

No. _____

OCTOBER TERM, 2021

IN THE SUPREME COURT OF THE UNITED STATES

Siaosi Vanisi, Petitioner,

v.

William Reubart, Acting Warden;
Aaron Ford, Attorney General, State of Nevada,
Respondents.

**Petitioner's Application to Extend Time to File Petition for Writ
of Certiorari**

Capital Case

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To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner Siaosi Vanisi respectfully requests that the time to file a Petition for Writ of Certiorari in this matter be extended for sixty (60) days, to and including October 15, 2022. The Nevada Supreme Court issued its opinion on January 27, 2021, attached as App. A. The Nevada Supreme Court denied a timely petition for rehearing on May 18, 2022, attached as App. B. Petitioner's current due date for filing a Petition for Writ of Certiorari is August 16, 2022. *See* Sup. Ct. R. 13.1, 13.3.

Petitioner is filing this Application at least ten days before that date. *See* Sup. Ct. R. 13.15. This Court has jurisdiction under 28 U.S.C. § 1257(a).

BACKGROUND

Mr. Vanisi was convicted of first-degree murder and sentenced to death for a crime that occurred in 1998; the Nevada Supreme Court affirmed his conviction on appeal. *See Vanisi v. State*, 22 P.3d 1164 (2001). The Nevada Supreme Court also affirmed the denial of Vanisi's first state post-conviction proceedings in 2010. *See Vanisi v. State*, No. 50607, 2010 WL 3270985 (Nev. Apr. 20, 2010). After filing a federal habeas petition, Mr. Vanisi returned to state court for exhaustion. *See Vanisi v. Baker*, No. 3:10-cv-MMD-CBC, ECF No. 57 (D. Nev. Apr. 25, 2012). The state district court denied Mr. Vanisi's exhaustion petition, but the Nevada Supreme Court reversed with instruction that the district court conduct an evidentiary hearing. *See Vanisi v. Baker*, No. 65774, 2017 WL 4350947 (Nev. Sept. 28, 2017).

On remand, the district court again denied relief; the Nevada Supreme Court affirmed. *Vanisi v. Gittere*, No. 78209, 2022 WL 263342 (Nev. Jan. 27, 2022). On May 18, 2022, the Nevada Supreme Court denied Mr. Vanisi's petition for rehearing. The instant appeal comes to this Court from denial of this most recent state petition for post-conviction relief.

REASONS FOR GRANTING THE EXTENSION

The time for filing a Petition for Writ of Certiorari should be extended for sixty days for the following reasons:

1. Randolph M. Fiedler, counsel of record for Petitioner has been unable to complete the Petition for Writ of Certiorari, despite diligent efforts to do so, due to his caseload and deadlines in other capital habeas matters. Specifically, since the Nevada Supreme Court's denial of rehearing, Mr. Fiedler has been involved in a federal capital evidentiary hearing in *Williams v. Filson*, USDC Case No. 2:98-cv-00056-APG-VCF; additionally, in *Johnson v. State*, No. 83796, he filed an opening brief in a capital post-conviction case before the Nevada Supreme Court on May 27, 2022; in *Hampton v. Shinn*, No. 19-99005, another capital post-conviction case, before the Ninth Circuit, Mr. Fiedler filed a reply brief (June 22, 2022), a notice of supplemental authority (June 27, 2022), a motion for limited remand (June 27, 2022), and a reply to state's response (July 6, 2022).

2. As a result of these obligations, Mr. Fiedler has been unable to complete the Petition for Writ of Certiorari and will not be able to dedicate sufficient time to completing the Brief until after August 16, when the Petition is due. Granting the instant request for a sixty-day extension of time will allow Mr. Fielder to complete the Petition for Writ of Certiorari no later than October 15, 2022.

3. This Court has consistently held that death is different: “[t]he taking of life is irrevocable. It is in capital cases especially that the balance of conflicting interests must be weighed most heavily in favor of the procedural safeguards of the Bill of Rights.” *Reid v. Covert*, 354 U.S. 1, 45-46 (1957) (on rehearing) (Frankfurter, J., concurring); *see also Gregg v. Georgia*, 428 U.S. 153, 188 (1976) (“the penalty of death is different in kind from any other punishment imposed under our system of criminal justice.”). Capital litigants should be given every reasonable opportunity to bring their claims of constitutional error before the courts.

4. The Petition for Writ of Certiorari that Mr. Vanisi intends to file raises a substantial constitutional issues regarding whether a court may deny a request of self-representation based on its view that the defendant is seeking to delay the proceedings and whether a State may seek to retry a defendant after a mistrial cause by the State's error. *See* SCR 10(b).

5. This application for extension of time is not sought for the purposes of delay or for any other improper purpose, but only to ensure that Mr. Vanisi receives competent representation in this matter.

DATED this 5th day of August, 2022.

Respectfully submitted,

Rene Valladares
Federal Public Defender of Nevada

/s/ Randolph M. Fiedler
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Counsel for Petitioner

CERTIFICATE OF SERVICE

I hereby declare that on 5th day of August, 2022, I served Petitioner's Application for Extension of Time to File Petition for Writ of Certiorari on Respondents by depositing an envelope containing the Application in the United States mail, with first-class postage prepaid, addressed as follows:

Jennifer P. Noble
Chief Appellate Deputy
Washoe County District Attorney's Office
One South Sierra Street
Reno, NV 89501

/s/ Randolph M. Fiedler
Randolph M. Fiedler
Assistant Federal Public Defender

APPENDICES

Appendix A	Order of Affirmance, <i>Vanisi v. State of Nevada</i> , Case No. 78209 (Filed January 27, 2022)	APP001-009
Appendix B	Order Denying Rehearing, <i>Vanisi v. State of Nevada</i> , Case No. 78209 (Filed May 18, 2022)	APP010-011

APPENDIX A

Order of Affirmance, *Vanisi v. William A. Gittere, Warden*,
Nevada Supreme Court Case No. 78209
(January 27, 2022)

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

No. 78209

FILED

JAN 27 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying appellant's postconviction petition for a writ of habeas corpus. Second Judicial District Court, Washoe County; Connie J. Steinheimer, Judge.

A jury found appellant Siasosi Vanisi guilty of first-degree murder, three counts of robbery with the use of a deadly weapon, and grand larceny and sentenced him to death for the murder. This court affirmed the judgment of conviction on appeal, *Vanisi v. State (Vanisi I)*, 117 Nev. 330, 22 P.3d 1164 (2001), and the denial of his first postconviction petition for a writ of habeas corpus, *Vanisi v. State (Vanisi II)*, No. 50607, 2010 WL 3270985 (Nev. Apr. 20, 2010) (Order of Affirmance). Vanisi filed the instant petition on May 4, 2011—his second postconviction petition challenging his conviction and sentence. The district court denied the petition, but we reversed in part and remanded for the district court “to conduct an evidentiary hearing concerning whether Vanisi was prejudiced by postconviction counsel’s failure to substantiate their claim of ineffective assistance of trial counsel for failure to introduce additional mitigation evidence.” *Vanisi v. State (Vanisi III)*, No. 65774, 2017 WL 4350947, at *3

(Nev. Sept. 28, 2017) (Order Affirming in Part, Reversing in Part and Remanding).

On remand, Vanisi moved to disqualify the district attorney's office, and the district court denied the motion. Vanisi also sought to waive the evidentiary hearing because he no longer wanted to pursue relief in state court but instead wanted to expeditiously move forward in federal court with challenges to the guilt phase. The district court accepted the waiver after cautioning Vanisi numerous times against waiver, having Vanisi evaluated for competency, and determining he was competent to waive the hearing. Because there was no evidentiary hearing, the district court determined that Vanisi had not demonstrated prejudice with respect to the remanded claim and denied relief as to that claim. Vanisi attempted to supplement the petition with a new claim, but the district court denied his motion. In this appeal, Vanisi argues that the district court erred by accepting his waiver of the evidentiary hearing, denying his motions to supplement the petition and to disqualify the district attorney's office, and violating his right to self-representation at trial.

Regarding Vanisi's waiver of the evidentiary hearing, his counsel argue that the district court erred for three reasons. First, they contend the decision to waive the hearing rested with them, not Vanisi. *See Rhyne v. State*, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002) (“[T]he well-established rule [is] that while the client may make decisions regarding the ultimate objectives of representation, the trial lawyer alone is entrusted with the decisions regarding legal tactics.”); *see also* RPC 1.2(a) (addressing the allocation of authority between client and lawyer). Because the decision to waive the evidentiary hearing was indivisible from Vanisi's objective in

seeking postconviction relief—to obtain relief from the conviction (or guilt phase) rather than from just the death sentence—we conclude the decision to waive the evidentiary hearing was Vanisi’s to make. *See Gov’t of Virgin Islands v. Weatherwax*, 77 F.3d 1425, 1435 (3d Cir. 1996) (recognizing some fundamental decisions by a client may be viewed as strategic “because they relate to the means employed by the defense to obtain the primary object of the representation—ordinarily, a favorable end result” but concluding those decisions can be “so personal and crucial to the accused’s fate that they take on an importance equivalent to that of deciding the objectives of the representation”). As pointed out by the district court, “[a]lthough Mr. Vanisi used the words that it was a strategic decision, in fact, it wasn’t traditional legal strategy that he’s talking about. It is talking about the goal or objective of his appeals.” And our review of the record reveals Vanisi clearly identified his objective throughout the proceedings: to litigate his guilt-phase claims in federal court. While his counsel assert the decision to waive the hearing should have rested with them due to Vanisi’s diminished capacity, the record belies the contention that Vanisi suffers from diminished capacity. As the district court noted, there had been no conclusion by the court or a doctor that Vanisi suffered from diminished capacity. And the district court found that Vanisi could clearly articulate his reasons for waiving the hearing, that he had consistently expressed he did not want to spend the rest of his life in prison, and that there was no evidence in the record of an inconsistent mental status affecting his ability to understand the consequences of his decision to waive the hearing. *See Model Rules of Prof’l Conduct R. 1.14, cmt. 6* (stating factors a lawyer should consider when determining a client’s diminished capacity, including “the

client's ability to articulate reasoning leading to a decision, variability of state of mind and ability to appreciate consequences of a decision; the substantive fairness of a decision; and the consistency of a decision with the known long-term commitments and values of the client"). Accordingly, the district court did not err in allowing Vanisi to make the decision to waive the evidentiary hearing.

Second, counsel argue Vanisi was not competent to waive the evidentiary hearing. We disagree. The district court used the test for determining whether a petitioner is competent to waive a petition, *see Calambro By and Through Calambro v. Second Judicial Dist. Court*, 114 Nev. 961, 971, 964 P.2d 794, 800 (1998), heard testimony from two doctors about their evaluations of Vanisi, and considered both doctors' independent and unequivocal conclusions that Vanisi understood and had the capacity to appreciate his position and to make a rational choice to waive the evidentiary hearing and that any mental illness did not substantially affect his capacity to make that decision. The district court determined Vanisi was competent to waive the evidentiary hearing, and substantial evidence in the record supports the district court's determination. *Id.* ("[T]his court will sustain the [district] court's findings when substantial evidence supports them."). Accordingly, the district court did not err in finding Vanisi competent to make the decision to waive the evidentiary hearing.

Third, counsel argue the district court violated the mandate rule in accepting the waiver because this court remanded for an evidentiary hearing. "The mandate rule is a specific application of the law-of-the-case doctrine that compels the district court on remand to comply with this court's dictates and prohibits it from relitigating issues this court decided."

United States v. Mims, 655 F. App'x 179, 182 (5th Cir. 2016) (quotation marks omitted); *see also United States v. Lee*, 358 F.3d 315, 321 (5th Cir. 2004). We do not agree with, nor has counsel offered any authority to support, their uncompromising view of the mandate rule. *Cf. Hsu v. Cty. of Clark*, 123 Nev. 625, 630, 173 P.3d 724, 729 (2007) (recognizing exceptions to the law-of-the-case doctrine that have been adopted by federal courts and adopting an exception); *Bejarano v. State*, 122 Nev. 1066, 1074, 146 P.3d 265, 271 (2006) (“[T]he doctrine of the law of the case is not absolute . . .”). Our decision in *Vanisi III* did not address whether Vanisi could waive the evidentiary hearing or how such a waiver would impact the district court’s decision on remand. Rather, we remanded for an evidentiary hearing and a determination as to whether Vanisi had shown prejudice as to the remanded claim, and the district court considered Vanisi’s waiver of the hearing when denying the claim. Nothing in our *Vanisi III* decision precluded Vanisi from waiving the evidentiary hearing or the district court from accepting that waiver. Accordingly, the district court did not violate the mandate rule in accepting Vanisi’s waiver of the evidentiary hearing.

Next, Vanisi argues the district court abused its discretion by denying his motion to supplement the petition to add a new claim that severely mentally ill defendants should be categorically excluded from the death penalty. We disagree. Before Vanisi moved for leave to supplement the petition, the district court had considered Vanisi’s request to waive the evidentiary hearing and his competency to do so for nearly two months and orally denied relief on the remanded claim. The district court determined that the 2011 petition had been litigated to completion, with the only remaining claim being the one that this court remanded for an evidentiary

hearing, and denied Vanisi's motion to supplement the petition. See NRS 34.750(5) (providing that it is within the district court's discretion to allow supplemental pleadings). We do not think it outside the bounds of law or reason, nor arbitrary or capricious, for the district court to conclude that the time to supplement a postconviction habeas petition is *before* the district court has entered a final judgment denying the petition, the appellate court has affirmed that decision as to all but one claim that is then remanded for an evidentiary hearing, and the district court has orally rejected the remanded claim.¹ See *Crawford v. State*, 121 Nev. 744, 748, 121 P.3d 582, 585 (2005) (defining an abuse of discretion).

Vanisi also argues the district court abused its discretion by denying his motion to disqualify the entire Washoe County District Attorney's Office (WCDA). His motion was premised on alleged confusion during the first postconviction proceedings about whether the WCDA represented Vanisi's trial counsel in those proceedings and the disclosure of privileged and confidential information, namely trial counsel's SCR 250 memorandum. Vanisi has not shown that any purported conflict renders the postconviction proceedings unfair—any confusion about representation was immediately remedied when the prosecutor explained trial counsel was

¹In light of the above, we do not consider the merits of the claim Vanisi wished to add as it is not properly before the court. And we express no opinion as to whether Vanisi could meet the procedural requirements of NRS chapter 34 should he raise the claim in a new postconviction habeas petition.

not a client of the WCDA, the prosecutor is no longer with the WCDA, the prosecutor represented he had the SCR 250 memo for about an hour before giving it to postconviction counsel and did not read it, and the memo is a part of the public record as it was filed as an exhibit to the 2011 petition. *See State v. Eighth Judicial Dist. Court (Zogheib)*, 130 Nev. 158, 164-65, 321 P.3d 882, 886 (2014) (determining the inquiry about “an individual prosecutor’s conflict of interest [being] imputed to the prosecutor’s entire office . . . is whether the conflict would render it unlikely that the defendant would receive a fair trial unless the entire prosecutor’s office is disqualified from prosecuting the case”). Accordingly, the district court did not abuse its discretion in denying the motion to disqualify. *Id.* at 161, 321 P.3d at 884.


Lastly, Vanisi argues that the trial court violated his right to self-representation and that he had to proceed with conflicted counsel at trial. This claim was not a part of this court’s remand, and it is not a part of the district court’s order that is the subject of this appeal.² Therefore, we do not consider it. *See Davis v. State*, 107 Nev. 600, 606, 817 P.2d 1169,


²Of note, we rejected this claim on direct appeal. *See Vanisi I*, 117 Nev. at 338, 22 P.3d at 1170. We also determined the claim was barred by the doctrine of the law of the case on appeal from the order denying Vanisi’s first postconviction habeas petition. *See Vanisi II*, 2010 WL 3270985, at *2. It was raised a third time as part of a cumulative-error claim in the second postconviction petition, which we rejected on appeal. *See Vanisi III*, 2017 WL 4350947, at *8. Vanisi offers no excuse for raising this claim yet again nor any argument to overcome the law-of-the-case doctrine. *See Hsu*, 123 Nev. at 630, 173 P.3d at 728.

1173 (1991), *overruled on other grounds by Means v. State*, 120 Nev. 1001, 1012-13, 103 P.3d 25, 33 (2004).

Having concluded no relief is warranted, we
ORDER the judgment of the district court AFFIRMED.



_____, C.J.
Parraguirre



_____, J.
Hardesty


_____, J.
Stiglich


_____, J.
Cadish


_____, J.
Silver


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. Connie J. Steinheimer, District Judge
Federal Public Defender/Las Vegas
Attorney General/Carson City
Washoe County District Attorney
Law Office of Lisa Rasmussen
The Law Office of Kristina Wildeveld & Associates
American Civil Liberties Union of Nevada/Reno
Chesnoff & Schonfeld
Clark County Public Defender
Washoe District Court Clerk

APPENDIX B

Order Denying Rehearing, *Vanisi v. William A. Gittere, Warden*
Nevada Supreme Court Case No. 78209
(May 18, 2022)

IN THE SUPREME COURT OF THE STATE OF NEVADA

SIAOSI VANISI,
Appellant,
vs.
WILLIAM A. GITTERE, WARDEN,
Respondent.

No. 78209

FILED


MAY 18 2022

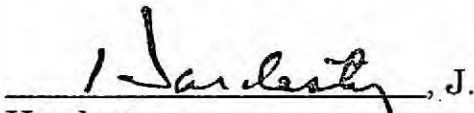
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BY S. Young
DEPUTY CLERK

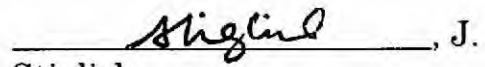
ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.



Parraguirre

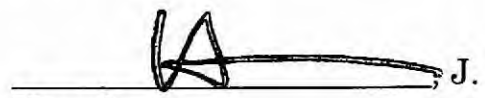

Hardesty


Stiglich


Cadish


Silver


Pickering


Herndon

cc: Hon. Connie J. Steinheimer, District Judge
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Attorney General/Carson City
Washoe County District Attorney
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American Civil Liberties Union of Nevada/Reno
Chesnoff & Schonfeld
Clark County Public Defender
Washoe District Court Clerk

APP 011

22-15757