

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Electronically Filed  
Dec 28 2021 05:32 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

ZANE MICHAEL FLOYD

Petitioner/Appellant,

vs.

WILLIAN GITTERE, Warden,  
and AARON FORD, Nevada  
Attorney General

Respondents/Appellees.

Supreme Court No. 83436

District Court Case No.

A-21-832952-W

(Death Penalty Habeas Corpus  
Case)

MOTION REQUESTING TRANSMITTAL OF AN EXHIBIT  
PURSUANT TO NRAP 30(d)

COMES NOW Appellant, ZANE MICHAEL FLOYD, by and  
through his counsel of record, and hereby files this Motion Requesting  
Transmittal of an Exhibit Pursuant to NRAP 30(d).

This Motion is based upon the following Points and Authorities, and all papers and pleadings on file herein.

DATED this 28th day of December 28, 2021.

Respectfully submitted,

RENE L. VALADARES  
Federal Public Defender

/s/ David Anthony  
DAVID ANTHONY  
Assistant Federal Public Defender  
Nevada Bar No. 7978

/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender  
Nevada Bar No. 13804C

411 E. Bonneville Ave., Suite 250  
Las Vegas, Nevada 89101  
(702)388-6577 (phone)  
(702)388-5819 (fax)  
Attorneys for Zane Michael Floyd

## POINTS AND AUTHORITIES

Under the Nevada Rules of Appellant Procedure, Rule 10(b)(2) allows parties to request transmittal of original exhibits to the clerk of the Supreme Court if the exhibits cannot be copied to be included in the appendix. Rule 30(d) states:

If exhibits are too large or otherwise incapable of being reproduced in the appendix, the parties may file a motion requesting the court to direct the district court clerk to transmit the original exhibits. The court will not permit the transmittal of original exhibit except upon a showing that the exhibits are relevant to the issues raised on appeal, and that the court's review of the original exhibits is necessary to the determination of the issues.

NRAP 30(d).

Mr. Floyd respectfully asks this Court to direct the District Court to send Exhibit 9 to Second Amended Petition in Support of Claim Two, filed on August 10, 2021, to the Court to be used when reaching a decision on the issues on appeal pursuant to Nevada Rules of Appellate Procedure 30(d) and 10(b)(2). Exhibit 9 is Mr. Floyd's clemency application video.

First, Exhibit 9 is relevant to the issues raised on appeal. Mr. Floyd cites to this exhibit in his brief, and the exhibit directly supports claims Two and Three contained in the Opening Brief. The clemency video is a material part of his application for commutation of his death sentence that was submitted to the Pardons Board and the trial court in support of his claim that he has been unconstitutionally deprived of an opportunity to seek commutation of his sentence.

Second, Exhibit 9 is necessary to the determination of the issues raised on appeal. Exhibit 9 contains firsthand accounts of the people who knew Mr. Floyd best when he was growing up and as an adult. Their insights not only help show why Mr. Floyd has a clemency application that should be heard, but also showcase the impact Fetal Alcohol Syndrome Disorder (“FASD”) had on him throughout his life. These interviews are crucial. The individuals interviewed in the video share their experience with not just Mr. Floyd, but his family—sharing details of the abusive environment Mr. Floyd grew up in, how his time in the marines serving our country impacted him, and his mother’s history with alcohol. *Cf. Porter v. McCollum*, 558 U.S. 30, 40 (2009) (*per*

*curiam*) (noting materiality of petitioner's mental impairment, family background, and military service in capital sentencing proceedings).

Mere words on paper are unable to fully convey these facts in the same capacity as the video.

For the above reasons, Mr. Floyd moves this Court to order the clerk of the district court to transmit Exhibit 9, Clemency Video (DVD), filed below on August 10, 2021, in order to ensure this Court has a complete record of information that was before the district court when it denied Mr. Floyd's habeas petition.

DATED this 28th day of December 28, 2021.

Respectfully submitted,

RENE L. VALADARES  
Federal Public Defender

/s/ David Anthony  
DAVID ANTHONY  
Assistant Federal Public Defender  
Nevada Bar No. 7978

/s/ Brad D. Levenson  
BRAD D. LEVENSON  
Assistant Federal Public Defender  
Nevada Bar No. 13804C

## CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on December 28, 2021. Electronic Service of the foregoing Motion Requesting Transmittal of an Exhibit Pursuant to NRAP 30(d) shall be made in accordance with the Master Service List as follows:

Alexander Chen  
Alesander.Chen@clarkcountyda.com

/s/ Celina Moore

An Employee of the  
Federal Public Defender,  
District of Nevada