

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

BRIAN KERRY O'KEEFE,)

Case No. 85141

Petitioner,)

-VS-

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF CLARK;
THE HONORABLE JACQUELINE BLUTH,
DISTRICT JUDGE,

Respondents,)

and

THE STATE OF NEVADA

Real Party
In Interest.

FILED

SEP 23 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Angela
DEPUTY CLERK

PETITION FOR REHEARING (NRAP 40)

NOTE: (NO OTHER REMEDY IN LAW EXISTS)
(TO HEAR HABEAS CLAIMS)
(TIMELY RAISED)

COMES NOW, Brian O'Keefe, proper Petitioner, to humbly move for "Rehearing" where this Honorable Court overlooked "substantial" procedural rules resulting in the implication and lack of jurisdiction of this very court - in the first instance as a chain-of-causation leading to the district court's procedural bar of NR 34-724 petition.

This action is made pursuant NRAP 40 (c)(2)(B) where procedural NRAP 41 (b)(3)(D) has been clearly omitted that would directly affect the dispositive issue that a U.S. Certiorari was filed and denied on October 15, 2013 on direct criminal appeal in this case. Dated this September 20, 2022 pursuant NR 208.165 by: Brian K. O'Keefe

22-29938

Brian K. O'Keefe

I. NRAP 40(c)(2)(B) - SCOPE OF APPLICATION; WHEN REHEARING CONSIDERED

OVERLOOKED PROCEDURAL RULE 41(b)(3) implicating "jurisdiction" of the courts.

- see Nev. Const., art. 6 § 4; United States v. Cotton, 535 U.S. 625, 630 (2002) (" [T]he term jurisdiction means... the court's statutory or constitutional power to adjudicate the case."); see also Landreth v. Malif, 127 Nev. 175, 183, 251 P.3d 163, 168 (2011) ("subject matter jurisdiction is the court's authority to render a judgment in a particular case.");
- see also Gonzalez v. Thaler, 132 S.Ct. 641, at 648 (2012)

Here, this Nevada Supreme Court overlooked NRAP 41(b)(3) where the "dispositive fact" occurred where O'Keefe completed application for direct appeal certiorari to SCOTUS, U.S. Supreme Case No. 13-6031 on August 19, 2013 in regard to 3RD Trial (Case No. 08CZ50630 - Eighth Judicial Dist. Court) AFFIRMANCE by Nevada Supreme Court docket no. 61631 where 11.8. certiorari was not denied until October 15, 2013.¹ However, the Nevada Clerk of the Court issued the direct appeal remittitur on July 23, 2013 contrary to NRAP 41(b)(3).

Pursuant Nev. Const., art. I § 2, this Court is bound by SCOTUS authorities.

- see e.g. Daggar v. NRP, 87 Nev. 30, 31 (1971) Here, subject matter jurisdiction can never be waived or forfeited. (see e.g. Gonzalez v. Thaler, 132 S.Ct. 648); (see e.g. Barefoot v. Estelle, 463 U.S. 880, at 892 (1983) (imposed stay)). Also, in Jimenez v. Quarterman, 558 U.S. 113, 129 S.Ct. 681 (2009) the Court adopted "stay" reading and holds that a judgment becomes final at the conclusion of direct review.

1 - see O'Keefe v. Nevada, 134 S.Ct. 444 (U.S. Certiorari denied 10/15/2013)

Case No. 13-6031

As a "chain-of-causation", the Clerk of Nevada Supreme Court, who issued prematurely the direct appeal remittitur on July 23, 2013, caused a "jurisdictional defect" where the United States Supreme Court truly obtained jurisdiction of the Nevada Supreme Court's AFFIRMANCE, case no. 61631.

This U.S.-Certiorari application became a "dispositive fact" that conferred rights to include the issue concerning the premature starting of the post collateral clock and limitations one year period defined by both NRS 34-726 and 28 U.S.C. § 2244.

Where the lower district court reviewed the direct appeal remittitur date of 7/23/2014, it concluded that O'Keefe's NRS 34-724 petition filed 9/15/2014 was not within the one-year limitations period of NRS 34-726(1).

This prejudiced O'Keefe where undisputedly a myriad of Constitutional violations exist and were timely raised challenging O'Keefe's unconstitutional conviction. IAC claims are required in Nevada, with jurisdictional claims, to be raised in NRS 34-724 petitions.

However, a deprivation of procedural law contrary to the Due Process Clauses of the U.S. and Nevada Constitutions (14th Amend.) continue this absolute fundamental, manifest injustice where O'Keefe is actually innocent! Moreover, the Great Writ had issued, 9th Cir. Case No. 12715271.

II. Conclusion - Grant Petition for Rehearing!

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CLARK; AND THE HONORABLE

JACQUELINE M. BLUTH, DISTRICT

JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

No. 85141

FILED

SEP 15 2022

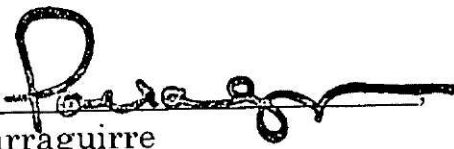
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

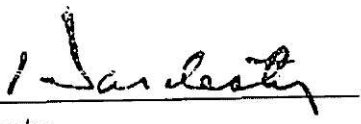
*ORDER DENYING PETITION
FOR A WRIT OF MANDAMUS*

This original pro se petition for a writ of mandamus seeks the reversal of a district court "Order Denying Defendant's Motion for Relief from Judgment or Order Pursuant to Rule 60 of the Nevada Rules of Civil Procedure Based on New and Equitable Rules of Law Filed 10/2/2015."

This court has original jurisdiction to issue writs of mandamus and the issuance of such extraordinary relief is within this court's sole discretion. *See Nev. Const. art. 6, § 4; D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007). Petitioner bears the burden to show that extraordinary relief is warranted. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004). Having considered the petition and supporting documentation, we conclude that petitioner has failed to demonstrate our intervention by extraordinary writ is warranted.

Therefore, we decline to exercise our original jurisdiction in this matter. See NRAP 21(b). Accordingly, we
ORDER the petition DENIED.

 C.J.
Parraguirre

 J.
Hardesty

 J.
Stiglich

cc: Hon. Jacqueline M. Bluth, District Judge
Brian Kerry O'Keefe
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

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 REHEARING (NRA 40)

☐ Other:

to the below address(es) on this 21st day of September, 2022, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

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Attorney For

☒ and

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