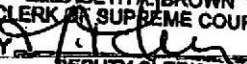


FILED

JUL 22 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

LUIS ALONSO HIDALGO, III,

APPELLANT,

VS.

THE STATE OF NEVADA,

RESPONDENT.

SUPREME COURT No. 82902

D.C. No. OSC212667-2

MOTION FOR RECONSIDERATION OF THE

MOTION FOR APPOINTMENT OF COUNSEL

ON 6-29-2021, PLAINTIFF FILED A MOTION FOR APPOINTMENT OF COUNSEL TO PERFECT HIS APPEAL FROM THE DISTRICT COURT'S DENIAL OF HIS MOTION FOR MODIFICATION OF SENTENCE.

A. REASONS FOR RECONSIDERATION

APPELLANT'S APPEAL PRESENTS AN IMPORTANT QUESTION OF LAW THAT WILL GUIDE THE LOWER COURTS IN NEVADA, WHEN ADDRESSING AN IMPORTANT CONSTITUTIONAL QUESTION.

APPELLANT WAS CHARGED BY WAY OF AN INDICTMENT WITH BEING A CO-CONSPIRATOR IN THE DEATH OF TIMOTHY HADLAND, EVEN THOUGH APPELLANT WAS NOT PRESENT WHEN HADLAND WAS KILLED.

THE LAW HAS LONG BEEN SETTLED THAT A CO-CONSPIRATOR IS LIABLE FOR A SUBSTANTIVE OFFENSE COMMITTED IN

1 FURTHERANCE OF THE CONSPIRACY, EVEN THOUGH HE DOES
2 NOT PARTICIPATE IN THE ACTS. THAT, ONCE THE
3 CONSPIRACY IS PROVEN, THERE IS SUFFICIENT EVIDENCE
4 TO CONVICT THE DEFENDANT OF THE SUBSTANTIVE
5 CHARGE. SEE UNITED STATES V. TORRES-RODRIGUEZ, 930 F.2d
6 1375, 1382-88 (9th Cir. 1991).

7 APPELLANT WAS CHARGED IN COUNT I WITH CONSPIRACY
8 TO COMMIT MURDER, AND COUNT II MURDER BY
9 CONSPIRACY. THE JURY, HOWEVER, RETURNED A VERDICT
10 OF CONSPIRACY TO COMMIT BATTERY WITH SUBSTANTIAL
11 BODILY HARM, ON COUNT I; AND, SECOND DEGREE
12 MURDER ON COUNT II.

13 APPELLANT, IN HIS MOTION FOR MODIFICATION OF SENTENCE
14 ARGUED THAT THE JURY FINDING HIM GUILTY OF THE
15 LESSER INCLUDED OFFENSE ON COUNT I, SHOULD
16 REQUIRE THAT HIS SENTENCE FOR SECOND DEGREE
17 MURDER ON COUNT II BE MODIFIED TO CONFORM
18 TO THE LESSER INCLUDED ON COUNT I, BATTERY WITH
19 SUBSTANTIAL BODILY HARM; AS BEING A VIOLATION OF
20 HIS DOUBLE JEOPARDY CLAUSE RIGHTS.

21 THIS COURT HAS HELD THAT UNDER THE BLOCKBURGER
22 V. UNITED STATES, TEST THAT, "IF THE ELEMENTS OF
23 ONE OFFENSE ARE ENTIRELY INCLUDED WITHIN THE
24 ELEMENTS OF A SECOND OFFENSE, THE FIRST OFFENSE
25 IS A LESSER INCLUDED OFFENSE AND THE DOUBLE
26

1 JEOPARDY CLAUSE PROHIBITS CONVICTION FOR BOTH OFFENSES.

2 SEE WILLIAMS V. STATE, 118 NEV. 536, 548, 50 P.3d
3 1116, 1124 (2002), CERT. DENIED WILLIAMS V. NEVADA,
4 2002 U.S. LEXIS 8507 (11-18-2002).

5 SINCE APPELLANT WAS CONVICTED ON COUNT I OF
6 BEING A CO-CONSPIRATOR WHO CONSPIRED TO COMMIT
7 A BATTERY CAUSING SUBSTANTIAL BODILY HARM, THEN
8 THE DOUBLE JEOPARDY CLAUSE PROTECTS HIM FROM
9 BEING CONVICTED OF THE GREATER OFFENSE ON THE
10 SUBSTANTIVE OFFENSE. TORRES-RODRIGUEZ, SUPRA,

11 IF COUNT I IS A LESSER INCLUDED CO-CONSPIRACY
12 COUNT, THEN ANY SENTENCE FOR THE SUBSTANTIVE
13 COUNT IN COUNT II, MUST BE EQUALLY A LESSER
14 INCLUDED OFFENSE.

15 A DEFENDANT SHOULD NOT BE ALLOWED TO BE
16 CONVICTED OF A LESSER INCLUDED OFFENSE IN A
17 CO-CONSPIRACY COUNT, AND A GREATER OFFENSE ON
18 THE SUBSTANTIVE OFFENSE, WITHOUT RUNNING
19 AFOUL OF THE DOUBLE JEOPARDY CLAUSE.

20 APPELLANT, AND HIS INMATE ASSISTANT ARE
21 LIMITED IN THEIR ABILITIES TO PROPERLY RESEARCH,
22 AND PRESENT A CLAIM. SEE EXHIBIT # ATTACHED,
23 LCC LAW LIBRARY JOB OPENING FOR A "RESEARCHER"
24 AND QUALIFICATIONS TO BE HIRED FOR SAID
25 RESEARCH POSITION.

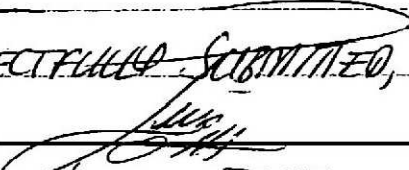
CONCLUSION

WHEREFORE ALL OF THE ABOVE STATED REASONS, APPELLANT REQUESTS THE HONORABLE COURT TO RECONSIDER ITS DENIAL OF APPOINTING COUNSEL WHO WOULD PRESENT A COHERENT ARGUMENT ON WHY A MOTION FOR MODIFICATION OF SENTENCE IS THE PROPER VEHICLE TO PRESENT A REQUEST TO RESENTENCE A CRIMINAL DEFENDANT SO THAT HIS SENTENCE ON THE CO-CONSPIRATOR COUNT AND THE SUBSTANTIVE COUNT, REFLECT THE SAME SENTENCE WHICH SHOULD HAVE BEEN IMPOSED; RATHER THAN A 2 YEAR GROSS MISDEMEANOR ON THE CO-CONSPIRATOR COUNT 1; AND THE 10 YEAR MINIMUM TO LIFE ON THE SUBSTANTIVE OFFENSE.

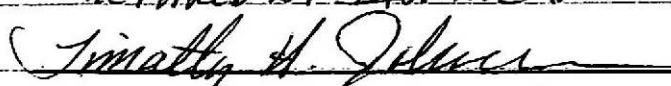
Does THE DISTRICT COURT HAVE THE INHERENT POWER TO RESENTENCE, WHEN A MANIFEST INJUSTICE HAS BEEN RENDERED BY THE SENTENCING COURT.

DATED: JULY 15TH, 2021

RESPECTFULLY SUBMITTED,


LUIS A. HIDALGO, III

PREPARED BY INMATE:


TIMOTHY H. JOHNSON #23766

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☒ Motion: FOR RECONSIDERATION OF THE MOTION FOR APPOINTMENT
OF COUNSEL

☐ Petition: _____

☐ Other: _____

to the below address(es) on this 15TH day of JULY, 2021, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

CLARK COUNTY DISTRICT ATTORNEY
200 LEWIS AVE

LAS VEGAS, Nevada 89155

Attorney For _____

☒ and

OFFICE OF THE CLERK
SUPREME COURT BUILDING, ROOM 201
201 S. CARSON STREET

CARSON CITY, Nevada 89701-4702

LUIS A. HIDALGO III #1038153

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

APPELLANT In Pro Se

EXHIBIT

#1

EXHIBIT

#1

JOB OPENING

Law Library Researcher (1 Paid)

Open Date: Thursday, June 10, 2021
Closing Date: Thursday, June 24, 2021

Qualifications:

- Must be **GP & Phase I Inmate**
- High School Diploma/GED
- **12 Months Disciplinary Free**
- Dependable/Ability to meet deadlines
- Able to manage **Heavy paperwork load** and multi-task
- Medical restrictions subject to review
- Able to interact with people in a positive, effective manner
- Clean and Neat in Appearance
- Must pass basic qualification test
- Requires **Social Security Card**
- Requires **Birth Certificate**
- Requires Classification Committee Decision

Use regular "LCC Inmate Job Application"

And

**** Drop completed application in GRIEVANCE BOX ****