

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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**MICHAEL MCNAIR**

Appellant,

vs.

**THE STATE OF NEVADA**

Respondent.

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**Docket No. 78871**

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

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**MOTION FOR EXTENSION OF TIME FOR LIMITED REMAND  
DUE TO QUARANTINE AND TO TRANSFER APPELLANT**

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Navid Afshar  
State Bar #14465  
Deputy Special Public Defender  
JoNell Thomas  
State Bar #4771  
Special Public Defender  
330 South 3<sup>rd</sup> 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 submits the following Motion to Remand.

### **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, and instead ordered the parties to comply with NRAP 12. The district court indicated it was inclined to grant the requested relief.

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). 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. On June 4, Mr. McNair filed a Motion for Limited Remand and to Withdraw Motion for Extension Of Time to Comply with NRAP 12A. On June 15, 2020, this Court directed the

district court to provide an amended judgment of conviction and for Mr. McNair to withdraw his appeal within fourteen days thereafter.

On June 15, 2020, counsel for Mr. McNair contacted the district court and respondent to schedule an entry of plea and sentencing. See Exhibit A, pgs. 13-15. Counsel notified the court that Mr. McNair objected to lack of physical presence at entry of plea and sentencing. *Id.* The district court set entry of plea and sentencing via video for July 14, 2020. See Exhibit B. On July 7, 2020, defendant's filed his objection to lack of physical presence. See Exhibit A. A hearing was set on the matter for July 10, 2020. On July 7, 2020, undersigned counsel was notified by administrative staff at Ely State Prison that Mr. McNair's housing unit had been quarantined due to COVID-19, and would remain so until July 21, 2020, at the earliest. See Exhibit C.

On July 10, 2020, the district heard argument on the motion to object to lack of presence. The district court indicated it is inclined to have Mr. McNair appear in person for entry of plea of sentencing, and to allow him to be transported to High Desert State Prison so that he may easier communicate with his counsel and review and sign the guilty plea

agreement.<sup>1</sup> The district court asked that counsel for Mr. McNair file the extensions' request with this court and ask on behalf of the district court that 60 days be granted in order to transfer Mr. McNair to High Desert State Prison, and so that he may appear in person for entry of plea and sentencing. Id. The district court ordered a status check on July 31, 2020, to address the status of Mr. McNair's present motion with this Court, as well as having him transferred to High Desert State Prison. The Nevada Department of Corrections notified undersigned counsel that it will transfer Mr. McNair, pursuant to a district court order, so long as it has at least fourteen business days' notice. See Exhibit D.

### **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

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<sup>1</sup> Minutes from the July 10, 2020 hearing in front of the Honorable Douglas W. Herndon – Dept 3., are not yet available. Counsel makes this recitation based on information and belief, and to the best of their recollection of the hearing. Counsel can provide this Court with the minutes of the hearing once they are available, should this Court request it.

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 June 15, 2020, appellant, respondent, and the district court have tried to provide a new amended judgment of conviction. However, due to COVID-19 quarantine, and the district court's inclination to have Mr. McNair appear in person, as well as transferring him to High Desert State Prison, so that he may more easily communicate with counsel, on behalf of the district court, and Mr. McNair, counsel respectfully requests 60 days to have Mr. McNair transported and to enter an amended judgment of conviction, up to and including August 14, 2020.

...

## CONCLUSION

Based on the Declaration attached hereto, Appellant respectfully requests that this Court grant his Motion for Extension of Time, and allow the district court to retain limited jurisdiction, so that Mr. McNair may be transferred to High Desert State Prison, and an amended judgment of conviction be filed, and his motion to dismiss his appeal filed thereafter.

Dated July 15, 2020.

SUBMITTED BY:

/s/ NAVID AFSHAR

---

NAVID AFSHAR  
Deputy Special Public Defender  
330 S. Third St., Ste. 800  
Las Vegas, Nevada 89101  
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. The district court has certified its intention to have this matter remanded for entry of plea and enter an amended judgment of conviction.

5. I contacted the State and district court on June 15, 2020, to coordinate Mr. McNair's entry of plea and sentencing.

6. I was contacted on July 7, 2020, by Ely State Prison, informing me that Mr. McNair's unit was quarantined for at least two weeks, with operations expected to resume on July 21, 2020.

7. That myself, and trial counsel, Melinda Simpkins Esq., appeared virtually before the Honorable Douglas W. Herndon on July 10, 2020, with the State in attendance as well.

8. At the hearing of July 10, 2020, the district court indicated it is inclined to have Mr. McNair transferred to High Desert State Prison so that he may enter his plea and be re-sentenced in person.

9. The Nevada Department of Corrections has indicated it can transfer Mr. McNair, pursuant to a district court order, but required 14 business days' notice.

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

Dated: 7/15/2020

/s/ NAVID AFSHAR

---

NAVID AFSHAR  
Attorney for McNair



## **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that on July 15, 2020, a copy of the foregoing document was served as follows:

### **BY ELECTRONIC FILING TO**

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

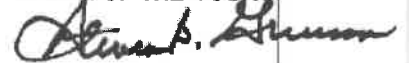
Nevada Attorney General  
100 N. Carson St.  
Carson City NV 89701

*/s/ NAVID AFSHAR*

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NAVID AFSHAR

**EXHIBIT A**



1 MOT

2 JONELL THOMAS

3 SPECIAL PUBLIC DEFENDER

4 Nevada Bar #4771

5 RANDALL H. PIKE

6 Chief Deputy Special Public Defender

7 Nevada Bar #1940

8 MELINDA E. SIMPKINS ESQ.

9 Chief Deputy Special Public Defender

10 Nevada Bar #7911

11 330 So. Third Street, Suite #800

12 Las Vegas, Nevada 89155

13 (702) 455-6265

14 FAX: (702) 455-6273

15 EMAIL:randy.pike@clarkcountynv.gov

16 EMAIL:msimpkins@clarkcountynv.gov

17 Attorneys for Michael McNair

18 DISTRICT COURT

19 CLARK COUNTY, NEVADA

20 THE STATE OF NEVADA,

21 Plaintiff

CASE NO. C-17-327395-1

DEPT. NO. 3

22 vs.

23 MICHAEL MCNAIR,

24 Defendant.

25 **DEFENDANT'S OBJECTION TO VIDEO PRESENCE AT SENTENCING. MOTION**  
26 **FOR PERSONAL PRESENCE AT SENTENCING AND REQUEST TO EXTEND**  
27 **SENTENCING DATE AND FOR ORDER SHORTENING TIME**

28 DATE: 7-10-20

TIME: 1:45 p.m.

Hearing Date Requested on Order Shortening Time

TO: THE STATE OF NEVADA, and

TO: THE DISTRICT ATTORNEY'S OFFICE, Attorney for the State of Nevada:

PLEASE TAKE NOTICE that Defendant Michael McNair, by and through his counsel  
of record, JoNell Thomas, Special Public Defender, Randall H. Pike, Chief Deputy Special

1 Public Defender, and Melinda E. Simpkins, Chief Deputy Special Public Defender, requests a  
2 hearing on his motion to have Defendant's Objection to Video Presence at Sentencing, Motion  
3 for Personal Presence at Sentencing Date, and Request to Extend Sentencing Date. Said request  
4 is made under an Order Shortening Time, as the hearing for his plea and sentencing is set for  
5 July 14, 2020.

6 The instant motion is set on the Court's calendar on 7-10, 2020 at the  
7 hour of 1:45 p.m.

8 ORDER

9 This matter having come before the Court, the Court being fully advised in the premises  
10 and good cause appearing, it is hereby

11 ORDERED, ADJUDGED AND DECREED that Defendant's request for Defendant's  
12 Objection to Video Presence at Sentencing, Motion for Personal Presence at Sentencing Date,  
13 and Request to Extend Sentencing Date be set on an Order Shortening time is granted.

14 The motion is set on the Court's calendar on 7-10, 2020 at the hour of  
15 1:45 p.m.

16 DATED and DONE: 7-7-20

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19  
20 DISTRICT COURT JUDGE

21  
22 COMES NOW, MICHAEL MCNAIR, Prison BAC #1082775, by and through his  
23 attorneys, JONELL THOMAS, Special Public Defender, RANDALL H. PIKE, Chief Deputy  
24 Special Public Defender, and MELINDA E. SIMPKINS ESQ., Chief Deputy Special Public  
25 Defender, and submits his objection to video presence; moves the court to allow him to appear  
26 in person; and that the sentencing date be moved. This motion is made and based upon all of the  
27 papers and pleadings on file, the attached Points and Authorities, as well as oral argument at the  
28 time of the hearing.

1                                    **STATEMENT OF FACTS / PROCEDURAL HISTORY**

2            The Judgment of Conviction (Jury Trial) in the instant case was filed on May 3, 2019.  
3 Defendant McNair was found guilty of First Degree Murder with Use of a Deadly Weapon and  
4 Carrying a Concealed Firearm or Other Deadly Weapon. He was sentenced to 20 years to Life,  
5 plus a consecutive term of 60-240 months for use of the deadly weapon (aggregate total 300  
6 months to Life) and a concurrent sentence of 24-60 months for Count 2. McNair filed his  
7 Notice of Appeal on May 22, 2019.  
8

9            Prior to filing the Opening Brief, McNair moved the Nevada Supreme Court to grant  
10 limited remand of the case back to district court for entry of plea and filing of an amended  
11 judgment of conviction, based on the hearing held in the district court on March 12, 2020 and  
12 pursuant to a stipulated term between the parties. The district court advised it was inclined to  
13 grant the relief requested as follows: to stay the direct appeal, remand the case to district court,  
14 vacate the jury verdict, and enter into a re-negotiation. On June 15, 2020, the Nevada Supreme  
15 Court entered an Order, granting limited remand to the district court for the purpose of entering  
16 a plea and re-sentencing. *See Exhibit A.*  
17  
18

19            The Nevada Supreme Court entered their Order of Limited Remand on June 15, 2020,  
20 stating in pertinent part: "...this appeal is remanded to the district court for the limited purpose  
21 of proceeding pursuant to the district court's stated intent." Additionally, the Supreme Court  
22 gave the district court 30 days to submit the Amended Judgment of Conviction.  
23

24            On June 15, 2020, counsel for Mr. McNair contacted this court and respondent for  
25 scheduling the date for entry of plea and sentencing. After agreeing to a sentencing date of July,  
26 14, 2020, Mr. McNair submitted an Ex Parte Draft order to have Mr. McNair transported to  
27 High Desert State Prison. Although Mr. McNair would still have to appear via video, and would  
28

1 still object to not being present in person, this would allow him easier access to communicate  
2 with his counsel, as there are several important issues related to withdrawing his appeal and  
3 entering a plea that Counsel would need to discuss directly with Mr. McNair prior to the change  
4 of plea and re-sentencing. Mr. McNair's counsel was informed that the Nevada Department of  
5 Corrections would transfer him pursuant to a court order but would need fourteen business  
6 days' notice to transfer him.  
7

8         The District Court has set the Entry of Plea and Sentencing in this matter for July 14,  
9 2020, at 3:30 PM. Pursuant to direction from the District Court, Mr. McNair's Counsel  
10 submitted for the Court's signature, a Request for Appearance by Video at this Court date as  
11 well as the above referenced Order to have Mr. McNair transferred from Ely State Prison to  
12 High Desert State Prison. Further, the District Court was aware that Mr. McNair wished to  
13 appear in person and objected to appearing by video, however, due to the COVID-19  
14 restrictions, the Court would only allow appearance by video. (See Exhibit B, attached hereto).  
15 Accordingly, Mr. McNair herein files his objection to appearance at his re-sentencing via video.  
16  
17

#### 18                     POINTS AND AUTHORITIES

19         The district court has set a hearing in this matter for July 14, 2020, for the Defendant's  
20 entry of plea and sentencing. The Court has informed attorneys for Mr. McNair that it is  
21 adhering to the Administrative Order of the Eighth Judicial District Court and appearances of  
22 in-custody defendants are handled by video or telephone. (See Exhibit B, attached hereto).  
23 Mr. McNair objects to having his appearance made by video or phone and requests that he be  
24 present for the entry of plea and sentencing and that Mr. McNair be transported to High Desert  
25 State Prison, which would allow easier communication between Mr. McNair and his counsel.  
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1 4. The presence of the defendant is not required at the arraignment or any  
2 preceding stage if the court has provided for the use of a closed-circuit  
3 television to facilitate communication between the court and the defendant  
4 during the proceeding. If closed-circuit television is provided for, members  
of the news media may observe and record the proceeding from both  
locations unless the court specifically provides otherwise.

5 5. The defendant's presence is not required at the settling of jury instructions.

6 Accordingly, absent Mr. McNair's incarceration in another jurisdiction, which is not the  
7 case in the instant matter, his presence is *required* at the time of sentencing. Further, as NRS  
8 178.388(4) specifically *solely* allows for a defendant's presence via video at arraignment or any  
9 "preceding stage" of the proceedings. Since sentencing does not precede arraignment, and  
10 given the maxim "*expressio unius est exclusio alterius*" (the expression of one thing is the  
11 exclusion of another), the Nevada Legislature has clearly considered and rejected the issue of  
12 video appearance and required that a defendant must be present, *in person*, at sentencing, not  
13 via video. *See Galloway v. Truesdell*, 83 Nev. 13, 26, 422 P.2d 237, 246 (1967) ("The maxim  
14 '*Expressio Unius Est Exclusio Alterius*,' the expression of one thing is the exclusion of another,  
15 has been repeatedly confirmed in this State.").

16  
17  
18 Requiring a defendant's in person presence at re-sentencing is not a novel idea. As the  
19 Second Circuit noted in *United States v. Salim*, 690 F.3d 115, 119 (2<sup>nd</sup> Cir. 2012):

20  
21 Under both the Constitution and Fed. R. Crim. P. 43(a)(3), a criminal defendant  
22 has the right to be present during sentencing. This right extends to resentencing.  
23 Where the district court re-enters a sentence which has been vacated or set aside  
24 by the Court of Appeals, a defendant has a constitutional right to be present,  
25 because technically a new sentence is being imposed in place of the  
vacated sentence. Every federal appellate court to have considered the question  
has held that a defendant's right to be present requires physical presence and is  
not satisfied by participation through videoconference.

26 In addition, the ability for a defendant to communicate with his lawyer both candidly  
27 and confidentially is essential in the defense of that individual. *Nordstrom v. Ryan* (*Nordstrom*  
28



1 *I*), 762 F.3d 903, 910 (9th Cir. 2014). *See also Daniels v. Woodford*, 428 F.3d 1181, 1197  
2 (2005). (“The Supreme Court has repeatedly held that a defendant's Sixth Amendment right to  
3 counsel is violated if the defendant is unable to communicate with his or her counsel during key  
4 trial preparation times) (citing *Riggins v. Nevada*, 504 U.S. 127, 144 (1992) (“We have held  
5 that a defendant's right to the effective assistance of counsel is impaired when he cannot  
6 cooperate in an active manner with his lawyer. The defendant must be able to provide needed  
7 information to his lawyer and to participate in the making of decisions on his own behalf.”)).

8  
9 In addition, “the right to privately confer with counsel is nearly sacrosanct.” *Id*; *See also*  
10 *Weatherford v. Bursey*, 429 U.S. 545, 563 (1977) (“Of equal concern, governmental incursions  
11 into confidential lawyer-client communications threaten criminal defendants' right to the  
12 effective assistance of counsel). A defendant does not receive effective aid of counsel if the  
13 defendant cannot privately consult with counsel. *See Nordstrom I*, 762 F.3d at 910; *Coplon v.*  
14 *United States*, 191 F.2d 749, 757 (D.C.Cir.1951). “When the government deliberately interferes  
15 with the confidential relationship between a criminal defendant and defense counsel, that  
16 interference violates the Sixth Amendment right to counsel if it substantially prejudices the  
17 criminal defendant.” *Williams v. Woodford*, 384 F.3d 567, 584–85 (9th Cir.2004).

18  
19 Here, Mr. McNair’s incarceration in Ely substantially interferes with Counsel’s ability  
20 to communicate with him privately, explain the rights he is giving up by entering this plea and  
21 answer any questions or address any concerns that Mr. McNair may have regarding this change  
22 of plea. Further, Counsel must be available, at the time of sentencing, to privately answer any  
23 questions or address any concerns Mr. McNair has which may arise during the change of plea.  
24 Mr. McNair will be waiving important Constitutional rights during that hearing and his ability  
25 to privately confer with Counsel in real time is essential. While Mr. McNair and his attorneys  
26  
27  
28

1 are mindful of the current health situation which resulted in the Administrative Order governing  
2 court appearances, Mr. McNair submits that given the Constitutional implications of his entry  
3 of plea, re-sentencing, and withdrawal of direct appeal, he needs to be able to effectively  
4 communicate with counsel, and be able to have his questions answered in the moment, without  
5 allowing the State or other parties to hear his concerns.  
6

7 Furthermore, having to waive certain rights and enter a guilty plea via videoconference  
8 could create a chilling effect and prevent Mr. McNair from asking questions, relevant to his  
9 First, Fifth, Eighth, and Fourteenth Amendment rights, due to fear or concern of having other  
10 parties privy to this communication. Given the current constraints, Mr. McNair believes it is not  
11 unreasonable to postpone the sentencing date until he can be physically present, accompanied  
12 by a request for extension of time to the Nevada Supreme Court. In the alternative, preserving  
13 his objection to not being physically present but allowing him to be transferred to High Desert  
14 State Prison, will allow better communication with Counsel prior to the entry of plea and in  
15 sentencing. In this latter option, Mr. McNair could be transported to High Desert State Prison  
16 within fourteen business days of this court granting his request.  
17

#### 18 CONCLUSION

19  
20 For the aforementioned reasons, Mr. McNair requests that his entry of plea and  
21 sentencing be postponed until he can be physically present for sentencing, or in the alternative  
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25 ...

26 ...

1 that this court extend the sentencing date by fourteen business days to allow Mr. McNair to be  
2 transported to High Desert State Prison.

3 DATED this \_\_ day of July, 2020.

4 JONELL THOMAS  
5 SPECIAL PUBLIC DEFENDER

6 /s/ RANDALL H. PIKE

7 By \_\_\_\_\_  
8 RANDALL H. PIKE  
9 Chief Deputy Special Public Defender  
10 MELINDA E. SIMPKINS ESQ.  
11 Chief Deputy Special Public Defender  
12 Attorneys for Michael McNair

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that service of the foregoing document was made pursuant to EDCR  
15 7.26 on the attorney for the named parties by means of electronic mail to the email address  
16 provided to the court's electronic filing system for this case. Proof of Service is the date service  
17 is made by the court's electronic filing system by email to the parties and contains a link to the  
18 file stamped document.

19 PARTY

EMAIL

20 STATE OF NEVADA

DISTRICT ATTORNEY'S OFFICE  
email: [motions@clarkcountynvda.com](mailto:motions@clarkcountynvda.com)

21 Dated: 7/1/2020

22 /s/ Kathleen Fitzgerald

23 \_\_\_\_\_  
24 Employee for the Special Public Defender  
25  
26  
27  
28

## **EXHIBIT A**

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DEANGELO MCNAIR,  
Appellant,

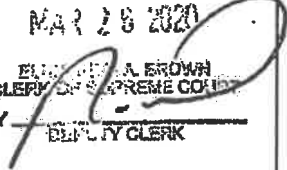
vs.

THE STATE OF NEVADA,  
Respondent.

No. 78871

FILED

MAR 26 2020

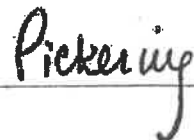
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  CLERK

ORDER GRANTING MOTION

Appellant's motion for an extension of time to comply with the procedures set forth in NRAP 12A is granted to the following extent. Appellant shall have until June 2, 2020, to comply with the procedures set forth in NRAP 12A, 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.

The briefing schedule shall remain suspended pending further order of this court.

It is so ORDERED.

 , C.J.

cc: Hon. Douglas W. Herndon, District Judge  
Special Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

## **EXHIBIT B**

**From:** Smith, Jennifer <[dept03lc@clarkcountycourts.us](mailto:dept03lc@clarkcountycourts.us)>

**Sent:** Tuesday, June 23, 2020 2:48 PM

**To:** Navid Afshar <[Navid.Afshar@ClarkCountyNV.gov](mailto:Navid.Afshar@ClarkCountyNV.gov)>; Jacoby, Jill <[JacobyJ@clarkcountycourts.us](mailto:JacobyJ@clarkcountycourts.us)>

**Cc:** Alexander Chen <[Alexander.Chen@clarkcountysda.com](mailto:Alexander.Chen@clarkcountysda.com)>; Jeffrey Rogan <[Jeffrey.Rogan@clarkcountysda.com](mailto:Jeffrey.Rogan@clarkcountysda.com)>; Randy Pike <[Randy.Pike@ClarkCountyNV.gov](mailto:Randy.Pike@ClarkCountyNV.gov)>; Melinda Simpkins <[Melinda.Simpkins@ClarkCountyNV.gov](mailto:Melinda.Simpkins@ClarkCountyNV.gov)>; Kathleen Fitzgerald <[Kathleen.Fitzgerald@clarkcountynv.gov](mailto:Kathleen.Fitzgerald@clarkcountynv.gov)>

**Subject:** RE: McNair Order - NSC grants limited remand to DC3

We set the entry of plea / sentencing for July 2<sup>nd</sup> at 3:30 p.m. If that date doesn't work, let me know.

Judge said that you can file a motion if you want, but under the current conditions with the 30 day window, the options are appearing by video from Ely State Prison or from CCDC.

**Jen Smith**

Law Clerk to the Honorable Douglas W. Herndon

Eighth Judicial District Court, Dept. 3

[Dept03LC@clarkcountycourts.us](mailto:Dept03LC@clarkcountycourts.us)

(702) 671-4309

**From:** Navid Afshar [<mailto:Navid.Afshar@ClarkCountyNV.gov>]

**Sent:** Monday, June 22, 2020 10:29 AM

**To:** Smith, Jennifer; Jacoby, Jill

**Cc:** Alexander Chen; Jeffrey Rogan; Randy Pike; Melinda Simpkins; Kathleen Fitzgerald

**Subject:** RE: McNair Order - NSC grants limited remand to DC3

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good morning,

Thank you so much for getting back to me! I spoke to Mr. McNair this morning and he wanted us to object to doing it by video. He wanted me to express that he is not pulling out of the agreement but he wants to be present for the sentencing. If he has any questions, that we could go over with him in person. I wanted to give everyone a heads up that we will file a pre-sentencing motion to object to it being done by video. Once the court sets a date for sentencing by video, we would file the motion then on his behalf.

**From:** Smith, Jennifer [<mailto:dept03lc@clarkcountycourts.us>]

**Sent:** Friday, June 19, 2020 11:13 AM

**To:** Navid Afshar <[Navid.Afshar@ClarkCountyNV.gov](mailto:Navid.Afshar@ClarkCountyNV.gov)>; Jacoby, Jill <[JacobyJ@clarkcountycourts.us](mailto:JacobyJ@clarkcountycourts.us)>

**Cc:** Alexander Chen <[Alexander.Chen@clarkcountysda.com](mailto:Alexander.Chen@clarkcountysda.com)>; Jeffrey Rogan <[Jeffrey.Rogan@clarkcountysda.com](mailto:Jeffrey.Rogan@clarkcountysda.com)>; Randy Pike <[Randy.Pike@ClarkCountyNV.gov](mailto:Randy.Pike@ClarkCountyNV.gov)>; Melinda Simpkins <[Melinda.Simpkins@ClarkCountyNV.gov](mailto:Melinda.Simpkins@ClarkCountyNV.gov)>; Kathleen Fitzgerald

<Kathleen.Fitzgerald@clarkcountynv.gov>

**Subject:** RE: McNair Order - NSC grants limited remand to DC3

At the moment, we are adhering to the Administrative Order and aren't having anyone appear in the courtroom in person – all of our appearances are done by video or phone. As long as the Admin Order is in effect, we will be continuing to do our appearances that way. So, even if Mr. McNair were transported to CCDC, at this point, he would likely still be appearing by video from there. However, we should be able to set up a video appearance for him from Ely State Prison.

**Jen Smith**

Law Clerk to the Honorable Douglas W. Herndon

Eighth Judicial District Court, Dept. 3

[Dept03LC@clarkcountycourts.us](mailto:Dept03LC@clarkcountycourts.us)

(702) 671-4309

**From:** Navid Afshar [<mailto:Navid.Afshar@ClarkCountyNV.gov>]

**Sent:** Wednesday, June 17, 2020 12:26 PM

**To:** Smith, Jennifer; Jacoby, Jill

**Cc:** Alexander Chen; Jeffrey Rogan; Randy Pike; Melinda Simpkins; Kathleen Fitzgerald

**Subject:** RE: McNair Order - NSC grants limited remand to DC3

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good morning,

He is currently at Ely State Prison. I was notified that currently, NDOC will transport an inmate if they receive an order to transport. I have not had a chance to speak with him yet since the order came out to see if he would have any issue with doing it via video. Does the State have any issue with doing it via video? If so, I can go ahead and file a status report and motion for extension with the NSC, explaining that we have moved to transport for in person sentencing. I do not think they would have a problem with that and if they say no, we can then move to do it via video. Does that work for everyone?

**From:** Smith, Jennifer [<mailto:dept03lc@clarkcountycourts.us>]

**Sent:** Wednesday, June 17, 2020 11:53 AM

**To:** Navid Afshar <[Navid.Afshar@ClarkCountyNV.gov](mailto:Navid.Afshar@ClarkCountyNV.gov)>; Jacoby, Jill <[JacobyJ@clarkcountycourts.us](mailto:JacobyJ@clarkcountycourts.us)>

**Cc:** Alexander Chen <[Alexander.Chen@clarkcountydada.com](mailto:Alexander.Chen@clarkcountydada.com)>; Jeffrey Rogan

<[Jeffrey.Rogan@clarkcountydada.com](mailto:Jeffrey.Rogan@clarkcountydada.com)>; Randy Pike <[Randy.Pike@ClarkCountyNV.gov](mailto:Randy.Pike@ClarkCountyNV.gov)>; Melinda

Simpkins <[Melinda.Simpkins@ClarkCountyNV.gov](mailto:Melinda.Simpkins@ClarkCountyNV.gov)>; Kathleen Fitzgerald

<[Kathleen.Fitzgerald@clarkcountynv.gov](mailto:Kathleen.Fitzgerald@clarkcountynv.gov)>

**Subject:** RE: McNair Order - NSC grants limited remand to DC3

Good morning,

Where is Mr. McNair currently? We've arranged video appearances for people in custody from several of the prisons, so we can probably arrange for a video appearance, which might be faster given the



current circumstances.

**Jen Smith**

Law Clerk to the Honorable Douglas W. Herndon

Eighth Judicial District Court, Dept. 3

[Dept03LC@clarkcountycourts.us](mailto:Dept03LC@clarkcountycourts.us)

(702) 671-4309

**From:** Navid Afshar [<mailto:Navid.Afshar@ClarkCountyNV.gov>]

**Sent:** Monday, June 15, 2020 2:06 PM

**To:** Jacoby, Jill; Smith, Jennifer

**Cc:** Alexander Chen; Jeffrey Rogan; Randy Pike; Melinda Simpkins; Kathleen Fitzgerald

**Subject:** McNair Order - NSC grants limited remand to DC3

[NOTICE: This message originated outside of Eighth Judicial District Court -- DO NOT CLICK on links or open attachments unless you are sure the content is safe.]

Good afternoon,

The Nevada Supreme Court just issued an order of limited remand to the district court and that the amended JOC be submitted within 30 days of said order. I attached the order for reference. I had a couple questions before proceeding further:

Would the court like for our office to draft a proposed order to request Mr. McNair be transported to High Desert State Prison, so he may attend the entry of plea in person? Could we do the entry of plea and sentencing on the same date? (I would send State a copy for review). Would the State / court have an issue doing the entry of plea and sentencing via video? If so, and if it turns out it will take more than 30 days to have him transported down, I can prepare the order to transport and file a status report with NSC to request more time to enter the amended JOC.

**Regards,**

Navid Afshar

Deputy Special Public Defender

Office of the Special Public Defender


330 S. Third Street, Suite 800

Las Vegas, Nevada 89101

702-455-5236 (Direct)

702-455-6265 (Main)

EXHIBIT **B**



1 **EXPR**  
JoNELL THOMAS  
2 SPECIAL PUBLIC DEFENDER  
Nevada Bar #4771  
3 RANDALL H. PIKE  
Chief Deputy Special Public Defender  
4 Nevada Bar #1940  
MELINDA E. SIMPKINS ESQ.  
5 Chief Deputy Special Public Defender  
Nevada Bar #7911  
6 330 So. Third Street, Suite #800  
Las Vegas, Nevada 89155  
7 (702) 455-6265  
FAX: (702) 455-6273  
8 EMAIL:randy.pike@clarkcountynv.gov  
EMAIL:msimpkins@clarkcountynv.gov  
9 Attorneys for Michael McNair

10 DISTRICT COURT

11 CLARK COUNTY, NEVADA

12  
13 THE STATE OF NEVADA,

14 Plaintiff

15 vs.

16 MICHAEL MCNAIR,

17 Defendant.

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

18 **EX PARTE APPLICATION AND ORDER FOR DEFENDANT TO APPEAR BY**  
19 **VIDEO FOR HIS HEARING FROM ELY STATE PRISON**

20 COMES NOW, MICHAEL MCNAIR, Prison BAC #1082775, by and through his  
21 attorneys, JoNELL THOMAS, Special Public Defender, RANDALL H. PIKE, Chief Deputy  
22 Special Public Defender, and MELINDA E. SIMPKINS ESQ., Chief Deputy Special Public  
23 Defender, and hereby requests this Court Order that the Defendant can participate from Ely  
24 State Prison by video and telephone for his court appearance in District Court, Department 3,  
25 200 Lewis Ave., Las Vegas NV 89101 for entry of plea and sentencing on 7/14/2020 at 03:30  
26 PM.

27 Attached hereto are the instructions for the Court to schedule a video conference.  
28

1 It is the understanding of counsel that the video link would need to be established by the Court.  
2 (See Instructions attached on requesting the link.)

3 Pursuant to Order by the Nevada Supreme Court, the district court has retained limited  
4 jurisdiction over this matter for entry of plea and sentencing. See Exhibit A.

5 DATED this 29th day of June, 2020.

6 JONELL THOMAS  
7 SPECIAL PUBLIC DEFENDER

8 By s/ RANDALL H. PIKE  
9 RANDALL H. PIKE  
10 Chief Deputy Special Public Defender  
11 MELINDA E. SIMPKINS ESQ.  
12 Chief Deputy Special Public Defender  
13 Attorneys for Michael McNair

12 **ORDER TO TRANSPORT**

13 TO: Ely State Prison  
14 Dahn Puckett, AA to Warden Gittere  
dpuckett@doc.nv.gov

15 This matter having come before the Court by Ex Parte Application, the matter having  
16 been fully reviewed, and good cause appearing therefore,

17 IT IS HEREBY ORDERED that Michael McNair, ID 1082775, will be allowed to  
18 participate in his court hearing for the purpose of entry of plea and sentencing on 7/14/2020 at  
19 03:30 PM, by video and telephone from Ely State Prison.

20 IT IS FURTHER ORDERED should the Court will establish the video link for the  
21 appearance pursuant to the attached instructions.

22 DATED AND DONE this 30 day of June, 2020.

23 JH  
DISTRICT COURT JUDGE

24 Submitted by:  
25 s/ RANDALL H. PIKE

26 RANDALL H. PIKE  
27 MELINDA E. SIMPKINS  
28 Attorneys for McNair

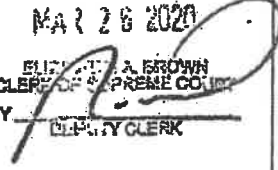
IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL DEANGELO MCNAIR,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 78871

FILED

MAR 26 2020

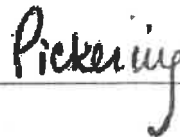
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER GRANTING MOTION

Appellant's motion for an extension of time to comply with the procedures set forth in NRAP 12A is granted to the following extent. Appellant shall have until June 2, 2020, to comply with the procedures set forth in NRAP 12A, 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.

The briefing schedule shall remain suspended pending further order of this court.

It is so ORDERED.

 C.J.

cc: Hon. Douglas W. Herndon, District Judge  
Special Public Defender  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

**Scheduling Courts & outside entities through TC  
Reliance  
NSHE=(Nevada System of Higher Education)**

For video conference requests (scheduling court or out of state or outside entities), please go to:

[www.scs.nevada.edu](http://www.scs.nevada.edu) - under "quick-links" choose "schedule a video conference" fill out the request form and submit

this will generate a work/request ticket which will allow NSHE to keep track of the your request

A representative with NSHE will then make contact with you through e-mail providing your reservation number

and all pertinent information they will also notify Nevada Dept. of Corrections.

NSHE does request a "test" at the site to ensure compatibility of the equipment if it is out of state or outside entities

they also require an IP address and phone number to the video conference room and also a contact name and phone number

\*\*\*The facility coordinator's or "requesters" responsibility is to make sure that all the NDOC sites are available for the date and time in question.

An "Order to Produce" is required by NSHE when scheduling for attorneys as attorneys are a "for profit" organization

\*\* If you experience any problems with connectivity or while the video conference is running please contact Kathy Swain (775) 887-3249

EXHIBIT C

**STATE OF NEVADA  
NEVADA DEPARTMENT OF CORRECTIONS  
ELY STATE PRISON  
OFFICE OF THE WARDEN**

DATE: July 7, 2020

TO: Inmate Michael McNair #1082775      U5-B-7-B      Close

FROM:

  
Dahn Puckett, AA II to Warden Gittere

**SUBJECT: Monday, July 13, 2020 Telephone Conference Call with Legal Counsel**

Because you and your housing unit have been placed on a fourteen (14) day quarantine status, which began on Monday, July 6, 2020, you will be unable to attend the Monday, July 13, 2020 telephone conference call with Navid Afshar, ATL which was scheduled to be held in Visiting Holding Room D. The appointment will need to be rescheduled once the quarantine has been lifted.

While on quarantine status you must remain within your housing unit.

I have already contacted Mr. Afshar and advised him that due to your quarantine status you will not be able to attend the Tuesday, July 14, 2020 Plea and Sentencing Hearings which were set to be held in our Video Court Room. They will need to be rescheduled.

The fourteen day quarantine status is schedule to end on Monday, July 20, 2020 and scheduled movement will resume the following day, Tuesday, July 21, 2020.

cc: Navid Afshar, ATL  
Deputy Special Public Defender  
Office of the Special Public Defender



EXHIBIT D

## Navid Afshar

---

**From:** Monica Navarro <mmnavarro@doc.nv.gov>  
**Sent:** Monday, June 29, 2020 8:28 AM  
**To:** Navid Afshar  
**Subject:** RE: Michael McNair Id #1082775 - transfer inmate order

Anytime, have a good day.

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**From:** Navid Afshar <Navid.Afshar@ClarkCountyNV.gov>  
**To:** Monica Navarro <mmnavarro@doc.nv.gov>  
**Date:** 6/29/2020 8:18 AM  
**Subject:** RE: Michael McNair Id #1082775 - transfer inmate order

Thank you so much for getting back to me and letting us know the procedure. I really appreciate it!

---

**From:** Monica Navarro [mailto:mmnavarro@doc.nv.gov]  
**Sent:** Monday, June 29, 2020 8:00 AM  
**To:** Navid Afshar <Navid.Afshar@ClarkCountyNV.gov>  
**Cc:** Dahn Puckett <dpuckett@doc.nv.gov>; Tasheena Sandoval <tsandoval@doc.nv.gov>; dept03lc@clarkcountycourts.us; Kathleen Fitzgerald <Kathleen.Fitzgerald@clarkcountynv.gov>  
**Subject:** Re: Michael McNair Id #1082775 - transfer inmate order

Good morning Navid,

You would list High Desert State prison. But to move an inmate this distance for court we would need a notice of 14 business days. We are already past that 14 day notice so we would not be able to move him in time to appear in court on the 14th of July.

*Monica Navarro*  
*Nevada Department Of Corrections*  
*Central Transportation Division*  
*P.O. Box 7011 | Carson City, NV 89702*  
*Phone (775)977-5518 | Fax (775)887-3280*  
*mmnavarro@doc.nv.gov*



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**From:** Navid Afshar <[Navid.Afshar@ClarkCountyNV.gov](mailto:Navid.Afshar@ClarkCountyNV.gov)>  
**To:** "[mmnavarro@doc.nv.gov](mailto:mmnavarro@doc.nv.gov)" <[mmnavarro@doc.nv.gov](mailto:mmnavarro@doc.nv.gov)>  
**CC:** Kathleen Fitzgerald <[Kathleen.Fitzgerald@clarkcountynv.gov](mailto:Kathleen.Fitzgerald@clarkcountynv.gov)>, "Smith, Jennifer" <[dept03lc@clarkcountycourts.us](mailto:dept03lc@clarkcountycourts.us)>, Dahn Puckett <[dpuckett@doc.nv.gov](mailto:dpuckett@doc.nv.gov)>, Tasheena Sandoval <[tsandoval@doc.nv.gov](mailto:tsandoval@doc.nv.gov)>  
**Date:** 6/26/2020 2:08 PM  
**Subject:** Michael McNair Id #1082775 - transfer inmate order

Good afternoon Ms. Navarro,

I was referred to contact you regarding questions for transferring inmates. I have also cc'ed the Department 3 District Court in Clark County on this email. We are finalizing an order to transport Mr. McNair to Las Vegas for a hearing. My question is for the order can we put Clark County Detention Center for the location or would we need to put High Desert State Prison? He is currently in Ely State Prison. We are hoping to have him here by July 14<sup>th</sup> for his hearing so I just wanted to confirm before we sent it out. Any assistance you can provide would be greatly appreciate. I have attached an order from the Nevada Supreme Court granting limited jurisdiction to the district court to take an entry of plea and sentencing.

**Regards,**

Navid Afshar  
Deputy Special Public Defender  
Office of the Special Public Defender  
330 S. Third Street, Suite 800  
Las Vegas, Nevada 89101  
702-455-5236 (Direct)  
702-455-6265 (Main)