

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER A. LIBBY,

Appellant,

vs.

ROBERT LEGRAN, WARDEN,  
LOVELOCK CORRECTIONAL

CENTER; AND CATHERINE CORTEZ

MASTO, ATTORNEY GENERAL,

STATE OF NEVADA,

Respondents.

No. 85294-COA

**FILED**

APR 21 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT

BY  DEPUTY CLERK

*ORDER OF AFFIRMANCE*

Roger A. Libby appeals from an order of the district court denying a “motion for vacatur of void judgments pursuant to Nev. R. Civ. P. 60(b)(4)” filed on April 9, 2021. Sixth Judicial District Court, Humboldt County; Michael Montero, Judge.

In his motion, Libby claimed several of his convictions were void because the statute under which he was convicted was amended prior to his convictions. The district court denied the motion on its merits.

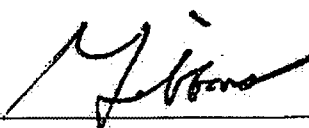
Libby’s claim challenged the validity of his convictions and was thus not properly raised in a motion filed pursuant to NRCP 60(b)(4). Rather, such a claim must be raised in a postconviction petition for a writ of habeas corpus.<sup>1</sup> See NRS 34.724(2)(b) (stating a postconviction habeas petition “[c]omprehends and takes the place of all other common-law, statutory or other remedies which have been available for challenging the


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<sup>1</sup>We express no opinion as to whether Libby can satisfy the procedural requirements of NRS Chapter 34.

validity of the conviction or sentence, and must be used exclusively in place of them"). Therefore, we conclude the district court did not err by denying Libby's motion. See *Wyatt v. State*, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) ("If a judgment or order of a trial court reaches the right result, although it is based on an incorrect ground, the judgment or order will be affirmed on appeal."). Accordingly, we

ORDER the judgment of the district court AFFIRMED.

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Bulla

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Michael Montero, District Judge  
Roger A. Libby  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

ROGER A. LIBBY,

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MASTO, ATTORNEY GENERAL,

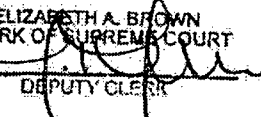
STATE OF NEVADA,

Respondents.

No. 85294-COA

**FILED**

JUN 28 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING REHEARING*

Rehearing denied. NRAP 40(c).

It is so ORDERED.<sup>1</sup>

  
\_\_\_\_\_, C.J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

  
\_\_\_\_\_, Sr.J.  
Silver

<sup>1</sup>The Honorable Abbi Silver, Senior Justice, participated in the decision of this matter under a general order of assignment.

cc: Hon. Michael Montero, District Judge  
Roger A. Libby  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk

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CASE NO. CV0020354

DEPT. NO. II

FILED

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TAMI RAE SPERO  
DIST. COURT CLERK

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF HUMBOLDT

-o0o-

ROGER A. LIBBY,

Petitioner,

vs.

ROBERT LEGRAND, Warden,  
Lovelock Correctional Center; and  
CATHERINE CORTEZ MASTO,  
Attorney General, State of Nevada,

Respondents.

**ORDER DENYING MOTION FOR  
VACTUR OF VOID JUDGMENTS  
PURSUANT TO NEV. R. CIV. P.  
60(b)(4)**

BEFORE THIS COURT is Petitioner, Roger A. Libby, in his *proper* person, and his  
*Motion for Vacatur of Void Judgments Pursuant to Nev. R. Civ. P. 60(b)(4)* filed on April 9,  
2021. Significantly, this matter has never been appropriately submitted to the Court for  
decision pursuant to **District Court Rule 13(4)**. This matter is therefore not properly before  
the Court.

Moreover, no opposition has ever been filed by the State, despite service of  
Petitioner's motion via US Mail on April 7, 2021. Motion for Vacatur of Void Judgments at  
31, *Libby v. Garrett*, Case No. CV0020354 (April 9, 2021).

1 Nevertheless, the Court is aware that Petitioner is acting in his *proper* person, and  
2 entertains the motion at bar in the light of the administration of justice.

3 By way of procedural history, Petitioner filed this instant motion in Case No.  
4 CV0020354, which houses Petitioner's previous *Petition for a Writ of Habeas Corpus (Post-*  
5 *Conviction)* filed on March 12, 2015. Said *Petition* was effectively denied by this Court on  
6 November 1, 2016. Order Denying Writ, *Libby v. Legrand*, Case No. CV0020354  
7 (November 1, 2016). Petitioner appealed and the Nevada Supreme Court entered its *Order*  
8 *of Affirmance* on January 12, 2018. Order of Affirmance, *Libby v. Legrand*, Case No.  
9 CV0020354 (November 1, 2016).

10 Significantly, the Nevada Supreme Court stated the following:

11 **[Petitioner argued] he was actually innocent of several counts of**  
12 **grand larceny, relying on amendments made to NRS 205.220 after**  
13 **he committed the charged offenses. See 1989 Nev. Stat., ch. 626, §**  
14 **13, at 1433. This is a claim of legal, not factual innocence. Regardless,**  
15 **the Legislature did not clearly express its intent to apply the**  
16 **amendments retroactively, see *id* § 43, at 1443 (providing that section**  
17 **containing amendments to NRS 205.220 “becomes effective at 12:01**  
18 **a.m. on October 1, 1989”), so the amendments do not apply here. See**  
19 ***State v. Second Judicial Dist. Court (Pullin)*, 124 Nev. 564, 188 P.3d**  
20 **1079 (2008) (“[U]nless the Legislature clearly expresses its intent to**  
21 **apply a law retroactively, Nevada law requires the application of the**  
22 **law in effect at the time of a commission of a crime.”). Order of**  
23 **Affirmance, *supra*, at 4 (January 12, 2018) (emphasis added).**

18 Here, Petitioner contends that his convictions for COUNTS V, VI, VII, and VIII in  
19 the *Felony Indictment* are in violation of due process since the offenses were not considered  
20 criminal in Nevada at the time of conviction. Motion for Vacatur of Judgments, *supra*, at 5  
21 (April 9, 2021). This is a substantially similar argument to the one he made in his March 12,  
22 2015 *Petition*. The only difference is that Petitioner now relies on the application of NRCP  
23

1 60(b)(4), which states, "On motion and just terms, the court may relieve a party or its legal  
2 representative from a final judgment, order, or proceeding for the following reasons: ... (4)  
3 the judgment is void."

4 In his motion, Petitioner provides a statement of facts admitting that (1) Petitioner  
5 obtained unlawful possession of Charles W. Beatty's personal property worth \$100.00 on  
6 September 14, 1988; (2) Petitioner obtained access to Charles W. Beatty's bank account and  
7 withdrew \$200.00 from an ATM in Winnemucca, Nevada on September 14, 1988; (3)  
8 Petitioner obtained access to Charles W. Beatty's bank account again and withdrew a total  
9 of \$400.00 from an ATM in Las Vegas, Nevada on September 15, 1988. *Id.* at 6-7.

10 On April 18, 1989, a Humboldt County Grand Jury issued a *Felony Indictment* against  
11 Petitioner, charging Petitioner with a total of eight (8) felony counts, including COUNTS V-  
12 VIII of GRAND LARCENY pursuant to NRS 205.220 in effect in 1988. *Id.* at 7. Petitioner  
13 ultimately argues that the 1989 amendments to the grand larceny statute should have been  
14 applied retroactively to his case, rendering his convictions effectively void. *Id.* at 8.

15 However, the Nevada Supreme Court already addressed this issue in its *Order of*  
16 *Affirmance* entered on January 12, 2018. *Order of Affirmance, supra*, at 4 (January 12, 2018).  
17 The Nevada Legislature did not express its intent to apply the 1989 amendments  
18 retroactively. *Id.* Thus, Petitioner's convictions are not void under NRCP Rule 60(b)(4).  
19 Petitioner is also barred from making these arguments under the doctrine of collateral  
20 estoppel. *See Clark v. Clark*, 80 Nev. 52, 55-56, 389 P.2d 69, 71 (1964). Thus, Petitioner's  
21 instant motion must fail.

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Accordingly, Petitioner's *Motion for Vacatur of Void Judgments Pursuant to Nev. R. Civ. P. 60(b)(4)* is **HEREBY DENIED**.

**IT IS SO ORDERED.**

DATED this 22<sup>nd</sup> day of August, 2022.



HONORABLE MICHAEL R. MONTERO  
DISTRICT JUDGE



SIXTH JUDICIAL  
DISTRICT COURT  
• HUMBOLDT COUNTY, NEVADA •  
MICHAEL R. MONTERO  
DISTRICT JUDGE

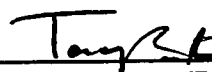


**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Honorable Michael R. Montero, District Court Judge, Sixth Judicial District Court and am not a party to, nor interested in, this action; and that on this 22<sup>nd</sup> day of August, 2022, I caused to be served a true and correct copy of the enclosed **ORDER DENYING MOTION FOR VACATUR OF VOID JUDGMENTS PURSUANT TO NEV. R. CIV. P. 60(b)(4)** upon the following parties:

Humboldt County Deputy District Attorney  
P.O. Box 909  
Winnemucca, NV 89445  
*Hand-delivered to Humboldt County Courthouse, DCT Box*

Roger A. Libby #30842  
LOVELOCK CORRECTIONAL CENTER  
1200 Prison Road  
Lovelock, NV 89419  
*Via US Mail*

  
TAYLOR M. STOKES, ESQ.  
STAFF ATTORNEY  
SIXTH JUDICIAL DISTRICT COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROGER A. LIBBY,

Appellant,

vs.

ROBERT LEGRAN, WARDEN,  
LOVELOCK CORRECTIONAL

CENTER; AND CATHERINE CORTEZ

MASTO, ATTORNEY GENERAL,

STATE OF NEVADA,

Respondents.

No. 85294

**FILED**

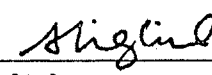
JUL 24 2023

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

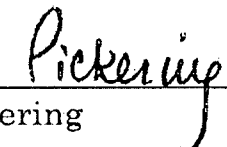
*ORDER DENYING PETITION FOR REVIEW*

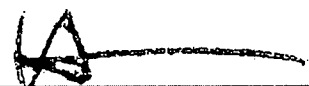
Review denied. NRAP 40B.

It is so ORDERED.

, C.J.  
Stiglich

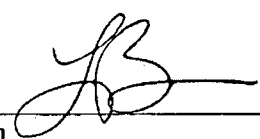
, J.  
Cadish

, J.  
Pickering

, J.  
Herndon

, J.  
Lee

, J.  
Parraguirre

, J.  
Bell

cc: Hon. Michael Montero, District Judge  
Roger A. Libby  
Attorney General/Carson City  
Humboldt County District Attorney  
Humboldt County Clerk

**Additional material  
from this filing is  
available in the  
Clerk's Office.**