



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

June 10, 2020

James H Hayes  
Inmate ID 1175077  
Southern Desert Correctional Ctn.  
20825 Cold Creek Rd  
PO Box 208  
Indian Springs, NV 89070

Re: HAYES, JR. (JAMES) VS. STATE (78590)

Dear Mr. Hayes:

We are returning, unfiled, the letter titled "Hearing Requested" received in this office on June 10, 2020 in the above-entitled matter.

You are represented by counsel in this appeal. Only your attorney can file into this case. Please contact your attorney with any further questions or concerns you may have regarding your appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Lococo", with a long horizontal line extending to the right.

A. Lococo  
Deputy Clerk

20-21776

Hayes, James H ID NO. 1175077

RETURNED  
UNFILED

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89070

JUN 10 2020

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY DEPUTY CLERK

IN the Court of Appeals of the State  
of Nevada

JAMES H. HAYES

Appellant

v.

State of Nevada

Respondent

"HEARING REQUESTED"

CASE NO.: 78590

DEPT. NO.: \_\_\_\_\_

DOCKET: \_\_\_\_\_

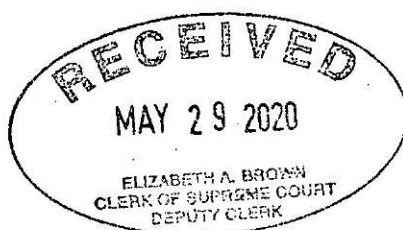
"Motion to Recall the Mandate"/Judgment  
of Affirmance"

COMES NOW, Appellant, James H. Hayes, herein above respectfully  
moves this Honorable Court for an granting of this motion to recall  
the Mandate to redress a fundamental miscarriage  
of Justice of the wrongfully convicted

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 24 day of May, 2020

BY: James H. Hayes  
James H. Hayes # 1175077  
Defendant In Proper Personam



1 Hayes James H #1175077

2 /In Propria Personam  
3 Post Office Box 208 S.D.C.C.  
4 Indian Springs, Nevada 89018

5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 JAMES H. HAYES  
9 Plaintiff

10 v.

11 STATE OF NEVADA  
12 Respondent

"HEARING REQUESTED"

Case No. 78590

Dept No. \_\_\_\_\_

Docket \_\_\_\_\_

13  
14 NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that \_\_\_\_\_

16  
17 will come on for hearing before the above-entitled Court on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
18 at the hour of \_\_\_\_\_ o'clock \_\_\_\_ M. In Department \_\_\_\_\_, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 24 day of May, 2020.

23  
24 BY: James H. Hayes  
25 JAMES H. HAYES # 1175077  
26 /In Propria Personam  
27  
28

Points and Authorities  
Statement of the Case

ON March 28, 2019, James H. Hayes (hereinafter, appellant) filed his Notice of Appeal "IN the Supreme Court of the State of Nevada" (Case Number 78590).

ON January 14, 2020, issued its order "the judgment of conviction Affirmed"

ON February 25, 2020, the Remittitur issued "IN the Supreme Court of the State of Nevada."

ON February 26, 2020 to the present day I have requested and notified appellant counsel that I would like a Review by the United States Supreme Court by way of writ of Certiorari

## Argument

Mr. Hayes (appellant) was denied his guaranteed constitutional right of effective assistance of counsel prescribe by the sixth and fourteenth Amendments of the United States Constitution:

1. The dismissal of counsel by District court Judge William Kephart prior to the perfection of appeal on July 15, 2019 left appellant completely without representation throughout the appeal process to raise meritorious grounds and to reply to state's opposition, and such conduct is always unreasonable

2. Counsel failed to inform appellant of his appeal rights and the procedures for filing appeal and its advantages and disadvantages after appellant requested that he file appeal on his behalf. So appellant was forced to file Notice of appeal pro se on the last days to get appeal filed, when counsel failed to perform his duty.

Mr. Hayes was denied his constitutionally guaranteed rights of the Equal protection clause of the fourteenth amendment and the Due Process clause of the fifth amendment of the United States Constitution:

1. Appellant was prejudiced and discriminated against for being of the Negro race as it took less

## ADDITIONAL FACTS OF THE CASE:

evidence to convict him than it would have to convict a white person, and appellant received the greater punishment (felony treatment) than the white person. When in fact appellant's charge of Attempt Grand Larceny had previously been dismissed by Justice Court magistrate at conclusion of preliminary examination for lack of evidence, no corpus delicti, and no slight or marginal evidence of guilt. So this is a clear and convincing showing that prosecution had unfettered discretion to prescribe different punishments for the same act and thereby purports to authorize the prosecutor to charge the Negro person with a felony and the white person with a gross misdemeanor when the Negro is actually innocent and the white person having evidence of actual guilt, under the same circumstances. Whereby this has permitted excessive prosecutorial discretion in the selection of penalties when the constitution prohibits selective enforcement of criminal laws, where as here they have impermissibly delegated to the executive branch of government the legislature's responsibility to fix criminal penalties on one who is actually innocent and this is a unjustifiable standard against the Negro class of defendants.

2. Statute unconstitutionally vague (NRS 193.330) No reasonable and practical construction may be given statute does not state with sufficient clarity of the consequences as vague sentencing provisions pose

constitutional questions and invites arbitrary enforcement which offends fundamental justice. Furthermore, the doctrine in that ambiguities in criminal statutes punishments must be resolved in favor of lenity. As in the instant case the penalty provision for the conviction of Attempt Grand Larceny is under one statute cannot coexist as there are alternative interpretations possible, that allows the prosecutor unfettered discretion in selecting which penalty to apply that implicates important constitutional protections.

3. State violated Mr. Hayes right to "Due process as guaranteed by both the Due Process Clause of the United States Constitution and the Nevada Constitution:

State failed to adhere to Nevada state law prescribe by NRS 174.085(a) and NRS 178.562. Where, as here, state did violate NRS 178.562 by bringing another prosecution following dismissal of an action to constitute "another prosecution" without another pending vehicle for the prosecution of the charge of Attempt Grand Larceny that runs afoul of the provisions of NRS 178.562 and BARS further prosecutions of the appellant on that charge. When in fact, the state held the preliminary hearing June 14, 2016 pursuant to the filed criminal complaint as the vehicle for prosecution of the instant offense Attempt Grand Larceny until Nov. 7, 2018 by the way of an emailed information and there is no colorable argument the state can make that would allow them to overcome the violation of state law NRS 178.562

and this jurisprudence set forth is perfectly clear and unambiguous.

Here, the state did violate NRS 174.085(3) when the appellant was once placed in jeopardy upon the criminal complaint and state proceeded to preliminary hearing and at conclusion of hearing the charge of Attempt Grand Larceny was dismissed by Justice Court magistrate for lack of evidence, no corpus delicti, and no slight nor marginal evidence, that is a BAR to another indictment, information or complaint for the offense charged in the former, thus the state triggered the protections of NRS 174.085(3) to bar the subsequent prosecution of the instant offense Attempt Grand Larceny against appellant in all Clark County district court proceedings and this jurisprudence set forth is perfectly clear and unambiguous.

### Conclusion:

Wherefore, appellant requests that this said court grant appellant relief to which he may be entitled to redress this fundamental miscarriage of justice of the wrongfully convicted.

**CERTIFICATE OF SERVICE BY MAILING**

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 24  
day of May, 2020, I mailed a true and correct copy of the foregoing, "Motion  
to Recall the Mandate / Judgment of Affirmance"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Court of Appeals Nevada  
Office of the Clerk  
201 South Carson St, Ste 201  
Carson City, NV  
89401

Attorney General of Nevada  
100 North Carson Street  
Carson City, NV  
89401

CC:FILE

DATED: this 24 day of May, 2020.

James H. Hayes  
James H. Hayes # 1173047  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding "Motion  
to recall mandate"/ Judgment of Affirmance  
(Title of Document)

filed in District Court Case number 78590

☒ Does not contain the social security number of any person.

-OR-

☐ Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

James H. Hayes  
Signature

5-24-20  
Date

JAMES H. HAYES  
Print Name

Appellant  
Title