

No. 86112

IN THE NEVADA SUPREME COURT

James Howard Hayes,

Appellant,

v.

State of Nevada,

Respondent.

On Appeal from the Order Denying
Motion to Correct Illegal Sentence
Eighth Judicial District, Clark County (C-16-315718-1)
Honorable Monica Trujillo, District Court Judge

Appellant's Opening Brief

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NEV. RULE. APP. P. 26.1(a), and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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JURISDICTIONAL STATEMENT

This is an appeal from the order denying James Edward Hayes' Motion to Modify or Correct an Illegal Sentence filed on January 4, 2023. III.App.454. The court filed an order denying the motion on February 13, 2023. III.App.499. Hayes timely filed a notice of appeal on February 14, 2023. III.App.503.

ROUTING STATEMENT

Under Nev. R. App. P. 17(b)(1)(4), this case is presumptively assigned to the Court of Appeals because it involves an appeal from the denial of a motion to modify or correct an illegal sentence. Nevertheless, the Supreme Court should retain jurisdiction on this appeal because it involves an issue of statewide importance, namely the proper interpretation of NRS 207.010. The statute governs habitual criminal adjudications and provides, in relevant party, that "[t]he trial judge may, at his discretion, dismiss a [habitual criminal] count under this section which is included in any indictment or information." NRS 207.010(3).

Here, the district court overlooked the aforementioned statutory discretion and sentenced Hayes under the mistaken assumption that it was obligated to automatically adjudicate him a habitual criminal should

it find that the prosecutor had established two prior felony convictions. One of the questions that Hayes' brief poses is whether, in exercising its discretion as provided by NRS 207.010(3), the district court must assess whether it is just and proper to adjudicate a defendant a habitual criminal, even if it is under no obligation to articulate such a finding. The lower court concluded that "just and proper was not the state of the law." III.App.500. However, in *Clark v. State*, 109 Nev. 426 (1993), this Court qualified the nature of the discretion that lower courts must exercise in such a manner. This is an open question that has an impact in every case involving a habitual criminal charge throughout the State and should be decided by the Supreme Court.

STATEMENT OF THE ISSUES

Whether Hayes' sentence and adjudication as a habitual criminal was based on materially untrue assumptions and mistakes of fact pertaining to his criminal record.

Whether the district court failed to exercise discretion and abide with NRS 207.010(3) when it adjudicated Hayes as a habitual criminal.

STATEMENT OF THE CASE

On July 25, 2013, the State filed a criminal complaint in Case No. 13F10723X charging James Howard Hayes with Burglary (Count 1) and Attempt Grand Larceny (Count 2). Subsequently, on June 17, 2016, the State filed an Information charging Hayes with only burglary. On August 29, 2017, the State filed an Amended Notice of Intent to Seek Punishment as Habitual Criminal. II.App.322. The State cited to three convictions in support: (1) Hayes' 2007 Texas conviction for the crime of credit card abuse in Case No. 108378501010, (2) Hayes' 2011 Nevada conviction for the crime of attempt possession of credit or debit card without cardholder's consent in case no. C270308, and (3) Hayes' 2017 Nevada conviction for the crime of burglary in case no. C-16-315125. II.App.322.

On November 7, 2018, Hayes appeared before the district court and executed a Guilty Plea Agreement. II.App.324. Pursuant to *Alford*, Hayes entered a plea of guilty to attempt grand larceny. II.App.324. The State agreed it would not oppose a sentence of probation conditioned on thirty (30) days of incarceration with thirty (30) days credit for time served. II.App.324. Pursuant to the agreement, the State filed an Amended Information charging Hayes with one count of attempt grand larceny. The State then requested a pre-sentence investigation report and the district court set Hayes' sentencing for March 6, 2019. II.App.349.

On January 26, 2019, Hayes was arrested by the Las Vegas Metropolitan Police Department and charged with burglary in Case No. 19F01534X (hereinafter "the Mirage case"). II.App.333. The complaint filed by the State alleged Hayes had unlawfully entered a hotel room at the Mirage Hotel & Casino with the intent to commit larceny. II.App.333. The State moved to revoke bail on Hayes' attempt grand larceny case for which Hayes was then set to be sentenced on March 6, 2019. 01/31/2019 Motion. In the motion, the State further argued that Hayes had violated a condition precedent in his Guilty Plea Agreement and that the State had thus regained the right to argue at sentencing and to seek habitual

criminal treatment. *Id.* at 5-6.

On March 6, 2019, Hayes was sentenced on the charge of attempt grand larceny. II.App.349. Counsel Michael W. Sanft represented Hayes at the hearing. II.App.349. The district court inquired whether there was anything in the pre-sentence investigation report that Hayes believed was incorrect. II.App.351. Hayes answered in the affirmative, noting that the report included crimes that occurred after the offense date in his case. II.App.351. Hayes also explained that the Texas convictions noticed by the State (II.App.335, 345) did not comprise felonies. II.App.351. The State noted that, given Hayes' arrest in the Mirage case, it had regained the right to argue at sentencing and requested that the district court sentence Hayes to 8 to 20 years in prison, to run consecutive to Hayes' conviction in Case No. 315125 (*see* II.App.339). II.App.354. The district court adjudicated Hayes guilty pursuant to the small habitual criminal statute, NRS 207.010(a), and sentenced him to a minimum of sixty (60) and maximum of one hundred seventy-four (174) months in prison, to run consecutively to Hayes' sentence in case no. C315125. II.App.366-67.

Following his conviction, Hayes filed several pro se motions to correct his illegal sentence, petitions for postconviction relief, and

accompanying addenda with the district court as well as this Court. Hayes' pro se pleadings challenged his adjudication as a habitual criminal as not complying with NRS 207.010. On September 17, 2021, the Nevada Court of Appeals entered an order in case no. 82734 affirming the district court's denial of postconviction relief and rejecting Hayes' claim that the district court had improperly adjudicated him a habitual criminal. III.App.439. On February 9, 2022, the Nevada Court of Appeals entered another order in case no. 83274 affirming the district court's denial of a motion to modify and/or correct an illegal sentence filed on March 25, 2021. III.App.444. The order once again rejected Hayes' claim that his adjudication as a habitual criminal had been improper and contrary to NRS 207.010. III.App.444-45.

On January 4, 2023, Hayes, through undersigned counsel, filed a motion to modify and correct illegal sentence challenging Hayes' adjudication as a habitual criminal. Hayes' motion attached newly obtained public records from Harris County, Texas (I.App.001, 014) that sought to demonstrate that two of the felony convictions noticed by the State (II.App.335. 445) in support of its habitual criminal count grew out of the same act, transaction or occurrence and thus could only be treated

as a single conviction. III.App.454. The motion also challenged the eligibility, under NRS 207.010(a), of other convictions noticed by the State in support of its habitual criminal count. III.App.454.

On January 25, 2023, the district court held a hearing and considered counsel's argument. III.App.499. The district court denied Hayes' motion on the merits. III.App.500. Hayes timely appealed. III.App.503.

SUMMARY OF THE ARGUMENT

The district court adjudicated Hayes as a habitual criminal based on several materially untrue assumptions pertaining to his criminal record. First, the court construed 2007 convictions out of Texas as two separate convictions despite the charges growing out of the same act, transaction, or occurrence. The court also incorrectly construed the Texas charges as comprising felony offenses. In addition, the court improperly considered a 2017 Nevada felony conviction despite the same occurring after the 2013 offense in this case. Finally, in sentencing Hayes as a habitual criminal, the court impermissibly considered unadjudicated charges and uncharged bad acts. The materially untrue assumptions regarding Hayes' criminal record worked to his extreme detriment as

they prompted the district court to adjudge him a habitual criminal.

The sentencing court's adjudication of Hayes was also improper, and in violation of Hayes' due process rights, because it failed to abide with NRS 207.010(3). Specifically, the court sentenced Hayes under the misapprehension that it was required to adjudicate him a habitual criminal once the State established two prior felony convictions. However, NRS 207.010(3) demanded that the court exercise discretion. Here, at the very least, the court failed to weigh and consider the evidence, including the remoteness and non-violent nature of Hayes' prior crimes, and failed to ascertain that a habitual criminal adjudication was just and proper. Hayes' sentence was illegal; this Court should vacate it and remand the case for re-sentencing.

ARGUMENT

I. Hayes' sentence must be modified because it was based on materially untrue assumptions and mistakes of fact pertaining to his criminal record

NRS 176.555 states, "[t]he [district] court may correct an illegal sentence at any time." The Nevada Supreme Court has interpreted this statute to allow a defendant to bring one of two types of motions at any time: (1) a motion to modify a sentence that was based on a materially

untrue assumption or mistake of fact and (2) a motion to correct a facially illegal sentence. *Edwards v. State*, 112 Nev. 704, 708 (1996).

A motion to modify sentence “is limited in scope to sentences based on mistaken assumptions about a defendant’s criminal record which work to the defendant’s extreme detriment.” *Id.*; see also *State v. Eighth Judicial Dist. Court (Husney)*, 100 Nev. 90, 97 (1984) (“[T]he district court has authority to correct or modify a sentence which is the result of the sentencing judge’s misapprehension of a defendant’s criminal record.”). Here, the district court adjudicated Hayes as a habitual criminal based on several materially untrue assumptions pertaining to his criminal record. *Edwards*, 112 Nev. at 708. At the time of Hayes’ sentencing, NRS 207.010(a), the “small habitual criminal” statute, provided that a person convicted in Nevada of “[a]ny felony, who has previously been two times convicted, whether in this State or elsewhere, of any crime which under the laws of the situs of the crime or of this State would amount to a felony is a habitual criminal and shall be punished for a category B felony by imprisonment in the state prison for a minimum term of not less than 5 years and a maximum term of not more than 20 years.”

In this case, the Amended Notice of Intent to Seek Punishment as Habitual Criminal filed by the State cited to three convictions in support of the request that Hayes be sentenced as a habitual criminal:

1. A 2007 conviction out of Texas for Credit Card Abuse in Case No. 108378501010;
2. A 2011 conviction out of Nevada for Attempt Possession of Credit or Debit Card without Cardholder's Consent in Case No. C270308; and
3. A 2017 conviction out of Nevada for Burglary in Case No. C315125.

II.App.322.

At Hayes' sentencing, the State presented an additional and unnoticed judgment of conviction from Harris County, Texas (Judgment of Conviction for Case No. 1083786). II.App.345. Further, during the hearing, the State cited to the then unadjudicated 2019 Mirage burglary offense in Case No. 19F01534X and a 2011 incident during which Hayes allegedly stole from a convenience store tip jar, thus improperly relying on prior bad acts to argue Hayes was a habitual criminal. *See* II.App.354-56.

As described below, the district court mistakenly assumed the Texas convictions (Case Nos. 1083785, 1083786) comprised separate

convictions. In addition, and as noted above, the court improperly considered both unadjudicated conduct and a conviction that followed Hayes' primary offense. The aforementioned assumptions prompted this court to adjudicate Hayes as a habitual criminal when in fact he did not meet the criteria set forth in NRS 207.010(a). Alternatively, even if Hayes qualified under the statute, the Court's sentence was based upon mistaken assumptions about Hayes' criminal record which worked to his "extreme detriment." *Edwards*, 112 Nev. at 708.

A. Hayes' adjudication as a habitual criminal was based upon numerous mistaken assumptions

The district court mistakenly assumed Hayes' 2017 Nevada conviction in Case No. C315125-1 (II.App.339) could be relied upon to adjudicate Hayes a habitual criminal. However, the relevant offense in this case occurred in 2013. Thus, the 2017 conviction could not be relied upon to adjudicate Hayes a habitual criminal. *See Brown v. State*, 97 Nev. 101, 102 (1981) ("All prior convictions used to enhance a sentence must have preceded the primary offense.").

The district court also mistakenly assumed Hayes' 2007 Texas convictions (II.App.335, 345) comprised separate convictions for purposes

of NRS 207.010(a). Specifically, during sentencing, the State introduced two judgments from the 185th District Court of Harris County, Texas:

(1) A conviction in Case No. 1083785 entered on March 2, 2007, for Credit/Debit Card Abuse, said to have occurred on September 7, 2006; and

(2) A conviction in Case No. 1083786 entered on March 2, 2007, for Fraudulent Use/Possession of Identifying Information, said to have occurred on September 7, 2006.

II.App.335.

A cursory review of the record in those cases reveals that both convictions, Case No. 1083785 and Case No. 1083786, “[grew] out of the same act, transaction or occurrence, and [were] prosecuted in the same indictment or information” and thus, at most, could be “utilized only as a single ‘prior conviction’ for purposes of applying the habitual criminal statute.” *Rezin v. State*, 95 Nev. 461, 462 (1979). Public records, retrieved from the Harris County District Court website,¹ show that on September 7, 2006, Hayes used a credit card belonging to an individual named Dean

¹ Harris County District Clerk, available at <https://www.hcdistrictclerk.com/Common/Default.aspx> (last visited July 6, 2023).

Alac to purchase jewelry from a business operating out of Las Vegas and used a Texas driver's license belonging to an individual named Percy Vital to assume that person's identity and accept the aforementioned jewelry once it was delivered to a Hilton hotel in Houston. *See* I.App.054-57 (Order of Affirmance by the Court of Appeals for the First District of Texas). Use of Alac's credit card resulted in the charge of credit card abuse in Case No. 1083785 while use of Vital's driver's license, led to the fraudulent use of identifying information charged in Case No. 1083786. *See id.*

A review of the Harris County record further shows that the charges were prosecuted as part of the same indictment. Namely, both charges were indicted by the same grand jury. *See* I.App.001 (Indictment for Case No. 1083785); I.App.047 (Indictment for Case No. 1083786). Because they were indicted together and were never severed, both charges were tried jointly. *See* I.App.149. In short, the Texas convictions comprised a single prior conviction for purposes of applying the habitual criminal statute. *Rezin*, 95 Nev. at 462. The district court, however, mistakenly assumed the State had provided proof of two distinct convictions. *See* II.App.353-54.

In addition to comprising a single conviction, neither Texas conviction qualified as a felony for purposes of NRS 207.010(a) because each comprised a “state jail felony.” II.App.335, 345 (emphasis added). Texas’ Penal Code provides that “individual[s] adjudged guilty of a state jail felony shall be punished by confinement in a *state jail* for any term of not more than two years or 180 days.” Tex. Penal Code § 12.35(a) (emphasis added). However, Section 1.07(a)(23) of the Texas Penal Code defines a “felony” as “an offense so designated by law or punishable by death or confinement in a *penitentiary*.” Tex. Penal Code § 1.07(a)(23) (emphasis added). In addition, in 2007, Texas law required mandatory supervision for Hayes’ offenses. *In re Craven*, 2009 Tex. App. LEXIS 8836, *6 (Tex. App. 2009). Finally, Section 12.42(d), which governs the adjudication of habitual offenders in Texas, provides that ordinary state jail felonies—such as those Hayes was convicted of in 2007—are not eligible for purposes of adjudging an individual a habitual criminal. Tex. Penal Code § 12.42(d).

The sentencing court in Hayes’ case mistakenly assumed that the Texas convictions comprised felonies for purposes of adjudicating Hayes a habitual criminal. In addition, the court mistakenly assumed that the

convictions stemmed from different acts or transactions and comprised separate convictions for purposes of applying the habitual criminal statute. Finally, the court improperly considered both unadjudicated conduct and a conviction that followed Hayes' primary offense. The aforementioned assumptions prompted the court to improperly adjudicate Hayes as a habitual criminal.

The lower court rejected the above argument, noting that the adjudication was not based on mistaken assumptions of fact because "there were the appropriate number of prior convictions that were valid, even just with the Texas conviction and the 2011 conviction" III.App.500. However, whether the State proved two convictions or not, the sentencing court still adjudicated Hayes under the mistaken assumption that the State had proven *four* distinct and qualifying convictions under NRS 207.010(a). The court misapprehended Hayes' criminal record; its materially untrue assumptions or mistakes of fact worked to Hayes' extreme detriment. *Edwards*, 112 Nev. at 707.

II. Hayes’ sentence must be corrected because the Court failed to follow the statutory requirements set forth in NRS 207.010(3) when it adjudicated Hayes a habitual criminal

Motions to correct illegal sentences address the facial legality of a sentence. *Edwards*, 112 Nev. at 708. An “illegal sentence” is “one ‘*at variance with the controlling sentencing statute*,’ or ‘illegal’ in the sense that the court goes beyond its authority by acting without jurisdiction or imposing a sentence in excess of the statutory maximum provided” *Id.* (citing *Allen v. United States*, 495 A.2d 1145, 1149 (D.C. 1985)) (citations omitted) (emphasis added). In *Passanisi v. State*, this Court further explained that “the district court has inherent authority to correct... a sentence that, although within the statutory limits was entered in violation of the defendant’s due process rights.” 108 Nev. 318, 321 (1992) (*overruled on other grounds by Harris v. State*, 130 Nev. 435 (2014)).

Hayes’ sentence is illegal. His challenge falls squarely under a motion to correct an illegal sentence, because his sentence was at variance with NRS 207.010(3) and violated his due process rights on account of the district court’s failure to weigh the evidence, exercise

discretion, and ascertain whether it was just and proper to adjudicate Hayes a habitual criminal.

A. Hayes’ sentence was at variance with NRS 207.010(3)

NRS 207.010(3) provides that “[i]t is within the discretion of the prosecuting attorney whether to include a [habitual criminal] count” and, more significantly, that “[t]he trial judge may, at his or her discretion, dismiss a count under this section which is included in any indictment or information.” NRS 176.135(2)(a). This Court has explained that NRS 207.010 provides the trial court with “the broadest kind of judicial discretion” when determining whether to adjudicate a defendant a habitual criminal. *Clark v. State*, 109 Nev. 426, 428 (1993). In *Clark*, this Court recognized that a habitual criminal adjudication not only required that the requisite felony convictions be authenticated and established, but that the district court determine “whether it [is] just and proper for [a defendant] to be punished and segregated as a habitual criminal.” *Id.* The Court noted that it “was incumbent upon the trial court to weigh properly whether the habitual criminality count should have been dismissed pursuant to the discretion conferred by NRS 207.010[].” *Id.* at 429.

In *Hughes v. State*, 116 Nev. 327, 333 (2000), this Court, reiterated the district court must “exercise its discretion and weigh the appropriate factors for and against the habitual criminal statute before adjudicating a person as a habitual criminal.” The Court, however, did clarify that “nothing in *Clark* stands for the proposition that in meeting this obligation the sentencing court must utter specific phrases or make ‘particularized findings’ that it is ‘just and proper’ to adjudicate a defendant as a habitual criminal.” *Id.*

In this case, the transcript of Hayes’ sentencing demonstrates the lower court failed to exercise the above-referenced discretion and automatically adjudicated Hayes a habitual criminal after noting the State had “satisfied any obligations statutorily under [NRS] 207.010 to support their claim for habitual treatment.” II.App.366. Rather than weight the evidence and assess that it was just and proper for Hayes to be adjudicated a habitual criminal, the court merely ensured that Hayes had committed the requisite number of crimes. *Clark*, 109 Nev. at 427. The court’s reference to the State satisfying the statutory criteria demonstrates it was under the impression that two felony convictions “automatically equated to habitual criminal status.” *Id.*

In this case, the court’s failure to address the nature of the prior convictions—including their remoteness and the non-violent character of the crimes—further evinces it did not weigh whether the habitual criminality count should be dismissed. *See Sessions v. State*, 106 Nev. 186 (1990) (finding it was an abuse of discretion for the court to enter a habitual adjudication when the convictions were nonviolent and remote in time). The failure to scrutinize the judgment of convictions from Harris County, Texas—which on their face showed the offenses grew out of the same occurrence, had been prosecuted together, and thus did not merit separate consideration—likewise demonstrates the Court overlooked its discretionary power under NRS 207.010(3).

The district court rejected the above argument, noting that “it [did] not believe that by Judge Kephart stating the State had satisfied its obligations under 207.071 was [] inappropriate as that needed to be met before he could use his discretion to proceed and further, just and proper was not the state of the law.” III.App.500. The district court’s ruling was wrong. While Judge Kephart’s statements were not “inappropriate,” they demonstrate he did not weigh the evidence and exercise discretion. III.App.500. The words uttered by Judge Kephart, and the sequence of

those words, demonstrate that the court was under the impression that Hayes' adjudication was automatic upon the State proving the prior convictions.

Finally, the district court erred in concluding that the sentencing court was not required to determine that it was just and proper to adjudicate Hayes a habitual criminal. *Hughes* did not revoke the requirement that the district court consider “whether it [is] *just and proper* for [a defendant] to be punished and segregated as a habitual criminal.” *Clark*, 109 Nev. at 428 (emphasis added). Rather, *Hughes* merely explained that “talismanic phrases” need not be uttered. 116 Nev. at 333. The decision in *Hughes* reflects specific statements showing that the district court considered mitigation evidence and ascertained that it was just and proper to adjudicate the defendant a habitual criminal. *See id.* (noting the court had “read and considered . . . the correspondence delivered from Mr. Hughes’s counsel.”). In fact, in *Hughes*, this Court noted that the record reflected “the court understood that it had discretion in deciding whether to adjudicate Hughes as a habitual criminal and that the court exercised that discretion in adjudicating Hughes a habitual criminal.” *Id.*

Here, in contrast, the district court did not make any references to the evidence that would indicate it actually weighed the factors for or against the criminal enhancement, much less decide that it was “just and proper” to adjudge Hayes a habitual criminal. *See Walker v. Deeds*, 50 F.3d 670 (9th Cir. 1995).

B. The district court’s failure to abide with NRS 207.010(3) violated Hayes’ due process rights

The court’s automatic adjudication and its failure to make an individualized finding that it was just and proper to adjudge Hayes a habitual criminal deprived Hayes of his liberty without due process of law. *See Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980). The sentencing court’s error rendered Hayes’ sentence illegal.

Federal law requires a state to use “fair procedures” to vindicate any liberty interest. *See Swarthout v. Cooke*, 562 U.S. 216, 220 (2011) (“When, however, a State creates a liberty interest, the Due Process Clause requires fair procedures for its vindication.”). Here, “Nevada law creates a liberty interest in sentencing procedures protected by the Due Process Clause of the Fourteenth Amendment.” *Walker*, 50 F.3d at 672. The court’s failure to abide with NRS 207.010 and, specifically, to weigh

the evidence, exercise discretion, and ascertain whether it was just and proper to adjudicate Hayes a habitual criminal, violated Hayes' due process rights. The language of NRS 207.010(3) is mandatory. Thus, when the court failed to follow that statute, it denied Hayes his right to due process.

CONCLUSION

For the reasons discussed herein, this Court should order that the sentence be vacated and that Hayes' case be remanded for re-sentencing.

Dated July 7, 2023

Respectfully submitted,

Rene L. Valladares
Federal Public Defender

/s/ Martin L. Novillo

Martin L. Novillo
Assistant Federal Public Defender

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 in Century, 14 point font: or

☐ This brief has been prepared in a monospaced typeface using Word Perfect with Times New Roman, 14 point font.

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 and contains 4,038 words; or

☐ Does not exceed 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 July 7, 2023

Respectfully submitted,

Rene L. Valladares
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/s/ *Martin L. Novillo*

MARTIN L. NOVILLO

Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on July 7, 2023, I electronically filed the foregoing with the Clerk of the Nevada Supreme Court by using the appellate electronic filing system.

Participants in the case who are registered users in the electronic filing system will be served by the system and include: Alexander Chen, Alexander.Chen@clarkcountynvda.com, Motions@clarkcountynvda.com.

I further certify that some of the participants in the case are not registered electronic filing system users. I have mailed the foregoing document by First-Class Mail, postage pre-paid, or have dispatched it to a third-party commercial carrier for delivery within three calendar days, to the following people:

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/s/ Kaitlyn O'Hearn
An Employee of the
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