

FILED

No. 52984

DEC 26 2008

Gene Allen Pro se  
Petitioner

C-177427

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. Ingersoll  
DEPUTY CLERK

v

leave to file

State of Nevada "et al"  
Respondent

In The Supreme Court of Nevada

A writ of Mandamus N.R.A.P. 21.

Comes now the petitioner by a pro per motion to compel the honorable high court to move within and grant the above request with out further delay, or prejudice, because, see Calderon V. U.S. Dist. Court for Cent. Dist. of Calif. (C.A.9 (Cal.) 1998) there are clear factors that support the issuance of the writ. P.S.1. and P.S.R. must be disclosed before trial guilty plea and sentencing, N.R.S. 176.156. See State v. State 634 P2d 4168

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RECEIVED  
DEC 26 2008  
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
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08-32790

(Nev. 1981) as prior transcripts  
where produced by, Free lance  
Court Reporters back in may  
15th of 03, add: 719 S. 6th St. of  
Las Vegas, Nv. 89101, they are  
incomplete and where not pro-  
duced with all of the court  
reporter and stenographer's  
notes include all of the defd's  
pro per court appearances  
claiming obstruction of legal  
Justice denied due process  
and the right of allocution and  
its functional equivalent due  
to Clark County racial bias, ~~see~~  
U.S. V. Armstrong 116 S.Ct 1480.  
this has lead to a violation of  
the Court Reporting Act, ~~see~~  
U.S. V. Upshaw 448 F.2d 1218-  
1224.

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it has been a well settled rule that all criminal proceedings must be recorded word for word and verbatim a composite of due process of law and equal protection. The appellant has made severial attempts to challenge the legality of the J.O.C. and sentence, 3 of N.R.S. 174.035 due to a silent record pleading without the assistance of court appointed counsel as most of the discovery is out of state jurisdiction, the factual predicate for the claims being reported could not have been discovered previously through the exercise of due diligence, see USV. Julian 108 Sct 1606, as counsel did not make any objections or disclose to the defd before trial and plea discovery and

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working product known, that would have impeached the credibility of states witness, See Jackson v. Virginia 443 U.S. 307., N.R.S. 34.726.(1). (a).(b). In essence the court must review counsel and conduct on the facts of the case "Strickland 466 U.S. at 690 as there was a bona fide defence that counsels conduct was unethical and fell well below an objective standard of reasonableness that prejudice trial and plea proceeding in the first instance U.S.C. A. Const. Amend. 5th, 6th, and, 14th, demonstrating that if the P.S.I. and P.S.R. would have been disclosed before trial and error defd would not have plead guilty and would have continued his trial, See Mc.Nelton v. State 115 Nev. 396 disclosure of P.S.I

1 would have been a reasonable  
2 probability sufficient to have un-  
3 dermine confidence in the out-  
4 come citing, Strickland 466 U.S.  
5 at 687-89, supported by the  
6 specific fact that where un-  
7 known or disclosed pro per at  
8 sentencing see Hargrove v.  
9 State 100 Nev 498, further the  
10 J.D.C. of C.C. has admitted in  
11 proceedings an indigent pro se  
12 indigent has the right to a need  
13 transcript to appeal and to  
14 support his claims for H/C.,  
15 and P.C.R., Chapt. 34, and 177.,  
16 see Grillin v. Ill. 76 Sct 585 (1956)

21 Background of the case the  
22 appellant was sentenced to  
23 10 years-with, by the Judge  
24 John S. McGroarty, D.A. Stewart  
25 L. Bell the A.G., Brian E. Sandoval  
26 represented by the P.D.O. Co-  
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1 Steve Immerman and Jeff Banks  
2 at trial and quilty plea they did  
3 withdraw from the case Mr  
4 Allen was sentenced pro per  
5 and with out counsel, on April  
6 the 1st the year, 2003 Jennifer  
7 Bolton was appointed stand by,  
8 on remand, William Taulor was  
9 appointed to appeal, 41274 and  
10 was allowed to withdraw after  
11 filing a merites opening brief.  
12 Since and a matter of judicial re-  
13 view, attempt to vacate the J.  
14 O. C., pro se the petitioner has  
15 made several appearances  
16 by P.. for H/C. and P.C.R. N.R.S.  
17 Chapter 34 and 177 to address  
18 the fact that his plea at trial  
19 recess is clearly unconstitut-  
20 ionally in valid, Nv. Const. Art  
21 1- Sec. 8.. U.S.C.A. Const Amend 6th  
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1 The first appearance before,  
2 Judge James Bixler was on  
3 May 16th of 2007, and entered a  
4 Second Amended J.O.C. the next  
5 appearance P. for H/C., for P.C.R..  
6 before, Judge James Bixler in  
7 Dept. 24. date of hearing June 17th,  
8 2008, present in court put forth  
9 medication and oral argument  
10 with judicial discretion state  
11 opp's by D.A. David Roger with  
12 chief D.A. Thomas J. Moreo the  
13 request at this time for the  
14 appointment of counsel was  
15 denied the request for an  
16 evidentiary hearing was  
17 also denied in open court  
18 being denied due process of  
19 law, *See Gibbons v. State* 629  
20 P2d 1196 (Nev. 1981) Citing,  
21 *Koerschner v. Warden* 508 F.  
22 Supp 2d 849 (D. Nev) 2007).  
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28 Judge Bixler, simply made

1 vage and inconclusive comments  
2 about good time credit then his  
3 statement was Sir, I request my  
4 self from any further proceed-  
5 ing, supported by the record on  
6 June 17th 08. See Hamv. 8th J.  
7 D.C. 93 Nev. 409 (1997), Hays v.  
8 Forman 93 Nev. 490 (1997), State  
9 Bar v. Clairborne 104 Nev. 115 at  
10 244 (1988)... N.R.S. 1.230... 710

11  
12 The claims for review are pro-  
13 cedurally default and belated  
14 by the J.D.C. record and must  
15 satisfy the exhaustion doctrine  
16 demonstrating a manifest in-  
17 justice by a guilty plea rather  
18 than a fair trial see Rose v. Lundy  
19 102 S.Ct 1198.

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22 defences counsel filed a  
23 pre-trial motion for an indep-  
24 endent psychiatric evaluation  
25 of the plaintiff the outcome  
26 would have been a guilty see  
27 Abbott v. State 138 P.3d 462  
28 (denied). (Nev. 2006)



1 it was further abuse of court's  
2 discretion when the court did  
3 not allow the defd to withdraw  
4 his guilty plea as it was also  
5 affirmed on direct appeal, doc.  
6 No. 41274. Supreme Court of Nev.,  
7 March the 11th of 2004, in addi-  
8 tion Mr Allen has never been  
9 appointed counsel in all procee-  
10 dings, federal and state, see  
11 (E.C.R.). *Id. Koerschner v. Warden*  
12 508 F. Supp 2d. 849 (D. Nev) 2007)  
13 if there is any doubt as to if the  
14 petitioner has meet this stand-  
15 ard are to be resolved in his  
16 favor see *Valerio v. Crawford*  
17 306 F. 3d 742-767. The court is  
18 unable to determine how the  
19 Const. rights have been violated  
20 with respects to each claim  
21 presented for review for the  
22 state conviction he is challen-  
23 ging alledged specific facts  
24 do deserve the incurrence to  
25 proceed furth fact finding, that  
26 cases be for the federal courts  
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1 are being backwashed, U.S.D.C.  
2 decided without the district  
3 court record and states appell-  
4 ate court, Cir. R. 10-3 or 28 U.S.C.  
5 753(f). It is a virtual imposa-  
6 bility to electronically transfer  
7 the records without the (M.J.)  
8 appointing a master or a F.P.D..  
9 as the forms are just to com-  
10 plex as Bonds' requirements  
11 are not being met. See USV.  
12 Jones 114 P.2d 1002, Id. 97 S.Ct 1491.

13 The petitioner could not de-  
14 velope the record to advance  
15 his claims until June 17th, 08.  
16 State H/C for P.C.R. and do to  
17 the circumstances of the case  
18 a Evidentiary hearing was in  
19 order due to the Strickland con-  
20 tention See Hathway V. State  
21 71 P.3d 503 (Nev. 2003), that the  
22 claims presented for review  
23 are more than adequate to now  
24 deserve incouragement to pro-  
25 ceed further because he took a  
26 plea to life in state prison at trial  
27 Citing, Barefoot V. Estelle 103 S.Ct  
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3383 (1983). the petitioner has  
more than developed a factual  
recourd that he has consistently  
being denied his const. rights  
~~see~~ Slack v. McDaniel 120 S.Ct  
1595 (2000). that Jurists would  
debate without the records be-  
ing transferred to the U.S.D.C.  
wether his pleadings petitions  
should have been resolved in  
a different manner.

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The petitioner was never given  
an opportunity to introduce evidence  
of good maral character to rebut  
the states case in his own de-  
fence ~~see~~ Knorr v. State 748 P.2d  
103 (nev. 1987).

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The state provides in P.C.R.  
that the Judge shall determine  
whether an evidentiary hear-  
ing is required ~~see~~ Gebers v.  
State 50 P.3d 1093 the petition  
for H/C... did not get a impartial  
determination that his counsel  
was so inadequate it denied  
the defd a right to a fair trial  
U.S.C.A. Const Amend 6th as the

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plea at trial was in valid ~~see~~  
Ballard v. Maggo, 544 F.2d 1247  
(C.A. 5 (La.) 1977).

Ineffective Assistance of Counsel  
under the Strickland v. Washington  
104 S.Ct 2052 that counsel conduct  
was not within the range of that  
competence demanded of counsel  
in criminal proceedings trial/  
guilty plea as under this stand-  
ard the court may review that  
counsel's representation clearly  
fell below an objective stand-  
ard of reasonableness there is  
a three part inquiry here,

(1) Banks was appointed

(2) Co Counsel, Immerman

(3) Cooper, Chief P.D. at that

time, there are countless ways  
to present the issues rather  
we review counsel's actions  
based on the facts known to  
the attorney's in chief and the  
P.D.O. See U.S.V. Nerr session  
824 F.2d 1294 and second  
that counsel's or the P.D.O.,  
deficient performance case

1 prejudice that was so significant  
2 as to deprive the defd a fair trial  
3 the Judge did not investigate in-  
4 to a conflict of interest.

5 The defendant need not prove  
6 definitively that the outcome would  
7 have been, but only a reasonable  
8 probability in a deferent result  
9 Id. at 104 S.Ct 2052 a reasonable  
10 probability to undermine the con-  
11 fidence in the outcome a show-  
12 ing less than a preponderance  
13 of evidence standard of review  
14 to meet the first prong of Strick-  
15 land that his counsel had reason  
16 to know that plaintiff's mental  
17 capacity might be an issue in  
18 this case, where counsel was  
19 on notice that plaintiff may be  
20 mentally impaired, as counsel's  
21 failure to investigate the Plaintiff  
22 mental condition without a  
23 supporting strategic reason  
24 constitutes deficient perform-  
25 ance, she was coached in the  
26 courtroom by her psychologist  
27 ward of the State of Colo., and  
28 ordered to a treatment Center for  
anger management, these are  
reasonable clues that would put  
defence lawyer on clear notice.

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that she had serious psychiatric issues, based on these facts alone counsels performance fell below an objective standard of reasonableness. U.S.C.A. Const. Amend 6th. U.S.V. Abbott 138 P.3d 462. trial counsel has a duty to investigate when he had no theory for a defense they did not request an investigator or a mental health expert because the Judge would have not granted an out of state request, the standard of review competent assistance requires counsel to request funds which would allow for an adequate investigation or preserve the issues for a direct appeal.

The first prong of Strickland and the second there is more than a reasonable probability that the outcome of the trial would have been different with reasonable investigation and no plea. Strickland v. Wash 466 U.S. at 693-694. because at that time she was committed to a

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Colo. treatment center by the state where she was diagnosed as suffering from seemingly a psychosis manifested by delusional and violence, affecting her ability to reason that is generally characterized with also with logic and the assessment of her ability in communication with great difficulty unless she was being choched the fact.

### The Plea Offer

The only comment, communication at trial resses as I was reading the plea with great confusion then Counsel, I hope you know what you are doing Sir. at the plea bargaining process he received nothing for very little here, that the state would argue at sentencing, and trading a life in prison sentence, for a fair trial the thered prong. Two reasons that being deficient performance of counsel, because the defd had a hard time and no advice at all the record indicate: difficulty understanding life

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time supervision his understand.  
was he would have to register  
as a felon upon release if he  
may be allowed to stay in the  
U.S. there is nothing in the plea  
that indicates a psych panel  
the defd had no time to think or  
research the facts about Nev.  
law, that advice fell upon the  
assistance of counsel alone  
and there for he could not have  
been aware of the consequences,  
an impediment external to  
the defense Citing, Boykin v.

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Alb 395 U.S. 238, Santobello v.  
NY, 404 U.S. 257. Secound and  
for most the defd was prejudiced  
by a Judge who concurred  
that there was a severe  
conflict of intrest not only  
with counsel but the defence  
team and the states P.D.O.  
we all know about the Co,  
counsel conflict, see U.S.V. lev 4  
25 F. 3d 146, Ciak v. U.S. 59 F. 3d  
296,

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At a meeting co counsel got  
very load and out of control  
the defd got up to leave the  
meeting pushed the control



1 button to leave Co Counsel grabbed  
2 defendant from behind and  
3 tried to force him back down  
4 into the chair, metro Sgt came  
5 in and said let that man go he  
6 did I sat down upon relise the  
7 Sgt statement to me was would  
8 you like to leave, its about that  
9 time, yes, but on the way out  
10 Sgt comment you need a new  
11 lawyer from what I heard, I  
12 said I know, I received threates  
13 phone calls from Co Counsel at  
14 this point at the C.C.D.C., on the  
15 eve before trial, the defd  
16 filed a pre trial motion to dis-  
17 miss counsel (denied) then  
18 counsel filed a motion to  
19 withdraw from the case also  
20 (denied), The Judge ordered  
21 the defd to cooperate with  
22 counsel and pre pair for  
23 trial as counsel was forced  
24 U.S.C.A. Const Amend 6th 14th.

25 Ineffective Appellant Counsel  
26 the petitioners first appeal was  
27 frivolous and without merit  
28 Cir. R. 4-1, (6). in the Supreme  
Court of Nev, Doc. No 41274

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See *Anders v. Calif* 386 U.S. 738  
as counsel filed the opening  
brief then filed a motion in the  
J.D.C. to withdraw as counsel  
the petitioner was prejudiced  
as the direct appeal was affir-  
med on March the 11th, 2004, as  
there was no communication  
so Mr Allen could address his  
concerns before the brief  
was filed, it left the appellant  
unconstitutionally restricted  
to the record, a denial of due  
process and equal protection  
and a remand would be re-  
quired See *Evitts v. Lucey*  
469 U.S. 387, *Pensent v. Ohio*  
109 Sct 346, U.S.C.A. Const.  
Amend 6th.

### Psych Panel

That if the States determination  
into the competence by evaluation  
is to be determined in criminal  
proceedings and poral evaluation  
he has a right to due process  
and to be represented by  
counsel See *Akav, Okla* 470 U.S.  
68-83 (1985)

## Brady Violation

1 The petitioner filed a H/C. for P.C.R.  
2 because the Supreme Court will  
3 not entertain ineffective assistance  
4 of counsel claims on the merits  
5 and do to his erroneous belief that  
6 his counsel had included all the  
7 claims in his first appeal as of right  
8 thus an Evidentiary Hearing was  
9 required Citing, Hathaway v. State  
10 71 P.3d 503 (nev. 2003) the issue  
11 has never been resolved he  
12 received his P. and P. and P.S.I.  
13 after trial, plea, sentencing  
14 and incarceration and there  
15 for the factual predicate for the  
16 claim could not have been disco-  
17 vered previously through the  
18 exercise of due diligence see  
19 Shields v. State 634 P.2d 468, Julin  
20 v. D.O.J. 108 S.Ct 1606. he did not  
21 receive the requested P.S.I. in-  
22 till may 12 of 2008 wich did  
23 prejudice all proceeding federal  
24 and state as counsel did not  
25 raise any objects or disclose  
26 to his client before trial and  
27 guilty plea,

28 as P.C.R. letter See at Page, 20.

## Speedy Trial

At first calendar call there was only one letter of complaint on file the P.D.O. filed a pre trial motion to have the defd speedy trial deposit- ion withdraw without any prior notice to the defd the P.D.O. claimed at first calendar call it was due to ongoing out of state investi- gation that never occurred the delay between arrest, trial and sentencing was clearly excessive a total of 678 days credit in C.C.D.C. with 43 court apperences in chains shackles and a orange jump- suit did prejudice proceed- ings gave the state to much time too manufacture hear say that they faulsettied evidence, and lead the court to belive the defd was guilty for a crime he had not committed See U.S.V. Mancuso 302 F Supp. 2d 23.

U.S.C.A. Const Amend 14th.

## Sentencing

1 There was no date on callender  
2 set for sentencing the court  
3 failed to inform the defd that  
4 he may be appointed counsel  
5 see U.S.V. White 341 F3d 674.  
6 Reversed and remand 138 P.3d  
462, Abbott v. State (Nev. 2006)

## Sentencing Transcript

7 The state has withheld the re-  
8 quested transcript because  
9 the P.S.I. was not disclosed  
10 all motions have been denied  
11 it is a well settled rule a pro  
12 se appellant should have  
13 the complete record for review  
14 he was and still is prejudiced  
15 a silent record, and he can not  
16 support his argument for, P.C.R.  
17 H/C., and appeal, see Griffin v.  
18 Ill 76 S.Ct 585, Smith v Bennett,  
19  
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## With Plea Hearing

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22 The plea was withdrawn as the  
23 hearing date was Jan 6th 03  
24 proper motion to withdraw the  
25 plea in J.D.C. v. was set on  
26 callendar for Oct 12th of 02 be-  
27 for sentencing the honorable  
28 Judge, John S. Mc Goardty the

1 motion is granted but we must give  
2 the state the opportunity to now  
3 answer there opposition to the  
4 motion sir, let's set a date say  
5 Jan 22nd. 03 you will get your  
6 hearing. Ferretta canvassed at  
7 that time, Mrs Bolton appointed  
8 stand by from the P.D.O.. At the  
9 hearing Jan 22nd the Judge Mr Allen  
10 I stood up (Mr Kocka) stood up  
11 at the same time, his answer was  
12 we have no opposition to the plea  
13 at this time, the Judge next, I  
14 did not get a chance to address  
15 the court and, Mr Kock's name  
16 also appears on my J.O.C. there  
17 seems to be an indication that  
18 he may have represented me  
19 at sentencing, he was not in  
20 the court and P.D. for the State.  
21 I was in court on a pro per plead-  
22 ing motion in Limine hearing  
23 set for April the 1st 2003, I  
24 entered the court room, the Judge  
25 Mr Allen, yes your honor, the  
26 court, we have held enough Sir  
27 I am sentencing you today  
28 to, 10 years to be served in the  
N.D.O.C., and if you have any  
reservations take them up  
by appeal or P.C.R. that will  
that will be all Sir, next. The

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defd was not represented by court  
counsel with no lawyer at the  
hearing and sentencing, there  
is prejudice that is presumed  
in every case U.S.C.A. Const.  
Amend. 6th, Citing, Childress v.  
Johnson 103 F.3d 1221. The argument  
is compelling, on the other hand  
counsel appointed as stand by  
was not any assistance at all  
perhaps the case that best ex-  
plains the petitioner pleadings  
illuminates the present one, see  
U.S. v. Taylor 933 F.3d 1d at 312-313.  
The conviction is constitution-  
ally invalid binding on the state  
through the U.S.C.A. Const. Amend  
14th, 28 U.S.C. 2254, Gideon v.  
Wainwright 83 S.Ct 792 (1967).

### Defense

She had engaged in sexual  
relations at a party and could  
not remember his name, that  
counsel was unable to deve-  
lope the theory of the case  
because it was out of state  
he should have disclosed  
the incident report from  
Arvada Colo. P.D. See Chief,  
C.B.I., that was fabricated  
be yound belittle, see Luna v.

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Mass 354 F. 3d 108, they tried  
to locate the boy and could not  
find him and dropped the in-  
vestigation, that she was in a  
mental hospital and she also  
had relations with a neighbor at  
age 7, while living at her grand-  
mother's there goes the highman  
theory of the case, there's no  
D.N.A. or medical forensics to  
substantiate the allegations  
filed by the D.A. after a 7 year  
separation that ended in a divorce  
last but not least she was arrested  
for prostitution as a teen as a  
factual basis exists there is  
new evidence Citing, Colderson  
v. Thompson 118 S. Ct 1489 at  
1503 (1998), which then rises  
to the level of a fundamental  
miscarriage of Justice in this  
instance see Schulope v. DeLo  
115 Sct 851 (1995), Daily v. State  
665 P. 2d 798 (1983) that none  
of the reports are credible  
be found a reasonable doubt,  
see Jackson v. Virginia 443 U.S.  
307.

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Evidence Standard of Review  
28 U.S.C. 2254(d)(2). at trial the  
court excused the jury for  
lunch Mr Hendrick's D.D.A. and



1 Wicherly D.D.A. meet in chambers  
2 with defence Counsel from the  
3 P.D.O. Banks with Co Counsel  
4 Immerman because Immerman  
5 was grand standing first his  
6 open statement to the Jury  
7 was ladies and gentleman of the  
8 Jury, then pointed at the defd we  
9 should just take a gun out and  
10 shoot him, next at trial he in-  
11 troduced his own transcript,  
12 then he tented the Jury with  
13 the statement ( she was raped  
14 by friends and family) the  
15 Judge read an anonishment to  
16 the Jury the correct statement  
17 was in fact ( she was worried  
18 about her mom's friend) was  
19 made) the Judge told the Jury  
20 to diseregard all statements  
21 made by Jannia Taylor this  
22 far, there is no more evidence  
23 see Coleman V. Thompson 501  
24 U.S. 722-750 (1991) the defd  
25 was prejudiced by Immerman  
26 bellringing and misconduct  
27 and could not get a fair trial  
28 U.S.C.A. Const. Amend. 6th, 14th,  
28 U.S.C. § 2254.

### Conclusion

The petitioner's first appeal  
was based on the standard

1 review hill v. lockhart 474 U.S. 52  
2 (1985) as in hill you will not be  
3 granted relief unless you meet  
4 the standard of review the  
5 three prong test of Strickland  
6 and there is a four prong test in  
7 Hill, one being Strickland as this  
8 creates a procedural bar that  
9 a pro se litigant simply can and  
10 will not be able to overcome ab-  
11 sent cause and prejudice simply  
12 because the Supreme Court of N.Y.  
13 will not entertain ineffective assis-  
14 tance of counsel claims by  
15 direct appeal, denying review and  
16 due process as counsel claims  
17 are only reviewed in state H/C.  
18 for P. for P.C.R. there for the  
19 court erred by not granting the  
20 requested relief his is entitled  
21 to, invalidating the J.O.C. based on  
22 trial and guilty plea, for any "fair  
23 and just reason" F.R.C.P. Rule 11  
24 Id 3 of N.R.S. 174.035. In addition  
25 that his counsel failed to pursue  
26 a reasonable trial strategy and  
27 disclose P.S.I. and all discovery  
28 known to him to his client be-  
for the plea offer and trial. If all  
evidence favorable to the defd  
would have been disclosed he  
not have pleaded guilty  
and would have continued with  
the trial See Reeves v. State  
944 P.2d 795-796 (1997) U.S.C.  
Const. Amend 6th 14th.

## Confrontation Clause

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The petitioner also claims  
that unreliable hearsay  
evidence was admitted and  
used against him during his  
trial and plea that was in  
violation of his 6th, 8th  
and 14th amendment rights  
because the plea at trial  
prevented the fact finding  
process as there was no  
further cross examination  
a denial of due process and  
an unreasonable application  
of U.S. Supreme Court Law.  
See U.S. v. Reilly 33 F. 3d 1396-  
1409 (1994), (quoting, U.S. v.  
Counsole 13 F. 3d 641-656  
(1993), Id. Rugh v. Miller 303  
F. 3d 231.

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Standby counsel prevented  
him from present his own de-  
fence at hearing to withdraw  
his guilty plea, see McKaskle v.  
Wiggins, 104 S. Ct 944 (U.S. Tex.  
1994).

## Parole Hearing

1 The petitioner was sentenced  
2 to life with, the plea indicates  
3 10 to life, the first hearing was  
4 to be after five years back in  
5 July 7th 08 the appellant has  
6 not received the required stan-  
7 dard Parole Plan forms from  
8 the unite case worker or an  
9 explanation from the State Bord  
10 of Commissioners Action order  
11 denying parole to date violation  
12 of Equal protection, res Judicata  
13 did not bar due process or a  
14 fair hearing, see Jubilee V.  
15 Horn 959 F. Supp. 776 (E.D. Pa  
16 1997) the plea was breached at  
17 sentencing Id. Santobello V. NY.  
18 92 Sct 495 (U.S.N.Y. 1971).

### The Judge Voluntary Recusal

19 The Judge, James Bixler desqualify-  
20 ed him self from any further  
21 proceedings in the matter do to  
22 an implied bias at hereing for  
23 H/C.. P.C.R., Chapt, 341 and 177, Nev.  
24 see Ham V. 8th. J.D.C. 566 P.2d  
25 420, he did not address the  
26 issues but only made vage  
27 comments about sanctions  
28 and good time credit I did  
not get a fair hearing that  
violated due procees, see  
More V. Colerston 108 F.3d 261.

## Requested Relief

There are five factors that may support issuance of the writ of mandamus (1) the party seeking the writ has no other adequate means such as a ~~derivate~~ appeal to attain the relief he or she desires (2) the petitioner will be damaged and or prejudiced in a way that is not correctable on appeal (3) the J.D.C. order is clearly erroneous as a matter of law (4) the J.D.C. order is an off-repeated error, or manifests a persistent disregard of the federal rules (5) the J.D.C. order raises new and important problems, or issues of law of the first impression.

That the honorable high court can not rely on the trial J.D.C. record alone in P. for H/C. for P.C.R. and failure of the court to produce and review the sentencing transcripts, with the ineffective assistance of trial, plea and also appellant counsel, has left the

appellant unconstitutionally re-  
stricted without further review  
N.R.A.P. 11.

remand back to vacate the  
order entered June 17th, 08  
J.D.C. and grant the P. of H/C.,  
for P.C.R..

vacate on remand allowing  
the petitioner to withdraw  
his guilty plea at trial to life-  
with.

appointment of counsel n.R.S.  
34.750.(a).(b).(c). n.R.S. 34.810.(3).  
(a).(b). to aid in discovery and  
prepare the rest for sentenc-  
ing transcripts.

that the petitioner is entitled  
to a direct appeal id. at  
Coe v. Thurman 923 F.3d 528  
(C.A.9 (Cal.) 1990).

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# Representation Statement

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? C177427. And in what court was the prior action filed? J.D.C. for Clark County. Was the prior action  denied on the merits or  dismissed for procedural reasons (check one). Date of decision: 6/17/08. 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: P. H/C in federal court and 9th Cir.
8. Case number of the judgment of conviction being challenged: C-177427
9. Length and terms of sentence(s): 10 to life with
10. Start date and projected release date: July 14th 2011
11. What was (were) the offense(s) for which you were convicted: Sexual Assault 1st, lewdness
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: trial and guilty plea
13. Who was the attorney that represented you in the 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	Pro se
arraignment and plea	<u>Jeff Banks</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
trial/guilty plea	<u>Jeff Banks</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
sentencing	<u>Gene Allen</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
direct appeal	<u>William Taylor</u>	<input checked="" 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"/>

## Parties of Interest

Nevada Board of Parole  
Commissioner's Suite A  
1677 Old Hot Springs Rd.  
Carson City, Nv. 89706.

Arvada Colo. P.D. Report No. 113236  
(Offense Synopsis), and C.B.I.  
8101, Ralston Rd.  
Arvada Colo. 80002.

The Honorable James Bixler  
Dept. 24, The 8th Judicial District  
Court in and for the County Clark  
Las Vegas Nv. 89101.

Office of The Public Defender  
309 S. 3rd. St. 2nd. Fl.  
Las Vegas, Nv. 89155.

Clerk of The Court  
200 Lewis Ave 3rd. Fl.  
Las Vegas Nv 89155



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

Yes  No. If no, explain why not: sentencing  
N.R.A.P. 11

► **First Post Conviction:**

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

Yes  No. If no, explain why not: \_\_\_\_\_

If yes, name of court: J.D.C. Clark County date petition filed 5/15/07.

Did you receive an evidentiary hearing?  Yes  No. Did you appeal to the Nevada Supreme Court?  Yes  No. If no, explain why not: see McKaskle v. Wiggins, 104 S.Ct 944 (U.S. Tex. 1984)

If yes, did you raise this issue?  Yes  No. If no, explain why not: N.R.A.P. 11

► **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: J.D.C. Clark County date petition filed 6/17/08

Did you receive an evidentiary hearing?  Yes  No. Did you appeal to the Nevada Supreme Court?  Yes  No. If no, explain why not: see Fowler v. US 310 F.2d. 606 (C.A. 5 (Fla.) 1962).

If yes, did you raise this issue?  Yes  No. If no, explain why not: N.R.A.P. 11

► **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: 41274, counsel had withdrawn. Entsminger v. State 87 Sct 1482.

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

VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

[Signature]  
Petitioner

Parties of Interest

Pro Per  
Attorney for petitioner

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS to the below addresses on this 22 day of Dec., 2008, by placing same into the hands of prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

JACK PALMER, WARDEN  
Lovelock Correctional Center  
[via Interdepartmental Mail]

CATHERINE CORTEZ MASTO  
Nevada Attorney General  
100 North Carson Street  
Carson City, Nevada 89701-4717

Gene Allen #16542  
Lovelock Correctional Center  
P.O. Box 359  
Lovelock, NV 89419

[Signature]  
Signature of Petitioner In Pro Se

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Case No. C177427

Dept. No. \_\_\_\_\_

leave to file

In the Supreme Court for the  
State of Nevada

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark County

\*\*\*\*\*

Gene Allen, )  
\_\_\_\_\_)  
-vs- )  
State of Nevada, )  
\_\_\_\_\_) )

ORDER TO PROCEED  
IN FORMA PAUPERIS

A Writ of Mandamus

Upon consideration of petitioner's Application to Proceed in  
Forma Pauperis and it appearing that there is not sufficient income, property  
or resources with which to maintain the action and good cause appearing  
therefore:

**IT IS HEREBY ORDERED** that \_\_\_\_\_,  
shall be permitted to proceed In Forma Pauperis with this action as permitted  
by NRS 12.015, with no fees, costs or securities being necessary towards the  
filing or issuance or any necessary writ, process, pleading or other paper.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
DISTRICT COURT JUDGE

LCC

**FINANCIAL CERTIFICATE**

I request that an authorized officer of the institution in which I am confined, or other designated entity, such as Inmate Services for the Nevada Department of Prisons (NDOC), complete the below Financial Certificate.

I understand that:

(1) if I commence a petition for writ of habeas corpus in federal court pursuant to 28 U.S.C. § 2254, the filing fee is \$5.00, and that such fee will have to be paid by me if the current account balance (line #1 below), or the average account balance (line #2 below), or the average deposits to my account (line #3), whichever is greater, is \$20.00 or more;

(2) if I commence a civil rights action in federal court pursuant to 42 U.S.C. § 1983, the filing fee is \$350.00, which I must pay in full; and

(a) if my current account balance (line #1 below) is \$350.00 or more, I will not qualify for *in forma pauperis* status and I must pay the full filing fee of \$350.00 before I will be allowed to proceed with the action;

(b) if I do NOT have \$350.00 in my account as reflected on line #1 below, before I will be allowed to proceed with an action I will be required to pay 20% of my average monthly balance (line #2 below), or the average monthly deposits to my account (line #3 below), whichever is greater, and thereafter I must pay installments of 20% of the preceding month's deposits to my account in months that my account balance exceeds \$10.00 (if I am in the custody of the NDOC, I hereby authorize the NDOC to make such deductions from deposits to my account, and I further understand that if I have a prison job, then the 20% of my paycheck that is guaranteed to me as spendable money will be sent to the court for payment of the filing fee); and

(c) I must continue to make installment payments until the \$350.00 filing fee is fully paid, without regard to whether my action is closed or my release from confinement.

Type of action (check one):  civil rights

habeas corpus

Gene Allen  
INMATE NAME (printed)

WKS 70542  
SIGNATURE & PRISON NUMBER

1. CURRENT ACCOUNT BALANCE	<u>0</u>
2. AVERAGE MONTHLY BALANCE*	<u>0</u>
3. AVERAGE MONTHLY DEPOSITS*	<u>0</u>
4. FILING FEE (based on #1, #2 or #3, whichever is greater)	<u>0</u>

\* for the past six (6) months, from all sources, including amount in any savings account that is in excess of minimum amount that must be maintained

I hereby certify that as of this date, the above financial information is accurate for the above named inmate.

(Please sign in ink in a color other than black.)

11/6/2008  
DATE

[Signature]  
AUTHORIZED OFFICER

AAI  
TITLE

11/06/08  
14:04:06

Nevada Department of Corrections  
INMATE FINANCIAL CERTIFICATE  
2008/05/07 THRU 2008/11/06

1 GENE A. ALLEN 73542

START DATE	END DATE	TOTAL DAILY BALANCES	NUMBER OF DAYS	AVERAGE MONTHLY BALANCE
2008/05/07	2008/06/06	.00	30	.00
2008/06/07	2008/07/06	.00	30	.00
2008/07/07	2008/08/06	.00	31	.00
2008/08/07	2008/09/06	.00	31	.00
2008/09/07	2008/10/06	.00	30	.00
2008/10/07	2008/11/06	.00	31	.00

START DATE	END DATE	TOTAL DEPOSITS	NUMBER OF DEPOSITS	AVERAGE MONTHLY DEPOSITS
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CURRENT ACCOUNT BALANCE	2008/11/06		.00	
AVERAGE MONTHLY BALANCE			.00	
AVERAGE MONTHLY DEPOSITS			.00	
AVERAGE TOTAL MONTHLY DEPOSIT			.00 ✓	

**ACKNOWLEDGMENT**

I, the undersigned, acknowledge that I have read the foregoing and that the information contained therein is true and correct to my own knowledge and belief.

Further, I state that I have not directly or indirectly paid or caused to be paid to any inmate, agent of an inmate, or family member of any inmate a sum of money, favors or anything else for assistance in the preparation of this document or any other document in connection with this action.

Further, I acknowledge that if any of the information included in this motion for leave to proceed *in forma pauperis* is false or misleading, I understand that sanctions may be imposed against me. Those sanctions may include, but are not limited to, the following:

- (1) dismissal of my case with prejudice;
- (2) imposition of monetary sanctions;
- (3) the Nevada Department of Prisons may bring disciplinary proceedings for a violation of MJ-48 of the Code of Penal Discipline, which can include all sanctions authorized under the Code including the loss of good time credits and punitive confinement; and
- (4) perjury charges.

Further, I hereby authorize the United States District Court, District of Nevada, or its representative, to investigate my financial status, and authorize any individual, corporation, or governmental entity to release any such information to the said Court or its representative.

Further, I acknowledge and consent that a portion of any recovery, as directed by the court, shall be paid to the clerk for reimbursement of all fees incurred by me as a result of being granted leave to proceed *in forma pauperis*.

Dated this 22 day of Dec, 2008

[Signature]  
(Signature of Applicant)

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.

Signed at L.C.C.  
(Location)

[Signature]  
(Signature)

12-22-08  
(Date)

76542  
(Inmate Prison Number)

Mr. Gene Allen  
#76542  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

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**SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

GENE ANTHONY ALLEN,  
Petitioner,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 52984**  
District Court Case No. C177427

**RECEIPT FOR DOCUMENTS**

TO: Gene Anthony Allen #76542  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

12/26/08 Filing Fee Waived: Criminal.  
12/26/08 Filed Proper Person Petition for Writ.  
A Writ of Mandamus N.R.A.P. 21.

DATE: December 26, 2008

Tracie Lindeman, Clerk of Court