

STEVEN FLOYD VOSS #5209V

Northern Nevada Correctional Center

Post Office Box # 7000

Carson City, Nevada 89702-7000

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,
Appellant,

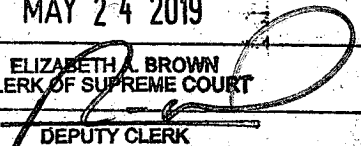
VS.

THE STATE OF NEVADA,
Respondent.

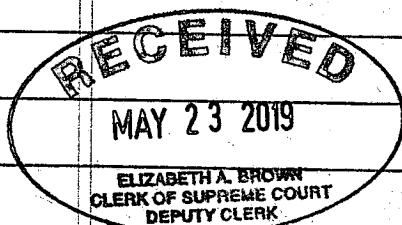
No. 77505-COA

FILED

MAY 24 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

PETITION FOR REHEARING



19-22692

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Petition:

The Petitioner hereby requests the rehearing of the above entitled appeal. Where, the Court has clearly misapprehended or overlooked material facts, including judicially noticable facts, necessary to the Court's adequate consideration and resolution of the instant appeal:

II. Discussion:

The Court within its May 17, 2019 Order of Affirmance (Docket at page 19-217104), had acknowledged the Appellant's claim that the District Court had granted him a resentencing hearing in 2001, but he had never received said resentencing hearing or the benefit of proportionate sentencing contemplated by the 2001 post-conviction court in the context of Case No. CR96-P-1581. However, the Court failed to recognize the merit

of such claims and to take judicial notice of such facts previously determined by the Court in the context of Case No. 74227. Similarly, the Court acknowledged the Appellant's claim that he had expired and served to completion on March 4, 2018 each of the decidedly "onerous" and disproportionate sentences imposed upon him pursuant to the District Court's November 27, 1996 Judgment of Conviction. However, the Court failed to recognize the merit of such claims and to take judicial notice of such facts which appear outside of the record. (See, attached Exhibit #1 and Exhibit #2). The judicially noticable facts reflected by said Exhibit #1 and Exhibit #2 function as prima facie evidence of the Appellant's expiration and discharge from the sentences imposed via the District Court's November 27, 1996 Judgment of Conviction, thereby demonstrating a structural defect affecting the District Court's power to conduct a resentencing

proceeding relative to Case No. CR96-1581, at this late juncture, and to enter an Amended Judgment of Conviction therein.

From the language of the Court's Order of Affirmance (Docket at page 19-217104) it clearly appears that the Court has misapprehended certain material facts. It seems that the Court is of the belief that the District Court had conducted a resentencing hearing and entered an amended Judgment of Conviction in Case No. CR96-1581, which the Appellant now challenges herein. However, the fact is the Appellant seeks to have the District Court's original and decidedly invalid November 27, 1996 Judgment of Conviction vacated with prejudice. Based upon this Court's August 15, 2018 Order Granting Petition entered in Case No. 74227 (Docket at page 18-901833), which had found the November 27, 1996 Judgment of Conviction invalid (see, attached Exhibit #3), and the jurisdictional defect precluding the District Court's entry of an Amended Judgment of Conviction, which

completion and discharge of said sentences this Court in the context of case No. , had found the November 27, 1996 Judgment of Conviction to be invalid.

Therefore, the Court's finding is clearly erred where the Court has overlooked or misapprehended such material facts outside of the District Court record.

B. This Court overlooked or misapprehended material facts in that the Appellant could not have raised his present coram nobis claims prior to his discharge from custody in case No. CR96-1581.

First, the Appellant's claims that his decidedly "one-sided" and disproportionate November 27, 1996 Judgment of Conviction which this Court had found to be invalid within its August 15, 2018 order Granting Petition (Docket at page 18 -) entered in Case (see, Exhibit #3) could not have been raised

was effected by the Appellants' completion and discharge from the sentences imposed via the November 27, 1996 original Judgment of Conviction.

III. Argument:

A. This Court overlooked or misapprehended material facts relative to its finding that the Appellants Petition For writ of Coram Nobis claims, "did not involve errors of fact outside the record, and are accordingly not within the scope of a petition for a writ of coram nobis."

The Appellants Petition For writ of Error Coram Nobis clearly raises issues of fact outside the District Court record. Such as: (1) the Appellant has served to completion and discharge each of the six (6) decidedly "onerous" and disproportionate sentences imposed via the November 27, 1996 Judgment of Conviction; and (2) that subsequent to the Appellants

in the District Court via any statutory remedy. Whereas, habeas corpus relief was not reasonably available to the Petitioner subsequent to the August 9, 2001 Writ of Habeas Corpus entered by the District Court in the context of case No. CR96-P-1581, and in the pendency of the sentencing proceedings ordered by such Writ. Because, said writ had found the sentences imposed to be "onerous" and disproportionate, and provided a remedy which if it had been timely administered would have been effective to correct the disproportionality of the sentences imposed. Thus, habeas corpus would have been premature. Nonetheless, the November 27, 1996 original Judgment of conviction has never been vacated based upon the 2001 Writ of Habeas Corpus. Therefore, there was no finding by any Nevada Court of competent jurisdiction finding the November 27, 1996 Judgment -

OF Conviction to be invalid
until this Court's August 17, 2018
Order Granting Petition (Docket at
page 18-901833) entered some five
months subsequent to the Appellant's
completion and discharge from
custody relative to Case No. CR96-1581.

Therefore, the only vehicle
available to the Appellant to
attain his requested relief and
to challenge the jurisdiction of
the District Court was by a
Petition Per Writ of Error Coram
Nobis filed in the District Court.

Nonetheless, this Court has overlooked
the fact that in the State of
Nevada a person has no obligation
whatsoever to see that he is
properly convicted or sentenced,
(see, Order Granting Petition, Case
No. 74227, Docket at page 18-901833),
citing State v. Loveless,

IV Conclusion:

Given the above facts a
Petition Per Writ of Error Coram
Nobis was an appropriate and

legally viable vehicle to attain the Appellant's requested relief and to challenge the District Court's limited jurisdiction, and specifically its lack of jurisdiction to conduct resentencing proceedings and to enter an Amended Judgment of Conviction relative to Case No. CR96-1581.

Thereby, requiring the District Court to vacate its decidedly invalid November 27, 1996 Judgment of Conviction with prejudice to the filing of an Amended Judgment of Conviction. Therefore, because such a Order vacating the November 27, 1996 Judgment of Conviction would effectively function as a Judgment of Acquittal there exists no reasonable basis to deny the Appellant's request for the entry of such a Judgment of Acquittal relative to the charges brought in Case No. CR96-1581, where, such a Judgment of Acquittal would be undeniably effective to avail the Appellant to a plea of former

jeopardy if the need to do so should ever arise.

V. Verification: (under penalty of perjury)

I the undersigned Appellant do hereby certify that I have read the content of the foregoing Petition For Rehearing, and that same is true and correct of my own personal information, knowledge and belief. Dated this day of May 2018, By: Steven F. Voss STEVEN F. VOSS

CERTIFICATE OF SERVICE VIA U.S. MAIL

I STEVEN FLOYD VOSS do hereby certify that on this day of May 2018 that I mailed a true and correct copy of the foregoing document, addressed to:

JENNIFER NUBLES, Esq. (DDA)
% Washoe County D.A.
Post office Box # 11130
Reno, Nevada 89520-0027

By Steven F. Voss
STEVEN FLOYD VOSS

EXHIBIT #1

EXHIBIT #1

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
VOSS, STEVEN F.	52094	2C - 65	08-27-2018

4.) REQUEST FORM TO: (CHECK BOX)

☒ CASEWORKER	☐ MEDICAL	☐ MENTAL HEALTH	☐ CANTEEN
☐ EDUCATION	☐ VISITING	☐ LAW LIBRARY	☐ DENTAL
☐ LAUNDRY	☐ PROPERTY ROOM	☐ SHIFT COMMAND	☐ OTHER

5.) NAME OF INDIVIDUAL TO CONTACT: Unit #2, Caseworker

6.) REQUEST: (PRINT BELOW) I am informed that on February 26, 2018, that I expired and discharged the last of the six (6) sentences imposed pursuant to the November 27, 1996 Judgment of Conviction entered in Washoe County District Court Case No. CR96-1581; and that at present date, I am restrained pursuant to Murder and Kidnapping convictions as set out within the January 30, 2004 Corrected Amended Judgment of Conviction entered in Washoe County District Court, Case No. CR97-2077.
Please verify whether such facts are true and correct.

7.) INMATE SIGNATURE [Signature] DOC # 52094

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

CR 961581 expired 3/4/18. —
Voss is serving time currently under CR97-2077. —

10.) RESPONDING STAFF SIGNATURE C. J. Buchanan DATE 3/5/18

EXHIBIT #2

EXHIBIT #2

Board of State
Prison Commissioners

STEVE SISOLAK
Governor

BARBARA CEGAVSKE
Secretary of State

AARON FORD
Attorney General



STATE OF NEVADA
DEPARTMENT OF CORRECTIONS



STEVE SISOLAK
Governor

JAMES E. DZURENDA
Director

Northern Nevada Correctional Center

K. Mattice, CCS I

PO Box 7000

Carson City, NV 89701

DATE: February 11, 2019

TO: Mary Duplin

FROM:

SUBJECT:	NAME:	VOSS, STEVEN	NDOC#	0000052094
	AKA:	VOSS, STEVEN F		
	DOB:		SSN#	
	FBI ID:	77922V5		

Sentence Structure

LVL	S	CASE#	CNT	OFFENSE	MIN	MAX	RETRO DATE	PED	MPR	PEX
1.01	A	972077	1	MURDER 1ST DEGREE		LIFE	07/08/1998			
1.02	A	972077	2	KIDNAPPING I	180	LIFE	07/08/1998	07/07/2013		
1.03	DCS	961581	1	BURGLARY	48	120	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF
2.01	DCS	961581	2	UTTERING FORGED INSTRUMENT	16	48	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF
3.01	DCS	961581	3	UTTERING FORGED INSTRUMENT	16	48	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF
4.01	DCS	961581	4	FORGERY	16	48	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF
5.01	DCS	961581	5	FORGERY	16	48	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF
6.01	D	961581	6	ATT THEFT	16	48	DISCHARGED	DISCHARGED	DISCHARGED	DISCHAF

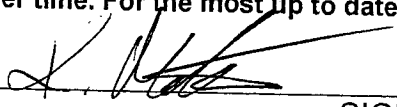
The following information is provided by a Nevada Department of Corrections, and is verified by a Correctional Caseworker.

DATE OF INCARCERATION: 07/12/1996

LENGTH OF INCARCERATION:

The above listed information has been verified by the undersigned Correctional Caseworker. The information provided on this document is considered accurate as of the date noted below. The dates provided above are subject to change at anytime due to credits the inmate may earn

over time. For the most up to date information please contact the NDOC.



SIGNATURE



DATE

EXHIBIT #3

EXHIBIT #3

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

Petitioner,

vs.

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

Respondent,

and

THE STATE OF NEVADA,
Real Party in Interest.

No. 74227

FILED

AUG 15 2018

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

ORDER GRANTING PETITION

This is a petition for extraordinary relief seeking an order directing the district court to vacate Steven Floyd Voss' November 27, 1996, judgment of conviction entered in district court case number CR96-1581 and enter an amended judgment of conviction in compliance with a district court order entered on August 9, 2001, that granted Voss' postconviction petition in part and ordered a new sentencing hearing. We ordered the real party in interest to file an answer on behalf of respondent.

The real party informs this court that although the district court granted Voss' petition in part and ordered a new sentencing hearing, Voss has not been resentenced. The real party, however, opposes the granting of extraordinary relief because Voss' petition "makes no sense" and he is seeking a non-existent remedy, and the district court improperly ordered a new sentencing hearing. The real party further asserts laches as a defense, asserting that on the face of the petition Voss "does not want a



new sentencing hearing due to the passage of time” and Voss has acquiesced in the conditions by waiting 17 years without ever showing any interest in getting a new sentencing hearing.

Voss filed a reply addressing the real party’s arguments. He also filed two other documents. Among other things, Voss informs this court that on February 26, 2018, he served to completion and discharged the sentences imposed in the November 27, 1996, judgment of conviction entered in district court case number CR96-1581. Voss asserts that because he never received a new sentencing hearing, the only equitable relief available is to vacate the judgment of conviction entered in CR96-1581 and enter a judgment of acquittal.

The record clearly demonstrates the district court did not conduct a resentencing as required by the August 9, 2001, order granting Voss’ petition in part or enter an amended judgment of conviction. As a result, there is currently no valid judgment of conviction entered in CR96-1581.¹ Further, it appears Voss does not have a plain, speedy, and adequate remedy available to him. Accordingly, we conclude mandamus relief is warranted. *See* NRS 34.160; NRS 34.170. We disagree, however, that entry of a judgment of acquittal is appropriate because, in granting Voss’ petition in part, the district court did not find the conviction itself was invalid; rather, the district court only determined there were errors at sentencing. Instead, we conclude resentencing, as originally ordered in the August 9, 2001, order, and entry of an amended judgment of conviction is the relief

¹We note that although there is no valid judgment in CR96-1581, Voss has not been subject to illegal restraint because since 1998 he has also been held and been serving a concurrent prison term of life without the possibility of parole pursuant to a judgment of conviction entered in district court case number CR97-2077.

warranted. We reject the real party's assertion that laches should preclude granting relief because it is the State's responsibility, not the defendant's, to ensure a defendant is legally convicted and sentenced. *See State v. Loveless*, 62 Nev. 17, 24, 136 P.2d 236, 239 (1943). Further, we conclude that any challenge to the district court's decision to grant a new sentencing hearing was waived by the State's failure to challenge this decision on cross-appeal in Docket No. 38373. Therefore, we

ORDER the petition GRANTED AND DIRECT THE CLERK OF THIS COURT TO ISSUE A WRIT OF MANDAMUS instructing the district court to resentence Voss and enter an amended judgment of conviction in CR96-1581.²

 C.J.
Silver

 J.
Tao

 J.
Gibbons

cc: Chief Judge, Second Judicial District Court
Steven Floyd Voss
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

²Voss shall be credited with all time he has served pursuant to the invalid judgment of conviction entered in CR96-1581.