

NEVADA COURT OF APPEALS



201 S. CARSON STREET
CARSON CITY, NEVADA 89701-4702
(775) 684-1600

408 EAST CLARK AVENUE
LAS VEGAS, NEVADA 89101-4088
(702) 486-9300

February 24, 2023

Steven Floyd Voss
Inmate Id: 52094
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, NV 89702-7000

Re: Voss vs State, Supreme Court Case No. 85687

Dear Mr. Voss:

We are returning, unfiled, the "Motion for Leave to File a Reply to Respondent's Answer to Petition for Rehearing" and the accompanying Reply received in this office on February 24, 2023 in the above-entitled matter.

The Court ordered that the Rehearing was Denied on February 21st, 2023. The time for filing a Reply to the Answer to Petition for Rehearing has expired. Therefore, we are returning the documents, unfiled.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Cowden". The signature is fluid and cursive.

B. Cowden
Deputy Clerk

1 STEVEN FLOYD VOSS #52094
2 Northern Nevada Correctional Center
3 Post Office Box # 7000
4 Carson City, Nevada 89702-7000

RETURNED
UNFILED

FEB 24 2023

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

6 IN THE SUPREME COURT OF THE STATE OF NEVADA

8 STEVEN FLOYD VOSS,

No. 85687

9 Appellant,

10 vs.

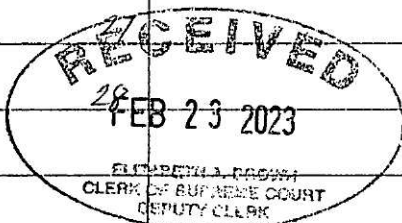
11 THE STATE OF NEVADA,

12 Respondent.

15 MOTION FOR LEAVE TO FILE A REPLY TO THE RESPONDENTS-
16 ANSWER TO PETITION FOR REHEARING

18 COMES NOW Petitioner, STEVEN FLOYD VOSS, by and
19 through his proper person, and hereby submits the instant
20 Motion.

21 The instant Motion for leave to file a Reply to the
22 Respondents Answer To Petition For Rehearing is made and
23 is predicated upon the attached memorandum of points and
24 authorities.



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

INDEX OF ATTACHMENTS

Attachment #1: (Proposed) REPLY TO RESPONDENT'S ANSWER
To Petitioner's Motion For Rehearing.

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Motion:

Through the instant Motion the Appellant seeks leave of the Court to file a Reply to the Respondent's Answer to his Petition For Rehearing

II. Statement of Relevant Facts:

On December 16, 2022 the Nevada Supreme Court had filed an Order Dismissing Appeal in the instant case.

On or about December 28, 2022 the Petitioner had filed a Petition For Rehearing.

On January 26, 2023 the Respondent filed an Answer To Petition For Rehearing.

On February 1, 2023 the Petitioner had mailed his Reply To Respondent's Answer To Petition For Rehearing to the Clerk of the Nevada Supreme Court. Same was returned unfiled to the Petitioner by the Clerk on February 9, 2023.

Now comes the instant Motion For Leave To File A Reply To The Respondent's Answer To Petition For Rehearing,

1 III. Argument:

2
3 A Reply to the Respondents Answer To Petition For
4 Rehearing will assist the Court in determining the
5 merits of the Petitioner's Petition For Rehearing

6
7 The Appellant submits that his attached
8 (proposed) Reply to the Respondents Answer to his
9 Petition For Rehearing will assist the Court in reaching
10 a fair Resolution to the Appellants Petition For Rehearing
11 by providing the Court with the utmost of facts
12 which demonstrate that this Court has proper appellate
13 jurisdiction, because the Petitioner's Motion To Recall, Correct,
14 And Reissue, The Court's April, 7, 2022 Amended Judgment
15 of Conviction filed in the District Court, which was filed
16 within a period of twenty (20) days subsequent to the
17 District Court's entry of its April 7, 2022 Amended
18 Judgment of Conviction and long before the Petitioner -
19 Appellant had received service of the Amended Judgment
20 of Conviction. Thus, the State's contention that said
21 Motion was untimely or procedurally invalid is without
22 merit. Therefore, the Petitioner's Motion To Recall, Correct,
23 And Reissue, The Court's April 7, 2022 Amended Judgment of
24 Conviction being timely Filed and procedurally correct
25 functioned to toll the 30 day time period proscribed
26 under NRAP Rule 4 to file a Notice of Appeal from the
27 District Court's Amended Judgment. Said time period
28 which had commenced accrual after the District Court's

1 filing of its October 31, 2022 Order resolving the
2 Petitioner's Motion To Recall, Correct, And Reissue The
3 Court's April 7, 2022 Amended Judgment of Conviction
4 such facts which clearly demonstrate that the
5 Petitioner-Appellant's filing of his Notice of Appeal
6 on November 10, 2022 was timely filed in the
7 District Court.

8
9 IV. Verification:

10
11 Under penalty of perjury, I STEVEN FLOH VOSS,
12 do hereby verify that I have read the content of the
13 foregoing Motion and that same is true and correct as
14 my own personal information, knowledge and belief.

15 DATED this 19th day of February 2023.

16 By: Steven Floh Voss

17 STEVEN FLOH VOSS,

18 Petitioner-Appellant in pro per.

19 ///

20 ///

21 ///

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE VIA U.S. MAIL

I, STEVEN FLOYD VOSS do hereby certify that on this 19th day of February 2023 that I mailed a true and correct copy of the foregoing document, addressed to:

JENNIFER NOBLE, ESQ

% Washoe County District Attorney

Post Office Box # 11130

Reno, Nevada 89520-0027

and

ARRON FORD, ESQ

Nevada Attorney General

100 N Carson Street

Carson City, Nevada 89701-

DATED this 19th day of February 2023.

By: 

STEVEN FLOYD VOSS

///

///

///

STEVEN FLOYD VOSS #52094

Northern Nevada Correctional Center

Post office Box #7000

Carson City, Nevada 89702-7000

RETURNED
UNFILED

FEB 09 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT

BY CHIEF DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent,

No. 85687

APPELLANT'S REPLY TO RESPONDENT'S ANSWER TO PETITION
FOR REHEARING

COMES NOW Appellant, STEVEN FLOYD VOSS, by and
through his proper person, and hereby submits the
instant Reply.

RECEIVED

FEB 08 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

MEMORANDUM OF POINTS AND AUTHORITIES

I. Nature of Action:

The instant appeal is from the entry of an Amended Judgment of Conviction by the Second Judicial District Court.

The instant Reply is to the Respondent's Answer to the Appellant's Petition For Rehearing of this Court's Order Dismissing Appeal filed December 16, 2022.

II. Statement of Facts:

On April 7, 2022 the District Court, sua sponte, entered an Amended Judgment of conviction relative to Case No. CR96-1581, which had amended and modified in material regard the prior Judgment of conviction entered on July 7, 2020. The District Court prior to the entry of said Amended Judgment of conviction failed to identify the cause and authority underlying the Court's entry of the Amended Judgment of conviction and failed to serve said Amended Judgment of conviction upon the Appellant. Thus, the Appellant did not receive any knowledge of the entry of said Amended Judgment of conviction until approximately May 16, 2022, from family.

Therefore, on May 17, 2022, the Appellant filed a Motion To Recall, Correct, And To Reissue, The Court's April 7, 2022 Amended Judgment of Conviction. The gravamen of the Appellant's Motion was that the Court's failure to serve him with the Amended Judgment of Conviction filed April 7, 2022 had effectively deprived him of his right to appeal the Judgment within the time period prescribed under NRAP Rule 4; and that he is entitled to receive time-credits for all time served pursuant to the invalid November 27, 1996 Judgment of Conviction pursuant to the Order Granting Petition and Writ of Mandamus issued by the Nevada Court of Appeals in Case No. 74227-COA, on August 15, 2018.

Thereafter, on July 26, 2022, the District Court filed an Order To File directing the Respondent to respond to the Appellant's Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction.

On July 25, 2022, the Respondent filed an Opposition to the Appellant's Motion To Recall, Correct, And Reissue The Court's April 7, 2022 Amended Judgment of Conviction.

On August 15, 2022, the Appellant filed his Reply to the Respondent's Opposition to his Motion To Recall, Correct, And Reissue The Court's April 7, 2022 Amended Judgment of Conviction.

On August 22, 2022 the Appellant filed a Request For Submission of his Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction.

On October 31, 2022 with the matter of the Appellant's Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction having been fully briefed, the District Court had entered an "Order Addressing... Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction," Notably, the Court therein had failed to identify any statutory basis which would authorize the Court to amend the prior July 7, 2020 Judgment of Conviction, which was affirmed by the Nevada Court of Appeals in Case No. 81471-COA. Specifically, the District Court failed to specify the existence of any clerical error within the prior July 7, 2020 Judgment of Conviction which would be amenable to correction pursuant to NRS 176.565, or assert jurisdiction or authority under said statute.

On November 10, 2022 and exactly ten days subsequent to the District Court's filing of its Order Addressing... Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction the Appellant filed a Notice of Appeal from the Court's April 7, 2022 Amended Judgment of Conviction.

On November 28, 2022 the instant appeal (Case No. 85687) was docketed in the Nevada Supreme Court.

On December 16, 2022 the Supreme Court filed an Order Dismissing Appeal in Case No. 85687, based upon a perceived jurisdictional defect of an untimely Notice of Appeal. Notably, the Supreme Court had reached its conclusion without first ordering the transmittal of the District Court record, and thereby giving due consideration to the Appellant's filing of his Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction and the District Court proceedings relative thereto.

Therefore, on or about December 28, 2022 the Appellant filed a Petition For Rehearing in Case No. 85687 (the instant case).

On December 29, 2022 the Nevada Supreme Court in Case No. 85687 had filed an Order Directing Answer To Petition For Rehearing.

On January 26, 2023 the Respondent filed an Answer To Petition For Rehearing. Wherein pertinent part, the Respondent argued that the Court lacks jurisdiction to consider the instant appeal because "Voss's notice of appeal was extremely untimely". The Respondent, however, failed to recognize to obvious fact that the Appellant's Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction

functioned to toll the time-period under NRAP Rule 4, in which to file a Notice of Appeal from the April 7, 2022 Amended Judgment of Conviction, during the pendency of said Motion in the District Court, from May 17, 2022 when said Motion was filed through October 31, 2022 when said Motion was resolved by order of the District Court.

III. Argument:

The Respondent's claims of jurisdictional defect precluding the Court's consideration of the instant appeal upon the merits is wholly without merit and repelled by the District Court record.

First, the Respondent does not dispute the Appellant's claim that he was not provided service of the April 7, 2022 Amended Judgment of Conviction in a timely manner. Instead, the Respondent argues that the time period under NRAP Rule 4, in which to file a Notice of Appeal commenced upon the Appellant's service of the Amended Judgment of Conviction and presumably on June 3, 2022. See, Respondent's Opposition To Petition For Rehearing at page 4. Notably, the Respondent has not proffered any evidence such as NDOC Legal Mail Logs to demonstrate the date of the Appellant's receipt of service of the April 7, 2022

Amended Judgment of Conviction. Nonetheless, the commencement of the 30 day time-period to file a Notice of Appeal clearly could not have commenced accrual on June 3, 2022 as the Respondent alludes, because the commencement of accrual was tolled by the Appellant's prior May 17, 2022 filing of his Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction. Such fact which is clear from the District Court record. Therefore, it is clear from the record that the 30 day time-period to file a Notice of Appeal from the April 7, 2022 Amended Judgment of Conviction had commenced accrual after October 31, 2022 and the District Court's filing of its "Order Addressing... Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction". Whereas, already conceded by the Respondent the commencement of accrual of the 30 day time-period under NRAP Rule 4, in which to file a Notice of Appeal begins to accrue upon the Appellant's receipt of service of the Amended Judgment of Conviction. Thus, the accrual of said time-period was tolled by the Appellant's Motion To Recall, Correct, And Reissue, The Court's April 7, 2022 Amended Judgment of Conviction from May 17, 2022 when said Motion was filed, and until such Motion was resolved by the October 31, 2022 Order

of the District Court which had finally resolved the matter in that Court. Thereby, demonstrating as a matter of judicially noticable fact that the accrual of the 30 day time-period to file a Notice of Appeal from the April 7, 2022 Amended Judgment of Conviction did not occur until after December 3, 2022, as a matter of fact and law. Thereby, further demonstrating that the Appellant's November 10, 2022 filing of his Notice of Appeal was in fact timely, despite the Respondent's arguments; and furthermore, clearly demonstrating that the Nevada Supreme Court had overlooked or misapprehended the material facts: of when the accrual of the 30 day time-period pursuant to NRAP Rule 4, in which to file a Notice of Appeal had occurred; material questions of law; and failed to consider controlling statutes, state law precedents, procedural rules, and regulations relative to the tolling of procedural time-periods under NRAP Rule 4.

IV. Conclusion:

The Respondent's Opposition to the instant Petition For Rehearing is utterly without merit and repelled by the District Court record, and applicable law, procedural rules, and regulations.

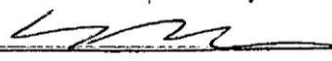
Furthermore, the District Court Record and clearly established state legal precedent, statutory law, procedural rules, etc., demonstrate that the Nevada Supreme Court had overlooked or misapprehended significant facts present within the District Court record, and failed to apply applicable controlling law, procedural rules, etc., in reaching its decision to dismiss the instant appeal and to conclude that the Court lacked subject-matter jurisdiction over the instant appeal, based upon an erroneous assumption that the Appellant's filing of his Notice of Appeal was untimely, where, the record of the instant appeal reveals that the reviewing panel had merely relied upon the date that the Amended Judgment of Conviction was entered on April 7, 2022, and the fact that the Appellant's Notice of Appeal was not filed within a period of 33 days following the entry of said Amended Judgment of Conviction to conclude that the Appellant's Notice of Appeal was untimely filed. That is, the reviewing panel had assumed that the Appellant's Notice of Appeal was untimely filed without first exploring the District Court record, where even a cursory review of the District Court docket would have revealed post-judgment proceedings which had effectively tolled the 30 day time-period under NRSAP Rule 4, in which to file a Notice of Appeal from the Amended Judgment-

of Conviction filed April 7, 2022.

Therefore, the rehearing of the instant appeal should be granted and the appeal should be considered upon the merits.

V. Verification:

Under penalty of perjury, I STEVEN FLOYD VOSS, do hereby verify that I have read the content of the foregoing document, and that same is true and correct of my own personal information, knowledge and belief, DATED this 1st day of February 2023.

By: 

STEVEN FLOYD VOSS,

Appellant in pro. per.

CERTIFICATE OF SERVICE VIA U.S. MAIL

I, STEVEN FLOYD VOSS, do hereby certify that on this 1st day of February 2023 I mailed a true and correct copy of the foregoing document, addressed to:

JENNIFER P. NOBLE, ESQ

% Washoe County District Attorney

Post Office Box # 11130

Reno, Nevada 89520-0027

By: 

STEVEN FLOYD VOSS