



SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
ELIZABETH A. BROWN, CLERK
201 SOUTH CARSON STREET, SUITE 201
CARSON CITY, NEVADA 89701-4702

Telephone
(775) 684-1600

July 30, 2019

James Howard Hayes, Jr., #1175077
Pioche Conservation Camp
P.O. Box 509
Pioche, NV 89043

Re: Hayes vs. State, Supreme Court Docket No. 78590

Dear Mr. Hayes:

Your document entitled, "Affidavit of Facial Legality," has been referred to me for response.

Since, you are represented by counsel in this appeal, your document is being returned to you unfiled. Please contact your attorney with any questions or concerns you may have regarding your appeal.

Sincerely,

Sandy Young

Sandy Young
Deputy Clerk

cc: Michael W. Sanft, Esq.

19-32067

RETURNED
UNFILED

JUL 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY DEPUTY CLERK

AFFIDAVIT OF facial legality

STATE OF NEVADA)

COUNTY OF CLARK)

ss: Supreme Court case No. 78590

TO WHOM IT MAY CONCERN:

I, James H. Hayes, the undersigned, do hereby swear that all the following statements and description of events, are true and correct, of my own knowledge, information, and belief, and to those I believe to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

(1) THAT James H. Hayes, appellant, is currently incarcerated at Pioche Conservation Camp (PCC) allege the following facts supporting a Miscarriage of Justice.

Whereas, the state knowingly and voluntarily filed a fraudulent unconstitutional amended information in open court Clark County District Court 19, to deprive and mislead appellant to his prejudice that was malicious, unprofessional, and in bad faith.

Whereas, a criminal complaint was filed in Justice Court, Las Vegas Township case # 13F10723X on 07-23-2013 charging appellant having committed the crime(s) of Burglary and Attempt Grand Larceny on or about the 9th day of April 2013.

Whereas, on or about the 14th day of June 2016 the appellant free jeopardy on the charge(s) of Burglary and Attempt Grand Larceny by the way of preliminary hearing in Justice Court Dept #3 and at the conclusion of the prelim. hearing the Burglary charge was bound over to District Court and the charge Attempt grand larceny was dismissed for lack of evidence, corpus delicti, slight or marginal evidence to proceed to court and appellant's bond for attempt grand larceny

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1 was exonerated.

2 WHEREAS, it is Black letter law in the state of Nevada as
3 stated in NRS 174.085 that once the appellant was placed in
4 jeopardy upon the filed criminal complaint in Justice Court
5 and proceeded to preliminary hearing on the said charge
6 and charge dismissed by Justice Court Judge at the conclusion
7 of the hearing that said charge is barred from any subsequent
8 proceedings and the law is clear and unambiguous

9 WHEREAS, NEITHER NRS 173.095 or NRS 174.145 permits the
10 court the amend of an information to restate a charge
11 that has been dismissed by the Justice Court Magistrate
12 at the preliminary examination.

13 WHEREAS, when the charge of attempted Grand larceny
14 was dismissed that the state predicated its intent on for
15 the charge of Burglary in the filed criminal complaint in
16 Justice Court, then the Burglary charge was fatal and it
17 to must have been dismissed leaving no charge(s) and
18 no jurisdiction for the District court to proceed at all.

19 WHEREAS, it is unconscionable for the state to
20 attempt to insulate a conviction from collateral constitutional
21 review by conditioning its willingness to enter into

22 FURTHER, AFFIANT SAYETH NAUGHT.

23 EXECUTED AT PCC

this 26th day of July 2019

24 IN FRONT OF:

BY James H. Plares

NDOC # 1125077

1 plea negotiations on appellant's waiver of the rights to
2 pursue post-conviction remedies.

3 Whereas, the state's amended notice to seek punishment
4 as a habitual criminal was for the charge of Burglary not the
5 negotiated charge attempt grand larceny a wobbler in addition
6 the credit card abuse conviction in Texas is a state jail crime
7 that doesn't carry any prison term, mandatory supervision,
8 nor parole and is not a category A, B, C, D, or E felony but a
9 state jail crime that is only punishable by jail time so at
10 best its trivial and shall not be used in adjudication
11 and the Burglary conviction used was not a prior
12 felony as it occurred in 2016 just three years after the
13 said attempt grand larceny that occurred in 2013. Leaving
14 appellant deemed a habitual criminal on his first time
15 being sentence to prison with one prior felony conviction

16 Whereas, consecutive sentence imposed by the district court
17 violates the legislative intent of NRS 126.035 and does not
18 serve the interests of justice, as the instant offense attempt
19 grand larceny took place on or about April 9, 2013 and was not
20 subsequent to Burglary conviction that occurred April 2, 2016
21 but prior. In addition, appellant should have been given
22 credit for time served from the date the attempted grand
23 larceny charge was dismissed and bond exonerated at
24 the conclusion of the preliminary hearing June 14, 2016 to
25 the present towards his sentence.

UNDER PENALTY OF PERJURY

I, the undersigned, certify, declare, or state that the foregoing is true and correct, to the best of my knowledge and belief, in accordance with NRS 208.165 and 28 USCA § 1746.

Excuted on the 26th day of July, 2019

James H. Hayes James H. Hayes # 1175077
Name and Prison BAC#, printed