

FILED

SEP 28 2021

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROY DANIELS MORAGA

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

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

Supreme Court No. 83179

District Court No. 92174

WRIT OF PROHIBITION

### APPELLANT'S INFORMAL BRIEF

**INSTRUCTIONS:** If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

**HOW TO FILL OUT THIS FORM:** This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

**WHERE TO FILE THE BRIEF:** You may submit your brief for filing in person or by mail.

**To file your brief in person:** Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

**Carson City:** Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

**Las Vegas:** Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

21-27855

**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or "Order"
7-21-21	Denying Defendant's
	Writ of Prohibition Double Jeopardy
	Claim.

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: July 6, 2021

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
80897	Appellant's Opening Brief	Supreme Court

**Pro Bono Counsel.** Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes      ☐ No

**NOTE:** If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

ON ~~THE~~ OCT. 21, 1991 a new Judge JACK LEHMAN  
Resentenced MORAGA to (4) consecutive sentences  
(3) for the underlying and primary offenses and  
the large Habitual Criminal Adjudication the  
court applied multiple punishments for a single  
offense. While NRS 207.010(6) allows for an  
enhanced penalty to be applied, it is only

CONSTITUTIONAL AND LEGAL IF THE COURT FOLLOWS THE STIPULATIONS AND REQUIREMENTS THAT ARE SET FORTH WITHIN THE STATUTE ITSELF. THE RECORD IN THIS CASE CLEARLY SHOWS THAT THE COURT FAILED TO FULFILL THE REQUIRED REQUIREMENTS / STIPULATIONS THAT ARE NECESSARY IN ORDER FOR THE ENHANCEMENT TO BE LEGALLY APPLIED. NR3207.010 IS NOT A STATUTE THAT WAS ENACTED TO CREATE A SEPERATE AND ADDITIONAL CRIMINAL OFFENSES FOR WHICH MULTIPLE PUNISHMENTS ARE TO BE APPLIED, BUT IT IS A STATUTE THAT ALLOWS THE STATE TO PRESENT OR ALLEGE A FACT THAT ALLOWS THE DISTRICT COURT TO METE OUT MORE SEVERE PUNISHMENT THEN ALLOWED BY THE STATUTORY LIMITS FOR THE OFFENSE COMMITTED. THIS ENHANCEMENT IS TO BE SERVED INSTEAD OF, NOT IN ADDITION TO THE PRIMARY / UNDERLYING OFFENSE. MORAGA HAS BEEN PAROLED ON EACH OF THIS PRIMARY OFFENSE CONSECUTIVELY AND IN 1998 HE WAS PAROLED TO HIS HABITUAL CRIMINAL ENHANCEMENT CONSECUTIVELY TO HIS PRIMARY OFFENSE'S, IN VIOLATION OF NEV. CONST. ARTICLE 1§8 AND THE UNITED STATES CONST. AMEND. V. MORAGA ARGUES THAT HE IS BEING PROSECUTED TWICE FOR THE SAME OFFENSE, MORAGA'S ADJUDICATION AS A HABITUAL CRIMINAL IS AN ERROR AND (3) SENTENCES WERE IMPOSED UPON MORAGA WERE FOR THE PRIMARY OFFENSE'S AND THE (4) WAS FOR THE HABITUAL CRIMINAL CHARGE, STATE V. BARDMESS, 54 NEV. 84, 7 P.2D 817 (1932), ONLY ONE SENTENCE MAY BE IMPOSED, LISBY V. STATE, 82

NEV. 183, 4/4 P.2d 592 (only one sentence may be imposed for a single offense).

Appellant raises this issue with the District Court and referred to the record on file as evidence of double jeopardy clause of the Fifth Amendment states that no person shall be "subject for the same offense to be twice put in jeopardy of life or limb." The prohibition of double jeopardy applies not only to life and limb but also to "imprisonment and monetary penalties." Yeager v. U.S. 557 U.S. 110, 117 (2009)

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

The state District Court Errored when it Sentenced Moraga to the underlying primary offense's consecutively and then imposing the large Habitual Criminal enhancement Also consecutively when only one sentence may be imposed.

The Habitual Offender Sentence of life without must be vacated and dismissed, because of its violation of Nev. Const. Art. 1 § 8 and U.S. Const. V.

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby Affirm that the  
preceding document, "Opening Brief for Appeal"  
Filed in case number 93129 does not contain  
the Social Security Number of any person.

DATED this 21 day of September, 2021.

Roy D. Moraga  
Signature of Appellant

Roy D. Moraga  
Print Name of Appellant

### CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or  
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

*Office of the Attorney General*

*100 N. CARSON ST.*

*CARSON CITY, NV 89701-4717*

DATED this 21 day of September, 2021.

*Roy J. Moraga*  
Signature of Appellant

*Roy J. Moraga*  
Print Name of Appellant

*NNCC-P.O. Box 7400*  
Address

*CARSON CITY, NV 89702*  
City/State/Zip

\_\_\_\_\_  
Telephone