

IN THE SUPREME COURT OF THE STATE OF NEVADA

BO DWIGHT HEGGE,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

CASE NO. 83664

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Judgment of Conviction
Fourth Judicial District Court, County of Elko
The Honorable Kriston N. Hill, District Court Judge, Dept. 1

APPELLANT'S REPLY BRIEF

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ARGUMENT

**(1) The State's position that Bo Dwight Hegge was
rightfully denied an evidentiary hearing should be
rejected.**

The State has taken contradictory positions between the district court level and this Supreme Court appeal. Deputy District Attorney Jeffrey Slade said in his opposition to Mr. Hegge's motion to withdraw his plea of no contest, "By putting at issue Mr. Woodbury's discussions with the Defendant, Hegge has turned Mr. Woodbury into a necessary witness should the Court decide to conduct an evidentiary hearing.

Thus, the Defendant now needs a new attorney so that his constitutional right to the effective assistance of counsel is not compromised." *Joint Appendix 46.*

Comparing this to a statement that was made in the Respondent's Answering Brief, it is hard to believe that the same attorney made both statements. In the State's answer, Deputy District Attorney Jeffrey Slade says, "The district court did not commit reversible error by

1 keeping Gary Woodbury as Hegge's counsel." *Respondent's Answering*
2 *Brief 18.*

3 The State was correct, however, to cite Little v. Warden, 117 Nev.
4 845, 852, 34 P.3d 540, 544-45 (2001); and Hargrove v. State, 100 Nev.
5 498, 502, 686 P.2d 222, 225 (1984); for the rule that "the district court
6 may decline to conduct an evidentiary hearing if it finds that the
7 defendant's claims is belied by the record." *Respondent's Answering*
8 *Brief 19.*

9 An evidentiary hearing would not have been "redundant," as the
10 State falsely asserts. Rather, it would have allowed Mr. Hegge the
11 opportunity to explain why he did not understand the issue of whether
12 Officer Pinkham's suspicions were objectively reasonable.

13 In response to the State's proclamation that "such a claim is far
14 too subjective to be considered a reliable basis for allowing Hegge to
15 withdraw his plea," Mr. Hegge contends that it is a "subjective" matter
16 that Judge Hill had to assess before concluding that the motion to
17 withdraw the no contest plea should be denied.

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1 The States claims that “[Mr. Hegge’s] vague claim that it was
2 error not to hold an evidentiary hearing is unsupported by a specific
3 factual allegations that if true would have entitled him to withdraw his
4 plea.” *Respondent’s Answering Brief* 24-25. That is wrong. Mr. Hegge’s
5 lack of knowledge as to the issue of objective reasonableness is a matter
6 that, if true, would absolutely allow him to withdraw his plea. He
7 cannot knowingly and intelligently enter a no contest plea without the
8 knowledge of objective reasonableness. Mr. Hegge was waiving
9 valuable constitutional rights by entering his no contest plea. When
10 that waiver is not knowingly and intelligently done, it is invalid. See
11 Stevenson v. State, 131 Nev. 598, 354 P.3d 1277 (2015).
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15 In yet another instance of Deputy District Attorney Jeffrey Slade
16 saying diametrically opposed things, he stated in his opposition to Mr.
17 Hegge’s motion to withdraw the plea of no contest that two “portions of
18 the Defendant’s motion are an implicit challenge to the effectiveness of
19 Mr. Woodbury’s work as Hegge’s counsel.” *Joint Appendix* 45. In the
20 State’s answer on this appeal, Mr. Slade says that “Trial Counsel’s
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1 effectiveness is not called in question.” *Respondent’s Answering Brief*
2 25.

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4 Between those two contradictory statements, the only one that has
5 validity is the first position. Yes, Mr. Hegge’s counsel’s effectiveness
6 was called into question. Mr. Hegge just wishes that Mr. Slade were
7 just as committed to protecting Mr. Hegge’s constitutional right to
8 effective counsel on this appeal as Mr. Slade had been at the district
9 court level.
10

11 Mr. Slade says that a “no contest plea is not a placeholder for
12 reserving our criminal justice system’s incentives for accepting
13 responsibility unless or until a preferable alternative later arises.”
14 *Respondent’s Answering Brief 26.* That is correct – which is why Mr.
15 Hegge is not treating the plea as a placeholder.
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18 The State, in its zeal to characterize Mr. Hegge’s position as
19 wanting a “placeholder,” declares that it “is not until more than 10
20 weeks later [after entering his no contest plea] that Hegge feels he
21 made a bad choice and seeks to withdraw his plea.” *Respondent’s*
22 *Answering Brief 27.* The State oversimplifies this as a case of buyer’s
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1 remorse. This is a case where Mr. Hegge's lack of intelligence as to a
2 serious Fourth Amendment issue was so palpable, it is hardly a close
3 case whether he should be bound by the no contest plea.
4

5 As to the Brady issue, the State does not seem to grasp how a
6 letter from Mr. Brasher that it withheld from Mr. Hegge would be
7 exculpatory. Mr. Brasher was incarcerated in the State of Utah – which
8 is a huge factor in considering whether Mr. Hegge should have pled no
9 contest. Of course, the letter would have affected his decision because it
10 would have been monumentally difficult for the State to proceed
11 without him.
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14 The State highlights Mr. Brasher's "unequivocal desire to see
15 Hegge prosecuted." *Respondent's Answering Brief 31*. Mr. Brasher's
16 desire in that regard does not erase the fact that it would be much
17 harder for him to testify while incarcerated in Utah versus being a free
18 man in Nevada.
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21 Mr. Hegge's lack of access to this letter at the time he entered his
22 plea of no contest further buttresses his claim that his plea was not
23 knowingly and intelligently made. Hence, the district court's order
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1 denying an evidentiary hearing should be reversed and this matter
2 should be remanded for an evidentiary hearing on the motion to
3 withdraw the plea of no contest.
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5 CONCLUSION

6 Bo Dwight Hegge reaffirms his positions from the Opening Brief
7 that (1) the district court committed reversible error in denying his
8 motion to withdraw his plea of no contest without the benefit of an
9 evidentiary hearing, and (2) the district court abused its discretion in
10 sentencing Mr. Hegge to prison rather than community supervision.
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12

13 DATED this 10th day of June, 2022.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Reply 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 this Reply Brief has been prepared in a proportionally spaced typeface using Microsoft Word in size 14 Century Schoolbook font.

2. I further certify that this Reply Brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

☒ Proportionately spaced, has a typeface of 14 points or more, and contains 993 words; or

☐ Monospaced, has 10/5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 15 pages.

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

1 this brief complies with all the applicable Nevada Rules of Appellate
2 Procedure, in particular NRAP 28(e)(1), which requires every assertion
3 in the brief regarding matters in the record to be supported by a
4 reference to the page and volume number, if any, of the transcript or
5 appendix where the matter relied on is found.
6

7 I understand that I may be subject to sanctions in the event that
8 the accompanying brief is not in conformity with the requirements of
9 the Nevada Rules of Appellate Procedure.
10

11 DATED this 10th day of June, 2022.
12

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22 CERTIFICATE OF SERVICE
23

24 (a) I hereby certify that this document was electronically filed
25 with the Nevada Supreme Court on the 10th day of June, 2022.

1 (b) I further certify that on the 10th day of June, 2022, electronic
2 service of the foregoing document shall be made in accordance with the
3 Master Service List to Aaron Ford, Nevada Attorney General; and Tyler
4 J. Ingram, Elko County District Attorney; and Jeffrey C. Slade, Deputy
5 Elko County District Attorney.
6

7 (c) I further certify that on the 10th day of June, 2022, this brief
8 shall be mailed with postage prepaid to Bo Dwight Hegge, NDOC
9 #1084187, High Desert State Prison, P.O. Box 650, Indian Springs, NV
10 89070-0650.
11

12 DATED this 10th day of June, 2022.
13

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