

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

BRENDAN JAMES NASBY,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
COUNTY OF CLARK, STATE OF
NEVADA, THE HONORABLE MONICA
TRUJILLO, DISTRICT COURT JUDGE,
Respondent,

And

THE STATE OF NEVADA,

Real Party in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

CASE NO: 86434-COA

**ANSWER TO PETITION
FOR WRIT OF MANDAMUS**

COMES NOW, the State of Nevada, Real Party in Interest, by STEVEN B. WOLFSON, District Attorney, through his Chief Deputy, Jonathan E. VanBoskerck, on behalf of the above-named respondents and submits this Answer to Petition for Writ of Mandamus in obedience to this Court's order filed June 26, 2023, in the above-captioned case. This Answer is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 28th day of June, 2023.

Respectfully submitted,

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

BY /s/ Jonathan E. VanBoskerck
JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney

**MEMORANDUM OF
POINTS AND AUTHORITIES**
STATEMENT OF THE CASE

The District Court summarized the procedural history of this case as follows:

On November 9, 1998, the State filed an Information charging BRENDAN JAMES NASBY ("Petitioner") with: Count I - Conspiracy to Commit Murder; and Count 2 - Murder with use of a Deadly Weapon (Open Murder). Petitioner's jury trial began on October 11, 1999. On October 19, 1999, the jury found Petitioner guilty on both counts; as to Count 2, the jury returned a guilty verdict for First Degree Murder with use of a Deadly Weapon.

On November 29, 1999, the District Court sentenced Petitioner as follows: Count I - a maximum of one hundred twenty (120) months to a minimum of forty-eight (48) months in the Nevada Department of Corrections ("NDC"); and Count 2 - Life with the possibility of parole, plus an equal and consecutive term of Life with the possibility of parole for the use of a deadly weapon. to run consecutive to Count I. with four hundred eighty (480) days credit for time served. The Judgment of conviction was filed on December 2, 1999.

On December 14, 1999, Petitioner filed a Notice of Appeal. The Nevada Supreme Court affirmed Petitioner's conviction on February 7, 2001. Nasby v. State, No. 35319 (Order of Affirmance, Feb. 7, 2001). Remittitur issued on March 6, 2001.

On January 30, 2002. Petitioner filed a Post-Conviction petition for Writ of Habeas corpus. The State filed a Response on April 5, 2002. On March 27, 2006, the court denied Petitioner's Petition and filed its Findings of Fact, Conclusions of Law and Order on April 26, 2006. Petitioner filed a Notice of Appeal on April 12, 2006. On June 18, 2007, the Nevada Supreme Court affirmed the Court's denial of Petitioner's first Petition. See Nasby v. State, No. 47130 (Order of Affirmance, June 28, 2007). Remittitur issued on July 13, 2001.

Petitioner filed his second Post-Conviction Petition for Writ of Habeas Corpus on February 18, 2011. The State responded on April 8, 2011. The Court denied petitioner's second Petition as procedurally barred on May 11, 2011. The Court then filed its Findings of Fact, Conclusions of Law on June 17, 2011. Petitioner filed a Notice of Appeal on June 13, 2011. with the Nevada Supreme Court affirming the decision of the District Court on February 28, 2012, and issuing Remittitur on March 5, 2012. See Nasby, v. State, No. 58579 (Order of Affirmance, Feb. 8, 2012).

On December 9, 2014, Petitioner filed his third Post-Conviction Petition for Writ of Habeas Corpus. The State responded on February 4, 2015. This Court denied petitioner's Petition as procedurally barred on February 25, 2015, and the Findings of Fact, Conclusions of Law was filed on March 30, 2015. Petitioner filed a Notice of Appeal on March 13, 2015. On September 11, 2015, the Nevada Supreme Court affirmed the Court's denial of petitioner's third petition as untimely, successive, and an abuse of the writ without a showing of good cause and prejudice.

On April 3, 2015, Petitioner filed a Motion to Disqualify Judge, and Notice and Motion to Attach Supplemental Exhibits on April 21, 2015. The State filed an Opposition on April 28, 2015. On April 28, 2015, the Court filed a written order denying petitioner's motions. Petitioner appealed this decision and the Nevada Supreme Court dismissed petitioner's appeal on July 8, 2015.

On January 5, 2016, Petitioner filed his fourth Post-Conviction petition for Writ of Habeas Corpus, a Memorandum of Points and Authorities in Support, a Supplemental Memorandum of Points and Authorities in Support, and a Motion for Appointment of Counsel. The State filed a Response on February 23, 2016. Petitioner filed a Reply on March 10, 2016. On April 4, 2016, the District Court denied Petitioner's Petition. The Findings of Fact, Conclusions of Law were filed on May 9, 2016. On May 18, 2016, petitioner filed a Motion to

Alter or Amend Judgment N. R. Civ. P. 59(e). The State responded on June 2, 2016. On June 8, 2016, the Court denied Petitioner's Motion. Petitioner filed a Notice of Appeal on June 14, 2016. On July 12, 2017, the Nevada Court of Appeals affirmed the denial of Petitioner's fourth Petition for Writ of Habeas Corpus.

On January 26, 2016, Petitioner filed a Petition for Writ of Habeas Corpus (NRS 34.360 - Constitutional Questions/Questions of Law) in the Eleventh Judicial District court, seeking a declaratory judgment on seven (7) allegations of trial error. The Eleventh Judicial District Court transferred Petitioner's Petition back to this Court, as this Court has proper jurisdiction over Petitioner. On April 4, 2017, Petitioner filed a Motion for Reconsideration. The State responded on April 19, 2017. The State Responded to Petitioner's Petition on April 25, 2017. The next day, Petitioner's Motion for Reconsideration was denied. On May 10, 2017, Petitioner filed a Reply to the State's Response to Petitioner's Petition, and on May 15, 2017, the court denied Petitioner's Petition. The Findings of Fact, Conclusions of Law, and Order was filed on June 20, 2017. On June 27, 2017, Petitioner filed a Notice of Appeal. On August 14, 2018, the Nevada Court of Appeals affirmed the District Court's decision; Remittitur issued on November 30, 2018.

On January 11, 2019, Petitioner filed another Petition for Writ of Habeas Corpus. The State responded on March 13, 2019. On March 25, 2019, the District Court denied the petition as procedurally barred, successive, and an abuse of the Writ process. On April 1, 2019, Petitioner filed a Reply to the State's Response, NRCP 12(f) Motion to Strike; and if Necessary, NRCP 59(e) Motion to Alter or Amend Judgment. On April 12, 2019, the Court entered its Findings of Fact, Conclusions of Law and Order. On May 2, 2019, petitioner filed a Notice of Appeal. On April 10, 2020, the Nevada Court of Appeals issued its Order of Affirmance.

On February 27, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus. On June 4, 2020, Petitioner filed a "Motion for Resolution of Petition Notwithstanding Respondent's Failure to Answer". The Court did not order the State to file a response and denied the Petition on June 8, 2020.

Respondent's Appendix (RA) 6-8.¹

On December 22, 2022, Petitioner filed a Motion to Correct Clerical Mistake (NRS 176.565). Petitioner's Exhibit B. The State filed an opposition on December 29, 2022. Petitioner's Exhibit C. Petitioner filed a reply on February 1, 2023. Petitioner's Exhibit D. The Court denied the motion through an order filed on March 2, 2023. Petitioner's Exhibit E.

STATEMENT OF FACTS

The District Court summarized the factual background of this case as follows:

During its case-in-chief, the State presented overwhelming evidence of Defendant's guilt. This evidence included testimony that Petitioner had murdered Michael Beasley execution style, that Petitioner made admissions to two (2) different people and that petitioner voluntarily, and without provocation led police to the location of the murder weapon within Petitioner's house. Furthermore, the State offered evidence from petitioner's accomplices to detail the premeditated manner in which the homicide took place.

The State called the three (3) accomplices that joined Petitioner in killing Michael. The first accomplice, Jeremiah Deskin ("Jeremiah") testified that he knew Petitioner as a member of the gang L.A. Crazy Riders and that Petitioner was the gang leader. Jeremiah told the jury that Tommie Burnside ("Tommie") and his brother Jotee Bumside ("Jotee") were also members of the gang. Jeremiah said that one (1) month prior to the July 16, 1998, killing of Michael, Petitioner met with Jeremiah, Tommie, Jotee and another male gang member to discuss whether Michael should be killed. Jeremiah specifically recalled that Petitioner was soliciting opinions as to whether Michael should be killed because Michael was allegedly trying to take Petitioner's role in the gang. Jeremiah also related that the general consensus from the

¹ The Findings of Fact, Conclusions of Law and Order do not relate to the Motion to Correct Clerical Error but they are the District Court's most recent summary of the long procedural history and factual background of this case.

other gang members at that meeting was that Michael should not be killed.

Jeremiah further testified that on the night of the murder, he was at petitioner's house when Petitioner called him into the garage. There inside the garage with Tommie, Petitioner told Jeremiah to go pick up Michael so that they could take him to the desert and shoot him. Jeremiah then went with Tommie and Jotee to Michael's residence. Upon returning to Petitioner's home, Petitioner displayed his Browning 9mm handgun that he had purchased from an individual named David. Jeremiah explained that the "plan" was to go to the desert to shoot guns and smoke weed, but that no one had any weed on them.

After driving out into the desert, Jeremiah recalled that he stopped his car near the edge of a wash. Jeremiah told the jury that all five (5) men got out of the car to look amongst the garbage and debris for something to use as a target. He also said that he kept the lights of his car on to illuminate the area. At this time Petitioner asked Jeremiah to move his car closer to the edge to brighten the area of the wash where old refrigerators were strewn about. After he got out of the car, Jeremiah observed Petitioner approach Michael from behind as Michael continued looking into the wash for something to use as a target. From closer than ten (10) feet away, Petitioner then raised the handgun and shot Michael in the upper back. Having never seen Petitioner approach him from behind, Michael grabbed his neck/shoulder area while dropping down onto one (1) knee. Petitioner then stepped forward and fired another shot at Michael's neck/head area which caused Michael to fall forward and roll over onto his back.

Jeremiah testified that Tommie, Jotee and Petitioner then ran back to the car after Petitioner had shot Michael for the second time. Before Jeremiah was able to start the car to leave, Petitioner jumped out, ran over to Michael and shot once more at Michael's head as Michael lay there on his back. Jeremiah recalled that when Petitioner returned to the car, he muttered something like, "Try to take me off my own set" which Jeremiah understood to mean that Petitioner believed Michael was trying to remove Petitioner from the gang.

Jeremiah further testified that on the way back to Las Vegas, Petitioner threatened Jeremiah and the Burnside brothers if any of them spoke of the killing. Jeremiah explained to the jury that he had also been charged in the death of Michael, but agreed to plead to a lesser charge in exchange for his testimony against Petitioner. The Burnside brothers, Tommie and Jotee, testified that they had been at Petitioner's house on

the night of the murder and that Petitioner had shot Michael out in the desert. They also explained that they too had been charged with the death of Michael, but had agreed with the State to testify against petitioner.

Two women next testified for the State -- Tanesha Banks ("Tanesha") and Crystal Bradley ("Crystal"). Tanesha related that she was the mother of Michael's son and had been involved in a three (3) way conversation over the telephone with Crystal and Petitioner on July 17, 1998. Tanesha stated that Petitioner sounded "panicky" when she incorrectly mentioned that she had seen Michael earlier in the morning of July 17, 1998. Tanesha also told the jury that she had been beaten by a friend of Petitioner purportedly because Tanesha had been telling people she believed Petitioner was responsible for Michael's death. Tanesha later explained that once Petitioner had been arrested, she received a threatening call from him when he was being held at the Clark County Detention Center ("CCDC").

Crystal next testified that she had been familiar with Petitioner from the L.A. Crazy Riders gang and that she had stayed in contact with the gang. She also recalled the three (3) way telephone conversation with Tanesha and Petitioner in which Petitioner abruptly told her that he needed to speak with only Crystal. Crystal then testified that during this conversation, Petitioner admitted to murdering Michael, and he planned on attempting to make it look like another gang had committed the killing. Crystal revealed that while she did not believe Petitioner at first, she later called Secret Witness when she confirmed that Michael was indeed dead.

Brittney Adams ("Brittney") testified that she had talked to Petitioner about Michael's death and that she thought Petitioner was "covering something up." Brittney also said that Petitioner had told her Crystal and Tanesha were involved in Michael's death and that he wanted Brittney to kill Tanesha because Tanesha was blaming him for the death. Brittney explained that she drove over to Tanesha's house with her cousin and Petitioner to get Tanesha's side of the story. Petitioner offered Brittney a hammer to use in the assault on Tanesha telling her, "You can just hit her between the eyes and kill her, just kill her, cuz; just kill her." Brittney told the jury that she refused Petitioner's offer to use the hammer, but did get into a fight with Tanesha while Petitioner remained inside the car. Brittney recalled that when they left Tanesha's house, Petitioner repeatedly said to her. "You should have killed her, cuz, you should have killed her."

Jomeka Beavers (Jomeka”), Michael's aunt, testified that she was living with Michael on the day he was murdered. She related that Michael had received a telephone call early in the evening on the night he was killed. Michael then asked Jomeka to watch his infant son while he went out with his friends. Jomeka specifically remembered that Michael got into a car with Jeremiah, whom she knew as Woodpecker, but that Charles Damion Von Lewis a.k.a. Sugar Bear was not present.

Dr. Robert Jordan (“Jordan”) testified that he performed the autopsy on Michael who had three (3) bullet wounds, two (2) to the chest and one (1) to the head. Jordan explained that Michael had one entrance wound to the back, one exit wound to the chest and one entrance wound above the left eye. Jordan also testified that the only projectiles he recovered during the autopsy were bullet fragments from Michael's skull.

Las Vegas Metropolitan Police Department (“LVMPD”) homicide detectives James Buczek (“Buczek”) and Thomas Thowsen (“Thowsen”) testified that they had been the lead investigators into Michael's death. Buczek related that he had developed petitioner as a suspect in the murder of Michael after he spoke with Tanesha who told him about the three (3) way telephone conversation she had with Crystal and Petitioner. Burczek confirmed this information by speaking with Crystal and then proceeded to have a search warrant drawn up to search Petitioner's house for evidence. Petitioner was placed under arrest after the execution of the search warrant and was advised of his Miranda rights. As Burczek was transporting him to the police station, Petitioner immediately referred to a 9mm handgun as the murder weapon even though Burczek never told Petitioner what kind of weapon was used to kill Michael. Petitioner also told Burczek that the 9mm handgun was back at his house. LVMPD found the 9mm handgun in a bag under Petitioner's bed. AA Vol. 3. p. 0480. Thowsen testified that he had investigated a September 23, 1998, phone call from CCDC to Tanesha and confirmed that it had come from a phone line within CCDC. Further investigation by Thowsen revealed that two (2) phone calls had been placed from the section of CCDC where petitioner was being held. The jury then heard from another inmate of CCDC, John Holmes (“Holmes”) who testified that Petitioner had admitted to killing Michael. Holmes stated that petitioner told him he murdered Michael because Michael was trying to take his leadership spot in the gang.

A number of LVMPD crime scene analysts testified for the State as well. Kelly Neil (“Neil”) testified that he recovered four (4) shiny,

new-looking shell casings from the crime scene amidst “hundreds” of expended shell casings. Neil also recovered three (3) Winston brand cigarette butts and took photographs of footprints. Neil explained that three (3) of the four (4) shell casings he retrieved were 9mm cartridges. Randall McPhail (“McPhail”) testified that he collected evidence from Petitioner's house after the search warrant had been executed. McPhail explained that he recovered a 9mm handgun, took pictures of seven (7) pairs of shoes and collected cigarette butts bearing the brands Kool, Benson & Hedges and a generic brand. A further check on the 9mm handgun revealed that it had been reported stolen from a residence in North Las Vegas.

Fred Boyd ("Boyd") next testified that he had run fingerprint analysis on the recovered shell casings and 9mm handgun, but was unable to get any tangible latent prints. Boyd also explained that he could not find a match amongst the photographs of footprint impression at the crime scene and the photographs of the seven (7) pairs of shoes from petitioner's house.

Firearms expert Torrey Johnson (“Johnson”) testified that he conducted a test fire on the 9mm handgun recovered from Petitioner's house and that the shell casings discovered at the crime scene were three (3) 9mm casings and one (1) .45 casing. Johnson also told the jury that while he could not positively find that the shell casings had been fired from the 9mm handgun seized at Petitioner's house, the casings bore marks consistent with that conclusion. Moreover, Johnson explained that based on the assumption that the coroner removed bullet fragments from Michael's skull which were the resulting cause of death, the 9mm handgun examined by Jordan was the murder weapon.

RA 8-13.

ARGUMENT

Judge Trujillo's denial of the Motion to Correct Clerical Error (NRS 176.565) without reviewing the transcript does not warrant extraordinary relief. Petitioner's decision to wait over 23 years before raising this issue precludes writ review. Additionally, Petitioner's claim is belied by the existing record.

I. STANDARD OF REVIEW

This Court may issue a writ of mandamus to enforce “the performance of an act which the law enjoins as a duty especially resulting from an office . . . or to compel the admission of a party to the use and enjoyment of a right . . . to which he is entitled and from which he is unlawfully precluded by such inferior tribunal.” NRS 34.160.

Mandamus will not lie to control discretionary action unless it is manifestly abused or is exercised arbitrarily or capriciously. Office of the Washoe County DA v. Second Judicial Dist. Court, 116 Nev. 629, 635, 5 P.3d 562, 566 (2000). Thus a writ of mandamus will only issue to control a court’s arbitrary or capricious exercise of its discretion.” Id. citing Marshall v. District Court, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992); City of Sparks v. Second Judicial Dist. Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-1016 (1996); Round Hill Gen. Imp. Dist. V. Newman, 97 Nev. 601, 637 P.2d 534 (1981).

However, mere recitation of the standard does not do justice to the meaning of the rule:

An arbitrary or capricious exercise of discretion is one “founded on prejudice or preference rather than one reason,” Black’s Law Dictionary, 119 (9th ed. 2009) (defining “arbitrary”), or “contrary to the evidence or established rules of law,” id. at 239 (defining “capricious”). See generally, City Council v. Irvine, 102 Nev. 277, 279, 721 P.2d 371, 372 (1986) (concluding that “[a] city board acts arbitrarily and capriciously when it denies a license without any reason for doing so”). A manifest abuse of discretion is “[a] clearly erroneous

interpretation of the law or a clearly erroneous application of a law or rule.” Steward v. McDonald, 330 Ark. 837, 953 S.W.2d 297, 300 (1997); see Jones Rigging and Heavy Hauling v. Parker, 347 Ark. 628, 66 S.W.3d 599, 602 (2002) (stating that a manifest abuse of discretion “is one exercised improvidently or thoughtlessly and without due consideration”); Blair v. Zoning Hearing Bd. of Tp. Pike, 676 A.2d 760, 761 (Pa.Comm.w.Ct. 1996) (“[M]anifest abuse of discretion does not result from a mere error in judgment, but occurs when the law is overridden or misapplied, or when the judgment exercised is manifestly unreasonable or the result of partiality, prejudice, bias or ill will.”).

State v. Eighth Judicial District Court (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777, 780 (2011) (emphasis added).

II. PETITIONER’S DECISION TO WAIT 23 YEARS PRECLUDES REVIEW

Petitioner’s delay of over 23 years in raising this issue precludes extraordinary relief.

The Nevada Supreme Court has stated that “[w]rit relief is subject to laches.” State v. Eighth Jud. Dist. Ct. ex rel. Cnty. of Clark, 118 Nev. 140, 147-48, 42 P.3d 233, 238 (2002). In determining whether consideration of a petition for extraordinary is precluded by laches a court should consider: “(1) whether there was an inexcusable delay in seeking the petition; (2) whether an implied waiver arose from the petitioner’s knowing acquiescence in existing conditions, and (3) whether there were circumstances causing prejudice to the respondent.” Id. at 148, 42 P.3d at 238.

Clearly there was inexcusable delay by Petitioner. He waited over 23 years before filing his Motion to Correct Clerical Error (NRS 176.565). Petitioner was

personally present at the sentencing hearing on November 29, 1999. The allegedly erroneous Judgment of Conviction was filed on December 2, 1999. Petitioner's Motion to Correct Clerical Error (NRS 176.565) was not filed until December 2, 2022. Neither the underlying motion nor the writ petition before this Court explains why Petitioner waited over 23 years to correct an alleged error that supposedly happened last century.

Petitioner waived relief due to his acquiescence to his sentence. Petitioner was clearly aware of his sentence when it was verbally pronounced on November 29, 1999, and the Judgment of Conviction has been available since December 2, 1999. Petitioner has acquiesced to the status quo for over 23 years.

If this Court should grant writ relief the State will be prejudiced. Petitioner was sentenced by the judge who heard his trial and thus was intimately familiar with the facts of the case. It is highly unlikely that any judge who re-sentences Petitioner would have the depth of knowledge of the facts that the trial judge had. See, NRS 34.730(3)(b). Additionally, assuming that any victim impact evidence could even be presented after a delay of 23 years, it surely would not present the same way it did last century.

Writ review is precluded due to Petitioner's extraordinary delay of 23 years. This Court should deny relief without reaching the merits of Petitioner's complaint.

III. WRIT RELIEF IS UNWARRANTED

Petitioner's claim regarding his sentence is belied by the existing record and as such Judge Trujillo's decision to rule without the benefit of a transcript of the sentencing hearing was not an arbitrary or capricious exercise of discretion.

"Clerical mistakes in judgments, orders or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the court orders." NRS 176.565. However, claims that are belied or repelled by the record do not warrant relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

Petitioner's complaint is belied by the record. The minutes generated at the time of Petitioner's sentencing indicate he was sentenced to consecutive time:

COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, deft. is SENTENCED to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE POSSIBILITY OF PAROLE plus an equal and CONSECUTIVE term of LIFE WITH THE POSSIBILITY OF PAROLE for use of a deadly weapon for Count II, CONSECUTIVE to Count I, with 480 DAYS credit for time served.

RA 1-2.

The Judgment of Conviction drafted at the time of Petitioner's sentence indicate Petitioner was sentenced to consecutive time:

In addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a MAXIMUM term of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole eligibility of FORTY-EIGHT (48) MONTHS in the Nevada Department of Prisons for Count I and SENTENCED to LIFE WITH THE POSSIBILITY OF PAROLE plus

an equal and CONSECUTIVE term of LIFE WITH THE POSSIBILITY OF PAROLE for use of a deadly weapon. for Count II, CONSECUTIVE to Count I, with 480 DAYS credit for time served. RA 3-4.

Petitioner's allegation is belied by the record. Hargrove, 100 Nev. at 502, 686 P.2d at 225. As such, Judge Trujillo's decision to deny relief without the transcript was not an arbitrary and capricious exercise of discretion.

CONCLUSION

WHEREFORE, the State respectfully requests that Petitioner's demand for extraordinary relief be DENIED.

Dated this 28th day of June, 2023.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney

BY */s/ Jonathan E. VanBoskerck*

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney
Nevada Bar #006528
Office of the Clark County District Attorney

AFFIDAVIT

I certify that the information provided in this mandamus petition is true and complete to the best of my knowledge, information and belief.

Dated this 28th day of June, 2023.

BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF COMPLIANCE

1. **I hereby certify** that this Answer to Mandamus Writ complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point font of the Times New Roman style.
2. **I further certify** that this brief complies with the page and type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points, contains 4,139 words and 396 lines of text and does not exceed 15 pages.
3. **Finally, I hereby certify** that I have read this Answer to Mandamus Writ, 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 brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 28th day of June, 2023.

Respectfully submitted

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

BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on June 28, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
Nevada Attorney General

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

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

BRENDAN JAMES NASBY, #63618
Southern Desert Correctional Center
208 Cold Creek Road
P.O. Box 208
Indian Springs, Nevada 89070

I, further certify that on June 28, 2023, a copy was sent via email to:
District Court, Department 3's JEA for Judge Trujillo:

Terri Elliott – JEA
ElliottT@clarkcountycourts.us

BY /s/ E. Davis
Employee, District Attorney's Office

JEV//ed