IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * *

ZANE M. FLOYD,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MICHAEL P. VILLANI, DISTRICT JUDGE,

Respondent.

STATE OF NEVADA

Real Party in Interest.

Supreme Court Case No. 83225

District Court Case Nos. 99C159897

Habeas Court Case No. A-21-832952-W

REPLY TO STATE'S ANSWER TO PETITION FOR WRIT OF MANDAMUS AND PROHIBITION

RENE L. VALLADARES
Federal Public Defender
Nevada State Bar No. 11479
DAVID ANTHONY
Assistant Federal Public Defender
Nevada State Bar No. 7978
BRAD D. LEVENSON
Assistant Federal Public Defender
Nevada State Bar No. 13804C
JOCELYN S. MURPHY
Assistant Federal Public Defender
Nevada State Bar No. 15292

411 E. Bonneville Ave., Suite 250
Las Vegas, NV 89101
702-388-6577 telephone
702-388-6419 fax
David_Anthony@fd.org
Brad_Levenson@fd.org
Jocelyn_Murphy@fd.org

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. The Clark County Public Defender's office represented Mr. Floyd in his pretrial, trial, and direct appeal proceedings.

2. David M. Schieck represented Mr. Floyd during his initial state post-conviction proceedings.

3. The Federal Public Defender, District of Nevada, has represented Mr. Floyd for all subsequent proceedings, including the proceedings below.

/s/ David Anthony
DAVID ANTHONY
Attorney of record for Zane M. Floyd

/s/ Brad D. Levenson
BRAD D. LEVENSON
Attorney of record for Zane M. Floyd

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Attorney of record for Zane M. Floyd

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I. INTRODUCTION

NRS 176.355(3) means exactly what it says; in Nevada, all executions are required to take place at the Nevada State Prison. Not only is this intent clear from the plain language of the statute, but also through examination of the entire statutory scheme, legislative and historical history, public policy, and reason. Nevada State Prison is one of the oldest prisons in the United States and is today recognized as a historic landmark. It stood as Nevada's only prison for over 100 years in the State's capital. And every single execution carried out in Nevada since 1903 has taken place there—intentionally.

Despite each of these considerations raised in Floyd's Petition, the State fails to address them, and instead, focuses its answer on one argument: Floyd's interpretation cannot stand because it leads to absurd results. What the State does not apprehend, however, is that the very statutes it cites describe a process that existed at the time of transporting all felony convicts sentenced to imprisonment to the state prison, the Nevada State Prison, for classification and assignment to an appropriate prison in the state to serve their sentence. The upshot is

that the State's statutory arguments actually support Floyd's central argument that the state prison is the Nevada State Prison as a matter of statutory construction.

The State's answer does not address the plain language of the statute, the terms the Legislature uses when designating other state prisons, or the relevant legislative history of the statutes. And, as will be demonstrated below, there is no absurdity in interpreting NRS 176.355(3) as limiting executions to only occur at the Nevada State Prison. It was the intent of the Legislature and should continue to be so unless and until that statute is amended.

II. ARGUMENT

The State bases its entire argument on the premise that Floyd's interpretation of NRS 176.355 should be rejected because it would "clearly lead to an absurd result." Ans. at 3, 6. In support of this contention, the State proffers three arguments: 1) all defendants statutorily sentenced to "imprisonment in the state prison" will have to be confined in the Nevada State Prison; 2) "the" actually means "any"; and 3) the intent from the Legislature's 2015 finance committee that

culminated in the funding of an execution chamber at Ely State Prison can be transferred and attributed to criminal codes enacted by legislation that came out of the judiciary committee, which was enacted by the Legislature in 1967 and 1983. Ans. at 3-5. Each of these arguments is meritless, and as will be explained below, are either absurd, unsupported, or actually support, rather than repel, Floyd's arguments.

1. The Legislature has consistently used specific and general terminology to show a distinction between prisons in Nevada.

Nevada enacted NRS 200.030, a statute previously adopted by the state through the Crimes and Punishment Act of 1911, in 1957. The statute's purpose then and now is solely to define different "crimes against the person" and "penalties" for such offenses and it does exactly that by penalizing convicted persons: "By *imprisonment in the state prison."* NRS 200.030(4)(b) (emphasis added). The statute sought to "imprison" convicted defendants into the state prison system which at the time received, processed, and housed all new inmates through the Nevada State Prison.

Indeed, until 1961, all inmates, male and female, were imprisoned at the Nevada State Prison.[1] 1PRA101–02 (Nevada Department of Corrections Statistical Abstract). But as the state grew so did crime. This prompted the creation of two additional prisons, and a conscious effort by the Legislature to formalize the state's criminal procedures. Assembly Bill 81, which passed in 1967, did just that. It proposed a complete overhaul of the criminal justice system 1PRA001 (A.B. 81 Leg., 54th Sess. (Nev. 1967)). It codified the Nevada court system, established rules for criminal cases, and set forth a system for capital punishment. *Id.* A.B. 81 also demonstrated the Legislature's beginning effort to distinguish Nevada State Prison, which was the state prison, from other emerging prisons in Nevada. *See e.g.*, *compare id.* at 1PRA023 ("The execution shall take place within the limits of the state prison."), *and* NRS 176.355, *with id.* at 1PRA008. ("The grand jury shall be entitled to free access . . . to all public prisons.").

[1] Female inmates continued to be housed at the Nevada State Prison until 1965 when Nevada's first women's prison opened. 1PRA100–02.

Over the next decade Nevada's penal system continued to transform. Nevada was no longer a small state with one prison. And as a result, the 1977 Legislature undertook establishing the Department of Prisons by consolidating and adding laws concerning inmates, and the operation of the prison system and specific prisons within that system.[2] *See* 1PRA079 (*Establish[ing] the Department of Prisons: Hearing on S.B. 116 Before the S. Comm. on Education, Health, Welfare, and State Institutions* 1977 Leg., 58th Sess. 20 (Nev. 1977) (testimony of Warden Charles Wolff)); *see generally* NRS Chapters 209, 212. This also included formally changing the title of Nevada's top prison official from "Warden of the state prison" to "Director" of the Department of Prisons. *Id.* at 1PRA080. Being that several prisons now needed executive oversight, and not just the Nevada State Prison, the change was necessary as it signified this intent.

Another important purpose of the bill was to "refine the terminology" regarding prisons in Nevada in the statutory scheme. *Id.*

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[2] In 2001, the Legislature again changed the title of the department, this time to the Nevada Department of Corrections (NDOC).

The Legislature effectuated these goals by enacting NRS 209.261, which amended an earlier provision of A.B. 81 and used specific terms to distinguish different state prisons in Nevada. Specifically, that:

> Upon notification by the county clerk of any county in this State that a person is being held under sentence of imprisonment in *the state prison*, the Director shall immediately *provide for the transportation* of the offender from the place of confinement *to an appropriate institution or facility of the Department*.

1977 Nev. Stat. 848 § 27 (emphasis added). NRS 209.261 and 209.341 also evidenced the Legislature's continued and purposeful use of specific terminology to show distinction between terms. By using "the state prison" and "an appropriate institution or facility of the Department," the Legislature intended the terms to have distinct and different meanings: one referencing Nevada State Prison and the other referencing all other state prisons.[3] NRS 209.261.

[3] Facility is defined as "a community correctional center, conservation camp, facility of minimum security or other place of confinement, other than an institution, operated by the Department for the custody, care or training of offenders. NRS 209.065. Institution is defined as "a prison designed to house 125 or more offenders within a secure perimeter." NRS 209.071.

The distinct use of specific terms by the 1977 Legislature carried on throughout other provisions of the statutory scheme including Chapter 212, a section concerning "offenses relating to prisons and prisoners." Notably, rather than using "the state prison" to describe the place of confinement when detailing chargeable offenses by prisoners, the Legislature only used general terms that referenced *a* or *any* "institution," "facility," or "prison." *See e.g.*, NRS 212.030; NRS 212.090. The distinction was important. The Legislature wanted to make clear that these terms encompassed any and all Nevada prisons, whereas "the state prison" only referenced Nevada State Prison. And, that once someone is sentenced to "imprisonment in the state prison" and goes through the intake process there, they can be confined and face subsequent charges for crimes committed at any prison. Nevada State Prison's place as the intake center was logical as it was the largest institution in the state, it centralized the classification process for the penal system, and had served in that capacity prior to the construction of other prisons. 1PRA086 (Establish[ing] the Department of Prisons:

Hearing on S.B. 116 Before the S. Finance Comm. 1977 Leg., 58th Sess. 38 (Nev. 1977) (testimony of Warden Charles Wolff)).

Just six years later, the 1983 Legislature revisited the language it had previously used to describe the various state prisons. Its goal was to "properly designate" prisons, define penal terms, and make changes for "consistency sake [sic]." 1PRA096–99 (*Changes designation of certain facilities and officers of department of prisons: Hearing on S.B. 118 Before the Ass. Comm. on Judiciary*, 1983 Leg., 62nd Sess. 1181-74 (Nev. 1983)); 1PRA093 (*Changes designation of certain facilities and officers of department of prisons: Hearing on S.B. 118 Before the S. Comm. on Judiciary*, 1983 Leg., 62nd Sess. 152 (Nev. 1983) (statement of Warden Pete Demosthenes)). Tellingly, although discussion ensued regarding the use of "institution" versus "prison," and how to properly define prisons, none of the references to "the state prison" were removed. Neither was "the state prison" discussed as being equal to "a" or "any" institution or prison in the department.[4] In fact, the legislative

[4] The Legislature has provided definitions for "prison," "institution," and "facility. *See* NRS 208.075; 209.065; 209.071

history indicates the opposite. For example, during one committee discussion former Director Housewright stated that when a dangerous defendant is awaiting trial at a local jail, "the state prison will house him until the trial." 1PRA097 (*Hearing on S.B. 118 Before the Ass. Comm. on Judiciary*, 1983 Leg., 62nd Sess. (testimony of Vernon Housewright, Director of Prisons)). After these changes occurred the Legislature declined to make any further amendments to the relevant language in the criminal and penal code as it had defined and adequately clarified its intent.

Then, in 2015, without reference to NRS 176.355 or the criminal procedure statutory scheme that the Legislature had passed out of the judiciary committee, the Assembly Committee on Ways and Means and Senate Committee on Finance apportioned funds for a new execution chamber to be constructed at Ely State Prison. *See* 1PA032–46. Despite this subsequent act, the Legislature made no indication, clarification, or amendment to Nevada's criminal statutory scheme and its use of specific terms throughout.

With this historical context in mind, Floyd will now address the State's specific statutory arguments.

2. NRS Chapter 200 merely sets forth the prison to which a defendant will initially be sent for processing and classification into NDOC, not where they will ultimately serve out their sentence.

The State argues for the first time in its answer that the term "the state prison," as used in NRS 176.355, cannot mean the Nevada State Prison, because NRS Chapter 200 also references "the state prison" but as the place of imprisonment for felony offenses, and as "this Court is well aware, any defendant . . . can serve their sentence at a number of different Nevada state prisons." Ans. at 4. The State's reasoning assumes that for the latter to be true the former must be false, but this is incorrect. While NRS Chapter 200 does specify a defendant be penalized "by imprisonment in the state prison," this imprisonment is temporary and was clarified by NRS 209.261 that it is only meant to last until NDOC "provide[s] for the transportation of the offender from the place of confinement to an appropriate institution or facility of the Department." *Compare* NRS 200.030(4)(b), *with* NRS 209.261. By declining to grapple with legislative history, reason, or purpose, or even

address other relevant provisions of the statutory scheme, the State's entire argument on this point falters. In fact, the State's argument supports Floyd's argument as the Nevada State Prison was the location at the time where prisoners were classified before being transferred to other institutions.

a. NRS 209.261 and NRS 212.030, must be read harmoniously with NRS Chapter 200

"Whenever possible, this court will interpret a rule or statute in harmony with other rules and statutes." *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 993, 860 P.2d 720, 722-23 (1993). And, this Court will "construe statutes such that no part of the statute is rendered nugatory or turned to mere surplusage." *Albios v. Horizon Communities, Inc.*, 122 Nev. 409, 418, 132 P.3d 1022, 1028 (2006).

NRS Chapter 200 defines the elements of crimes against the person. The chapter also prescribes that those guilty of the defined crimes "shall be punished . . . by imprisonment in the state prison." *See, e.g.*, NRS 200.030(4)(b). At first glance, chapter 200 appears to say what the State suggests, but further review of other provisions reveal the actual legislative intent as one indicating central processing of felony

convicts. Specifically, NRS 209.261 clarifies the process by placing the place of ultimate confinement in NDOC's discretion:

> [A] person is being held under sentence of imprisonment in *the state prison*, the Director shall immediately *provide for the transportation* of the offender from the place of confinement *to an appropriate institution or facility of the Department*.

(emphasis added). And NRS 212.030, which discusses offenses committed by prisoners supports this reading:

> A prisoner confined *in a prison*, or being in the lawful custody of an officer or other person, who escapes or attempts to escape from prison or custody, if the prisoner is held on a charge, conviction or sentence of: A felony, shall be punished:

As evidenced above, NRS Chapter 200 coupled with NRS 209.261's language does not support the State's argument that Chapter 200 "mean[s] any defendant convicted of a crime must also serve their punishment at the decommissioned Nevada State Prison." Ans. at 4. Indeed, it indicates the exact opposite. It is clear from NRS 209.261 that any initial transfer and classification at the Nevada State Prison under chapter 200 is never meant to be a statutorily permanent placement. In

effect, chapter 200 details the process for imprisonment (how a felony convict will be processed as an inmate into the NDOC), while NRS 209.261 affords NDOC full discretion to confine the defendant at whichever facility it deems proper, and NRS 212.090 evidences this by detailing that subsequent charges may be brought against a person confined at *any* prison. The provisions necessarily must work in cohesion as it is the Legislature that is vested with the power to define punishments, but the executive's duty to determine how that punishment will be carried out, unless otherwise described.

Moreover, because these statutes govern the process of confinement for an inmate based on their plain language, they can and should be read harmoniously together. As envisioned by the statutes, defendants are initially "punished" by being sentenced to "the state prison," where they are processed and classified into the department of corrections and then "immediately" transported to "an appropriate institution or facility of the Department" and that they may face subsequent punishment for any crimes committed while being confined at any "prison." NRS 200.030(4)(b); 209.261; 212.090. This reading is

the most logical one; whereas, interpreting NRS Chapter 200 as the State suggests would lead to a wholly absurd result—NSP being the only prison that can house inmates, and NRS 209.261 and 212.090 consequently being rendered nugatory.

b. NRS 176.355(3)'s purpose is to mandate an execution location, NRS Chapter 200's is to describe a process.

Looking to NDOC's administrative regulations also provides further support and explanation for this interpretation. Identifying a central location for defendants to be received by NDOC provides an efficient and consistent mechanism to ensure that all new inmates are uniformly received. *See* 1PRA078–84 (testimony of Warden Wolff, supra). This is exactly what the Legislature intended when it enacted the penal code and created the former Department of Prisons. Though the Nevada State Prison is no longer a processing facility, NDOC still uses distinct prisons as "hubs" for new inmates before they are transported to the institution where they will serve their sentence. Today, under NDOC Administrative Regulation 504, male inmates are initially processed either through High Desert State Prison (southern

defendants) or Northern Nevada Correctional Center (northern defendants) before being transported to the proper correctional institution. *See* 1PRA108–09 (explaining that all new inmates must be initially "transported to an intake center" to "complete the reception process" for NDOC); 1PRA118 (defining HDSP as "the [inmate] reception center for Southern Nevada."); *see also* 1PRA106 (stating that female defendants are initially sent to Florence McClure Women's Correctional Center where they will go through an "intake process" and receive an "appropriate classification" before determining which prison will ultimately retain custody).

While NDOC does not currently send all felony convicts to the state prison for processing that does not change the fact that the state prison referenced throughout the statutory scheme is the Nevada State Prison. The most reasonable interpretation of the statutes is that the use of the term the state prison merely recognized the then-existing practice of processing all felony convicts sentenced to terms of imprisonment through a centralized location for uniform classification and objective measures for ultimate placement.

Moreover, the actual purpose of the two different statutory provisions explains why executions must take place at the Nevada State Prison even though inmate classification and processing no longer occurs in the administrative offices of the state prison. Unlike NRS 176.355, which requires a death sentenced inmate's execution to occur at NSP, NRS Chapter 200 and 209.261 do not afford a similar right from the statutory language to the location of initial processing of felony convicts. What prison an inmate is processed through before being sent to the proper prison is inconsequential as it has no adverse effect on the ultimate place of confinement, conditions of confinement, or the underlying sentence. In contrast, there is no dispute that NRS 176.355(3) was intended to designate one place, the state prison, as the site where executions "must" occur and holding executions elsewhere directly violates state law.

Consideration of each statute's stated purpose is helpful as "[t]he stated purpose of legislation is a factor considered by courts in interpreting a given statute." *Sheriff, Washoe Cty. v. Smith*, 91 Nev. 729, 734, 542 P.2d 440, 443 (1975). Here, each statute's purpose

reinforces Floyd's arguments. NRS Chapter 200's stated purpose is to describe "crimes against the person" and generally and formulaically proscribe "penalties." The purpose of NRS 176.355 is to codify the specific "time and place," of an execution and NRS 209.261's is to detail "transportation of offender[s] to [an] appropriate institution or facility." Unlike NRS 176.355 and NRS 209.261, it is apparent from NRS Chapter 200's purpose that those provisions were not meant to establish permanent places of confinement for convicted defendants.

3. "The" state prison references Nevada State Prison; "a" or "any" state prison references all other state prisons

The State argues that this Court should read the definite article "the" as synonymous with indefinite articles such as "a" or "any" and thereby conclude that "the state prison" actually means "any state prison with the proper facility." Ans. at 4. This argument is faulty and unsupported. The difference in word choice in the law it is critical, particularly with respect to statutory interpretation, and as a result the Legislature's specific use of terms cannot be disregarded.

Happenstance did not create the language used in Nevada's criminal and penal codes. As discussed above, the Legislature's use of dissimilar terms to refer to prisons in Nevada was intentional. When the Legislature expected a provision to only implicate the Nevada State Prison it used limiting language and the definite article. And when it did not it did the opposite by using indefinite articles and using inclusive language. Examples of this methodical approach are evidenced throughout the statutory scheme. For instance, NRS 176.355(3) uses a definite term and specific language: "the execution must take place at the state prison." This language is in contrast with provisions in NRS Chapter 212, which mainly use indefinite terms and general language: "a prisoner confined in an institution of the Department of Corrections." NRS 212.160.

Upon considering the legislative history and intent of each provision the purpose of the distinction becomes apparent. When describing where an execution must take place specific definite language makes sense as executions usually take place in one location for each state that currently has the death penalty. This was

particularly so when the Legislature designated executions to take place at the Nevada State Prison because the gas chamber required special expertise to build and operate.[5] It requires, among other things, a constitutional execution chamber, costly safety expenditures, and relative access to key government figures housed in Carson City; all things the 1967 Legislature knew, and considered, designating as a result one prison, Nevada State Prison, as the mandated institution where all executions would occur. However, in Chapter 212, there is no longer a specific prison being referenced using the definite article "the," but instead indefinite articles with terms such as "institutions," "facilities," and "prisons." The legislative history supports that this more general use of language to describe places of confinement is intentional as a crime committed by a prisoner in *any* prison would be subject to prosecution, rather than limited solely to crimes committed at the state prison.

2. The intent behind the subsequent legislation passed in 2015 cannot be transferred to the 1967 and 1983 Legislature.

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[5] *See generally* Jennifer E. Riddle, Sena M. Loyd, Stacy L. Branham, & Curt Thomas, *Nevada State Prison*, 63–82 (2012).

The State argues that interpreting NRS 176.355(3) as Floyd contends "would lead to an absurd result" because executions would occur "at the decommissioned Nevada State Prison." Ans. at 4. The State's argument on this point is misleading.

The State attempts to characterize its result as the *only* possible result while ignoring the most reasonable solution—calling upon the Legislature to amend NRS 176.355.[6] The State also fails to explain how allowing the Legislature to amend the statute would lead to an absurd result when codifying and amending laws is the Legislature's constitutional responsibility. *See Galloway v. Truesdell*, 83 Nev. 13, 20, 422 P.2d 237, 242 (1967); *see also Woofter v. O'Donnell*, 91 Nev. 756, 758, 542 P.2d 1396, 1397 (1975) (holding that "it is axiomatic that the Legislature has the power to declare certain criminal conduct and provide for its punishment.").

The State next argues that NRS 176.355's legislative intent should not be derived from the intent of the Legislature at the time of

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[6] *See e.g., Castillo v. State*, 110 Nev. 535, 544 n.4, 874 P.2d 1252, 1258 n.4 (1994) (asking "the Legislature to review" a statutory scheme "at the next legislative session.").

passage, but rather from "the legislature's intent for an execution in 2021," which it asserts is evidenced by "the newly built execution chamber at Ely State Prison. In 2015." Ans. at 5. This is wholly absurd and unreasonable as the State cites no authority to support this proposition. To reach the State's interpretation, this Court would have to abandon its statutory construction jurisprudence not only by ignoring NRS 176.355's clear legislative intent and history, but also by transferring the intent of a budgetary appropriation—that changed no existing statute and evidenced an intent only to fund construction—to a previously codified statute.

Legislative intent is determined at the time of passage, not 50 years later, based upon a budget appropriation, passed by a different Legislature, acting out of an entirely different statutory scheme, that fails to amend or clarify any statute. *See City of Las Vegas v. Macchiaverna*, 99 Nev. 256, 257-58, 661 P.2d 879, 879-880 (1983). The reasoning behind this rule is obvious as "subsequent legislative history is a hazardous basis for inferring the intent of an earlier [Legislature]." *Great Basin Water Network v. State Eng'r*, 126 Nev. 187, 196 n.8, 234

P.3d 912, 918 n.8 (2010) (quoting *Pension Benefit Guaranty Corp. v. The LTV Corp.*, 496 U.S. 633, 650 (1990)).

As a result, this Court does not consider this type of evidence in determining legislative intent unless the Legislature expressly affirms that the subsequent legislation was meant to "clarify[] prior language" in the original statute.[7] *Canarelli v. Dist. Ct.*, 127 Nev. 808, 815 n.7, 265 P.3d 673, 678 n.7 (2011) (citing *Public Employees' Benefits Prog. v. LVMPD*, 124 Nev. 138, 157, 179 P.3d 542, 554-55 (2008)). For example, in *Roberts v. State*, this Court was asked to determine the legislative intent of NRS 284.177, and specifically, whether, although not expressly stated in its text, its increased compensation for state employees included professional employees of the University of Nevada System.

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[7] Notably, the majority of cases addressing this rule only discuss subsequent litigation in the context of an amendment to the original statute not when the subsequent act is an entirely different statute. *See, e.g., Sheriff, Washoe County v. Smith*, 91 Nev. 729, 542 P.2d 440 (1975); *Board of County Com'rs of Clark County v. CMC of Nevada, Inc.*, 99 Nev. 739, 670 P.2d 102 (1983); *In re Estate of Thomas*, 116 Nev. 492, 998 P.2d 560 (2000); *In re Christensen*, 122 Nev. 1309, 149 P.3d 40 (2006). It is also important to note that even if subsequent legislation is considered, it is never the only consideration under statutory review and is to be considered alongside other rules of statutory interpretation such as plain meaning, legislative history, public policy, and other circumstances surrounding the statute's enactment.

104 Nev. 33, 34-35, 752 P.2d 221, 221-22 (1988). To determine intent, this Court reviewed the statute's amendments, legislative history and purpose, and also NRS 284.179, a statute enacted the next year, for the sole purpose of "declar[ing] and "clarify[ying]" NRS 284.177. *Id.* at 35-38, 752 P.2d at 222-24. Indeed, NRS 284.179 expressly mandated that "[p]rofessional employees of the University of Nevada System are not entitled to receive the increases provided in NRS 284.177." *Id.* at 224, 752 P.2d at 38. This Court concluded that consideration of subsequent legislation was warranted under this narrow circumstance as "it would be difficult to imagine a more certain, if not more timely, expression of the legislature's original intent regarding the scope of NRS 284.177." *Id.*

Here, the subsequent apportionment of funds cannot be used to determine legislative intent because nothing in the act provides a "certain" and "timely" clarification of the Legislature's intent when codifying NRS 176.355 in 1967 and amending the statute in 1983. Indeed, unlike *Roberts*, where the Legislature definitively stated the subsequent legislation was clarifying prior legislation and cited the enacted statute in its text, here, the Legislature did not even mention

NRS 176.355 or the Nevada State Prison when it approved funding for the execution chamber. *See* 1PA032–46. Moreover, by the State's own concession, considering the subsequent apportionment of funds for ESP's execution chamber does not clarify the Legislature's original intent under NRS 176.355(3), but only "the legislature's intent for an execution in 2021." Ans. at 5. This concession alone is enough to void consideration of the mere funding of a new execution chamber, as the intent of the 2015 Legislature is irrelevant when conducting a subsequent legislation review.

The case at hand is further distinguishable from *Roberts* because the subsequent legislation occurred almost 50 years later, rather than one year, and was passed out of a completely different legislative committee whose sole purpose is apportioning funds, not enacting or clarifying intent for criminal codes—a distinction Floyd made in his original Writ but that the State noticeably failed to respond to. As explained there, the most reasonable explanation is that the Legislature merely made an oversight when they apportioned funds for

a new execution chamber without also amending NRS 176.355(3) to make it consistent with their intent.

III. CONCLUSION

For the foregoing reasons and those stated in his writ petition, Floyd requests that this Court grant his petition and prohibit the district court from entering a Warrant of Execution that designates any location other than the Nevada State Prison as the location for the execution.

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If executions are to occur at Ely State Prison the Legislature must amend NRS 176.355(3) to effectuate their intent.

DATED this 15th Day of September, 2021.

Respectfully submitted,

RENE L. VALLADARES
Federal Public Defender

/s/ David Anthony
DAVID ANTHONY
Attorney of record for Zane M. Floyd

/s/ Brad D. Levenson
BRAD D. LEVENSON
Attorney of record for Zane M. Floyd

/s/ Jocelyn S. Murphy
JOCELYN S. MURPHY
Attorney of record for Zane M. Floyd

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:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word in Century, 14 point font: or

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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.

Respectfully submitted,

/s/ David Anthony
DAVID ANTHONY
Assistant Federal Public Defender

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on September 15, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

ALEXANDER G. CHEN
Chief Deputy District Attorney
motions@clarkcountyda.com
Eileen.davis@clarkcountyda.com

/s/ Sara Jelinek
An Employee of the
Federal Public Defender, District of Nevada

NOTICE OF FILING

In accordance with NRAP 21(a)(1), the undersigned hereby certifies that on this 15th day of September, 2021, I served a true and correct copy of the foregoing document via UPS to:

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Judge Department XVII
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