

Brendan Nasby #G3618
SDCC
P.O. Box 708
Indian Springs, NV 89070
(Petitioner In Pro Se)

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

* * * * *

Brendan Nasby,
Petitioner,

vs.

The 8th Jud. Dist. Court,
Respondent,

and

State Of Nevada,

Real Party In Interest.

Case No. 86434 - COA

Dist. Ct. No. 98C154293-2

FILED

JUL 11 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY Elizabeth A. Brown
DEPUTY CLERK

PETITIONER'S REPLY TO ANSWER TO PETITION FOR
WRIT OF MANDAMUS

COMES NOW, the Petitioner, Brendan Nasby (Nasby), in Pro Se, respectfully submitting this Petitioner's Reply To Answer to Petition For Writ Of Mandamus. This Reply is made and based on all of the papers and pleadings on file herein, as well as the following points and authorities.

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Points And Authorities

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Writs Nasby believes that the facts of his criminal case are irrelevant in this matter, if the Court considers the Real Party In Interest's presentation of its Statement Of Facts in resolving this Mandamus request,

Nasby respectfully reserves the right to contest the many false representations included in Real Party In Interest's Statement Of Facts¹, in an additional pleading. Again... Nasby only wishes to submit an additional pleading, if this Court considers the irrelevant Statement Of Facts, which were not presented to the district court in the instant matter.

Argument.

1. The State argues that Nasby's "delay of over 23 years in raising this issue precludes extraordinary relief."

However, the extraordinary relief Nasby seeks is not for the requested relief in his motion, but for the district court's abuse of discretion in denying that motion without first ordering and reviewing his sentencing transcripts.

See (Order Directing Answer, pg. 1, No. 86434-COA). That order, denying Nasby's Motion To Correct ~~Relief~~ Clerical Mistake (NRS 176.565), was filed on March 2, 2023. Nasby's Petition for Mandamus relief, was filed on April 19, 2023.

Laches does not apply here.

Furthermore, a Motion To Correct Clerical Mistake (NRS 176.565) is a creature of statute, and is thus governed by the

Fn. 1 - Eg. - The State's star, and only witness to testify to seeing Nasby shoot the victim, testified that he witnessed Nasby shoot Beasley three separate and distinct times - each shot having its own set of facts and from close range. However, the coroner testified that the victim was only shot twice once in the back exiting the chest and once in the head. The coroner further testified that the shots were not from close range. The science & medical testimony makes Deskin's (the star witness) testimony blatantly false.

statute.² To put a time limit on this remedy, or to apply laches to it, would defeat the statute's "may be filed at any time" language. See - (NRS 176.565).

What's more, the same sentencing hearing Nasby requested be transcribed in his 2023 Motion To Correct Clerical Mistake, ~~was~~ is the same hearing he requested be transcribed in 2001. See - (Petitioner's Exhibit A) & (Petition, pg. 2, ln. 1-10). Nasby attempted to have the mistake corrected in 2001, but with his limited understanding of the law and the district court's denial of his 2001 request, Nasby knew of no other remedy until he discovered the availability of NRS 176.565 and its application to his case, in 2023.³ But again, this is irrelevant, as the statute allows Nasby to make the motion "at any time."⁴

Further, the State's assertion of prejudice is misplaced. Nasby agrees with the State's statement about how he "was sentenced by the judge who heard his trial and thus was intimately familiar with the facts of the case."⁵ However, the State's claim of prejudice due to "any judge who re-sentences" him, has no application here. Nasby's motion does not request re-sentencing, but only the exact sentence the sentencing judge pronounced at his sentencing hearing. See - (Petitioner's Exhibit B, pg. 3).

Fn. 2 - See - McConnell v. State, 125 Nev. 246, 247; 212 P.3d 309, 310 (2009).

3 - See - This Court acknowledged the difficulty in doing research with the state's inadequate prison law libraries. Nasby v. State, No. 53579; Order of App. E, No. 20626 - COA.

4 - NRS 176.565.

5 - State's Answer at pg. 12.

6 - State's Answer at pg. 12.

2. The State, again, claims that Nasby's "claim regarding his sentencing is belied by the existing record" because the court minutes and the JOC, both state that all of Nasby's sentences are to be ran consecutively. (State's Answer at pg. 13-14)

However, Nasby's motion alleges that the court minutes and the JOC do not match the Court's oral pronouncement. See (Petition at pg. 1-2). This Court, in Ledbetter v. State, 122 Nev. 252, 129 P.3d 671 (2006), explains that ~~§~~ NRS 126.565 allows the district court to correct this specific mistake, and Nasby filed his motion for that purpose.

Furthermore, how could a court reviewing Nasby's specific allegation, determine that his claim is belied by the record without reviewing the requisite portion of the record? It cannot. Doing so, ultimately results in a refusal to settle the dispute, which the district court is required to do by the Nev. Constitution and statute, and cannot refuse.

Nasby claims that the court minutes of his sentencing hearing, are wrong, and do not match the Court's oral pronouncement. The JOC, which was prepared by the State, likely relied on the court minutes for its statement of sentence structures and how they are to be served. The district court, likely assuming the prepared JOC matched his oral pronouncement, overlooked the incorrect sentence, and signed the JOC. This Court explained that this likely ~~§~~ scenario occurred quite often, prior to 2006. See: Ledbetter, supra.

Nasby's claim is not belied by the record. The requ-

ised portion of the record is omitted.

Conclusion.

Wherefore, Nasby's request for Mandamus Relief should be granted. Nasby request the district court be ordered to review his motion after ordering his sentencing hearing be transcribed, ~~and~~ provided to him, and reviewed to insure his JOC matches the district court's oral pronouncement. Nasby further request, that if the district court is unable to review the transcripts of the sentencing hearing, that the motion be reviewed as if the allegations in them are true and correct.

Dated this 6th day of July, 2023.

Respectfully Submitted,

By: Brendan Nasby #63618
(Petitioner In Pro Se)

Verification

Under penalty of perjury, the undersigned declares that he is the petitioner, "Brendan Nasby" named in the foregoing "Petitioner's Reply To Answer To Petition For Writ Of Mandamus" and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

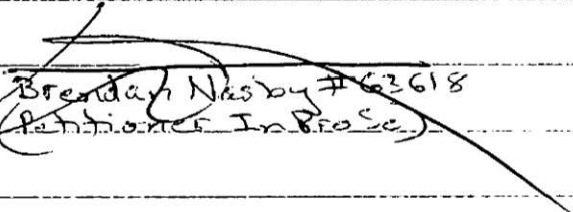
Dated this 6th day of July, 2023.

By: Brendan Nasby #63618
(Petitioner In Pro Se)

Certificate Of Service

I, Brendan Nasby, hereby certify that on this 6th day of July, 2023, I mailed to the Clerk of the Nevada Supreme Court, and caused to be served by the Clerk's Electronic Filing/Service, the foregoing:
"Petitioner's Reply To Answer To Petition For Writ Of Mandamus" to:

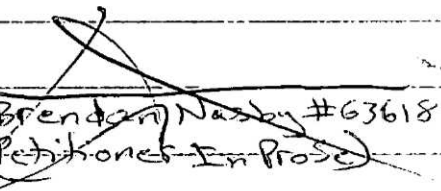
- 1) Dist. Ct. Judge "Monica Trujillo"
8th Jud. Dist. Ct.
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By: 
Brendan Nasby #63618
(Petitioner In Pro Se)

Affirmation Pursuant To NRS 239B.030

The undersigned does hereby affirm that the preceding "Petitioner's Reply To Answer To Petition For Writ Of Mandamus" does not contain the social security number of any person.

Dated this 6th day of July, 2023.

By: 
Brendan Nasby #63618
(Petitioner In Pro Se)