

**No. 86406**

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IN THE NEVADA SUPREME COURT

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Elizabeth A. Brown  
Clerk of Supreme Court

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**Troy White,**

Appellant,

**v.**

**State of Nevada, et al.,**

Respondents.

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On Appeal from the Order Denying Petition  
for Writ of Habeas Corpus (Post-Conviction)  
Eighth Judicial District, Clark County (A-22-859004-W)  
Honorable Bitia Yeager, District Court Judge

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**Response to opposition to motion to consolidate**

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On April 27, 2023, Troy White filed a motion to consolidate his appeal with that of Petitioner Coca in *Coca v. Williams*, case no: 85519.<sup>1</sup> (Petitioner Derrell Christy also made this same request in *Christy v. Hutchings*, case no: 86366.) White made this request because both his and Coca’s appeals will involve a threshold legal issue—whether post-conviction counsel’s ineffectiveness in prior habeas proceedings can provide good cause and prejudice to overcome procedural bars to his petition. As such, both appeals request, among other issues, this Court overrule its prior decision in *Brown v. McDaniel*, 130 Nev. 565 (2014).

Respondents oppose this request, arguing consolidation would not be practicable.<sup>2</sup> First, Respondents express concern that White’s case does not only request the overruling of *Brown v. McDaniel*, but raises multiple other issues unrelated to Coca’s appeal, making consolidation impracticable.<sup>3</sup> Second, Respondents argue consolidation of Christy’s appeal with Coca’s, and Christy’s for that matter, will disadvantage

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<sup>1</sup> 4/27/2023, Motion to consolidate.

<sup>2</sup> 5/1/2023, Opposition to motion to consolidate appeals.

<sup>3</sup> *Id.* at 2.

Respondents as NRAP 32 (a)(7) imposes strict limitations on briefs.<sup>4</sup>

Respondents express concern that having to address the multiple issues raised in White, Coca, and Christy's appeals in one brief will disadvantage Respondents by preventing the State from presenting meaningful and fact intensive analysis in the face of page limits pursuant to NRAP 32 (a)(7).<sup>5</sup> Likewise, Respondents are opposed to consolidation on the grounds the Elko and Clark County DA's Offices may have to share time at oral argument.<sup>6</sup>

White acknowledges his appeal will raise issues outside the question of whether *Brown v. McDaniel* should be overruled. Because of the differing issues raised in White, Coca, and Christy's appeals, there will not be a common disposition, and each case will have to be decided separately. But it still remains that each of the three appeals is requesting this Court decide a novel legal issue—whether *Brown v. McDaniel* should be overturned to allow for post-conviction counsel ineffectiveness to serve as cause and prejudice for overcoming

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<sup>4</sup> Id. at 3.

<sup>5</sup> Id.

<sup>6</sup> Id.

procedural bars to a successive petition.

As such, White suggests the appeals should be decided together, and Respondents can request permission from this Court to exceed the page limits of its briefing under NRAP (a)(7)(D). In the alternative, White requests—as do Respondents—the Court decides the motion for consolidation once briefing is completed in all three cases.

Dated May 3, 2023.

Respectfully submitted,

Rene L. Valladares  
Federal Public Defender

*/s/ Laura Barrera*

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Laura Barrera  
Assistant Federal Public Defender

## CERTIFICATE OF SERVICE

I hereby certify that on May 3, 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 appellate electronic filing system will be served by the system and include:  
Alexander G. Chen, Aaron D. Ford, and Jonathan VanBoskerck.

I further certify that some of the participants in the case are not registered appellate 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 person:

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/s/ Kaitlyn O'Hearn

An Employee of the  
Federal Public Defender