

IN THE SUPREME COURT OF THE STATE OF NEVADA

JORGE MENDOZA,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 82740

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Jul 30 2021 01:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO APPELLANT'S MOTION FOR A DETERMINATION
ON WHETHER THE DISTRICT COURT SUFFICIENTLY ADDRESSED
ALL ISSUES RAISED IN THE POSTCONVICTION HABEAS ACTION OR
IN THE ALTERNATIVE PETITION FOR WRIT OF MANDATE**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Opposition to Appellant's Motion for a Determination on whether the District Court Sufficiently Addressed all Issues Raised in the Postconviction Habeas Action or in the Alternative Petition for Writ of Mandate. This opposition is filed pursuant to NRAP Rule 27 and is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 30th day of July, 2021.

Respectfully submitted,

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

BY /s/ Jonathan E. VanBoskerck
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
OPPOSITION TO APPELLANT’S MOTION FOR A DETERMINATION
ON WHETHER THE DISTRICT COURT SUFFICIENTLY ADDRESSED
ALL ISSUES RAISED IN THE POSTCONVICTION HABEAS ACTION OR
IN THE ALTERNATIVE PETITION FOR WRIT OF MANDATE**

Appellant’s demand for a premature determination by this Court should be denied as nothing more substantive than a naked assertion that is belied by the record.

Initially, Appellant’s motion is premature and subverts the adversarial process. Appellant demands that this Court decide the sufficiency of the lower court’s order because Appellant is “concerned we will get to the end of all the briefing just to have the case dismissed[.]” Appellant’s Motion for a Determination on whether the District Court Sufficiently Addressed all Issues Raised in the Postconviction Habeas Action or in the Alternative Petition for Writ of Mandate (Motion), filed July 30, 2021, p. 3. The point of briefing is for the

parties to inform this Court about the issues and offer argument such that this Court has the benefit of the opposing views before it is forced to rule. Appellant is asking this Court to reach a decision without the benefit of meaningful briefing. This Court deserves better and should have the benefit of full briefing before it is asked to rule on this case.

Regardless, Appellant has failed to offer meaningful argument in support of his motion. In Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984), this Court held that naked assertions and claims belied by the record should be summarily denied. Notably absent from Appellant's Motion is a statement of what particular issues the lower court failed to address in the order below. Instead, Appellant merely cites this Court to the entirety of the various pleadings, the evidentiary and the order below. Appellant does not even deign to cite to particular sections of his pleadings. Both Respondent and this Court are left to divine just what is exactly wrong with the order below. Thus, Appellant's allegation that the order below is insufficient is nothing more substantive than a naked assertion and should be summarily denied. Id. at 502, 686 P.2d at 225. Accord, Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987) (This Court need not consider issues that are not cogently argued).

Additionally, a comparison of the habeas petition and supplement below against the order belie Appellant's naked assertion since it appears that all the

issues raised in his pleadings were addressed in the order. As such, Appellant's motion should be summarily denied as belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. To the extent that there is some nuance between the pleadings and the order that is not immediately apparent from a casual inspection of the record, Appellant's failure to point that out in his Motion warrants summary denial of his complaint.

To the extent that Appellant sandbags Respondent through a reply that outlines every alleged defect in the order below, this Court should decline to aid and abet such subversion of the adversarial process. See, Righetti v. Eighth Judicial District Court, 133 Nev. 42, 47, 388 P.3d 643, 648 (2017) (declining to adopt a rule that "rewards and thus incentivizes less than forthright advocacy").

CONCLUSION

WHEREFORE, the State respectfully requests that this Court deny Appellant's Motion for a Determination on whether the District Court Sufficiently Addressed all Issues Raised in the Postconviction Habeas Action or in the Alternative Petition for Writ of Mandate.

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Dated this 30th day of July, 2021.

Respectfully submitted,

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

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
Post Office Box 552212
Las Vegas, Nevada 89155
(702) 671-2750

CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on July 30, 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

DIANE LOWE, ESQ.
Counsel for Appellant

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

BY /s/ E. Davis
Employee, District Attorney's Office

JEV//ed