

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

SAMUEL HOWARD,

Appellant,

v.

WILLIAM GITTERE, Warden,  
AARON D. FORD, Attorney General  
for the State of Nevada, and THE  
STATE OF NEVADA,

Respondents.

Supreme Court Case Nos. 81278,  
81279

Electronically Filed  
Mar 24 2021 08:16 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Underlying Case:  
Clark County Dist. Ct.  
Nos. 81C053867, A-18-780434-W

**APPELLANT’S RENEWED MOTION TO EXPEDITE**

Pursuant to Nevada Rule of Appellate Procedure 2 and the Court’s inherent authority to manage its own docket, Appellant Samuel Howard respectfully renews his request that the instant appeal be expedited and resolved as soon as possible.

In the case at bar, Mr. Howard is challenging his death sentence on the ground that the prior conviction representing the final remaining aggravating circumstance has been vacated by the New York court that imposed it. *See generally* Appellant’s Opening Brief, filed June 25, 2020. Mr. Howard has pending in the Ninth Circuit a habeas appeal in case number 10-99003 contesting the same sentence, as well as the underlying Nevada convictions. *See generally Howard v. Gittere*, 392 F. Supp. 3d 1205 (D. Nev. 2019) (reflecting some of the issues in the appeal); *Howard v. Filson*, No. 2:93-cv-1209, 2016 WL 7173763 (D.

Nev. Dec. 8, 2016) (same). In the federal habeas appeal, the Ninth Circuit stayed the proceedings sua sponte on April 7, 2020 until the instant case concludes. *See* Mot. to Expedite, filed Oct. 1, 2020 (hereinafter “Orig. Mot.”), Ex. 1.<sup>1</sup> On June 2, 2020, Mr. Howard asked the Ninth Circuit to lift the stay in its entirety, or in the alternative to do so at least with respect to the guilt-phase issues. *See id.*, Ex. 2. The Ninth Circuit denied the motion without prejudice in an order dated July 27, 2020. *See id.*, Ex. 3. However, the Ninth Circuit permitted Mr. Howard to renew his request to lift the stay if this Court did not dispose of the current appeal by January 23, 2021. *See id.*

As a result, Mr. Howard filed a motion in this Court on October 1, 2020, asking for the appeal to be expedited and resolved by January 23, 2021. The State filed a response, in which it indicated that it did not oppose the motion to expedite and that it was willing to waive oral argument in order to facilitate the request. *See* Notice, filed Oct. 1, 2020. In reply, Mr. Howard clarified that he too was amenable to submission on the briefs. *See* Reply, filed Oct. 2, 2020. On October 13, 2020, the Court partially granted the motion and stated that it would expedite

---

<sup>1</sup> The Ninth Circuit appeal discussed above does not raise the same issue that is presented in this case, i.e., the claim based on the New York court order striking the prior conviction. Rather, that issue is pending in two separate federal proceedings, in Ninth Circuit case number 19-70384 and District of Nevada case number 19-247. Those cases are also stayed until the instant appeal ends. Thus, there are in actuality three separate federal proceedings that are being held up by the instant case, which further reinforces the need for expediting the appeal.

resolution of the appeal insofar as its docket allowed. *See* Order, filed Oct. 13, 2020.

Nevertheless, by January 23, 2021—the date set by the Ninth Circuit—this Court had taken no further action in the appeal. Therefore, Mr. Howard returned to the Ninth Circuit and filed a renewed request to lift the stay. *See* Ex. 1. Despite having invited Mr. Howard to renew his request after January 23, 2021, *see supra* at 2, the Ninth Circuit denied the motion without explanation. *See* Ex. 2. It then extended the timetable by an entire year, permitting Mr. Howard to ask for the stay to be lifted yet again if this Court had not settled the appeal by February 10, 2022. *See id.*

Because this appeal has caused a substantial and growing amount of delay in the federal habeas cases, and because Mr. Howard desires all of his pending litigation to be adjudicated as promptly as possible, he respectfully renews his motion to expedite and asks the Court to issue its decision as soon as it practicably can.

Mr. Howard has been quite diligent in his prosecution of the action under review. He did not seek a single extension in the district court. On appeal, he filed his opening brief more than three months before the first deadline. Although he sought an extension on his reply brief due to the personal circumstances of his attorneys, he nonetheless was able to submit the pleading by its original due date.

Mr. Howard is sensitive to the fact that this Court has a full docket with many demands on its time and energy. That said, he notes that the instant appeal has been fully briefed for six months now. While Mr. Howard recognizes that every case is different, the timeline of other appeals suggests that it would be feasible for the Court to render a decision here in the near future. In *Smith v. State*, No. 79600, a murder case, an opinion was recently issued less than five months after the reply brief was filed. And in *Jardine v. Warden*, No. 80385, a post-conviction matter, the decision came out slightly more than six months after the reply brief was submitted. *Smith* and *Jardine* were both appeals from the same district judge who denied Mr. Howard's petition below and they both involved substantial briefs and appendices. Mr. Howard appreciates the care and attention the Court is devoting to the serious challenge he has raised to his death sentence, and he acknowledges that *Jardine* and *Smith* were non-capital matters. Still, if the Court was able to process within six months non-capital cases that were not expedited and where oral argument was not waived, it would seem that a decision could be rendered here without significant additional delay.

Finally, this case is an appropriate one for expediting. The offense for which Mr. Howard was convicted took place more than forty years ago. *See Howard v. State*, 102 Nev. 572, 573, 729 P.2d 1341, 1342 (1986) (per curiam). His direct appeal was decided almost thirty-five years ago. *See id.* There are now no

aggravators left to support his death sentence, and there is nothing to stop this Court from putting an end to the lengthy and convoluted litigation over the death sentence that has been occurring non-stop since it was first imposed several decades ago.

The Court has repeatedly expressed concern about delays in capital cases. *See Young v. Ninth Jud. Dist. Ct.*, 107 Nev. 642, 648, 818 P.2d 844, 848 (1991) (per curiam); *see also Pellegrini v. State*, 117 Nev. 860, 876, 34 P.3d 519, 530 (2001), *abrogated on other grounds by Rippo v. State*, 134 Nev. 411, 423 n.12, 423 P.3d 1084, 1097 n.12 (2018) (en banc). In the present case, where both parties agreed to expedition and where the delay here is postponing finality in the federal system as well, the Court has a perfect opportunity to act on its concern and move the case toward its resolution.

In light of the above, Mr. Howard respectfully asks that the Court expedite this case and adjudicate it as soon as possible.

DATED this 24th day of March 2021.

HENDRON LAW GROUP LLC

*/s/ Lance J. Hendron*

---

LANCE J. HENDRON, ESQ.

Nevada Bar No. 11151

625 S. Eighth St.

Las Vegas, Nevada 89101

FEDERAL DEFENDER  
SERVICES OF IDAHO

/s/ Jonah Horwitz

JONAH J. HORWITZ, ESQ.  
Idaho Bar No. 10494  
702 West Idaho Street, Suite 900  
Boise, Idaho 83702

/s/ Deborah A. Czuba

DEBORAH A. CZUBA, ESQ.  
Idaho Bar No. 9648  
702 West Idaho Street, Suite 900  
Boise, Idaho 83702

**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document on March 24, 2021. Electronic service of the document shall be made in accordance with the Master Service List to:

Jonathan E. VanBoskerck  
Chief Deputy District Attorney  
200 East Lewis Avenue  
Las Vegas, Nevada 89101  
[Jonathan.VanBoskerck@clarkcountyda.com](mailto:Jonathan.VanBoskerck@clarkcountyda.com)

/s/ L. Hollis Ruggieri

L. Hollis Ruggieri

*Samuel Howard v. William Gittere*, Case Nos. 81278, 81279  
Filed in Support of Renewed Motion to Expedite

# **Exhibit 1**

**(Appellant's Renewed Motion to Lift Stay,  
Ninth Circuit Case No. 10-99003, dated January 25, 2021)**

Charles Peterson  
EXECUTIVE DIRECTOR  
Jonah J. Horwitz, ID Bar No. 10494  
Deborah A. Czuba, ID Bar No. 9648  
ASSISTANT FEDERAL DEFENDERS  
Federal Defender Services of Idaho  
Capital Habeas Unit  
702 W. Idaho, Suite 900  
Boise, Idaho 83702  
Telephone: (208) 331-5530  
Facsimile: (208) 331-5559  
ECF: [Jonah\\_Horwitz@fd.org](mailto:Jonah_Horwitz@fd.org)  
[Deborah\\_A\\_Czuba@fd.org](mailto:Deborah_A_Czuba@fd.org)

Attorneys for Petitioner-Appellant  
SAMUEL HOWARD

IN THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

SAMUEL HOWARD,  
  
Petitioner-Appellant,  
  
v.  
  
WILLIAM GITTERE,<sup>1</sup>  
Warden, Ely State Prison,  
  
Respondent-Appellee.

**CAPITAL CASE**  
Case No. 10-99003  
  
D.C. No. 2:93-cv-01209-LRH-LRL  
  
APPELLANT'S RENEWED  
MOTION TO LIFT STAY

---

<sup>1</sup> William Gittere is now Warden of Ely State Prison. *See* [http://doc.nv.gov/Facilities/ESP\\_Facility/](http://doc.nv.gov/Facilities/ESP_Facility/). As such, he should be automatically substituted in as respondent-appellee in this matter for his predecessor. *See* Fed. R. App. P. 43(c)(2); Rule 2(a) of the Rules Governing Section 2254 Cases in the United States District Courts. The district court likewise amended the caption of the case below to make Mr. Gittere the respondent. *See* Dist. Ct. Dkt. 393 at 1.



To prevent further delay in this case, and because the only circumstance justifying the Court’s denial of his previous motion is no longer present, Appellant Samuel Howard respectfully renews his request that the stay of the instant proceedings, Dkt. 104,<sup>2</sup> be lifted as to all claims, or in the alternative with respect to at least the guilt-phase issues.

In this capital habeas appeal, Chief Judge Thomas sua sponte stayed the proceedings on April 7, 2020 until the state courts resolve a pending post-conviction challenge to Mr. Howard’s death sentence. *See id.* On June 2, 2020, Mr. Howard filed a motion to lift the stay in this case. *See* Dkt. 105. The State objected to Mr. Howard’s motion, *see* Dkt. 106, despite its consistent opposition to such stays in the past and its failure to seek one in this appeal, *see* Dkt. 107 at 4–5. On June 17, 2020, Mr. Howard filed a reply in support of his motion to lift the stay. *See id.* To spare the Court from unnecessarily duplicative pleadings, Mr. Howard incorporates here the arguments he made in his earlier motion and reply and will not repeat them now. *See* Dkts. 105, 107.

On July 27, 2020, a motions panel denied the motion to lift the stay without prejudice. *See* Dkt. 108. The panel invited Mr. Howard to renew the motion if the

---

<sup>2</sup> Citations in the format above are to this Court’s docket in the instant appeal. For citations to filings in the district court below, Mr. Howard will use the form “Dist. Ct. Dkt. \_\_\_.”

state courts had not fully disposed of the post-conviction appeal within 180 days, i.e., by January 23, 2021. *See id.*

In the state post-conviction appeal, the matter became ripe for a decision with the filing of Mr. Howard's reply brief on September 24, 2020. *See* <http://caseinfo.nvsupremecourt.us/public/caseView.do?csIID=59127>. On October 1, 2020, Mr. Howard filed a motion to expedite the state appeal, asking for a decision by January 23, 2021. *See* Att. A. The motion explained the situation in federal court and attached the Ninth Circuit pleadings regarding the stay. *See id.* Mr. Howard specifically noted in his motion that he intended to ask the Ninth Circuit to lift its stay after January 23, 2021 if the Nevada Supreme Court did not adjudicate the appeal by then. *See id.* at 2.

In response, the State filed a notice indicating that it did not oppose Mr. Howard's request that the Nevada Supreme Court resolve the appeal by January 23, 2021. *See* Att. B. The State added that it was willing to waive oral argument in order to facilitate Mr. Howard's proposed timeline. *See id.* at 2. On October 2, 2020, Mr. Howard filed a reply in support of the motion to expedite, clarifying that he too was amenable to submitting the case on the briefs if such a course allowed the court to render an opinion by January 23, 2021. *See* Att. C. The Nevada Supreme Court issued an order on October 13, 2020, in which it granted the

motion to expedite “to the extent permitted by th[e] court’s docket.” Att. D. Since then, there has been no action by the court on the appeal.

To summarize the above, the Nevada Supreme Court has been aware for more than three months of the January 23, 2021 date chosen by the Ninth Circuit and of the fact that both parties wished it to rule by then. It has also been aware that Mr. Howard would attempt to move the federal habeas appeal forward if the Nevada Supreme Court did not act by January 23, 2021. Nevertheless, January 23 has come and gone with no movement from the Nevada Supreme Court. In short, the Nevada Supreme Court has had every opportunity to resolve the ongoing appeal and it has not done so. There is no longer any valid reason to postpone this case.

Mr. Howard was charged with the crime at issue here in 1981. *See* Dist. Ct. Dkt. 336-3. He has been contesting the charges since his 1982 arraignment, where he also notably demanded a speedy trial. *See* Dist. Ct. Dkt. 336-10 at 3–4. It is long past time for his habeas claims to be finally answered once and for all.

For the reasons stated, Mr. Howard respectfully renews his request that the Court lift the stay in its entirety or—in the alternative—that it do so in connection

with the guilt-phase claims, and in either case that it release a briefing schedule for whatever issues it deems fit for adjudication.<sup>3</sup>

Undersigned counsel have conferred with the attorney who represents the State in this appeal, Heather D. Procter, and she indicated that she continues to take the position that the stay should remain in effect until the ongoing post-conviction litigation in the Nevada Supreme Court concludes. Ms. Procter further advised that she will submit a response to the instant motion after it has been filed and she is able to review it.

DATED this 25th day of January 2021.

/s/ Jonah J. Horwitz

Jonah J. Horwitz

/s/ Deborah A. Czuba

Deborah A. Czuba

---

<sup>3</sup> As Mr. Howard has outlined in an earlier pleading, he believes it would be proper for the Court to also expand the certificate of appealability when it issues a briefing schedule. *See* Dkt. 102 at 3–5.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of January 2021, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which is designed to send a Notice of Electronic Filing to persons including the following:

Heather D. Procter  
[hprocter@ag.nv.gov](mailto:hprocter@ag.nv.gov)

*/s/ Jonah J. Horwitz*  
\_\_\_\_\_  
Jonah J. Horwitz

*Samuel Howard v. William Gittere*, Case Nos. 81278, 81279  
Filed in Support of Renewed Motion to Expedite

# **Exhibit 2**

**(Order Denying Renewed Motion to Lift Stay,  
Ninth Circuit Case Nos. 10-99003, 19-70384, dated February 10, 2021)**

FILED

UNITED STATES COURT OF APPEALS

FEB 10 2021

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

SAMUEL HOWARD,

Petitioner-Appellant,

v.

RENEE BAKER, Warden, Director of  
Nevada Department of Corrections,

Respondent-Appellee.

No. 10-99003

No. 19-70384

D.C. No. 2:93-cv-01209-LRH-LRL

District of Nevada,

Las Vegas

ORDER

Before: GRABER and FRIEDLAND, Circuit Judges.

Mr. Howard's renewed motion (Docket Entry No. 109), opposed by the State, to lift the stay of proceedings in 10-99003 in full or, alternatively, in part is denied without prejudice to filing a new motion to lift the stay if the Nevada Supreme Court has not finally resolved Mr. Howard's pending appeal by February 10, 2022. This Court's April 7, 2020 order, staying 10-99003 and 19-70384, remains in effect.