IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jan 28 2021 02:33 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VALENTINA MONEE KNIGHT,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

Case No: A-20-820448-W

Docket No: 82316

RECORD ON APPEAL

ATTORNEY FOR APPELLANT
VALENTINA KNIGHT #2020010861,
PROPER PERSON
949 N. 9TH ST.
MILWAUKEE, WI 53233

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

A-20-820448-W **Valentina Knight, Plaintiff(s)**
vs.
State of Nevada, Defendant(s)

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FILED
AUG 3 1 2020
CLERK OF COURT

Case No. C-15-309123-2
Dept No. XIX

IN the 9th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK COUNTY, NEVADA

A-20-820448-W
Dept. 19

Petitioner,
VALENTINA KNIGHT

-VS-

PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

1. Name of institution and county in which you are imprisoned or where and how are you presently restrained of your liberty:

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I am currently in custody under Nevada house of Correction in Clark County.

2. Name and location of court which entered the judgement of conviction under attack:

District Court 200 Lewis Avenue
Las Vegas, NV 89155-2212

3. Date of judgement of conviction:

January 15, 2020

4. Case No.:

C-15-309123-2

5. (a) Length of Sentence:

4-10 years

(b) If sentence is death, state any date upon which execution is scheduled:

N/A

6. Are you currently serving a conviction other than the conviction under attack in this motion?:

Yes ____ NO X

If yes list crime, Case number and Sentence being Served out this time:
N/A

7. Nature of offense involved in conviction being challenged:
Class B Felony Burglary

8. What was your Plea? (Check one):
(a) Not Guilty ___
(b) Guilty X
(c) Guilty but mentally ill ___

(d) Nolo contendere —

9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment or information, and a plea of not guilty to another count of an indictment or information, or if a plea of guilty or guilty but mentally ill was negotiated give details.
N/A

10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: N/A

(a) Jury _
(b) Judge without jury -

11. Did you testify at trail? N/A

12. Did you appeal from the judgement of conviction

Yes __
NO ✓

13. If you did appeal, answer the following:
(a) Name of court: District Court Clark County

(b) Case number or citation: C15-309-123-2

(c) Result: N/A I never recieved a response.

(d) Date of result N/A

(Attach copy of order or decision, if available)

14. If you did not appeal, explain briefly why you did not:
N/A

15. Other than a direct appeal from the judgement of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgement in any court, state or federal? Yes ___ NO X

16. If your answer to NO. 15 was "yes" give the following information: N/A

(a) Name of court: ___
(2) Nature of proceeding: ___
(3) Grounds raised: ___
(4) Did you recieve 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 such result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of court: _____

(2) Nature of proceedings: _____

(3) Grounds raised: _____

(4) Did you recieve an evidentary 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 such result: _____

(C) As to any third or subsequent additional applications or motions, give the same information as above, list them on a seperate sheet and attach.

(d) Did you appeal to the highest ~~state~~ or federal court having jurisdiction, the result or action taken on any petition, application or motion?

(1) First petition, application or motion?

Yes ___ NO X

(2) Second petition, applications or motions?

Yes ___ NO ___

(3) Third or subsequent petitions, applications or motions? Yes ___ NO ___

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not. (You must relate specific facts in response to this question. Your response may be included on paper which

is 8 ½ by 11 inches attached to the petition. Your response may not include ~~exceed~~ five handwritten or typewritten pages in length.)

17. Has any ground being raised in this Petition been previously presented to this or any other court by way of Petition for habeus corpus, motion, application or any other post conviction proceeding? If so, identify: No, I was unaware of some findings I have now discovered.

(a) Which ground is the same?: N/A

(b) The proceedings in which these grounds were raised?: _____

(C) Briefly explain why you are raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five hand written or type written pages in legnth.)

18. If any of the grounds listed in NO. 23 (a), (b), (C) and (d), or listed on any additional pages you have attached, were not previously presented in any

Other court, State or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. (Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five hand written or typewritten pages in length.):

Response is listed on following page.

19. Are you filing this Petition more than one year following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, State briefly the reasons for the delay. (You

18. Answer; Grand (a) was not presented to the court because the law making the crime of "burglary of a business" Penalties drop down from a Class B felony to a C felony had not passed until July 1, 2020. I was not able to ask for retroactive relief in my original motion (asking the court to amend sentence) Because this ground had not gone into legal effect at the time.

Ground (b) Ineffective assistance of counsel was not raised in respect to my attorneys because I wasn't educated to the facts that I should have not been charged with a burglary for my first conviction. Further I was uninformed by my attorneys of what to present in my case to show a distinction from myself and my codefendant.

Ground (c) Prosecutorial misconduct was not raised in my prior motion because I was not made aware of the error they made in charging me with burlary. I trusted my counsel to advise me as I was not versed in law.

must relate specific facts in response to this question, your response may be included on paper which is 8 1/2 by 11 inches attached to the Petition. Your response may not exceed five hand written or type written pages in length.)

NO, my final conviction was entered on January, 15 2020

20. Do you have any Petition or appeal now pending in any court, either State or Federal, as to the judgement under attack? Yes___ NO X

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Michael perierté, James Gallo, Michael W. Sanft Esq.

22. Do you have to serve sentences after you complete the sentence imposed by the judgement under attack? Yes_ NO X

If yes, specify where and when it is to be served, if you know:_____

23. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

(a) Ground one : listed on seperate sheet.

(b) Grand two : listed on seperate sheet.

(C) Grand three : listed on seperate sheet.

WHEREFORE, Petitioner prays that the Court grant petitioner relief to which Petitioner may be entitled in this proceeding. Executed at 9:40 AM on the 26th day of the month of July of the year of 2020.

Signature of Petitioner

informed properly on the Critical distinctions that existed from myself and my co-defendant, which ultimately led me to plea to the same deal as my co-defendant even though ALL forged cards were in his allias and matched the identification he used. Additionaly to check into the room he used a card with his Allias on the card. I should have been informed to sever. I attempted to sever myself but was unsuccessful and was told that would not be good for me or my case. Additionally, I was advised to take the plea deal of "Class B Burglary", But at the time of conviction inorder to "qualify" to be charged of a burglary of a business, one must commit the crime outside of bussiness hours as well as have a prior burglary on ones record PRIOR to conviction. Nicther was the case for me, Further I was 5 months pregnant when I was sentenced to prison, my lawyer did not mention this nor argue about programming that

I was enrolled in white in the probration program. If the judge were made aware of these facts I believe he would have sentenced me differently, myself and family were threatened to not fight this conviction by my co-defendants family. Several lawyers made and advised me poorly in this case and I humbly ask the court to re-open this matter.

(C) Grand three: "Prosecutorial misconduct" Prosecutors charged me with a class B felony burglary. Per the defenitions of a burglary, I should only be charged a burglary of a business when the crime is commited outside of business hours. Further, I should only be classified to be charged with a burglary of a business if at the time of conviction I was either a felon or had a prior burglary on my record. At the time of conviction niether was true. I believe I could have gotten less time going to trial.

District Attorney of County of Conviction:
STEVEN B. WOLFSON

Address:
200 Lewis Avenue Las Vegas,
Nevada 89155

Signature of Petitioner

Florence Mcclure Womens Correctional Facility

Address: 4370 Smiley RD Lasvegas NV 89115

Signature of attorney (if any):

Attorney for petitioner:

Address:

VERIFICATION

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

Petitioner:

Valentina Maree Knight

Attorney for the petitioner:

CERTIFICATE OF SERVICE
BY MAIL

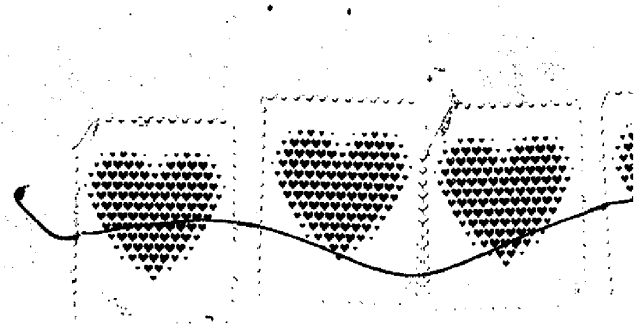
I Valentina Knight, hereby certify, Pursuant to N.R.C.P. 5(b) that on this 13th day of the month of August of the year of 2020, I mailed a true and correct COPY of the foregoing PETITION OF WRIT OF HABEAS CORPUS addressed to: District Court, 333 S. Las Vegas Blvd 4, NV 89101

Respondent prison or jail official:

Warden Dwight Neven,
Florence Mcclure Womens Correctional Facility
4370 Smiley RD Las Vegas, NV 89115

Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

Valentina Knight #20200108611
M.C.J
949 N. 9th St
Milwaukee, WI 53233



FILED
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COUNSEL/PARTIES OF RECORD
AUG 17 2020
CLERK US DISTRICT COURT
DISTRICT OF NEVADA
BY: DEPUTY

State District Court
333 S. Las Vegas Blvd
Las Vegas NV 89101

PPOW

DISTRICT COURT
CLARK COUNTY, NEVADA

Valentina Knight,

Petitioner,

vs.

State of Nevada,

Respondent,

Case No: A-20-820448-W
Department 19

ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS

Petitioner filed a Petition for Writ of Habeas Corpus (Post-Conviction Relief) on August 31, 2020. 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 26th day of October, 2020, at the hour of 8:30 A.M. o'clock for further proceedings.

District Court Judge

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

VALENTINA MONEE KNIGHT,
#7018909

Defendant.

CASE NO: A-20-820448-W

DEPT NO: XIX

STATE'S RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS

DATE OF HEARING: OCTOBER 26, 2020
TIME OF HEARING: 8:30AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through TALEEN PANDUKHT, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Petitioner's Petition for Writ of Habeas Corpus.

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

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POINTS AND AUTHORITIES

STATEMENT OF THE CASE

On September 2, 2015, VALENTINA MONEE KNIGHT (hereinafter "Petitioner") was charged by way of Information with one count BURGLARY (Category B Felony – NRS 205.060).

On October 1, 2015, Petitioner filed a Motion to Release from House Arrest. On October 12, 2015, Petitioner's Motion was denied.

On November 23, 2016, the State filed a Motion to Revoke Bail and Remand Defendants. On December 5, 2016, the State's Motion was granted.

On January 4, 2017, Petitioner, pursuant to a Guilty Plea Agreement, pled guilty to the charge contained in the Information.

On April 12, 2017, Petitioner was sentenced to a term of forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. Petitioner's sentence was suspended and Petitioner was placed on probation for an indeterminate period not to exceed five (5) years. The Judgment of Conviction was filed on May 1, 2017.

On December 6, 2019, Petitioner's counsel filed a Motion to Withdraw as Attorney of Record. On January 6, 2020, counsel's motion was granted. New counsel was confirmed on January 8, 2020.

On January 15, 2020, Petitioner appeared before this Court for a probation revocation hearing and this Court revoked Petitioner's probation and imposed her suspended sentence. The Amended Judgment of Conviction was filed on January 17, 2020.

On March 17, 2020, Petitioner filed a Motion to Withdraw Counsel, Motion to Amend Judgment of Conviction and Motion for Appointment of Attorney. On June 8, 2020, this Court granted Petitioner's Motion to Withdraw Counsel, but denied her other two motions. The Court entered its Order on June 15, 2020.

On August 31, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus. The State responds as follows.

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STATEMENT OF THE FACTS

On May 5, 2015, a detective was contacted by an officer, who had responded to a call at the Bellagio Hotel and Casino. Details of the call advised that two subjects were currently being detained by security officers due to a fraudulent room rental.

Further investigation revealed that the front desk manager of the Bellagio had been contacted by Orbitz in reference to a guest who had rented a room at the Bellagio using Orbitz as a third party booker.

The man renting the room, later identified as the co-defendant, Moustapha Dioubate, had provided a credit card number to Orbitz, who later received notification the card was fraudulent. Once Orbitz contacted the Bellagio hotel, the hotel pinned out the room the co-defendant was renting so that access could not be made into the room.

The co-defendant and a female, who was later identified as Petitioner, approached the front desk a short time later. Petitioner retrieved a credit card from her purse and handed it to the co-defendant, who gave the card to the front desk representative. Both Petitioner and the co-defendant were detained by security officers after it was determined the credit card was fraudulent. The two were then escorted to security holding where security searched both subjects. A security officer located a large amount of credit cards and identifications in a brown leather bag, which Petitioner was carrying. Security then contacted police.

Upon arrival, the Las Vegas Metropolitan Police Officer immediately noticed there were multiple identifications with different names on the table. The identifications had pictures with the likeness of the co-defendant and Petitioner and appeared fraudulent. The credit cards were found to be counterfeit. As an officer began to search the above mentioned bag, Petitioner immediately stated, "I didn't give you consent to search that."

The officer attempted to talk to both the co-defendant and Petitioner, but both requested the presence of an attorney, therefore no further questions were asked of them.

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ARGUMENT

I. PETITIONER'S PETITION IS TIME-BARRED.

Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

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Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

In the instant case, the Judgment of Conviction was filed on May 1, 2017, and Petitioner did not file a direct appeal. Thus, the one-year time bar began to run from this date. The instant Petition was not filed until August 31, 2020. This is over two (2) years in excess of the one-year time frame. Further, Petitioner's claim that the filing of the Amended JOC extends the deadline for filing a habeas petition is flatly incorrect. An Amended JOC does not change the deadline for filing a post-conviction petition for writ of habeas corpus. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) ("we conclude that the one-year statutory time limit did not automatically restart for Sullivan's post-conviction claims simply because the district court entered the amended judgment of conviction."). Absent a showing of good cause for this delay and undue prejudice, Petitioner's claim must be dismissed because of its tardy filing.

II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS.

A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526 To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, "bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is

'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. All of the facts and law alleged in Petitioner's Petition were available for direct appeal or a timely filed habeas petition. Further, to the extent that Petitioner claims that AB 236 provides good cause to overcome the procedural bars, Petitioner's claim fails. It is well established that, under Nevada law, the proper penalty for a criminal conviction is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. ("Pullin"), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of the crime. Id.

In the instant case, Petitioner was charged with an offense that occurred on or about May 4, 2015, prior to the amendment going into effect in July of 2020. Moreover, Petitioner admits that AB 236 had no legal effect on her case because it was not enacted at the time Petitioner committed the instant offense. Petition at 11. Further, the Legislature did not clearly express its intent that the amendment of the statute applies retroactively. Therefore, pursuant to Nevada law, the proper penalty for Petitioner's conviction is that which was in effect at the time of the commission of the crime. In the instant case, Petitioner was sentenced to forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. This sentence falls within the statutory sentencing guidelines. See NRS 205.060. Therefore, Petitioner is not entitled to relief under AB 236 and her claim fails. Thus, Petitioner has failed to demonstrate an impediment external to the defense. Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars and her Petition should be denied.

III. PETITIONER CANNOT DEMONSTRATE PREJUDICE SUFFICIENT TO IGNORE THE PROCEDURAL DEFAULTS.

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional

dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

a. Petitioner received effective assistance of counsel.

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's ineffective assistance, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

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Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of

the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

Here, Petitioner claims that counsel was ineffective for failing to raise her claim regarding AB 236 and failing to provide her certain facts of her case. Petition at 11. As an initial matter, as demonstrated above, AB 236 does not apply in Petitioner's case. Further, Petitioner provides no evidence other than her own conclusory claims that such deficient performance occurred. Therefore, Petitioner's claims are bare, naked and only appropriate for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus Petitioner's claim fails and her Petition must be denied.

b. Petitioner's substantive claims are waived as they should have been raised on direct appeal.

Under NRS 34.810(1),

> The court *shall* dismiss a petition if the court determines that:
> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.
> . . .
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

(emphasis added). Further, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on

other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Here, Petitioner raises claims of prosecutorial misconduct in her instant Petition. Petition at 11, 14-15. Petitioner has failed to demonstrate good cause to overcome the procedural bars and, as Petitioner failed to raise such a claim on direct appeal, the claim is waived.

c. Petitioner cannot raise constitutional claims that occurred prior to her guilty plea.

Additionally, Petitioner cannot raise constitutional claims that occurred prior to her guilty plea. A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). "'[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" Id. (quoting Tollett, 411 U.S. at 267). Therefore, Petitioner's claim of prosecutorial misconduct is waived by nature of her guilty plea.

d. There was no prosecutorial misconduct.

Petitioner claims that the State committed prosecutorial misconduct for failing to charge Petitioner in compliance with AB 236. Petition at 11, 14-15. This Court reviews claims of prosecutorial misconduct for improper conduct and then determines whether reversal is warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews improper conduct claims for harmless error. Id. Where no objection was made at trial, the standard of review for prosecutorial misconduct rests upon Defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is

whether the prosecutor's statements so contaminated the proceedings with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

In resolving claims of prosecutorial misconduct, this Court undertakes a two-step analysis: determining whether the comments were improper; and deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476. The standard of review for prosecutorial misconduct rests upon a defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (*citing* Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). This Court views the statements in context and will not lightly overturn a jury's verdict based upon a prosecutor's statements. Byars v. State, 130 Nev. 848, 865, 336 P.3d 939, 950–51 (2014). Notably, "statements by a prosecutor, in argument... made as a deduction or conclusion from the evidence introduced in the trial are permissible and unobjectionable." Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (*quoting* Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018–19, 945 P.2d 438, 444–45 (1997), receded from on other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

With respect to the second step, this Court will not reverse if the misconduct was harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188–89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments on the exercise of a constitutional right, or the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. 124 Nev. at 1189, 196 P.3d 476–77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When

the misconduct is of constitutional dimension, this Court will reverse unless the State demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d 476–77. When the misconduct is not of constitutional dimension, this Court "will reverse only if the error substantially affects the jury's verdict." Id.

As demonstrated above, AB 236 has no legal effect on Petitioner's case, as it went into effect after Petitioner committed the instant offense. Therefore, the State cannot have committed misconduct as Petitioner was properly charged under the statute in effect at the time the crime was committed. Thus, Petitioner's claim fails. Therefore, Petitioner has failed to demonstrate prejudice sufficient to overcome the procedural bars and her Petition must be denied.

CONCLUSION

For the foregoing reasons, Petitioner's Petition must be denied.

DATED this 9th day of October, 2020.

Respectfully submitted,

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

BY _____
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of Petition for Writ of Habeas Corpus (Post Conviction), was made this 9th day of October, 2020, by Electronic Filing to:

VALENTINA KNIGHT, BAC #1228728
FLORENCE MCCLURE CORRECTIONAL
4370 SMILEY ROAD
LAS VEGAS, NV 89115

Corina Garcia
C. Garcia
Secretary for the District Attorney's Office

TP/ss/cg/L2

27

FILED
OCT 16 2020
CLERK OF COURT

ENTERED SERVED ON COUNSEL/PARTIES OF RECORD
OCT -2 2020
CLERK US DISTRICT COURT DISTRICT OF NEVADA
BY: DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

Valentina Knight
Petitioner

Vs.

State of Nevada
Respondant

Case NO. A-20-820448-W
Department 19

MOTION TO SUBMIT DOCUMENTS TO SUPPLEMENT CLAIMS IN PETITION FOR WRIT OF HABEUS CORPUS

PLEASE TAKE NOTICE THAT I, VALENTINA KNIGHT would here like to submit the documents enclosed to supplement claims and merit my claims in the above stated case of Habeus Corpus. As I am at best a layman at law, it was unclear to me when to submit said documents.

CONCLUSION

For the stated reasons, I, Valentina Knight here by move the court to add the following documents to the PETITION FOR HABEUS CORPUS, For evidentary purposes

RECEIVED
OCT 16 2020
CLERK OF THE COURT

United States District Court
In the 8th District of Nevada

VALENTINA KNIGHT
Petitioner
Vs.
THE STATE OF NEVADA
Respondent

Criminal Case No:
CIS309123

AFFIDAVIT

I, Linda Mitchell, depose and state that the following FACTs are True and Correct under penalty of perjury, to WIT:

2. I, Linda Mitchell, state that I am Valentina Knight's Mother.

3. I, Linda Mitchell, state that I allege, of hearing that threats between March and April of 2017.

To whom it may concern, my name is Linda M Mitchell I am Valentina Knight's mother. I'm writing this statement to give Witness what I saw and heard concerning Valentina State of Mind when offered the plea deal. I believe she did so out of fear of what could happen to her if she didn't. She was scared of the consequences of not following Moustpha lead. I have seen them fighting and her with black and blue bruises on her face neck and arms, and constantly being called by Moustpha. She was cut off from cash, credit cards and business accounts if she did not adhere to what he wanted to do. Moustpha would beg my daughter not to get their marriage annulled because he didn't want to get deported. She had asked so many times to have their cases separated but it didn't happen. His family also treated her like dirt. My daughter was under duress at the time from March to April 2017. I am forever grateful that her case has been given another chance. This is for case c1530 91232 District Court Clark County.

Thank you,
Linda Mitchell

I, Linda Mitchell, declare under penalty of perjury, pursuant to 28 U.S.C 1746, that the above stated FACTS are True and Correct to the best of my knowledge and belief.

Executed on This 21st Day of September, 2020
Respectively Submitted

Signed: Linda M. Mitchell PRO SE

And or to add the evidentary documents to the case file stated above for record.

Dated this 15th day of September 2020.

Respectfully Submitted

Valentina Knight
1228728

27

DISTRICT COURT
CLARK COUNTY NEVADA

Valentina Knight
Petitioner

V.S.

State of Nevada
Respondent

Case No: A-20-820190-W
Department 19

AFFIDAVIT OF VALENTINA KNIGHT (PETITIONER)

I, Valentina Knight, depose and State that the following FACTS are True and Correct under penalty of perjury TO WIT:

2) I Valentina Knight, State that I was married to Co-defendant, Moustapha Diouf at the time of incarceration at Clark County Detention Center in December 2016 to April 2017.

3) I Valentina Knight, State that I did in fact recieve letters from my co-defendant addressed from his friend "Dia" with threats Stating that "Something bad" would

happen to me and my son if I did not take the Plea deal".

I, Valentina Knight declare under Penalty or perjury pursuant to 28 U.S.C § 2254 and/or 2255, that the above stated FACTS are True and Correct to the best of my knowlege and belief.

Executed on this 19th Day of July 2020.

Valentina Knight. PRO SE
1228728
Florence Mcclure Womens Correctional Center
4320 Smiley RD,
Las Vegas, NV 89115

2013 Nevada Revised Statutes Chapter 205 - Crimes Against Property NRS 205.060 - Burglary: Definition; penalties; venue; exception.

Universal Citation: NV Rev Stat § 205.060 (2013)

1. Except as otherwise provided in subsection 5, a person who, by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of burglary.

2. Except as otherwise provided in this section, a person convicted of burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000. A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence.

3. Whenever a burglary is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot

with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

4. A person convicted of burglary who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $10,000.

5. The crime of burglary does not include the act of entering a commercial establishment during business hours with the intent to commit petit larceny unless the person has previously been convicted:

(a) Two or more times for committing petit larceny within the immediately preceding 7 years; or

(b) Of a felony.

[1911 C&P 369; A 1953, 31] (NRS A 1967, 494; 1968, 45; 1971, 1161; 1979, 1440; 1981, 551; 1983, 717; 1989, 1207; 1995, 1215; 2005, 416; 2013, 2987)

Knight, V
6D07

FROM UNITED STATES SUPREME COURT WEBSITE (SCOTUS BLOG)

Posted Tue, April 19th, 2016 11:56 am

Opinion analysis: A lopsided majority for full retroactivity

Yesterday's opinion in *Welch v. United States* was not, after oral argument, much of a surprise. The Court decided, by a vote of seven to one, that last Term's decision in *Johnson v. United States*, which struck down as unconstitutionally vague a part of a federal sentencing enhancement statute, should apply "retroactively" even to cases that were final before *Johnson* was decided. And by expediting the decision – issuing the opinion only eighteen days after oral argument and ignoring procedural twists described (in what dissenting Justice Clarence Thomas described as a "considerable understatement") as "somewhat unusual" – the Court ensured that even federal prisoners who have already filed and lost a prior habeas corpus claim can still seek relief under *Johnson* if they file a "successive" habeas petition within the one-year statutory habeas deadline (that is, many people think, by June 25, 2016, a year after the Court issued its *Johnson* decision).

Still, there is no doubt that the Court's discussion of complex retroactivity law will provide more grist for the mill for many scholarly tenure-seekers and criminal law litigants. Together with this Term's earlier decision on retroactivity in *Montgomery v. Louisiana*, the current Court is plainly struggling with an age-old question: when is it fair to give defendants whose cases were settled long ago the benefit of a new Supreme Court decision, versus when is it fair (or at least better for a stable criminal justice system) to leave old cases "final" even when the law changes later on constitutional grounds? While yesterday's majority said it was acting well within the settled framework of a leading 1989 retroactivity decision, *Teague v. Lane*, Justice Clarence Thomas in his solo dissent described *Welch* as an "unprincipled expansion" "unmoored from ... limiting principles" of finality. Undoubtedly, *Welch* will be simply one case in a long chain of conflicted retroactivity decisions that might best be harmonized by Justice Potter Stewart's homespun claim about certain other cases lacking "intelligible" consistency: "I know it when I see it."

The question, oversimplified

Over-simply put, the issue before the Court was: when a Supreme Court decision (*Johnson*) strikes down as unconstitutionally vague a law which for years was used to increase some defendants' imprisonment terms by at least five years, should defendants whose cases were "final" before that decision be able to claim resentencing (to a lesser term) under that decision? (My prior posts about *Welch* as well as *Johnson* (here and here), are the place to find further details.) For several decades, the rule on "retroactivity" has been clear: all defendants whose cases are not yet "final" on direct appeal receive the retroactive benefit of new Supreme Court constitutional criminal procedure decisions. Cases that are final, however, do not receive the benefit of new constitutional rulings – meaning that new criminal procedure decisions do not apply on "collateral" review, that is, on habeas corpus.

Despite the apparent clarity of this "rule," the Court's decision in *Teague v. Lane*, which attempted to settle this doctrine after twenty years of struggling with ideas first advanced by Justice John Marshall Harlan in 1969, recognized two exceptions to its "non-retroactivity rule:" (1) new "watershed rules of criminal procedure" should be "fully retroactive" (that is, available on collateral review even for "final" cases); (2) and so too should be "new *substantive* rules." The parties here agreed that *Johnson* did not fall into the first category; the question then is whether *Johnson* announced a "substantive" or merely "procedural" rule. Finally on this question, the Court decided in 2004 in *Schriro v. Summerlin* that "a rule is substantive ... if it alters the range of conduct or the class of persons that the law punishes."

The *Johnson* rule is "substantive" and thus applies retroactively

Last June in *Johnson*, the Court ruled that a defendant may not have his sentence increased from ten years or less in prison, to at least fifteen years, under the "residual clause" of the Armed Career Criminal Act, because that clause was "unconstitutionally vague." Yesterday the Court decided that this ruling fits within the "substantive," and thus fully retroactive, category. Thus cases in which the residual clause was applied long ago, and are thus today "final," are not actually final at all: those defendants (who are by definition "career criminals") may now seek a reduced sentence as though the residual clause had never existed. Or as Justice Thomas put it, in closing his dissent, under this (mistaken, he believes) application of *Teague*, "every end is instead a new beginning."

Still, Justice Anthony Kennedy's opinion for the Court seems relatively straightforward, as it did to seven of the eight Justices – including Justice Samuel Alito, the lone dissenter in *Johnson*. (Indeed, Justices Kennedy and Alito both disagreed with the majority's constitutional vagueness ruling in *Johnson* (Justice Kennedy concurred on statutory grounds), yet they are part of the retroactivity majority in *Welch*.) *Johnson*, says the Court, created a "class of persons" that cannot be constitutionally punished under the residual

clause. It did not alter the "manner of determining" guilt or punishment (which would be merely procedural). Thus under *Schriro*, *Johnson* must fairly be given full retroactive effect, because a "class" of some defendants are serving extended time in prison when the statute that put them there is now unconstitutional.

Usefully, Justice Kennedy's opinion settles that proper application of *Teague* must consider the "function" of a new rule, not its constitutional source. Thus, a ruling – such as *Johnson* – under the Constitution's Due *Process* Clauses, may still be "substantive" in its effect. This approach, says the Court, achieves the "balance" that *Teague* embodies "between ... the need for finality in criminal cases, and ... the countervailing imperative to ensure that criminal punishment is imposed only when authorized by law."

The Court went on to respectfully, if at times bluntly, reject other arguments presented by Helgi Walker, the *amicus* who was appointed to defend the judgment below because the United States agreed with Welch that *Johnson* should be retroactive. (Indeed, the Court paid her the honor of a textual, rather than footnoted, "ably-discharged-her-responsibilities" compliment.) Thus, the Court ruled, it also does not matter that Congress could possibly rewrite a "precise enough" non-vague statute to achieve the same enhanced sentencing result that the residual clause imposed. The statute under which Welch and others were sentenced to lengthy prison terms is constitutionally invalid and nothing can save *that* class of individuals from *Johnson*'s impact.

One side note: the Court spent some time dismissing the "arbitrary distinction" that Walker attempted to draw between decisions that strike down a criminal statute entirely, and one that merely "narrows" the statute. The Court said that *Johnson* is of the first kind. But because *Johnson* struck down only one clause, just a partial subsection of a much longer criminal statute, it seems to me that *Johnson* would fit comfortably into a "narrowed the statute" category.

Finally, and apparently responding to Justice Thomas's critique that "*every* case invalidating a statute" will now have to be declared retroactive, the Court closed by noting that "not every decision striking down a statute is *ipso facto* a substantive decision." If a *procedural* statute is struck down – "for example, a statute regulating the types of evidence that can be presented at trial" – it "would have no retroactive effect" (unless it were "watershed" – and let's not get started down *that* rabbit hole here).

A separate point: certificates of appealability

Space precludes much detail about this, but to get to the merits in *Welch* the Court had to first wend its way through the thicket of the statutory "certificate of appealability" requirement for jurisdiction over federal habeas corpus appeals. This too is a somewhat complex point, but it seems certain that the Court's analysis here – that Welch may properly seek review of the Eleventh Circuit's denial of such a certificate even though his district court habeas petition did not raise the *Johnson* issue (which it couldn't do, because the Court had not yet decided *Johnson*) – will be pleasing to habeas corpus advocates. In fact, almost half of Justice Thomas's dissent was devoted to this issue, and he described the majority's "distort[ed]" analysis as "preposterous." (Justice Thomas is, after all, the Eleventh Circuit's "Circuit Justice," and some Court-watchers believe that the Circuit Justices often loyally defend their charges.) For more on this issue, the small but committed band of capital habeas lawyers in this country should read the opinions.

Dissent: Do *Welch* and *Montgomery* "unmoor" retroactivity doctrine?

Justice Thomas's dissent seems somewhat lonely in this case – perhaps in the absence of Justice Antonin Scalia, although as the author of *Johnson* Justice Scalia's vote here could not be certain. Still, Justice Thomas makes a point which seems unavoidable: retroactivity doctrine seems different today than it did some twenty years ago in *Teague*'s heyday. Justice Thomas says the majority's approach "breaks down all meaningful distinctions between 'new' and 'old,'" and that "the Court keeps moving the goalposts." Thus, he claims, the Court's recent "retroactivity rules have become unmoored from the limiting principles that" *Teague*, and perhaps Justice Harlan, originally voiced. The majority, for its part, is careful to quote Justice Harlan, and certainly Justice Harlan, like all lawyers who labor in this puzzling area, sometimes expressed mixed views. All that can fairly be said right now, I think, is that although *Welch* may add clarity for some, it hardly settles, with finality, future retroactivity issues that will continue to arise.

NRS 205.060 Residential burglary, burglary of a business, burglary of a motor vehicle and burglary of a structure: Definitions; penalties; venue. [Effective July 1, 2020.]

1. A person who, by day or night, unlawfully enters or unlawfully remains in any:

(a) Dwelling with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of residential burglary.

(b) Business structure with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a business.

(c) Motor vehicle, or any part thereof, with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a motor vehicle.

(d) Structure other than a dwelling, business structure or motor vehicle with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a structure.

2. Except as otherwise provided in this section, a person convicted of:

(a) Burglary of a motor vehicle:

(1) For the first offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

(2) For a second or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) Burglary of a structure is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(c) Burglary of a business is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(d) Residential burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years.

3. If mitigating circumstances exist, a person who is convicted of residential burglary may be released on probation and granted a suspension of sentence if the person has not previously been convicted of residential burglary or another crime involving the unlawful entry or invasion of a dwelling.

4. Whenever any burglary pursuant to this section is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

5. A person convicted of any burglary pursuant to this section who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the dwelling, structure or motor vehicle or upon leaving the dwelling, structure or motor vehicle, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $10,000.

6. As used in this section:

(a) "Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social or political purpose, regardless of whether the business is operated for profit.

(b) "Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations,

regardless of whether the person is inside at the time of the offense.

(c) "Motor vehicle" means any motorized craft or device designed for the transportation of a person or property across land or water or through the air which does not qualify as a dwelling or business structure pursuant to this section.

(d) "Unlawfully enters or unlawfully remains" means for a person to enter or remain in a dwelling, structure or motor vehicle or any part thereof, including, without limitation, under false pretenses, when the person is not licensed or privileged to do so. For purposes of this definition, a license or privilege to enter or remain in a part of a dwelling, structure or motor vehicle that is open to the public is not a license or privilege to enter or remain in a part of the dwelling, structure or motor vehicle that is not open to the public.

[1911 C&P § 369; A 1953, 31] — (NRS A 1967, 494; 1968, 45; 1971, 1161; 1979, 1440; 1981, 551; 1983, 717; 1989, 1207; 1995, 1215; 2005, 416; 2013, 2987; 2019, 4425, effective July 1, 2020)

First Step Act

The Formerly Incarcerated Reenter Society Transformed Safely Transitioning Every Person Act (known as the First Step Act) was a bipartisan criminal justice bill passed by the 115th Congress and signed by President Trump in December 2018. The First Step Act, among other changes, reforms federal prisons and sentencing laws in order to reduce recidivism, decrease the federal inmate population, and maintain public safety.[1]

An initial version of the First Step Act, H.R. 5682, was sponsored and introduced by Rep. Douglas Collins [R-GA-9] on May 7, 2018.[2] This draft primarily focused on recidivism reduction through the development of a risk and needs assessment system for all federal prisoners. The bill directed the U.S. Attorney General to develop this system along with evidence-based recidivism reduction programs for federal prisoners.[3] Under the bill, prison administrators would use the national risk and needs assessment system to classify a prisoner's risk of recidivism, to make decisions about which recidivism reduction programs might be appropriate for each individual, and to determine when a prisoner is prepared to transfer into prerelease custody. The draft legislation also included a number of other criminal justice reform provisions, including ones that permit Bureau of Prison (BOP) employees to store firearms in designated off-site firearms storage facility or vehicle lockbox and carry concealed weapons outside of the prison (Section 202); prohibit the use of restraints on prisoners during pregnancy, labor and postpartum recovery, except where a health care provider determines otherwise or where the prisoner is an unreasonable flight risk or public safety threat (Section 301); place prisoners as close as possible to (and no more than 500 miles away from) their primary residence where practicable (Section 401); expand compassionate release (also "reduction in sentencing" or "RIS") for terminally ill patients and reauthorize the Second Chance Act of 2007 (Section 403); mandate the Bureau of Prisons to provide identification to returning citizens (Section 404); authorize new markets for Federal Prison Industries (Section 406); mandate de-escalation training for correctional officers and employees (Section 407); direct reporting on opioid treatment and abuse in prisons (Section 408); improve availability of feminine hygiene products in prison (Section 412); and other actions.[4]

After introduction, the bill was immediately referred to the House Committee on the Judiciary, and was subsequently voted out of committee—accompanied by a report—on a 25-5 vote on May 22, 2018. The House Committee's report highlighted Bureau of Prison data about recidivism, and warned of the fiscal and social costs of repeated arrest, conviction and incarceration.[5] It also expressed concern with shrinking educational and vocational opportunities for

inmates, given the proven potential of those activities to reduce criminogenic tendencies.[5] The bill passed the House of Representatives by a 360–59 vote the same day, with remarks from many congressional members, including Rep. Jerry Nadler [D-NY-10], who acknowledged that though the bill did not include sentencing reform as some would have liked, it was an "important first step" that was able to unify groups as divergent as #cut50 and the Koch Foundation.[6] After passage, the bill was referred to the Senate.[7]

However, the Senate did not ultimately vote on H.R. 5682, nor did it consider S. 2795—a companion bill to H.R. 5682 that was introduced in the Senate on May 7, 2018 by Senator John Cornyn [R-TX] and referred to the Senate Judiciary Committee. The Senate actually did not vote on criminal justice reform until December 2018 due to disagreement about the scope of the First Step Act. Without the inclusion of meaningful sentence reform akin to the measures proposed in the Sentencing Reform and Corrections Act of 2015, many Senate Democrats were unwilling to support it.[8][9] After months of intense brokering in the Senate, Senator Chuck Grassley [R-IA] introduced a version of bill (S. 3649) on November 15, 2018 that incorporated the correctional reforms from S. 2795/H.R. 5682, added supplemental measures, and—importantly—included new sentencing reform provisions.[10] It garnered more than 40 cosponsors.

On December 12, Senator Grassley [R-IA], along with cosponsor Senator Dick Durbin [D-IL], introduced a revised version of S. 3649 as S. 3747, which preserved S. 3649's content and added an additional title reauthorizing and amending the Second Chance Act of 2007.[11] In a usual procedural move, and after reversing his statement that he would not proceed on a vote until 2019,[12] the Senate Majority Leader Mitch McConnell [R-KY] on December 13, 2019 substituted the content of The First Step Act (S. 3747) into a S. 756—a substantively unrelated bill called the Save Our Seas Act, which was originally introduced by Senator Dan Sullivan [R-AK] on March 29 2017—in order to solicit final amendments and bring the matter to a vote. (Due to this procedural move—known as "amendment in the nature of a substitute"[13]—congressional records in various places reflect two wholly unrelated versions of S. 756 from the 115th Congress). Many Senators moved to submit amendments, among them Senators Tom Cotton [R-AR] and John Kennedy [R-LA]. They introduced controversial amendment 4109 to S. 756 to expand the types of convictions that would render an inmate ineligible for good-time credits (the crime "exclusion list") and to require prison wardens to notify every crime victim of the release date of the inmate associated with their offense, among other information-sharing measures.[14] They argued that these reforms were necessary to protect victims,[15] but bill-backers viewed the move as a last-minute effort to derail months of consensus building.[16]

In his statement to the Senate prior to the vote encouraging bill passage and discouraging the Cotton-Kennedy amendments, Senator Dick Durbin [D-IL] explained that the notification requirements of the Cotton-Kennedy amendments duplicated already-existing notification and information-sharing provisions of the Crime Victim Rights Act while undesirably disallowing victims to opt-out of notifications.[17] He also suggested that the Cotton-Kennedy amendments attempted to add crimes to the exclusion list that they had previously opposed.[17] The Cotton-Kennedy Amendments were rejected in a 37-62 vote, and did not become a part of the bill.[18] On December 18, 2018, the revised First Step Act[18] passed the U.S. Senate as S. 756 on a bipartisan 87–12 vote.[19]

The House approved the bill with the Senate revisions on December 20, 2018 (358–36).[20] The act was signed by President Donald Trump on December 21, 2018,[20] and became Public Law 115-391.[21]

Main legislative provisions[edit]

The law as enacted is divided into six titles[22] and codified at various parts of Titles 18, 21, and 34 of the United States Code, based on the subject of legislation.[22]

Title I directs the U.S. Attorney General to develop and publicly announce a risk and needs assessment system for all Bureau of Federal Prison inmates within 210 days of enactment, and to recommend evidence-based recidivism reduction activities. This risk and needs assessment system, once developed, is to be used under the First Step Act to classify prisoner risk of recidivism, match prisoners with suitable recidivism reduction activities based on their classification, inform housing decisions so that prisoners in similar risk categories are grouped together, and create incentives for participation in and completion of recidivism-reduction activities. These incentives include increased access to phone privileges, transfer to penal institutions closer to a prisoner's primary residence, and time credits to reduce sentence length. However, time credit rewards are not available to all prisoners; 18 U.S.C. § 3632(d)(4)(D)—where Title I of the First Step Act was codified—details nearly 70 types of convictions that render an inmate ineligible to accrue time credits for successfully completing recidivism-reduction activities.[23] Additionally, prisoners subject to "a final order of removal"—which renders an individual deportable—are also ineligible from receiving good time credit incentives. Those who participate in risk and needs assessment activities may be eligible for prerelease custody or supervised release as described in 18 U.S.C. 3624(g).[25] This title also increases the number of good-time credits per year—small sentenced reductions earned by prisoners for good behavior—from 47 to 54, which many believe was consistent with the original intent behind 18 U.S.C. § 3624(b)(1).[26] Importantly, the law retroactively applies the good-time credits, making some prisoners immediately eligible for release based on accrual of seven additional good-time credits per year.

Title I of the First Step Act, as codified at 18 U.S.C. § 3621(h), also directs the Director of Bureau of Prisons to perform an initial risk and needs assessment of all federal prisoners within 180 days of the Attorney General's release of the risk and needs assessment system, and to begin expanding recidivism-reduction activities.[27]

Title II, as codified at 18 U.S.C. § 4050, stipulates that the Director of the Bureau of Prisons must ensure that federal prison directors provide employees a secure place to store firearms outside of the prison, or allow employees to store firearms in an authorized and approved vehicle lockbox.[28] It also allows federal BOP employees to carry concealed firearms outside of the prison.

Title III, codified at 18 U.S.C. § 4322, prohibits the use of restraints on prisoners during pregnancy, labor and postpartum recovery, subject to limited exceptions.[29] If a correctional officer determines that the prisoner is a flight risk or poses serious harm to herself or the community, or if a healthcare professional concludes that use of restraints is consistent with medical safety, restraints must be used. However, they must be the least restrictive means possible to prevent escape.

Title IV makes a variety of sentencing reforms. Section 401 amends the Controlled Substance Act (21 U.S.C. § 801 et seq.) to constrain the application of sentencing enhancements for defendants with prior drug felony convictions by redefining "serious drug felony" and "serious violent felony," to reduce the mandatory minimum sentence for a second violation from 20 years to 15 years, and to reduce the mandatory minimum sentence for a third violation from life to 25 years. It makes similar revisions to the Controlled Substance Import and Export Act at 21 U.S.C. § 960(b).

Section 402 expands the number of defendants who may be eligible for "safety valve" relief. Prior to the First Step Act, only defendants with one "criminal history point" could receive sentences below the mandatory minimums, but under the Act, defendants with up to four points (depending on the type of offense) may be eligible.[30]

Section 403 eliminates the "stacking" provision of 18 U.S.C. § 924(c).[31] Prior to this legislation, 18 U.S.C. § 924(c)—which stipulated that an enhanced mandatory minimum sentence could be added when a gun was used in the commission of a "second or subsequent" conviction—was interpreted to permit the imposition of enhanced mandatory minimum sentences where a gun was used in a *concurrently* charged offense. The First Step Act clarified that gun enhancements can only be added where the defendant was previously (e.g. non-concurrently) convicted of a gun violation, so as to restrict sentencing enhancements to "true" repeat offenders.[32]

Section 404 applies the Fair Sentencing Act of 2010—which, among other things, reduced the discrepancy between sentences for crack cocaine and powder cocaine convictions—retroactively. Under the First Step Act, prisoners who committed offenses "covered" by the Fair Sentencing Act are permitted to petition a court *directly* to reconsider their sentence (after certain administrative steps are satisfied).[33] Prior to this law, the Bureau of Prisons acted as the "gatekeeper" of prisoner petitions, and prisoners were not able to make motions to federal courts directly for back-end sentencing review.[34]

Title V reauthorizes the Second Chance Act of 2007 from 2019-2023. This reauthorization directs the Attorney General to make grants to state and local projects which support the successful reentry of juvenile and adult prisoner

populations into their communities after incarceration—including projects which improve academic and vocational education for offenders during incarceration.

Title VI includes more than ten miscellaneous provisions, including those that place prisoners as close as possible to (and no more than 500 miles away from) their primary residence where practicable (Section 601); encourage home confinement for low risk prisoners (Section 602); lower the eligibility age and reduce to the time-served requirement for compassionate released, and broaden the prisoner population eligible for compassionate release to include terminally ill offenders (Section 603); mandate the Bureau of Prisons to provide identification to returning citizens (Section 604); authorize new markets for Federal Prison Industries (Section 605); mandate de-escalation training for correctional officers and employees (Section 606); direct reporting on opioid treatment and abuse in prisons (Section 607); direct data collection on various metrics for inclusion in the National Prisoner Statistics Program (Section 610); improve availability of feminine hygiene products in prison (Section 611); and prohibit the use of solitary confinement for federally-incarcerated juveniles, excepting certain circumstances (Section 613).

Support and opposition during legislative process[edit]

Senators Chuck Grassley [R-IA], Dick Durbin [D-IL], Cory Booker [D-NJ], and Mike Lee [R-UT] championed the First Step Act in the Senate and built a bipartisan coalition to pass the legislation. In the House, Representatives Doug Collins [R-GA-9], Hakeem Jeffries [D-NY-8] and John Lewis [D-GA-5] promoted similar legislation, albeit without sentencing reform provisions. Though President Donald Trump was initially skeptical of the legislation, intense lobbying by his son-in-law and senior adviser Jared Kushner—whose views on criminal justice reform are believed to be influenced by his father's conviction and incarceration—eventually persuaded President Trump to back the bill and push for a floor vote in 2018.[12] Kushner's efforts included reaching out to the Murdoch family (who own Fox News) to encourage positive coverage, appearing on Fox, securing Vice President Mike Pence's support, scheduling policy time discussions with President Trump, and arranging meetings with celebrities like Kanye West and Kim Kardashian and media players like Van Jones to lobby President Trump.[13][12] Prominent conservatives from political and advocacy backgrounds also wrote to President Donald Trump on August 22, 2018 addressing criticisms of the First Step Act, assuring him of conservative support for the measure (including its sentencing provisions), and urging him to support it.[14]

Notable conservative lawmakers who opposed the bill included Senators Tom Cotton [R-AR], John Kennedy [R-LA], Ben Sasse [R-NE] and Lisa Murkowski [R-AK]. Twelve Republican senators in total voted against the First Step Act.[12] Though Senator Ted Cruz [R-TX] was originally opposed to the legislation, he ultimately backed the bill after an amendment he drafted to expand the crime exclusion list was adopted.[15]

No Democratic congressional members voted against the First Step Act.[12][13] However, some liberal commentators such as Roy L. Austin Jr., who worked on criminal justice in the Obama administration, criticized the act for not delivering more relief to more prisoners.[16]

Early achievements and implementation critiques[edit]

Scope of Impact: Within the first year of enactment, more than 3,000 federal prisoners were released based on changes to the good-time credits calculation formula under the First Step Act, and more than 2,000 inmates benefited from sentence reductions from the retroactive application of the Fair Sentencing Act of 2010.[4][16][2] Additionally, nearly 350 people were approved for elderly home confinement and more than 100 received compassionate release sentence reductions.[4][2] While many groups applauded those developments, both liberal and conservative critics suggest that the Trump Administration's Department of Justice is not properly applying the law, resulting in fewer prisoners enjoying the release and sentencing adjustment reforms than Congress intended.[4][2] In many cases, Department of Justice prosecutors are opposing inmates' motions for sentence reduction under the First Step Act by arguing that the relevant drug quantity is not what the offender was *convicted* of possessing or trafficking, but the quantity that records *suggest* the offender possessed or trafficked. The latter figure is typically substantially larger. In some instances, DOJ prosecutors are trying to "reincarcerate offenders already released under the First Step Act."[17]

Budget: Though the First Step Act authorizes Congress to appropriate $75 million per year between 2019-2023, only $14 million was explicitly earmarked for funding the legislation when President Trump released his 2020 budget priorities in March 2019. This lead First Step Act advocates to worry that the bill's underfunding represented an attempt to "starve it to death."[4][2]

Transparency of risk and needs assessment system: In July 2019, the Department of Justice announced the creation of the risk and needs assessment tool mandated by the First Step Act legislation. Dubbed PATTERN ("Prisoner Assessment Tool Targeting Estimated Risk and Needs"), the tool is "designed to predict the likelihood of general and violent recidivism for all BOP inmates."[4][2] The initial report detailed the mechanics of the assessment tool and its implementation, and invited a 45-day comment period.[18] The Leadership Conference on Civil and Human Rights, The Leadership Conference Education Fund, the American Civil Liberties Union, the Center on Race, Inequality, and the Law at NYU Law, The Justice Roundtable, Media Mobilizing Project, and Upturn replied in a joint letter to DOJ outlining concerns about the transparency of PATTERN's algorithmic development, and its potential for exacerbating existing racial discrepancies in the criminal justice system.[4][2]

In January 2020, the DOJ announced that all BOP prisoners had undergone an initial risk and needs assessment with the PATTERN tool as required by the law, and that the Department was making changes to the PATTERN algorithm in response to feedback.[4][8] However, allegations of racial algorithmic bias in the PATTERN tool persist.[4][9]

Compassionate Release under the First Step Act During the COVID-19 Pandemic[edit]

On April 3, 2020 Attorney General William Barr issued a memo pursuant to § 12003(b)(2) of the CARES Act directing the BOP to review the sentences of all prisoners with COVID-19 risk factors and prioritize their transfer to home confinement, starting with the most at-risk facilities.[20] Given the expanded eligibility for transfer to home confinement, many federal prisoners are trying to utilize the First Step Act's amended compassionate release provisions at 18 U.S.C. § 3582(c)(1)(A) to get out of prison. These provisions permit a federal judge to modify an inmate's sentence by motion of the BOP or by motion of the inmate after the inmate exhausts administrative requirements if "extraordinary and compelling reasons" warrant reduction or if the inmate meets certain age and sentence criteria, and so long as such a reduction is consistent with the U.S. Sentencing Guidelines.[5] Some inmates argue that risk of contracting COVID-19 in prison is an "extraordinary and compelling reason" justifying sentence modification pursuant to 18 U.S.C. § 3582(c)(1)(A)(i). In United States v. McCarthy, Judge Hall of the United States District Court of Connecticut agreed with an inmate, finding that a for a 65-year-old prisoner suffering from COPD, asthma, and other lung-related ailments, the risk of infection from COVID-19 in prison was an "extraordinary and compelling reason" to justify his release from BOP custody, subject to post-release supervision conditions.[22] However, not all courts have held that people with conditions "such as hypertension, heart disease, lung disease, or diabetes, which might make them more likely to suffer from serious complications if they were to contract COVID-19 meet any of the 'extraordinary and compelling reasons' specified in the U.S. Sentencing Guidelines."[5][3]

In addition to differing on the merits of compassionate release petitions during the COVID-19 pandemic, federal courts are split as of May 2020 on the question of whether the administrative requirements of 18 U.S.C. § 3582(c)(1)(A)—which stipulate that an inmate may *only* move for compassionate release (1) "after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf" or (2) "the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility"—are waivable. District Courts in the Second and Sixth Circuits (among others) have found the administrative requirements may be waived, such that the prisoner needn't exhaust all appeal rights or wait 30 days after requesting that the warden petition a federal court for sentence review in order to directly seek relief.[23] For example, in United States v. Scparta, S.D.N.Y. District Judge Nathan found that a 55-year-old petitioner ailing from high blood pressure, high cholesterol, sleep apnea, and hypertension was entitled to compassionate release *even though* he failed to exhaust the administrative requirements at 18 U.S.C. § 3582(c)(1)(A).[12] However, the Court of Appeals for the Third Circuit in United States v. Raia and district courts around the country (such as S.D.N.Y in United States v. Roberts, N.D. Cal in United States v. Reid, E.D. Mich in United States v. Alam and E.D. Ky in United States v. Hofmeister) have held that the administrative exhaustion

requirements are not subject to equitable waiver even during the COVID-19 pandemic, and must be complied with before federal courts can review the substance of the petitions.[52][54]

Subsequent legislation[edit]

At a celebration designating April 2019 First Step Act Month, President Trump announced that the next criminal justice priority for his administration would be a Second Step Act focusing on easing employment barriers for formerly incarcerated people.[56] As of May 2020, no such legislation has been proposed in Congress.

On March 7, 2019, Senator Cory Booker introduced the Next Step Act.[57] As of May 2020, it has not been referred to committee or subject to a vote.[58]

Existing law establishes the crime of burglary. **(NRS 205.060) Section 55** of this bill establishes: (1) certain types of burglary that differ based on the structure in which the crime is committed; and (2) the various penalties imposed for each type of burglary. Existing law authorizes a person to petition the court in which the person was convicted for the sealing of all records relating to the conviction, but excludes certain specified convictions. (NRS 179.245)

BURGLARY; INVASION OF THE HOME

NRS 205.060 Burglary: Definition; penalties; venue; exception. [Effective through June 30, 2020.]

1. Except as otherwise provided in subsection 5, a person who, by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of burglary.

2. Except as otherwise provided in this section, a person convicted of burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $10,000. A person who is convicted of burglary and who has previously been convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be released on probation or granted a suspension of sentence.

3. Whenever a burglary is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

4. A person convicted of burglary who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure or upon leaving the structure, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $10,000.

5. The crime of burglary does not include the act of entering a commercial establishment during business hours with the intent to commit petit larceny unless the person has previously been convicted:

(a) Two or more times for committing petit larceny within the immediately preceding 7 years; or

(b) Of a felony.

[1911 C&P § 369; A 1953, 31] — (NRS A 1967, 494; 1968, 45; 1971, 1161; 1979, 1440; 1981, 551; 1983, 717; 1989, 1207; 1995, 1215; 2005, 416; 2013, 2987)

NRS 205.060 Residential burglary, burglary of a business, burglary of a motor vehicle and burglary of a structure: Definitions; penalties; venue. [Effective July 1, 2020.]

1. A person who, by day or night, unlawfully enters or unlawfully remains in any:

(a) Dwelling with the intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain money or property by false pretenses, is guilty of residential burglary.

(b) Business structure with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a business.

(c) Motor vehicle, or any part thereof, with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a motor vehicle.

(d) Structure other than a dwelling, business structure or motor vehicle with the intent to commit grand or petit larceny, assault or battery on any person or any felony is guilty of burglary of a structure.

2. Except as otherwise provided in this section, a person convicted of:

(a) Burglary of a motor vehicle:

(1) For the first offense, is guilty of a category E felony and shall be punished as provided in NRS 193.130.

(2) For a second or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(b) Burglary of a structure is guilty of a category D felony and shall be punished as provided in NRS 193.130.

(c) Burglary of a business is guilty of a category C felony and shall be punished as provided in NRS 193.130.

(d) Residential burglary is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years.

3. If mitigating circumstances exist, a person who is convicted of residential burglary may be released on probation and granted a suspension of sentence if the person has not previously been convicted of residential burglary or another crime involving the unlawful entry or invasion of a dwelling.

4. Whenever any burglary pursuant to this section is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable certainty be ascertained in what county the crime was committed, the offender may be arrested and tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane, glider, boat or railroad car traveled during the time the burglary was committed.

5. A person convicted of any burglary pursuant to this section who has in his or her possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the dwelling, structure or motor vehicle or upon leaving the dwelling, structure or motor vehicle, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of not more than 15 years, and may be further punished by a fine of not more than $10,000.

6. As used in this section:

(a) "Business structure" means any structure or building, the primary purpose of which is to carry on any lawful effort for a business, including, without limitation, any business with an educational, industrial, benevolent, social or political purpose, regardless of whether the business is operated for profit.

(b) "Dwelling" means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that is divided into a separately occupied unit:

(1) In which any person lives; or

(2) Which is customarily used by a person for overnight accommodations,

Ê regardless of whether the person is inside at the time of the offense.

(c) "Motor vehicle" means any motorized craft or device designed for the transportation of a person or property across land or water or through the air which does not qualify as a dwelling or business structure pursuant to this section.

(d) "Unlawfully enters or unlawfully remains" means for a person to enter or remain in a dwelling, structure or motor vehicle or any part thereof, including, without limitation, under false pretenses, when the person is not licensed or privileged to do so. For purposes of this definition, a license or privilege to enter or remain in a part of a dwelling, structure or motor vehicle that is open to the public is not a license or privilege to enter or remain in a part of the dwelling, structure or motor vehicle that is not open to the public.

[1911 C&P § 369; A 1953, 31] — (NRS A 1967, 494; 1968, 45; 1971, 1161; 1979, 1440; 1981, 551; 1983, 717; 1989, 1207; 1995, 1215; 2005, 416; 2013, 2987; 2019, 4425, effective July 1, 2020)

Federal Bureau of Prisons

An Overview of the First Step Act

Learn how the First Step Act affects BOP inmates and their families.

On December 21, 2018, President Trump signed into law the First Step Act (FSA) of 2018 (P.L. 115- 391). The act was the culmination of a bi-partisan effort to improve criminal justice outcomes, as well as to reduce the size of the federal prison population while also creating mechanisms to maintain public safety.

This page provides a general overview of how the law affects BOP inmates and their families. For an expanded and detailed overview, please refer to the following document: https://crsreports.congress.gov/product/pdf/R/R45558

Reduction in Recidivism

The First Step Act requires the Attorney General to develop a risk and needs assessment system to be used by BOP to assess the recidivism risk and criminogenic needs of all federal prisoners and to place prisoners in recidivism reducing programs and productive activities to address their needs and reduce this risk. Under the act, the system provides guidance on the type, amount, and intensity of recidivism reduction programming and productive activities to which each prisoner is assigned, including information on which programs prisoners should participate in based on their criminogenic needs. The system also provides guidance on how to group, to the extent practicable, prisoners with similar risk levels together in recidivism reduction programming and housing assignments.

The Act also amends 18 U.S.C. § 4042(a) to require BOP to assist inmates in applying for federal and state benefits and obtain identification, including a social security card, driver's license or other official photo identification, and birth certificate.

The First Step Act also expands the Second Chance Act. Per the FSA, BOP developed guidance for wardens of prisons and community-based facilities to enter into recidivism-reducing partnerships with nonprofit and other private organizations, including faith-based and community-based organizations to deliver recidivism reduction programming.

Incentives for Success

The Act amended 18 U.S.C. § 3624(b) so that federal inmates can earn up to 54 days of good time credit for every year of their imposed sentence rather than for every year of their sentenced served. For example, this change means that an offender sentenced to 10 years in prison and who earns the maximum good time credits each year will earn 540 days of credit.

Eligible inmates can earn time credits towards pre-release custody. Offenses that make inmates ineligible to earn time credits are generally categorized as violent, or involve terrorism, espionage, human trafficking, sex and sexual exploitation; additionally excluded offenses are a repeat felon in possession of firearm, or high-level drug offenses. For more details, refer to the complete list of disqualifying offenses. These ineligible inmates can earn other benefits, as prescribed by BOP, for successfully completing recidivism reduction programming.

Confinement

The Act amends 18 U.S.C. § 3621(b) to require BOP to house inmates in facilities as close to their primary residence as possible, and to the extent practicable, within 500 driving miles. BOP makes designation decisions based on a variety of factors, including bedspace availability, the inmate's security designation, the inmate's programmatic needs, the inmate's mental and medical health needs, any request made by the inmate related to faith-based needs, recommendations of the sentencing court, and other security concerns. BOP is also required, subject to these considerations and an inmate's preference for staying at his/her current facility or being transferred, to transfer an inmate to a facility closer to his/her primary residence even if the inmate is currently housed at a facility within 500 driving miles.

The FSA reauthorizes and modifies a pilot program that allows BOP to place certain elderly and terminally ill prisoners on home confinement to serve the remainder of their sentences.

Additionally, inmates who successfully complete recidivism reduction programming and productive activities can earn time credits that will qualify them for placement in prerelease custody (i.e., home confinement or a Residential Reentry Center).

Correctional Reforms

The First Step Act (FSA) includes a series of other criminal justice-related provisions. These provisions include a prohibition on the use of restraints on pregnant inmates in the custody of BOP and the U.S. Marshals Service. It also includes a requirement for the BOP to provide tampons and sanitary napkins that meet industry standards to prisoners for free and in a quantity that meets the healthcare needs of each prisoner. (Note that BOP policy previously addressed these requirements.)

The FSA requires BOP to provide training to correctional officers and other BOP employees (including those who contract with BOP to house inmates) on how to de-escalate encounters between an officer or employee of BOP and a civilian or an inmate, and how to identify and appropriately respond to incidents that involve people with mental illness or other cognitive deficits. BOP staff training now incorporates these requirements.

Also included is a prohibition against the use of solitary confinement for juvenile delinquents in federal custody. (BOP does not house juveniles in its facilities but its contracts comply with this aspect of the FSA.)

Sentencing Reforms

Changes to Mandatory Minimums for Certain Drug Offenders
The FSA makes changes to the penalties for some federal offenses. The FSA modifies mandatory minimum sentences for some drug traffickers with prior drug convictions by increasing the threshold for prior convictions that count toward triggering higher mandatory minimums for repeat offenders, reducing the 20-year mandatory minimum (applicable where the offender has one prior qualifying conviction) to a 15-year mandatory minimum, and reducing a life-in-prison mandatory minimum (applicable where the offender has two or more prior qualifying convictions) to a 25-year mandatory minimum.

Retroactivity of the Fair Sentencing Act
The FSA made the provisions of the Fair Sentencing Act of 2010 (P.L. 111-220) retroactive so that currently incarcerated offenders who received longer sentences for possession of crack cocaine than they would have received if sentenced for possession of the same amount of powder cocaine before the enactment of the Fair Sentencing Act can submit a petition in federal court to have their sentences reduced.

Expanding the Safety Valve
The FSA also expands the safety valve provision, which allows courts to sentence low-level, nonviolent drug offenders with minor criminal histories to less than the required mandatory minimum for an offense.

For sentencing reform examples please refer to the guide published by the U.S. Sentencing Commission's Office of Education and Sentencing Practice .

Oversight

The Act requires the submission of several reports to review the BOP's implementation of the law and assess the effects of the new risk and needs assessment system.

In carrying out the requirement of the FSA, the Attorney General consults with an Independent Review Committee (IRC). The Hudson Institute is the nonpartisan and nonprofit organization to host the IRC. Some of the duties the IRC performs, in assisting the Attorney General, include:

- Conducting a review of the existing prisoner risk and needs assessment systems in operation on the date of enactment of this Act;
- Developing recommendations regarding evidence-based recidivism reduction programs and productive activities;
- Conducting research and data analysis on: evidence-based recidivism reduction programs relating to the use of prisoner risk and needs assessment tools;
- Advising on the most effective and efficient uses of such programs; and which evidence-based recidivism reduction programs are the most effective at reducing recidivism, and the type, amount, and intensity of programming that most effectively reduces the risk of recidivism;
- and reviewing and validating the risk and needs assessment system.

Two years after the enactment of the First Step Act, and each year thereafter for the next five years, DOJ will submit reports to Congress on various aspects of the FSA including a report on effective medication assisted treatment of opioid and heroin abuse, and plans on how to implement those treatment methods.

Within two years of BOP implementing the system, and every two years thereafter, the Government Accountability Office will audit how the new risk and needs assessment system is being used at BOP facilities.

FILED

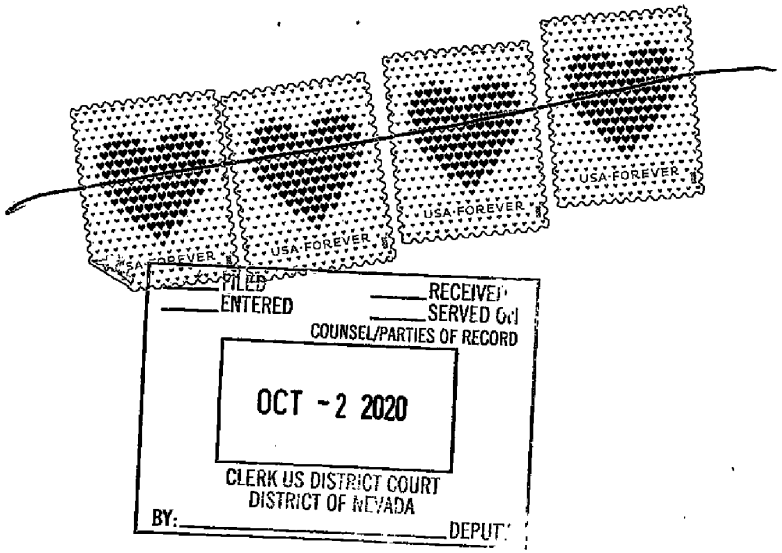
CERTIFICATE OF SERVICE BY MAIL

I Valentina Knight, herby certify, pursuant to N.R.C.P. 5(b) that on this 25th day of the month of September of the Year of 2020, I mailed a true and correct copy of the Foregoing MOTION TO SUBMIT DOCUMENTS TO SUPPLEMENT CLAIMS IN PETITION FOR WRIT OF HABEAS CORPUS addressed to;

Respondent prison or jail official;
Warden Dwight Neven,
Florence McClure Womens Correctional Facility
4370 Smiley RD Las Vegas, NV 89915

Attorney General
Heroes' Memorial Building
Capitol Complex
Carson City, Nevada 89710

Valentina Knight #2020010841
MCJ
949 N. 9th Street
Milwaukee. WI 53233



State District Court
333 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
LLOYD D. GEORGE U.S. COURTHOUSE
333 LAS VEGAS BLVD. SO. – RM 1334
LAS VEGAS, NV 89101

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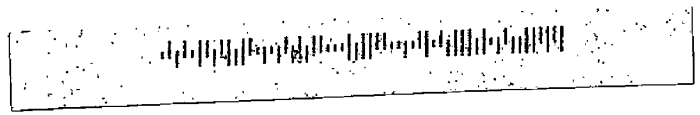

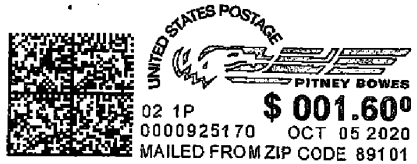

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Las Vegas NV 89155

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District Court

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FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

VALENTINA MONEE KNIGHT,
#7018909

Defendant.

CASE NO: A-20-820448-W

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: OCTOBER 26, 2020
TIME OF HEARING: 8:30AM

This cause having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on October 26, 2020, the Petitioner, pro se, not appearing, the Respondent being represented by Steven B. Wolfson, District Attorney, through Ercan E. Iscan, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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STATEMENT OF THE CASE

On September 2, 2015, VALENTINA MONEE KNIGHT (hereinafter "Petitioner") was charged by way of Information with one count BURGLARY (Category B Felony – NRS 205.060).

On October 1, 2015, Petitioner filed a Motion to Release from House Arrest. On October 12, 2015, Petitioner's Motion was denied.

On November 23, 2016, the State filed a Motion to Revoke Bail and Remand Defendants. On December 5, 2016, the State's Motion was granted.

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On August 31, 2020, Petitioner filed the instant Petition for Writ of Habeas Corpus. The State filed its Response on October 9, 2020. On October 26, 2020, this matter came before this Court for argument and the Court rules as follows:

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STATEMENT OF THE FACTS

On May 5, 2015, a detective was contacted by an officer, who had responded to a call at the Bellagio Hotel and Casino. Details of the call advised that two subjects were currently being detained by security officers due to a fraudulent room rental.

Further investigation revealed that the front desk manager of the Bellagio had been contacted by Orbitz in reference to a guest who had rented a room at the Bellagio using Orbitz as a third party booker.

The man renting the room, later identified as the co-defendant, Moustapha Dioubate, had provided a credit card number to Orbitz, who later received notification the card was fraudulent. Once Orbitz contacted the Bellagio hotel, the hotel pinned out the room the co-defendant was renting so that access could not be made into the room.

The co-defendant and a female, who was later identified as Petitioner, approached the front desk a short time later. Petitioner retrieved a credit card from her purse and handed it to the co-defendant, who gave the card to the front desk representative. Both Petitioner and the co-defendant were detained by security officers after it was determined the credit card was fraudulent. The two were then escorted to security holding where security searched both subjects. A security officer located a large amount of credit cards and identifications in a brown leather bag, which Petitioner was carrying. Security then contacted police.

Upon arrival, the Las Vegas Metropolitan Police Officer immediately noticed there were multiple identifications with different names on the table. The identifications had pictures with the likeness of the co-defendant and Petitioner and appeared fraudulent. The credit cards were found to be counterfeit. As an officer began to search the above mentioned bag, Petitioner immediately stated, "I didn't give you consent to search that."

The officer attempted to talk to both the co-defendant and Petitioner, but both requested the presence of an attorney, therefore no further questions were asked of them.

ANALYSIS

I. PETITIONER'S PETITION IS TIME-BARRED.

Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

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In the instant case, the Judgment of Conviction was filed on May 1, 2017, and Petitioner did not file a direct appeal. Thus, the one-year time bar began to run from this date. The instant Petition was not filed until August 31, 2020. This is over two (2) years in excess of the one-year time frame. Further, Petitioner's claim that the filing of the Amended JOC extends the deadline for filing a habeas petition is flatly incorrect. An Amended JOC does not change the deadline for filing a post-conviction petition for writ of habeas corpus. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) ("we conclude that the one-year statutory time limit did not automatically restart for Sullivan's post-conviction claims simply because the district court entered the amended judgment of conviction."). Absent a showing of good cause for this delay and undue prejudice, Petitioner's claim must be dismissed because of its tardy filing.

II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS.

A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526 To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, "bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. All of the facts and law alleged in Petitioner's Petition were available for direct appeal or a timely

filed habeas petition. Further, to the extent that Petitioner claims that AB 236 provides good cause to overcome the procedural bars, Petitioner's claim fails. It is well established that, under Nevada law, the proper penalty for a criminal conviction is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. ("Pullin"), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of the crime. Id.

In the instant case, Petitioner was charged with an offense that occurred on or about May 4, 2015, prior to the amendment going into effect in July of 2020. Moreover, Petitioner admits that AB 236 had no legal effect on her case because it was not enacted at the time Petitioner committed the instant offense. Petition at 11. Further, the Legislature did not clearly express its intent that the amendment of the statute applies retroactively. Therefore, pursuant to Nevada law, the proper penalty for Petitioner's conviction is that which was in effect at the time of the commission of the crime. In the instant case, Petitioner was sentenced to forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. This sentence falls within the statutory sentencing guidelines. See NRS 205.060. Therefore, Petitioner is not entitled to relief under AB 236 and her claim fails. Thus, Petitioner has failed to demonstrate an impediment external to the defense. Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars and her Petition is denied.

III. PETITIONER CANNOT DEMONSTRATE PREJUDICE SUFFICIENT TO IGNORE THE PROCEDURAL DEFAULTS.

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

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a. **Petitioner received effective assistance of counsel.**

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's ineffective assistance, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render

reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to

relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

Here, Petitioner claims that counsel was ineffective for failing to raise her claim regarding AB 236 and failing to provide her certain facts of her case. Petition at 11. As an initial matter, as demonstrated above, AB 236 does not apply in Petitioner's case. Further, Petitioner provides no evidence other than her own conclusory claims that such deficient performance occurred. Therefore, Petitioner's claims are bare, naked and only appropriate for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus Petitioner's claim fails and her Petition is denied.

b. Petitioner's substantive claims are waived as they should have been raised on direct appeal.

Under NRS 34.810(1),

> The court *shall* dismiss a petition if the court determines that:
> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.
> . . .
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

(emphasis added). Further, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Here, Petitioner raises claims of prosecutorial misconduct in her instant Petition. Petition at 11, 14-15. Petitioner has

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failed to demonstrate good cause to overcome the procedural bars and, as Petitioner failed to raise such a claim on direct appeal, the claim is waived.

c. Petitioner cannot raise constitutional claims that occurred prior to her guilty plea.

Additionally, Petitioner cannot raise constitutional claims that occurred prior to her guilty plea. A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). "'[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" Id. (quoting Tollett, 411 U.S. at 267). Therefore, Petitioner's claim of prosecutorial misconduct is waived by nature of her guilty plea.

d. There was no prosecutorial misconduct.

Petitioner claims that the State committed prosecutorial misconduct for failing to charge Petitioner in compliance with AB 236. Petition at 11, 14-15. This Court reviews claims of prosecutorial misconduct for improper conduct and then determines whether reversal is warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews improper conduct claims for harmless error. Id. Where no objection was made at trial, the standard of review for prosecutorial misconduct rests upon Defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is whether the prosecutor's statements so contaminated the proceedings with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct.

2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

In resolving claims of prosecutorial misconduct, this Court undertakes a two-step analysis: determining whether the comments were improper; and deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476. The standard of review for prosecutorial misconduct rests upon a defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (*citing* Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). This Court views the statements in context and will not lightly overturn a jury's verdict based upon a prosecutor's statements. Byars v. State, 130 Nev. 848, 865, 336 P.3d 939, 950–51 (2014). Notably, "statements by a prosecutor, in argument... made as a deduction or conclusion from the evidence introduced in the trial are permissible and unobjectionable." Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (*quoting* Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018–19, 945 P.2d 438, 444–45 (1997), receded from on other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

With respect to the second step, this Court will not reverse if the misconduct was harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188–89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments on the exercise of a constitutional right, or the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. 124 Nev. at 1189, 196 P.3d 476–77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When the misconduct is of constitutional dimension, this Court will reverse unless the State demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d

476–77. When the misconduct is not of constitutional dimension, this Court "will reverse only if the error substantially affects the jury's verdict." Id.

As demonstrated above, AB 236 has no legal effect on Petitioner's case, as it went into effect after Petitioner committed the instant offense. Therefore, the State cannot have committed misconduct as Petitioner was properly charged under the statute in effect at the time the crime was committed. Thus, Petitioner's claim fails. Therefore, Petitioner has failed to demonstrate prejudice sufficient to overcome the procedural bars and her Petition is denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this _____ day of November, 2020. Dated this 7th day of December, 2020

DISTRICT JUDGE
4CA 68F 2888 C3F1
William D. Kephart
District Court Judge

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

BY _____ for
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734

CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2020, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

VALENTINA KNIGHT, BAC #2020010861
CLARK COUNTY NEVADA HOUSE OF CORRECTION
949 N. 9th St.
MILWAUKEE, WI 53233

BY Carina Garcia
C. Garcia
Secretary for the District Attorney's Office

TP/cg/L2

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Valentina Knight, Plaintiff(s)	CASE NO: A-20-820448-W
vs.	DEPT. NO. Department 19
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

NEFF

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTINE KNIGHT,

Petitioner,

vs.

STATE OF NEVADA,

Respondent,

Case No: A-20-820448-W

Dept No: XIX

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

PLEASE TAKE NOTICE that on December 7, 2020, 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 December 10, 2020.

STEVEN D. GRIERSON, CLERK OF THE COURT

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

CERTIFICATE OF E-SERVICE / MAILING

I hereby certify that on this 10 day of December 2020, I served a copy of this Notice of Entry on the following:

☑ By e-mail:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☑ The United States mail addressed as follows:
Valentine Knight # 2020010861
949 N. 9th St.
Milwaukee, WI 53233

/s/ Amanda Hampton
Amanda Hampton, Deputy Clerk

FFCO
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

VALENTINA MONEE KNIGHT,
#7018909

Defendant.

CASE NO: A-20-820448-W

DEPT NO: XIX

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

DATE OF HEARING: OCTOBER 26, 2020
TIME OF HEARING: 8:30AM

This cause having come on for hearing before the Honorable Carolyn Ellsworth, District Judge, on October 26, 2020, the Petitioner, pro se, not appearing, the Respondent being represented by Steven B. Wolfson, District Attorney, through Ercan E. Iscan, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

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Further investigation revealed that the front desk manager of the Bellagio had been contacted by Orbitz in reference to a guest who had rented a room at the Bellagio using Orbitz as a third party booker.

The man renting the room, later identified as the co-defendant, Moustapha Dioubate, had provided a credit card number to Orbitz, who later received notification the card was fraudulent. Once Orbitz contacted the Bellagio hotel, the hotel pinned out the room the co-defendant was renting so that access could not be made into the room.

The co-defendant and a female, who was later identified as Petitioner, approached the front desk a short time later. Petitioner retrieved a credit card from her purse and handed it to the co-defendant, who gave the card to the front desk representative. Both Petitioner and the co-defendant were detained by security officers after it was determined the credit card was fraudulent. The two were then escorted to security holding where security searched both subjects. A security officer located a large amount of credit cards and identifications in a brown leather bag, which Petitioner was carrying. Security then contacted police.

Upon arrival, the Las Vegas Metropolitan Police Officer immediately noticed there were multiple identifications with different names on the table. The identifications had pictures with the likeness of the co-defendant and Petitioner and appeared fraudulent. The credit cards were found to be counterfeit. As an officer began to search the above mentioned bag, Petitioner immediately stated, "I didn't give you consent to search that."

The officer attempted to talk to both the co-defendant and Petitioner, but both requested the presence of an attorney, therefore no further questions were asked of them.

ANALYSIS

I. PETITIONER'S PETITION IS TIME-BARRED.

Pursuant to NRS 34.726(1):

> Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:
> (a) That the delay is not the fault of the petitioner; and
> (b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873-74, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

The one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 596, 53 P.3d 901, 904 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two days late despite evidence presented by the defendant that he purchased postage through the prison and mailed the Notice within the one-year time limit.

Furthermore, the Nevada Supreme Court has held that the district court has a *duty* to consider whether a defendant's post-conviction petition claims are procedurally barred. State v. Eighth Judicial Dist. Court (Riker), 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005). The Riker Court found that "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is mandatory," noting:

> Habeas corpus petitions that are filed many years after conviction are an unreasonable burden on the criminal justice system. The necessity for a workable system dictates that there must exist a time when a criminal conviction is final.

Id. Additionally, the Court noted that procedural bars "cannot be ignored [by the district court] when properly raised by the State." Id. at 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

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In the instant case, the Judgment of Conviction was filed on May 1, 2017, and Petitioner did not file a direct appeal. Thus, the one-year time bar began to run from this date. The instant Petition was not filed until August 31, 2020. This is over two (2) years in excess of the one-year time frame. Further, Petitioner's claim that the filing of the Amended JOC extends the deadline for filing a habeas petition is flatly incorrect. An Amended JOC does not change the deadline for filing a post-conviction petition for writ of habeas corpus. Sullivan v. State, 120 Nev. 537, 541, 96 P.3d 761, 764 (2004) ("we conclude that the one-year statutory time limit did not automatically restart for Sullivan's post-conviction claims simply because the district court entered the amended judgment of conviction."). Absent a showing of good cause for this delay and undue prejudice, Petitioner's claim must be dismissed because of its tardy filing.

II. PETITIONER HAS FAILED TO DEMONSTRATE GOOD CAUSE TO OVERCOME THE PROCEDURAL BARS.

A showing of good cause and prejudice may overcome procedural bars. "To establish good cause, appellants *must* show that an impediment external to the defense prevented their compliance with the applicable procedural rule. A qualifying impediment might be shown where the factual or legal basis for a claim was not reasonably available at the time of default." Clem v. State, 119 Nev. 615, 621, 81 P.3d 521, 525 (2003) (emphasis added). The Court continued, "appellants cannot attempt to manufacture good cause[.]" Id. at 621, 81 P.3d at 526 To find good cause there must be a "substantial reason; one that affords a legal excuse." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) (quoting Colley v. State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989)). Clearly, any delay in the filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a). Additionally, "bare" and "naked" allegations are not sufficient to warrant post-conviction relief, nor are those belied and repelled by the record. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). "A claim is 'belied' when it is contradicted or proven to be false by the record as it existed at the time the claim was made." Mann v. State, 118 Nev. 351, 354, 46 P.3d 1228, 1230 (2002).

Here, Petitioner cannot demonstrate good cause to overcome the procedural bars. All of the facts and law alleged in Petitioner's Petition were available for direct appeal or a timely

filed habeas petition. Further, to the extent that Petitioner claims that AB 236 provides good cause to overcome the procedural bars, Petitioner's claim fails. It is well established that, under Nevada law, the proper penalty for a criminal conviction is the penalty in effect at the time of the commission of the offense and not the penalty in effect at the time of sentencing. State v. Second Judicial Dist. Ct. ("Pullin"), 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008). Unless the Legislature clearly expresses its intent to apply a law retroactively, Nevada law requires the application of the law in effect at the time of the commission of the crime. Id.

In the instant case, Petitioner was charged with an offense that occurred on or about May 4, 2015, prior to the amendment going into effect in July of 2020. Moreover, Petitioner admits that AB 236 had no legal effect on her case because it was not enacted at the time Petitioner committed the instant offense. Petition at 11. Further, the Legislature did not clearly express its intent that the amendment of the statute applies retroactively. Therefore, pursuant to Nevada law, the proper penalty for Petitioner's conviction is that which was in effect at the time of the commission of the crime. In the instant case, Petitioner was sentenced to forty-eight (48) to one hundred twenty (120) months in the Nevada Department of Corrections. This sentence falls within the statutory sentencing guidelines. See NRS 205.060. Therefore, Petitioner is not entitled to relief under AB 236 and her claim fails. Thus, Petitioner has failed to demonstrate an impediment external to the defense. Therefore, Petitioner has failed to demonstrate good cause to overcome the procedural bars and her Petition is denied.

III. PETITIONER CANNOT DEMONSTRATE PREJUDICE SUFFICIENT TO IGNORE THE PROCEDURAL DEFAULTS.

In order to establish prejudice, the defendant must show "'not merely that the errors of [the proceedings] created possibility of prejudice, but that they worked to his actual and substantial disadvantage, in affecting the state proceedings with error of constitutional dimensions.'" Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710, 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596 (1982)).

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a. **Petitioner received effective assistance of counsel.**

The Sixth Amendment to the United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense." The United States Supreme Court has long recognized that "the right to counsel is the right to the effective assistance of counsel." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993).

To prevail on a claim of ineffective assistance of counsel as it relates to a guilty plea, a defendant must prove he was denied "reasonably effective assistance" of counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686-87, 104 S. Ct. at 2063-64; see also Love, 109 Nev. at 1138, 865 P.2d at 323. Under the Strickland test, a defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's ineffective assistance, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S. Ct. 366, 370 (1985).

The court begins with the presumption of effectiveness and then must determine whether the defendant has demonstrated by a preponderance of the evidence that counsel was ineffective. Means v. State, 120 Nev. 1001, 1011, 103 P.3d 25, 32 (2004). "Effective counsel does not mean errorless counsel, but rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975).

Counsel cannot be ineffective for failing to make futile objections or arguments. See Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Trial counsel has the "immediate and ultimate responsibility of deciding if and when to object, which witnesses, if any, to call, and what defenses to develop." Rhyne v. State, 118 Nev. 1, 8, 38 P.3d 163, 167 (2002).

Based on the above law, the role of a court in considering allegations of ineffective assistance of counsel is "not to pass upon the merits of the action not taken but to determine whether, under the particular facts and circumstances of the case, trial counsel failed to render

reasonably effective assistance." Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978). This analysis does not mean that the court should "second guess reasoned choices between trial tactics nor does it mean that defense counsel, to protect himself against allegations of inadequacy, must make every conceivable motion no matter how remote the possibilities are of success." Id. To be effective, the constitution "does not require that counsel do what is impossible or unethical. If there is no bona fide defense to the charge, counsel cannot create one and may disserve the interests of his client by attempting a useless charade." United States v. Cronic, 466 U.S. 648, 657 n.19, 104 S. Ct. 2039, 2046 n.19 (1984).

"There are countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." Strickland, 466 U.S. at 689, 104 S. Ct. at 689. "Strategic choices made by counsel after thoroughly investigating the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825 P.2d 593, 596 (1992); see also Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989). In essence, the court must "judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066.

Even if a defendant can demonstrate that his counsel's representation fell below an objective standard of reasonableness, he must still demonstrate prejudice and show a reasonable probability that, but for counsel's errors, the result of the trial would have been different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

The Nevada Supreme Court has held "that a habeas corpus petitioner must prove the disputed factual allegations underlying his ineffective-assistance claim by a preponderance of the evidence." Means v. State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). Furthermore, claims of ineffective assistance of counsel asserted in a petition for post-conviction relief must be supported with specific factual allegations, which if true, would entitle the petitioner to

relief. Hargrove, 100 Nev. at 502, 686 P.2d at 225. "Bare" and "naked" allegations are not sufficient, nor are those belied and repelled by the record. Id. NRS 34.735(6) states in relevant part, "[Petitioner] *must* allege specific facts supporting the claims in the petition[.] . . . Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed." (emphasis added).

Here, Petitioner claims that counsel was ineffective for failing to raise her claim regarding AB 236 and failing to provide her certain facts of her case. Petition at 11. As an initial matter, as demonstrated above, AB 236 does not apply in Petitioner's case. Further, Petitioner provides no evidence other than her own conclusory claims that such deficient performance occurred. Therefore, Petitioner's claims are bare, naked and only appropriate for summary denial. Hargrove, 100 Nev. at 502, 686 P.2d at 225. Thus Petitioner's claim fails and her Petition is denied.

b. Petitioner's substantive claims are waived as they should have been raised on direct appeal.

Under NRS 34.810(1),

> The court *shall* dismiss a petition if the court determines that:
> (a) The petitioner's conviction was upon a plea of guilty or guilty but mentally ill and the petition is not based upon an allegation that the plea was involuntarily or unknowingly entered or that the plea was entered without effective assistance of counsel.
> . . .
> unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

(emphasis added). Further, substantive claims are beyond the scope of habeas and waived. NRS 34.724(2)(a); NRS 34.810(1)(a); Evans v. State, 117 Nev. 609, 646-47, 29 P.3d 498, 523 (2001); Franklin v. State, 110 Nev. 750, 752, 877 P.2d 1058, 1059 (1994), disapproved on other grounds, Thomas v. State, 115 Nev. 148, 979 P.2d 222 (1999). Here, Petitioner raises claims of prosecutorial misconduct in her instant Petition. Petition at 11, 14-15. Petitioner has

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failed to demonstrate good cause to overcome the procedural bars and, as Petitioner failed to raise such a claim on direct appeal, the claim is waived.

c. Petitioner cannot raise constitutional claims that occurred prior to her guilty plea.

Additionally, Petitioner cannot raise constitutional claims that occurred prior to her guilty plea. A defendant cannot enter a guilty plea then later raise independent claims alleging a deprivation of his rights before entry of the plea. State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070, n.24 (2005) (quoting Tollett v. Henderson, 411 U.S. 258, 267 (1973). Generally, the entry of a guilty plea waives any right to appeal from events occurring prior to the entry of the plea. See Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975). "'[A] guilty plea represents a break in the chain of events which has preceded it in the criminal process. . . . [A defendant] may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea.'" Id. (quoting Tollett, 411 U.S. at 267). Therefore, Petitioner's claim of prosecutorial misconduct is waived by nature of her guilty plea.

d. There was no prosecutorial misconduct.

Petitioner claims that the State committed prosecutorial misconduct for failing to charge Petitioner in compliance with AB 236. Petition at 11, 14-15. This Court reviews claims of prosecutorial misconduct for improper conduct and then determines whether reversal is warranted. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476 (2008). It reviews improper conduct claims for harmless error. Id. Where no objection was made at trial, the standard of review for prosecutorial misconduct rests upon Defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (citing Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not necessarily a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). The relevant inquiry is whether the prosecutor's statements so contaminated the proceedings with unfairness as to make the result a denial of due process. Darden v. Wainwright, 477 U.S. 168, 181, 106 S.Ct.

2464, 2471 (1986). Defendant must show that the statements violated a clear and unequivocal rule of law, he was denied a substantial right, and as a result, he was materially prejudiced. Libby, 109 Nev. at 911, 859 P.2d at 1054.

In resolving claims of prosecutorial misconduct, this Court undertakes a two-step analysis: determining whether the comments were improper; and deciding whether the comments were sufficient to deny the defendant a fair trial. Valdez v. State, 124 Nev. 1172, 1188, 196 P.3d 465, 476. The standard of review for prosecutorial misconduct rests upon a defendant showing "that the remarks made by the prosecutor were 'patently prejudicial.'" Riker v. State, 111 Nev. 1316, 1328, 905 P.2d 706, 713 (1995) (*citing* Libby v. State, 109 Nev. 905, 911, 859 P.2d 1050, 1054 (1993)). This is based on a defendant's right to have a fair trial, not a perfect one. Ross v. State, 106 Nev. 924, 927, 803 P.2d 1104, 1105 (1990). This Court views the statements in context and will not lightly overturn a jury's verdict based upon a prosecutor's statements. Byars v. State, 130 Nev. 848, 865, 336 P.3d 939, 950–51 (2014). Notably, "statements by a prosecutor, in argument... made as a deduction or conclusion from the evidence introduced in the trial are permissible and unobjectionable." Parker v. State, 109 Nev. 383, 392, 849 P.2d 1062, 1068 (1993) (*quoting* Collins v. State, 87 Nev. 436, 439, 488 P.2d 544, 545 (1971)). Further, the State may respond to defense theories and arguments. Williams v. State, 113 Nev. 1008, 1018–19, 945 P.2d 438, 444–45 (1997), receded from on other grounds, Byford v. State, 116 Nev. 215, 994 P.2d 700 (2000).

With respect to the second step, this Court will not reverse if the misconduct was harmless error. Valdez, 124 Nev. at 1188, 196 P.3d at 476. The proper standard of harmless-error review depends on whether the prosecutorial misconduct is of a constitutional dimension. Id. at 1188–89, 196 P.3d at 476. Misconduct may be constitutional if a prosecutor comments on the exercise of a constitutional right, or the misconduct "so infected the trial with unfairness as to make the resulting conviction a denial of due process." Id. 124 Nev. at 1189, 196 P.3d 476–77 (quoting Darden v. Wainright, 477 U.S. 168, 181, 106 S.Ct. 2464, 2471 (1986)). When the misconduct is of constitutional dimension, this Court will reverse unless the State demonstrates that the error did not contribute to the verdict. Id. 124 Nev. at 1189, 196 P.3d

476–77. When the misconduct is not of constitutional dimension, this Court "will reverse only if the error substantially affects the jury's verdict." Id.

As demonstrated above, AB 236 has no legal effect on Petitioner's case, as it went into effect after Petitioner committed the instant offense. Therefore, the State cannot have committed misconduct as Petitioner was properly charged under the statute in effect at the time the crime was committed. Thus, Petitioner's claim fails. Therefore, Petitioner has failed to demonstrate prejudice sufficient to overcome the procedural bars and her Petition is denied.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this _____ day of November, 2020. Dated this 7th day of December, 2020

DISTRICT JUDGE
4CA 68F 2888 C3F1
William D. Kephart
District Court Judge

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

BY _____ for
TALEEN PANDUKHT
Chief Deputy District Attorney
Nevada Bar #5734

CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2020, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

VALENTINA KNIGHT, BAC #2020010861
CLARK COUNTY NEVADA HOUSE OF CORRECTION
949 N. 9th St.
MILWAUKEE, WI 53233

BY Carina Garcia
C. Garcia
Secretary for the District Attorney's Office

TP/cg/L2

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Valentina Knight, Plaintiff(s)	CASE NO: A-20-820448-W
vs.	DEPT. NO. Department 19
State of Nevada, Defendant(s)	

AUTOMATED CERTIFICATE OF SERVICE

Electronic service was attempted through the Eighth Judicial District Court's electronic filing system, but there were no registered users on the case. The filer has been notified to serve all parties by traditional means.

DISTRICT COURT
CLARK COUNTY, NEVADA

VALENTINA KNIGHT
Petitioner,
vs
STATE OF NEVADA
Respondent,

Case NO: A-20-820448-W
Dept NO: XIX

NOTICE OF APPEAL

Comes now the petitioner, Valentina Knight in PRO SE, in necessity, and hereby gives NOTICE OF APPEAL from this Courts ORDER that DENIED Post Conviction Relief. The petitioner Appeals to the District Court of Appeals for NEVADA County from this Courts judgement, entered for record in the above styled action on the 7th Day of December, 2020 was issued in error. Petitioner recieved the governments response on December, 18, 2020 and was not given Sufficient time to respond to the United States attorneys Answer. I would like that fact entered into record that I was never sent the District Attorneys response until December, 18, 2020 so I did not have time to respond to the answer, for the appeal entered on the 31st Day of August 2020.

Respectfully Submitted,

Valentina Knight, PRO SE
20200108a1
MCJ
949 N. 9th St

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have served a copy of the foregoing instrument on all parties, TO WIT: The Clerk of this Court and District Attorney, TALEEN PANDUKHT 200 Lewis Avenue, Las Vegas, NV 89155. This Service has been via United States mail, properly addressed, and placed into the internal mailing system of Milwaukee County Jail, as made available to inmates for legal mail.

Done this 23rd Day of December, 2020.

Respectfully Submitted,

Valentina Knight, pro se
202001086
Milwaukee County Jail
949 N. 9th St
Milwaukee, WI 53233

ntina Knight 2020010801
J
N. 9th St
ukee, WI 53233

Milwaukee P&DC 532
TUE 29 DEC 2020

CLERK OF THE COURT
200 Lewis Ave 3rd Floor
Las Vegas, NV 89155

ASTA

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

VALENTINA KNIGHT,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-20-820448-W

Dept No: I

CASE APPEAL STATEMENT

1. Appellant(s): Valentina Knight

2. Judge: William D. Kephart

3. Appellant(s): Valentina Knight

Counsel:

Valentina Knight #2020010861
949 N 9th St.
Milwaukee, WI 53233

4. Respondent (s): State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89155-2212

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
**Expires 1 year from date filed*
Appellant Filed Application to Proceed in Forma Pauperis: No
Date Application(s) filed: N/A

9. Date Commenced in District Court: August 31, 2020

10. Brief Description of the Nature of the Action: Civil Writ

Type of Judgment or Order Being Appealed: Civil Writ of Habeas Corpus

11. Previous Appeal: No

Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

13. Possibility of Settlement: Unknown

Dated This 6 day of January 2021.

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: Valentina Knight

DISTRICT COURT
CLARK COUNTY, NEVADA

Writ of Habeas Corpus	**COURT MINUTES**	**October 26, 2020**

A-20-820448-W Valentina Knight, Plaintiff(s)
vs.
State of Nevada, Defendant(s)

October 26, 2020 **10:15 AM** **Petition for Writ of Habeas Corpus**

HEARD BY: Kephart, William D. **COURTROOM:** RJC Courtroom 16B

COURT CLERK: Tia Everett

RECORDER: Toshiana Pierson

REPORTER:

PARTIES PRESENT: Iscan, Ercan E Attorney

JOURNAL ENTRIES

- Court noted Defendant not present and in custody with the Nevada Department of Corrections. Court FINDS the petition is time barred pursuant to NRS 34.726(1); Defendant has failed to show good cause to overcome the procedural bar and Defendant has failed to show how there is any prejudice; therefore, COURT ORDERED, Petition DENIED.

NDC

Certification of Copy and Transmittal of Record

State of Nevada
County of Clark } **SS:**

Pursuant to the Supreme Court order dated January 22, 2021, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the case referenced below. The record comprises one volume with pages numbered 1 through 89.

VALENTINA KNIGHT,

Plaintiff(s),

vs.

STATE OF NEVADA,

Defendant(s),

Case No: A-20-820448-W

Dept. No: III

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 28 day of January 2021.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk