

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 78209

SIAOSI VANISI

Appellant,

v.

WILLIAM GITTERE, WARDEN, ELY STATE PRISON, AARON
FORD, ATTORNEY GENERAL OF NEVADA,

Respondent.

**Motion of the Clark County Public Defender (CCPD), Clark
County Special Public Defender (SPD), Nevada State Public
Defender (NSPD), Washoe County Alternate Public
Defender (APD), and Washoe County Public Defender
(WCPD) for Leave to File Brief of *Amicus* Curiae Supporting
Exemption of Severely Mentally Ill Persons from the Death
Penalty**

COMES NOW, the Clark County Public Defender (CCPD), Clark
County Special Public Defender (SPD), Nevada State Public Defender
(NSPD), Washoe County Alternate Public Defender (APD), and Washoe
County Public Defender (WCPD), by and through the undersigned
counsel of record, and hereby files this motion for leave to file an amici
curiae supporting exemption of severely mentally ill persons from the
death penalty.

This motion is based upon the following Points and Authorities,
Declaration of Counsel, and all pleadings and papers on file herein.

Dated this 3rd day of October, 2019.

Respectfully submitted,

/s/ Sarah K. Hawkins

SARAH K. HAWKINS, Bar No. 13143
Chief Deputy Public Defender (CCPD)
Clark County Public Defender
Attorney of Record for *Amicus*

POINTS AND AUTHORITIES

The Clark County Public Defender (CCPD), Clark County Special Public Defender (SPD), Nevada State Public Defender (NSPD), Washoe County Alternate Public Defender (APD), and Washoe County Public Defender (WCPD) hereby request leave to appear and submit a brief as *amici curiae* in this matter. *See* NRAP 29(a).

Pursuant to Rule 29(a), the undersigned counsel files the instant motion for this Honorable Court's consideration. The proposed brief of *amicus curiae* is submitted along with this motion.

I. INTERESTS OF AMICUS

Indigent defense attorneys statewide daily protect and defend the severely mentally ill within a well-intentioned but ill-equipped criminal justice system. Challenges attendant to representation of the severely mentally ill person unacceptably undermine our ability to protect and defend them, and eviscerate the reliability of any death sentence imposed upon them.

No one knows this better than public defenders, who are the first line of defense for these vulnerable Nevadans. Our collective interest is

in protecting the severely mentally ill from cruel and unusual punishment. Dispensing death where a person cannot, because of an innate condition, regulate behavior, effectively communicate with counsel, comprehend court proceedings and/or adequately negotiate the attorney-client relationship can neither be reliable nor just.

Give the foregoing, indigent defense counsel statewide urge this Honorable Court to categorically exempt the severely mentally ill from the death penalty.

II. DESIRABILITY OF AMICUS CURIAE PARTICIPATION

The amicus brief submitted to this Honorable Court provides a unique and experiential perspective on the representation of severely mentally ill capital defendants, and the challenges related thereto. A decision exempting the severely mentally ill from death will not only obviate unjust execution for Mr. Vanisi, but insulate a significant number of our most vulnerable citizens from a disproportional, unreliable, and irrevocable punishment.

Severely mentally ill persons face challenges on par with the those of the intellectually disabled and juveniles, who are categorically exempt

from the death penalty. Roper v. Simmons, 543 U.S. 551, 560 (2005); Atkins v. Virginia, 536 U.S. 304, 311 (2002). Given this experiential congruency, categorical exemption from death should extend to severely mentally ill persons. Such a decision not only honors Eighth Amendment jurisprudence, but reflects American notions of human dignity, equity, and justice.

The “classic role of amicus curiae” is to assist in a case of “general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration.” *Miller-Wohl Co. v. Com’n of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1992). An amicus brief should be allowed “when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the role that the lawyers for the parties are able to provide. *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (citations omitted). The brief meets these purposes.

The issue presented here has general public interest, as this Honorable Court's interpretation of constitutional principles impacts all Nevadans. Moreover, indigent counsel for the severely mentally ill have a stake in this outcome since many of our clients' lives hang in the balance. Public defenders are uniquely positioned to understand the breadth and depth of this issue. We work with severely mentally ill persons every day, witnessing first-hand their challenges in negotiating the criminal justice system. Moreover, severe mental illness can significantly limit an attorney's ability to protect and defend his/her client. This is especially problematic in the capital context. Public defenders are in a unique position to provide that perspective.

III. CONCLUSION

Given the foregoing, the Clark County Public Defender (CCPD), Clark County Special Public Defender (SPD), Nevada State Public Defender (NSPD), Washoe County Alternate Public Defender (APD), and Washoe County Public Defender (WCPD) respectfully request leave to file the attached amicus brief in support of Appellant's argument that imposing the death penalty upon severely mentally ill offenders is cruel

and unusual, therefore warranting their categorical exemption from death.

Dated this 3rd day of October, 2019.

Respectfully submitted,

/s/ Sarah K. Hawkins

SARAH K. HAWKINS, Bar No. 13143
Chief Deputy Public Defender (CCPD)
Clark County Public Defender
Attorney of Record for *Amicus*

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on October 3, 2019. Electronic Service of the foregoing *Amicus* Brief of the Clark County Public Defender (CCPD), Clark County Special Public Defender (SPD), Nevada State Public Defender (NSPD), Washoe County Alternate Public Defender (APD), and Washoe County Public Defender (WCPD) Supporting Exemption of Severely Mentally Ill Persons from the Death Penalty shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble
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/s/ Carrie M. Connolly
An Employee of the
Clark County Office of the Public Defender
District of Nevada