

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68968

**FILED**

OCT 26 2015

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

*ORDER DIRECTING TRANSMISSION OF RECORD*

This court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). Accordingly, the clerk of the district court shall have 60 days from the date of this order to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall include copies of documentary exhibits submitted in the district court proceedings, but shall not include any physical, non-documentary exhibits or the original documentary exhibits. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

Within 120 days, appellant may file either (1) a brief that complies with the requirements in NRAP 28 (a) and NRAP 32; or (2) the "Informal Brief Form for Pro Se Parties" provided by the supreme court clerk. NRAP 31(a)(1). If no brief is submitted, the appeal may be decided on the record on appeal. NRAP 34(g).

It is so ORDERED.

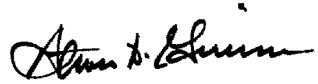
*[Signature]* C.J.

SUPREME COURT  
OF  
NEVADA

(C) 1947A 

15-32554

cc: Frank Herring, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

  
CLERK OF THE COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 WILLIAM ROWLES  
6 Deputy District Attorney  
7 Nevada Bar #013577  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,  
12 -vs-  
13 FRANK HEARRING, aka,  
14 Frank Hearing, Jr. #1774466  
15 Defendant.

CASE NO: C-13-291159-1  
DEPT NO: XX

**ORDER DENYING DEFENDANT'S REQUEST FOR  
RECORDS/COURT CASE DOCUMENTS**

DATE OF HEARING: FEBRUARY 23, 2016  
TIME OF HEARING: 8:30 A.M.

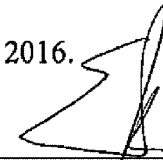
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20 THIS MATTER having come on for hearing before the above entitled Court on the  
21 23rd day of February, 2016, the Defendant not being present, in proper person, the Plaintiff  
22 being represented by STEVEN B. WOLFSON, District Attorney, through WILLIAM  
23 ROWLES, Deputy District Attorney, without argument, based on the pleadings and good  
24 cause appearing therefor,

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IT IS HEREBY ORDERED that the Defendant's Request for Records/Court Case Documents, shall be, and it is DENIED.

DATED this 1 day of <sup>March</sup> February, 2016.

  
\_\_\_\_\_  
DISTRICT JUDGE  
ERIC JOHNSON *KM*

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

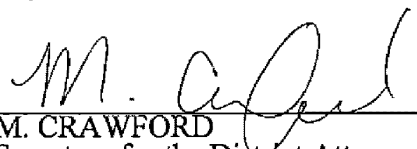
BY   
\_\_\_\_\_  
WILLIAM ROWLES  
Deputy District Attorney  
Nevada Bar #013577

CERTIFICATE OF SERVICE

I certify that on the 3rd day of March, 2016, I mailed a copy of the foregoing Order

to:

FRANK HEARRING #1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

BY   
\_\_\_\_\_  
M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/mc/L4

*Ann D. Linn*  
CLERK OF THE COURT

MC  
PP  
DA

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

Frank Herring

Petitioner/Plaintiff,

vi.

State of Nevada

Respondent/Defendant.

Case No. C-13-291159-1

Dept. No. XX

Docket No. \_\_\_\_\_

Hearing Date: 3-29-16

Time: 8:30AM

MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE  
ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner/Plaintiff, FRANK Herring, pro per,

and respectfully moves this Honorable Court for it's Order withdrawing Carl

Arnold, Esq., as the Attorney of Record in the above-entitled matter.

This Motion is made and based upon Nev. Rev. Stat. 7.055, and Nev. Sup. Ct. Rules 166(4), 173, 176, and 203, and Rules 11 and 20 of the Rules of the District Courts of the State of Nevada.

POINTS AND AUTHORITIES

Nev. Rev. Stat. 7.055, provides that:

An attorney who has been discharged by his client shall, upon demand...immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client.

See also Nev. Sup. Ct. Rule 166(4):

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ...surrendering papers and property to which the client is entitled...".

Petitioner/Plaintiff would respectfully point out to this Court and the attorney of record that there

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is controlling law on this issue. This citation of authority is precautionary only. In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), and State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974), both cases dealt with a factual situation involving a withdrawn attorney refusing to deliver to a former client his documents after being requested to do so by the client. The Court in Yount, supra, ordered the attorney disbarred, while in Alvey, supra, the Court had the attorney censured.

In most situations it is obviously not necessary to notify the parties when the attorney withdraws from a case, but when the client wishes to remove his attorney and represent himself in person, it is required by these Statutes and Rules that the client request the Court of action to issue a certificate releasing the attorney of record. Under such statutes it is necessary for the party to present his request for the change in order for the court in making an order withdrawing the attorney of record, and to make formal demand to the Attorney for the return of all papers and property.

Therefore, let this Court be so notified that this is the desire of the Petitioner/Plaintiff herein that the aforementioned attorney of record be withdrawn and the same shall be for any other attorney(s) which could possibly be subscribed and documented as attorney(s) of record in this case, so that further actions in the above-entitled cause can be conducted by the Petitioner/Plaintiff in proper person.

Further, Petitioner/Plaintiff hereby makes formal demand upon Carl Arnold, Esq., for the return of his entire file, including, but not limited to all papers, documents, pleadings and items of tangible personal property which belong to or were prepared on my behalf to me at the address set forth in this pleading.

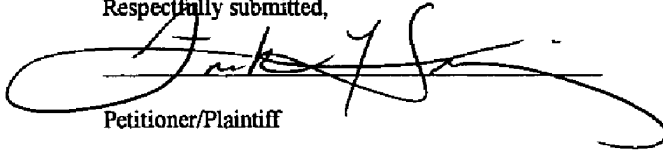
Further, it is requested of this Court that it issue an Order directing the named attorney of record that he turn over to the Petitioner/Plaintiff the entire case file, without costs, including, but not limited to, the trial transcripts or guilty plea transcript, all briefs on appeal, and all other papers and police reports relating to this matter, so that Petitioner/Plaintiff may prosecute an appeal/post-conviction with a minimum amount of delay.

#### CONCLUSION

**WHEREFORE**, all of the above stated reasons, Petitioner/Plaintiff respectfully requests this Honorable Court to grant his Motion for Withdrawal of Attorney of Record in accordance with this Court's fair and just consideration of the facts of the case.

DATED this 3<sup>rd</sup> day of March, 2006.

Respectfully submitted,

  
Petitioner/Plaintiff

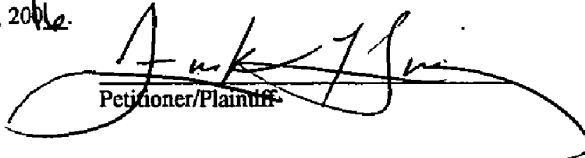
**CERTIFICATE OF SERVICE**

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner/Plaintiff in the foregoing Notice of Motion and Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents on this 3<sup>rd</sup> day of March, 2006. I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold  
1148 S. Maryland Pkwy  
Las Vegas, NV 89104  
\_\_\_\_\_  
\_\_\_\_\_

Steven B. Wolfson  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 3<sup>rd</sup> day of March, 2006.

  
Petitioner/Plaintiff

**AFFIRMATION PURSUANT TO NRS 239B.030**

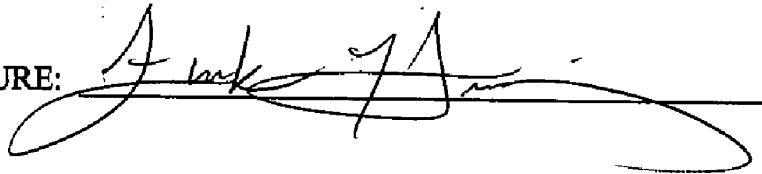
I, FRANK HEARRING, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Motion For Withdrawal  
OF Attorney OF Record

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 3<sup>rd</sup> DAY OF March, 2016.

SIGNATURE:



INMATE PRINTED NAME: FRANK HEARRING

INMATE NDOC # 1006445

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

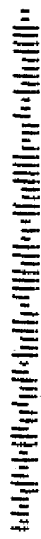


FRANK HEARMING #1006445  
ELY STATE PRISON  
P.O. Box 1989  
ELY, NV 89301

STEVEN D. GRIERSON  
200 LEWIS AVENUE 3rd Floor  
Las Vegas, NV 89155



95101\$6300 C075



ELY STATE PRISON  
JUN 23 2016  
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*Ann D. Quinn*  
CLERK OF THE COURT

MC  
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IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

FRANK HERRING  
Petitioner/Plaintiff,  
v.  
State of Nevada  
Respondent/Defendant.

Case No. C-13-291159-1  
Dept. No. XX  
Docket No. \_\_\_\_\_

**NOTICE OF MOTION**

TO: THE STATE OF NEVADA, Respondent/Defendant, Steven B. Wolfson  
Clark, County District Attorney, and CARL  
Arnold, Esq.

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 29 day of MARCH  
8:30AM  
2016, at the hour of 9:00 O'clock A.M., or as soon thereafter as  
the parties may be heard, the undersigned will bring on for hearing the attached **MOTION FOR**  
**WITHDRAWAL OF ATTORNEY OF RECORD**, before the above-entitled Court, at the  
Clark County Courthouse, in Las Vegas, Nevada, in  
Department No. XX, thereof.

DATED this 3rd day of March, 2016

Respectfully submitted,  
*Frank Herring*  
Petitioner/Plaintiff  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

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1 FRANK Hearring # 1006445  
2 Ely State Prison, P.O. Box 1989  
3 Ely, Nevada 89301-1989

Please Return Filed  
Stamped Copy!

DA  
PP

4 Defendant in proper person

Electronically Filed  
03/11/2016 04:36:46 PM

District Court  
Clark County, Nevada

*Alvin D. Johnson*  
CLERK OF THE COURT

9 FRANK Hearring  
10 v. Defendant  
11 State of Nevada  
12 Plaintiff

Case No: C-13-291159-1  
Dept No: XX

13 Reply to State's Response to Defendants Motion for  
14 Request for Records/Court Case Documents (Brady Material)  
15 in order to properly appeal Defendants Conviction.

16  
17 Comes now Defendant Frank Hearring in proper  
18 person and hereby Submits this Motion and the  
19 attached points of Authorities in response to States  
20 Arguments in Denial of Defendants Request For Records/  
21 Court case Documents (Brady Material.)

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## Points and Authorities

1 Introduction:

2 ON October 28, 2015 Defendant filed a Motion For  
3 Request for Records/Court Case Documents,  
4

5 ON November 19, 2015 the Defendant not being present,  
6 in proper person. The plaintiff being represented by Steven  
7 B. Wolfson, District Attorney, through John T. Jones, Chief  
8 Deputy District Attorney, without argument, and Hereby  
9 ordered that Defendants Request for Records/Court Case  
10 Documents, should be, and was granted ~~IN Part~~/  
11 Denied In Part - Motion was granted as to Request  
12 for Defendants Pre-Sentencing Report and Denied  
13 Without prejudice as to other Documents without  
14 Specific Request.  
15

16 ON January 21, 2016 at 4:22:13 pm Defendant Filed  
17 another Request for Records/Court Case Documents  
18 Specifically Requesting (Brady Material) See Exhibit A  
19 Requesting that (All) Documents/Material be relinquished  
20 related to case No: C-13-291159-1 in order for Defendant  
21 to thoroughly and adequately appeal Defendants  
22 Conviction.

23  
24 ON February 23, 2016 State of Nevada District Attorney  
25 Steven B. Wolfson, through Steven S. Owens, Chief Deputy  
26 District Attorney responded to Defendants Motion to  
27 Produce Brady Material attaching the following points  
28 of authorities: "In the instant Motion defendant requests

(2)

1 Discovery in order to appeal his conviction. Generally, once a defendant  
2 files a notice of appeal with the Nevada Supreme Court, that  
3 divests the district Court of jurisdiction to hear the matter  
4 until remittitur issues.

5 However, Defendant Dismissed his  
6 (Retained) Counsel Carl Arnold on May the 12<sup>th</sup> day of 20  
7 14, which on June 5, 2014 the Court heard Defendants  
8 Motion.

9 Further More, Defendant upon Dismissal of  
10 Counsel then Requested (All) Documents/ Discovery pertain  
11 ing to case No: C-13-291159-1.

12 In *Mazzan V. Wardens*,  
13 116 Nev. 48, 993 P.2d 25, (2000) Nev. Lexis 6; 116 Nev. Adv  
14 Rep. 7 No. 30998 Nevada Supreme Court held that where  
15 state fails to provide evidence which the Defendant did  
16 or did not request or requested generally, it is Const  
17 titutional/ error

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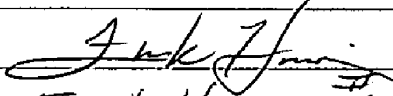
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Conclusion and Relief Requested

1 Based on the forgoing, Defendant Herring  
2 Request that (All) Documents related to Case No: C-13-  
3 291159-1 Records/Court case Documents (Brady Material)  
4 be turned over, he has shown "good cause" to  
5 justify Request.

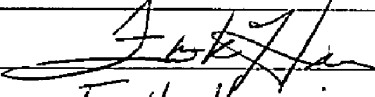
6 Respectfully Submitted  
7 Dated this 7<sup>th</sup> day of March 2016  
8

9   
10 Frank Herring ~~100645~~  
11 (Defendant in pro per)  
12

13 Certificate of Mailing

14 I hereby Certify that on the 7<sup>th</sup> Day of  
15 March 2016 I placed a true and correct Copy  
16 of Defendants Reply to State's Response to Defendants  
17 Motion to produce Records/Court case Documents (Brady —  
18 Material) in Mail Box for Legal Documents at Ely  
19 State Prison, postage fully prepaid and addressed  
20 as follows:

21 The Regional Justice Center  
22 Clerk of the Court  
23 200 Lewis Ave, 3<sup>rd</sup> floor  
24 Las Vegas, NV 89155-1160  
25

26 Dated: March 7, 2016   
27 2:52pm FRANK HERRING  
28 #100645

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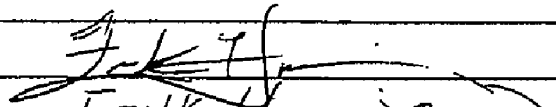
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Exhibit A

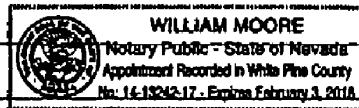
JAN 5 2016  
1:35pm

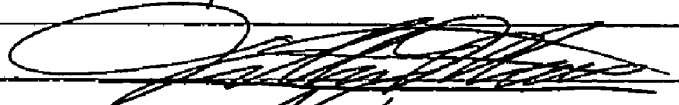
I, FRANK Herring Jr #1006445 have  
Attached a Notorized copy Titled: (Brady Mat-  
erial) Pages (1, through (3) Numbered (1) through (12)  
Requesting that THE STATE OF Nevada relinquish  
(All) Material related to CASE # C-13-291159-1 in  
order for the defendant to thoroughly and  
adequately appeal my Murder Conviction,  
(Second Degree Murder)

  
FRANK Herring

State of Nevada  
County of White Pine

This instrument was acknowledged before  
me on January 15, 2016 by Frank Herring.



  
Notary



①

v. Brady requests *D. V. P.*

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.
2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received<sup>1</sup> in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation<sup>2</sup> of any benefit<sup>3</sup> of any kind to be received, or already received, by any witness presented by the State<sup>4</sup>. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.
3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may be or may lead to admissible evidence<sup>5</sup>. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

<sup>1</sup> State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

<sup>2</sup> The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

<sup>3</sup> Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996); ) Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004)

<sup>4</sup> Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

<sup>5</sup> A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Striffler, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

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4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense<sup>6</sup>. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted<sup>7</sup>, or may lead to information which would tend to impeach or affect the credibility of a State witness<sup>8</sup>, including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.

5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.

7. Any 911 recordings to include the relevant dispatch log.

<sup>6</sup>State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); State acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness. Rudin v. State, 120 Nev. 121, 139 (2004).

<sup>7</sup>State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

<sup>8</sup>Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slayton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when, during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the defendant she saw in court. Jackson v. Wainwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carter v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Suartz v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garcia, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).

3

- 1 8. Copies of any and all video or audio recording of any form collected by the
- 2 investigating officers or any other agent of the State during the course of the
- 3 investigation.
- 4
- 5 9. All relevant reports of chain of custody. All reports of any destruction of any
- 6 evidence in the case.
- 7
- 8 10. Photocopies or other reproduction of any and all handwritten or otherwise
- 9 memorialized notes kept by the investigating police officers in this case (AKA
- 10 "Case Monitoring Forms"), including, but not limited to, any notes documenting
- 11 alternate suspects, investigative leads that were not followed up on, or any other
- 12 matter bearing on the credibility of any State witness.
- 13
- 14 11. Any and all notes and reports of any expert in the case, to include mental health
- 15 workers. This includes any preliminary reports or notes, not included in a final
- 16 report.
- 17
- 18 12. Any and all information which shows that the defendant did not commit the crimes
- 19 alleged, including, but not limited to, any information concerning an arrest of any
- 20 other individual for the charged crime<sup>9</sup> and any information suggesting a possible
- 21 suspect other than the defendant,<sup>10</sup> including investigative leads to other suspects<sup>11</sup>.
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<sup>9</sup>Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10<sup>th</sup> Cir. 1995).

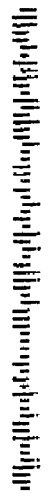
<sup>10</sup>State's failure to disclose evidence of another perpetrator violated Brady. Lay v. State, 116 Nev. 1185, 1195-96 (2000). Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Mazzan v. Warden, 116 Nev. 48,69 (2000); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

<sup>11</sup>Jimenez v. State, 112 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

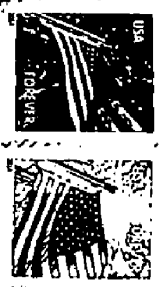
FRANK HARRING #1000445  
ELY STATE PRISON  
P.O. Box 1989  
ELY, NV 89301

STEVEN D. GRIFFINSON  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155

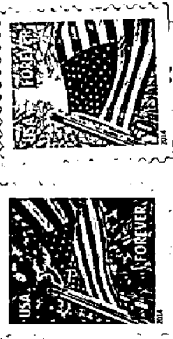
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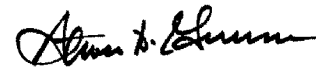
FRANK Hearing #1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301



STEVEN D. GRIERSON  
CLERK OF THE COURT  
200 LEWIS AVENUE, 3rd Floor  
Las Vegas, NV 89155-1140

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**ORDR**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
CHAD LEXIS  
Deputy District Attorney  
Nevada Bar #010391  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,

-vs-

FRANK HEARRING, aka,  
Frank Hearing, Jr. #1774466  
Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

**ORDER DENYING DEFENDANT'S MOTION FOR WITHDRAWAL OF  
ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR  
RECORDS/COURT CASE DOCUMENTS**

DATE OF HEARING: MARCH 29, 2016  
TIME OF HEARING: 8:30 A.M.


THIS MATTER having come on for hearing before the above entitled Court on the 29th day of March, 2016, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through CHAD LEXIS, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,

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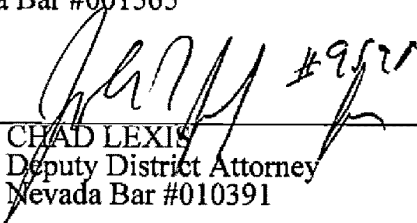
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IT IS HEREBY ORDERED that the Defendant's Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents, shall be, and it is DENIED.

DATED this 8 day of April, 2016.

  
\_\_\_\_\_  
DISTRICT JUDGE  
ERIC JOHNSON RM

STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565


BY   
\_\_\_\_\_  
CHAD LEXIS  
Deputy District Attorney  
Nevada Bar #010391

CERTIFICATE OF SERVICE

I certify that on the 12<sup>th</sup> day of April, 2016, I mailed a copy of the foregoing Order

to:

FRANK HEARRING #1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

BY   
\_\_\_\_\_  
M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/mc/L4

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 68968  
District Court Case No. C291159

FILED

MAY 13 2016

CLERK'S CERTIFICATE

*Tracie Lindeman*  
CLERK OF COURT

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

“ORDER the judgment of the district court AFFIRMED.”

Judgment, as quoted above, entered this 14<sup>th</sup> day of April, 2016.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this May 09, 2016.

Tracie Lindeman, Supreme Court Clerk

By: Joan Hendricks  
Deputy Clerk

C-13-291159-1  
CCJA  
NV Supreme Court Clerks Certificate/Judgm  
4548754





IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 68968

**FILED**

APR 14 2016

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK


**ORDER OF AFFIRMANCE**


This is a *pro se* appeal from a district court order denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Eric Johnson, Judge.


Appellant filed his postconviction petition on March 30, 2015, more than one year after entry of the judgment of conviction; he did not appeal the judgment of conviction. Therefore, the petition was untimely filed and procedurally barred absent of demonstration of good cause and prejudice. *See* NRS 34.726(1). To overcome the procedural default, appellant argues that he was awaiting resolution of his motion to withdraw his guilty plea before filing his petition. However, the filing of a motion to withdraw his guilty plea is not an impediment external to the defense that prevented him from timely filing his postconviction petition. *See Hathaway v. State*, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). Because appellant failed to establish good cause to excuse the delay in

filing his petition, the district court did not err by denying the petition as procedurally barred. Accordingly, we

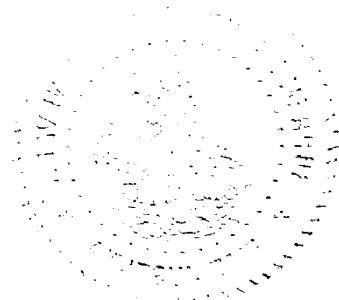
ORDER the judgment of the district court AFFIRMED.

 \_\_\_\_\_, J.  
Douglas

 \_\_\_\_\_, J.  
Cherry

 \_\_\_\_\_, J.  
Gibbons

cc: Hon. Eric Johnson, District Judge  
Frank Herring, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk



**CERTIFIED COPY**

This document is a full, true and correct copy of the original on file and of record in my office.

DATE: May 9th, 2016

Supreme Court Clerk, State of Nevada

By *[Signature]* Deputy

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 68968**  
District Court Case No. C291159

**REMITTITUR**

TO: Steven D. Grierson, Eighth District Court Clerk ✓

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.  
Receipt for Remittitur.

DATE: May 09, 2016

Tracie Lindeman, Clerk of Court

By: Joan Hendricks  
Deputy Clerk

cc (without enclosures):

Hon. Eric Johnson, District Judge  
Frank Hearing, Jr.  
Clark County District Attorney  
Attorney General/Carson City

**RECEIPT FOR REMITTITUR**

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the  
REMITTITUR issued in the above-entitled cause, on MAY 13 2016.

**HEATHER UNGERMANN**

**Deputy** \_\_\_\_\_  
District Court Clerk

**RECEIVED**

**MAY 12 2016**

CLERK OF THE COURT

1 Frank Herring, 1006445  
2 Petitioner/In Propria Persona  
3 Post Office Box 208, SDCC  
4 Indian Springs, Nevada 89070

5 IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF  
6 THE STATE OF NEVADA IN AND FOR THE  
7 COUNTY OF Clark

8 State of Nevada

9 Plaintiff,

10 vs.

11 Frank Herring

12 Defendant,

Case No. C-13-291159-1

Dept. No. XX

Docket \_\_\_\_\_

13 ORDER

14 Upon reading the motion of defendant, Frank Herring, requesting  
15 withdrawal of counsel, Carl Arnold, Esq., of the Clark county Public  
16 Defender's Office, and Good Cause Appearing,

17 **IT IS HEREBY ORDERED** that defendant's Motion for Withdrawal of Counsel is  
18 GRANTED.

19 **IT IS HEREBY FURTHER ORDERED** that Counsel deliver to defendant at his address,  
20 all documents, papers, pleadings, discovery and any other tangible property in the above-entitled  
21 case.

22  
23 DATED and DONE this 26 day of September, 2017.

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

27 C-13-291159-1  
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*Steven D. Grierson*

1 Frank Herring, 1006445  
2 Petitioner/In Propria Persona  
3 Post Office Box 208, SDCC  
4 Indian Springs, Nevada 89070

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5 IN THE 8th JUDICIAL DISTRICT COURT OF  
6 THE STATE OF NEVADA IN AND FOR THE  
7 COUNTY OF \_\_\_\_\_

8 State of Nevada  
9 Plaintiff,  
10 vs.  
11 FRANK Herring  
12 Defendant,

Case No. C-13-291159-1  
Dept. No. XX  
Docket \_\_\_\_\_

13  
14 MOTION TO WITHDRAW COUNSEL

15 Date of Hearing: 10/31/17

16 Time of Hearing: 8:30 AM

17 'ORAL ARGUMENT REQUESTED, Yes \_\_\_ No \_\_\_'

18 COMES NOW, Defendant, FRANK Herring, proceeding in proper  
19 person, moves this Honorable Court for an ORDER Granting him permission to withdraw his  
20 present counsel of record in the proceeding action, namely,

21 Carl Arnold

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
24 Affidavit of Defendant.

25 DATED: this 26<sup>th</sup> day of September, 2017.

26 BY: Frank Herring  
27 FRANK Herring #1006445  
28 Defendant/In Propria Personam

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CLERK OF THE COURT

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1 POINTS AND AUTHORITIES

2 The Nevada Revised Statute 7.055(1), which deals with the duty of a discharged attorney, states:

3 "An attorney who has been discharged by his client shall, upon demand and payment of the fee due from  
4 the client, immediately deliver to the client all papers, documents, pleadings and items of tangible property  
which belong to or were prepared for that client."

5 As can be seen in this case, the defendant does not owe any fees, in fact, they, meaning counsel(s)  
6 of record, were appointed by the Court to represent the defendant, who was an indigent, in Case  
7 Number, C-13-291159-1, in Department No. XX.

8 N.R.S. 7.055(2) gives this Court the power to Order the Attorney(s) of record to produce and  
9 deliver to the defendant in his/her possession, which states:

10 "A client who, after demand therefore and payment of the fee due from him, does not receive from his  
11 discharged attorney all papers, documents, pleadings and items of tangible personal property may, by  
12 a motion filed after at least 5 days' notice to the attorney, obtain an order for the production of his papers,  
Documents, pleadings and other property."

13 In numerous cases throughout this great land, the courts have held attorneys to a high degree of  
14 professional responsibility and integrity. This carried from the time of hiring to and through the  
15 attorney's termination of employment.

16 Supreme Court Rule 173 states quite clear that a withdrawn attorney owes his former client a  
17 . . . prompt accounting of all his client's . . . property in his possession." This is echoed in Canon 2 of  
18 the Code of Professional Responsibility of the American Bar Association, which states in pertinent  
19 part EC 2-32: "A lawyer should protect the welfare of his client by . . . delivering to the client all  
20 papers and property to which the client is entitled." Again in Disciplinary Rule 2-110(A)(2) of the  
21 ABA, this is brought out that a withdrawn attorney must deliver to the client all papers and comply with  
22 applicable laws on the subject.

23 In the cases of In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963) and State v. Alvey, 215 Kan. 460,  
24 524 P.2d 747 (1974), both of which dealt with a factual situation involving a withdrawn attorney  
25 refusing to deliver to a former client his documents after being requested to do so by the client. The  
26 court in Yount, supra, ordered the attorney disbarred while in Alvey, supra, the court had the attorney  
27 censured.

1 While not the intention of the Defendant in this case to have the attorney disbarred, these cases do  
2 show a pattern in the court in considering the refusal to deliver to a former client all his documents  
3 and property after being requested to do so, a serious infraction of the law and of professional ethics.  
4 See, In Re Sullivan, 212 Kan. 233, 510 P.2d 1199 (1973).

5 In summary, this court has jurisdiction through NRS 7.055 to Order the attorney(s) to produce and  
6 deliver to the Defendant all documents and personal property in his/their possession belonging to him  
7 or prepared for him. The Defendant has fulfilled his obligations in trying to obtain the papers. The  
8 attorney(s) is in discord with Cannon 2 of the Code of Professional responsibility and the Nevada  
9 Supreme Court Rules 173, 176 and 203.

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DATED: this 26<sup>th</sup> day of September, 2017.

BY: Frank Herring #100641C  
Defendant/In Propria Personam



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AFFIDAVIT OF: FRANK HEARRING

STATE OF NEVADA )  
                          )  
COUNTY OF CLARK )     ss:

TO WHOM IT MAY CONCERN:

I, FRANK HEARRING the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following: I am requesting (all) Material related to case # C-13-291159-1, All material relative and/or under the attached "Brady Request," (3) pages. Note: On November 19, 2015 at 9:00am the request was made (originally) and Denied (Without Prejudice) as to the request for the specific Request. Defendant did receive P.S.I., however I am now requesting Brady Material, (Brady Request Attached.) See Attached (Brady Request) numbered (1-123 pages)

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 26<sup>th</sup> Day of September.

2017.

BY: Frank Hearring  
Post Office Box-203 (SDCC)  
Indian Springs, Nevada 89070  
Affiant, In Propria Personam:

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**CERTIFICATE OF SERVICE BY MAILING**

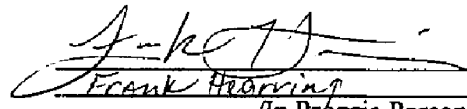
I, Frank Hearnings, hereby certify, pursuant to NRCP 5(b), that on this 26  
day of September, 2017, I mailed a true and correct copy of the foregoing, "Motion to  
Withdrawal of Counsel, "Brady Material" Request"  
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the  
United State Mail addressed to the following:

Carl Arnold Esq  
1148 S. Maryland Parkway  
Las Vegas, NV 89104

Steven B. Wolfson D.A.  
200 Lewis Ave 3rd Floor  
Las Vegas, NV 89155

CC:FILE

DATED: this 26<sup>th</sup> day of September, 2017.

  
Frank Hearnings # 10062546

In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and  
motion to withdrawal of Counsel. (Brady Request)  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:  
Kyles v. Whitley, 115 S.Ct. 1555, 1568 (1995)  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Frank Herring  
Signature

Sept 26, 2017  
Date

Frank Herring  
Print Name

\_\_\_\_\_  
Title

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*Brady request*

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.
2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received<sup>1</sup> in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation<sup>2</sup> of any benefit<sup>3</sup> of any kind to be received, or already received, by any witness presented by the State<sup>4</sup>. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.
3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may lead to admissible evidence<sup>5</sup>. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

<sup>1</sup> State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

<sup>2</sup> The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duggan v. State, 778 S.W.2d 463, 468 (Tex. Crim. App. 1989).

<sup>3</sup> Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996); Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004)

<sup>4</sup> Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duggan v. State, 778 S.W.2d 463, 468 (Tex. Crim. App. 1989).

<sup>5</sup> A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Striffler, 831 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

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- 4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense<sup>4</sup>. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted<sup>5</sup>, or may lead to information which would tend to impeach or affect the credibility of a State witness<sup>6</sup>, including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.
- 5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.
- 7. Any 911 recordings to include the relevant dispatch log.

<sup>4</sup>State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); Same acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness. Rudin v. State, 120 Nev. 121, 139 (2004).

<sup>5</sup>State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

<sup>6</sup>Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slawton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when, during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the defendant she saw in court. Jackson v. Weinwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carey v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Sunetz v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garcia, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 531-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).

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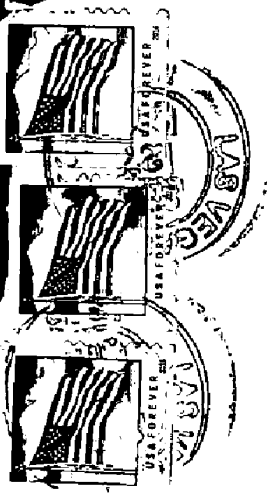
- 8. Copies of any and all video or audio recording of any form collected by the investigating officers or any other agent of the State during the course of the investigation.
- 9. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.
- 10. Photocopies or other reproduction of any and all handwritten or otherwise memorialized notes kept by the investigating police officers in this case (AKA "Case Monitoring Forms"), including, but not limited to, any notes documenting alternate suspects, investigative leads that were not followed up on, or any other matter bearing on the credibility of any State witness.
- 11. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.
- 12. Any and all information which shows that the defendant did not commit the crimes alleged, including, but not limited to, any information concerning an arrest of any other individual for the charged crime<sup>9</sup> and any information suggesting a possible suspect other than the defendant,<sup>10</sup> including investigative leads to other suspects<sup>11</sup>.

<sup>9</sup>Banks v. Reynolds, 54 P.3d 1308, 1518 n.21 (10<sup>th</sup> Cir. 1995).

<sup>10</sup>State's failure to disclose evidence of another perpetrator violated Brady. Lay v. State, 116 Nev. 1185, 1195-96 (2000). Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Marzan v. Warden, 116 Nev. 48, 69 (2000); Blanchworth v. State, 512 A.2d 1056, 1059-60 (1986).

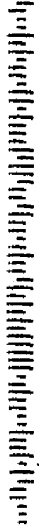
<sup>11</sup>Himenez v. State, 142 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

Mr. Frank Herring #1006445  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs, NV 89070



Steven D. Grierson  
(Clerk of the Court)  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155-1160

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05/10/2005

10:05 AM



1 **ORDG**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MEGAN THOMSON  
6 Chief Deputy District Attorney  
7 Nevada Bar #011002  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 FRANK HEARRING, aka,  
14 Frank Hearing, Jr., #1774466

15 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

16 **ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW COUNSEL**

17 DATE OF HEARING: October 31, 2017  
18 TIME OF HEARING: 8:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the  
20 31st day of October, 2017, the Defendant not being present, incarcerated in the Nevada  
21 Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON,  
22 District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, without  
23 argument, based on the pleadings and good cause appearing therefor,

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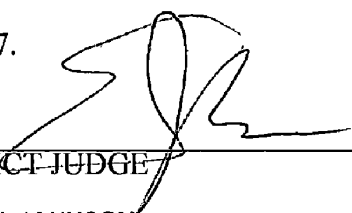
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1 IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Counsel, shall  
2 be, and it is GRANTED.

3 DATED this 13 day of November, 2017.

4  
5   
DISTRICT JUDGE

ERIC JOHNSON *KM*

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
Nevada Bar #001565

8  
9 BY 

MEGAN THOMSON  
10 Chief Deputy District Attorney  
11 Nevada Bar #011002  
12  
13  
14

CERTIFICATE OF SERVICE

15 I certify that on the 14th day of November, 2017, I mailed a copy of the foregoing  
16 Order to:

17  
18 FRANK HEARRING, JR., BAC #1006445  
SDCC  
19 P.O. BOX 208  
20 INDIAN SPRINGS, NV 89070  
21

22 BY 

Secretary for the District Attorney's Office  
23  
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28 13F08177X: ckb/L4

27

*Steven D. Grierson*

1 FRANK HEARRING ID NO: 1006445  
2 Southern Desert Correctional Center  
3 Post Office Box 208  
4 Indian Springs, Nevada 89070-0208

*MC  
DA  
PP*

6 IN THE JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 FOR THE COUNTY OF

8 FRANK HEARRING

1-02-18 8:30A

9 Plaintiff,

Case No: C-13-291159-1

10 v.

Dept. No: XX

11 State of Nevada

12 Defendant

13 NOTICE OF MOTION

14 MOTIONS FOR MODIFICATION OF SENTENCE

15 Comes now, Defendant, FRANK HEARRING, pro per, and respectfully moves  
16 this Honorable court for a modification of sentence.

17 This motion is based pursuant to the supporting Points and Authorities attached hereto, NRS  
18 176.555, as well as all papers pleading, and documents on file herein.

19 POINTS AND AUTHORITIES

20 1. STANDARD OF REVIEW

21 The Nevada Supreme Court has long recognized that Court's have the power and Jurisdiction to  
22 modify a sentence, see, Staley v. State, 787 P.2d 396, 106 Nev. 75 (1990):

23 "That if a sentencing court pronounces sentence within statutory limits, the court will have  
24 Jurisdiction to MODIFY, suspend or other wise correct that sentence if it is based upon  
25 materially untrue assumptions or mistakes which work to the extreme detriment of the  
26 defendant"

CLERK OF THE COURTS

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1 Defendant believes that this court has, based upon Staley, the jurisdiction to MODIFY his  
2 sentence, due to that sentence being pronounced based upon a Pre-Sentence Investigation Report which  
3 did have several material facts in error, which will be discussed below in the statement of facts.

4 Respondent may argue that laches apply due to the fact that thee [3] years have passed since  
5 sentence was pronounced. However, the Nevada Supreme Court held that such time requirement does not  
6 apply to a request for Modification of Sentence, see, Passanisi v. State, 831 P2d 1371, 108 Nev. 318  
7 (1995):

8  
9 ... "we note that the trial court has inherent authority to correct a sentence at any time if such  
10 sentence based on mistake of material fact that worked to the extreme detriment of the defendant.  
11 (Citations Omitted). If the trial court has inherent authority to correct a sentence, a Fortiori, it has  
12 the power to entertain a motion requesting it to exercise that inherent authority... Thus, the time  
13 limits and other restrictions with respect to a post-conviction relief do not apply to a Motion to  
14 Modify a Sentence based on a claim that the sentence was illegal or was based on an untrue  
15 assumption of the fact that amounted to denial of due process (Emphasis added) Id. 831 P2d at  
16 1372n. 1. See also, Edwards v. State, 918 P2d 321, 324, 112 Nev. 704 (1996).

17 Defendant, as stated above, is alleging that his sentence by this Court was based upon  
18 assumptions founded upon his Pre-Sentence Investigation Report (PSI) that had several factors in error,  
19 and as such, his constitutional right to due process was violated. See, State v. District Court, 677 P2d  
20 1044, 100 Nev. 90 (1984):

21 The district court's inherent authority to correct a judgment or sentence founded on mistake is in  
22 accord with the constitutional considerations underlying the sentencing process. The United  
23 States Supreme Court has expressly held that where a defendant is sentenced on the basis of  
24 materially untrue assumptions concerning his criminal record, "(the) result whether caused by  
25 carelessness or design, is inconsistent with due process of law". Townsend v. Burke, 736, 741,  
26 68 S. Ct. 12552, 1255, 92 L. Ed. 1690 (1948). Further, the cases clearly established that  
27 constitutionally Violate "materially untrue assumptions" concerning a criminal record may arise  
28 either as a result of a sentencing judge's correct perception of misapprehension. (Emphasis in  
29 original). Id. 677 P2d at 1048 n. 3.

30 Defendant would asks that this Court not perceive this request to be pointing the finger at the  
31 Court and saying 'you were wrong' as that is not the case. Defendant is merely requesting that the Court  
32 reconsider the sentence that was pronounced based upon mistakes of fact in the PSI report and at  
33 sentencing.

II. STATEMENT OF FACTS

On July 15, 2013, the state charged petitioner (Frank Herring) by way of information with the following: Count 1 - Murder with Use of a Deadly Weapon; Count 2 - Attempt - Murder with Use of a Deadly Weapon; Count 3 - Discharging Fire Arm at or into structure, vehicle, Aircraft or Watercraft; and Count 4 - Possession of Fire Arm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Petitioner entered into a Guilty Plea Agreement (GPA) with the state, wherein Petitioner agreed to plead guilty to one Count of Murder (Second Degree) with Use of a Deadly Weapon.

On December 10, 2013, Petitioner was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement.

On May 17, 2013 Detective, Buddy Embrey, P# 8644; Detective Mogg and Crime Scene Analyst Experts: Dahn, Robbin P# 5947, Reed, Gary P# 3731 and Morton, Larry P# 4935. Detective(s) and/or Crime Scene Analyst Experts failed to conduct a thorough investigation, failed to thoroughly perform forensic testing investigative duties such as locate, test and process mitigating evidence. This failure of Crime Scene Analyst Experts and/or Detectives to collect and/or thoroughly process Crime Scene evidence denied Petitioner a Constitutional right to an appropriate investigation which were not followed-up on and/or completed by law enforcement, which lead up to Petitioner's plea negotiations because of Detective(s) and/or Crime Scene Analyst Experts bias which would constitute and/or otherwise impeach

III STATEMENT OF FACTS

1  
2 their credibility violating petitioners Constitutional and/or  
3 rights(s) to Due process during a serious Criminal Proceedings).

4  
5 These elements are instrumental in either proving a —  
6 defendant's guilt or innocentance performing these forensic  
7 testing investigative duties.

8  
9 Crime Scene Expert Analyst(s) and/or Detective(s) Mishandled  
10 potential evidence that could exonerate petitioner when they  
11 concluded that based on witnesses statements of hearing  
12 one caliber of gun and/or that the spent 9mm cartridge  
13 casings are unrelated and from a previous shooting. —

14  
15 Petitioner also alleges prejudice ensued because evidence must  
16 be considered collectively, not item by item. However Detectives State  
17 in their Application And Affidavit For Search Warrant, Event Number  
18 130517-0127 that based (only) on witnesses hearing only one caliber  
19 of gun and all the other witnesses described hearing 5-7 shots, your  
20 (affiant believes) the spent 9mm cartridge casings are unrelated and  
21 from a previous shooting, when the evidence at issue was favorable  
22 to the petitioner. This nondisclosure undermines confidence in the  
23 outcome of the trial which would impeach the credibility, thorough-  
24 ness and good faith of the police investigation and furthermore  
25 impeach the credibility of state's witnesses.

26  
27 The above stated issue is favorable to the petitioner; the evidence was  
28 withheld by the (State Crime Scene Experts and/or Detectives) either intention-  
29 ally or ~~intentionally~~ inadvertently; and prejudice ensued.

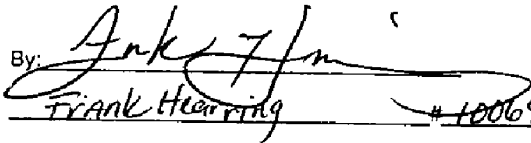
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CONCLUSION

WHEREFORE, all of the above stated reasons, Defendant respectfully requests this Honorable Court to Modify his/her Sentence in accordance with this Court's fair and just consideration of the facts of the case.

Dated this 3rd day of December, 2017.

By:   
Frank Herring #1006445

Southern Desert Correctional Center  
P.O. BOX 208  
INDIAN SPRINGS, NEVADA 89070-208

+

1 FRANK HERRING certify that the foregoing "Motion For  
2 Modification of Sentence", was served upon the Respondent pursuant to NRCP 5 (b), by placing same in  
3 the United States Postal Service, postage being fully pre-paid, and addressed as follows:  
4  
5

6 Clerk of Courts

District Attorney's Office

7 Steven B. Grierson

Steven B. Wolfson

8 200 Lewis Ave 3rd Floor

200 Lewis Avenue P.O. Box 552012

9  
10 Las Vegas, NV 89155-1160

Las Vegas, NV 89155-2212

11  
12  
13  
14 Dated this 3rd day of December, 2017.

15  
16  
17 By: Frank Herring

Frank Herring

#1006415

18  
19  
20 P.O. Box  
Indian Springs, NV. 89070

21  
22 Defendant, In Proper Person  
23  
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AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

for Modification OF Sentence.  
(Title of Document)

filed in District Court Case number 0-13-291159-1

Does not contain the social security number of any person.

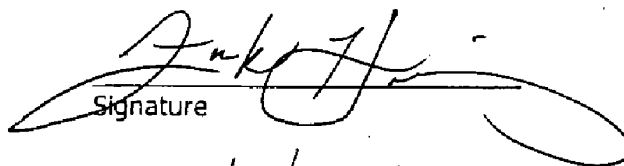
-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:  
Mazzan V. Warden, 116 Nev. 48 2000  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

  
Signature

Dec 3, 2017  
Date

FRANK Hearing  
Print Name

\_\_\_\_\_  
Title



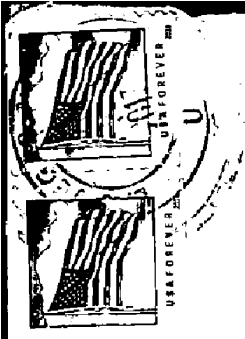
FRANK HEARING # 1001045  
Southern Desert Correctional Center  
P.O. Box 208  
07088 NV, 89155-0208

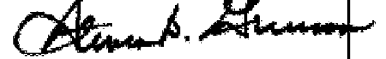
STEVEN D. ENIERTSON  
Clerk of the Court  
800 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

5400 0009310159

Outgoing Mail

Southern Desert  
Correctional Center  
DEC 04 2017





1 **OPPM**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 FRANK HEARRING, aka,  
13 Frank Hearing, Jr., #1774466  
14 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

15 **STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR SENTENCE**  
16 **MODIFICATION**

17 DATE OF HEARING: January 2, 2018  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Opposition to Defendant's Motion for Sentence  
22 Modification.

23 This Opposition is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

26 //

27 //

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//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 15, 2013, the State charged Frank Herring (hereinafter "Defendant")  
4 by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon;  
5 Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At  
6 or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-  
7 Felon.

8 On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea  
9 Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count  
10 of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted  
11 a plea canvass on the record and thereafter accepted Defendant's plea. An Amended  
12 Information was filed in open court reflecting the charge contained in the GPA.

13 On December 10, 2013, Defendant was present in court for sentencing, and was  
14 sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility  
15 after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of  
16 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time  
17 served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did  
18 not file a direct appeal.

19 On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of  
20 his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the  
21 motion.

22 On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and  
23 Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On  
24 December 4, 2014, the court denied the motion, finding the request for evidentiary hearing  
25 was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

26 On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22,  
27 2014, the State filed its Opposition. On January 6, 2015, the Court denied Defendant's  
28 Motion, finding that Defendant's claims of involuntariness were belied by the record and his

1 claims of ineffectiveness were without merit. The district court filed its Order on January 16,  
2 2015.

3 On March 30, 2015, Defendant filed a post-conviction Petition for Writ of  
4 Habeas Corpus ("Petition"). The State filed its Response on July 31, 2015. On August 4,  
5 2015, the Court denied Defendant's Petition. A Findings of Fact, Conclusions of Law and  
6 Order was filed on September 14, 2015. On October 6, 2015, Defendant filed a Notice of  
7 Appeal. The Supreme Court affirmed the District Court's denial on April 14, 2016.

8 Defendant filed four Motions for Withdrawal of the Attorney of Record or in the  
9 Alternative, Request for Records/Court Documents between the denial of his Habeas Corpus  
10 appeal, and the instant motion. The motions were granted with respect to the presentence  
11 investigation report and denied with respect to all other documents. Additionally, on October  
12 6, 2017, Defendant filed a Motion to Withdraw Counsel. On October 31, 2017, the court  
13 granted Defendant's Motion to Withdraw Counsel because Defendant did not have any  
14 outstanding motions before the court.

15 Defendant filed the instant motion on December 11, 2015. The State responds as  
16 follows.

### 17 ARGUMENT

#### 18 **I. DEFENDANT IS NOT ENTITLED TO SENTENCE MODIFICATION.**

19 Defendant is not entitled to a sentence modification because a district court only has  
20 jurisdiction to modify a sentence in limited circumstances.

21 In general, a district court lacks jurisdiction to modify a sentence once the defendant  
22 has started serving it. Passanisi v. State, 108 Nev. 318, 321, 831 P.2d 1371, 1373 (1992).  
23 However, a district court has inherent authority to correct, vacate, or modify a sentence that  
24 violates due process where the defendant can demonstrate the sentence is based on a materially  
25 untrue assumption or mistake of fact about the defendant's criminal record that has worked to  
26 the *extreme detriment* of the defendant. Edwards v. State, 112 Nev. 704,707, 918 P.2d 321,  
27 324 (1996) (emphasis added); see also Passanisi, 108 Nev. at 322, 831 P.2d at 1373.

28 //

1 Not every mistake or error during sentencing gives rise to a due process violation. State  
2 v. Eighth Judicial Dist. Court, 100 Nev. 90, 97, 677 P.2d 1044, 1048 (1984). A district court  
3 has jurisdiction to modify a defendant's sentence "only if (1) the district court actually  
4 sentenced appellant based on a materially false assumption of fact that worked to appellant's  
5 extreme detriment, and (2) the particular mistake at issue was of the type that would rise to the  
6 level of a violation of due process." Passanisi, 108 Nev. at 322-23, 831 P.2d at 1373-74.

7 **A. Defendant's Allegations Are Insufficient To Warrant Relief.**

8 Defendant claims that two detectives and one crime scene analyst were deficient in their  
9 investigation of his case and that they failed to take the entirety of the crime into account  
10 during their investigation. Motion at 3-4. However, that is not the standard required for  
11 modifying a sentence. Whether or not the investigators were deficient in their investigation is  
12 irrelevant to whether or not the court can modify Defendant's sentence, as the requirement is  
13 that the sentencing court would have had to make a mistake about Defendant's "*criminal*  
14 *record that had worked to his extreme detriment*" in order to modify his sentence. Edwards,  
15 112 Nev. 704, 707 (1996). In the instant Motion, there is no indication that the sentence  
16 imposed was based on any materially false assumptions of fact that worked to Defendant's  
17 extreme detriment, and without a mistake, during sentencing, it cannot be said that  
18 Defendant's due process was violated when he was sentenced. As a result, the instant Motion  
19 must be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion for Modification of Sentence be denied.

DATED this 26 day of December, 2017.

Respectfully submitted,

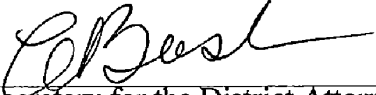
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
STEVEN OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 26th day of December, 2017, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING, BAC#1006445  
SDCC  
P.O. BOX 208  
INDIAN SPRINGS, NV, 89070-0208

BY   
Secretary for the District Attorney's Office

13F08177X: jw/SSO/ckb/L4

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DA  
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Electronically Filed  
12/29/2017 10:58 AM  
Steven D. Grierson  
CLERK OF THE COURT

JB

FRANK HARRING # 1006445  
S.D.C.C.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89018  
PETITIONER - IN PROPER PERSON

*Steven D. Grierson*

DISTRICT COURT  
CLARK COUNTY, NEVADA

FRANK HARRING, JR )  
Petitioner )  
v. )  
State of Nevada )  
Respondent )

CASE # C-13-291159-1

DEPT. # XX

Hearing Date: 1-23-18

Time: 8:30am

MOTION TO COMPEL

COMES NOW, Petitioner FRANK HARRING, in and through  
his proper person hereby moves this Honorable Court for an Order compelling:

Carl Arnold Esq

This motion is made and based upon all papers and pleadings on file with the Clerk of  
the Court, which are hereby incorporated by this reference, the Points and Authorities  
herein, and attached Affidavit of Petitioner.

Dated: this 19<sup>th</sup> day of December, 2017.

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CLERK OF THE COURT

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RECEIVED  
DEC 26 2017  
CLERK OF THE COURT

Submitted by: *Frank Haring*  
Frank Haring # 1006445  
Petitioner / In Proper Person

POINTS AND AUTHORITIES

On the 31<sup>st</sup> day of October, 2017, the Court had granted the Petitioner's, "Motion to Withdraw Counsel".  
However, Carl Arnold Esq has failed to comply with the Order from this Honorable Court. This Court has the power and duty to enforce its lawful judgment pursuant to N.R.S. 1.210 which states in pertinent part ;

*" Every court shall have power :*

1. *To preserve and enforce order in its immediate presence.*
2. *To enforce order in the proceedings before a person or persons empowered to conduct a judicial investigation under its authority.*
3. *To compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein.*
4. *To control ,in furtherance of justice, the conduct of its ministerial offers." (emphasis added)*

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340 which states in pertinent part that:

*" Every person who shall commit a contempt of court of any one of the following kind shall be guilty of a misdemeanor:*

*...4. Willful disobedience to the lawful process or mandate of the court;..."  
(emphasis added)*

In closing, by Carl Arnold Esq not adhering to the order of this court  
Carl Arnold Esq has displayed contempt. Petitioner cites three cases,



In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel Carl Arnold Esq to comply with the order and find Carl Arnold Esq guilty of contempt for not obeying the lawful order of this Court.

DATED: this 18<sup>th</sup> day of December, 2017

Submitted by: J-K-H  
Frankie Herring 1006455  
Petitioner / In Proper Person

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AFFIDAVIT OF: Frank Herring

STATE OF NEVADA )  
                          )     ss:  
COUNTY OF CLARK )

TO WHOM IT MAY CONCERN:

I, Frank Herring the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following:

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED At: Indian Springs, Nevada, this 18<sup>th</sup> Day Of December,

2017.

By: Frank Herring  
Frank Herring # 10010415  
Post Office Box-208 (SDCC)  
Indian Springs, Nevada, 89070.  
Affiant, In Propria Personam:

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CERTIFICATE OF SERVICE BY MAILING

I, Frank Hearing, hereby certify, pursuant to NRCP 5(b), that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a true and correct copy of the foregoing, "Motion To Compel"

by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Steven D. GrierSON  
Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

Steven B. Wolfson  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, NV 89155-2212

CC:FILE

DATED: this 18<sup>th</sup> day of September, 2017.

Frank Hearing  
/s/ Propria Personam #100144  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion To Compel

(Title of Document)

filed in District Court Case number C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application for a federal or state grant.

[Signature]  
Signature

12/18/17  
Date

Frank Hearing  
Print Name

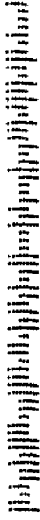
\_\_\_\_\_  
Title

Mr. Frank Hearning # 1006445  
Southern Desert Correctional Center  
P.O. Box 208  
Indian Springs NV 89070



LAS VEGAS NV 890  
20 DEC 2017 PM 2 L

Steven D. Giverson  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160



000003-10158

SOUTHERN DESERT  
CORRECTIONAL CENTER  
DEC 19 2017  
OUTGOING MAIL



1 **ORDD**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MEGAN THOMSON  
6 Chief Deputy District Attorney  
7 Nevada Bar #011002  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 FRANK HEARRING, aka,  
14 Frank Hearing, Jr., #1774466

15 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

16 **ORDER DENYING DEFENDANT'S PRO PER MOTION FOR MODIFICATION**  
17 **OF SENTENCE**

18 DATE OF HEARING: January 2, 2018

19 TIME OF HEARING: 8:30 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the  
21 2nd day of January, 2018, the Defendant not being present, incarcerated in the Nevada  
22 Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON,  
23 District Attorney, through MEGAN THOMSON, Chief Deputy District Attorney, without  
24 argument, based on the pleadings and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Modification of  
2 Sentence, shall be, and it is DENIED.

3 DATED this 4 day of January, 2018.

4  
5   
DISTRICT JUDGE  
ERIC JOHNSON *KM*

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
8 Nevada Bar #001565

9 BY 

MEGAN THOMSON  
10 Chief Deputy District Attorney  
11 Nevada Bar #011002

12  
13  
14 CERTIFICATE OF SERVICE

15 I certify that on the 8<sup>th</sup> day of January, 2018, I mailed a copy of the foregoing Order

16 to:

17 FRANK HEARRING, BAC #1006445  
18 SDCC  
19 P.O. BOX 208  
20 INDIAN SPRINGS, NV 89070-0208

21 BY 

22 Secretary for the District Attorney's Office

23  
24  
25  
26  
27  
28 13F08177X: ckb/L4



1 **ORDG**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 LEAH BEVERLY  
6 Chief Deputy District Attorney  
7 Nevada Bar #012556  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 FRANK HEARRING, aka,  
14 Frank Hearing, Jr., #1774466

15 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

16 **ORDER GRANTING DEFENDANT'S PRO PER MOTION TO COMPEL**

17 DATE OF HEARING: January 23, 2018  
18 TIME OF HEARING: 8:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the  
20 23rd day of January, 2018, the Defendant not being present, incarcerated in the Nevada  
21 Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON,  
22 District Attorney, through LEAH BEVERLY, Chief Deputy District Attorney, without  
23 argument, based on the pleadings and good cause appearing therefor,

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W:\2013\2013F081V7\13F08177-ORDG-(HEARRING\_FRANK)-002.DOCX



1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Compel, shall be,  
2 and it is GRANTED and Mr. Carl Arnold, Esq. is directed to send the file to Defendant.

3 DATED this 31 day of January, 2018.

4  
5   
DISTRICT JUDGE

ERIC JOHNSON *KMJ*

6 STEVEN B. WOLFSON  
7 Clark County District Attorney  
8 Nevada Bar #001565

9 BY 

LEAH BEVERLY  
10 Chief Deputy District Attorney  
11 Nevada Bar #012556

12  
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14 CERTIFICATE OF SERVICE

15 I certify that on the 2nd day of February, 2018, I mailed a copy of the foregoing

16 Order to:

17 FRANK HEARRING, JR., BAC #1006445  
18 SDCC  
19 P.O. BOX 208  
20 INDIAN SPRINGS, NV 89070

21  
22 BY 

Secretary for the District Attorney's Office

23  
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28 13F08177X: ckb/L4

Electronically Filed  
6/6/2018 2:21 PM  
Steven D. Grierson  
CLERK OF THE COURT

79

*Steven D. Grierson*

FRANK HERRING #1006445  
S.D.C.C.  
P.O. BOX 208  
INDIAN SPRINGS, NV 89018  
PETITIONER - IN PROPER PERSON

MC  
DA  
PP

DISTRICT COURT  
CLARK COUNTY, NEVADA

CASE # C-13-291159-1

FRANK HERRING )  
Petitioner )  
v. )  
State of Nevada )  
Respondent )

DEPT.# XX

Date: 06/28/18 Time: 9:00 AM

MOTION TO COMPEL

COMES NOW, Petitioner FRANK HERRING, in and through  
his proper person hereby moves this Honorable Court for an Order compelling: Att-  
orney Carl Arnold Esq

This motion is made and based upon all papers and pleadings on file with the Clerk of  
the Court, which are hereby incorporated by this reference, the Points and Authorities  
therein, and attached Affidavit of Petitioner.

Dated: this 23<sup>rd</sup> day of May, 2018.

CLERK OF THE COURT

JUN 06 2018

RECEIVED

CLERK OF THE COURT

MAY 30 2018

RECEIVED

Submitted by: Frank Herring  
FRANK HERRING #1006445  
Petitioner / In Proper Person

POINTS AND AUTHORITIES

On the 31<sup>st</sup> day of October, 2017, the Court had granted the  
Petitioner's, "Motion To Compel".

However, Carl Arnold has failed to comply with the Order from this  
Honorable Court. This Court has the power and duty to enforce its lawful judgment  
pursuant to N.R.S. 1.210 which states in pertinent part ;

*" Every court shall have power :*

1. *To preserve and enforce order in its immediate presence.*
2. *To enforce order in the proceedings before a person or persons  
empowered to conduct a judicial investigation under its authority.*
3. *To compel obedience to its lawful judgments, orders and process, and  
to the lawful orders of its judge out of court in an action or proceeding  
pending therein.*
4. *To control ,in furtherance of justice, the conduct of its ministerial  
offers." (emphasis added)*

Failure to comply with a court's order constitutes contempt under N.R.S. 199.340  
which states in pertinent part that:

*" Every person who shall commit a contempt of court of any one of the  
following kind shall be guilty of a misdemeanor:*

*...4. Willful disobedience to the lawful process or mandate of the court;..."  
(emphasis added)*

In closing, by Carl Arnold not adhering to the order of this court  
Carl Arnold has displayed contempt. Petitioner cites three cases,

In Re Yount, 93 Ariz. 322, 380 P.2d 780 (1963), State v. Alvey, 215 Kan. 460, 524 P.2d 747 (1974) and In Re Sullivan, 212 Kan. 233 510 P.2d 1199 (1973) that all deal with attorneys that refused to abide by the rulings of their respective courts and were either disbarred or censored. Petitioner prays this honorable Court compel Carl Arnoldesq to comply with the order and find Carl Arnoldesq guilty of contempt for not obeying the lawful order of this Court.

DATED: this 23<sup>rd</sup> day of May, 2018.

Submitted by: Frank Herring  
Frank Herring 1006446  
Petitioner / In Proper Person

///

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AFFIDAVIT OF: FRANK HERRING

STATE OF NEVADA )  
                          )     ss:  
COUNTY OF CLARK )

TO WHOM IT MAY CONCERN:

I, FRANK HERRING the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and as to those, I believe them to be True and Correct. Signed under the penalty of perjury, pursuant to, NRS. 29.010; 53.045; 208.165, and state the following: I filed this motion back in sept 2017, It was ruled on and granted on October 31, 2017, however as of May 8, 2018 I have yet to receive my file or anything related to case # C-13-291159-1 from Carl Arnold Esq. This Attorney has displayed complete disregard to any of the thoroughly disclosed information as well as (any) previously rendered litigation related to the disclosure of materials in the possession of all state agents connected with the prosecution, including police and other investigative agencies. Kyles v. Whitley, 115 S.Ct. 1555, 1568 (1995)

FURTHER YOUR AFFIANT SAYETH NAUGHT.

EXECUTED AT: Indian Springs, Nevada, this 23 Day Of May

2018.

BY: Frank Herring # 700645  
Post Office Box-208 (SDCC)  
Indian Springs, Nevada. 89070-1  
Affiant, In Propria Personam:

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**CERTIFICATE OF SERVICE BY MAILING**

I, Frank Herring, hereby certify, pursuant to NRCP 5(b), that on this 23<sup>rd</sup> day of May, 2018, I mailed a true and correct copy of the foregoing, "Motion To Compel"

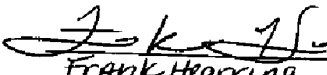
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the United State Mail addressed to the following:

Carl Arnold Esq  
1148 S. Maryland Pkwy  
Las Vegas, NV 89104

Steven B. Wolfson  
200 Lewis Avenue  
P.O. Box 552212  
Las Vegas, NV 89155-2212

CC:FILE

DATED: this 23<sup>rd</sup> day of May, 2018.

  
Frank Herring # 1006445  
/In Propria Personam  
Post Office Box 208, S.D.C.C.  
Indian Springs, Nevada 89018  
**IN FORMA PAUPERIS:**

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding \_\_\_\_\_

Motion To Compel  
(Title of Document)

filed in District Court Case number C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

Kyles v. Whitley 115 S.Ct. 1555, 1568 (1995)  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Frank Hearing  
Signature

May 23, 2018  
Date

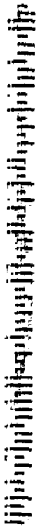
FRANK Hearing  
Print Name

\_\_\_\_\_  
Title

Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, NV 89702

STEVEN S. GRIERSON  
200 Lewis Avenue, 3rd floor  
Las Vegas, NV 89155-1160

6510136300 0075



OUTGOING MAIL  
MAY 24 2018  
NEVADA DEPARTMENT OF CORRECTIONS  
WARM SPRINGS CORRECTIONAL CENTER



Original

PP  
DA

Frank Herring  
Pro Se Defendant  
P.O. Box 7007  
Carson City, NV 89702

**FILED**  
OCT 01 2018 7  
*Alvin Williams*  
CLERK OF COURT

NOVEMBER 6, 2018  
@ 8:30 AM

DISTRICT COURT  
CLARK COUNTY, NEVADA

State of Nevada,  
Plaintiff,

C-13-291159-1  
MOT  
Molton  
4784673



vs - Case No. C-13-291159-1  
Dept. No. XX

Frank Herring, Jr.,  
Defendant

MOTION FOR ORDER TO SHOW CAUSE,  
CONTEMPT OF COURT AND MONETARY  
SANCTIONS

Comes Now, Defendant Frank  
Herring, Pro Se, and Files this  
Motion For Order To Show Cause,  
Contempt of Court and Monetary  
Sanctions, NRCR Rule 11, and  
pursuant to NRS 7.055, and states:

p. 1

RECEIVED  
OCT 01 2018

CLERK OF THE COURT

## I. Statement of Facts

In the case at bar, Defendant was represented by Counsel Carl Arnold, Esq. Upon completion of the case Defendant demanded his case file in accordance with NRS 7.055(1), after Counsel failed to comply with the demand Defendant filed a Motion on or about September, 2017 requesting the Court to issue a Order of Production in accordance to NRS 7.055(2). The Court granted Defendants order and directed Counsel to produce Defendants file to him. Based that Counsel refused to comply with this Courts order Defendant was forced to file yet another motion; (Motion To Compel) on June 6, 2018 in which once again Counsel was served a copy. The matter was set for hearing before this Court on July 31, 2018 and all parties were duly

notified by the Court. At the hearing, Counsel Mr. Arnold failed to appear and failed to file any responsive pleadings such as a Motion For Enlargement of time or continuance, or otherwise inform the court that he was not available for hearing. A second hearing was held on Aug. 2, 2018, again Counsel failed to appear. As of the filing of this Motion Counsel has not provided Defendant with his case file even after being ordered to do so, and even with the knowledge that he failed to appear at this court's scheduled hearing(s) to show cause see Exhibit A

## II. Argument / Authority

Counsel, Mr. Arnold has shown total disregard to his duties as a representative of the Court, he has knowingly and willingly disregard this court's orders to produce Defendant's file

and has impeded upon Defendants rights to file post-conviction pleadings by withholding Defendants File.

Counsel has Failed to appear at this Courts hearings even after receiving notice(s) and even with that knowledge has continued to not come into compliance with his obligations under NRS 7.055(1) without just cause and has willfully neglected to obey this Courts order issued on October 31, 2017, and on July 31, and Aug 2, 2018.

The law is clear under NRS 7.055 and mandatory, based on Counsel's disregard and neglect without just cause he should be held in contempt, a Fine imposed or imprisonment until the contempt is purged, NRS 7.055(2), and he should be made to pay Defendant a reasonable cost(s) as sanctions under NRCR Rule 11(c); NRS 7.055(2)

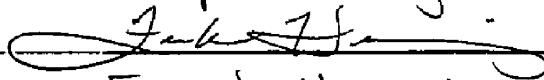
Based that Counsel's conduct has impeded upon Defendants rights, and counsel acted with total disregard to this courts order and his obligation to Defendant and performance under the law. The reasonable cost in this case should be such an amount to deter repetition of such conduct or comparable conduct by others similarly situated.

wherefore, its prayed upon this court to hold counsel, Mr. Carl Arnold, Esq. in contempt of court and impose monetary sanctions appropriately, and for such other relief as this court deems just and proper.

This document does not contain the social security number of any person.

Dated this 24<sup>th</sup> day of September 2018

Respectfully Submitted,



Frank Herring,  
Pro Se Defendant

P.O. Box 7007

Carson City, NV 89702

Tel. No Phone

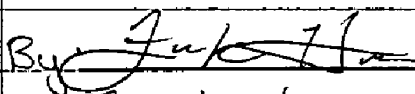
### certificate of service

I certify that on this 24<sup>th</sup> day of  
September 2018, I mailed a copy  
of this Motion To Show Cause,  
prepaid postage, via U.S. Postal  
Service to:

Carl Arnold Esq.,

1148 S. Maryland Pk. Wy

Las Vegas, NV 89104

By 

Frank Herring

Pro Se Defendant

P.O. Box 7007

Carson City, NV 89702

Frank Hearring  
DOC:1006445  
P.O. Box 7007  
Carson City, NV 89702

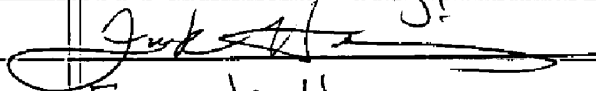
Clerk of Court  
200 Lewis Av, 3rd Floor  
Las Vegas, NV 89155-1160

RE: state us - Hearring  
Case No. C-13-291159-1  
Filing of Motion

Please find enclosed the original  
and a copy of Motion For Order  
To Show Cause, please file the  
original and endorse the enclosed  
copy with the filing date and  
return to me for my records.

In advance, thank you.

Sincerely,

  
Frank Hearring

# Exhibit Index

Exhibit A

OFFICIAL COURT  
minutes.  
pg's (2)



Exhibit A

P8

ORIGINAL

C-13-291159-1

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 31, 2018

C-13-291159-1      State of Nevada  
vs  
Frank Herring, Jr.

July 31, 2018      8:30 AM      Show Cause Hearing

HEARD BY: Leavitt, Michelle

COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

**PARTIES**

**PRESENT:**      Kern, Samuel R.  
State of Nevada

Deputy District Attorney  
Plaintiff

**JOURNAL ENTRIES**

( Deft. not present; not transported. Former counsel Carl Arnold, Esq., not present. COURT ORDERED, matter CONTINUED for Mr. Arnold to appear and make representations regarding whether the case file was turned over to Deft. )

NDC

8/02/18 8:30 A.M. SHOW CAUSE HEARING

CLERK'S NOTE: JEA notified Mr. Arnold regarding next Court date. /// sb

CLERK'S NOTE: A copy of the above minute order was delivered by regular mail to Frank Herring, #1006445, Southern Desert Correctional Center, P.O. BOX 208, Indian Springs, Nevada 89018. /// sb

PRINT DATE: 07/31/2018

Page 1 of 1

Minutes Date: July 31, 2018

C-13-291159-1

Original

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 02, 2018

C-13-291159-1      State of Nevada  
vs  
Frank Herring, Jr.

August 02, 2018      8:30 AM      Show Cause Hearing

HEARD BY: Leavitt, Michelle      COURTROOM: RJC Courtroom 14D

COURT CLERK: Susan Botzenhart

RECORDER: Kristine Santi

REPORTER:

PARTIES

PRESENT:      Holthus, Mary Kay      Chief Deputy District Attorney  
State of Nevada      Plaintiff

JOURNAL ENTRIES

Deft. not present; was not transported and is incarcerated in Nevada Department of Corrections (NDC). Former counsel Carl Arnold, Esq., not present. At request of Mr. Arnold, which was made to Chambers prior to the case being called, COURT ORDERED, matter CONTINUED for Mr. Arnold to appear and make representations regarding whether the case file was turned over to Deft. FURTHER, Mr. Arnold to turn over the case file to Deft, if not already done so.

NDC

9/04/18 8:30 A.M. SHOW CAUSE HEARING

CLERK'S NOTE: JEA notified Mr. Arnold regarding next Court date. /// sb

CLERK'S NOTE: A copy of the above minute order was delivered by regular mail to Frank Herring, #1006445, Southern Desert Correctional Center, P.O. BOX 208, Indian Springs, Nevada 89018. /// sb

PRINT DATE: 08/02/2018

Page 1 of 1

Minutes Date: August 02, 2018

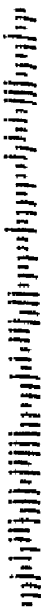
Mr. Frank Harrington #1006445  
D.S.C.C.  
P.O. Box 7007  
Carson City, NV 89702

Legal-3763

Steven D. Grierson  
Clerk of the Court  
200 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160



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LEADER DEVELOPMENT SERVICES  
NEVADA DEPARTMENT OF CORRECTIONS  
MAIL SERVICES DIVISION  
SEP 7 6 2018  
OUTGOING MAIL

Hearing, Frank #1006445  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, Nevada, 89702

Electronically Filed  
11/26/2018 11:47 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

DEFENDANT, In Propria Persona

IN THE 8<sup>th</sup> JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Clark

State of Nevada

Plaintiff,

Vs.

Frank Hearing

Defendant.

CASE No. C-13-291159-1

DEPT. No. XX

Dkt. No. \_\_\_\_\_

NOTICE OF APPEAL

Please take notice that Frank Hearing, Defendant, and in his proper person, hereby appeals to the Nevada Court of Appeals, the judgment(s) in the above-entitled action(s) entered in this Honorable Court on or about the 16<sup>th</sup> day of November, 2018. This notice of Appeal is timely filed pursuant to NRAP 4(b).

DATED this 19<sup>th</sup> day of November, 2018.

RESPECTFULLY SUBMITTED,

*Frank Hearing*  
DEFENDANT, In Propria Persona

RECEIVED  
NOV 26 2018  
CLERK OF THE COURT

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CERTIFICATE OF MAILING

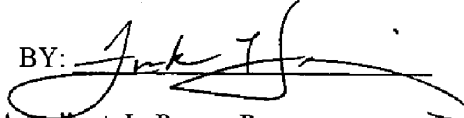
I, Frank Hearing certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

Steven B. Wolfson  
District Attorney  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155-1160

(Copy to)

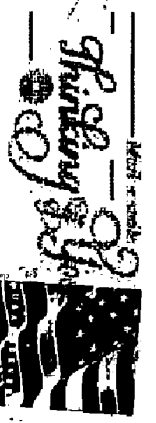
Carl Arnold  
1428 South Jones Blvd  
Las Vegas, NV 89146

DATED this 19<sup>th</sup> day of November, 20 18

BY:   
Appellant, In Proper Person

FRANK HEARRING #1006445  
U.S. & C  
P.O. Box 7007  
Carson City, NV 89702

RENO NV 894  
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Steven D. Giersold  
Clerk of the Court  
300 Lewis Avenue, 3rd Floor  
Las Vegas, NV 89155-1160

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Electronically Filed  
11/26/2018 11:47 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

Hearing, Frank # 1006445  
Warm Springs Correctional Center  
P.O. Box 7007  
Carson City, Nevada 89702  
Appellant, In Proper Person

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF Clark

Frank Hearing

Appellant,

Vs.

State of Nevada

Respondent.

CASE No. C-13-291159-1

DEPT. No. XX

Dkt. No. \_\_\_\_\_

**DESIGNATION OF RECORD ON APPEAL**

Please take notice that Frank Hearing, Appellant, and in his proper person, hereby files this Designation of Record on Appeal in the above entitled action, pursuant to NRAP 10(b); and respectfully herein asks this Honorable Court to designate the record on appeal, to be certified by the Clerk of the District Court and transcribed to the Clerk of the Nevada Court of Appeals: All motions, pleadings, judgments and transcripts.

DATED this 19th day of November, 2018.

RESPECTFULLY SUBMITTED,

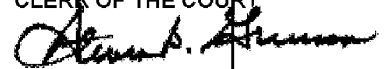
*Frank Hearing*  
Appellant in pro se

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CLERK OF THE COURT

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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

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STATE OF NEVADA,

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Plaintiff(s),

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vs.

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FRANK HEARRING  
aka FRANK HEARRING, JR.,

14

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Defendant(s),

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**CASE APPEAL STATEMENT**

18

19

1. Appellant(s): Frank Hearing

20

2. Judge: Michelle Leavitt

21

3. Appellant(s): Frank Hearing

22

Counsel:

23

Frank Hearing #1006445  
P.O. Box 7007  
Carson City, NV 89702

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4. Respondent: The State of Nevada

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Counsel:

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Steven B. Wolfson, District Attorney  
200 Lewis Ave.

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Las Vegas, NV 89101  
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A

Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A

6. Has Appellant Ever Been Represented by Appointed Counsel In District Court: No

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: July 15, 2013

10. Brief Description of the Nature of the Action: Criminal

Type of Judgment or Order Being Appealed: Misc. Order

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 68968

12. Child Custody or Visitation: N/A

Dated This 27 day of November 2018.

Steven D. Grierson, Clerk of the Court

/s/ Heather Ungermann  
Heather Ungermann, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Frank Herring

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

Supreme Court No. 77549  
District Court Case No. C291159

FILED

JAN 15 2019

*Elizabeth A. Brown*  
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Elizabeth A. Brown, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 17th day of December, 2018.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this January 11, 2019.

Elizabeth A. Brown, Supreme Court Clerk

By: Amanda Ingersoll  
Chief Deputy Clerk

C-13-291159-1  
CCJD  
NV Supreme Court Clerks Certificate/Judge  
4808766



IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANK HEARRING, JR.,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 77549

**FILED**

DEC 17 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER DISMISSING APPEAL*

This is a pro se appeal from a purported district court order denying a "motion for order to show cause, contempt of court and monetary sanctions."<sup>1</sup> Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Because no statute or court rule permits an appeal from the aforementioned order, we lack jurisdiction. *Castillo v. State*, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we

ORDER this appeal DISMISSED.

Cherry, J.  
Cherry


Parraguirre, J.  
Parraguirre

Stiglich, J.  
Stiglich

<sup>1</sup>The district court removed the motion from its calendar on November 6, 2018.

cc: Hon. Michelle Leavitt, District Judge  
Frank Herring, Jr.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

SUPREME COURT  
OF  
NEVADA

(S) 1977A 

**CERTIFIED COPY**  
This document is a full, true and correct copy of  
the original on file and of record in my office.  
DATE: 7/11/19  
Supreme Court Clerk, State of Nevada  
By A. Ingerson Deputy





DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

July 18, 2013

C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

**July 18, 2013                    9:30 AM                    Initial Arraignment**

**HEARD BY:** De La Garza, Melisa                    **COURTROOM:** RJC Lower Level Arraignment

**COURT CLERK:** Roshonda Mayfield

**RECORDER:** Kiara Schmidt

**REPORTER:**

**PARTIES**

<b>PRESENT:</b>	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Mitchell, Scott Steven	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- DEFT. HEARRING ARRAIGNED, PLED NOT GUILTY, and INVOKED the 60-DAY RULE. COURT ORDERED, matter set for trial. COURT FURTHER ORDERED, Counsel is allowed 21 days from today and/or 21 days from the filing of the transcript for there to be any filings as to writs.

**CUSTODY**

8/13/13 8:30 A.M. CALENDAR CALL (DEPT. 2)

8/19/13 9:00 A.M. JURY TRIAL (DEPT. 2)

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

August 13, 2013

C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

August 13, 2013      8:30 AM      Calendar Call

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

**PRESENT:**      Arnold, Carl E.      Attorney  
   Herring, Frank, Jr.      Defendant  
   Schwartzer, Michael J.      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Upon Court's inquiry, Mr. Arnold advised he just finished a murder trial and is not up to speed on this one. Additionally, he and Mr. Schwartzer just realized they do not have the Preliminary Hearing transcript. Mr. Arnold stated Defendant does not want to waive his right to a speedy trial and feels he could be ready in two weeks. Mr. Schwartzer advised this was a short setting and that there is discovery coming in every day. Following additional colloquy, COURT ORDERED, trial date VACATED and RESET on the first week of next criminal stack.

**CUSTODY**

10/1/13 8:30 AM CALNEDAR CALL (#3)

10/7/13 9:00 AM JURY TRIAL (#3)

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 01, 2013

C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

October 01, 2013      8:30 AM      All Pending Motions

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Joseph, Lindsey D	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- CALENDAR CALL...STATE'S REQUEST: MOTION IN LIMINE

AS TO CALENDAR CALL: Upon Court's inquiry, Ms. Joseph advised the State is ready to proceed with 20-25 witnesses and lasting 7-8 days. Mr. Arnold advised he is ready as well. Mr. Schwartzter advised an offer has been submitted to Mr. Arnold. Conference at the Bench. Court advised Jury selection would begin at 9:00 AM on Monday.

AS TO MOTION IN LIMINE: Court noted it did not receive an opposition from Mr. Arnold. Mr. Arnold advised he has no objection as he was going to raise the same issues. COURT ORDERED, Motion GRANTED as unopposed.

M. SCHWARTZER - L. JOSEPH / C. ARNOLD / 20-25 WITNESSES / 7-8 DAYS

CUSTODY

PRINT DATE: 05/31/2019

Page 3 of 27

Minutes Date: July 18, 2013

C-13-291159-1

10/7/13 9:00 AM JURY TRIAL

PRINT DATE: 05/31/2019

Page 4 of 27

Minutes Date: July 18, 2013

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

October 07, 2013

C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

October 07, 2013      9:00 AM      Jury Trial

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Arnold, Carl E.	Attorney
	Herring, Frank, Jr.	Defendant
	Joseph, Lindsey D	Attorney
	Schwartzter, Michael J.	Attorney
	State of Nevada	Plaintiff

**JOURNAL ENTRIES**

- Mr. Arnold advised this matter has been resolved. There being no objection, Amended Information and Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: Defendant to plead guilty to Amended Information. State retains the right to argue at time of sentencing. Mr. Schwartzter concurred. DEFENDANT HEARING WITHDREW NOT GUILTY PLEAS AND PLED GUILTY to MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Court ACCEPTED plea; referred matter to the Division of Parole and Probation for a Pre-sentence Investigation Report and ORDERED, trial date VACATED and set for sentencing.

CUSTODY

12/10/13 8:30 AM SENTENCING

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 10, 2013

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C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

---

December 10, 2013      8:30 AM      Sentencing

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Katherine Streuber

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

**PRESENT:**      Arnold, Carl E.      Attorney  
   Herring, Frank, Jr.      Defendant  
   Joseph, Lindsey D      Attorney  
   Schwartzer, Michael J.      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- DEFT. HEARRING ADJUDGED GUILTY of MURDER (SECOND DEGREE) WITH USE OF A DEADLY WEAPON (F). Argument by the State. Colloquy regarding restitution. Statement by Deft. Argument by counsel. Victim Witness addressed the Court. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and a \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED to LIFE in the Nevada Department of Corrections (NDC) with parole eligibility after TEN (10) YEARS, plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS and a MINIMUM of NINETY-SIX (96) MONTHS in the Nevada Department of Corrections (NDC) for the use of a deadly weapon, with TWO HUNDRED NINETY-THREE (293) DAYS credit for time served. FURTHER, matter SET for status check regarding restitution.

NDC

01-09-14 8:30 AM STATUS CHECK: RESTITUTION

PRINT DATE: 05/31/2019

Page 6 of 27

Minutes Date: July 18, 2013

C-13-291159-1

PRINT DATE: 05/31/2019

Page 7 of 27

Minutes Date: July 18, 2013

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

December 17, 2013

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C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

---

December 17, 2013      8:30 AM      Motion to Marry

HEARD BY: Tao, Jerome T.

COURTROOM: RJC Courtroom 10D

COURT CLERK: Carole D'Aloia

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

**PRESENT:**      Arnold, Carl E.      Attorney  
   Herring, Frank, Jr.      Defendant  
   Rhoades, Kristina A.      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- COURT ORDERED, motion GRANTED. Court directed Mr. Arnold to prepare and submit the appropriate Order.

NDC



DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 09, 2014

C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

January 09, 2014      8:30 AM      Status Check      Restitution

HEARD BY: Togliatti, Jennifer      COURTROOM: RJC Courtroom 10D

COURT CLERK: Athena Trujillo  
   Andrea Natali

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

PRESENT:      Arnold, Carl E.      Attorney  
   Herring, Frank, Jr.      Defendant  
   Radovcic, Michael      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Deft. present in custody. Mr. Radovcic stated the victim was requesting restitution; however, the letter of restitution had been sent to the wrong address; therefore, requested the matter be continued two weeks to obtain proof of restitution. Mr. Arnold requested the Deft. be sent to prison to serve his term. Upon Court's inquiry, Deft. agreed with Mr. Arnold's representations. COURT ORDERED, matter CONTINUED, Deft. s presence WAIVED the next date.

NDC

1/23/14 8:30 AM - STATUS CHECK: RESTITUTION

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

January 23, 2014

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C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

---

January 23, 2014      8:30 AM      Status Check

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

**PRESENT:**      Arnold, Carl E.      Attorney  
   Joseph, Lindsey D      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Court noted Defendant is in prison and not present. Upon Court's inquiry, Ms. Joseph advised they never received anything back from the victim's widow as to restitution and that it is unclear if she understands what would be covered under restitution. Following colloquy, COURT ORDERED, no restitution will be ordered and the matter is OFF CALENDAR.

NDC

DISTRICT COURT  
CLARK COUNTY, NEVADA

Felony/Gross Misdemeanor

COURT MINUTES

June 12, 2014

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C-13-291159-1      State of Nevada  
   vs  
   Frank Herring

---

June 12, 2014      8:30 AM      Motion

HEARD BY: Tao, Jerome T.      COURTROOM: RJC Courtroom 10D

COURT CLERK: Linda Skinner

RECORDER: Sara Richardson

REPORTER:

**PARTIES**

PRESENT:      Jones, Jr., John T.      Attorney  
   State of Nevada      Plaintiff

**JOURNAL ENTRIES**

- Court advised Defendant is in the Nevada Department of Corrections and not present, that this is post-conviction in nature and Mr. Arnold is not present, however, COURT ORDERED, Deft's Pro Per Motion is GRANTED. Further, Mr. Arnold to be contacted to send the file to Defendant with the proper redactions.

NDC

CLERK'S NOTE: JEA contacted Mr. Arnold's Office to advise of above.

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed  
May 31 2019 12:15 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

FRANK HEARRING, JR.,  
Appellant(s),

vs.

THE STATE OF NEVADA,  
Respondent(s),

Case No: C-13-291159-1  
*Related Case A-19-790102-W*  
Docket No: 78791

**RECORD ON APPEAL  
VOLUME  
2**

**ATTORNEY FOR APPELLANT**  
FRANK HEARRING # 1006445,  
PROPER PERSON  
P.O. BOX 7007  
CARSON CITY, NV 89702

**ATTORNEY FOR RESPONDENT**  
STEVEN B. WOLFSON,  
DISTRICT ATTORNEY  
200 LEWIS AVE.  
LAS VEGAS, NV 89155-2212

**I N D E X**

<b><u>VOLUME:</u></b>	<b><u>PAGE NUMBER:</u></b>
1	1 - 240
2	241 - 480
3	481 - 496

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	12/26/2014	APPLICATION AND ORDER FOR TRANSCRIPTS	299 - 299
2	10/07/2015	CASE APPEAL STATEMENT	351 - 352
2	11/27/2018	CASE APPEAL STATEMENT	463 - 464
3	05/31/2019	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	07/15/2013	CRIMINAL BINDOVER	1 - 31
1	01/08/2014	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	234 - 234
2	11/26/2018	DESIGNATION OF RECORD ON APPEAL	462 - 462
2	05/31/2019	DISTRICT COURT MINUTES (CONTINUED)	470 - 480
3	05/31/2019	DISTRICT COURT MINUTES (CONTINUATION)	481 - 496
2	09/14/2015	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	334 - 339
1	10/07/2013	GUILTY PLEA AGREEMENT	212 - 219
1	07/15/2013	INFORMATION	32 - 34
1	10/07/2013	INFORMATION	220 - 221
1	12/30/2013	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	232 - 233
2	10/01/2018	MOTION FOR ORDER TO SHOW CAUSE CONTEMPT OF COURT AND MONETARY SANCTIONS	446 - 458
2	11/12/2014	MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST FOR EVIDENTIARY HEARING	256 - 262
2	03/08/2016	MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS	378 - 382
1	09/25/2013	MOTION IN LIMINE	200 - 207
2	12/29/2017	MOTION TO COMPEL	428 - 434
2	06/06/2018	MOTION TO COMPEL	439 - 445

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
1	11/22/2013	MOTION TO MARRY	229 - 231
2	05/15/2014	MOTION TO WITHDRAW COUNSEL	247 - 253
2	10/06/2017	MOTION TO WITHDRAW COUNSEL	403 - 412
2	12/10/2014	MOTION TO WITHDRAWAL PLEA	268 - 276
2	05/13/2016	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - AFFIRMED	397 - 401
2	01/15/2019	NEVADA SUPREME COURT CLERK'S CERTIFICATE/REMITTITUR JUDGMENT - DISMISSED	465 - 469
2	10/06/2015	NOTICE OF APPEAL	347 - 350
2	11/26/2018	NOTICE OF APPEAL	459 - 461
2	09/21/2015	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	340 - 346
1	07/26/2013	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	35 - 41
2	05/15/2014	NOTICE OF MOTION	254 - 254
2	12/10/2014	NOTICE OF MOTION	277 - 277
2	05/26/2015	NOTICE OF MOTION	326 - 326
2	10/28/2015	NOTICE OF MOTION	356 - 357
2	01/21/2016	NOTICE OF MOTION	368 - 368
2	03/08/2016	NOTICE OF MOTION	383 - 383
2	12/11/2017	NOTICE OF MOTION; MOTION FOR MODIFICATION OF SENTENCE	415 - 422
1	08/08/2013	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	42 - 45
2	12/15/2014	ORDER DENYING DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING	278 - 279



I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
2	04/12/2016	ORDER DENYING DEFENDANT'S MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD OR IN THE ALTERNATIVE, REQUEST FOR RECORDS/COURT CASE DOCUMENTS	395 - 396
2	01/16/2015	ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA	300 - 301
2	01/08/2018	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR MODIFICATION OF SENTENCE	435 - 436
2	03/02/2016	ORDER DENYING DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	376 - 377
2	05/29/2015	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	327 - 327
2	11/14/2017	ORDER GRANTING DEFENDANT'S MOTION TO WITHDRAW COUNSEL	413 - 414
2	02/02/2018	ORDER GRANTING DEFENDANT'S PRO PER MOTION TO COMPEL	437 - 438
2	12/03/2015	ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	358 - 359
2	03/30/2015	PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION); EVIDENTIARY HEARING REQUESTED	302 - 319
1	11/19/2013	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	222 - 228
1	09/24/2013	RECEIPT OF COPY	196 - 199
2	03/11/2016	REPLY TO STATE'S RESPONSE TO DEFENDANTS MOTION FOR REQUEST FOR RECORDS/COURT CASE DOCUMENTS (BRADY MATERIAL) IN ORDER TO PROPERLY APPEAL DEFENDANT'S CONVICTION.	384 - 394
2	05/26/2015	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	320 - 325
2	10/28/2015	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	353 - 355

**I N D E X**

<b><u>VOL</u></b>	<b><u>DATE</u></b>	<b><u>PLEADING</u></b>	<b><u>PAGE NUMBER:</u></b>
2	01/21/2016	REQUEST FOR RECORDS/COURT CASE DOCUMENTS	360 - 367
1	09/17/2013	SECOND SUPPLEMENTAL NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	170 - 195
1	08/12/2013	SECOND SUPPLEMENTAL NOTICE OF WITNESSES[NRS 174.234(1)(A)]	50 - 53
2	12/26/2017	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR SENTENCE MODIFICATION	423 - 427
2	12/22/2014	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA	288 - 298
2	11/25/2014	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR THE APPOINTMENT OF COUNSEL AND OPPOSITION TO DEFENDANT'S REQUEST FOR EVIDENTIARY HEARING	263 - 267
2	07/31/2015	STATE'S RESPONSE TO DEFENDANT'S POST-CONVICTION PETITION FOR WRIT OF HABEAS CORPUS	328 - 333
2	02/17/2016	STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR RECORDS/COURT CASE DOCUMENTS	369 - 375
1	09/16/2013	SUPPLEMENTAL NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	157 - 169
1	08/09/2013	SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	46 - 49
1	09/30/2013	THIRD SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	208 - 211
1	09/05/2013	TRANSCRIPT OF HEARING HELD ON JULY 11, 2013	54 - 156
2	12/18/2014	TRANSCRIPT OF HEARING HELD ON OCTOBER 7, 2013	280 - 287
1	04/14/2014	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF UNFILED NOTICE OF MOTION AND W/COPY OF MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT (CONTINUED)	235 - 240
2	04/14/2014	UNFILED DOCUMENT(S) - ATTORNEY LETTER W/COPY OF	241 - 245

C-13-291159-1

State of Nevada  
vs  
Frank Herring

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER:</u>
		UNFILED NOTICE OF MOTION AND W/COPY OF MOTION FOR PRODUCTION OF DOCUMENTS, PAPERS, PLEADINGS AND TANGIBLE PROPERTY OF DEFENDANT (CONTINUATION)	
2	05/15/2014	UNSIGNED DOCUMENT(S) - ORDER	246 - 246
2	09/29/2017	UNSIGNED DOCUMENT(S) - ORDER	402 - 402
2	11/10/2014	UNSIGNED DOCUMENT(S) - ORDER APPOINTING COUNSEL	255 - 255

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and  
motion to withdraw counsel  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit: \_\_\_\_\_

(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

Frank Hearing  
Signature

March 31, 2014  
Date

Frank Hearing  
Print Name

Defendent  
Title

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and  
Motion to Withdraw Counsel  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or for an application  
for a federal or state grant.

Frank Herring  
Signature

March 31, 2014  
Date

Frank Herring  
Print Name

Defendant  
Title

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**CERTIFICATE OF SERVICE BY MAILING**

I, Frank Herring Jr, hereby certify, pursuant to NRCP 5(b), that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I mailed a true and correct copy of the foregoing, "notice and Motion to withdraw Counsel."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven B. Wolfson, D.A.  
200. Lewis Ave 3rd floor  
Las Vegas, NV 89155

CC:FILE

DATED: this 31 day of March, 2014.

Frank Herring Jr  
Frank Herring Jr 1000445 #  
Defendant /In-Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Frank Hearnings # 1006445  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070



03 APR 2004 PM 5:1

Steven D. Grierson  
200 Lewis Avenue 3rd Floor  
Las Vegas, NV 89155-1160

89101630000

HIGH DESERT STATE PRISON

APR 08 2014

UNIT 12



LSF

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DISTRICT COURT  
\_\_\_\_\_ COUNTY, NEVADA

vs.

Case No. 0-13-291159-1  
Dept. No. \_\_\_\_\_  
Docket \_\_\_\_\_

**ORDER**

Upon reading the motion of defendant, \_\_\_\_\_, requesting withdrawal of counsel, \_\_\_\_\_, Esq., of the Clark county Public Defender's Office, and Good Cause Appearing,

**IT IS HEREBY ORDERED** that defendant's Motion for Withdrawal of Counsel is GRANTED.

**IT IS HEREBY FURTHER ORDERED** that Counsel deliver to defendant at his address, all documents, papers, pleadings, discovery and any other tangible property in the above-entitled case.

DATED and DONE this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

C-13-291168-1  
LSF  
Left Side Filing  
3801805



Carl Arnold Atty

MC  
PP  
DA  
AOR

*Sharon D. Johnson*  
CLERK OF THE COURT

1 Frank Herring #1006445  
2 Defendant/In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

5  
6 IN THE Eighth JUDICIAL DISTRICT COURT OF THE  
7 STATE OF NEVADA IN AND FOR THE COUNTY OF Clark

8 State of Nevada  
9 Plaintiff

10 vs.  
11 Frank Herring  
12 Defendant

Case No. C-13-291159-1  
Dept. No. 20  
Docket \_\_\_\_\_

14 **MOTION TO WITHDRAW COUNSEL**

15 Date of Hearing: 06/05/14  
16 Time of Hearing: 8:30 AM

17 'ORAL ARGUMENT REQUESTED, Yes \_\_\_ No \_\_\_'

18 COMES NOW, Defendant, Frank Herring, proceeding in proper person,

19 moves this Honorable Court for an ORDER Granting him permission to withdraw his present counsel  
20 of record in the proceeding action, namely,

21 Carl Arnold

22 This Motion is made and based on all papers and pleadings on file with the Clerk of the Court  
23 which are hereby incorporated by this reference, the Points and Authorities herein, and attached  
24 Affidavit of Defendant.

25 DATED: this 12 day of May, 2014.

26 BY: Frank Herring  
27 Frank Herring #1006445  
28 Defendant/In Propria Personam

RECEIVED  
MAY 15 2014  
OF THE COURT

1 **POINTS AND AUTHORITIES**

2 NRS 7.055 states in pertinent part:

- 3 1. An attorney who has been discharged by his client shall upon demand and payment of the fee  
4 due from the client, immediately deliver to the client all papers, documents, pleadings and items  
5 of tangible personal property which belong to or were prepared for that client.  
6 2. . . If the court finds that an attorney has, without just cause, refused or neglected to obey its  
7 order given under this section, the court may, after notice and fine or imprison him until the  
8 contempt purged. If the court finds that the attorney has, without just cause, withheld the  
9 client's papers, documents, pleadings, or other property, the attorney is liable for costs and  
10 attorney's fees.

11 Counsel in the above-entitled case was court-appointed due to Defendant's indigence. Defendant  
12 does not owe counsel any fees.

13 **WHEREFORE**, Defendant prays this Honorable Court, Grant his Motion to Withdraw Counsel  
14 and that counsel deliver to Defendant all papers, documents, pleadings, discovery and any other  
15 tangible property which belong to or were prepared for the Defendant to allow Defendant the proper  
16 assistance that is needed to insure that justice is served.

17 **DATED:** this 12 day of May, 2014.

18 Respectfully submitted,

19 BY: Frank Hemming  
20 Frank Hemming #1006445  
21 Defendant *In Propria Personam*  
22 Post Office Box 650 [HDSP]  
23 Indian Springs, Nevada 89018  
24  
25  
26  
27  
28

NAME: Frank Herring Jr. # 1006445

HIGH DESERT STATE PRISON  
P.O. BOX 650  
INDIAN SPRINGS, NEVADA 89018

DATE: May 12, 2014

TO: Carl Arnold  
1148 S. Maryland  
Pkwy Las Vegas, NV  
89014

SUBJECT: TERMINATION OF COUNSEL/TRANSFER OF RECORDS

CASE NO.: C-13-291159-1

DEPT. NO.: 20

CASE NAME: Frank Herring Jr

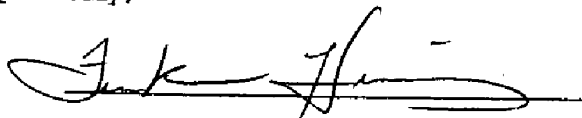
Please be advised that from this date forward, your authority as Attorney of Record in the above-stated action is hereby terminated. All of the professional relations of Attorney and Client do hereby cease.

Please enter your withdrawal from this action with the Court immediately.

Pursuant to NRS 7.055, I respectfully request that you deliver to me, forthwith, all documents, papers, pleadings and tangible personal property that is in your possession that relates to the above-named action.

Your prompt attention to this request is genuinely appreciated.

Respectfully,



/////

/////

/////

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Notice and  
motion to withdraw counsel.  
(Title of Document)

filed in District Court Case number \_\_\_\_\_

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Frank Herring  
Signature

May 12, 2014  
Date

Frank Herring  
Print Name

Defendent  
Title

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**CERTIFICATE OF SERVICE BY MAILING**

I, Frank Herring Jr, hereby certify, pursuant to NRC 5(b), that on this \_\_\_\_\_ day of \_\_\_\_\_, 2014, I mailed a true and correct copy of the foregoing, "Notice and motion to withdraw counsel."

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid, addressed as follows:

Steven B. Wolfson D.A.  
300 Lewis Ave, 3rd Floor  
Las Vegas, NV 89155

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

CC: FILE

DATED: this 12 day of May, 2014.

Frank Herring Jr  
Frank Herring 104415#  
Defendant / In Propria Personam  
Post Office box 650 [HDSP]  
Indian Springs, Nevada 89018  
IN FORMA PAUPERIS:

Frank Hearing # 1006445  
High Desert State Prison  
P.O. Box 650  
Indian Springs, NV 89070

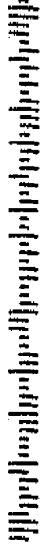
LAS VEGAS, NV 890

13 MAY 2014 PM 5:1



Steven D. Grierson  
200 Lewis Avenue, 3rd floor  
Las Vegas, NV 89155 - 1100

69101630000



HIGH DESERT STATE PRISON  
MAY 12 2014  
UNIT 12



Carl Arnold Att

CLERK OF THE COURT

1 Frank Herring  
2 Defendant In Propria Personam  
3 Post Office Box 650 [HDSP]  
4 Indian Springs, Nevada 89018

MC  
PP  
DA  
AOR

5 **DISTRICT COURT**  
6 **CLARK COUNTY, NEVADA**

7  
8 State of Nevada  
9 Plaintiff

10 vs.  
11 Frank Herring  
12 Defendant

Case No. G-13-291159-1  
Dept No. 20  
Docket \_\_\_\_\_

14 **NOTICE OF MOTION**

15 **YOU WILL PLEASE TAKE NOTICE**, that The Foregoing Motion to  
16 Withdraw Counsel

17 will come on for hearing before the above-entitled Court on the 05 day of June, 2014,  
18 at the hour of 8:30 o'clock A. M. In Department 20, of said Court.

19  
20 CC:FILE

21  
22 DATED: this 12 day of May, 2014.

23  
24 BY: Frank Herring  
25 Frank Herring 1001015 #  
26 Defendant / In Propria Personam

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MAY 15 2014

CLERK OF THE COURT

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PLEASE FILE  
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C-13-291159-1

Case No. \_\_\_\_\_

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

IN THE \_\_\_\_\_ JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_  
Petitioner,

-vs-

\_\_\_\_\_  
Respondents.

C-13-291159-1  
LSF  
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**ORDER APPOINTING COUNSEL**

Petitioner, \_\_\_\_\_, has filed a proper person REQUEST FOR APPOINTMENT OF COUNSEL, to represent him on his Petition for Writ of Habeas Corpus (Post-Conviction), in the above-entitled action.

The Court has reviewed Petitioner's Request and the entire file in this action, and Good Cause Appearing, IT IS HEREBY ORDERED, that petitioner's Request for Appointment of Counsel is GRANTED.

IT IS FURTHER ORDERED that \_\_\_\_\_, Esq., is appointed to represent Petitioner on his Post-Conviction for Writ of Habeas Corpus.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

Submitted by:

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

\_\_\_\_\_  
Petitioner, In Proper Person

CLERK OF THE COURT

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DA

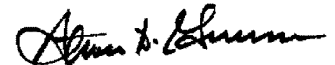
Case No. 0-291159-1

Dept. No. XX

0-13-291159-1

Electronically Filed  
11/12/2014 09:20:10 AM

IN THE Eighth JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark.



CLERK OF THE COURT

Frank Herring  
Petitioner,

**MOTION FOR THE APPOINTMENT  
OF COUNSEL**

-vs-

Date: 12/04/14

Time: 8:30 AM

State of Nevada  
Respondents.

**REQUEST FOR EVIDENTIARY HEARING**

COMES NOW, the Petitioner, Frank Herring, proceeding pro se, within the above entitled cause of action and respectfully requests this Court to consider the appointment of counsel for Petitioner for the prosecution of this action.

This motion is made and based upon the matters set forth here, N.R.S. 34.750(1)(2), affidavit of Petitioner, the attached Memorandum of Points and Authorities, as well as all other pleadings and documents on file within this case.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. STATEMENT OF THE CASE**

This action commenced by Petitioner Frank Herring, in state custody, pursuant to Chapter 34, et seq., petition for Writ of Habeas Corpus (Post-Conviction).

**II. STATEMENT OF THE FACTS**

To support the Petitioner's need for the appointment of counsel in this action, he states the following:

1. The merits of claims for relief in this action are of Constitutional dimension, and Petitioner is likely to succeed in this case.

CLERK OF THE COURT

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CLERK OF THE COURT

2. Petitioner is incarcerated at the Ely State Prison in Ely, Nevada. Petitioner is unable to undertake the ability, as an attorney would or could, to investigate crucial facts involved within the Petition for Writ of Habeas Corpus.
3. The issues presented in the Petition involves a complexity that Petitioner is unable to argue effectively.
4. Petitioner does not have the current legal knowledge and abilities, as an attorney would have, to properly present the case to this Court coupled with the fact that appointed counsel would be of service to the Court, Petitioner, and the Respondents as well, by sharpening the issues in this case, shaping the examination of potential witnesses and ultimately shortening the time of the prosecution of this case.
5. Petitioner has made an effort to obtain counsel, but does not have the funds necessary or available to pay for the costs of counsel, see Declaration of Petitioner.
6. Petitioner would need to have an attorney appointed to assist in the determination of whether he should agree to sign consent for a psychological examination.
7. The prison severely limits the hours that Petitioner may have access to the Law Library, and as well, the facility has very limited legal research materials and sources.
8. While the Petitioner does have the assistance of a prison law clerk, he is not an attorney and not allowed to plead before the Courts and like Petitioner, the legal assistants have limited knowledge and expertise.
9. The Petitioner and his assisting law clerks, by reason of their imprisonment, have a severely limited ability to investigate, or take depositions, expand the record or otherwise litigate this action.
10. The ends of justice will be served in this case by the appointment of professional and competent counsel to represent Petitioner.

## II. ARGUMENT

Motions for the appointment of counsel are made pursuant to N.R.S. 34.750, and are addressed to the sound discretion of the Court. Under Chapter 34.750 the Court may request an attorney to represent any

such person unable to employ counsel. On a Motion for Appointment of Counsel pursuant to N.R.S. 34.750, the District Court should consider whether appointment of counsel would be of service to the indigent petitioner, the Court, and respondents as well, by sharpening the issues in the case, shaping examination of witnesses, and ultimately shortening trial and assisting in the just determination.

In order for the appointment of counsel to be granted, the Court must consider several factors to be met in order for the appointment of counsel to be granted; (1) The merits of the claim for relief; (2) The ability to investigate crucial factors; (3) whether evidence consists of conflicting testimony effectively treated only by counsel; (4) The ability to present the case; and (5) The complexity of the legal issues raised in the petition.

### **III CONCLUSION**

Based upon the facts and law presented herein, Petitioner would respectfully request this Court to weigh the factors involved within this case, and appoint counsel for Petitioner to assist this Court in the just determination of this action

Dated this 4 day of November, 20 14

Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

Frank Herring  
Petitioner.

### **VERIFICATION**

I declare, affirm and swear under the penalty of perjury that all of the above facts, statements and assertions are true and correct of my own knowledge. As to any such matters stated upon information or belief, I swear that I believe them all to be true and correct.

Dated this 4 day of November, 20 14.

Frank Herring  
Petitioner, pro per.

**CERTIFICATE OF SERVICE BY MAIL**

I, Frank Herring, hereby certify pursuant to N.R.C.P.  
5(b), that on this 4 day of November, of the year 2014, I mailed a true and  
correct copy of the foregoing, MOTION FOR THE APPOINTMENT OF COUNSEL; REQUEST  
FOR EVIDENTIARY HEARING, to the following:

Carl Arnold  
Name

Clerk of the Court  
Name

Steven Wolfson  
Name

\_\_\_\_\_  
\_\_\_\_\_  
Address

200 Lewis Ave 3rd Floor  
Las Vegas, NV 89155  
Address

District Attorney  
200 Lewis Ave  
Las Vegas, NV 89155  
Address

Frank Herring  
Petitioner

**AFFIRMATION PURSUANT TO: N.R.S. 239B.010**

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED  
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT  
THAT IS ENTITLED: Frank Herring  
\_\_\_\_\_, DOES NOT  
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSON, UNDER THE PAINS AND PENALTIES OF  
PERJURY, THIS, 4, DAY OF, November, 2014.

SIGNATURE: \_\_\_\_\_

Frank Herring

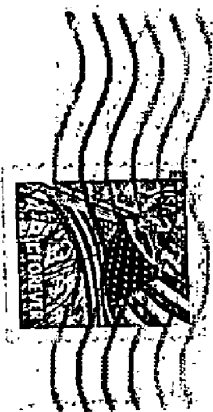
INMATE NAME PRINTED: Frank Herring

INMATE NUMBER: 1006445

ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

FRANK HEARTING # 1000445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301

LAS VEGAS, NV 890  
05 NOV 2014 PM 3 L



Steven Grierson  
200 Lewis Ave 3rd Floor  
Las Vegas, NV 89155

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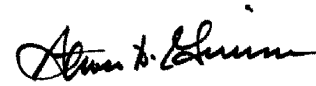




FLY STATE PRISON

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CLERK OF THE COURT

1 **RSPN**  
2 **STEVEN B. WOLFSON**  
3 **Clark County District Attorney**  
4 **Nevada Bar #001565**  
5 **H. LEON SIMON**  
6 **Chief Deputy District Attorney**  
7 **Nevada Bar #000411**  
8 **200 Lewis Avenue**  
9 **Las Vegas, Nevada 89155-2212**  
10 **(702) 671-2500**  
11 **Attorney for Plaintiff**

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

9 **THE STATE OF NEVADA,**  
10 **Plaintiff,**

11 **-vs-**

12 **FRANK HEARRING, aka,**  
13 **Frank Hearing, Jr. #1774466**

14 **Defendant.**

**CASE NO: C-13-291159-1**

**DEPT NO: XX**

15 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR THE APPOINTMENT OF**  
16 **COUNSEL AND OPPOSITION TO DEFENDANT'S REQUEST FOR EVIDENTIARY**  
17 **HEARING**

18 **DATE OF HEARING: DECEMBER 4, 2014**  
19 **TIME OF HEARING: 8:30 AM**

20 **COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County**  
21 **District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby**  
22 **submits the attached Points and Authorities in Response to Defendant's Motion for**  
23 **Appointment of Counsel and in Opposition to Defendant's Request for Evidentiary Hearing.**

24 **This response is made and based upon all the papers and pleadings on file herein, the**  
25 **attached points and authorities in support hereof, and oral argument at the time of hearing, if**  
26 **deemed necessary by this Honorable Court.**

27 **///**

28 **///**

**///**

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 15, 2013, Defendant Frank Herring was charged by way of Information with  
4 Murder With Use of a Deadly Weapon (Category A Felony – NRS 200.010, 200.030,  
5 193.165), Attempt Murder With Use of a Deadly Weapon (Category B Felony – NRS 193.330,  
6 200.010, 200.030), Discharging a Firearm at or into Structure, Vehicle, Aircraft or Watercraft  
7 (Category B Felony – NRS 202.285), and Possession of Firearm by Ex-Felon (Category B  
8 Felony – NRS 202.360). Pursuant to negotiations, on October 7, 2013, the State filed an  
9 Amended Information charging Defendant with one count of Murder With Use of a Deadly  
10 Weapon (Category A Felony – NRS 200.010, 200.030, 193.165).

11 On October 7, 2013, Defendant was arraigned on the Amended Information and a  
12 Guilty Plea Agreement was filed in open court. Defendant pleaded guilty to the charge alleged  
13 in the Amended Information.

14 On December 10, 2013, Defendant was sentenced for the murder charge to life in the  
15 Nevada Department of Corrections, with parole eligibility after ten (10) years, plus a  
16 consecutive term of a minimum of ninety-six (96) months and a maximum of two hundred  
17 forty (240) months for the use of the deadly weapon. Defendant received two hundred ninety-  
18 three (293) days credit for time served. The Judgment of Conviction was filed on December  
19 30, 2013 and no direct appeal was taken.

20 On May 15, 2014, Defendant filed a pro per Motion to Withdraw Counsel. The district  
21 court granted the motion on June 12, 2014. On November 12, 2014, Defendant filed a pro per  
22 Motion for the Appointment of Counsel and Request for Evidentiary Hearing. The State  
23 responds as follows:

24 **ARGUMENT**

25 **I. THE COURT HAS DISCRETION TO APPOINT AN ATTORNEY**

26 Defendant requests the appointment of counsel pursuant to NRS 34.750. In Coleman v.  
27 Thompson, 501 U.S. 722, 752 (1991), the United States Supreme Court ruled the Sixth  
28 Amendment provides no right to counsel in post-conviction proceedings. In McKague v.

1 Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed  
2 that “[t]he Nevada Constitution . . . does not guarantee a right to counsel in post-conviction  
3 proceedings, as we interpret the Nevada Constitution’s right to counsel provision as being  
4 coextensive with the Sixth Amendment to the United States Constitution.” Id. at 258.

5 NRS 34.750(1) provides that a court has discretion to appoint a defendant post-  
6 conviction counsel:

7 “[a] petition may allege that the Defendant is unable to pay the  
8 costs of the proceedings or employ counsel. If the court is satisfied  
9 that the allegation of indigency is true and the petition is not  
10 dismissed summarily, the court may appoint counsel at the time  
the court orders the filing of an answer and a return. In making its  
determination, the court may consider, among other things, the  
severity of the consequences facing the petitioner and whether:

- 11 (a) The issues are difficult;  
12 (b) The Defendant is unable to comprehend the  
proceedings; or  
13 (c) Counsel is necessary to proceed with discovery.”

14 Additionally, the Nevada Supreme Court has observed that a petitioner “must show that  
the requested review is not frivolous before he may have an attorney appointed.” Peterson v.  
15 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS  
16 177.345(2)).

17 While Defendant is not entitled to appointment of an attorney, under NRS 34.750 it is  
18 clear the court has discretion in determining whether to appoint post-conviction counsel.  
19 However, Defendant has yet to file a Post-Conviction Petition for Writ of Habeas Corpus.  
20 Thus, Defendant has not made a showing regarding frivolousness, the difficulty of the issues,  
21 or a need for discovery. However, the consequences facing Defendant are severe, as Defendant  
22 is serving a life sentence with a possibility of parole after ten years, with a consecutive sentence  
23 of eight to twenty years. Therefore, the State will leave the issue of appointment of counsel to  
24 the discretion of the court.

## 25 **II. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

26 A defendant is entitled to an evidentiary hearing if his petition is supported by specific  
27 factual allegations, which, if true, would entitle him to relief unless the factual allegations are  
28 repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605 (1994).

1 "The judge or justice, upon review of the return, answer and all supporting documents which  
2 are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1).  
3 However, "[a] defendant seeking post-conviction relief is not entitled to an evidentiary hearing  
4 on factual allegations belied or repelled by the record." Hargrove v. State, 100 Nev. 498, 503,  
5 686 P.2d 222, 225 (1984).

6 In the instant case, Defendant's request for an evidentiary hearing is extremely  
7 premature. Defendant has yet to even file a Post-Conviction Petition for Writ of Habeas  
8 Corpus. Further, this Court has not yet determined whether Defendant's writ has merit. See  
9 NRS 34.770. Defendant fails to provide the court with specific allegations of how his rights  
10 were violated. Therefore, this court should deny Defendant's request for an evidentiary  
11 hearing.

12 **CONCLUSION**

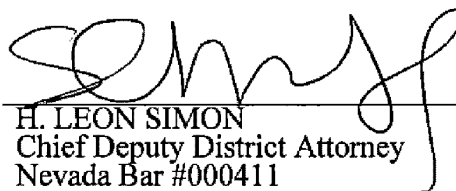
13 Based on the foregoing, the State respectfully requests that Defendant's Request for  
14 Evidentiary Hearing be DENIED. The State leaves the issue regarding the appointment of  
15 counsel to the discretion of the court.

16 DATED this 25<sup>th</sup> day of November, 2014.

17 Respectfully submitted,

18 STEVEN B. WOLFSON  
19 Clark County District Attorney  
20 Nevada Bar #001565

21 BY

  
22 H. LEON SIMON  
23 Chief Deputy District Attorney  
24 Nevada Bar #000411

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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 25<sup>th</sup> day of November, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301

BY M. Agard  
Secretary for the District Attorney's Office

13F08177X/mc/L4

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*Alvin D. Johnson*

CLERK OF THE COURT

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IN THE Eightth JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA IN AND FOR THE COUNTY OF Clark

THE STATE OF NEVADA,  
Plaintiff

CASE NO. C-13-291159-1

DEPT. NO. 20

v.

Frank Herring  
Defendant.

Hearing Date: 01-06-2015  
Time: 8:30am

MOTION TO WITHDRAWAL PLEA

COMES NOW, Defendant, Frank Herring, proceeding in proper  
person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea  
Agreement in the the case number C-13-291159-1, on the date of 7<sup>th</sup> in the month  
of Oct in the year 2013, where defendant was then represented by Carl Arnold as  
counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are  
hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of  
Defendant.

Dated this 20 day of November, 2014

Respectfully submitted,

*Frank Herring*  
Defendant in Proper Person

CLERK OF THE COURT

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CLERK OF THE COURT

MEMORANDUM OF POINTS AND AUTHORITIES

NRS. 176.165 PROVIDES:

A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, or imposition of sentence is suspended. To correct manifest injustice, the court, after sentencing, may set aside the judgment of conviction and permit the defendant to withdraw his or plea.

Failure to adequately inform a defendant of the full consequences of his/her plea creates manifest injustice which could be corrected by setting aside the conviction and allowing him/her to withdraw the guilty plea. Meyer v. State, 603 P.2d 1066 (Nev. 1979), and Little v. Warden, 34 P.3d 540 (Nev.2001).

Defendant herein alleges that his/her plea is in error and must withdraw the plea pursuant to the following facts: Defendant: Frank Herring's Guilty Plea Negotiation was unknowingly and unintelligently entered due to the fact that defense Attorney: Carl Arnold, misrepresented the actual reason when he advised his client to plea negotiate which was because he advised the defendant that he would not face the death penalty which he never related the facts to defendant: Frank Herring any results as to the result of the Grand Jury's decision on the Death Penalty phase, leaving defendant: Frank Herring to assume that he still was facing the Death Penalty which made the defendant: Frank Herring to plea negotiate with the States Attorney. Later, the defendant: Frank Herring found out that the Grand Jury, had insufficient evidence to sustain a fixed determination of a guilt penalty, which if defendant: Frank Herring would have had any knowledge that he wasn't facing the Death Penalty, he would have choosing to go to trial and demanding trial by jury is his Sixth Amendment Right to the Federal Constitution, Letting the Jury decide all relevant evidence in light of the truth which trial Defense Counsel had rendered his ability from this Constitution Right.

A defendant is allowed to file a Motion to Withdraw a Guilty Plea either



1 1) AFTER the Judge HAS Accepted defendant's Plea, but [before] the Judge  
2 has sentence him; or 2) [AFTER] the Judge HAS Sentence him. HART, vs, State  
3 116. Nev. 558 (2000).

4 In Nevada, A defendant is NOT Allowed to Appeal A [guilty] Plea  
5 Agreement by going to the Nevada Supreme Court AFTER the Judge  
6 has Accepted the defendant's guilty Plea AND [Filed] A "Judgment of  
7 Conviction." Defendant has to [First] File A Motion with the TRIAL  
8 Court or File A Post-Conviction Petition for Habeas Corpus see  
9 Mitchell, vs, State, 109 Nev. 137.

10  
11 Certain kinds of Guilty Plea Agreements will automatically be  
12 withdrawn by the trial Court. These kind of Agreements include  
13 guilty Pleas that Result From Ignorance (the defendant did not Under  
14 stand or was not told about the Agreement) FEAR, or Coercion (the  
15 defendant was Forced by AN Attorney or Someone else AND did not be-  
16 lieve he had ANY other choice but to Plead Guilty). See WARDEN, Nev-  
17 ada State Prison, vs, Peters, 83 NEV. 298 (1967).

18  
19 The Court set aside A defendant's guilty Plea where the defendant  
20 Plead Guilty to First degree Murder by strangulation, but Refused  
21 to Admit to the Judge that he did ANYthing more than beat the  
22 victim up. The Judge said this showed he WAS [coerced] or Forced,  
23 to plead Guilty so that he wouldn't get the [death Penalty]. See  
24 Smith, vs, State 110 NEV. 1009.

25  
26 Defendant: Frank Herring's Assertion, that he plead guilty on  
27 Advice of Defense Counsel due to FEAR of AN Indictment by the

1 GRAND JURY'S VERDICT UPON A DEATH PENALTY PHASE OF MURDER IN THE  
2 FIRST DEGREE WITH THE USE OF A DEADLY WEAPON, FALLS WITHIN THIS COURT'S  
3 JURISDICTION THROUGH SMITH, VS, STATE IN WHICH THIS DEFENSE COUNSEL  
4 PERFORMANCE RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL TOWARDS  
5 DEFENDANT: FRANK HEARRING'S 6<sup>TH</sup> AMENDMENT CONSTITUTIONAL RIGHT  
6 TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE STRICK-  
7 LAND TEST. SEE STRICKLAND, VS, WASHINGTON 466 U.S. 668, 104 S. CT 2052  
8 BOL. ED 2d 674 (1984)

9  
10 IN STRICKLAND, VS, WASHINGTON, THE UNITED STATES SUPREME COURT  
11 HAD ESTABLISH A TWO PRONG TEST FOR REVERSAL BASED UPON INEFFECTIVE-  
12 NESS ASSISTANCE OF COUNSEL. DEFENDANT MUST SHOW THAT COUNSEL'S  
13 PERFORMANCE WAS SO DEFICIENT, THAT HIS ERROR DEPRIVE DEFENDANT  
14 OF A FAIR TRIAL. HERE, DEFENDANT: FRANK HEARRING WAS ADVISED BY  
15 TRIAL COUNSEL TO ACCEPT A GUILTY PLEA JUST TO AVOID THE DEATH PEN-  
16 ALTY. THE DEFENDANT: FRANK HEARRING HAD EXPRESSED HIS DESIRE  
17 TO GO TO TRIAL ON NUMEROUS OCCASIONS AND COUNSEL PERFORMANCE  
18 WAS NOT TRIAL STRATEGY WHEN HE DENIED DEFENDANT: HEARRING'S  
19 REQUEST IN VIOLATION OF HIS SIXTH AMENDMENT RIGHT TO A JURY TRIAL

20  
21 THE UNITED STATES SUPREME COURT HAS HELD IN HILL, VS, LOCK-  
22 HART WHICH HAD DECLINED A FEDERAL HABEAS PETITIONER RELIEF TO  
23 AN EVIDENTIARY HEARING CLAIMING HIS GUILTY PLEA WAS INVOLUNTARY  
24 AND UNKNOWINGLY ENTERED BY REASON OF INEFFECTIVE ASSISTANCE OF  
25 COUNSEL, SINCE HE [DID NOT] ALLEGED IN HIS HABEAS PETITION THAT,  
26 HAD COUNSEL CORRECTLY [INFORMED] HIM ABOUT HIS PAROLE ELIG-  
27 IBLITY DATE, HE WOULD HAVE PLEADED NOT GUILTY AND INSTEAD

1 insisted on going to trial, but that's not here, AS defendant:  
2 Frank Hearing is seeking this Honorable Court's permission to  
3 Withdraw his guilty Plea which he entered upon Counsel's Advise  
4 to do so by Misinformation of A Death Penalty Phase, the voluntar-  
5 iness to Plea Negotiate WAS INVOLUNTARILY AND UNKNOWINGLY MADE  
6 upon the Advise of AN INCOMPETENT TRIAL Counsel which he  
7 would had preferred to go to trial. See Hill, vs, Lockhart, 474  
8 U.S. 52, 88 L. ED. 2d 203, 106 S. CT 366 (1985)

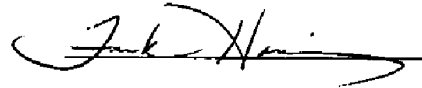
9  
10 The Death Penalty was presented to defendant: Frank Hearing  
11 after his preliminary Indictment on July 11, 2013 by State Court  
12 decision through Defense Counsel, who never referred the decision  
13 back to Defendant: Frank Hearing by neither way via Telephone  
14 Postal Service or through Visitation, who went under the assumption  
15 that this Death Penalty was still sort after by the State's Attorney  
16 which had operated to Coerce his Plea Agreement.

17  
18 The United States Supreme Court held that the Death Penalty  
19 provision of the Statute was unconstitutional AS imposing AN imp-  
20 ermissible burden upon AN Accused's Exercise of his Fifth  
21 Amendment Right not to plead guilty AND his Sixth Amendment  
22 Right to demand A TRIAL by Jury. See United States vs, Jackson  
23 390 U.S. 570, 20 L. ED 2d 138, 88 S. CT 1209 (1968)

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 20<sup>th</sup> day of November, 2014.

Respectfully Submitted,



CERTIFICATE OF SERVICE BY MAILING

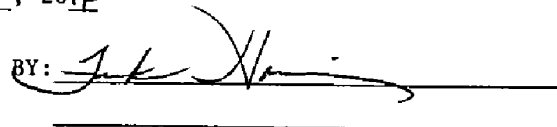
I, Frank Herring, hereby certify, pursuant to NRCF 5(b), that on this 20<sup>th</sup> day of November, 2014, I mailed a true and correct copy of the foregoing Motion to withdraw Plea, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

Steven B. Wolfson D.A.  
200 Lewis Ave 3rd floor  
Las Vegas, NV 89155

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CC: File

Dated this 20 day of November, 2014

BY: 

AFFIRMATION  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

To withdrawal Plea  
(Title of Document)

filed in District Court Case number C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-or-

B. For the administration of a public program or for an application  
for a federal or state grant.

Jack Xian  
Signature

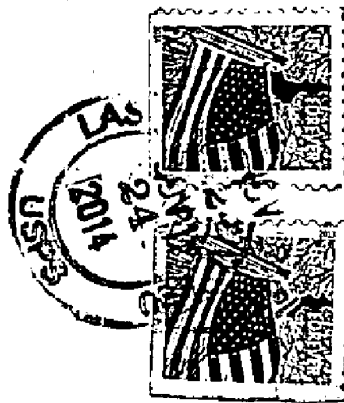
Nov 20, 2014  
Date

Frank Herring  
Print Name

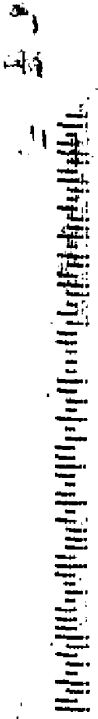
Defendant  
Title

FRANK HEARMING # 1006445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301

STANLEY D. GRIERSON  
200 LEWIS AVENUE 3rd Floor  
LAS VEGAS, NV 89155



8910136300



ELY STATE PRISON

NOV 23 2014

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12/10/2014 12:53:43 PM

MC  
DA  
PP

1 Frank Hearing #1006445  
2 Defendant/ In Propria Personam  
3 Post Office #989 ES. #  
4 Ely, Nevada 89301

*Alan D. Lamm*  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 STATE OF NEVADA  
9 PLAINTIFF  
10 vs.  
11 FRANK HEARING  
12 DEFENDANT

Case No. C-13-291159-1  
Dept No. 20  
Docket \_\_\_\_\_

NOTICE OF MOTION

15 YOU WILL PLEASE TAKE NOTICE, that JAMES G. COX AND CLARK COUNTY  
16 District Attorney: Steven B. Wolfson  
17 will come on for hearing before the above-entitled Court on the 06 day of January, 2015.  
18 at the hour of 8:30 o'clock am M. In Department XX, of said Court.

20 CC:FILE

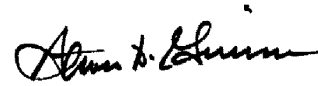
22 DATED: this 20<sup>th</sup> day of November, 2014.

BY: Frank Hearing #1006445  
Defendant/In Propria Personam

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CLERK OF THE COURT

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CLERK OF THE COURT

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**ORDER**  
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565  
K. NICHOLAS PORTZ  
Deputy District Attorney  
Nevada Bar #012473  
200 Lewis Avenue  
Las Vegas, NV 89155-2212  
(702) 671-2500  
Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FRANK HEARRING, aka,  
Frank Hearing, Jr. #1774466

Defendant.

CASE NO: C-13-291159-1  
DEPT NO: XX

**ORDER DENYING DEFENDANT'S MOTION FOR THE APPOINTMENT OF  
COUNSEL AND REQUEST FOR EVIDENTIARY HEARING**

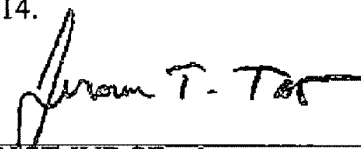
DATE OF HEARING: DECEMBER 4, 2014  
TIME OF HEARING: 8:30 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 4th day of December, 2014, the Defendant not being present, in proper person, the Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through K. NICHOLAS PORTZ, Deputy District Attorney, without argument, based on the pleadings and good cause appearing therefor,


///  
///  
///  
///

1 IT IS HEREBY ORDERED that the Defendant's Motion for the Appointment of  
2 Counsel and Request for Evidentiary Hearing, shall be, and it is DENIED. Court noted this is  
3 premature as Defendant has not filed a Writ of Habeas Corpus to show what grounds he wants  
4 to raise and if counsel need to be appointed and/or a hearing needs to be set.

5 DATED this 10<sup>th</sup> day of December, 2014.

6  
7   
8 \_\_\_\_\_  
DISTRICT JUDGE *JD*

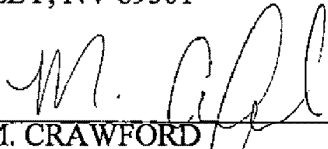
9 STEVEN B. WOLFSON  
10 Clark County District Attorney  
Nevada Bar #001565

11  
12 BY   
13 \_\_\_\_\_  
K. NICHOLAS PORTZ  
14 Deputy District Attorney  
Nevada Bar #012473

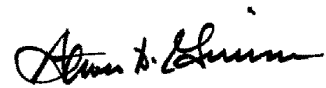
15  
16  
17  
18 CERTIFICATE OF SERVICE

19 I certify that on the 15<sup>th</sup> day of December, 2014, I mailed a copy of the foregoing  
20 Order to:

21 FRANK HEARRING #1006445  
22 ELY STATE PRISON  
23 P.O. BOX 1989  
ELY, NV 89301

24  
25 BY   
26 \_\_\_\_\_  
M. CRAWFORD  
27 Secretary for the District Attorney's Office

28 13F08177X/mc/L4



CLERK OF THE COURT

1 RTRAN

2

3

DISTRICT COURT  
CLARK COUNTY, NEVADA

4

5

THE STATE OF NEVADA,

6

Plaintiff,

CASE NO. C291159

7

vs.

DEPT. NO. XX

8

FRANK HEARRING,

9

Defendant.

10

11

BEFORE THE HONORABLE JEROME T. TAO, DISTRICT COURT JUDGE

12

MONDAY, OCTOBER 7, 2013

13

**RECORDER'S TRANSCRIPT OF JURY TRIAL**

14

15

16

17

18

19

APPEARANCES:

20

For the State:

MICHAEL J. SCHWARTZER  
LINDSEY DAVIS JOSEPH  
Deputies District Attorney

21

22

23

For the Defendant:

CARL E.G. ARNOLD, ESQ.

24

RECORDED BY: SARA RICHARDSON, COURT RECORDER

25

1 LAS VEGAS, NEVADA, MONDAY, OCTOBER 7, 2013, 10:06 A.M.

2 \* \* \* \* \*

3 THE COURT: Good morning, everybody, this is State versus Frank -- is it  
4 Herring or Herring? I'm sorry.

5 MR. ARNOLD: Herring, Your Honor.

6 THE COURT: -- Frank Herring, C291159. Mr. Herring is present in  
7 custody with his attorney. It's my understanding that this case may have negotiated;  
8 is that correct?

9 MR. ARNOLD: That's correct, Your Honor.

10 MR. SCHWARTZER: That's correct, Your Honor.

11 THE COURT: Can someone state the negotiation for the record?

12 MR. ARNOLD: I will, Your Honor. My client will be agreeing to plead guilty to  
13 murder, second degree, with use of a deadly weapon. The State will retain the right  
14 to argue.

15 MR. SCHWARTZER: That is correct, Your Honor.

16 THE COURT: All right, Mr. Herring, can you move the microphone closer to  
17 him?

18 MR. ARNOLD: Yes, Your Honor.

19 THE COURT: Thanks.

20 What is you true, full legal name, sir?

21 THE DEFENDANT: Frank Herring, Junior.

22 THE COURT: And how old are you?

23 THE DEFENDANT: Twenty-eight.

24 THE COURT: How far did you go in school?

25 THE DEFENDANT: Eleventh grade.

1 THE COURT: Did -- so do you read, write, and understand the English  
2 language?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did you hear the statement of the negotiation that the  
5 attorneys just made before me?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you agree with what they said?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: How do you plead to the offense of second degree murder with  
10 use of a deadly weapon which is a category A felony?

11 THE DEFENDANT: Guilty.

12 THE COURT: I have in my hand a written guilty plea agreement which  
13 appears to have your signature on page five. Is this your signature?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Before signing this document did you read the entire  
16 document?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Did you understand everything in the document?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Was your attorney available to answer any questions you may  
21 have had about anything in this document?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have any questions for me about anything in this  
24 document?

25 THE DEFENDANT: No, sir.

1 THE COURT: Before I may accept your plea of guilty I must be satisfied that  
2 your plea is freely and voluntarily entered, are you entering this plea freely and  
3 voluntarily of your own free will?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have any threats been made against you or anyone closely  
6 associated with you in order to get you to enter this plea of guilty?

7 THE DEFENDANT: No, sir.

8 THE COURT: Other than the negotiations that have been stated, have any  
9 promises been made to you to get you to enter this plea of guilty?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you discussed with your attorney the elements of the  
12 crimes that you have been charged with and what the State must prove if you went  
13 to trial, and have you and your attorney discussed any possible defenses that you  
14 may have to the charges filed against you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you believe that it is in your best interest to enter this plea  
17 today instead of proceeding to trial on the charges against you?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you satisfied with the work that your attorney has done for  
20 you in this case and the advice that you have been given so far?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Do you understand that the range of potential  
23 punishments in this case is as follows: It is either life with the possibility of parole  
24 after 10 years or a definite term of 10 years to 25 years plus a consecutive term of 1  
25 to 20 years for the deadly weapon enhancement; do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, do you understand also that the matter of sentencing  
3 is strictly up to court and that no one can promise you exactly what I'm going to do  
4 at sentencing?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you also understand that for these offenses you are not  
7 eligible for probation?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. By entering your plea of guilty, you're giving up  
10 certain valuable constitutional rights which I'm now going to list for you. The right to  
11 a speedy and public trial before an impartial jury; the right to be confronted by  
12 witnesses against you; the right to compel witnesses to testify on your behalf at trial;  
13 the right to testify in your own defense or to refuse to testify at trial; and the right to  
14 the assistance of an attorney at trial; do you understand all the rights that I just listed  
15 for you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that by entering your plea of guilty you are  
18 forever waiving and giving up all of those rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you a citizen of the United States?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you currently under the influence of any controlled  
23 substance or prescription medication or do you have any medical conditions that  
24 might affect your ability to understand what we're talking about here today?

25 THE DEFENDANT: No, sir.

1 THE COURT: So in knowing all of this, do you still wish to enter your plea of  
2 guilty?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Are you pleading guilty because in truth and in fact you are  
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: This is what the State is alleging that you did: On or about  
8 May 17, 2013, within the County of Clark, State of Nevada, that you did willfully,  
9 feloniously, without authority of law and with malice aforethought kill a human being  
10 named Michael Jordan by shooting him with a deadly weapon, namely, a firearm.  
11 So in other words, did you shoot and kill this gentleman, Michael Jordan?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And did you intend to do so? It wasn't an accident or anything  
14 like that?

15 THE DEFENDANT: No, sir, I didn't intend to.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: I didn't intend to.

18 THE COURT: You didn't intend to?

19 THE DEFENDANT: No, sir.

20 MR. SCHWARTZER: Your Honor, this was a transferred intent case. I  
21 believe he was shooting at a man by the name of Clifford Watkins and shot  
22 Michael Jordan; and therefore, there was a transfer of intent.

23 THE COURT: Oh, I see.

24 MR. ARNOLD: I'll dispute that he was trying to shoot Mr. Watkins, but he was  
25 shooting a firearm and Mr. Jordan died because of that.



1 THE COURT: Okay. So did you -- did you intentionally point a firearm at  
2 somebody and pull the trigger?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: It wasn't like an accidental discharge or something like that?  
5 You weren't target shooting, right?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. So you intentionally pointed it at somebody, you  
8 intentionally pulled the trigger, right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And that shooting led to the death of Michael Jordan; you're  
11 agreeing to that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Okay. State, are you satisfied with that?

14 MR. SCHWARTZER: Yes, Your Honor.

15 THE COURT: All right. The Court finds the defendant's plea of guilty is freely  
16 and voluntarily made and he understands the nature of the offense and the  
17 consequences of his plea; and therefore, accepts his plea of guilty, this matter is  
18 referred to the Division of Parole and Probation for a presentence investigation  
19 report and is set for entry of judgment and imposition of sentence on this in-custody  
20 date and time.

21 THE CLERK: December 10<sup>th</sup> at 8:30.

22 MR. SCHWARTZER: December 10<sup>th</sup>?

23 THE CLERK: Yes.

24 MR. SCHWARTZER: Thank you.

25 THE COURT: All right, we'll see if that sentencing date holds with the way

1 P&P's been going, but, yeah. All right, thanks, everybody.

2 MR. ARNOLD: All right, thanks, Your Honor.

3 MS. JOSEPH: Thank you, Judge.

4 THE COURT: And, you know, just for the record, let me ask, State, anything  
5 else that you want me to cover in the canvass? I know I'm a little bit past it, but I  
6 can always go back. This is now the time to ask if there's anything else particularly  
7 that you want me to ask the defendant?

8 MR. SCHWARTZER: No, Your Honor. Thank you.

9 MR. ARNOLD: All right.

10 THE COURT: All right, thanks, everybody.

11 MS. JOSEPH: Thank you.

12 PROCEEDING CONCLUDED AT 10:11 A.M.

13 \* \* \* \* \*

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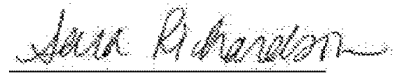
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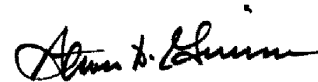
21 ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-  
22 video recording of this proceeding in the above-entitled case.

23

24

25

  
SARA RICHARDSON  
Court Recorder/Transcriber



CLERK OF THE COURT

1 **OPPS**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 H. LEON SIMON  
6 Chief Deputy District Attorney  
7 Nevada Bar #000411  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

12 FRANK HEARRING, aka,  
13 Frank Hearing, Jr. #1774466

14 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW PLEA

16 DATE OF HEARING: JANUARY 6, 2015  
17 TIME OF HEARING: 8:30 AM

18 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
19 District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby  
20 submits the attached Points and Authorities in Opposition to Defendant's Motion to Withdraw  
21 Plea.

22 This opposition is made and based upon all the papers and pleadings on file herein, the  
23 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
24 deemed necessary by this Honorable Court.

25 ///

26 ///

27 ///

28 ///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 15, 2013, the State charged Frank Hearing (hereinafter "Defendant") by way  
4 of Information with the following: Count 1 – Murder With Use of a Deadly Weapon (Category  
5 A Felony – NRS 200.010; 200.030; 193.165); Count 2 – Attempt Murder With Use of a Deadly  
6 Weapon (Category B Felony – NRS 193.330; 200.010; 200.030); Count 3 – Discharging  
7 Firearm At or Into Structure, Vehicle, Aircraft or Watercraft (Category B Felony – NRS  
8 202.285) and Count 4 – Possession of Firearm by Ex-Felon (Category B Felony – NRS  
9 202.360).

10 On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea  
11 Agreement ("GPA") with the State, wherein he agreed to plead guilty to one count of Murder  
12 (Second Degree) With Use of a Deadly Weapon (Category A Felony – NRS 200.010; 200.030;  
13 193.165). The same day, the court conducted a plea canvass on the record and thereafter  
14 accepted Defendant's plea. An Amended Information was filed in open court reflecting the  
15 charge contained in the GPA.

16 On December 10, 2013, Defendant was present in court for sentencing, and was  
17 sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility  
18 after ten years, plus a consecutive sentence of a maximum of two hundred forty (240) months  
19 and a minimum of ninety-six (96) months for the deadly weapon enhancement. Defendant  
20 received two hundred ninety-three (293) days credit for time served. On December 30, 2013,  
21 the court entered its Judgment of Conviction.<sup>1</sup>

22 On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of  
23 his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

24 ///

25 \_\_\_\_\_  
26 <sup>1</sup> Though the Nevada Supreme Court has held that a post-conviction petition for writ of habeas corpus is the exclusive  
27 remedy to challenge a guilty plea after sentence has been imposed, it has also made clear that a district court should  
28 construe a post-sentence motion to withdraw guilty plea which otherwise complies with NRS Chapter 34 (including the  
one-year time limit after a judgment of conviction within which to file) as a post-conviction petition for writ of habeas  
corpus. *Harris v. State*, 130 Nev. \_\_, \_\_, 329 P.3d 619, 628-629 (2014). Thus, a post-conviction motion to withdraw  
guilty plea filed within the one year time limit should be decided on the merits. As such, the State contends the instant  
motion should be construed as a post-conviction petition for writ of habeas corpus, and be decided on the merits.

1 On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and  
2 Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On  
3 December 4, 2014, the court denied the motion, finding the request for evidentiary hearing  
4 was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

5 On December 10, 2014, Defendant filed the instant Motion to Withdraw Plea. The State  
6 hereby opposes that motion as follows.

7  
8 **ARGUMENT**

9 **I. DEFENDANT HAS NOT DEMONSTRATED ANY MANIFEST**  
10 **INJUSTICE TO WARRANT WITHDRAWAL OF HIS GUILTY PLEA**

11 NRS 176.165 states that a motion to withdraw a plea of guilty may be made only before  
12 sentence is imposed, but: “[t]o correct manifest injustice, the court after sentence may set aside  
13 the judgment of conviction and permit the defendant to withdraw his plea.” See NRS 176.165;  
14 Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). Three important factors in making  
15 the determination of the presence of a “manifest injustice” are whether the defendant: 1) acted  
16 voluntarily; 2) understood the nature of the charges against him; and 3) understood the  
17 consequences of his plea. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In the  
18 instant matter, the record plainly indicates all three factors were present.

19 **A. Defendant’s Counsel Did Not Coerce Defendant Into Entering the**  
20 **Guilty Plea Agreement, Rather, Defendant’s Plea Was Freely and**  
21 **Voluntarily Entered.**

22 The law in Nevada clearly establishes that a plea of guilty is presumptively valid and  
23 the burden is on a defendant to show that the plea was not voluntarily entered. Bryant v. State,  
24 102 Nev. 268, 272, 721 P.2d 364 (1986); Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295,  
25 1295 (1975). Patton v. Warden, 91 Nev. 1, 2, 530 P.2d 107, 107 (1975), suggests that the  
26 presence and advice of counsel is a significant factor in determining the voluntariness of a plea  
27 of guilty. Furthermore, the Nevada Supreme Court made clear in the case of Heffley v.  
28 Warden, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973), that the guidelines for voluntariness

1 of guilty pleas “do not require the articulation of talismanic phrases. It is required only ‘that  
2 the record affirmatively disclose that a defendant who pleaded guilty entered his plea  
3 understandingly and voluntarily.’” Brady v. United States, 397 U.S. 742, 747-748, 90 S.Ct.  
4 1463, 1470 (1970); United States v. Sherman, 474 F.2d 303 (9th Cir. 1973).

5 In determining whether a guilty plea is knowingly and voluntarily entered, the Court  
6 will review the totality of the circumstances surrounding the defendant's plea. Bryant at 271.  
7 The proper standard set forth in Bryant requires the Court to personally address a defendant at  
8 the time he enters his plea in order to determine whether he understands the nature of the  
9 charges to which he is pleading. Id. at 271. In Wilson v. State, 99 Nev. 362, 366, 664 P.2d  
10 328, 330 (1983), the Nevada Supreme Court stated the following regarding the acceptance of  
11 a guilty plea:

12 In Higby v. Sheriff, 86 Nev. 774, 476 P.2d 950 (1970), we  
13 concluded that certain minimum requirements must be met when  
14 a judge canvasses a defendant regarding the voluntariness of a  
15 guilty plea. We held that the record must affirmatively show the  
16 following: 1) the defendant knowingly waived his privilege  
17 against self-incrimination, the right to trial by jury, and the right  
18 to confront his accusers; 2) the plea was voluntary, was not  
coerced, and was not the result of a promise of leniency; 3) the  
defendant understood the consequences of his plea and the range  
of punishment; and 4) the defendant understood the nature of the  
charge, i.e., the elements of the crime.

19 Id. at 781, 476 P.2d at 963.

20 In State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000), the Nevada Supreme Court held  
21 that a failure to conduct a ritualistic oral canvass does not mandate a finding of an invalid plea.  
22 Instead, the Court found that a district court should not invalidate a plea as long as the totality  
23 of the circumstances, as shown by the record, demonstrates that the plea was knowingly and  
24 voluntarily made and that the defendant understood the nature of the offense and the  
25 consequences of the plea. Id. at 448. As to Defendant’s claim that his attorney coerced him  
26 into enter the Guilty Plea Agreement, it is counsel’s duty to recommend a plea negotiation the  
27 attorney deems favorable to the defendant, but the ultimate responsibility to decide whether to  
28 accept the negotiation is the defendant’s. Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (2002).



1                   ...  
2                   My attorney has answered all my questions regarding  
3                   this guilty plea agreement and its consequences to my  
4                   satisfaction and I am satisfied with the services provided by  
5                   my attorney.

6 Guilty Plea Agreement, 10/07/2013 (emphasis added). The GPA also included a "Waiver of  
7 Rights" section explaining that by signing the agreement, Defendant forfeited the privilege  
8 against self-incrimination, the right to a speedy and public trial, the right to confront, cross-  
9 examine, or subpoena witnesses, the right to testify in his own defense, and the right to appeal.  
10 Id. at 4. Finally, a copy of the Information detailing the elements of the charge of Murder  
11 (Second Degree) With Use of a Deadly Weapon was attached to the GPA. See Id.

12 At the plea canvass, also conducted October 7, 2013, the court orally confirmed that Defendant  
13 was entering the plea voluntarily, that he understood the charges against him, and that he  
14 comprehended the consequences of the plea. The following exchange occurred between  
15 Defendant and the court:

16           THE COURT:       Before signing [the GPA], did you read the entire  
17                               document?

18           DEFENDANT:     Yes, sir.

19           THE COURT:       Did you understand everything in the document?

20           DEFENDANT:     Yes, sir.

21           THE COURT:       Was your attorney available to answer any questions  
22                               you may have had about anything in the document?

23           DEFENDANT:     Yes, sir.

24           THE COURT:       Do you have any questions for me about anything in the  
25                               document?

26           DEFENDANT:     No, sir.

27           THE COURT:       ...Are you entering this plea freely and voluntarily of  
28                               your own free will?

          DEFENDANT:     Yes, sir.



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...  
THE COURT: Have you discussed with your attorney the elements of the crimes that you have been charged with and what the State must prove if you went to trial, and have you and your attorney discussed any possible defenses that you may have to the charges filed against you?

DEFENDANT: Yes, sir.

...  
THE COURT: Do you understand that the range of potential punishments in this case is as follows: It is either life with the possibility of parole after 10 years or a definite term of 10 years to 25 years plus a consecutive term of 1 to 20 years for the deadly weapon enhancement; do you understand that?

DEFENDANT: Yes, sir.

...  
THE COURT: Alright. By entering your plea of guilty, you're giving up certain valuable constitutional rights which I'm now going to list for you. The right to a speedy public trial before an impartial jury; the right to be confronted by the witnesses against you; the right to compel witnesses to testify on your behalf at trial; the right to testify in your own defense or to refuse to testify at trial; and the right to the assistance of an attorney at trial; do you understand all the rights that I just listed for you?

DEFENDANT: Yes, sir.

Reporter's Transcript 10/07/13, p. 3-5. The court went on to discuss each element of the crime with Defendant and found he was entering the plea freely and voluntarily, and that he understood the nature of the offense and the consequences of the plea. *Id.* Thus, it is clear that Defendant was at least twice apprised of the nature of the charges against him and the consequences of his plea.

Moreover, Defendant's assertion that the plea was not entered knowingly and intelligently in that he was under the impression that proceeding to trial presented the risk of

1 being sentenced to death is belied by the record. Pursuant to Nevada Supreme Court Rule 250,  
2 where the State intends to seek the death penalty, it must file a notice in the district court  
3 indicating such intent no later than 30 days after the filing of an information or indictment.  
4 Nev. Sup. Ct. R. 250(4)(a). Here, the State filed an Information on July 15, 2013. Defendant's  
5 trial was set to begin the day his plea was entered on October 7, 2013. At no time during the  
6 interim did the State file a notice of intent to seek the death penalty. As such, it is unlikely that  
7 Defendant, represented by a seasoned defense attorney, held a genuine belief that a guilty plea  
8 was necessary in order to avoid the death penalty. Further, even if Defendant's belief was  
9 genuine, the Nevada Supreme Court has found that a defendant's fear of death does not  
10 invalidate his guilty plea if he "voluntarily, knowingly, and understandingly consented to the  
11 imposition of a prison sentence," as Defendant did here. Conger v. Warden, 89 Nev. 263, 265,  
12 510 P.2d 1359, 1361 (1973) (citing North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160  
13 (1970)).

14 Finally, Defendant's bare allegation that he discovered after entering the guilty plea  
15 that "the Grand Jury had insufficient evidence to sustain [sic] a fixed determination of a guilt  
16 penalty" does not amount to a "manifest injustice" sufficient to warrant withdrawal of his plea.  
17 See Defendant's Motion, p. 2. Defendant offers no specific facts or argument in support of the  
18 contention that a jury would not have convicted him, and as such, the claim is purely  
19 speculative.

20 Defendant understood the content of the Guilty Plea Agreement, the potential sentence,  
21 and entered the plea knowingly and voluntarily. Indeed, because Defendant entered the plea  
22 agreement pursuant to the advice of Counsel, under Jeziarski, Defendant's plea is  
23 presumptively valid. Moreover, the record affirms that the ultimate decision to plead guilty  
24 was indeed Defendant's, pursuant to Rhyne. Thus, Defendant's contention that his plea was  
25 coerced by counsel or was otherwise involuntary is without merit. As such, Defendant's plea  
26 was valid and should not be disturbed on post-conviction review.

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1                                   **B. Defendant Received Effective Assistance of Counsel.**

2           Nevada has adopted the standard outlined in Strickland v. Washington, 466 U.S. 668,  
3 104 S.Ct. 2052 (1984), for determinations regarding the effectiveness of counsel. Under  
4 Strickland, in order to assert a claim for ineffective assistance of counsel, the defendant must  
5 prove that he was denied “reasonably effective assistance” of counsel by satisfying a two-  
6 pronged test. Strickland 466 U.S. at 686–687, 104 S.Ct. at 2063-64; see State v. Love, 109  
7 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, the Defendant must show: first,  
8 that his counsel’s representation fell below an objective standard of reasonableness, and  
9 second, that but for counsel’s errors, there is a reasonable probability that the result of the  
10 proceedings would have been different. See Strickland, 466 U.S. at 687–688 and 694, 104  
11 S.Ct. at 2065 and 2068.

12           “Surmounting Strickland’s high bar is never an easy task.” Padilla v. Kentucky, 130  
13 S.Ct. 1473, 1485 (2010). The question is whether an attorney’s representations amounted to  
14 incompetence under prevailing professional norms, “not whether it deviated from best  
15 practices or most common custom.” Harrington v. Richter, 131 S.Ct. 770, 778 (2011).  
16 Furthermore, “[e]ffective counsel does not mean errorless counsel, but rather counsel whose  
17 assistance is ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’”  
18 Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975) (quoting McMann v.  
19 Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970)).

20           The court begins with the presumption of effectiveness and then must determine  
21 whether the defendant has demonstrated by a preponderance of the evidence that counsel was  
22 ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a court in  
23 considering allegations of ineffective assistance of counsel is “not to pass upon the merits of  
24 the action not taken but to determine whether, under the particular facts and circumstances of  
25 the case, trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94  
26 Nev. 671, 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166  
27 (9th Cir. 1977)).

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1 Even if a defendant can demonstrate that his counsel's representation fell below an  
2 objective standard of reasonableness, he must still demonstrate prejudice and show a  
3 reasonable probability that, but for counsel's errors, the result of the trial would have been  
4 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing  
5 Strickland, 466 U.S. at 687). "A reasonable probability is a probability sufficient to undermine  
6 confidence in the outcome." Id. Furthermore, claims asserted in a petition for post-conviction  
7 relief must be supported with specific factual allegations, which if true, would entitle the  
8 petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "Bare"  
9 and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id.

10 Here, Defendant's only allegation in regard to counsel's alleged ineffectiveness is that  
11 counsel coerced Defendant into entering the Guilty Plea Agreement by failing to inform  
12 Defendant that he was not death penalty-eligible. As previously discussed, it is counsel's duty  
13 to recommend a plea negotiation the attorney deems favorable to the defendant, but the  
14 ultimate responsibility to decide whether to accept the negotiation is the defendant's. Rhyne  
15 v. State, 118 Nev. 1, 38 P.3d 163 (2002). Moreover, Defendant's bare claim of ineffectiveness  
16 is unsupported by specific factual allegations which would entitle him to relief. Finally,  
17 Defendant has failed to establish prejudice, as he cannot show that had counsel's alleged error  
18 not occurred, he would have in fact proceeded to trial and ultimately received a lesser penalty  
19 than that imposed pursuant to the Guilty Plea Agreement. As such, Defendant has failed to  
20 satisfy the heavy burden he shoulders under Strickland, and has not established ineffectiveness  
21 of counsel. Defendant's guilty plea should therefore stand.

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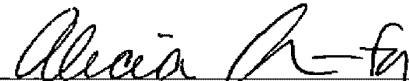
CONCLUSION

Because Defendant entered the guilty plea voluntarily and knowingly in that he understood the nature of the charges against him and the consequences of the plea, the State respectfully requests that this Court reject Defendant's attempt to withdraw the plea.

DATED this 22nd day of December, 2014.

Respectfully submitted,

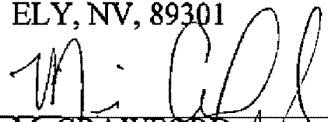
STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
H. LEON SIMON  
Chief Deputy District Attorney  
Nevada Bar #000411

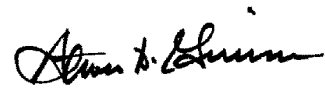
CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 22nd day of December, 2014, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV, 89301

BY   
M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/MF/mc/L4



CLERK OF THE COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 H. LEON SIMON  
6 Chief Deputy District Attorney  
7 Nevada Bar #000411  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

CASE NO: C-13-291159-1

10 -vs-

DEPT NO: XX

11 FRANK HEARRING, JR.,  
12 #1774466

APPLICATION AND  
ORDER FOR TRANSCRIPTS

13 Defendant.

14 TO: COURT RECORDER, DEPT. NO. XX, SARA RICHARDSON

15 Upon the application of the District Attorney's Office, by and through Deputy District  
16 Attorney H. LEON SIMON, Appellate Division, attorney for Plaintiff in the above-entitled  
17 matter, and good cause appearing therefor,

18 IT IS HEREBY ORDERED that an original and two (2) copies of Reporter's Transcript  
19 of Proceedings on OCTOBER 7, 2013 (Plea), be prepared as soon as possible at State expense  
20 in order for the State to adequately address the issues presented in defendant's post-conviction  
21 matters.

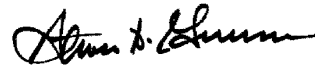
22 Dated this 18<sup>th</sup> day of December, 2014.

23   
DISTRICT JUDGE

24 STEVEN B. WOLFSON  
25 District Attorney

26 BY   
27 H. LEON SIMON,  
28 Chief Deputy District Attorney  
Nevada Bar #000411

ig/CAU



CLERK OF THE COURT

1 **ORDD**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 MICHELLE SUDANO  
6 Deputy District Attorney  
7 Nevada Bar #13260  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 FRANK HEARRING, aka,  
14 Frank Herring, Jr., #1774466

15 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

16 ORDER DENYING DEFENDANT'S MOTION TO WITHDRAW PLEA

17 DATE OF HEARING: January 6, 2015

18 TIME OF HEARING: 8:30 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the  
20 6th day of January, 2015, the Defendant not being present, incarcerated in the Nevada  
21 Department of Corrections, the Plaintiff being represented by STEVEN B. WOLFSON,  
22 District Attorney, through MICHELLE SUDANO, Deputy District Attorney, without  
23 argument, based on the pleadings and good cause appearing therefor,

24 ///

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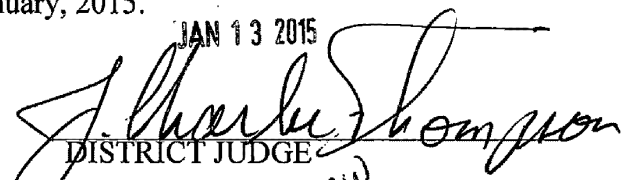
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IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Plea, shall be,  
and it is DENIED.

DATED this \_\_\_\_\_ day of January, 2015.

JAN 13 2015  
  
DISTRICT JUDGE  
pw


STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY   
MICHELLE SUDANO  
Deputy District Attorney  
Nevada Bar #13260

CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of Jan, 2014, I mailed a copy of the  
foregoing Order to:

FRANK HEARRING, BAC #1006445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301

BY   
Secretary for the District Attorney's Office

13F08177X: ckb/L4



FRANK HEARING # 10060445  
Petitioner in Pro-Per  
ELY STATE PRISON  
P.O. Box #1989  
ELY, Nevada 89301

FILED  
MAR 30 2015  
A. J. Blain  
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF  
THE STATE OF NEVADA IN AND FOR THE  
COUNTY OF CLARK

FRANK HEARING  
Petitioner,  
vs.  
State of Nevada  
JAMES GREG COX  
RENEE BAKER  
Respondent(s).

Case No. C-13-291159-1  
Dept. No. 20  
Docket \_\_\_\_\_

Evidentiary Hearing Requested

**PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of corrections, name the warden or head of the institution. If you are not in a specific institution of the department within its custody, name the director of the department of corrections.
- (5) You must include all grounds or claims for relief which you may have regarding your conviction and sentence.

RECEIVED  
MAR 30 2015  
CLERK OF THE COURT

C-13-291159-1  
PWHC  
Petition for Writ of Habeas Corpus  
4444529



1 Failure to raise all grounds in this petition may preclude you from filing future petitions  
2 challenging your conviction and sentence.

3 (6) You must allege specific facts supporting the claims in the petition you file seeking relief  
4 from any conviction or sentence. Failure to allege specific facts rather than just conclusions may  
5 cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of  
6 counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which  
7 you claim your counsel was ineffective.

8 (7) If your petition challenges the validity of your conviction or sentence, the original and one  
9 copy must be filed with the clerk of the district court for the county in which the conviction  
10 occurred. Petitions raising any other claim must be filed with the clerk of the district court for the  
11 county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the  
12 attorney general's office, and one copy to the district attorney of the county in which you were  
13 convicted or to the original prosecutor if you are challenging your original conviction or sentence.  
14 Copies must conform in all particulars to the original submitted for filing.

15 **PETITION**

16 1. Name of institution and county in which you are presently imprisoned or where and who you  
17 are presently restrained of your liberty: Ely State Prison, White Pine County  
18 AND RESTRAINED BY Renee Baker, Warden

19 2. Name the location of court which entered the judgment of conviction under attack: The  
20 Eighth Judicial District Court of Clark County, Nevada

21 3. Date of judgment of conviction: December 10, 2013

22 4. Case number: C-13-291159-1

23 5. (a) Length of sentence: 10 YEARS TO LIFE CONSECUTIVELY WITH 8 TO 20 YEARS

24 (b) If sentence is death, state any date upon which execution is scheduled: \_\_\_\_\_

25 6. Are you presently serving a sentence for a conviction other than the conviction under attack in  
26 this motion:

27 Yes \_\_\_\_\_ No  If "Yes", list crime, case number and sentence being served at this time: \_\_\_\_\_

28 7. Nature of offense involved in conviction being challenged: MURDER (SECOND DEGREE)  
WITH THE USE OF A DEADLY WEAPON (CATEGORY A FELONY)

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8. What was your plea? (Check one)

(a) Not guilty \_\_\_

(b) Guilty

(c) Nolo contendere \_\_\_

9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea to another count of an indictment or information, or if a guilty plea was negotiated, give details:

The Plea of Guilty was unknowingly and unintelligently made as well as involuntarily entered due to defense attorney's ineffectiveness of attorney.

10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

(a) Jury \_\_\_

(b) Judge without a jury \_\_\_

11. Did you testify at trial? Yes \_\_\_ No \_\_\_

12. Did you appeal from the judgment of conviction?

Yes \_\_\_ No

13. If you did appeal, answer the following:

(a) Name of court:

(b) Case number or citation:

(c) Result:

(d) Date of appeal:

(Attach copy of order or decision, if available).

14.) If you did not appeal, explain briefly why you did not: The reasons was because

I negotiate A Plea Agreement with the States Attorney by the Coersion of Incompetent trial Counsel.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal? Yes  No \_\_\_

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16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: EIGHT Judicial Distr

(2) Nature of proceedings: \_\_\_\_\_

(3) Grounds raised : Motion to Withdraw Guilty Plea which WAS denied by Trial Court, & Supreme Court Affirmed the Trial Courts Decision ON Give date Supreme court Affirmed decision

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No

(5) Result: \_\_\_\_\_

(6) Date of result: \_\_\_\_\_

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: \_\_\_\_\_

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: N/A

(2) Nature of proceeding: N/A

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes \_\_\_ No \_\_\_

(5) Result: N/A

(6) Date of result: N/A

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: N/A

(c) As to any third or subsequent additional application or motions, give the same information as above, list them on a separate sheet and attach.

1 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or action  
2 taken on any petition, application or motion?

3 (1) First petition, application or motion?

4 Yes  No

5 Citation or date of decision: \_\_\_\_\_

6 (2) Second petition, application or motion?

7 Yes  No

8 Citation or date of decision: \_\_\_\_\_

9 (e) If you did not appeal from the adverse action on any petition, application or motion,  
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your  
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response  
12 may not exceed five handwritten or typewritten pages in length). \_\_\_\_\_

13 \_\_\_\_\_

14 \_\_\_\_\_

15 17. Has any ground being raised in this petition been previously presented to this or any other  
16 court by way of petition for habeas corpus, motion or application or any other post-conviction  
17 proceeding? If so, identify:

18 (a) Which of the grounds is the same: INEFFECTIVE ASSISTANCE OF  
19 COUNSEL FOR COERSION OF A GUILTY PLEA AGREEMENT

20 (b) The proceedings in which these grounds were raised: IN A MOTION TO  
21 WITHDRAW GUILTY PLEA AGREEMENT

22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts  
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches  
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in  
25 length). \_\_\_\_\_

26 BECAUSE THE NEGOTIATION OF THE PLEA AGREEMENT WAS COERSED  
27 BY DEFENSE ATTORNEY WHEN I WANTED TO GO TO JURY TRIAL.

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1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages  
2 you have attached, were not previously presented in any other court, state or federal, list briefly what  
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate  
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x  
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten  
6 pages in length). \_\_\_\_\_

N/A  
N/A

7  
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of  
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.  
10 (You must relate specific facts in response to this question. Your response may be included on  
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five  
12 handwritten or typewritten pages in length).

13 REASONS FOR ANY DELAYS AFTER THE  
14 ONE YEAR DEADLINE WAS BECAUSE A MOTION TO WITHDRAW GUILTY PLEA  
15 WAS FILED.

16 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the  
17 judgment under attack?

18 Yes \_\_\_ No

19 If "Yes", state what court and the case number: \_\_\_\_\_

20 21. Give the name of each attorney who represented you in the proceeding resulting in your  
21 conviction and on direct appeal: DEFENSE ATTORNEY: CARL ARNOLD

22  
23  
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the  
25 judgment under attack?

26 Yes \_\_\_ No  If "Yes", specify where and when it is to be served, if you know: \_\_\_\_\_

1 23. a. GROUND ONE Petitioner Alleges that his Plea Negotiation  
2 was UNknowing AND untelligently AS well AS involuntarely made Due  
3 to TRIAL Counsels INEffective Assistance in violation of the  
4 Petitioner's Sixth Amendment and Fourteenth Amendment Right

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Defense Attorney Purposely lead Petitioner to believe he was  
7 getting the Death Penatty by withholding the Results to the  
8 GRAND Jury's Indictment Seeking the Death Penatty until After  
9 Petitioner's Plea Negotiation Agreement, CAusing Petitioner to  
10 Plea Negotiate with the States Attorney. Petitioner WAS  
11 COERsed into Accepting A lesser charge From first degree Mue-  
12 der to Second degree Murder because of trial Counsel's  
13 COersion AND this deception [forced] Petitioner to plead Guilty  
14 to Avoid the Death Penatty which he contend that due to  
15 trial Counsel's Performance of MISREpresentation, he would've  
16 Preferred to go to trial instead of Plea bargaining.

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1 23. (b) GROUND TWO: Petitioner Alleges that TRIAL Counsel Failed  
2 to properly Interview potential witnesses and make Indep-  
3 endent Investigation of the Facts and Circumstances of the  
4 Case Rendering Ineffectiveness Assistance of Counsel in Viol of 6<sup>th</sup> Amend.

5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Court Appointed Defense Attorney: Carl Arnold to Represent  
7 Petitioner: Frank Herring in a Murder Case in the First Degree  
8 which carried a penalty of Death. Trial Counsel Failed to prop-  
9 erly Interview witnesses that Petitioner Presented to him by  
10 way of Visitation in the Clark County Detention Center. Petitioner  
11 Alleges that Counsel's Failure to interview Potential Witnesses that  
12 could've exonerated him from the crime constituted bad Perform-  
13 ance of a Reasonable Trial Attorney in violation of the 6<sup>th</sup> Amend-  
14 ment and 14<sup>th</sup> Amendment Right to Effectiveness Assistance  
15 of Counsel and Due Process Rights to Life & Liberty

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1 23. (c) GROUND THREE: Petitioner Alleges that the Trial Counsel  
2 Rendered Ineffective Assistance of Counsel when he Failed to  
3 Use the Private Investigator of the Office to conduct A thorough  
4 Investigation in violation of his 6<sup>th</sup> Amendment to Effective Counsel.

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that Trial Counsel Failed to use the LAW OFFICE'S  
7 Private Investigator to perform Investigative duties such AS  
8 Locate friend & Family of Petitioner who would have made  
9 Statements on behalf of Petitioner's Alibi to the crime of  
10 Murder with the use of a deadly weapon AND EXONARATE him  
11 from doing such Criminal Activity. This Failure of the Use  
12 of a Private Investigator that Trial Counsel has choosing  
13 to do, denied Petitioner a Constitutional Right to a Fair  
14 Trial Proceeding which Lead to Petitioner's Plea Negotiation  
15 because of Ineffective Assistance from Counsel in violation  
16 of His 6<sup>th</sup> Amendment to Effectiveness of Counsel during A  
17 Serious Criminal Proceeding.

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1 23. D ROUND FOUR: PETITIONER ALLEGES THAT TRIAL COUNSEL FAILED  
2 TO PROPERLY INTERVIEW STATES ATTORNEY KEY WITNESS,  
3 \_\_\_\_\_  
4 \_\_\_\_\_

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 PETITIONER CONTENDED THAT TRIAL COUNSEL FAILED TO PROPERLY INTERVIEW  
7 THE STATES ATTORNEY KEY WITNESS TO RECEIVE THE WITNESS POINT  
8 OF THE INVESTIGATION WHICH RENDERS COMPETENT TRIAL COUNSEL AND  
9 THIS PREJUDICED THE PETITIONER BECAUSE THIS KEY WITNESS PURSUED  
10 A COURSE OF MISIDENTIFICATION UNTIL THEY WERE SHOWN A PHOTOGRAPH  
11 THAT WAS OF PETITIONER AND OTHER BLACK MALES WHICH PETITIONER'S  
12 PICTURE WAS EXPOSE IN SIZE MUCH BIGGER THEN THE REST OF THE  
13 BLACK MALES. A PROPER INTERVIEW WOULD HAVE GIVEN TRIAL COUN-  
14 SEL A BETTER VIEW OF THE STATES WITNESS DEMEANOR, BUT TRIAL  
15 COUNSEL FAILED TO PERFORM SUCH CRITICAL DUTIES WHICH HAD  
16 VIOLATED PETITIONER'S 6<sup>TH</sup> AMENDMENT CONSTITUTIONAL RIGHT TO  
17 EFFECTIVE ASSISTANCE OF COUNSEL GUARENTEED UNDER THE STATE  
18 AND FEDERAL CONSTITUTION.  
19 \_\_\_\_\_  
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1 23. (e) GROUND Five Petitioner Alleges that trial Counsel Failed  
2 to Present Mitigating Evidence during the sentencing hearing  
3 which would have rendered a more lenient sentence from  
4 trial Judge and to show Good Character of Petitioner.

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that trial Counsel Failed to present Mitigating  
7 Evidence during sentencing which he had advised Counsel  
8 to do and Trial Counsel Refused to present Mitigating Test-  
9 imony from the Petitioner's Church members, School Mentor,  
10 Youth Counselor, Parents (Mother & Father) Fiancée, child hood  
11 friends, and Petitioner's Supervisor's as well as Employer so  
12 that Trial Judge can show Leniency towards Petitioner's  
13 Sentencing because State's Attorney presented Evidence to  
14 show Petitioner's Bad Character which rendered unfair-  
15 ness in violation of the Petitioner's Constitutional Rights to  
16 the State & Federal Constitution in violation of the 6th & 14th  
17 Amendment to Effectiveness of Counsel.

1 23. F GROUND SIX. Petitioner Alleges that Trial Counsel Failed  
2 to File a Motion for a Psychological Evaluation for the States Key  
3 Witness After Knowing witness had a inconsistent statement  
4 testimony during preliminary hearing.

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law): The  
6 Petitioner Alleges that trial Counsel Failed to File a Motion for a  
7 Psychological Evaluation for the states key witness once it was  
8 discovered that the states witness Testimony during the Preliminary  
9 hearing showed inconsistency which Trial Counsel Failed to Invest-  
10 igate and Petitioner Requested for this Evaluation to be conducted  
11 by Filing a Motion with the Courts but was told "No" by Trial  
12 Counsel. This rendered ineffectiveness of Counsel on the  
13 Trial Attorney's Part because this key witness was the State's  
14 only witness to a Murder Conviction and Petitioner was not  
15 allowed to confront this witness by questioning in violation  
16 of Petitioner's 6<sup>th</sup> Amendment Right to Confrontation of the  
17 Accuser and the 14<sup>th</sup> Amendment to the State & Federal Const.  
18 to Due Process and Counsel's Performance rendered ineffect-  
19 iveness, denying Petitioner of his Federal Constitutional Right.

20 \_\_\_\_\_  
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1 (d) Ground 7 Petitioner Alleges that trial counsel rendered ineffective assistance of counsel, when counsel  
2 advised him to accept the revised plea, despite his pro-  
3 testations of innocence on advice of an attorney who was  
4 improperly motivated due to petitioners inability to pay retained attorney.  
5 Supporting FACTS (Tell your story briefly without citing cases or law.):

6 The defense Attorney purposely advised petitioner to  
7 accept plea negotiations based on petitioners inability  
8 to pay retained fees(s) of 10,000.00. Petitioner alleges  
9 that defense counsel was improperly motivated. Defense  
10 Counsel induced guilty plea(s) based solely defend-  
11 ant's inability to pay counsel's fee, because of counsel's  
12 coercion and this deception forced petitioner to plead  
13 guilty, which is a violation of petitioners Sixth Amend-  
14 ment and fourteenth Amendment right(s).

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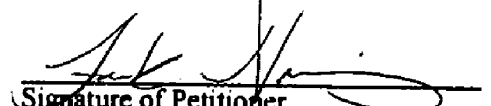
WHEREFORE, Petitioner, prays that the court grant FRANK HEARRING  
relief to which he may be entitled in this proceeding

EXECUTED at Ely State Prison, P.O. Box #1989  
on the 24 day of March, 2015.

  
Signature of Petitioner

**VERIFICATION**

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is  
the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is  
true and correct of his own personal knowledge, except as to those matters based on information and  
belief, and to those matters, he believes them to be true.

  
Signature of Petitioner

Jamal D. Hendrix  
Attorney for Petitioner  
PRO-SE LITIGANT  
BROOKLYN, NYC

B.

CERTIFICATE OF SERVICE

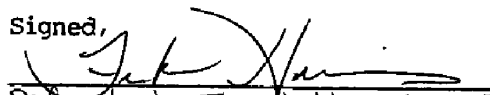
I, Frank Herring, hereby certify pursuant to  
FRCP 5(b) that on this 24 day of March, 2015, I did serve a  
true and correct copy of the foregoing, Petition For Writ of Habeas Corpus  
(Post-Conviction) Relief,

by giving it to a prison guard at Ely State Prison to deposit in the U.S. Mail,  
sealed in an envelope, postage pre-paid, addressed to the following:

Steven B. Wolfson  
200 Lewis Avenue, 3rd Floor  
LAS Vegas N.V. 89155

Office of the Attorney General  
100 N. CARSON Street  
CARSON City NV 89201-4717

Signed,

  
Defendant Frank Herring #100645  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301

**AFFIRMATION**  
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding FOR A

(MOTION) PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) RELIEF  
(Title of Document)

filed in District Court Case No. C-13-291159-1

Does not contain the social security number of any person.

-OR-

Contains the social security number of a person as required by:

A. A specific state or federal law, to wit:

\_\_\_\_\_  
(State specific law)

-OR-

B. For the administration of a public program or  
for an application for a federal or state grant.

Jack N...  
(Signature)

03.24.15  
(Date)



Frank Hearing # 1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

Steven D. Grierson  
200 Lewis Avenue 3rd floor  
Las Vegas, NV 89155



**ELY STATE PRISON**

**MAR 24 2015**

**U8**

*Ann D. Quinn*  
CLERK OF THE COURT

DA  
PP

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

FRANK Hearing

Petitioner,

vs.

State of Nevada

Respondent.

Case No. C-13-291159-1

Dept. No. 20

Docket No. \_\_\_\_\_  
6-16-15

8:30 am

**REQUEST FOR RECORDS/COURT CASE DOCUMENTS**

COMES NOW, Petitioner, FRANK Hearing, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

**POINTS AND AUTHORITIES**

In Griffin v. Illinois, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

“There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. \* \* \* Plainly the ability to pay costs in advance bears no rational relationship to the defendant’s guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial.”

This Griffin principle has been applied in other U.S. Supreme cases as well. See Burns v. Ohio, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings). Also, Smith v. Bennett, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

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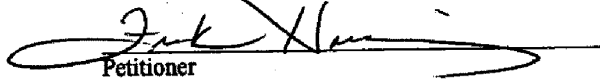
statutory filing fees). The Nevada Supreme Court has also adopted the *Griffin* principle to Nevada. See State v. Eighth Judicial District Court, 396 P. 2d 680.

**CONCLUSION**

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 18 day of May, 2015.

Respectfully submitted,

  
Petitioner

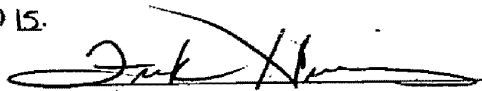
**CERTIFICATE OF SERVICE**

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 18 day of May, 2015. I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

STEVEN B. WOLFSON  
200 CULWIS AVENUE 3RD FLOOR  
LAS VEGAS, NV 89155

Carl Arnold  
1148 S. Maryland Park Way  
Las Vegas, NV 89104

DATED this 18 day of May, 2015.

  
Petitioner

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, FRANK Hearing, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Notice for Request for  
Records/court case documents

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 18 DAY OF May, 20 15.

SIGNATURE: Frank Hearing

INMATE PRINTED NAME: FRANK Hearing

INMATE NDOC # 1006445

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

5.18.15

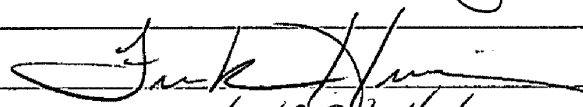
4:44pm

To Whom it May Concern:

The reason for this Motion to present all Documents is because I've Requested to have a copy of My Pre-Sentencing Report from Mr. Carl Arnold on several different occasions, however to no avail.

May I please have all Documentation of Case # C-13-291159-1 sent me please including My Pre-Sentencing Report.

Most Sincerely  
And Respectfully,

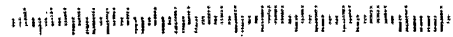
  
#1006445

FRANK HERRING # 1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301



STEVEN D. GRIERSON  
200 LEWIS AVENUE 3rd Floor  
Las Vegas, NV 89155

9910196300



ELY STATE PRISON

MAY 18 2005

US



MC  
DA  
PP

CLERK OF THE COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

Frank Herring

Petitioner,

v.

State of Nevada

Respondent.

Case No. C-13-291159-1

Dept. No. 20

Docket No. \_\_\_\_\_

NOTICE OF MOTION

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson

Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 16 day of  
June, 2015 at the hour of 8:30 am ~~9:00~~ o'clock A.M., or as soon thereafter as the

parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR**

**RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the

Clark County, Courthouse, in Las Vegas, Nevada, in

Department No. 20, thereof.

DATED this 18 day of May, 2015.

Respectfully submitted,

Petitioner  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

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CLERK OF THE COURT

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MAY 22 2015

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OPWH

FILED

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

2015 MAY 29 P 1:34

FRANK HEARING,  
Petitioner,

*[Signature]*  
CLERK OF THE COURT

vs.

Case No: C-13-291159-1  
Dept No: XX

STATE OF NEVADA,  
Respondent,

**ORDER FOR PETITION FOR  
WRIT OF HABEAS CORPUS**

Petitioner filed a petition for writ of habeas/corpus (Post-Conviction Relief) on May 22, 2015. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

**IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

**IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's Calendar on the 4<sup>th</sup> day of August, 2015, at the hour of 8:30 o'clock for further proceedings.

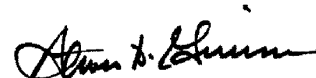
**IT IS SO ORDERED THIS** 26 day of May, 2015.

C-13-291159-1  
OPWH  
Order for Petition for Writ of Habeas Corp  
4460288

*[Signature]*  
District Court Judge  
**ERIC JOHNSON**



RECEIVED  
MAY 29 2015  
CLERK OF THE COURT



CLERK OF THE COURT

1 **RSPN**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **STEVEN OWENS**  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

CASE NO: C-13-291159-1

12 FRANK HEARRING, aka,  
13 Frank Hearing, Jr. #1774466

DEPT NO: XX

14 Defendant.

15 **STATE'S RESPONSE TO DEFENDANT'S POST-CONVICTION PETITION**  
16 **FOR WRIT OF HABEAS CORPUS**

17 DATE OF HEARING: AUGUST 4, 2015  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through STEVEN OWENS, Chief Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Response to Defendant's Post-Conviction  
22 Petition for Writ of Habeas Corpus.

23 This response is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

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**POINTS AND AUTHORITIES**

**STATEMENT OF THE CASE**

On July 15, 2013, the State charged Frank Herring (hereinafter "Defendant") by way of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea canvass on the record and thereafter accepted Defendant's plea. An Amended Information was filed in open court reflecting the charge contained in the GPA.

On December 10, 2013, Defendant was present in court for sentencing, and was sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did not file a direct appeal.

On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the motion.

On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On December 4, 2014, the court denied the motion, finding the request for evidentiary hearing was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22, 2014, the State filed an Opposition. On January 6, 2015, the district court denied Defendant's Motion, finding that Defendant's claims of involuntariness were belied by the record and his

1 claims of ineffectiveness were without merit. The district court filed its Order on January 16,  
2 2015.

3 On March 30, 2015, Defendant filed the instant post-conviction Petition for Writ of  
4 Habeas Corpus. The State responds as follows and requests that Defendant's Petition be  
5 denied.

### 6 ARGUMENT

7 In his Petition, Defendant raises a variety of ineffective assistance of counsel claims.  
8 However, Defendant's Petition is untimely, and he fails to demonstrate good cause and  
9 prejudice to overcome this procedural bar.

#### 10 I. DEFENDANT'S PETITION IS UNTIMELY

11 Defendant's Petition was not filed within one year after the filing of the Judgment of  
12 Conviction, thus, his Petition is time-barred. Pursuant to NRS 34.726(1):

13 Unless there is good cause shown for delay, a petition that  
14 challenges the validity of a judgment or sentence must be filed  
15 within 1 year of the entry of the judgment of conviction or, if an  
16 appeal has been taken from the judgment, within 1 year after the  
17 Supreme Court issues its remittitur. For the purposes of this  
18 subsection, good cause for delay exists if the petitioner  
demonstrates to the satisfaction of the court:

- 17 (a) That the delay is not the fault of the petitioner; and
- 18 (b) That dismissal of the petition as untimely will unduly prejudice  
the petitioner.

19 The Nevada Supreme Court has held that NRS 34.726 should be construed by its plain  
20 meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the  
21 language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from  
22 the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed.  
23 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

24 The one-year time limit for preparing petitions for post-conviction relief under NRS  
25 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002),  
26 the Nevada Supreme Court rejected a habeas petition that was filed two days late despite  
27 evidence presented by the defendant that he purchased postage through the prison and mailed  
28 the Notice within the one-year time limit.

1 Here, Defendant's Judgment of Conviction was filed on December 30, 2013, and  
2 Defendant did not file a direct appeal. Therefore, Defendant had until December 30, 2014, to  
3 file a timely Petition. However, Defendant's instant Petition was not filed until March 30,  
4 2015, several months after the one-year time frame expired. Thus, since Defendant's Petition  
5 is untimely, this Court must dismiss the Petition as time-barred under NRS 34.726.

6 **II. DEFENDANT FAILS TO DEMONSTRATE GOOD CAUSE AND**  
7 **PREJUDICE TO OVERCOME THE PROCEDURAL BAR**

8 Defendant attempts to allege good cause by stating that his "reasons for any delays after  
9 the one year deadline was because a Motion to Withdraw Guilty Plea was filed." Pet. 6.

10 To show good cause for delay under NRS 34.726(1), a petitioner must demonstrate the  
11 following: (1) "[t]hat the delay is not the fault of the petitioner" and (2) that the petitioner will  
12 be "unduly prejudice[d]" if the petition is dismissed as untimely. Under the first requirement,  
13 "a petitioner must show that an impediment external to the defense prevented him or her from  
14 complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71  
15 P.3d 503, 506 (2003) (citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537  
16 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director,  
17 Dep't Prisons, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989). "An impediment external to the  
18 defense may be demonstrated by a showing 'that the factual or legal basis for a claim was not  
19 reasonably available to counsel, or that some interference by officials, made compliance  
20 impracticable.'" Id. (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639 (1986)  
21 (citations and quotations omitted)). Clearly, any delay in filing of the petition must not be the  
22 fault of the petitioner. NRS 34.726(1)(a). Once a petitioner has established cause, he must  
23 show actual prejudice resulting from the errors of which he complains, i.e., "a petitioner must  
24 show that errors in the proceedings underlying the judgment worked to the petitioner's actual  
25 and substantial disadvantage." State v. Huebler, 128 Nev. \_\_\_, \_\_\_, 275 P.3d 91, 94-95 (2012)  
26 (citing Hogan v. Warden, 109 Nev. 952, 959-60, 860 P.2d 710, 716 (1993)).

27 Defendant fails to demonstrate good cause to overcome the procedural bar. Simply  
28 because he was waiting for his pending Motion to Withdraw Guilty Plea is not an impediment

1 external to the defense that prevented him from complying with the one-year time bar. In fact,  
2 he raised some similar issues in his Motion, so he was clearly aware of these issues and could  
3 have raised them in a timely Petition. Hathaway, 119 Nev. at 252, 71 P.3d at 506. Moreover,  
4 Defendant fails to even allege actual prejudice. Instead, Defendant raises a variety of claims,  
5 generally arguing that his counsel was ineffective for not interviewing witnesses, presenting  
6 mitigating evidence, and filing motions. However, these claims are simply bare allegations,  
7 as Defendant fails to explain what relevant information would have been obtained and how it  
8 would have caused him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185,  
9 192, 87 P.3d 533, 538 (2004). Further, Defendant re-alleges claims from his Motion to  
10 Withdraw Guilty Plea, which this court already denied as without merit. Thus, Defendant fails  
11 to show that he would suffer any actual prejudice as a result of denying his procedurally barred  
12 Petition. Accordingly, Defendant fails to demonstrate good cause and prejudice to overcome  
13 the procedural bar.

### 14 III. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING

15 Defendant also requests an evidentiary hearing. A defendant is entitled to an  
16 evidentiary hearing only if his petition is supported by specific factual allegations, which, if  
17 true, would entitle her to relief. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603, 605  
18 (1994). "The judge or justice, upon review of the return, answer and all supporting documents  
19 which are filed, shall determine whether an evidentiary hearing is required." NRS 34.770(1).  
20 Further, "[i]f the judge or justice determines that the petitioner is not entitled to relief and an  
21 evidentiary hearing is not required, the judge or justice shall dismiss the petition without a  
22 hearing." NRS 34.770(2).

23 Here, as demonstrated above, Defendant's Petition is procedurally barred, thus he fails  
24 to present specific factual allegations that would entitle him to relief. Marshall, 110 Nev. at  
25 1331, 885 P.2d at 605. As such, all facts necessary to rule on Defendant's Petition are set forth  
26 in the record and in the State's responses, thus there is no need to expand the record by holding  
27 an evidentiary hearing. Therefore, Defendant's request for an evidentiary hearing should be  
28 denied.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Petition be denied.

DATED this 31<sup>st</sup> day of July, 2015.

Respectfully submitted,


STEVEN B. WOLFSON  
Clark County District Attorney  
Nevada Bar #001565

BY  FOR OWENS  
STEVEN OWENS  
Chief Deputy District Attorney  
Nevada Bar #004352

CERTIFICATE OF MAILING

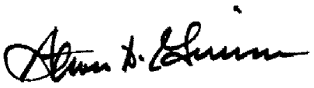
I hereby certify that service of the above and foregoing was made this 31<sup>st</sup> day of July, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445  
ELY STATE PRISON  
P.O. BOX 1989  
ELY, NV 89301

BY   
M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/BS/mc/L4





CLERK OF THE COURT

1 **FCL**  
2 **STEVEN B. WOLFSON**  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 **STEVEN S. OWENS**  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

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

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

CASE NO: C-13-291159-1

12 FRANK HEARRING, aka,  
13 Frank Herring, Jr. #1774466

DEPT NO: XX

14 Defendant.

15 **FINDINGS OF FACT, CONCLUSIONS OF**  
16 **LAW AND ORDER**

17 DATE OF HEARING: AUGUST 4, 2015  
18 TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come on for hearing before the Honorable ERIC JOHNSON,  
20 District Judge, on the 4<sup>th</sup> day of August, 2015, the Petitioner not being present, PROCEEDING  
21 IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
25 findings of fact and conclusions of law:

26 ///

27 ///

28 ///

///

1 **FINDINGS OF FACT, CONCLUSIONS OF LAW**

2 On July 15, 2013, the State charged Frank Herring ("Herring") by way of Information  
3 with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2 – Attempt  
4 Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into Structure,  
5 Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

6 On October 7, 2013, pursuant to negotiations, Herring entered into a Guilty Plea  
7 Agreement ("GPA") with the State, wherein, he agreed to plead guilty to one count of Murder  
8 (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted a plea  
9 canvass on the record and thereafter accepted Herring's plea. An Amended Information was  
10 filed in open court reflecting the charge contained in the GPA.

11 On December 10, 2013, Herring was sentenced to life imprisonment in the Nevada  
12 Department of Corrections with parole eligibility after ten years, plus a consecutive sentence  
13 of a maximum of 240 months and a minimum of 96 months for the deadly weapon  
14 enhancement. Herring received 293 days credit for time served. Judgment of Conviction  
15 was filed on December 30, 2013. Herring did not file a direct appeal.

16 On May 15, 2014, Herring filed a Motion to Withdraw Counsel. On June 12, 2014,  
17 the Motion was granted.

18 On November 12, 2014, Herring filed a Motion for Appointment of Counsel and  
19 Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On  
20 December 4, 2014, the court denied the Motion, finding the request for evidentiary hearing  
21 was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

22 On December 10, 2014, Herring filed a Motion to Withdraw Plea. On December 22,  
23 2014, the State filed an Opposition. On January 6, 2015, the district court denied Herring's  
24 Motion. The district court filed its Order on January 16, 2015.

25 On March 30, 2015, Herring filed a Pro Per post-conviction Petition for Writ of  
26 Habeas Corpus. On July 31, 2015, the State filed its Response. A hearing was held on August  
27 4, 2015.

28 ///

1 This Court finds that Herring's Petition for Writ of Habeas Corpus is time barred with  
2 no good cause shown for delay. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that  
4 challenges the validity of a judgment or sentence must be filed  
5 within 1 year of the entry of the judgment of conviction or, if an  
6 appeal has been taken from the judgment, within 1 year after the  
7 Supreme Court issues its remittitur. For the purposes of this  
8 subsection, good cause for delay exists if the petitioner  
9 demonstrates to the satisfaction of the court:

- 10 (a) That the delay is not the fault of the petitioner; and  
11 (b) That dismissal of the petition as untimely will  
12 unduly prejudice the petitioner.

13 The Supreme Court of Nevada has held that NRS 34.726 should be construed by its  
14 plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per  
15 the language of the statute, the one-year time bar prescribed by NRS 34.726 begins to run from  
16 the date the Judgment of Conviction is filed or a remittitur from a timely direct appeal is filed.  
17 Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998). The one-year time  
18 limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In  
19 Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court  
20 rejected a habeas petition that was filed two days late despite evidence presented by the  
21 defendant that he purchased postage through the prison and mailed the Notice within the one-  
22 year time limit.

23 Herring's Judgment of Conviction was filed on December 30, 2013, and he did not  
24 file a direct appeal. Therefore, Herring had until December 30, 2014, to file a timely Petition.  
25 Herring did not file his Petition until March 30, 2015. This Court finds this is over one year  
26 after the date of the Judgment of Conviction and in excess of the one-year time frame.

27 This Court finds Herring has not shown good cause to excuse the untimely filing.  
28 Herring alleges good cause by stating that his "reasons for any delays after one year deadline  
was because a Motion to Withdraw Guilty Plea was filed". To show good cause for delay  
under NRS 34.726(1), a petitioner must demonstrate the following: (1) "[t]hat the delay is not  
the fault of the petitioner" and (2) that the petitioner will be "unduly prejudice[d]" if the  
petition is dismissed as untimely. Under the first requirement, "a petitioner must show that an

1 impediment external to the defense prevented him or her from complying with the state  
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3 (citing Pellegrini, 117 Nev. at 886-87, 34 P.3d at 537; Lozada v. State, 110 Nev. 349, 353, 871  
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6 factual or legal basis for a claim was not reasonably available to counsel, or that some  
7 interference by officials, made compliance impracticable.’” Id. (quoting Murray v. Carrier,  
8 477 U.S. 478, 488, 106 S.Ct. 2639 (1986) (citations and quotations omitted)). Clearly, any  
9 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Once  
10 a petitioner has established cause, he must show actual prejudice resulting from the errors of  
11 which he complains, i.e., “a petitioner must show that errors in the proceedings underlying the  
12 judgment worked to the petitioner’s actual and substantial disadvantage.” State v. Huebler,  
13 128 Nev. Adv. Rep. 19, \_\_\_, 275 P.3d 91, 94-95 (2012) (citing Hogan v. Warden, 109 Nev.  
14 952, 959–60, 860 P.2d 710, 716 (1993)).

15 This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea  
16 is not an impediment external to the defense that prevented Herring from complying with the  
17 one-year time bar. Additionally, Herring raised some similar issues in his Motion, so he was  
18 clearly aware of these issue and could have raised them in a timely Petition. Hathaway, 119  
19 Nev. at 252, 71 P.3d at 506. Additionally, this Court finds that Herring has failed to even  
20 allege actual prejudice. Herring raises a variety of claims, generally arguing that his counsel  
21 was ineffective for not interviewing witnesses, presenting mitigating evidence, and filings.  
22 However, this Court finds these claims to be simply bare allegations as Herring fails to  
23 explain what relevant information would have been obtained and how it would have caused  
24 him to plead not guilty and pursue a trial. Molina v. State, 120 Nev. 185, 192, 87 P.3d 533,  
25 538 (2004). Additionally, Herring re-alleges claims from his Motion to Withdraw Guilty  
26 Plea, which this Court has already denied without merit. Thus, this Court finds that Herring  
27 has failed to show that he would suffer any actual prejudice as a result of the denial of his  
28

1 Petition. Accordingly, this Court finds Herring failed to demonstrate good cause and  
2 prejudice to overcome the procedural bar.

3 Additionally, this Court finds that Herring is not entitled to an evidentiary hearing.  
4 A defendant is entitled to an evidentiary hearing only if his petition is supported by specific  
5 factual allegations, which, if true, would entitle her to relief. Marshall v. State, 110 Nev. 1328,  
6 1331, 885 P.2d 603, 605 (1994). "The judge or justice, upon review of the return, answer and  
7 all supporting documents which are filed, shall determine whether an evidentiary hearing is  
8 required." NRS 34.770(1). Further, "[i]f the judge or justice determines that the petitioner is  
9 not entitled to relief and an evidentiary hearing is not required, the judge or justice shall dismiss  
10 the petition without a hearing." NRS 34.770(2). Since Herring's Petition is procedurally  
11 time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-  
12 bar, this Court finds that it is unnecessary to expand the record, thus, Herring's request for an  
13 evidentiary hearing is denied.


14 **ORDER**

15 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
16 shall be, and it is, hereby denied.

17 DATED this 10 day of <sup>September</sup> ~~August~~, 2015.

18  
19   
20 DISTRICT JUDGE  
ERIC JOHNSON JA

21 STEVEN B. WOLFSON  
22 Clark County District Attorney  
Nevada Bar #001565

23  
24 BY  For owl  
25 STEVEN S. OWENS  
26 Chief Deputy District Attorney  
Nevada Bar #004352

27 ///

28 ///

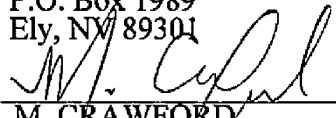
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CERTIFICATE OF SERVICE

I certify that on the 24<sup>th</sup> day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

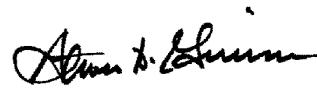
FRANK HEARRING #1006445  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NV 89301

BY



M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4



CLERK OF THE COURT

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NEO

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

FRANK HEARRING, JR.,

Petitioner,

Case No: C-13-291159-1

Dept No: XX

vs.

THE STATE OF NEVADA,

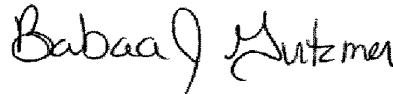
Respondent,

**NOTICE OF ENTRY OF FINDINGS OF  
FACT, CONCLUSIONS OF LAW AND  
ORDER**

**PLEASE TAKE NOTICE** that on September 14, 2015, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on September 21, 2015.

STEVEN D. GRIERSON, CLERK OF THE COURT

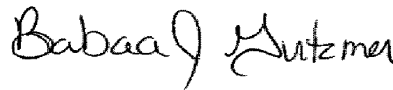


Barbara J. Gutzmer, Deputy Clerk

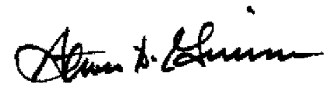
CERTIFICATE OF MAILING

I hereby certify that on this 21 day of September 2015, I placed a copy of this Notice of Entry in:

- The bin(s) located in the Regional Justice Center of:  
Clark County District Attorney's Office  
Attorney General's Office – Appellate Division-
- The United States mail addressed as follows:  
Frank Hearing, Jr. # 1006445  
P.O. Box 1989  
Ely, NV 89301



Barbara J. Gutzmer, Deputy Clerk



CLERK OF THE COURT

1 FCL  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10 Plaintiff,

11 -vs-

CASE NO: C-13-291159-1

12 FRANK HEARRING, aka,  
13 Frank Hearing, Jr. #1774466

DEPT NO: XX

14 Defendant.

15 **FINDINGS OF FACT, CONCLUSIONS OF  
16 LAW AND ORDER**

17 DATE OF HEARING: AUGUST 4, 2015  
18 TIME OF HEARING: 8:30 AM

19 THIS CAUSE having come on for hearing before the Honorable ERIC JOHNSON,  
20 District Judge, on the 4<sup>th</sup> day of August, 2015, the Petitioner not being present, PROCEEDING  
21 IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON,  
22 Clark County District Attorney, by and through STEVEN S. OWENS, Chief Deputy District  
23 Attorney, and the Court having considered the matter, including briefs, transcripts, arguments  
24 of counsel, and documents on file herein, now therefore, the Court makes the following  
25 findings of fact and conclusions of law:

25 ///  
26 ///  
27 ///  
28 ///





1 This Court finds that Herring's Petition for Writ of Habeas Corpus is time barred with  
2 no good cause shown for delay. Pursuant to NRS 34.726(1):

3 Unless there is good cause shown for delay, a petition that  
4 challenges the validity of a judgment or sentence must be filed  
5 within 1 year of the entry of the judgment of conviction or, if an  
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7 Supreme Court issues its remittitur. For the purposes of this  
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- 9 (a) That the delay is not the fault of the petitioner; and  
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15 This Court finds that simply waiting for a pending Motion to Withdraw a Guilty Plea  
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1 Petition. Accordingly, this Court finds Herring failed to demonstrate good cause and  
2 prejudice to overcome the procedural bar.

3 Additionally, this Court finds that Herring is not entitled to an evidentiary hearing.  
4 A defendant is entitled to an evidentiary hearing only if his petition is supported by specific  
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11 time-barred and he has failed to demonstrate good cause or prejudice to overcome the time-  
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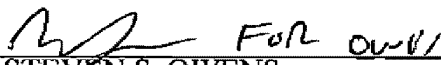
14 **ORDER**

15 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief  
16 shall be, and it is, hereby denied.

17 DATED this 10 day of ~~August~~ <sup>September</sup>, 2015.

18   
19 \_\_\_\_\_  
20 DISTRICT JUDGE  
ERIC JOHNSON JH

21 STEVEN B. WOLFSON  
22 Clark County District Attorney  
Nevada Bar #001565

23  
24 BY  For Owl  
25 STEVEN S. OWENS  
26 Chief Deputy District Attorney  
Nevada Bar #004352

27 ///

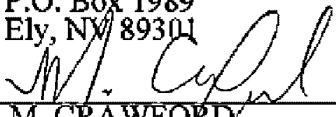
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CERTIFICATE OF SERVICE

I certify that on the 24<sup>th</sup> day of August, 2015, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

FRANK HEARRING #1006445  
ELY STATE PRISON  
P.O. Box 1989  
Ely, NY 89301

BY   
\_\_\_\_\_  
M. CRAWFORD  
Secretary for the District Attorney's Office

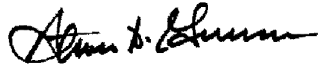
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No. C-13-291159-1

Dept. No. XX

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10/06/2015 11:36:40 AM

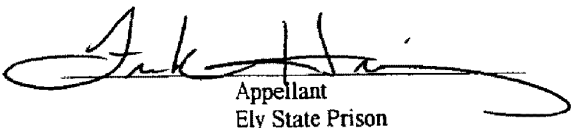
IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

  
CLERK OF THE COURT

FRANK HEARING }  
Petitioner/Plaintiff, }  
v. }  
State of Nevada }  
Respondent/Defendant. }

NOTICE OF APPEAL

Notice is hereby given that FRANK HEARING, Petitioner/Defendant above named,  
hereby appeals to the Supreme Court of Nevada from the final judgment/order  
Petition For Writ of Habeas Corpus (Post Conviction)  
entered in this action on the 1st day of October, 2015.  
Dated this 1st day of October, 2015.

  
Appellant  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

RECEIVED  
51 OCT 06 2015  
CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAIL**

I, FRANK HEARING, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 1st day of October, 20 15, I served a true and correct copy of the above-entitled Notice of Appeal postage prepaid and addressed as follows:

Carl Arnold  
1148 S. Maryland Pkwy  
Las Vegas, NV 89104

Steven Wolfson  
Distict Attorney  
200 Lewis Ave  
Las Vegas, NV 89155

Signature Frank Hearing

Print Name Frank Hearing

Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Frank Herring, NDOC# 1006445

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE

ATTACHED DOCUMENT ENTITLED Notice of Appeal For  
Petition For Writ of Habeas Corpus (post conviction)

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY

PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 1st DAY OF October, 20 15.

SIGNATURE: 

INMATE PRINTED NAME: Frank Herring

INMATE NDOC # 1006445

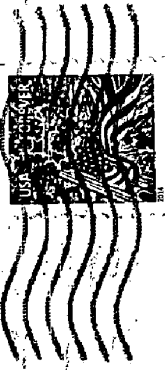
INMATE ADDRESS: ELY STATE PRISON

P. O. BOX 1989

ELY, NV 89301



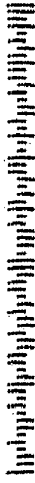
FRANK HAARVING #10006445  
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ELY, NV 89301



LAS VEGAS NV 890

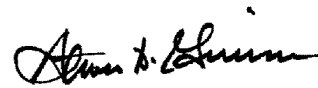
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STEVEN GRIERSON  
200 LEWIS AVE 3rd Floor  
Las Vegas, NV 89155



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**IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF CLARK**

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STATE OF NEVADA,

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Plaintiff(s),

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vs.

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FRANK HEARRING, JR. aka  
FRANK HEARRING,

14

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Defendant(s),

16

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**CASE APPEAL STATEMENT**

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19

1. Appellant(s): Frank Hearing

20

2. Judge: Eric Johnson

21

3. Appellant(s): Frank Hearing

22

Counsel:

23

Frank Hearing #1006445  
P.O. Box 1989  
Ely, NV 89301

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4. Respondent: The State of Nevada

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Counsel:

27

Steven B. Wolfson, District Attorney  
200 Lewis Ave.

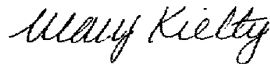
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Las Vegas, NV 89101  
(702) 671-2700

5. Appellant(s)'s Attorney Licensed in Nevada: N/A  
Permission Granted: N/A
- Respondent(s)'s Attorney Licensed in Nevada: Yes  
Permission Granted: N/A
6. Appellant Represented by Appointed Counsel In District Court: No
7. Appellant Represented by Appointed Counsel On Appeal: N/A
8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
9. Date Commenced in District Court: July 15, 2013
10. Brief Description of the Nature of the Action: Criminal  
Type of Judgment or Order Being Appealed: Post-Conviction Relief
11. Previous Appeal: No  
Supreme Court Docket Number(s): N/A
12. Child Custody or Visitation: N/A

Dated This 7 day of October 2015.

Steven D. Grierson, Clerk of the Court



---

Mary Kielty, Deputy Clerk  
200 Lewis Ave  
PO Box 551601  
Las Vegas, Nevada 89155-1601  
(702) 671-0512

cc: Frank Herring

CLERK OF THE COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

MC  
PP  
DA

FRANK HEARING

Petitioner,

vs.

State of Nevada

Respondent.

Case No. C-13-291159-1

Dept. No. XX

Docket No. \_\_\_\_\_

11/19/15 @ 9:00am

**REQUEST FOR RECORDS/COURT CASE DOCUMENTS**

COMES NOW, Petitioner, FRANK HEARING, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

**POINTS AND AUTHORITIES**

In Griffin v. Illinois, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

"There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. \* \* \* Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This Griffin principle has been applied in other U.S. Supreme cases as well. See Burns v. Ohio, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings).

Also, Smith v. Bennett, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

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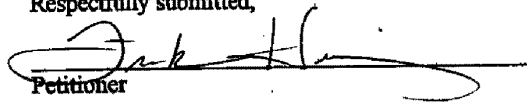
statutory filing fees). The Nevada Supreme Court has also adopted the *Griffin* principle to Nevada. See State v. Eighth Judicial District Court, 396 P. 2d 680.

**CONCLUSION**

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 14 day of October, 2015

Respectfully submitted,

  
Petitioner

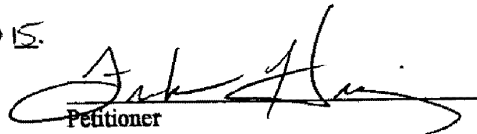
**CERTIFICATE OF SERVICE**

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 14 day of October, 2015, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold  
1148 S. Maryland Pkwy  
Las Vegas, NV 89104  
\_\_\_\_\_  
\_\_\_\_\_

Steven B. Wolfson  
District Attorney  
200 Lewis Ave  
Las Vegas, NV 89155  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 14 day of October, 2015.

  
Petitioner

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, Frank Hearing, NDOC# 1006445,

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Request For Records /  
Court Case Documents

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 14 DAY OF October, 2015.

SIGNATURE: Frank Hearing

INMATE PRINTED NAME: Frank Hearing

INMATE NDOC # 1006445

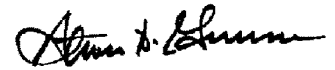
INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

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OCT 28 2015

CLERK OF THE COURT

MC  
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CLERK OF THE COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

Frank Herring

Petitioner,

v.

State of Nevada

Respondent.

Case No. C-13-291159-1

Dept. No. XX

Docket No. \_\_\_\_\_

**NOTICE OF MOTION**

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson

Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 19 day of  
November \_\_\_\_\_, 2015, at the hour of 9:00 O'clock A.M., or as soon thereafter as the

parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR**

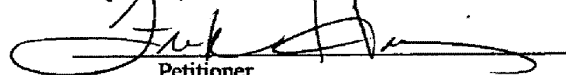
**RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the

Clark County, Courthouse, in Las Vegas, Nevada, in

Department No. XX, thereof.

DATED this 14 day of October, 2015.

Respectfully submitted,



Petitioner  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

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OCT 28 2015

CLERK OF THE COURT

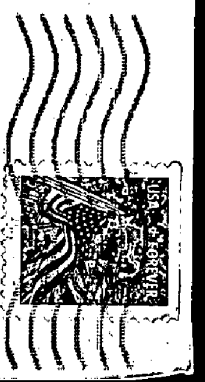
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CLERK OF THE COURT

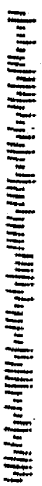
FRANK HARRING # 1006445  
ELY STATE PRISON  
P.O. Box 1989  
ELY, NV 89301

LAS VEGAS, NV 890  
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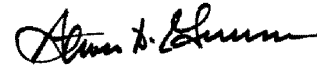
STEVEN D. GRIERSON  
200 LEWIS AVE 3rd Floor  
LAS VEGAS, NV 89155

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CLERK OF THE COURT

1 **ORDR**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 JOHN T. JONES  
6 Chief Deputy District Attorney  
7 Nevada Bar #009598  
8 200 Lewis Avenue  
9 Las Vegas, NV 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,  
11 Plaintiff,

12 -vs-

13 FRANK HEARRING, aka,  
14 Frank Hearing, Jr. #1774466

15 Defendant.

CASE NO: C-13-291159-1

DEPT NO: XX

16 **ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S**  
17 **REQUEST FOR RECORDS/COURT CASE DOCUMENTS**

18 DATE OF HEARING: NOVEMBER 19, 2015  
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the  
21 19th day of November, 2015, the Defendant not being present, IN PROPER PERSON, the  
22 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through JOHN T.  
23 JONES, Chief Deputy District Attorney, without argument, based on the pleadings and good  
24 cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Request for Records/Court Case  
2 Documents, shall be, and it is GRANTED IN PART/DENIED IN PART - it is GRANTED  
3 as to the request for the Pre-sentence Report and DENIED WITHOUT PREJUDICE as to  
4 other documents without specific requests.

12-2-15



DISTRICT JUDGE

ERIC JOHNSON

km

7 STEVEN B. WOLFSON  
8 Clark County District Attorney  
9 Nevada Bar #001565

10 BY



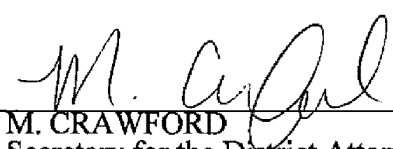
11 JOHN T. JONES  
12 Chief Deputy District Attorney  
13 Nevada Bar #009598

14 CERTIFICATE OF MAILING

15 I hereby certify that service of the above and foregoing was made this 3rd day of  
16 December, 2015, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17 FRANK HEARRING #1006445  
18 Ely State Prison  
19 P.O. Box 1989  
20 Ely, NV 89301

21 BY



22 M. CRAWFORD  
23 Secretary for the District Attorney's Office

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CLERK OF THE COURT

MC  
PP  
DA

IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

FRANK Herring

Petitioner,

vs.

State of Nevada

Respondent.

Case No. C-13-291159-1

Dept. No. XX

Docket No. \_\_\_\_\_

REQUEST FOR RECORDS/COURT CASE DOCUMENTS

COMES NOW, Petitioner, FRANK Herring, pro per, and respectfully moves this Honorable Court for an Order granting Petitioner a copy of any and all Court records, including but not limited to, Pre-Trial Motions and Transcripts of any Hearings on same, Pre-Trial Writs of Habeas Corpus and Transcripts of any Hearings on same, any Evidentiary Hearings and Transcripts of same, Trial Transcripts, any Post-Trial Petitions or Motions, and any and all Habeas Corpus or other Post-Conviction Petitions and Transcripts of same.

POINTS AND AUTHORITIES

In Griffin v. Illinois, 351 U.S. 12, 76 :S. Ct. 585, 100 L.Ed. 891, the United States Supreme Court held that it violates the due process and equal protection clauses of the Fourteenth Amendment when a state denies an indigent defendant the transcripts necessary for his appeal. The Court held:

"There can be no equal justice where the kind of a trial a man gets depends upon the amount of money he has. Destitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts. \* \* \* Plainly the ability to pay costs in advance bears no rational relationship to the defendant's guilt or innocence and could not be used as an excuse to deprive a defendant of a fair trial."

This Griffin principle has been applied in other U.S. Supreme cases as well. See Burns v. Ohio, 360 U.S. 252, 79 :S. Ct. 1164, 3 L.Ed. 1209(Applicable to state collateral proceedings).

Also, Smith v. Bennett, 365 U.S. 708, 81 :S. Ct. 895, 6 L.Ed. 39(No requirement of paying

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CLERK OF THE COURT

statutory filing fees). The Nevada Supreme Court has also adopted the *Griffin* principle to Nevada. See State v. Eighth Judicial District Court, 396 P. 2d 680.

**CONCLUSION**

Based upon the above stated points and authorities and arguments, Petitioner respectfully requests this Court to Grant this Request.

DATED this 15 day of January, 2016.

Respectfully submitted,

  
Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify pursuant to N.R.C.P. 5(b) that I am the Petitioner in the foregoing Notice of Motion and Request For Records/Court Case Documents on this 15 day of January, 2016, I did serve a true and correct copy of the above mentioned document, by giving it to a prison official at the Ely State Prison to deposit in the U.S. Mail, sealed in an envelope, postage pre-paid, and addressed as follows:

Carl Arnold  
1145 S. Maryland PKWY  
Las Vegas, NV 89104  
\_\_\_\_\_  
\_\_\_\_\_

Steven B. Wolfson  
District Attorney  
200 Lewis Ave  
Las Vegas, NV 89155  
\_\_\_\_\_  
\_\_\_\_\_

DATED this 15 day of January, 2016.

  
Petitioner

**AFFIRMATION PURSUANT TO NRS 239B.030**

I, FRANK HEARRING, NDOC# 1006445

CERTIFY THAT I AM THE UNDERSIGNED INDIVIDUAL AND THAT THE  
ATTACHED DOCUMENT ENTITLED Request For Records/  
Court Case Documents

DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS, UNDER THE PAINS AND PENALTIES OF PERJURY.

DATED THIS 15 DAY OF January, 2016.

SIGNATURE: Frank Hearring

INMATE PRINTED NAME: FRANK HEARRING

INMATE NDOC # 1006445

INMATE ADDRESS: ELY STATE PRISON  
P. O. BOX 1989  
ELY, NV 89301

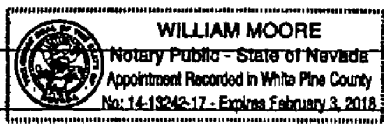
JAN 5 2016  
1:35pm

I, FRANK Herring Jr #1006445 have  
Attached a Notarized Copy Titled: (Brady Mat-  
erial) Pages (1, through (3) Numbered (1) through (12)  
Requesting that THE STATE OF Nevada relinquish  
(All) Material related to CASE # C-13-291159-1 in  
order for the defendant to thoroughly and  
adequately appeal my Murder Conviction,  
(Second Degree Murder.)

*Frank Herring*  
FRANK Herring

State of Nevada  
County of White Pine

This instrument was acknowledged before  
me on January 15, 2016 by Frank Herring.



*William Moore*  
Notary

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v. Brady requests

Based on the foregoing law and analysis, the Defendant requests that the following Brady material be produced by the State:

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1. All memorandum, notes, reports associated with any and all initial investigations and follow up investigations.
2. Disclosures of any and all compensation, express or implied promises of favorable treatment or leniency, or any other benefit that any of the State's witnesses received<sup>1</sup> in exchange for their cooperation with this prosecution, including, but not limited to, any information concerning any expectation<sup>2</sup> of any benefit<sup>3</sup> of any kind to be received, or already received, by any witness presented by the State<sup>4</sup>. This also includes, but is not limited to, any express or implied promise made to any witness to provide counseling and/or treatment as a result of their participation in the prosecution of this case.
3. Any information on any criminal history or any material or information which relates to specific instances of misconduct of any material witness in the case from which it could be inferred that the person is untruthful and which may be or may lead to admissible evidence<sup>5</sup>. This is to include, but is not limited to, any felonies, misdemeanors, out-of-state arrests and convictions, outstanding arrest warrants or bench warrants, and cases which were dismissed or not pursued by the prosecuting agency or any other information that would go to the issue of credibility and bias, whether or not the information is admissible by the rules of evidence.

<sup>1</sup> State v. Bennett, 119 Nev. Nev. 589, 603 (2003)(evidence that the State paid witness as an informant on several occasions)

<sup>2</sup>The law is clear that it is the witness' own anticipation of reward, not the intent of the prosecutor, which gives rise to the necessity of disclosure. Moore v. Kemp, 809 F.2d 702, 726, 729-30 (11th Cir.), cert. denied, 481 U.S. 1054 (1987); Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

<sup>3</sup> Evidence of benefits to State witnesses is not limited to agreements made in relation to the specific case at issue. Jimenez v. State, 112 Nev. 610, 622-23 (1996); ) Information about benefits to an important State witness constitutes Brady material, even though no explicit deal was outlined. Browning v. State, 120 Nev. 347, 369 (2004)

<sup>4</sup>Agreements need not be express or formal arrangements, and understandings merely implied, suggested, insinuated, or inferred to be of possible benefit to witness constitutes proper material for impeachment. Duggan v. State, 778 S.W.2d 465, 468 (Tex. Crim. App. 1989).

<sup>5</sup>A defendant is entitled to material in the government witness' confidential probation file that bears on the credibility of that witness. United States v. Striffler, 851 F.2d 1197, 1201 (9th Cir. 1988), cert. denied, 489 U.S. 1032 (1989).

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4. Disclosures of any and all statements tangible or intangible, recorded or unrecorded, made by any State witness, or any other person, at any time that are in any manner inconsistent with the written and/or recorded statements previously provided to the defense<sup>6</sup>. This includes material or information which would tend to exculpate the Defendant of the charges, might mitigate the punishment should he be convicted<sup>7</sup>, or may lead to information which would tend to impeach or affect the credibility of a State witness<sup>8</sup>, including, but not limited to, any oral statements made to the prosecutor or any other State employee during pre-trial conferences or other investigative meetings.

5. Any photographs of any lineups done or any other photographs in the case, not already given in discovery. This includes any photos taken at any medical exams as well as photos taken by law enforcement.

7. Any 911 recordings to include the relevant dispatch log.

<sup>6</sup>State violated Brady when it failed to inform the defense of prior inconsistent statements by a key prosecution witness. Lay v. State, 116 Nev. 1185, 1199 (2000); State acted improperly by failing to disclose statements in its possession of evidence contradictory to another State witness. Rudin v. State, 120 Nev. 121, 139 (2004).

<sup>7</sup> State v. Bennett, 119 Nev. 589, 602 (2003) (admission of a co-conspirator to a jailhouse informant which could have served as mitigating evidence).

<sup>8</sup>Brady violation where the State failed to turn over a police report where the eyewitness was initially uncertain in their identification of the Defendant. Norris v. Slayton, 540 F.2d 1241, 1244 (4th Cir. 1976); State had a duty to disclose when, during trial, a key prosecution witness told the prosecutor that the perpetrator was lighter skinned than the defendant she saw in court. Jackson v. Wainwright, 390 F.2d 288, 291-93 (5th Cir. 1968); Due process was violated when the government failed to provide to the defense the prior inconsistent statement given to DEA agents of a key prosecution witness where credibility was an issue. United States v. Beasley, 576 F.2d 626 (5th Cir. 1978), cert. denied, 440 U.S. 947 (1979); State violated Brady by failing to disclose to the defense reports of lie detector test administered to important prosecution witness Carter v. Rafferty, 826 F.2d 1299, 1307-08 (3rd Cir. 1987), cert. denied, 484 U.S. 1011 (1988); Suartz v. State, 506 N.W.2d 792, 794-95 (Iowa App. 1993) (evidence of alleged co-perpetrator's threatening and overbearing nature and impending psychiatric examination of him); People v. Garcia, 17 Cal. App. 4th 1169, 22 Cal. Rptr. 2d 545, 551-52 (1993) (evidence showing state's expert used faulty methodology and made errors in other cases); People v. Wright, 658 N.E.2d 1009, 1012 (1995) (alleged victim's status as police informer).



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8. Copies of any and all video or audio recording of any form collected by the investigating officers or any other agent of the State during the course of the investigation.
9. All relevant reports of chain of custody. All reports of any destruction of any evidence in the case.
10. Photocopies or other reproduction of any and all handwritten or otherwise memorialized notes kept by the investigating police officers in this case (AKA "Case Monitoring Forms"), including, but not limited to, any notes documenting alternate suspects, investigative leads that were not followed up on, or any other matter bearing on the credibility of any State witness.
11. Any and all notes and reports of any expert in the case, to include mental health workers. This includes any preliminary reports or notes, not included in a final report.
12. Any and all information which shows that the defendant did not commit the crimes alleged, including, but not limited to, any information concerning an arrest of any other individual for the charged crime<sup>9</sup> and any information suggesting a possible suspect other than the defendant,<sup>10</sup> including investigative leads to other suspects<sup>11</sup>.

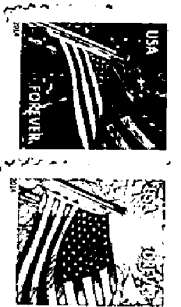
<sup>9</sup>Banks v. Reynolds, 54 F.3d 1508, 1518 n.21 (10<sup>th</sup> Cir. 1995).

<sup>10</sup>State's failure to disclose evidence of another perpetrator violated Brady. Lay v. State, 116 Nev. 1185, 1195-96 (2000); Summary of prosecutor's perspective on written reports relating to potential suspects were constitutionally inadequate and reports should have been disclosed pursuant to Brady. Mazzan v. Warden, 116 Nev. 48,69 (2000); Bloodworth v. State, 512 A.2d 1056, 1059-60 (1986).

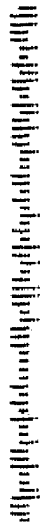
<sup>11</sup> Jimenez v. State, 112 Nev. 610, 622-23 (1996) (withholding evidence of investigative leads to other suspects, regardless of admissibility, constitutes Brady violation).

FRANK HARRING #1000445  
ELY STATE PRISON  
P.O. Box 1989  
ELY, NV 89301

STEVEN D. GRIORSON  
200 Lewis AVENUE 3rd Floor  
Las Vegas, NV 89155



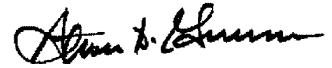
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IN THE 8th JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA IN AND FOR  
THE COUNTY OF Clark

Frank Herring  
Petitioner,  
v.  
State of Nevada  
Respondent.

Case No. C-13-291159-1  
Dept. No. XX  
Docket No. \_\_\_\_\_

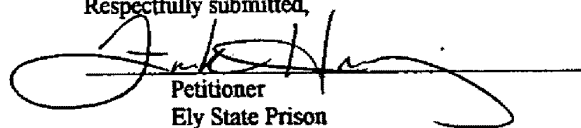
**NOTICE OF MOTION**

TO: THE STATE OF NEVADA, Respondent, Steven B. Wolfson  
Clark, County District Attorney, and Carl Arnold

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that on the 11 day of  
February, 2016, at the hour of 9:00 O'clock A.M., or as soon thereafter as the  
parties may be heard, the undersigned will bring on for hearing the attached **REQUEST FOR  
RECORDS/COURT CASE DOCUMENTS**, before the above-entitled Court, at the  
Clark County, Courthouse, in Las Vegas, Nevada, in  
Department No. XX, thereof.

DATED this 15 day of January, 2016.

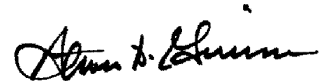
Respectfully submitted,



Petitioner  
Ely State Prison  
P.O. Box 1989  
Ely, Nevada 89301-1989

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JAN 21 2016  
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CLERK OF THE COURT

1 **RSPN**  
2 STEVEN B. WOLFSON  
3 Clark County District Attorney  
4 Nevada Bar #001565  
5 STEVEN S. OWENS  
6 Chief Deputy District Attorney  
7 Nevada Bar #004352  
8 200 Lewis Avenue  
9 Las Vegas, Nevada 89155-2212  
10 (702) 671-2500  
11 Attorney for Plaintiff

DISTRICT COURT  
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,  
10  
11 Plaintiff,

11 -vs-

CASE NO: C-13-291159-1

12 FRANK HEARRING, aka,  
13 Frank Hearing, Jr., #1774466

DEPT NO: XX

14 Defendant.

15 **STATE'S RESPONSE TO DEFENDANT'S REQUEST FOR**  
16 **RECORDS/COURT CASE DOCUMENTS**

17 DATE OF HEARING: FEBRUARY 23, 2016  
18 TIME OF HEARING: 8:30 AM

19 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County  
20 District Attorney, through STEVEN S. OWENS, Chief Deputy District Attorney, and hereby  
21 submits the attached Points and Authorities in Response to Defendant's Request for  
22 Records/Court Case Documents.

23 This response is made and based upon all the papers and pleadings on file herein, the  
24 attached points and authorities in support hereof, and oral argument at the time of hearing, if  
25 deemed necessary by this Honorable Court.

26 ///

27 ///

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 15, 2013, the State charged Frank Herring (hereinafter "Defendant") by way  
4 of Information with the following: Count 1 – Murder With Use of a Deadly Weapon; Count 2  
5 – Attempt Murder With Use of a Deadly Weapon; Count 3 – Discharging Firearm At or Into  
6 Structure, Vehicle, Aircraft or Watercraft; and Count 4 – Possession of Firearm by Ex-Felon.

7 On October 7, 2013, pursuant to negotiations, Defendant entered into a Guilty Plea  
8 Agreement (hereinafter "GPA") with the State, wherein he agreed to plead guilty to one count  
9 of Murder (Second Degree) With Use of a Deadly Weapon. The same day, the court conducted  
10 a plea canvass on the record and thereafter accepted Defendant's plea. An Amended  
11 Information was filed in open court reflecting the charge contained in the GPA.

12 On December 10, 2013, Defendant was present in court for sentencing, and was  
13 sentenced to life imprisonment in the Nevada Department of Corrections with parole eligibility  
14 after ten years, plus a consecutive sentence of a maximum of 240 months and a minimum of  
15 96 months for the deadly weapon enhancement. Defendant received 293 days credit for time  
16 served. On December 30, 2013, the court entered its Judgment of Conviction. Defendant did  
17 not file a direct appeal.

18 On May 15, 2014, Defendant filed a Motion to Withdraw Counsel, seeking removal of  
19 his court-appointed attorney, Carl Arnold, Esq. On June 12, 2014, the court granted the  
20 motion.

21 On November 12, 2014, Defendant filed a Motion for Appointment of Counsel and  
22 Request for Evidentiary Hearing. The State filed its Response on November 25, 2014. On  
23 December 4, 2014, the court denied the motion, finding the request for evidentiary hearing  
24 was made prematurely and could be renewed in a Petition for Writ of Habeas Corpus.

25 On December 10, 2014, Defendant filed a Motion to Withdraw Plea. On December 22,  
26 2014, the State filed its Opposition. On January 6, 2015, the Court denied Defendant's Motion,  
27 finding that Defendant's claims of involuntariness were belied by the record and his claims of  
28 ineffectiveness were without merit. The district court filed its Order on January 16, 2015.

1 On March 30, 2015, Defendant filed a post-conviction Petition for Writ of Habeas  
2 Corpus ("Petition"). The State filed its Response on July 31, 2015. On August 4, 2015, the  
3 Court denied Defendant's Petition. A Findings of Fact, Conclusions of Law and Order was  
4 filed on September 14, 2015. On October 6, 2015, Defendant filed a Notice of Appeal.

5 **ARGUMENT**

6 In the instant motion Defendant requests discovery in order appeal his conviction.  
7 Generally, once a defendant files a notice of appeal with the Nevada Supreme Court, that  
8 divests the district court of jurisdiction to hear the matter until remittitur issues. See  
9 Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). Here, Defendant filed a  
10 Notice of Appeal from his order denying his Petition for Writ of Habeas Corpus. Pursuant to  
11 Nevada Supreme Court's Order Directing Transmission of record, the court clerk has  
12 transmitted the entire record for appeal. Exhibit 1. The appeal has been briefed and has been  
13 submitted for decision. Defendant does not have a right to discovery pending an appeal and  
14 this Court does not have jurisdiction to hear Defendant's Motion.

15 **CONCLUSION**

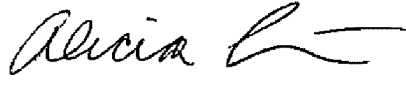
16 Based on the foregoing, the State respectfully requests that Defendant's Request for  
17 Records/Court Case Documents be denied.

18 DATED this 17<sup>th</sup> day of February, 2016.

19 Respectfully submitted,

20 STEVEN B. WOLFSON  
21 Clark County District Attorney  
22 Nevada Bar #001565

23 BY

  
24 STEVEN S. OWENS  
25 Chief Deputy District Attorney  
26 Nevada Bar #004352

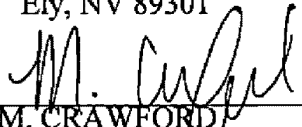
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 17<sup>th</sup> day of February, 2016, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FRANK HEARRING #1006445  
Ely State Prison  
P.O. Box 1989  
Ely, NV 89301

BY   
M. CRAWFORD  
Secretary for the District Attorney's Office

13F08177X/ED/mc/L4

# EXHIBIT “1”