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U.S. COURT OF APPEALS

JUL 31 2017

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DOUGLAS WARENBAC
#1112924
HIGH DESERT STATE PRISON
P.O. Box 650
INDIAN SPRINGS, NEVADA, 89070-0650

In the U.S. Court of Appeals for the 9th circuit


DOUGLAS WARENBAC,
PETITIONER,
U.S.,
THE STATE OF NEVADA,
RESPONDENT,

Case no. 17-72096
Nevada Supreme
Court case no 71902

(Motion) for leave to supplement application to file
a successive habeas corpus petition.

I, Douglas Wareback, petitioner, prose, in proper person hereby requests the Court or the Clerk of the Court to add the attached documents to the application (to file a successive habeas petition) I sent to this court on 7/16/17. Since I do not have a case number, I ask the Clerk to find the application under my name (and from High Desert State prison, Nevada) to properly include the attached documents.

The attached documents are 1) Arguement on 28 U.S.C. § 2244 (1)(b) and the "proposed 28 U.S.C. § 2254 petition".

Respectfully submitted,  Douglas Wareback, petitioner,
prose, #1112924, High Desert State Prison
July 20, 2017 P.O. Box 650, Indian Springs, Nevada
89070-0650

Conforming to 28 U.S.C. § 2244 (1)(b)

28 U.S.C. § 2244 (1)(b) states, "-- The limitation period shall run from the latest of--the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence."

It is the definition of "due diligence" that determines if I met the requirement "could have been discovered".

The Factual^{predicate} became available on 4/14/15. The Factual predicate for the application petition is "counsel did not waive any other procedural defects," in the NSC's "order of affirmance", case no. 66294, (ecf 25, exhibit 91) at page 3, lines 5-6.

The core of the problem was^{to} determine what the NSC meant by "other procedural defects" what were these "other" defects not waived by counsel? Only^{through} due diligence could I make a guess. And only then determine if the guess had any post conviction value. And further, discover another Factual predicate to support "other" the case law "Nollette v. State, 118 Nev. 346 (2002)". Certainly, all that takes time. The thinking process was not linear. Only after "putting all the pieces together" did I finally realize I may have a cognizable appealable issue to present to the courts.

The first attempt was "motion pursuant to NRS 179D-0357(4) to remove sex offender registration from the defendant's judgement of conviction", filed on 8/17/16, then already 16 months after the source predicate was made available. Certainly, that is 4 months past the one year limitation, but as fully explained, the predicate is but a part of many other^{required} predicates as ~~is~~ detailed in the ground.

Two new problems/errors were discovered in the proceedings of that motion, 1) I was referring to the wrong versions of the conviction offense and the sex offender registration statute, and 2) the motion was not appealable to the NSC.

The NSC dismissed the appeal in case no. 71453 on 10/27/16. Actually, prior ~~the~~ to receiving the dismissal, I already realized the motion would not survive appeal, thus on 10/26⁴/16 I filed the motion that is basis for exhaustion.

Technically, one could allege I am fully 6 months past the limitation period to have filed the current motion. All I can say, I believe I demonstrated, with extensive "due diligence" defined, that I have overcome the procedural bar.

Since I ~~file~~ sent my application ^{to this court}, only 2 days after receiving the NSC's affirmance filed on 7/12/17, further demonstrates I am diligent in my efforts, and a showing of good faith.

Also, note, my application was not using the most recent form, I discovered on 7/18/17 the most recent form available at the law library, that requires ~~sup~~ submission of the "proposed 2254 petition". That is included and this more detailed explanation on overcoming the timeliness procedural bar.

I pray this honorable Court sees my good faith effort, and grants leave on 28 U.S.C. § 2244(1)(C), independent of the merits of the ground presented.

Under penalty of perjury, the foregoing is true and correct.

July 20, 2017
20C 2

Q Douglas Warenback, defendant
#1112924, HBSP. (30F10)

DOUGLAS WARENBACK
Name
1112924
Prison Number
High Desert State Prison
Place of Confinement

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DOUGLAS HARRY WARENBACK, Petitioner,)
(Full Name))
vs.)
Brian Williams, Respondent,)
(Name of Warden, Superintendent, jailor or)
authorized person having custody of petitioner))
and)
The Attorney General of the State of Nevada)

CASE NO. _____
(To be supplied by the Clerk)
→ Proposed First
→ Successive
**PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2254
BY A PERSON IN STATE CUSTODY
(NOT SENTENCED TO DEATH)**

- Name and location of court, and name of judge, that entered the judgment of conviction you are challenging: 8th Judicial District Court, Clark County, Hon. David B. Barker.
- Full date judgment of conviction was entered: 12 / 17 / 13. (month/day/year)
- Did you appeal the conviction? ___ Yes No. Date appeal decided: / / .
- Did you file a ~~petition for post-conviction relief or petition for habeas corpus~~ ^{motion to correct illegal sentence} in the state court? Yes ___ No. If yes, name the court and date the ~~petition~~ ^{motion} was filed: 8th Judicial District Court 10 / 4 / 16. Did you appeal from the denial of the petition for post-conviction relief or petition for writ of habeas corpus? Yes ___ No. Date the appeal was decided: 7 / 12 / 17. Have all of the grounds stated in this petition been presented to the state supreme court? Yes ___ No. If no, which grounds have not? _____
- Date you are mailing (or handing to correctional officer) this petition to this court: 7 / 20 / 17.

Attach to this petition a copy of all state court written decisions regarding this conviction.

handwritten orders attached to application

6. Is this the first federal petition for writ of habeas corpus challenging this conviction? Yes No. If no, what was the prior case number? ^{2:15-cv-01789} -APG-VLF. And in what court was the prior action filed? U.S. District Court, district of Nevada.

pending Was the prior action denied on the merits or dismissed for procedural reasons (check one). Date of decision: 1/1/15. Are any of the issues in this petition raised in the prior petition? Yes No. If the prior case was denied on the merits, has the Ninth Circuit Court of Appeals given you permission to file this successive petition? Yes No.

7. Do you have any petition, application, motion or appeal (or by any other means) now pending in any court regarding the conviction that you are challenging in this action? Yes No.

If yes, state the name of the court and the nature of the proceedings: See answer 6, submitted 9/17/15, dismissed filed 11/4/16, dismissed with leave to amend 2/13/17, amended,

8. Case number of the judgment of conviction being challenged: ^{petition filed 3/13/17} C-13-286735-1.

9. Length and terms of sentence(s): 48-120 months.

10. Start date and projected release date: 11/12/12, 9/2018.

11. What was (were) the offense(s) for which you were convicted: pandering a child
NRS 201.300 (a) [Fictitious charge]

12. What was your plea? Guilty Not Guilty Nolo Contendere. If you pleaded guilty or nolo contendere pursuant to a plea bargain, state the terms and conditions of the agreement:

13. Who was the attorney that represented you in the ^{correct} proceedings in state court? Identify whether the attorney was appointed, retained, or whether you represented yourself *pro se* (without counsel).

	Name of Attorney	Appointed	Retained	<i>Pro se</i>
arraignment and plea	<u>John P. Parris</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
trial/guilty plea	<u>"</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
sentencing	<u>"</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
direct appeal	<u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
1st post-conviction petition	<u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
appeal from post conviction	<u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2nd post-conviction petition	<u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
appeal from 2nd post-conviction	<u></u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

State concisely every ground for which you claim that the state court conviction and/or sentence is unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1

I allege that my state court ~~conviction and/or~~ sentence ^{is partially} ~~are~~ unconstitutional, in violation of my 14th Amendment right to due process of law,

based on these facts:

Alleged facts: Written in my judgement of conviction, see pending U.S. district court case no. (Nevada) 2:15-cv-01789-APG-VCF, ecf 22, exhibit 15, page 1, lines 20-21, states, "PANDERING OF A CHILD (Category B Felony) in violation of NRS [Nevada Revised Statute] 201.300 (a); --"; id. at page 2, lines 2-3 states, "TO A MAXIMUM of --- (120) MONTHS --"; id. at lines 7-8 states, "ADDITIONALLY, the Defendant is ORDERED to REGISTER as a sex offender in accordance with NRS 179D.460 ---".

However, pursuant to NSC's "order of affirmance", case no. 71902, page 2, lines 6-7 states, "---"; see also 1997 Nev. Stat., ch 137, § 2 at 295-96 (former version of NRS 201.300).", expanded for the relevant offense states, "NRS 201.300: Pandering; --- 1. A person who: (a) Induces, persuades, encourages, in veiles, entices or compels a person to become a prostitute or continue to engage "prostitution"; --- 2. A person who is found guilty of pandering: --- (b) A child: --- (2) -- if no physical force --- 1-10 years ---". Based on a 10 year maximum sentence the correct legal subsections of my conviction must be stated as, "NRS 201.300 (1)(a), pandering, (2)(b)(2), a child, if no physical force".

That contradicts 201.300 (a) [D page 5], or 201.300. How is that possible? The NSC Fails to address this obvious discrepancy - why?

The discrepancy is explained at my plea hearing, ecf 22, exhibit 12, page 2, line 13 states, "Both the State and the Defense agree this is a fictitious plea ---". In a previous affirmance order, case no. 66294, the NSC

Exhaustion of state court remedies regarding Ground 1: ecf 25, exhibit 91

unconstitutional. Summarize briefly the facts supporting each ground. You may attach up to two extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1 continued [i]

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____.

based on these facts:

acknowledged this fictitious charge and the required waiver in order for the district court to accept this charge by stating, at page 3, lines 5-6, "--- counsel waived the procedural defects [2] page 5] so that he [I, the defendant] could plead to the fictitious charge. Counsel did not waive any other procedural defects."

It is here, the basis for the ground is made. From the appealed affirmance order (no. 71902), page 2, lines 1-4, the NSC stated, "--- NRS Chapter 179D [1970, 210(3)] required persons convicted of crimes involving a child, including an "offense involving pandering or prostitution pursuant to NRS 201.300 to 201.340, inclusive," ". From the legal syntax of the pandering offense 201.300 (1)(a), (2)(b)(2) is properly "encompassed" by the said range of statutes.

I claim the NSC's statement, id. at lines 7-8, "As Warnback's offense was clearly encompassed by that provision, ---" is patently incorrect. Nowhere in 179D.210(3) does it imply or permit a (procedurally defective) fictitious, non-existent subsection or no subsection^{that} can be included in the said range of statutes. Therefore, I claim the District Court was, in fact, "deprived of the authority to order [me] to register as a sex offender" (id. at lines 10-11). Herein lies the core of the debate; the NSC's own acknowledgement of the fictitious charge and associated waivers as the "law of my case". The NSC fails to recall its previous statements in 66294, why? Because, in 66294 the NSC established what defects were and were not waived. The divisions are "could plead" and "other".

Exhaustion of state court remedies regarding Ground 2:

Direct Appeal:

extra pages stating additional grounds and/or supporting facts. You must raise in this petition all grounds for relief that relate to this conviction. Any grounds not raised in this petition will likely be barred from being litigated in a subsequent action.

GROUND 1 continued [2]

I allege that my state court conviction and/or sentence are unconstitutional, in violation of my _____ Amendment right to _____,

based on these facts:

A legal definition of "other" comes from another case law from the NSC, it is *Nollette v. State*, 118 Nev. 346 (2002) stating, "We conclude that Nevada's sex offender registration and notification is a collateral consequence of a guilty plea--- notification and advisement of a collateral consequence of a criminal conviction is not a prerequisite to the entry of a constitutionally valid plea." Thus, I ~~concluded~~ conclude "counsel did not waive any collateral [other] non-prerequisite procedural defects", and "so that he could plead" means "only prerequisite, direct procedural defects were waived to enter a constitutionally valid plea".

Federal Habeas implication: Therefore, attaching sex offender registration to a fictitious charge was not waived by counsel, violating my right to legal due process of law (14th amendment) when the trial state district court entered a ^{partially} unconstitutional plea by subjecting me to sex offender registration illegally.

① In the current affirmance, page 1, lines 5-6 states, "Warrenback asserted his judgement of conviction contained a typographical error---" is a false statement. In the motion, page 5, lines 24-25, I stated, "later, it will be demonstrated this is not a "typographical error" that one might allege.---".

② I am challenging "counsel waived" in ground 4 of my pending amended federal petition.

Exhaustion of state court remedies regarding Ground 3:

Direct Appeal:

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Exhaustion of state court remedies regarding Ground 1:

▶ **Direct Appeal:**

Did you raise this issue on direct appeal from the conviction to the Nevada Supreme Court?

Yes No. If no, explain why not: basis for this petition is based on the NSC's order 66294, appeal from first habeas petition, filed 4/14/15

▶ **First Post Conviction:**

Did you raise this issue in a ^{motion to correct illegal sentence} petition for post conviction relief or state petition for habeas corpus?

Yes No. If no, explain why not: see see above
motion to correct illegal sentence

If yes, name of court: 8th Judicial District Court date ^{motion} petition filed 10/4/16

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Second Post Conviction:**

Did you raise this issue in a **second** petition for post conviction relief or state petition for habeas corpus?

Yes No. If yes, explain why: _____

If yes, name of court: _____ date petition filed ____/____/____

Did you receive an evidentiary hearing? Yes No. Did you appeal to the Nevada Supreme Court? Yes No. If no, explain why not: _____

If yes, did you raise this issue? Yes No. If no, explain why not: _____

▶ **Other Proceedings:**

Have you pursued any other procedure/process in an attempt to have your conviction and/or sentence overturned based on this issue (such as administrative remedies)? Yes No. If yes, explain: _____

State concisely every ground for which you claim that the state court conviction and/or sentence is

(Name of person who wrote this
complaint if not Plaintiff)

CO

(Signature of Plaintiff)

July 20, 2017

(Date)

(Signature of attorney, if any)

(Attorney's address & telephone number)

DECLARATION UNDER PENALTY OF PERJURY

I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA THAT THE FOREGOING IS TRUE AND CORRECT.

See 28 U.S.C. § 1746 and 18 U.S.C. § 1621.

Executed at High Desert State Prison on July 20, 2017.
(Location) (Date)

CO

(Signature)

1112924

(Inmate prison number)