IN THE SUPREME COURT OF THE STATE OF NEVADA

Robert Ybarra, Jr.,

Appellant,

vs.

Terry Royal, Warden,

Respondent.

DOCKET NO.: 89824

SEVENTH JUDICIAL DISTRICT COURT CASE HC-2410004

RESPONDENT'S OPPOSITION TO APPELLANT'S MOTION TO STAY OF SEVENTH JUDICIAL DISTRICT COURT CRIMINAL CASE PROCEEDINGS PENDING RESOLUTION OF HABEAS CASE APPEAL

Respondent STATE OF NEVADA, by and through the WHITE PINE COUNTY DISTRICT ATTORNEY, hereby opposes Appellant ROBERT YBARRA, JR.'S motion for stay of proceedings pending in his criminal case in the Seventh Judicial District Court.

ROBERT YBARRA, JR. attempts to shoehorn his criminal case into his appeal of the Seventh Judicial District Court's denial of his sixth petition for post-conviction habeas relief. The two matters involve different case numbers - CR-0001511 and HC-2410004. The two matters involve different orders – a December 17, 2024 denial of ROBERT YBARRA, JR.'S sixth petition for habeas relief, and a judgment and sentence of death in his criminal case entered over 40 years ago. While there is an appeal pending in this court of the district court's denial of relief

in case HC-2140004, this court lacks jurisdiction over case CR-0001511 because no appeal from that criminal case is pending.

Even if this court finds jurisdiction over the criminal case, ROBERT YBARRA, JR. is unlikely to prevail on his habeas appeal under NRS Chapter 176, as the district court found his claims procedurally barred and denied relief without hearing or response from the State. No stay should issue.

Additionally, this court should be required to use the procedures provided in Chapter 176 to decide the issue of stays in death penalty cases rather than the factors to be argued through NRAP 8. Nevada Rules of Appellate Procedure 8 provides parties guidance on the factors considered in reviewing the propriety of stays generally, but there already exists a framework for stays in death penalty cases in Chapter 176. Chapter 176 should govern.

I. BACKGROUND

On June 24, 1981, ROBERT YBARRA, JR., was found guilty of First-Degree Murder for the killing of Nancy Griffith that he committed in September 1979 in White Pine County, Nevada. On July 23, 1981, judgment was entered against ROBERT YBARRA, JR., and he was sentenced to death. The Nevada Supreme Court upheld his conviction. That sentence has yet to be carried out.

On October 10, 2024, ROBERT YBARRA, JR. filed a sixth Petition for Writ of Habeas Corpus (Post Conviction), case HC-2410004. *See Appellant's* Ex. 1. On December 17, 2024, the district court properly denied ROBERT YBARRA, JR.'S Habeas Petition without ordering a response from the state and without hearing. The district court found the sixth petition untimely pursuant to NRS 34.726(1), that the petition was successive to the extent it raised claims previously litigated, and that the petition constituted an abuse of writ to the extent it raised new claims. In denying habeas relief, the district court found that procedural bars were mandatory because ROBERT YBARRA, JR. failed to show actual prejudice or good cause as

required by NRS 34.726(1) and NRS 34.810(4). Further the district court found no excuse from the procedural bars because there was no fundamental miscarriage of justice.

On December 19, 2024, ROBERT YBARRA, JR. filed a Notice of Appeal regarding the district court's denial of habeas relief. Separate from the habeas matter on December 17, 2024, the district court in case CR-0001511 issued a Warrant of Execution of Penalty of Death. On December 24, 2024, ROBERT YBARRA, JR. filed a Motion to Stay Warrant of Execution. The State filed an opposition to that motion on January 2, 2025, and a supplemental opposition to the motion on January 27, 2025. The warrant of execution has since expired and no new warrant has issued. No decision of the Motion to Stay Warrant of Execution has been handed down by the district court in the criminal case at the time of this filing.

On January 24, 2025 ROBERT YBARRA, JR. filed a Motion seeking stay of all proceedings in the criminal case pending this court's decision on the appeal of his sixth habeas petition. This opposition now follows.

II. ARGUMENT

While NRAP 8 allows for stay pending an appeal of judgment generally, the only appeal pending is that of his sixth petition for habeas relief; there is no appeal pending of ROBERT YBARRA, JR.'S judgment of conviction. That the two involve separate case numbers is telling – the proceedings are separate. A separate statutory scheme in NRS Chapter 176 provides an avenue for stay of execution of death penalty, not NRAP 8. This court lacks jurisdiction in the appeal of his habeas petition to stay a warrant for execution of death penalty issued in ROBERT YBARRA, JR.'S criminal case through NRAP 8. Judgment in his criminal case was upheld nearly forty-five years ago. No stay should issue.

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A. NEVADA REVISED STATUTES 176.415 FAILS TO PROVIDE ROBERT YBARRA, JR. RELIEF IN HIS CRIMINAL CASE AND NO STAY SHOULD ISSUE.

Nevada Revised Statutes 176.415 provides 6 avenues for stay of execution. Nevada Revised Statutes 176.415(6) is the only means that this court may use to stay execution of the death penalty in ROBERT YBARRA, JR.'S criminal case. No other portion of that statute applies to the facts of this case. The appeal currently pending is not a direct appeal from ROBERT YBARRA, JR.'S judgment of conviction and sentence, therefore NRS 176.415(3) is inapplicable. ROBERT YBARRA, JR. fails to make a case pursuant to NRS 176.415(6), therefore no stay should issue.

Nevada Revised Statutes 176.415(6) looks to NRS 176.0919 or NRS 176.486 to NRS 176.492 for grounds to stay an execution of a judgment of death. The genetic marker analysis provisions of NRS 176.0919 are inapplicable in the instant case. Nevada Revised Statutes 176.488 to NRS 176.492 provide no method for deciding a stay, therefore those statutes will not be addressed. ROBERT YBARRA, JR. is not entitled to relief under NRS 176.415(6) when considered through the provisions of NRS 176.486 or NRS 176.487. No stay should issue.

1. NEVADA REVISED STATUTES 176.486 FAILS TO PROVIDE VIABLE GROUNDS FOR STAY.

Nevada Revised Statutes 176.486 provides this court means to enter a stay of execution only " ... when a postconviction petition for habeas corpus challenging a judgment of conviction or sentence has been filed ...." Here, ROBERT YBARRA, JR.'S sixth petition for habeas corpus relief contained claims for relief due to claimed intellectual disability, claimed severe mental illness, claimed

incompetence, and then Claims 5 through 7, which are improperly brought in a habeas petition. *See generally* Appellant's Ex. 1 and Ex. 2. That sixth petition did not challenge the judgment of conviction or his sentence. ROBERT YBARRA, JR., is not entitled to relief under that statute.

2. SIMILARLY, NRS 176.487 FAILS TO PROVIDE GROUNDS FOR A STAY.

Next, this court may issue a stay pursuant to NRS 176.415(6) through NRS 176.487, however none of the subsections of that statute provide a means for relief for ROBERT YBARRA, JR.

This is not his first petition, therefore NRS 176.487(1) is inapplicable.

Nevada Revised Statutes 176.487(2) similarly provides no grounds for stay. ROBERT YBARRA, JR.'S sixth petition is not timely filed pursuant to NRS 34.726(1), remittitur having been issued in 1984. *Ybarra v. State*, 100 Nev. 167, 679 P.2d 797 (1984). Additionally, it sets forth conclusory claims, especially with regard to Claims 3 and 4, ROBERT YBARRA, JR.'S claimed incompetence. Here, the district court found the sixth petition pleaded these claims to such a deficiency that no hearing was triggered. The claims regarding incompetence rely on Exhibit 18 attached to his sixth petition. This unsworn declaration of David R. Price, PhD is deficient in that it fails to comply with NRS 53.045(2), coming from outside of the state of Nevada and failing to include that Mr. Price "declare[s] under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct." Emphasis added. The Exhibit should not be considered by the court.

With regard to NRS 176.487(3), the district court held that all claims were procedurally barred. Specifically with regard to Claim One, ROBERT YBARRA, JR.'S successive claim of intellectual disability, this claim was litigated heavily going back to 2008 and relief has been denied in both state and federal courts.

While ROBERT YBARRA, JR. asserts that the bars should not apply because of current clinical standards and a new factual basis, the district court again denied relief because the claim was not made in ROBERT YBARRA, JR.'S 2017 habeas petition despite that the case law he relies upon existed at that time[1], and because the claim is barred by the law of the case.

Also, ROBERT YBARRA, JR.'S Claim Three and Claim Four by association, are barred by NRS 176.487(3) because arguments related to these claims were brought in ROBERT YBARRA, JR.'S 2003 petition for habeas relief and no relief was granted. This court found that the claim of incompetence was belied by the record. Thus, the law of the case bars relief.

Similarly, NRS 176.487(4) is unavailable as a means to seek relief. Nevada Revised Statutes 176.487(4) allows that when there is a second or successive petition, as presented here, the filing must present "substantial grounds upon which relief might be granted and valid justification for the claims not having been presented in a prior proceeding."

ROBERT YBARRA, JR. argues that Claim Two, his alleged severe mental illness, entitles him to relief because while it was not previously brought, there would be a miscarriage of justice if procedural bars were applied. In denying relief, the district court relied upon *Chappell v State*, 137 Nev. 780, 501 P.3d 935 (2021). ROBERT YBARRA, JR. urges this court to unnecessarily constrict the holding in *Chappell*. While ROBERT YBARRA, JR. and Chappell claim different mental health conditions, there is nothing contained in this court's opinion that would limit the holding regarding mental illness in *Chappell* to only apply to cases

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[1] In his sixth habeas petition Claim One, ROBERT YBARRA, JR. relies on *Hall v Florida*, 572 U.S. 701 (2014) and *Moore v Texas*, 581 U.S. 1 (2017), both of which were released prior to ROBERT YBARRA, JR.'S 2017 habeas petition.

wherein defendant's claim fetal alcohol spectrum disorders. In fact, the actual words contained in the opinion are far broader and encompass the claims made by ROBERT YBARRA, JR. In upholding the district court denial of relief in *Chappell*, and finding the claim procedurally barred, this court opined that neither Nevada's highest court nor the US Supreme Court "[have] suggested that the severely mentally ill are ineligible for the death penalty." *Id.* at 801, 959.

Regarding NRS 176.487(5), the above arguments and the denial of relief in the lower court show that no relief would issue based on the facts contained in the sixth petition for habeas relief. Any new claims of intellectual disability are inadequately pleaded and did not result in a hearing in the lower court. The claims of intellectual disability were also previously litigated in state and federal courts and relief has been denied, including at the US Supreme Court, which denied cert. in May 2024.

The operation of a stay pursuant to NRS 176.487(6) does not apply here. The district court reviewed all claims and found the bulk of them procedurally barred. Regarding claims five through seven, the claims were not appropriately brought in a habeas petition. No hearing was triggered due to the procedural bars. No different result would occur because the lower court's finding that ROBERT YBARRA, JR., was not entitled to relief was not decided hastily. ROBERT YBARRA, JR.'S claims have been heard and denied relief at all levels of state and federal court. The judgment and sentence of death were entered nearly 45 years ago, and ample time and litigation have ensued wherein these claims were extensively presented, considered and denied. Evidentiary hearings have been held, the matters have been repeatedly denied. ROBERT YBARRA, JR.'S claims are successive, and no stay should issue.

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B. NEVADA REVISED STATUTES CHAPTER 176 GOVERNS AND NRAP 8 SHOULD NOT BE THE FRAMEWORK USED TO DECIDE THE ISSUE OF STAY.

Here, the method of deciding generally whether this court should grant stays should not govern where stays in death penalty cases are governed by a specific statutory framework in NRS Chapter 176. The court should use NRS 176.415 to determine this issue and not NRAP 8.

Assuming arguendo that NRAP 8 overrides the provisions set forth in NRS Chapter 176, no relief should issue. Appellant ROBERT YBARRA, JR. seeks relief under NRAP 8. Nevada Rules of Appellate Procedure 8(c) provides that in deciding whether to issue a stay or injunction, the following factors are considered:

> (1) whether the object of the appeal or writ petition will be defeated if the stay or injunction is denied; (2) whether the appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether the respondent/real party in interest will suffer irreparable or serious injury if the stay or injunction is granted; and (4) whether the appellant/petitioner is likely to prevail on the merits in the appeal or writ petition.

These factors do not all need to be met, but are generally considered. An insufficient showing under NRAP 8(c) urges this court to deny stay under this rule.

NRAP 8(c)(1) fails to allow relief because the object of appeal is the denial of ROBERT YBARRA, JR.'S sixth habeas petition and not the judgment in his criminal case. Reversal of the district court's December 17, 2024 order denying habeas relief would result in the case being remanded, not the judgment in the criminal case being affected. That the claims of incompetence, severe mental illness, and intellectual disability asserted by ROBERT YBARRA, JR. in support of this factor were denied without a hearing and have been previously litigated

over 40 years show that no relief will ultimately result in the criminal case.

In looking at NRAP8(c)(2), while imposition of the death sentence is irreversible, the actual carrying out of that sentence is not at hand at this time. No warrant for execution is pending. The issue of actually carrying out that sentence is not ripe and the matter of his appeal of the denial of his sixth habeas petition can go forward absent a stay of a warrant for execution that has not been entered.

In arguing the third factor, NRAP8(c)(3), ROBERT YBARRA, JR. relies upon *Harris v. Vasquez*, 901 F.2d 724 (9th Cir. 1990) to support his argument that the STATE will not suffer injury should this court issue the stay. That case is not helpful to ROBERT YBARRA, JR. The court in *Harris* opined that while stays are proper for first petitions, second and successive petitions require more of a showing by the petitioner. 901 F.2d at 725 (*citing Barefoot v. Estelle*, 463 U.S. 880 (1983) (internal citations omitted). As required in *Harris* when successive petitions are involved, if a stay is granted necessitates a showing that substantial grounds for relief are present. ROBERT YBARRA, JR.'S claims in his sixth petition for habeas relief lack this showing. ROBERT YBARRA, JR., has instead rehashed previously litigated and therefore barred claims. The new claims he made are not cognizable in habeas or were presented in a conclusory fashion. While due process is necessary in effecting the sentence, ROBERT YBARRA, JR., has been afforded all process due in the past 40 years of litigation.

Finally, in considering the fourth factor on NRAP(8), no stay should issue. The habeas petition was properly denied. No relief is expected from the appeal. As has been extensively argued above, the claims are barred, the procedural bars

are mandatory, and any new claims were inadequately brought or were improperly brought in the habeas case, and no relief can be granted.

III. CONCLUSION

No stay of the criminal case should issue from this court while it decides the matter of ROBERT YBARRA, JR.'S appeal of his sixth habeas petition. ROBERT YBARRA, JR. has failed to satisfy provisions required in NRS Chapter 176 and those of NRAP 8. The Motion for Stay should be denied.

RESPECTFULLY SUBMITTED this 30th day of January, 2025.

Melissa A. Brown, Esq.
Nevada Bar No. 11500
White Pine County District Attorney
1786 Great Basin Boulevard, Suite 4
Ely, Nevada 89301
775-293-6565
MABrown@WhitePineCountyNV.gov

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:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 MSO (Version 2412 Build 16.0.18324.20092) 64-bit in Times New Roman in 14 point font size; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

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 3,135 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains ___ words or ___ lines of text; 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

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Rules of Appellate Procedure.

SUBMITTED this 30th day of January, 2025.

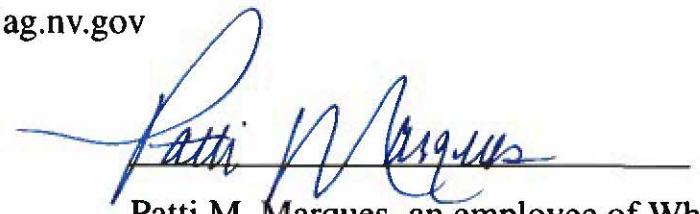
Melissa A. Brown, Esq.
Nevada Bar No. 11500
White Pine County District Attorney
1786 Great Basin Boulevard, Suite 4
Ely, Nevada 89301
775-293-6565
MABrown@WhitePineCountyNV.gov

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on this 30th day of January, 2025. The following participants in the case will be served by the electronic filing system:

Rene L. Valladares,
Federal Public Defender
David Anthony,
Assistant Federal Public Defender
FEDERAL PUBLIC DEFENDER
411 E. Bonneville Avenue, Ste. 250
Las Vegas, Nevada 89101
David_Anthony@fd.org.

Aaron D. Ford,
Attorney General
Jeffrey M. Conner,
Chief Deputy Solicitor General
OFFICE OF THE ATTORNEY GENERAL
100 North Carson Street
Carson City, Nevada 89701
JConner@ag.nv.gov



Patti M. Marques, an employee of White Pine County