

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL MCNAIR

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 78871

Direct Appeal From A Judgment of Conviction
Eighth Judicial District Court
The Honorable Douglas Herndon, District Judge
District Court No. C-17-327395-1

**MOTION FOR LIMITED REMAND AND
TO WITHDRAW MOTION FOR EXTENSION OF
TIME TO COMPLY WITH NRAP 12A**

Navid Afshar
State Bar #14465
Deputy Special Public Defender
JoNell Thomas
State Bar #4771
Special Public Defender
330 South 3rd Street
Las Vegas, NV 89155
(702) 455-6265
Attorney for McNair

COMES NOW, Appellant Michael McNair, by and through his attorneys JoNell Thomas, Special Public Defender and Navid Afshar, Deputy Special Public Defender, and moves this Court for a limited remand to the district court for entry of plea. This motion is based on the following points and authorities and declaration of counsel attached hereto.

PROCEDURAL HISTORY

Appellant Michael McNair filed a stipulation with the Respondent, the State of Nevada, and moved this Court to suspend briefing in this matter and remand the matter to the district court for an entry of plea and amended judgment of conviction. On March 5, 2020, this Court denied the request for remand, finding:

This court declines to remand this matter at this time. If the district court is inclined to grant the relief requested, then it may certify its intent to do so, and appellant may file a motion in this court, with the district court's certification attached, seeking a remand to the district court to grant the requested relief. See NRAP 12A.....proper method for relief under NRAP 12(A), and obtain certification from the district court if it is inclined to grant the requested relief.

Based on this Court's order, the parties presented an oral argument in front of the district court on March 12, 2020. See Exhibit A. The district court indicated that it was inclined to grant the requested relief

and requested that Appellant prepare the proposed order to comply with NRAP 12. Id.

On March 16, 2020, Appellant prepared and forwarded the proposed order to the State for review and approval.

On March 26, 2020, this Court entered an Order, noting in part that by June 2, 2020, Appellant must “inform this court that the district court has denied the requested relief, inform this court of the status of the district court proceedings, or to file a motion or stipulation to voluntarily withdraw this appeal.”

On June 2, 2020, Mr. McNair filed a Status Report and Motion for Extension of Time to Comply with Procedures Set Forth in NRAP 12A. (SC). Thereafter, on June 2, 2020, the district court signed and filed an order indicating it is inclined to grant the requested relief. On same date, the district court’s order was certified. See Exhibit B. Mr. McNair now moves to withdraw his Motion for Extension of Time to Comply, and instead moves to remand this matter to the district court so that the district court may accept an entry of plea and enter an amended judgment of conviction.

POINTS AND AUTHORITIES

NRAP 12A sets forth the procedure if a motion is made in the district court for relief that the court lacks authority to grant because an appeal has been docketed:

(a) Notice to the Appellate Court. If a timely motion is made in the district court for relief that it lacks authority to grant because of an appeal that has been docketed and is pending, the movant must promptly notify the clerk of the Supreme Court if the district court states either that it would grant the motion or that the motion raises a substantial issue.

(b) Remand After an Indicative Ruling. If the district court states that it would grant the motion or that the motion raises a substantial issue, the Supreme Court or the Court of Appeals may remand for further proceedings but the appellate court retains jurisdiction unless it expressly dismisses the appeal. If the appellate court remands but retains jurisdiction, the parties must promptly notify the clerk of the Supreme Court when the district court has decided the motion on remand.

Pursuant to rule 12(A)(a), and this Court's Order of March 5, 2020, Mr. McNair appeared before the district court, requesting relief. Pursuant to rule 12(A)(b), on June 2, 2020, the district court entered a certified order indicating it is inclined to grant the requested relief. See Exhibit B. Mr. McNair respectfully requests that this Court remand this matter to the district court, while retaining jurisdiction, so that the district court may

accept the entry of plea, vacate the judgment of conviction, and enter an amended judgment of conviction.

CONCLUSION

Based on the Declaration attached hereto, Appellant respectfully requests that this Court disregard his Motion of June 2, 2020 for an Extension of Time, and that this matter be remanded to the district court so that it may carry out its intended judgment in its certified order.

Dated: June 4, 2020.

SUBMITTED BY:

/s/ NAVID AFSHAR

NAVID AFSHAR
Deputy Special Public Defender
330 S. Third St., Ste. 800
Las Vegas, Nevada 89155
702-455-6265
Attorney for Appellant McNair

DECLARATION OF NAVID AFSHAR

NAVID AFSHAR, hereby declares as follows:

1. That I am an attorney duly licensed to practice law in the State of Nevada, and the deputy with the Clark County Special Public

Defender's office assigned to represent Mr. McNair on his direct appeal from a Judgment of Conviction (Verdict From Jury Trial).

2. I was not the trial attorney in this case but assisted trial counsel at certain points.

3. This matter has been resolved pursuant to negotiation with Respondent, the State of Nevada.

4. On June 2, 2020, the district court signed and entered a certified order indicating its intent to grant the requested relief, and that the certified order contains a provision that the Clerk shall transmit a copy of the order to this Court.

5. While the certified order will soon be received by this Court, Mr. McNair also attaches a copy to this motion.

9. Because the district court has entered the certified order, an extension of time to file the Rule 12A motion for remand is unnecessary

. . .

and Appellant therefore moves this Court to withdraw the motion filed June 2, 2020.

I declare that I make this request in good faith and not for purposes of delay.

Dated: 6/4/2020

/s/ NAVID AFSHAR

NAVID AFSHAR
Attorney for McNair

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on June 4, 2020, a copy of the foregoing document was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ *NAVID AFSHAR*

NAVID AFSHAR

EXHIBIT A

Felony/Gross Misdemeanor

COURT MINUTES

March 12, 2020

C-17-327395-1 State of Nevada
 vs
 Michael McNair

March 12, 2020 09:00 AM Status Check: Supreme Court Order

HEARD BY: Herndon, Douglas W. COURTROOM: RJC Courtroom 16C

COURT CLERK: Schlitz, Kory

RECORDER: Ray, Stacey

REPORTER:

PARTIES PRESENT:

Alexander G. Chen

Attorney for Plaintiff

Navid Afshar

Attorney for Defendant

State of Nevada

Plaintiff

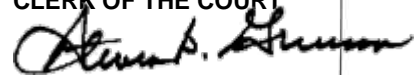
JOURNAL ENTRIES

Defendant not present and in custody in the Nevada Department of Corrections.

COURT ADVISED they were inclined to grant the relief requested in terms of allowing parties to stay the appeal, pull the case back to District Court, to vacated the jury verdict, and enter into a re-negotiation, and the Court would grant the relief in following the terms of the stipulated sentence. COURT ORDERED, relief requested GRANTED; and DIRECTED Mr. Afshar to prepare and submit an order. '

NDC

EXHIBIT B



1 **ORD**

2 JONELL THOMAS
3 Clark County Special Public Defender
4 RANDALL H. PIKE
5 Chief Deputy Special Public Defender
6 State Bar No. 1940
7 MELINDA SIMPKINS
8 Chief Deputy Special Public Defender
9 State Bar No. 7911
10 NAVID AFSHAR
11 Deputy Special Public Defender
12 State Bar No. 14465.
13 330 South Third Street, 8th Floor
14 Las Vegas, NV 89155
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16 Fax: 455-6273
17 rpike@clarkcountynv.gov
18 msimpkins@ClarkCountyNV.gov
19 navid.afshar@clarkcountynv.gov
20 Attorneys for McNair

21 DISTRICT COURT

22 CLARK COUNTY, NEVADA

23 THE STATE OF NEVADA,
24 Plaintiff

25 vs.

26 MICHAEL MCNAIR,
27 Defendant.

28) CASE NO. C-17-327395-1
DEPT. NO. 3

29 **ORDER GRANTING MOTION TO AMEND THE JUDGMENT OF CONVICTION**
30 **AND ACCEPT ENTRY OF PLEA**

31 DATE: 3/12/2020
32 TIME: 9:00 a.m.

33 This matter came before the court on March 12, 2020 on an oral Motion to Request that
34 the matter currently pending on appeal be stayed and remanded to this court, in order to vacate
35 the judgment of conviction, and enter a plea. The Defendant's appearance was waived but he
36 was represented by his attorney, Navid Afshar, Deputy Special Public Defender, while the State
37 of Nevada was represented by Alexander Chen, Chief Deputy District Attorney.

1 This court finding that both parties are in agreement, and having considered the issue on
2 the merits, orders as follows.

3 **IT IS HEREBY ORDERED, ADJUDGED, AND DECREED** as follows:

4 The Court certifies that it intends to grant in part the parties' motion to alter or amend
5 the judgment of the conviction.

6 The Court hereby certifies that it intends to vacate the May 3, 2019, Judgment of
7 Conviction, and accept Mr. McNair's entry of plea pursuant to the parties' stipulated
8 agreement.

9 Upon remand from the Nevada Supreme Court and granting a stay of the appellate
10 process, this Court will enter a written order effectuating the above.

11 The Clerk of Court is hereby instructed to transmit this order to the Nevada Supreme
12 Court.

13 DATED this 2 day of June, 2020.

14 

15 DISTRICT COURT JUDGE

16
17 Submitted by:

18 _____
19 NAVID AFSHAR
20 Counsel for McNair
21
22
23
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25
26
27
28

June 2, 2020



CERTIFIED COPY
ELECTRONIC SEAL (NRS 1.190(3))