

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID BURNS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Aug 12 2020 02:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 80834

MOTION TO FILE APPENDIX VOLUME UNDER SEAL

COMES NOW, Appellant David Burns, by and through counsel, Jamie Resch, Esq., and files this Motion to file an appendix volume under seal. This motion is based on the following memorandum and all papers and pleadings on file herein.

DATED this 12th day of August, 2020.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: 

JAMIE J. RESCH

Attorney for Appellant

MEMORANDUM

At sentencing, the court relied on a long sentencing memorandum that contained several medical and expert reports in mitigation of Burns' offenses. At the end of the sentencing hearing, counsel requested that the sentencing memorandum be made a sealed part of the record based on the private and medical nature of the information in it. The trial court granted the request and memorandum was "filed in open court and it will be sealed." 16 AA 3376. The State offered no objection to the memorandum being filed under seal.

As a result, the memorandum was part of the record of these proceedings, but the only file-stamped copy believed to exist is the sealed copy possessed by the Clerk of Court below. Trial counsel, Christopher Oram, provided an unfiled copy of the memorandum as part of his files. That unfiled copy was provided to the State as part of the supplemental post-conviction proceedings, which plainly referenced it as part of Burns' claims.

In addition, on appeal to this Court from the denial of post-conviction relief, a near-identical motion was filed and granted. This Court allowed the sealed memorandum to be filed as part of a sealed appendix volume. See *Burns v. State*, #77424.

The same issue exists in this appeal. It is necessary that this Court have a copy of the sentencing memorandum in order to properly review whether the district court's sentence was unreasonable or unconstitutional. Burns has, consistent with what are believed to be this Court's procedures for filing sealed appendix volumes (and the result in #77424), prepared this motion and sent the Supreme Court Clerk and State of Nevada a paper copy of the proposed sealed appendix volume, which is the sentencing memorandum. Burns requests that the sealed appendix volume be filed under seal as part of the record in this matter.

The record was sealed below and thus remains sealed on appeal. Rules for Sealing and Redacting Court Records ("SRCR") 7. As a result, the content of the sentencing memorandum itself could not be included in the appendix. Nevada Rule of Appellate Procedure ("NRAP") 10(b)(2). It is

therefore necessary that leave be granted to file the memorandum as part of a sealed appendix volume.

A copy of the sentencing memorandum is necessary to the adjudication of this appeal because one of Burns' claims directly relies upon the material in it. That is, Burns asserts among other claims that the trial court imposed an unreasonable or unconstitutional sentence when it sentenced Burns, who was only 18 at the time of the offense and has cognitive issues, to a sentence of life without possibility of parole.

WHEREFORE, Appellant respectfully requests that his proposed sealed appendix volume be filed under seal as part of the record in this matter.

DATED this 12th day of August, 2020.

RESCH LAW, PLLC d/b/a Conviction
Solutions

By: _____

JAMIE J. RESCH

Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on August 12, 2020. Electronic service of the foregoing document shall be made in accordance with the master service list as follows:

STEVEN WOLFSON
Clark County District Attorney
Counsel for Respondent

AARON FORD
Nevada Attorney General



An Employee of RESCH LAW,
PLLC, d/b/a Conviction Solutions