

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 Electronically Filed
4 Jul 06 2022 05:30 p.m.
5 Elizabeth A. Brown
Clerk of Supreme Court

6 CRYSTAL YVONNE AUSTIN,

CASE NO.: 83345

7 Appellant,

8 vs.

9 THE STATE OF NEVADA,

10 Respondent,

11 **ON APPEAL FROM THE FIFTH JUDICIAL DISTRICT COURT IN AND**
12 **FOR THE COUNTY OF NYE, THE HONORABLE ROBERT LANE,**
13 **PRESIDING**

14 **PETITION FOR REVIEW**

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16 Appellant, **CRYSTAL YVONNE AUSTIN**, by and through her attorney of
17 record, **DAVID H. NEELY III, ESQ.**, hereby petitions this Honorable Court to
18 Review the **COURT OF APPEALS ORDER DENYING REHEARING** from
19 an appeal of an order of the district court that denies a Post-Conviction Petition for
20 Writ of Habeas Corpus.

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1 This Motion is made and based upon SCR 40B, the following Points and
2 Authorities, all papers, pleadings and documents on file herein, as well as any oral
3 arguments that may be entertained at the hearing of this Motion.

4 **POINTS AND AUTHORITIES**

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6 NRAP 40B(a) allows review of a decision of the Court of Appeals on petition
7 for review. NRAP 40B(a) states:

8 (a) Decisions of Court of Appeals Reviewable by Petition for Review. A
9 decision of the Court of Appeals is a final decision that is not reviewable by the
10 Supreme Court except on petition for review. A party aggrieved by a decision of the
11 Court of Appeals may file a petition for review with the clerk of the Supreme Court.
12 The petition must state the question(s) presented for review and the reason(s) review
13 is warranted. Supreme Court review is not a matter of right but of judicial discretion.
14 The following, while neither controlling nor fully measuring the Supreme Court's
15 discretion, are factors that will be considered in the exercise of that discretion:

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17 (1) Whether the question presented is one of first impression of general
18 statewide significance;

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20 (2) Whether the decision of the Court of Appeals conflicts with a prior
21 decision of the Court of Appeals, the Supreme Court, or the United States Supreme
22 Court;

1 (3) Whether the case involves fundamental issues of statewide public
2 importance.

3 Here, the Court has misapprehended one (1) matter in the record.

4 The Court has misapprehended a material fact when it concluded that Trial
5 Counsel was not ineffective for failing to impeach victim impact testimony during
6 the sentencing hearing which Appellant contends was ineffective assistance of
7 counsel.
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9 The Court states, "Third, Austin claimed that her trial counsel was
10 ineffective for failing to impeach victim impact testimony during the sentencing
11 hearing. Austin asserted that the victim's testimony concerning the facts of the
12 offense was not accurate. During the sentencing hearing, counsel cross-examined
13 the victim concerning her version of the events. Counsel also noted during the
14 sentencing hearing that many of the victim/s statements concerning the incident
15 were not supported by the factual evidence, and counsel urged the sentencing court
16 to disregard those statements when it imposed Austin's sentence. In light of
17 counsel's cross-examination of the victim and request for the sentencing court to
18 disregard the victim's unsupported statements, Austin did not demonstrate that her
19 counsel's performance fell below an objective standard of reasonableness. Austin
20 also failed to demonstrate a reasonable probability of a different outcome at
21 sentencing had counsel performed different actions concerning the victim's impact
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1 testimony. Therefore, we conclude that the district court did not err by denying this
2 claim without conducting an evidentiary
3 hearing.

4 In Petitioner's own words, "I signed a 2 to 5 deal. However, I was double
5 sentenced due to Mc Cox's lies. If you read through the testimony she (Ms. Cox)
6 said I was out 4 years. I should be sentenced 4 years. This was all done before Mr.
7 Martinez and the DA could Ms. Cox on her over dramatization of things that did
8 not exist." (Appx. 0290-0291)

9 "Ms. Cox was allowed Oct. 28, 2019, to read a "story" of her unfactual
10 accounts. To which Judge Lane allowed to be submitted to PNP. Ms. Cox was
11 trying to get restitution and blame me for the death of her mother all the while not
12 involved in the wreck."
13

14 "Ms. Cox lied under oath. I was maliciously prosecuted by Ms. Cox. Ms.
15 Cox submitted receipts for 4 new tires. Her mother's medical proved no injuries,
16 her service dog- no proof no receipts nor were they listed as being involved. Ms.
17 Cox's mother wrote a statement submitted 1 year later which claimed I had open
18 container on the floorboard. A complete lie. Malicious prosecution. That's what
19 Nye County charged me with when making a police statement to the best of my
20 knowledge." (Appx. 0291)
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1 “Ms. Cox stalled my case for 4 years trying to pin the blame of her mother’s
2 death, which was I’m sure natural causes 2 years after June 1, 2016.”

3 DA Vitto told Ms. Cox she was stretching the truth. But the “story” was
4 already incorporated in my report. PNP Pahrump started it, Clark County finished
5 my report.” (Appx. 0291)

6 “Ms. Cox is a fraud and a liar. Ms. Cox submitted receipts for 4 new tires?
7 She claims trees, her car was a sports car type (4 door KIA Optima) is no sports
8 car. Not involved in a wreck. Merely a Golddigger.” (Appx. 0291)

9 “With Ms. Cox perjuring herself, malicious prosecuting me, stalking my
10 residence all last year, manipulation of the truth, the letter of lies, her trying to
11 blame a natural COD of her mother on me. Trying to snow over the Judge
12 controlling the courtroom telling the Judge what my sentence should be.
13 Meanwhile, Mr. Martinez let her do whatever with no objection. Told me all
14 victims have a right to speak. I said she is no victim. Mr. Martinez told me to shut
15 up.” (Appx. 0291)

16 “The DA is the only one who basically called Ms. Cox a liar. But damage
17 was done.” Trial Counsel had a duty to defend his client at the Sentencing by
18 objecting to testimony that included falsehoods from Ms. Cox, the victim witness.
19 Thus, he was not functioning as the ‘counsel’ guaranteed the defendant by the
20 Sixth Amendment,” Strickland, 466 U.S. at 87, 104 S. Ct. at 2064. (0292)

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2 Counsel's performance fell below an objective standard of reasonableness
3 and his errors were so severe that it caused Appellant to plead Guilty in the instant
4 case in violation of Strickland since there was a reasonable probability that she
5 would have chosen to go to trial if she knew she would be sentenced without her
6 Trial Counsel defending her by objecting to falsehoods uttered by the victim
7 witness.
8

9 **CONCLUSION**

10 In conclusion, the Court has misapprehended one material fact in the instant
11 matter. The material fact that the Court misapprehended was when it concluded
12 that Trial Counsel was not ineffective for failing to impeach victim impact
13 testimony during the sentencing hearing which Appellant contends was ineffective
14 assistance of counsel.
15

16 Review is warranted because this was a miscarriage of justice which is a
17 fundamental issue of state wide importance when the Court of Appeals
18 misapprehends one (1) material fact that resulted in the Appellant having lost his
19 liberty as a result.
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1 **CERTIFICATE OF COMPLIANCE PURSUANT TO RULES 40 and 40A**


2 1. I hereby certify that this petition for review complies with the formatting
3 requirements of Rule 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the
4 type style requirements of NRAP 32(a)(6) because:
5

6 [a] It has been prepared in a proportionally spaced typeface using Microsoft Word
7 in Times Roman 14.

8 2. I further certify that this brief complies with the page limitations of Rule
9 40B(d) because it:

10 [X] Does not exceed 10 pages.

11 **DATED** this 6th day of July, 2022.

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