.

20 //////////////

21

22

23

24

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)
4

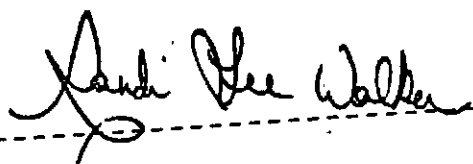
5 I, RANDI LEE WALKER, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, do hereby certify:

8 That as such Reporter, I was present in
9 Department No. 10 of the above court on said date, time
10 and hour, and I then and there took verbatim stenotype
11 notes of the proceedings had and testimony given therein.

12 That the foregoing transcript is a full, true
13 and correct transcript of my said stenotype notes, so
14 taken as aforesaid.

15 That the foregoing transcript was taken down
16 under my direction and control, and to the best of my
17 knowledge skill and ability.

18 DATED: At Reno, Nevada, this 29th day of
19 November, 1996.

20 
21 -----
22 RANDI LEE WALKER, CSR #137
23
24

CERTIFICATE OF SERVICE BY U.S.MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P. 5(b),
that on this 19th day of July, 2004, I, mailed a true
and correct copy of the foregoing: Index Of Exhibits In Support Of
Motion For Leave To File A Successive Petition For Writ Of Habeas
Corpus (Post-Conviction) and alternative, (Pre-Sentencing) Motion
To Set Aside Jury Verdict, addressed to:

RICHARD GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box #11130
Reno, Nevada 89520-0027

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

By: Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O.Box #1989
 Ely, Nevada 89301-9999

FILED

2004 JUL 27 AM 9:18

RONALD A. LONGTIN, JR.

BY *[Signature]*
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,
 Petitioner,

VS.

E.K.McDANIEL, et al.,
 Respondent's,

Case No. CR96-P-1581-A

Dept.No. 10

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

COMES NOW, Petitioner, STEVEN FLOYD VOSS, in proper person,
 pursuant to NRS 12.015, and respectfully moves the Honorable
 Court for an ORDER granting him leave to procede in the above
 entitled action in Forma Pauperis without requiring security for
 the costs of prosecuting this action.

This motion is made and based upon the attached Affidavit
 and Certificate Of Inmate's Institutional Account.

RESPECTFULLY SUBMITTED, this 19th day of July 2004.

By: *Steven F Voss*
 STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

DC-9900026702-062
 POST STEVEN FLOYD VOSS (D1 5 Pages
 District Court 07/27/2004 09:18 AM
 Washoe County 2385
 CR96P1581A

STEVEN FLOYD VOSS #52094
 ELY STATE PRISON
 P.O. Box #1989
 Ely, Nevada 89301-9999

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,)	Case No. CR96-P-1581-C
)	
Petitioner,)	Dept.No. 10
)	
VS.)	
)	
E.K.McDANIEL, et al.,)	<u>AFFIDAVIT IN SUPPORT OF</u>
)	<u>REQUEST TO PROCEDE IN</u>
Respondent's,)	<u>FORMA PAUPERIS</u>
	/	

I, STEVEN FLOYD VOSS, first being duly sworn, deposes and says that I am the Petitioner in the above entitled action; that in support of my Motion For Leave To Proceed in Forma Puaperis without being required to prepay fees, costs, or give security therefore, I state that because of my poverty, I am unable to pay the costs of said proceeding or to give security therefore; that I am intitled to relief.

I, do request an attorney to be appointed. I, further swear that the responses which I have made to the below questions and instructions are true and correct to the best of my knowledge.

1. Are you presently employed? NO.

(a) NOT APPLICABLE.

(b) If the answer is "NO", state the date of last employment and the amount of salary and wages per month you received: Date of last employment, 1995, amount of wages unknown.

1 2. Have you received within the past twelve months any money
2 from any of the following sources?

3 (a) Business, profession or form of self-employment? NO.

4 (b) Rent payment, interest or dividends? NO.

5 (c) Pensions, annuities or life insurance payments? NO.

6 (d) Gifts or inheritances? YES.

7 (e) Any other sources? NO.

8 If the answer is "YES" to any of the above describe each source of
9 money and state the ammount received from each during the past
10 twelve months: Cash gifts from family, estimated total amount of
11 gifts combined, approximately \$500.00.

12
13 3. Do you own cash or equivalent prison currency, or do you
14 have money in a checking or savings account? YES.

15 If the answer is "Yes" state the total amount of monies; At times
16 as a result of gifts from family, I sometimes have an amount of
17 approximately \$50.00 to \$100.00 in credit to my Inmate Account
18 which is used for Medical Co-payments, hygiene items, etc.

19
20 4. Do you own any real estate, stocks, bonds, notes,
21 automobiles, or other valuable property? NO.

22
23 5. NOT APPLICABLE.

24
25
26 ///

27 ///

28 ///

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,

Petitioner,

VS.

E.K. McDANIEL, et al.,

Respondent's,

Case No. CR96-P-1581-A

Dept. No. 10

INMATE FINANCIAL CERTIFICATE

I, hereby certify that the Petitioner above named has the
sum of \$ 86.03, on account to his credit at the Ely State
Prison where he is presently confined. I, further certify that
the Petitioner has the following securities to his credit
according to institutional records: \$ 200.00

DATED this 17th day of MAY 2004. ✓

By: [Signature]
Nevada Department Of Corrections,
Inmate Services Accountant or an
Authorized Officer Of Institution

Title: Acct Tech II

Submitted to Inmate Services on this 10th day of May, 2004.

By: [Signature]
STEVEN FLOYD VOSS #52094 ✓
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

RCUD IN SER 04NRY14

1 UNDER PENALTY OF PURJURY, pursuant to NRS 208.165, the
2 undersigned, Petitioner affirms that the above Affidavit is true
3 and correct to the best of his knowledge and belief.

4
5 DATED, this 19th day of July 2004.

6 BY: Steven F Voss
7 STEVEN FLOYD VOSS,
8 Petitioner,

9
10 CERTIFICATE OF SERVICE BY U.S.MAIL

11 I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
12 5(b), that on this 19th day of July 2004, I mailed a
13 true and correct copy of the foregoing, Motion For Leave To
14 Procede In Forma Pauperis, Affidavit In Support of "Motion" and
15 Inmate Financial Certificate, Addressed to:

16 RICHARD GAMICK
17 WASHOE COUNTY DISTRICT ATTORNEY
18 P.O. Box #11130
19 Reno, Nevada 89520-0027

20 and,

21 BRIAN SANDOVOL
22 NEVADA ATTORNEY GENERAL
23 100 North Carson Street
24 Carson City, Nevada 89701-4714

25 By: Steven F Voss
26 STEVEN FLOYD VOSS #52094
27 ELY STATE PRISON
28 P.O. Box #1989
Ely, Nevada 89301-9999

STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

FILED

2004 JUL 27 AM 9:18

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

RONALD A. LONGSTIN, JR.

By [Signature]
DEPUTY

STEVEN FLOYD VOSS,

Petitioner,

VS.

E.K.McDANIEL, et al.,

Respondent's,

Case No. CR96-P-1581-A
Dept. No. 10

MOTION FOR LEAVE OF COURT TO FILE A SUCCESSIVE PETITION FOR WRIT
OF HABEAS CORPUS (POST-CONVICTION), AND ALTERNATE;
PRE-SENTENCING MOTION TO SET ASIDE JURY VERDICT.

COMES NOW, Petitioner, STEVEN FLOYD VOSS, in proper person
and hereby moves this Honorable Court for an ORDER granting the
Petitioner leave to bring forth a Successive Petition For Writ Of
Habeas Corpus (Post-Conviction)/Motion To Set Aside Jury Verdict.

This Motion is made and predicated upon the attached
pleadings, Petitioner's accompanying Index Of Exhibits In Support
of the Instant Motion submitted herewith, aswell as all papers
and pleadings on file including Petition For Writ Of Habeas Corpus
submitted herewith.

RESPECTFULLY SUBMITTED, on this 19th day of July 2004.

By: [Signature]
STEVEN FLOYD VOSS,
Petitioner,

STATEMENT OF THE CASE

Petitioner, STEVEN FLOYD VOSS, was found guilty after a Jury Trial and punished by imprisonment in the Nevada State Prison for a maximum term of one hundred twenty (120) months with a minimum term of forty eight (48) months on Count I, Burglary; on Count II, Uttering A Forged Instrument, to a maximum term of forty eight (48) months with a minimum term of sixteen (16) months consecutive to Count I; on Count III, Uttering A Forged Instrument, to a maximum term of forty eight (48) months with a minimum term of sixteen (16) months consecutive to Counts I and II; on Count IV, Forgery, to a maximum term of forty eight (48) months with a minimum term of sixteen months consecutive to Counts I, II and III; on Count V, Forgery, to a maximum term of forty eight (48) months with a minimum term of sixteen (16) months consecutive to Counts I, II, III and IV; on Count VI, Attempted Theft, to a maximum term of forty eight (48) months with a minimum term of sixteen (16) months consecutive to Counts I, II, III, IV and V. With credit for (137) days time served. Mr. Voss was further ordered to pay Seven Hundred Fifty Dollars (\$750.00) Attorney Fees and the Statutory Administrative Assessment Fee of Twenty Five Dollars (\$25.00).

MR. VOSS, FILED A TIMELY NOTICE OF APPEAL. An Order Dismissing Appeal was filed in the Nevada Supreme Court, Case No. 29783 on March 11, 1999. MR. VOSS filed a Proper Person Petition For Writ Of Habeas Corpus (Post-Conviction) on March 9, 2000. An Evidentiary Hearing was ORDERED and was held in Department 10, of the Second Judicial District Court Of Nevada, In And For Washoe County, Reno, Nevada. Judge Steven P. Elliot, presiding. On

1 June 8, 2001 the Court granted the Writ, but only in so far as
2 allowing for a new sentencing hearing. After determining that
3 the Sentencing Court had relied upon "Suspect and Impalpable
4 Information" in determining sentence. A timely Notice Of Appeal
5 To The Partial Denial Of Petition was filed . An ORDER Of
6 Affirmance was entered by the Nevada Supreme Court on January 17,
7 2002. A federal Petition For Writ Of Habeas Corpus, pursuant to
8 28 U.S.C. § 2254 was filed in the United States District Court,
9 District Of Nevada, Reno, Nevada on November 19, 2002..

10 A Successive Petition For Writ Of Habeas Corpus (Post-
11 Conviction) was filed on April 14, 2003 and was dismissed as
12 un-timely by this Court on October 13, 2003. A timely Notice Of
13 Appeal to the Denial and Dismissal of Petition was filed on
14 November 2, 2003.. On December 2, 2003 the Appeal was docketed for
15 review by the Nevada Supreme Court, where it is presently
16 pending Fast Track Review.

17 18 LEGAL ISSUES PRESENTED HEREIN

19
20 (a) Ground one: THE TRIAL COURT LACKED JURISDICTION TO TRIE
21 PETITIONER, WHERE THE TRIAL JUDGE ENTERTAINED EITHER AN ACTUAL
22 PERSONAL BIAS, OR AN IMPIED PERSONAL BIAS TOWARD THE ACCUSED.

23 24 JURISDICTION

25
26 This Honorable Court has jurisdiction to hear the instant
27 matter pursuant to NRS 34.724, NRS 1.230 and the Nevada Code Of
28 Judicial Conduct, Canon 3

1 NRS 34.724 Persons who may file petition;effect of filing.

2 1. Any person convicted of a crime and under sentence of
3 death or imprisonment who claims that the conviction was obtained,
4 or that the sentence was imposed, in violation of the Constitution
5 of the United States or the constitution or laws of this state, or
6 who claims that the time he has served pursuant to the judgment of
conviction has been improperly computed, may, without paying a
filing fee, file a post-conviction petition for writ of habeas
corpus to obtain relief from the conviction or sentence or to
challenge the computation of time that he has served.

7 2. Such petition:

8 (a) Is not a substitute for and does not affect any remedies
9 which are incident to the proceedings in the trial court or the
remedy of direct review of the sentence or conviction.

10 (b) Comprehends and takes the place of all other common law,
11 statutory or other remedies which have been available for
12 challenging the validity of the conviction or sentence, and must
be used exclusively in place of them.

13 (c) Is the only remedy available to an incarcerated person
14 to challenge the computation of time that he has served pursuant
15 to a judgment of conviction.

16 (Added to NRS by 1991,75)

17
18 Petitioner, anticipates the inevitable argument that the
19 instant petition is untimely pursuant to the dictates of the
20 Nevada Revised Statutes, NRS 34.726.

21 NRS 34.726 Limitations on time to file;stay of sentence.

22 1. Unless there is good cause shown for delay, a petition
23 that challenges the validity of a judgment or sentence must be
24 filed within 1 year after the entry of the judgment of conviction
25 or, if an appeal has been taken from the judgment, within 1 year
26 after the supreme court issues its remittiture. For the purposes
of this subsection, good cause exists if the petitioner
demonstrates to the satisfaction of the court:

27 (a) That the delay is not the fault of petitioner; and

28 (b) That dismissal of the petition as untimely will unduly
prejudice the petitioner.

29 2. The execution of a sentence must not be stayed for the
30 period provided in subsection 1 solely because a petition may be
31 filed within that period. A stay of sentence must not be granted
32 unless:

33 (a) A petition is actually filed;and

34 (b) The petitioner establishes a compelling basis for the
stay.

35 (Added to NRS by 1991,75)

1 Additionally, Petitioner anticipates that the Respondent may
2 argue the premise of "Presumed Prejudice" pursuant to NRS 34.800
3 and specifically plead "The Equitable Doctrine Of Laches" in
4 support of such premise. Where a period exceeding five years has
5 passed since the entry of the Judgment Of Conviction or a decision
6 on Direct Appeal.

7

8 NRS 34.800 Dismissal of petition for delay in filing.

9 1. A petition may be dismissed if delay in the filing of the
10 petition:

11 (a) Prejudices the respondent or the state of nevada in
12 responding to the petition, unless the petitioner shows that the
13 petition is based upon grounds of which he could not have had
14 knowledge by the exercise of reasonable diligence before the
15 circumstances prejudicial to the state occurred; or

16 (b) Prejudices the state of nevada in its ability to conduct
17 a retrial of the petitioner, unless the petitioner demonstrates
18 that a fundamental miscarriage of justice has occurred in the
19 proceedings resulting in the judgment of conviction or sentence.

20 2. A period exceeding 5 years between the filing of a
21 judgment of conviction, an order imposing a sentence of
22 imprisonment or a decision on direct appeal of a judgment of
23 conviction and the filing of a petition challenging the validity
24 of a judgment of conviction creates a rebuttable presumption of
25 prejudice to the state. In a motion to dismiss the petition
26 based on that prejudice, the respondent or the state of nevada
27 must specifically plead laches. The petitioner must be given an
28 opportunity to respond to the allegations in the pleading before
a ruling on the motion is made.

(Added to NRS by 1985, 1231; A 1987, 1219; 1991, 87)

21

22 Further, Petitioner anticipates that the respondent may
23 argue for dismissal of petition upon the "Successive Nature" of
24 the instant petition, pursuant to NRS 34.810.

25

26 NRS 34.810 Additional reasons for dismissal of petition.

27 1. The court shall dismiss a petition if the court
28 determines that:

1 (a) The petitioner's conviction was upon a plea of guilty or
2 guilty but mentally ill and that the petition is not based on the
3 allegation that the plea was involuntarily or unknowingly entered
or that the the plea was entered without effective assistance of
counsel.

4 (b) The petitioner's conviction was the result of trial and
the grounds of the petition could have been:

(1) Presented to the trial court;

5 (2) Raised in a direct appeal or a prior petition for writ
of habeas corpus or post-conviction relief; or

6 (3) Raised in any other proceeding that petitioner has taken
to secure relief from his conviction and sentence, unless the
7 court finds both cause for the failure to present the grounds and
actual prejudice to petitioner.

8 2. A second or successive petition must be dismissed if the
9 judge or justice determines that it fails to allege new or
different grounds for relief and that the prior determination was
10 on the merits or, if new and different grounds are alleged, the
judge or justice finds that the failure of the petitioner to
11 assert those grounds in a prior petition constituted abuse of the
writ.

12 3. Pursuant to subsections 1 and 2, the petitioner has the
burden of pleading and proving specific facts that demonstrate:

13 (a) Good cause for the petitioner's failure to present the
claim or for presenting the claim again; and

14 (b) Actual prejudice to petitioner. The petitioner shall
15 include in the petition all prior proceedings in which he
challenged the same conviction and sentence.

16 4. The court may dismiss a petition that fails to include
17 any prior proceedings of which the court has knowledge through
the record or through the pleading submitted by the respondent.

18 (Added to NRS by 1985, 1232; A 1989, 457; 1995, 2465)

19
20 However, based upon the particular circumstances of the
21 instant case procedural bars are not available to the respondent.
22 First, procedural time bars and procedural bars related to the
23 filing of successive petitions do not apply. Due to the fact
24 that there is NO possible issue of prejudice to the respondent
25 where the petitioner has been granted a new sentencing
26 proceeding which is presently pending in this court and where
27 therefore the petitioner will be statutorily entitled to pursue
28 Petition For Writ Of Habeas Corpus (Post-Conviction) once a new

1 judgment is entered by this Court. Secondly, procedural
 2 defaults, such as time bars, do NOT apply to petitions which raise
 3 jurisdictional challenges, and raise questions concerning a Courts
 4 "Personal Jurisdiction" or "Subject Matter Jurisdiction",
 5 Jurisdictional Challenges may be raised at any time.

6 In the case of United States V. Barragan-Mendoza, 174 F.3d
 7 1024 (9th Cir.1999), the Court visited the issues of Jurisdiction,
 8 Procedural Time Bars, Waivers Of Jurisdiction and Preservation Of
 9 Issues On Appeal. The Court found in part, the following:

10 "Moreover, even if Barragan did not preserve the issue, a
 11 party can challenge the Courts jurisdiction at any time." citing
 12 Sanchez V. Pacific Powder Co., 147 F.3d 1097 (9th Cir.1998) (Waiver
 13 "does not apply, however, when the issue is jurisdictional.")
 14 also see, Conforte V. United States, 979 F.2d 1375 (9th Cir.1992)
 15 "The question was not addressed by the district court, but
 16 jurisdiction is open to challenge at any time." Id. at 1377.

17
 18 "BLACK'S LAW DICTIONARY" defines the terms "Subject-Matter
 19 Jurisdiction" and "Personal Jurisdiction" as follows:

20 Subject-Matter Jurisdiction. Jurisdiction over the nature of
 21 the case and the type of relief sought; the extent to which a court
 22 can rule on the conduct of persons or the status of things.....
 23 Also termed, Jurisdiction Of The Subject Matter.

24 Personal Jurisdiction. A court's power to bring a person into
 25 its adjudicative process; jurisdiction over a defendant's personal
 26 rights, rather than merely over property interests... Also termed,
 27 In Personam Jurisdiction; Jurisdiction In personam; Jurisdiction
 28 Of The Person.

1 In Harris V. United States, 149 F.3d 1309 (1998) the Court
2 visited the issues of Jurisdictional Defects and Procedural
3 Defaults, and found in part the following:

4 "Jurisdictional defects, cannot be procedurally defaulted."
5 and "It is well established that subject matter jurisdiction
6 cannot be waived or conferred on a court by consent of the parties.
7 Furthermore, we are bound to assure ourselves of jurisdiction
8 even if the parties fail to raise the issue." citing Ins. Corp. of
9 Ireland V. Compagnie Des Bauxites, 456 U.S. at 702 Id. at 1308
10 "A court not only has the power but also the obligation at any
11 time to inquire into jurisdiction whenever the possibility that
12 jurisdiction does not exist arises." citing Philbrook V. Glodgett,
13 421 U.S. 707, 95 S.Ct. 1893, City Of Kenosha V. Bruno, 412 U.S. 507,
14 93 S.Ct. 2222 (1973) Id. at 1308. "In short, because jurisdictional
15 claims may not be defaulted, a defendant need not show 'cause' to
16 justify his failure to raise such a claim." Id. at 1308. Also see,
17 Kelly V. United States, 29 F.3d 1107 (1994); Where the Court
18 concluded that, "Because jurisdictional defects are nonwaivable,
19 Kelly need not provide us with an excuse ('cause and prejudice')
20 adequate to convince us to forgive his waiver." Id. at 1114.

21
22 Subject Matter Jurisdiction, is a statutory requirement
23 which functions as a restriction upon a Courts power, and which
24 contributes to the characterization of a States sovereign. Thus,
25 certain legal consequences directly flow from this. For example,
26 "No action of the parties can confer subject matter jurisdiction
27 upon a court." Ins. Corp. of Ireland V. Compagnie Des Bauxites, 102
28 S.Ct. 2099. Thus, "Consent of the parties is irrelevant."

1 California V. La Rue, 93 S.Ct. 390. and "Principles of estoppel do
2 not apply." Amarican Fire & Casulty Co. V. Finn, 71 S.Ct. 534, 541-
3 542. Therefore, a party does not waive the requirement of
4 Subject Matter Jurisdiction by failing to challenge jurisdiction
5 early in proceedings. Upon the aforstated the Petitioner now
6 asserts that this Court in fact has Subject Matter Jurisdiction
7 to hear Petitioner's Instant Petition For Writ Of Habeas Corpus.
8 Which is premised upon the Trial Court's complete lack of
9 requisite jurisdiction, both Subject Matter Jurisdiction and more
10 importantly Personal Jurisdiction.

11 The requirement that a Court have "Personal Jurisdiction"
12 flows from the Due Process Clause of the 14th Amendment to the
13 United States Constitution. The "Personal Jurisdiction"
14 requirement recognizes and protects an individuals liberty
15 interests. It represents a restriction on judicial power not as
16 a matter of sovereignty, but as a matter of individual liberty.
17 Thus, the test for "Personal Jurisdiction" requires that, "The
18 maintainance of the suit...not offend 'Traditional notions of
19 fair play and substantial justice'." International Shoe Co. V.
20 Washington, 66 S.Ct 154 (1945), quoting Millken V. Meyer, 61 S.Ct.
21 339 (1940).

22
23 Once again, the primary issue alleged in the instant
24 petition sets out to challenge the Trial Courts jurisdiction
25 from the standpoint of a statutory violation aswell as a State
26 and federal Constitutional violation. as enumerated in NRS 1.230,
27 N.C.J.C. Canon 3, Artical 1 Section 8 of the Nevada State
28 Constitution and the 14th Amendment to the U.S. Constitution.

POINTS AND AUTHORITIES

(a) Ground one; THE TRIAL COURT LACKED JURISDICTION TO TRIE PETITIONER, WHERE THE TRIAL JUDGE ENTERTAINED EITHER AN ACTUAL PERSONAL BIAS. OR AN IMPLIED PERSONAL BIAS TOWARD THE ACCUSED.

On June 8, 2001 this court granted in part petitioner's Petition For Writ Of Habeas Corpus (Post-Conviction) in so far as this Court granted Petitioner relief in the form of a "allowing for a new sentencing proceeding". Based upon This Courts Finding and Conclusion that the Trial - Sentencing Judge, James A. Stone had based Petitioner's sentence at least in part upon his suspect and impalpable belief that Mr.Voss (Petitioner) was responsible for the disappearance and/or murder of Beverly Ann Baxter, who is also alleged to be the victim of the crimes charged in the instant case. In pertinent part, Findings Of Fact, Conclusions Of Law And Judgment, reads as follows:

FINDINGS OF FACT

7. Voss's claim that his sentence was based, at least in part, on Judge Stone's belief that Voss caused the murder or disappearance of Beverly Baxter, has merit. It is supported by the record. Even though Voss has not been charged for the murder of Ms.baxter, Judge Stone made reference in his rendition of sentence, to his belief that she would not be found alive. He then imposed the maximum sentence on Voss, a sentence clearly outside the heartland of sentences for a person with Voss's criminal record being sentenced for forgery offenses.

CONCLUSIONS OF LAW

4. because Judge Stone based Voss's onerous sentence, at least in part, on the suspect and impalpable ground that Voss had murdered Ms Baxter, Voss is entitled to a new sentencing hearing.

JUDGMENT

It is hereby the judgment and order of this court that Voss's Petition for Writ of Habeas Corpus (Post-Conviction) is granted, but only insofar as allowing for a new sentencing proceeding. In all other respects, the Petition is denied.

The entry of the aforementioned Judgment and Order entitles Petitioner not only to the Court Ordered Re-Sentencing but also to once again challenge his conviction. Further, because of this courts pending Re-Sentencing proceeding and upon which this Courts New Judgment will be entered thereby statutorily providing Petitioner right to pursue post-conviction remedies the Respondent can NOT reasonably claim that pursuant to NRS 34.726 that the Petitioner is procedurally bared from bringing the Instant Petition. Further, Respondent can NOT reasonably presume any prejudice in responding to the Instant Petition or to Re-Trie the case, pursuant to the dictates of NRS 34.800. Further yet, the Respondent can NOT reasonably claim that the Instant Petition must be procedurally barred from Successive Petition on grounds that the Instant petition is an "Abuse Of The Writ" pursuant to NRS 34.810.

Additionally, the Instant petition is predicated solely upon Jurisdictional Grounds. The basis of these grounds is that the Trial Judge, James A.Stone's actions during sentencing

1 proceedings demonstrate an "Actual Personal Bias" on the part of
 2 the Judge toward the Petitioner which raises questions regarding
 3 Judicial Bias during earlier Court proceedings thus, implying such
 4 prior bias. Petitioner further asserts in his petition that
 5 pursuant to the dictates of NRS 1.230 and Canon 3, of the Nevada
 6 Code Of Judicial Conduct, that dismissal of a Judge is mandatory
 7 where a judge entertains an "Actual or Implied Bias". Thus, where
 8 such a Personal Bias is known to exist or is reasonably implied,
 9 jurisdiction to preside over ANY important proceedings is NOT
 10 vested upon said Judge.

11
 12 NRS 1.230 Grounds for disqualifying judges other than
 13 supreme court justices.

14 1. A judge shall not act as such in an action or proceeding
 15 when he entertains actual bias for or against one of the parties
 16 to the action.

17 2. A judge shall not act as such in an action or proceeding
 18 when implied bias exists in any of the following respects:

19 (a) When he is a party to or interested in the action or
 20 proceeding.

21 (b) When he is related to either party by consanguinity or
 22 affinity within the third degree.

23 (c) When he has been attorney or counsel for either of the
 24 parties in the particular action or proceeding before the court.

25 (d) When he is related to an attorney or counselor for either
 26 of the parties by consanguinity or affinity within the third
 27 degree. This paragraph does not apply to the presentation of
 28 ex parte or uncontested matters, except in fixing fees for an
attorney so related to the judge.

3. A judge upon his own motion, may disqualify himself from
acting in any matter upon the ground of actual or implied bias.

4. A judge or court shall not punish for contempt any person
 who proceeds under the provisions of this chapter for a change of
 judge in a case.

5. This section does not apply to the arrangement of the
 calander or the regulation of the order of business.

[45:19; 1865; A 1907,25; 1927,108; 1931,247; 1937,214; 1939,
 225; 1931 NCL § 8407] + [45a:19;1865; added 1931,247; 1931 NCL §
 8407.01]-(NRS A 1957,69; 1965,551; 1969,351; 1975,608; 1977,765)

(Emphasis added)

NEVADA CODE OF JUDICIAL CONDUCT Canon 3

A judge shall perform the duties of judicial office impartially and diligently

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judges other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. *In the performance of these duties, the standards that follow apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, and staff, court officials, and others subject to the judge's discretion and control.

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's discretion and control to do so.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

(7) A judge shall accord to every person who has a legal interest in a proceeding, or that is a person's lawyer, the right to be heard according to law.* A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

1 (b) A judge may obtain the advice of a disinterested expert
2 on the law applicable to the proceeding before the judge if the
3 judge gives notice to the parties of the person consulted and the
4 substance of the advice, and affords the parties reasonable
5 opportunity to respond.

6 (c) A judge may consult with court personnel* whose function
7 is to aid the judge in carrying out the judge's adjudicative
8 responsibilities or with other judges.

9 (d) A judge may, with the consent of the parties, confer
10 separately with the parties and their lawyers in an effort to
11 mediate or settle matters pending before the judge.

12 (e) A judge may initiate or consider any ex parte
13 communications when expressly authorized by law* to do so.

14 (8) A judge shall dispose of all judicial matters promptly,
15 efficiently and fairly.

16 (9) A judge shall not, while a proceeding is pending or
17 impending in any court, make any public comment that might
18 reasonably be expected to affect the outcome or impair fairness or
19 make any nonpublic comment that might substantially interfere with
20 a fair trial or hearing. The judge shall require* similar
21 abstention on the part of court personnel* subject to the judge's
22 discretion and control. This section does not prohibit judges from
23 making public statements in the course of their official duties or
24 from explaining for public information the procedures of the court.
25 This section does not apply to proceedings in which the judge is a
26 litigant in a personal capacity.

27 (10) A judge shall not commend or criticize jurors for
28 their verdict other than in a court order or opinion in a
proceeding, but may express appreciation to jurors for their
service to the judicial system and the community.

(11) A judge shall not disclose or use, for any purpose
unrelated to judicial duties, nonpublic information* acquired in a
judicial capacity.

18 C. Administrative Responsibilities.

19 (1) A judge shall diligently discharge the judge's
20 administrative responsibilities without bias or prejudice and
21 maintain professional competence in judicial administration, and
22 should cooperate with other judges and court officials in the
23 administration of court business.

24 (2) A judge shall require* staff, court officials and
25 others subject to the judge's discretion and control to observe
26 the standards of fidelity and diligence that apply to the judge
27 and to refrain from manifesting bias or prejudice in the
28 performance of their official duties.

(3) A judge with supervisory authority for the judicial
performance of other judges shall take reasonable measures to
assure the prompt disposition of matters before them and the
proper performance of their other judicial responsibilities.

(4) A judge shall not make unnecessary appointments. A
judge shall exercise the power of appointment impartially and on
the basis of merit. A judge shall avoid nepotism and favoritism.
A judge shall not approve compensation of appointee beyond the
fair value of services rendered.

1 D. Disiplinary Responsibilities.

2 (1) A judge who receives information indicating a
 3 substantial liklihood that another judge has committed a violation
 4 of this Code should take appropariate action. A judge having
 5 knowledge* that another judge has committed a violation of this
 6 Code that raises a substantial question as to the other judge's
 7 fitness for office shall inform the appropariate authority.*

8 (2) A judge who receives information indicating a
 9 substantial liklihood that a lawer has committed a violation of
 10 the Rules of Professional Conduct should take appropariate action.
 11 A judge having knowledge that that a lawer has committed a
 12 violation of the Rules of Professinal Conduct that raises a
 13 substantial question as to the lawer's honesty, trustworthiness or
 14 fitness as a lawer in all other respects shall inform the
 15 appropariate authority.*

16 (3) Acts of a judge, in the discharge of disiplinary
 17 responsibilities, required or permitted by Sections 3D(1) and
 18 3D(2) are part of a judge's judicial duties and shall be
 19 absolutely privileged, and no civil action predicated thereon may
 20 be instituted against the judge.

21 E. Disqualification.

22 (1) A judge shall disqualify himself or herself in a
 23 proceeding in which the judge's impartiality might reasonably be
 24 questioned, including but not limited to instances where:

25 (a) The judge has a personal bias or prejudice concerning
 26 a party or a party's lawer, or personal knowlege* of disputed
 27 evidentiary facts concerning the proceeding;

28 (b) The judge has served as a lawer in the matter in
 controversy, or a lawer with whom the judge previously practiced
 law served during such association as a lawer concerning the
 matter, or the judge has been a material witness concerning it;

(c) The judge knows* that he or she, individually or as a
 fiduciary, or the judges spouse, parrent or child wherever residing,
 or any other member of the judges family residing in the judge's
 household,* has an economic interest* in the subject matter in
 controversy or in a party to the proceeding or has any other more
 than de minimis* interest that could be substantially affected by
 the proceeding;

(d) The judge or the judge's spouse, or a person within the
 third degree of relationship* to either of them, or a spouse of
 such person:

(i) is a party to the proceeding, or an officer, director or
 trustee of a party;

(ii) is acting as a lawer in the proceeding;

(iii) is known* by the judge to have more than de minimis*
 interest that could be substantially affected by the proceeding;

(iv) is to the judge's knowledge* likly to be a material
 witness in the proceeding.

(2) A judge shall keep informed about the judge's personal
 and fiduciary* economic interests,* and make a reasonable effort
 to keep informed about the personal economic interests of the
 judges spouse and minor children residing in the judge's
 household.

1 F. Remittal ao Disqualification.

2 A judge disqualified by terms of Section 3E may disclose on
3 the record the basis of the judge's disqualification and may ask
4 the parties and their lawyers to consider, out of the presence of
5 the judge, whether to waive disqualification. If following
6 disclosure of any basis for disqualification other than personal
bias or prejudice concerning a party, the parties and lawyers,
without participation by the judge, all agree that the judge should
not be disqualified, and the judge is willing to participate, the
judge may participate in the proceeding. The agreement shall be
incorporated into the record of the proceeding.

7

8 Specific provisions governing disqualification of a judge
9 control over the general provisions requiring avoidance of
10 impropriety. The specific provisions of N.C.J.C. Canon 3E
11 providing for the disqualification of a judge control over the
12 general provisions of N.C.J.C. Canon 2 that require a judge to
13 avoid impropriety and the appearance of impropriety in all of his
14 activities. City of Las Vegas Downtown Redevelopment Agency V.
15 Hecht, 113 Nev. 644, 940 P.2d 134 (1997), cited City of Las Vegas
16 Downtown Redevelopment Agency V. Eighth Judicial District Court,
17 116 Nev. 640, at 644, 5 P.3d 1059 (2000).

18 Failure to object to a trial judge's conduct does not
19 necessarily preclude judicial review. Although the general rule
20 is that error must be preserved for appellate review where clear
21 and offensive judicial misconduct occurs, the failure to object
22 will not always preclude appellate review in instances where
23 judicial department is of an inappropriate and repetitive nature
24 that becomes prejudicial when considered in its entirety. Parodi
25 V. Washoe Medical Center, 111 Nev. 365, 892 P.2d 588 (1995), cited
26 Holderer V. Aetna Casualty & Surety Co, 114 Nev. 845, at 850, 963
27 P2d 549 (1998).

28

1 In the case of Turner V. State, 962 P.2d 1226 (Nev.1998) the
2 Nevada Supreme Court visited the issue of "Implied Bias" as it
3 applies to the recusal of a judge. The Court found in part that;

4 "The preamble to the NCJC [Nevada Code Of Judicial Conduct]
5 states: '[J]udges, individually and collectively, must respect
6 and honor the judicial office as a public trust and strive to
7 enhance and maintain confidence in our legal system.' The United
8 States Supreme Court held that 28 U.S.C. §455(a), a statute similar
9 to Canon 3E, is designed to "avoid even the appearance of partiality"
10 Lindberg V. Heath Services Acquisition Corp. 486 U.S. 847, 680, 108
11 S.Ct. 2194, 100 L.Ed. 2d 855 (1988). We conclude that it would be
12 inconsistent with these goals to apply a harmless error analysis
13 to a judge's improper failure to recuse himself. Therefore, we
14 conclude that such failure mandates automatic reversal."

15 In stark contrast to Turner, the Petitioner has demonstrated
16 an "Actual Bias" on the part of the Presiding Judge, James A. Stone
17 at the time of the sentencing proceeding as evidenced by this
18 Courts Findings Of Fact, Conclusions Of Law and Judgement, entered
19 in Petitioner's previous Petition CR96-P-1581-A. This, Judgment
20 and Order which granted Petitioner a new sentencing proceeding,
21 could conceivably when viewed superficially, lead one to perceive
22 the instant issues of Judicial Bias as moot. However, in addition
23 to Judge Stone's known inappropriate conduct and legal indiscretion
24 during sentencing proceedings, the Petitioner further asserts that
25 Judge Stone's discretion during previous Court proceedings is also
26 suspect for parallel and additional reasons. Namely, because
27 Judge Stone, entered several questionable rulings regarding the
28 Petitioner's Pre-Trial Motions In Limine, and regarding various

1 objections entered by Defense Counsel at trial of the instant case
2 which amount to "Implied Bias", which are as follows:

3 1. When the Trial Court Denied Defendant's Pre-Trial Motion
4 In Limine #1. Which moved the Trial Court to exclude at Trial
5 ALL testimony concerning the hearsay statements of the alleged
6 victim Beverly Ann Baxter. Where the alleged victim was not
7 present to testify and thereby subject to examination by the
8 Defense regarding said hearsay statements, and where the inclusion
9 of said hearsay statements tended to raise inference to the
10 existence of alleged fact and cosequence which made a determination
11 of guilt more probale than without said testimony, where the
12 probative value of said hearsay statements was substantially
13 outweighed by considerations of unfair prejudice to the Defendant
14 and Danger of confusing the issues before the court or of
15 misleading the Jury. In violation of NRS 51.065, NRS 48.025,
16 NRS 48.035 and NRS 48.045. Which deprived the Defendant of his
17 independant State and Federal Constitutional Guarantees to Fair
18 Trial and to Confrontation as enumerated in Artical 1, Section 8,
19 of the Constitution of the State of Nevada; and the 6th and 14th
20 Amendments to the United States Constitution. More specifically,
21 this issue reached constitutional significance when the State
22 included at trial testimony from the following State's Witnesses
23 concerning hearsay statements presumably made by the alleged
24 victim; (1) Sandra Crumb; (2) Claudette Andrews; (3) Linda Weeks;
25 (4) Sophia Pantoga; (5) Ed Park; (6) Timothy Sturdavant;
26 (7) Debra Moberly; (8) Ronald Baxter. Through these State's
27 witnesses the State set out by hearsay statements of the alleged
28 victim presumably made prior to the alleged crimes, to establish

1 the victims presumed state of mind and intent regarding the
2 deposit of a certain \$5,026.00 "Settlement Check" drawn on the
3 Corporate account of Burgess North American Moving And Storage
4 Company, and made payable to Beverly Ann Baxter. "Hearsay On
5 Hearsay", amounting ONLY to Conjecture, Speculation, Supposition
6 and enuendo. See, Petitioner's Index Of Exhibits In Support
7 Of Petition For Writ Of Habeas Corpus (Post-Conviction), Exhibit
8 #2, (Partial Trial Transcript, Case #CR96-1581, October 7, 1996-
9 "Motions In Limine".); Exhibit #3, (Defendant's Motions In
10 Limine, Case #CR96-1581); Exhibit #4, (State's, Opposition To
11 Motion In Limine, Case #CR96-1581).

12
13 2. When the Trial Court denied Defendant's Motion In Limine
14 #6. Which moved the Trial Court to exclude at Trial ALL
15 Irrelevant Evidence and ALL Relevant evidence, where the
16 probative value of such evidence was substantially outweighed by
17 considerations of Danger of unfair prejudice to the Defendant, of
18 confusing the issues before the Court and of misleading the Jury.
19 In violation of NRS 48.025, NRS 48.035 and Nrs 48.045. Which,
20 deprived the Defendant of his independent State and Federal
21 Constitutional Guarantees to Fair trial as enumerated in Article
22 1, Section 8, of the Constitution of the State of Nevada; and
23 by the 14th Amendment to the United States Constitution.. More
24 specifically, this issue reached constitutional significance
25 when the State included at trial evidence which was not relevant
26 to the criminal charges before the Court, or relevant evidence
27 where the probative value of said evidence was substantially
28 outweighed by unfair prejudice to the Defendant and Danger of

1 confusing the issues before the Court or misleading the Jury.
2 Through the testimony of the following State's Witnesses:
3 (1) Sandra Crumb; (2) Claudette Andrews; (3) Linda Weeks;
4 (4) Sophia Pantoja; (5) Ed Park; (6) Timothy Sturdavant;
5 (7) Debera Moberly; (8) Ronald Baxter; (9) Vernon Woodard.
6 Additionally, much of the testimony elicited by the State's
7 Prosecutor; Egan Walker was done so as to introduce by implication
8 or inference the Petitioner's involvement in uncharged criminal
9 conduct and thereby attack the Defendant's Character. That is the
10 State presented evidence to the Jury which tended to implicate
11 the Defendant in the disappearance of Beverly Ann Baxter and which
12 implied that Petitioner may have murdered her. See, Petitioner's
13 Index Of Exhibits In Support Of Petition For Writ Of Habeas Corpus
14 (Post-Conviction), Exhibit #2, (Partial Trial Transcript, Case
15 #CR96-1581, October 7, 1996- "Motions In Limine."); Exhibit #3,
16 (Defendant's Motions In Limine, Case #CR96-1581.); Exhibit #4,
17 (State's, Opposition To Motion In Limine, Case #CR96-1581). Also
18 see, complete Trial Transcripts of October 7th, 8th and 9th, 1996
19 and the testimony of the aforesaid States Witnesses therein.

20

21 3. When the Trial court, against the adamant objections of
22 Trial Counsel, allowed the State to include at trial hearsay
23 testimony and supposition which made implication and inference to
24 the Defendant's alleged involvement in uncharged criminal conduct.
25 To wit, the Defendant's alleged involvement in the disappearance
26 and murder of the alleged victim of the charged crimes, Beverly
27 Ann Baxter, and thereby inferring that the charged conduct as a
28 motive for the uncharged criminal conduct. In violation of

1 NRS 48.025, NRS 48.035 and NRS 48.045. Which, deprived the
2 Defendant of his independent State and Federal Constitutional
3 Guarantees to Fair trial as enumerated in Artical 1, Section 8,
4 of the Constitution of the State of Nevada; and by the 14th
5 Amendment to the United States Constitution. Specifically, this
6 issue reached constitutional significance when the State included
7 at trial evidence by testimony which was not relevant to the
8 criminal charges before the Court, or relevant evidence where the
9 probative value of said evidence was substantially outweighed by
10 unfair prejudice to the Defendant and Danger of confusing the
11 issues before the Court or of misleading the Jury. Through the
12 testimony of the following State's Witnesses: (1) Sandra Crumb;
13 (2) Claudette Anrews; (3) Linda Weeks; (4) Sophia Pantoga:
14 (5) Ed Park; (6) Timothy Sturdivant; (7) Debra Moberly;
15 (8) Ronald Baxter; and (9) Vernon Woodard. Once again much of
16 this testimony elisited by the State's Prosecutor, Egan Walker
17 was done so as to introduce by implication or inferance the
18 Petitioner's alleged involvement in uncharged criminal conduct
19 and thereby attack the Defendant's Character. That is, the State
20 presented evidence to the jury which tended to implicate the
21 Defendant in the disappearance of Beverly Ann Baxter, and which
22 implied that Petitioner may have murdered her. See, complete
23 Trial Trancripts of Case #CR96-1581, October 7th, 8th and 9th,
24 1996, and the testimony of the aforestated State's Witnesses
25 therein.

26
27 The following is a complete listing of the Nevada Revised
28 statutes which are applicable to the aforementioned sub-grounds
#1, #2 and #3.

1
2 APPLICABLE NEVADA REVISED STATUTES
3
4

5 NRS 51.025 "Declarant" defined. "Declarant" means a person
6 who makes a statement.

(Added to NRS by 1971,793)

7 NRS 51.035 "Hearsay" defined. "Hearsay" means a statement
8 offered in evidence to prove the truth of the matter asserted
9 unless:

1. The statement is one made by a witness while testifying
at the trial or hearing;

2. The declarant testifies at the trial or hearing and is
subject to cross-examination concerning the statement, and the
statement is:

(a) Inconsistent with his testimony;

(b) Consistent with his testimony and offered to rebut an
express or implied charge against him of recent fabrication or
improper influence or motive;

(c) One of identification of a person made soon after
perceiving him; or

(d) A transcript of testimony given under oath at trial or
hearing before a grand jury; or

3. The statement is offered against a party and is:

(a) His own statement, in either his individual or a
representative capacity;

(b) A statement of which he has manifested his adoption or
belief in its truth;

(c) A statement by a person authorized by him to make a
statement concerning the subject;

(d) A statement by his agent or servant concerning a matter
within the scope of his agency or employment, made before the
termination of the relationship; or

(e) A statement by a conspirator of a party during the
course and furtherance of the conspiracy.

(Added to NRS by 1971,793)

23 NRS 51.045 "Statement" defined. "Statement" means:

1. An oral or written assertion; or

2. Nonverbal conduct of a person, if it is intended by him
as an assertion.

(Added to NRS by 1971,794)

1 NRS 51.055 "Unavailable as a witness" defined.

2 1. A declarant is "unavailable as a witness" if he is:

3 (a) Exempted by ruling of the judge on the ground of
privilege from testifying concerning the subject matter of his
statement;

4 (b) Persistent in refusing to testify despite an order of
the judge to do so;

5 (c) Unable to be present or to testify at the hearing
because of death or then existing physical or mental illness or
infirmity; or

6 (d) Absent from the hearing and beyond the jurisdiction of
the court to compel appearance and the proponent of his statement
has exercised reasonable diligence but has been unable to procure
his attendance or to take his deposition.

7
8 2. A declarant is not "unavailable as a witness" if his
9 exemption, refusal, inability or absence is due to the procurement
or wrongdoing of the proponent of his statement for the purpose of
10 preventing the witness from attending or testifying.

(Added to NRS by 1971,794)

11 NRS 51.065 General rule.

12 1. Hearsay is inadmissible except as provided in this
chapter, Title 14, of NRS and the Nevada Rules of Civil Procedure.

13 2. This section constitutes the hearsay rule.

14 (Added to NRS by 1971,794)

15 NRS 48.025 Relevant evidence generally admissible;
irrelevant evidence inadmissible.

16 1. All relevant evidence is admissible, except:

17 (a) As otherwise provided by this title;

18 (b) As limited by the constitution of the United States or
the State of Nevada; or

19 (c) Where a statute limits the review of an administrative
determination to the record made or evidence offered before
that tribunal.

20 2. Evidence which is not relevant is not admissible.

21 (Added to NRS by 1971,780)

22 NRS 48.035 Exclusion of relevant evidence on grounds of
prejudice, confusion or waste of time.

23 1. Although relevant, evidence is not admissible if its
probative value is substantially outweighed by the danger of
24 unfair prejudice, of confusion of the issues or of misleading
the jury.

25 2. Although relevant, evidence may be excluded if its
probative value is substantially outweighed by considerations of
26 undue delay, waste of time or needless presentation of cumulative
evidence.

3. Evidence of another act or crime which is so closely related to an act in controversy or a crime charged that an ordinary witness cannot describe the act in controversy or the crime charged without referring to the other act or crime shall not be excluded, but at the request of an interested party, a cautionary instruction shall be given explaining the reason for the admission.

(Added to NRS by 1971m780; A 1979,37)

NRS 48.045 Evidence of character inadmissible to prove conduct; exceptions; other crimes.

1. Evidence of a person's character or trait of his character is not admissible for the purpose of proving that he acted in conformity therewith on a particular occasion, except:

(a) Evidence of his character or trait of his character offered by an accused, and similar evidence offered by the prosecution to rebut such evidence.

(b) Evidence of the character or trait of character of the victim of a crime offered by an accused, subject to the procedural requirements of NRS 48.069 where applicable, and similar evidence offered by the prosecution to rebut such evidence; and

(c) Unless excluded by NRS 50.090, evidence of the character of a witness, offered to attack or support his credibility, within the limits provided by NRS 50.85.

2. Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

(Added to NRS by 1971,781; A 1975,1131)

CONCLUSIONARY ARGUEMENTS

The Petitioner has demonstrated this Courts Jurisdiction to hear the instant matter pursuant to established law either as a Petition For Writ Of Habeas Corpus (Post-Conviction) or in alternative as a Pre-Sentencing Motion to Set Aside Jury Verdict for purposes of correcting Manifest and Fundamental Miscarage of Justice raised upon Jurisdictional Grounds. (a party may raise jurisdictional claim at any time) See, U.S. V. Barragan-Mendoza, Sanchez V. Pacific Powder Co., and Conforte V.U.S., etc.

1 The standard of proof which Petitioner must meet to prevail
2 in the instant Petition / Pre-Sentencing Motion To Set Aside Jury
3 Verdict, is that; A judge is presumed to be impartial and the
4 party asserting a challenge carries the burden of establishing
5 sufficient factual grounds warranting disqualification of the
6 Judge. See, Rippo V. State, 113 Nev. 1239, 946 P.2d 1017 (1997).

7 The Petitioner has demonstrated as a matter of fact, supported
8 by the record (Trial Transcripts CR96-1581, and Sentencing
9 Transcripts, thereof) and by law of this case as enumerated in
10 this Courts Findings Of Fact, Conclusions Of Law and Judgment, in
11 prior Petition CR96-P-1581-A, that District Court judge, James A.
12 Stone, in fact entertained an "Actual Personal Bias" against the
13 Petitioner, at minimum during the sentencing proceeding.

14 The presence of such "suspect and Impalpable" prejudice
15 against Petitioner during the sentencing proceeding "Reasonably
16 Implies" the presence of "Personal Bias" in regard to ALL previous
17 Trial Proceedings. From Pre-Trial Motions and Jury Selection to
18 the Jury Trial it-self. In light of ALL pertinent facts including
19 Unfair Prejudice to Petitioner from the inclusion of hearsay
20 statements of the alleged victim, inclusion of Irrelevant
21 Testimony and Relevant Testimony where the probative value of said
22 testimony was substantially outweighed by unfair prejudice to
23 Petitioner and Danger of confusing the issues before the Court or
24 of misleading the Jury. Judge Stone did in fact abuse his
25 discretion when he disregarded Defence Motions to Suppress at trial
26 Witness testimony regarding hearsay statements of the alleged
27 victim, Irrelevant Evidence and certain Relevant Evidence pursuant
28 to NRS 51.065, NRS 48.025, NRS 48.035 and NRS 48.045.

1 Judge Stone did not even conduct a Petrocelli, hearing to evaluate
2 the prejudicial impact of the particular victim hearsay testimony,
3 and the relevancy of witness statements amounting to Character
4 Testimony, which asserted or implied prior bad acts or wrongs by
5 the Defendant, and further, which asserted by implication the
6 Defendant's involvement in un-charged criminal conduct. to wit,
7 Defendant's culpability in the disappearance and murder of Beverly
8 Ann Baxter. The denial of the Defendant's Motions In Limine, and
9 Judge Stone's failure to, at minimum, properly instruct the Jury
10 regarding this highly prejudicial statutorily precluded testimony
11 strongly suggests Judge Stone's partiality and personal bias.

12 Canon 2, of the Nevada code Of Judicial Conduct asserts the
13 general principle that; "A judge shall avoid impropriety and the
14 appearance of impropriety in all the judges activities."
15 Additionally, pursuant to NRS 1.230 (1) and (2a), and Canon 3E, of
16 the Nevada Code Of Judicial Conduct, disqualification of a judge
17 is manditory where the judge entertains an "Actual Personal Bias"
18 against a Defendant or where "Personal Bias" may be "Reasonably
19 Implied", such as in the instant case.

20 The United States Supreme Court has held that 28 U.S.C §455(a)
21 (a statute similar in constuction to N.C.J.C. Canon 3E) is designed
22 to "avoid even the appearance of partiallity." cited by the
23 Nevada Supreme Court in Turner V. State, 962 P.2d 1226. Though,
24 both N.C.J.C. Canon 2, and Canon 3, support Petitioner's claims
25 herein regarding the disqualification of Judge Stone, the Nevada
26 Supreme Court found in PETA V. Bobby Berosini, Ltd., 111 Nev, 615,
27 895 P.2d 1269 (1995) that "The specific disqualification
28 provisions of Canon 3E, and subseqent case law applying these

1 provisions, should control over the broader statement of Canon 2."

2
3 CONCLUSION

4
5 This honorable Court does in fact have Personal and Subject
6 Matter Jurisdiction to hear the instant matter pursuant to
7 NRS 34.724. The foregoing Petition may not be procedurally
8 defaulted (time bared or bared as a successive petition) based upon
9 NRS 34.726, NRS 34.800 or NRS 34.810. As the Petitioner pursuant
10 to well established legal principles may raise a "Jurisdictional
11 Challenge" at any time. However, this Court does have the
12 available option of hearing this "Jurisdictional Challenge" as a
13 Pre-Sentencing Motion To Set Aside Jury Verdict, The Petitioner
14 submits that this may be the most expeditious and Judicially
15 economic manner in which to dispose of the matter.

16 The Petitioner is entitled as a matter of established law to
17 a ruling of disqualification of (former) District Court Judge,
18 James A. Stone, upon grounds of "Actual Personal Bias" or "Implied
19 Personal Bias" based upon Judge Stone's display of "Actual
20 Personal Bias during the sentencing proceeding in the instant case.
21 Such display "Reasonably Implies" likelihood that Judge Stone may
22 have also entertained personal bias at some previous stage in
23 Court proceedings as well. Such as, when hearing Pre-Trial Motions,
24 during Jury Selection and Voir Dire, when ruling upon Defense
25 objections at trial, when considering Jury instructions and when
26 administering cautionary statements to the Jury. An analysis of
27 Judge Stone's conduct and discretion during such judicial
28 proceedings in relation to applicable established law demonstrates

1 numerous judicial indiscretions on Judge Stone's part. Which
2 further raise inference as to the likelihood that Judge Stone had
3 in fact entertained personal bias at various stages prior to his
4 now infamous displays of indiscretion and bias during the
5 sentencing proceeding and substantiated in his rendition of
6 sentence therein.

7 this Court has previously visited the the issues of judge
8 Stone's Discretion-Indiscretion in relation to his conduct during
9 the sentencing proceeding and to his rendition of sentence therein,
10 and determined, in short, that Judge Stone had imposed upon the
11 Petitioner, "a sentence clearly outside the hearland of sentences
12 for a person with Voss's criminal record" and that, "Judge Stone
13 based Voss's onerous sentence, at least in part, on suspect and
14 impalpable ground that Voss had murdered Ms. Baxter."

15 Thus, judge Stones conduct demonstrates an attendant Personal
16 Bias toward the Defendant during sentencing proceedings, and this
17 Courts, Findings Of Fact, Conclusions Of Law and Judgment, and
18 ORDER granting a Re-Sentencing Proceeding further evidence the
19 presence of judicial bias on the part of Judge, James A. Stone.
20 A bias which extends beyond "Implied Bias" to the degree of an
21 "Actual Personal Bias". In the presence of evidence of a clear
22 case of "Actual Personal Bias" inference is reasonably raised as
23 to questions of prior incidents of personal bias. That is,
24 "Personal Bias" is "Reasonably Implied" in ALL prior Court
25 proceedings where Judge Stone had presided in the instant case.
26 Therefore Judge Stone's disqualification is mandated and the
27 Petitioner is entitled to a reversal of the Jury Verdict as
28 requested through the petitioner's Successive Petition For Writ

1 Habeas Corpus, and by Petitioner's alternate, Pre-Sentencing
2 Motion To Set aside Jury Verdict. As under the disqualification
3 requirement Jurisdiction was severed due to the Mandates of
4 NRS 1.230 and Canon 2, and 3, of the N.C.J.C. therefore
5 jurisdiction was not lawfully vested in Judge Stone to preside
6 over such important proceedings as as Hearing to consider Motions
7 In Limine, Jury Selection and Voir Dire, the Guilt phase of Trial
8 or the Sentencing Phase of Trial.

9 The Jury's verdict, must be set aside and Petitioner's
10 convictions must be reversed..... Due to Judge, James A.Stone's
11 undermining of the adversarial process. Which resulted in a
12 manifestly unjust and inherently unfair trial. The outcome of
13 which cannot be relied upon as having reached a just result and
14 culminating in a Jury verdict not worthy of confidence, amounting
15 to a Fundamental Miscarage Of Justice by depriving the Petitioner
16 of his independant State and Federal Constitutional Rights to
17 a Fair Trial and to Confront His Accusers.

18
19 VERIFICATION

20
21 Under penalty of perjury, the undersigned declares that he
22 is the Petitioner in the foregoing action and that he knows the
23 contents of the instant Motions: that the pleadings are are true
24 of his own knowledge except as to those matters stated on
25 information and belief, and as to such matters he believes them
26 to be true.

27 By: Steven F. Voss
28 STEVEN FLOYD VOSS,
Petitioner,

CERTIFICATE OF SERVICE BY U.S.MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.
5(b), that on this 19th day of July 2004, I, mailed a
true and correct copy of the forgoing: MOTION FOR LEAVE OF COURT
TO FILE A SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS and
alternate, PRE-SENTENCING MOTION TO SET ASIDE JURY VERDICT,
addressed to:

E.K. McDANIEL, Warden,
ELY STATE PRISON
P.O. BOX #1989
Ely, Nevada 89301-9999

RICHARD GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. BOX 11130
Reno, Nevada 89520-0027

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

By: Steven F Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 98301-9999

FILED
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

2004 JUL 27 AM 9:18

Case No. CR96-1581-A

Dept. No. 10
DEPUTY

STEVEN FLOYD VOSS,
PETITIONER,

VS.

E.K.McDANIEL, et al.,
Respondent's,

(Successive)

PETITION FOR WRIT OF HABEAS CORPUS

(Post-Conviction)

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty ? : ELY STATE PRISON, COUNTY OF WHITE PINE.
2. Name and location of the court which entered the judgment under attack ? ; THE SECOND JUDICIAL DISTRICT COURT OF NEVADA, IN AND FOR WASOE COUNTY, RENO, NEVADA.
3. Date judgment of conviction imposed ? : November 27, 1996.
4. Case number ? : CR96-1581.
5. Lenth of sentence ? : (SIX CONSECUTIVE COUNTS) COUNT ONE, 48-120 months; COUNT TWO, 16-48 months; COUNT THREE, 16-48 months; COUNT FOUR, 16-48 months; COUNT FIVE, 16-48 months; COUNT SIX, 16-48 months.
6. Are you presently serving a sentence for a conviction other than that under attack in this petition ? If "YES" list crime, case number and sentence being served at this time : Case number CR97-2077. Count One, MURDER WITH THE USE OF A DEADLY WEAPON; Count Two, KIDNAPPING IN THE FIRST DEGREE.

CR96P1581A DC-9900026740-002
POST STEVEN FLOYD VOSS (D 16 Pages)
District Court 07/27/2004 09:18 AM
Washoe County 3565

- 1 7. Nature of offenses involved in convictions being
2 challenged ? : Count One, BURGLARY; Count Two and Three,
3 UTTERING A FORGED INSTRUMENT; Counts Four and Five,
4 FORGERY; Count Six, ATTEMPTED THEFT.
- 5 8. What was your plea ? : NOT GUILTY.
- 6 9. NOT APPLICABLE.
- 7 10. If you were found guilty after a plea of not guilty, the
8 finding was made by ? : JURY.
- 9 11. Did you testify at trial ? : NO.
- 10 12. Did you appeal from the judgment of conviction ? : YES.
- 11 13. If you did appeal, answer the following :
- 12 (a) Name of the court : NEVADA SUPREME COURT.
- 13 (b) Case number or citation : No. 29783
- 14 (c) Result : ORDER DIS MISSING APPEAL.
- 15 (d) Date of result : March 11, 1999.
- 16 14. NOT APPLICABLE.
- 17 15. Other than a direct appeal from the judgment of conviction
18 and sentence, have you previously filed any petitions,
19 applications or motions with respect to this judgment in
20 any court, state or federal ? : YES.
- 21 16. If your answer to No. 15 was "YES", give the following
22 information :
- 23 (a) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT OF
24 THE STATE OF NEVADA, WASHOE COUNTY, RENO.
- 25 (2) Nature of proceedings : MOTION FOR A JUDGMENT OF
26 ACITTAL OR NEW TRIAL.
- 27
- 28

(3) Grounds raised : INSUFFICIENT EVIDENCE TO SUPPORT
GUILTY VERDICTS BEYOND A REASONABLE DOUBT, IMPROPER
JUROR CONDUCT.

(4) Did you receive an evidentiary hearing on your
petition, application or motion ? : YES.

(5) Result: MOTION DENIED.

(6) date of Result : november 27, 1996.

(7) If known, citations or any written opinion or date of
orders entered pursuant to such result : NONE.

(b) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, WASHOE COUNTY, RENO.

(2) Grounds raised : COUNT SIX, ATTEMPTED THEFT MUST BE
DISMISSED, IT IS NECESSARILY INCLUDED IN COUNT THREE,
UTTERING A FORGED INSTRUMENT.

(3) Nature of proceeding : MOTION TO DISMISS.

(4) Did you receive an evidentiary hearing on your
petition, application or motion : YES.

(5) Result: MOTION DENIED.

(6) Date of result: November 27, 1996.

(7) If known, citations or any written opinion or date of
orders entered pursuant to such result: NONE.

(c) (1) Name of court : THE SECOND JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, WASHOE COUNTY, RENO.

(2) Nature of proceeding: MOTION TO SET ASIDE VERDICT.

(3) Grounds raised : THE STATE FAILED TO DISCLOSE
MATERIAL EXCULPATORY EVIDENCE.

(4) did you receive an evidentiary hearing on your
petition application or motion : YES.

1 (5) Result: NON CONCLUSIVE (INCOMPLETE)

2 (6) Date of result: NONE.

3 (7) If known, citations or any written opinion or date of
4 orders entered pursuant to such result: NO DECISION
5 WAS EVER RENDERED REGARDING THIS MOTION.

6 (c-X) (1) Name of court: THE SECOND JUDICIAL DISTRICT COURT
7 OF THE STATE OF NEVADA, WASHOE COUNTY, RENO.

8 (2) Nature of proceedings: PETITION FOR WRIT OF HABEAS
9 CORPUS (Post-Conviction)

10 (3) Grounds raised:

11 (a) The State failed to disclose Material
12 Exculpatory Evidence.

13 (b) The Defendant was exposed to Inpaneled Jurors
in Prison Garb and in Restraints.

14 (c) Inpaneled Jurors were allowed to hear comments
15 concerning Defendant's In-Custody Status.

16 (d) Court erred when it failed to reach decision
regarding Motion to Set Aside Verdict.

17 (e) Counsel provided Ineffective Assistance, when
18 Counsel failed to consult with Client, to
conduct reasonable investigations, to file
19 Motion's to Suppress Evidence tainted by Illegal
Search and Seizure, and Statements which were
20 obtained by Custodial Interrogation.

21 (f) The Sentencing Court erred when it imposed
Sentence which was based in part upon allegations
22 of Murder which the defendant had not been tried
for.

23 (g) Trial court failed to suppress Defendant's written
and video recorded statements which were obtained
24 by Police through Custodial Interrogation and in
the absence of Miranda admonishments and waiver
25 of Defendants Rights.

26 (h) The State denied the Defendant a Fair Trial,
27 when the State included evidence at trial that
had been obtained without a valid Search Warrant.

28

- 1 (i) The State denied the Defendddant a Fair Trial,
2 when The State failed to first demonstrate the
3 use of Procedural safeguards Effective to Secure
4 The Defendant's Privilege Against Self Incrimination
before including The Defendant's statements at
trial.
- 5 (4) Did you receive an evidentiary hearing on your
petition, application or motion?: Yes
- 6 (5) Result: PETITION WAS GRANTED, BUT ONLY SO FAR AS TO
7 ALLOW FOR A NEW SENTENCING PROCEEDING.
- 8 (6) Date of result: JUNE 8, 2001.
- 9 (7) If known, citations of any written opinion or date of
orders entered pursuant to such result: FINDINGS OF
10 FACT, CONCLUSIONS OF LAW AND JUDGMENT. FILED ON
11 AUGUST 9, 2001. Notice of entry of Order Filed on
AUGUST 14, 2001.
- 12 (c-XX) (1) Name of court: UNITED STATES DISTRICT COURT, DISTRICT
OF NEVADA, RENO, NEVADA.
- 13 (2) Nature of proceeding: Petition for Writ of Habeas
14 Corpus, by person in State custody, Pursuant to
28 U.S.C. § 2254.
- 15 (3) Grounds raised:
- 16 (a) The State failed to present competent evidence at
17 trial sufficient to prove the state's allegations
beyond a reasonable doubt. Violating 14th Amend.
- 18 (b) Court erred, defendant cannot be convicted of
19 both Count 3 and Count 6 as the offences are
necessarilly included in each other. Violating
20 14th Amend.
- 21 (c) The State failed to disclose Material Exculpatory
22 Evidence, the value of which was known to the
State before trial, and the value of which would
23 have played a significant roll to the defense of
the charges. Violating 14th Amendment.
- 24 (d) State denied Mr. Voss a Fair Trial when Jurors
25 were allowed to view him in Prison Garb and in
Physical Restraints during guilt phase of Trial.
Violating 14th Amend.
- 26 (e) State denied Mr. voss a fair Trial, when Jurors
27 were allowed to hear comments concerning his
In-Custody Statis. Violating 14th Amend.
- 28

1 (f) Appointed Counsel was ineffective and Counsel's
2 performance fell below an objective standard of
3 reasonableness, when Counsel failed to meet with
4 Mr.Voss and to engage in meaningful conversations
5 regarding the case. Thereby, limiting his ability
6 to conduct reasonable investigations, to locate
7 potential defense witnesses and to prepare a
8 reasonably adequate defense to the charges, Counsel
9 refused to allow Mr.Voss any input what so ever
10 into his defense which denied Mr.Voss the defense
11 of his choice, counsel failed to file Motions to
12 suppress evidence tainted by illegal search and
13 seizure, written and recorded video statements
14 obtained by custodial interrogation, without any
15 admonishments or waiver of Miranda, rights, Counsel
16 failed to object at trial to the admission of
17 illegally obtained evidence and statements, Counsel
18 failed to represent Mr.Voss in regard to his
19 presentencing investigation and to statements made
20 therein, Counsel failed to investigate and to
21 present mitigating evidence at sentencing. In
22 violation of 14th Amendment.

23 (g) Mr.Voss was denied a fair Trial when the State
24 admitted statements at trial obtained by Custodial
25 interrogation, without demonstration by the State
26 that Police had employed Procedural Safeguards
27 Effective to secure Mr.Voss's rights against
28 Self-Incrimination and to the Assistance of
legal counsel before Custodial Interrogation, and
when statements were utilized by the State at
Trial for the purpose of showing untruths in
those statements given in custodial interrogation.
Violating the 14th Amendment.

(h) Mr.Voss was denied a Fair Trial, when the State
included evidence at trial which had been
obtained without valid search warrants or without
any warrant at all. Violating the 14th Amendment.

(4) Did you receive an evidentiary hearing on your
petition, application or motion: NOT AS OF YET, THE
PETITION IS STILL PENDING.

(5) Result: N/A.

(6) Date of result: N/A.

(7) If known, citations or any written opinion or date of
orders entered pursuant to such result: N/A.

1 (c-XXX)(1) Name of court: THE SECOND JUDICIAL DISTRICT COURT
2 OF THE STATE OF NEVADA, WASHOE COUNTY, RENO.

3 (2) Nature of proceedings: PETITION FOR WRIT OF HABEAS
4 CORPUS (Post-Conviction)

5 (3) Grounds raised:

6 (a) The State committed prosecutorial misconduct and
7 denied Petitioner a Fair Trial in violation of his
8 Fourteenth Amendment Constitutional Guarantees, when
9 the State knowingly and intentionally introduced
10 evidentiary exhibits at trial, when the State had
specific knowledge that said exhibits were tainted by
a break in the official chain of evidence custody
prior to the admission of said exhibits at trial of
the instant case.

11 (b) Appointed Counsel committed Ineffective
12 Assistance of Counsel and denied petitioner his Sixth
13 and Fourteenth Amendment Rights to Effective
14 Assistance of Counsel and to Fair Trial, when Counsel
15 failed to file a Defense Motion To Suppress State's
16 Exhibit #1 and State's Exhibit #29, and when Counsel
17 failed to object to the State's admission of said
exhibits at trial, eventhough Counsel had express
knowledge that said exhibits had been tainted by a
break in the official chain of evidence custody prior
to the State's admission of said exhibits at trial
of the instant case.

18 (c) Appointed Appellant Counsel committed Ineffective
19 Assistance of Counsel and denied Petitioner his sixth
20 and fourteenth Amendment Rights to Effective
21 Assistance of Counsel and to Fair Trial, when Counsel
22 failed to raise the issue of Prosecutorial
Misconduct relative to the State's presentation of
evidence at trial which was tainted by a break in
the chain of official evidence custody, within
direct Appeal of the Conviction and Sentence to the
Nevada Supreme Court.

23 (4) Did you receive an evidentiary hearing on your
24 petition, application or motion?: NO.

25 (5) Result: ORDER DISMISSING APPEAL AS UNTIMELY.

26 (6) Date of result: October 13, 2003.

27 (7) If known, citations or any written oppinion or date of
28 orders entered pursuant to result: October 14, 2003.

1 16.(d) Did you appeal to the highest state or federal court having
2 jurisdiction, the result or action taken on any petition
3 application or motion?:

4 (1) First petition, application or motion: Yes.

5 (2) Second petition, application or motion: Yes.

6 (3) Third petition application or motion: No .

7 (4) Fourth petition application or motion: Yes.

8 (5) Fifth petition, application or motion: Yes

9 (6) Sixth petition application or motion: Yes.

10 16.(e) if you did not appeal from the adverse action on any
11 petition, application or motion, explain briefly why you
12 did not: IN REGARD TO THE THIRD MOTION FILED, MOTION TO
13 SET ASIDE VERDICT, COUNSEL FAILED TO FOLLOW UP ON MY
14 REPEATED REQUESTS FOR INFORMATION ON THIS MATTER, ASWELL AS
15 TO ADDRESS THE COURT REGARDING IT'S APPEARENT OVERSIGHT IN
16 DECIDING THIS MOTION.THEN IN REGARD TO THE FIFTH FEDERAL
17 PETITION FOR WRIT OF HABEAS CORPUS, THIS PETITION IS STILL
18 PENDING IN THE UNITED STATES DISTRICT COURT,DISTRICT OF
19 NEVADA.

20 17. has any ground raised in this petition been previously
21 presented in this or any other court by way of petition for
22 writ of habeas corpus, motion, application or by any other
23 post-conviction proceeding?: NONE OF THE GROUNDS SUBMITTED
24 HEREIN HAVE PREVIOUSLY BEEN PRESENTED TO ANY COURT STATE OR
25 FEDERAL.

1 18. If any of the grounds listed in No.23 (a), (b) and (c)
2 were not previously presented in any other court, state or
3 federal. List what grounds were not so presented, and
4 give your reasons for not presenting them:NONE OF THE
5 GROUND S PRESENTED HEREIN HAVE BEEN PREVIOUSLY PRESENTED
6 TO ANY COURT STATE OR FEDERAL, THESE ISSUES WERE NOT
7 PRESENTED IN DIRECT APPEAL OF THE JUDGMENT OF CONVICTION
8 AND SENTENCE DUE TO THE INEFFECTIVE REPRESENTATION OF
9 APPOINTED APPEALANT COUNSEL. SEE, GROUND THREE HEREIN.
10 THESE ISSUES WERE NOT PRESENTED IN PREVIOUS STATE PETITION
11 FOR WRIT OF HABEAS CORPUS BECAUSE PETITIONER DID NOT HAVE
12 ACCESS TO PRELIMINARY HEARING TRANSCRIPTS WHICH DELINIATE
13 PETITIONERS CLAIMS HEREIN DUE TO APPOINTED COUNSELS
14 FAILURES TO RESPOND TO PETITIONERS REPEATED REQUEST TO BE
15 PROVIDED WHITH COPIES OF THE TRANSCRIPTS OF ALL COURT
16 PROCEEDINGS. ASWELL AS BY THE FAILURE OF APPOINTED APPELANT
17 COUNSEL TO IDENTIFY AND RAISE THESE ISSUES IN A SUPPLEMENT
18 TO PETITIONER'S PROPER PERSON PETITION AS APPEALANT
19 COUNSEL COMPLETELY FAILED TO SUPLEMENT MR.VOSS'S PROPER
20 PERSON PETITION AS COUNSEL WAS ORDERED BY THIS COURT ON
21 MAY 10, 2000. IN ORDER FOR EVIDENTIARY HEARING, APPOINTMENT
22 OF COUNSEL.

23 19. NOT APPLICABLE.

24 20. Do you have any petition or appeal now pending in any
25 court state or federal, as to the judgment under attack ? :
26 YES.

1 21. Give the name of each attorney who represented you in the
 2 proceedings resulting in your conviction and upon direct
 3 appeal: COTTER C. CONWAY, MARY LOU WILSON and JENIFER LUNT.

4 22. Do you have any future sentences to serve after you complete
 5 the sentences imposed by the judgment under attack?: Yes.

6 23. State concisely every ground on which you claim you are
 7 being held unlawfully:

8 (a) Ground one: THE TRIAL COURT LACKED JURISDICTION TO TRIE
 9 PETITIONER, WHERE THE TRIAL JUDGE ENTERTAINED EIGHTHER AN ACTUAL
 10 PERSONAL BIAS, OR AN IMPLIED PERSONAL BIAS TOWARD THE ACCUSED.

11 Supporting facts: It is an undisputed fact that the Trial
 12 Judge, James A. Stone entertained an "Actual Personal Bias"
 13 toward Petitioner during the sentencing proceeding in the
 14 instant case. In fact such conclusion is supported by the
 15 record and by this Courts earlier Findings Of Fact, Conclusions
 16 Of Law And Judgment in petitioner's previous Petition For Writ
 17 Of Habeas Corpus (Post-Conviction), Case number CR96-P-1581-A,
 18 and is now thereby, "Law Of The Case". Wherein, this Courts
 19 Finding Of facts, Conclusions Of Law And Judgment, filed on
 20 August 14,2001 and affirmed by the Nevada Supreme Court in
 21 case number 38373, decision filed on February 14,2002, this
 22 Court found the following:

23 FINDINGS OF FACT

24 "7. Voss's claim that his sentence was based, at least in part,
 25 on Judge Stone's belief that Voss caused the murder or
 26 disappearance of Beverly Baxter, has merit. It is supported by
 27 the record. Even though Voss has not been charged for the murder
 28 of Ms.Baxter, Judge Stone made reference in his rendition of

1 sentence, to his belief that she would not be found alive. He
2 then imposed the maximum sentence on Voss, a sentence clearly
3 outside the heartland of sentences for a person with Voss's
4 criminal record being sentenced for forgery offences."

5
6 CONCLUSIONS OF LAW

7 "4. Because Judge Stone based Voss's onerous sentence, at least
8 in part, on the suspect and impalpable ground that Voss had
9 murdered Ms.Baxter, Voss is entitled to a new sentencing hearing."

10 JUDGMENT

11
12 "It is hereby the judgment and order of this court that Voss's
13 Petition for Writ of Habeas Corpus (Post-Conviction) is granted,
14 but only insofar as allowing for a new sentencing proceeding.
15 In all other respects, the Petition is denied."

16
17 Clearly, Judge Stones conduct during sentencing proceedings
18 and his imposition of the maximum sentence upon petitioner, "a
19 sentence clearly outside the heartland of sentences for a person
20 with [Petitioner's] criminal record being sentenced for forgery
21 offences." a sentence which has been found by this Court to be
22 "onerous, suspect and impalpable" demonstrates an "Actual
23 Personal Bias" on the part of Judge Stone toward Petitioner and
24 at minimum during the sentencing proceeding of the instant case.

25 Where, a trial judge entertains an "Actual Personal Bias"
26 toward a party in a criminal prosecution, including sentencing
27 proceedings, such Personal Bias implies that the Judge may have
28 also entertained "Personal Bias" at some earlier point in Court

1 proceedings. In other words where a Judge is found to have
 2 entertained an "Actual Personal Bias" during the sentencing
 3 proceeding, such fact lends itself to the strong possibility or
 4 likelihood that the Judge had in fact entertained the same
 5 "Personal Bias" during earlier Court proceedings. Such as
 6 Proceedings To Consider Pre-Trial Motions and during the Trial of
 7 the instant case.. The legal term for this phenomina is "Implied
 8 Bias."

9 Pursuant to NRS 1.230 and Canon 3, of the Nevada Code Of
 10 Judicial Conduct, dismissal of a Trial Judge is manditory,
 11 where the Judge entertains either a "Personal Bias" or where
 12 a "Personal Bias" is implied. Thus, where a Judge entertains
 13 such personal bias or where such personal bias may be
 14 reasonably implied, jurisdiction to preside over any important
 15 proceeding(s) is NOT vested upon said Judge.

16 NRS 1.230 Grounds for disqualifying judges other than
 17 supreme court justices.

18 1. A judge shall not act as such in an action or proceeding when
he entertains actual bias for or against one of the parties to
the action.

19 2. A judge shall not act as such in an action or proceeding when
implied bias exists in any of the following respects:

20 (a) When he is a party to or interested in the action or
proceeding.

21 (b) When he is related to either party by consanguinity or
affinity within the third degree.

22 (c) When he has been attorney or counsel for either of the parties
in the particular action or proceeding before the court.

23 (d) When he is related to an attorney or counselor for either of
the parties by consanguinity or affinity within the third degree.
 24 This paragraph does not apply to the presentation of ex parte or
 25 uncontested matters, except in fixing fees for an attorney so
 26 related to the judge.

27 3. A judge upon his own motion, may disqualify himself from
acting in any matter upon the ground of actual or implied bias.

28 4. A judge or court shall not punish for contempt any person who
proceeds under the provisions of this chapter for a change of
judge in a case

1 5. This section does not apply to the arrangement of the calander
 2 or the regulation of the order of business.
 3 [45:19;1865; A 1907, 25; 1927, 108; 1931, 247; 1937, 214; 1939,
 4 225; 1931 NCL § 8407] + [45a:19:1865; added 1931, 247; 1931 NCL
 5 § 8407.01]--(NRS A 1957, 69; 1965, 551; 1969, 351; 1975, 608;
 6 1977, 765)

7 (APPLICABLE SECTIONS FROM;)

8 NEVADA CODE OF JUDICIAL CONDUCT, CANON, 3.

9 A judge shall perform the duties of judicial office
 10 impartially and diligently.

11 A. Judicial duties in general. The judicial duties of a jude take
 12 precedence over all the judges other activities. The judge's
 13 judicial duties include all the duties of the judge's office
 14 prescribed by law. *In the performance of these duties, the
 15 standards that follow apply.

16 B. Adjudicative Responcibilities.

17 (1) A judge shall hear and decide matters assigned to the
 18 judge except those in which disqualification is required.

19 (5) A judge shall perform judicial duties without bias or
 20 prejudice. A judge shall not, in the performance of judicial
 21 duties by words or conduct manifest bias or prejudice, including
 22 but not limited to bias or prejudice based uopn race,sex,religion,
 23 national origine,disability,age,sexual orientation or
 24 socioeconomic status, and shall not permit staff,court officials
 25 and others subject to the judge's discretion and control do so.

26 C. Administrative Responsibilities.

27 (1) A judge shall diligently discharge the judges
 28 administrative responsibilities without bias or prejudice and
maintain confidence in judicial administration, and should
cooperate with other judge's and court officials in the
administration of court business.

D. Disiplinary Responsibilities.

(1) A judge who receives-information indicating a substantial
liklihood that another judge has committed a violation of this
Code should take appropariate action. A judge having knowledge*
that another judge has committed a violation of this Code that
raises a substantial question as to the other judge's fitness for
office shall inform the appropriate authority.

E. Disqualification.

(1) A judge shall disqualify himself or herself in a
proceeding in which the judge's impartiality might resonably be
questioned, including but not limited to instances where:

(a) The judge has a personal bias or prejudice concerning
a party or a party's lawer, or personal knowlege od disputed
evidentiary facts concerning the proceeding.

1 In addition to Judge Stone's known conduct and indiscretion
2 during the sentencing proceeding, the Petitioner asserts that
3 Judge Stone's discretion during previous Court proceedings is also
4 suspect for additional reasons. namely.that Judge Stone entered
5 several questionable rulings regarding the Defendant's Pre-Trial
6 Motions In Limine, and regarding various objections of Counsel
7 entered during the trial of the instant case, which imply Judge
8 Stone's personal bias during Trial Proceedings aswell. Which
9 are as follows:

10 1. When the Trial Court denied Defendant's Motion In Limine
11 #1, Which moved the Trial Court to exclude at Trial ALL testimony
12 concerning the hearsay statements of the alleged victim. Where
13 the alleged victim was not present to testify and subject to
14 cross-examination by the Defense regarding said hearsay
15 statements. Where the admission of said hearsay statements
16 tended to raise inference to the existance of alleged fact and
17 consequence which made a determination of guilt more probable
18 than it would have been without said tesimony. Where the probative
19 value of said hearsay statements was substantially outweighed by
20 considerations of unfair prejudice to the Defendant and danger of
21 confusing the issues before the Court or of misleading the Jury.
22 In violation of NRS 51.065, NRS 48.025, NRS 48.035 and NRS 48.045.
23 Which deprived the Defendant of his independent State and Federal
24 Constitutional Guarantees to Fair Trial and Confrontation as
25 enumerated in Artical 1, Section 8 of the Constitution of the State
26 of Nevada; and by the 6th and 14th Amendments to the United States
27 Constitution.

28

2. When the Trial Court denied the Defendant's Motion In
Limine #6. Which moved the Trial Court to exclude at trial ALL
Irrelevant Evidence and ALL Relevant Evidence where the probative
value of such evidence was substantially outweighed by the Danger
of unfair prejudice to the Defendant and of confusing the issues
before the Court or misleading the Jury. In Violation of
NRS 48.025, NRS 48.035 and NRS 48.045. Which deprived the
Defendant of his independent State and Federal Constitutional
Guarantees to fair trial as enumerated in Artical 1, section 8
of the Nevada State Constitution; and the 14th Amendment to the
United States Constitution.

3. When the Trial Court, against the objections of Trial Counsel, allowed the State to include at trial victim hearsay testimony and supposition which made implication and inference to the Defendant's alleged involvement in uncharged criminal conduct, to wit, the Defendant's alleged involvement in the disappearance and alleged murder of Beverly Ann Baxter. In violation of NRS 48.025, NRS 48.035 and NRS 48.045. Which deprived the Defendant of his independant State and Federal Constitutional Guarantees to Fair trial as enumerated in Artical 1, Section 8 of the Constitution of the State of Nevada; and by the 14th amendment to the United States Constitution.

23 WHEREFORE, Petitioner prays that this honorable Court grant
24 him the relief to which he is entitled in this proceeding

25 EXECUTED, at the ELY STATE PRISON, Ely, White Pine County
26 Nevada, on this 19th day of July, 2004:

By: Steven F Voss
STEVEN FLOYD VOSS,
Petitioner, Pro per.

VERIFICATION

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

By: Steven F. Voss
STEVEN FLOYD VOSS,
Petitioner.

CERTIFICATE OF SERVICE BY U.S.MAIL

I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.5(b) that on this 19th day of July, 2004, I, mailed a true and correct copy of the foregoing: Petition For Writ Of Habeas Corpus (Post-Conviction), addressed to:

E.K.McDANIEL, Warden,
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

BRIAN SANDOVOL
NEVADA ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701-4714

RICHARD GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
P.O. Box #11130
Reno, Nevada 89520-0027

By: Steven F. Voss
STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

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STEVEN FLOYD VOSS #52094
NEVADA STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999

FILED

2004 JUL 29 PM 3:08

RONALD A. LONGTIN, JR.

BY  DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

STEVEN FLOYD VOSS,
Petitioner,

VS.

E.K.McDANIEL, et al.,
Respondent's,

Case No. CR96-P-1581-A

Dept. No. 10

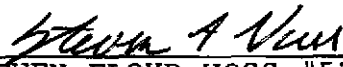
REQUEST FOR SUBMISSION
OF MOTION

COMES NOW, Petitioner, STEVEN FLOYD VOSS, and hereby requests that his proper person, Motion For Leave Of Court To File A Successive Petition For Writ Of Habeas Corpus (Post-Conviction) And Alternative, Pre-Sentencing Motion To Set Aside Jury Verdict, which was filed on the 19th day of July 2004, in the above entitled matter be submitted to the Court for decision.

The undersigned Petitioner certifies that a copy of the foregoing has been mailed to all Counsel of record.

DATED, this 26th day of July 2004.

By:


STEVEN FLOYD VOSS #52094
ELY STATE PRISON
P.O. Box #1989
Ely, Nevada 89301-9999