

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD HONABACH,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

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Case No. 81402

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of Petition for Writ of Habeas Corpus
Eighth Judicial District Court, Clark County**

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Eighth Judicial District Court, Clark County**

ROUTING STATEMENT

This appeal is appropriately retained by the Supreme Court because it relates to an appeal of an ‘A’ felony with a life sentence.

STATEMENT OF THE ISSUE(S)

1. Whether this Court has jurisdiction over an appeal that is an attempt to challenge the denial of a motion for reconsideration
2. Whether the district court properly denied Honabach’s motion for reconsideration.
3. Whether Honabach is not entitled to be appointed post-conviction counsel by this Court

STATEMENT OF THE CASE

On April 12, 2016, the State filed an Information charging Appellant Edward Honabach (hereinafter “Honabach”) with Conspiracy to Commit Murder (Category B Felony – NRS 200.010, 200.030, 199.480); Attempt Murder With Use of a Deadly

Weapon (Category B Felony – NRS 200.010, 200.030, 193.330, 193.165); Mayhem With Use of a Deadly Weapon (Category B Felony – NRS 200.280, 193.165); Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category B Felony – NRS 200.481); First Degree Kidnapping With Use of a Deadly Weapon Resulting in Substantial Bodily Harm (Category A Felony – NRS 200.310, 200.320, 193.165); Extortion With Use of a Deadly Weapon (Category B Felony – NRS 205.320, 193.165); Robbery With Use of a Deadly Weapon (Category B Felony – NRS 200.380, 193.165); and First Degree Arson (Category B Felony – NRS 205.010). I AA-C¹ 1.

On April 14, 2016, Honabach was arraigned on the Information, at which time he entered a plea of not guilty and waived his right to a speedy trial. II AA-C 318. On February 4, 2019, pursuant to negotiations, the State filed an Amended Information charging Honabach with one count of First-Degree Kidnapping Resulting in Substantial Bodily Harm (Category A Felony – NRS 200.310, 200.320). II AA-C 243. On that same date, Honabach pleaded guilty to the charge contained in the Amended Information, and a signed Guilty Plea Agreement was filed in open

¹ This Court ordered the district court to transmit the complete trial record of this appeal. The District Court filed a separate appendix for A812948 and C314092-2. AA-C refers to the appendices compiling the record for C-16-314092-2. AA-A refers to the appendix compiling the record for A-20-812948-W

court. II AA-C 245-49. On February 28, 2019, the Pre-Sentence Investigation Report was prepared. Pre-Sentence Investigation Report (hereinafter “PSI”), at 1.

On March 26, 2019, Honabach was sentenced to life without the possibility of parole in the Nevada Department of Corrections. II AA-C 326. The Judgment of Conviction was filed on March 28, 2019. II AA-C 294.

On April 26, 2019, Honabach filed a Notice of Appeal. II AA-C 304. On August 13, 2019, Honabach filed a Notice of Withdrawal of Appeal. I RA 1. On August 23, 2019, the Nevada Supreme Court dismissed the appeal. I RA 3. The Court ordered that the one-year period for filing a Petition for Writ of Habeas Corpus run from the date of the order dismissing the appeal. I RA 3.

On March 27, 2020, Honabach filed, through counsel, a post-conviction Petition for Writ of Habeas Corpus. I AA-A 1. On May 18, 2020, the district court issued a Minute Order denying the Petition. I AA-A 39-41. On July 21, 2020, the district court filed its Findings of Fact, Conclusions of Law and Order. I AA-A 28.

On June 10, 2020, Honabach filed a pro-per Motion for Reconsideration. I AA-A 14. On July 17, 2020, the State filed its Opposition. I AA-A 22. On July 23, 2020, the district court issued a Minute Order denying the motion. I AA-A 43. On July 24, 2020, Honabach filed his Notice of Appeal. I AA-A 18-19. On August 18, 2020, the district court filed its Order Denying Defendant’s Motion for Reconsideration. I RA 9.

STATEMENT OF THE FACTS

The Pre-Sentence Investigation Report sets forth the facts of the case:

On March 7, 2016, officers received a call in reference to a residential fire and of a male with a slit throat exiting the same residence. The caller reported that the victim was possibly tied up.

Paramedics arrived on the scene and advised there were several citizens around the victim attempting to provide first aid. The paramedics observed that the victim had both legs bound together by a cord at his ankles and knees. The paramedics removed the bindings. The victim had several injuries including: multiple stab wounds to his chest, back and right arm, his right pinky finger was partially amputated, his fingernails were pulled off from his right index and middle fingers, there was a laceration to his right thumb and a deep laceration to his throat/neck. The paramedics reported that it appeared that the victim was tortured. The victim was treated by paramedics and transported to a local hospital. The victim was unable to be interviewed the night of the incident as he was undergoing numerous surgeries and was heavily sedated.

Officers and detectives arrived on the scene and set a perimeter around the crime scene while firefighters battled the residential fire. Detectives interviewed each witness individually on scene. All witnesses confirmed that they noticed the residence on fire and when they pulled over to assist, they observed the victim with his legs bound, with several injuries. On March 8, 2016, detectives canvassed the area and spoke to surrounding neighbors. The neighbors advised seeing a pickup truck with two males and two females at the victim's residence.

Detectives arrived to the local hospital to attempt to speak to the victim. He was unable to speak due to his injuries; however, he was responsive and wished to attempt to provide information to the detectives. He was able to

provide information regarding his identity and his girlfriend's identity. When asked how many suspects committed the crime against him, he raised four fingers. When asked who committed the crime against him, the victim mouthed the name Angel Castro, who was identified as a co-defendant Luis Angel Castro.

Detectives were able to make contact with the victim's girlfriend. She stated that on March 6, 2016, her vehicle had broken down while the victim was driving it and he asked his friend Angel Castro for a tow back to his girlfriend's home. The victim's girlfriend stated that the victim told her he was going to pay Mr. Castro \$50.00 in United States currency for the tow. She stated on March 7, 2016 the victim was still at her residence with a mechanic when Mr. Castro arrived in a pickup truck with two other males. Mr. Castro demanded the tow money from the victim and the other male made mention that he had a firearm inside the truck. The victim then agreed to leave with the three males in the truck. The victim's girlfriend reported that she had not heard from the victim for several hours so she attempted to contact several friends of his to see if anyone had heard from him. One of his friends told her that the victim had contacted him asking for \$300.00 in United States currency. He stated that he heard a female in the background apparently coaching him on what to say.

Detectives returned to the hospital and continued to interview the victim. The victim reported he was taken in a pickup truck to an unknown house. Once at the home, Mr. Castro bound the victim's hands/wrists and ankles/knees. He stated that he remembers making three phone calls asking for \$300.00 in United States currency. The victim reported that one of the males cut his finger and hand with a machete and stabbed him multiple times about his body with a knife. He reported that all four suspects cut his throat/neck. The victim stated that he was tortured before, during and after he made the phone calls. He reported after the four suspects took turn cutting his throat/neck, the victim faked as if he died. After believing

the victim was dead, the unknown male started the fire and all the suspects left the house. Once all the suspects left, the victim stated he was able to get out of the home, where he was assisted by people going by. The victim stated that the only thing the suspects took from him was a pack of cigarettes.

During the course of the investigation, detectives were able to identify the defendant Edward Honabach as the driver of the pickup truck. Both the victim and his girlfriend were able to identify Angel Castro and Edward Honabach from a lineup. Detectives went to Mr. Honabach's residence and took Mr. Honabach and Mr. Castro into custody. Also, present at the residence were two females. One of the females was identified as the co-defendant Fabiola Jimenez. A photo lineup with Ms. Jimenez in it was presented to the victim who confirmed that Ms. Jimenez was present and involved in his torture. A search of Mr. Honabach's residence was completed where detectives found numerous knives inside the home and the vehicle. They also found a machete and twine inside the vehicle.

On March 10, 2016, detectives interviewed Ms. Jimenez. She confessed to being present during the brutal attempt murder and arson where the incident occurred. Her version of the incident was similar to the victim's account. She stated that on March 7, 2016, Mr. Honabach, Mr. Castro and an unknown male went to pick up the victim. Ms. Jimenez reported that the victim owed \$200.00 in United States currency for a drug debt. A short time later, Mr. Honabach, Mr. Castro and the unknown male arrived with the victim to the residence the incident occurred at. Ms. Jimenez was already present at the residence as Mr. Castro and Mr. Honabach had dropped her off prior to picking up the victim. Once inside the residence, Mr. Honabach and Mr. Castro confronted the victim about the money he owed them. The victim told them he was working on getting the money and asked Mr. Honabach and Mr. Castro for another week to pay off the debt. Mr. Honabach

and Mr. Castro became physical with the victim and forced him into a chair and bound his hands and legs with rope found in the home. Ms. Jimenez reported that Mr. Honabach, Mr. Castro and the unknown male started punching the victim. Mr. Honabach then brandished a pocket knife and stabbed the victim three times in his right shoulder area. The victim pleaded for them to stop. Mr. Honabach asked Mr. Castro what he wanted to do and Mr. Castro stated “we have gone this far, let’s finish it.” At that point, Mr. Honabach pulled the victim’s hair and Mr. Castro took the knife and cut the victim’s throat. Ms. Jimenez advised that they all believed the victim to be dead so began to gather paper materials and household chemicals which they poured on the victim. Mr. Castro told Ms. Jimenez to leave the residence at that point and she did. She stated that before she left she saw Mr. Honabach and Mr. Castro with lighters in their hands. Once outside, Ms. Jimenez saw the flames coming from the house and that is when Mr. Honabach and Mr. Castro left the residence. They then got into the vehicle and left. Ms. Jimenez reported she did not know where the unknown male had gone. She stated that she did believe the victim was dead and confirmed that she did not call the police to stop the brutal attack. Ms. Jimenez denied participating in the actual stabbing or setting the house on fire. Initially, she denied being with Mr. Castro and Mr. Honabach; however, eventually did admit being present at the house during the attack and that she does not like the victim.

On March 10, 2016, Mr. Honabach was arrested and transported to Clark County Detention Center where he was booked accordingly.

PSI, at 5-7.

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SUMMARY OF THE ARGUMENT

The district court properly denied Honabach's Petition for Writ of Habeas Corpus and Motion for Reconsideration.

First, this appeal should be dismissed as the Supreme Court of Nevada lacks jurisdiction. This Court does not maintain jurisdiction over appeals from a motion for reconsideration. This appeal is Honabach's attempt to challenge the district court's ruling on his Motion for Reconsideration. As such, this appeal should be dismissed.

Second, the district court properly denied Honabach's motion for reconsideration. The record indicates that Mr. Akin discussed the filing of the Petition with Honabach. Once filed, there was no basis for the district court to grant a motion for reconsideration. Additionally, Honabach provides no support that the filed Petition was frivolous in any manner. As such, this Court should uphold the district court's ruling.

Third, Honabach never requested post-conviction counsel be appointed by the district court. As such, Honabach's request for counsel should be decided by the district court after remand.

ARGUMENT

I. THIS COURT DOES NOT HAVE JURISDICTION OVER THIS APPEAL

Honabach filed an appeal from the denial of his Petition. However, the substance of his Brief challenges the denial of his Motion for Reconsideration. NRS Chapter 34 “sets forth with specificity the extent of the right to appeal in habeas proceedings.” Mazzan v. State, 109 Nev. 1067, 1071, 863 P.2d 1035, 1037 (1993). “Appeals from orders denying a motion for reconsideration are not included in that chapter.” Phelps v. State, 111 Nev. 1021, 1022, 900 P.2d 344, 345 (1995) (*citing* NRS 34.575). As such, the Supreme Court of Nevada lacks jurisdiction to entertain appeals from a motion for reconsideration. Id.; Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990).

Honabach make no arguments regarding the underlying challenges to ineffective assistance of counsel or the voluntariness of the plea. Instead, his argument mirrors that of his Motion for Reconsideration. This appeal is an attempt to circumvent the rule preventing such appeal. Given that, this Court should treat this appeal, or at the bare minimum the claims regarding Mr. Akin’s filing of the petition, as it would an appeal from a motion for reconsideration. As such, this appeal should be dismissed.

II. THE DISTRICT COURT PROPERLY DENIED HONABACH’S MOTION FOR RECONSIDERATION

A. Honabach’s Statements are Belied by the Record

Honabach’s Appeal does not challenge the substance of district court’s Findings of Fact, Conclusions of Law and Order. Instead, he objects to the filing

itself claiming that prior counsel filed the Petition without his authorization. However, his claim is belied by Mr. Akin's statements to this Court. On February 15, 2020, Mr. Akin filed a letter sent to Honabach that discussed the future Petition. I RA 7. He told Honabach that "I am still planning on filing a post-conviction writ of habeas corpus with the district court, as we discussed." I RA 7. Not only did Mr. Akin file a document stating he spoke with Honabach, but the district court described his conduct as proper:

Mr. Honabach then filed a Motion to Withdraw Counsel, which was granted on 10/31/2019. Out of an abundance of caution, and because the time for filing a Writ was about to expire, Mr. Akin went above and beyond the call of duty and filed the instant Petition for Writ of Habeas Corpus.

I AA-A 39. Honabach fails to refute or provide any evidence that the Petition was filed without his knowledge. Therefore, any claim that Honabach had no knowledge of the underlying Petition is belied by the record.

Honabach also finds himself in a better position due to Mr. Akin filing the Petition. He currently claims he desired to file a petition, but neither in this brief nor his Motion for Reconsideration does he specify which issues he would challenge. Additionally, in his Motion for Reconsideration he states that "he shall have a petition filed on time," but this filing never occurred. I AA-A 15. His failure to specify any issues, as well as the fact that he never filed a separate petition indicate that he did not possess a valid petition. As the district court noted, without the filing

of any petition, Honabach's claims would be time-barred. I AA-A 43. As such, the Petition filed by Mr. Akin put Honabach in a better position to litigate his post-conviction claims. Thus, the district court properly denied Honabach's request to refile a petition.

B. The District Court Possessed No Legal Basis to Grant Honabach's Motion for Reconsideration

Honabach's claim that the Petition was filed by counsel without his permission is not a basis for granting a Motion for Reconsideration. The District Court Rules ("DCR") of Nevada, Rule 13, states, "No motion once heard and disposed of shall be renewed in the same cause, nor shall the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties." DCR 13(7). Reflecting this language, Eighth Judicial District Court Rule ("EDCR") 2.24 reads in relevant part:

(a) No motions once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefore, after notice of such motion to the adverse parties.

(b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59, or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30-day period for filing a notice of appeal from a final order or judgment.

A defendant must obtain leave of the court before filing a motion for reconsideration. EDCR 2.24(a).

Additionally, the Nevada Supreme Court has repeatedly noted that the law does not favor multiple applications for the same relief. Whitehead v. Nevada Com'n. on Judicial Discipline, 110 Nev. 380, 388, 873 P.2d 946, 951–52 (1994) (“it has been the law of Nevada for 125 years that a party will not be allowed to file successive petitions for rehearing . . . The obvious reason for this rule is that successive motions for rehearing tend to unduly prolong litigation”); Groesbeck v. Warden, 100 Nev. 259, 260, 679 P.2d 1268, 1269 (1984), superseded by statute as recognized by Hart v. State, 116 Nev. 558, 1 P.3d 969 (2000) (“petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.”). The less than favorable view of successive applications for the same relief explains why there is no right to appeal the denial of a motion for reconsideration. See Phelps v. State, 111 Nev. 1021, 1022, 900 P.2d 344, 346 (1995). It also justifies why a motion for reconsideration does not toll the time for filing a notice of appeal. See In re Duong, 118 Nev. 920, 923, 59 P.3d 1210, 1212 (2002).

Honabach failed to secure leave of the court to seek reconsideration. DCR 13(7); EDCR 2.24(a), 7.12. Accordingly, the district court properly denied Honabach's motion.

C. Honabach Claims That the Underlying Petition Was Frivolous but Provides No Support for This Assertion

NRS 34.810(1)(a) limits claims that can be brought when the conviction is based upon a guilty plea. It specifically states that if a conviction was based upon a plea of guilty, the Court shall dismiss a petition if the claim is one other than "that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel." As such, the only claims Honabach could raise in a Petition for Writ of Habeas Corpus would be those related to whether his plea was involuntarily or unknowingly entered, or whether he received ineffective assistance of counsel.

Honabach blanketly asserts that the issues raised in the Petition were frivolous. However, Mr. Akin raised three claims regarding: (1) the voluntariness of the plea; (2) ineffective assistance of counsel; and (3) cumulative error. While Petitioner argues these claims are frivolous, he makes no attempt to identify which claims should have been raised.

While these are valid claims under NRS 34.810(1)(a), the Court properly denied the Petition.² Both the plea agreement and guilty plea canvass gave Honabach sufficient knowledge to know that he could receive a life sentence without parole:

The Guilty Plea Agreement in this case clearly states that “the State will have the right to argue for Life without the possibility of Parole, and the Defense will argue for Life with the possibility of Parole after fifteen (15) years.” Additionally, during the plea canvass on February 4, 2019, the court accepted Petitioner’s plea of guilty and concluded that his guilty plea was made freely and voluntarily and that he understood the nature of the offense and consequences of the plea.

I AA-A 29-30. The district court conducted the proper analysis when denying the Petition. However, if Honabach desires to file another petition he is free to do so. The district court can then assess whether he has demonstrated good cause and prejudice for filing a successive petition.³ As such, this Court should uphold the district court’s ruling.

III. HONABACH IS NOT ENTITLED TO BE APPOINTED POST-CONVICTION COUNSEL BY THIS COURT

Honabach requests that this Court grant him post-conviction counsel. However, this matter should be decided by the district court after the outcome of

² This Court has never endorsed cumulative error in the context of a post-conviction petition for writ of habeas corpus, but the claim was at least arguably proper.

³ The State does not in any way concede that such a claim by Defendant would be meritorious. The State is merely acknowledging the burden Defendant would be required to meet should he file another post-conviction petition for writ of habeas corpus.

this appeal if he continues to seek post-conviction relief. Even if this Court grants Honabach relief, the district court needs to conduct a new analysis under NRS 34.750. As such, the district court is in the best position to evaluate his claims if he files a second petition. Therefore, this Court should deny Honabach's Request.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court AFFIRM the district court's denial of Honabach's Petition.

Dated this 3rd day of November, 2021.

Respectfully submitted,

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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 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 3,634 words and does not exceed 30 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 3rd day of November, 2021.

Respectfully submitted

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BY */s/ John Niman*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on November 3, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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Employee, District Attorney's Office

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