Hayes, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89070

Supreme Court of Nevada

James H. Hayes
(Appellant)

v.

State of Nevada
(Respondent)

CASE NO.: 83274

DEPT. NO.:

DOCKET:

Motion to Expedite Appeal

COMES NOW, appellant James H. Hayes, herein above respectfully moves this Honorable Court for an Expeditious review of issues of first impression and extraordinary circumstances contained in the instant appeal

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

DATED: this 8th day of December, 2021

BY: James H Hayes
James H. Hayes #1175077
Defendant In Proper Personam

21-35424

ADDITIONAL FACTS OF THE CASE:

Comes Now, James H. Hayes appellant, in necessity, and hereby "Moves" this Honorable court for an Expeditious 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 prelim hearing for lack of probable cause, No corpus delecti, 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 resulted 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." (Kinsey v. Sheriff 487 P.2d. 340; State v. White 330 P.3d 482). there, 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 appellant.

In Thompson v. State (125 Nev. 807) Justice Cherry stated "If the State files a criminal complaint or information, then dismisses the charge, and subsequently indicts the defendant on the same charge or charges NRS 174.085(3) comes into play to bar the subsequent prosecution for the same offense that afforded appellant adequate protection from state law double jeopardy. (Cross v. U.S 1385 Ct.

Accordingly, appellant has demonstrated that his counsel's performance fell below an objective standard of reasonableness by failing to argue that appellant's prosecution on the charge of attempted grand larceny was barred by the application of NRS 174.085(3) and/or NRS 178.562 that demonstrates a reasonable probability of a different outcome.

1(b). Justice court ruling of probable cause to believe that appellant committed burglary was misplace. As appellant could not have committed burglary as alleged by the state in its factual synopsis without an intent when the state's intent of attempted grand larceny was dismissed at conclusion of preliminary hearing that made the burglary offense fatal and it to must have been dismissed for lack of probable cause and insufficient evidence. (See NRS 205.060; State v. Kirkpatrick 94 Nev. 628; Simpson v. Eighth Judicial Dist. Court 88 Nev. 654)

1(c) State clearly brought another prosecution following dismissed of an action in violation of NRS

178.562 THE dismissed of the charge of attempted grand larceny without another pending vehicle for the prosecution of that charge runs afoul of the provisions of NRS 178.562(1) and barred further prosecution of the defendant on that charge. Even if the order of dismissal was upon motion of the district attorney providing for voluntary dismissal, the prohibition of NRS 178.562(1) was applicable and NRS 174.085(5)(A) was inapplicable as the state's voluntary dismissal was at conclusion of preliminary hearing and not before. Hence NRS 174.085(3) comes in to play to deny prosecution of appellant on the charge of attempted grand larceny, regardless of negotiations.

Accordingly, counsel's performance fell below an objective standard of reasonableness by failing to move to dismiss or seek a bill of particulars to the information and amended information constituted constitutionally deficient performance. Here the information for the charge of Burglary was fatal as the intent of attempted grand larceny had been dismissed and intent is an essential element of Burglary and the charge could not be proven beyond a reasonable doubt as describe by the state in its filed factual synopsis contained in the information. The charge of attempted grand larceny in the state's filed amended information was without probable cause and lack the essential element of value of $650.00 or greater so the charge could not be proven beyond a reasonable doubt. (Sheriff v. Hicks 89 Nev. 78)

ADDITIONAL FACTS OF THE CASE:

2. District court failed to make the requisite individualized determination that it was proper that appellant be judged a habitual criminal as mandated by state law violated appellant's due process rights (Walker v. Deeds 50 F.3d 670). Court had to properly understand the discretionary nature of habitual criminal adjudication and exercise its discretion (Hughes v. State 116 Nev. 327). As Nevada supreme court precedent clearly states that a prior conviction record for NON-violent property crimes (credit card abuse, fraudulent possession of Identification') though reprehensible simply does not warrant the harsh sanction available under the habitual criminality statute. Furthermore the boilerplate clause is not sufficient notice of enhancement of penalty. Habitual criminality was not alleged in the state's filed amended information so there was no proper notice to the appellant that the state was seeking enhancement of penalty (Oyler v. Boyles 368 U.S. 448) and no reasonable notice in violation of due process (Gray v. State 178 P.3d 154). Stocks v. Warden 476 P.2d 49 states "possibility of being charged as an habitual criminal should not weigh heavily if appellant were not guilty of the primary offense, since proof of guilt of the primary charge is a precondition to a subsequent habitual hearing. (Hodges v. State 78 P.3d 87)

*Footnote: 1. Section 17 of the California penal code reads: A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime is a misdemeanor. Appellant could not be sent to prison for offense. Conviction was one event, one trial.

3. "No factual basis" (Alford v. Thomas, 2016 U.S. Dist. LEXIS 160711) THERE WAS NO factual basis for appellant's Alford plea to the crime of attempted grand larceny. It therefore was ineffective assistance of counsel for trial counsel to advise appellant to enter "Alford plea" to the charge when there was no factual basis for such a charge ON the undisputed facts presented at preliminary hearing. Due process requires that appellant factual guilt of the crime charged be established and the record before the Judge contains strong evidence of guilt (North Carolina v. Alford 400 U.S. 25) A plea cannot support a judgment of guilt unless it is voluntary and intelligent under the 14th amendment the U.S supreme court has determined that a defendant's plea cannot be voluntary in the sense that it constituted an intelligent admission that he committed the offense unless the defendant received real notice of the true nature of the charge, the 1st and most universally recognized requirement of due process that appellant did not understand not only the nature of the charge against him but also that his conduct actually falls within the charge. (Henderson 238 F.2d 199). The Judge failed to determine that the conduct which the appellant admitted constitutes a public offense (Marrero-Diaz v. U.S. 870 F.2d. 417). Based on Jessions v. Dimaya (138 S.Ct. 1204) appellant could not knowingly and voluntarily plead guilty to something that is not a crime. Here the alleged conduct in the state's factual synopsis in its amended information is verbatim

to the State's factual synopsis in its criminal complaint that was dismissed at the conclusion of the preliminary hearing on the State's initiation for failure to satisfy the elements of the statute that is a clear and convincing showing that no public offense of attempted grand larceny was committed by the appellant. there is simply no indication on the record of the "Alford plea" proceeding that appellant's plea can stand as an intelligent, knowing, and voluntary admission of guilt as to all elements of the crime with which he was charged. (Nash v. Israel 707 F.2d 298)

4. Appellant never had retained or appointed counsel for the completion of his direct appeal only had trial counsel who filed fast-track statement by threat of sanctions by this honorable court. Furthermore trial counsel was dismissed in July 2019 and the Order of Affirmance was January 2020. Leaving appellant completely without counsel for direct appeal and no reply being filed on appellant's behalf.

5. All appellant claims were based on an allegation that his "Alford plea" was involuntary and unknowingly entered or that his "Alford plea" was entered without effective assistance of counsel (See Supplemental petition filed 4-7-2021 and Supplemental petition addendum filed 4-14-21)... Appellant followed the court's instructions and filed the supplemental pleadings to address the specific issue ordered by district court (SEE EXHIBIT 2000)

CERTFICATE OF SERVICE BY MAILING

I, James H. Hayes, hereby certify, pursuant to NRCP 5(b), that on this 8th day of December, 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:

Supreme Court of Nevada
Office of the Clerk
201 S. Carson St., Ste 201
Carson City, NV
89701

Attorney General of Nevada
100 North Carson St
Carson City, NV
89701

Clerk County District Attorney
200 Lewis Ave
Las Vegas, NV
89155-2212

CC:FILE

DATED: this 8th day of December, 2021.

James H. Hayes #1175077
/In Propria Personam
Post Office Box 208,S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus | **COURT MINUTES** | **March 08, 2021**

A-19-793315-W James Hayes, Plaintiff(s)
vs.
Nevada State of, Defendant(s)

March 08, 2021 **8:30 AM** **Motion to Compel**

HEARD BY: Trujillo, Monica **COURTROOM:** RJC Courtroom 11C

COURT CLERK: Alan Castle

RECORDER: Rebeca Gomez

REPORTER:

PARTIES PRESENT:

Iscan, Ercan E	Attorney
Nevada State of	Defendant

JOURNAL ENTRIES

- After reviewing petition, Court determined Defendant needs to supplement his petition with specificity. Further, Court directed State to respond to Defendant's petition. Supplemental briefing schedule set and matter continued for decision. Defendant has until April 4, 2021 to supplement his petition; State has until May 5, 2021 to file a response.

5/10/21 8:30 a.m. Decision

EXHIBIT 2020