

FILED

JUN 14 2022

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

Hayes, James H ID NO. 1175077

SOUTHERN DESERT CORRECTIONAL CTN.
20825 COLD CREEK RD.
P.O. BOX 208
INDIAN SPRINGS, NV 89010

In the Court of Appeals of the State
of Nevada

JAMES H. HAYES

v.

State of Nevada

CASE NO.: 84169-COA

DEPT. NO.: _____

DOCKET: _____

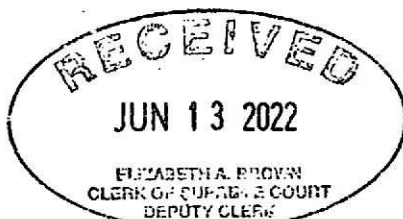
Motion for Reconsideration

COMES NOW, ~~applicant~~, James H. Hayes, herein above respectfully
moves this Honorable Court for an Order granting rehearing N.R.A.P.
40(c) to promote substantial justice (Cordal v. District
Court, 961 P.2d 142)

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

DATED: this 8th day of JUNE, 2022

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



ADDITIONAL FACTS OF THE CASE:

Appellant MR. James H. Hayes prays the court for reconsideration of its order of affirmance entered May 26, 2022

A. The court's order concerning petition is procedurally barred contains errors of fact and law. MR. HAYES swears that he suffered from a fundamental miscarriage of justice because he is actually innocent. In support of his claim MR. HAYES in his attach exhibit "Affidavit of Actual INNOCENCE NOT MORE LEGAL INSUFFICIENCY BUT Factual INNOCENCE" that was filed in District Court May 15, 2020. MR. Hayes demonstrated that it is more likely than not that no reasonable jury would have convicted him in light of the evidence presented in Justice and District Courts. However, the district court 8th Judicial district did not consider MR. Hayes actual-innocence claim, the attach exhibit affidavit of actual INNOCENCE... BECAUSE if the district court would have properly considered MR. Hayes claim he will overcome the procedural bars and obtain review of defaulted claims on the merits via a valid actual INNOCENCE claim. Thus, district court erred by failing to consider MR. Hayes actual-innocence claim. When in fact, MR. Hayes has demonstrated actual innocence of the forgone more serious crime of Burglary as the state's charging

1 Partial criminal synopsis for the crime of Burglary
2 was based on the larceny as the specific intent
3 to satisfy the statute, and upon dismissal of
4 the attempted grand larceny charge at the conclusion
5 of the preliminary hearing it left the Burglary
6 charge fatal and it to must have been dismissed.
7 Accordingly, no reasonable juror would have
8 convicted Mr. Hayes in light of state's lack of
9 specific intent that's vital to the elements of
10 the crime pursuant to NRS 205.060. Moreover,
11 that's clear and convincing evidence state could
12 not prove the elements of the offense, in view
13 of the totality of the evidence.

14 B. the court's order of affirmance is also
15 based on legal error. While the court correctly
16 cites actual innocence as the standard to over-
17 come the procedural bars under *Caldwell v.*
18 *Thompson*, 523 U.S. 538, its analysis of the evidence
19 shows that it misapplied the actual innocence
20 standard. (*Vidal v. Williams*, 2020 Nev. App. Unpub
21 *LEXIS 943*) cases which have decided "factually
22 similar issues should be considered.

23 C. Finally, Mr. Hayes in the instant petition
24 claims raised are not new or different from
25 those raised in his previous supplemental pleadings
26 to his original "amended petition" that was
27 filed in the district court on April 7, 2021 and

1 April 14, 2021, that this honorable court in its September
2 17, 2021 (CASE NO 82734-COA) order page 1 stated "In
3 his February 12, 2020, petition and later-filed
4 SUPPLEMENTS." Thus, Mr. Hayes instant petition is
5 NOT untimely NOR SUCCESSIVE as all the claims
6 raised relate back to original "amended petition"
7 filed February 12, 2020. (SEE NRS Chapter 34). Moreover,
8 Mr. Hayes has demonstrated through clear and
9 CONVINCING EVIDENCE and facts, to overcome the
10 procedural bars and that district court did err
11 by denying petition as procedurally barred, when
12 all Mr. Hayes good-cause and actual innocence
13 claims were raised in the initial "amended petition"
14 and supplemental pleadings, by way of attach-
15 exhibits of previous filed affidavits that was filed
16 simultaneously. (SEE Attached exhibit #1)

17 Conclusion:

18 For the foregoing reasons, appellant MR.
19 James H. Hayes prays that this court "GRANTS"
20 motion for reconsideration, and upon reconsi-
21 deration provide appellant relief from his unlawful
22 conviction and sentence.

23 Respectfully submitted,
24 James H. Hayes
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28

NO CRIME COMMITTED
State ex rel. Deborah v. Fogliani
82 Nev. 300

March 24, 2021

Supplemental Petition for Writ of Habeas Corpus

Insufficient evidence presented to Magistrate
pretrial Judge Hutchinson

76 Nev. 478

EXHIBITS

EXHIBIT 100 - An information cannot be

Martin v. Sheriff, Clark County 88 Nev. 383
NRS 123.095 174.145

Amended so as to charge an
offense not shown by the evidence
taken at pretrial examination

EXHIBIT 101 A charge already dismissed may
not be added by amendment

EXHIBIT 102 Affidavit "Jurisdiction of the
Subject Matter is derived from law"

EXHIBIT 103 Affidavit "No factual statements
on the record"

EXHIBIT 104 Affidavit "Actual Innocence not
mere legal insufficiency but
FACTUAL INNOCENCE"

EXHIBIT #1

Full cognizance Petition should be entertained

ONCE a judicial magistrate has determined that PC does not exist
it would be the most naked deprivation of due process

Gery v. Sheriff, Clark County
96 Nev. 78

Lack of probable cause In re Rowland 74 Nev. 215

- the order of dismissal was upon motion of the DA providing for
voluntary dismissals hence, the prohibition of NRS 178.562(1) was applicable

held by reason of the commission of an act, which the law did not
prohibit or penalize STATE v OSBORN 82 Nev. 300 ^{wrongfully imprisoned because he}
^{→ 2nd ISO crime committed} ^{was convicted under a statute which}
^{did not prohibit his behavior}

In Nevada, a criminal prosecution is commenced by criminal complaint

Thompson v STATE 125 Nev. 807

The dismissal of the ~~can~~ charge upon another pending vehicle for the
prosecution of that charge runs afoul of the provisions of 178.562(1)
and bars further prosecution of the defendant on that charge -

State was clearly bringing another prosecution following dismissal of
an action

174.085(5)(A) before ph
so exception of (5) is in applicable
when state dismissed at conclusion of ph
Hence, ~~state~~ 174.085(3) comes in to play to
deny any prosecution on the charge of AGL

CERTIFICATE OF SERVICE BY MAILING

I, JAMES H. NOYES, hereby certify, pursuant to NRCP 5(b), that on this 8th day of JUNE, 2022, I mailed a true and correct copy of the foregoing, "Motion for Reconsideration"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Nevada Court of Appeals
201 S. Carson St. Suite 201
Carson, City, NV
89701

Clark County District City
200 LEWIS AVE
LAS VEGAS NV
89155-2212

Nevada Attorney General
100 N. Carson St.
Carson City, NV
89701

CC: FILE

DATED: this 8th day of JUNE, 2022.

James H. Noyes
James H. Noyes #1175677
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS: