

No. 21-5024 ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
JUN 25 2021
OFFICE OF THE CLERK

Gary McKinley — PETITIONER
(Your Name)

VS.

Eighth Judicial District Court for the State of Nevada ^{etal} RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Nevada Supreme Court
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Gary McKinley 96251
(Your Name)

LCC, 1200 Prison Road
(Address)

Lovelock, NV. 89419
(City, State, Zip Code)

(Phone Number)

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QUESTION(S) PRESENTED

1. Whether in a petition for mandate on several claims for relief these two statements provide the same "standard of review":
"Petitioner has not provided this court with all of the exhibits or other documentation that would support his claims for relief" and;
"the Petitioner shall submit an appendix containing all documents essential to understand the matters set forth in the Petition?"
2. Whether it is in fact a denial of a prose prisoner's Due process and equal protection of rights for the state supreme court to deny a petition for mandates while citing a lack of proof without describing what proof is lacking and which issues are unproven, leaving Petitioner with no avenue for relief?
3. If a person is abandoned by his attorney, is it then proper for his state court system to deny him his due process rights to see and obtain the discovery of his case as they would if he were an attorney?

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:

1. The Eighth Judicial District Court of the State of Nevada
2. Clark County, NV. District Attorney
3. City of Henderson, NV. Police Department
4. The Nevada Department of Corrections

Related Cases

Henderson Township v. McKinley, No. DSFH 1328, Henderson Justice Court
Henderson, NV. Bound over to district court, NOV 16, 2005

State of Nevada v. McKinley, No. 2005C 216968, Eighth Judicial District
Court, Clark County, NV., Judgment entered MAR. 29, 2007

McKinley v. State, No. 49300, Nevada Supreme Court, Conviction Affirmed
July 24, 2008.

McKinley v. State of Nevada, No. 2005C 216968, Eighth Judicial District
Court, Clark County, NV. Habeas Corpus denied, NOV. 12, 2010

McKinley v. State of Nevada, No. 57345, Nevada Supreme Court, AFFIRMANCE
of Denial of habeas Corpus, OCT. 5, 2011.

McKinley v. LeGrand, 2:12-cv-01090-APG-NJK, US District Court for the
District of Nevada, Judgment entered Sept. 18, 2015

McKinley v. LeGrand, 15-17082, Ninth Circuit Court of Appeals
AFFIRM denial, Nov. 9, 2016

US Supreme McKinley v. LeGrand, No. 16-1259, US Supreme Court, Certiorari denied

June 19, 2017

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OTHER

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 Eighth Judicial District Court court 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 Feb 8, 2021. A copy of that decision appears at Appendix A .

☒ A timely petition for rehearing was thereafter denied on the following date: Mar 24, 2021, and a copy of the order denying rehearing appears at Appendix D .

☒ An extension of time to file the petition for a writ of certiorari was granted to and including Aug 17, 2021 (date) on Apr 16, 2021 (date) in Application No. A .

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the V, VI and XIV Amendments to the US Constitution; Nevada court rules part VI Revised Nevada Code of Judicial Conduct, Canon 2, Rule 2.6; Nevada Court Rules Rule 250 (3)(b); Nevada Revised Statutes 174.235, 174.285, 174.295.

The Fifth Amendment in pertinent part says: No Person shall be held to answer for a capital, or other infamous crime, unless on a presentment or indictment of a Grand Jury... nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment in pertinent part says: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury... to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favor, and to have assistance of counsel for his defense.

Nevada Court Rules part VI Revised Nevada code of judicial conduct, Canon 2, Rule 2.6 and Commentary in pertinent part says: Ensuring the Right to be heard, Part (A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. Part (B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into a settlement. Commentary

[1] The right to be heard is an essential component of a fair and impartial

System of Justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

Nevada Court Rules Rule 250(3)(a) & (b) in summary say: (3) Duties and compensation of defense counsel (a) Records of litigation, describes the records defense counsel should build while representing a client which include discovery. And (b) notifies counsel about providing all those records to succeeding counsel.

NRS 174.235(3) states, The provisions of this section are not intended to affect any obligation placed upon the prosecuting Attorney by the Constitution of the United States or the Constitution of this state to disclose Exculpatory Evidence to the defendant.

NRS 174.285 Time limits; In Pertinent Part, (1) A request made... A subsequent request may be made only upon showing cause why the request would be in the interests of justice.

~~NRS 239~~ NRS 174.295(1) If, after complying with the provisions of NRS 174.235 to 174.295 inclusive, and before or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under those sections the party shall promptly notify the other party or the other parties Attorney or the court of the existence of the additional material.

The Fourteenth Amendment to the US Constitution section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state

deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

I come to this Court the victim of a perfect storm. The First element came in June of 2017. My attorney of record Cal J. Potter III abandoned me in this very Court case no. 16-1229. I knew some ruling should be coming but I did not know when. I called Mr. Potter on June 28, 2017, to inquire how things were going and if a ruling had happened yet. He said no ruling had been made yet and that maybe this Court would address it in October in the next session. I did not know yet that a decision had already been made to deny certiorari on June 19, 2017. It wasn't until later in the month while talking with my son and I told him the case number so he could check your website that he discovered the truth. I was stunned. I tried to call Mr. Potter but no one would answer the phone. I did not know what to do. I decided, since I will never give up, I must pull myself up by my bootstraps and continue on. I asked for materials from the Law Library here at Lovelock Correctional Center.

That brought in the second element of this perfect storm, "The Lovelock Correctional Center Law Library". It uses a "paging system" of legal research. It requires you to exactly cite the cases, books, treatises, etc. that you wish to check out. Most of the inmates who work there have never had any training in the law. see Koerchner v. Warden, Nevada State Prison, 508 F. Supp. 2d 849, 857.

I tried to file some documents "in and through my attorney", a motion to stay proceedings until I could discover what was occurring in this case and finally a petition to rehear. But I did not know what

I was doing. I probably still don't.

On August 28, 2017, I received from Mr. Potter the notification letter the clerk of your court had sent to Mr. Potter. It was dated June 19, 2017, he attached the envelope it had been sent in. It was posted on June 19, 2017. He also sent the copies of the motion to discovery/request extension for time to file petition for rehearing dated July 20, 2017 and Petition for rehearing and the envelopes I had sent to him.

On August 31, 2017, I received my documents back from your court clerk, unfiled, stating I was too late. On September 4, 2017, believing that if I wrote to a Supreme Court Justice, I might convince them to help, (stay the proceedings, appoint an attorney, help me file a petition to rehear), I sent him all the documents just described including the letter from your court clerk. I have never heard anything from Justice Thomas nor ever received my documents back.

The third element of this perfect storm came on October 2, 2017, when I received an order granting withdrawal of Counsel from the Ninth Circuit Court of Appeals. Again, I was surprised. I had not been able to contact Mr. Potter anyway but you sort of expect a professional to at least say something. On October 4, 2017, I received a copy of the motion to withdraw as Counsel in the Ninth Circuit. Mr. Potter's son and law partner, made a declaration of Counsel, in summary, he said his father had at some point been diagnosed with Glioblastoma, it had advanced to primary grade 4 affecting his parietal, temporal, and occipital lobes. He underwent emergency brain surgery on July 29, 2017, and that he was completely incapacitated. It was an absolutely reasonable reason to

withdraw as counsel but it left me with very few resources and a mountain of a legal battle to fight.

I had already written a letter to Potter law offices trying to obtain my case file on July 31, 2017. So after they withdrew I waited. On October 20, 2017, my motion to proceed in forma pauperis was granted in the Eighth Judicial District Court, Las Vegas, NV. and on November 16, 2017, my motion to withdraw counsel in state court and order to send my file was granted.

On December 18, 2017, I received a copy of the Las Vegas Review Journal Newspaper it contained an obituary for MR. Cal J. Potter III. He had died on November 22, 2017.

Around the end of February 2018, I received purportedly my entire file but I was convinced there should be more. I obtained a subpoena and had it served on April 6, 2018. Finally I filed a motion for order to show cause why Potter law offices had not fully complied with the court's order. Finally around the end of June different but more of my entire file. The motion was heard on June 28, 2018. This brought in a Fourth element to this perfect storm, "The Eighth Judicial District Court Clark County, NV." I never received a copy of any order from the July 26, 2018 proceeding, the June 28 hearing was continued while the court also discovered MR. Potter had died. At the July 26, 2018 proceeding the court ordered ~~Potter~~ the Clark County District Attorney to "send all discovery to Defendant." I only discovered about it months later while reviewing new docket sheets and suddenly ~~60 minutes~~ minutes were included that showed the court's order it was on Jan. 2, 2020.

I had already filed a motion for Production of Exculpatory evidence on Dec. 7, 2018, heard on Jan. 8, 2019. But once again I never received an order. After asking where the minutes were several times, I asked for another set of docket. They were printed on April 3, 2019, and sure enough the order denying my motion for production of exculpatory evidence was there for January 8, 2019.

When I had discovered the order for the district Attorney to send all discovery to defendant on Jan. 2, 2019, I had the court certify subpoenas and I had the Clark County Sheriff serve them on the District Attorney, the Henderson Police dept. and the District Attorney's witness/victim Assistance center. However, the District Attorney's office and the Henderson Police dept. refused to honor the subpoenas.

In Feb., after still not hearing anything about the motion for production of exculpatory evidence and the Jan. 8 hearing, I moved the court for an order NDOC to allow inmate McKinley to receive and possess electronically recorded discovery and NDOC Assist him review this discovery. This motion attempted to further involve the Fifth element in this perfect storm "The Nevada Department of Corrections"

The reason for the order was related to a situation involving the audio/video transcripts of all the hearings and two trials that I had been able to get copies of from the court. I had read the NDOC Rules (AR's) on Law Library AR 722. I believed AR 722.09.9 would allow DVDs to come into the prison from the court.

But, even with the rule prison staff tried to interfere and not allow it to happen. I had to go to court and get an order that it was my right of access to the courts to review the record of my case. Even then prison officials denied they had any equipment to review it with. I finally prevailed.

The motion for order NDOC to Allow McKinley to receive and possess electronically recorded discovery ... was heard on March 19, 2019. The court seemingly misconstrued my motion although granting it and directing me to contact Henry Kim, Deputy Attorney General for aid in securing more discovery and reviewing it and finally, again, it "instructed the state to send defendant's discovery to him as his attorney passed away."

The Attorney General had responded to that motion claiming NDOC had not been properly served even though they had responded and engaged in all proceedings. On March 13, 2019, I had filed certificates of service for the second time for, Motion for order NDOC Allow/Assist inmate E-file documents and papers in the Eighth Judicial district ... motion for order produce prisoner for simultaneous audio video transmission equipment for criminal proceedings ... and motion for Production of Exculpatory evidence. At April 9, 2019 hearing the court took all those motions off calendar as moot and advised me to contact DAG Kim regarding discovery issues. I wrote MR Kim on April 22, 2019. I never received any response back.

After the March 19, 2019, hearing results were disclosed to me, I filed a traverse stating exactly some of the electronically recorded

discovery I sought. A hearing was held on APR. 23, 2019. The Court ordered me to provide a Supplement with additional things requested.

At this point I felt that by the Court not allowing me to participate in these hearings either Televised or simply telephonically I was being denied due process and access to the Courts. The hearings were simply one sided oral arguments.

I petitioned the Nevada Supreme Court for a writ of Mandamus to simply order these people to stop ignoring me. Case No. 78909, doc. 24391 filed June 5, 2019. The Nevada Supreme Court transferred the case to the Nevada Court of Appeals and on June 25, 2019 the Court of Appeals denied the petition saying "McKinley should seek enforcement of a district court order in the district court" and "the district court ordered McKinley to 'submit a supplemental pleading numbered of any additional things requested.' McKinley does not allege he filed a pleading in which he specifically identified any additional documents he needs."

But I had already written to Mr Kim after the April 9, hearing on April 23, 2019 simply sending copies of subpoenas already served that laid out all the discovery I asked for. I never received a response back from Mr Kim. I filed a petition to rehear, it was simply denied.

However, I did go back to the district court with a supplementary listing of the evidence needed on Sept. 5, 2019, heard on Oct 17, 2019. The court now decided I should file a habeas corpus, I was premature now with this request, pursuant to NRS 34.780(2).

I then filed a motion on Nov. 8, 2019, for order Ndoc produce prisoner for simultaneous Audio Visual transmission equipment or in the alternative a telephonic hearing. Then on Nov. 25, 2019, I filed a motion for order to show cause, please schedule for when the motion for televideo/telephonic hearing is held. When the court heard the telephonic request incredulously, it said there was no motion outstanding on Dec. 3, 2019. Further when the motion for order to show cause was heard by a different judge, on Christmas eve Dec. 24, 2019, the new judge said they had reviewed the record and the D.A. had sent all discovery ordered by the court. I felt the District Attorney in his opposition to the motion for order to show cause had misrepresented the facts. I filed an objection and notice of erratum to his statements, on Jan. 27, 2020. I filed a motion for leave of the court to rehear the motion for order to show cause. On Feb. 4, 2020 the motion for leave was denied by the original judge and, reverting now, on an enforcement action of his original order, to be now, I was presumptively premature and should file a habeas corpus.

On Jan. 28, 2020, the day after I filed my objection the district Attorney filed a motion to have defendant declared a vexatious litigant and to refer defendant to the department of corrections for forfeiture of statutory credits. And despite the fact I had given them notice of my address change the District Attorney sent this motion and an opposition to my motion the court for leave to rehear to the wrong prison. I received them both on Feb. 13, 2020.

But, even though I was able to respond on the 18th to both documents, the wierdest thing happened with that mailing. When I weigh all of the factors involved it sums up to: someone in the Nevada department of corrections made a deliberate effort to interfere with those court responses. most likely the mailroom personnel working the 18th or 19th of February, 2020.

Around this same time, Dec 12, 2019, I had moved from another Nevada prison. NDOC had sent me to that other, Ely State prison under false pretenses, then allowed me to come back, but they confiscated over half of my legal files in the process. I still do not have ready access to that nor the whole file together at once to make sense for me, for now a year and a half.

I had already filed on Feb. 19, 2020, heard on Mar. 12, 2020 a motion for order Nevada Department of corrections return the Five(5) Legal boxes of Gary McKinley's legal case files to him without delay. once again NDOC's legal counsel a Nevada Deputy Attorney General claimed I had not served them as he produced a "Notice of Compliance" to my motion. I filed a reply to that notice on May 26, 2020. I had already notified the court twice this issue was impeding my filing of a habeas corpus when the judge ruled on the motion on June 23, 2020, ordering motion off calendar unless I properly served the Attorney General. But I don't even understand what the court means.

In October of 2020, I began again trying to obtain from the State Supreme Court a writ of mandamus, although, after all of the preceeding

issues occurred. I added some new claims for relief. On Nov. 16, 2020, I received my documents back with a letter from the court clerk telling me the rules in Nevada Rules of Appellate procedure had been changed and my petition was too long (35 pages handwritten text). I made a motion for permission to exceed the page limit. My main grounds, was the rule book, the only one available to me at Lovelock Law Library did not contain any mention of a new rule change. I asked the law library supervisor specifically, but received back an answer unrelated to my question about a new rule, from a law library supervisor who only a few years ago was a deputy court clerk in Nevada. The rulebook in the law library still does not have the rule change in it. A year and a half after it went into effect. The chief justice of the state supreme court denied my motion and gave me 21 days to refile a 15 page petition stating, Having considered the motion and the submitted petition, this court is not convinced that the petitioner demonstrates "diligence and good cause" warranting the filing of such a lengthy petition.

I had to cut my petition in half leaving out issues of great concern to me, the First Amended petition filed on January 21, 2021.

On Feb. 12, 2021, I received the order denying ~~original~~ petition and Amended petition. The only reasoning for denying my several claims for relief was, "Petitioner has not provided this court with all the exhibits or other documentation that would support his claims for relief" and they cited NRAP 21(a)(4) (providing

the petitioner shall submit an appendix containing all documents "essential to understand the matters set forth in the petition").

In my estimation, those two statements are two entirely different standards of review.

And see Artuz v. Bennett 531 US 4, 8 ("In common usage, the question whether an application has been 'properly filed' is entirely separate from the question whether the claims contained in the application are meritorious and free of procedural bar")

Further, the failure to provide any reasoning to support their ruling flies in the face of the Nevada Supreme Court's en banc ruling in Leche

v. Cohn, 124 Nev. 1, 24-25 (the order denying Lioce's motion for a new trial is summary, only stating that the motion was denied without providing any reasoning. As there is no reasoning for the district court's decision we are unable to decide whether it abused its discretion ... accordingly, we vacate ~~the~~ district court's order and remand

this case for a decision on the motion based on the standards discussed in this opinion.) And Daniel v. State, 119 Nev 498, 507 (meaningful and effective appellate review is dependant upon the availability of an accurate record, and the failure to provide an adequate record on appeal handicaps appellate review and triggers due process clause violations.)

I asked for a rehearing citing my reference to the petition I had filed over a year ago. I pointed out to them that NDOC had confiscated over half my legal files and I do not have documents readily available to me from those. The wording of their

denial leads me to believe all these documents are on file with the state supreme court even case no. 57345 the appeal of my prior habeas petition with the issues involved there. I simply in so many words and with case citation, Cannon v. Taylor 88 Nev. 671, 673-74. which basically refers to taking judicial notice of facts in the record that are "integral to the complaint."

See Cortec Industries, Inc. v. Sum Holding L.P., 949 F2d 42, 47 (2nd Cir 1991) That petition was denied on March 24, 2021. On Apr. 16, 2021 the court granted a stay of remittitur until Aug 17, 2021, so this court may notify them I have filed a petition for a petition of certiorari.

I brought the issue of Brady violations and denial of due process up first in the Eighth Judicial District Court in my motion for production of exculpatory evidence Filed Dec. 7, 2018 on page 1. I used those cases as according to these cases this evidence must be produced. Due process requires it. The district court said I didn't say why I needed this exculpatory evidence in his order of January 8, 2019. Appx B pg 2

I brought the issue of production of exculpatory evidence in my first Petition for writ of mandamus Filed June 5, 2019, case 78909 doc 19-24391 page 2. I questioned the constitutionality of allowing it to continue unaddressed. I incorporate those same statements in my Petition of Dec. 7, 2020 and First Amended Petition of Jan 21, 2021.

REASONS FOR GRANTING THE PETITION

The NONTRANSPARENCY and UNACCOUNTABILITY of the CRIMINAL Justice System in America has finally come to a head here in America.

A Policeman has been convicted of murdering a suspect of possibly passing a counterfeit twenty dollar bill for a pack of cigarettes in a pandemic of epic proportions.

This Court must do its part to rein in police and prosecutorial powers especially in Nevada. Police brazenly edit audio and video recordings, Prosecutors establish a slush fund to bribe witnesses.

My case is a prime example.

CONCLUSION

The facts clearly show an alignment of purposes to overpower my resolve.
I ask this court for a common law ruling in Equity and Justice.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Gary McKinley

Date: June 22, 2021