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1-1-2006

### Summary of George v. State, 122 Nev. Adv. Op 1

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*Nevada Law Journal*

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#### Recommended Citation

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## ***George v. State*, 122 Nev. Adv. Op 1 (2006)<sup>1</sup>**

### **CRIMINAL LAW – APPEAL**

#### **Summary**

In 2002, appellant, George, filed a writ of habeas corpus with the Nevada Supreme Court claiming he was deprived his right to appeal. The Nevada Supreme Court then discovered that defendant's original 1985 notice of appeal was never transmitted. The court directed the district court to transmit defendant's notice of appeal and appoint appellate counsel.

#### **Disposition/Outcome**

Reversed and remanded. The Nevada Supreme Court held that George timely filed his notice of appeal and was improperly denied his opportunity to prosecute his direct appeal and ordered a new trial in district court.

#### **Factual and Procedural History**

In 1985, a jury found appellant, George, guilty of six counts of sexual assault and guilty of five counts of lewdness with a minor. George filed a proper person notice of appeal before entry of judgment. However, the clerk for the district court failed to transmit the appeal to the Nevada Supreme Court and the district court entered the judgment of conviction upon the verdict.<sup>2</sup>

George moved to obtain transcripts from the district court for preparation of his appeal. The State opposed arguing that George had to show a “meritorious claim” and that the transcripts were necessary to that claim under *Peterson v. Warden*.<sup>3</sup> George’s motion was summarily denied by the district court and subsequently, the clerk destroyed all the trial exhibits in 1987.<sup>4</sup>

In 1987 and 1988, George filed actions in federal court alleging he was deprived his opportunity to prosecute his direct appeal but the claims were dismissed on procedural grounds. In 2002, George filed a writ of habeas corpus with the Nevada Supreme Court claiming that he was deprived of his right to appeal. The court then discovered that defendant's original 1985 notice of appeal was never transmitted.

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<sup>1</sup> By David T. Gluth

<sup>2</sup> *George v. State*, 122 Nev. Adv. Op 1 (2006).

<sup>3</sup> 87 Nev. 134, 136, 483 P.2d 204, 205 (1971).

<sup>4</sup> The court noted that this was because George’s time to appeal had expired.

## **Discussion**

### *1. Timeliness of appeal*

The State argued that George's notice of appeal was ineffective to preserve appellate jurisdiction because he filed it before entry of judgment. The Nevada Supreme Court disagreed holding that reading Nevada Rule of Appellate Procedure 4(b)(1)<sup>5</sup> and NRS 177.015<sup>6</sup> together, a premature notice of appeal filed after the verdict but before judgment will be treated under NRAP 4(b)(1) as filed after the entry of judgment.

### *2. Trial transcripts*

The district court denied George's 1985 request for trial transcripts because George did not show his request was necessary to his claim under *Peterson*.<sup>7</sup> While the Nevada Supreme Court stated that *Peterson* is still good law, the court clarified that the State must provide an indigent defendant transcripts when the defendant needs them for a direct appeal. In the instant case, George's trial transcripts were destroyed and as a result he could not effectively prosecute his appeal.

## **Conclusion**

The court held that George timely filed his notice of appeal but he was improperly denied his opportunity to prosecute his direct appeal. Therefore, the court determined the only remedy was to grant a new trial.

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<sup>5</sup> Nevada Rule of Appellate Procedure 4(b)(1) provides in pertinent part:

In a criminal case, the notice of appeal by a defendant shall be filed in the district court within thirty (30) days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof.... A judgment or order is entered within the meaning of this rule when it is signed by the judge and filed with the clerk.

<sup>6</sup> NEV. REV. STAT. § 177.015(3) (2005) allows a defendant to appeal from a "final judgment or verdict."

<sup>7</sup> *Peterson*, 87 Nev. 134, 483 P.2d 204.