



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 29, 2020

James H. Hayes #1175077
SDCC
PO Box 208
Indian Springs, NV 89070

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

Dear Mr. Hayes:

We are returning, unfiled, the Letter received in this office on June 29, 2020 in the above-entitled matter.

A decision has been reached in your case and the remittitur has issued. The time for filing has expired. Therefore, we are returning the documents, unfiled.

Sincerely,

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

A. Lococo
Deputy Clerk

20-23895

Supreme Court of Nevada

6-16-2020

RETURNED
UNFILED

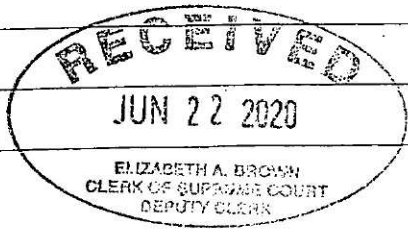
Dear Clerk of the Court,

JUN 29 2020

I, JAMES H. HAYES, appellant, Supreme Court Case 78590 beg of your assistance as I the appellant has the record and has tried to contextualize this actual record to reveal that a fundamental miscarriage of Justice was done in this specific case. As my appellant counsel was dismissed prior to the perfection of my direct appeal by Judicial officer William D. Kepner on July 15, 2019 per "Motion to Withdraw Counsel" after the proper filing of my "Notice appeal" that was filed in this said court March 28, 2019 and before this court issued its remittitur on February 25, 2020 (see exhibit 4) (enclosed on the date June 18, 2019) so contrary to this court's belief appellant JAMES H. HAYES was completely without counsel during the complete process of my direct appeal and have had no communication with attorney MICHAEL SMITH since March 6, 2019 to the present after over 100 attempts through e-mails, phone calls, and written correspondence. As I now beg of you to view the ENCLOSE exhibit to verify that everything I'm telling you is true and correct and that you notify the Judges of this said court and the Court of Appeals of this fundamental miscarriage of Justice and allow my re-sent motion to recall the mandate / Judgment of Affirmance to be filed as Justice so requires

Thanks

James Hayes #1175072



CASE SUMMARY

CASE NO. C-16-315718-1

DEFT. HAYES ADJUDGED GUILTY of ATTEMPT GRAND LARCENY (F). Matter argued and submitted. Exhibits presented. (see worksheets). Court FINDS State has sufficiently met the requirements of NRS 207.010. COURT ORDERED. in addition to the \$25.00 Administrative Assessment fee and a \$3.00 DNA Collection fee; Deft. SENTENCED UNDER the SMALL HABITUAL STATUTE to a MINIMUM of SIXTY (60) MONTHS and a MAXIMUM of ONE HUNDRED SEVENTY-FOUR (174) MONTHS in the Nevada Department of Corrections (NDC); CONSECUTIVE to case number C315125; with TEN (10) DAYS credit for time served. FURTHER ORDERED, \$150.00 DNA Analysis fee including testing to determine genetic markers WAIVED as previously ordered. NDC;

06/03/2019

 Motion (8:30 AM) (Judicial Officer: Kephart, William D.)

06/03/2019, 07/15/2019

Defendant's Pro Per Motion to Withdraw Counsel

Matter Continued;

Granted;

Journal Entry Details:

Court noted Defendant not present and in custody with the Nevada Department of Corrections. COURT ORDERED, Motion GRANTED as a Remittitur has been filed by the Supreme Court. NDC ;

Matter Continued;

Granted;

Journal Entry Details:

Mr. Sanft advised he does not believe the motion can be granted as he must file the appeal pursuant to a Supreme Court Order, COURT ORDERED, matter CONTINUED thirty days. NDC CONTINUED TO: 7/15/2019 8:30 AM;

10/07/2019

Motion (8:30 AM) (Judicial Officer: Bonaventure, Joseph T.)

Defendant's Pro Per Motion In the Nature of a Writ of Coram Nobis

DATE

FINANCIAL INFORMATION

Defendant Hayes, James Howard

Total Charges

28.00

Total Payments and Credits

0.00

Balance Due as of 10/4/2019

28.00

Exhibit 4



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", followed by a horizontal line.

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: _____

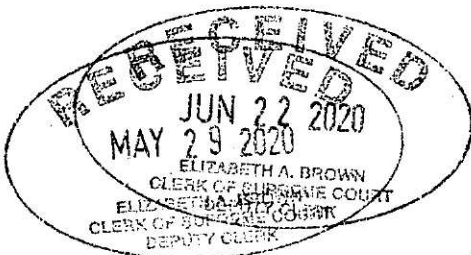
"Motion to Recall the Mandate/Judgment
of Affirmance"

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 Appellant

10 ✓

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 clearly unreasonable.

2. Counsel failed to inform appellant of his appeal rights and the procedures for filing appeal and its advantages and disadvantages after appellant had 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~~ 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:

1 EVIDENCE TO CONVICT HIM THAN IT WOULD HAVE TO CONVICT A
2 WHITE PERSON, AND APPARENT RECEIVED THE GREATER PUNISHMENT
3 (FELONY TREATMENT) THAN THE WHITE PERSON. WHEN IN FACT
4 APPARENT'S CHARGE OF ATTEMPT GRAND LARCENY HAD PREVIOUSLY
5 BEEN DISMISSED BY JUSTICE COURT MAGISTRATE AT CONCLUSION
6 OF PRELIMINARY EXAMINATION FOR LACK OF EVIDENCE, NO
7 CORPUS DELICTI, AND NO SLIGHT OR MARGINAL EVIDENCE OF
8 GUILT. SO THIS IS A CLEAR AND CONVINCING SHOWING THAT
9 PROSECUTION HAD UNFETTERED DISCRETION TO PRESCRIBE
10 DIFFERENT PUNISHMENTS FOR THE SAME ACT AND THEREBY
11 PURPORTS TO AUTHORIZE THE PROSECUTOR TO CHARGE THE NEGRO
12 PERSON WITH A FELONY AND THE WHITE PERSON WITH A GROSS-
13 MISDEMEANOR WHEN THE NEGRO IS ACTUALLY INNOCENT AND
14 THE WHITE PERSON HAVING EVIDENCE OF ACTUAL GUILT, UNDER
15 THE SAME CIRCUMSTANCES. WHEREBY, THIS HAS PERMITTED
16 EXCESSIVE PROSECUTORIAL DISCRETION IN THE SELECTION OF
17 PENALTIES WHEN THE CONSTITUTION PROHIBITS SELECTIVE
18 ENFORCEMENT OF CRIMINAL LAWS, WHICH AS HAVE THEY HAVE
19 IMPERMISSIBLY DELEGATED TO THE EXECUTIVE BRANCH OF
20 GOVERNMENT THE LEGISLATURE'S RESPONSIBILITY TO FIX CRIMINAL
21 PENALTIES ON ONE WHO IS ACTUALLY INNOCENT AND THIS IS
22 A UNJUSTIFIABLE STANDARD AGAINST THE NEGRO CLASS OF
23 DEFENDANTS.

24 2. Statute UNCONSTITUTIONALLY VAGUE (NRS 193.
25 330) NO REASONABLE AND PRACTICAL CONSTRUCTION MAY BE
26 GIVEN. STATUTE DOES NOT STATE WITH SUFFICIENT CLARITY OF
27 THE CONSEQUENCES AS VAGUE SENTENCING PROVISIONS PER

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(3) 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 prosecution 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 amended 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
89701

Attorney General of Nevada
102 North Carson Street
Carson City, NV
89701

CC:FILE

DATED: this 24 day of May, 2020.

James H. Hayes
JAMES H. HAYES # 1179047
/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