

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN KERRY O'KEEFE ,)

Case No. 86880

Petitioner ,)

86880

-vs-

CLERK OF THE SUPREME COURT ,)

STATE OF NEVADA: ELIZABETH A. ,)

BROWN AND MELISSA FULLER ,)

Respondents ,)

FILED

OCT 02 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

APPELLANT'S PETITION FOR REHEARING
WITH SUGGESTION FOR REHEARING EN BANC
RECONSIDERATION

(NRAP 40 ; NRAP 40A)

I-

OVERVIEW

The panel decision filed September 14, 2023 clearly overlooks the fact that an actual motion was not filed, thereby depriving civil rights¹ and misapprehended that ultimately a jurisdictional defect occurred with this court always retaining authority to correct its own errors concerning jurisdiction.

Rehearing is justified because the panel "overlooked or misapprehended" that NRAP 1, NRAP 27, NRAP 45 (2)(2), NRS 176.565, U.S Constitution FIRST and Fourteenth Amendments were completely deprived when the clerk returned unfiled June 6, 2023 a motion mailed and submitted as a legal procedural means, with a mandamus being the only vehicle available for redress. Motions under NRS 176.565 apply also to closed cases at anytime.

FN1 : SEP 29, 2023 include inalienable due process and equal protection -

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

II

ARGUMENT

A. Background

1.) Appellant O'Keefe mailed a motion pursuant NRAP 27 to the clerk for filing where NRS 176.565 permits correction of clerical mistakes... in other parts of the record at any time, as the court orders. This includes a closed case!

2.) NRAP 1(b) mandates that the Nevada Rules of Appellate Procedure ("NRAP") shall not be construed to extend or limit the jurisdiction of the Nevada Supreme Court as established by law.

3.) NRAP 45, Clerk's duties, pursuant provision (a)(2) mandates that the courts are always open for filing any paper....

4.) The U.S. First Constitutional Amendment requires access to the courts for a redress of grievances.

• See Bounds v. Smith, 430 U.S. 817, 821 (1977) (access to courts).

5.) The U.S. Fourteenth Constitutional Amendment is applicable to the States where statutes and regulations such as NRAP are protected liberty-interests to include NRS 176.565.

6.) This Court announced that criminal direct review concludes when SCOTUS denies a timely "SOUBHIT" Petition for a Writ of Certiorari. • see WHITE v. NEVADA, 427 P.3d 1044 (10/9/2018)

Jurisdiction of a first criminal direct review of a State's Order of Affirmance vests plenary jurisdiction.

B. GROUNDS FOR REHEARING - EN BANC RECONSIDERATION
NRAP 40(c) - NRAP 40A(c)

8.) Appellant O'Keefe's purpose solely of the mandamus petition filed as docket no. 86880 on July 5, 2023 was to enforce the right under the FIRST AMENDMENT, NRAP 27 (d)(1)(F) and NRAP 45(a)(2) to have my motion filed.
• see Petition For Writ of Mandamus at page 2 (STATEMENT OF FACTS)

9.) Panel overlooked that Appellant's Mandamus Petition involved a substantial "First" and "Fourteenth" Constitutional issue as access to the court's being deprived where the clerk is acting in a judicial capacity.
• see NRAP 40A(c) (Involves substantial Constitutional issue).
(id. ¶ 2 Petition For Writ of Mandamus FILED July 5 2023 86880)

10.) Appellant's requested relief in Mandamus petition no. 86880 filed July 5, 2023 was only for the court to order the clerk of court to file O'Keefe's motion submitted under the law on July 1, 2023.

11.) The underlying merits of Appellant's unfiled June 6, 2023 Motion To Correct Clerical Mistake should have then been addressed separately where a criminal direct first appeal sought is an appeal by right that supersedes any discretionary procedural motion. Factually, there can only be one true date for the conclusion of direct review in any criminal case enforceable by law.

C. RELIEF IS WARRANTED BY CERTIORARI JURISDICTION

12.) "Jurisdiction" was vested by the Rules of the Supreme Court of the United States - Rule 13 - which holds that a petition for a writ of certiorari to review the Nevada Supreme Court's decision of docket no. 61631 in the first direct criminal review in case 08CZ50630 is timely when it is sought within 90 days from the entry here of rehearing denied on June 13, 2013.

13.) SCOTUS did not release jurisdiction of Nevada Supreme Court docket no. 61631 (direct criminal review of case no. 08CZ50630) until October 15, 2013.

14.) Conclusion and disposition of a Petition for a Writ of Certiorari (SCOTUS Rule 16.3) is by an order which denies a petition for a writ of certiorari thereby constituting a case being final.
• see Gonzalez v. Thaler, 565 U.S. 134, 150 (2012) (case becomes final)

15.) In a criminal case, any petitioner who seeks the "appeal by right" for certiorari review by SCOTUS is therefore entitled for the records to reflect the true date that his case became final as a matter of law. Due process and equal protection cannot be deprived by a clerk of the court.

II. PRAYER FOR RELIEF

Grant Appellant's request for rehearing in some fashion.

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing
(check appropriate box)

☐ Opening Brief

☐ Reply Brief

☐ Motion: _____

☒ Petition: REHEARING - SUGGESTION - EX BANC

☐ Other: _____

to the below address(es) on this 21st day of September, 2023, by
placing same in the hands of prison staff for posting in the U.S. Mail, per
Nev.R.App.P. 25:

Nevada Attorney General

Aaron D. Ford

100 N. Carson St.

Carson City, Nevada 89701-4717

Attorney For _____

☒ and

ORIGINAL

Clerk of Court

Nevada Supreme Court

201 S. Carson St.

Ste. 201

Carson City, Nevada 89701

Don K. O'Keefe

Don K. O'Keefe # 90244

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Appellant

In Pro Se

Supreme Court of Nevada
Office of the Clerk
201 South Carson Street, Suite 201
Carson City, Nevada 89701-4702

In Re: Case Name: O'Keefe v. State
Supreme Court No. 01631
8th District Court No. 080250630

Dear Clerk, (See Below) - FILE MOTION TO RECALL REMITTANCE...

~~Please provide me with a copy of the Docket Sheet for the above stated case.~~

~~If there is a charge for such, please provide me with the information necessary so that I may request same from your office.~~

I thank you in advance for your attention to this matter.

Sincerely,

Brian R. O'Keefe
Brian R. O'Keefe

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

copy: retained

In detail, 10-15 minutes,
I spoke with a clerk who answered
the phone (775) 644-1610 on Wednesday at approximately
1:00 pm, who put me on hold and spoke
with her supervisor, after recognizing that
Socur sent notice of certiorari being filed
to send this motion. Please
and send me a copy -
Thank You!
Sincerely.
God Bless You & Yours!

