

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

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

FILED

FEB 24 2017

Brendan Nasby,
Appellant,

Case No. 70626

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

vs.

The State Of Nevada,
Respondent.

MOTION TO RECONSIDER ORDER
DENYING MOTION FOR APPOINT-
MENT OF COUNSEL.

COMES NOW, the Appellant, Brendan Nasby (hereinafter "Nasby") proceeding in Pro Se, before this Honorable Court, in the above captioned action, respectfully submitting this Motion To Reconsider Order Denying Motion For Appointment Of Counsel.

This motion is made and based on NRS Ch. 34, N.R.A.P., the attached Points and Authorities, as well as all other papers, pleadings, and documents on file herein.

POINTS AND AUTHORITIES

In its order denying Nasby's Motion For Appointment Of Counsel, this Court applied Brown v. McDaniel, 130 Nev. Adv. Op. 60, 331 P.3d 867, 870 (2014); Coleman v. Thompson, 501 U.S. 722, 755 (1991); and the 6th Amendment's Right To Counsel. This Court then determined that Nasby had no entitlement to appointed counsel in post-conv-

tion proceedings

HOWEVER, Nasby NEVER asserted the 6th Amendment's

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DEPUTY CLERK

17-900361

1 right to counsel in his motion for appointment of counsel.

2 Nasby asserted the 1st and 14th Amendments entitle him
3 to Meaningful Access To The Court and require this Court to rem-
4 edy past or imminent official interference with his presentation
5 of claims to the Court. Lewis v. Casey, 518 U.S. 343 at 349.

6 Not only does NRS Ch. 34 give the Court discretion whether to
7 appoint counsel on post-conviction, but the U.S. Supreme Court also
8 stated that the appointment of counsel may be sought to remedy the
9 denial of meaningful access to the courts. Christopher v. Harbury,
10 536 U.S. 403 at 413 (2002) (Thus, in the prison-litigation cases, the
11 relief sought may be a law library for a prisoner's use in preparing a
12 case, or a reader for an illiterate prisoner, or simply a lawyer).
13 (Citations omitted and emphasis added).

14 The facts supplied in Nasby's Motion for appointment of counsel dem-
15 onstrate that he is not provided with access to the prison's law library.
16 In fact, a review of two of the cited cases in Nasby's motion, address
17 the paging system used at Nevada's prisons. In particular, in Nasby
18 v. McDaniel, 2011 U.S. Dist. LEXIS 52317, the court said:

19 "The various Law Library Supply and Book Request Forms submitted by
20 petitioner demonstrate the near impossibility that an inmate will be
21 able to obtain necessary ~~the~~ research materials in a timely manner.
22 The forms further demonstrate that the inmate must be fully in-
23 formed of the available resources and even specific case law before
24 such can be delivered. Similar exact-cite paging systems have been
25 held to fail to meet the requirement that a prison ensure a reason-
26 ably adequate opportunity to present to the court a prisoner's
27 claim's that his or her fundamental constitutional rights have been
28 violated. See Koerschner v. Warden, 508 F.Supp. 2d 849, 859 (D. Nev.
29 2007); see also Trujillo v. Williams, 465 F.3d 1210, 1226-27 (10th Cir.
30 2006)."

31 In regards to the litigation following the filing of legal papers,
32 the U.S. Supreme Court, in Bounds v. Smith, 430 U.S. 817 at 826 said:

33 "Moreover, if the State files a response to a pro se pleading, it

will undoubtedly contain seemingly authoritative citations. Without a library, an inmate will be unable to rebut the State's argument. It is not enough to answer that the court ~~will~~ will evaluate the facts pleaded in light of relevant law. Even the most dedicated trial judges are bound to overlook meritorious cases without the benefit of adversary presentation."

Further, in Gluth v. Ari. Dept. of Corr., 951 F.2d 1504 at 1507-08 (9th Cir. 1991) the court said:

"In Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977), the Supreme Court held the fundamental constitutional right of access to the courts requires the state provide "adequate law libraries or adequate assistance from persons trained in the law." Id. at 838. We have held that "if the state denies a prisoner reasonable access to a law library, the state must provide that prisoner legal assistance." Toussaint v. McCarthy, 401 F.2d 1080, 1110 (9th Cir. 1968), cert. denied, 481 U.S. 1069, 95 L.Ed.2d 571, 107 S.Ct. 2462 (1987)."

So, although Nasby does not assert a right to counsel on post-conviction and this Court stated that Nasby "is not entitled to appointed counsel at the state's expense in postconviction proceedings", the State, in light of its denial of adequate access to the prison's law library, must provide Nasby with legal assistance. What method to provide legal assistance is left to the States, however this Court has discretion to grant the appointment of counsel (NRS Ch. 34) and the U.S. Sup. Ct. explained that Nasby can seek "a lawyer" to remedy imminent official interference ~~was~~ (Harburg, Supra), and it is the Court's duty to apply the appropriate remedy for Nasby's injuries/imminent injuries (Lewis v. Casey, 516 U.S. 343 at 349). In this instance, the appropriate remedy would be to appoint counsel to represent Nasby.

CONCLUSION

WHEREFORE, Nasby respectfully request this Court:

1) Grant his instant Motion To Reconsider Order Denying

1 Motion For Appointment Of Counsel;

2 2) Vacate its prior Order Denying Nasby's Motion For Appoint-
3 ment Of Counsel;

4 3) Appoint Counsel to represent Nasby; and/or

5 4) Anything else this Court deems full and fair.

6
7 Dated this ^{21st} ~~20th~~ day of February, 2017.

8
9 Respectfully Submitted,

10 By: ~~Brendan Nasby #63618~~
11 ~~(Appellant In Pro Se)~~

12
13 VERIFICATION

14 Under penalty of perjury, the undersigned declares that he is the
15 appellant, "Nasby" named in the foregoing "Motion To Reconsider Order
16 Denying Motion For Appointment Of Counsel" and knows the contents
17 thereof; that the pleading is true of his own knowledge, except as to
18 those matters stated on information and belief, and as to such matters
19 he believes them to be true.

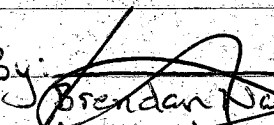
20 Dated this ^{21st} ~~20th~~ day of February, 2017.

21 By: ~~Brendan Nasby #63618~~
22 ~~(Appellant In Pro Se)~~

23
24 CERTIFICATE OF MAILING

25 I, Brendan Nasby, hereby certify that on this ^{21st} ~~20th~~ day of February,
26 2017, I mailed a true and correct copy of the foregoing "Motion To Re-
27 consider Order Denying Motion For Appointment Of Counsel" add-
28 ressed to:

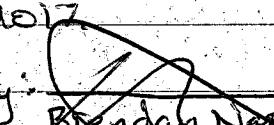
1) Clark County D.A.
P.O. Box 552211
Las Vegas, NV 89155-2211

By:  #63618
(Appellant In Pro Se)

AFFIRMATION PURSUANT TO NRS 239B.030.

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

Date this ^{21st} ~~20th~~ day of February, 2017.

By:  #63618
(Appellant In Pro Se)