

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL PHILLIP ANSELMO,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

No. 81382 Electronically Filed
Nov 23 2021 03:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITIES

The State of Nevada hereby provides notice pursuant to NRAP 31(e) of Supplemental Authority in support of its Answering Brief. This authority came to the State's attention in preparation for oral argument in this matter, which is currently scheduled on December 15, 2021. The following are areas the State intends to supplement:

1. At the time the State filed its Answering Brief, the Nevada Supreme Court had not addressed the standard of review for genetic marker petitions in a published opinion. The State suggested a mixed standard of review, like the Court applies for post-conviction petitions filed pursuant to Chapter 34 of the Nevada Revised Statutes. *See Answering Brief*, pgs. 25-26. In *James v. State*, a panel of the Nevada Supreme Court

adopted a mixed standard of review for a district court's decision to dismiss a genetic marker petition. 137 Nev. Adv. Op. 38, *5, 492 P.3d 1 (2021). It indicated that "a district court's factual findings will be given deference by this court on appeal, so long as they are supported by substantial evidence and are not clearly wrong." *Id.* The Court held that questions of law will be reviewed de novo. *Id.*

2. The parties in this case also disputed the meaning of the term "reasonable possibility" in the relevant statutes. In *James*, Court defined the term "reasonable possibility" and explained that "[w]hen the results of the analysis would be irrelevant to the State's theory of the crime or the defendant's defense, a 'reasonable possibility' does not exist." *Id.* at *8. The State submits that the Court's holding in *James* is consistent with the definition and analysis it offered. *See* Answering Brief, pgs. 33-38. In other words, *James* supports the State's position that the mere possibility that undisclosed information or results might have helped the defense is insufficient to meet the standard. *See id.* at 36-38.

3. In *James*, the Court reversed the district court's decision dismissing a genetic marker analysis. 137 Nev. Adv. Op. 38, 8-10. In doing so, it distinguished a prior unpublished case, *Langford v. State*, Dkt. No. 77262 (Order of Affirmance, Apr. 12, 2019), where testing was denied

because in that case the testing would not have refuted the State's narrative of events. The significance of the possible DNA evidence in the *James* case is distinguishable from the facts of this case. The Court's analysis in both *James* and *Langford* support the State's contention that the district court did not err by dismissing the petition because the evidence at issue in this case would not produce exculpatory results or create a reasonable possibility of a different result. *See* Answering Brief, pgs. 39-52.

DATED: November 23, 2021.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: MARILEE CATE
Appellate Deputy

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on November 23, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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