

21-6684
No. _____

ORIGINAL

Supreme Court, U.S.
FILED

DEC 16 2021

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

FERRILL J. VOLPICELLI — PETITIONER
(Your Name)

vs.

STATE OF NEVADA, et al RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

FERRILL J. VOLPICELLI #79565
(Your Name)

1200 PRISON ROAD
(Address)

LOVELOCK, NV 89419
(City, State, Zip Code)

N/A
(Phone Number)

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTION(S) PRESENTED

WHETHER THE NEVADA SUPREME COURT LACKED
SUBJECT MATTER JURISDICTION TO REVIEW PRELIMINARILY
APPEALED, NON-FINAL DISTRICT COURT ORDERS; THEREBY
DEPRIVING VOICELY OF CONSTITUTIONALLY FAIR STATE
HABEAS REVIEWS, AS GUARANTEED BY THE FOURTEENTH
AMENDMENT TO THE UNITED STATES CONSTITUTION?

**'EVERY DAY THE
COURT FAILS
TO GRANT
RELIEF IS
DEVASTATING.'**

SCOTUS JUSTICE SONIA SOTOMAYOR, 2021

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:

FERRILL JOSEPH VOLPICELLI,
PETITIONER

VS.
THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
WASHOE,
RESPONDENT,
AND
THE STATE OF NEVADA; AND TIM
GARRETT, WARDEN,
REAL PARTIES IN INTEREST,

TABLE OF AUTHORITIES CITED

ARE SPECIFIC TO THE POINTS AND AUTHORITIES IN APPX. F-4
CASES PAGE NUMBER

<u>ALPER V POSW</u> , 363 P2d 502 (1961) NV	6
<u>DUNLEVY</u> , 769 P2d 1271 (1988) NV	1
<u>DOAN V WICKERSON</u> , 327 P3d 498 (2014) NV	8
<u>PEOPLE V SOLARZANO</u> , 63 Cal Rptr 3d 659 (2007)	9
<u>POWELL V. STATE</u> , 460 P3d 787, 793 (2020)	8
<u>INS. CO. OF DENVER, V. CHAMBERS</u> , 456 US 694	8
<u>SOUTHERN NV BLDG</u> , 913 P2d 1276 (1996) NV	6
<u>U.S. V BEECH</u> , 281 F3d 1336, 1348 (2012)	8
<u>WASH. V STATE</u> , 756 P2d 1191 (1988) NV	6

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NRS 177.385	6
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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 F-6 to the petition and is NEVADA SUPREME COURT ON REHEARING
F-5 & REVIEW.

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☒ is unpublished.

The opinion of the NEVADA COURT OF APPEALS court appears at Appendix F-3 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 AUGUST 9, 2021
A copy of that decision appears at Appendix F-3.

☒ A timely petition for rehearing was thereafter denied on the following date: NOVEMBER 16, 2021, and a copy of the order denying rehearing appears at Appendix F-5.

☒ A TIMELY PETITION FOR REVIEW WAS DENIED ON 11-16-21 (F-6)

☐ 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

U.S. CONSTITUTIONAL AMENDMENT 5: DUE PROCESS OF LAW... GUARANTEE

U.S. CONSTITUTIONAL AMENDMENT 14: MAKING THE 5TH AMENDMENT (USC 15) ENFORCEABLE UPON THE STATES
BROOK V MARYLAND, 373 US 83 (1963)

NEVADA CONSTITUTION ARTICLE 1 § 8.6, DUE PROCESS OF LAW.

NEVADA CONSTITUTION ARTICLE 1 § 2: ALLEGIANCE TO THE FEDERAL GOVERNMENT AND BOUND BY U.S. SUPREME COURT DECISIONS
BATES V WALDEN, NSP, 482 P2d 317 (1971)

NEVADA HABEAS STATUTE: NRS 34-830(1)
ANY ORDER THAT FINALLY DISPOSES OF A PETITION, WHETHER OR NOT AN EVIDENTIARY HEARING WAS HELD, MUST CONTAIN SPECIFIC FINDINGS OF FACTS AND CONCLUSIONS OF LAW SUPPORTING THE DECISION OF THE COURT.

STATEMENT OF THE CASE

VOLPICELLI SEEKS CERTIORARI RELIEF WITH THIS COURT COMPELLING THE NEVADA SUPREME COURT TO VOID ITS ORDER OF AFFIRMANCE FROM PROMANUELY APPEALED DISTRICT COURT ORDERS WHICH WERE NOT FINAL. BOTH DISTRICT COURT ORDERS FAILED TO ADDRESS ALL OF THE PROPERLY PRESENTED HABEAS ISSUES WITHIN VOLPICELLI'S 2005 STATE WRIT OF HABEAS CORPUS (POST-CONVICTION).

IN THE, THE NEVADA COURTS' HABEAS REVISIONS LACKED INTEGRITY AND PREJUDICED VOLPICELLI'S CHALLENGE TO THE MISFEASANCE^① OF JUSTICE BASED ON A JURISDICTIONAL DEFECT.

FURTHER, THAT THE NEVADA SUPREME COURT'S SUBJECT MATTER JURISDICTION DETERMINATIONS ARE CAPRICIOUS AND ARBITRARY, AS WELL AS BEING ANTITHETICAL TO DUE PROCESS AND CONVENTIONAL LAW.

LASTLY, THE NEVADA SUPREME COURT FAILED TO REVEAL THE JURISDICTIONAL DEFECT IN ITS REVIEW OF VOLPICELLI'S Rule 60(b) MOTION, OR IN THE ALTERNATE, WRIT OF CERTIORARI, OR WRIT OF HABEAS CORPUS.

① THE ACCOMPANYING ATTACHMENT IS A TWO(2) PAGE PAPER DEMONSTRATING THE PERSISTENT ERRORS THROUGHOUT VOLPICELLI'S CASE CONTRIBUTING TO THE MISFEASANCE OF JUSTICE WHICH CONTINUES TO THIS DAY.

② REASONS FOR GRANTING THE PETITION

Volicelli Turley Filed his 2005 STATE WRIT OF HABEAS CORPUS (POST-CONVICTION) CONTAINING 22 GROUNDS. HE SUBSEQUENTLY FILED A TURLEY SUPPLEMENTAL PETITION WITH GROUND 23. (APPENDIX A-1) TWO RELEVANT DISTRICT COURT ORDERS ENDED, THE FIRST ORDER (APPENDIX B-1) DISPOSED OF THE MAJORITY OF GROUNDS IN ACCORDANCE WITH NEVADA'S HABEAS LAW.

HOWEVER, GROUNDS 7, 11, 12 AND 14 WERE TO BE SUBSEQUENTLY ADJUDICATED PENDING AN EVIDENTIARY HEARING. SAID ORDER NEVER ACKNOWLEDGED THE EXISTENCE OF GROUND 23. AT THE EVIDENTIARY HEARING, EVIDENCE AND TESTIMONY WERE PRESENTED AS TO GROUND 7 (APPENDIX A-2), GROUND 11 (APPENDIX A-3), AND GROUND 14 (APPENDIX A-4).

HOWEVER, THE PROSECUTORIAL MISCONDUCT CLAIM AS TO VOUCHING FOR THE 'LETTER OR BREAK THE CASE' WITNESS' TESTIMONY, APTLY REFERRED IN GROUND 12, (APPENDIX A-5)

② IN THIS SECTION, Volicelli HAS PRESENTED THE RATIONALE AS TO HIS CLAIMS ASSET THE POINTS AND AUTHORITIES WHICH ARE CONTAINED IN APPENDIX G-4 OF THIS WRIT.

was never addressed. Nor was Ground 23 mentioned as even existing for consideration. The Second Order (Appendix B-2) ensued clearly referencing and adjudicating Grounds 7, 11, and 14, along with ancillary comments as to the ineffective assistance of counsel claims.

Not surprisingly, and because the vouching claim from Ground 12 was never addressed at the evidentiary hearing, said claim was not addressed at all within the second district court order. Lastly, and again, there was no reference given as to Ground 23.

As such, Volpicelli contends that the two (2) orders aforementioned were not final orders under both state and federal laws, and not appealable to the Nevada Supreme Court. Hence, jurisdiction was retained by the state district court until all of the habeas issues were adjudicated. Unfortunately, court-appointed counsel (post-conviction) failed to secure the jurisdictional demand and prematurely appealed the two (2) non-final orders to the Nevada Supreme Court in case 51622 (Appendix C-1). Seemingly, all parties

IN THESE PROCEEDINGS WERE OBVIOUS TO THE PROBLEMATICAL REVIEW OF THE HABEAS ISSUES NOT BEING DISPOSED OF BY THE DISTRICT COURT - INCLUDING THE NEVADA SUPREME COURT.

YEARS LATER AND IN A MOTION FOR THE STATE DISTRICT COURT TO FINISH ITS REVIEW OF THE 2005 STATE WRIT SPECIFICALLY GROUND 23; THE DISTRICT COURT RECOGNIZED THE INCOMPLETE HABEAS REVIEW, THE DISTRICT COURT ISSUED AN ORDER IN 2016 FINDING GOOD CAUSE TO FINALLY ADJUDICATE GROUND 23 ON ITS MERITS. (APPENDIX D-1).

SUBSEQUENT TO THAT ORDER VOLPKEHL APPEARED THE DENIAL OF ANY RELIEF AS TO GROUND 23 TO THE NEVADA SUPREME COURT. THEREAFTER, THE NEVADA HIGHT COURT ISSUED AN ORDER OF AFFIRMANCE IN 2016 (APPENDIX D-2) STATING THAT (1) THE DISTRICT COURT HAD ERRED IN FINISHING A REVIEW OF GROUND 23 AND (2) THAT GROUND 23 WAS PRELIMINARILY DEFAULTED FROM ANY CONSIDERATION BY THE NEVADA COURTS BASED ON THE PRELIMINARY DEFAULT DOCTRINE; AND THAT VOLPKEHL

should have pursued the Ground 23 problem on appeal when the claim first became available in 2008.

VOLPICELLI ASSUES THAT THERE WERE TWO (2) REASONS WHY THAT NEVADA SUPREME COURT ORDER IN 20126 MADE NO SENSE. FIRST, THERE IS NO AUTHORITY CITING THAT IT WAS EVEN VOLPICELLI'S RESPONSIBILITY TO ENSURE THAT THE STATE DISTRICT COURT FULFILLED ITS JUDICIAL OBLIGATION TO COMPLETE ITS HABEAS REVIEW OF VOLPICELLI'S 2005 STATE WRIT. HOWEVER, THERE IS AMPLE AUTHORITY THAT IT IS INCUMBENT UNDER DUE PROCESS FOR THE STATE DISTRICT COURT TO COMPLETE A FAIR AND JUST HABEAS REVIEW OF ALL ISSUES.

SECONDLY, VOLPICELLI COULD NOT HAVE LEGALLY APPEALED THE GROUND 23 DECISION TO THE NEVADA SUPREME COURT BECAUSE, AT THAT POINT, THERE WAS NO FINAL ORDER TO APPEAL, SO LONG AS THE DISTRICT COURT FAILED TO ISSUE A FINAL ORDER ADDRESSING ALL HABEAS ISSUES - INCLUDING GROUND 23.

VOLPICELLI THEN REALIZED THAT HE MUST WORK BACKWARDS BY COMPELLING THE NEVADA SUPREME COURT TO HAVE THE STATE DISTRICT COURT FINISH WHAT IT STARTED WITH THE 2005 STATE WRIT.

VIA A WRIT OF HABEAS TO THE NEVADA SUPREME COURT, VOLPICELLI REQUESTED TO HAVE THE VOUCHING CLAIM FROM GROUND 12 ADJUDICATED. IN CASE 82726 (APPENDIX E-1). WITH THE DENIAL OF THAT WRIT (APPENDIX E-2) THE NEVADA SUPREME COURT HELD THAT GROUND 12 HAD BEEN ADJUDICATED - EVEN THOUGH THE ACTUAL CLAIM OF VOUCHING WAS IGNORED. FURTHER, THAT TO THE EXTENT THAT THE STATE DISTRICT COURT HAD ORDERED THAT ADJUDICATION BY IGNORING THE VOUCHING ISSUE, AND MISTAKENLY CONFUSING IT WITH THE BRADY VIOLATION OF GROUND 14, THERE WAS A PLAIN, SPEEDY AND ADEQUATE REMEDY - AN APPEAL FROM THE STATE DISTRICT COURT'S ORDER BACK IN 2008.

AGAIN, AND FOR TWO (2) REASONS, THAT RATIONALE MADE NO SENSE UNDER BOTH STATE AND FEDERAL LAW.

First, it's not the Ground that is adjudicated - it's the issue within the Ground that is adjudicated. Merely because Ground 12, itself, was erroneously adjudicated, does not mean that the issue within Ground 12 was adjudicated, i.e. Volcker's claim. Secondly, and once again, Volcker was precluded from appealing the matter of the Volcker's claim to the New York Supreme Court because there was no final appellate order from the State District Court, and until all issues were disposed of by the District Court.

Finally, and as a last resort to compel the New York Courts to properly finish the adjudication of Grounds 23, and 12 with some degree of integrity, Volcker filed a Rule 60(b) Motion, or in the alternative, writ of Certiorari or Writ of Habeas Corpus. (Appendix F-1) Within the exhibits of that Petition to the New York Supreme Court, Volcker provided that Court with a cogent and

most recent from Nevada Supreme Court order from a summary statement in writing (Appendix F-2). That particular order clearly demonstrated that a jurisdictional defect manifested when there is an attempt to appeal any aspect of a habeas proceeding unless all habeas issues are disposed of in a final appealable order.

That said, and in the interest of eliminating the subject matter jurisdiction dilemma with Volcanic's habeas reviews, the requested the Nevada Supreme Court void its previous review in 51622, with a remand to the State District Court to finish its habeas review in accordance with Nevada habeas law and due process.

Suffice it to say, the Nevada Supreme Court denied Volcanic's pleading (Appendix F-3) stating that, despite the state district court's errors with the vouching claim, the adjudication of Ground 12 was the law of the case. Yet, as this court is aware, the law of the case

CAN BE REVISITED AND REVERSED AT ANY TIME
TO CORRECT MANIFEST INJUSTICE.
THEN, WITHIN VOLKREIN'S PETITION FOR REHEARING
(APPENDIX F-4), THE NEVADA SUPREME COURT'S
CONTRADICTION IS ADDRESSED BY VOLKREIN AS TO
GROUND 23 IN BOTH 2012 AND 83042.

AS PREVIOUSLY MENTIONED, THE NEVADA THREE
COURT ACKNOWLEDGED THAT GROUND 23 WAS
NEVER ACKNOWLEDGED OR ADJUDICATED IN 2012,
AND STATED THAT VOLKREIN SHOULD HAVE
RAISED THE GROUND 23 ISSUE EARLIER ON APPEAL
IN 2008 WHEN THE MATTER FIRST BECAME
AVAILABLE. THE ORDER IN 83042 NOW STATED
THAT GROUND 23 WAS SUMMARY DENIED
BY THE DISTRICT COURT.

BASED ON THE FOREGOING, IT IS ABUNDANTLY
CLEAR THAT THE NEVADA SUPREME COURT'S
SUBSTANTIAL MATTER JURISDICTION DETERMINATIONS
ARE CAPRICIOUS AND ARBITRARY. IT IS
ALSO APPARENT THAT THE ADJUDICATION OF
THE CONTROVERSIAL GROUNDS 23 AND THE
VOUCHING CLAIM IN GROUND 12 ARE BASED
UPON CONVENIENCE, RATHER THAN THE LETTER
AND SPIRIT OF STATE AND FEDERAL HABEAS LAWS

CONCLUSION

WHEREFORE NOW, THIS COURT SHOULD, AT A MINIMUM, ORDER BRIEFING ON THIS MATTER OF FIRST IMPRESSION. JUSTICE DEMANDS THAT NEVADA COURTS COMPORT WITH DUE PROCESS OF LAW, AS WELL AS STATE AND FEDERAL LAW. ONLY THEN WILL THERE BE A RESTORATION OF INTEGRITY WITH THE REVIEW OF VOLPICELLI'S HABEAS PROCEEDINGS.

IF NOT, THEN THE NEVADA COURTS WILL CONTINUE WITH CONDOMINIOUS HABEAS REVIEWS WHICH CONTRIBUTE TO A MISCARriage OF JUSTICE. NOT SO DIFFERENT FROM JUDICIAL PROCEEDINGS FOUND IN A BANANA REPUBLIC.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: 12/16/21