

FILED

AUG 23 2021

1 Hayes, James H ID NO. 1175077

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

6 "IN THE COURT OF APPEALS OF THE STATE  
7 of Nevada"

8 JAMES H. HAYES  
9 (Appellant)

10 v.

11 STATE OF NEVADA  
12 (Respondent)

CASE NO.: 82734 COA

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

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

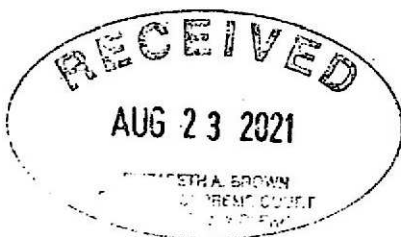
13 "Motion to Expedite Appeal"

14  
15  
16  
17 COMES NOW, Appellant, James H. Hayes herein above respectfully  
18 moves this Honorable Court for an expeditions review of issues of  
19 first impressions contained in the instant appeal to  
20 redress this fundamental miscarriage of justice...

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

23 DATED: this 16<sup>th</sup> day of August, 2021

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



ADDITIONAL FACTS OF THE CASE:

Comes now, James H. Hayes appellant, in necessity and hereby "MOVES" this honorable court for an Expeditions ruling on issues of first impression contained in the instant appeal as justice so requires in favor of appellant. In support, the appellant shows this Honorable court the following:

1. This is a very unique case for this Honorable court were a dismissed charge at the conclusion of a pre-hearing for lack of probable cause, no corpus delicti, no mens rea, and no slight nor marginal evidence that the offense of attempt grand larceny had been committed and that the appellant has committed it, has been resisted without a grand jury indictment or motion for leave of the court to file by affidavit has resulted in a conviction by way of an "Alford Plea" to an amended information in a guilty plea agreement.

2. NRS 171.206 clearly states "if from the evidence it appears to the magistrate that there is probable cause to believe that an offense has been committed and that the defendant has committed it, the magistrate shall forthwith hold the defendant to answer in the district court." (Kinsley v. Sheriff 487 P.2d 340; State v. White 330 P.3d 482). Here, at conclusion of preliminary hearing no probable cause was found for the charge of attempt grand larceny against defendant and charge dismissed (see NRS 174.085(3)). That being a layman at law the conviction and sentence is facially illegal, as no public offense was committed by the

1 defendant.

2 3. 8<sup>th</sup> Judicial district court had no jurisdiction to  
3 pronounce 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 intent. (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 4. ~~The~~ The court failed to determine that the  
20 factual synopsis conduct which the appellant admitted  
21 upon his "Affid 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 verbatim 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 Nieves-Diaz v. U.S. 870  
27 F.2d 417). Court's determination of factual sufficiency was

1 substantial error.

2 5. 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 6. 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 impossible and highly suspect evidence (Allred v. State 92 P.2d  
19 1246)

20 7. 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). What Nevada supreme court precedent  
25 clearly states that a prior conviction record for non-  
26 violent property crimes 'credit card abuse'; attempted pass  
27 of credit card without cardholders consent; 2 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 8. 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 9. Stocks 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. Here, state's notice of intent  
17 to seek punishment as a habitual criminal filed 8-29-2017  
18 was for the primary offense of Burglary and not the  
19 negotiated offense of attempt grand larceny.

20 10. Due process requires that appellant 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,  
23 400 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 16<sup>th</sup>  
day of August, 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:

Nevada Court of Appeals  
OFFICE OF THE CLERK  
2015 CARSON ST. STE 201  
CARSON CITY, NV  
89701

Attorney General of Nevada  
101 N. CARSON ST  
CARSON CITY, NV  
89701

CC:FILE

DATED: this 16<sup>th</sup> day of August, 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: