

FILED

FEB 17 2022

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

ROY DANIELS MORAGA
Appellant,

vs.

THE STATE OF NEVADA
Respondent.

Supreme Court No. 84020

District Court No. 92174

WRIT OF Prohibition
Double Jeopardy Clause

APPELLANT'S INFORMAL BRIEF

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

22-05346

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
12-29-21	Order of Affirmance

Notice of Appeal. Give the date you filed your notice of appeal in the district court: July 6, 2021

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
83177-00A	Writ of Prohibition Appellant's Internal Brief	Supreme Criminal Appeals

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

On December 29, 2021, the court of Appeals entered an Order of Affirmance on Appellant's writ of Prohibition pursuant to Double Jeopardy Clause. In this court's ruling it stated that "The writ will not issue if the petitioner has a plain, and adequate remedy in the ordinary course of law. NRS 34.330." This is an error pursuant to the AEDPA's one year Provides: "a 1 year period of limitation shall apply to an application

For the writ of habeas corpus by a person in custody pursuant to the judgment of a state court.⁹ Therefore Appellant Moraga did not have a plain, and Adequate remedy in the ordinary course of Law like the Appeals Court stated. Also the Court of Appeals stated that Moraga's petition is challenging the validity of his judgment of conviction.¹⁰ This is also an error Moraga does not care about his conviction, but what Moraga is challenging is the sentence's that were imposed which amounted to the violation of Moraga's United States Const. Rights Amend. V, and Nev. Const. Art. 1 § 8, 14th Amendment Due process clause, Double Jeopardy clause. See Benton v. Md., 395 U.S. 784, 794 (1969).

STANDER OF REVIEW FOR DOUBLE JEOPARDY CLAIMS

A writ of prohibition is an appropriate vehicle to address double jeopardy claims; see Glover v. 8th Judicial District Court, 125 Nev. 691, 701, 220 P.3d 684, 692 (2009) and HILTON v. The 8th Judicial District Court, 103 Nev. 418, 743 P.2d 622 (1987), Jackson v. State, 128 Nev. 604, 791 P.3d 1278; in this case is the second protection, Moraga Argues that he was prosecuted (4) Four Times for the same offense, Moraga's Adjudication as a Large habitual Criminal was an Error, Three of the sentence's that were imposed upon Moraga were for the "Primary offense's" which Moraga has served each sentence consecutively, in 1998 Moraga was paroled to serve his habitual Criminal Enhancement consecutively to his Primary offense's.

This was an Error "The purpose of the habitual Criminal Charge/statute is not to Charge a Separate Substantive Crime, but to Allege a Fact which may enhance the punishment; State v. Bardsness, 54 Nev. 84, 7 P.2d 817 (1932) Only one Sentence may be imposed. See "Dept. of Revenue v. Kurth Ranch, 511 U.S. 767, 767 N. 1, 128 L. Ed. 2d 767, 114 S. Ct. 1932 (1994).

"The F. Fth Amendment states that no person shall be "Subject For the same offense to be Twice put in jeopardy of Life or Limb" The prohibition of double jeopardy Applies not only to Life and Limb" but Also to "imprisonment and monetary penalties." Yeager v. U.S. 557, U.S. 110, 112 (2009).

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

The Court of Appeals Abused their discretion Pursuant To Koller v. State, 122 Nev. 233, 236, 130 P.3d 653, 655 (2006) when they Ordered Moraga's writ of Prohibition Affirmed Furthermore, these Judge's Gibbons, Tao, Bulla are named in Moraga's Federal Civil Rights Complaint 3/1983, before they ruled on Moraga's writ of Prohibition.

Pursuant to NRS 202.010 states; "NRS 202.010 is not a Statute that was enacted To Create a Seperate and Additional Criminal offense for which Multiple punishment are to be Applied, but it is a Statute that Allows the

State to present or allege a fact that allows the District Court to mete out more severe punishment than allowed by the statutory limits for the offense committed. This enhancement is to be served instead of, not in addition to the primary/underlying offense. Moraga has been paroled on each of his primary offense's consecutively to each other, in 1998 Moraga was paroled to his habitual criminal enhancement also consecutively to his primary offense's, in violation of Moraga's United States Const. Amendment V. and Nevada's Const. Article 1 § 8, Fifth Amendment to the Double Jeopardy Clause.

The Court of Appeals said in their "Order of Affirmance" that "exclusive remedy" a postconviction petition for a writ of habeas corpus. See NRS 34.724(2)(b). And as I stated that the Court of Appeals Errored in Ruling that a Petition for writ of habeas corpus is a plain, speedy, ~~and~~ Adequate, exclusive remedy when Moraga would be barred by the 7 year period of limitation pursuant to the AEDPA. So for the reasons stated herein, the Habitual Criminal Enhancement of Life without Parole MUST be Dismissed as a matter of Law and Justice.

Dated this 14th day of February 2022.

Ray Daniels Moraga
Ray Daniels Moraga

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

*Attorney General Office's
100 N. CARSON ST.
CARSON CITY, NV 89701-4717*

DATED this *14th* day of *February*, 20*22*.

Roy Daniels Moraga

Signature of Appellant

ROY DANIELS MORAGA

Print Name of Appellant

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