

IN THE SUPREME COURT OF THE STATE OF NEVADA

MATTHEW HOUSTON,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

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Case No. 84886

RESPONDENT'S ANSWERING BRIEF

**Appeal From Denial of a Motion to Withdraw Guilty Plea
Eighth Judicial District Court, Clark County**

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ROUTING STATEMENT

This appeal is presumptively assigned to the Court of Appeals because it is a post-conviction challenge to a guilty plea involving a category B felony. NRAP 17(b)(3).

STATEMENT OF THE ISSUES

1. Whether the district court properly denied Houston's Motion to Withdraw Plea

STATEMENT OF THE CASE

Preliminarily, it is difficult to determine what case Appellant Matthew Houston is appealing from, much less what order of the district court he is

challenging. The Nevada Supreme Court docket under the instant appeal number, 84886, indicates that the Lower Court Case is C357927. The clerk of the district court transmitted Records on Appeal from that criminal case number as well as A-22-853203-W, a post-conviction habeas case number. Despite Houston listing numerous case numbers on his notice of appeal, the State assumes Houston is challenging proceedings in either C357927 or A853203. Notice of Appeal at 1.

Habeas case A853203 does not appear to have any orders which may be challenged on appeal, the habeas petition has not been decided, and no findings of fact, conclusions of law, and order has been filed in it. It is currently set for hearing on May 5, 2023. Houston already attempted to appeal under this habeas case number, and this Court dismissed the appeal because no decision had been made in that case. Order Dismissing Appeal, Case 85353, filed October 6, 2022. Because there still has been no final decision or other appealable order in that case, to the extent Houston is appealing from any filing in that case this appeal should be dismissed for the same reason.

Accordingly, the State assumes that Houston is challenging some order presented in case C357927. His Notice of Appeal indicates that he is appealing “the decision of the District Court from the 4th day of April, 2022 also April 25, 2022, with the ORDER having been issued in error not until May 10th, 2022.” Notice of Appeal at 1. On May 10, 2022, the district court entered an Order Denying

Defendant's All Pending Motions. 2 ROA 326-328.¹ That Order denied four motions, three of which are not appealable; Defendant's Pro Se Motion For an Order to Suppress Hearing from December 6, 2021, Defendant's Emergency Motion requesting hearing De Novo and Release to Intensive Supervision, and Defendant's Pro-Se Motion for An Order to Appear By Phone Or Video and Notice of Motion. 2 ROA 327. The Order also denied Defendant's Emergency Motion to Withdraw Plea, and the denial of a motion to withdraw plea is an appealable order. NRS 177.015. Accordingly, the State assumes that is the order that Houston is appealing from.

On April 27, 2021, Houston was charged, by way of Criminal Complaint, with one count of Making Threats Or Conveying False Information Concerning Act of Terrorism. 1 ROA 4.

On August 2, 2021, Houston waived his right to a preliminary hearing, agreeing to plead guilty to one count of Aggravated Stalking (Category B Felony) with certain conditions that, if followed, could allow Houston to withdraw his plea and plead guilty to a gross misdemeanor Aggravated Stalking offense. 1 ROA 39-41. He also received various release benefits and an agreement that the State would not oppose probation. Id. On August 3, 2021, Houston was accordingly charged, by way of Information, with one count of Aggravated Stalking (Category B Felony). 1

¹ For the reasons just explained, ROA refers to the Record on Appeal from case C357927. The Record on Appeal from the A-case appears to be irrelevant to the instant proceedings.

ROA 36-37. A Guilty Plea Agreement reflecting the negotiations was filed on August 4, 2021. 1 ROA 43-51.

On October 5, 2021, Houston moved to have alternate counsel appointed to withdraw his plea. 1 ROA 52-54. The same day, the State moved to have Houston remanded for failure to comply with his release conditions and violating his plea agreement. 1 ROA 55-69. The district court entered a bench warrant for Houston's arrest on October 12, 2021, and he was arrested and returned on October 18, 2021. 1 ROA 70-76.

On October 25, 2021, the district court granted the State's motion to remand, increased bail to \$15,000, and imposed high level electronic monitoring. The district court also set a status check for confirmation of counsel to consider a motion to withdraw plea.² Mr. Goldstein confirmed as counsel on November 1, 2021.

Mr. Goldstein met with Houston several times, and on December 6, 2021, represented that Houston no longer wished to withdraw his plea. 1 ROA 216; 2 ROA 338. Prior counsel was reinstated, and Houston was adjudged guilty of Aggravated Stalking (Category B felony) and sentenced to 24-96 months in the Nevada Department of Corrections with 93 days credit for time served. Id. On December 8,

² These minutes do not appear to be part of the Record on Appeal. To the extent information is provided in the procedural history that is not cited, it is not provided in the ROA.

2021, the district court filed a Judgment of Conviction reflecting Houston's Conviction. 1 ROA 94-95.

Houston filed a slew of motions thereafter, including Notices of Appeal on February 22, 2022, and March 30, 2022. Both of those appeals were dismissed. See Houston v. State, 84281, Houston v. State 84478.

Relevant to this appeal, Houston filed an "Emergency Motion to Withdraw Plea" (hereinafter, Motion") on April 13, 2022. 1 ROA 226-230. The State opposed on April 21, 2022. 2 ROA 264-270. The Motion was denied on April 25, 2022, and the order denying the Motion was filed on May 10, 2022. 2 ROA 326-328.

STATEMENT OF THE FACTS

The Court relied on the following factual synopsis in sentencing Houston:

A detective of LVMPD was assigned to investigate the offense of Threat/False Info Regarding Acts of Terrorism, which said investigation developed the defendant, Matthew Houston aka Matthew Travis Houston, as the perpetrator thereof.

On December 23, 2020, Mr. Houston left a voicemail at the Office for Consumer Health Assistance. When victim 1 returned his call, Mr. Houston stated he had a case in the Supreme Court and said he was being harassed by an individual. Victim 1 attempted to explain the process to help Mr. Houston and point him in the right direction. However, Mr. Houston became angry and began yelling and said he should be afforded all the benefits due to him instead of being harassed by the government. He then said that no one should be surprised if/when he goes on a mass shooting rampage like the one committed on October 1st.

Victim 1 felt scared that Mr. Houston would carry out the threats he had expressed.

The detective later found out that on July 23, 2020, Mr. Houston had phoned victim 2, who was employed by his insurer. Mr. Houston threatened to murder everyone at Sedgwick and their families, and to “eat their hearts.” On March 16, 2021, victim 3, who is an employee at the Department of Administration Hearings Division, advised Capitol Police that Mr. Houston had also made threats on their voicemail line. Mr. Houston stated that he “Needed immediate assistance because [he] was going to fucking murder every fucking employee at Mandalay Bay, MGM, and everyone in the State of Nevada if [you] fucking people don’t give me my fucking money.” Contact was then made with an officer of Iowa Police Department. He stated that Mr. Houston had been responsible for (21) calls for service in Iowa City and that he was mentally unstable.

A warrant of arrest was issued for Mr. Houston; and on July 14, 2021, he was arrested, transported to the Clark County Detention Center, and booked accordingly.

1 ROA 86-93.

SUMMARY OF THE ARGUMENT

The district court correctly denied Houston’s Motion to Withdraw Plea because he provided no legal basis or coherent argument supporting his Motion.

ARGUMENT

I. THE DISTRICT COURT CORRECTLY DENIED HOUSTON’S MOTION TO WITHDRAW PLEA

Houston’s Motion asserted various grievances, but none which would permit withdrawal of his guilty plea. He complained that unknown individuals had stolen

his seeing eye dogs, and complained that district court judges were in some manner interfering with Houston's (apparently civil) claims against other people. 1 ROA 227. He engaged in an extended rant, at the end of which he denied making the phone call that (presumably) was the basis for the initial terroristic threats charge. Id. at 228.

After a sentence has been imposed, a post-conviction habeas petition takes the place of a motion to withdraw guilty plea. Harris v. State, 130 Nev. 435, 437, 329 P.3d 619, 621 (2014). Given the rambling motion, the district court apparently denied the pleading as a motion to withdraw plea rather than a post-conviction habeas petition.³ This was erroneous, but harmless. This Court will affirm the district court if it reaches the right result for the wrong reason. Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970). Additionally, any error, defect, or irregularity which does not affect substantial rights shall be disregarded. NRS 178.598.

As the State noted in its response, the single-sentence denial of making the phone call essentially amounted to an assertion of actual innocence. But actual innocence is not a free-standing claim in the habeas context. Nevada state law does not recognize freestanding claims of actual innocence in a Petition for Writ of

³ No transcript was apparently generated, nor minutes provided. The minutes that do exist do not provide any additional detail. That a simple Order denying the motion, rather than a Findings of Fact, was filed seems to indicate that the Court denied the pleading as a motion rather than a habeas petition.

Habeas Corpus, but rather only provides for claims of actual innocence where a defendant is attempting to overcome a procedural bar caused by an untimely or successive petition. *See Mitchell v. State*, 122 Nev. 1269, 1273-74, 149 P.3d 33, 36 (2006); *See also Clem v. State*, 119 Nev. 615, 621, 81 P.3d 521, 525-26 (2003). This is consistent with the Nevada Supreme Court’s adoption of the standard established in *See Schlup v. Delo*, 513 U.S. 238, 315, 115 S. Ct. 851, 861 (1995) (*quoting Herrera v. Collins*, 506 U.S. 390, 404, 113 S. Ct. 853, 862 (1993)) (“Schlup’s claim of innocence is thus not itself a constitutional claim, but instead a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.”). In contrast, a freestanding claim of actual innocence is a claim wherein a petitioner alleges actual innocence alone, rather than actual innocence supported by a claim of constitutional deficiency, warrants relief. *See Herrera*, 506 U.S. 390, 113 S. Ct. 853 (1993). The *Herrera* Court acknowledged that claims of actual innocence based on newly discovered evidence have never been held as a ground for habeas relief absent an independent constitutional violation in the underlying criminal proceeding. *Id.* The Court noted such claims were traditionally addressed in the context of requests for executive clemency, which power exists in every state and at the federal level. *Id.* at 414-15, 113 S. Ct. at 867-68. However, the Court assumed, *arguendo*, that a federal freestanding claim of actual innocence may exist where a petitioner was sentenced to death and state law

precluded any relief. Herrera, 506 U.S. at 417, 113 S. Ct. at 869; Schlup, 513 U.S. at 317, 115 S. Ct. at 862. The United States Supreme Court has never found a freestanding claim of actual innocence to be available in a non-capital case. *See, e.g., Herrera*, 506 U.S. at 404-405, 416-417; House v. Bell, 547 U.S. 518, 554, 126 S. Ct. 2064, 2086 (2006); *see also Carriger v. Stewart*, 132 F.3d 463, 476 (9th Cir. 1997); Jackson v. Calderon, 211 F.3d 1148, 1165 (9th Cir. 2000).

Houston failed to cite any Nevada authority which would allow him to raise a freestanding claim of actual innocence and improperly suggested the claim before the district court. “Actual innocence” is a term of art that should only be raised in the context of an attempt to overcome post-conviction procedural bars to petitions for writ of habeas corpus. Even in the post-conviction context, where at least “actual innocence” claims can be made in order to have other arguments heard on the merits, there is no such concept as a “freestanding” actual innocence claim where a person can claim they deserve some kind of relief solely because they proclaim their innocence.

Moreover, Houston’s claim that he did not make the phone call was belied by the record. Actual innocence means factual innocence not mere legal insufficiency. Bousley v. United States, 523 U.S. 614, 623, 118 S.Ct. 1604, 1611 (1998); Sawyer v. Whitley, 505 U.S. 333, 338-39, 112 S.Ct. 2514, 2518-19 (1992). To establish actual innocence of a crime, a petitioner “must show that it is

more likely than not that no reasonable juror would have convicted him absent a constitutional violation.” Calderon v. Thompson, 523 U.S. 538, 560, 118 S. Ct. 1489, 1503 (1998) (emphasis added) (quoting Schlup v. Delo, 513 U.S. 298, 316, 115 S. Ct. 851, 861 (1995)). Actual innocence is a stringent standard designed to be applied only in the most extraordinary situations. Pellegrini, 117 Nev. at 876, 34 P.3d at 530.

“Without any new evidence of innocence, even the existence of a concededly meritorious constitutional violation is not itself sufficient to establish a miscarriage of justice that would allow a habeas court to reach the merits of the barred claim.” Schlup, 513 U.S. at 316, 115 S. Ct. at 861. The Eighth Circuit Court of Appeals has “rejected free-standing claims of actual innocence as a basis for habeas review stating, ‘[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding.’” Meadows v. Delo, 99 F.3d 280, 283 (8th Cir. 1996) (citing Herrera v. Collins, 506 U.S. 390, 400, 113 S. Ct. 853, 860 (1993)). Furthermore, the newly discovered evidence suggesting the defendant’s innocence must be “so strong that a court cannot have confidence in the outcome of the trial.” Schlup, 513 U.S. at 315, 115 S. Ct. at 861. Once a defendant has made a showing of actual innocence, he may

then use the claim as a “gateway” to present his constitutional challenges to the court and require the court to decide them on the merits. Id.

Here, Houston claimed he never called any of the victims and that he is innocent of the crime he pled guilty to. 1 ROA 228. However, Houston did not allege any specific facts nor provided any evidence of his innocence apart from his own self-serving statement. Further, he did not allege any constitutional violations. Outside of the single claim, Houston only generally complained that the people involved in his case colluded against him, causing unidentified errors and “cluster trucks.” ROA 227-228. Simply put, there is no evidence, let alone coherent argument that Houston is innocent outside of his one-sentence claim.

Furthermore, Houston pled guilty in this case. Thus, his claim is belied by his signed GPA. Houston’s GPA states, “I hereby agree to plead guilty to: AGGRAVATED STALKING (Category B Felony – NRS 200.575 – NOC 50333) ...I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit ‘1’.” 1 ROA 43-45. Additionally, Houston was canvassed and affirmatively stated he was entering a plea of guilty freely and voluntarily.

Houston had the opportunity to move to withdraw his plea and chose not to. 2 ROA 338. He pleaded guilty to the offense, and that guilty plea was further supported by the victim impact speakers at sentencing, as well as the voicemail

message of Houston making the call that was played at sentencing. 2 ROA 338-353. Houston presented no evidence in his Motion that would call into question either his guilt or his desire not to withdraw his plea.

Finally, any error in construing the Motion as a motion should be disregarded for at least two reasons. First, Houston neither alleged that his plea was entered into without the effective assistance of counsel nor that it was not freely and voluntarily entered into, the only two bases upon which he could have challenged his guilty plea in a habeas proceeding. NRS 34.810. Second, as noted previously, Houston has a pending habeas petition that has not yet been decided wherein he is again challenging his guilty plea. 1 ROA-A853203 1-40. To the extent he has any cognizable claims or can meet the standard for a habeas petition, his claims will be resolved when that litigation concludes.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court AFFIRM the district court's denial of Houston's Motion.

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Dated this 28th day of February, 2023.

Respectfully submitted,

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BY */s/ John T. Afshar*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either proportionately spaced, has a typeface of 14 points or more, contains 2,742 words and 12 pages.
3. **Finally, I hereby certify** that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of February, 2023.

Respectfully submitted

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 28th day of February, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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