

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 [Signature] 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.

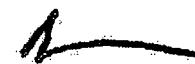
Libby's claim challenged the validity of his convictions and was thus not properly raised in a motion filed pursuant to NRCP 60(b)(4). Rather, such a claim must be raised in a postconviction petition for a writ of habeas corpus.¹ See NRS 34.724(2)(b) (stating a postconviction habeas petition "[c]omprehends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

¹We 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,

Appellant,

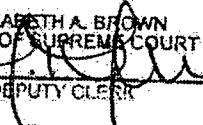
vs.

ROBERT LEGRAN, WARDEN,
LOVELOCK CORRECTIONAL
CENTER; AND CATHERINE CORTEZ
MASTO, ATTORNEY GENERAL,
STATE OF NEVADA,
Respondents.

No. 85294-COA

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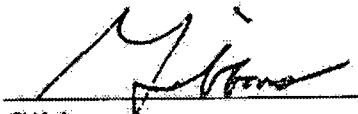
JUN 28 2023

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK

ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Westbrook


_____, Sr.J.
Silver

¹The 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



FILED

1 CASE NO. CV0020354

2 2022 AUG 22 PM 2:33

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

12 -00-

13 ROGER A. LIBBY,

14 Petitioner,

15 vs.

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

20 Respondents.

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

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

11 Significantly, the Nevada Supreme Court stated the following:

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

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

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.

22 //

1 Accordingly, Petitioner's *Motion for Vacatur of Void Judgments Pursuant to Nev. R.*
2
3 *Civ. P. 60(b)(4)* is **HEREBY DENIED**.

4 **IT IS SO ORDERED.**

5
6 DATED this 22nd day of August, 2022.
7



8
9 HONORABLE MICHAEL R. MONTERO
10 DISTRICT JUDGE
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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 22nd 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:

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.

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.

Stiglich, C.J.
Stiglich

Cadish, J.
Cadish

Pickering, J.
Pickering

Herndon, J.
Herndon

Lee, J.
Lee

Parraguirre, J.
Parraguirre

Bell, 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.**