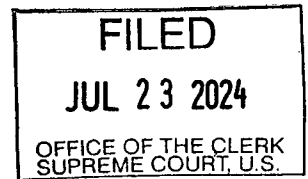


No. 24 - 5273



IN THE

SUPREME COURT OF THE UNITED STATES

NICHOLAS FRANK WILCOX — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Nicholas Frank Wilcox

(Your Name)

Lovelock Correctional Center

1200 Prison Road

(Address)

Lovelock, Nevada 89419

(City, State, Zip Code)

N/A

(Phone Number)

QUESTIONS PRESENTED

1. Did Petitioner's APPLICATION FOR CERTIFICATE OF APPEALABILITY demonstrate that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling?

2. Where a Nevada state district court sentenced Petitioner pursuant to a state law that was: (1) Repealed by an act of state legislation, and (2) whose sentencing statutes were struck down by the Nevada Supreme Court ("NSC"), therefore, was the Petitioner denied his Fourteenth Amendment right to due process of law when the State of Nevada lacked jurisdiction to prosecute state crimes; for purposes of Nevada Revised Statute ("NRS") 171.010 and Senate Bill 2 ("SB2"), § 1 and 3.

3. Should Petitioner have been allowed to demonstrate such a massive unconstitutional statutory defect and a jurisdictional issue upon which there is a major conflict in the published decisions of the NSC and the Nevada legislature's SB2 by which Nevada state court decisions draw into question thousands of convictions obtained by the State for crimes involving defendants across several decades?

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:

RELATED CASES

Court in Question	Docket No.	Case Caption	Date of Judgment
State District Court	C-14-298701-2	Motion To Correct Illegal Sentence	11/7/22
Supreme Court of Nevada	85707	Appellants Opening Brief (Appeal From Order Denying Defendants Motion To Correct Illegal Sentence	5/8/23
United States District Court District of Nevada	3:23-cv-00457-MMD-CLB	Petition For A Writ of Habeas Corpus § 2254	10/13/23
United States Court Of Appeals For The The Ninth Circuit	23-2897	Application For Certificate Of Appealability	5/28/24

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ADDITIONAL STATEMENT

Pro se Petitioner is held to a less stringent standard than practicing attorneys, *Haines v. Kerner*, 404 U.S. 519 (1972), and as he acts as his own Counsel it's not to be imposed on him the same high standard as members of the Bar, for that would have a prejudicial effect on him because he is unlearned in the complicated procedures of pleadings, it is enough that he represents an allegation that is supported by facts which, if sustained, would entitle him to relief, *Price v. Johnston*, 334 U.S. 266 (1948).

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 A to N/A 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 B to B5 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 _____ 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 state 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was May 28, 2024.

☒ 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).

☒ Notification pursuant to 28 U.S.C. § 2403(b) and R. Sup. Ct. Rule 29.4(c) has been made.

☐ For cases from **state courts**:

The date on which the highest state court decided my case was _____.
A copy of that decision appears at Appendix _____.

☐ A timely petition for rehearing was thereafter denied 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. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "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 within its jurisdiction the equal protection of the laws."

The Nevada Revised Statutes is the result of the enactment by the 48th Session of the Legislature of the State of Nevada in 1957. Upon completion of the revision of the text of the statutes in December 1956, a decision had to be made: Would the NRS scheme be enacted as law or would it merely adopt the revised statutes as evidence of law?

The powers that be decided that the enactment of the revised statutes as law, rather than the mere adoption thereof as evidence of the law, would be the more desirable course of action [App. J2].

Accordingly, Nevada Revised Statutes was submitted to the 48th Session of the Legislature in the form of a bill providing for its enactment as law of the

State of Nevada. This bill, *Senate Bill 2*, was passed without amendment or dissenting vote, and on January 25, 1957, was approved by Governor Charles H. Russell [App. D]. Section 1 of SB2 states: "Enactment of Nevada Revised Statutes. The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada." [emphasis].

From 1861 to 1951 the Legislature made no provisions for a statutory revision scheme and during that period 8,423 acts were passed [App. J]. With the passage of SB2, Section 3 of this act repealed all prior laws: "...all laws and statutes of the State of Nevada of a general, public and permanent nature enacted prior to January 21, 1957, hereby are repealed." [App. D2].

Enacted and adopted within this new NRS scheme was NRS 171.010 which related to the jurisdiction of offenses committed in the State of Nevada. NRS 171.010 is entitled "Local Jurisdiction Of Public Offenses." [App. C] [emphasis].

Herein (SB2 § 1, § 3, and NRS 171.010), lies the foundation of Petitioner's Constitutional claim.

STATEMENT

The United States court of appeals held that Petitioner's APPLICATION FOR CERTIFICATE OF APPEALABILITY did not show that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." [App. A] However, reasonable jurists could debate or resolve this claim in a different manner under *Slack* and *Barefoot*.

In *Slack*, this Court held that the standard adopted in *Barefoot* would apply in all post-AEDPA cases. See *Slack v. McDaniel*, 529 U.S. 473, 483-84 (1983) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

"[t]o obtain a Certificate of Appealability under § 2253(c), a habeas petitioner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement."

Slack, 529 U.S. at 483-94 (quoting *Barefoot*, 464 U.S. at 893).

"[O]bviously the petitioner need not show that he should prevail on the merits." *Barefoot*, 463 U.S. at 893 n.4. "[The litigant]" has already failed in that endeavor." *Id.* Rather, a certificate must issue if the appeal presents a question of some substance: (1) that is debatable among jurists of reason; (2) that a court could resolve in a different manner; (3) that is adequate to deserve encouragement to proceed further and (4) that is not squarely foreclosed by statute, rule, or authoritative court decision, or that has some factual basis in the record. *Id.*

Petitioner's issues for review met the low standard for granting a Certificate of Appealability ("COA"). The petition articulated a valid claim/substantial showing of the denial of a constitutional right as his COA application demonstrated the State of Nevada lacked jurisdiction to prosecute state crimes. [App. K-K9] [*infra*].

Further, jurists of reason would find it debatable whether the U.S. Court of Appeals was correct in its procedural ruling when issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal. *Mc Girt v. Oklahoma*, S. Ct. 2452 July 9th, 2020. Reasonable jurists could debate or resolve this claim and decision in a different manner. See *Barefoot*, 463 U.S. 893 n.4.

REASONS FOR GRANTING THE PETITION

The Nevada Supreme Court ("NSC") has effectively struck down the entire NRS statutory scheme.

In 1957, the Nevada legislature passed an act entitled: "Act of the 48th Session of the Nevada Legislation Adopting and Enacting Nevada Revised Statutes", also known as "Senate Bill 2". The legislative intent of this act was stated in the provision of section 1 as follows:

Section 1. Enactment of Nevada Revised Statutes.

The Nevada Revised Statutes, being the statute laws set forth after section 9 of this act, are hereby adopted and enacted as law of the State of Nevada. [App.D] [emphasis].

There is no ambiguity to this provision.

However, the NSC and the Nevada court of appeals have contradicted Senate Bill 2, Section 1, in numerous rulings - and decreed that the NRS statutory scheme is *not* the law of the State of Nevada. [emphasis]. In numerous case-laws as follows:

Taylor v. State, 472 P.3d 195 (2020) [App. E],
O/son v. State, 133 Nev. 1058 Unpub. LEXIS 699 (2017),
Hunt v. State, 133 Nev. 1025 Unpub. (Nev. 2017),
Cesar Victor v. State, LEXIS 269 Unpub. (Nev. 2017),
Peck v. State, LEXIS 867 Unpub. (Nev. 2017),
Escamilla v. State, 133 Nev. 1005 Unpub. (Nev. 2017),
Bryant v. State, 2021 Nev. App. Unpub. LEXIS 114 (2021),
Krig v. State, 125 Nev. 1054, 281 P.3d 1193 Unpub. (2009)
[App. F].

The NSC and appellate courts have clearly ruled that the NRS statutory scheme is not the law of the State of Nevada and is opposed to "Senate Bill 2" as the NSC opines in the above case-laws that the NRS scheme "merely constitutes of codified /reflective version of the statutes of Nevada." Not to confuse or conflate Nevada's actual laws, the NRS scheme is not the law of Nevada. "The actual laws of Nevada are contained in the statutes [repealed, SB2 § 3] of Nevada." *O/son* [App. G2].

The Petitioner's conviction/sentencing are based on two (2) "NRS" violations [App. H]. If these NRS sentencing statutes are not the law as substantiated by the published decisions of the NSC, then Petitioner's guaranteed right of due process of law under the Fourteenth Amendment to the U.S. Constitution

has been violated by implicating Petitioner's fair notice of what is lawfully prohibited. To arrest, indict, convict, and sentence this Petitioner on what is not law is illegal and unconstitutional.

The Petitioner's sentence, based on two "NRS" violations, has been voided by an authoritative act, i.e., binding decision, of the Nevada Supreme Court when it declared the NRS statutes not the law of the State of Nevada implicating the state district court's subject matter jurisdiction. If there are no valid statutes charged against this Petitioner, there is nothing that can be deemed a crime, and without a crime, there is no subject matter jurisdiction.

The Nevada state district court sentenced Petitioner pursuant to a state law that was repealed by an act of legislation which deprived the court of jurisdiction to prosecute state crimes.

NRS 171.010 is cited by the NSC as the cognizance, in addition to Article 6, Section 6 of the Nevada Constitution, to impose sentence and punish defendants in criminal cases and is the source of the state courts' subject matter jurisdiction. [App. E5].

NRS 171.010 states:

Jurisdiction [emphasis] of offense committed in state. Every person, whether an inhabitant of this state, or any other state, or of a territory or district of the United States, is liable to punishment by the laws of this state for a public offense committed therein, except where it is by law cognizable exclusively in the courts of the United States.

[App. C]

Upon examination, in the legislative history section of NRS 171.010 located in brackets below the above text, is shown the authoritative statutes [1911 Cr. Prac. § 58; RL 6908; NCL § 10705] which is derived from the statutes of Nevada.

According to this informational bracket, it is the source of its legal authority to validate its existence.¹ The interpolation following the text of NRS 171.010 means that NRS 171.010 was derived from section 58 of the Crimes and Punishment Act of 1911 and subsequently appeared in Revised Laws of Nevada (1912) section 6908, and Nevada Compiled Laws (1929) section 10705.²

¹ www.Leg.State.NV.US/division-LCB-index.html

Contrary to this, these statutes of Nevada have been repealed in 1957 by Statutes of Nevada 1957, Chapter 2, entitled "Senate Bill 2", Section 3. It states:

Section 3: Repeal of prior laws. Except as provided in Section 5 of this act and unless expressly continued by specific provisions of Nevada Revised Statutes, all laws and statutes of the State of Nevada of a general, public, and permanent nature enacted prior to January 21, 1957, hereby are repealed. [App. D2]

Since then, no new enacted legislative acts have been passed by the Nevada legislature as law to establish the statutory authority for NRS 171.010 during or after 1957. No where in this NRS does it indicate by specific provisions that the repealed, antiquated Statutes of Nevada correlating to this NRS are to be continued.

The Federal District Court of Nevada in its order to dismiss Petitioner's Petition for Writ of Habeas Corpus 2254 states: "...NRS § 171.010 does not address the state district court's jurisdiction; rather, it provides criminal liability for persons committing offenses within Nevada. [App. B4 at 21-22].

² The 1957 act (SB2) that enacted and adopted NRS 171.010 does not appear in its history section. [App. C].

This argument fails on three levels. First, the title of NRS 171.010 describes the content of the statute: "Local Jurisdiction Of Public Offenses" [emphasis] [App. C]. Second, the Nevada Cases section beneath the text of NRS 171.010 contains several case-law examples describing NRS 171.010 as jurisdictional including this language, "The fact that NRS 171.010, relating to the jurisdiction of offenses committed in the state..." [emphasis] [App. C].

Lastly, this argument conflicts with the ruling of the NSC. As already mentioned, NRS 171.010 is cited by the NSC as the cognizance, in addition to Article 6, Section 6 of the Nevada Constitution, to impose sentence and punish defendants in criminal cases and is the source of the state court's subject matter jurisdiction [App. E5].

As a result, NRS 171.010 is invalid, void, and this Petitioner's sentencing court lacks jurisdiction to sentence and impose punishment against Petitioner. The court may exercise judicial power only when it has a valid statutory scheme and subject matter jurisdiction. *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838). To impose sentence violates the Petitioner's right to due process of law as guaranteed by the Fourteenth Amendment to the U.S. Constitution. NRS 171.010 has no source sentencing statutes to sustain it because they were

all repealed.

Therefore, the Nevada state court overstepped the bounds of constitutional authority by extrajudicial action. It cannot validly sentence this Petitioner pursuant to a statute *not* in effect at the time of the offense. NRS 171.010 was repealed by legislation which deprived the state sentencing court of jurisdiction to prosecute state crimes.

I. THE NINTH CIRCUIT DECISION IS FLAWED; PETITIONER'S REASONING FOR GRANTING A CERTIFICATE OF APPEALABILITY CORRECTLY CAPTURES THE REQUIREMENTS OF *SLACK V. MC DANIEL* AND *BAREFOOT V. ESTELLE*.

Petitioner submits that he has made a substantial showing of the denial of a constitutional right in his application for COA [App. K-K6]. The standard set by *Slack* (quoting *Barefoot*) sets a low threshold of some substance that the appeal presents: (1) an issue that is debatable among jurists of reason; (2) that a court could resolve in a different manner; (3) that is adequate to deserve encouragement to proceed further and (4) that is not squarely foreclosed by statute, rule, or authoritative court decision, or that has some factual basis in the record.

Petitioner's originating Motion To Correct Illegal Sentence and subsequent appeals up to his application for COA demonstrated that Nevada lacked jurisdiction to prosecute him for an alleged crime; for purposes of Senate Bill 2 § 1 and 3 and NRS 171.010.

Petitioner claims Senate Bill 2 § 1, which enacted the NRS statutory scheme as law of the State of Nevada, was effectively **Struck down** by the State's highest court (NSC), consequently depriving the state district court of jurisdiction over his two alleged "NRS" violations.

Petitioner claims Senate Bill 2 § 3 repealed the state district court's jurisdiction over crimes committed in the state; for the purpose of NRS 171.010.

Petitioner submits that a question of a jurisdictional defect, which implicates the very power of a state court to prosecute and punish its citizens and foreign nationals is a valid claim of the denial of a constitutional right. *Mc Girt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 2452; 207 L.Ed. 2d 985; 2020 US LEXIS 3554 (2020).

Petitioner further submits that the Ninth Circuit Court's procedural ruling is flawed. This Court has held that "every federal appellate court has a special

obligation to satisfy itself not only of its own jurisdiction, but also that of the lower courts in a cause under review." *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541, 89 L.Ed. 2d 501, 106 S.Ct. 1326 (1986). "There is no discretion to ignore lack of jurisdiction." *Joyce v. U.S.*, 474 F.2d 215.

The Ninth Circuit Court's decision to deny this Petitioner a COA was flawed as Petitioner demonstrated that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); see also 28 U.S.C. § 2253 (c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

II. UNIFORM LAWLESSNESS HAS OCCURRED IN THE STATE OF NEVADA FOR SEVERAL DECADES. THE STATE HAS OVERSTEPPED ITS AUTHORITY IN PROSECUTING THOUSANDS OF CASES ALL WHILE THE STATE AND FEDERAL COURTS TURNED A BLIND EYE.

The State of Nevada lacked jurisdiction to prosecute state crimes that occurred after January 21, 1957. The very act (SB2) that enacted NRS 171.010 (jurisdiction

for state crimes) adopted it with a fatal flaw — the three supporting Nevada statutes with pre-1957 enactment dates were repealed by SB2 (*supra*).

As a result of this statutory defect, thousands of convictions obtained by the State for crimes involving defendants or victims across several decades are now drawn into question.

When the State of Nevada was confronted in the state (and later Federal) courts over its lack of jurisdiction for prosecuting state crimes committed by defendants, the response has been the same.

Inmates "conflate[s] the laws of Nevada with the codified statutes. The Nevada Revised Statutes 'constitute the official codified version of the Statutes of Nevada and may be cited as *prima facie* evidence of the law.'" [Krig v. State, App. F2] This "codified" version of law, according to *Taylor v. State*, are laws that are grouped together "of similar subject matter" "but not itself exercising the legislative function". [Taylor v. State, App. E6].

In *O/son*, the appellate court opined, "The actual laws of Nevada are contained in the Statutes of Nevada". [O/son v. State, App. G2].

To say the NRS statutory scheme is simply an "official codified version of the Statutes of Nevada" and "prima facie evidence of law" would require willful blindness to the clear and plain language of 1957's Senate Bill 2, Section 1. [App. D].

Historically speaking, contemporaneous legislative acts supported the legislative intent of SB2. In a separate action that expressed the sense, will, or action of the Assembly, another act entitled, "Assembly Concurrent Resolution No. 1" clearly declared the NRS statutory scheme was to become "law" and "supersede" all previous laws. [App. I].

Therefore, uniform lawlessness has occurred in the State of Nevada for many decades. All crimes prosecuted since January 21, 1957 lacked jurisdiction. The State has convicted thousands for "NRS" violations. Violations that have been decreed not to be law by the State's highest court.

In Nevada, a jurisdictional question can be raised at any time. See *Edwards v. State*, 112 Nev. 704 (1996); NRS 176.555. In fact, a litigant can raise a court's lack of subject matter jurisdiction at anytime in the 9th Circuit (*Newtok Vill v. Patrick*, 2021 U.S. Dist. LEXIS 35139 (9th Cir. 2021)) and in this Court (*Melo v. U.S.*, 505 F.2d 1026)

Despite this, all State and Federal courts have continuously dismissed all jurisdictional challenges as procedurally "untimely". See e.g. Altamirano v. State, case Number C-16-314317-1 (Nevada Supreme court No. 85708), Altamirano v. Garritt et al. No. 3:23-cv-00266-MMD-CSD, (9th Cir. No. 23-3953), Barral v. State, Supreme court case No. 85706, McCaffrey v. State, Supreme case No. 85709, et al., Reeder v. Breitenbach, et al, case No. 3:24-cv-00220-ART-CLB, Doyle v. Garritt, et al, case No. 3:23-cv-004137-MMD-CSD, Gonzales v. State, case No. C259414, and Eatherly v. State, Supreme court case No. 86565.

How long must this blatant miscarriage of justice continue? To this date the State of Nevada continues its long historical practice of illegally and unconstitutionally prosecuting and punishing thousands for serious crimes rendering punishment of the highest level including life in prison and death penalties. Illegally confining people against their will is kidnapping. Sentencing people to death without jurisdiction is murder. Our Constitution demands more than the continued use of a flawed criminal justice system.

This case is not only of state and national importance, but of world wide importance. Las Vegas is a world-wide tourist destination receiving millions of visitors from all over the world year after year. It once has been said of "Sin City": "Come on vacation, leave on probation". The State's jurisdictional issue must be addressed once

and for all.

History shows this Court does not shy away from correcting the errors of state governments, e.g. *Ramos v. Louisiana*³; *Mc Girt v. Oklahoma*.⁴ Nevada's long-standing practice of asserting jurisdiction over its citizens without a valid statutory scheme must end, despite the State's view of unacceptable consequences. The magnitude of a legal wrong is no reason to perpetuate it (*Mc Girt, id.*).

When confronted with the difficult task of rendering a judgment adverse to a state with potential far-reaching consequences this Court stated the following: "Every judge must learn to live with the fact he or she will make some mistakes; it comes with the territory. But it is something else entirely to perpetuate something we all know to be wrong only because we fear the consequences of being right..." (*Ramos, supra*).

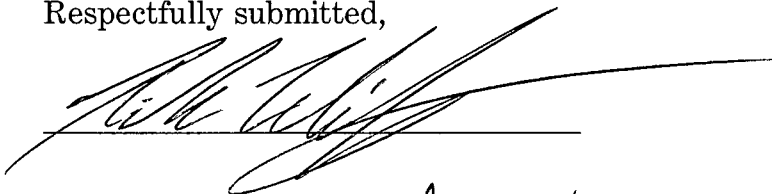
³ *Ramos v. Louisiana*, 590 U.S. —, —, —, 140 S.Ct. 1390, 206 L.Ed. 2d 583 (2020).

⁴ *Mc Girt v. Oklahoma*, 591 U.S. —; 140 S.Ct. 2452; 207 L.Ed. 2d 985; 2020 U.S. LEXIS 3554 (2020).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "John G. ...", written over a horizontal line.

Date: July 22nd 2024