

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLYDE LEWIS,  
A.K.A., LOUIS RANDOLPH.  
Appellant,

vs.

THE STATE OF NEVADA, et al.  
Respondent.

Supreme Court No. 78451

District Court No. C120857-2

**FILED**

JUN 04 2019

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

**APPELLANT'S INFORMAL BRIEF**

**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

JUN 03 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
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19-24163

**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
2-25-19	Decision And Order

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: March 20<sup>th</sup> of 2019

**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
49952	STINCHFIELD V. STATE	Sup. Crt. of Nevada
75759	AMATO V. STATE	EJDC, Clark County
74479	LUSTER V. STATE	Sup. Crt. of Nevada
	STAUDE V. STATE	Sup. Crt. of Nev. (1996)

**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.)

The Petitioner/Appellant maintain and says that he has repeatedly filed a "Motion to correct an Illegal Sentence" Motion in the Eighth Judicial District Court.

However, the Nevada District Court has continuously denied Appellant's Motion, by applying procedural bars to the Appellant's only vehicle -- NRS 176.555, that allows him to challenge an Illegal Sentence, at any time.

On February 5, 2019, Appellant filed his "PETITION FOR WRIT OF MANDAMUS", challenging LACK OF JURISDICTION, where the EJDC Judge abused the authority of the Court when she "RELEASED APPELLANT'S TRIAL JURY PRIOR TO THE JURY FULFILLING THEIR DUTY AND OBLIGATION TO PRONOUNCE THE SENTENCE ON

the Appellant/Petitioner pursuant to **NRS 175.552 (1)(a)**. On February 25, 2019, without conducting the required hearing, District Court Judge Miley, denied the Appellant's Petition for Writ of Mandamus, based on her findings that: "JURISDICTION HAD BEEN ADDRESSED IN DEFENDANT'S THREE PREVIOUS WRITS OF HABEAS CORPUS. STATE TO PREPARE THE ORDER(S)."

The Nevada Legislative Body created **NRS 175.552 (1)(a)**, which clearly stated that ("When a Jury has found a Defendant guilty of 'FIRST DEGREE MURDER'... The JURY THEMSELVES 'MUST' determine the Penalty") see: **NRS 175.552 PENALTY HEARING FOR FIRST DEGREE MURDER**.

In the instant case, the Appellant/Petitioner has been prejudiced by the erroneous act of the Eighth Judicial District Court Judge, who with malice and forethought ignored the well established **NRS 175.552 (1)(a)**, and discharged the Trial Jury without allowing the Jury to conduct a separate penalty hearing and complete their duty and obligations to determine this convicted person's sentence. see: **REPORTER'S TRANSCRIPTS OF JURY VERDICT, MARCH 10, 1997**.

The EJDC Judge knew or should have known that she LACK the authority to impose sentence on the Appellant/Petitioner, after the finding of guilty by a Trial Jury.

**NRS 175.552 (1)(a) states the following:**

**PENALTY HEARING FOR FIRST DEGREE MURDER**

REQUIREMENT; JURY; PANEL OF JUDGES; EVIDENCE; WAIVER.

1. Except as otherwise provided in subsection 2, in every case in which there is a finding that a defendant is guilty of murder of the first degree, whether or not the death penalty is sought, the court shall conduct a separate penalty hearing. The separate penalty hearing must be conducted as follows:
  - a. If the finding is made by a Jury, the separate penalty hearing must be conducted in the trial court before the trial jury, as soon as practicable.

The Appellant/Petitioner has been denied DUE PROCESS OF THE LAWS that **NRS 175.552 (1)(a)** requires. A law that legislature has provided that when a Jury finds a Defendant guilty of 1st Degree Murder -- that Jury is vested with **SOLE JURISDICTION** to determine the penalty. **Staudt at 1377 [supra]**

On March 10, 1997, after the Trial Jury found the Appellant/Petitioner guilty of 1st Degree Murder -- the District Court Judge immediately dismissed the Trial Jury. Subsequently, Appellant/Petitioners, Trial Counsel's failed to object to the release of the Jury, and failed to raise the issue on Direct APPEAL.

On April 29, 1997, Appellant was sentenced to numerous consecutive sentences to be served in the Nevada Department of Prisons. See: Sentencing Transcripts on the above date.

Appellant/Petitioner has sought via other means to resolve the facial Unconstitutionality of the pronouncement of his Sentence, to no avail.

Appellant/Petitioner, has no plain, speedy and adequate remedy in the ordinary course of Law, to cure the "Manifest Injustice". See: Appellant's Petition for Writ of Mandamus, filed February 5, 2019.

For the record, the respondents relied on "HARRIS v. STATE, 329 P.3d 619 (2014)" which was used in an "EX POST FACTO" application, to "TIME BAR" Appellant Lewis from filing his "MOTION TO CORRECT AN ILLEGAL SENTENCE" under NRS 176.555, arguing that such grounds should be raised in a Petition for Writ of Habeas Corpus.

On February 25, 2019, DISTRICT COURT JUDGE MILEY, denied Appellant Lewis a legislatively provided "VEHICLE" to challenge his sentence pronouncement, by deeming Appellant's Motion to Correct Illegal Sentence -- as Writ of Habeas Corpus.

As such, any previous Court reviews is **INVALID** as in itself violates the provisions of the Nevada and United States Constitutions.

As of this day, **NO** Order has been prepared by the State, or issued by the Court to said Appellant, in regards to the **DENIAL** of his "PETITION FOR WRIT OF MANDAMUS".

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 believes the District Court was wrong in denying his "PETITION FOR WRIT OF MANDAMUS," in accord with the "MOTION TO CORRECT ILLEGAL SENTENCE," without conducting a Hearing, to determine the facts of Lack of JURISDICTION.

Moreover, the District Court's use of the "HARRIS" supra decision in an Retroactive application to **DENY REVIEW** and **relief** from an illegal sentencing, hearing and pronouncement, is at its very core unconstitutional, thus rendering the Court's decision to deny and Bar Review Unconstitutional as well.

The Nevada Legislative Body created NRS 175.552 (1)(a) which clearly stated that ("when a Jury has found a defendant guilty of 'First Degree Murder...' the Jury themselves **must** determine the Penalty.")

"If the Law as passed is 'VALID,' it must be enforced."  
The fact remains that the District Court's Trial Judge, ignored the Law applicable to the Appellant (at the time of his conviction) in NRS 175.552 (1)(a).

In *William et ux. v. Berry*, 8 Howard 459, 541 ( ),  
the High Court held: Where a Court has Jurisdiction,  
it has a right to decide every question which oc-  
curs in the Cause, and whether it's decision be cor-  
rect or otherwise, it's judgment, "until reversed, is  
regarded as binding in every court." "But if it 'Act  
without authority,' it's judgment and orders are  
nullities; they are not voidable, but simply void,  
and form no bar to a recovery sought even prior  
to a reversal in opposition to them; they consti-  
tute no justification, and all persons concerned  
in executing such judgments, or sentences, are  
considered in law as trespassers." (emphasis  
added to original).

"JURISDICTION IS STRIPPED IF THE DISTRICT  
COURT JUDGE DISCHARGES THE JURY PRIOR TO  
THE JURY DERIVING A SENTENCE FOR THE DEFENDANT."

For the reasons set forth herein, this Court should  
find the District Court's Judgment, Orders were  
in excess of the Court's powers, JURISDICTION.  
*Peters*, 83 Nev. at 301, 302, 429 P.2d at 551, 552; *Cot-*  
*ton*, 535 U.S. at 630; *Valley*, 254 U.S. at 353.

Further, this Court should find "EXTRAORDINARY CIRCUMSTANCE," to depart from the Orders to Case NO. 94-C120857-2 and Appellant's prior filings regarding "Motion to Correct Illegal Sentence," due to **LACK OF JURISDICTION**, denied by the Eighth Judicial District Court, Judge Miley.

This Court has opined on the Due Process clause as follows:

"The Due Process clause requires that a person have the opportunity to 'ESTABLISH ANY FACT' which would be 'PROTECTION TO HIM.' ... The Due Process clause of the Constitution of Nevada, Art. 1, § 8, not only requires that a person shall be properly brought into court, yet, that he 'shall have opportunity to establish any fact,' (Lack of JURISDICTION), which according to usages of Common Law or 'provisions of Constitution, would be protection to him.' (emphasis added). See: Wright v. Cradlebough, 3 Nev. 341 (1867); cited Persing v. Reno, Stock Brokerage Co., 30 Nev. 342, 349, 96 Pac. 1054 (1908); State v. Fouquette, 67 Nev. 505, 514, 221 P.2d 404 (1950).

The extraordinary circumstance of this matter calls for the flexibility of such procedural protections that this particular situation demands. Morrissey, 408 U.S. at 481.

NRS 175.552, effective on passage and approval. Approved on 6-8-95 and effective on 6-8-95, Amended 1995 via AB 535 § 2, afforded the Appellant protection of the Laws. However, the officer of the Law, whose duties is to provide such protection, cannot at her discretion sport away the vested rights of the Appellant.

## **CONCLUSION**

The Law requires that a Jury pronounce the sentence upon a Defendant, that has been found guilty of First Degree Murder. The writ must issue to compel

the District Court to perform a ministerial act in accordance with the best authorities, (and has been the Law of this state for more than 25 years) to ensure that the Law is followed. Therefore, the writ **MUST** be **GRANTED** for prima facie evidence has been presented to warrant **EXTRAORDINARY RELIEF**.

### **RELIEF SOUGHT**

Appellant respectfully request the following relief:

- 1) Find that the EJDC, Clark County, Nev., did in fact exceed its **JURISDICTION** when **[IT]** stated to the Trial Jury that: "... and then that's up to me as to what type of sentence that he should receive.", then imposed sentence on Appellant, violative of NRS 175.552 (1)(a). **SEE: TT JURY VERDICT, pg. 8, lines 1-8, March 10, 1997;**
- 2) Per REMEDY set forth in **Stinchfield [Supra]**--conduct a New Sentencing Hearing before a Newly Empannelled Jury--to determine Appellants **PENALTY**; and/or
- 3) **VACATE** the instant Judgment of Conviction and **[SENTENCE]** this Appellant to **[TIME SERVED]**.

DATED this 28<sup>th</sup> day of May, 2019.

Louis Randolph  
Signature of Appellant

Louis Randolph  
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):

CLERK OF THE COURT  
SUPREME COURT OF NEVADA  
201 S. Carson St., Suite 201  
Carson City, Nevada. 89701

STEVEN B. WOLFSON, D.A.  
OFFICE OF THE DISTRICT ATTORNEY  
200 LEWIS AVE.  
P.O. BOX 552212  
Las Vegas, Nev. 89155-2212

DATED this 28<sup>th</sup> day of May, 2019.

Louis Randolph  
Signature of Appellant

Louis Randolph  
Print Name of Appellant

P.O. BOX 208-SDCC  
Address

Indian Springs, Nev. 89070  
City/State/Zip

N/A  
Telephone