

Brendan Nasby  
I.D. No. 63618  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
(Appellant In Pro Se)

IN THE SUPREME COURT OF THE STATE OF NEVADA

\* \* \* \* \*

Brendan James Nasby,

Appellant,

Sup. Ct. No. 70626

vs.

The State of Nevada,

Respondent.

Dist. Ct. No. 98154293-

**FILED**

FEB 08 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY                       
DEPUTY CLERK

MOTION FOR APPOINTMENT OF COUNSEL

COMES NOW, Brendan James Nasby, Appellant in Pro Se, and moves this Court for an order appointing counsel in the instant appeal.

This motion is made and based on the instant Opening Appeal Brief on file herein, the Habeas Corpus Petition, all papers and documents on file regarding the above captioned action, as well as the points and authorities below.

POINTS AND AUTHORITIES

1. Appellant is unable to afford counsel. See (Application to Proceed In Forma Pauperis filed in Dist. Ct.).

2. The substantive issues and procedural requirements of this case are difficult and incomprehensible to Appellant.

Appellant, due to his incarceration, cannot investigate, take depositions or otherwise proceed with discovery herein.

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ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

1 4. Appellant's sentence is: 4 yrs to 10 yrs; 20 to Life; and 20 to  
2 Life.

3 5. Appellant is limited in his access to legal materials due to decisions  
4 made by the Nevada Department of Corrections.

5 6. The merits of the issues presented are of Constitutional dime-  
6 nsion.

7 7. Appellant is incarcerated at Lovelock Correctional Center, in Love-  
8 lock, Nevada. Appellant is unable to undertake the ability, as an attorney  
9 would or could, to investigate crucial facts involved within Appellant's brief.

10 8. Appellant is a lay inmate, and does not have the current legal knowledge  
11 and abilities, as an attorney would have, to properly present the case to the  
12 court.

13 9. Appointed counsel would be of service to the Court, Appellant, and the  
14 respondents, by sharpening the issues in this case and ultimately shortening  
15 the time of the prosecution of the case.

16 10. Appellant only has access to the material in the prison's law library,  
17 via institutional mail, using a paging system, which delays the reception of  
18 needed legal materials.

19 11. The prison has very limited legal research materials and sources, and  
20 to add, much needed research materials are already checked out to other in-  
21 mates, are not in stock, or the law library is doing inventory, which means  
22 that, at that time, no materials will be checked out and the law library  
23 is closed.

24 12. Prison legal assistants are not permitted to assist or give legal ad-  
25 vice to inmates at Lovelock Correctional Center. Thus, not only is Appellant  
26 not allowed access to the prison law library, but he is also denied the assist-  
27 ance of someone trained in the law or minimal assistance from legal  
28 assistants.

1 13. The ends of justice will be best served in this case by the appoint-  
2 ment of professional and competent counsel to represent Appellant.

3 14. Not appointing counsel to represent Appellant would result in a  
4 complete denial of his fundamental right of access to the courts.

5 15. Federal courts in Nevada have previously stated that the paging  
6 system and conditions in regards to law libraries at Nevada's prisons, are  
7 inadequate and may be unconstitutional.

8 16. Appellant is no longer allowed to make legal photocopies of doc-  
9 uments and exhibits do to NDOC's application of \$100.<sup>00</sup> charge  
10 account limit on copy request. Appellant has exceeded his \$100.<sup>00</sup> limit  
11 years ago. This prevents Appellant from properly serving respondents and  
12 from keeping a correct record of his own. Counsel would not have  
13 this problem.

14

15 Petitioner has a fundamental constitutional right to access to  
16 the courts, which requires the State to assist him in the preparation  
17 and filing of meaningful legal papers by providing him with adequate  
18 law libraries or adequate assistance from persons trained in the law.  
19 Bounds v. Smith, 430 U.S. 817, 52 LEd 2d 76 (1977).

20 "It is for the courts to remedy past or imminent official interfer-  
21 ence with individual inmates' presentation of claims to the courts."

22 Lewis v. Casey, 518 U.S. 343 at 349.

23 The State denying Appellant his fundamental right to meaningful access  
24 to the courts, requires this Court appoint counsel, to remedy such denial.  
25 Not appointing counsel will only result in the continued denial of Appellant's  
26 fundamental right. Thus, this Court should give Appellant "someone trained  
27 in the law" and appoint counsel, to ensure him meaningful access to the  
28 courts.

1 Discretion lies with the Court to appoint counsel. Crump v. Warden,  
2 113 Nev. 293, 934 P.2d 247, 254 (1997). The Court is to consider: (1) the  
3 complexity of the issues; (2) whether Appellant comprehends the issues;  
4 (3) whether counsel is necessary to conduct discovery; and (4) the  
5 severity of Appellant's sentence.

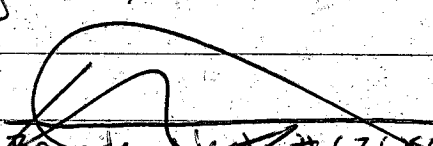
6 Under similar discretionary standards, Federal courts are encouraged  
7 to appoint counsel when the interests of justice so requires — a  
8 showing which increases proportionately with the increased complex-  
9 ities of the case and the penalties involved in the conviction. Chaney  
10 v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). Attorneys should be app-  
11 ointed for indigent petitioners who cannot "adequately present their  
12 own cases." Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

13 Although Appellant need meet but one of the enumerated criteria  
14 in order to merit appointment of counsel, he meets all of them. He  
15 also presents a classic example of one meriting counsel under the  
16 interest of justice test bespoken by the 9th Circuit. Indeed, App-  
17 ellant's sentence, coupled with the other factors set forth above,  
18 demonstrate that appointment of counsel to him would not only sat-  
19 isfy justice, but fundamental fairness, as well.

## 20 21 CONCLUSION

22 Wherefore, this Court should appoint counsel to represent  
23 Appellant in and for all further proceedings in this habeas corpus  
24 action.

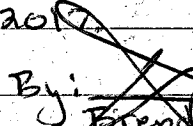
25 Dated this 2nd day of February, 2017.

26  
27 By:   
28 Brendan Vestby #63618  
(Appellant In Pro Se)

## VERIFICATION

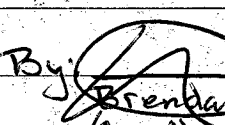
I declare, affirm, and swear, under penalty of perjury that all of the above facts, statements, and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and ~~correct~~ correct.

Dated this 2nd day of February, 2017.

By:  Brendan Nason #63618  
(Appellant In Pro Se)

## CERTIFICATE OF MAILING

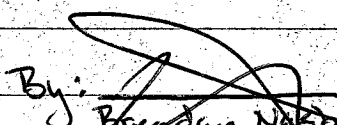
I do certify that I mailed a true and correct copy of the foregoing "Motion For Appointment Of Counsel" to the below address on this 2nd day of February, 2017, by placing same in the U.S. Mail via prison law library staff: 1) Clark County D.A.; P.O. Box 552211; Las Vegas, NV 89155-2211.

By:  Brendan Nason #63618  
(Appellant In Pro Se)

## AFFIRMATION PURSUANT TO NRS 239B.030.

The undersigned does hereby affirm that the preceding "Motion For Appointment Of Counsel" does not contain the social security number of any person.

Dated this 2nd day of February, 2017.

By:  Brendan Nason #63618  
(Appellant In Pro Se)