

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

No. 85687

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Jan 26 2023 04:36 PM
Elizabeth A. Brown
Clerk of Supreme Court

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

_____ /

RESPONDENT'S ANSWER TO PETITION FOR REHEARING

I. STATEMENT OF THE CASE

In July of 1996, Appellant Steven Floyd Voss, hereafter “Voss,” was charged with the following felony offenses: one count of burglary (Count I); two counts of uttering a forged instrument (Counts II and III); two counts of forgery (Counts IV and V); and attempted theft (Count VI). A jury convicted Voss of the six felony offenses charged and he was originally sentenced on November 27, 1996.

On August 9, 2001, the district court granted Voss’s post-conviction petition in part and ordered a new sentencing hearing. Other litigation occurred in the case, but Voss was not resentenced according to the order. Voss ultimately filed a pro se petition for extraordinary relief seeking a new

sentencing hearing, which the Nevada Court of Appeals granted on August 15, 2018. *See* Order Granting Petition, Dkt. No. 74227-COA, August 15, 2018. The Court of Appeals ordered its clerk to issue a writ of mandamus instructing the district court to resentence Voss.

Thereafter, the district court set the matter for resentencing on several occasions; however, as this Court observed, “Voss filed no less than sixteen motions and four appeals with the Nevada Supreme Court in an effort to prevent this Court from proceeding with resentencing.” In its July 7, 2020 Order, it observed:

Mr. Voss’s long endured strategy has been to file motion after motion and appeal after appeal in an effort to prevent his resentencing. Mr. Voss has successfully found a loophole in which he is attempting to park his case and hold it in a perpetual procedural limbo. Mr. Voss’s strategy is to make procedurally invalid motions, wait for the Court to rule on them, appeal the decision, have the appellate courts deny the appeals as premature and issue a remittitur, and then Mr. Voss starts the process over again.

The July 7, 2020 order “resolve[d] all pending motions filed by Mr. Voss....” *Id.* at 14-15. This district court conducted a resentencing hearing the same day it issued its order and entered a new judgment of conviction on July 8, 2020. On July 10, 2020, Voss filed a timely notice of appeal, and this Court entered an order staying the proceedings on September 1, 2020. On November 23, 2020, the Court of Appeals issued an Order of Affirmance. *See*

Order of Affirmance, Dkt. No. 81471-COA, November 23, 2020. Voss filed another direct appeal, and counsel was appointed to represent him. The Court of Appeals again affirmed the conviction. *See* Order of Affirmance, Dkt. No. 81472-COA, February 17, 2022. On April 5, 2022, Voss filed a Motion for Correction of Illegal Sentences. On April 7, 2022, the district court filed an Amended Judgment of Conviction, and on May 2, 2022, denied the motion on the basis that it was moot. On May 17, Voss filed a Motion to Recall, Correct, and to Reissue the Court's April 7, 2022 Amended Judgment of Conviction. Exhibit 1. The motion made clear that Voss was aware of the district court's Amended Judgment. *Id.* The State opposed as part of an omnibus opposition filed August 15, 2022. The District Court denied the Motion to Recall, Correct, and to Reissue the Court's April 7, 2022 Amended Judgment of Conviction on October 31, 2022. Voss did not file his notice of appeal until November 10, 2022.

II. ARGUMENT

Rehearing should not be granted in this case. Rehearing is only appropriate where the Court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or where the Court has overlooked, misapplied, or failed to consider a controlling statute, procedural rule, or regulation. NRAP 40(c). Voss contends that

the district court did not serve him with the Amended Judgment of Conviction until June 3, 2022. Assuming, *arguendo*, that this representation is accurate, Voss did not file a notice of appeal until November 10, 2022, over four months after he claims to have received the Amended Judgment.

As such, even if the time period to appeal the Amended Judgment began on June 3, 2022, Voss's notice of appeal was extremely untimely, and this Court does not have jurisdiction to consider it on the merits. *See* NRAP 4(b); *Edwards v. State*, 112 Nev. 704, at 709, 918 P.2d at 325 (concluding that the Court lacked jurisdiction over the appeal because the notice of appeal was untimely filed). The fact that Voss continued to file procedurally invalid motions in district court for months after he knew the judgment was amended does not operate to toll his time to appeal it. The current Petition for Rehearing is the latest example of Voss's ongoing strategy to, as the district court aptly observed, hold his case in "perpetual procedural limbo."

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III. CONCLUSION

Based on the foregoing, this Court should deny Voss's request for rehearing.

DATED: January 26, 2023.

CHRISTOPHER J. HICKS
DISTRICT ATTORNEY

By: JENNIFER P. NOBLE
Chief Appellate Deputy

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 2013 in Georgia 14.

2. I further certify that this answer complies with the word number limitations of NRAP 40(b)(3) because, excluding the parts of the answer exempted by NRAP 32(a)(7)(c), it does not exceed 10 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

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the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: January 26, 2023.

CHRISTOPHER J. HICKS
Washoe County District Attorney

BY: Jennifer P. Noble
Chief Appellate Deputy
Nevada State Bar No. 9446
One South Sierra Street
Reno, Nevada 89501
(775) 328-3200

CERTIFICATE OF MAILING

Pursuant to NRAP Rule 25, I hereby certify that I am an employee of the Washoe County District Attorney's Office and that on January 26, 2023, I deposited for mailing at Reno, Washoe County, Nevada, postage prepaid, a true copy of the foregoing document, addressed to:

Steven Voss #52094
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702

/s/ Tatyana Ducummon
TATYANA DUCUMMON

EXHIBIT 1

EXHIBIT 1

1 STEVEN FLOYD VOSS #52094

2 Northern Nevada Correctional Center

3 Post Office Box # 7000

4 Carson City, Nevada 89702-7000

2022 MAY 17 PM 12:16

ALICIA L LERUD
CLERK OF THE COURT
BY Stefanovich
DEPUTY

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 VS.

12 STEVEN FLOYD VOSS,

13 Defendant.

Case No. CR96-1581

Dept. No. 1

16 MOTION TO RECALL, CORRECT, AND TO REISSUE, THE
17 COURT'S APRIL 7, 2022 AMENDED JUDGMENT OF CONVICTION

19 COMES NOW Defendant, STEVEN FLOYD VOSS,
20 and hereby submits the instant Motion.

21 The instant Motion is made and is
22 predicated upon the attached memorandum
23 of points and authorities, and all papers and
24 pleadings on file in the above entitled case.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Motion:

Through the instant Motion the Defendant seeks the Court's Recall of its April 7, 2022 Amended Judgment of Conviction referenced by the Court within its May 2, 2022 Order Denying Motion To Correct Illegal Sentence As Moot. Whereas, the Defendant has not received service of such Amended Judgment of Conviction from the Court and such Judgment contains prejudicial material defects rendering such Judgment contrary to the August 15, 2018 Order Granting Petition issued by the Nevada Court of Appeals in the context of Case No. 74227 -COA. Therefore, the Defendant further seeks the Court's correction of said April 7, 2022 Amended Judgment of Conviction to comport with the directives of the Nevada Court of Appeals August 15, 2018 Order Granting Petition and Writ of Mandamus, and to have the Court issue a Corrected Amended Judgment of Conviction removing the prejudicial material defects present within the April 7, 2022 Amended Judgment of Conviction, and further curing the Defendant's disability to appeal from such Amended Judgment of Conviction as a matter of right due to the

1 failure to timely serve the Defendant the
2 April 7, 2022 Amended Judgment of Conviction and
3 any other associated Order identifying the
4 basis for the Court's amendment of its prior
5 July 8, 2020 Judgment of Conviction.

6
7 II. Statement of Relevant Facts:

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9 The Defendant first identifies that he is
10 not aware of any legal basis to amend the
11 Court's prior July 8, 2020 Judgment of Conviction.
12 Notably, same was affirmed by the Nevada Court
13 of Appeals in the context of Case No. 81472, on
14 February 17, 2022.

15 However, it now appears that the Court had
16 On April 7, 2022 issued an Amended Judgment of
17 Conviction. However, such Judgment and any
18 associated orders were not served upon the
19 Defendant. Nonetheless, the Defendant has
20 been informed that such Amended Judgment of
21 Conviction fails to provide the Defendant
22 credits for time served from November 27, 1996
23 to April 7, 2022. Thereby, effectively restarting
24 the Defendant's previously completed sentences
25 on April 7, 2022, in violation of the Double
26 Jeopardy clause of the Fifth Amendment to
27 the United States Constitution, and in utter
28 disregard of the Order of the Nevada Court

1 of Appeals (Order Granting Petition) issued in case
2 No. 74227-COA. Wherein, the Court had "instruct[ed]"
3 the district court to resentence Voss and enter an
4 amended judgment of conviction in CR96-1581.² ...
5 ² Voss shall be credited with all time he has served
6 pursuant to the invalid judgment of conviction entered
7 in CR96-1581." (emphasis added).

8 9 III. Argument:

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11 The Defendant is entitled to receive his
12 requested relief.

13
14 (1) The Defendant is entitled to receive
15 time credits from November 27, 1996 to April 7, 2022
16 in addition to the 137 days credit granted
17 within the April 7, 2022 Amended Judgment of
18 Conviction; and

19 (2) The Defendant is entitled to be
20 served a Corrected Amended Judgment of
21 Conviction which provides the Defendant an
22 opportunity if he so desires to appeal from
23 such Judgment of this Court.

24 25 IV. Conclusion:

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27 This Court must now in the interests
28 of substantial justice: (a) recall its April 7,

1 2022 Amended Judgment of Conviction; (b)
2 correct the material defects therein; and (c)
3 reissue a Corrected Amended Judgment of
4 Conviction and serve same upon the Defendant
5 in a timely manner, admitting the Defendant
6 to his enjoyment of his right to appeal from
7 a judgment of this court, to which he has
8 been deprived of by the court's failure to
9 serve upon him the Court's April 7, 2022
10 Amended Judgment of Conviction.

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12 IV. Verification:

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14 Under penalty of perjury, I STEVEN
15 RLOYD VOSS, do hereby verify that I have read
16 the content of the foregoing Motion, and that
17 same is true and correct of my own
18 personal information, knowledge and belief.

19 The foregoing Motion does not contain
20 the personal information or social security
21 number of any person.

22 DATED this 12th day of May 2022.

23

24

By: 

25

STEVEN RLOYD VOSS

26


Defendant, in pro. per.

27

28

1 CERTIFICATE OF SERVICE VIA U.S. MAIL

2
3 I, STEVEN FLOYD VOSS, do hereby certify
4 that on this 12th day of May 2022, that
5 I mailed a true and correct copy of the
6 foregoing Motion, addressed to:
7 JENNIFER NOBLE, ESQ. (DIA)
8 % Washoe County District Attorney
9 Post Office Box # 11130
10 Reno, Nevada 89520-0027
11

12 By: 
13 STEVEN FLOYD VOSS
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