

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD

Petitioner,

vs.

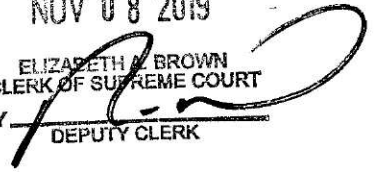
NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER, and
NEVADA DEPARTMENT OF CORRECTIONS,
As Employer,

Respondents.

Supreme Court No. 79718
Dist. Ct. Case No. CV19-00641

FILED

NOV 08 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

OPPOSITION TO MOTION TO DISMISS

Michael Whitfield
P.O. Box 18421
Reno, NV 89511
(775) 737-3493
Email: mwhitfi2000@gmail.com
Self-Represented Litigant



19-45964

COMES NOW, Petitioner, MICHAEL WHITEFIELD, in proper person, and herby files his Opposition to Respondents' Motion to Dismiss.

This Motion is based on the Memorandum of Points and Authorities as referenced and attached hereto, as well as all other pleadings and papers on file with this Court.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION AND PROCEDURAL HISTORY

Petitioner was employed at Nevada State Prison from February 28, 2005 through January 2012 and was transferred to Warm Springs Correctional Center until his dismissal on April 20, 2018. Petitioner was terminated on April 20, 2018, for alleged violations of AR 339.07.15 and NAC 284.650.

Petitioner appealed his termination on April 30, 2018. On December 14, 2018 an appeal hearing was held. On March 1, 2019, the administrative hearing officer affirmed the decision of the NDOC to dismiss Petitioner from state service.

On March 20, 2019 Petitioner filed for Judicial Review in the Second Judicial District Court. On April 4, 2019, Respondents filed their Intent to Participate, acknowledging receipt of the Petition, then moved for dismissal of the Petition for Judicial Review, due to the clerical error of having failed to comply

with the mandatory and jurisdictional requirements of NRS 233B.130(2). Specifically, Petitioner failed to name any respondents in the Caption of his Petition.

Petitioner immediately corrected the clerical error via his Amended Petition for Judicial Review filed on April 8, 2019.

On April 9, 2019, Petitioner filed an Opposition to NDOC's Motion to Dismiss, arguing that his failure to name any respondents in the caption of his Petition was not jurisdictionally fatal, citing the recent case of *Prevost v. State Dep't of Admin.*, 134 Nev. Adv. Op. 42, 418 P.3d 675, 677 (2018).

In its Reply, NDOC emphasized that Petitioner must "strictly comply" with the naming requirements of NRS 233B.130(2)(a), citing *Otto*, 128 Nev. at 431. *Prevost* contradicts this argument.

On June 24, 2019 the district court granted NDOC's Motion to Dismiss. Petitioner filed his Motion for Reconsideration which was denied on September 17, 2019.

On November 7, 2019 Petitioner/Appellant filed a Motion to Amend Notice of Appeal in order to correct the misstated document from which Petitioner/Appellant seeks intercession from. (Exhibit 1)

II.

LAW AND ARGUMENT

A. THE NOTICE OF APPEAL IS TIMELY

Respondent incorrectly posits that Petitioner's Appeal is untimely. A Motion for Reconsideration clearly falls under the auspices of NRCP 59 which applies not only to new trials, but to reconsideration of any other decision or order, tolling the time to file an appeal.

In *Lytle v. Rosemere Estates Prop. Owners Ass'n, Non-Profit Corp.*, No. 60657 (2013), the court found that "NRCP 54(a) defines judgment to include any order from which an appeal lies. Based on this definition, we conclude that tolling under NRAP 4(a)(4) applies to an NRCP 59(e) motion to alter or amend directed at an appealable special order after final judgment. As a result, the notice of appeal from this order was timely filed and the appeal may proceed." This finding clearly establishes the timeliness of Petitioner's appeal and fully vests the Supreme Court with appropriate jurisdiction of this matter.

In *Classic Concepts, Inc. v. Linen Source, Inc.*, __ F.3d __, No. 07-56870, 2013 WL 2350148 (9th Cir. May 30, 2013) the court specifically qualified its consideration of a Motion for Reconsideration "when a party files a timely motion for relief under Rule 60, the period to file a notice of appeal is tolled."

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III.

CONCLUSION

Based on the foregoing, Petitioner respectfully request that the Court deny Respondents' Motion for Dismissal.

Dated this 8th day of November 2019.

MICHAEL WHITFIELD
Self-Represented Litigant



CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ This brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 pt. font in Times New Roman.

2. I further certify that this brief complies with the page- or typevolume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☐ Proportionately spaced, has a typeface of 14 points or more and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

☒ Does not exceed 10 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix

where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 8th day of November 2019.

MICHAEL WHITFIELD
Self-Represented Litigant

CERTIFICATE OF SERVICE

I hereby certify that I am the Petitioner in the above referenced matter, and that on the 8th day of November, 2019 I filed and served a true copy of the foregoing **OPPOSITION TO MOTION TO DISMISS** by hand delivery, to the following:

Kevin A. Pick
Senior Deputy Attorney General
Office of the Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

MICHAEL WHITFIELD
Self-Represented Litigant

INDEX OF EXHIBITS

Exhibit 1 MOTION TO FILE AMENDED NOTICE OF APPEAL

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

1 Code: 2490
Michael Whitfield
2 P.O. Box 18421
3 Reno, NV 89511
(775) 737-3493
4 Email: mwhitfi2000@gmail.com
Self-Represented Litigant
5

6
7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 * * *

10 IN THE MATTER OF:

Case No. CV19-00641

11 MICHAEL WHITFIELD
12 (Appeal No. 1803430-LLW)

Dept. No. 1 .

13 Petitioner,
14

15 vs.

16 NEVADA STATE PERSONNEL
17 COMMISSION, STATE OF NEVADA
18 DEPARTMENT OF ADMINISTRATION,
19 LORNA WARD, APPEALS OFFICER, and
JAMES DZURENDA, NEVADA
20 DEPARTMENT OF CORRECTIONS,
As Employer,

21 Respondents.
22 _____/

23 **MOTION TO FILE AMENDED NOTICE OF APPEAL**

24 Comes now, Petitioner, Michael Whitfield, Petitioner in proper person, and hereby
25 requests this Court to permit him to amend his NOTICE OF APPEAL filed on September
26 23, 2019.

27 In Petitioner's Notice of Appeal he mistakenly listed the incorrect Order in which
28

1 he was appealing from. Petitioner should have listed the Order Dismissing Petition for
2 Judicial Review, entered on June 24, 2019.

3 Pursuant to NRAP 3(a)(3) upon the initial filing of the Notice of Appeal the district
4 court clerk should have apprised Petitioner/Appellant of the apparent deficiency regarding
5 the incorrectly identified Order, in writing.
6

7 In *Whitman v. Whitman*, 107 Nev. 328, 810 P.2nd 1209 (1991), the Court held that
8 the clerk of the district court should have ... informed appellant by letter of any perceived
9 deficiencies in the document. In this case, as in the *Whitman* matter, Appellant could then
10 have taken corrective action to pursue his appeal.
11

12 1. Petitioner offers his Amended Notice of Appeal as Exhibit 1 as attached to
13 this Motion.

14 2. Petitioner believes that his claims are valid and that his rights and interests
15 of justice will be served by the offered amendment; and
16

17 3. This Motion is not brought for any dilatory of other impermissible purpose.

18 **This document does not contain the personal information of any person as**
19 **defined by NRS 603A.040.**

20 Dated this 7th day of November, 2019

21 /s/ Michael Whitfield
22 Michael Whitfield
23 Petitioner in Proper Person
24
25
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am the Petitioner in the above entitled matter and that on the 7th
3 day of November, 2019, I served a copy of the foregoing **Motion to File Amended Notice of**
4 **Appeal** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex
5 system and by depositing a true copy of the same for mailing addressed as follows:

6
7 Kevin Pick, Esq.
8 Deputy Attorney General
9 5420 Kietzke Lane, Suite 202
10 Reno, NV 89511

11 Lorna L. Ward, Esq.
12 Hearing Officer
13 c/o Hearings Division
14 1050 West William Street, Suite 450
15 Carson City, NV 89701

16 /s/ Michael Whitfield
17 Michael Whitfield
18 Petitioner in Proper Person
19
20
21
22
23
24
25
26
27
28

1 Code:
2 Michael Whitfield
3 P.O. Box 18421
4 Reno, NV 89511
5 (775) 737-3493
6 Email: mwhitfi2000@gmail.com
7 Self-Represented Litigant

8
9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

11
12 IN AND FOR THE COUNTY OF WASHOE

13 * * *

14 IN THE MATTER OF:

Case No. CV19-00641

15 MICHAEL WHITFIELD
16 (Appeal No. 1803430-LLW)

Dept. No. 1

17 Petitioner,

18 vs.

19 NEVADA STATE PERSONNEL
20 COMMISSION, STATE OF NEVADA
21 DEPARTMENT OF ADMINISTRATION,
22 LORNA WARD, APPEALS OFFICER, and
23 JAMES DZURENDA, NEVADA
24 DEPARTMENT OF CORRECTIONS,
25 As Employer,

26 Respondents.
27 _____/

28 INDEX OF EXHIBITS

Exhibit Number 1 Number of Pages: 3
Exhibit Description: Amended Notice of Appeal

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EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

1 Code: 1097
Michael Whitfield
2 P.O. Box 18421
3 Reno, NV 89511
(775) 737-3493
4 Email: mwhitfi2000@gmail.com
5 Self-Represented Litigant
6

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 * * *

10 IN THE MATTER OF:

Case No. CV19-00641

11 MICHAEL WHITFIELD
12 (Appeal No. 1803430-LLW)

Dept. No. 1

13 Petitioner,

14 vs.
15

16 NEVADA STATE PERSONNEL
17 COMMISSION, STATE OF NEVADA
18 DEPARTMENT OF ADMINISTRATION,
19 LORNA WARD, APPEALS OFFICER, and
JAMES DZURENDA, NEVADA
20 DEPARTMENT OF CORRECTIONS,
As Employer,

21 Respondents.
22 _____ /

23 **AMENDED NOTICE OF APPEAL**

24 Notice is hereby given that Michael Whitfield, Petitioner above named, hereby
25 appeals to the Supreme Court of Nevada from the Order Dismissing Petition for Judicial

26 //

27 //
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1 Review entered in this action on June 24, 2019.

2 **This document does not contain the personal information of any person as**
3 **defined by NRS 603A.040.**

4 Dated this 7th day of November, 2019

6 /s/ Michael Whitfield
7 Michael Whitfield
8 Petitioner in Proper Person

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I hereby certify that I am the Petitioner in the above entitled matter and that on the 7th day of November, 2019, I served a copy of the foregoing **Amended Notice of Appeal** by causing a true copy thereof to be filed with the Clerk of the Court using the eFlex system and by depositing a true copy of the same for mailing addressed as follows:

Kevin Pick, Esq.
Deputy Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511

Lorna L. Ward, Esq.
Hearing Officer
c/o Hearings Division
1050 West William Street, Suite 450
Carson City, NV 89701

/s/ Michael Whitfield
Michael Whitfield
Petitioner in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL WHITFIELD,

Petitioner,

vs.

NEVADA STATE PERSONNEL
COMMISSION, STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION,
LORNA WARD, APPEALS OFFICER,
and DEPARTMENT OF CORRECTIONS,
as Employer,

Respondents.

Supreme Court No. 79718
Dist. Court Case No. CV19-00641

NOTICE OF AMENDED CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on the 29th day of October 2019, I served the **MOTION TO DISMISS**, previously filed with the Clerk of the Court on October 21, 2019, using the CM/ECF system, by depositing a true copy of the same for mailing, first class mail, at Reno, Nevada, addressed as follows:

Michael Whitfield
P.O. Box 18421
Reno, NV 89511

Said Motion to Dismiss, previously served on October 21, 2019, was returned to sender due to an incorrect address.

/s/ Ginny Brownell

An Employee of the State of Nevada, Office
of the Attorney General

