

GREGORY SCOTT HERMANSKI,
a/k/a, ROBERT JAMES DAY, #69140
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

IN PRO SE

FILED

JAN 22 2004

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richard*
CHIEF DEPUTY CLERK

PROPER PERSON
RECEIVED/ENTERED

DEC 15 2003

JANETTE M. BLOOM
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT JAMES DAY,
aka, GREGORY SCOTT HERMANSKI,

Appellant,

vs.

CASE NO. 41405

THE STATE OF NEVADA,

Respondent.

MOTION FOR SUBSTITUTION OF COUNSEL

COMES NOW, Appellant, GREGORY SCOTT HERMANSKI, in Pro Se,
moving this Honorable Court, pursuant to NRAP RULE 46 and SCR
46, 2, to substitute present, court appointed counsel, for
newly appointed counsel.

This motion is made and based upon the entire record in
the case at bar and the attached Memorandum.

DATED this 9th day of December, 2003.

Respectfully submitted,

Gregory S. Hermaniski

GREGORY SCOTT HERMANSKI
In Pro Se

03-20824

MEMORANDUM

STATEMENT OF THE CASE

This motion is in relation to an appeal (pursuant to NRAP RULE 3B), from an Amended Judgment Of Conviction. The Amended Judgment Of Conviction was as the result of this Court's previous order of remand (Case No. 38028).

STATEMENT OF FACTS

This Court previously remanded this case back to the district court to correct sentence/judgment errors.

Upon remand Appellant ("Mr. Hermanski"), moved the district court to substitute Mr. Hermanski's original trial/sentencing/appellate counsel, Dianne M. Dickson, DPD, due to a conflict of interest. The district court appointed Paul E. Wommer, ESQ., as substitute counsel. The substitution of Mr. Wommer for Ms. Dickson was a confusing affair which caused both Mr. Wommer and Ms. Dickson to think that the other was Mr. Hermanski's counsel during the sentencing proceeding which directly followed the district court's substitution ruling (this caused Mr. Hermanski to be resentenced without any defense counsel input; both Counsel's stood there tapping their feet as if waiting for the other to say something). Said substitution confusion resulted in another hearing, 12 days later, outside of Mr. Hermanski's presense, clarifying for Ms. Dickson and Mr. Wommer, that, Mr. Wommer was substituted as counsel for Mr. Hermanski, and, that it would be Mr. Wommer's duty to prepare Mr. Hermanski's appeal, now before the Court. SEE Exhibit "A", two pages, attached hereto.

Mr. Wommer submitted a Notice Of Appeal (from Amended Judgment Of Conviction), which this Court filed on May 27, 2003. On May 27,

2003, this Court's Clerk' mailed a Docketing Statement, and, issued a Notice to File Case Appeal Statement ("Due Date: 10 days".), to Mr. Wommer. On May 29, 2003, Mr. Wommer submitted the above-Noticed Case Appeal Statement, which was filed with this Court on June 4, 2003. SEE Exhibit "B", two pages, attached hereto.

On July 22, 2003, this Court filed an "Order to file Docketing Statement and Comply with NRAP 9(a)", directed to Mr. Wommer, allowing Mr. Wommer 10 days to file said documents; warning Mr. Wommer that, "[f]ailure to comply timely with this order may result in the imposition of sanctions." On August 11, 2003, (10 days late), the above-ordered Docketing Statement was filed with this Court. SEE Exhibit "B".

On August 21, 2003, this Court filed a second Order directing Mr. Wommer to comply with NRAP 9(a), ("file and serve a transcript request form or a certificate indicating that not [sic] transcripts are requested."; again giving Mr. Wommer 10 days to comply with said order, "or show cause why sanctions should not be imposed." To date, as far as Mr. Hermanski knows, Mr. Wommer has failed to comply with this Court's August 21, 2003, order. The most recent "Nevada Supreme Court Docket Sheet" (Exhibit "B"), that Mr. Hermanski has been able to obtain (dated 9/24/03), indicates that 34 days have elapsed since this Court's August 21, 2003, order (setting 10 day time limit for compliance), was issued, without any response to said order by Mr. Wommer. SEE Exhibit "B".

As stated, Mr. Wommer's appointment confusion caused Mr. Hermanski's resentencing hearing to be conducted without the

assistance of counsel. Mr. Wommer is not going to claim his own ineffectiveness at said hearing, on the appeal presently before this Court. In light of the shadow now on Mr. Wommer's professionalism for his failures to timely comply with this Court's rules, it is understandable that Mr. Wommer would not place further shadow upon himself for his failure to properly represent Mr. Hermanski at said resentencing hearing. Mr. Hermanski's lack of counsel at said resentencing hearing is clearly apparent from the record of said hearing, therefore, ripe for review in the appeal now before this Court.

ARGUMENT

Mr. Hermanski has the right to effective assistance of Appellate Counsel. Cf. Douglas v. California, 372 U.S. 353, 355-357, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963). Mr. Wommer's failures to timely comply with this Court's rules/orders places Mr. Hermanski's appeal in jeopardy of sanctions. See, NRAP RULE 9(a)(3) and RULE 31(c). Said sanctions would definitely prejudice Mr. Hermanski's appeal. If said sanctions did not effect/prejudice Mr. Hermanski's appeal they would not be considered sanctions; they would just be a waste of judicial time/resources.

The appointment of substitute counsel would facilitate a full, fair and timely appeal. The failure to substitute Mr. Wommer as Mr. Hermanski's appellate counsel has already resulted in unnecessary delay and the possibility of prejudicial sanctions. To allow Mr. Wommer to continue as Mr. Hermanski's counsel will likely prevent Mr. Hermanski from receiving a full hearing (by Mr. Wommer's likely failure to assert his own ineffectiveness), thereby causing further delay with redundant trips back to the


district court.

CONCLUSION

Mr. Hermanski cannot receive a full, fair and timely appeal with Mr. Wommer as counsel. Mr. Hermanski respectfully requests that this Honorable Court withdraw Mr. Wommer as Mr. Hermanski's appellate counsel, and, appoint new counsel to represent Mr. Hermanski on this appeal.

DATED this 9th day of December, 2003.


Respectfully submitted,


GREGORY SCOTT HERMANSKI
In Pro Se

CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this Motion For Substitution Of Counsel, 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 Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP RULE 22(e), which requires every assertion in the Motion regarding matters in the record to be supported by a reference to the page in the attached Exhibit where the matter relied upon (when available to Appellant), is to be found. I understand that I may be subject to sanctions in the event that the accompanying Motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 9th day of December, 2003.


GREGORY SCOTT HERMANSKI

CERTIFICATE OF SERVICE

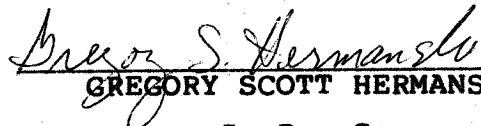
I hereby certify that on this date I mailed a true copy
of the foregoing document, addressed as follows:

Brian Sandoval
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701-4717

David Roger
Clark County District Attorney
Clark County Courthouse, 7th Floor
200 South Third Street
Las Vegas, NV 89155

Paul E. Wommer
625 South Sixth Street
Las Vegas, NV 89101

DATED this 10th day of December, 2003.



GREGORY SCOTT HERMANSKI
In Pro Se

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District Case Inquiry - Minutes

Home

Case 00-C-167783-C

Just Ct. 00-F -06978
Case#

Status INACTIVE

Summary
Case Activity
Calendar
Continuance
MinutesPlaintiff State of Nevada
Defendant Hermanski, Gregory S
Judge Hardcastle, KathyAttorney Roger, David J.
Attorney Wommer, Paul E.
Dept. 4Parties
Def. Detail
Next Co-Def.
Charges
Sentencing
Bail Bond
JudgmentsEvent 04/30/2003 at 09:00 AM SENTENCING
Heard By Hardcastle, Kathy
Officers Dorothy Kelly, Court Clerk
Carrie Hansen, Reporter/Recorder

Parties	000 - S1	State of Nevada	Yes
	000346	Mitchell, Scott S.	Yes
	001 - D1	Hermanski, Gregory S	Yes
	000015	Wommer, Paul E.	Yes
	005620	Dickson, Dianne	Yes

District Case
Party Search
Corp. Search
Atty. Search
Bar# Search
ID SearchCalendar Day
HolidaysWilliam Lizura present for the Division of Parole and Probation (P&P). DEFT.
HERMANSKI ADJUDGED GUILTY OF CT. I ROBBERY WITH USE OF A DEADLY WEAPON (F)Help
Comments &
Feedback
Legal Notice

AND CT. II - BURGLARY WHILE IN POSSESSION OF A DEADLY WEAPON (F). Court heard argument as to Deft's Habitual Criminal status. Mr. Mitchell noted Defendant's prior felonies and stated that under the law, the maximum penalty has to be imposed; it is not discretionary. Mr. Wommer stated he substituted in as counsel for sentencing; Ms. Dickson represented the Deft. previously. Mr. Wommer read Defendant's statement in Court. Court directed Mr. Wommer to put the matters contained in Deft's statement in a motion. Mr. Mitchell provided Court with certified copies of Deft's Judgment of Convictions along with other paperwork reflecting Deft's past convictions. DEFT. HERMANSKI ADJUDGED GUILTY AS A HABITUAL OFFENDER IN COUNTS I AND II. In addition to the \$25 Administrative Assessment Fee and \$150 DNA Fee, COURT ORDERED, Deft. SENTENCED in COUNT I to LIFE in the Nevada Department of Corrections WITHOUT the Possibility of Parole and in COUNT II to LIFE in the Nevada Department of Corrections WITHOUT the Possibility of Parole; Count II to run CONCURRENTLY with Count I with NO Credit for Time Served; Deft. to submit to a test to determine genetic markers. Court advised counsel he can file the appropriate motion as to credit for time served while Deft. serving Federal time.

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

Generated on 12/3/2003

EXHIBIT "A"

(Page 1 of 2.)

District Case Inquiry - Minutes

Home

Case 00-C-167783-C

Just Ct. 00-F -06978

Status INACTIVE

Summary

Case Activity

Calendar

Continuance

Minutes

Parties

Def. Detail

Next Co-Def.

Charges

Sentencing

Bail Bond

Judgments

Plaintiff State of Nevada
Defendant Hermanski, Gregory S
Judge Hardcastle, Kathy

Attorney Roger, David J.**Attorney** Wommer, Paul E.**Dept.** 4**Event** 05/12/2003 at 09:00 AMDEFT'S REQUEST TO CLARIFY
APPOINTMENT OF COUNSEL/31**Heard By** Hardcastle, Kathy

Officers Billie Jo Craig, Relief Clerk
 Carrie Hansen, Reporter/Recorder

Parties 000 - S1 State of Nevada
 002781 Roger, David J.
 006056 Bauer, Elizabeth B.
 001 - D1 Hermanski, Gregory S
 000015 Wommer, Paul E.
 PUBDEF Public Defender
 005620 Dickson, Dianne

Yes

Yes

Yes

No

Yes

Yes

Yes

District Case

Party Search

Corp. Search

Atty. Search

Bar# Search

ID Search

Calendar Day

Holidays

Help

Comments &

Feedback

Legal Notice

COURT ORDERED, defendant's PRESENCE WAIVED today. Ms. Dickson requested clarification of who represents defendant. Mr. Wommer advised he was appointed to represent defendant only for the ineffectiveness of counsel problem. Court noted it had appointed Mr. Wommer to represent defendant.

NDC

Due to time restraints and individual case loads, the above case record may not reflect all information to date.

Top Of Page

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EXHIBIT "A"

(Page 2 of 2.)

Nevada Supreme Court Docket Sheet

Docket: 41405 HERMANSKI (GREGORY) VS. STATE

Page 1

GREGORY SCOTT HERMANSKI A/K/A ROBERT JAMES DAY,
Appellant,

Supreme Court No. 41405

vs.

Consolidated with:

THE STATE OF NEVADA,
Respondent.

Counsel

Paul E. Wommer, Las Vegas, NV, as counsel for Appellant

Attorney General Brian Sandoval/Carson City, Carson City, NV, as counsel for Respondent

Clark County District Attorney David J. Roger, Las Vegas, NV, as counsel for Respondent

Case Information

Panel: SNP

Panel Members: CLK

Disqualifications:

Case Status: Open

Category: Criminal Appeal

Type: Direct/Life

Submitted:

Date Submitted:

Oral Argument:

Sett. Notice Issued:

Sett. Judge:

Sett. Status:

Related Supreme Court Cases: 38028

District Court Case Information

Case Number: C167783

Case Title: STATE VS. DAY

Judicial District: Eighth

Division:

County: Clark Co.

Sitting Judge: Kathy A. Hardcastle

Replaced By:

Notice of Appeal Filed: 05/07/03

Appeal

Judgment Appealed From Filed: 05/16/03

05/08/03

Appeal

05/20/03

Appeal

05/22/03

Appeal

Docket Entries

Date	Docket Entries	
05/13/03	Filing Fee Waived: Criminal.	
05/13/03	Filed Certified Copy of proper person Notice of Appeal. Appeal docketed in the Supreme Court this day.	03-08113
05/13/03	Filed Certified Copy of proper person Notice of Appeal.	03-08159
05/21/03	Issued Notice to Transmit Required Document. 5/6/03 Amended Judgment of Conviction. Due Date: 10 days	
05/27/03	Filed Certified Copy of proper person Notice of Appeal.	03-08877
05/27/03	Filed Certified Copy of Notice of Appeal. (Docketing statement mailed to counsel for appellant.)	03-08878
05/27/03	Issued Notice to File Case Appeal Statement. Due Date	

Nevada Supreme Court Docket Sheet

Docket: 41405 HERMANSKI (GREGORY) VS. STATE

Page 2

05/30/03	Filed District Court Order/Judgment Certified copy of Amended Judgment of Conviction filed in district court on May 16, 2003.	03-09066
06/04/03	Filed Case Appeal Statement. Certified copy filed in district court on May 30, 2003.	03-09375
07/22/03	Filed Order to file Docketing Statement and Comply with NRAP 9(a). Appellant shall, within 10 days from the date of this order, file and serve the docketing statement and file the appropriate document pursuant to NRAP 9. Failure to comply timely with this order may result in the imposition of sanctions.	03-12403
08/11/03	Filed Docketing Statement.	03-13371
08/21/03	Filed Order To date, appellant has failed to comply with our order entered July 22, 2003. We again direct appellant to file and serve a transcript request form or a certificate indicating that not transcripts are requested. Appellant shall file the appropriate document within 10 days from the date of this order or show cause why sanctions should not be imposed.	03-14095