

IN THE SUPREME COURT OF THE STATE OF NEVADA

HAMZA ZALYAUL,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Dec 14 2022 04:34 PM
Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 83334

**STATE'S OPPOSITION TO APPELLANT'S
MOTION FOR RELEASE PENDING REVIEW
PURSUANT TO NRAP 23(c)**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JOHN AFSHAR and submits this Opposition to Appellant's Motion for Release Pending Review Pursuant To NRAP 23(c) ("Motion").

This opposition is based on the following memorandum, declaration of counsel and all papers and pleadings on file herein.

Dated this 14th day of December, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ John Afshar
JOHN AFSHAR
Chief Deputy District Attorney
Nevada Bar #014408
Office of the Clark County District Attorney

MEMORANDUM OF POINTS AND AUTHORITIES

Appellant asserts that he is entitled to release pursuant to NRAP 23. Appellant is mistaken. NRAP 23 governs “Custody of Prisoners in Habeas Corpus Proceedings.” NRAP 23(c), in particular, governs release of a prisoner pending review *of a decision ordering release (in a habeas corpus proceeding.)* As must be patently obvious to Appellant, this is not a habeas corpus proceeding, and there has been no decision ordering release, much less one pending review. Accordingly, the rule is inapplicable. Appellant fails to identify any legal authority equating a decision vacating a judgment of conviction with an order of release. An appellant bears the burden of clearly asserting and supporting his claims. Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987). While Appellant asserts that both the district court and juvenile courts lacked subject matter jurisdiction, the panel’s holding that the courts lacked jurisdiction is the subject of the petition for rehearing, and until a petition for rehearing is decided the issue is not settled.

Moreover, even if NRAP 23 were somehow applicable, the rule itself permits the Court to decline to release a prisoner. Assuming, *arguendo*, the rule were applicable, this Court should not release Appellant. It is already a matter of record that he fled the jurisdiction once to avoid prosecution with the assistance of his family. PSI at 4. Additionally, the crimes of which Appellant was accused (and the subset of those crimes to which he pled guilty) were extremely serious and resulted

in a lengthy prison sentence. He has more reason to flee the jurisdiction now than he did previously when he escaped. There is, therefore, no reason to believe that Appellant would remain in the jurisdiction pending the results of the Petition for Rehearing.

CONCLUSION

For the foregoing reasons, the State respectfully requests that Appellant's Motion be denied.

Dated this 14th day of December, 2022.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY */s/ John Afshar*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on December 14, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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BY /s/ E. Davis

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JA//ed