

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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4 **FILED**

5 DALE EDWARD FLANAGAN)

6 Appellant,)

7 v.)

8 THE STATE OF NEVADA,)

9 Respondent.)

MAY 25 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

Case No. 40232

10 **STATE'S RESPONSE TO ORDER DIRECTING FILING**
11 **OF SUPPLEMENTAL POINTS AND AUTHORITIES**

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Counsel for Appellant

MAY 25 2005

DOCUMENT 1

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

Counsel for Respondent

05-10215

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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5 DALE EDWARD FLANAGAN)

6 Appellant,)

7 v.)

Case No. 40232

8 THE STATE OF NEVADA,)

9 Respondent.)

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11 **STATE'S RESPONSE TO ORDER DIRECTING FILING
OF SUPPLEMENTAL POINTS AND AUTHORITIES**

12
13 Pursuant to this Court's previous Order of Limited Remand, Flanagan
14 filed in district court the Petitioner's Memorandum Regarding Settlement of Record
15 on March 12, 2004. See Exhibit 1. In Response, the State filed the State's
16 Memorandum Regarding Settlement of Record on May 17, 2004. See Exhibit 2
17 [transcripts, court minutes and other documents attached to the State's Memorandum
18 have been omitted for brevity]. Thereafter, the State and Flanagan entered into a
19 Stipulation on May 2, 2005, a copy of which is attached to Appellant's Response to
20 Order Directing Filing of Supplemental Points and Authorities.

21 Flanagan now appears ready to proceed with his appeal and has requested a
22 briefing schedule from this Court.

23 WHEREFORE, The State submits this status report and awaits further Order of
24 this Court.

25 Dated May 23, 2005.

26
27 BY



28 STEVEN S. OWENS
Chief Deputy District Attorney
Nevada Bar #004352

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Eileen Davis
Employee, Clark County
District Attorney's Office

SO/da

ORIGINAL

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Shirley B. Ruggine

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EXPT

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Telephone (503) 241-2300

Attorney for Petitioner
Dale Edward Flanagan

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

DALE EDWARD FLANAGAN,

Petitioner,

v.

THE STATE OF NEVADA, and E.K.
McDANIEL, Warden, Ely State Prison,

Respondents.

DEATH PENALTY CASE

Case No. C69269
Dept. No. VII
Docket "S"

PETITIONER'S MEMORANDUM
REGARDING SETTLEMENT OF
RECORD

Pursuant to the "Order of Limited Remand" issued by the Nevada Supreme Court on March 2, 2004, Petitioner respectfully submits this memorandum for the purpose of clarifying, assembling, and settling upon an adequate record.

Petitioner has repeatedly sought a complete record from the District Court in this matter, but has been unable to secure it. Attached hereto is Exhibit A, a chart outlining those portions of the record not received from the District Court. The shaded portion of Exhibit A shows the transcripts of the original trial which were not part of the District Court

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CLARK COUNTY CLERK

1 record, but which Petitioner has. The remainder reflects entries in the Court minutes which
2 were not part of the District Court record and which Petitioner does not have.

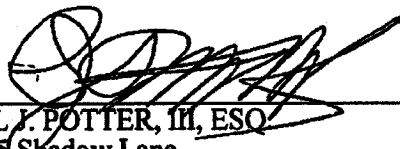
3 As the Court can see, significant portions of the trial record are missing and
4 cannot be identified more specifically than what is contained in the court minutes. Petitioner
5 has never had copies of these documents and had been unable, despite diligent effort, to
6 secure copies of them.

7 Accordingly, Petitioner requests that the court enter an appropriate order
8 requiring the Clerk of the Court to conduct a search for these portions of the record and for
9 the State to provide copies of any such portions it possesses.

10 DATED this ____ day of March, 2004.

11
12 **POTTER LAW OFFICES**

13
14 By


15 CAL J. POTTER, III, ESQ.
16 1125 Shadow Lane
17 Las Vegas, NV 89102
18 Of Attorneys for Petitioner
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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of POTTER LAW
OFFICES, and that, on this date, I deposited for mailing at Las Vegas, Nevada, a true copy
of the PETITIONER'S MEMORANDUM REGARDING SETTLEMENT OF
RECORD addressed to:

James Tufeland
Deputy District Attorney
Clark County District Attorney's Office
200 South 3rd Street
Las Vegas, NV 89155

DATED this 12 day of March, 2004.

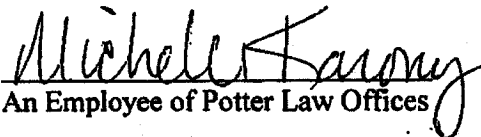

An Employee of Potter Law Offices

EXHIBIT 1

Flanagan v. Nevada
Clark County District Court Case No. C69269
Nevada Supreme Court Case No. 40232

Portions of Record Not Supplied by District Court

	1	2	3	4	5
	DATE	HEARING / PLEADING	JUDGE	COURT REPORTER	HAVE COPY
1	09/26/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
2	09/27/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
3	09/30/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
4	10/01/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
5	10/02/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
6	10/03/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
7	10/04/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
8	10/07/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
9	10/07/85	Testimony of Scott Alan Sloan	Mosley	Sharon J. Theilman	YES
10	10/08/85	Testimony of Scott Alan Sloan	Mosley	Sharon J. Theilman	YES
11	10/08/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
12	10/09/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
13	10/10/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
14	10/14/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
15	10/15/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
16	10/17/85	Transcript of Jury Trial	Mosley	Sharon J. Theilman	YES
17	11/20/85	Transcript of Sentencing	Mosley	Sharon J. Theilman	YES
18	06/03/91	Motion for Fees in Excess of Statutory Allowance	Mosley	Connie McCarthy	NO
19	07/10/91	Motion for Stay of Execution	Mosley	Donna Little	NO
20	11/04/92	All Pending Motions; Proper Person Motion to Proceed In Forma Pauperis; Proper Person Motion to Release Trial Transcripts	Mosley	Donna Little	NO
21	02/24/93	All Pending Motions; Oral Request of DA; Scheduling of Penalty Hearing for Flanagan & Moore	Mosley	Donna Little	NO
22	03/01/93	All Pending Motions; Scheduling of New Penalty Hearing by Request of DA; L.E. McMahon Motion to W/draw as Attorney of Record and Appoint Counsel for Representation of Defendant Flanagan in Death Penalty Hearing	Mosley	Donna Little	NO
23	03/10/93	All Pending Motions; Confirmation of Counsel for Defendant Flanagan; Schedule New Penalty Hearing for Flanagan & Moore	Mosley	Donna Little	NO

Flanagan v. Nevada
Clark County District Court Case No. C69269
Nevada Supreme Court Case No. 40232

Portions of Record Not Supplied by District Court

24	03/22/93	All Pending Motions; Confirmation of Counsel for Defendant Flanagan; At Request of DA Schedule New Penalty Hearing for Flanagan & Moore	Mosley	Donna Little	NO
25	04/19/93	Transcript of Evidentiary Hearing	Thompson	Janice Liston	NO
26	05/03/93	Motion for Order for Payment of Fees	Mosley	Unknown	NO
27	07/14/93	Minute Order re: Reset 9/1/93 Hearing	Mosley	Unknown	NO
28	08/18/93	Motion for Fees in Excess of Statutory Allowance	Mosley	Donna Little	NO
29	02/08/94	Proper Person Petition for Appointment of Counsel	Guy	Unknown	NO
30	02/17/94	Defendant's Proper Person Motion for Appointment of Counsel on Appeal	Guy	Patricia Lofft	NO
31	03/30/94	Calendar Call	Guy	Unknown	NO
32	04/04/94	Penalty Phase	Guy	Unknown	NO
33	06/09/94	All Pending Motions; Status Check for Defendants Flanagan & Moore	Guy	Unknown	NO
34	09/22/94	Further Proceedings	Guy	Patricia Lofft	NO
35	10/03/94	All Pending Motions; Penalty Hearing for Defendant's Flanagan & Moore	Guy	Unknown	NO
36	12/15/94	All Pending Motions	Guy	Anita Springs-Walker	NO
37	12/15/94	Status Check: Waiver	Guy	Unknown	NO
38	12/29/94	Calendar Call	Guy	Unknown	NO
39	01/03/95	Penalty Hearing	Guy	Unknown	NO
40	05/25/95	Minute Order re: Hearing Motions	Guy	Joyce Brown	NO
41	08/15/95	All Pending Motions; Status Check: Credit for Time Served & Perfection of Appeal	James Brennan	Debra Winn	NO
42	06/04/98	All Pending Motions; Defendant Flanagan's Request for Appointment of Counsel for Post- Conviction Relief; Defendant Moore's Petition for Writ of Habeas Corpus	Myron E. Leavitt	Suzy Nichols	NO
43	12/20/99	Status Check; Briefing Schedule	Michael L. Douglas	Cathy Nelson	NO

Flanagan v. Nevada
Clark County District Court Case No. C69269
Nevada Supreme Court Case No. 40232

Portions of Record Not Supplied by District Court

44	03/09/00	Argument: Defendant Petition for Writ of Habeas Corpus	Kathy Hardcastle	Unknown	NO
45	05/18/00	Defendant's Motions	Mark Gibbons	Renee Silvaggio	NO
46	06/06/00	Minute Order re: Disqualification of Judge Hardcastle	Kathy Hardcastle	Unknown	NO
47	06/13/00	Minute Order re: Recusal VI	Joseph T. Bonaventure	Unknown	NO
48	06/15/00	Defendant's Motion for Disqualification of Judge	Kathy Hardcastle	Unknown	NO
49	12/18/00	All Pending Motions: Defendant's Motion to Clarify and Expand Scope of Evidentiary Hearing; Defendant's Motion to Seal Order	Mark Gibbons	Unknown	NO
50	04/17/01	Status Check: Reassignment / Evidentiary Hearing Schedule	Mark Gibbons	Patsy Smith	NO
51	08/28/01	Order re: Petition for Writ of Habeas Corpus - Hearing Set			NO
52	09/12/01	Evidentiary Hearing (Remaining Issues on Writ)	Mark Gibbons	Renee Silvaggio	NO

1 MEMO

2 DAVID ROGER

3 Clark County District Attorney

4 Nevada Bar #002781

5 STEVEN S. OWENS

6 Chief Deputy District Attorney

7 Nevada Bar #004352

8 200 South Third Street

9 Las Vegas, Nevada 89155-2212

10 (702) 455-4711

11 Attorney for Plaintiff

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Shirley S. Rungius
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 DALE EDWARD FLANAGAN,
14 #0737065

15 Defendant.)

CASE NO: C69269

DEPT NO: XII

16 STATE'S MEMORANDUM REGARDING SETTLEMENT
17 OF RECORD

18 DATE OF HEARING:

19 TIME OF HEARING:

20 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
21 STEVEN S. OWENS, Chief Deputy District Attorney, and hereby submits the State's
22 Memorandum Regarding Settlement Of Record.

23 This Memorandum is made and based upon all the papers and pleadings on file
24 herein, the attached points and authorities in support hereof, and oral argument at the time of
25 hearing, if deemed necessary by this Honorable Court.

26 ///

27 ///

28 ///

1 MEMORANDUM

2 Dale Flanagan, hereinafter "Petitioner" has made various attempts with the District
3 Court to reconstruct an adequate record for purposes of post-conviction relief. As of this
4 date, the District Court has been unable to comply with all of Petitioner's requests for
5 transcripts and other documentation. On March 2, 2004, Petitioner was ordered to prepare,
6 file and serve a memorandum specifying which transcripts or other parts of the record were
7 needed to prepare for the imminent appeal. Once Petitioner filed the required documentation,
8 the State was to prepare, file and serve a memorandum indicating whether the State was in
9 possession of any of the required documentation. After all papers were filed the District
10 Court would conduct proceedings to determine which documentation was still missing and
11 determine the best means to reconstruct the missing portions of the record.

12 On March 16, 2004, Petitioner filed with the District Court a memorandum regarding
13 settlement of record along with a chart outlining which portions of the record were
14 unrecovered as of that date. The chart appeared to simply be a regurgitation of the case
15 history from "Blackstone," including court dates which were vacated or continued. The
16 District Attorney's Office contacted both attorney's of record, Cal Potter and Robert Newell,
17 in an attempt to clarify what was being requested. Attorney Robert Newell responded that
18 because the record is so incomplete that he would like anything that the State could provide
19 regarding any of the referenced court dates.

20 After an extensive search of the records maintained by the District Attorney's Office
21 a compilation of documentation has been prepared for Petitioner. However, much of the
22 requested information did not have associated transcripts for the limited hearings that were
23 held. Attached are Exhibits 1 and 2. Exhibit 1 is a chart outlining the documentation
24 requested by Petitioner and what was actually provided by the State. The first three columns
25 of Exhibit 1 are a duplicate of the first three columns of Petitioner's Exhibit A. The final
26 (fourth) column depicts the information that was provided. In only a few situations were
27 transcripts located for a particular court date, in all other cases, where available, a copy of
28 the court minutes was provided. Exhibit 2 is the entire compilation of the documentation

1 provided to Petitioner by State. The numbered references in Exhibit 2 directly correspond to
2 the numbered references in Exhibit 1.

3 On April 23, 2004, the District Court ordered the State to produce its file for
4 inspection by Petitioner and that the Clerk of the District Court gather and make available to
5 petitioner the entirety of the trial court record. The State has gathered all of the materials
6 relevant to this case in one central location and will make it available to the Petitioner, so
7 long as inspection takes place within the timeframe set out by the order. It should be made
8 clear that the State will not be making available any privileged work-product materials for
9 inspection.

10 DATED this 17 day of May, 2004.

11 Respectfully submitted,

12 DAVID ROGER
13 Clark County District Attorney
14 Nevada Bar #002781

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16 BY

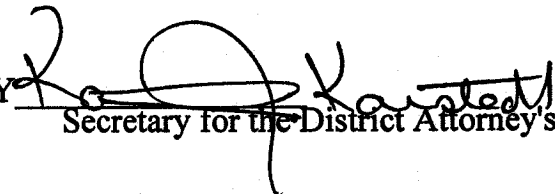

17 STEVEN S. OWENS
18 Chief Deputy District Attorney
19 Nevada Bar #004352
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17th day of May, 2004, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CAL J. POTTER III, ESQ.
1125 SHADOW LANE
LAS VEGAS, NV 89102

ROBERT D. NEWELL, ESQ.
DAVIS WRIGHT TREMAINE LLP
1300 S.W. FIFTH AVENUE, STE. 2300
PORTLAND, OR 97201

BY 
Secretary for the District Attorney's Office

kjk

EXHIBIT "1"

#	Date	Hearing/Pleading	Provided
18	06/03/91	Motion for fees in excess of statutory allowance (<i>For Δ Moore</i>)	- Minutes - Δ motion
19	07/10/91	Motion for stay of execution (<i>For Δ Moore</i>)	- Minutes - Δ motion
20	11/04/92	All pending motions; (1) Proper person motion to proceed in forma pauperis; (2) Proper person motion to release trial transcripts (<i>For Δ McDowell</i>)	- Minutes - Affidavit in support
21	02/24/93	All pending motions; Oral request of DA; Scheduling of penalty hearing for Flanagan & Moore	- Minutes - Order appointing counsel
22	03/01/93	All pending motions; (1) Scheduling of new penalty hearing by Request of DA; (2) LE McMahon motion to withdraw as attorney of record and appoint counsel for representation of defendant Flanagan in death penalty hearing	- Minutes - Δ motion - Order
23	03/10/93	All pending motions; Confirmation of counsel for defendant Flanagan; Schedule New penalty hearing for Flanagan & Moore	- Minutes
24	03/22/93	All pending motions; Confirmation of counsel for Defendant Flanagan; At request of DA schedule new penalty hearing for Flanagan & Moore	- Minutes
25	04/19/93	Transcript of evidentiary hearing (<i>no information found</i>)	
26	05/03/93	Motion for order for payment of fees	- Minutes - Δ motion
27	07/14/93	Minute Order re: Reset 9-1-93 hearing	- Minutes
28	08/18/93	Motion for fees in excess of statutory allowance	- Minutes - Δ motion
29	02/08/94	Proper person petition for appointment of counsel	- Δ motion
30	02/17/94	Defendant's proper person motion for appointment of counsel on appeal (<i>For Δ Lockett</i>)	- Minutes
31	03/30/94 (Vacated)	Calendar call	- Minutes
32	04/04/94 (Vacated)	Penalty phase	- Minutes
33	06/09/94 (Vacated)	All pending motions; Status check for defendants Flanagan & Moore	

34	09/22/94	Further proceedings (<i>For Δ Lockett</i>)	- Minutes - Amended Judgment of Conviction
35	10/03/94 (Vacated)	All pending motions; Penalty hearing for defendant's Flanagan & Moore	
36	12/15/94	All pending motions	- Minutes - Δ waiver - Transcript
37	12/15/94 (Resolved)	Status Check: Waiver	
38	12/29/94 (Vacated)	Calendar call	
39	01/03/95 (Vacated)	Penalty hearing	
40	05/25/95	Minute order re: Hearing motions	- Minutes - Δ motions - Order
41	08/15/95	All pending motions; Status check: Credit for time served & perfection of appeal	- Minutes - Transcript
42	06/04/98	All pending motions; (1) Defendant Flanagan's request for appointment of counsel for post-conviction relief; (2) Defendant Moore's petition for writ of habeas corpus	- Minutes - Δ motion - Transcript
43	12/20/99	Status check; Briefing schedule	- Minutes
✓ 44	03/09/00 (Vacated)	Argument: Defendant petition for writ of habeas corpus	
✓ 45	05/18/00	Defendant's motions (<i>no information found</i>)	
46	06/06/00	Minute order re: Disqualification of Judge Hardcastle	
47	06/13/00	Minute order re: Recusal VI	
48	06/15/00	Defendant's motion for disqualification of judge	- Δ motion

✓ 49	12/18/00	All pending motions: (1) Defendant's motion to clarify and expand scope of evidentiary hearing; (2) Defendant's motion to seal order	<ul style="list-style-type: none"> - Minutes - Δ motion - State opposition - Order
50	04/17/01	Status check: Reassignment/Evidentiary hearing schedule	<ul style="list-style-type: none"> - Minutes - Transcript
51	08/28/01	Order re: Petition for writ of habeas corpus – Hearing set (no information found)	
52	09/12/01	Evidentiary hearing (Remaining issues on writ)	- Order