

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI
Appellant,

vs.
WILLIAM A. GITTERE, WARDEN
Respondent.

Supreme Court No. 78260

District Court No. CR94-0345

FILED

MAY 23 2019

APPELLANT'S INFORMAL BRIEF

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

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 submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017

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.

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
12-20-18	ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS
2-15-19	NOTICE OF ENTRY OF ORDER

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 2-26-19

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

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

☒ Yes ☐ No

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.)

On 2-2-19, in the Second Judicial District Court the Appellant pro pet filed the following: 1. Petition For Writ Of Habeas Corpus (Post-Conviction) "hereafter WRIT"; 2. Memorandum of Points and Authorities in Support of Post-Conviction Writ of Habeas Corpus in Support of actual innocence and or resentencing & exhibits "hereafter MEMORANDUM"; 3. Exhibits in Support of Memorandum of Points and Authorities in Support of Post-Conviction Writ of Habeas Corpus Relief "hereafter EXHIBITS": On 2-15-19,

the Honorable Barry L. Breslow, District Court Judge entered an NOTICE OF ENTRY OF ORDER, and ORDER DISMISSING SUCCESSIVE PETITION FOR WRIT OF HABEAS CORPUS. The Appellant on 2-26-19, Filed a Notice of Appeal that brings the instant Appeal before this Honorable Court, "No. 78260". On 4-23-19, this Court ORDERED] DIRECTING TRANSMISSION OF RECORD.

Appellant is challenging his criminal sexual conviction from a jury trial in April, 1994. Appellant previously had a direct appeal, and subsequent PCR Petitions and other kinds of motions for relief that all were denied and affirmed in this Court.

In Appellant's previous pro se litigation he attempted many times over to present he was innocent and evidence exist in support, and he was denied effective assistance of counsels.

Concerning the instant appeal in the Record On Appeal in the WRIT, MEMORANDUM and EXHIBITS the Appellant had presented at least nine(9) grounds per the District Court's Order Dismissing the Writ, the Court had briefly stated Appellant's previous some litigation before the Court including the background, then stated a standard of review and subsequent Findings of Facts and conclusion of law in Dismissing the Writ and Denied a request for a Hearing.

It should be noted and mention herein the initial petition for p.c.t. was denied in 1997, and importantly here in 2014, the district court had denied a second, successive p.c.t. petition what is most relevant here is the District Court had appointed counsel Robert W. Story, Esq and the

APPELLANT HAS DOCUMENTATION MR STORY SAID HE WILL OPPOSE ANY MOTION TO DISMISS ETC. ETC. THEN HAD APPARENTLY FILED A NOTICE TO COURT OF NO SUPPLEMENT ON 6-30-14. DEFENDENT ASKED MR STORY AS OTHERS TO LOOK INTO AND GET HIS MEDICAL RECORDS ^{1 ON} FEB-03-94 PREL. HEARING TRANSCRIPTS ESTABLISH NO TESTIMONY OF ANY CRIMES IN NOV. 93- ~~DEC 93~~ ^{OR JAN 94} PREL. (T. PAGES 7-24) DIRECT EXAMINATION. THE STATE FAILED TO MEET ITS BURDEN OF PROOF NOV. 93 AND JAN 94 (SHERIFF V. MIDDLETON 112 NU. (1996) DESIREE WAS DEEMED COMPETENT TO TEST. 17 p. 17) L. 16-25) p. 8) L. 1-25) p. 9 (L. 1-13), THE STATE FAILED TO EST. ITS CASE (FOR DEC 1993) AS THE STATE CAN NOT EST. ITS CASE BY PROVIDING THE WHAT, WHERE, WHEN AND HOW OF AN ALLEGED VICTIM OF SEXUAL ASSAULT. SEE p. 11 L. 16, p. 11 L. 12 p. 12 L. 1-3 AND 18 / p. 11 L. 23-24, p. 12 L. 15-16 p. 13 L. 6-7 / p. 12 L. 9-14 ECT. PETITIONER IS FACTUALLY INNOCENT OF SAID VIOLATIONS LAYED OUT UNDER NRS 200.366 AS THE STATE "NOT THE ALLEGED VICTIM" EST. THE ALLEGED CRIME. THE COURT DIDN'T HAVE ACTUAL EVID. TO EST. PROBABLE CAUSE SCHULP V. DELO 115 S. CT 851

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.)

APPELLANT RESPECT FULLY REQUESTS FOR THE FOLLOWING REASONS HIS WRIT SHOULD HAVE BEEN GRANTED OR AT LEAST AN EVID. HEARING HELD. PETITIONER, APPELLANT HAD PRESENTED IN COURTS THAT EVIDENCE EXIST THAT FOR MEDICAL REASONS AND OTHER REASONS AND CIRCUMSTANCES HE WAS UNABLE TO HAVE COMMITTED THE CRIMES HE'S CONVICTED OF AND TRIAL AND APPELLANT ATTORNEYS WERE INEFFECTIVE. APPELLANT IN THE INSTANT APPEAL HAD IN THE DIST. CT. TO THIS COURT IN THE RECORD ON APPEAL BEFORE THE COURT PRESENTED THIS NEW EVID. AND THE EXTREME COMPLICATION FOR HIM TO FINALLY OBTAIN AND PRODUCE IT HIMSELF THAT PREVIOUS COUNSELS WERE MADE "FULLY AWARE OF THIS EVIDENCE" THAT SUPPORTS HIS CLAIM OF ACTUAL/FACTUAL INNOCENCE. APPELLANT REQUEST THIS COURT WILL REVIEW THE ENTIRE R.O.A. OF NOV. HEREIN THE

Following: "Appellant told his P.D. before his prelin. hearing of his medical condition, and at the end of Appellants interrogation by police Det. Steigmet, Appellant clearly states how he has medical problems (broken back and broken leg etc.) Appellant told his P.D. to get his medical files to show "but was denied", P.D. stated she didn't have time - so starts conflict of interest and ineffective assistance of counsel. Also Appellant had asked all court appointed counsel to get his medical records as they had resources to do such, Appellant was not able to get counsels to get medical records, it took years for Appellant to finally track down his medical files which moved from company to company and state to state where he finally found 'em in the state of Florida! These Records EXHIBITS prove totally how petitioner was medically incompetent to commit the alleged crime of sexual assault. Appellant had surgery and was confined in a body cast till Dec. 1993 - still under a Dr's care till Jan. 17, 1994 see medical documents provided by Appellant from Florida state.

Appellants trial counsel knew he was factually innocent of the crimes of sexual assault based on the fact he was confined to a body cast, see the Medical Records EXHIBITS. Appellant had two (2) major open back surgeries to fix his spine and more; trial counsel was ineffective, deficient because she as all other court appointed counsel had failed too investigate and/or collect evidence of medical documentation that would have proven Appellant innocent. "The investigation stage of to perpetrating to defend a criminal case is "extremely" and highly crucial," rather than to simply prepare a case based upon the D-A's case file! The fact that evidence of Appellant's actual innocence exist (all court appointed counsel's) including trial counsel had a duty to investigate into the information provided by Appellant or to simply show why this investigation was unnecessary

SANDERS v. RATTLE 21 F.3d (9th Cir 1994) TO IGNORE AND FAILURE TO INVESTIGATE AND TO RETRIEVE THE MEDICAL DOCUMENTATION THAT WOULD PROVE APPELLANTS INNOCENTS RENDERS ALL INCLUDING TRIAL COUNSEL'S PERFORMANCE INEFFECTIVE. TRIAL COUNSEL VIOLATED APPELLANTS 5TH CONN. AMEND. RIGHT TO CROSS EXAMINE HIS ACCUSERS, HAD TRIAL COUNSEL EFFECTIVELY SECURED THESE MEDICAL RECORDS APPELLANT COULD HAVE SHOWN AT HIS PRELIMINARY HEARING THAT (1) NO SUCH CRIME COULD HAVE OCCURRED (2) THAT NO PROBABLE CAUSE EXIST TO BIND APPELLANT OVER TO DIST. CT. FOR TRIAL. APPELLANT FURTHER CONTENTS THAT THE ALLEGED VICTIM SUMMER MENNESS ESTABLISHES THE ACTUAL INNOCENTS OF APPELLANT, AFTER SHE WAS DEEMED COMPETENT TO TESTIFY SEE (P.L.T. PAGE 39 L. 15-20) DUE TO THE FACT SUMMER WAS DEEMED COMPETENT TO TESTIFY ALL TESTIMONY IS OPEN FOR EXAMINATION BY ALL PARTIES INVOLVED PURSUANT TO SUMMER'S TESTIMONY SHE HAD PLAINLY STATED THAT THE APPELLANT did NOT / NEVER INSERTED HIS PENIS INTO HER VAGINA AT (P. 42 L. 12-17), SEE ALSO (P. 45 L. 23-25) (P. 46 L. 1-6) IT WAS ONLY AFTER D.A. GRECO GAVE SUMMER THE IMPRESSION SHE WOULD GET INTO TROUBLE IS WHEN SHE CHANGED HER TESTIMONY (P. 42 L. 18-25) (P. 48 L. 1-10), STILL AT END OF ALL THIS THE WITNESS TESTIFYING SHE RETURNS TO THE TRUTH OF WHAT SHE ACTUALLY KNOWS TO BE TRUE, DESPITE REDIRECTION FROM D.A. GRECO (SEE P. 45 L. 23-25) (P. 46 L. 1-2). YET IN TRIAL THE D.A. USED COERCIVE TACTICS TO GET HER TO CHANGE HER TESTIMONY (AGAIN)!. DESIRE MENNESS HAS BEEN CERTIFIED A VIRGIN BY THE STATES OWN EXPERT, (SEE D.A. GRECO ON 3-11-94 EVID. HEARING P. 25 L. 16-21) TELLING THE COURT MS. KATHY M. PEELE IS AN EXPERT FOR CHILD S.A. VICTIMS, [THIS WAS ALSO CORROBORATED BY THE COURTS OWN STATEMENT ON RECORD ON HOW THE STATES EXPERT WILL TESTIFY DURING APPELLANTS TRIAL] SEE T.I. P. 8 L. 23-24) AND P. 9 L. 1). THE STATE "CAN NOT" REFUTE THAT (IT HAD AN EXPERT TESTIFY IN PHYSICAL EVID.) THE STATE HAD ITS EXPERT, BUT THE COURT CLEARLY ON RECORD DENIES THE DEFENSE ITS EXPERT TO REFUTE THE STATES EXPERTS TESTIMONY, TO HAVE AN EQUAL OPPORTUNITY TO OBTAIN AN OPINION TO PRESENT TO THE JURY. (THIS IS CLEAR ERROR BY THE COURT.) ITS A CLEAR VIOLATION OF APPELLANTS 5TH CONST. RIGHTS TO DUE PROCESS, AND VIOLATION OF APPELLANTS 14TH AMEND TO DUE PROCESS

EQUAL PROTECTION AND HIS 6TH AMEND. RIGHT TO EFFECTIVE ASSISTANCE OF
COUNSEL (TRIAL) AND A FAIR TRIAL ETC. ON 3-03-1994 TRIAL COUNSEL MADE AN
ORAL MOTION FOR ALL DISCOVERY, NV. STATE LAW REQUIRES PROSECUTORS TO TURN OVER
AT LEAST 21 DAYS BEFORE TRIAL SUMMARIES OF THE TESTIMONY, EXPERT WITNESSES ARE
EXPECTED TO GIVE, MEDICAL REPORTS, PHOTOS, ANY PHYSICAL EVID. ALL MUST BE DISCLOSED
TO DEFENSE IF REQUESTED BY DEFENSES ATTORNEY. THE STATE REFUSED TO DO THIS, TH
30 DAYS BEFORE TRIAL, DEFENSE GOT DISCOVERY ON (4-08-1994) (FRIDAY) - TRIAL IS MONDAY
(4-11-1994) THIS IS A CLEAR BRADY VIOLATION.. WHEN PROSECUTORS ARE CAUGHT WITH HAVING
EXCULPATORY EVID THEY OFTEN TRY TO PUT THE BLAME ON SOME ONE ELSE, INSTEAD OF
TAKING RESPONSIBILITY FOR THEIR ACTIONS. (BETTER KNOWN AS PASSING THE BUCK) EVEN THOUGH
A MOTION WAS FILED IN A TIMELY MANNER. THE SYSTEM OF PLAUSIBILITY/CREDIABILITY
ALLOW THE STATE TO DUCK A FINDING OF BAD FAITH, WHICH IS ABOUT THE ONLY WAY THE STATE
CAN GET A CASE DISMISSED (FOR DISCOVERY ABUSE). AND BY THE COURT ALLOWING THIS
IS HIGHLY PREJUDICIAL AND ABUSE BY THE COURT (ABUSE OF DISCRETION). APPELLANT IS
FACTUALLY INNOCENT AND DIST. CT SHOULD GRANT WRIT AND OR AT LEAST HOLD AN EVID. HEARING
APPELLANT ALSO REQUEST ANY RELIEF THIS COURT DEEMS APPROPRIATE?

DATED this 16 day of MAY, 2019.

Charles Maki
Signature of Appellant

CHARLES MAKI
Print Name of Appellant

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):

THRU PRISON MAIL / c/o CORR. OFFICERS.

DIST. ATTORNEY.

75 COURT ST.

RENO, NV. 89501

NU. S. CT.

CARSON CITY NV.

DATED this 16 day of MAY, 2019.

Charles Mark
Signature of Appellant

CHARLES MARK
Print Name of Appellant

PO Box 1985 - ESP
Address

ELY NV. 89301
City/State/Zip

N/A
Telephone