

1 IN THE NEVADA SUPREME COURT OF THE STATE
2 OF NEVADA

3 MARK ZANA
4 Appellant

5 VS.

6 STATE OF NEVADA
7 Respondent

No. 84854

FILED

JUN 05 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Melissa S. Sully*
DEPUTY CLERK

8
9 PETITION FOR REVIEW BY THE NEVADA SUPREME COURT

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11 This Petition for Review by the Nevada Supreme Court is
12 being brought forth due to the Court of Appeals (hereto C.O.A.)
13 overlooking or misapprehending clearly established Nevada Supreme
14 Court precedent and controlling caselaw when they denied Appellant's
15 appeal of his motion for modification to correct an illegal sentence.
16 In accordance with NRSAP Rule 40B, the questions presented
17 in this petition for review are of first impression of general
18 statewide significance due to them involving a double jeopardy
19 violation.

20 The decision of the C.O.A. conflicts with prior decisions
21 of the Nevada Supreme Court and United States Supreme Court
22 and therefore fails to secure and maintain uniformity of the
23 decisions from those courts.

24 Appellant's case involves fundamental issues of statewide
25 public importance as double jeopardy protections are
26 guaranteed by both the Nevada Constitution and the United
27 States Constitution.

QUESTIONS PRESENTED

1. Does the Nevada Supreme Court's clarification of NRS 200.730 in Castaneda v. Nevada, 373 P.3d 108 (2016) apply retroactively to Appellant due to it being the first time this court interpreted and clarified this statute and did not make a new rule of law?
2. Do Appellant's 6 convictions and 2 consecutive sentences, for a single violation of NRS 200.730, constitute double jeopardy violations?
3. Does the Nevada Supreme Court's clarification of NRS 200.730 in Castaneda constitute a restatement of existing law due to it being the first time this court interpreted and clarified this statute and did not make a new rule of law?
4. Does the Nevada Supreme Court's decision in Castaneda furnish the proper statement of law at the date Appellant's conviction became final?
5. Do Appellant's 6 convictions and 2 consecutive sentences comport with the legislative intent of NRS 200.730 as interpreted and clarified, for the first time, by this court in Castaneda?
6. Do Appellant's 6 convictions and 2 consecutive sentences, for a single violation of NRS 200.730, constitute redundant convictions and sentences as clarified by this court in Castaneda?
7. Does the decision of the C.O.A. conflict with the decision of this court in Castaneda?
8. Does the decision of the C.O.A. conflict with the decision of this court in Colwell v. Nevada, 118 Nev. 807; 59 P.3d 463 (2002)?

- 1 - 9. Does the decision of the C.O.A. conflict with the decision
2 of this court in Clem v. Nevada, 119 Nev. 615; 81 P.3d 521 (2003)?
3 - 10. Does the decision of the C.O.A. conflict with the decision of
4 this court in Passanisi v. Nevada, 108 Nev. 318, 321, 831 P.2d 1371, 1372 (1992)?
5 - 11. Does this court's decision in Celwell support applying Castaneda
6 to Appellant's case?
7 - 12. Does this court's decision in Clem support applying Castaneda
8 to Appellant's case?
9 - 13. Does the C.O.A.'s failure to apply clearly established Nevada
10 Supreme Court precedent and controlling caselaw to Appellant's
11 case also fail to secure and maintain uniformity of the decisions
12 of this court and the United States Supreme Court?
13 - 14. Does the failure of the C.O.A. to apply clearly established
14 precedent and controlling caselaw of this court to Appellant's
15 case constitute due process violations?

16 SUMMARY

- 17 - The C.O.A. overlooked or misapprehended clearly established
18 precedent and controlling caselaw when they failed to apply Castaneda,
19 Celwell, Clem, and Passanisi to Appellant's appeal of his motion for
20 modification of sentence to correct an illegal sentence.
21 - Appellant respectfully requests the clearly established precedent
22 of this court be applied to Appellant in order to secure and maintain
23 uniformity of its decisions.
24 - The material facts of Castaneda and Appellant's case are the
25 same. Celwell and Clem substantiate that Castaneda applies to
26 Appellant. Therefore, Appellant's redundant convictions and consecutive
27 sentences should be vacated and his appeal granted.

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☐ Motion:

☒ Petition: For Review

☐ Other:

to the below address(es) on this 1st day of June, 2023, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

700 Lewis Ave.

P.O. Box 552212

Las Vegas, Nevada 89155-1212

District
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☒ and

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