

Case No. 74050

IN THE COURT OF APPEALS FOR THE STATE OF NEVADA

JACK LEAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

FILED

SEP 13 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Richard*
DEPUTY CLERK

On Appeal from the Eighth Judicial District Court of the State of Nevada
Case No. C-17-322664-2

RESPONDENT'S APPENDIX

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SEP 12 2018

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
DEPUTY CLERK

18-90208L

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK LEAL,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 74050

District Court No. C-17-322664-2

RESPONDENT'S APPENDIX – VOLUME 1

DATE	DOCUMENT/COURT	VOLUME	PAGE NOS.
4/16/2018	Application for Bail Pending Appeal	1	0001-0014
4/23/2018	State's Opposition to Motion to Defendant's Motion for Bail Pending Appeal	1	0015 - 0025
4/25/2018	Transport Order	1	0026-0027
4/26/2018	Minutes – Motion	1	0028
5/15/2018	Minutes – Motion	1	0029
5/23/2018	Notice of Rescheduling of Hearing	1	0030-0031
6/5/2018	Minutes – Motion	1	0032
6/11/2018	Notice of Rescheduling of Hearing	1	0033-0034
6/26/2018	Minutes – Motion	1	0035

8/24/2018	Recorder's Transcript of Hearing	1	0036-0044
9/5/2018	Decision and Order	1	0045-0047

CERTIFICATE OF SERVICE


I hereby certify that I have mailed the foregoing RESPONDENT'S APPENDIX to the Clerk of the Court to be filed, on the 6th day of September, 2018.

I further certify that I have also mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

Lester M. Paredes III, Esq.
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An employee of the Office of the Attorney General



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7 **EIGHTH JUDICIAL DISTRICT COURT**
8 **CLARK COUNTY, NEVADA**

9 STATE OF NEVADA,)
10 Plaintiff,)
11 -vs-) CASE NO.: C-17-322664-2
12 JACK LEAL,) DEPT NO: XVII
13 Defendant.)
14)

15 **APPLICATION FOR BAIL PENDING APPEAL**

16 Defendant, JACK LEAL, by and through the law firm of MUELLER, HINDS &
17 ASSOC., CHTD., hereby applies to the District Court for bail pending appeal of his conviction
18 and sentence based on the fact that Defendant is not a flight risk, is not a danger to the
19 community, and the appeal in this matter is meritorious. NRS 178.488 grants that "Bail may be
20 allowed pending appeal unless it appears that the appeal is frivolous or taken for delay." NRS
21 178.488(1) (2015).
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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring
the foregoing APPLICATION FOR BAIL PENDING REVIEW for hearing before the District
Court Dept. XVII on the 26 day of APRIL 2018, at 8:30 a .m.

DATED: April 13, 2018

Respectfully Submitted By:
MUELLER HINDS & ASSOCIATES



Craig A. Mueller, Esq.
NV Bar No. 4703
Attorney for Defendant

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 NRS 178.488 (1) provides: "Bail may be allowed pending appeal or certiorari unless it
3 appears that the appeal is frivolous or taken for delay." See NRS 178.488(1) (2015). Under
4 Bergna v. State, 120 Nev. 869, 874 (2004), the Nevada Supreme Court recommended
5 considering whether the appeal was taken frivolously, taken for delay, the applicant's danger to
6 the community and flight risk, seriousness or violence of the crime, term of imprisonment, etc.
7 Id. at 874, 877.

8 Defendant is asking this court to admit him to bail based on the following information
9 and legitimate questions raised by Defendant's appeal.

10 **I. FACTS AND PROCEDURAL HISTORY**

11 Applicant made a huge mistake and took responsibility for selling the properties,
12 but added that he "didn't explain it correctly, I guess, what we were selling. We did transfer title
13 to them. We did sell them the properties. It wasn't as if we just took their money and ran and -."
14 Applicant essentially sold the properties as is and did not tell them that they were encumbered, as
15 opposed to misrepresenting them as unencumbered.

16 The first Criminal Complaint was filed Sep. 30, 2016, alleging fourteen counts of
17 criminal conduct ranging from theft to racketeering, and 14 counts of criminal forfeiture.
18 Applicant waived his right to a preliminary hearing on April 11, 2017, an Information was filed
19 on April 18, 2017, charging one count of Multiple Transactions Involving Fraud or Deceit in
20 Course of Enterprise or Occupation, NRS 205.377, and filed a GPA on April 24, 2017.

21 The GPA set forth eleven victims that were owed restitution totaling \$694,420,
22 excluding anything already recovered which would be forfeited to the State. Applicant was
23 required to pay restitution in full prior to sentencing, jointly and severally with codefendant
24 Jessica Garcia. The State would not oppose probation and a suspended sentence of 36 to 90
25 months in prison if the restitution was paid, but would regain the right to argue if not. The

1 \$157,105.17 the State seized was to be applied to the restitution balance. Applicant also agreed
2 to execute and file a lien in favor of the State of Nevada, Office of the Attorney General in the
3 amount of \$600,314.83 against the home located at 1024 Santa Helena Ave., Henderson, NV
4 89002, with the proceeds of the sale to be applied against the restitution requirements.

5 The GPA signed by Applicant purported to waive the right to appeal except based
6 on "reasonable constitutional, jurisdictional or other grounds that challenge the legality of the
7 proceedings and except as otherwise provided in subsection 3 of NRS 174.035." Attached to the
8 GPA was a Conflict-of-Interest Waiver, signed by Applicant and his attorney and a copy of
9 "Rule 1.7. Conflict of Interest: Current Clients."

10 **a. Sentencing Hearing**

11 At the first setting for the sentencing hearing on August 17, 2017 the State argued
12 to the court for a sentence of imprisonment of 60 to 180 months in prison. The facts according to
13 the State was that Applicant and his codefendant bought encumbered properties and then
14 fraudulently sold them to the victims by misrepresenting them as unencumbered. The State also
15 argued that Applicant had done nothing until a week before sentencing and that the property is
16 valued at \$580,000 but on the market for 1.2 million dollars. (See AA at 120-121.)

17 **i. Conflict of Interest**

18 At the beginning of the sentencing hearing, Mr. Weiner, then-attorney for
19 Applicant and his codefendant Jessica Garcia, raised a conflict of interest issue at a bench
20 conference and on the record:

21 The – well, as an initial matter, Your Honor, just to address what we discussed at
22 the bench, the ongoing conflict waivers – the dispute between [the codefendants]
23 began after the change of plea but before sentencing. If you want to put on the
24 record, I contacted the bar ethics hotline. They recommended that I withdraw
25 based on what's going on here. I did. I will make that motion. I do undersand that
the Court's going to insist that we go forward today and that's certainly the
Court's right to do but –

1 The Court: Well, is the conflict the fact that your client thought that Ms. Garcia
2 was going to pay this off? Is that the conflict?

3 Mr. Wiener: Well, no, it wasn't that they were paying it off. They were supposed
4 to be working together. Then they had a no contact order so they couldn't. So
5 they're now basically pointing at each other saying this is – she's saying this is his
6 fault, he's saying that's her fault. That's an antagonistic defense. I mean I should
7 not be –

8 The Court: Well, it's – that related – it's not a defense to the case –

9 Mr. Wiener: Well—

10 The Court: - because if it says why –

11 Mr. Wiener: - in terms of sentencing.

12 The Court: -- restitution wasn't paid and this is joint and several which means if
13 one –

14 Mr. Wiener: Correct.

15 The Court: doesn't pay the other owes the full amount. ...

16 (AA at 124-1125.)

17 **b. Applicant's Good Faith Efforts to Pay Restitution**

18 With respect to Applicant's good faith efforts to pay restitution, there was no
19 dispute that Applicant had recorded a lien in the State's favor for over \$600,000. (AA at 121.)
20 Applicant had relied on his codefendant to work on selling the property at first, but had since
21 intervened, the home was valued by the assessor at over one-million dollars. (*Id.*) Further,
22 codefendant Jessica Garcia was subject to a domestic violence no contact order with respect to
23 Applicant and that was the cause for the delay. (AA at 121-122, 124.) Applicant had even
24 presented the State with a letter from the real estate agent showing that the property had been
25 actively marketed. (AA at 126.)

c. Victim Impact Statements and Court's Reaction

The victim impact statements were powerful and moving given the absence of the
restitution. For example, Irene Segura testified that the money taken was for her orphaned
grandson's college fund. (AA at 128.) Ms. Segura explained to the court that twelve years ago
she gave a victim impact statement at the sentencing of the murderers of her son and the father of
her grandson. (AA at 128.) The money was saved for her grandson's college fund because she

1 “scrimped and saved and cut back on every possible expense” she could think of including
2 dining out, vacations and getting a new car. (AA at 129.)

3 It is apparent from the transcript that the Court became angry with Applicant. The
4 court informed a representative from the Department of Parole and Probation, “P &P,” that the
5 program they use to make recommendation was “broken,” that Applicant had time to sell the
6 house but they “stabbed [the victims] in the back and I’m not standing for it.” (AA at 137-138.)
7 The court then pronounced the sentence against codefendant Garcia for whom he issued a no bail
8 bench warrant for failing to appear, “if she’s here within a week she may get the similar
9 sentence. If she’s out and about and trying to avoid prosecution that’s going to tell me she’s not
10 taking this serious and I’m going to max her out. I’m not mad –

11 Mr. Weiner: Understood, Your honor.

12 The Court: -- at you, Counsel. You did your job. You got 11 felonies down to 1 so
13 I mean you should be commended because you did a good job for them but these
14 people need to pay the price.

(AA at 138-139.)

15 The Court entered a Judgment of Conviction, AA at 140-141, sentencing Applicant to 72-
16 180 months in prison with zero days credit for time served. (AA at 141.) This appeal follows.

17 **II. ARGUMENT**

18 **a. Applicant is a Good Candidate for Supervised Release**

19 If permitted by the Court, Applicant would testify that he moved to Clark County in 2013
20 and has lived here since. Applicant has been in real estate since 2009 and completed 350 real
21 estate transactions without problems before these types of caveat emptor transactions. Admission
22 to bail would also help Applicant pay restitution. Finally, Applicant is not a threat to the
23 community or flight risk or the State would have never conditionally agreed to probation for
24 Applicant. If the Court desires to inquire further, Applicant welcomes the opportunity to prove
25 his bail worthiness. Therefore, the Court should admit Applicant to bail.

1 **b. Applicant's Appeal is not Frivolous**

2 **i. The District Court Erred by Sentencing Applicant to Prison without**
3 **Holing a Hearing Under Gamble v. State, 95 Nev. 904 (1979)**

4 The first issue Applicant raised in his appeal was that Applicant had the right to show the
5 Court he was not at fault for the purported breach of the guilty plea agreement under Gamble v.
6 State, 95 Nev. 904 (1979).

7 The State and Applicant entered into an agreement which contained the following
8 clauses:

9 6. Should I, Jack Leal, pay restitution in full at or before the time I am sentenced in
10 the present case, the State will not oppose the imposition of a term or probation not to
11 exceed a term of five years, with a suspended 36-to-90 month term of imprisonment;

12 7. Should I, Jack Leal, fail to pay restitution in full at or before the time I am
13 sentenced in the present case, the State will retain the right to argue for the imposition of
14 imprisonment.

15 (AA at 89:18-22.)

16 At the first sentencing hearing, the State argued for imprisonment, falsely accusing
17 Applicant of doing nothing to pay the restitution when in fact Applicant had been trying to sell a
18 piece of property that the State had already tied up the property in civil litigation. See supra.

19 This Court held in Gamble v. State, 95 Nev. 905 (1979) and Villalpando v. State, 107
20 Nev. 465 (1991), held that an evidentiary hearing is required where the State alleges a defendant
21 breached the agreement unless the defendant is "obviously to blame" for the breach of the
22 agreement. See Sparks v. State, 121 Nev. 107, 111 (2005) (citations omitted). "When the State
23 enters into a plea agreement, it is held to the most meticulous standards of both promise and
24 performance with respect to both the terms and the spirit of the plea bargain." See Sparks v.
25 State, 121 Nev. 107, 110 (2005) (citations omitted).

 In Sparks, the defendant entered into a guilty plea agreement that gave the State the full
right to argue if he either committed a new criminal offense or failed to appear at his sentencing

1 hearing. Id. The defendant in Sparks did not offer a reason for the apparent breach of the
2 agreement, instead argued that the clause was unenforceable; the Supreme Court of Nevada
3 disagreed and affirmed the judgment of conviction.

4 Here and unlike in Sparks, Applicant made good faith efforts to pay the restitution before
5 the imposition of sentence, gave reasons why the sale of the property had not been completed to
6 that end and rebutted the State's claim that Applicant was not asking a good faith asking price
7 for the home valued at seven figures. (See, generally, AA at 118-139.) Applicant complied with
8 all the terms as best as he could and was hindered by his co-defendant and the actions of the
9 State, i.e., requiring the placement of the lien on the property and the initiation of the lawsuit.
10 (Id.)

11 The State's actions in this case are particularly troubling. To both require the sale of a
12 property to pay restitution and at the same time require that a lien be placed on the same property
13 is akin to requiring a defendant to appear at a sentencing hearing while blockading them in their
14 home.

15 The case should be remanded for an evidentiary hearing to determine whether Applicant
16 is to blame for the failure to pay the restitution and whether that constitutes a material breach.
17 The State could have given Applicant more time, removed the lien or offered to allow Applicant
18 to transfer title under the civil case that the State had started and noticed a lis pendens. Instead,
19 the State misrepresented to the court the reasons for failing to pay the restitution and insisted on
20 imposing a prison sentence. (Compare AA at 121 ("And the house is on the market. It's valued
21 about [sic] \$580,000. That's what the last recorder entry notes and they have it on the market for
22 1.2 million dollars. Now they dropped it to one million dollars. There's no real effort to make
23 restitution in this case."), and AA at 122 ("Defense counsel sent me the title assessment just
24 yesterday and it shows a bunch of liens on this property."), with AA at 125 ("We have a print out
25 from the Clark County Assessor's website for the 2017-2018 year that values the property at

1 \$1,032,044.00), and AA at 122 (“There’s two Republic garbage -- Republic Waste
2 [indiscernable] for \$256.00 each. I have a copy of it right here from Fidelity Title.”) The lower
3 court, perhaps blinded by its anger, (see AA at 139 “I’m not mad --... at you Counsel. You did
4 your job. ... These people need to pay the price.”), did not meticulously hold the State to its end
5 of the bargain and require them to make a showing that Applicant’s good faith efforts were
6 insufficient under the letter or spirit of the guilty plea agreement.

7 **ii. The District Court Erred by Denying Motion to Withdraw Counsel with**
8 **an Unwaivable Conflict under Clark v. State, 108 Nev. 324 (1992)**

9 Counsel for Applicant moved the court to withdraw based on a conflict of interest at the
10 sentencing hearing. (AA at 124.) At the time, counsel for Applicant was also counsel for his
11 codefendant. (Id.) Given that Applicant and his codefendant were accused as coconspirators in a
12 fraudulent scheme, it is not apparent how such a conflict could have been waived in the first
13 place, much less at sentencing after Applicant’s codefendant failed to cooperate to pay the
14 restitution and had a been involved in a domestic violence incident with Applicant.

15 Nevada Rules of Professional Conduct, Rule 1.7, provides:

16 (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the
17 representation involves a concurrent conflict of interest. A concurrent conflict of interest
18 exists if:

- 18 (1) The representation of one client will be directly adverse to another client; or
19 (2) There is a significant risk that the representation of one or more clients will be
20 materially limited by the lawyer’s responsibilities to another client, a former client or a
21 third person or by a personal interest of the lawyer.

20 (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph
21 (a), a lawyer may represent a client if:

- 21 (1) The lawyer reasonably believes that the lawyer will be able to provide competent
22 and diligent representation to each affected client;
23 (2) The representation is not prohibited by law;
24 (3) The representation does not involve the assertion of a claim by one client against
25 another client represented by the lawyer in the same litigation or other proceeding before
a tribunal; and
(4) Each affected client gives informed consent, confirmed in writing.

1
2 NRPC 1.7 (2006).

3 Here, under NRPC 1.7(a), the conflict of interest clearly existed prior to and through
4 sentencing. The concurrent conflict of interest existed from the inception of the case because
5 there was a “significant risk the representation” of Applicant would be materially limited by the
6 lawyer’s responsibilities to Applicant’s codefendant, i.e., Applicant and Applicant’s codefendant
7 could at trial point the finger at the other as to who misrepresented unencumbered status of the
8 properties that were sold.

9 Whether the waiver was proper prior to sentencing turns on the actual defenses of the
10 parties, but by the time Applicant was sentenced, the conflict had ripened into an unwaivable
11 conflict under NRPC 1.7(b)(3). At sentencing, Applicant and his codefendant had been required
12 to pay restitution, but it was not paid due to Applicant’s codefendant’s malfeasance and domestic
13 violence restraining order against her. In order to explain why he could not pay restitution,
14 Applicant needed zealous counsel to point out that the failure was due to circumstances outside
15 of his control including the actions of his codefendant. However, he did not have unconflicted
16 counsel and zealous representation.

17 At sentencing, counsel for Applicant and his codefendant, was in an awkward place. He
18 could not throw Applicant’s codefendant under the proverbial bus by, for instance, showing the
19 court evidence of that codefendant’s domestic violence against Applicant. Counsel was told by
20 bar counsel to move to withdraw but the court ignored the mandate of bar counsel and
21 substituted its own flawed judgment for that of experienced ethics professionals. This was an
22 abuse of discretion. See Wilmes v. Reno Mun. Ct., 59 P.3d 1197, 118 Nev. 831 (2002) (district
23 attorney representing municipal court in mandamus action not an abuse of discretion).

24 Every defendant has the constitutional right to assistance of counsel unhindered by
25 conflicting interests. U.S. Const. Amend. VI; Hollaway v. Arkansas, 435 U.S. 475, 98 S.Ct. 1173

1 (1978); Clark v. State, 108 Nev. 324, 326 (1992). In Clark, the Court found that where an actual
2 conflict of interest which adversely affects a lawyer's performance will result in a presumption
3 of prejudice to the defendant. Id. (citations omitted). The Clark, the court found that the lower
4 court erred by requiring the Applicant to show he was prejudiced by his lawyer's conflict of
5 interest.

6 **III. CONCLUSION**

7 For the foregoing reasons, Applicant should be admitted to a reasonable bail pending
8 appeal.

9
10 DATED: April 13, 2018

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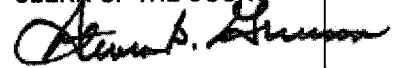
13
14 _____
15 Craig A. Mueller, Esq.
16 NV Bar No. 4703
17 Attorney for Defendant
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EXHIBIT A

Appellant's Appendix

EXHIBIT A

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1 **OPPM**
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8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 JACK LEAL,
14 Defendant.

Case No.: C-17-322664-2
Dept. No.: XVII
Hearing Date: April 26, 2018
Hearing Time: 8:30 AM

15
16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR BAIL PENDING APPEAL**

17 ADAM PAUL LAXALT, Attorney General for the State of Nevada, through Chief Deputy
18 Attorney General, Michael C. Kovac, hereby submits the State's Opposition to Defendant's Motion for
19 Bail Pending Appeal. This opposition is made and based upon the pleadings on file, the following
20 memorandum of points and authorities, and any oral arguments the Court may allow.

21 Dated this 23rd day of April, 2018.

22 SUBMITTED BY:
23 ADAM PAUL LAXALT
24 Attorney General

25 By: /s/ Michael C. Kovac
26 MICHAEL C. KOVAC (Bar No. 11177)
27 Chief Deputy Attorney General
28

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 FACTS AND RELEVANT PROCEDURAL HISTORY

3 On September 30, 2016, the State filed in the Eighth Judicial District Court a complaint for
4 forfeiture against, *inter alia*, property located at 1024 Santa Helena Avenue, Henderson, NV 89002 (case
5 number A-16-744347-C). Appellant's Appendix ("AA"), at 2-10. The request for forfeiture was based
6 on the fact that the home constituted the proceeds – or replacement of the proceeds – of fraudulent real
7 estate transactions. Id.

8 On November 29, 2016, the State initiated the present, related criminal proceedings by filing a
9 criminal complaint in the Las Vegas Township Justice Court (case number 16F19220ABC). Id., at 15-
10 38. The complaint for forfeiture and the criminal complaint were both based on the same fraudulent real
11 estate transactions. Id. Thus, under NRS 179.1173(2), the forfeiture proceedings were automatically
12 stayed. On April 11, 2017, the criminal case was bound over to District Court. Id., at 14, 69-72, 79-80.

13 On April 24, 2017, Defendant JACK LEAL and his codefendant/estranged wife, JESSICA
14 GARCIA, pled guilty to the charge of Multiple Transactions Involving Fraud or Deceit in the Course of
15 an Enterprise or Occupation, a category B felony, in violation of NRS 205.377, a crime punishable by a
16 term of imprisonment not to exceed 20 years. Id., at 103-12. The charges stem from LEAL and GARCIA
17 selling various parcels of real estate to various victims on the false representation that said parcels were
18 not subject to any security interests. Id., at 97-99. LEAL and GARCIA fleeced their victims of \$757,420.
19 Id., at 88.

20 At that same time the plea was being entered, and while being represented by attorney Jason
21 Weiner, LEAL and GARCIA expressly and effectively waived any potential conflict of interest Weiner
22 may have in his representation of them both. Id., at 100-12.

23 The terms of the guilty plea agreement provided, *inter alia*, that:

24 6. Should I, JACK LEAL, pay restitution in full at or before the time I am sentenced in the
25 present case, the State will not oppose the imposition of a term of probation not to exceed a term of five
26 years, with a suspended 36- to-90 month term of imprisonment;

27 7. Should I, JACK LEAL, fail to pay restitution in full at or before the time I am sentenced
28 in the present case, the State will retain the right to argue for the imposition of a term of imprisonment.

1 Id., at 89.

2 Immediately following the entry of plea, the undersigned Deputy met with Weiner, LEAL, and
3 GARCIA in the hallway outside of the courtroom where the plea was entered. At that time, the
4 undersigned Deputy stressed the importance of quickly doing what needed to be done in order to get the
5 restitution paid prior to sentencing – with special attention being paid to the sale of a home owned by
6 LEAL and GARCIA (through a trust) that would likely satisfy the restitution requirement (the same home
7 that is the subject of the above-mentioned forfeiture proceedings). As part of the guilty plea agreements,
8 LEAL and GARCIA agreed to “execute and file in the Clark County Recorder’s Office a lien agreement
9 and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83
10 against the home located at 1024 Santa Helena Avenue, Henderson, Nevada 89002, assessor parcel
11 number 179-33-710-056, legally described as MISSION HILLS EST AMD PLAT BOOK 17 PAGE 12,
12 LOT 223 & LOT 223A, with the proceeds of the sale of said home to be applied to my restitution
13 requirements,” in order to provide the State with assurances that any proceeds from the sale would, in
14 fact, be applied toward the restitution obligations of LEAL and GARCIA. Id., at 89-90.

15 Nearly four months passed, and the undersigned Deputy heard nothing from LEAL, GARCIA, or
16 Weiner until approximately one week prior to sentencing, at which point Weiner requested a continuance
17 of the sentencing hearing so that his clients could sell the home at 1024 Santa Helena Avenue and pay
18 restitution with the proceeds. The State rejected the request, noting that LEAL and GARCIA failed to
19 even execute the lien required under the terms of their GPAs, let alone make any legitimate effort to sell
20 the home.

21 Weiner made vague statements about unidentified issues holding up the sale. The undersigned
22 Deputy informed Weiner that he was well aware of the issues his clients were having, including the
23 following:

- 24 1. LEAL had no intention of complying with the terms of the guilty plea agreement and made no
25 legitimate effort to do so;
- 26 2. In March of 2017, GARCIA was arrested in Florida on felony heroin and misdemeanor battery
27 charges (In July of 2017, GARCIA entered a nolo contendere plea to the heroin charge, and the
28 adjudication was withheld);

1 3. In June of 2017, GARCIA entered a guilty plea for another misdemeanor battery charge in a
2 separate Florida case; and

3 4. Soon after that, GARCIA, in yet another Florida case, was convicted on charges of battery and
4 “contempt of court violate injunction protection domestic vio.”

5 On or about August 16, 2017 – *the day before the sentencing hearing* – Weiner informed the
6 undersigned Deputy that LEAL had (finally) filed the lien required under the terms of the GPA. While
7 there is no reason to doubt that Weiner sincerely believed that to be true, it was actually another of
8 LEAL’s lies. In reality, according to a Deputy District Attorney representing the Recorder’s Office (who
9 called the undersigned Deputy the day of, or day after, LEAL’s sentencing), the day prior to sentencing,
10 LEAL attempted to file the lien; however, he did not have all of the necessary documentation, and an
11 employee of the Recorder’s Office informed him that the lien filing was suspended. LEAL informed that
12 same employee that he would not be correcting the filing because he was returning to Florida the
13 following day.

14 On August 17, 2017, LEAL appeared for his sentencing hearing. At that hearing, LEAL proved
15 himself to be a conman through and through. First, LEAL lied to this Court and stated that the property
16 at 1024 Santa Helena Avenue was free of any liens (the exact type of misrepresentation that landed him
17 in this mess in the first place). Id., at 122. Second, LEAL lied to this Court and stated that he properly
18 filed a lien against that property and in favor of the State, as required by the terms of the plea agreement.
19 Id. As explained above, at the time LEAL made that false statement to this Court, he was well aware that
20 his attempted filing (which took place one day prior to sentencing) was suspended.

21 Fortunately, this Court was not the latest victim of LEAL’s lies, as LEAL was sentenced to a 72-
22 to 180-month term of imprisonment. Id., at 138. A day after the sentencing, the Recorder’s Office
23 accepted documentation from the undersigned Deputy and lifted the suspension on the lien required under
24 the terms of LEAL’s GPA.¹

25 ///
26

27 ¹ Garcia failed to appear for sentencing. The Court issued a bench warrant for her arrest. Subsequently,
28 Garcia was apprehended in Florida and transported to Clark County, Nevada. Her sentencing is presently
scheduled for May 8, 2018.

1 Following his conviction, LEAL filed a frivolous appeal, arguing two issues:

2 (1) “The District Court erred by permitting the state to breach the plea agreement without holding
3 an evidentiary hearing under *Gamble v. State*, 95 Nev. 904 (1979), etc., to determine blame
4 for the breach.”

5 (2) “The District Court erred by denying Motion to Withdraw Counsel with an unwaivable
6 conflict under *Clark v. State*, 108 Nev. 324 (1992).”

7 LEAL now moves for bail pending appeal. Motion.

8 ARGUMENT

9 “Bail may be allowed pending appeal or certiorari unless it appears that the appeal is frivolous or
10 taken for delay.” NRS 178.488(1). When faced with a motion for bail pending appeal, the Court is to
11 consider:

12 (1) “whether the appeal is frivolous or taken for delay”; and

13 (2) “whether the applicant’s release may pose a risk of flight or danger to the community.”

14 *Bergna v. State*, 120 Nev. 869, 877 (2004). The Nevada Supreme Court has explained that “[t]he nature
15 and quality of the evidence adduced at trial and the circumstances of the offense are highly relevant
16 considerations in evaluating these factors.” *Id.* Additionally, “evaluation of these concerns may
17 encompass a wide range of information, including the applicant’s prior criminal record, attempted
18 escapes from confinement, community associations, and employment status.” *Id.*

19 An applicant “who faces a substantial term of imprisonment will shoulder a heavy burden to
20 demonstrate, not only that the appeal is not frivolous, nor taken for delay, but also that his or her release
21 will not pose a risk of flight or danger to the community.” *Id.* Here, LEAL most certainly cannot satisfy
22 that heavy burden.

23 *I. Factor no. 1 – whether the appeal is frivolous or taken for delay.*

24 LEAL’s appeal is clearly frivolous, as his two arguments are based on events that simply did not
25 take place.

26 With respect to LEAL’s first issue on appeal, contrary to LEAL’s contentions otherwise, the State
27 clearly did not breach the term of the plea agreement. Under the terms of the plea agreement, should
28

1 LEAL fail to have restitution paid at the time of sentencing, the State would have the right to argue for
2 imprisonment. That is exactly what happened.

3 LEAL comically argues: “To both require the sale of a property to pay restitution and at the same
4 time require that a lien be placed on the same property is akin to requiring a defendant to appear at a
5 sentencing hearing while blockading them in their home.” Motion at 9:11-9:14. First, the terms of the
6 guilty plea agreement did not require the sale of the property at 1024 Santa Helena Avenue. Second,
7 LEAL’s suggestion that the State’s lien on the property prevented its sale is utterly absurd. LEAL did not
8 even attempt to record the lien until the day after sentencing. Moreover, as explained above, the lien
9 filing was suspended until after LEAL’s sentencing. Further, if anyone knows how to sell an encumbered
10 property, it is LEAL; that is exactly why he is in the mess he presently finds himself. Thus, there is clearly
11 no merit to LEAL’s suggestion that the lien requirement made it impossible for LEAL to sell the property
12 prior to the date of his sentencing.²

13 LEAL makes much of his supposed good faith efforts to pay restitution. Whether LEAL made
14 any such good faith efforts is irrelevant. The terms of the guilty plea agreement require the payment of
15 restitution, not good faith efforts to pay restitution. Through no fault of the State, LEAL failed to satisfy
16 his restitution obligation. Thus, the State was free to argue for a term of imprisonment.

17 LEAL’s second appellate argument – that the District Court erred in denying his trial court
18 attorney’s motion to withdraw as counsel – is equally unavailing. LEAL specifically argues that an
19 unwaivable conflict existed under NRCP 1.7(b)(3) because LEAL and GARCIA “had been required to
20 pay restitution, but it was not paid due to [GARCIA’s] malfeasance and domestic violence restraining
21 order against her.” Motion at 11:11-11:13. On appeal, the Nevada Supreme Court will be reviewing any
22 such denial for an abuse of discretion. *Young v. State*, 120 Nev. 963, 968 (2004).

23 As a preliminary matter, it must be noted that LEAL’s trial attorney did not file a **written** motion
24 to withdraw as trial counsel, as required under EDCR 7.40. Additionally, any motion made the day of
25 sentencing would be barred under EDCR 7.40(c), which provides: “No application for withdrawal or

26 ² Even if LEAL had filed the lien in a timely manner, it certainly would have made no impact upon any
27 sale of the property. The lien was in the amount of \$600,314.83. If the property is truly worth in excess
28 of a million dollars as LEAL contends, there would be no reason for the lien to have any effect whatsoever
on the buyer, as the lien would be paid off in its entirety when any such sale would be completed.

1 substitution may be granted if a delay of the trial or of the hearing of any other matter in the case would
2 result.” Moreover, even if it is determined that trial counsel properly moved to withdraw, any such motion
3 was properly denied on the merits.

4 The failure of LEAL and GARCIA to pay restitution did not create any conflict, let alone an
5 unwaivable one. They were both responsible for payment of the restitution, regardless of whether they
6 were willing and able to work together to get it paid. No amount of excuses would have relieved LEAL
7 of that obligation. As explained above, the State did not prevent LEAL from repaying his victims. And
8 it makes no difference whether GARCIA prevented him from doing so; even if we are to assume (for the
9 sake of argument) that fact to be true, the terms of the guilty plea agreement do not provide LEAL with
10 any relief on that basis.

11 LEAL’s trial attorney could have jumped up and down, yelling and screaming about how
12 GARCIA supposedly wronged LEAL. It would have been all for naught, as any such claim affords LEAL
13 no relief from his obligations.

14 Finally, even if a conflict existed, LEAL knowingly and effectively waived it in conformance
15 with the requirements established in *Ryan v. Eighth Judicial Dist. Court ex rel. County of Clark*, 123
16 Nev. 419 (2007).³ AA, at 100-02. LEAL ignores the clearly applicable opinion of *Ryan* and instead relies
17 upon *Clark v. State*, 108 Nev. 324 (1992) – a case that has absolutely nothing to do with dual
18

19 ³ In *Ryan*, the Nevada Supreme Court explained, in pertinent part:
20

21 [W]hen a non-indigent criminal defendant’s choice of counsel results in dual or multiple
22 representation of clients with potentially conflicting interests, the defendant may waive
23 the right to conflict-free counsel. An attorney or firm attempting to engage in dual or
24 multiple representation of two or more criminal defendants must advise the defendants of
25 their right to seek independent counsel to advise them on the potential conflict of interest.
26 If the defendants choose not to seek the advice of independent counsel, they must
27 expressly waive their right to do so, or their waiver of conflict-free representation will be
28 ineffective. When a defendant knowingly, intelligently, and voluntarily waives the right
to conflict-free representation, the district court must accept the waiver. **Once the district
court accepts the waiver, the defendant cannot subsequently seek a mistrial arising
out of the conflict he waived and cannot subsequently claim that the conflict he
waived resulted in ineffective assistance of counsel.**

123 Nev., at 430-31 (emphasis added). LEAL’s waiver satisfies these requirements. AA, at 100-02.

1 representation of codefendants – in support of his claim that this Court erred in denying his trial attorney’s
2 supposed motion to withdraw.

3 *II. Factor no. 2 – whether the applicant’s release may pose a risk of flight or danger to the*
4 *community.*

5 As noted above, in determining whether applicant’s release may pose a risk of flight or danger to
6 the community, the Court may consider a number of factors, including:

- 7 (A) The circumstances of the offense;
- 8 (B) The applicant’s criminal history;
- 9 (C) The applicant’s community associations; and
- 10 (D) The applicant’s employment status.

11 Here, evaluation of these factors clearly supports the conclusion that LEAL’s release would pose a serious
12 risk of both flight and danger to the community.

13 A. The circumstances of the offense.

14 In the present case, LEAL stole a total of \$757,420⁴ from eleven victims. In his Motion, LEAL
15 contends that he “essentially sold the properties as is and did not tell [the victims] that they were
16 encumbered, as opposed to misrepresenting them as unencumbered.” Motion 4:14-4:15. That is a flat out
17 lie. LEAL, knowing that these properties were encumbered, sold these properties while knowingly and
18 intentionally – and in some cases personally – falsely telling the victims that these properties were free
19 and clear of any security interests.

20 In doing so, LEAL left his victims’ finances and lives in ruins. He wrecked retirement plans. He
21 wiped out a grandchild’s college savings. LEAL’s victims continue to suffer as a result of his greed.

22 Now, LEAL wants to reenter society and continue his life as if he did no wrong, all while his
23 victims try to scrap their lives back together. The filing of his frivolous appeal does not undue all of the
24 damage LEAL has caused while running his criminal enterprise.

25 ///

26 ///

27 _____

28 ⁴ In his motion, LEAL incorrectly contends that the restitution total is \$694,420.

1 B. The applicant's criminal history.

2 LEAL is a conman. In 2008, in Berwyn, Illinois, LEAL was convicted of felony Theft by
3 Deception. A week later, in Lyons, Illinois, LEAL again was convicted of felony Theft by Deception. He
4 finds himself back in the criminal justice system in the present matter as a result of his fraudulent conduct.
5 In other words, LEAL is a habitually fraudulent felon within the meaning of the term set forth in NRS
6 207.014. LEAL has two misdemeanor convictions out of Illinois for the crime of Resist Peace Officer
7 (2003 and 2006). Given this history, there is no reason to believe that, if released from custody, LEAL
8 would begin to abide by the law.

9 C. The applicant's community associations.

10 In his Motion, LEAL states: "If permitted by the Court, Applicant would testify that he moved to
11 Clark County in 2013 and has lived here since." If he so testified, he would be committing perjury.
12 According to his PSI, LEAL's address is in Apopka, Florida. Additionally, as explained above, after
13 LEAL was informed that he would have to return to the Clark County Recorder's Office to lift the
14 suspension on his lien filing, LEAL stated that he was returning to Florida the following day.

15 To the extent that LEAL has resided in Nevada, his community associations can only be described
16 as deplorable. He ran his criminal enterprise in Nevada with his coconspirator/wife, GARCIA, who has
17 an impressive rap sheet of her own. Also associated with LEAL's criminal enterprise was Jacory
18 Williams, an upstanding individual who (at last check) has an active warrant issued out of California for
19 charges stemming from him pimping out his underage niece. Williams was also previously convicted for
20 making/passing a false check.

21 Aside from directing his criminal enterprise here in Nevada, LEAL's connections to Nevada
22 appear to be tenuous, at best. In a phone call made from CCDC after LEAL was sentenced, LEAL directed
23 an associate to retrieve a vehicle LEAL parked near the courthouse – along with \$25,000 cash LEAL left
24 in the car. Combining that fact with the fact that LEAL had already expressed that he would be returning
25 to Florida after his sentencing, it is clear that there is a high risk LEAL would flee Nevada if given the
26 opportunity.

27 D. The applicant's employment status.

1 Aside from running a criminal enterprise, it appears that LEAL has no ability and/or willingness
2 to maintain gainful employment.

3 **CONCLUSION**

4 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's
5 Motion for Bail Pending Appeal.

6 Dated this 23rd day of April, 2018.
7

8 SUBMITTED BY:
9 ADAM PAUL LAXALT
10 Attorney General

11 By: /s/ Michael C. Kovac
12 MICHAEL C. KOVAC (Bar No. 11177)
13 Chief Deputy Attorney General
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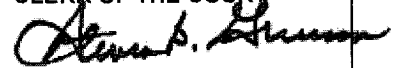
1 CERTIFICATE OF SERVICE

2 I certify that I am an employee of the Office of the Attorney General, State of Nevada, and that
3 on April 23, 2018, I filed the foregoing document via this Court's electronic filing system. Parties that
4 are registered with this Court's EFS will be served electronically. The following parties are not registered
5 and therefore, a prepaid postage copy of this document has been placed in the U.S. mail.

6 Craig Muller, Esq.
7 600 South Eighth Street
8 Las Vegas, NV 89101
Attorney for Jack Leal

9
10 /s/ A. Reber
11 A. Reber, an employee of
12 the office of the Nevada Attorney General
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 ORIGINAL



1 **ORDR**
2 ADAM PAUL LAXALT
3 Attorney General
4 Michael C. Kovac (Bar No. 11177)
5 Chief Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 555 E. Washington Ave., Ste. 3900
9 Las Vegas, Nevada 89101-1068
10 P: (702) 486-3420
11 F: (702) 486-0660
12 mkovac@ag.nv.gov
13 *Attorneys for the State of Nevada*

8 **DISTRICT COURT**
9
10 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,
11 Plaintiff,
12 vs.
13 JACK LEAL,
14 Defendant.

Case No.: C-17-322664-2
Dept. No.: XVII
Hearing Date: April 26, 2018
Hearing Time: 8:30 AM

15 **TRANSPORT ORDER**

16
17 **TO: LT. DOUG GORDON, NEVADA DEPARTMENT OF CORRECTIONS**
18 **JERRY HOWELL, Warden, SOUTHERN DESERT CORRECTIONAL CTR.**

19 **THE COURT HEREBY FINDS** that the Defendant is presently in the custody of the Nevada
20 Department of Corrections, located at **SOUTHERN DESERT CORRECTIONAL CTR.**


21 **IT IS HEREBY ORDERED** that the Warden of Southern Desert Correctional Ctr., or his
22 designee, shall transport Defendant, **JACK LEAL, #1183500**, from Southern Desert Correctional Ctr. in
23 Indian Springs, Nevada, to the Eighth Judicial District Court, Department 17 on the 26th day of

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RECEIVED BY
DEPT 17 C11
APR 23 2018


1 April, 2018, at 8:30 A.M. for a Hearing regarding the instant matter, and arrange for his *appearance on said*
2 *date, and all subsequent dates, as relayed by Memorandum from the Office of the Attorney General.*

3 DATED this 24 day of April, 2018.

4 
5 _____
6 HONORABLE DISTRICT COURT JUDGE
7 *FBI*

7 Respectfully submitted,

8 ADAM PAUL LAXALT
9 Attorney General

10 By: 
11 MICHAEL C. KOVAC
12 Nevada Bar No. 11177
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C-17-322664-2 State of Nevada
 vs
 Jack Leal

April 26, 2018 08:30 AM Defendant's Application for Bail Pending Appeal

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Jack Leal	Defendant
Michael C. Kovac	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Clay Plummer, Esq. present for Defendant on behalf of Craig Muller, Esq.

At the request of Mr. Plummer, COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 05/15/18 8:30 AM

C-17-322664-2 State of Nevada
 vs
 Jack Leal

May 15, 2018 08:30 AM Defendant's Application for Bail Pending Appeal

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Jack Leal	Defendant
Michael C. Kovac	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Weiner not present. COURT ORDERED, matter OFF CALENDAR.

NDC



1 Craig A. Mueller, Esq.
2 Nevada Bar No. 4703
3 **MUELLER HINDS & ASSOCIATES, CHTD.**
4 600 S. Eighth St.
5 Las Vegas, NV 89101
6 (702) 940-1234
7 *Attorneys for JACK LEAL*

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,)
11)
12 Plaintiff,)
13) CASE NO.: C-17-322664-2
14 -vs-)
15) DEPT NO: XVII
16 JACK LEAL,)
17)
18 Defendant.)
19 _____)

20 **NOTICE OF RESSCHEDULING OF HEARING**

21 Please be advised that the hearing re: Defendant's Motion for Bail Pending Appeal,
22 hearing set before Honorable Michael Villani is currently off calendar.

23 PLEASE TAKE NOTICE that the above referenced hearing is being rescheduled to the
24 **5** day of **JUNE**, 2018 **8:30** a.m./p.m.

25 DATED: May 23, 2018

Respectfully Submitted By:
MUELLER HINDS & ASSOCIATES

/s/ Craig A. Mueller
Craig A. Mueller, Esq.
NV Bar No. 4703
Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of May, 2018 I served a true and correct
3 copy of the foregoing NOTICE OF RESETTIGN OF HEARING, upon each of the parties by
4 electronic service through Odyseyy/Wiznet, the Eighth Judicial District Court's e-filing/e-
5 service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed
6 envelope in the United States mail, Postage Pre-Paid, addressed as follows:

7
8 Attorney General's Office
9 Adam P, Laxalt, Esq.
10 Michael C. Kovac, Esq.
11 555 E. Washington Blvd., Suite 3900
12 Las Vegas, NV 89101
13 winzetfilings@ag.nv.gov

14 /s/ Giselle D. Villa
15 An Employee of Mueller Hinds & Associates
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C-17-322664-2 State of Nevada
 vs
 Jack Leal

June 05, 2018 08:30 AM Defendant's Application for Bail Pending Appeal

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Black, Olivia

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Jack Leal	Defendant
Michael C. Kovac	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Weiner not present. COURT ORDERED, matter OFF CALENDAR.

NDC



1 Craig A. Mueller, Esq.
2 Nevada Bar No. 4703
3 **MUELLER HINDS & ASSOCIATES, CHTD.**
4 600 S. Eighth St.
5 Las Vegas, NV 89101
6 (702) 940-1234
7 Attorneys for JACK LEAL

8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 STATE OF NEVADA,)
11)
12 Plaintiff,)
13)
14 -vs-)
15)
16 JACK LEAL,)
17)
18 Defendant.)
19)

CASE NO.: C-17-322664-2
DEPT NO: XVII

20 **NOTICE OF RESSCHEDULING OF HEARING**

21 Please be advised that the hearing re: Defendant's Motion for Bail Pending Appeal,
22 hearing set before Honorable Michael Villani is currently off calendar.

23 PLEASE TAKE NOTICE that the above referenced hearing is being rescheduled to the
24 **26 JUNE 8:30A**
25 day of _____, 2018 _____ a.m./p.m.

DATED: June 11, 2018

Respectfully Submitted By:
MUELLER HINDS & ASSOCIATES

_____/s/ Craig A. Mueller
Craig A. Mueller, Esq.
NV Bar No. 4703
Attorney for Defendant

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 11 day of June 2018 I served a true and correct copy
3 of the foregoing NOTICE OF RESETTING OF HEARING, upon each of the parties by
4 electronic service through Odyssey/Wiznet, the Eighth Judicial District Court's e-filing/e-
5 service system, pursuant to N.E.F.C.R.9; and by depositing a copy of the same in a sealed
6 envelope in the United States mail, Postage Pre-Paid, addressed as follows:

7
8 Attorney General's Office
9 Adam P, Laxalt, Esq.
10 Michael C. Kovac, Esq.
11 555 E. Washington Blvd., Suite 3900
12 Las Vegas, NV 89101
13 winzetfilings@ag.nv.gov

14 */s/ Giselle D. Villa*
15 _____
16 An Employee of Mueller Hinds & Associates
17
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C-17-322664-2 State of Nevada
 vs
 Jack Leal

June 26, 2018 08:30 AM Defendant's Motion Re: Rescheduling of Hearing

HEARD BY: Villani, Michael COURTROOM: RJC Courtroom 11A

COURT CLERK: Ortega, Natalie

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Craig A Mueller	Attorney for Defendant
Jack Leal	Defendant
Michael C. Kovac	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Mr. Mueller argued in support of the motion requesting a \$100,000.00 cash bail and noting there was a property to be liquidated and the amount could applied to the restitution owed. Argument by Mr. Kovac. COURT NOTED at the time of sentencing the issue was whether or not Defendant had paid the restitution as the negotiations were joint and several. Defendant had four months from the entry of plea to the time of sentencing and had only attempted the day before and was unsuccessful. Furthermore, there was not a conflict of situation, it was a simple question. It was a reality that Defendant did not pay the restitution. COURT FURTHER NOTED, the State retained the right to argue. Additionally, this was not conditional plea to give either Defendants probation. The Court reviewed eleven victims in the amount of \$750,000.00. They were victims of the fraudulent conduct of the two defendants. Furthermore, Defendant had a record of fraud in the past in two other cases. Defendant was a danger to the community; other unsuspecting individuals could be victims of his conduct. COURT ORDERED, motion DENIED pending appeal.

NDC



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

JACK LEAL,

Defendant.

CASE: C-17-322664-2

DEPT. XVII

BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE
TUESDAY, JUNE 26, 2018

**RECORDER'S TRANSCRIPT OF HEARING:
DEFENDANT'S MOTION RE: RESCHEDULING OF HEARING**

APPEARANCES:

For the State:

MICHAEL C. KOVAC, ESQ.
Senior Deputy Attorney General

For the Defendant:

CRAIG MUELLER, ESQ.

RECORDED BY: CYNTHIA GEORGILAS, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, June 26, 2018

2 [Hearing begins at 8:30 a.m.]

3 THE COURT: All right, State versus Jack Leal.

4 Just one moment, please, my law clerk is coming in.

5 MR. MUELLER: Your Honor, may we trail this for a few
6 moments?

7 THE COURT: Sure.

8 MR. MUELLER: Counsel and I were actually just making –

9 THE COURT: Sure.

10 MR. MUELLER: -- having a discussion. Thank you.

11 [Matter trailed at 8:30 a.m.]

12 [Matter recalled at 8:42 a.m.]

13 THE MARSHAL: Recalling 1 top.

14 THE COURT: All right; the Leal matter.

15 MR. MUELLER: Good morning, Your Honor, Craig Mueller on
16 behalf of Mr. Leal. I would like to have the record reflect me showing as
17 attorney of record. This is on for a motion of bail pending appeal.

18 THE COURT: Okay. Go ahead.

19 MR. MUELLER: Thank you, Your Honor.

20 I spoke with Mr. Leal and as this is not the run of the mill state
21 court criminal case but I believe I'm comfortable with the record, I
22 believe a meritorious appeal is potentially available to Mr. Leal pursuant
23 to the Nevada Revised Statutes that allow for it, specifically – I just had it
24 here – 178.08 – 488. I'm going to ask for a \$100,000.00 cash bail to be
25 held and the cash eventually be applied to the restitution that is owed.

1 Mr. Leal is not a threat to the community, not a flight risk, and there is
2 another piece of property apparently that can be – or is in the process of
3 being liquidated to pay the restitution.

4 As I was reviewing this, and I look at this as a judge, -- I've
5 been doing this a number of years now -- I've reviewed the record and
6 looked at everything and I kind of – the two things that struck out to me,
7 Judge, I was very uncomfortable when I read this record about this
8 conflict between the two parties. I – occasionally the lower courts will
9 waive conflict between the parties when the matter's simply going to be
10 negotiated, where there came a time at sentencing when the parties are
11 actually in fisticuffs and have cross restraining orders between them and
12 there is a -- charges pending as a result of their interactions with each
13 other, I believe at that point the fate – the conflict can – becomes fatal
14 and the representation, the joint representation can simply not proceed.

15 The second issue that struck me as very unusual -- and I'll
16 defer to my colleague, I don't want to step on his toes if I've
17 misunderstood what's transpired, but it would appear that the
18 contemplated negotiations included liquidating a property for which there
19 was a considerable amount of equity and then using that equity to pay
20 off the restitution as a condition of probation. For whatever reason, there
21 apparently was a lien or some other administrative mechanism put on
22 that property that prevented its timely sale. I don't know if it was
23 intentional. I don't know the exact details. Obviously getting – coming in
24 to representation late I'm tentative, not because I haven't read
25 everything and I'm not prepared, I just want to make sure that I don't

1 misstate the record here coming into it a little later.

2 Having said that, I believe either of those issues, particularly –
3 potentially are meritorious. I'm asking for a cash bail, not a bond, and
4 that that's real money that can go to restitution of the parties if Mr. Leal
5 does not prevail on appeal.

6 THE COURT: Thank you.

7 State.

8 MR. KOVAC: Good morning; Michael Kovac, the Attorney
9 General's Office. So, I'm sure Your Honor is familiar with this case. It's
10 dragged on for a while now. This is the fourth defense attorney we've
11 dealt with in this case.

12 Mr. Leal and Ms. Garcia are estranged. At the time this case
13 was being negotiated they were still estranged even at that – estranged
14 even at that time. They were represented by Mr. Weiner at the lower
15 proceedings where this case was negotiated.

16 When we were at the lower level arraignment, I said make
17 sure – I was out in the halls. Mr. Weiner, Mr. Leal, and Ms. Garcia were
18 all out in the hall. I said it's important that this restitution gets paid off
19 before sentencing. If it gets paid off before sentencing I have no problem
20 – I'm not opposing probation. If it doesn't, for whatever reason, I'm going
21 to make an argument for prison time. So, everybody was aware of that. I
22 said part of this deal contemplated that you put a lien on the house
23 where there's equity. That house was owned by Mr. Leal and Ms. Garcia
24 but it was in the name of a trust. So, I said you have to hurry up and get
25 that trust – that property into your name rather than the trust name so

1 that you can sign the lien to us. The lien doesn't have any effect on the
2 sale of the property because the sale – the property was worth enough
3 that the lien would be satisfied once it was sold. They did nothing for the
4 nearly 4 months that passed between the arraignment and the
5 sentencing.

6 Just a few days before the sentencing Mr. Weiner called me
7 and asked me if they could have a continuance to get more time and I
8 said absolutely not because they've done absolutely nothing to get this
9 property moving along. Finally at that point, when they knew that they
10 weren't getting any more chances, all of a sudden, bam, the house goes
11 from the trust name to Mr. Leal's name. I said, okay, now you need to
12 get the lien in the place of the Attorney General's Office. Mr. Leal said
13 that that was done. He came into court the day of sentencing and told
14 you that it was done. That was a flat out lie. He tried to do it the day
15 before sentencing finally and they told him – the recorder's office told
16 him that lien was suspended because he didn't have the proper
17 paperwork. He said, oh well, I'm going back to Florida the next day. I'm
18 not going to fix it. Nevertheless, he had no problem lying to your face
19 during sentencing.

20 Now, we get here and we have the appeal. Well, there was a
21 conflict between Mr. Leal and Ms. Garcia that couldn't be resolved. But
22 there is case law directly on point, that Ryan case that I cited in here. It
23 says exactly what needs to be done in order to have a valid waiver of
24 any conflict. I made sure that the language in the waiver that was filed in
25 district court and it was attached to the GPA track the language in the

1 Ryan case. The Ryan case says that once a district court accepts the
2 wavier, the Defendant cannot subsequently seek a mistrial arising out of
3 conflict he waived. He cannot subsequently claim that the conflict waiver
4 resulted in ineffective assistance of counsel. That would be equally as
5 effective for a Guilty Plea Agreement as it would be for a trial.

6 As far as the other issue, whether the State prevented the
7 Defendant from being able to satisfy his restitution obligation, that's just
8 flat out false. I've done everything I can to get this stuff moving along. It's
9 been – the Defendant – he's a con man. This is his third conviction for
10 fraud. He thought he could talk his way out of it. He finally got caught.
11 That's why we're here today.

12 MR. MUELLER: In rejoinder, Your Honor, my colleague's very
13 eloquent, but in rejoinder I'd make three points. Number one, I'm offering
14 cash bail. There's no con. Its cash or he doesn't get anywhere so that's
15 easy. If he doesn't get [indiscernible] cash, then it doesn't go.

16 And number two, conflicts cannot be waived when they are in
17 fact fatal. And I took Rob Bare's course and I actually still have his notes
18 from when I went over on conflicts. When the parties are in open warfare
19 between each other and where their positions or the relationship has
20 degraded, you cannot continue to represent both. You can't. It's a fatal
21 conflict. Now, all conflicts can be waived up to a point until they become
22 fatal. At a certain point, no – the conflict can simply not be waived.

23 Now, I – you and I go out and we do a [indiscernible] skip and
24 we both go to agree to hire a couple – a guy to represent us, gets petty
25 larceny and 30 days in jail and it turns out later you want to testify

1 against me. That conflict goes from being waivable to being non-
2 waivable. That becomes a fatal conflict because there's now actual open
3 hostility between the parties. Now, in this instance, that is a meritorious
4 argument; I believe the Supreme Court is going to see to it.

5 And third, it would appear that there was at least some
6 substantial compliance or at least some meaningful effort to substantially
7 comply with the restitution request. Now, if the two parties are at odds
8 with each other over ownership of property that needs to be liquidated
9 for restitution, very clearly there's a conflict that can't be waived at that
10 point as well. And I would also just point out in rejoinder, you know
11 some of us grow up with educated and alert and responsible parents
12 who are sophisticated in the ways of the world and some people have to
13 make their own way in the world. It's easy to lose sight of the fact that
14 Mr. Leal is 34, was actually about 30, involved in some very detailed and
15 sophisticated real estate transactions, that I approaching 60 would not
16 be comfortable with. Now, the reality is is how much of this was a young
17 man in bluster and how much of this was crime. For whatever – by what
18 other mechanisms, it would appear that he and his then ex-girlfriend had
19 some real success at some point with real estate and there's still
20 apparently enough equity to make the restitution here if mechanisms are
21 in place to have it.

22 For those foregoing reasons, I'd ask – I'm not asking for a
23 bond. I'm not asking for anything other than a cool hard \$100,000.00
24 cash bail.

25 THE COURT: When I reviewed this matter, the – we do have

1 a conflict of wavier and I understand the argument that there's an issue
2 down the road. The issue at the time of sentencing was whether or not
3 the Defendant had paid the restitution and the negotiations were joint
4 and several. The negotiations were for him to sign the lien in the
5 Attorney General's Office. He had 4 months from the entry of the plea to
6 the time of sentencing and he only attempted apparently the day before
7 and was unsuccessful, but in any event it would not have been
8 accomplished the day of the sentencing. He did not pay one dime
9 towards restitution. And so that's why I didn't find – there wasn't a
10 conflict with that situation whether he paid it or not. It's a very simple
11 question. It's reality. He did not pay it. The State retained the right to
12 argue. And furthermore, it was not a conditional plea that the Court give
13 either Defendant probation. I looked at 11 victims in the amount of
14 \$757,000.00, that they were victims of the fraudulent conduct of the two
15 Defendants. And for those reasons, I gave him the sentence that I did.

16 And so, I'm going to – he is – he's got a record of fraud in the
17 past, two other cases. These are fraudulent transactions going over, I
18 believe, a two year period of time. He is a danger to the community
19 because other unsuspecting individuals could be victims to his
20 fraudulent conduct. And so, for those reasons I am denying his motion
21 for bail pending appeal.

22 MR. KOVAC: Thank you, Your Honor.

23 MR. MUELLER: Your Honor, and respectfully, Judge, I
24 understand the Court's ruling and decision, but the standard here is for
25 the – and right out of the statute, is "...unless it appears that the appeal

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is frivolous or taken for delay.”

THE COURT: Well, I just set forth the basis where I feel that there was no – there wasn’t an appealable – an issue of conflict that would arise to a meritorious appeal. And also, in any event, there was no conflict as to whether or not he paid his restitution or not. It was never paid. It has nothing to do with the attorney. He didn’t pay it. The attorney wasn’t supposed to pay. The attorney didn’t have money in a trust account to pay this. The Defendant didn’t pay it, just very simple.

MR. MUELLER: Thank you, Your Honor.

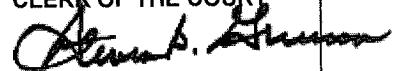
THE COURT: Thank you.

MR. KOVAC: Thank you.

[Hearing concludes at 8:53 a.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Cynthia Georgilas
CYNTHIA GEORGILAS
Court Recorder/Transcriber
District Court Dept. XVII



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9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 STATE OF NEVADA,
12 Plaintiff,
13 vs.
14 JACK LEAL,
15 Defendant.

Case No. C-17-322664-2
Dept. No. XVII

17 **DECISION AND ORDER**

18 THIS CAUSE came before the Honorable Michael P. Villani on June 26, 2018, for review of
19 Defendant Jack Leal's Application for Bail Pending Appeal (Motion) filed April 16, 2018 where he
20 requested bail pending his appeal to the Nevada Court of Appeals pursuant to NRS 178.488. Plaintiff
21 filed an opposition on April 23, 2018. Based on the oral argument and pleadings filed in this case, the
22 Court hereby DENIES Defendant's Motion for the reasons set forth below.

23 THE COURT FINDS that Defendant Jack Leal (Defendant) entered into negotiations with the
24 State wherein he agreed to plead guilty to one count of Multiple Transactions Involving Fraud or Deceit
25 in Course of Enterprise or Occupation, a category B felony, a crime punishable by a term of imprisonment
26 not to exceed twenty (20) years. Defendant also agreed to be jointly and severally liable with the co-
27 defendant, Jessica Garcia (co-defendant), for paying in full restitution totaling \$757,420 to the eleven
28 (1) victims at or before the time of his sentencing. Defendant further agreed to execute a lien in the

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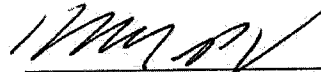
Furthermore, the Court did not give a conditional plea that either Defendant receive probation.

1 Defendant's counsel had nothing to do with Defendant's failure to pay full restitution at or before his
2 sentencing. As a result, a non-waivable conflict-of interest did not exist to arise to a meritorious appeal
3 because Defendant agreed to be liable for the full restitution despite any failure by the co-defendant to
4 pay the restitution. Due to Defendant's failure to pay any restitution, the State argued for a term of
5 imprisonment as permitted and agreed to in the GPA. Thus, Defendant's appeal is frivolous.

6 WHEREFORE THE COURT FURTHER CONCLUDES that Defendant has failed to show he
7 does not pose a danger to the community to warrant bail. Defendant's prior criminal history involved
8 fraudulent transactions in two (2) other cases prior to the instant case. In the instant case, Defendant
9 defrauded eleven (11) victims of \$757,420 that he failed to pay in restitution. Thus, Defendant is a danger
10 to the community because other unsuspecting individuals could be victims to his fraudulent conduct.

11 THEREFORE, IT IS HEREBY ORDERED that Defendant's Application for Bail Pending
12 Appeal is DENIED.

13 IT IS SO ORDERED this 5 day of Sept, 2018.



The Honorable Michael P. Villani
District Court Judge

JM

17 Submitted by:

18 ADAM PAUL LAXALT
19 Attorney General



21 MICHAEL C. KOVAC (Bar No. 11177)
22 Chief Deputy Attorney General