

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JAMES H. HAYES

AUG 09 2022

vs. (Appellant)

CASE NO: 84163

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

State of Nevada
(Respondent)

Petition for Rehearing (En Banc)

Comes Now Appellant, JAMES H. HAYES, and respectfully requests this honorable court to "GRANT" rehearing en banc, pursuant to NBAR 40(c)(2). In support of petition, MR. HAYES states the following:

1.) Court of Appeals decision conflicts with a decision of the Nevada Supreme Court and consideration by the full court is therefore necessary to secure and maintain uniformity of the court's decision. (Harris v. State, 130 Nev. 435) states MR. HAYES must be permitted a reasonable time period to cure any defects with respect to the procedural requirements of NRS Chapter 34. See also (Ghostface Ghost Code v. State, 2020 Nev. App. Unpub. Lexis 263). Thus, Court of Appeals has misapprehended a point of law and fact.

2.) State v. James, 500 N.W. 2d 345, states Manifest injustice occurs where a defendant makes a plea involuntarily or without knowledge of the consequences of the plea - or where the plea is entered without knowledge of the charge or that the sentence actually imposed could be imposed. MR. HAYES did not have an ~~adequate~~ appreciation of the possible sentence that

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could be imposed, plea not voluntarily knowingly entered. see also (Taylor v. Warden, 607 P.2d 587). MR. HAYES guilty plea agreement was state has agreed to make no recommendation at the time of sentencing and no opposition to probation with the only condition being thirty (30) days in the Clark County Detention Center, with thirty (30) days credit for time served. Thus, no suspended sentence or years to be served on probation.

A.) Factual errors. The opinion contains a glaring factual error that clearly affected the court's consideration of the prejudice issue. The plain language of the guilty plea agreement shows that MR. HAYES agreement was for a gross misdemeanor to be served in the Clark County Detention Center and not a prison term to be served in the Nevada Department of Corrections. It seems clear that this misstatement affect the judgment of the panel, requiring rehearing.

B.) Legal Error. The panel opinion is also based on a legal error. While the panel correctly cites fundamental miscarriage of justice as the standard for determining actual prejudice NRS chapter 34, see (Batt v. State, 131 Nev. 957) its analysis of the evidence shows that it misapplied the prejudice standard. The problem with the panel conducting a prejudice review relying on a recitation of the facts which ignores all evidence and inferences contrary to the verdict is that requires that the panel

1 consider all of the evidence admitted as well as
2 the evidence that could have been admitted had the
3 appellant had effective assistance of counsel. Here
4 the state used the boilerplate language of the guilty
5 plea agreement improperly to sentence appellant as
6 if the agreement was for a felony to the small
7 habitual criminal when agreement was for gross
8 misdemeanor and the maximum punishment Mr. Hayes
9 could receive was 364 days in the Clark County Detention
10 Center for a material breach of agreement.² Because of
11 the failure to consider the entire record, the panel
12 ignored evidence which contradicted the recitation
13 in its opinion. If Mr. Hayes had gone to trial on
14 the more serious charge of Burglary he faced the
15 same sentence and could not face a potentially
16 harsher punishment upon guilty verdict at trial. Thus,
17 has been intentionally treated differently from others
18 similarly situated and there is no rational basis
19 for the difference in treatment (Vila of Willowbrook v.
20 O'Leh, 528 U.S. 542)

21 Conclusion:

22 For the foregoing reasons, appellant James H. Hayes
23 prays that this court grant rehearing, and upon
24 rehearing, he be discharged from his unlawful
25 conviction and sentence.

26 Footnote: 1) Material breach is improper on a misplace ruling
27 of probable cause as victim testified Mr. Hayes was not the
28 perpetrator of alleged event at preliminary hearing.

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 07 2018

BY: 
TIA EVERETT, DEPUTY

1 GPA
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 MICHAEL DICKERSON
6 Deputy District Attorney
7 Nevada Bar #013476
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,

11 -vs-

CASE NO: C-16-315718-1

12 JAMES HOWARD HAYES, aka
13 James Howard Hayes, Jr.,
14 #2796708

DEPT NO: XIX

Defendant.

GUILTY PLEA AGREEMENT

16 I hereby agree to plead guilty, pursuant to North Carolina v. Alford, 400 U.S. 25 (1970),
17 to: **ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS**
18 **205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**, as more fully alleged in the charging
19 document attached hereto as Exhibit "1".

20 My decision to plead guilty by way of the Alford decision is based upon the plea
21 agreement in this case which is as follows:

22 The State has agreed to make no recommendation at the time of sentencing. The State
23 has no opposition to probation with the only condition being thirty (30) days in the Clark
24 County Detention Center (CCDC), with thirty (30) days credit for time served.

25 I agree to the forfeiture of any and all weapons or any interest in any weapons seized
26 and/or impounded in connection with the instant case and/or any other case negotiated in
27 whole or in part in conjunction with this plea agreement.

28 ///

Exhibit 3

C-16-315718-1
GPA
Guilty Plea Agreement
4794980

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A004

ORIGINAL

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CLERK OF THE COURT

AINF
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Attorney for Plaintiff

NOV 07 2018
BY: *[Signature]*
TIA EVERETT, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

JAMES HOWARD HAYES, aka,
James Howard Hayes Jr., #2796708

Defendant.

CASE NO. C-16-315718-1

DEPT NO. XIX

AMENDED
INFORMATION

STATE OF NEVADA }
COUNTY OF CLARK } ss:

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That JAMES HOWARD HAYES, aka, James Howard Hayes Jr., the Defendant(s) above named, having committed the crime of **ATTEMPT GRAND LARCENY (Category D Felony/Gross Misdemeanor - NRS 205.220.1, 205.222.2, 193.330 - NOC 56025/56026)**, on or about the 9th day of April, 2013, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada, did willfully, unlawfully, feloniously, and intentionally, with intent to deprive the owner permanently thereof, attempt to steal, take and carry away lawful money of the United States in an amount of \$650.00, or greater, owned by another

Denial federally guaranteed constitutional rights. This charge was dismissed at the conclusion of preliminary hearing same factual criminal synopsis for insufficient evidence produced at prelim to be bound over...

C-16-315718-1

AINF
Amended Information
4794959

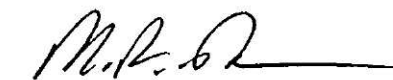


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1 person, to wit: JOSHUA JARVIS, by attempting to steal lawful money of the United States,
2 an iPhone and other personal items from the said JOSHUA JAVIS.

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

5
6 BY



7 MICHAEL DICKERSON
8 Deputy District Attorney
9 Nevada Bar #013476
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26 DA#13F10723X /cmj/L2
27 LVMPD EV#1304090843
28 (TK3)