

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jul 27 2023 02:59 PM
Elizabeth A. Brown
Clerk of Supreme Court

BRIAN KERRY O'KEEFE,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: 04C202793

Docket No: 86804

RECORD ON APPEAL VOLUME 7

ATTORNEY FOR APPELLANT
BRIAN O'KEEFE # 90244,
PROPER PERSON
1200 PRISON RD.
LOVELOCK, NV 89419

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NV 89155-2212

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**THIS SEALED
DOCUMENT,
NUMBERED PAGE(S)
1423 - 1487
WILL FOLLOW VIA
U.S. MAIL**

**THESE SEALED
MINUTES,
NUMBERED PAGE(S)
1488 - 1522
WILL FOLLOW VIA
U.S. MAIL**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 13, 2014

04C202793

The State of Nevada vs Brian K O'Keefe

January 13, 2014

9:30 AM

All Pending Motions

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- DEFT'S PRO PER (EX PARTE) MOTION TO APPOINT COUNSEL...DEFT'S PRO PER PETITION FOR A WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF CORAM NOBIS...DEFT'S PRO PER MOTION TO WAIVE FILING FEES FOR PETITION FOR WRIT OF MANDAMUS...DEFT'S PRO PER MOTION TO SUPPLEMENT PETITION FOR A WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF CORUM NOBIS WITH A CERTIFIED COPY OF J.O.C. TO C202793...DEFT'S PRO PER SUPPLEMENT OF EVIDENCE OF SUICIDES AND SELF MUTILATIONS AND MENTAL HEALTH ALONG WITH NINTH COA ON NAMELY, A DOUBLE JEOPARDY VIOLATION, CASE NO - 12- 15271

COURT ORDERED, matter CONTINUED as the JAVS system is malfunctioning.

NDC

CONTINUED TO: 1/29/14 9:30 AM

CLERK'S NOTE: A copy of this Minute Order was placed in the District Attorney folder and mailed to Deft. at:

Brian O'Keefe #90244

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

04C202793

HDSP

P.O. Box 650

Indian Springs, NV 89018. anm/1/13/14

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

January 29, 2014

04C202793

The State of Nevada vs Brian K O'Keefe

January 29, 2014

9:30 AM

All Pending Motions

HEARD BY: Miley, Stefany

COURTROOM: RJC Courtroom 12C

COURT CLERK: Anntoinette Naumec-Miller

RECORDER: Maria Garibay

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Gwynneth Smith, Deputy District Attorney, present for the State of Nevada.

DEFT'S PRO PER (EX PARTE) MOTION TO APPOINT COUNSEL...DEFT'S PRO PER PETITION FOR A WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF CORAM NOBIS...DEFT'S PRO PER MOTION TO WAIVE FILING FEES FOR PETITION FOR WRIT OF MANDAMUS...DEFT'S PRO PER MOTION TO SUPPLEMENT PETITION FOR A WRIT OF MANDAMUS OR, IN THE ALTERNATIVE, WRIT OF CORUM NOBIS WITH A CERTIFIED COPY OF J.O.C. TO C202793...DEFT'S PRO PER SUPPLEMENT OF EVIDENCE OF SUICIDES AND SELF MUTILATIONS AND MENTAL HEALTH ALONG WITH NINTH COA ON NAMELY, A DOUBLE JEOPARDY VIOLATION, CASE NO - 12- 15271

Deft. not present. Court noted Deft. wasn't transported as it is not entertaining oral argument. COURT ADOPTED the Procedural History as set forth by the State FINDING it is an accurate recitation of the history of this case, stated its FINDINGS, and ORDERED, Motions DENIED. Court advised Deft. will need to file something with Judge Villani's court if he wants Judge Villani to take actions in his cases. State to prepare the order.

NDC

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

CLERK'S NOTE: A copy of this Minute Order was mailed to:

Brian O'Keefe #90244

HDSP

P.O. Box 650

Indian Springs, NV 89018. anm/1/31/14

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****February 03, 2014**

04C202793

The State of Nevada vs Brian K O'Keefe

February 03, 2014**9:30 AM****Motion for Default
Judgment****HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Anntoinette Naumec-Miller**RECORDER:** Maria Garibay**REPORTER:****PARTIES****PRESENT:**

JOURNAL ENTRIES

- Hilary Heap, Deputy District Attorney, present for the State of Nevada.

Deft. not present. Court noted Deft. wasn't transported as it is not entertaining oral argument. COURT ADOPTED the Procedural History as set forth by the State FINDING it is an accurate recitation of this case, stated its FINDINGS, and ORDERED, Motion DENIED. State to prepare the order.

NDC

CLERK'S NOTE: A copy of this Minute Order was mailed to:

Brian O'Keefe # 90244

HDSP

P.O. Box 650

Indian Springs, NV 89018. anm/2/5/14

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

October 13, 2014

04C202793

The State of Nevada vs Brian K O'Keefe

October 13, 2014

9:30 AM

Motion

**Defendant's Pro Se
Motion for
Appointment of
Counsel**

HEARD BY: Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Katherine Streuber**RECORDER:** Maria Garibay**REPORTER:****PARTIES****PRESENT:**

State of Nevada

Plaintiff

Thoman, Charles W.

Attorney

JOURNAL ENTRIES

- Court noted State's Opposition filed October 10, 2014, pointed out Deft. gave no reason for the need of counsel, stated Deft. had no constitutional right to counsel in post-conviction proceedings and further stated motion lacks merit. Therefore, COURT ORDERED, motion DENIED. State to prepare the Order.

NIC (COC-FED)

CLERK'S NOTE: The above minute order has been distributed to: Brian K. O'Keefe #90244 c/o Lovelock Correctional Center, 1200 Prison Road, Lovelock, NV 89419. 10/15/14 kls

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****October 22, 2014**

04C202793

The State of Nevada vs Brian K O'Keefe

October 22, 2014**9:30 AM****Petition****HEARD BY:** Miley, Stefany**COURTROOM:** RJC Courtroom 12C**COURT CLERK:** Jill Chambers**RECORDER:** Maria Garibay**REPORTER:****PARTIES****PRESENT:**Heap, Hilary
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft. not present Court ORDERED matter OFF CALENDAR as this Court has no jurisdiction due to Petitioner's previous Writ of Coram Nobis being on appeal.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 05, 2022

04C202793

The State of Nevada vs Brian K O'Keefe

July 05, 2022

7:00 AM

Minute Order

HEARD BY: Ballou, Erika

COURTROOM: Chambers

COURT CLERK:

Ro'Shell Hurtado

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- It having come to the attention of the Court that Mr. O Keefe filed the instant Motion to Vacate Judgment (NRS 176.555) on June 10, 2022, and the State of Nevada filed its opposition to said motion on June 30, 2022, and the same being scheduled for hearing on July 6, 2022. The Court, having considered all papers and pleadings, hereby DENIES the motion and VACATES the hearing scheduled for July 6, 2022.

It is unclear what type of pleading Mr. O Keefe intended. There was no statutorily recognized pleading known as Motion to Vacate Judgment when the judgment is the result of a jury trial. See NRS 176.515. Mr. O Keefe cites NRS 176.555 in the motion's title. This statute permits a court to correct an illegal sentence. NRS 176.555 provides that the court may correct an illegal sentence at any time. The grounds to correct an illegal sentence are narrow. See *Edwards v. State*, 112 Nev. 704, 708, 918 P.2d 321, 324 (1995). A motion to correct an illegal sentence is an appropriate vehicle for raising the claim that a sentence is facially illegal at any time. Such motion cannot be used for challenging the validity of a judgment of conviction or sentence based on alleged errors at trial. *Id.* Here, Mr. O Keefe does not allege that his sentence is at variance with the controlling statute, that the court was acting beyond its jurisdiction, or that his sentence is in excess of the statutory maximum. Therefore, the allegations at hand are out of the narrow scope allowed in this type of motion. Here, Mr. O Keefe's

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sentence is within the sentencing range set by the statute. The Motion fails on this front.

If Mr. O Keefe intended the instant pleading to be a post-conviction petition for writ of habeas corpus, the motion does not conform with requirements of NRS Chapter 34. Even if the motion did comply with the requirements under the NRS, it would be procedurally barred as untimely under NRS 34.726 and successive under NRS 34.810. Mr. O Keefe must demonstrate good cause and prejudice before the claims could be considered on their merits.

The pleading substantively appears to be most similar to a motion to establish factual innocence as Mr. O Keefe claims to be innocent of burglary. However, the pleading does not meet the required standards of NRS 34.900-990. First and foremost, Mr. O Keefe has previously filed such a petition before the Court and it was properly denied. NRS 34.920 defines factual innocence to mean that a person did not:

1. Engage in the conduct for which he or she was convicted;
2. Engage in conduct constituting a lesser included or inchoate offense of the crime for which he or she was convicted;
3. Commit any other crime arising out of or reasonably connected to the facts supporting the indictment or information upon which he or she was convicted; and
4. Commit the conduct charged by the State under any theory of criminal liability alleged in the indictment or information.

Here, Mr. O Keefe's claims fail again as the conviction for misdemeanor Battery could have been a predicate offense for Burglary. The applicable statute was in effect from 1995-2005.

Furthermore, pursuant to NRS 176.515, a motion for a new trial based on newly discovered evidence may be made only within two years after the verdict of guilt. Mr. O Keefe's case had a jury verdict on October 28, 2004. This Motion does not comply with the NRS 176.515 requirement and also fails for this reason.

Due to the aforementioned reasons, Mr. O Keefe's Motion to Vacate Judgment (NRS 176.555) is DENIED. The hearing scheduled for July 6, 2022, is hereby VACATED. The State is to prepare the order. It is so ordered.

CLERK'S NOTE: This Minute Order was electronically filed by Courtroom Clerk, Ro'Shell Hurtado, to all registered parties for Odyssey File & Serve: Mailed to: Brian O'Keefe #90244, P.O.Box 650, Indian Springs, NV, 89070.//rh07.05.22

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 19, 2023**

04C202793

The State of Nevada vs Brian K O'Keefe

April 19, 2023**9:30 AM****Petition****HEARD BY:** Holthus, Mary Kay**COURTROOM:** RJC Courtroom 03F**COURT CLERK:** Dara Yorke**RECORDER:** Connie Coll**REPORTER:****PARTIES****PRESENT:**Reeves, Taylor Renee
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft. not present. Court noted matter was on for Deft.'s Petition, in which the State was served, and requested 30 days. Ms. Reeves concurred. Colloquy regarding Response. Following colloquy, COURT ORDERED, the following briefing schedule SET: State to file Response by May 17, 2023 and argument SET.

NDC

5/31/23 9:30 AM ARGUMENT: PETITION FOR WRIT OF CORAM NOBIS

CLERK'S NOTE: A copy of the minute order mailed to: Brian O'Keefe #90244- Lovelock Correctional Center- 1200 Prison Rd. -Lovelock, NV 89419. //4-20-23/ dy

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 31, 2023**

04C202793

The State of Nevada vs Brian K O'Keefe

May 31, 2023**9:30 AM****Petition****HEARD BY:** Holthus, Mary Kay**COURTROOM:** RJC Courtroom 03F**COURT CLERK:** Dara Yorke**RECORDER:** Ofelia Abrego**REPORTER:****PARTIES****PRESENT:**Jefferson, Tianna A
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Deft. not present. COURT ORDERED, Petition for Writ of Coram Nobis was hereby DENIED without argument as set forth in the State's Opposition. State to prepare findings.

NDC

CLERK'S NOTE: A copy of the minue order mailed to: Brian O'Keefe #90244- Lovelock Correctional Center- 1200 Prison Rd. -Lovelock, NV 89419. //6-1-23/ dy

PRINT DATE: 07/27/2023

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Minutes Date: July 13, 2004

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated July 26, 2023, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises seven volumes with pages numbered 1 through 1533.

STATE OF NEVADA,

Plaintiff(s),

vs.

BRIAN KERRY O'KEEFE,

Defendant(s),

Case No: 04C202793

Dept. No: XVIII

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 27 day of July 2023.

Steven D. Grierson, Clerk of the Court



Amanda Hampton, Deputy Clerk