

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

APR 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY DEPUTY CLERK

James H. Hayes

Appellant,

Supreme Court No. 84404

vs.
State of Nevada

Respondent.

District Court No. C-19-338412-1

APPELLANT'S INFORMAL BRIEF

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, *see* NRAP 28(k), with the Nevada Supreme Court on or before the due date, *see* NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.

Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.

Las Vegas: Place your brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

Informal Brief Form October 2017

APR 11 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

22-11415

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
02-07-2022	IN the NATURE of a writ of Habeas Corpus

Notice of Appeal. Give the date you filed your notice of appeal in the district court: March 18, 2022

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
	N/A	

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes ☐ No

NOTE: If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

On January 26, 2019, Mr. Hayes was wrongfully arrested by Las Vegas Metro Police for attempted burglary. On this date Mr. Hayes was staying at the Mirage hotel with a registered guest who provided him with a key to enter room. When James McGrath and security officers at the Mirage gave false information to the police, resulting in the initiation of a criminal complaint (case) against Mr. Hayes. At the show-up Mr. Hayes was held -

called and the alleged victim McGrath could not identify Mr. Hayes with certainty. McGrath was 100% sure at the preliminary hearing that Mr. Hayes was not the perpetrator of the direct attempted burglary during the in court identification. Whereas, the magistrate stated "even though he identified the wrong person" "he identified someone that might have come into his room". Thus, no probable cause to arrest Mr. Hayes and no probable cause to bound Mr. Hayes over to district court. As there is no greater evidence than the victims own sworn testimony!! Here, the integrity and the sufficiency of the evidence is lacking. "irreparable misidentification" see DeLham v. Decks 954 F.2d 1501; Simmons v. United States 390 U.S. 377

ADDITIONAL FACTS OF THE CASE:

1 Comes now the defendant MR. JAMES H. NILES
2 IN PRO SE, IN NECESSITY, and hereby "MOVES" this
3 honorable court to issue writ of CORAM NOBIS to
4 correct manifest injustice. In support, the defendant
5 shows the court the following:

6 1.) To achieve justice, a motion in the nature
7 of CORAM NOBIS is available to correct errors of the
8 most fundamental character under circumstances
9 where no other remedy is available, meaning its
10 available to correct violations of the constitution
11 and laws of the United States.

12 2.) Fact remains that courts which make a
13 mistake in rendering a judgment, which works to the
14 extreme detriment of the defendant, can not allow
15 it to stand uncorrected.

16 3.) Guilt plea was the product of ignorance,
17 fear, inadvertence and coercion, and must be vacated
18 as void since it is violative of constitutional safe-
19 guards, and the passage of time does not close the
20 door to reconsideration. (See WARDEN V. PETERS 429 P.2d
21 549)

22 4.) Preliminary hearing showed that alleged
23 victim James McGrath while under oath facing the
24 penalty of perjury was unable to identify defendant
25 as the perpetrator of the 1956 hit crime in open
26 court rendering the evidence false, and rise to
27 irreparable misidentification (See DALEHAM V. DEDDS

1 954 F.2d 1501) (Simmons v. United States 390 U.S. 377)
2 Thus, Clark County District Court failed to provide on the
3 record proof that the court had subject-matter
4 jurisdiction, or an essential element to prosecute
5 defendant pursuant to the powers granted to the
6 State of Nevada under the United States Constitution.

7 5.) Coram Nobis is used to address errors of
8 fact outside the record that have affected the validity
9 of the decision itself and would have precluded the
10 judgment from being rendered. As here the errors of
11 fact involved subject-matter jurisdiction and personal
12 jurisdiction errors regarding the status of defendant
13 which would have prevented a judgment from being
14 entered against defendant. Furthermore, this error was
15 not reasonably avoidable to be raised by defendant
16 while in custody due to his constitutional guarantee
17 of effective assistance of counsel. Thus challenge
18 could not be raised by defendant pro se, so defendant
19 had no available legal remedy.

20 6.) Coram Nobis is the forum to correct only
21 the most egregious factual errors that would have
22 precluded entry of the judgment of conviction had
23 the error been known to the court. At the time, court's
24 determination was based on several factual inaccuracies
25 and representations that were not supported by or
26 contained within the record.

27 7.) Accordingly, defendant has demonstrated

1 United States Supreme Court in Morgan, explained
2 "that, to achieve justice a motion in the nature of coram
3 Nobis would be available to correct errors of the most
4 fundamental character under circumstances where no other
5 remedy was available..." "In a breathtaking expansion of
6 the common-law writ, the Morgan Court indicated that a
7 motion in the nature of coram Nobis was the same general
8 character as a motion under 28 U.S.C. § 2253 - meaning it
9 would be available to correct violations of the Constitution
10 and laws of the United States." Id. 505 n.4. See also United
11 States v. Kurnat, 407 F.3d 1005, 1011 (9th Cir 2005) (Morgan 346 U.S. 502)

12 4.) State's opposition was based on an unreasonable
13 determination of the facts in light of the evidence presented
14 in preliminary hearing and the Nevada Supreme Court
15 decision in Trujillo v. State, 310 P.3d 514. See also Lockyer v.
16 Andrade, 538 U.S. 63, 70-71 (2003)

17 5.) State identifies the correct governing legal principle
18 from the Nevada Supreme Court decision but unreasonably
19 applies the principle to the facts of the defendant's case. (Williams
20 v. Taylor, 529 U.S. 362, 405 (2000)). The state's opposition "unreason-
21 able application" of Supreme Court precedent is more than
22 merely incorrect or erroneous. Rather, it's so unreasonable no
23 fair-minded individual would agree with it. (Herrington v.
24 Richter, 562 U.S. 86 (2011))

25 6.) State district courts are presumed to know and
26 follow the law thus district court decisions should not
27 contradict clearly established Supreme Court precedent. State's
28 opposition is an incorrect statement of Nevada law, as

1 The Supreme Court of Nevada in its decision in,
2 Trujillo, 310 P.3d 594 (2013) states "At common law, many
3 of errors of fact involves jurisdictional errors".

4 Whereas, the Clark County District Court lack jurisdiction
5 of defendant was an error of fact outside the record
6 that effect the validity and regularity of the decision
7 by the court and would have precluded the judgment
8 from being rendered, as insufficient evidence was produced
9 at preliminary hearing to establish probable cause against
10 the defendant, as alleged victim testified under oath
11 that defendant was not the perpetrator, and 100% sure
12 of it, of the indecent charge rendering all the evidence
13 produced at preliminary hearing false and irreparable
14 misidentification (Dantherm v. Deeds, 954 F.2d 1501; Simmons v.
15 United States, 390 U.S. 377). This is the most egregious
16 factual error and would have precluded entry of the
17 judgment as jurisdiction error and constitutional violations.

18 2.) Thus, no reasonable basis for the Clark County
19 District Court to deny relief, when there is no open question
20 in the U.S and Nevada Supreme Court jurisprudence. Indeed,
21 State fails to identify even a single United States Supreme
22 Court case that contradicts defendant claim(s). State may
23 be attempting to wait to hearing date to meet their burden
24 and cite federal law. However, such impermissible maneuvering
25 would violate the longstanding view that parties may not
26 raise an argument that defendant has no opportunity to
27 refute, such argument would prejudice defendant and there-
28 fore must not be permitted. As such, State has not and

1 cannot satisfy their burden. It's states responsibility, not
2 the courts to search the decisions issued by the United
3 states and Nevada Supreme court to find the appropriate
4 case law that may benefit the state, thus bare assertion
5 does not defeat a meritorious claim.

6 B.) In closing, the preliminary hearing was devoid
7 of probable cause that defendant was the perpetrator.
8 therefore state fails to show district court had personal
9 and subject-matter jurisdiction, and no reasonable
10 basis exists to support jurisdiction in the Clark County
11 district court, thus states claims are so lacking in just-
12 ification that there was an error well understood and
13 comprehended in existing law beyond any possibility
14 for a fair minded disagreement. Because the courts lack
15 of personam jurisdiction and no corpus delicti, Mansora
16 thus no justiciable controversy or cause of action properly
17 before the Clark County district court. I motion that the
18 court vacate the conviction as there is neither an injured
19 party nor trespass, for a crime to exist, there must be an
20 injured party and Mr. Hayes had a valid hotel key issued
21 to him by a registered guest of the hotel, that Metro
22 police and hotel security failed to verify by doing a
23 simple investigation into the key and the registered guest
24 that the keys investigation would have lead to...

25 WHEREFORE Mr. Hayes "Moves" this honorable court
26 to vacate the sentence and conviction with prejudice..

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- ☐ By personally serving it upon him/her; or
☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

Supreme Court of Nevada
"Clark of the Court"
201 S. Carson St, Ste 201
Carson City, NV 89701

Clark County Dist. Atty
200 LEWIS AVE
LAS VEGAS, NV
89155-2212

Atty General of Nevada
100 N. Carson St
Carson City, NV 89701

DATED this 7th day of April, 2022.

James H. Hayes
Signature of Appellant

JAMES H. HAYES
Print Name of Appellant

P.O. Box 208
Address

Indian Springs, NV 89070
City/State/Zip

N/A
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