

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

JOSE VALDEZ-JIMENEZ  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND  
THE HONORABLE MARK B. BAILUS  
DISTRICT JUDGE  
Respondents,

and

THE STATE OF NEVADA,  
Real Party In Interest.

Electronically Filed  
Jun 12 2019 01:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO: 76417

AARON WILLARD FRYE,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND  
THE HONORABLE JERRY A. WIESE  
DISTRICT JUDGE  
Respondents,

and

THE STATE OF NEVADA  
NATHAN GRACE,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND  
THE HONORABLE MICHAEL VILLANI  
DISTRICT JUDGE  
Respondents,

and

THE STATE OF NEVADA,  
Real Party In Interest.

CASE NO: 76845

CASE NO: 76947

## **MOTION TO DISMISS PETITIONERS FRYE AND GRACE**

On November 21, 2018, this Court granted Petitioner Valdez-Jimenez's motion to consolidate with two other cases, Aaron Frye (SC# 76845) and Nathan Grace (SC# 76947). The three consolidated cases have been expedited and are currently scheduled for oral argument on July 2, 2019.<sup>1</sup>

After filing his emergency petition with this Court on September 14, 2018, Petitioner Nathan Grace pleaded guilty on October 22, 2018, had his bail reduced to \$20,000 on November 5, 2018, was sentenced to prison with a Judgment of Conviction filed on December 18, 2018, and the criminal case below is now closed. Exhibit 1. Similarly, Petitioner Aaron Frye recently pleaded guilty straight up without negotiations in his criminal case below on April 25, 2019, and was set for sentencing yesterday on June 11, 2019, but sentencing has been continued to July 16, 2019. Exhibit 2. Because of their respective guilty pleas, the petitions filed by Frye and Grace seeking a pretrial remedy should be dismissed.

## **POINTS AND AUTHORITIES**

There is no constitutional or statutory right to bail after a guilty plea. See NRS 178.484 (recognizing the "[r]ight to bail before conviction"); NRS 176.015(1)

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<sup>1</sup> The State takes no position on the recent motion to reschedule oral argument except to note that Petitioners have complained of this Court's inaction to the federal judge and are insisting on immediate federal intervention to cure the prejudice they argue accrues with each passing day.

(providing the district court with discretion to grant bail pending sentencing); Bergna v. State, 120 Nev. 869, 872, 102 P.3d 549, 551 (2004) (recognizing that there is no constitutional right to bail after conviction).

This Court's duty is to decide actual controversies and not to give opinions on moot questions. Personhood Nevada v. Bristol, 126 Nev. \_\_\_, 245 P.3d 572, 574 (2010). The question of mootness is one of justiciability. This Court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment. NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must be present through all stages of the proceeding, *see* Arizonans for Official English v. Arizona, 520 U.S. 43, 67, 117 S.Ct. 1055 (1997); Lewis v. Continental Bank Corp., 494 U.S. 472, 476-78, 110 S.Ct. 1249 (1990), and even though a case may present a live controversy at its beginning, subsequent events may render the case moot. University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); Wedekind v. Bell, 26 Nev. 395, 413-15, 69 P. 612, 613-14 (1902).

Mootness is a jurisdictional issue that must be addressed at the threshold. See Foster v. Carson, 347 F.3d 742, 745 (9<sup>th</sup> Cir. 2003). For a case to fall within this Court's limited judicial power, "it is not enough that there may have been a live case or controversy when the case was decided by the court whose judgment we are reviewing." Burke v. Barnes, 479 U.S. 361, 363, 107 S.Ct. 734 (1987). Rather, a

live case or controversy must be “extant at all stages of review.” Steffel v. Thompson, 415 U.S. 452, 459 n.10, 94 S.Ct. 1209 (1974). Otherwise, the case is moot and must be dismissed. See Paulson v. City of San Diego, 475 F.3d 1047, 1048 (9<sup>th</sup> Cir. 2007). An appeal is moot “when, by virtue of an intervening event, a court of appeals cannot grant any effectual relief whatever in favor of the appellant.” United States, v. Strong, 489 F.3d 1055, 1059 (9<sup>th</sup> Cir. 2007), *citing* Calderon v. Moore, 518 U.S. 149, 150, 116 S.Ct. 2066 (1996).

Petitioners have claimed that the capable-of-repetition-yet-evading-review exception to the mootness doctrine should apply even if they plead guilty. See Personhood Nevada v. Bristol, 126 Nev. —, —, 245 P.3d 572, 574 (2010). However, the issue will not evade review should Frye and Grace be dismissed, because Petitioner Valdez-Jimenez will remain as the only party for whom the Court can grant any relief. Both Petitioners Frye and Grace acknowledged in their petitions that their challenge to unlawful pretrial confinement would “necessarily dissipate” or become moot upon conviction. The relief requested by both was an order releasing them from pretrial custody or at least vacating their bail setting unless the district court below finds it is the least restrictive means of assuring their return to court and the safety of the community. This relief can no longer be granted to Frye and Grace.

Finally, it is well-settled law that when a defendant pleads guilty, the only claims that may be raised thereafter are those involving the voluntariness of the plea itself, or that the plea was entered without effective assistance of counsel. Kirksey v. State, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996), *citing* Warden, Nevada State Prison v. State, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984). “[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.” Id. (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973)). By pleading guilty, Petitioners Frye and Grace have waived or forfeited their right to pursue a remedy for perceived errors occurring before they entered guilty pleas.

WHEREFORE, the State respectfully requests that the Petitions by Frye and Grace be dismissed.

Dated this 12<sup>th</sup> day of June, 2019.

Respectfully submitted,  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY /s/ Steven S. Owens  
STEVEN S. OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352  
Office of the District Attorney

## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 12, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD  
Nevada Attorney General

NANCY M. LEMCKE  
CHRISTY L. CRAIG  
Deputy Public Defenders

CHARLES LEWIS GERSTEIN, ESQ.  
*Pro Hac Vice*  
Civil Rights Corps.

STEVEN S. OWENS  
Chief Deputy District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

HONORABLE MARK B. BAILUS  
Eighth Judicial District Court, Dept. 18  
Phoenix Building  
330 S. Third Street, CTRM 110  
Las Vegas, Nevada 89101

HONORABLE JERRY A. WIESE  
Eighth Judicial District Court, Dept. 30  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101

HONORABLE MICHAEL P. VILLANI  
Eighth Judicial District Court, Dept. XVII  
Regional Justice Cnter  
200 Lewis Avenue  
Las Vegas, Nevada 89101

*/s/ E. Davis*

\_\_\_\_\_  
Employee, Clark County  
District Attorney's Office

SSO/Andrea Orwoll/ed

EXHIBIT 1

EXHIBIT 1

C-18-335667-1

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**November 05, 2018**

C-18-335667-1      State of Nevada  
   vs  
   Nathan Grace

**November 05, 2018      08:30 AM      Defendant's Motion for Own Recognizance Release With  
Electronic Monitoring**

**HEARD BY:**      Cadish, Elissa F.      **COURTROOM:** RJC Courtroom 15B

**COURT CLERK:** Reed, Keith

**RECORDER:**      Kirkpatrick, Jessica

**REPORTER:**

**PARTIES PRESENT:**

<b>Aaron M. Nance</b>	<b>Attorney for Plaintiff</b>
<b>James J. Ruggeroli</b>	<b>Attorney for Defendant</b>
<b>Nathan Paul Grace</b>	<b>Defendant</b>
<b>State of Nevada</b>	<b>Plaintiff</b>

**JOURNAL ENTRIES**

Court noted the \$100,000.00 bail setting. Argument in support of Defendant's Motion for Own Recognizance Release With Electronic Monitoring by Mr. Ruggeroli, requesting the Defendant be allowed to get his affairs in order and earn money to help his family before going away; should the Defendant fail to interview with Parole and Probation or commit any new crimes, the State can argue for the maximum sentence. Argument in opposition of motion by Mr. Nance. Court stated findings and ORDERED, Defendant's Motion for Own Recognizance Release With Electronic Monitoring DENIED; bail REDUCED to \$20,000.00 with low level electronic monitoring.

CUSTODY

12-12-18 8:30 AM SENTENCING



JOCP

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

NATHAN PAUL GRACE, aka  
Nathan Grace  
#1877173

Defendant.

CASE NO. C-18-335667-1

DEPT. NO. VI

JUDGMENT OF CONVICTION  
(PLEA OF GUILTY)

The Defendant previously appeared before the Court with counsel and entered a plea of guilty to the crime of DRIVING UNDER THE INFLUENCE RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony) in violation of NRS 484C.110, 484C.430, 484C.105; thereafter, on the 12<sup>th</sup> day of December, 2018, the Defendant was present in court for sentencing with counsel JAMES RUGGEROLI, ESQ., and good cause appearing,

1 THE DEFENDANT IS HEREBY ADJUDGED guilty of said offense and, in  
2 addition to the \$25.00 Administrative Assessment Fee, \$2,000.00 Fine, \$60.00 Drug  
3 Analysis Fee plus \$3.00 DNA Collection Fee, the Defendant is sentenced as follows: a  
4 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-  
5 FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); with ONE  
6 HUNDRED SEVENTEEN (117) DAYS credit for time served. As the \$150.00 DNA  
7 Analysis Fee and Genetic Testing have been previously imposed, the Fee and Testing  
8 in the current case are WAIVED.  
9

10  
11 COURT FURTHER ORDERED, pursuant to NRS 484C.340, 484C.460, prior to  
12 any reinstatement of driving privileges the defendant shall have an interlock device  
13 installed and inspected on his vehicle at his expense for a period of 36 months, said  
14 period to commence after any period of imprisonment, residential confinement,  
15 confinement in a treatment facility or on parole or probation.  
16

17 DATED this 17 day of December, 2018  
18

19  
20  
21   
22 ELISSA F. CADISH  
23 DISTRICT COURT JUDGE  
24  
25  
26  
27  
28

EXHIBIT 2

EXHIBIT 2

Felony/Gross Misdemeanor

COURT MINUTES

April 25, 2019

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C-18-331986-1      State of Nevada  
                                 vs  
                                 Aaron Frye

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April 25, 2019      08:30 AM      All Pending Motions

HEARD BY:      Wiese, Jerry A.      COURTROOM: RJC Courtroom 14A

COURT CLERK: Medina, Vanessa

RECORDER:

REPORTER:      Farkas, Kimberly

## PARTIES PRESENT:

Aaron Frye	Defendant
Elizabeth A. Mercer	Attorney for Plaintiff
Pandora L. Leven	Attorney for Defendant
Robert E O'Brien, ESQ	Attorney for Defendant
State of Nevada	Plaintiff

## JOURNAL ENTRIES

DEFENDANT'S MOTION TO CONTINUE TRIAL DATE...CALENDAR CALL

Mr. O'Brien indicated after speaking in Chambers and speaking with Defendant, he had decided to plead guilty to the Indictment. Counsel requested Defendant be canvassed without a guilty plea agreement. DEFT. FRYE ARRAIGNED AND PLED GUILTY TO COUNT 1 - BURGLARY WHILE IN POSSESSION OF FIREARM (F), COUNT 2,3,4,5 - ROBBERY WITH USE OF A DEADLY WEAPON (F), COUNT 6 - CARRY CONCEALED FIREARM OR OTHER DEADLY WEAPON (F), and COUNT 7 - OWNERSHIP OR POSSESSION OF FIREARM BY PROHIBITED PERSON (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for Sentencing. COURT FURTHER ORDERED, Trial VACATED and Motion OFF CALENDAR.

CUSTODY

06/11/19 8:30 AM SENTENCING