

FILED

OCT 19 2021

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
CHIEF DEPUTY CLERK

Hayes, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.  
20825 COLD CREEK RD.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89010

In the Supreme Court of the State of  
Nevada

JAMES H. HAYES

v.

STATE OF NEVADA et al

CASE NO.: 83151

DEPT. NO.: \_\_\_\_\_

DOCKET: \_\_\_\_\_

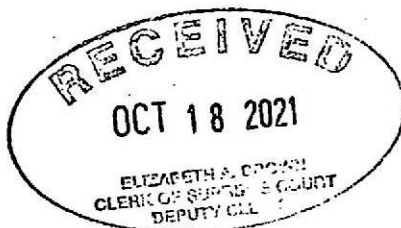
"Motion to Expedite Appeal"

COMES NOW, ~~appellant~~, JAMES H. HAYES, herein above respectfully  
moves this Honorable Court for an EXPEDITIOUS REVIEW OF ISSUES  
CONTAINED IN THE INSTANT APPEAL TO REDRESS THIS  
FUNDAMENTAL MISCARriage OF JUSTICE...

This Motion is made and based upon the accompanying Memorandum of Points and  
Authorities,

DATED: this 12<sup>th</sup> day of OCTOBER, 2021

BY: James H. Hayes  
JAMES H. HAYES # 1175077  
Defendant In Proper Personam



ADDITIONAL FACTS OF THE CASE:

1 Comes now James H. Hayes, appellant in proper  
2 person in necessity, and hereby "MOVES" this honorable  
3 court for an expeditious ruling on issues contained  
4 in the instant appeal as justice so requires in favor  
5 of appellant. In support, the appellant shows this  
6 Honorable court the following:

7 1. It is evident from the record that appellant  
8 has never received an opportunity to develop his claims.  
9 The issues was raised on motions, and the district  
10 court nor the court of appeals allowed appellant an  
11 evidentiary hearing. (Earp v. Onoski 431 F.3d 1158). Appellant  
12 is entitled to an evidentiary hearing to develop the facts  
13 of his claims as he has presented a colorable claim for  
14 relief. Appellant claims are colorable as he has alleged  
15 specific facts that, if true (that they are) would entitle  
16 him to relief.

17 2. Nothing strategic about failing to object at  
18 sentencing to categorically non-qualifying convictions that  
19 would prevent appellant from being eligible for sentencing  
20 under habitual criminal statute. The prosecution alleges that  
21 appellant is a habitual criminal ~~on~~ on the basis of non-  
22 qualifying convictions, the appellant had everything to  
23 gain and nothing to lose by objecting (deficiency proof).  
24 The facts alleged by appellant, trial counsel had ~~provided~~  
25 provided ineffective assistance of counsel by failing to  
26 object to the proffered non-qualifying convictions, and  
27 thereby limited the trial court's consideration to qualifying

1 convictions. Appellant would have been ineligible for  
2 sentencing as a habitual criminal under NRS 207.010, in  
3 other words, the trial court could not have sentence appel-  
4 ant to 5 to 15 years, instead appellant would have faced  
5 a statutory maximum of 19 to 48 months (prejudice prong)

6 3. In *Re Bais* (684 P.2d 712), appellant can plead  
7 guilty to a factually unsupported lesser charge if a factual  
8 basis exists to support the original charge. Here, the original  
9 charge of Burglary was fatal as the intent used in the  
10 state's factual synopsis of attempted grand larceny was  
11 dismissed and there was no unlawful entry in light  
12 of the evidence presented at preliminary hearing in Justice  
13 court. So there was no factual basis for district court  
14 judge acceptance of appellant's "Alford" plea.

15 4. An "Alford" plea must represent a voluntary  
16 and intelligent choice among the alternative courses of  
17 action open to the appellant. Here, not voluntary nor  
18 intelligent as appellant would not have taken a lesser  
19 charge to suffer the maximum punishment he would had  
20 received if found guilty at trial. Counsel's alleged mis-  
21 advisement as to the potential sentence was unreasonable.

22 5. NRS 171.206 clearly states "if from the evidence it appears  
23 to the magistrate that there is probable cause to believe that an offense  
24 has been committed and that the defendant has committed it, the  
25 magistrate shall forthwith hold the defendant to answer in the district  
26 court (*Kinsley v. Sheriff* 487 P.2d 340) here at conclusion of prelim no probab-  
27 cause was found for the charge of attempted grand larceny and

1 ~~Dismissed~~ charge dismissed, no public offense of AGI was committed.

2 6. 8<sup>th</sup> Judicial district court had no jurisdiction to  
3 DENOUNCE the judgment, insufficient evidence was presented  
4 in Justice court, Las Vegas township to constitute probable  
5 cause to believe that a criminal offense had been committed.  
6 The charge of attempt grand larceny was dismissed for lack  
7 of probable cause, as the state's criminal factual synopsis  
8 in its filed criminal complaint was not a public offense  
9 in turn, this being the instant for the underlying charge  
10 in the state's factual synopsis for the charge of Burglary,  
11 made the Burglary offense fatal and it to must had been  
12 dismissed for lack of probable cause and insufficient evidence.  
13 As appellant, could not have committed Burglary as alleged  
14 by the state in its factual synopsis without an instant. (See  
15 NRS 205.060). After all of the evidence received at the prelim.  
16 hearing no probable cause was establish to believe that an  
17 offense had been committed and that the appellant committed  
18 it. (Smith, 528 U.S. 285; Williams, 529 U.S. 413)

19 7. The court failed to determine that the  
20 factual synopsis conduct which the appellant admitted  
21 upon his "Alford plea" constitutes a public offense, when in  
22 fact, the factual synopsis in the state's criminal complaint  
23 that was dismissed for lack of probable cause was  
24 variation to the state's factual synopsis in its filed amended  
25 information. So the court unreasonably concluded given the  
26 facts of the prelim. hearing. (Jesus Navarez - Diaz v. U.S. 870  
27 F.2d 417). Court's determination of factual sufficiency was

1 substantial error.

2 8. If the state, as here, files a criminal complaint  
3 then dismisses the charge for lack of probable cause, and  
4 subsequently files an amended information on the defendant  
5 on the same charge, NRS 174.085(3) comes into play to BAR  
6 the subsequent prosecution for the same offense. (Thompson v.  
7 State 221 P.3d 708)

8 9. Conviction and sentence is facially illegal  
9 in violation of state law NRS 174.085(3); NRS 178.562(4);  
10 NRS 174.145, and NRS 34.520, as an information cannot  
11 be amended so as to charge an offense not shown by  
12 the evidence taken at the prelim. hearing, nor permit the  
13 court to allow the amendment of an information to restate  
14 a charge that has been dismissed by the magistrate at  
15 the conclusion of prelim. hearing. The record clearly shows  
16 prejudice resulting from consideration of information and  
17 accusations founded on laws and facts supported by  
18 improbable and highly suspect evidence. (Allred v. State 92 P.2  
19 1246)

20 10. District court's failure to make the requisite  
21 individualized determination that it was just and proper  
22 that appellant be judged a habitual offender as mandated  
23 by state law violated appellant's due process rights (Walker  
24 v. Deeds 50 F.3d 670). When Nevada supreme court precedent  
25 clearly states that a prior conviction record for non-  
26 violent property crimes & credit card abuse<sup>1</sup>; attempted pass  
27 of credit card without cardholders consent<sup>2</sup> & though

ADDITIONAL FACTS OF THE CASE:

1 reprehensible simply does not warrant the harsh sanction  
2 available under the habitual criminality statute. Moreover,  
3 appellant did not have the requisite number of felonies  
4 convictions at the time of the commission of the instant  
5 offense in 2013, nor had appellant ever been to prison.

6 11. Habitual criminality was not alleged in the  
7 state's filed amended information, so there was no proper  
8 notice to the appellant that the state was seeking enhance-  
9 ment of penalty (Coker v. Bales 368 U.S. 448) and no reasonable  
10 notice in violation of due process (James Gray v. State 178  
11 P.3d 154).

12 12. Stacks v. Warden 476 P.2d 469 states "possibility  
13 of being charged as an habitual criminal should not weigh  
14 heavily if defendant were not guilty of the primary offense,  
15 since proof of guilt of the primary charge is a precondition  
16 to a subsequent habitual hearing. [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]

20 13. Due process requires that appellant's factual guilt of  
21 the crime charged be established and the record before the  
22 judge contains strong evidence of guilt (North Carolina v. Alford,  
23 408 U.S. 25).

24 footnote: 1. Section 17 of the California penal code reads: "A felony is  
25 a crime which is punishable w/ death or by imprisonment in the state  
26 prison. Credit card Abuse does not carry a prison term.

27 2. State offense for which mandatory probation was not  
28 a felony offense for sentencing enhancement purposes (281 F.3d 900)

**CERTIFICATE OF SERVICE BY MAILING**

I, JAMES H. HAYES, hereby certify, pursuant to NRCP 5(b), that on this 12<sup>th</sup>  
day of October, 2021, I mailed a true and correct copy of the foregoing, "Motion  
to Expedite Appeal"

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  
OFFICE OF THE CLERK  
201 S. Carson St., Ste 201  
Carson City, NV  
89701

Attorney General of Nevada  
100 North Carson Street  
Carson City, Nevada  
89701

CC: FILE

DATED: this 12<sup>th</sup> day of October, 2021.

James H. Hayes  
JAMES H. HAYES # 1175076  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS: