

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES H. HAYES
(Petitioner)

V.

STATE OF NEVADA ET AL.
(Respondents)

82962-004

CASE NO. 82962

FILED

MAY 27 2021

JUN 14 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

CHIEF DEPUTY CLERK

"EMERGENCY" Petition for writ of Prohibition

JAMES H. HAYES, Petitioner in proper person, in necessity, under penalty of perjury, being duly sworn deposes and says: Petitioner hereby avers that the District Court abused its discretion and acted in excess of its jurisdiction, when it prosecuted a case without subject-matter jurisdiction, namely the charge of attempt grand larceny depriving a citizen of his Constitutional Rights.

Hereupon, the petitioner MOVES this Honorable Court to INTERVENE, as this case of 1st impression needs a precedence to be established and clarity of this issue, when on its face it's clear and convincing that it's ILLEGAL, and petitioner has NO other remedy of law in which to compel the District Court to rule on the issue. That has left petitioner NO other adequate means to obtain relief.

Petitioner has repeatedly presented the record of the Court that CLEARLY has shown that the Court convicted petitioner without SUBJECT-MATTER JURISDICTION

MAY 26 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

Jurisdictional Statement

The jurisdiction of this court is invoked pursuant to NRS 34.150 thru NRS 34.320, the All Writs Act, 28 U.S.C. 1651, and the Constitution of the United States GUARANTEE of probable cause must exist. The Petitioner swears that he is currently in custody of Southern District Correctional Center and being in prison due to financial disability, who therefore, requests that this Honorable Court liberally construe his pleadings in light of Heines v. Kerner, 404 U.S. 519 (1972)

*** NOTE: There must be meeting of minds on all of its essential terms of state law NRS 174.085(3) and NRS 178.562(1). "GOOD CAUSE" is shown because production of the necessary documents (enclosed exhibits) will establish the validity of petitioner's constitutional claim, and the error of law was a fundamental defect which inherently resulted in a complete miscarriage of justice which has presented exceptional circumstances in which the need for a "writ of prohibition" remedy is apparent...

Points and Authorities

Statement of the Case

ON or about July 23, 2013, James H. Hayes (hereinafter, Petitioner) was charged by way of Criminal Complaint with one count of BURGLARY and one count of ATTEMPT GRAND LARCENY.

ON June 14, 2016, following a preliminary hearing in Justice Court, Las Vegas Township, the charge of ATTEMPT GRAND LARCENY was dismissed by Magistrate for lack of probable cause.

ON November 7, 2018, pursuant to a guilty plea agreement, Petitioner entered a plea of "Alford" pursuant to North Carolina v. Alford 400 U.S. 25 to one count of ATTEMPT GRAND LARCENY, by way of an Amended Information.

ON March 12, 2019, the Judgment of Conviction was filed, petitioner was sentenced to sixty to one hundred seventy-four months in the NMC.

ON April 15, 2019, petitioner filed a Petition for Writ of Habeas Corpus.

ON February 12, 2020, petitioner filed an AMENDED Petition for Writ of Habeas Corpus.

ON February 1, 2021, the court denied petitioner's Amended Petition for Writ of Habeas Corpus.

ON April 7, 2021, petitioner filed a Supplemental Petition for Writ of Habeas Corpus pursuant to District Court

1 Judge Monica Trujillo minute order on March 8, 2021.

2 3 ARGUMENT

4 COMES NOW the petitioner, JAMES H. HAYES
5 in proper person, in NECESSITY, and hereby MOVES
6 this Honorable Court for an "GOOD FAITH" ruling as
7 Justice so requires, of ISSUANCE of the writ of
8 Prohibition. In support the petitioner shows this
9 Honorable Court the following:

10 A. I, JAMES H. HAYES depose and state that
11 the following "FACTS" are true and correct under
12 penalty of perjury.

13 B. Here, there is no "plain, speedy, and
14 adequate remedy" at law available to petitioner (NRS
15 34.320) and the circumstances (OVER) an urgency
16 and strong necessity for extraordinary relief.

17 C. Petitioner's conviction is illegal in violation
18 of state law NRS 174.085(3), NRS 178.562(4), NRS 173.095,
19 NRS 174.145 and NRS 34.520 as an information can-
20 not be amended so as to charge an offense not
21 shown by the evidence taken at the preliminary
22 hearing, nor permit the court to allow the amend-
23 ment of an information to restate a charge that
24 has been dismissed by the magistrate at the
25 conclusion of preliminary hearing (Thompson v. State
26 221 P.3d 708). Here, after all the evidence presented
27 at preliminary hearing it was proven that the

1 ESSENTIAL ELEMENTS OF THE CHARGE OFFENSE ATTEMPT GRAND
2 LARCENY WAS NOT PROVEN AS THAT RELATE TO FACT AND
3 NARROWER RANGING STATUTES (LAW) AS ALLEGED IN THE STATE'S
4 FILED CRIMINAL COMPLAINT THAT WAS DISMISSED FOR LACK
5 OF PROBABLE CAUSE BY JUSTICE COURT MAGISTRATE.

6 D. PROBABLE CAUSE THAT A CRIME HAS BEEN COMMITTED
7 AND THAT THE PETITIONER COMMITTED IT MUST BE ESTABLISHED
8 AT THE PRELIMINARY HEARING, SINCE THE VERY REASON FOR THE
9 PRELIMINARY HEARING IS TO weed out groundless or UN-
10 SUPPORTED CHARGES, SO THAT THE ACCUSED MAY BE RELIEVED
11 OF THE DEGRADATION OF A CRIMINAL TRIAL AND THE DEPRIVATION
12 OF HIS LIBERTY (LAMB V. LOVELESS 468 P.2d 24). WHEN THE STATE
13 FAILED TO SHOW PROBABLE CAUSE, HABEAS RELIEF WAS APPROPRIATE
14 THAT HAS BEEN DENIED TO PETITIONER.

15 E. THE DISTRICT COURT WAS NOT AT LIBERTY TO
16 IGNORE STATE LAW AND THE CONSTITUTION AND ACTED IN
17 EXCESS OF ITS JURISDICTION BY CONVICTING AND SUSTAINING
18 PETITIONER WITHOUT SUBJECT-MATTER JURISDICTION FOR THE
19 CHARGE OF ATTEMPT GRAND LARCENY.

20 F. PETITIONER REQUESTS THAT THIS HONORABLE COURT
21 ORDER THE DISTRICT COURT TO VACATE ITS ORDERS AND DIS-
22 MISSAL OF THE CHARGE OF ATTEMPT GRAND LARCENY. FURTHER-
23 MORE, BECAUSE THE DISTRICT COURT LACKED SUBJECT-MATTER
24 JURISDICTION OVER THE CHARGE OF ATTEMPT GRAND LARCENY,
25 THE CLERK OF THIS COURT SHALL ISSUE A WRIT OF PROHIBITION
26 DIRECTING THE DISTRICT COURT TO VACATE ITS ADJUDICATIONS

27 G. STATE ACTED IN EXCESS OF ITS JURISDICTION, WHEN
28 IT FAILED TO PROPERLY NOTICE ITS INTENT TO SEEK PUNISHMENT

25 a habitual criminal, as the state's amended notice of
instant to seek punishment as a habitual criminal filed
on August 29, 2017 was for the primary offense of
Burglary (2nd offense) and not the negotiated "wobbler"
offense of attempt grand larceny, thus petitioner had
not entered a formal plea to the charge of habitual
criminality as it was not alleged in the state's filed
amended information, so there was no notice to the
petitioner that the state was seeking enhancement
of penalty, (Coker v. Piles 368 U.S. 448) and no reason-
able notice in violation of "DUE PROCESS" (TAMM v. State 178 P.3d 154). Furthermore, petitioner was not properly
adjudicated a habitual criminal when failure of the trial
court to make the requisite individualized determination
that it was just and proper that petitioner be judged
a habitual offender as mandated by state law NRS
207.010 violated petitioner's "DUE PROCESS" rights (Walker
v. Dicks 50 F.3d 670). A prior conviction record for a
non-violent property crime and a Texas state jail ~~conviction~~
conviction that does not carry a prison term, mandatory
supervision, nor parole, though reprehensible simply does
not warrant the harsh sanction available under the
habitual criminality statute. Finally, petitioner did not
have the requisite number of convictions at the comm-
ission of the instant offense that occurred in 2013, nor
had ~~petitioner~~ petitioner ever been to prison at the
occurrence of the alleged instant offense.

H. District Court acted in excess of its

Footnote: 1. Section 17 of the California penal code reads: "A felony is a crime which
is punishable with death or by imprisonment in the state prison. Every other crime
is a misdemeanor."

jurisdiction, based on Sessions v. Dimaya 138 S.Ct. 1204
petitioner cannot knowingly and voluntarily plea "Alford"
to something that is not a crime. When in fact, as
here, the alleged conduct in the state's filed amended
information is verbatim to the state's filed criminal
complaint that was dismissed at the conclusion of
the preliminary hearing on the state's initiation for
failure to establish the essential elements of the statute
and lack of probable cause that shows clear and
convincing no crime was committed or attempt
grand larceny by petitioner.

CERTIFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 24th
day of May, 2021, I mailed a true and correct copy of the foregoing, "EMERGENCY
Petition for Writ of Prohibition"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:

Supreme Court of Nevada
201 S. Carson St. Ste 201
Carson City, NV
89701

Attorney General of Nevada
100 N. Carson St.
Carson City, NV
89701

Clerk County Dist. Attorney
200 Lewis Ave
Las Vegas, NV
89701

CC:FILE

DATED: this 24th day of May, 2021.

James H. Hayes
James H. Hayes # 1175077
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

Petition for Writ of Prohibition

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I. PAGES 1 thru 7 "EMERGENCY Petition for Writ of Prohibition"

II EXHIBITS: *1. "Amended Information"

*2. Information

*3. Guilty Plea Agreement

*7. Criminal Complaint

1 AIME
2 STEVEN B. WOLFSON
3 Clerk County District Attorney
4 Nevada Bar #001563
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 280 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 JAMES HOWARD HAYES, aka
13 James Howard Hayes Jr., #2796708

14 Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss:

17 STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State
18 of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s)
20 above named, having committed the crime of ATTEMPT GRAND LARCENY (Category
21 D Felony/Gross Misdemeanor - NRS 203.222.1, 203.222.2, 193.339 - NCC 300.23/300.26),
22 on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary
23 to the form, force and effect of statutes in such cases made and provided, and against the peace
24 and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally,
25 with intent to deprive the owner permanently thereof, attempt to steal, take and carry away
26 lawful money of the United States in an amount of \$650.00, or greater, owned by another

27 //

28 //

EXHIBIT - L

1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

3 STEVEN B. WOLFSON
4 Clerk County District Attorney
5 Nevada Bar #001365

6 BY


7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476

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28 LVMPD EV01304080343
(TK3)

W.2013091907141072-024-GAYES JAMES DE DOCK

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 07 2018

BY: *[Signature]*
TIA EVERETT, DEPUTY

1 **GPA**
2 **STEVEN B. WOLFSON**
3 **Clark County District Attorney**
4 **Nevada Bar #001565**
5 **MICHAEL DICKERSON**
6 **Deputy District Attorney**
7 **Nevada Bar #013476**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

7 **DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

11 **-vs-**

CASE NO: C-16-315718-1

12 **JAMES HOWARD HAYES, aka**
13 **James Howard Hayes, Jr.,**
14 **#2796708**

DEPT NO: XIX

15 **Defendant.**

15 **GUILTY PLEA AGREEMENT**

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
17 to: **ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS**
18 **205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**, as more fully alleged in the charging
19 document attached hereto as Exhibit "I".

20 My decision to plead guilty by way of the Alford decision is based upon the plea
21 agreement in this case which is as follows:

22 The State has agreed to make no recommendation at the time of sentencing. The State
23 has no opposition to probation with the only condition being thirty (30) days in the Clark
24 County Detention Center (CCDC), with thirty (30) days credit for time served.

25 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
26 and/or impounded in connection with the instant case and/or any other case negotiated in
27 whole or in part in conjunction with this plea agreement.

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C-16-315718-1
GPA
Guilty Plea Agreement
4794860

Exhibit 3

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A004

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes, Jr. #2796708,

Defendant.

JUSTICE COURT
LAS VEGAS, NEVADA

CASE NO: 13F10723X

DEPT NO: 3

CRIMINAL COMPLAINT

The Defendant above named having committed the crimes of BURGLARY (Category B Felony - NRS 205.060) and ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330), in the manner following, to-wit: That the said Defendant, on or about the 9th day of April, 2013, at and within the County of Clark, State of Nevada,

COUNT 1 - BURGLARY

did then and there wilfully, unlawfully, and feloniously enter, with intent to commit larceny, Room No. 17151, of the EXCALIBUR HOTEL & CASINO, located at 3850 South Las Vegas Boulevard, Las Vegas, Clark County, Nevada, occupied by JOSHUA JARVIS.

COUNT 2 - ATTEMPT GRAND LARCENY

did then and there wilfully, unlawfully, feloniously and intentionally, with intent to deprive the owner permanently thereof, attempt to steal, take and carry away, load away or drive away personal property of a value of \$650.00 or more, lawful money of the United States, belonging to JOSHUA JARVIS, to-wit: lawful money of the United States, an iPhone and other personal items, by taking and/or moving items within the room, but was stopped before he could take all the items.

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FORWARDED
ON
Criminal Complaint
JAN 10 2014

PRODUCED

EXHIBIT 7

1 All of which is contrary to the firm, force and effect of Statutes in such cases made
2 and provided and against the peace and dignity of the State of Nevada. Said Complainant
3 makes this declaration subject to the penalty of perjury.

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28 LVMPD EV# 1304090843
(TKJ)