

In the Supreme Court of the State of Nevada

Case No. 80255

Evaristo Jonathan Garcia

Appellant,

v.

James Dzurenda, et al.,

Respondent.

Electronically Filed
Feb 14 2020 10:21 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Status Report

Dated this 14th day of February, 2020.

Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

/s/ S. Alex Spelman

S. ALEX SPELMAN

Assistant Federal Public Defender

Appellant Garcia moved this Court to stay the briefing schedule for this appeal pending the district court's resolution of his outstanding Nevada Rule of Civil Procedure 59(e) motion. This Court granted the motion on January 16, 2020, staying the briefing in this appeal "pending further order of this court," and ordered Garcia to file a status report within 30 days "informing this court of the decision of the district court to deny the motion or providing this court with the district court's order indicating its inclination to grant the motion. *See Foster v. Dingwall*, 126 Nev. 49, 228 P.3d 453 (2010); *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978)." Garcia provides the following update.

The Eighth Judicial District Court held oral argument on the Rule 59(e) motion on February 6, 2020. Garcia's Rule 59(e) motion had requested the court either (a) vacate the final judgment and enter a new judgment granting Garcia habeas relief, or (b) vacate the final judgment and set this matter for an evidentiary hearing. After considering the arguments at the February 6, 2020 hearing, the court indicated that an evidentiary hearing will be held on June 5, 2020. *See Ex. 1*. The district court has not yet issued a written order on the Rule 59(e) motion.

Mr. Garcia respectfully proposes providing this Court with a status report every 30 days until the district court enters a written order, at which point, Garcia will promptly file another status report with a copy of the district court's written order. In the meantime, Garcia respectfully requests this appeal remain stayed.

Dated this 14th day of February 2020.

Respectfully submitted,
Rene L. Valladares
Federal Public Defender

/s/ S. Alex Spelman
S. Alex Spelman
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on February 14, 2020, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the appellate electronic filing system will be served by the system and include: Alexander Chen.

I further certify that some of the participants in the case are not registered appellate electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following person:

Evaristo Jonathan Garcia
No. 1108072
Saguaro Correctional Center
1252 E. Arica Road
Eloy, AZ 85131

/s/ Jessica Pillsbury
An Employee of the
Federal Public Defender, District of Nevada

EXHIBIT 1

EXHIBIT 1

A-19-791171-W Evaristo Garcia, Plaintiff(s)
vs.
James Dzurenda, Defendant(s)

February 06, 2020 08:30 AM MOTION TO ALTER OR AMEND

HEARD BY: Jones, David M COURTROOM: RJC Courtroom 15A

COURT CLERK: Maldonado, Nancy

RECORDER: Delgado-Murphy, Melissa

REPORTER:

PARTIES PRESENT:

Charles W. Thoman Attorney for Defendant

Stephen A Spelman Attorney for Plaintiff

JOURNAL ENTRIES

Arguments by Mr. Spelman. Arguments by Mr. Thoman. Court advised it would allow an Evidentiary Hearing to be set. Mr. Spelman advised the motion to unseal the case was unopposed by the State, noting he had an order already prepared for signature. COURT SO ORDERED. Order SIGNED in Open Court. COURT FURTHER ORDERED, Evidentiary Hearing SET.

06/05/20 1:00 PM EVIDENTIARY HEARING