

FILED

JAN 17 2019

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY [Signature]
DEPUTY CLERK

Supreme Court No. 77541

District Court No. 08-C250630

EIGHTH JUDICIAL

CASE - OF - FIRST - IMPRESSION FOR NRS. 176.555 ¹

APPELLANT'S INFORMAL BRIEF

CASE BECOMES A PERFECT EXAMPLE OF LACK OF JURISDICTION BASED ON PROCEDURAL DUE PROCESS ²

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

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

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

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

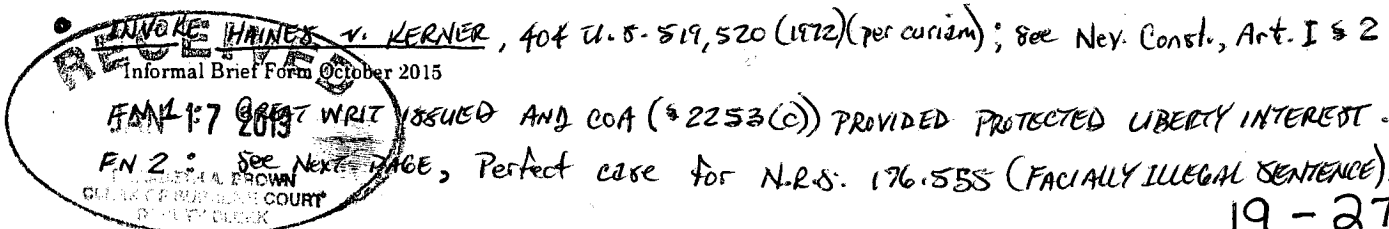
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To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Becomes a training tool which fits within "limited scope" of "Edwards".
FN 2: SEE ALSO SULLIVAN v. THE STATE OF NEVADA, 120 Nev. 537, 96 P.3d 761, 764 (2004)

O'Keefe's continued custody by the Sheriff was by the power of the Second-Amended Information (C250630) charging the same statutory offense. These informations were vested in the federal appeal, 9TH circuit case no. 12-15271 filed April 13, 2012, which determined a colorable "double jeopardy" violation under the federal question of law jurisdiction (Section 1331) - The "CoA" embodied in the WRIT issued, (Section 2243) was based on the physical event of the Second-State Trial held 8/23/2010 to 9/2/2010, two years prior the 3RD TRIAL. This second trial was an actual event outside the 3RD TRIAL.

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

Filed Date	Name of Judgment or Order - Case No. C250630
10/31/2018	ORDER DENYING DEFENDANT'S MOTION TO CORRECT "FACIALLY" ILLEGAL SENTENCE

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 11/21/2018

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

Case No.	Case Title	Name of Court
01631	(FAST TRACK APPEAL) 3RD TRIAL	Nev. Sup. Court

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

☒ Yes ☐ No

* SEE PRAYER - CASE OF FIRST IMPRESSION

• 28 U.S.C. §§ 2243, 2253(c)(2)(252)
(*Consequences of Writ and Notice)

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

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

- 1.) O'KEEFE filed Notice of Motion and Motion to Correct FACIALLY ILLEGAL SENTENCE on October 2, 2018, "for the court goes beyond its authority by acting without jurisdiction." O'Keefe invoked EDCR 3.20 and Nev.R. Civ. P. 8(c)(d). State filed untimely answer on October 18, 2018. FAILS to address affirmative defenses raised as, "Illegality", "WAIVER", and "Res Judicata".
- 2.) State disavows that an affirmative defense of a colorable double

jeopardy claim was found prior the third trial under § 2241(c)(3).

- 3.) ^{the} State claims in opposition that O'Keefe only had a federal appeal pending not divulging that the 9th Circuit Court had decided O'Keefe's request to appeal and had "GRANTED" the appeal, made under Fed.R.A.P. 3(c)(1) and 4, with full briefing to continue now under 28 U.S.C. §§ 1291, 2253 with the gate keeping function being satisfied. Section 2253(c) is jurisdictional. (see also § 1331) (• SEE CONSEQUENCES OF WRIT, COA, and NOTICE; BROWN v. ALGERIA, Sheriff, *intra*)
- 4.) ^{the} State fails to divulge that the Clark County Attorney General's Office was NOTICED by law (Section 2252) that the habeas litigation would continue; now as a federal question and jurisdiction, § 1331.
- 5.) ^{the} State fails to recognize that Nevada prior "legislature" approved Nev. Const., Article I § 2 (... Bound by all S.C.O.-U.S. authorities.)
- 6.) Federal "All Writs Act" prohibits any stay pursuant 28 USC § 1651(2) when or where an appeal has been granted or / or under §§ 1291, 1292. (• Clerk of U.S. Dist. Court and 9TH CIR. CLERK WRONGLY FILED AS CAUSE 2254)
- 7.) The state fails to recognize that O'Keefe's single GRAND raised in the federal petition under 28 USC § 2241(c)(3) and U.S. Const., Article I, sec. 9, Cl. 2 was that the physical and tangible event of the Second-State Trial violated the federal DOUBLE JEOPARDY CLAUSE of the U.S. Const. V Amendment. This trial happened two years before the third trial to which was the purpose of the COA issued 4/18/2012. The "COA" guaranteed a protected "Liberty interest(s)" by law under the procedural due process clause enforced by the 14th Amend. Also protected by Nev. Const., ARTICLE I § 5 (suspension clause).

- 8.) All State parties violated the "Castro Rule" under Castro vs. United States, 540 U.S. 375, 382 (2003) (recharacterized "2241" as "2254").
See also STON vs. Mulvihill, 389 F.3d 880 (9th Cir. 2004) (same)
 to prevent full effect of the HABEAS CORP WRIT under the U.S. Constitution protected by Suspension Clause of the U.S. Const., Article I § 8 which incorporates U.S. Const. Art. I, § 2.
- 9.) The State claims in his Opposition (page 7, lines 11-12) that O'Leary's claim is an attack on the judgment and ~~states~~ argument basis, but does not say why! ? ...
- 10.) U.S. Congress incorporated Barefoot, 463 U.S. 880, at 892 FN13 into post AEDPA Section 2253 which imposes an automatic stay of any proceeding and especially prohibits any sentence being imposed unless case is remanded!
- Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)
- The fact that the U.S. District Court Clerk and the 9th Circuit Clerk wrongly filed O'Leary's posttrial 2241 petition as a 2254 post action did not ~~attenuate~~ alleviate the fact that all parties were served "Noticed" under (Section) 28 U.S.C. § 2252 which explains everything - see EXHIBIT "A" attached to O'Leary's MOTION TO CORRECT FACIALLY ~~ILLEGAL~~ SENTENCE filed October 2, 2018. (WRIT issued UNDER 2241 on paper)
 • (9TH CIRCUIT CASE NO. 12-15271) (U.S. DIST COURT 2:11-cv-02109-GMN-VCF)
- The State of Nevada's OWN SENIOR NINTH CIRCUIT Justice PROCTER HUG FR's OPINION in BROWN v. AHERN, - Sheriff, 676 F.3d 899, at 901 (2012) explain the true

vi "Consequences" and "Effect" of the COA issued - (i.d. at 90)

- (GROUND as ISSUE ON APPEAL VESTS JURISDICTION - § 2253(c))

Procedural Due Process Rights and Liberty Interests
required full briefing to be completed under § 2291 -

The fundamental purpose of the COA was to be heard
before final sentencing - • see Wolff v. McDonnell, 418 U.S. 539,
557 (1974) • see also Blackledge v. Perry, 417 U.S. 21, 28-29 (1974)
(... Due Process Triggered)

The Double Jeopardy Clause of the 5th
Amendment of the U.S. Constitution is incorporated into the DUE
PROCESS CLAUSE of the 14th Amend. made applicable to the States
through the express dicta of Benton v. Maryland, 395 U.S. 745 (1969).

• FUNDAMENTAL FAIRNESS DOCTRINE FOR PROCEDURAL DUE PROCESS TRIGGERED.
Standing applies through Minn. v. New York, 423 U.S. 41, 62 (1975)

"Barefoot v. Estelle, set the "guidelines" by S.Ct. U.S. that
if a CIRCUIT COURT GRANTED A COA a stay was automatic.
(see 463 U.S. 892 F.N3) (THE HIDEAS CEARIS ACT OF 1967, ACT OF Feb 5 1967)
SUBSEQUENT § 2253(c) issued, "DUE PROCESS ACTIVATED."

This was the purpose of the GRANTED APPEAL
by DUE PROCESS OF LAW. (New Const. Article 1 § 8 (5))
(New Const. Art 1 § 2) (New Const Art 1 § 5) (U.S. Const;
XIV AMENDMENT'S DUE PROCESS, EQUAL PROTECTION AND LIBERTY CLAUSES).

- See DAVIS v. SCHERER, 468 U.S. 103, 202 (1984) (prohibits
deprivation of protected liberty interests - i.d.

The Court had a DUTY to SPEAK and a DUTY to ACT.
This is the purpose of his job as an equitable court.

• see JUDICIAL CANONS 2:20; Oath of Office New Const,
15 § 2.

ERRORS OF THE OFFICERS OF THE COURT

O'Leary notes that the front-end of the state headed by the Clark County District Attorneys, seem to INTENTIONALLY not understand the purpose and power of Federal law and Federal rights dictated by statutes 28 USC § 2241, 2243, 2252, 2253(c) and also 28 USC §§ 1291, 1331 but the back end of the state, after conviction, headed by the assistant attorney general's certainly understand and moreover instantly and immediately apply 28 USC § 2244 and only about section 2251 not being upheld.

Rush all pretrial detainees into the slaughter house like cattle for the meat market, and we will overlook and disavow the "Rule of Law", "Fundamental Fairness Doctrine", the U.S. and Nevada Constitutions embodied with and by the DUE PROCESS CLAUSES, EQUAL PROTECTION CLAUSES and the LIBERTY CLAUSES of the U.S. 5th, 14th Const. Amend and Nev. Const., Article I § 8(5), and the GREAT WRIT

IF pre-trial's must follow procedural due process (FORMAL LAW) in all actions, then why is not the Officers of the court required to follow the same. See § 1331

The State GREAT WRIT (NRS 341360) and the U.S. GREAT WRIT (28 USC § 2241) cannot be disavowed and suspended. (see Nev. Const. art. 1 § 5)

However, the Court (Dept. XVII, J. Villari) went on unscheduled vacation, the same time as the third trial after disavowing the WRIT Issued and Noticed to all

• See 28 USC § 2252; Nev. Const., Art. 1 § 2 (Oath of Office)

Due process of law prohibits the state from depriving procedural due process of law and protected liberty interests generated here by federal statutes 28 U.S.C. §§ 1291, 1331, 2241, 2243, 2252, 2253(c) and the Due Process Clauses of their own force as U.S. Const. XIV Amend. and Nev. Const., Article I § 8(5) to also include the prescription promulgated as Nev. Const., Article I § 5 (Suspension Clause), where the U.S. Const., Art. I, Sec. 9, Clause 2 is incorporated. Moreover, the Double Jeopardy Clause of the U.S. Fifth Amend. is incorporated into the Due Process Clause of the 14th Amend.

As a pretrial detainee, under the custody of the Sheriff, O'Keefe had a heightened protection by the Due Process Clauses above when the Writ was issued with O.A.

Once the Writ was issued with a colorable double jeopardy violation certified, as a consequence, by federal law and Congress, subject-matter jurisdiction was vested.

- PRAYER TO INCLUDE: 1.) Take this action as a case of first impression under N.R.S. 176-585 where based on procedural due process jurisdiction became temporarily lost where district state trial court was without authority to act until and only once the Remand had issued from the actual "NOTICE" given that jurisdiction and the Habeas litigation would continue pursuant § 2252.
- 2.) Delineate for the county district attorneys the purpose of a pretrial writ³ under § 2241(c)(3) and the consequences of jurisdiction when Writ issued as Great Writ!

DATED this 15th day of January (Tuesday), 2019.

Pursuant N.R.S. 208-165 (28 U.S.C. § 1746) by: Brian K. O'Keefe #90244
Signature of Appellant

Brian K. O'Keefe proper
Print Name of Appellant

FN3: THE "SILVER STATE" via the Supreme Court of Nevada judges actually needs this case based on the novel situation and factors as the legal procedures involved as the "CAUSE" and the consequences as the "RESULT" of "formal law" and the "Rule of Law" here as the GREAT WRIT. It will be another 100 years before another case occurs as did here. Someday, ostensibly, one of the Judges, family member or friend may depend on the "GREAT WRIT" themselves.

CERTIFICATE OF SERVICE

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

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

Clark County District Attorney
200 Lewis Ave.
Las Vegas Nevada 89155-2212

DATED this 15th day of January (Tuesday), 2019.

Brian K. O'Keefe
Signature of Appellant

Brian K. O'Keefe
Print Name of Appellant

L.C.C. 1200 Prison Rd.
Address

Lovelock, Nevada 89419
City/State/Zip

Pro Per #90244
~~Telephone~~