

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

BRIAN KERRY O'KEEFE — PETITIONER
(Your Name)

VS.

RENEE BAKER, WARDEN ;
AND THE STATE OF NEVADA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

IN THE SUPREME COURT OF THE STATE OF NEVADA
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

BRIAN KERRY O'KEEFE #90244
(Your Name)

LOVELOCK CORRECTIONAL CENTER
(Address)

1200 Prison Rd., Lovelock, Nv. 89419
(City, State, Zip Code)

N/A
(Phone Number)

INVOKE MAILBOX RULE, ACCORD HOUSTON V. LACK, 489 U.S. 266, 276 (1988)

(2)- QUESTION(S) PRESENTED
(FINALITY OF DIRECT REVIEW
DETERMINATION)

- 1.) Whether rights, during the direct-criminal-review process, generated by federal procedural and substantive due process of law prescribed particularly by the protected liberty interest in 28 U.S.C. § 2244(d)(1)(A), prohibits the state in the continual libel,¹ of "misdating" the state's conclusion of direct review "as" 7/23/13, for the state's benefit of time-bar,² which "wrongful conduct" deprives the actual certiorari "denial" date of "10/15/13," as a matter-of-record, reported by this Court upon denial of the direct criminal appeal petition for writ of certiorari to the Supreme Court of Nevada on "October 15, 2013," U.S. case no. 13-6031. (see APPENDIX C)(Cert. Denied)
- 2.) Whether the libel,¹ results in prejudice to petitioner's "liberty interest" by section 2244(d)(1)(A) resulting in an unwarranted denial of a timely state post habeas action,² demonstrates good cause and excuse to overcome the time-bar currently imposed, when the Supreme Court of Nevada individually caused the state-imposed impediment, as the external force, therefore warranting the granting of this writ of certiorari within 28 U.S.C. § 2106.

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- **FN1** The libel of the misdate of "finality" by the S.C.N. on the state CM/ECF currently reflects the conclusion of direct review "as" 07/23/13 by the issuance of the remittitur contradicting the uniform meaning accepted in ("Clay" and "Jimenez", *infra*), triggering the continuing violation doctrine.
 - **FN2** Before expiration of the (90) day window the state infringed upon U.S. Supreme Court Rule 13.1 and 28 U.S.C. § 2101(c) by issuing the direct appeal remittitur thereby starting the collateral clock (NRS 34.726) contrary to (§ 2244(d)(1)(A)) (84) days premature resulting in the timely state habeas filed 9/15/14 being time-barred. (see APPENDIX D)(Nevada Supreme Court Docket Sheet: 61631 - 07/23/13 Remittitur ISSUED...)

LIST OF PARTIES

☒ All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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PROOF OF SERVICE APPENDED

● SEE SEPARATE APPENDIX INDEX TO APPENDICES as EXHIBITS

APPENDIX A	SUPREME COURT OF NEVADA ORDER DENYING PETITION FOR REVIEW 5/24/2018
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APPENDIX D	NEVADA SUPREME COURT CRIMINAL DIRECT APPEAL DOCKET SHEET (PRINTED 12/14/17)
APPENDIX E	NOTICE OF APPEAL <u>via</u> MOTION TO STAY MANDATE PENDING CERTIORARI 7/8/2013
APPENDIX F	ORDER AS NOTICE/PERMIT TO SEEK NRS 34.360 (ORIGINAL WRIT PETITION) REVIEW OF THE ORDER DENYING ORIGINAL PETITION <u>via</u> U.S. Certification of SUPREME COURT OF NEVADA NRS 34.360 CASE NO. 74588 JUNE 13, 2018

● APPENDIX TO PETITION FOR CERTIORARI SEPARATE WITH "COVER" & INDEX

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the COURT OF APPEALS OF THE STATE OF NEVADA appears at Appendix B to the petition and is

☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was MAY 24 2018.
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The "First Amendment" provides the right to petition the government for redress of grievances.

The "SIXTH Amendment" additionally provides the right to appeal, for direct-review of a criminal jury trial judgment from a not-guilty plea, via petition for certiorari all the way to this Court.

(Both enforced by the "Fourteenth Amendment".)

● Statutory provisions 28 U.S.C. § 2101(c) provides interim jurisdiction by a (90) day window to apply with U.S. Supreme Court Rule 13.1; with 28 U.S.C. § 1257 (2) impliedly involves the taking of jurisdiction for final judgments, rendered for certiorari, by the highest state court.

● Federal statute 28 U.S.C. § 2244(d)(1)(A) provides the uniform meaning of conclusion of direct review to harmonize with Nevada Revised Statute 34.726(1), also ending the direct-review clock.

● Moreover, the due process and equal protection clauses are guaranteed by the "XIV Amend."

The Nevada Constitution, Article 1 section 2 provides paramount allegiance to the laws of the federal government to also be bound by all "SCOTUS" authorities. Nevada Constitution, Article 6 section 4 governs motions to stay remittitur pending application to the United States Supreme Court for certiorari review which embodies within N.R.A.P. Rule 41(b)(3) federal statute 28 U.S.C. § 1257(2). With emphasis however, N.R.A.P. Rule 41(b)(3)(A) mandates only that; "A party may file a Motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari."

This then, by N.R.A.P. Rule 1(e)(e), dictates "MAY" as permissive only! Moreover, N.R.A.P. Rule 4(d) accords appeals by an inmate confined in an institution by delivering to a prison official for mailing by the mailbox rule, where notices to appeal and motions for direct review are considered "then" filed.

STATEMENT OF THE CASE

From a 3RD criminal jury trial conviction, petitioner's direct appeal and petition for rehearing were denied. Petitioner in "pro se" filed a timely direct notice to appeal, pursuant prescribed rule and motion. (SEE APPENDIX E)³ (herein)

Pursuant state law, Nevada Rules of Appellate Rule 41(b)(3)(A) mandates that such motion is only "permissive", acting moreover as a true notice to stop the State Supreme Court from divesting jurisdiction and court record back to the trial court, pending certiorari review by this Court.

● ACCORD FED. R. APP. P. 3(c)(4) ("[A]ppel must not be dismissed for informality of form or title of the notice...").

- 1.) Pursuant the "mailbox rule," petitioner had mailed APPENDIX "E" on "July 8, 2013," with the clerk filing on "July 12, 2013," then unfiling on "July 16, 2013" despite all this still part of direct-review and a federal right to seek certiorari.
- 2.) The Nevada Supreme Court ("NSC") improperly issued remittitur on "07/23/2013."
- 3.) Within the (90) day window, the U.S. court clerk sent actual-notice, to the N.S.C. clerk, that a petition for a writ of certiorari was received, filed, and then docketed on "08/19/2013" as No. 13-6031. (SEE APPENDIX D)
- 4.) Noting, the actual Solicitor General of Nevada, C. Wayne Houke filed notice of appearance. This "Court" ultimately denied certiorari on "October 15, 2013." (SEE APPENDIX C)
- 5.) Petitioner timely filed state post habeas on "09/15/2014" wrongfully time-barred, with appeal summarily denied. Petitioner then filed original habeas to challenge their state-imposed impediment of issuing the direct-appeal remittitur approximately (3) months premature. The state courts accepted jurisdiction, under NRS 34.360, ultimately with both the Court of Appeals (SEE APPENDIX B) and Supreme Court (SEE APPENDIX A) denying the original habeas raising a Constitutional/procedural due process violation. The Nevada Supreme Court then granted, by ORDER, the right to have their decision reviewed on certiorari by this Court. (SEE APPENDIX F)

● FN 3 BECKER v. MONTGOMERY, 532 U.S. 757, 760 (2001) (... brief could be treated as notice of appeal...)

REASONS FOR GRANTING THE PETITION

- See CLAY v. UNITED STATES, 537 U.S. 522 (2003); JIMENEZ v. QUARTERMAN, 555 U.S. 113 (2009)

This Court has not entertained an action considering this Constitutional deprivation of procedural federal due process "where" the state supreme court disavows a "pro se" petitioner's right to seek direct review of a criminal judgment, by independently concluding the "finality" of "direct review" based on "state law," which contradicts the "conclusion of direct-review" by this court accepted in "CLAY" and "Jimenez", *supra*.

Moreover, "Nevada" is ignoring the (90) day window established by U.S. Supreme Court Rule 13.1, to file for certiorari, thereby stopping the direct clock and starting the statute-of-limitations clock, for collateral post actions, creating a phantom state collateral clock that becomes contrary to the federal clock; NRS 34.726(1) vs. § 2244(d)(1)(A).

- see GONZALEZ v. TAYLOR, 132 S.Ct. 641 (2012) (i.d. at 645)

Direct-appeal review is rarely submitted, based on a myriad of reasons, e.g.- cost, time, amount of copies to submit, chances of review, *inter-alia*.

However, here, petitioner filed direct appeal, rehearing and sought U.S. certiorari on the "premise" that the collateral clock would "not" start, until the conclusion of direct review by this Court, when denying my request, which still was a guaranteed right to do per federal law, with the "Equitable Doctrine" applying. ("EQUITABLE ESTOPPEL")

This court needs to intercede and "enforce" the true final judgment date, thereby ending the direct-review clock, to prevent the state of Nevada in prematurely issuing the direct appeal review remittitur when this Court has not even conducted the direct review, to only then start the limitations clock pursuant 28 U.S.C. § 2244(d)(1)(A) which is the true parent of the state limitations clock, N.R.S. 34.726(1). Unwary prisoners don't realize Nevada has prematurely issued the "direct" remittitur!

REASONS FOR GRANTING THE PETITION

Many Nevada prisoners, who had trials, don't realize the remittitur date, from the conclusion of state direct appeal review, ending with U.S.

certiorari petitions, must benefit from the conclusion date by denial of certiorari by this Court. This is primarily based on the fact that state attorneys, let alone pro se litigants, even submit and attempt certiorari review by this Court, like O'Keefe did here.

Without the benefit of the reported date of certiorari, by this Court on direct-review, places the state collateral clock advanced in time depriving petitioner's, like O'Keefe here, of valuable time to develop state post habeas claims.

"Arguendo" - Here, petitioner O'Keefe was granted a 2ND Certificate of Appealability on a "colorable" Constitutional double jeopardy claim. When litigating and filing his federal habeas, the chance and opportunity existed to exhaust more claims in state court and return to federal court. Petitioner's main point is upon litigation with the federal court, the respondent's attorney via the assistant attorney general assigned, argued in his response to petitioner's judicial notice, that he recognized O'Keefe's argument that the statute of limitations started running approximately (3) months early despite the fact that direct review was still pending via U.S. Certiorari. As usual, the state did nothing more than admit the truth. (Per CM/ECF)

• (See 3:14-cv-06477-RCJ-YPC DOCUMENT 105 Filed 03/27/18 Page 3 of 4, lines 2-5)

This then proves my point, with the fact that direct-review did not end until this Court denied my certiorari request on 10/15/2013, the state habeas was timely.

The entire purpose of direct appeal is the opportunity to have your Constitutional claims heard, via prescribed by procedural rules. The fundamental fairness requirement of due process to be heard can not be disavowed. • see Wolff v. McDonald, 418 U.S. - 539, 551-58 (1974). Federal courts must apply the correct law enforcing fundamental fairness. Demonstrated here, petitioner timely submitted a direct review notice to appeal and stay the remittitur followed by timely submitting his petition for certiorari. Despite this, the Nevada Supreme Court issued the direct appeal remittitur before this Court filed the actual petition ultimately however denying on 10/15/2013. The remittitur could not issue before, as it did here, however prejudicing O'Keefe.

- With emphasis, "procedural due process imposes constraints on governmental decisions which ultimately deprive individuals of liberty interests within the meaning of the Due Process

CONCLUSION

Clauses of the V. XIV Ameri's.

- see Davis v. Scherer, 468 U.S. 183, 202 (1984)

The petition for a writ of certiorari should be granted. (see 28 U.S.C. § 2106)
Based on a matter of first impression.

Respectfully submitted,

Brian L. O'Keefe #90244

Date: August 14, 2018 (Tuesday)

Pursuant 28 U.S.C. § 1746