

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

2 No. 83451

3
4 **JACK LEAL,**

5
6 Appellant,

7 vs.

8 **THE STATE OF NEVADA,**

9
10 Respondent.

Electronically Filed
Sep 29 2021 06:17 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

11
12 **Appeal from the Judgment of Conviction and Post-Conviction Denial of**
13 **Relief for Writ of Habeas Corpus - Eighth Judicial District Court, Clark**
14 **County The Honorable Judge Michael P. Villani 8th Judicial District**
15 **Court Judge Department 17, Presiding, Order Dismissing Petition for**
16 **Writ of Habeas Corpus Issued September 6, 2021,**
17 **District Court Case No. A-20-814369-W**

18 **APPELLANT'S APPENDIX VOLUME 2 OF 2 TO OPENING BRIEF**

19 DIANE C. LOWE, ESQ.
20 Lowe Law, L.L.C.
21 7350 West Centennial Pkwy #3085
22 Las Vegas, Nevada 89113
(725) 212-2451

23 Attorney for Appellant

ALEXANDER G. CHEN
CLARK COUNTY DA.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

AARON D. FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1265

27 Attorneys for Respondent

TABLE OF CONTENTS APPENDICES

Volume 1 of 2 pages 1-242

9/30/2016 Complaint for Forfeiture A-16-744347-C.....	1-9
9/30/2016 Notice of Lis Pendens.....	10-11
11/29/2016 Summons.....	12-13
11/29/2016 Req. for Summons and File-Stamped Copies.....	14-15
11/29/2016 Returned Summons.....	16-18
11/29/2016 Criminal Complaint Las Vegas Justice Court Case 16F19220A/B/C.....	19-42
12/27/2016 Justice Court Minutes.....	43
12/27/2016 Amended Criminal Complaint 16F19220A/B/C.....	44-66
02/07/2017 Justice Court Minutes...Motion to continue Leal.....	67
03/07/2017 Justice Court Minutes.....	68
03/07/2017 Stipulation and Order to Continue.....	69-70
04/04/2017 Justice Court Minutes.....	71
04/11/2017 Justice Court Minutes.....	72-73
04/11/2017 Unconditional Waiver of Preliminary Hearing and Conflict of Interest (dated 4/10//17 at signature line handwritten.....	74-77
04/20/2017 Justice Court Minutes.....	78
04/20/2017 Transcript Initial Arraignment C-17-322644-2.....	79-81
04/24/2017 Guilty Plea Agreement of Jack Leal.....	82-96
Exhibit 1 04/18/2017 Information.....	90-93
Conflict of Interest (dated 4/20//17 at signature line handwritten).	94-96
04/24/2017 Guilty Plea Agreement of Codefendant Jessica Garcia.....	97-107
Conflict of Interest Waiver.....	105-107
04/24/2017 Transcript Arraignment Continued Plea Hearing.....	108-117
04/24/2017 District Court Minutes.....	118
08/17/2017 District Court Minutes.....	119
08/17/2017 Transcript of Sentencing.....	120-141
08/23/2017 Judgment of Conviction (Plea of Guilty) Leal.....	142-143
09/07/2017 Order for Dismissal.....	144
09/14/2017 Notice of Appeal.....	145-146
09/28/2017 Plaintiff's Ex Parte Motion for Order Reopening Case And Staying Proceedings.....	147-148
10/10/2017 Order Reopening Case and Staying Proceedings.....	149
01/22/2018 Register of Actions Dist Ct Dept II A-16-744347-C.....	150

	Register of Actions C-17-322664-2.....	151-152
	Register of Actions 16F19220B JC Dept 7.....	153-154
02/01/2018	Appellant’s Opening Brief without lengthy duplicative appendix individual documents cited when warranted in chronological order herein.....	155-176
04/12/2018	State’s Notice of Motion and Motion to Continue Sentencing Upon Stipulation of the Parties (Jessica Garcia).....	177-180
06/26/2018	Transcript Defendant’s Motion re Scheduling of Hearing.....	181-189
07/24/2018	District Court Minutes Codefendant Garcia Extension Granted...	190
08/23/2018	District Court Minutes Codefendant Garcia Extension Granted.....	191
09/11/2018	Court of Appeals Order 74050 Affirming District Court.....	192-194
10/18/2018	District Court Minutes Codefendant Garcia Extension Granted...	195
11/27/2018	District Court Minutes for Codefendant Garcia Another Extension granted.....	196
01/17/2019	Supreme Court Remittitur for case 74050.....	197
01/24/2019	District Court Grants Codefendant Garcia another Extension.....	198
02/21/2019	District Court Grants Codefendant another Extension.....	199
03/21/2019	Petition for Writ of Habeas Corpus Post-Conviction.....	200-211
03/21/2019	District Court Minutes for Codefendant.....	212
04/23/2019	District Court Minutes for Codefendant Sentencing.....	213
04/26/2019	Judgment of Conviction Plea of Guilty Garcia.....	214-215
05/06/2019	Garcia Motion to Reconsider.....	216-220
05/07/2019	Transcript Petition for Writ of Habeas Corpus Post- Conviction First Action C-17-322664-2.....	221-232
05/09/2019	Amended Judgment of Conviction Plea of Guilty.....	233-234
06/19/2019	First Action C-17-322664-2 District Court Order Denying Petition for Writ of Habeas Corpus.....	235-238
07/09/2019	Minutes of Garcia Hearing Sentence Vacated and Reduced C-17-322664-3.....	239-240
07/16/2019	Amended Judgment of Conviction Plea of Guilty Codefendant Jessica Garcia.....	241-242

Appendix Volume 2 of 2 pages 243-446

07/19/2019	Notice of Appeal First Writ of Habeas Corpus Action C-17-322664-2.....	243-244
12/30/2019	Appellant’s Informal Brief.....	245-253
04/28/2020	2 nd Petition for Writ of Habeas Corpus Post-Conviction by Attorney Schwartzer.....	254-261

05/27/2020	Handwritten Petition for Writ of Habeas Corpus Post-Conviction by Jack Leal adding to April 28 2020 Petition.	262-273
08/12/2020	AG Answer to Post-Conviction Petition for Writ of Habeas Corpus without lengthy duplicative exhibits cited elsewhere herein if warranted.....	274-287
10/09/2020	Court of Appeals Order of Affirmance in First Writ Appeal Case 79243.....	288-291
10/28/2020	Attorney Schwartzer Motion to Modify Sentence C-17-322644-2 without exhibits.....	292-301
11/03/2020	State’s Opposition to Defendant’s Motion to Modify Sentence.....	302-309
11/09/2020	Reply to State’s Opposition to Motion to Modify Sentence.....	310-314
11/10/2020	District Court Minutes C-17-322664-2 Leal re Motion To Modify Sentence.....	315
11/10/2020	Supreme Court Clerk’s Certificate and Remittitur For 1 st Writ of Habeas Corpus case 79243.....	316-317
11/17/2020	District Court Minutes Motion to Modify Sentence Denied.....	318
12/08/2020	Handwritten Supplement to Petition for Writ of Habeas Corpus Post-Conviction by Jack Leal.....	319-324
12/18/2020	Order Denying Rehearing Court of Appeals.....	325
01/27/2021	Remittitur Supreme Court Case 79243.....	326-327
05/18/2021	Declaration of Jack Leal.....	328-329
05/20/2021	Supplemental Brief in Support of Petitioner’s Postconviction Petition for Writ of Habeas Corpus (2 nd – this action) A-20-814369-W without most lengthy and or duplicative exhibits cited elsewhere herein.....	330-363
	Table of Contents for Supp Appendices.....	364-365
	Redacted PSI of Codefendant Jessica Garcia.....	366-375
	Evidence of Notice of Property for Sale Possibly having Liens given to purchasers supporting strength of case argument and likelihood Leal would have taken case to trial but for ineffectiveness of counsel subject of Counts 6, 7, 10, 13 and illustrative of documents used for all counts / sales.....	376-401
07/21/2021	Answer to Post-Conviction Petition for Writ of Habeas Corpus [No Reply].....	402-417
08/27/2021	Transcript of Hearing Petition for Writ of Habeas Corpus.....	418-430
08/29/2021	Notice of Appeal Second Writ of Habeas Corpus.....	431-433
09/06/2021	Order Dismissing Petition for Writ of Habeas Corpus.....	434-443

09/10/2021 Amended Notice of Appeal.....444-446

Alphabetical Volume 1 [pages 1-242] and Volume 2 [pages 243-446]

Appeal – Notice of

09/14/2017 Notice of Appeal (Direct)145-146

07/19/2019 Notice of Appeal First Writ of Habeas Corpus
Action C-17-322664-2.....243-244

08/29/2021 Notice of Appeal Second Writ of Habeas Corpus.....431-433

09/10/2021 Amended Notice of Appeal.....444-446

Appeal Briefs

02/01/2018 Appellant’s Opening Brief without lengthy duplicative
appendix individual documents cited when warranted
in chronological order herein.....155-176

12/30/2019 Appellant’s Informal Brief.....245-253

Complaint

9/30/2016 Complaint for Forfeiture A-16-744347-C.....1-9

11/29/2016 Criminal Complaint Las Vegas Justice Court Case
16F19220A/B/C.....19-42

12/27/2016 Amended Criminal Complaint 16F19220A/B/C.....44-66

Codefendant Jessica Garcia

04/24/2017 Guilty Plea Agreement of Codefendant Jessica Garcia.....97-107
Conflict of Interest Waiver.....105-107

Redacted PSI of Codefendant Jessica Garcia.....366-375

07/24/2018 District Court Minutes Codefendant Garcia Extension Granted...190

08/23/2018 District Court Minutes Codefendant Garcia Extension
Granted.....191

10/18/2018 District Court Minutes Codefendant Garcia Extension Granted...195

11/27/2018 District Court Minutes for Codefendant Garcia
Another Extension granted.....196

03/21/2019 District Court Minutes for Codefendant.....212

04/23/2019 District Court Minutes for Codefendant Sentencing.....213

04/26/2019 Judgment of Conviction Plea of Guilty Garcia.....214-215

05/06/2019 Garcia Motion to Reconsider Sentence.....216-220

07/09/2019 Minutes of Garcia Hearing Sentence Vacated
and Reduced C-17-322664-3.....239-240

07/16/2019 Amended Judgment of Conviction Plea of
Guilty Codefendant Jessica Garcia.....241-242

Continuance

03/07/2017 Stipulation and Order to Continue.....69-70
04/12/2018 State’s Notice of Motion and Motion to Continue
Sentencing Upon Stipulation of the Parties (Jessica Garcia).....177-180

Declaration

05/18/2021 Declaration of Jack Leal.....328-329

Judgment of Conviction

08/23/2017 Judgment of Conviction (Plea of Guilty) Leal.....142-143
04/26/2019 Judgment of Conviction Plea of Guilty Garcia.....214-215
05/09/2019 Amended Judgment of Conviction Plea of Guilty.....233-234
07/16/2019 Amended Judgment of Conviction Plea of
Guilty Codefendant Jessica Garcia.....241-242

Lis Pendens

9/30/2016 Notice of Lis Pendens.....10-11

Minutes and Summary

12/27/2016 Justice Court Minutes.....43
04/20/2017 Justice Court Minutes.....78
04/24/2017 District Court Minutes.....118
08/17/2017 District Court Minutes.....119
02/07/2017 Justice Court Minutes...Motion to continue Leal.....67
03/07/2017 Justice Court Minutes.....68
04/04/2017 Justice Court Minutes.....71
04/11/2017 Justice Court Minutes.....72-73
01/22/2018 Register of Actions Dist Ct Dept II A-16-744347-C.....150
Register of Actions C-17-322664-2.....151-152
Register of Actions 16F19220B JC Dept 7.....153-154
07/24/2018 District Court Minutes Codefendant Garcia Extension Granted...190
08/23/2018 District Court Minutes Codefendant Garcia Extension
Granted.....191
10/18/2018 District Court Minutes Codefendant Garcia Extension Granted...195
11/27/2018 District Court Minutes for Codefendant Garcia
Another Extension granted.....196
03/21/2019 District Court Minutes for Codefendant.....212
04/23/2019 District Court Minutes for Codefendant Sentencing.....213
07/09/2019 Minutes of Garcia Hearing Sentence Vacated
and Reduced C-17-322664-3.....239-240
11/10/2020 District Court Minutes C-17-322664-2 Leal re Motion
To Modify Sentence.....315
11/17/2020 District Court Minutes Motion to Modify Sentence
Denied.....318

Motions

09/28/2017 Plaintiff’s Ex Parte Motion for Order Reopening Case
And Staying Proceedings.....147-148
05/06/2019 Garcia Motion to Reconsider Sentence.....216-220
10/28/2020 Attorney Schwartzer Motion to Modify Sentence
C-17-322644-2 without exhibits.....292-301
11/03/2020 State’s Opposition to Defendant’s Motion to
Modify Sentence.....302-309
11/09/2020 Reply to State’s Opposition to Motion to
Modify Sentence.....310-314

Orders by Court

09/07/2017 Order for Dismissal.....144
10/10/2017 Order Reopening Case and Staying Proceedings.....149
09/11/2018 Court of Appeals Order 74050 Affirming District Court.....192-194
01/17/2019 Supreme Court Remittitur for case 74050.....197
01/24/2019 District Court Grants Codefendant Garcia another Extension.....198
02/21/2019 District Court Grants Codefendant another Extension.....199
06/19/2019 First Action C-17-322664-2 District Court Order
Denying Petition for Writ of Habeas Corpus.....235-238
10/09/2020 Court of Appeals Order of Affirmance in First Writ
Appeal Case 79243.....288-291
12/18/2020 Order Denying Rehearing Court of Appeals.....325
09/06/2021 Order Dismissing Petition for Writ of Habeas Corpus.....434-443

Plea Agreement

04/24/2017 Guilty Plea Agreement of Jack Leal.....82-96
Exhibit 1 04/18/2017 Information.....90-93
Conflict of Interest (dated 4/20//17 at signature line handwritten).94-96
04/24/2017 Guilty Plea Agreement of Codefendant Jessica Garcia.....97-107
Conflict of Interest Waiver.....105-107

Preliminary Hearing

04/11/2017 Unconditional Waiver of Preliminary Hearing and Conflict
of Interest (dated 4/10//17 at signature line handwritten).....74-77

Remittitur

11/10/2020 Supreme Court Clerk’s Certificate and Remittitur
For 1st Writ of Habeas Corpus case 79243.....316-317
01/27/2021 Remittitur Supreme Court Case 79243.....326-327

Summons

11/29/2016 Summons.....12-13
11/29/2016 Req. for Summons and File-Stamped Copies.....14-15
11/29/2016 Returned Summons.....16-18

Transcripts

04/20/2017 Transcript Initial Arraignment C-17-322644-2.....79-81
04/24/2017 Transcript Arraignment Continued Plea Hearing.....108-117
08/17/2017 Transcript of Sentencing.....120-141
06/26/2018 Transcript Defendant’s Motion re Scheduling of Hearing.....181-189
05/07/2019 Transcript Petition for Writ of Habeas Corpus Post-
Conviction First Action C-17-322664-2.....221-232
08/27/2021 Transcript of Hearing Petition for Writ of Habeas Corpus.....418-430

Writ of Habeas Corpus

03/21/2019 Petition for Writ of Habeas Corpus Post-Conviction (1st).....200-211
04/28/2020 2nd Petition for Writ of Habeas Corpus Post-Conviction
by Attorney Schwartzer.....254-261
05/27/2020 Handwritten Petition for Writ of Habeas Corpus
Post-Conviction by Jack Leal adding to April 28 2020 Petition.262-273
08//12/2020 AG Answer to Post-Conviction Petition for Writ
of Habeas Corpus without lengthy duplicative exhibits cited
elsewhere herein if warranted.....274-287
12/08/2020 Handwritten Supplement to Petition for Writ of Habeas Corpus
Post-Conviction by Jack Leal.....319-324
05/20/2021 Supplemental Brief in Support of Petitioner’s
Postconviction Petition for Writ of Habeas Corpus
(2nd – this action) A-20-814369-W without lengthy and or
duplicative exhibits cited elsewhere herein.....330-365
Evidence of Notice of Property for Sale Possibly having
Liens given to purchasers supporting strength of case argument
and likelihood Leal would have taken case to trial but for
ineffectiveness of counsel.....376-401
07/21/2021 Answer to Post-Conviction Petition for
Writ of Habeas Corpus [No Reply].....402-417
09/06/2021 Order Dismissing Petition for Writ of Habeas Corpus.....434-443

CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing Appendices Volume 1 and 2 was made on September 29, 2021, upon the appropriate parties hereto by electronic filing using the Nevada Supreme Court eFlex eFile system which will send a notice of electronic filing to the following:

ALEXANDER G. CHEN
CLARK COUNTY DA.
200 Lewis Avenue, 3rd Floor
Las Vegas, Nevada 89155
(702) 455-4711

AARON D. FORD
Attorney General
100 North Carson Street
Carson City, Nevada 89701
(775) 684-1265
Attorneys for Respondent

A paper copy has been forwarded to Appellant Jack Leal at:


Mr. Jack Leal DOC 1183500
THREE LAKES VALLEY CONSERVATION CAMP (TLVCC)
Southern Desert Correctional Center
P.O. Box 208
Indian Springs, Nevada 89070-0208

BY /s/Diane C. Lowe
DIANE C. LOWE, ESQ.
Nevada Bar #14573

THE GERSTEN LAW FIRM PLLC
9680 W Tropicana Avenue # 120
Las Vegas, NV 89147
Tel (702) 857-8777 | Fax (702) 857-8767

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOAS
JOSEPH Z. GERSTEN, ESQ.
Nevada Bar No.: 13876
The Gersten Law Firm PLLC
9680 W Tropicana Avenue # 120
Las Vegas, NV 89147
Telephone (702) 857-8777
joe@thegerstenlawfirm.com
Attorney for Petitioner

Electronically Filed
7/19/2019 2:34 PM
Steven D. Grierson
CLERK OF THE COURT


Electronically Filed
Jul 24 2019 10:54 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DISTRICT COURT
CLARK COUNTY, NEVADA

JACK LEAL,

Petitioner,

vs.

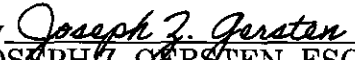
JERRY HOWELL, Warden, Southern
Desert Correctional Center

Respondent.

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

NOTICE OF APPEAL

Notice is hereby given that JACK LEAL, Petitioner above named, hereby
appeals to the Supreme Court of Nevada from the order denying his WRIT OF
HABEAS CORPUS entered in this action on the 21st day of June 2019.

By 
JOSEPH Z. GERSTEN, ESQ.
Nevada Bar No.: 13876
9680 W Tropicana Avenue # 120
Las Vegas, NV 89147
Telephone (702) 857-8777
joe@thegerstenlawfirm.com
Attorney for Petitioner

IN THE SUPREME COURT OF THE STATE OF NEVADA

Jack Leal
Appellant,
vs.
Serry Howell, Warden, Southern Desert Correctional Center
Respondent.

Supreme Court No. 79243

District Court No. C-20064

FILED

DEC 30 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: [Signature]
DEPUTY CLERK

APPELLANT'S INFORMAL BRIEF

INSTRUCTIONS: If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

HOW TO FILL OUT THIS FORM: This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

WHERE TO FILE THE BRIEF: You may submit your brief for filing in person or by mail.

To file your brief in person: Briefs may be submitted for filing Monday through Friday, 8:00 a.m. to 4:00 p.m.
Carson City: Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, 89701.
Las Vegas: Bring the brief in the Clerk's Office Drop Box at the Las Vegas courthouse for the Nevada Appellate Courts, 408 East Clark Avenue, Las Vegas, Nevada, 89101.

19-52402

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. Your brief must be postmarked on or before the due date.

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

CAUTION: Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.

Judgment or Order You Are Appealing. List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
6-29-2019	Order denying Petition for Writ of Habeas Corpus

Notice of Appeal. Give the date you filed your notice of appeal in the district court: 7-19-2019

Related Cases. List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court

Pro Bono Counsel. Would you be interested in having pro bono counsel assigned to represent you in this appeal?

Yes No

***NOTE:** If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

Statement of Facts. Explain the facts of your case. (Your answer must be provided in the space allowed.)

Leal had been involved in the Real Estate Field since 2009 without any issues. In September of 2016 the Nevada Attorney Generals (A.G.) office filed a civil complaint for forfeiture. Jessica Garcia (Garcia) who is Leal's co-defendant immediately retained counsel Michael Pariente (Pariente) to represent both defendants in the civil matter. Leal was only aware of this civil complaint since there were no criminal charges filed at this point. Apparently at some point the A.G. decided to pursue criminal charges against Leal and Garcia and made a formal offer letter (which was contingent on both Defendants acceptance, a "package deal") to Pariente. Garcia somehow accepted the offer on behalf of herself and Leal, without Leal consenting to or even being aware of such offer at the

time, as it quickly benefited her by leaving her with only a misdemeanor conviction. Due to Garcia's acceptance of the offer, the A.G. then filed criminal charges. On November 25th 2016 Leal found out that Garcia had been in contact with Pariente without Leal's knowledge so Leal attempted to contact Pariente directly and Garcia became irate and physically attacked Leal. Garcia was subsequently arrested for domestic battery against Leal. This was the beginning of a series of events against Leal including 4 separate arrests, 5 orders of protection, and numerous threats all of which lead to Leal's eventual conviction and the court issues relating to him entering a coerced and involuntary guilty plea. At this point in November of 2016 Pariente refused to further represent both Defendants.

Garcia then retained Jason Weiner (Weiner) to represent both Defendants. At this time Leal was still unaware that criminal charges had been filed although Garcia was apparently aware. When Leal became aware that there were criminal charges against him^{and} the severity of the charges, he immediately confronted Garcia who made numerous threats about Leal not saying or doing anything about it. On April 20th 2017 Leal made his first personal appearance in court and planned to tell the court about the violence and threats against him and plead not guilty so Weiner requested a continuance. The next date was continued to April 24th 2017 and Leal again planned to plead not guilty but as Leal was leaving his purse for court that morning, Garcia showed up and literally attacked him and made threats that he could never see his kids again if he did not sign the guilty plea in court that day. Leal being completely disturbed and having been just physically attacked and threatened only hours earlier ended up signing the guilty plea that day but under complete duress and with the fear that him not doing so would put him in immediate danger.

On August 17th 2017 Leal had a court date for sentencing. Weiner was aware of all the actual conflicts between the Defendants which is shown by the record as he attempted to withdraw as counsel due to what had become an unresolvable conflict. The court was unaware of the totality of the situation since Weiner could not simply tell the court the complete story since Garcia was also his client. Weiner had informed Leal that he was simply there to withdraw as counsel and that the court would appoint Leal independent counsel which Leal believed would help him withdraw his involuntary plea but instead the court went forward with sentencing, despite Weiner's attempts to withdraw, and sentenced Leal to 72 to 180 months in prison.

Leal filed a direct appeal which the Court of Appeals (COA) affirmed. Leal believes the COA was unaware of the actual conflicts and instead states the conflict was "conflicting defenses as to why they did not pay the restitution" and later that "Leal failed to demonstrate there was a conflict of interest because the fact that his co-defendant did not also

pay the restitution was not a defense" which is not at all what Led was alleging. However Weiner's failure to disclose the actual conflicts to the court meant it was not on the record for review but has since been presented to the court both in several subsequent filings and also in Led's Petition which is the subject of this appeal.

On March 31st 2019 Led filed his Petition for Writ of Habeas Corpus. His 1st ground alleges that the charging document failed to provide notice of the actual charges against him. The information does not in any way show Led's limited involvement, and most importantly, does not specify which Defendant made which false or untrue statements to which victims leaving Led and the court left to make blind assumptions which Led believes was a strong factor as to his sentencing hearing. Led's 2nd ground states that his counsel, Weiner, was ineffective in representing him. One issue is the fact that both Defendants had Weiner representing them from the time criminal charges were filed on November 29th 2016 through April 10th 2017, the time in which Weiner was negotiating a plea agreement, without any conflict of interest waiver ever being presented to or signed by Led during this 4 month period. Garcia made numerous threats to coerce Led to enter a guilty plea against his free will all while Weiner continued to represent both Defendants. Weiner then refused to disclose to the court the actual conflicts to protect Garcia while simply not providing effective assistance of counsel to Led.

Statement of District Court Error. Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed.)

The first error Led brings is about his first claim which is that the information by which he was charged failed to put him on notice of the charges against him. Led states his plea was entered into both unknowingly and involuntarily. A plea cannot be truly voluntary unless the Defendant receives real notice of the charges against him and the information here is clearly vague and ambiguous and therefore lacks specificity. It actually does not state any specifics such as the place of the alleged crime, the specific dates of any events of the crime, the actual that said false statements were made (phone, in person, email) or by which Defendant the false statements were made, and lastly, it does not allege any specific acts committed by Led involving specific victims. It also clearly does not state which Defendant is alleged to have done what or which Defendant allegedly made which false or untrue statements to which victims and therefore does not show each and every element of the crime charged. It is known that the charging document must contain "(1) each and

every element of the crime charged and (2) the facts showing how the Defendant allegedly committed each element of the crime charged." Leal cites "Hancock 114 Nev. 161" which is almost identical in that the Information here simply lumps the Defendants together making it very difficult to decipher who is alleged to have done what. The Information also fails to show that two separate transactions actually occurred instead it simply shows two or victims but more importantly it fails to show that Leal himself actually had any involvement in two or more (multiple) transactions involving Fandi which is exactly what he is currently incarcerated for. Here Leal's guilty plea is invalid and should be vacated and declared as void since the factual basis was not specifically stated with information about the Defendant's actual involvement. The charging document here fails to show the particular acts alleged to have been committed by Leal and that he was actually involved or committed any crime at all. Also, a guilty plea does not waive any jurisdictional defects such as omission or failure to state the essential material elements of the offense which are missing from the said Information. For this error Leal requests that the Information used here, should therefore be declared as insufficient and void and the present charges dismissed. Should the state then desire, Leal should be charged by means of a new charging document which clearly identifies the charges against him. At a minimum, Leal believes he should be re-sentenced with the sentencing court being made fully and specifically aware of his actual involvement. Leal respectfully requests that this court reverse and remand for one of the above options.

The next error Leal raises is that Weiner was representing both Defendants without any conflict waiver whatsoever for the period between November of 2016 and April of 2017 (over 4 months). This was a critical time as this is the period in which all of the issues between the Defendants, including threats and actual physical violence against Leal, began. This was also the period when the plea was being negotiated so during this time without a conflict waiver, Leal was not being properly represented. Weiner was aware of the actual conflicts (the threats and violence against Leal) between the Defendants as shown by his attempt to withdraw at Leal's sentencing. At the time Leal was unaware of both his right to independent counsel, and also of his right to the appointed counsel since rights were never disclosed to him by Weiner or by the court. Had Leal known of these rights he could have proceeded to trial with the proper representation. For these errors Leal requests that he be appointed independent counsel by the court and be allowed to plead anew free from any actual conflicts, threats or coercion of any kind. Also with regard to this claim, the court simply

states it sees no problems with the waiver that was signed (Transcripts at 10:19-22) but does not address the fact that there was no waiver at all in place for the 4 month period prior to that time and that Leal's signing of the Waiver was coerced, both of which are Leal's actual argument. The court also several times refers to the C.O.A. Finding where they state "Leal failed to demonstrate there was a conflict of interest" but it appears they based their decision on restitution issues as the domestic violence issues were not on the record until Leal's independent appellate counsel raised them. Leal would ask the C.O.A. to revisit their previous decision in light of the actual conflicts and additional information now available and before them. Regardless of the determination as to if the conflict waiver was valid, Leal's claim that Garcia "visited domestic violence upon the Petitioner" needs to be further examined as the court here determined that the "Petitioner signed the plea agreement freely and voluntarily and entered his plea of his own free will and free from threats" (Underlying Petition at 4:4-7) which is clearly contradicted by the claims made here and on the record.


The court next discusses the disparity between the Defendant's sentences (transcripts at 10:22-24). Leal in his claim argued prejudice in the punishment's "negotiated" where Garcia would end up with only a misdemeanor conviction but the court only discusses the sentences "actually received". Even so, Leal received 72-180 months in prison which is significantly longer than Garcia's 48-120 month sentence especially given Garcia's numerous recent arrests and his failure to appear for sentencing in this case so this issue is not not at the court states. This was prejudicial as Leal was forced to enter his plea in order for Garcia to benefit from the plea and a reduced sentence. Leal requests that the court reverse and remand and Leal be sentenced to 48-120 months or less as was given to Garcia to eliminate the current disparity between Leal and Garcia's sentences.

Leal's third argument where he claims an error is about Package Plea Deals (Transcripts at 9:3-9) which is when one Defendant's plea is contingent upon another Defendant's acceptance of the plea deal. Since there is a greater possibility of threats and coercion, the court is required to know if there is a joint plea at the entry of plea hearing so that the court may conduct a more thorough canvass to ensure one Defendant is not pleading against their will and to prevent exactly what was happening here to Leal by Garcia. The more detailed canvass was not conducted here so Leal requests that the court reverse and remand to provide Leal with a full hearing to determine whether Leal entered his plea due to threats or pressures by Garcia due to the package plea deal.

As to Leal's claim of coercion against him, his plea was entered into without effective assistance of counsel and was not

voluntary. By the time Leal entered his guilty plea on April 24th 2017, he had already been subjected to several threats and instances of actual violence against him due to his desire to not go along with the plea negotiations, so at that point it is shown that the plea was obtained by both actual and threatened physical harm to Leal which stripped the plea of a voluntary act since his will was overborne. Both Wainwright and the A.G. knew, or should have known and alerted the court, of the existence of coercion and of an actual conflict between the defendants as Garcia's arrests for Battery against Leal were in her P.S.T. at sentencing. Garcia's last arrest prior to the charges in this case was on 11-23-2009 which shows a direct correlation with the timeline of this case and the threats and violence against Leal. The court briefly addresses the coercion claim (Transcripts at 5:27-24) but then moves on and later re-addresses the coercion issue (Transcripts at 8:3-5) by inquiring if Leal entered his plea based upon coercion by Garcia. Being that coercion is one of the main claims throughout the entire petition, and by the court's inquiries, it appears that the court is aware that it is possible that Leal's plea was coerced and that Leal simply never informed the court due to his fear that doing so would result in further violence against him. Leal requests that the plea entered here be declared as void since it was induced by threats and since the coercion made it involuntary and against Leal's free desire and wishes. At a minimum Leal requests an evidentiary hearing as it is the only way to fully address this claim and to determine if Leal's guilty plea was entered into freely and voluntarily or if in fact there was coercion and the plea was entered into only due to fear and under duress.

DATED this 10th day of December, 2019.


Signature of Appellant

Jack Leal
Print Name of Appellant

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

- By personally serving it upon him/her; or
- By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

Jerry Howell
Warden, Southern Desert Correctional Center
90825 Cold Creek Road
P.O. Box 208
Indian Springs, NV 89070

Steven Wolfson
Clark County District Attorney
900 Lewis Avenue
Las Vegas, NV 89101

Aaron Ford
Nevada Attorney General
100 North Carson Street
Carson City, NV 89401

DATED this 20th day of December, 2019.



Signature of Appellant

Jack Leal

Print Name of Appellant

P.O. Box 208

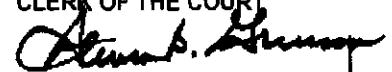
Address

Indian Springs, NV 89070

City/State/Zip

N/A

Telephone



1 PWHC
2 JEAN J. SCHWARTZER, ESQ.
3 Nevada Bar No. 11223
4 Law Office of Jean J. Schwartzer
5 10620 Southern Highlands Parkway, Suite 110-473
6 Phone: (702) 979-9941
7 jean.schwartzter@gmail.com
8 Attorney for Petitioner

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 JACK LEAL) A-20-814369-W
10)
11 Petitioner,)
12)
13 v.) CASE NO: ~~C-17-322664-2~~
14) DEPT NO: XVII
15)
16 JERRY HOWELL, WARDEN,)
17 Southern Desert Correctional Center;)
18 STATE OF NEVADA)
19)
20 Respondents.)
21)
22)

17 PETITION FOR WRIT OF HABEAS CORPUS
18 (POST-CONVICTION)

- 19
20 1. Name of institution and county in which you are presently imprisoned or where and
21 how you are presently restrained of your liberty:
22 Southern Desert Correctional Center, Indian Springs, Clark County Nevada
23 2. Name and location of court which entered the judgment of conviction under attack:
24 Eighth Judicial District Court, Clark County Nevada.
25 3. Date of judgment of conviction:
26 First JOC: August 23, 2017
27 Amended JOC: May 9, 2019
28 4. Case number: C-17-322664-2

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

5. (a) Length of sentence:

Petitioner was sentenced as follows:

COUNT 1: MAXIMUM of ONE HUNDRED EIGHTY (180) MONTHS and a MINIMUM of SEVENTY-TWO (72) MONTHS in the Nevada Department of Corrections (NDC) with ZERO (0) DAYS credit for time served HUNDRED EIGHTY EIGHT (888) DAYS CREDIT FOR TIME SERVED.

Restitution in the amount of \$757,420.00 payable to (\$70,000 LoryLee Plancarte, \$75,000 Edelyn Rudin, \$37,500 Chatty Becker, \$57,500 Irene Segura, \$98,620 Liih-Ling Yang, \$90,300 Lina Palafox, \$85,000 Adilson Gibellato, \$50,000 Juan Eloy Ramirez, \$115,000 Catherine Wyngarden, \$25,000 Shahram Bozorgnia, \$53,500 Tat Lam).

On May 9, 2019, an Amended Judgment of Conviction was adding the provision that the restitution was to be paid jointly and severally between Petitioner and his co-defendant.

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

N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion?

No

If "yes," list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged:

COUNT 1: MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN THE COURSE OF AN ENTERPRISE AND OCCUPATION (Category B Felony)(NRS 205.377)

8. What was your plea?

Guilty

///
///
///

- 1 **9. If you entered a plea of guilty or guilty but mentally ill to one count of an indictment**
2 **or information, and a plea of not guilty to another count of an indictment or**
3 **information, or if a plea of guilty or guilty but mentally ill was negotiated, give**
4 **details:**
- 5 Petitioner entered into a Guilty Plea Agreement whereby, in exchange for a plea of guilty
6 by both Petitioner and his co-defendant, the Attorney General would reduce the original
7 charges of: Count 1 – Racketeering (NRS 207.400(1)(c)); Counts 2 through 13 – Theft in
8 the Amount of \$3,500 or More (NRS 205.0832; 205A.030); Count 14 – Multiple
9 Transactions Involving Fraud or Deceit in Court of Enterprise or Occupation (NRS
10 205.377); down to one count of Multiple Transactions Involving Fraud or Deceit in Court
11 of Enterprise or Occupation (NRS 205.377). Additionally, if he and his co-defendant (joint
12 and severally liable) paid the ordered restitution prior to their sentencing date, the Attorney
13 General agreed to not oppose the imposition of a term of probation not to exceed a term of
14 five years, with a suspended sentence of 36-90 months term of imprisonment. Petitioner
15 also agreed to pay restitution to various victims in a total amount of \$757,420. Petitioner
16 also agreed to forfeit \$157,105.17, which was seized in relation to the instant case, with
17 said money to be applied to the restitution requirement. Petitioner also agreed to execute
18 and file a lien agreement and lien in favor of the State of Nevada, Office of Attorney
19 General, in the amount of \$600,314.83 against the home located at 1024 Santa Helena
20 Avenue, Henderson Nevada 89002.
- 21 **10. If you were found guilty or guilty but mentally ill after a plea of not guilty, was the**
22 **finding made by:**
- 23 N/A
- 24 (a) Jury _____
25 (b) Judge without a jury _____
- 26 **11. Did you testify at the trial?**
- 27 N/A
- 28 **12. Did you appeal from the judgment of conviction?**
- Yes.
- 13. If you did appeal, answer the following:**
- (a) Name of court: Nevada Supreme Court
(b) Case number or citation: 74050
(c) Result: Conviction Affirmed
(d) Date of result: November 28, 2018
- 14. If you did not appeal, explain briefly why you did not:**
- N/A

- 1 15. **Other than a direct appeal from the judgment of conviction and sentence, have you**
2 **previously filed any petitions, applications or motions with respect to this judgment in**
3 **any court, state or federal?**
- 4 Yes.
- 5 16. **If your answer to No. 15 was "yes," give the following information:**
- 6 (a) (1) **Name of court:** Eighth Judicial District Court
7 (2) **Nature of proceeding:** Petition for Writ of Habeas Corpus
8 (3) **Grounds raised:**
- 9 Ground One: Petitioner's conviction was invalid because the information failed to
10 the Petitioner on notice of the charges.
- 11 Ground Two: Petitioner received ineffective assistance of counsel when counsel
12 failed to obtain a meaningful conflict waiver.
- 13 Ground Three: Petitioner received ineffective assistance of counsel when counsel
14 coerced Petitioner into entering a plea of guilty.
- 15 Ground Four: Petitioner received ineffective assistance of counsel when counsel
16 failed to inform the Court of Petitioner's joint plea/package deal wit
17 his Co-Defendant
- 18 (4) **Did you receive an evidentiary hearing on your petition, application**
19 **or motion?** No.
- 20 (5) **Result:** Petition denied.
- 21 (6) **Date of result:** May 7, 2019 Oral Ruling
22 June 19, 2010 Order Filed
23 June 21, 2029 Notice of Order Filed
- 24 (7) **If known, citations of any written opinion or date of orders entered pursuant**
25 **to such result:**
- 26 Finding of Facts Conclusion of Law and Order: June 19, 2019
27 Notice of Entry of Order: June 21, 2019
- 28 (b) **As to any second petition, application or motion, give the same information:**
- (1) **Name of court:** N/A
(2) **Nature of proceeding:** N/A
(3) **Grounds raised:** N/A
(4) **Did you receive an evidentiary hearing on your petition, application**
or motion? N/A
(5) **Result:** N/A

- 1 (6) Date of result: N/A
- 2 (7) If known, citations of any written opinion or date of orders entered
- 3 pursuant to such result: N/A
- 4
- 5 (c) As to any third or subsequent additional applications or motions, give the same
- 6 information as above, list them on a separate sheet and attach. N/A
- 7
- 8 (d) Did you appeal to the highest state or federal court having jurisdiction, the result or
- 9 action taken on any petition, application or motion?
- 10 (1) First petition, application or motion? Yes ..X..... No
- 11 Citation or date of decision: Still pending.
- 12
- 13 (2) Second petition, application or motion? Yes No
- 14 Citation or date of decision:
- 15
- 16 (3) Third or subsequent petitions, applications or motions? Yes No
- 17 Citation or date of decision:
- 18
- 19 (e) If you did not appeal from the adverse action on any petition, application or motion,
- 20 explain briefly why you did not. (You must relate specific facts in response to this
- 21 question. Your response may be included on paper which is 8 1/2 by 11 inches attached to
- 22 the petition. Your response may not exceed five handwritten or typewritten pages in
- 23 length.)
- 24 N/A
- 25
- 26 17. Has any ground being raised in this petition been previously presented to this or any
- 27 other court by way of petition for habeas corpus, motion, application or any other
- 28 post-conviction proceeding? If so, identify:
- (a) Which of the grounds is the same: None.
- (b) The proceedings in which these grounds were raised: N/A
- (c) Briefly explain why you are again 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 handwritten or typewritten pages in length.)
- N/A
- ///
- ///
- ///

1 18. If any of the grounds listed in Nos. 23(a), (b), (c) and (d), or listed on any additional
2 pages you have attached, were not previously presented in any other court, state or
3 federal, list briefly what grounds were not so presented, and give your reasons for not
4 presenting them. (You must relate specific facts in response to this question. Your
5 response may be included on paper which is 8 1/2 by 11 inches attached to the
6 petition. Your response may not exceed five handwritten or typewritten pages in
7 length.)

Petitioner was unaware of some of these issues previously. Petitioner will supplement his good cause argument in subsequent pleadings.

8 19. Are you filing this petition more than 1 year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons
10 for the delay. (You must relate specific facts in response to this question. Your
11 response may be included on paper which is 8 1/2 by 11 inches attached to the
12 petition. Your response may not exceed five handwritten or typewritten pages in
13 length.)

The instant Petition is filed over a year from the remitter on Petitioner's Direct Appeal. However, an Amended Judgment of Conviction was entered on May 9, 2019. This Petition is within the one year time frame from that date.

14 20. Do you have any petition or appeal now pending in any court, either state or federal,
15 as to the judgment under attack? Yes ...X..... No
16 If yes, state what court and the case number: Nevada Supreme Court Case No. 79243

17 21. Give the name of each attorney who represented you in the proceeding resulting in
18 your conviction and on direct appeal:

19 Trial Counsel: Jason G. Weiner, Esq.

20 Appellate Counsel: Lester M. Paredes, Esq.

21 22. Do you have any future sentences to serve after you complete the sentence imposed
22 by the judgment under attack?

23 No

24 If yes, specify where and when it is to be served, if you know: N/A

25 ///
26 ///
27 ///
28 ///

Jack Leal 1183500
Petitioner/In Propria Persona
Post Office Box 208, SDCC
Indian Springs, Nevada 89070

FILED

MAY 27 2020

Ann Williams
CLERK OF COURT

7

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

Jack Leal
Petitioner,
vs.
Jerry Howell, Warden
Southwest Desert Correctional Center
Respondent(s).

A-20-814369-W
Dept. 17

Case No. C-17-322664-2

Dept. No. XV II

Docket _____

*Evidentiary Hearing Requested
(Not a death Penalty Case)*

PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)

INSTRUCTIONS:

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

RECEIVED
MAY - 8 2020
CLERK OF THE COURT

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

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

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

15 **PETITION**

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: Southern Desert Correctional Center, Clark County, Nevada.

18 2. Name the location of court which entered the judgment of conviction under attack: _____
19 Eighth District Judicial Court, Department XVII

20 3. Date of judgment of conviction: May 9th 2019

21 4. Case number: C-17-322664-2

22 5. (a) Length of sentence: 72-180 months

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

24 6. Are you presently serving a sentence for a conviction other than the conviction under attack in
25 this motion:

26 Yes ___ No If "Yes", list crime, case number and sentence being served at this time: _____

27 7. Nature of offense involved in conviction being challenged: _____

28 Multiple Transactions Involving Fraud or Deceit in the Course of an
Enterprise or Occupation

- 1 8. What was your plea? (Check one)
- 2 (a) Not guilty
- 3 (b) Guilty
- 4 (c) Nolo contendere
- 5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
- 6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
- 7 N/A
- 8 _____
- 9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)
- 10 (a) Jury
- 11 (b) Judge without a jury
- 12 11. Did you testify at trial? Yes No
- 13 12. Did you appeal from the judgment of conviction?
- 14 Yes No
- 15 13. If you did appeal, answer the following:
- 16 (a) Name of court:
- 17 (b) Case number or citation:
- 18 (c) Result:
- 19 (d) Date of appeal:
- 20 (Attach copy of order or decision, if available).
- 21 14.) If you did not appeal, explain briefly why you did not: _____
- 22 Was not aware of the judgment of conviction being filed until recently
- 23 (May 9th 2019 J.D.C.)
- 24 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
- 25 filed any petitions, applications or motions with respect to this judgment in any court, state or
- 26 federal? Yes No
- 27
- 28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. If your answer to No 15 was "Yes", give the following information:

(a) (1) Name of court: _____

(2) Nature of proceedings: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ___ No ___

(5) Result: _____

(6) Date of result: _____

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: _____

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

(1) Name of Court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ___ No ___

(5) Result: _____

(6) Date of result: _____

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: _____

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

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

3 (1) First petition, application or motion?

4 Yes ___ No ___

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ___ No ___

8 Citation or date of decision: _____

9 (e) If you did not appeal from the adverse action on any petition, application or motion,
10 explain briefly why you did not. (You may relate specific facts in response to this question. Your
11 response may be included on paper which is 8 1/2 x 11 inches attached to the petition. Your response
12 may not exceed five handwritten or typewritten pages in length). _____

13 _____

14 _____

15 17. Has any ground being raised in this petition been previously presented to this or any other
16 court by way of petition for habeas corpus, motion or application or any other post-conviction
17 proceeding? If so, identify: No

18 (a) Which of the grounds is the same: _____

19 _____

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

21 _____

22 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts
23 in response to this question. Your response may be included on paper which is 8 1/2 x 11 inches
24 attached to the petition. Your response may not exceed five handwritten or typewritten pages in
25 length). _____

26 _____

27 _____

28

1 18. If any of the grounds listed in Nos. 23(a), (b), (c), and (d), or listed on any additional pages
2 you have attached, were not previously presented in any other court, state or federal, list briefly what
3 grounds were not so presented, and give your reasons for not presenting them. (You must relate
4 specific facts in response to this question. Your response may be included on paper which is 8 1/2 x
5 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten
6 pages in length). N/A

7
8 19. Are you filing this petition more than one (1) year following the filing of the judgment of
9 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
10 (You must relate specific facts in response to this question. Your response may be included on
11 paper which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five
12 handwritten or typewritten pages in length). No

13
14
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?
17 Yes ___ No X
18 If "Yes", state what court and the case number: _____

19
20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: Michael Pariente Lester M. Paredes
22 Craig Mueller Jason Weiner Joseph Z. Gersten

23
24 22. Do you have any future sentences to serve after you complete the sentence imposed by the
25 judgment under attack?
26 Yes ___ No X If "Yes", specify where and when it is to be served, if you know: _____

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: Challenge to validity of guilty plea

4 _____
5 _____
6 _____

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

8 My plea was involuntary as I was coerced and it was not entered into of my
9 own free will (See attached "Motion to Withdraw Plea")

10 _____

11 My plea was entered into without the effective assistance of counsel as there
12 was a clear actual conflict of interest between both Defendants who were being
13 represented by the same attorney. Jason Weiner began representing both Defendants
14 but seems to have only had meaningful conversations with Garcia and not Leal. Both
15 co-defendants were unable to be properly represented due to no contact orders stemming from
16 domestic violence issues related to this criminal case. Since almost all communications
17 were done solely with only Garcia as she was the one to retain and pay for Weiner's
18 services, Leal simply was not involved in discussions regarding the case and had I had
19 independent counsel to discuss with would have been able to proceed to trial.

20 _____

21 I believe I am actually innocent as each victim signed a purchase agreement to
22 purchase the properties which clearly stated that the properties were being sold "subject
23 to" liens and encumbrances and believe that a trial would show my innocence.

24 _____

25 My plea was also entered without any meaningful representation. (See: "Ground Two")

26 _____

27 _____

28 _____

1 23. (b) GROUND TWO: Ineffective Assistance of Counsel

2 Jason Weiner - Trial Counsel

3
4
5 23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

- 6 - Weiner failed to disclose the court of the Civil Forfeiture case which
7 was filed by the A.G. and had a direct impact on my ability to pay
8 my restitution as it caused a Lis Pendens to be placed against a home
9 which was to be sold to pay restitution. Instead the A.G. argued that
10 there was nothing done to pay anybody back but that was simply not the case.
11 - Weiner did not disclose to the court the fact that this was a "package plea
12 deal" which should have resulted in a more thorough plea canvass which
13 would have prevented the issues in "Ground One".
14 - Weiner did not present the jurisdictional issues relating to the fact
15 that certain properties were located and sold in Florida with Nevada having
16 no jurisdiction for these sales.
17 - Weiner represented both co-defendants from the period of December 2016
18 through April 9th 2017 with one conflict of interest waiver in place at all
19 while the co-defendants were involved in several actual conflicts (See: Ground One)
20 - Weiner did not dispute or challenge a insufficient charging document which
21 made my plea unknowingly entered. The "Information" by which I was
22 charged does not put me on notice of the charges as it does not contain
23 each and every element of the crime charged or the facts showing how I
24 allegedly committed the acts. It is not clear and concise and therefore
25 a Defendant cannot plea to charges which do not constitute a crime.
26 - Due to all of the above, counsel's assistance was clearly ineffective
27 and in violation of my constitutional rights to effective counsel.

1 23. (c) GROUND THREE: Ineffective Assistance of Counsel

2 Craig A. Mueller + Lester M. Paredes - Appellate Counsel

5 23. (c) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

6 I was never provided a copy of my Pre-sentence investigation report (P.S.I.) prior
7 to being sentenced as required by N.R.S. 176.153.

8 This is a due process violation as information in his PSI was presumably used
9 against him at sentencing and is still being used against him by N.D.O.C
10 for purposes of classification. This non-disclosure affects the Petitioner's rights
11 and ability to challenge and dispute incorrect information as per Nevada law, the
12 only opportunity to do so is at sentencing. Petitioner ~~will~~ will also be prejudiced
13 moving forward as the Nevada Parole Board has stated that the P.S.I. is
14 the primary document used to determine eventual release. Just a few errors
15 from my PSI are: My offense date is listed as being over a period of 1 year
16 when really it was a period of approximately 90 days. Under "Offense Synopsis:"
17 there are 7 paragraphs which I do not know what they relate to. This
18 information appears to have come directly from the A.G.'s office and was
19 never provided to me. It also does not list my actual limited involvement
20 and instead refers to "an individual" in 12 separate paragraphs. The referenced
21 "individual" is not me but it is implied that it was me and a reader without
22 knowing this could surely not make this distinction.

24 Appellate counsel was ineffective for not raising this issue as it
25 was error that was on the record and therefore appealable.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WHEREFORE, Jack Leal, prays that the court grant Petitioner

relief to which he may be entitled in this proceeding.

EXECUTED at Southern Desert Correctional Center, Indian Springs, NV, Clark County,

on the 1st day of May, 2020.

Nevada



Signature of Petitioner

VERIFICATION

Under penalty of perjury, pursuant to N.R.S. 208.165 et seq., the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true and correct of his own personal knowledge, except as to those matters based on information and belief, and to those matters, he believes them to be true.



Signature of Petitioner

N/A

Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAILING

I, Jack Leal, hereby certify, pursuant to NRCP 5(b), that on this 1st day of May, 2020, I mailed a true and correct copy of the foregoing, "Petition for Writ of Habeas Corpus"

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

Jerry Howell
Warden, Southern Desert Correctional Center
20225 Cold Creek Road
P.O. Box 208
Indian Springs, NV 89070

Aaron Ford
Nevada Attorney General
100 North Carson Street
Carson City, NV 89701

Steven Wolfson
Clark County District Attorney
200 Lewis Avenue
Las Vegas, NV 89101

CC:FILE

DATED: this 1st day of May, 2020.

[Signature]
Jack Leal # 1183500
/In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Petition for Writ of Habeas Corpus

(Title of Document)

filed in District Court Case number C-17-322664-2

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-OR-

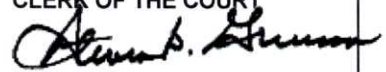
B. For the administration of a public program or for an application
for a federal or state grant.


Signature

5-1-20
Date

Jack Leal
Print Name

Petitioner
Title



1 **ANS**
AARON D. FORD
2 Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
3 Senior Deputy Attorney General
State of Nevada
4 Office of the Attorney General
1539 Avenue F, Suite 2
5 Ely, NV 89301
(775)289-1632 (phone)
6 (775)289-1653 (fax)
MBongard@ag.nv.gov
7 Attorneys for Respondents

8 **DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

10 JACK LEAL,)
11) Petitioner,)
12 vs.)
13 JERRY HOWELL, WARDEN, SOUTHERN)
DESERT CORRECTIONAL CENTER,)
14) Respondents.)
15)

Case No.: A-20-814369-W
Department XVII

16 **ANSWER TO POST-CONVICTION PETITION FOR WRIT OF**
17 **HABEAS CORPUS**

18 Respondents, by and through counsel, Aaron D. Ford, Attorney General of The State of Nevada,
19 and Michael J. Bongard, Senior Deputy Attorney General, hereby submit their answer to Petitioner Jack
20 Leal’s (Leal) Counseled and Pro Se Petitions for Writ of Habeas Corpus filed in this matter.

21 Respondents base this answer upon the pleadings, the legal authorities, and the pleadings on file
22 in this case.

23 **PROCEDURAL HISTORY**

24 **I. Justice Court Proceedings, Las Vegas Township Justice Court¹**

25 On November 29, 2016, the State filed a criminal complaint charging Leal with one count of
26 Racketeering, 12 counts of Theft in the Amount of \$3500 or More, Fraud or Deceit in the Course of

27 ¹ Respondents believe that all documents with the exception of the appellate briefing, are in the
28 district court record. Respondents attach as exhibits the appellate briefing and the documents central to
resolution of the claim in the petition.

1 Enterprise or Occupation, and one count of Multiple Transactions Involving Fraud or Deceit in the
2 Course of an Enterprise and Occupation. The State filed an amended complaint on December 27, 2016,
3 containing the same charges.

4 On April 11, 2017, Leal unconditionally waived his preliminary hearing, which included a
5 conflict of interest waiver.

6 **II. District Court Proceedings, Eighth Judicial District Court Case Number C-17-322664-2**

7 On April 18, 2017, the State filed a criminal information charging Leal with one count of
8 Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation. On
9 April 20, 2017, the parties continued the matter until April 24, 2017.

10 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry
11 of plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the
12 information and agreed to jointly and severally pay restitution in the amount of \$757,420.

13 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a
14 maximum term of one hundred eighty (180) months in the Nevada Department of Corrections, with a
15 minimum term of seventy-two (72) months. The clerk filed the judgment of conviction on August 23,
16 2017.

17 Leal filed a notice of appeal on September 14, 2017.

18 On May 9, 2019, the Court entered an amended judgment of conviction which corrected the
19 original judgment of conviction by ordering restitution jointly and severally.

20 **III. Direct Appeal Proceedings, Nevada Court of Appeals**

21 Leal filed his opening brief on February 1, 2018. (Exhibit 1). On appeal, Leal raised the
22 following claims:

- 23 A. Did the District Court err by failing to hold an evidentiary hearing
24 or inquire into the nature and materiality of the alleged breach of
25 the guilty plea agreement?
26 B. Did the District Court err by denying Appellant's motion to
27 withdraw counsel due to an unwaiveable concurrent conflict of
28 interest?

Id. at 1.

1 The State filed the answer brief on March 20, 2018. (Exhibit 2). Leal filed the reply brief on
2 April 20, 2018. (Exhibit 3).

3 On September 11, 2018, the Nevada Court of Appeals Affirmed Leal's conviction.

4 Leal filed a petition for review by the Nevada Supreme Court on October 2, 2018. (Exhibit 4).
5 The Nevada Supreme Court denied rehearing on November 28, 2018. (Exhibit 5).

6 Remittitur issued December 24, 2018. (Exhibit 10).

7 **IV. State Habeas Corpus Proceedings, Eighth Judicial District Court, C-17-322664-2**

8 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition. In his petition,
9 Leal raised the following claims:

10 A. Mr. Leal's conviction and sentence are invalid under the 6th and
11 14th Federal Constitutional Amendment guarantees of Due
12 Process and Equal Protection, and under the law of Article 1 of
the Nevada Constitution because the original information failed to
put the petitioner on notice of the charges;

13 B. Mr. Leal's conviction and sentence are invalid under the 6th and
14 14th Federal Constitutional Amendment guarantees of Due
15 Process and Equal Protection, and under the law of Article 1 of
the Nevada Constitution because prior counsel's performance fell
16 below an objective standard of reasonableness as is mandated by
Strickland [v. Washington], 466 U.S. 668 (1984).

17 1.) Petitioner's criminal counsel's assistance was ineffective,
18 because prior counsel's performance fell below an
objective standard of reasonableness as is mandated by
Strickland, by failing to obtain a conflict waiver;

19 2.) Petitioner's criminal counsel's assistance was ineffective,
20 because prior counsel's performance fell below an
objective standard of reasonableness as is mandated by
21 *Strickland*, by coercing petitioner into entering a plea.

22 PWHC.

23 Respondent filed the answer on April 23, 2019. On May 7, 2019, counsel for the parties
24 presented argument to the Court on the petition. The Court announced findings and denied the petition.
25 The clerk filed the order denying the petition on June 19, 2020 and filed the notice of entry of order on
26 June 21, 2019. Leal filed a notice of appeal on July 19, 2019.

27 ///

28 ///

1 **V. State Habeas Corpus Appellate Proceedings, Nevada Court of Appeals**

2 Leal filed his informal brief on December 30, 2019. On May 29, 2020, the Nevada Supreme
3 Court transferred the case to the Nevada Court of Appeals for decision. As of the date of filing, that
4 court has not issued an opinion.

5 **VI. State Habeas Corpus Proceedings, Eight Judicial District Court Case A-20-814369-W**

6 On April 28, 2020, Leal filed a counseled state habeas petition (counseled PWHC). In that
7 petition, Leal raises three claims: (1) Ineffective assistance of counsel for failure to present mitigating
8 factors at sentencing, due to the difficulty of selling property to pay restitution, (2) Ineffective
9 assistance of counsel for failure to correct errors in the pre-sentence report prior to sentencing, and (3)
10 Ineffective assistance of counsel for failure to correct or explain errors in Leal's criminal history prior
11 to sentencing.

12 On May 27, 2020, Leal filed a pro se habeas petition (Pro Se PWHC). In that petition Leal raises
13 the following claims: (1) the guilty plea was involuntary, (2) Ineffective assistance of trial counsel
14 (consisting of six subclaims), (3) Ineffective assistance of appellate counsel for failing to raise a claim
15 that petitioner never received a copy of his pre-sentence investigation report.

16 Respondent now files their response to the petition.

17 **ARGUMENT AND LAW**

18 **I. Applicable Law**

19 Nevada law governs state habeas corpus proceedings. *McConnell v. State*, 212 P.3d 307, 309
20 (Nev. 2009).

21 By statute, habeas corpus proceedings permit a person to challenge that his conviction or
22 sentence violate the Constitution of the United States or the Constitution or laws of Nevada. NRS
23 34.724(1). To the extent they do not conflict with habeas corpus statutes, the Nevada Rules of Civil
24 Procedure apply to habeas corpus proceedings. NRS 34.780. Appointment of counsel in habeas corpus
25 proceedings lies with the discretion of the court. NRS 34.750. A court determines the propriety and
26 necessity of discovery or an evidentiary hearing. NRS 34.770.

27 A court may dismiss a petition if the petition is untimely or contains claims that could have been
28 litigated in previous proceedings. NRS 34.810 and NRS 34.726

1 **II. Leal's Counseled and Pro Se Petitions are Subject to Dismissal**

2 **A. NRS 34.726**

3 Both the counseled and amended petitions are untimely. Nevada habeas statutes require a
4 petitioner file a petition challenging a judgment or sentence within 1 year of the date the Nevada
5 Supreme Court files its remittitur. NRS 34.726(1). A petitioner may demonstrate good cause and
6 prejudice to excuse an untimely filing. NRS 34.726(1)(a) and (b).

7 In this case, the Nevada Supreme Court's remittitur issued on December 24, 2018. (Exhibit 6).
8 Leal filed the counseled petition on April 28, 2020 and the pro se petition on May 27, 2020. Therefore,
9 both petitions are subject to dismissal because they are untimely.

10 Leal cannot argue the May 19, 2020 amended judgment of conviction provides good cause to
11 excuse the untimely filing. The Nevada Supreme Court held that claims that do not address the clerical
12 correction in an amended judgment could have been previously raised in a timely petition and are
13 therefore procedurally barred. *Sullivan v. State*, 120 Nev. 537, 541-42, 96 P.3d 761, 764-65 (2004).

14 None of the claims in the counseled or pro se petition address the amendment (restitution to be
15 paid jointly and severally, instead of Leal solely responsible for restitution) in the amended judgment of
16 conviction. Therefore, absent a showing of some other cause to excuse his late filing, the Court must
17 apply NRS 34.726 and dismiss Leal's counseled and pro se petitions. *State v. Eighth Judicial District*
18 *Court (Riker)*, 121 Nev. 225, 231, 112 P.3d 1070, 1074 (2005).

19 **B. NRS 34.810(2)**

20 In addition to the untimely filing of both the counseled and pro se petitions, both petitions are
21 procedurally defaulted because the claims in both pleadings are either successive or could have been
22 raised in Leal's first state habeas petition. A judge must dismiss a second or successive petition if the
23 petition raises new or different claims and a court addressed the merits of the prior petition, or if the
24 petition raises new or different grounds that could have been raised in a prior petition. NRS 34.810(2).
25 A petitioner may demonstrate good cause and prejudice to excuse the default of the second or
26 successive petition. NRS 34.810(3).

27 In both the counseled and pro se petition, Leal raises either claims that were previously raised in
28 his first state habeas corpus petition, or the petitions raise claims that could have been raised in his first

1 state habeas petition or on direct appeal. Since both petitions are successive or an abuse of the writ
2 because the claims are previously raised or should have been raised in the first petition, Respondent
3 requests the Court dismiss both the counseled and pro se petitions pursuant to NRS 34.810(2).
4 Application of the bar is mandatory. *State v. Eighth Judicial District Court (Riker)*, 121 Nev. at 231,
5 112 P.3d at 1074.

6 **C. NRS 34.810(1)(a)**

7 A petition or claim challenging a judgment of conviction entered pursuant to a plea agreement
8 must be dismissed if the claim does not allege the petitioner entered an unknowing or involuntary plea.
9 NRS 34.810(1)(a). The rule essentially codifies *Tollett v. Henderson*, 411 U.S. 258, 267 (1973). The
10 Nevada Supreme Court held “[A] guilty plea represents a break in the chain of events which has
11 preceded it in the criminal process.” *Webb v. State*, 91 Nev. 469, 469, 538 P.2d 164, 165 (1975)
12 (quoting *Tollett*). The Nevada Supreme Court held “Where the defendant has pleaded guilty, the only
13 claims that may be raised thereafter are those involving the voluntariness of the plea itself and the
14 effectiveness of counsel. *Kirksey v. State*, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996), citing NRS
15 34.810 and *Warden v. Lyons*, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984), *cert denied*, 471 U.S. 1004
16 (1985).

17 In the pro se petition, Leal raises several claims that do not challenge the validity of his plea.
18 Those claims are: (1) Counsel was ineffective for failing to present the fact that some charges involved
19 property located in Florida, (2) Counsel did not challenge alleged infirmities in the charging document,
20 (3) appellate counsel failed to appeal a claim that petitioner did not receive a pre-sentence investigation
21 report.

22 Should the Court find that Leal entered a knowing, intelligent and voluntary plea, Respondents
23 request the Court dismiss the three claims of ineffective assistance of counsel listed above pursuant to
24 NRS 34.810(1)(a), because those claims do not allege that Leal entered an unknowing or intelligent
25 plea.

26 **III. Leal’s Claims in the Counseled Petition**

27 In his Counseled Petition, Leal raises three claims — all challenging deficiencies at sentencing.
28 Counseled PWHC at 7. These claims, if addressed on the merits and found meritorious, only provide

1 relief in the form of a new sentencing hearing. All claims are conclusory and do not allege sufficient
2 facts demonstrating cause or prejudice under *Strickland*.

3 When reviewing a claim of ineffective assistance of counsel, the Nevada Supreme Court has
4 held:

5 A claim that counsel provided constitutionally inadequate representation
6 is subject to the two-part test established by the Supreme Court in
7 *Strickland v. Washington*, 466 U.S. 668 (1984). To prevail on a claim of
8 ineffective assistance of trial or appellate counsel, a defendant must
9 demonstrate (1) that counsel's performance was deficient and (2) that
10 counsel's deficient performance prejudiced the defense. *Id.* at 687. A
11 court need not consider both prongs of the *Strickland* test if a defendant
12 makes an insufficient showing on either prong. *Id.* at 697. "A claim of
13 ineffective assistance of counsel presents a mixed question of law and
14 fact, subject to independent review." *Evans v. State*, 117 Nev. 609, 622,
15 28 P.3d 498, 508 (2001).

16 *McConnell v. State*, 212 P.3d 307, 313 (Nev. 2009).

17 Leal's ineffective assistance of trial counsel claims are meritless.

18 **A. Leal's First Claim**

19 In Ground One of the Counseled Petition for Writ of Habeas Corpus, Leal alleges that trial
20 counsel failed to present mitigation evidence in the form of Leal's inability to pay restitution.
21 Counseled Petition at 7. Ground One alleges counsel failed to inform the Court of documents recorded
22 on the Henderson property making the property difficult to sell.

23 The transcript at sentencing reflects the following: (1) a week before sentencing, Leal had the
24 home transferred from a trust to his name (August 17, 2017 sentencing transcript at 4-5), (2) Leal then
25 flew to Las Vegas and recorded a lien on the property. *Id.* at 5. The State noted that the property had
26 two liens on it from Republic Garbage. *Id.* at 5.

27 Should the Court reach the merits of this claim, Respondent requests the Court find the claim
28 meritless. First, Leal placed a lien on the property to have the sale proceeds go the Attorney General's
Office. If this lien is the impairment making sale of the property difficult, Leal fails to explain how a
lien placed on a property one week prior to sentencing impaired the sale of the property.

Second, the additional liens on the property were apparently due to Leal not paying bills, and
not the fault of anyone but Leal.

///

1 Finally, Leal's petition fails to explain what other information counsel should have provided to
2 the Court in addition to the information Leal personally provided to the Court.

3 Ground One of the Counseled Petition is Meritless.

4 **B. Leal's Second and Third Claims**

5 In Grounds Two and Three, Leal alleges that trial counsel failed to correct the pre-sentence
6 investigation (PSI) report prior to sentencing. Ground Two alleges no errors that counsel failed to
7 correct. Counseled PWHC at 7. Ground Three alleges trial counsel failed to correct unspecified errors
8 in Leal's criminal history and the nature of the instant offense.

9 Grounds Two and Three of the counseled petition present no specific addressing the portions of
10 the PSI that trial counsel failed to correct. Leal present no evidence the trial court relied on erroneous
11 information when pronouncing sentence. The trial court based its sentence on the fact that the
12 defendants had time to sell the property and victimized numerous people of over three quarters of a
13 million dollars. August 17, 2017 sentencing transcript, at 21-22.

14 Leal's Ground Two and Ground Three claims fail to satisfy either the deficient conduct or the
15 prejudice prong of Strickland. Should the Court reach the merits of Grounds Two and Three of the
16 Counseled Petition, Respondent requests the Court find the claims meritless.

17 **IV. Leal's Claims in the Pro Se Petition**

18 **A. Ground One**

19 In Ground One of the Pro Se Petition, Leal alleges that his plea was unknowing and
20 unintelligent because trial counsel had an actual conflict of interest due to the fact that counsel
21 represented both parties. Pro Se PWHC at 7.

22 This Court already considered and rejected this claim, which Leal raised in his first state habeas
23 corpus petition.² The Court found two waivers of conflict from Leal; the first entered in justice court,
24 the second entered in district court prior to his entry of plea.³ The Nevada Court of Appeals found that
25 Leal waived the conflict. *Leal v. State*, NVCA Case Number 74050, 2018 WL 4408758 (Order of
26 Affirmance, Sept. 11, 2018). This Court also found trial counsel was not ineffective when denying
27

28 ² Case No. C-17-322664-1, PWHC, filed March 21, 2019, pp 9-10.

³ Order denying petition, C-17-322664-1, filed June 19, 2019, p. 3.

1 Leal's first habeas petition's allegation that trial counsel was ineffective because of a direct conflict of
2 interest due to representation of multiple defendants.

3 Respondents request the Court find Ground 1 of the Pro Se Petition barred by the law of the
4 case. *See, Hsu v. County of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724, 728 (2007).

5 **B. Ground Two**

6 In Ground Two of his petition, Leal alleges several claims of ineffective assistance of trial
7 counsel. Pro Se PWHC, at 8. The claims allege errors at sentencing (subparts 1 and 5), that if
8 meritorious, only provide relief in the form of a new sentencing hearing.

9 **1.) Trial counsel failed to disclose a civil forfeiture case**

10 In the first part of his Ground Two claim, Leal alleges trial counsel failed to disclose a civil
11 forfeiture case which adversely affected Leal's ability to pay restitution. Pro Se PWHC at 8.

12 At sentencing, Leal explained to the Court that he was unable to pay restitution because of a
13 non-contact order between Leal and Garcia, and how that negatively impacted Leal's ability to sell a
14 home to provide restitution to the victims. August 17, 2017 sentencing transcript, at pp. 4-8. That
15 transcript reflects the fact that during the week before sentencing, Leal pushed through a transfer of
16 property in order to attempt to sell the property and placed a lien on the property to have the sale
17 proceeds go to the Attorney General's Office. *Id.*

18 Leal's petition fails to explain what else trial counsel should have told the trial court at
19 sentencing. Pro Se PWHC at 8. Leal fails to explain how he was prejudiced by counsel's alleged
20 failures.

21 Respondent requests that if the Court reaches the merits of this portion of Ground Two of the
22 Pro Se Petition, that the Court find the claim meritless and deny relief.

23 **2.) Trial counsel failed to notify the Court of a joint plea**

24 Leal next alleges that trial counsel failed to notify the Court of the fact that Leal and his co-
25 defendant entered a joint plea. However, the record belies this claim. The plea agreement in C-17-
26 322664 clearly stated on page two that Leal and his codefendant were jointly and severally liable for
27 restitution in this matter. Second, the fact that Leal executed a waiver of conflict notified the Court that

28 ///

1 counsel also represented a co-defendant in this matter. Third, the record in this case reflects that the co-
2 defendant entered her plea on the same day as Leal. *See, State v. Jessica Garcia, C-17-322664-3.*

3 Finally, in his petition Leal alleges that because of the “package deal” trial counsel should have
4 notified the Court in order for the Court to conduct a more thorough plea canvass. Pro Se PWHC at 8.
5 However, Leal fails to state what additional steps the Court should have taken in order to conduct the
6 plea canvass. Leal bears the burden of proving counsel’s conduct was deficient and he suffered
7 prejudice. By failing to state the additional steps that should have been taken, Leal fails to satisfy his
8 burden of demonstrating deficient conduct under Strickland. Leal’s petition also alleges no prejudice.
9 Respondent requests the Court find this portion of Leal’s Ground Two claim meritless.

10 **3.) Counsel failed to present the fact that certain properties were located in Florida**

11 Leal alleges that trial counsel was ineffective for failing to raise a claim that some of the
12 properties involved in this case were located in Florida. Pro Se PWHC at 8. However, Leal ignores the
13 fact that NRS 171.020 exposes Leal to criminal liability for crimes that occur in other states if Leal
14 committed an act in furtherance of the crime in the State of Nevada. The fact that some properties are
15 located outside Nevada is irrelevant if Leal took steps in Nevada with the intent to commit a crime.

16 In his petition, Leal alleges that counsel was ineffective for failing to raise a claim some
17 property was located in Florida. Pro Se PWHC at 8. Leal’s petition does not allege none of the acts
18 constituting the crime did not occur in Nevada. *Id.* Because Leal’s petition does not allege a defect in
19 the prosecution, trial counsel was not ineffective for failing to challenge the charges based upon the fact
20 that some property he sold was located in Florida.

21 Respondent requests the Court find that Leal failed to demonstrate deficient conduct or
22 prejudice and deny relief on this part of his Ground Two claim.

23 **4.) Counsel represented both co-defendant without a waiver of conflict in place**

24 Leal next alleges trial counsel represented both co-defendants between December 2016 and
25 April 2017 without a waiver of conflict. Pro Se PWHC at 8. To the extent that this claim differs from
26 Leal’s Ground One claim, he fails to establish either cause or prejudice under *Strickland*.

27 The Nevada Supreme Court held, “[W]hen a defendant knowingly, intelligently, and voluntarily
28 waives [his] right to conflict-free representation, [he] also waives [his] right to seek a mistrial arising

1 out of such conflicted representation. Further, the waiver is binding on the defendant throughout the
2 trial, on appeal, and in habeas proceedings.” *Ryan v. Eighth Judicial Dist. Court*, 123 Nev. 419, 429,
3 168 P.3d 703, 710 (2007), *citing Gomez v. Ahitow*, 29 F.3d 1128, 1135-36 (7th Cir. 1994) (a knowing
4 intelligent waiver of conflict precludes claims of ineffective assistance of counsel based on the
5 conflict).

6 In this portion of Ground Two, assuming Leal can bring the claim, he fails to allege facts that he
7 was prejudiced by the absence of a waiver of conflict during the time-period between December 2016
8 and April 2017. In order to demonstrate “actual prejudice” under Strickland, a petitioner must show an
9 error worked to his actual and substantial disadvantage, not that the deficient conduct created a
10 possibility of prejudice. *State v. Eight Judicial Dist. Court (Riker)*, 121 Nev. at 232, 112 P.3d at 1075.

11 Leal’s successive petition pleads no facts alleging prejudice under *Strickland*. Failing to
12 demonstrate prejudice, Respondent requests the Court deny this portion of Ground Two, should the
13 Court reach the merits of the petition.

14 **5.) Counsel failed to challenge alleged deficiencies in the charging document**

15 In the last subclaim in Ground Two, Leal alleges trial counsel failed to challenge alleged defects
16 in the information. Pro Se PWHC at 8. Leal alleges the information does not put him on notice of the
17 charges and does not contain the facts supporting the charges.

18 The information accused Leal of violating NRS 205.377 [Effective through June 30, 2020]. That
19 statute contains the following elements:

- 20 1. A person shall not, in the course of an enterprise or occupation,
21 knowingly and with the intent to defraud, engage in an act, practice or
22 course of business or employ a device, scheme or artifice which operates
or would operate as a fraud or deceit upon a person by means of a false
representation or omission of a material fact that:
23 (a) The person knows to be false or omitted;
24 (b) The person intends another to rely on; and
25 (c) Results in a loss to any person who relied on the false representation
or omission,
26 →in at least two transactions that have the same or similar pattern,
intents, results, accomplices, victims or methods of commission, or are
27 otherwise interrelated by distinguishing characteristics and are not
isolated incidents within 4 years and in which the aggregate loss or
intended loss is more than \$650.

28 NRS 205.377(1) [Effective through June 30, 2020].

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

The information alleges how Leal and his co-defendant committed the crime:

On or about March 1, 2015 through March 31, 2016, in and through the course of a real estate enterprise known at PARCELNOMICS, LLC (d/b/a INVESTMENT DEALS), Defendants knowingly and with the intent to defraud, obtained thousands of dollars from [names of 11 victims] by means of knowingly and falsely representing to said individuals that the titles to properties being sold to them by the defendants were not encumbered by liens or other security interests, intending that said individuals rely on said misrepresentations, and resulting in a loss of more than \$650.00.

Information at 2.

Leal's successive petition fails to allege which elements the information failed to contain, or what facts the State failed to allege that failed to provide notice of the charges. Leal's petition fails to explain what challenges trial counsel failed to make. Since Leal's Pro Se Petition fails to allege facts supporting claims of deficient conduct or prejudice, Respondent requests the Court find the claim meritless should the Court reach the merits of the claim.

C. Ground Three

In Ground Three of his petition, Leal alleges appellate counsel failed to challenge the fact that Leal never received a copy of the pre-sentence investigation (PSI) report in his case. Pro Se PWHC at 9. In the petition, Leal points out that the offense date was only over a course of 90 days, rather than one year. *Id.* Leal also alleges he does not understand the information in the offense synopsis. *Id.*

Leal contends that the errors in the PSI will adversely affect his appearing before the parole board. Pro Se PWHC at 9. However, Leal fails to explain how a discrepancy in the date of offense or the offense synopsis will adversely affect him. Leal's petition also fails to explain what the correct offense date should be, and how the offense synopsis should be changed. *Id.*

Leal's Ground Three claim alleges only conclusory allegations that fail to demonstrate deficient conduct or prejudice under Strickland. Leal fails to allege material errors in the PSI (incorrect number of prior felonies or prior offenses that he failed to commit).

Respondent requests the Court deny Leal's conclusory Ground Three claim.

///
///
///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The relevant Nevada authority compels dismissal of Leal’s Counseled and Pro Se Petitions for writ of habeas corpus because the petitions are untimely and successive. Should the Court reach the merits of the claims in those pleadings, they are meritless.

RESPECTFULLY SUBMITTED this 12th day of August 2020.

AARON D. FORD
Attorney General

By: /s/ Michael Bongard
MICHAEL J. BONGARD
Senior Deputy Attorney General
Nevada Bar No. 007997
mbongard@ag.nv.gov
Post-Conviction Division
1539 Avenue F, Suite 2
Ely, Nevada 89301

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK LEAL,
Appellant,

vs.

JERRY HOWELL, WARDEN,
SOUTHERN DESERT CORRECTIONAL
CENTER,
Respondent.

No. 79243-COA

FILED

OCT 09 2020

CLERK OF THE COURT
BY *[Signature]*
DEPUTY CLERK

ORDER OF AFFIRMANCE

Jack Leal appeals from an order of the district court denying a postconviction petition for a writ of habeas corpus. Eighth Judicial District Court, Clark County; Michael Villani, Judge.

Leal argues the district court erred by denying his claims of ineffective assistance of counsel raised in his March 21, 2019, petition. To demonstrate ineffective assistance of trial-level counsel sufficient to invalidate a judgment of conviction based on a guilty plea, a petitioner must show counsel's performance was deficient in that it fell below an objective standard of reasonableness and prejudice resulted in that, but for counsel's errors, there is a reasonable probability petitioner would not have pleaded guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 58-59 (1985); *Kirksey v. State*, 112 Nev. 980, 988, 923 P.2d 1102, 1107 (1996). Both components of the inquiry must be shown. *Strickland v. Washington*, 466 U.S. 668, 687-88 (1984). To warrant an evidentiary hearing, the petitioner must raise claims supported by specific factual allegations that are not belied by the record and, if true, would entitle him to relief. *Hargrove v. State*, 100 Nev. 498, 502-03, 686 P.2d 222, 225 (1984).

First, Leal claimed his counsel was ineffective because counsel also represented Leal's codefendant and, thus, had a conflict of interest. On direct appeal this court concluded Leal "waived any current or potential conflicts of interest by signing two different waivers regarding actual and potential conflicts of interest." *Leal v. State*, Docket No. 74050-COA (Order of Affirmance, September 11, 2018). Because he waived potential conflicts of interest stemming from counsel's representation of Leal's codefendant, Leal's claim was without merit. Therefore, we conclude the district court did not err by denying this claim without conducting an evidentiary hearing.¹

Second, Leal claimed his counsel was ineffective for failing to ensure his guilty plea was voluntarily entered. Leal contended his codefendant used threats and physical force to coerce him into entering a guilty plea and counsel was aware of those issues when Leal entered his guilty plea. In the written plea agreement, which Leal acknowledged having read and understood, Leal asserted that he entered his plea voluntarily and did not act under duress or coercion. At the plea canvass, Leal acknowledged that no one forced him to plead guilty and he was acting of his own free will. In light of the written plea agreement and the plea canvass, Leal failed to demonstrate his counsel's performance fell below an objective standard of reasonableness. Leal also failed to demonstrate a reasonable probability he would have refused to plead guilty and would

¹To the extent Leal claims on appeal that the waiver itself was involuntary, he did not argue this point below and we decline to consider it on appeal in the first instance. *McNelton v. State*, 115 Nev. 396, 416, 990 P.2d 1263, 1276 (1999).

have insisted on proceeding to trial had counsel performed different actions regarding entry of the guilty plea. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.²

Third, Leal appeared to claim his counsel was ineffective for failing to argue that the information did not provide him with proper notice of the allegations against him. Leal contended that, as a result of the defective information, he did not enter a knowing and voluntary guilty plea. The record demonstrates that Leal received proper notice of the allegations against him, because the information provided a plain and concise statement of the essential facts as well as a citation to the statutes discussing the crime of multiple transactions involving fraud or deceit in the course of an enterprise or occupation. See NRS 173.075(1); NRS 205.377(1). Leal did not demonstrate objectively reasonable counsel would have challenged the information on that basis. Leal also failed to demonstrate a reasonable probability he would have refused to plead guilty and would have insisted on proceeding to trial had counsel argued that the information was deficient. Therefore, the district court did not err by denying this claim without conducting an evidentiary hearing.³

Finally, Leal claimed the information did not provide him with proper notice of the allegations against him. However, this claim was not

²To the extent Leal also asserted he should be permitted to withdraw his guilty plea due to the alleged coercion, he failed to demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. See NRS 176.165.

³To the extent Leal also asserted he should be permitted to withdraw his guilty plea due to the allegedly improper notice of the charges against him, he failed to demonstrate withdrawal of his guilty plea was necessary to correct a manifest injustice. See NRS 176.165.

based on an allegation that Leal's plea was involuntarily or unknowingly entered or that his plea was entered without the effective assistance of counsel, and therefore, this claim was not appropriately raised in Leal's petition. See NRS 34.810(1)(a). Therefore, the district court properly concluded Leal was not entitled to relief based upon this claim. Accordingly, we

ORDER the judgment of the district court AFFIRMED.



Gibbons C.J.



Tao J.



Bulla J.

cc: Hon. Michael Villani, District Judge
Jack Leal
Attorney General/Carson City
Attorney General/Ely
Eighth District Court Clerk





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

MOT
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
Phone: (702) 979-9941
Email: jean.schwartzter@gmail.com
Counsel for Defendant

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

THE STATE OF NEVADA,)	Case No.: C-17-322644-2
)	
Plaintiff,)	Dept No.: XVII
)	
vs.)	
)	
JACK LEAL,)	
)	
Defendant.)	

MOTION TO MODIFY SENTENCE

COMES NOW, Defendant, JACK LEAL, by and through his attorney, JEAN J. SCHWARTZER, ESQ., and hereby files the instant Motion to Modify Sentence.

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

DATED this 28th day of October, 2020.

Respectfully submitted,

/s/ Jean J. Schwartzter
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
(702) 979-9941
Counsel for Defendant

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

NOTICE OF MOTION

TO: ALL INTERESTED PARTIES;
TO: THE STATE OF NEVADA, Respondent; and

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **MOTION TO MODIFY SENTENCE**, on for hearing before the Eighth Judicial District Court, Dept. XVII on the _____ day of _____, 2020 at _____ a.m., or as soon thereafter as may be heard.

DATED this 28th day of October, 2020.

/s/ Jean J. Schwartzer
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
(702) 979-9941
Counsel for Defendant

1
2 **POINTS AND AUTHORITIES**

3 **STATEMENT OF FACTS & PROCEDURAL HISTORY**

4 On November 29, 2016, the State charged Jack Leal (“Leal”) via a criminal complaint with the
5 following: Count 1 – ~~Racketeering~~, (Felony – (NRS 207.400(1)(c)); Counts 2 through 13 – Theft in
6 the Amount of \$3500 or More (Felony – (NRS 205.0832; 205A.030); and Count 14 – Multiple
7 Transactions Involving Fraud or Deceit in Course of Enterprise or Occupation (Felony – (NRS
8 205.377). He was charged with his co-defendant, Jessica Garcia (“Garcia”), who is his partner and
9 mother of Leal’s children.
10

11
12 These charges stemmed from the sale of various properties by Leal and/or Garcia to buyers
13 without disclosing that the homes were encumbered with mortgages. They did not tell the buyers the
14 homes were *not* encumbered but they also did not disclose the encumbrances.

15 As a results of these acts and prior to the charges being filed, on September 30, 2016, the
16 Attorney General filed a Complaint for Forfeiture on two bank accounts in the name of Parcelnomics,
17 LLC., a corporation owner by Leal and Garcia, and the real property located at 1024 Santa Helena
18 Avenue, Henderson Nevada 89002. (**See Complaint for Forfeiture, attached hereto as Exhibit 1**).
19 On this same day, the Attorney General also filed a Notice of Lis Pendens on the property. (**See Notice**
20 **of Lis Pendens, attached hereto as Exhibit 2**).
21

22 Pursuant to negotiations, on April 18, 2017 the State filed an Information reducing the charges
23 against Leal to one count of Multiple Transactions Involving Fraud or Deceit in Court of Enterprise or
24 Occupation (NRS 205.377).
25

26 On April 24, 2017, Leal and Garcia entered into almost identical Guilty Plea Agreements
27 (“GPA”). Pursuant to the GPA, Leal pleaded guilty to the charge contained in the Information.
28

1 Additionally, he agreed to be jointly and severally liable with Garcia for the restitution to the victims
2 in the amount of \$757,420. Leal also agreed to forfeit \$157,105.17, which was seized in relation to the
3 instant case, with said money to be applied to the restitution requirement leaving an outstanding
4 balance of \$600,314.83. Finally, Leal agreed to execute and file a lien in favor of the State of Nevada,
5 Office of Attorney General, in the amount of \$600,314.83 against the home located at 1024 Santa
6 Helena Avenue, Henderson Nevada 89002. Also pursuant to the GPA, if the restitution, which was to
7 come from the sale of the aforementioned home, was paid prior to their sentencing date, the Attorney
8 General agreed to not oppose the imposition of a term of probation not to exceed five years, with a
9 suspended sentence of 36-90 months term of imprisonment. 1
10

11
12 The home was put on the market and Leal attempted to sell the property. However, due to the
13 lis pendens recorded on the property, it became very difficult to sell the home. Additionally, due to the
14 actions of Garcia, against whom Leal had multiple restraining orders at the time, the sale of the home
15 was further delayed. Due to Garcia expending zero effort in selling the property, Leal requested that
16 the trustee of the trust that owned the property (Leal and Garcia were beneficiaries) convey the
17 property to Leal so that he could sell it without the burden of having Garcia sign off on every
18 document. The property was finally quit claim deeded to him on July 17, 2017. (**See Quit Claim**
19 **Deed, attached hereto as Exhibit 5)**. Leal even lowered the price of the home to comply so as to
20 comply with the GPA. Unfortunately, despite his best efforts, he was unable to sell the property prior
21 to their scheduled sentencing date.
22

23 On August 17, 2017, Leal was sentenced to a minimum of seventy-two (72) months and a
24 maximum of one hundred eighty (180) months in the Nevada Department of Corrections (NDC); with
25

26
27 1 Garcia's GPA differed from Leal's to the extent that if the restitution was paid prior to sentencing,
28 she received probation and was honorably discharged, she would be permitted to withdraw her plea of
guilty to the charge contained in the information and enter a plea of guilty to the crime of Conspiracy
to Commit Theft (Gross Misdemeanor – NRS 199.480; 205.0832). (**See GPA of Jack Leal, attached**

1 zero (0) days credit for time served. Restitution in the amount of \$757,420.00 to the victims (jointly
2 and severally with Garcia) was also ordered. Garcia did not appear for sentencing and a bench warrant
3 was issued for her arrest.

4 Leal, through his attorney, now files the instant Motion to Modify Sentence.

5
6 **ARGUMENT**

7 **I. LEAL WAS SENTENCED BASED UPON MATERIALLY UNTRUE**
8 **ASSUMPTIONS OR MISTAKES OF FACT ABOUT HIS CRIMINAL**
9 **HISTORY**

10 In general, a district court lacks jurisdiction to modify a sentence once the defendant has started
11 serving it. Passanisi v. State, 108 Nev. 318, 322, 831 P.2d 1371, 1373 (1992). However, a district
12 court does have inherent authority to correct, vacate or modify a sentence where the defendant can
13 demonstrate the sentence violates Due Process because it is based on a materially untrue assumption or
14 mistake of fact that has worked to the defendant's extreme detriment. Edwards v. State, 112 Nev. 704,
15 707, 918 P.2d 321, 324 (1996); *see also* Passanisi, 108 Nev. at 322. Not every mistake or error during
16 sentencing gives rise to a Due Process violation. State v. District Court, 100 Nev. 90, 97, 677 P.2d
17 1044, 1048 (1984). The Nevada Supreme Court has emphasized that a "motion to modify a sentence
18 is limited in scope to sentences based on mistaken assumptions about a defendant's criminal record
19 which work to the extreme detriment of the defendant." Edwards, 112 Nev. at 708.

20
21 **A. Charges on September 17, 2007**

22
23 The PSI states that Leal was charged on September 17, 2007 for Forgery in Berwyn, Illinois,
24 with the disposition being Theft by Deception and a sentence of twenty-four (24) months probation.
25 (See PSI at page 3). The PSI states that also on that same day Leal was charged with an additional
26 two counts of Theft by Deception and Possession of Fraudulent Identification Card in Lyons, Illinois
27

28 hereto as Exhibit 3; *see also* GPA of Jessica Garcia, attached hereto as Exhibit 4.)

1 with a disposition of Theft by Deception and a sentence of twenty-four (24) months probation. (See
2 Id.). These entries stem from the same act that was committed while crossing district lines, **all**
3 **charges were dealt together to ONE count of Theft by Deception and Leal only served ONE**
4 **term of 24 months on probation.** Additionally, he was **honorably discharged from probation,**
5 which is not noted in his PSI.
6

7 Additionally, at Leal's sentencing, the Attorney General incorrectly argued that Leal had been
8 convicted of two felonies: Theft by Deception and Possession of Fraudulent ID. (See Transcript of
9 Sentencing August 17, 2017 at 3, attached hereto as Exhibit 6). This is not true. He has been
10 convicted one felony: Theft by Deception.
11

12 **B. Misdemeanor Charges**

13 The PSI states that Leal was convicted in Illinois of the misdemeanor offenses of, *inter alia*,
14 Resist Peace Office [sic] in 2003 for which he received community service, and Resist Peace Officer
15 in 2006, for which he received ten days in jail. (See PSI at page 4). These convictions are misleading.
16 Leal was cited for a driving with a suspended license and in no way physically resisted a Resist Peace
17 Office [sic].
18

19 **C. Additional Charges in Illinois for Which No Disposition is Noted**

20 The PSI states that Leal was cited in 2003 and 2009 for Retail Theft, Resist Peace Officer on
21 four occasions, Financial Identification Theft, Forgery, and Theft by Deception. (See PSI at page 4).
22 The additional four charges of Resist Peace Officer is duplicative and incorrect. Leal was not arrested
23 or cited for this crime in addition to the other Resist Police Officer charges (also incorrect), discussed
24 *supra* in section B of the instant Motion.
25

26 The charges of Financial Identification Theft, Forgery and Theft by Deception are all
27 duplicative of the September 17, 2007 charges. It is important to note that the date for these duplicative
28

1 charges appears to be 2009, which is the year Leal was discharged from probation on the same 2007
2 charges. The Illinois equivalent of parole and probation may enter charges differently than Nevada
3 Parole and Probation does and Illinois may have noted the same charges in 2009 at the time Leal was
4 honorably discharged from probation. This entry appears to have shown up as a separate set of
5 charges, which is incorrect.

6
7 It should be noted that the Retail Theft charge was a **misdemeanor** charge.

8 In summary, it incorrectly appeared at sentencing that Leal had been charged with **ten** different
9 crimes (**seven** felonies, **three** non-traffic misdemeanors); convicted of **four** crimes (two felonies and
10 three non-traffic misdemeanors); and served **two** probation periods of two years and ten days in jail,
11 all prior to the instant offense.

12
13 The reality is that Leal has been charged with a total of **FOUR** crimes felonies and one non-
14 traffic misdemeanor), has been convicted of **ONE** non-violent felony (Theft by Deception) and **TWO**
15 non-traffic misdemeanors; and has served **ONE** period of probation prior to the instant offense and ten
16 days in jail.

17
18 Additionally, it should be noted that Leal viewed his PSI for the first time a year after he was
19 sentenced. (See Written Correspondence between Jack Leal and Parole and Probation
20 Regarding PSI, attached hereto as Exhibit 7).

21 It was through no fault of the Court that it believed Leal had a very checkered past at the time
22 of sentencing. The Court received incorrect information regarding Leal's criminal history, which was
23 used to determine Leal's sentence. Therefore, Leal's sentence was based on mistaken assumptions
24 about his criminal record which worked to his extreme detriment. Therefore, Leal requests that this
25 Court resentence him based upon the correct information regarding his criminal history. Edwards, 112
26 Nev. at 708.

1 **II. LEAL'S CO-DEFENDANT BENEFITTED FROM ABSCONDING AND FROM**
2 **LEAL'S SUCCESSFUL EFFORTS TO PAY RESTITUTION**

3 Leal's co-defendant, Garcia, received a benefit from absconding and failing to appear at her
4 and Leal's initial sentencing. Leal appeared as ordered for his sentencing on August 17, 2017. Due to
5 the fact that the home had not been sold and the restitution not paid, the State argued for sixty (60) to
6 one hundred eighty (180) months. Leal was sentenced as such.

7 Garcia, on the other hand, **absconded to Florida and failed to appear for sentencing.** She
8 was eventually apprehended in Florida and extradited to Las Vegas, Nevada. Her sentencing was
9 continued several times as her attorney represented to the Court that she was in the process of selling
10 properties in Florida so as to pay towards the restitution. (See March 29, 2018 Minutes, attached
11 **hereto as Exhibit 8).** **These Florida properties did not belong to Garcia. Instead, they belonged to**
12 **Leal who, from prison, was working with his Power of Attorney to sell the properties** so as to
13 contribute funds to the ordered restitution.
14

15 On April 24, 2018, Garcia represented to this Court that she was in the process of signing
16 documents to sell the home. (See April 24, 2018 Minutes, attached hereto as Exhibit 9). Given the
17 fact that she was no longer the owner of the home and had not been for almost a year at his point, this
18 appears to be a misrepresentation.
19

20 Eventually, the Court denied any further requests for continuances and sentenced Garcia on
21 April 23, 2019. (See April 23, 2019 Minutes, attached hereto as Exhibit 10). She received the same
22 sentence Leal did. (See Id.). However, on May 6, 2019, Garcia filed a Motion to Reconsider Sentence
23 pursuant to EDCR 3.20, which allows a defendant to request reconsideration within fifteen (15) days
24 of sentencing. (See Motion for Reconsideration, attached hereto as Exhibit 11). In her Motion,
25 Garcia claimed that the sale of the property was going to close on May 9, 2019 and that she had
26 "worked hard to push for the closing to take place" on the property. (See Id. at 3). At this point,
27
28

1 Garcia had not owned the property in almost two years. At the time the property was sold, it was
2 owned solely by Leal and it was he who effectuated the sale and ultimate fulfillment of their
3 restitution obligation, not Garcia. It appears as though the Court was not made aware of these facts.
4 Ultimately this Court granted Garcia's Motion and reduced her sentence to forty-eight (48) to one
5 hundred twenty (120) months in the Nevada Department of Corrections. (See July 9, 2019 Minutes,
6 attached hereto as Exhibit 12).

8 Leal could not file such a motion to request a reduction in his sentence for selling the home and
9 paying restitution to the victims because he actually appeared at the scheduled sentencing hearing,
10 unlike Garcia. As a result, almost two years had passed between his sentencing date and the day of
11 the sale of the house, the event that would have warranted a reduction occurred, making a Motion to
12 Reconsider Sentence untimely pursuant to EDCR 3.20. It should also be noted that Garcia picked up
13 three new charges prior to her sentencing date whereas Leal did not pick up any new charges.
14 (See Exhibit 8).

16 In short, Garcia benefited from absconding and from Leal's efforts from prison to pay down
17 the restitution, yet claimed his efforts as her own. She was not held accountable for absconding or
18 picking up new charges. This is in stark contrast to Leal, who was punished for appearing at his
19 sentencing hearing with and received no benefit for his efforts devoted to selling the home *from*
20 *prison* and paying the restitution. In the spirit of fairness and justice, Leal asks that the court consider
21 this discrepancy when ruling on the instant Motion to Modify, which is based upon a materially untrue
22 assumption and mistake of fact about his criminal history that has worked to his extreme detriment
23 and reduce his sentence.

26 ///

27 ///

28

1 **CONCLUSION**

2 Based upon the foregoing, JACK LEAL respectfully requests that the Court vacate his sentence
3 and schedule a new sentencing hearing so that he may be sentenced based upon correct information
4 regarding his criminal history.

5 DATED this 28th day of October, 2020.

6
7 Respectfully submitted,

8
9 /s/ Jean J. Schwartzer

10 JEAN J. SCHWARTZER, ESQ.

11 Nevada Bar No. 11223

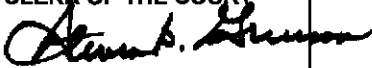
12 LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.

13 170 S. Green Valley Parkway #300

14 Henderson, Nevada 89012

15 (702) 979-9941

16 Counsel for Defendant
17
18
19
20
21
22
23
24
25
26
27
28



1 **OPPM**
AARON D. FORD
2 Attorney General
Michael C. Kovac (Bar No. 11177)
3 Chief Deputy Attorney General
State of Nevada
4 Office of the Attorney General
555 E. Washington Ave., Ste. 3900
5 Las Vegas, Nevada 89101-1068
6 P: (702) 486-3420
F: (702) 486-0660
7 mkovac@ag.nv.gov
Attorneys for the State of Nevada

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

<p>10 STATE OF NEVADA,</p> <p>11 12 Plaintiff,</p> <p>13 14 v.</p> <p>15 JACK LEAL,</p> <p>Defendant.</p>		<p>Case No.: C-17-322664-2</p> <p>Dept. No.: 17</p>
---	--	---

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY SENTENCE**

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

21 Dated this 3rd day of November, 2020.

22
23 **SUBMITTED BY:**
24 AARON D. FORD
Attorney General

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

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 FACTS AND RELEVANT PROCEDURAL HISTORY

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

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

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

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

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

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

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

27 Immediately following the entry of plea, the undersigned deputy met with Weiner, LEAL, and
28 GARCIA in the hallway outside of the courtroom where the plea was entered. At that time, the

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

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

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

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

28 ///

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

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

12 On August 17, 2017, LEAL appeared for his sentencing hearing. At that hearing, LEAL proved
13 himself to be a conman through and through. First, LEAL lied to this Court and stated that the property
14 at 1024 Santa Helena Avenue was free of any liens (the exact type of misrepresentation that landed him
15 in this mess in the first place). *Defense Exhibit 6*, at 5:11-5:12. Second, LEAL *twice* lied to this Court
16 and stated that he properly filed a lien against that property and in favor of the State, as required by the
17 terms of the plea agreement. *Id.* at 4:10, 5:5-5:6. As explained above, at the time LEAL made that false
18 statement to this Court, he was well aware that his attempted filing (which took place one day prior to
19 sentencing) was suspended.

20 During the sentencing, there was little discussion of LEAL’s prior convictions. After the State
21 noted the prior Illinois convictions listed in LEAL’s PSI, the following exchange took place between
22 LEAL, LEAL’s attorney at the time (Jason Weiner), the Court, and the undersigned deputy:

23 THE COURT: How about the two prior fraud cases?

24 MR. WEINER: I do not believe those involved –

25 THE COURT: No, I want to know his past –

26 MR. WEINER: -- real –

27 THE COURT: -- record, what are those about?

28 MR. WEINER: I think those were how many years ago?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

[Colloquy between Counsel and Defendant]

MR. WEINER: Yeah, I think it was just a theft. That's what I thought.

[Colloquy between Counsel and Defendant]

THE COURT: Well, one was forgery pled to a theft. One was theft by deception which sounds like what we have here and he pled to theft by deception and he got 20 –

MR. WEINER: Right, that the one in 2007, Your Honor. They're actually from the same case. That's why the dates are the same.

THE COURT: It was a different – I mean, --

MR. WEINER: The 9/17 of 2007, the Court looked at the two convictions. They're both from the same –

THE DEFENDANT: Incident.

MR. WEINER: -- incident.

THE COURT: State, do you know anything about the facts of those cases?

MR. KOVAC: I don't know the facts. I just see that there's two separate cases listed, one with one felony, one with two felonies.

Id. at 10:13-11:9.

The State argued for a sentence of 60 to 180 months in prison. This Court, focusing on LEAL's conduct in the present case (as opposed to his criminal history), sentenced LEAL to a 72- to 180-month term of imprisonment. *Id.* at 21:12-21:16. A day after the sentencing, the Recorder's Office accepted documentation from the undersigned Deputy and lifted the suspension on the lien required under the terms of LEAL's GPA.¹

Following his conviction, LEAL – through privately-retained counsel – made several failed attempts to obtain post-conviction relief. It is the undersigned deputy's understanding that, throughout

¹ Garcia failed to appear for sentencing. The Court issued a bench warrant for her arrest. Subsequently, Garcia was apprehended and sentenced separately.

1 the duration of the investigation, prosecution, and post-conviction proceedings, LEAL – who wants this
2 Court to believe he could not pay any restitution as a result of his codefendant’s conduct – paid for the
3 services of the following private defense attorneys: (1) Michael Pariente; (2) Jason Weiner; (3) Craig
4 Mueller; (4) Joseph Gersten; (5) Lester Paredes; and now (6) Jean Schwartzer.

5 In the Motion presently before the Court, LEAL seeks relief based on two assertions: (1) that
6 LEAL’s sentence was based on materially untrue assumptions or mistakes of fact relating to his criminal
7 history; and (2) LEAL’s co-defendant benefitted from absconding and from LEAL’s successful efforts
8 to pay restitution. For the following reasons, both arguments fail.

9 ARGUMENT

10 Defense counsel correctly cites *Passanisi v. State*, 108 Nev. 318, 322, 831 P.2d 1371, 1373
11 (1992), for the principle that, “[i]n general, a district court lacks jurisdiction to modify a sentence once
12 the defendant has started serving it.” *Motion*, at 5:9-5:10. Defense counsel also correctly cites *Edwards*
13 *v. State*, 112 Nev. 704, 707, 918 P.2d 321, 324 (1996) – a case that relies heavily on *Passanisi* – for the
14 principle a “motion to modify a sentence is limited in scope to sentences based on mistaken assumptions
15 about a defendant’s criminal record which work to the extreme detriment of the defendant.” *Motion*, at
16 5:17-5:20. Both of these opinions were based on NRS 34.724(2)(a), which provides that a petition for a
17 writ of habeas corpus “[i]s not a substitute for and does not affect any remedies which are incident to the
18 proceedings in the trial court”

19 There are two fatal flaws in LEAL’s arguments. First, even under the legal principles cited by
20 the defense, this Court has no authority to consider LEAL’s argument about his codefendant benefiting
21 from his purported efforts to pay restitution. Second, and more importantly, *Passanisi* was overruled
22 insofar as it defined NRS 34.724(2)(a)’s phrase “remedies which are incident to the proceedings in the
23 trial court” in a manner that renders the defense’s arguments – and reliance upon *Passanisi* and *Edwards*
24 – meritless.

25 Specifically, in *Harris v. State*, the Nevada Supreme Court explained that “[a] post-conviction
26 petition for a writ of habeas corpus is the *exclusive remedy* for challenging the validity of a conviction or
27 sentence aside from direct review of a judgment of conviction on appeal and ‘remedies which are incident
28 to the proceedings in the trial court.’” 130 Nev. 435, 437, 329 P.3d 619, 621 (2014) (quoting NRS

1 34.724(2)(a)) (emphasis in the original). When examining the phrase “remedies which are incident to
2 the proceedings in the trial court,” the Nevada Supreme Court expressly overruled *Passanisi* insofar as it
3 defined that phrase (the definition upon which LEAL’s present arguments turn) to permit such motions
4 to be filed *after sentencing* and held, instead, that “a motion is ‘incident to the proceedings of the trial
5 court’ when it is *filed prior to sentencing*.” *Id.* at 447, 329 P.3d, at 627-28 (emphasis added).

6 That is where the analysis of LEAL’s present motion must begin and end; because LEAL filed
7 the present motion after his sentencing, this Court lacks the authority to grant the relief requested.
8 Moreover, even if the Court had the authority to address the merits of LEAL’s argument, it must be noted
9 that more than three years have passed since LEAL was sentenced, and LEAL *still* has not presented a
10 shred of evidence showing that the criminal history set forth in his PSI was incorrect.

11 To the extent LEAL’s arguments are based on the criminal history set forth in his PSI, the Nevada
12 Supreme Court has made clear that “any objections must be resolved prior to sentencing, and, if not
13 resolved in the defendant’s favor, the objections must be raised on direct appeal.” *Stockmeier v. State,*
14 *Bd. of Parole Com’rs*, 127 Nev. 243, 250, 255 P.3d 209, 214 (2011). As the Court explained, “to allow
15 a defendant to wait and challenge a PSI in a later action would open the courts to a flood of litigation
16 from prisoners seeking amendments to their PSIs long after being sentenced.” *Id.* at 251, 255 P.3d, at
17 214. LEAL needed to make his arguments on direct appeal; he cannot make them in this post-conviction
18 motion.

19 ///
20 ///
21 ///
22 ///
23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 To the extent LEAL's arguments are based on the sentence his codefendant received, the defense
2 has failed to cite any legal authority that would allow this Court to entertain any such arguments – because
3 no such authority exists. Thus, such arguments cannot serve as a basis for the relief requested.

4 CONCLUSION

5 For the foregoing reasons, the State respectfully requests that the Court deny Defendant's
6 Motion to Modify Sentence.

7 Dated this 3rd day of November, 2020.

8 SUBMITTED BY:

9 AARON D. FORD
10 Attorney General

11 By: /s/ Michael C. Kovac
12 MICHAEL C. KOVAC (Bar No. 11177)
13 Chief Deputy Attorney General
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RPLY
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
Phone: (702) 979-9941
Email: jean.schwartzter@gmail.com
Counsel for Defendant

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

THE STATE OF NEVADA,)	Case No.: C-17-322644-2
Plaintiff,)	Dept No.: XVII
vs.)	
JACK LEAL,)	
Defendant.)	

REPLY TO STATE’S OPPOSITION TO MOTION TO MODIFY SENTENCE

COMES NOW, Defendant, JACK LEAL, by and through his attorney, JEAN J. SCHWARTZER, ESQ., and hereby files the instant Reply to State’s Opposition to Motion to Modify Sentence.

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

DATED this 9th day of November, 2020.

Respectfully submitted,

/s/ Jean J. Schwartzter
JEAN J. SCHWARTZER, ESQ.
Nevada Bar No. 11223
LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
170 S. Green Valley Parkway #300
Henderson, Nevada 89012
(702) 979-9941
Counsel for Defendant

1
2 **POINTS AND AUTHORITIES**

3
4 **I. Leal Did Not Lie to This Court at Sentencing**

5 The State claims that Leal lied to this Court at sentencing by stating that there were no liens on
6 the property when two nominal Republic Waste liens existed. When looking at the context of the
7 statement, the comment about the home being “free and clear” was referencing the fact that there were
8 was nothing that would prevent him from selling the home. Leal brought the title to court showing the
9 *two nominal* liens. **See Exhibit 6 at 5. 1** He was not attempting to hide these inconsequential and
10 nominal liens from this Court.

11
12 The State also claims that Leal lied to this Court by stating that he filed a lien in the favor of
13 the Attorney General’s office when according to the State, “at the time, Leal made that false statement
14 to this Court, he was well aware that his attempted filing was suspended.” **See State’s Opposition**
15 **(“OP”) at 4.** It is clear from the sentencing transcript that Leal filed a lien in the Attorney General’s
16 favor and provided that paperwork to the State. If the recording of the document was suspended, this is
17 not the fault of Leal. Leal complied with the terms of the Guilty Plea Agreement by submitting the lien
18 to the County Recorder’s Office for recording. To accuse Leal of lying to this Court is disingenuous.
19 Leal cannot be held accountable for what the County Recorder’s Office chose to do with the lien after
20 he submitted it for recording. This is especially so when Leal’s attorney explained to this Court at
21 sentencing about the issues Leal had at the County Recorder’s Office due to the fact he was oddly
22 recording a lien against himself in the Attorney General’s favor. **See Exhibit 6 at 8.**

23
24
25 **II. This Court Did Take Leal’s Criminal History Into Consideration**

26 The State claims that “[t]his Court, focusing on Leal’s conduct in the present case (*as opposed*
27

28

1 All exhibits referred to in the instant Reply are attached to Leal’s Motion to Modify Sentence.

1 *to his criminal history*), sentenced Leal to a 72 to 180 month term of imprisonment.” See SO at 5
2 **(emphases added)**. While the State’s allegation that this Court only focused on Leal’s conduct in the
3 present case (as opposed to his criminal history) makes it easier to argue that any mistaken
4 assumptions about Leal’s criminal record played no role in his sentence, this is clearly not true based
5 upon the questions this Court asked of Leal’s attorney:
6

7 THE COURT: What about the two prior fraud cases?

8 MR. WEINER: I do not believe those involved real --

9 THE COURT: No, I want to know his past --

10 MR. WEINER: --real--

11 THE COURT: --record, what are those about?

12 See Exhibit 6 at 10.

13 To say that this court did not take into consideration Leal’s criminal history, while convenient
14 for the State’s argument, appears to be absolutely untrue based upon this Court’s interest in Leal’s
15 history when it said, “I want to know his past..[]..record, what are those about?” See Id.

16 Moreover, the State conveniently fails to address the fact that it misrepresented to this
17 Court that Leal had been convicted of three felonies. See Exhibit 6 at 3. Leal’s PSI shows he was
18 convicted of two felonies and Leal argues in his Motion to Modify he was actually convicted of one
19 felony. Even if this Court chooses to take the PSI as is on its face, the State still misrepresented Leal’s
20 criminal history by stating that Leal had been convicted of THREE felonies. Although the State
21 claims that Leal provides no proof of any of the *other* mistakes about his criminal history, it should be
22 noted that Leal cannot prove a negative. See SO at 7.

23 III. Harris has not been extended to a Motion to Modify

24 In its Opposition, the State claims that the Nevada Supreme Court ruled in Harris v. State² that
25 motions such as the Motion to Modify Sentence filed by Leal is not “incident to the proceedings of the
26 trial court” and therefore any arguments raised in such a motion must be filed in a petition for writ of
27

1 habeas corpus (post-conviction). See SO at 6-7. The State then argues that the analysis of Leal's
2 Motion to Modify Sentence begins and ends here and that this Court lacks the authority to grant the
3 relief requested. See SO at 7. This State cites to no authority in support of this new interpretation of
4 Harris.

5
6 In Harris, the Nevada Supreme Court held that after sentence has been imposed, the statutory
7 post-conviction habeas petition takes the place of a *motion to withdraw a guilty plea*, overruling Hart
8 v. State, 116 Nev. 558, 1 P.3d 969 (2000). 130 Nev. at 2. At no point since Harris was decided has the
9 Supreme Court extended the holding to a motion to modify. In fact, since Harris was decided, the
10 Supreme Court has ruled on numerous cases involving a motion to modify and/or a motion to
11 withdraw guilty plea. In these cases, the Supreme Court has repeatedly chosen to apply Harris to
12 motions to withdraw guilty plea but not to motions to modify. Instead, the Supreme Court has
13 continued to hear appeals on motions to modify sentence and apply the standard enunciated in
14 Edwards v. State,³ which is that a motion to modify is limited in scope to challenging sentences based
15 on mistaken assumptions about a defendant's criminal record which work to the defendant's extreme
16 detriment.⁴ Leal cannot find a single case (citable or un-citable) that applies the Harris holding to a
17 motion to modify sentence despite the numerous opportunities for the Nevada Supreme Court to do so.
18
19

20 IV. **Stockmeier Does Not Preclude a Defendant From Filing a Motion to Modify**
21 **Sentence Based Upon a Mistake Assumption About the Defendant's Criminal**
22 **record**

23 Finally, the State argues that Leal is precluded by the ruling in Stockmeir v. State, Bd. of

24 ² 130 Nev. 435 (2014).

25 ³ 112 Nev. 704, 708, 918 P.2d 321, 324 (1996).

26 ⁴ State v. Abara, 2018 Nev. Unpub. LEXIS 1032 (unpublished disposition)(Sept. 13, 2018)(applying
27 Edwards standard, not Harris, to analysis of motion to modify sentence and holding that "the record
28 does not support the district court's determination that consideration of the possession case was a
mistaken assumption about Abara's criminal record that worked to his extreme detriment").

1 Parole Com'rs from arguing that this Court sentenced him based upon mistakes about his criminal
2 history if those mistakes are contained in his PSI. 127 Nev. 243, 250, 255 P.3d 209, 214 (2011). See
3 **SO at 7.** The State fails to cite to any legal authority in support of the notion that Stockmier precludes
4 or supersedes the standard enunciated in Edwards when arguing, in a motion to modify, that the court
5 relied on mistaken assumptions about a defendant's criminal history at sentencing. There is no legal
6 requirement, in statue or case law, mandating that the "mistakes" come from somewhere or someone
7 other than the PSI. Leal is entitled to request a modification of sentence based upon *any* mistakes,
8 from *any* source, about his criminal history that this Court relied upon when sentencing him. There is
9 no case law stating otherwise. Moreover and again, one of the mistakes, that Leal has been convicted
10 of **three** felonies came from the State's arguments at sentencing, not the PSI.
11

12 CONCLUSION

13
14 Based upon the foregoing, JACK LEAL respectfully requests that the Court vacate his sentence
15 and schedule a new sentencing hearing so that he may be sentenced based upon correct information
16 regarding his criminal history.

17 DATED this 9th day of November, 2020.

18
19 Respectfully submitted,

20
21 /s/ Jean J. Schwartzer
22 JEAN J. SCHWARTZER, ESQ.
23 Nevada Bar No. 11223
24 LAW OFFICE OF JEAN J. SCHWARTZER, Ltd.
25 170 S. Green Valley Parkway #300
26 Henderson, Nevada 89012
27 (702) 979-9941
28 Counsel for Defendant

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondent.

Supreme Court No. 79243
District Court Case No. C322664

FILED

NOV 10 2020

Elizabeth A. Brown
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 9th day of October, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
November 03, 2020.

Elizabeth A. Brown, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk

C-17-322664-2
CCJA
NV Supreme Court Clerks Certificate/Judgm
4936221



IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondent.

Supreme Court No. 79243
District Court Case No. C322664

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: November 03, 2020

Elizabeth A. Brown, Clerk of Court

By: Rory Wunsch
Deputy Clerk

cc (without enclosures):
Hon. Michael Villani, District Judge
Jack Leal
Attorney General/Ely

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on NOV 10 2020.

HEATHER UNGERMANN

Deputy District Court Clerk

RECEIVED
APPEALS

NOV 10 2020

CLERK OF THE COURT

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

November 17, 2020 10:15 AM Defendant's Motion to Modify Sentence

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

COURT CLERK: Albrecht, Samantha

RECORDER: Georgilas, Cynthia

REPORTER:

PARTIES PRESENT:

Jean Schwartzner	Attorney for Defendant
Michael C. Kovac	Attorney for Plaintiff
State of Nevada	Plaintiff

JOURNAL ENTRIES

Argument by Ms. Schwartzner and Mr. Kovac. COURT ORDERED, Motion DENIED WITHOUT PREJUDICE. Court stated if Ms. Schwartzner can obtain the records on the other cases, it would take a look at them. Court noted its concern regarding the fraudulent conduct in these cases. Court DIRECTED Mr. Kovac to prepare the Order for today's decision within THIRTY (30) days. COURT FURTHER ORDERED, matter SET for Status Check. Court noted it would not sign the Order prior to the Status Check date.

NDC

12/15/2020 10:15 AM STATUS CHECK: ORDER

Harold Shinn
CLERK OF THE COURT

1 Jack Leal ID NO. 1183500

2 SOUTHERN DESERT CORRECTIONAL CTN.
3 20825 COLD CREEK RD.
4 P.O. BOX 208
5 INDIAN SPRINGS, NV 89070

6 Eighth Judicial District Court

7 Clark County, Nevada

8 Jack Leal,
9 Petitioner,

10 v.

11 Jerry Howell, Warden, Southern Desert
12 Correctional Center, State of Nevada,
13 Respondents.

CASE NO.: A-20-00814369-W

DEPT. NO.: XVII

DOCKET: _____

14 Supplemental to Petition for Writ of Habeas Corpus
15 (Post-Conviction)

17 COMES NOW, Petitioner, Jack Leal, herein above respectfully
18 moves this Honorable Court ~~to~~ to grant Petitioner relief to which he may
19 be entitled in this proceeding. Ground Four is being added as it was rejected
20 due to Rule 37D but to not consider it would result in a miscarriage of justice.

21 This Motion is made and based upon the accompanying Memorandum of Points and
22 Authorities,

23 DATED: this 20th day of November, 2020

24 BY: _____

Jack Leal

1183500

~~Defendant~~ In Proper Personam
25 Petitioner

26 RECEIVED

NOV 30 2020

CLERK OF THE COURT

27 Page 1

1 23. (d) GROUND FOUR: Leal's Guilty Plea Agreement is invalid as it was
2 entered into involuntarily, under duress, because of undue influence and was coerced all in
3 violation of his rights pursuant to the Fifth, Sixth and Fourteenth Amendments to the
4 Constitution of the United States of America and of Article I of the Nevada Constitution

5 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law): _____

6 Leal had been involved in Real Estate since 2009 without any issues. On September 29th 2016 the
7 Nevada Attorney General's (A.G.) office filed a civil complaint for forfeiture (A-16-744347-C). Leal's
8 co-defendant, Jessica Garcia (Garcia), immediately retained counsel Michael Pariente (Pariente) to represent
9 both Defendants in the civil case. At some point the A.G. decided to pursue criminal charges against
10 Leal and Garcia and made a formal offer letter, which was contingent upon both Defendants acceptance
11 (a package plea deal), to Pariente. This is when Garcia began to pressure Leal to accept the deal
12 as it greatly benefited her by leaving her with only a misdemeanor conviction.

13 On November 25th 2016 Garcia found out that Leal contacted Pariente directly to discuss options
14 available to Leal other than pleading guilty and ~~was~~ Garcia became irate and an argument began
15 that ended with Leal being physically attacked. Garcia was subsequently arrested on this date for
16 domestic battery against Leal. This was the beginning of a series of events by Garcia to force
17 and intimidate Leal into entering a guilty plea for her benefit including 4 separate arrests,
18 5 order of protections (no contact orders), at least 8 calls for police service and numerous threats
19 all of which led to Leal's eventual conviction due to him entering a completely involuntary and coerced
20 guilty plea on April 24th 2017.

21 After the November 2016 incident, Pariente refused to further represent both Defendants. Criminal
22 charges were not yet filed. Garcia then retained Jason Weiner (Weiner) to represent both Defendants.
23 Once criminal charges were filed, and when Leal became aware of the allegations and the severity
24 of them, he immediately confronted Garcia who made numerous threats about Leal not saying or doing
25 anything about it, all of which continued for months.

26 On April 20th 2017 Leal made his first personal appearance in court and wanted to tell the court
27 about the continued violence and threats against him so Weiner requested a continuance.
28

1 The court date was continued to April 24th 2017 and Leal again planned to disclose these issues to
2 the court and to plead not guilty but as Leal was leaving his house for court that morning
3 Garcia showed up and literally attacked Leal and made threats that he would never see his kids again
4 if he did not sign the guilty plea in court that day or if he called the police again. Leal being completely
5 disoriented and having been ^{just hours earlier} physically attacked and having been threatened for months by that
6 point, signed the guilty plea agreement that day but only under complete duress and with the
7 fear that not doing so would put him in immediate and continued danger.

8 On August 17th 2017 Leal had a court date at which Weiner was well aware of the actual conflicts
9 between the defendants which is shown by the record as he attempted to withdraw as counsel due to
10 what had become an unworkable conflict. The court was unaware of the totality of the situation as
11 Weiner could not simply tell the court the complete story since Garcia was also his client. Weiner
12 had informed Leal that he was going to withdraw as counsel that morning due to the threats and
13 conflicts and that the court would appoint Leal independent counsel whom Leal believed was going
14 to help him withdraw his involuntary plea and disclose the threats and violence to the court
15 but instead the court sentenced Leal on this day, despite Weiner's attempts to withdraw as counsel.
16 By the time Leal entered his guilty plea, he had already been subjected to several threats and
17 instances of actual violence against him due to his desire not to go along with the plea negotiations
18 so by that point the plea was only obtained by both actual and threatened physical harm to Leal
19 which stripped the plea of a voluntary act since his will was overborne. Both Weiner and the
20 A.G. knew and had an obligation to alert the court of the existence of coercion and of an
21 actual conflict of interest between the defendants. This is made clear in the "State's
22 opposition to defendant's motion for bail pending appeal" filed on April 23 2018. This is
23 shown on Page 3 where "Weiner made vague statements about unidentified issues holding
24 up the sale" (Line 21) which were the conflicts that Weiner refused to disclose in
25 order to protect Garcia. Also in this opposition, the Deputy (A.G.) stated he is "well
26 aware of the issues" (Line 22) and goes on to list 3 of Garcia's 4 recent arrests
27 for battery, all of which were against Leal, clearly showing that Weiner and the A.G.

1 had full knowledge but did not disclose it to the court, causing Leal to essentially
2 be without any meaningful representation on his side.

3
4 Due to these issues, Leal requests that his guilty plea which was entered be declared
5 as null and void since it was induced by threats and since the coercion made it
6 involuntary and against Leal's free desire and wishes.

7
8 At a minimum Leal requests an evidentiary hearing as it is the only way to fully
9 address this claim and to determine if Leal's guilty plea was entered into freely and
10 voluntarily, and of his own free will and free from threats, or if in fact he was
11 coerced and only entered into his guilty plea agreement due to fear and
12 under complete duress.

13
14
15
16 In summary, Leal asserts that he should be permitted to withdraw his
17 guilty plea as it was entered into involuntarily and due to coercion and that
18 withdraw of his guilty plea is necessary to correct a manifest injustice.

19
20
21
22
23
24
25
26
27

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAILING

I, Jack Leal, hereby certify, pursuant to NRCF 5(b), that on this 20th
day of November, 2020, I mailed a true and correct copy of the foregoing, "Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)."
by placing document in a sealed pre-postage paid envelope and deposited said envelope in the
United State Mail addressed to the following:


Clark County District Attorney's Office
200 E. Lewis Avenue
Las Vegas, NV 89101

Nevada Attorney General's Office
100 North Carson Street
Carson City, NV 89701

Jerry Howell, Warden
Southern Desert Correctional Center
20825 Cold Creek Road
Indian Springs, NV 89070

CC:FILE

DATED: this 20th day of November, 2020.


Jack Leal # 1183500
Petitioner /In Propria Personam
Post Office Box 208, S.D.C.C.
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Supplemental Petition for Writ of Habeas Corpus (Post-Conviction)
(Title of Document)

filed in District Court Case number A-20-814369-W

Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-OR-

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

[Signature]
Signature

11-20-20
Date

Jack Leal
Print Name

Petitioner
Title

Page 6


IN THE COURT OF APPEALS OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
JERRY HOWELL, WARDEN,
SOUTHERN DESERT CORRECTIONAL
CENTER,
Respondent.

No. 79243-COA

FILED

DEC 18 2020


ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY 
DEPUTY CLERK


ORDER DENYING REHEARING

Rehearing denied. NRAP 40(c).

It is so ORDERED.¹


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Michael Villani, District Judge
Jack Leal
Attorney General/Carson City
Attorney General/Ely
Eighth District Court Clerk

¹We have reviewed Leal's November 24, 2020, motion requesting clarification as to the effective date of his judgment of conviction. We conclude no relief is warranted and deny the motion.

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondent.

Supreme Court No. 79243
District Court Case No. C322664

FILED

JAN 21 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

REMITTITUR

TO: Steven D. Grierson, Eighth District Court Clerk

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

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

DATE: January 12, 2021

Elizabeth A. Brown, Clerk of Court

By: Kaitlin Meetze
Administrative Assistant

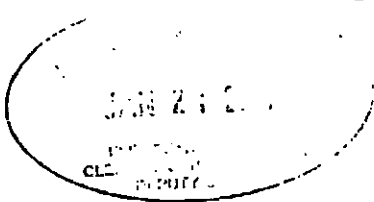
cc (without enclosures):

Hon. Michael Villani, District Judge
Jack Leal
Attorney General/Ely \ Michael Bongard, Deputy Attorney General

RECEIPT FOR REMITTITUR

Received of Elizabeth A. Brown, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JAN 13 2021.

[Signature]
Deputy District Court Clerk



RECEIVED
APPEALS

JAN 13 2021

CLERK OF THE COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACK LEAL,
Appellant,
vs.
JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,
Respondent.

Supreme Court No. 79243
District Court Case No. C322664

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

Judgment, as quoted above, entered this 09 day of October, 2020.

JUDGMENT

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

"Rehearing Denied."

Judgment, as quoted above, entered this 18 day of December, 2020.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
January 12, 2021.

Elizabeth A. Brown, Supreme Court Clerk

By: Kaitlin Meetze
Administrative Assistant

1 **DECL**
2 **LOWE LAW, L.L.C.**
3 **DIANE C. LOWE, ESQ.** Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner JACK LEAL

9
10 **EIGHTH JUDICIAL DISTRICT COURT**
11
12 **CLARK COUNTY NEVADA**
13

14 **JACK LEAL,**

15 [NDOC 1183500]

16 **Petitioner,**

17 **vs.**

18 **WILLIAM HUTCHINGS, WARDEN**
19 **OF SOUTHERN DESERT STATE**
20 **PRISON**

21 **Respondent.**

Case No.: A-20-814369-W

DEPT NO XVII

[stemming from C-17-322644-2]

DECLARATION OF JACK LEAL

22 1 I, Jack Leal, am the Petitioner.

23 2 I believe there is a reasonable probability, that were it not for the prejudicial
24 ineffective assistance of my attorneys as alleged in the documents filed in
25 this case – I would have refused the plea offer and insisted on taking this
26 matter to trial.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28


DECLARATION OF JACK LEAL

STATE OF NEVADA)

COUNTY OF CLARK)

I, JACK LEAL, the undersigned, do hereby swear that all statements, facts and events within my foregoing Affidavit are true and correct of my own knowledge, information and belief, and to those I believe them to be true and correct. Signed under penalty of perjury pursuant to NRS 208.165.

Respectfully Signed and Attested to this 18th day of MAY 2021.

 _____ X
JACK LEAL

NRS 208.165 Execution of instrument by prisoner. A prisoner may execute any instrument by signing his or her name immediately following a declaration "under penalty of perjury" with the same legal effect as if he or she had acknowledged it or sworn to its truth before a person authorized to administer oaths. As used in this section, "prisoner" means a person confined in any jail or prison, or any facility for the detention of juvenile offenders, in this state.

(Added to NRS by 1985, 1643)



1 **SUPP**
2 **LOWE LAW, L.L.C.**
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Email: DianeLowe@LoweLawLLC.com
8 Attorney for Petitioner JACK LEAL

9 EIGHTH JUDICIAL DISTRICT COURT

10 CLARK COUNTY NEVADA

11 JACK LEAL, #1183500

12 Petitioner,

13 vs.

14 WILLIAM HUTCHINGS, WARDEN
15 OF SOUTHERN DESERT STATE
16 PRISON,

17 Respondent.

Case No.: A-20-814369-W
DEPT NO XVII

[Stemming from C-17-322664-2]

SUPPLEMENTAL BRIEF IN
SUPPORT OF PETITIONER'S
POSTCONVICTION PETITION FOR
WRIT OF HABEAS CORPUS

18
19 DATE OF HEARING: AUGUST 27, 2021

20 TIME OF HEARING: 8:30 a.m.

21
22 COMES NOW, Petitioner, JACK LEAL, by and through his counsel of
23 record DIANE C. LOWE, ESQ., and hereby submits his supplemental brief in
24 support of his Petition for Writ of Habeas Corpus.
25
26
27
28

1 This Supplement is made and based upon the pleadings and papers on
2 file herein, and the Points and Authorities attached hereto, and any oral arguments
3 adduced at the time of hearing/s on this matter. Petitioner, JACK LEAL alleges that
4 he is being held in custody in violation of the Fifth, Sixth, and Fourteenth
5 Amendments of the Constitution of the United States of America, and Articles I and
6 IV of the Nevada Constitution.
7
8

9
10 Dated this 20th day of May 2020.

11 Respectfully Submitted,
12 /s/ Diane C. Lowe
13 DIANE C. LOWE ESQ. Nevada Bar #14573
14

15
16 **POINTS AND AUTHORITIES**

17 **I. STATEMENT OF THE CASE**

18 Mr. LEAL was charged November 29, 2016 with his wife JESSICA GARCIA and
19 their company PARCELNOMICS, LLC (d/b/a Investment Deals) under three cases
20 at the Las Vegas Justice Court for 14 felony B criminal charges: 1 Racketeering, 12
21 theft, and 1 Multiple transactions involving fraud or deceit in course of enterprise or
22 occupation. Justice Court Case 16F19220B (Jack Leal), 16F19220A (Parcelnomics,
23 LLC), 16F19220C (Jessica Garcia). 2 PA 268. Thirteen people claimed they sold
24 them houses and did not comply with possible disclosure requirements to alert them
25
26
27
28

1 about liens on the properties, defrauding them of a combined amount of \$757,420.00
 2 between March 1, 2015 and March 31, 2016. 2 PA 293-315. On December 27, 2016
 3 Attorney Jason G. Weiner confirmed as counsel for both defendants. 2 PA 292. On
 4 April 11, 2017 Jack Leal unconditionally waived his right to a preliminary hearing
 5 and the Justice Court cases were closed and bound over to District Court. 2 PA 322,
 6 331-2. On April 10, 2017 a Conflict-Of-Interest Waiver was signed by Mr. Leal
 7 so Attorney Leal could represent both he and his wife – per Rule 1.7 2 PA 334.
 8 Conflict of Interest Current Clients was initialed. 2 PA 335. An Information was
 9 issued April 18, 2017. 2 PA 336-8. On April 24, 2017 Mr. Leal entered a guilty
 10 plea agreement to Count 14 – Multiple transactions involving fraud or deceit in
 11 course of enterprise or occupation with all the other counts being incorporated into
 12 Count 14. PA 55-69. The chart below outlines where issues were discussed.
 13
 14
 15
 16
 17

18 PLEA FORM AND COLLOQUY AT PLEA HEARING

Page in Plea Form Signed	Page in Transcript 4/24/17 eFiled 11/20/17	Plea Agreement 1PA55 Plea Hearing Transcript 2PA234 (pdf 99)
Page 6 1PA60	2PA239-40 Page 6 line 11-18, 21-25 Page 7 line 1-3	Guilty / No Contest Plea Questionnaire and Waiver of Rights form Read & Signed by Defendant
	2PA237-8 Page 4-5	Court Determines age and education of Defendant and whether he can speak read and write English
Page 2, 3 1PA56-7	Offense but not Max 2PA235	Form Specifies Correct Offenses and Maximum Punishments

1		2PA236-7 Page 3-4	Restitution agreement outlined if paid before Sentencing State will not oppose probation
2		2PA242 lines 12-25	Conflict of Interest issue Addressed
3			Defendant waives reading of Information
4		2PA235-6 Page 2-3	Court Explains Charges to Defendant
5	Page 6 1PA60	2PA239 Page 6 line 16-18	Court ensures he has had enough time to speak to his attorney has received the information and understands it
6	Page 6 line 12-13 1PA60	2PA239 Page 6 line 19-20	Court asks defendant if he is satisfied with the representation and advise given by his attorney and the answer is yes by defendant
7	Pages 3 line 19-20 1PA57	2PA239 Page 6 line 7-10	Court advises Defendant that it is not bound by recommendations of attorneys and is free to sentence Defendant to the maximum punishment
8	Page 3-4 1PA57-8	2PA238-9 Page 5 line 23-25 Page 6	Consequences of Plea are outlined.
9	Page 2 1PA56	2PA239 Page 3 line 7-8	Plea form page 2 states in number 5 – I Jack Leal, and my co-conspirator, Jessica Garcia, are jointly and severally responsible for said restitution but the Judgment of Conviction does not reflect this.
10	Pages 1-3 1PA55-7	2PA235-7 Page 2-4	Plea agreement outlined.
11	Page 2 1PA56	2PA235 Page 2 line 16-17	Restitution Jointly and severally with co-conspirator Jessica Garcia addressed.
12	Page 4 lines 8-10 1PA58	2PA239 Page 6 line 7-10	Court advises no promises as to concurrent consecutive sentences
13	Page 4 line 17-22 1PA58		PSI
14	Page 4 line 11-12 1PA58		Court can consider at sentencing charges not file, dismissed or dismissed pursuant to this agreement.

1	Page 6 lines 9-11 1PA60	2PA238 Page 5 line 5-9	Court determines that Defendant is competent and sober
2	Page 8 line 2-6 1 PA62		
3			
4	Page 4 line 13-16	2PA238 lines 18- 22	No threats or promises other than plea agreement
5	1PA58	2PA239	
6	Page 6 lines 6-8 1PA60	Page 6 Line 7-10	
7			
8	Page 1 line 16 1PA55	2PA239 Page 5 line 17	Defendant enters a plea to each charge by actually saying "Guilty" or "No Contest"
9	Page 5 1PA59	2PA240 Page 7 line 4-7	Court determines that Defendant understands that by pleading guilty that Defendant is giving up important constitutional rights:
10			
11	Page 5 line 9-11 1PA59	2PA240 Page 7 line 4-16	Right to remain silent / Right against self- incrimination
12	Page 5 line 16-17	2PA240 Page 7 line 4-16	Right to confront / cross examine state's witnesses
13	1PA59		
14			
15	Page 5 line 18 1PA59	2PA240 Page 7 line 4-16	Right to compel witness testimony / present evidence
16	Page 5 line 12-15	2PA240 Page 7 line 4-16	Right to 12-person jury decision on guilty by unanimous verdict
17	1PA59		
18	Page 5 line 12-15	2PA240 Page 7 line 4-16	Right to make state prove guilty by evidence beyond reasonable doubt on each and every element of the crime charge
19	1PA59		
20	Page 5 line 19 1PA59	2PA240 Page 7 line 4-16	Right to testify
21	Page 5 line 20 1PA59	2PA240 Page 7 line 4-16	Right to appeal the conviction
22			
23	Page 4 line 26 1PA58	2PA240 Page 7 line 8-10	Court advises Defendant that conviction may subject non-citizens to deportation
24	Page 7 line 11 1PA61		
25			
26	Page 7-8 1PA61-2	2PA242 Page 9	Defense counsel satisfied that the plea is knowing, intelligent and voluntary
27			
28			

1		2PA238 Page 5 line 18-22	Court asked if anybody is forcing him to plead guilty and whether he is pleading of his own free will
2			
3		2PA240-1 Page 7 line 17-25 Page 8 line 1-24	Counsel / Defendant stipulates that actual factual basis exists for the plea.
4			
5	Page 6 1PA60	2PA239 Page 6 line 16-20	My attorney has answered all my questions regarding this guilty plea agreement and its consequences to my satisfaction and I am satisfied with the services provided by my attorney
6			
7			
8			
9		2PA241-2 Page 8 line 25 Page 9 line 1	Court Accepts Plea and Finds Defendant Guilty
10			

11
12 He was sentenced on August 17, 2017, to a minimum initial incarceration time of 72
13 months and a maximum of 180 months (6 years – 15 years) with 0 credit for time
14 served and ordered to pay restitution to the thirteen people defrauded. The Judgment
15 of Conviction (Plea of Guilty) was filed August 23, 2017. 1 PA 47-48. An Amended
16 Judgment of Conviction was entered by the Court which corrected the original
17 judgment of conviction by adding the order for the restitution to be joint and several.
18
19
20
21 1 PA 49-50.

22 **Actions After Conviction**

23
24 Two appeals have been filed by Mr. Leal. The first was direct appeal 74050. A
25 Notice of Appeal was filed by Attorney Craig A. Mueller on September 14, 2017.
26 After that, attorney Lester M. Paredes III took over and submitted the opening brief.
27
28 2 PA 208-33. (pdf 73).

1 The Issues Raised in Opening Brief: 2 PA 14 (pdf 79)

2
3 1. Did the District Court Err by Failing to Hold an Evidentiary Hearing
4 or Inquire into the Nature and Materiality of the alleged breach of the
5 guilty plea agreement?

6 2. Did the District Court Err by denying appellant's motion to withdraw
7 counsel due to an unwaiveable concurrent conflict of interest?

8 They lost. 2 PA 205-7. (pdf 70) A Remittitur was filed January 17, 2019.

9 A writ of habeas corpus petition was filed March 21, 2019, and Attorney Joseph
10 Gersten was assigned to represent Mr. Leal in the matter. 2 PA 193-204. (pdf 58).

11 The issues raised in the initial Petition which was typed and prepared by Attorney
12 Gerstein were:

13
14 A. Mr. Leal's Conviction and Sentence are Invalid under the 6th and
15 14th Federal Constitutional amendment guarantees of due process and
16 equal protection and under the law of article 1 of the Nevada
17 Constitution because the Original Information failed to put the
18 petitioner on notice of the charges. Page 6. 2 PA 198. (pdf 63).

19 B. Mr. Leal's conviction and sentence are invalid under the 6th and 14th
20 Federal Constitutional Amendment guarantees of due process and equal
21 protection and under the law of article 1 of the Nevada Constitution
22 because prior counsel's performance fell below an objective standard
23 of reasonableness as is mandated by Strickland, 466 U.S. 668, 104 S.
24 Ct. 2052 (1984). 2 PA 200 (pdf 65).

25 1) Petitioner's criminal counsel's assistance was ineffective,
26 because prior counsel's performance fell below an objective
27 standard of reasonableness as mandated by Strickland, by failing
28 to obtain a conflict waiver; 2 PA 201. (pdf 66).

2) Petitioner's criminal counsel's assistance was ineffective,
because prior counsel's performance fell below an objective
standard of reasonableness as is mandated by Strickland, by
coercing petitioner into entering a plea. 2 PA 203. (pdf 67).

1
2 After briefing and an evidentiary hearing the Petition was denied June 19, 2019 by
3 Judge Michael P. Villani. 2 PA 189-92. (pdf 54). Attorney Gerstein filed the
4 preliminary appeal documents July 19, 2019 challenging Judge Villani's ruling.
5 He was allowed to withdraw August 7, 2019. Mr. Leal filed an Informal Brief
6 December 30, 2019. 2 PA 180-88. (pdf 45). But relief was denied. Remittitur
7 was filed January 27 2021. On April 28, 2020 Attorney Jean J Schwartzler filed a
8 second Writ of Habeas Corpus Petition in order to try to preserve timeliness. 2 PA
9 149-56. (pdf 14). The Amended Judgment of Conviction was filed May 9, 2019. 1
10 PA 53-4. The original judgment of conviction was filed August 23, 2017. 1 PA
11 47-8.
12
13
14
15

16 In it she raises the following issues: 2 PA 149-56.
17

- 18 1. Based upon information and belief, Petitioner received
19 ineffective assistance of counsel in violation of his right to counsel
20 pursuant to the Sixth Amendment to the Constitution of the United
21 States of America and Article 1 of the Nevada Constitution due to
22 trial counsel's failure to present mitigation factors at sentencing,
23 including but not limited to the inability of Petitioner to pay the
24 restitution prior to sentencing due to document(s) being records on
25 the property located at 1024 Santa Helena Avenue, Henderson
26 Nevada 89002 at the mandate of the Attorney General, thereby
27 making it difficult to sell. 2 PA 155 (pdf 20).
- 28 2. Based upon information and belief, Petitioner received
ineffective assistance of counsel in violation of his right to counsel
pursuant to the Sixth Amendment to the Constitution of the United
States of America and Article 1 of the Nevada Constitution due to

1 trial counsel's failure to go over or correct Petitioner's Presentence
2 Investigation Report prior to sentencing. 2 PA 155 (pdf 20).

3 3. Based upon information and belief, Petitioner received
4 ineffective assistance of counsel in violation of his right to counsel
5 pursuant to the Sixth Amendment to the Constitution of the United
6 States of America and Article 1 of the Nevada Constitution due to
7 trial counsel's failure to correct and/or explain errors in Petitioner's
8 criminal history and nature of the instant offense. 2 PA 155 (pdf
9 20).

10 4. Petitioner requests an evidentiary hearing pursuant to NRS
11 34.770. 2 PA 155 (pdf 20).

12 On May 27, 2020 Mr. Leal filed a handwritten Petition for Writ of Habeas Corpus
13 supplementing the previous one filed by Ms. Schwartz. 2 AP 139-48. (pdf 1).

14 Ground 1: Challenge to validity of guilty plea. 2 PA 145 (pdf 10).

15 Supporting Facts: My plea was involuntary as I was coerced and it was
16 not entered into of my own free will. My plea was entered into without
17 the effective assistance of counsel as there was a clear actual conflict of
18 interest between both Defendants who were being represented by the
19 same attorney. Jason Weiner began representing both Defendants but
20 seems to have only had meaningful conversations with Garcia and not
21 Leal. Both co-defendants were unable to be properly represented due
22 to no contact orders stemming from domestic violence issues related to
23 this criminal case. Since almost all communications were done solely
24 with only Garcia as she was the one to retain and pay for Weiner's
25 services, Leal simply was not involved in discussions regarding the case
26 and had I had independent counsel to discuss with would have been
27 able to proceed to trial.

28 I believe I am actually innocent as each victim signed a purchase
agreement to purchase the properties which clearly stated that the
properties were being sold "subject to liens and encumbrances and
believe that a trial would show my innocence."

My plea was also entered without any meaningful representation. (See:
Ground Two).

1
2
3 Ground 2: Ineffective Assistance of Counsel Jason Weiner – Trial Counsel 2 PA
146 (pdf 11).

4 Supporting Facts: Weiner failed to disclose the court of the Civil
5 Forfeiture case which was filed by the A.G. and had a direct impact on
6 my ability to pay any restitution as it caused a Lis Pendens to be placed
7 against a home which was to be sold to pay restitution. Instead the
8 A.G. argued that there was nothing done to pay anybody back but that
9 was simply not the case – Weiner did not disclose to the court the fact
10 that this was a “package plea deal” which should have resulted in a
11 more thorough plea canvass which would have prevented the issues in
12 Ground One.

13 Weiner did not present the jurisdictional issues relating to the fact that
14 certain properties were located and sold in Florida with Nevada having
15 no jurisdiction for these sales.

16 Weiner represented both co-defendants from the period of December
17 2016 through April 9 2017 with no conflict of interest waiver in place
18 at all while the co-defendants were involved in several actual conflicts
19 (See Ground One).

20 Weiner did not dispute or challenge a insufficient charging document
21 which made my plea unknowingly entered. The Information by which
22 I was charged does not put me on notice of the charges as it does not
23 contain each and every element of the crime charged or the facts
24 showing how I allegedly committed the acts. It is not clear and concise
25 and therefore a Defendant cannot plea to charges which do not
26 constitute a crime.

27 Due to all of the above, counsel’s assistance was clearly ineffective and
28 in violation of my constitutional rights to effective counsel.

29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
710
711
712
713
714
715
716
717
718
719
720
721
722
723
724
725
726
727
728
729
730
731
732
733
734
735
736
737
738
739
740
741
742
743
744
745
746
747
748
749
750
751
752
753
754
755
756
757
758
759
760
761
762
763
764
765
766
767
768
769
770
771
772
773
774
775
776
777
778
779
780
781
782
783
784
785
786
787
788
789
790
791
792
793
794
795
796
797
798
799
800
801
802
803
804
805
806
807
808
809
810
811
812
813
814
815
816
817
818
819
820
821
822
823
824
825
826
827
828
829
830
831
832
833
834
835
836
837
838
839
840
841
842
843
844
845
846
847
848
849
850
851
852
853
854
855
856
857
858
859
860
861
862
863
864
865
866
867
868
869
870
871
872
873
874
875
876
877
878
879
880
881
882
883
884
885
886
887
888
889
890
891
892
893
894
895
896
897
898
899
900
901
902
903
904
905
906
907
908
909
910
911
912
913
914
915
916
917
918
919
920
921
922
923
924
925
926
927
928
929
930
931
932
933
934
935
936
937
938
939
940
941
942
943
944
945
946
947
948
949
950
951
952
953
954
955
956
957
958
959
960
961
962
963
964
965
966
967
968
969
970
971
972
973
974
975
976
977
978
979
980
981
982
983
984
985
986
987
988
989
990
991
992
993
994
995
996
997
998
999
1000

Ground Three: Ineffective Assistance of Counsel Craig A. Mueller and Lester M.
Paredes – Appellate Counsel. 2 PA 147. (pdf 12).

Supporting Facts: I was never provided a copy of my pre-sentence
investigation report (P.S.I.) prior to being sentenced as required by
N.R.S. 176.153.

This is a due process violation as information in his PSI was
presumably used against him at sentencing and is still being used
against him by N.D.O.C. for purposes of classification. This non-
disclosure affects the Petitioner’s rights and ability to challenge and

1 dispute incorrect information as per Nevada Law, the only opportunity
2 to do so is at sentencing. Petitioner will also be prejudiced moving
3 forward as the Nevada Parole Board has stated that the P.S.I. is the
4 primary document used to determine eventual release. Just a few errors
5 from my PSI are: My offense date is listed as being over a period of 1
6 year when it was a period of approximately 90 days. Under "Offense
7 Synopsis" there are 7 paragraphs which I do not know what they relate
8 to. This information appears to have come directly from the A.G.'s
9 office and was never provided to me. It also does not list my actual
10 limited involvement and instead refers to "an individual" in 12 separate
11 paragraphs. The referenced "individual" is not me but it is implied that
12 it was me and a reader without knowing this could surely not make this
13 distinction.

14 Appellate counsel was ineffective for not raising this issue as it was
15 error that was on the record and therefore appealable.
16
17

18 He also filed a Ground 4 on December 8 2020 (not in Apen but attached to this
19 document herewith Exhibit 1) stating Leal's Guilty Plea Agreement is invalid as it
20 was entered into involuntarily, under duress, because of undue influence and was
21 coerced in all in violation of his rights pursuant to the Fifth, Sixth and Fourteenth
22 Amendments to the Constitution of the USA and of Article 1 of the Nevada
23 Constitution.

24 Jean Schwartzer's primary reason for being on the case was to submit a motion to
25 Modify Sentence which she did on October 28, 2020. 2 PA 157. (pdf 22). Her
26 Motion to Modify was Denied without Prejudice November 17, 2020. On August
27 12 2020 Michael J Bongard, Senior Deputy Attorney General submitted an Answer
28 to the Post-Conviction Petition for Writ of Habeas Corpus. 2 PA 167-79. (pdf

1 32). On October 28, 2020 Attorney Schwartzer filed a Motion to Modify
2 Sentence. 2 PA 157-66. (pdf 22). No signed Order regarding the Motion to
3 Modify the Sentence is found online but the January 28 2021 minutes state “Ms.
4 Schwartzer advised all parties agreed on the Order the Attorney General had
5 submitted, which denied Defendant’s Motion without prejudice. Upon Ms.
6 Schwartzer’s inquiry, Court clarified that if the supporting documents were
7 obtained that Defendant could bring his Motion to Modify before the Court again
8 and the Court would hear it on the merits.” Minutes eFiled 1/28/21. And on
9 November 27 2020 the minutes Efiled that same day for that hearing state
10 “Argument by Ms. Schwartzer and Mr. Kovac. COURT ORDERED, Motion
11 DENIED WITHOUT PREJUDICE. Court stated if Ms. Schwartzer can obtain the
12 records on the other cases, it would take a look at them. Court noted it’s concern
13 regarding the fraudulent conduct in these cases. Court directed Mr. Kovac to
14 prepare the Order for Today’s decision within 30 days. Court further ordered,
15 matter set for Status Check. Court noted it would not sign the Order prior to the
16 Status Check date.
17

18 On January 2021 There were three subsequent Stipulations and Orders to Extend
19 time for the briefing schedule. Then on January 14 2021 Attorney Schwartzer was
20 allowed to withdraw.
21
22
23
24
25
26
27
28

1 In order to ensure inclusion of the entire prior Odyssey eFiled documents for case
 2 C-17-322644-2 for consideration as part of the record in the current writ case – this
 3
 4 counsel requested and was granted Judicial Notice by the court of that case and its
 5 contents. 1 PA 3-5.

6
 7 The Amended Judgment of Conviction was filed May 9, 2019. 1 PA 49-50. The
 8 original judgment of conviction was filed August 23, 2017. 1 PA 47-8.

<u>Grounds Raised for the 4 actions after conviction</u>	ACTION 1 Direct Appeal 74050 Filed 9/22/17 Remittitur issued 1/17/19	ACTION 2 First Writ of Habeas Corpus C-17-322664-2 Denied after briefing and evidentiary hearing 6/19/19	ACTION 3 1 st Writ appeal Appeal 79243 Filed 7/24/19 Remittitur was filed 1/27/21	ACTION 4 2 nd / current writ of Habeas Corpus A-20-814 369-W filed 4/28/20 With additional points added directly by Mr. Leal 5/27/20
Unknowing involuntary unintelligent plea – ineffective Assistance of Counsel in plea				Leal Ground 1 Ground 4 (eFiled 12/8/20 – not in APEN but attached - Exhibit 1)
Failure to hold Evidentiary Hearing on breach of plea	Ground 1			Ground 2 Leal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

agreement re if restitution paid in advance would recommend or not object to probation				
Denying appellant's motion to withdraw counsel due to an unwaiveable concurrent conflict of interest	Ground 2			Ground 2 Leal
Original Information failed to put the petitioner on notice of the charges.		Point A	Page 6	Ground 2 Leal
Conflict – waiver dual representation same attorney for the 2 codefendants Petitioner's criminal counsel's assistance was ineffective, by <u>failing to obtain a conflict waiver</u> ;		Point B 1	Page 6	
Coercion Petitioner's criminal counsel's assistance was ineffective, because prior counsel's performance fell below an objective standard of reasonableness as is mandated by <u>Strickland</u> , by		Point B 2	Page 7-8	Point 1

1	<u>coercing petitioner</u>				
2	<u>into entering a plea.</u>				
3	Trial counsel's				Point one
4	failure to present				4/28/20
5	mitigation factors at				Atty
6	sentencing, including				Schwartzter
7	but not limited to the				
8	inability of Petitioner				
9	to pay the restitution				
10	prior to sentencing				
11	due to document(s)				
12	being records on the				
13	property located at				
14	1024 Santa Helena				
15	Avenue, Henderson				
16	Nevada 89002 at the				
17	mandate of the				
18	Attorney General,				
19	thereby making it				
20	difficult to sell.				
21	PSI				Ground 3
22					Leal
23	Due to trial counsel's				Point 2
24	failure to go over or				Atty
25	correct Petitioner's				Schwartzter
26	Presentence				
27	Investigation Report				
28	prior to sentencing.				
29	Due to trial counsel's				Point 3
30	failure to correct				Atty
31	and/or explain errors				Schwartzter
32	in Petitioner's				
33	criminal history and				
34	nature of the instant				
35	offense.				
36	Petitioner requests an				Point 4
37	evidentiary hearing				Atty
38	pursuant to NRS				Schwartzter
39	34.770.				

1 **II. FACTS**

2 Mr. Leal and his wife Jessica Garcia were accused of using their limited liability
3 corporation Parcelnomics, LLC (d/b/a Investment Deals) to sell to purchasers
4 encumbered property at very low prices. They were alleged to have not told the
5 purchasers the property was encumbered – in a manner that violated the law. He
6 denies this and points to the language in the signed agreements with the
7 complainants disclaiming liability for any and all liens known or unknown.
8
9
10

11 **III. SUMMARY OF ARGUMENT**

12 Mr. Leal’s primary argument is that his plea was done unknowingly, involuntarily,
13 unintelligently and without effective assistance of counsel. Further that but for his
14 counsel’s errors he would have taken the matter to trial. Due to this ineffective
15 prejudicial assistance of counsel he urges the court to find manifest injustice
16 occurred allowing plea withdrawal or at the very least resentencing. We will
17 address these points further in the argument section as well as talking about the
18 preliminary bars of timeliness, successive petitions, and - issues already raised and
19 or that could have been previously raised as argued in the State’s Answer filed
20 August 12, 2020. 2 PA 167-79. (pdf 32).
21
22
23
24

25 Mr. Leal states he was of the belief that he fulfilled all disclosure duties and points
26 to the contract language reviewed and signed by the purchasers:
27

28 **GRANT, BARGAIN AND SALE DEED**

1 FOR A VALUABLE CONSIDERATION, receipt of which is hereby
2 acknowledged do by these presents transfer, sell and convey by this
3 deed unto grantee, without warranty whether expressed or implied, in
4 “as-is, where-is” condition and with any faults, all grantor’s interest, if
5 any, Grantee will take title to the property, subject to any and all claims,
6 liens, and other encumbrances, if any.” 1 PA 8-37.

6 A simple internet search “how do you find out if a property in Nevada is
7 encumbered” shows how easy it is to follow up with background checks. This is
8 important to keep in mind because in order to show manifest injustice for plea
9 withdrawal efforts you must show that there is a reasonable probability that but for
10 the unknowing, unintelligent, involuntary plea and or ineffectiveness of counsel -
11 there is a reasonable probability that you would have declined the plea offer and
12 taken the matter to trial. Mr. Leal has signed a Declaration asserting this. 1 PA 6-
13 7. In determining the credibility of this Declaration, one of the things the court is
14 to look at the strength of the case. He states he made no active representations to
15 people by affirmatively stating that the properties were not encumbered. Further
16 he points to the contract language which specifically states the property is being
17 sold as is and subject to existing liens: “Grantee will take title to the property,
18 subject to any and all claims, liens, and other encumbrances, if any.” 1 PA 9, 13,
19 17, 21, 25, 31, 35. Though he plead guilty at the plea hearing he maintains his
20 actual innocence in his writ of habeas petition. 2 PA 145. (pdf 10).
21
22
23
24
25
26
27
28

1 Both codefendants Leal and Garcia plead guilty to count 14 – Multiple transactions
2 involving fraud or deceit in the court of an enterprise and occupation.
3

4 Count 14 3. A person who violates subsection 1 is guilty of a category B felony
5 and shall be punished by imprisonment in the state prison for a minimum term of
6 not less than 1 year and a maximum term of not more than 20 years, and may be
7 further punished by a fine of not more than \$10,000. NRS 205.377 3/1/15-3/31/16
Plea date: 4/24/17

8 **NRS 205.377 Multiple transactions involving fraud or deceit in course
of enterprise or occupation; penalty. [Effective through June 30, 2020.]**

9 1. A person shall not, in the course of an enterprise or occupation,
10 knowingly and with the intent to defraud, engage in an act, practice or course of business
11 or employ a device, scheme or artifice which operates or would operate as a fraud or deceit
12 upon a person by means of a false representation or omission of a material fact that:

- 13 (a) The person knows to be false or omitted;
- 14 (b) The person intends another to rely on; and
- 15 (c) Results in a loss to any person who relied on the false representation

16 or omission,
17 Ê in at least two transactions that have the same or similar pattern, intents,
18 results, accomplices, victims or methods of commission, or are otherwise interrelated by
19 distinguishing characteristics and are not isolated incidents within 4 years and in which the
20 aggregate loss or intended loss is more than \$650.

21 2. Each act which violates subsection 1 constitutes a separate offense.

22 3. A person who violates subsection 1 is guilty of a category B felony
23 and shall be punished by imprisonment in the state prison for a minimum term of not less
24 than 1 year and a maximum term of not more than 20 years, and may be further punished
25 by a fine of not more than \$10,000.

26 4. In addition to any other penalty, the court shall order a person who
27 violates subsection 1 to pay restitution.

28 5. A violation of this section constitutes a deceptive trade practice for
the purposes of NRS 598.0903 to 598.0999, inclusive.

6. As used in this section, “enterprise” has the meaning ascribed to it
in NRS 207.380.

(Added to NRS by 2009, 143; A 2011, 168)

Their sentence and criminal history:

	JOC	Amended JOC	Prior Criminal History
--	-----	----------------	------------------------

1 2 3 4 5 6	Leal sentencing 8/17/17	72 months to 180 months [6 years to 15 years] credit for 0 days	5/9/19 72 months to 180 months [6 years to 15 years] credit for 0 days "Jointly and severally with Co- Defendant" added	PSI page 3-4 1 felony*
----------------------------	----------------------------	---	---	---------------------------

Leal Continued: (*See Attorney Schwartz Clarification in Motion to Modify Sentence 2 PA 161-3 and (pdf 26)) Exhibits not attached for full document see one eFiled 10/28/20 in case C-17-322644-2 – as of 5/20/21 she has been unable to get supporting paperwork) 2
Misdemeanor 0 prison
1 jail 2007CR226920 9/17/7 Illinois Forgery convicted of theft by deception 9/19/8 24 months probation 2007C5507080 Theft by Deception 24 months probation 9/26/8 2 misdemeanors IL 2003 Resist police officer community service and Resist police officer 206 10 days jail Additionally, the defendant was arrested, detained or cited for the following offenses in Illinois 2003 and 2009 for which no disposition is noted, prosecution was not pursued or charges were dismissed: Retail Theft, Resist Peace Officer (4), Financial Identification Theft, Forgery, and Theft by Deception

15 16 17 18 19 20 21 22 23	Garcia absconded and was absent for what was intended to be a joint sentencing hearing. His was held August 17 2017 and hers was April 23, 2019	72 months to 180 months [6 years to 15 years] with 574 days credit Restitution jointly and severally with Co- Defendant	7/16/19 48 months to 120 months [4 years to 10 years] with 651 days credit Restitution jointly and severally with Co-Defendant	PSI page 3-4
--	---	--	--	--------------

Garcia continued: She was arrested on a Clark County District Court warrant in Florida 9/27/17 She was transported to CCDC 1/16/18 to await sentencing. 5 misdemeanors 3 jail terms 20080024810 4/10/8 Illinois Domestic battery Physical contact 1 year jail suspended with 36 days jail 200840046480 6/2/8 Illinois Convicted Deceptive practice M 12 months jail suspended 200940028060 3-31-9 Illinois Retail Theft one year jail suspended 200950043740

1 6/12/9 Illinois Retail theft 45 days jail 200912929520 10/27/09 Retail theft 14
2 days jail 17CF003125-A-0

3 Florida Charged with Misd Battery and Felony possession of Heroin

4 6/27/17 Florida Charged with Battery Misd written plea filed

5 Additionally, the defendant was arrested, detained m- cited for the following offenses in
6 Illinois, Wisconsin and Florida between 2007 and 2016 for which no disposition is noted,
7 prosecution was not pursued or charges were dismissed: (IL): Domestic Battery/Bodily Harm
8 (2), Endanger Life/Health of a Child, Neglect Child hclcludes Nonsupport a Child (2), Retail
9 Theft (2), Violate Order of Protection; (WI): Disorderly Conduct, Battery; (FL): Battery.

10 III. ARGUMENT

11 The Sixth Amendment to the United States Constitution provides
12 that, “[in] all criminal prosecutions the accused shall enjoy the right ... to have
13 the Assistance of Counsel for his defense.” Strickland v Washington, 466, U.S.
14 668, 104 S.Ct. 2052, 2063 (1984); see also State v. Love, 109 Nev. 1136, 1138,
15 865 P.2d 322, 323 (1993).

16 To prevail on a claim of ineffective assistance of trial counsel a
17 defendant must prove he was denied “reasonably effective assistance” of
18 counsel by satisfying the two-prong test of Strickland. 466 U.S. at 686, 104 S.
19 Ct. at 2063-64; see also Love, 109 Nev at 1138, 865 P.2d at 323. Under the
20 Strickland test, a defendant must show first that his counsel’s representation fell
21 below an objective standard of reasonableness, and second, that but for the
22 counsel’s errors there is a reasonable probability that the result of the
23 proceedings would have been different. Strickland at 687-88, 694, 104 S. Ct at
24 2065, 2068. Warden, Nevada State Prison v Lyons, 100 Nev 430, 432, 683 P.2d
25
26
27
28

1 504, 505 (1984) (adopting the Strickland two-part test). The Nevada Supreme
2 Court has held “claims of ineffective assistance of counsel must be reviewed
3 under the ‘reasonably effective assistance’ standard articulated by the U.S.
4 Supreme Court in Strickland v Washington, requiring the petitioner to show that
5 counsel’s assistance was deficient and that the deficiency prejudiced the
6 defense.” Bennett v State, 111 Nev. 1099, 1108, 901 P.2d 676, 682 (Nev. 1995),
7 and Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (Nev. 1966).
8
9
10

11 When seeking postconviction relief due to ineffective assistance of
12 counsel in which a plea agreement resulted in a judgement of conviction
13 Petitioner must demonstrate a “reasonable probability that but for counsel’s
14 errors he would not have pleaded guilty and would have insisted on going to
15 trial.” Molina v State, 120 Nev. 185, 190-91, 87 P.3d 533, 537 (2004). “A
16 guilty plea represents a break in the chain of events which has preceded it in the
17 criminal process. When a criminal defendant has solemnly admitted in open
18 court that he is in fact guilty of the offense with which he is charged, he may not
19 thereafter raise independent claims relating to the deprivation of constitutional
20 rights that occurred prior to the entry of the guilty plea. Where defendant has
21 pleaded guilty, the only claims that may be raised thereafter are those involving
22 the voluntariness of the plea itself and the effectiveness of counsel. Nev. Rev.
23 Stat. 34.810(1).” Kirksey v. State, 112 Nev. 980, 986, 923 P.2d 1102, 1106
24
25
26
27
28

1 (1996). A motion to withdraw a guilty plea, based upon claims of ineffective
2 assistance of counsel, directly places in issue the scope and content of
3
4 communications between the attorney and the client. Molina v. State, 120 Nev.
5 185, 187, 87 P.3d 533, 535 (2004)

6
7 The Nevada Supreme Court has held “that a habeas corpus petitioner must prove
8 the disputed factual allegations underlying his ineffective-assistance claim by a
9 preponderance of the evidence.” Means v State at 1012, 33 (2004).
10

11 The Nevada Supreme Court has held “claims of ineffective assistance of
12 counsel must be reviewed under the ‘reasonably effective assistance’ standard
13 articulated by the U.S. Supreme Court in Strickland v Washington, requiring the
14 petitioner to show that counsel’s assistance was deficient, and that the deficiency
15 prejudiced the defense.” Bennett v State, 111 Nev. 1099, 1108, 901 P.2d 676,
16 682 (Nev. 1995), and Kirksey v. State, 112 Nev. 980, 987, 923 P.2d 1102, 1107
17 (Nev. 1966). Prejudice to the defendant occurs where there is a reasonable
18 probability that but for counsel’s errors, the result of the proceeding would have
19 been different. Kirksey at 988, 1107.
20
21
22

23 “To establish ineffective assistance of counsel, a claimant must show both that
24 counsel's performance was deficient, and that the deficient performance
25 prejudiced the defense. Deficient performance is representation that falls below
26
27
28

1 an objective standard of reasonableness.” Evans v. State, 117 Nev. 609, 622, 28
2 P.3d 498, 508 (2001).

3
4 For plea agreements, “The plain language of NRS 34.810(1)(a), as a whole, limits
5 cognizable claims to two types, both of which challenge the validity of the guilty
6 plea. *See Harris v. State*, 130 Nev. 435, 438-39, 329 P.3d 619, 621-22
7 (2014) (citing NRS 34.810(1)(a) for the proposition that “the validity of a guilty
8 plea may be challenged in a post-conviction petition for a writ of habeas corpus”
9 and for the proposition that the issues that may be raised are limited). The first
10 acceptable challenge is a direct attack against the validity of a guilty plea on the
11 basis that the plea was not voluntarily or knowingly entered. *See Bradshaw v.*
12 *Stumpf*, 545 U.S. 175, 183, 125 S. Ct. 2398, 162 L. Ed. 2d 143 (2005) The
13 second acceptable challenge is an indirect attack against the validity of a guilty
14 plea on the basis that “the plea was entered without effective assistance of
15 counsel.” It is the meaning of this passage that is at the crux of the issue in this
16 appeal.” Gonzales v. State, 2020 Nev. App. LEXIS 8, *3-4, 476 P.3d 84, 87, 136
17 Nev. Adv. Rep. 60.

18 The Gonzales court did not allow for consideration claims that “trial-level counsel
19 was ineffective for not objecting to the State’s breach of the plea agreement at the
20 sentencing hearing and that appellate counsel was ineffective for not raising the
21 breach on appeal.” *Id* at 90-91.
22
23
24
25
26
27
28

1 **Nevada Revised Statutes (NRS) Habeas Corpus – Petitions for**
2 **Postconviction Relief**

3 **NRS 34.810 Additional reasons for dismissal of petition. [Effective**
4 **through December 31, 2019.]**

5 1. The court shall dismiss a petition if the court determines that:

6 (a) The petitioner’s conviction was upon a plea of guilty or guilty but
7 mentally ill and the petition is not based upon an allegation that the plea
8 was involuntarily or unknowingly entered or that the plea was entered
9 without effective assistance of counsel.

10 (b) The petitioner’s conviction was the result of a trial and the grounds
11 for the petition could have been:

12 (1) Presented to the trial court;

13 (2) Raised in a direct appeal or a prior petition for a writ of habeas
14 corpus or postconviction relief; or

15 (3) Raised in any other proceeding that the petitioner has taken to
16 secure relief from the petitioner’s conviction and sentence,

17 Ê unless the court finds both cause for the failure to present the grounds
18 and actual prejudice to the petitioner.

19 2. A second or successive petition must be dismissed if the judge or
20 justice determines that it fails to allege new or different grounds for relief
21 and that the prior determination was on the merits or, if new and different
22 grounds are alleged, the judge or justice finds that the failure of the
23 petitioner to assert those grounds in a prior petition constituted an abuse of
24 the writ.

25 3. Pursuant to subsections 1 and 2, the petitioner has the burden of
26 pleading and proving specific facts that demonstrate:

27 (a) Good cause for the petitioner’s failure to present the claim or for
28 presenting the claim again; and

(b) Actual prejudice to the petitioner.

Ê The petitioner shall include in the petition all prior proceedings in which
the petitioner challenged the same conviction or sentence.

4. The court may dismiss a petition that fails to include any prior
proceedings of which the court has knowledge through the record of the
court or through the pleadings submitted by the respondent.

(Added to NRS by 1985, 1232; A 1989, 457; 1995, 2465; 2003,
1478; 2007, 1435)

1 Because defendant claims alleging deficiencies that occurred after he
2 entered his guilty plea could not have affected counsel's advice regarding entering
3 the plea or the outcome of the plea negotiations, they were not permitted by Nev.
4 Rev. Stat. § 34.810(1)(a). Gonzales v. State, 2020 Nev. App. LEXIS 8, *1, 476
5 P.3d 84, 86, 136 Nev. Adv. Rep. 60.
6

7
8 “...The exclusion of these claims does not abrogate a defendant's right
9 to the effective assistance of counsel in post-plea proceedings. It merely highlights
10 that the Nevada Legislature has not provided petitioners a means of collaterally
11 challenging counsel's efficacy in post-plea proceedings at the state level. Offenders
12 remain free to seek redress of constitutional deprivations in federal courts in the
13 first instance. Gonzales v. State, 2020 Nev. App. LEXIS 8, *11, 476 P.3d 84, 89,
14 136 Nev. Adv. Rep. 60.
15

16
17 A District court may only set aside a conviction post-conviction
18 sentence in order to correct “manifest injustice”. NRS 176.165.
19

20
21 **Nevada Revised Statutes (NRS) Chapter 176 Judgment**
22 **and Execution - Withdrawal of Plea**

23 **NRS 176.165 When plea of guilty, guilty but mentally**
24 **ill or nolo contendere may be withdrawn.** Except as otherwise
25 provided in this section, a motion to withdraw a plea of guilty, guilty but
26 mentally ill or nolo contendere may be made only before sentence is
27
28

1 imposed or imposition of sentence is suspended. To correct manifest
2 injustice, the court after sentence may set aside the judgment of conviction
3 and permit the defendant to withdraw the plea.
4

5 “To establish prejudice in the context of challenging a guilty plea
6 agreement based upon ineffective assistance of counsel, Petitioner must
7 demonstrate a reasonable probability that, but for counsel’s errors, he would not
8 have pleaded guilty and would have insisted on going to trial.” Molina v State,
9
10 120 Nev. 185, 190-191, 87 P.3d 533, 537 (2004). Kirksey v State, 112 Nev. 980,
11 988, 923 P.2d 1102, 1107 (1996).
12

13
14 **1. Mr. Leal’s Writ of Habeas Corpus Action in this case is timely**
15 **per NRS 34.726 and Nevada Caselaw.**

16 A petition challenging a judgment of conviction’s validity must be
17 filed within one year of the judgment or within one year of the remittitur, unless
18 there is good cause to excuse delay. NRS 34.726(1). Under Sullivan v. State the
19 Nevada Supreme Court has ruled that entry of an Amended Judgment of
20 Conviction can at times restart the statutory time limit for post-conviction claims.
21 Sullivan v. State, 120 Nev. 537, 540-1, 96 P.3d 761, 764. (2004). The Senior
22 Deputy Attorney General argues in their initial Answer to the Petition for
23 Postconviction Petition that both petitions are untimely thus barring their claims
24
25
26
27
28

1 from this Court's consideration. State Brief, August 12, 2020 page 5 at . 2 PA
2 167-179 at 171. (pdf 32 at 36.).
3

4 On April 28, 2020, Attorney Jean J Schwartzter filed a second Writ of Habeas
5 Corpus Petition in order to try to preserve timeliness. 2 PA 149-56. (pdf 14). The
6 Amended Judgment of Conviction was filed May 9, 2019. The original judgment
7 of conviction was filed August 23, 2017. 21PA 51-52 . The Remittitur for the
8 Direct Appeal was issued January 17, 2019. On May 27, 2020, Mr. Leal filed a
9 handwritten Petition for Writ of Habeas Corpus supplementing the previous one
10 filed by Ms. Schwartzter. 2 PA 139. (pdf 4). And another December 8, 2020.
11 Exhibit 1 Attached. The Amended Judgment of Conviction entered by the Court
12 May 9, 2019 corrected the original judgment of conviction by ordering restitution
13 jointly and severally. 1 PA 49-50.
14

15 Under Whitehead v. State the Nevada Supreme Court ruled that changes to the
16 Judgement of Conviction pertaining to restitution, qualified as a substantive change
17 which allowed the date of the Amended Judgment of Conviction to serve as the
18 commencement time of the 1 year time period under NRS 34.726 for the purposes
19 of filing a Petition for Writ of Habeas Corpus.
20
21
22
23
24

25 "The Supreme Court of Nevada concludes that a judgment of conviction that imposes
26 restitution but does not set an amount of restitution, in violation of Nevada statutes, is not
27 final and therefore does not trigger the one-year time limit for filing a post-conviction
28 petition for a writ of habeas corpus." Whitehead v. State, 128 Nev. 259, 260, 285 P.3d
1053, 1053 (2012). "Given the requirements in Nev. Rev. Stat. § 176.105(1) that

1 restitution, if appropriate, be included in the judgment of conviction and in a specific
2 dollar amount, the Supreme Court of Nevada concludes that a judgment of conviction
3 that imposes a restitution obligation but does not specify its terms is not a final judgment.
4 In those circumstances, the intermediate judgment is not sufficient to trigger the one-year
5 period under Nev. Rev. Stat. § 34.726 for filing a post-conviction petition for a writ of
6 habeas corpus.” Id.

7 The petition for reconsideration was granted. The judgment was reversed, and the
8 case was remanded to the district court for further proceedings. In doing so they
9 determined it did not matter that the issues raised by Petitioner did not relate to the
10 change causing the amendment in the judgment of conviction. “In that petition,
11 Whitehead raised 45 claims of constitutional error, none of which related to the
12 amount of restitution.” Whitehead v. State, at 261-62, 1054.
13

14 Therefore, the Petitions for Relief filed by Attorney Schwartz and added to by
15 Mr. Leal are timely and require consideration on the merits.
16

17 This though the plea form on page 2 1 PA 55-69; and the Judge on page 3 line 7-8
18 of the April 24 2017 plea hearing transcript 2 PA 234 (pdf 99) both advise the
19 sentence is to be joint and several between he and Jessica Garcia. See also
20 Sentencing Transcript August 17,
21 2017 ‘Joint and several’ page 8 line 4. 2 PA 244. (pdf 109). Whitehead is clear.
22
23

24 The judgment of conviction must reflect the full restitution terms. This is more
25 than the clerical error issue addressed in Sullivan v. State above.
26

27 **2. The Petition and Addition are not Procedurally Defaulted as**
28 **Successive per NRS 34.810.(2) and (3) and should be considered on the merits.**

1 **See NRS 34.810 Additional reasons for dismissal of petition.**
2 **[Effective January 1, 2020.]**

3 1. The court shall dismiss a petition if the court determines that:

4 (a) The petitioner's conviction was upon a plea of guilty or guilty
5 but mentally ill and the petition is not based upon an allegation that the
6 plea was involuntarily or unknowingly entered or that the plea was
7 entered without effective assistance of counsel.

8 ...

9 2. A second or successive petition must be dismissed if the
10 judge or justice determines that it fails to allege new or different
11 grounds for relief and that the prior determination was on the
12 merits or, if new and different grounds are alleged, the judge or
13 justice finds that the failure of the petitioner to assert those grounds
14 in a prior petition constituted an abuse of the writ.

15 3. Pursuant to subsections 1 and 2, the petitioner has the
16 burden of pleading and proving specific facts that demonstrate:

17 (a) Good cause for the petitioner's failure to present the claim
18 or for presenting the claim again; and

19 (b) Actual prejudice to the petitioner.

20 ↪ The petitioner shall include in the petition all prior proceedings
21 in which the petitioner challenged the same conviction or sentence.

22 4. The court shall dismiss a petition without prejudice if:

23 (a) The petition challenges the computation of time that the
24 petitioner has served pursuant to a judgment of conviction; and

25 (b) The court determines that the petitioner did not exhaust all
26 available administrative remedies to resolve such a challenge as
27 required by NRS 34.724.

28 5. The court may dismiss a petition that fails to include any prior
 proceedings of which the court has knowledge through the record of the
 court or through the pleadings submitted by the respondent.

Claims that could have been considered in a prior proceeding are generally waived.

The district court must dismiss any claims that could have been raised in a prior
proceeding unless the court finds

(1) Cause for the procedural default & actual prejudice NRS 34.810(1)(b); or

1 (2) That failure to consider the claims would result in a fundamental miscarriage of
2 justice. Pellegrini, 117 Nev. at 887.

3
4 Under well-established caselaw codefendants are to be treated similarly with
5 identical charges and no significant difference.

6
7 “A disparity in the sentences of codefendants or accomplices may be a
8 relevant mitigating circumstance. **It is not mere disparity that is significant,**

9 **however, but unexplained disparity.**” State v. Dickens, 187 Ariz. 1, 926 P.2d

10 468 (1996). It is manifestly unfair that she absconds – does not show up at their

11 sentencing hearing, is picked up a month later and has a very similar criminal

12 background -and yet her sentence is modified shortly after receiving the same

13 sentence as Mr. Leal because by July 9 2019 all the restitution had been paid. So

14 her sentence was changed to 4 to 10 years instead of 6 to 15. This is important

15 new information that was not available at the time of the plea hearing or at any of

16 the prior postconviction actions. Not just for the sentencing factor alone – we are

17 aware of our limited ability to raise issues outside of the plea proper in this writ.

18 But because he agreed to what she agreed to after being coerced by both his

19 attorney and Ms. Garcia – into taking joint plea agreements - he had no intention

20 of shouldering more of the liability for the crime than his codefendant. “By the

21 time Leal entered his guilty plea, he had already been subjected to several threats

22 and instances of actual violence against him due to his desire not to go along with

1 the plea negotiations.” Exhibit I attached page 3. So clearly it was unknowing
2 unintelligent involuntary and without the effective assistance of counsel. He does
3 not have the same rights to pursue EDCR 3.29 within 15 days of sentencing. So, it
4 seems she is being rewarded for her bad behavior.
5

6 Mr. Leal did get the short end of the stick as far as being pressured to settle and
7 counting on her to take care of the necessary paperwork so restitution could be
8 paid in time for the sentencing. But it wasn't.
9
10

11 “When a conviction is the result of a guilty plea,
12 the second, or "prejudice," requirement . . . focuses on whether
13 counsel's constitutionally ineffective performance affected the outcome
14 of the plea process. In other words, in order to satisfy the "prejudice"
15 requirement, the defendant *must show that there is a reasonable
16 probability that, but for counsel's errors, he would not have pleaded
17 guilty and would have insisted on going to trial*”. Hill v. Lockhart, 474
18 U.S. 52, 59, 88 L. Ed. 2d 203, 106 S. Ct. 366 (1985) (emphasis added);
19 *see also State v. Langarica*, 107 Nev. 932, 933, 822 P.2d 1110, 1111 (1991), *cert.*
20 *denied*, 506 U.S. 924, 121 L. Ed. 2d 261, 113 S. Ct. 346 (1992). "A reasonable
21 probability is a probability sufficient to undermine confidence in the
22 outcome." *Strickland*, 466 U.S. at 694. *Kirksey v. State*, 112 Nev. 980, 988, 923
23 P.2d 1102, 1107 (1996). Mr. Leal took it from all ends of this plea agreement in a
24 prejudicial way. First his attorney was primarily her attorney and communicated
25 for the most part with her his codefendant not him. Then he is coerced into taking
26 a plea agreement on incomplete information about the plea – one for all and all for
27
28

1 one. Even though he tried to assert his rights and to point out the contract language
2 which he believed made him innocent. His attorney never should have stated he
3 believed the plea was voluntary - knowing Mr. Leal had this position. It is clear
4 there was coercion if he plead guilty though he kept trying to show his position on
5 why he felt he was in the right. But a package deal or not at all really can put a lot
6 of pressure on the hold out. Then his codefendant says that she will try to arrange
7 the sale of the house and payment of the restitution and she did not. And he is
8 denied a delay in sentencing. She absconds. 2 AA 165. (pdf 31). He gets
9 sentenced and lashed by the prosecutor and the court for not selling the house and
10 providing the proceeds. He tried to explain she told him he was taking care of it.
11 And when she is picked up on a warrant in Florida a month later and is brought
12 back she is given with the State's cooperation and in fact insistence on - extension
13 after extension after extension until the paperwork finally goes through and all the
14 restitution is paid – thus lowering her sentence compared to his by 2-5 years. He
15 was bullied and cajoled and stuck around anyway and what he got as clearly
16 revealed after all the other appeals and writ were done was not what he thought he
17 was going to get. His plea was done unknowingly without effective assistance of
18 counsel. Knowing is defined in Black's Law Dictionary: Having or showing
19 awareness or understanding [*Knowing* page 1042, Black's Law Dictionary, Deluxe
20 11th Edition, 2019]; well-informed. Voluntarily is defined as Intentionally -
21
22
23
24
25
26
27
28

1 without coercion [*Voluntarily* page 1886, Id.] Ineffective assistance of counsel.

2 Defined supra at 33.

3
4 His due process rights were violated under the fourteenth and sixth amendments to
5 the US Constitution. His counsel said it was the joint deal or no deal. Had he
6 known it was possible it was not a joint deal he would never have taken it in the
7 first place. He could not have foreseen this, but his counsel certainly could have.
8 And this is one of the many things that Mr. Leal has asserted which establish
9 manifest injustice sufficient to by a preponderance of evidence and allows plea
10 withdrawal based on the totality of the circumstances.
11
12

13 CONCLUSION

14
15 WHEREFORE, based upon the above and foregoing Mr. Leal
16 respectfully requests this Court grant his Petition finding he received ineffective
17 assistance of counsel and that ineffectiveness prejudiced him on multiple levels
18 throughout his court proceedings. Under the totality of circumstances this court
19 should find manifest injustice and allow postconviction plea withdrawal.
20
21

22 DATED this 20th day of May 2021.

23 Respectfully Submitted,

24
25 /s/ Diane C. Lowe, Esq.

26 DIANE C. LOWE, ESQ. Nevada Bar #014573

27 Lowe Law, L.L.C.

28 7350 West Centennial Pkwy #3085

Las Vegas, NV 89131

1 Telephone: (725)212-2451
2 Facsimile: (702)442-0321
3 Attorney for Petitioner Jack Leal
4

5 **CERTIFICATE OF SERVICE**

6 **IT IS HEREBY CERTIFIED**, by the undersigned that on this 20th day of May, I
7 served a true and correct copy of the foregoing **Supplement with Exhibit 1 on the**
8 **parties listed on the attached service list:**

9 **BY E-MAIL:** by transmitting a copy of the document in the format to be used for
10 attachments to the electronic-mail address designated by the attorney or the party
11 who has filed a written consent for such manner of service. Attorney General of
12 Nevada at MBongard@ag.nv.gov and wiznetfilings@ag.nv.gov.

13 **By: /s/Diane C Lowe, Esq.**
14 **DIANE C. LOWE**
15 **LOWE LAW, L.L.C.**
16 **Attorney for Jack Leal**
17
18
19
20
21
22
23
24
25
26
27
28

APEN
LOWE LAW, L.L.C.
DIANE C. LOWE, ESQ. Nevada Bar No. 14573
7350 West Centennial Pkwy #3085
Las Vegas, Nevada 89131
(725)212-2451 – F: (702)442-0321
Email: DianeLowe@LoweLawLLC.com
Attorney for Petitioner JACK LEAL

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY NEVADA

JACK LEAL, #1183500

Petitioner,

vs.

WILLIAM HUTCHINGS, WARDEN
OF SOUTHERN DESERT STATE
PRISON,

Respondent.

Case No.: A-20-814369-W
DEPT NO XVII

[Stemming from C-17-322664-2]

APPENDIX TO SUPPLEMENTAL BRIEF TO WRIT OF HABEAS CORPUS

Order of Appointment and Judicial Notice of Criminal Case
Signed Declaration of Jack Leal
Count 3 Evidence of Notice of possible Liens Given to Complainant
Count 4 Evidence of Notice of possible Liens Given to Complainant
Count 6 Evidence of Notice of possible Liens Given to Complainant
Count 7 Evidence of Notice of possible Liens Given to Complainant
Count 10 Evidence of Notice of possible Liens Given to Complainant
Count 13 Evidence of Notice of possible Liens Given to Complainant
Transcript of June 26 2018 Motion for Bail Hearing
Judgment of Conviction Leal August 23 2017
Amended Judgment of Conviction Leal May 9 2019
Judgment of Conviction of Codefendant Garcia April 25 2019
Amended Judgment of Conviction of Garcia July 16, 2019
Guilty Plea Agreement April 24 2017 Leal
Guilty Plea Agreement Garcia
Jack Leal Redacted PSI
Jessica Garcia Redacted PSI
Sentencing Minutes of Jessica Garcia April 23 2019
Motion to Reconsider Sentence for Garcia May 6 2019
Minutes of Motion to Reconsider Sentence and Resentencing Hearing July 9 2019
Online Article Avoiding Disparities between Sentences of Codefendants
Sentencing Disparity from website AZCourts
Offer Letter
Declaration of Jessica Garcia



PRESENTENCE INVESTIGATION REPORT

The Honorable Michael P. Villani
Department XVII, Clark County
Eighth Judicial District Court

Date Report Prepared: July 12, 2017

Prosecutor: Michael C. Kovac, Senior DAG
Defense Attorney: Jason G. Weiner, Retained

PSI:

I. CASE INFORMATION

Defendant: Jessica Garcia
Case: C-17-322664-3
ID: None
P&P Bin: 4004370695

PCN: Pending
Offense Date: On or between 03-01-15
and 03-31-16
Arrest Date: Not arrested
Plea Date: 04-24-17 Guilty
Sentencing Date: 08-17-17

II. CHARGE INFORMATION

Offense: Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise or Occupation (F)
NRS: 205.377 Category: B
NOC: 55110
Penalty: By imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 20 years, and may be further punished by a fine of not more than \$10,000.

PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3

Page 3

Military Service:

Health and Medical History:

Mental Health History:

Gambling History:

Substance Abuse History:

Gang Activity/Affiliation:

IV. CRIMINAL RECORD

As of July 12, 2017, records of the Las Vegas Metropolitan Police Department, the National Crime Information Center and the Federal Bureau of Investigation reflect the following information:

CONVICTIONS- FEL: 0 GM: 0 MISD: 5

INCARCERATIONS- PRISON: 0 JAIL: 3

SUPERVISION HISTORY:

CURRENT- Probation Terms: 0 Parole Terms: 0

PRIOR TERMS:

Probation- Revoked: 0 Discharged: Honorable: 0 Other: 0

Parole- Revoked: 0 Discharged: Honorable: 0 Other: 0

Active Arrest Warrants: Warrant#: 3950705 Jurisdiction: Las Vegas Justice Court
Charges: Operate Unregistered Vehicle/Trailer/Semi (M) Extraditable: Clark County, Nevada
Bail Amount: \$6,480.00

Adult:

Arrest Date:	Offense:	Disposition:
03-31-08 Maywood, IL Cook County S.O.	Domestic Battery/Physical Contact (M)	200850024810 04-10-08: Convicted of Domestic Battery (M); sentenced to one year in jail, suspended with 36 days jail.
05-10-08 North Riverside, IL North Riverside PD	Deceptive Practice (M)	200840046480 06-02-08: Convicted of Deceptive Practice (M); sentenced to 12 months jail, suspended.

PRESENTENCE INVESTIGATION REPORT

Page 4

JESSICA GARCIA
CC#: C-17-322664-3

03-31-09 Oak Park, IL Oak Park PD	Retail Theft (M)	200940028060 04-20-09: Convicted of Retail Theft (M); sentenced to one year jail, suspended.
06-12-09 Stickney, IL Stickney PD	Retail Theft (M)	200950043740 07-28-09: Convicted of Theft (M); sentenced to 45 days jail.
10-23-09 Chicago, IL Chicago PD	Retail Theft (M)	200912929520 10-27-09: Convicted of Retail Theft (M); sentenced to 14 days jail.
11-23-16 Las Vegas, NV AG's Office	Summons: 1. Racketeering (F) 2. Theft, \$3500+ (12 counts) (F) 3. Lewdness with a Minor Under 14 (F)	Instant Offense, CC#: C-17-322664-3
03-11-17 Apopka, FL Apopka Police Department	1. Battery (M) 2. Possession of Heroin (F)	2017-CF-003125-A-0 06-13-17: Arraignment 08-28-17: Trial scheduled
06-27-17 Pasco County, FL Pasco County S.O.	Battery (M)	512017MM003372MMAXWS 06-28-17: Order of No Contact 06-28-17: Compliant 06-29-17: Written Plea filed

Additionally, the defendant was arrested, detained or cited for the following offenses in Illinois, Wisconsin and Florida between 2007 and 2016 for which no disposition is noted, prosecution was not pursued or charges were dismissed: (IL): Domestic Battery/Bodily Harm (2), Endanger Life/Health of a Child, Neglect Child Includes Nonsupport a Child (2), Retail Theft (2), Violate Order of Protection; (WI): Disorderly Conduct, Battery; (FL): Battery.

Supplemental Information: N/A**Institutional/Supervision Adjustment:** N/A

PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3

Page 5

V. OFFENSE SYNOPSIS

Records provided by the State of Nevada Attorney General's Office reflect that the instant offense occurred substantially as follows:

In March of 2015, a victim found a property being auctioned off through Ebay.com and began email communications with the Jack Leal, the seller of the property. On March 11, 2015, the victim won the auction of the property with a bid of \$50,600. After winning the bid, the victim agreed to purchase an additional property. On March 11, 2015, the victim wired a total of \$98,620 to Jack Leal's personal bank account for the purchase of both properties. On April 1, 2015, the victim contact a title insurance company with questioning regarding the properties she purchased and was informed that liens existed for both properties. She contacted the defendant regarding the liens and he stated he had discussed the liens that existed on the properties with his attorney, claiming his attorney said the liens are "clouds" on the title. In February of 2016, the victim learned the second property she purchased was in foreclosure. Since April of 2015, she has been served with two foreclosure notices on both properties that Jack Leal claimed were "free and clear" of liens.

In June of 2015, a victim found a home on a website and met with an individual of the business owned by Jack Leal and Jessica Garcia. After negotiations, the victim and individual agreed on a price of \$70,000 for the house. The individual stated to the victim that purchasing the home for cash would allow the closing to go very quickly. The victim met the individual at the Clark County Recorder's Office on August 6, 2015 where they completed the sales transaction. In exchange, the victim directly handed the individual a cashier's check totaling \$70,000. In February of 2016, the victim attempted to refinance the property and was informed by the title company that there were a first and second mortgage totaling over \$300,000. On March 2, 2016, the victim found a foreclosure notice taped to the front door of the property. The victim attempted to contact the individual numerous times but he never returned her phone calls or messages.

In August of 2015, a victim found a property she wanted to purchase on a website. On September 1, 2015, the victim met with the individual, and Jack Leal at the Clark County Recorder's Office. Mr. Leal stated he saw no liens with the property. The victim then gave the individual a cashier's check for \$60,000 and was given a signed deed which was recorded. A few days after the sale, the victim saw another property listed by the individual that she wanted to purchase. The initial price of the property was \$50,000 but eventually agreed upon \$30,300. On September 9, 2015, the victim met with the individual at the Clark County Recorder's Office. She provided the individual with a cashier's check for \$30,300 made out to Jack Leal and Jessica Garcia's business and the deed for the property was recorded. On September 22, 2015, the victim learned that both of the properties she purchased had existing bank liens. She was able to get in contact with Leal and demanded her money back. He stated he would not return her money because there was no benefit for him to do so. The victim indicated she would take the purchase price minus what the individual earned for the sale. In November of 2015, Jessica Garcia contacted the victim regarding the original property she purchased and offered to purchase it back for \$40,000. The victim rejected the offer stating she paid \$60,000 for it and wanted her money back. On March 23, 2016, the victim made her final attempt to get her money and after feeling desperate, she told Jessica Garcia she would accept \$40,000 for the property. Approximately a week later, the victim was informed that the property would be purchased for \$30,000. Jessica Garcia told the victim she would transfer the property into the name of SRT Holdings, a company located in Arizona and would fax the victim a copy of the deed regarding the purchase. When the victim saw the deed was a warranty deed, she rejected the offer and did not have any further communication with the employee, defendant or co-defendant. A foreclosure notice on the second property the victim purchased was filed on March 28, 2016.

PRESENTENCE INVESTIGATION REPORT

Page 6

**JESSICA GARCIA
CC#: C-17-322664-3**

In August of 2015, a victim agreed to purchase a property for \$65,000 from the individual listed on the advertisement. They met at the Clark County Recorder's Office and handed him a cashier's check for that amount and received the deed. The victim agreed to purchase a second property, met the individual at the Clark County Recorder's Office again and handed him a check for \$57,500. She reported that she did not receive keys for the property and was informed the deed would be mailed to her. She attempted to contact the individual asking for the deeds and the deed and did not receive any response. The victim stated she was advised to obtain an attorney to try and resolve the title issues on her properties.

In August of 2015, a victim agreed to a purchase price. She met the individual at the Clark County Recorder's Office, handed him a cashier's check for \$87,500 and was provided the deed. Within a few weeks, the victim discovered the home's title history and saw that it had "clouded title". The victim made contact with Leal who informed her that if she deeded the property back to him, she would receive \$50,000 back. In September of 2016, the victim deeded the property back and she received a \$50,000 check.

In August of 2015, a victim located a property for sale and agreed to purchase the property for \$149,000. The victim met the individual at the Clark County Clerk's Office and handed the individual two cashier's checks totaling \$149,000. Approximately thirty to forty-five days after the purchase, the victim was notified that there was an outstanding mortgage note on the property for approximately \$404,000. The victim obtained an attorney and was advised to accept partial payment from Jack Leal who offered a return of \$27,500. The victim accepted and that amount was returned to him. Near the end of April of 2016, the victim received a foreclosure notice on the property.

In August of 2015, the victim agreed to rent a property and paid \$2,500 upfront to the individual. After two days of renting, Jessica Garcia showed up to the property and was angry the individual had rented out the property to the victim. The victim ended up making a rent to own deal with Jessica Garcia and in September of 2015, agreed to purchase the property for \$40,000. The victim met Jessica Garcia at the Clark County Recorder's Office and handed a cashier's check for \$40,000. The victim reported the deed Jessica Garcia brought was already filled out and was given to the agent at the recorder's office on September 17, 2015. It was noted that the cashier's check was made out to Jack Leal and Jessica Garcia's business, but the deed provided to the victim stated that another business name was selling the home. The victim began receiving lien notices on the property. He contacted Jessica Garcia who stated she believed they were already paid and that they were not her concern anymore. The victim ultimately paid the liens which totaled approximately \$10,000.

In September of 2015, the victim found a property for sale on the website Zillow that was located in Florida. He contacted the individual who stated his company had power of attorney from Jack Leal and Jessica Garcia's company to sell the property, indicating the company was a Nevada corporation. They agreed on a price and he met the individual at the County Recorder's Office located in Florida, handed a cashier's check for \$85,000 and the deed was recorded. Approximately three weeks after the purchase, the victim discovered the house in foreclosure.

On September 20, 2015, the victim located a property for sale and offered \$75,000 for the property and they agreed to meet later in the day at the Clark County Recorder's Office. During the signing of the documents, Jessica Garcia stated the property was free and clear of all liens. The victim brought a purchase agreement with her, and both she and Jessica Garcia signed the document; however, she decided not to use the agreement and had blackened out her signature. Instead, Jessica Garcia used her own purchase agreement. After signing the deed, the victim gave Jessica Garcia a cashier's check for \$75,000. The victim spent approximately \$25,000 in renovations and placed the property for sale in December of 2015. While the sale was in escrow, the title search revealed an existing mortgage of approximately \$186,000. In February of 2016, the property went into foreclosure and was sold at auction. Additionally, the victim had previously bought a second

PRESENTENCE INVESTIGATION REPORT

Page 7

JESSICA GARCIA

CC#: C-17-322664-3

property from the Jessica Garcia for \$95,000 and in June of 2016, she received a foreclosure notice on that property. For both properties, the victim was defrauded out of \$205,000.

In October of 2015, the victim agreed to buy property for \$60,000 and on November 2, 2015, she met the individual at the Clark County Recorder's Office. She handed over a check and the deed for the property was recorded. Later on, the victim discovered that there was a mortgage for approximately \$15,000. The victim hired an attorney and through negotiations, Jack Leal and Jessica Garcia's company offered approximately half of the \$60,000 payment back. In return, the victim had to sign a non-disclosure agreement with the company.

In November of 2015, a victim couple located a property for sale and offered \$100,000. On November 22, 2016, the victims met with the individual at the Clark County Recorder's Office and handed him a cashier's check for \$100,000 and the deed was recorded. In July of 2016, the victims were notified they may or not actually own their home and would want to verify with a title company. Approximately a week later, they stated their further research of the property indicated that there was in fact an encumbrance on the property.

In November of 2015, a victim decided to purchase property totaling \$100,000. On November 24, 2015, the victim met with the individual at the Clark County Recorder's Office and gave him the remaining balance of \$50,000 in cashier's checks and he was provided the deed. In December of 2015, the victim discovered there were still previous exiting liens on the property. The victim contacted and met with both the individual and Jack Leal, stating he was aware of the fraud and demanded a full refund of \$150,000. Jack Leal told the victim he would give him a full refund but he needed some time. In February of 2016, the victim stated he received a cashier's check for \$120,000; however, he never received the remaining \$30,000.

In February of 2016, an elderly victim couple met with an individual at the Clark County Recorder's Office and handed a check in the amount of \$20,000. Additionally, the victims reported they paid the individual a cash bonus on each transaction for giving them "such great deals". For this property, they stated the individual received approximately \$2,500. The victims ended up purchasing several additional properties from the individual which they paid approximately \$317,000 and additional bonuses paid to the individual for approximately \$24,000. A police report was submitted by the victim stating he paid the defendant \$50,000 for a property. After the purchase of the property, the victim received a foreclosure notice from the bank that he was never made aware of by Jack Leal.

In March of 2016, a victim agreed to purchase property. On April 8, 2016, the victim met the individual at the Clark County Recorder's Office, handed him a check for \$124,000 and the deed was recorded. She indicated the deed was already filled out when the individual arrived. Shortly after moving in, the victim discovered there was approximately \$10,000 in delinquent HOA liens on the property, which she paid herself. Within days of moving, she had seen a foreclosure notice posted to her door but did not pay attention to it because she believed it was for the previous owner.

On March 16, 2016, the investigator contacted a bankruptcy trustee who stated he was the legal trustee for the multiple properties purchased at bankruptcy auctions by Jack Leal. The trustee stated that Jack Leal was "definitely knowledgeable" about the liens and encumbrances that stayed with the property after the purchase at the auction and that those liens are specifically highlighted in the deed that is signed after purchase. He stated that the property was sold at a telephone auction and that a list of the properties for auction would be sent to approximately fifty people. These emails contained two sections: properties to be sold free and clear and properties to be sold subject to an existing mortgage. Additionally, the trustee stated that free and clear properties sell for an average of \$100,000 and properties with mortgages sell for an average of \$5,000. The trustee provided a list of six properties Jack Leal and Jessica Garcia's business purchased from him and those

PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3

properties matched the addresses that relate to the defrauding victims. It was appeared that Jack Leal and Jessica Garcia's business purchased these properties for pennies on the dollar and "sold" them to unsuspecting victims at a much high value without telling victims about the existing encumbrances on the property.

Based on the investigation from the investigator, Jack Leal and Jessica Garcia were fraudulently misrepresenting encumbered properties to the victims as "free and clear" of any liens or mortgages. The business Jack Leal and Jessica Garcia operated appeared on forty-nine deeds in the Clark County, Nevada, at least several properties in Florida, over twenty properties in Michigan, as well as other properties in Ohio. Large rounded dollar cashier's checks identifying at least 15-30 other possible victims have been viewed in the bank accounts owed by Jack Leal and Jessica Garcia. The new alleged owners of the properties would then receive foreclosure notices, pay other outstanding liens, and be faced with financial burdens associated from the alleged property sale. Jack Leal and Jessica Garcia would then ignore the victims after the purported sale of the home, or offer to "buy" it back for less than they receive for it. Additionally, the business's Jack Leal and Jessica Garcia owned and operated are not licensed to conduct business with Clark County and Jack Leal and Jessica Garcia are not licensed with the Nevada Division of Real Estate to sell real estate.

Based on the aforementioned circumstances, a summons to appear was issued for Mr. Leal and Ms. Garcia.

Co-Defendant Information: Jack Leal, in case C-17-322664-2, pled guilty to Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise or Occupation (F). His sentencing is scheduled for August 17, 2017 in Department 17.

VI. DEFENDANT'S STATEMENT

See Attached Defendant interviewed, no statement submitted Defendant not interviewed

VII. VICTIM INFORMATION/STATEMENT

According to the information contained in the Attorney General's file:

Victim #1 (VC2245835) suffered a financial loss of \$70,000.

Victim #2 (VC2245836) suffered a financial loss of \$75,000

Victim #3 (VC2245837) suffered a financial loss of \$37,500

Victim #4 (VC2245838) suffered a financial loss of \$57,500.

Victim #5 (VC2245839) suffered a financial loss of \$98,620.

Victim #6 (VC2245840) suffered a financial loss of \$90,300.

Victim #7 (VC2245841) suffered a financial loss of \$85,000.

Victim #8 (VC2245842) suffered a financial loss of \$50,000.

Victim #9 (VC2245843) suffered a financial loss of \$115,000.

**PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3**

Page 9

Victim #10 (VC2245844) suffered a financial loss of \$25,000.

Victim #11 (VC2245845) suffered a financial loss of \$53,500.

Therefore, the Division is recommending restitution in the amount of \$757,420.00.

VIII. CUSTODY STATUS/CREDIT FOR TIME SERVED

Custody Status: Not arrested

CTS: 0 DAYS

IX. PLEA NEGOTIATIONS

1. The defendant will enter a plea of GUILTY to MULTIPLE TRANSACTIONS INVOLVING FRAUD OR DECEIT IN THE COURSE OF AN ENTERPRISE OR OCCUPATION, in violation of NRS 205.377, as alleged in Count One of the Criminal Information attached hereto as Exhibit "1";
2. The defendant will pay restitution to the named and unnamed victims in the total amount of seven hundred fifty-seven thousand four hundred twenty dollars (\$757,420) as follows:
 - i. \$70,000 to L.P.;
 - ii. \$75,000 to E.R.;
 - iii. \$37,500 to C.B.;
 - iv. \$57,500 to I.R.;
 - v. \$98,620 to L.Y.;
 - vi. \$90,300 to L.P.;
 - vii. \$85,000 to A.G.;
 - viii. \$50,000 to J.R.;
 - ix. \$115,000 to C.W.;
 - x. \$25,000 to S.B; and
 - xi. \$53,500 to T.L..
3. Should any of the named victims have previously recovered any of their losses, they shall not be entitled to restitution covering any such sum; instead, the portion of the restitution covering said sum shall instead be forfeited to the State of Nevada, Office of the Attorney General;
4. The defendant shall pay the restitution in full at or before the time she is sentenced in the present case;
5. The defendant and her co-conspirator, JACK LEAL, are jointly and severally responsible for said restitution;
6. Should the defendant pay restitution in full at or before the time she is sentenced in the present case, the State will not oppose the imposition of a term of probation not to exceed a term of five years, with a suspended 36- to-90 month term of imprisonment;
7. Should the defendant fail to pay restitution in full at or before the time she is sentenced in the present case, the State will retain the right to argue for the imposition of a term of imprisonment;
8. The defendant agrees that the \$157,105.17 seized in relation to the present case shall be forfeited to the State of Nevada, Office of the Attorney General, with said money to be applied to my restitution requirements;
9. The defendant will execute and file in the Clark County Recorder's Office a lien agreement and lien in favor of the State of Nevada, Office of the Attorney General, in the amount of \$600,314.83 against the home located at 1024 Santa Helena Avenue, Henderson, Nevada 89002, assessor parcel number 179-33-710-056, legally described as MISSION HILLS EST AMD PLAT BOOK 17 PAGE 12 LOT 223 & LOT 223A, with the proceeds of the sale of said home to be applied to my restitution requirements;
10. The defendant will pay all fees and costs imposed by the Court;

PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3

Page 10

11. The defendant will submit to any and all terms and conditions imposed by the Division of Parole and Probation, if granted probation;
12. The defendant understands that, pursuant to NRS 176.015(3), victims so desiring will be allowed to make impact statements;
13. Should the defendant satisfy all of the terms set forth in this agreement, including the payment of all monies owed, and receive an honorable discharge from probation, she will be permitted to withdraw her plea of guilty to the above-stated crime and enter a plea to the crime of CONSPIRACY TO COMMIT THEFT, a gross misdemeanor, in violation of NRS 199.480 and 205.0832; and
14. The defendant understands and agrees that, if she fails to interview with the Department of Parole and Probation, fail to appear at any subsequent hearings in this case, or an independent judge or magistrate, by affidavit review or other satisfactory proof, confirms probable cause against her for new criminal charges, including reckless driving or DUI, but excluding minor traffic violations, that the State will have the unqualified right to argue for any legal sentence and term of confinement allowable for the crime(s) to which she is pleading guilty, including the use of any prior convictions she may have to increase my sentence as a habitual criminal to five (5) to twenty (20) years, life without the possibility of parole, life with the possibility of parole after ten (10) years, or a definite twenty-five (25) year term with the possibility of parole after ten (10) years. Otherwise, she is entitled to receive the benefits of these negotiations as stated in the plea agreement.

X. RECOMMENDATIONS

Based on information obtained and provided in this report, the following recommendations are submitted.

190 Day Regimental Discipline Program: N/A **Deferred Sentence Per NRS 453.3363, 458.300, 458A.200, 176A.250, 176A.280:** N/A

FEEES

Administrative Assessment: \$25.00 **Chemical/Drug Analysis:** N/A **DNA:** \$150.00 and submit to testing
DNA Admin Assessment: \$3.00

Domestic Violence Fee: N/A **Extradition:** N/A **Psychosexual Fee:** N/A

SENTENCE

Minimum Term: 24 months **Maximum Term:** 120 months **Location:** NDOC
Consecutive to/Concurrent With: N/A **Probation Recommended:** No **Probation Term:** N/A
Fine: \$10,000.00 **Restitution:** \$757,420.00 jointly and severally with co-offender **Mandatory Probation/Prison:** N/A

Pursuant to NRS 239B.030, the undersigned hereby affirms this document contains the social security number of a person as required by NRS 176.145.

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

Per the Nevada Supreme Court opinion in Stockmeier v. Nevada Board of Parole Commissioners et al., any changes to factual allegations in the Presentence Investigation Report must be made at or before sentencing. Permanent changes to Criminal History must be initiated by the defendant by submitting a written request to the Criminal History Repository in the reporting state.

PRESENTENCE INVESTIGATION REPORT
JESSICA GARCIA
CC#: C-17-322664-3

Page 11

The information used in the Presentence Investigation Report may be utilized reviewed by federal, state and/or local agencies for the purpose of prison classification, program eligibility and parole consideration.

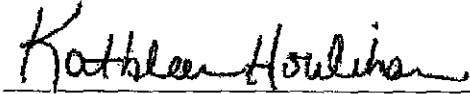
In accordance with current Interstate Commission for Adult Offender Supervision rules and requirements, all felony convictions and certain [gross] misdemeanants are offense eligible for compact consideration. Due to Interstate Compact standards, this conviction may or may not be offense eligible for courtesy supervision in the defendant's state of residence. If not offense eligible, the Division may still authorize the offender to relocate to their home state and report by mail until the term of probation is complete and/or the case has been completely resolved.

Respectfully Submitted,

Natalie A. Wood, Chief

Report prepared by: A. Denny
DPS Parole and Probation, Specialist III

Approved by:



Kathleen Houlihan, DPS Parole and Probation Supervisor
Southern Command, Las Vegas

Original signature on file

4-1

Inst #: 20150319-0001640
Fee: \$19.00 N/C Fee: \$0.00
RPTT: \$1127.10 Ex: #
03/19/2015 12:57:30 PM
Receipt #: 2354119
Requestor:
GOLDBERRY GROUP LLC
Recorded By: CYV Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 124-07-412-095

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT
(DO NOT Abbreviate)

GRANT, BARGAIN and SALE DEED

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Jack Leal

RETURN TO: Name Goldberry Group, LLC

Address 5740 Stowell Drive

City/State/Zip Frisco, TX 75035

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name same as above

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

A.P.N: 124-07-412-095

R.P.T.T:

When Recorded Mail To: Mail Tax Statements To:
Goldberry Group, LLC
5740 Stowell Drive
Frisco, TX 75035

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

4326 Oasis Plains Ave, Las Vegas, NV 89085

PARCEL I:

LOT 95 OF TETONN ALLEY NW 80 R1-60 NO.1, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 121 OF PLATS, PAGE 26, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA, AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED JANUARY 14, 2005, IN BOOK 20050114 AS DOCUMENT NO. 041 06 AND BY CERTIFICATE OF AMENDMENT RECORDED JUNE 16, 2005, IN BOOK 20050616, AS DOCUMENT NO. 0001448 AND AMENDED BY CERTIFICATE OF AMENDMENT RECORDED SEPTEMBER 20, 2007 IN BOOK 20070920 AS DOCUMENT NO. 02819, OFFICIAL RECORDS

PARCEL II:

AN EASEMENT FOR INGRESS AND EGRESS OVER PRIVATE STREETS AND COMMON AREAS AS SHOWN AND DELINEATED ON SAID MAP.

Now therefore


Jack Leal

does hereby *GRANT, BARGAIN and SELL* to,

Goldberry Group, LLC

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: March 18, 2015



Jack Leal

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on March 18, 2015 by:



Notary Public

My Commissions expires: 8/20/2017



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
 a. 124-07-412-095
 b. _____
 c. _____
 d. _____

2. Type of Property:
 a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'l/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

- 3.a. Total Value/Sales Price of Property \$ 50,000.00
 b. Deed in Lieu of Foreclosure Only (value of property (_____)
 c. Transfer Tax Value: \$ 220,814
 d. Real Property Transfer Tax Due \$ 1,127.10

4. **If Exemption Claimed:**
 a. Transfer Tax Exemption per NRS 375.090, Section _____
 b. Explain Reason for Exemption: paying under protest- plan to file for refund.
 5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: owner
 Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Jack Leal
 Address: 3157 N Rainbow Blvd. #248
 City: Las Vegas
 State: NV Zip: 89108

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Goldberry Group, LLC
 Address: 5740 Stowell Drive
 City: Frisco
 State: TX Zip: 75035

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
 Address: _____
 City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

4-1

Inst #: 20150313-0001597
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$257.55 Ex: #
03/13/2015 01:08:20 PM
Receipt #: 2346866
Requestor:
GOLDBERRY GROUP LLC
Recorded By: MJM Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 163-26-512-005

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

GRANT, BARGAIN AND SALE DEED

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Jack Leal

RETURN TO: Name Goldberry Group, LLC

Address 5740 Stowell Drive

City/State/Zip Frisco, TX 75035

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name same as above

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

A.P.N: 163-26-512-005

R.P.T.T:

When Recorded Mail To: Mail Tax Statements To:
Goldberry Group, LLC
5740 Stowell Drive
Frisco, TX 75035

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

6360 Katella Ave, Las Vegas, NV 89118

LOT NINETEEN (19) IN BLOCK SIX (6) OF FOOTHILLS VILLAGES – UNIT N. 2, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 19 OF PLATS, PAGE 6, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Now therefore


Jack Leal

does hereby *GRANT, BARGAIN and SELL* to,

Goldberry Group, LLC

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: March 13, 2015



Jack Leal

STATE OF NEVADA

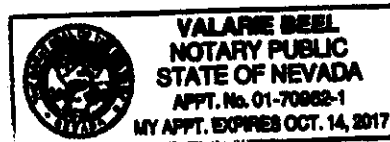
COUNTY OF CLARK

This instrument was acknowledged before me on March 13, 2015 by:



Notary Public

My Commissions expires: Oct 14, 2017



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

- a. 163-26-512-005
- b. _____
- c. _____
- d. _____

2. Type of Property:

- a. Vacant Land
- b. Single Fam. Res.
- c. Condo/Twnhse
- d. 2-4 Plex
- e. Apt. Bldg
- f. Comm'l/Ind'l
- g. Agricultural
- h. Mobile Home
- Other

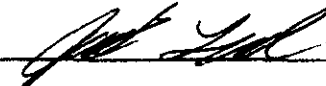
FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

- 3.a. Total Value/Sales Price of Property \$ 50,100.00
- b. Deed in Lieu of Foreclosure Only (value of property (_____))
- c. Transfer Tax Value: \$ 50,100
- d. Real Property Transfer Tax Due \$ 257.55

4. If Exemption Claimed:

- a. Transfer Tax Exemption per NRS 375.090, Section _____
- b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: seller
 Signature _____ Capacity: _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Jack Leal
 Address: 3157 N Rainbow Blvd. #248
 City: Las Vegas
 State: NV Zip: 89108

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Goldberry Group, LLC
 Address: 5740 Stowell Drive
 City: Frisco
 State: TX Zip: 75035

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
 Address: _____
 City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

4-1

Inst #: 20150901-0002483
Fees: \$19.00 N/C Fee: \$0.00
RPTT: \$588.85 Ex: #
09/01/2015 03:08:16 PM
Receipt #: 2543126
Requestor:
LINA PALAFOX
Recorded By: SHAWA Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only
and avoid printing in the 1" margins of document)

APN# 162-06-314-028

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

GRANT, BARGAIN and SALE DEED

Document Title on cover page must appear EXACTLY as the first page of the document
to be recorded.

RECORDING REQUESTED BY:

RETURN TO: Name Lina Palafox
Address 1251 Bledsoe Ln
City/State/Zip Las Vegas, NV 89110

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name same as above
Address _____
City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

A.P.N: 162-06- 314-028

R.P.T.T:

When Recorded Mail To: Mail Tax Statements To:
Lina Palafox
1251 Bledsoe Ln.
Las Vegas, NV 89110

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

2005 Aquarius Dr, North Las Vegas, NV 89102

Lot Eight (8) In Block Two (2) of Fairacres Tract No. 2 as shown by map thereof on file in Book 12 of Plats, Page 49, in the Office of the County Recorder, Clark County, Nevada.

Now therefore


Jack Leal

does hereby *GRANT, BARGAIN and SELL* to,

Lina Palafox

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: September 1, 2015




Jack Leal

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on September 1, 2015 by:



Notary Public



My Commissions expires: 10-15-15

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 162-06-31-028
 b. _____
 c. _____
 d. _____

2. Type of Property:

a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'l/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3.a. Total Value/Sales Price of Property

\$ 111,191 KB

b. Deed in Lieu of Foreclosure Only (value of property: _____)

c. Transfer Tax Value:

\$ 111,191 KB

d. Real Property Transfer Tax Due

\$ 528 KB


4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____

b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature  Capacity: Owner

Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Jack Leal
 Address: 3157 N Rainbow Blvd. #248
 City: Las Vegas
 State: NV Zip: 89108

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Lina Palafox
 Address: 1251 Bledsoe Ln
 City: Las Vegas
 State: NV Zip: 89110

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____
 Address: _____
 City: _____

Escrow # _____
 State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

Inst #: 20150923-0002179

Fee: \$19.00 N/C Fee: \$25.00

RPTT: \$0.00 Ex: #003

09/23/2015 01:53:31 PM

Receipt #: 2560928

Requestor:

LINA PALAFOX

Recorded By: ARO Pgs: 6

DEBBIE CONWAY

CLARK COUNTY RECORDER

(5) 2

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 138-26-811-032

(11 digit Assessor's Parcel Number may be obtained at: <http://redrock.co.clark.nv.us/assrealprop/ownr.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

Grant, Bargain and Sale Deed **RE-RECORDED**
Re-record to add title to signature line

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Investment Deals

RETURN TO: Name Lina Palafox

Address 1251 Bledsoe Ln

City/State/Zip Las Vegas, NV 89110

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name same as above

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

Inet #: 20150909-0001199
Fees: \$18.00 N/C Fee: \$25.00
RPTT: \$328.96 Ex: #
09/09/2015 12:56:18 PM
Receipt #: 2548363
Requestor:
LINA PALAROIX
Recorded By: DHG Pgs: 3
DEBBIE CONWAY
CLARK COUNTY RECORDER

(3)

A.P.N: 138-26-811-032

R.P.T.T:

When Recorded Mail To: Mail Tax Statements To:
Lina Palafox
1251 Bledsoe Ln.
Las Vegas, NV 89110

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

6213 Lawton Ave, Las Vegas, NV 89107

Lot Eighty-Five (85) in Block Ten (10) of Charleston Heights Tract No. 29-A, as shown by map thereof on file in Book 8 of Plats, Page 97, in the Office of the County Recorder, Clark County, Nevada.

Now therefore

Investment Deals (Grantor)

does hereby *GRANT, BARGAIN and SELL* to,

Lina Palafox (Grantee)

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

Date: September 9, 2015

Jessica Garcia
Jessica Garcia, Member of Investment Deals, A Nevada Fictitious Firm Name

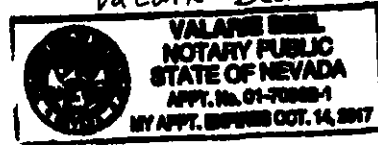
STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on September 9, 2015 by: Jessica Garcia

Valarie Beel
Notary Public

My Commissions expires: oct 14, 2017



01-70962-1

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)

a. 138-26-811-032
 : _____
 c. _____
 d. _____

2. Type of Property:

a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3.a. Total Value/Sales Price of Property \$ 64223⁰⁰
 b. Deed in Lieu of Foreclosure Only (value of property) (_____)
 c. Transfer Tax Value: \$ 64223⁰⁰
 d. Real Property Transfer Tax Due \$ 328¹²

4. If Exemption Claimed:

a. Transfer Tax Exemption per NRS 375.090, Section _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: 100 %

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature Josua Garcia Capacity: Managing Member
 Signature _____ Capacity: _____

**SELLER (GRANTOR) INFORMATION
(REQUIRED)**

Print Name: Investment Deals
 Address: 3157 N Rainbow Blvd. #248
 City: Las Vegas
 State: NV Zip: 89108

**BUYER (GRANTEE) INFORMATION
(REQUIRED)**

Print Name: Lina Palafox
 Address: 1251 Bledsoe Ln
 City: Las Vegas
 State: NV Zip: 89110

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
 Address: _____
 City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

**CERTIFIED COPY, THIS
DOCUMENT IS A TRUE AND
CORRECT COPY OF THE
RECORDED DOCUMENT MINUS
ANY REDACTED PORTIONS**

SEP. 23. 2015

Debbie Conway
RECORDER

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
 a. 138-26-811-032
 b. _____
 c. _____
 d. _____

2. Type of Property:
 a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'l/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3.a. Total Value/Sales Price of Property \$ 64,223
 b. Deed in Lieu of Foreclosure Only (value of property (_____)
 c. Transfer Tax Value: \$ 64,223
 d. Real Property Transfer Tax Due \$ 0

4. **If Exemption Claimed:**
 a. Transfer Tax Exemption per NRS 375.090, Section 3
 b. Explain Reason for Exemption: re-record to add title to signature line

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor
 Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)

Print Name: Investment Deals
 Address: 3157 W Rainbow Blvd #248
 City: Las Vegas
 State: NV Zip: 89108

BUYER (GRANTEE) INFORMATION
(REQUIRED)

Print Name: Lina Palafax
 Address: 151 Bledsoe Ln
 City: Las Vegas
 State: NV Zip: 89110

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)

Print Name: _____ Escrow # _____
 Address: _____
 City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

(4)-1

Inst #: 20160413-0002444

Fee: \$19.00 N/C Fee: \$0.00

RPTT: \$2218.50 Ex: #

04/13/2016 02:49:18 PM

Receipt #: 2735012

Requestor:

SRT HOLDINGS NEVADA POOL 4

Recorded By: GLORD Pgs: 4

DEBBIE CONWAY

CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 176-10-812-018

(11 digit Assessor's Parcel Number may be obtained at: <http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

GRANT, BARGAIN and SALE DEED

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Pham Delaware Realty, LLC

RETURN TO: Name Pham Delaware Realty, LLC

Address 7159 Iron Oak Ave

City/State/Zip Las Vegas, NV 89113

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name Pham Delaware Realty, LLC

Address 7159 Iron Oak Ave

City/State/Zip Las Vegas, NV 89113

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

A.P.N: 176-10-812-018

R.P.T.T: \$2,218.50

When Recorded Mail To: Mail Tax Statements To:
Pham Delaware Realty, LLC
7159 Iron Oak Ave
Las Vegas, NV 89113

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

7159 Iron Oak Avenue, Las Vegas, NV 89113

Nevada Trails R2-70 #12; Plat Book 111, Page 16, Lot 18 & Vac Rd

Now therefore

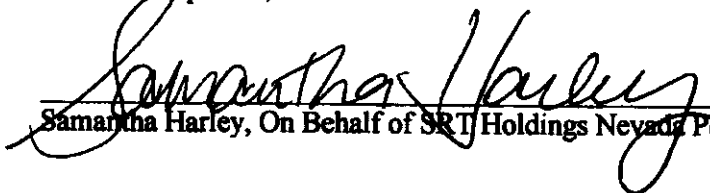
SRT Holdings Nevada Pool 4, LLC

does hereby *GRANT, BARGAIN and SELL* to,

Pham Delaware Realty, LLC

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

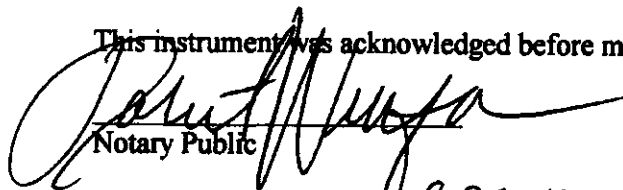
Date: April 13, 2016

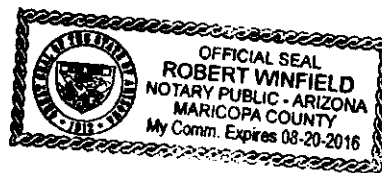

Samantha Harley, On Behalf of SRT Holdings Nevada Pool 4, LLC

STATE OF ARIZONA

COUNTY OF MARICOPA

This instrument was acknowledged before me on April 13, 2016 by:


Notary Public
My Commissions expires: 8-20-16



**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
 a. 176-10-812-018
 b. _____
 c. _____
 d. _____

2. Type of Property:
 a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'l/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 434,780.00
 b. Deed in Lieu of Foreclosure Only (value of property (NA))
 c. Transfer Tax Value: \$ 434,780.00
 d. Real Property Transfer Tax Due \$ 2,218.50

4. **If Exemption Claimed:**
 a. Transfer Tax Exemption per NRS 375.090, Section NA
 b. Explain Reason for Exemption: NA

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature [Signature] Capacity: Grantor
 Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)
 Print Name: SRT Holdings Nevada Pool 4 LLC
 Address: 6501 E Greenway Pkwy. #244
 City: Scottsdale
 State: AZ Zip: 85254

BUYER (GRANTEE) INFORMATION
(REQUIRED)
 Print Name: Pham Delaware Realty, LLC
 Address: 7159 Iron Oak Ave
 City: Las Vegas
 State: NV Zip: 89113

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
 Print Name: Kevin Brown Escrow # _____
 Address: 6501 E Greenway Parkway #244
 City: Scottsdale AZ State: AZ Zip: 85254

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

4

Inst #: 20150416-0002699
Fee: \$19.00 N/C Fee: \$0.00
RPTT: \$272.85 Ex: #
04/16/2015 04:47:05 PM
Receipt #: 2388260
Requestor:
TAT LAM
Recorded By: ARO Pgs: 4
DEBBIE CONWAY
CLARK COUNTY RECORDER

RECORDING COVER PAGE

(Must be typed or printed clearly in BLACK ink only and avoid printing in the 1" margins of document)

APN# 178-01-614-035

(11 digit Assessor's Parcel Number may be obtained at:
<http://redrock.co.clark.nv.us/assrealprop/owner.aspx>)

TITLE OF DOCUMENT

(DO NOT Abbreviate)

GRANT, BARGAIN, and SALE DEED

Document Title on cover page must appear EXACTLY as the first page of the document to be recorded.

RECORDING REQUESTED BY:

Jack Leal

RETURN TO: Name Tat Lam

Address 337 N. 4th St.

City/State/Zip San Jose, CA 95112

MAIL TAX STATEMENT TO: (Applicable to documents transferring real property)

Name same as above

Address _____

City/State/Zip _____

This page provides additional information required by NRS 111.312 Sections 1-2.

An additional recording fee of \$1.00 will apply.

To print this document properly, do not use page scaling.

Using this cover page does not exclude the document from assessing a noncompliance fee.

P:\Common\Forms & Notices\Cover Page Template Feb2014

A.P.N: 178-01-614-035

R.P.T.T:

When Recorded Mail To: Mail Tax Statements To:

Tat Lam

337 N. 4th St.

San Jose, CA 95112

GRANT, BARGAIN and SALE DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do by these presents transfer, sell and convey by this deed, unto grantee, without warranty whether expressed or implied, in "as-is, where-is" condition and with any faults, all grantor's interest, if any. Grantee will take title to the property, subject to any and all claims, liens, and other encumbrances, if any.

The real property situate in the County of Clark, State of Nevada, described as follows:

556 Liverpool Ave, Henderson, NV 89011

LOT FORTY (40) IN BLOCK TWENTY ONE (21) OF SUMMERFIELD UNIT 6C, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 36 OF PLATS, PAGE 81, IN THE OFFICE OF THE COUNTY RECORDER OF CLARK COUNTY, NEVADA.

Now therefore

Jack Leal

does hereby *GRANT, BARGAIN and SELL* to,

Tat Lam

Together with all tenements, hereditaments and appurtenances, including easements and water rights, if any, thereto belonging or appertaining, and any reversions, remainders, rents, issues or profits thereof.

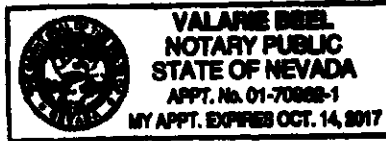
Date: April 16th, 2015



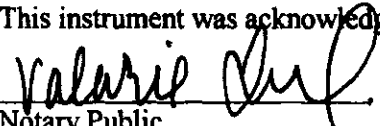
Jack Leal

STATE OF NEVADA

COUNTY OF CLARK



This instrument was acknowledged before me on April 16, 2015 by:



Notary Public

My Commissions expires: Oct 14, 2017

**STATE OF NEVADA
DECLARATION OF VALUE**

1. Assessor Parcel Number(s)
 a. 178-01-814-035
 b. _____
 c. _____
 d. _____


2. Type of Property:
 a. Vacant Land b. Single Fam. Res.
 c. Condo/Twnhse d. 2-4 Plex
 e. Apt. Bldg f. Comm'l/Ind'l
 g. Agricultural h. Mobile Home
 Other

FOR RECORDERS OPTIONAL USE ONLY	
Book _____	Page: _____
Date of Recording: _____	
Notes: _____	

3. a. Total Value/Sales Price of Property \$ 53,500
 b. Deed in Lieu of Foreclosure Only (value of property (_____)
 c. Transfer Tax Value: \$ 53,500
 d. Real Property Transfer Tax Due \$ 272.85

4. **If Exemption Claimed:**
 a. Transfer Tax Exemption per NRS 375.090, Section _____
 b. Explain Reason for Exemption: _____

5. Partial Interest: Percentage being transferred: _____ %
 The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

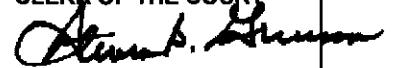
Signature  Capacity: Grantor
 Signature _____ Capacity: _____

SELLER (GRANTOR) INFORMATION
(REQUIRED)
 Print Name: Jack Leal
 Address: 3157 N Rainbow Blvd. #248
 City: Las Vegas
 State: NV Zip: 89108

BUYER (GRANTEE) INFORMATION
(REQUIRED)
 Print Name: Tat Lam
 Address: 337 N. 4th St.
 City: San Jose
 State: CA Zip: 95112

COMPANY/PERSON REQUESTING RECORDING (Required if not seller or buyer)
 Print Name: _____ Escrow # _____
 Address: _____
 City: _____ State: _____ Zip: _____

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED



1 ANS
2 AARON D. FORD
3 Attorney General
4 MICHAEL F. BONGARD (Bar No. 007997)
5 Senior Deputy Attorney General
6 State of Nevada
7 Office of the Attorney General
8 1539 Avenue F. Suite 2
9 Ely, NV 89301
10 (775)289-1632 (phone)
11 (775)289-1653 (fax)
12 MBongard@ag.nv.gov
13 Attorney for Respondents

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 JACK LEAL,

Case No.: A-20-814369-W

11 Petitioner,

Department XVII

12 vs.

13 JERRY HOWELL, WARDEN, SOUTHERN
14 DESERT CORRECTIONAL CENTER,

15 Respondents.

16 **ANSWER TO POST-CONVICTION PETITION FOR WRIT OF**

17 **HABEAS CORPUS**

18 Respondents, by and through counsel, Aaron D. Ford, Attorney General of The State of Nevada,
19 and Michael J. Bongard, Senior Deputy Attorney General, hereby submit their answer to Petitioner Jack
20 Leal's (Leal) Counseled and Pro Se Petitions for Writ of Habeas Corpus filed in this matter.

21 Respondents base this answer upon the pleadings, the legal authorities, and the pleadings on file
22 in this case.

23 **PROCEDURAL HISTORY**

24 **I. JUSTICE COURT PROCEEDINGS**

25 On November 29, 2016, the State filed a criminal complaint charging Leal with: one count of
26 Racketeering, 12 counts of Theft in the Amount of \$3500 or More; one count of Fraud or Deceit in the
27 Course of Enterprise or Occupation (Raketeering); and one count of Multiple Transactions Involving

28 ///

1 Fraud or Deceit in the Course of an Enterprise and Occupation. On April 11, 2017, Leal unconditionally
2 waived his preliminary hearing, which included a conflict of interest waiver.

3 **II. DISTRICT COURT PROCEEDINGS, CASE NUMBER C-17-322664-2**

4 On April 18, 2017, the State filed a criminal information charging Leal with one count of Multiple
5 Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation.

6 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry
7 of plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the
8 information agreeing to jointly and severally pay restitution in the amount of \$757,420.

9 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a maximum
10 term of one hundred eighty (180) months in the Nevada Department of Corrections, with a minimum
11 term of seventy-two (72) months, ordering restitution in the amount of \$757,420.00. The clerk filed the
12 judgment of conviction on August 23, 2017.

13 Leal filed a notice of appeal on September 14, 2017.

14 On May 9, 2019, the Court entered an amended judgment of conviction which corrected the
15 original judgment of conviction by ordering restitution jointly and severally pursuant to the terms of the
16 plea agreement.

17 **III. DIRECT APPEAL PROCEEDINGS, NEVADA COURT OF APPEALS, CASE 74050**

18 Leal filed his opening brief on February 1, 2018. (RA 1).¹ On appeal, Leal raised the following
19 claims:

20 A. Did the District Court err by failing to hold an evidentiary hearing
21 or inquire into the nature and materiality of the alleged breach of the guilty
22 plea agreement?

23 B. Did the District Court err by denying Appellant's motion to
24 withdraw counsel due to an unwaivable concurrent conflict of interest?

25 The State filed the answer brief on March 20, 2018. (RA 28). Leal filed he reply brief on April
26 20, 2018. (RA 65).

27 On September 11, 2018, the Nevada Court of Appeals affirmed Leal's conviction. (RA 75). The
28 Nevada Supreme Court subsequently denied Leal's petitions for review and reconsideration. Remittitur
issued December 24, 2018. (RA 78).

¹ Respondents refer to items in their appendix as "RA." Respondents refer to items in petitioner's appendix as "PA."

1 **IV. STATE HABEAS CORPUS PPROCEEDINGS, CASE NUMBER C-17-322664-2**

2 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition. (RA 80). In his
3 petition, Leal raised the following claims:

4 A. Mr. Leal's conviction and sentence are invalid under the 6th and 14th Federal
5 Constitutional Amendment guarantees of Due Process and Equal
6 Protection, and under the law of Article 1 of the Nevada Constitution
because the original information failed to put petitioner on notice of the
charges;

7 B. Mr. Leal's conviction and sentence are invalid under the 6th and 14th Federal
8 Constitutional Amendment guarantees of Due Process and Equal
9 Protection, and under the law of Article 1 of the Nevada Constitution
because prior counsel's performance fell below an objective standard of
10 reasonableness as is mandated by *Strickland* [v. Washington], 466 U.S. 668
(1984).

11 1.) Petitioner's criminal counsel's assistance was ineffective,
because prior counsel's performance fell below an objective
12 standard of reasonableness as is mandated by *Strickland*, by failing
to obtain a conflict waiver;

13 2.) Petitioner's criminal counsel's assistance was ineffective,
because prior counsel's performance fell below an objective
14 standard of reasonableness as is manded by *Strickland*, by coercing
petitioner into entering a plea.
15

16 Respondent filed the answer on April 23, 2019. (RA 97). On May 7, 2019, counsel for the parties
17 presented argument to the Court on the petition. The Court announced findings and denied the petition.
18 The clerk filed the order denying the petition on June 19, 2019. (RA 226). Leal filed a notice of appeal.

19 **V. STATE HABEAS APPELLATE PROCEEDINGS, NEVADA COURT OF APPEALS**
20 **CASE NUMBER 79243**

21 Leal filed his pro se informal brief on December 30, 2019. (RA 237). The Nevada Supreme Court
22 transferred the case to the Nevada Court of Appeals for decision.

23 On October 9, 2020, the Nevada Court affirmed the denial of Leal's state habeas petition. (RA
24 246). The Court rejected Leal's claims of: (1) ineffective assistance of counsel due to a conflict of interest;
25 (2) ineffective assistance of counsel because the plea was not voluntary; (3) ineffective assistance of
26 counsel because the information provided inadequate notice of the charges; and (4) found procedurally
27 defaulted a claim the information provided inadequate notice of the charges. *Id.*

28 After denying rehearing, the remittitur issued on January 12, 2021.

1 **VI. SECOND STATE HABEAS CORPUS PROCEEDINGS, CASE A-20-814369-W**

2 On April 28, 2020, Leal filed a Counseled State Habeas Petition (PWHC). In that petition, Leal
3 raises three claims: (1) Ineffective assistance of counsel for failure to present mitigating factors at
4 sentencing, due to the difficulty of selling property to pay restitution, (2) Ineffective assistance of counsel
5 for failure to correct errors in the pre-sentence report prior to sentencing, and (3) Ineffective assistance
6 of counsel for failure to correct or explain errors in Leal's criminal history prior to sentencing.

7 On May 27, 2020, Leal filed a Pro Se Habeas Petition (Pro Se PWHC). In that petition, Leal raises
8 the following claims: (1) the guilty plea was involuntary, (2) Ineffective assistance of trial counsel
9 (consisting of five subclaims)², and (3) Ineffective assistance of appellate counsel for failing to raise a
10 claim that petitioner never received a copy of his pre-sentence investigation report.

11 Respondent filed an answer to these claims on August 12, 2020.

12 On December 8, 2020, Leal filed a Pro Se Supplemental Petition (Pro Se Supp). In his petition,
13 Leal raises an additional claim:

14 Mr. Leal's guilty plea is invalid because it was entered into involuntarily,
15 under duress, because of undue influence and was coerced in violation of
16 his rights pursuant to the Fifth, Sixth and Fourteenth Amendments of the
Constitution of the United States of America and of Article 1 of the Nevada
Constitution.

17 On May 5, 2021, Leal filed a Counseled Supplemental Petition (Supp PWHC). In his petition,
18 opposing counsel raises the following claims:

19 A. The habeas claims raised are not procedurally barred under NRS
20 34.726 and NRS 34.810. and that Leal's plea was entered into involuntarily

21 B. Mr. Leal's plea was entered into unknowingly, involuntarily,
unintelligently and without effective assistance from counsel.

22 ///

23 ///

24 ///

25
26 ² Those subclaims are: (a) counsel failed to disclose to the Court a civil forfeiture case filed by
27 the Attorney General's Office; (b) counsel failed to disclose to the court that the plea agreement involved
28 both defendants, which should have noticed the Court to conduct a more thorough plea canvass; (c)
counsel failed to litigate a "jurisdictional defect" i.e. certain properties were located out of state, therefore
prosecution could not occur in Nevada; (d) counsel represented both co-defendants for a period of time
without a conflict of interest waiver; (e) counsel did not dispute an insufficient charging document.

1 Respondent now files the response to the petitions. All claims in Leal's pro se and counseled
2 petitions are barred by NRS 34.724(1), NRS 34.810(1) and (2), as well as the fact that claims previously
3 raised and decided in prior proceedings are barred by the law of the case doctrine. In the event the Court
4 reaches the merits of any claims, those claims are meritless.

5 ARGUMENT AND LAW

6 I. APPLICABLE LAW

7 Nevada law governs state habeas corpus proceedings. *McConnell v. State*, 212 P.3d 307, 309
8 (Nev. 2009). To the extent they do not conflict with habeas corpus statutes, the Nevada Rules of Civil
9 Procedure apply to habeas corpus proceedings. NRS 34.780.

10 Pursuant to NRS 34.724(1), a person may challenge that his sentence or conviction violates the
11 Constitution of the United States or the Constitution or laws of Nevada. NRS 34.724(1). However,
12 untimely petitions or petitions containing claims that could have been previously litigated in previous
13 proceedings may be dismissed by the court. NRS 34.810 and NRS 34.726.

14 II. ALL PRO SE AND COUNSELED PETITIONS ARE PROCEDURALLY BARRED, OR 15 CLAIMES PREVIOUSLY RAISED ARE BARRED BY THE LAW OF THE CASE DOCTRINE

16 The Nevada Supreme Court has expressly stated "the statutory rules regarding procedural default
17 are mandatory and cannot be ignored when properly raised by the State." *State v. Eighth Judicial District*
18 *Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 2070, 1074 (2005). Because consideration of the habeas
19 procedural rules is mandatory, this Court should apply the procedural rules prior to reaching the merits
20 of Leal's claims in his petitions.

21 A. The Procedural Bars Applicable to Leal's Claims

22 1.) NRS 34.726

23 Leal's petitions are untimely. NRS 34.726(1) provides that absent good cause for delay, "a
24 petition that challenges the validity of a judgment or sentence must be filed within 1 year" after the
25 Nevada Supreme Court issues its remittitur. NRS 34.726(1). The Nevada Supreme Court has reiterated
26 the "plain and unambiguous" mandatory provisions contained within NRS 34.726 and has gone so far as
27 to reject state habeas petitions that were filed even two days late. *See Gonzales v. State*, 118 Nev. 590,
28 593-94, 53 P.3d 901, 902-03 (2002).

1 Here, the Nevada Supreme Court issued its remittitur on December 24, 2018. Leal filed the
2 Couseled Petition on April 28, 2020 and the Pro Se Petition on May 27, 2020. Consequently, both
3 petitions are subject to dismissal because they are untimely.

4 By statute, a petitioner may demonstrate good cause and prejudice to excuse an untimely filing.
5 NRS 34.736(1)(a) and (b). Good cause for delay exists if the petitioner demonstrates to the satisfaction
6 of the court:

7 (a) That the delay is not the fault of the petitioner; and

8 (b) That dismissal of the petition as untimely will unduly prejudice the petitioner. NRS
9 34.726(1)(a) and (b).

10 Leal argues that his petition is timely because he filed it within one year of the filing of the
11 amended judgment of conviction. *See*, Supp PWHC at 26. Leal cites the Nevada Supreme Court's
12 decision in *Sullivan v. State*, 120 Nev. 537, 96 P.3d 761 (2004), in support of his argument.

13 However, Leal's supplement petition ignores the fact that the Court in *Sullivan* held:

14 Absent a showing of good cause as defined by this statute, untimely post-
15 conviction claims that arise out of the proceedings involving the initial
16 conviction or the direct appeal and that could have been raised before the
17 judgment of conviction was amended are procedurally barred. We
18 emphasize, however, that the entry of an amended judgment may in and of
19 itself provide the good cause required by the statute to present appropriate
20 post-conviction claims relating to the amendment at issue. In other words,
21 if the claims presented in a petition filed within one year of the entry of the
22 amended judgment challenge the proceedings leading to a substantive
23 amendment to the judgment and could not have been raised in prior
24 proceedings, there may be no delay attributable to the "fault of the
25 petitioner."

26 120 Nev. at 541, 96 P.3d at 764.

27 In other words, the amended judgment of conviction does not start a new 1-year period for the
28 statute of limitations in NRS 34.726(1). Instead, the Court in *Sullivan* found that a claim in a habeas
petition that challenged the change in the amended judgment conviction was not untimely, if raised within
a year of the filing of the amended judgment of conviction. 120 Nev. at 541, 96 P.3d at 764.

The amended judgment of conviction filed in Leal's case in March of 2019 addressed only one
issue: adding language ordering restitution jointly and severally with the co-defendant. *See*, Leal's
appendix, at 47-50. None of the claims raised in the Leal's four petitions filed since April of 2020 address

1 the issue of joint and several payment of restitution. Therefore, Sullivan provides no basis for cause to
2 excuse the application of NRS 34.726(1) to Leal's petitions.

3 Leal's supplemental counseled petition cites *Whitehead v. State*, 128 Nev. 259, 285 P.3d 1053
4 (2012), as a basis for starting a new one-year limitations period. However, extending the facts in
5 *Whitehead* would stand NRS 34.726(1) and the Court's decision in *Sullivan* on its head.

6 In *Whitehead*, the Court granted reconsideration and held that "[A] judgment of conviction that
7 imposes restitution but does not set an amount of restitution in violation of Nevada statutes, is not final
8 and therefore does not trigger the one-year time limit for filing a post-conviction petition for a writ of
9 habeas corpus." 128 Nev. at 260-61, 285 P.3d at 1054. The Court differentiated *Sullivan* from *Whitehead*,
10 finding that in *Sullivan* the judgment was amended to correct a clerical error—but in *Whitehead's* case,
11 the Court found the judgment (absent an amount of restitution) was "not a final judgment." *Id.* at 263,
12 285 P.3d at 1055.

13 In Leal's case, based upon both *Whitehead* and *Sullivan*, this Court should find the original
14 judgment of conviction a final judgment because the judgment set forth an amount of restitution and the
15 terms of paying the restitution in accordance with Nevada law. *See*, NRS 176.105(1) and 176.033(1)(c).
16 Leal's Appendix at 47-48. The amended judgment of conviction, changed the terms of repayment to joint
17 and several liability from individual liability, correcting an error and conforming with the plea agreement.
18 Leal's Appendix at 49-50. Since the record in this case reflects both a valid original judgment of
19 conviction and an amended judgment of conviction (both of which Leal treated as final documents),
20 *Sullivan*—rather than *Whitehead*—controls the outcome of this case.

21 The Court must dismiss the petitions as untimely.

22 **2.) NRS 34.810(1)(a)**

23 NRS 34.810(1)(a) limits what claims a petitioner may in a habeas corpus petition when the
24 petitioner judgment and sentence are pursuant to a plea agreement. Where a defendant enters a guilty
25 plea, the Nevada Supreme Court found "the only claims that may be raised thereafter are those involving
26 the voluntariness of the plea itself and the effectiveness of counsel. *Kirksey v. State*, 112 Nev. 980, 999,
27 923 P.2d 1102, 1114 (1996). A petition or claim challenging a judgment of conviction entered pursuant

28 ///

1 to a plea agreement must be dismissed if the claim does not allege the petitioner entered an unknowing
2 or involuntary plea. NRS 34.810(1)(a).

3 The claims not alleging the plea was not involuntary or unknowing:

- 4 • The pro se petition's claim that counsel failed to disclose to the
5 Court a civil forfeiture case filed by the Attorney General's Office (Ground
6 2(a)).
- 7 • The pro se petition's claim that counsel failed to disclose to the
8 Court that a more thorough plea canvass was necessary because the plea
9 agreement involved both co-defendants (Ground 2(b)).
- 10 • The pro se petition's claim counsel failed to litigate a jurisdictional
11 defect regarding out-of-state properties (Ground 2(c)).
- 12 • The pro se petition's claim counsel represented both co-defendants
13 for a period of time without a conflict of interest waiver (Ground 2(d)).
- 14 • The pro se petition's claim counsel did not dispute an allegedly
15 insufficient charging document (Ground 2(e)).

16 Respondent requests the Court find these claims subject to dismissal because they are not properly
17 before the Court, because Leal's guilty plea created a "break in the chain of events" barring relief from
18 antecedent events. *See, Tollett v. Henderson*, 411 U.S. 258, 267 (1973).

19 Leal cites the Nevada Court of Appeal's decision in *Gonzales v. State*, 476 P.3d 84, 86 (Nev.
20 2020),³ supporting argument that his claim are properly before the Court. Supp PWHC at 25. However,
21 the Nevada Supreme Court vacated the Court of Appeal's decision on January 8, 2021, and the case is
22 currently pending a decision from the Supreme Court.⁴ (Exhibit 11).

23 For the reasons stated above, *Sullivan* provides no basis for relief because none of Leal's claims
24 address joint and several liability for restitution—the subject of the amended judgment of conviction.

25 **3.) NRS 34.810(2)**

26 All of Leal's pro se and counseled petitions filed in this matter are also procedurally defaulted
27 because the claims in those pleadings are either raised for a second time or (alternatively) Leal could
28 have raised the claims in his first state habeas petition. A second or successive petition must be dismissed
if "it fails to allege new or different grounds for relief and that the prior determination was made on the
merits," or "if new and different grounds are alleged," this Court can dismiss the claims upon a finding
that Leal's failure to raise the claim previously constitutes an abuse of the writ. NRS 34.810(2). A court

³ 136 Nev. Adv. Rep. 60 (Case Number 78152-COA).

⁴ Even if *Gonzales* were still law, his petitions are still untimely, successive, and claims previously raised are barred by the law of the case.

1 may excuse the default of the second or successive petition if there is cause for the procedural default
2 and actual prejudice NRS 34.810(3) or that failure to consider the claims would result in a fundamental
3 miscarriage of justice. *Pellegrini*, 117 Nev. at 887.

4 As described below, Leal fails to bring claims that were not already raised in the previous
5 proceedings, or alternatively raises claims that he could have raised in his first state habeas petition but
6 failed to do so.

7 **a. The claims raised for the second time**

- 8 • The pro se petition's claim that the guilty plea was involuntary (Ground 1).
- 9 • The pro se petition's claim that counsel represented both co-defendant "for a period of time"
10 without a conflict of interest waiver (Ground 2(d)).⁵
- 11 • The pro se petition's claim that counsel did not dispute an insufficient charging document
12 (Ground 2(e)).
- 13 • The supplemental pro se petition's claim that the plea was invalid and under duress because of
14 undue influence and coercion.
- 15 • The supplemental counseled petition's claim that the plea was involuntary (Ground A).
- 16 • The supplemental counseled petition's claim that the plea was unknowing, involuntary, and
17 unintelligent and entered without the effective assistance of counsel (Ground B).⁶

18 **b. New claims that could have been raised in Leal's March, 2019 petition**

- 19 • The counseled petition's claim that counsel failed to present mitigating factors at sentencing
20 regarding difficulty selling the property to pay restitution (Ground 1).
- 21 • The counseled petition's claim that counsel failed to correct errors in the pre-sentence report
22 (Ground 2).
- 23 • The counseled petition's claim that counsel failed to correct or explain errors in Leal's criminal
24 history prior to sentencing (Ground 3).

25 _____
26 ⁵ If this Court finds the claim "new" because representation "for a period of time" is different than
27 the March 2019 petition's claim that counsel had a conflict of interest, then the claim is defaulted for
failure to raise the claim in the March 2019 petition.

28 ⁶ To the extent that this claim raises new ground of ineffective assistance of counsel not raised in
the March 2019 petition, the claims are defaulted because Leal should have raised the claims in the March
2019 petition.

- 1 • The pro se petition's claim that counsel failed to disclose to the Court a civil forfeiture case filed
- 2 by the Attorney General's Office (Ground 2(a)).
- 3 • The pro se petition's claim that counsel failed to disclose to the Court that a more thorough plea
- 4 canvass was necessary because the plea agreement involved both co-defendants (Ground 2(b)).
- 5 • The pro se petition's claim counsel failed to litigate a jurisdictional defect regarding out-of-state
- 6 properties (Ground 2(c)).
- 7 • The pro se petition's claim appellate counsel was ineffective for failing to raise a claim that
- 8 petitioner never received a copy of his pre-sentence investigative report (Ground 3).

9 As cause and prejudice to excuse his default, Leal asserts that the disparity in sentences that were
10 received by Leal and his co-defendant. See, Supp PWHC at 29. This Court should reject Leal's argument
11 for three reasons: First, the Nevada Supreme Court held that there is "no rule of law require[ing] a court
12 to sentence codefendant's to identical terms." *Nobles v. Warden*, 106 Nev. 67, 68, 787 P.2d 390, 391
13 (1990) (per curiam), citing to *People v. Walford*, 716 P.2d 137 (Colo.App. 1985).

14 Second, Leal litigated this issue in his October 2020 motion for modification of his sentence. See,
15 Leal's Appendix at 157. The Court denied that motion without prejudice. See, Supp PWHC at 12.

16 Third, Leal fails to explain how an already litigated issue regarding his sentence length provides
17 cause to look at unrelated and previously litigated claims seeking to overturn his conviction.

18 This Court should apply NRS 34.810(2) and dismiss the claims in Leal's second and successive
19 petitions.

20 **B. Law of the Case Doctrine**

21 Claims previously raised on direct appeal and rejected by the appellate court are subject to the
22 law of the case doctrine. Under the law of the case doctrine, "[w]hen an appellate court states a principle
23 or rule of law necessary to a decision, the principle or rule becomes the law of the case and must be
24 followed throughout its subsequent process." *Hsu v. Cty. of Clark*, 123 Nev. 625, 629-30, 173 P.3d 724,
25 728 (2007).

26 Several of the claims raised in these proceedings have previously been considered and rejected
27 by both this Court and the Nevada Court of Appeals. Those claims include:

- 28 • Ground 1 of the pro se second petition alleging the plea was involuntary, which was
rejected by the Court of Appeal. (Exhibit 10).

- 1 • Ground 2(d) challenging counsel's failure to obtain a waiver of conflict. Exhibits 4 and 10).
- 2
- 3 • Ground 2(e) of the pro se second petition alleging counsel was ineffective for failing to challenge an insufficient charging document. (Exhibit 10).
- 4
- 5 • The claim of coercion in the supplemental pro se petition. (Exhibit 10).
- 6
- 7 • Ground A in the supplemental counseled petition that the plea was not voluntary. (Exhibits 4 and 10).
- 8 • Ground B in the supplemental petition that the plea was not knowing, intelligent and voluntary and entered without the effective assistance of counsel. (Exhibit 10).

8 Additionally, this Court also determined Leal failed to show his trial counsel's performance fell
9 below the objective standard of reasonableness that is required to show actual prejudice under *Strickland*.
10 Under the law of the case doctrine, this rule of law must be followed throughout the subsequent habeas
11 process. While Nevada recognizes at least the "fundamental miscarriage of justice" exception to the law
12 of the case doctrine, as well as the intervening case law exception (*see, Hsu, 123 Nev. at 631-33, 173*
13 *P.3d at 729-31*), Leal's petitions plead neither exception to avoid application of the law of the case
14 doctrine.

15 Consequently, the above-listed claims contained within both the Pro Se Supplemental and
16 Counseled Supplemental Petition are barred by the law of the case doctrine.

17 Should the Court address the merits of the claims in the petitions in this case, the claims are
18 meritless based on the argument and law presented below.

19 **III. CLAIM RAISED IN THE PRO SE SUPPLEMENTAL PETITION**

20 In the Pro Se Supplemental Petition, Leal alleges that his plea was unknowing and unintelligent
21 because there was an actual conflict of interest due to his trial attorney representing both parties.
22 Specifically, he contends trial counsel was ineffective for failing to ensure his guilty plea was voluntarily
23 entered because he was allegedly coerced by his co-defendant Garcia to enter into the plea agreement
24 and that this coercion constitutes an actual conflict of interest.

25 However, the court already considered and rejected this claim in his first state habeas petition. On
26 two occasions, Leal signed and submitted waivers of conflict; one entered in the justice court and the
27 second entered in district court prior to his entry of plea. (*See, RA 193, 197*). In doing so, Leal waived

28 ///

1 any current or potential conflicts of interest. The Nevada Court of Appeals reaffirmed the validity of the
2 waivers when it found that Leal waived the conflict. (RA 75 and 226).

3 Additionally, Leal acknowledged in the plea agreement that he entered into the plea agreement
4 voluntarily and not as the results of threats or promises. Leal further acknowledged at the plea canvas
5 that no one forced him to plead guilty and that he was acting of his own free will. Leal possessed full
6 knowledge of the terms stated in the plea agreement and therefore cannot now argue that he was forced
7 into the agreement.

8 Leal's allegations regarding a conflict without a valid waiver are meritless.

9 **IV. CLAIMS RAISED IN COUNSELED SUPPLEMENTAL PETITION**

10 **A. Ground One in the Counseled Supplemental Petition (Ineffective Trial Counsel)**

11 In the Counseled Supplemental Petition, Leal alleges he received ineffective assistance of counsel
12 and that ineffectiveness prejudiced him. Again, this claim was previously raised and rejected in prior
13 habeas proceedings. *See Leal v. Howell*, 473 P.3d 464 (Nev. App. 2020).

14 To the extent that this claim is any different than the previous claims already raised in Ground
15 One of the Pro Se petition or Ground Four of the Pro Se Supplemental Petition, it nonetheless fails to
16 satisfy either prong of *Strickland*. *Strickland v. Washington*, 466 U.S. 668 (1984).

17 A claim that counsel provided constitutionally inadequate representation is subject to the two-
18 prong test established in *Strickland*. *Id.* To succeed on a claim of ineffective counsel, a claimant must
19 demonstrate (1) that counsel's performance was deficient and (2) that counsel's deficient performance
20 prejudiced the defense. *Id.* at 687. *See Bennett v. State*, 111 Nev. 1099, 1108, 901 P.2d 676, 682 (Nev.
21 1995), and *Kirksey v. State*, 112 Nev. 980, 987, 923 P.2d 1102, 1107 (Nev. 1966). Deficient performance
22 is representation that falls below the standard of reasonableness. *Evans v. State*, 117 Nev. 609, 28 P.3d
23 498 (2001). Prejudice to the defendant occurs where there is a reasonable probability that but for
24 counsel's errors, the result of the proceedings would have been different. *Kirksey* at 988, 1107. However,
25 if a defendant makes an insufficient showing on either prong, a court need not consider both. *Id.* at 697.

26 Assuming this claim is not procedurally barred, this claim is meritless. As previously noted, the
27 Nevada Court of Appeals already determined that Leal failed to demonstrate his counsel's performance
28 fell below an objective standard of reasonableness. *See Leal v. Howell*, 473 P.3d 464 (Nev. App. 2020).

1 Additionally, it was further determined Leal failed to demonstrate a reasonable probability he would have
2 refused to plead guilty and insisted on proceeding to trial due to counsel's performance. *Id.* Since the
3 appellate court and subsequent habeas proceedings, Leal has not pleaded any new facts that would bring
4 this determination into question. Even if he pleaded facts sufficient to show ineffective counsel, he failed
5 to allege them in any prior proceedings and therefore cannot argue such now.

6 As addressed above, the Court in *Sullivan* held that an amended judgment does not start a new
7 one-year period for filing a state habeas petition under NRS 34.726, nor does Whitehead support
8 argument that the Amended Judgment of Conviction prevents finding Leal's petitions untimely. *See,*
9 *II(A)(1), above.*

10 **B. This Court Previously Found Leal's Plea Knowing, Intelligent and Voluntary, Entered**
11 **with the Benefit of Effective Counsel**

12 During Leal's first state habeas proceeding, this Court found Leal entered his plea knowingly,
13 intelligently, and voluntary, further finding counsel was effective and that the record from the plea
14 canvass belied Leal's claims of coercion or undue influence. (RA 229). The Nevada Court of Appeals
15 affirmed this Court's findings and decision. (RA 247-48).

16 Leal's petitions present no additional basis for relief other than the allegations previously
17 presented to this Court and the Court of Appeals. Respondents therefore request that the Court deny
18 Leal's claims that his plea was coerced, or not intelligent, knowing and voluntary.

19 **V. LEAL'S CLAIMS ADDRESSED BY RESPONDENTS' AUGUST 2020 ANSWER**

20 Respondents addressed the merits of the claims in Leal's original counseled and pro se petitions
21 in the August, 2020 answer. While those claims are procedurally defaulted or barred by the law of the
22 case doctrine, the claims are also meritless based upon the points and authorities briefed in the answer
23 previously filed in this matter.

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CONCLUSION

The relevant Nevada authority compels dismissal of Leal's petitions for writ of habeas corpus filed in this matter based upon the fact that the petitions are untimely, successive, and the law of the case doctrine bars some claims. Should the Court reach the merits of the claims in those pleadings, they are meritless.

DATED this 27th day of July, 2020.

AARON D. FORD
Attorney General

By: /s/Michael J. Bongard
MICHAEL J. BONGARD
Senior Deputy Attorney General
Nevada Bar No. 007997
mbongard@ag.nv.gov
Post-Conviction Division
1539 Ave F
Ely, Nevada 89301

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I electronically filed the foregoing **ANSWER TO POST-CONVICTION**
3 **PETITION FOR WRIT OF HABEAS CORPUS** with the Clerk of the Court by using the electronic
4 filing system on the 27th day of July, 2021.

5 The following participants in this case are registered electronic filing system users and will be
6 served electronically:

7 Lowe Law, L.L.C
8 Diane C. Lowe, Esq.
9 7350 West Centennial Pkway #3085
Las Vegas, NV 89131
dianelowe@lowelawllc.com

10
11 /s/ Amanda White _____
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JACK LEAL,
Petitioner,

vs.

JERRY HOWELL,
Respondent.

CASE#: A-20-814369-W
DEPT. XVII

BEFORE THE HONORABLE MICHAEL VILLANI, DISTRICT COURT JUDGE
FRIDAY, AUGUST 27, 2021

RECORDER'S TRANSCRIPT OF HEARING:
PETITION FOR WRIT OF HABEAS CORPUS

APPEARANCES: [All appearances via videoconference]

For the Petitioner: DIANE LOWE, ESQ.

For the Respondent: MICHAEL BONGARD, ESQ.
Senior Deputy Attorney General

RECORDED BY: KRISTINE SANTI, COURT RECORDER

1 Las Vegas, Nevada, Friday, August 27, 2021

2
3 [Case called at 8:39 a.m.]

4 THE COURT: All right. Thank you. Page 2 is Jack Leal.

5 MR. BONGARD: Your Honor, Michael Bongard from the
6 Attorney General's Office. Bar number 7997 appearing for respondents.

7 THE COURT: All right. Thank you.

8 MS. LOWE: Attorney Diane Lowe, bar number 14573
9 appears for petitioner, Jack Leal.

10 THE COURT: All right. Thank you.

11 Ms. Lowe, it's your petition, go ahead.

12 MS. LOWE: Your Honor, we submitted a second writ petition.
13 As you know, there had been three prior actions, a direct appeal, a writ
14 of habeas corpus, an appeal on the writ of habeas corpus. And Your
15 Honor, appointed me for the second writ of habeas corpus.

16 The first question that we have to address is whether this
17 second writ is timely. The -- there was a judgment of conviction filed on
18 August 23rd, 2017. There was an amended judgment of conviction filed
19 May 9th, 2019. Now it's our position and obviously the Attorney General
20 disagrees that the amended judgment of conviction, which is May 9th,
21 2019, should allow the filed second petition on April 28th, 2020 to be
22 timely.

23 There are two cases primarily addressing these issues on
24 whether it's a clerical change. Under *Sullivan v. State*, the clerical
25 change isn't allowed to change the date for purposes of filing for a

1 second writ or another writ. And but under *Whitehead v. State*, which
2 we argue this case falls under, there is a chance to consider if the
3 change was substantive of had to do with restitution which in this case
4 the language added to the amended judgment of conviction was to add
5 the joint and severely portion of the final order for restitution. Then if
6 that's the case, this petition is timely because the amended judgment of
7 conviction was May 9th, 2019.

8 The Schwartzer second writ petition was filed April 28th. And
9 we would also argue Mr. Leal made a supplement to that in May 2020.
10 We don't think they should be counted as two separate petitions.
11 Rather, he was just adding to the one that was initially filed by Ms.
12 Schwartzer. So we have that hurdle that you would need to make a
13 decision on.

14 The second issue is whether the issues raised were law of the
15 case or whether they're allowed under a successive petition, were the
16 issues allowable with the first writ. And if they were, does that preclude
17 them from being issued in this next writ. So I did prepare a chart on
18 page 13 of my supplement outlining all the actions and the issues raised.

19 We believe partly because there as new information clearly
20 showing prejudice which he couldn't establish necessarily before. But
21 the fact that his co-defendant was given an ultimate sentence of 4 to 10
22 years and his sentence was 6 to 15 years, there's clear prejudice
23 showing in the actions which wasn't in existence before. So when you
24 look at 34.812 and 34.803(b), one of the things you're to look at when
25 considering these issues is was the claim available previously.

1 So we weren't able necessarily to show prejudice before. But
2 now we can clearly establish that due to the actions of his prior counsel,
3 for instance, not getting a stay on the sentencing hearing in sufficient
4 time so that they could gather the information. He had to have done --
5 the trial counsel had to have done something wrong by not contacting
6 the Court earlier rather than just trying to address it at the sentencing
7 hearing that hey look, we believe that because the property is tied up
8 with this lis pendens with the Attorney General's Office it's been making
9 it difficult to sell the property. He was under the understanding that his
10 wife was acting to sell the property. There as a miscommunication
11 problem and his attorney should have handled it better and addressed
12 that in a way where he would have had ability to have the extensions
13 that his wife did.

14 Your Honor, they have similar criminal backgrounds, very
15 minimal. So even though opposing counsel Bongard cites cases which
16 states that in Nevada you don't have to have equal sentencing for co-
17 defendants for the same crime, if you read through the cases that he
18 cites, they're very clear that if for the particular instances where the
19 Court made those decisions, they very clearly state the differences
20 between the two defendants and their background as to why there was a
21 difference in the sentencing.

22 So there may be some general language that leads one to
23 believe that that's what the case is standing for, that you blanketly [sic]
24 don't have to sentence two defendants to the same thing. But if you
25 read further in the cases, they clearly note that because -- this is

1 because two co-defendants don't necessarily have the same
2 background. And that's for each -- I read through all the sentencing
3 cases that Mr. Bongard cited and that was for every single case.

4 Never in the cases that they cite do they state that it doesn't
5 matter whether they, for instance, don't -- neither of them have a criminal
6 record and both of them had the same amount of participation in the
7 crime. Never is there a case like that. It's always well this one was a
8 ring leader or this one had more of a criminal record.

9 But I think in this case -- and the reason I'm going into this
10 more in depth is because it has to do with prejudice. In this case when
11 you look at the backgrounds, which I've clearly outlined in my
12 supplement of each of the defendants, on page 19, very, very similar
13 backgrounds. So the fact that they're given such a different sentence
14 ultimately and the fact that his attorney-- her attorney, rather, was able to
15 get extension after extension after extension, but Mr. Leal's attorney, the
16 same guy, obviously he didn't give him the same sort of services
17 because he didn't get the extension that he wanted that would have
18 been able to give him what he was looking for and that was fair, fair, fair
19 sentence based on what his efforts were. So we also believe --

20 THE COURT: Did Mr. Leal just place the lien on the property
21 just one week before sentencing? I mean, that was my concern at the
22 time of sentencing that didn't show good faith on his part, trying to, you
23 know, resolve the issue of restitution.

24 MS. LOWE: Right. And that was one of the reasons, but also
25 he wasn't at fault, the trial attorney for not outlining the other reasons.

1 Well first, there was -- it was a definite communication problem. But I do
2 believe Mr. Leal had told him in advance that -- and of course Mr. Leal
3 did make a statement to the Court and maybe he didn't get everything in
4 that he wanted and that's not really his fault. He's not a trained litigator
5 and someone knows what's important or who has excellent speaking
6 skills when it's pretty nerve racking alone to appear in court. But his
7 attorney knew of the reasons that he was relying on his wife to do all of
8 this. And there were some efforts on his part. But he didn't take the
9 necessary action in advance. It shouldn't have been left to his client.

10 So as you note in Mr. Leal's filings, he did file some things
11 prior to me jumping on. He does complain that his attorney was one-
12 sided with his wife and didn't seem to pay attention to what he wanted
13 and what he was doing and what his impressions were. And so it was
14 the fault of his attorney to not get some sort of stay well in advance and
15 to ensure that these things were taken care of because he knew how
16 important that was. But he did not.

17 And I'm not -- I haven't outlined too all the other issues that he
18 wanted to address. I mean, some of these factors that he raises
19 unknowing, unintelligent plea, ineffective assistance of counsel, there as
20 a coercion portion that was prior law of the case, but this next action four
21 raises it in a way that's a little bit more general and I think can go to -- to
22 go to he wasn't aware of things and that his attorney didn't shepherd him
23 through. He treated the couple more as a couple and used the wife as
24 the primary person of contact. And yet as we've talked to the Court
25 about or as he has addressed with the Court there were some domestic

1 abuse issues of him, some intimidation. And so his position and his
2 knowledge of the case and what should have been relayed to the Court
3 was not.

4 THE COURT: All right. Thank you, counsel. State.

5 MR. BONGARD: Thank you, Your Honor. Unless the Court
6 has any specific questions I want to address just three areas. First is a
7 correction on the bottom of page 12 of my answer I give the specific
8 reporter site for Mr. Leal's first habeas case. And it refers to a Westlaw
9 citation. That's 2020 Westlaw 6019375.

10 Next I wanted to address, Your Honor, the *Gonzales* case. I
11 filed a notice of supplemental authority two weeks ago addressing
12 *Gonzales versus State*, Nevada Supreme Court opinion. The Pacific
13 Reporter site is 476 Pacific 3d 84. In that case, the Nevada Supreme
14 Court over -- withdrew and basically reinterpreted the decision of the
15 Court of Appeals that discussed the interpretation or the proper
16 interpretation and scope of NRS 34.810(1).

17 The Court said that in their -- they found that that statute is
18 basically a codification of the United States Supreme Court case, which
19 is *Tollett versus Henderson*. And they stated that the proper
20 interpretation to give the 34.810(1) is that a petitioner waives claims
21 relating to the deprivation of constitutional rights that occurred prior to
22 the entry of the guilty plea. And then quoting from the decision and
23 *Tollett*, the Court said he may only attach the voluntary and intelligent
24 character of the guilty plea by showing that the advice he received from
25 counsel was not within the range of competence demanded of attorneys

1 in criminal cases.

2 So the Court based on *Gonzales* can separate Mr. Leal's
3 claims into two categories. One categories of claims that are alleging
4 violations of constitutional rights prior to the entry of the plea which are
5 clearly barred by *Gonzales* and its interpretation of NRS 34.810(1).

6 Second, claims that address things -- defects either in the plea
7 proceeding itself, which go to the voluntary nature of the plea, or defects
8 that occur after the change of plea. And that's what the Court of
9 Appeals originally cut out in their original decision. But the Nevada
10 Supreme Court restored, based on their decision in *Gonzales*. And
11 again of the -- and I outlined in my answer the claims that are barred
12 pursuant to 34.810 based upon that type of reading, a codification of
13 *Tollett* versus claims that would still be viable after *Gonzales*. But that's
14 the least procedural bars in place under 34.810(2) a successive petition
15 and a statute of limitations.

16 And Ms. Lowe states that *Whitehead* provides relief. But I
17 believe, Your Honor, the key way to address that argument it looking at
18 *Sullivan versus State*, 120 Nevada 537. In *Sullivan* the Supreme Court
19 stated that the goal of having finality in criminal convictions would be an
20 absurd result if every amendment of a judgment of conviction restarted
21 the time limit under 34.726(1).

22 And what the Court said is that an amended judgment doesn't
23 restart the clock for filing of a habeas petition, rather if a claim is raised
24 within one year of the amended judgment the fact that that new claim
25 touches on the subject of the amendment and could not have been

1 raised in a prior proceeding and is no fault of the petitioner, then what
2 you have is you have cause to excuse the untimely filing of the claim
3 and then you address prejudice.

4 And if the Court looks at Mr. Leal's claims, none of his claims
5 touch on the subject matter of the amendment of the judgment of
6 conviction which changed the restitution from sole responsibility of Mr.
7 Leal to joint and several responsibility based on both defendants. So
8 Your Honor, therefore I would ask the Court to find the claims in Mr.
9 Leal's petition untimely, successive, barred by 34.810(1) or barred by
10 the law of the case doctrine.

11 THE COURT: All right, thank you.

12 Ms. Lowe, on August 17th, 2017, when the defendant was
13 sentenced, I did impose restitution, correct? And the amendment only
14 dealt with joint and several. Isn't that different than the *Whitehead* case?

15 MS. LOWE: Well the difference being, you're right, Your
16 Honor. And I did point that out specifically in my brief, because I didn't
17 want to mislead you. You did state and the plea agreement did state
18 exact amount of restitution plus joint and several. So the one change in
19 the amended judgment of conviction was that it added the language that
20 was already discussed by you at the hearing. So that's the tricky
21 question you have here.

22 There is a line specifically in *Whitehead* -- and I want to
23 address a point that attorney Bongard raised as far as if the issue of the
24 amendment is not the subject of what's being raised in the petition it
25 can't be raised. *Whitehead* specifically -- and incidentally *Whitehead*

1 was 2012 case. And *Sullivan*, the case, that he's citing from is 2004.
2 But *Whitehead* specifically states it doesn't matter if the claims you're
3 raising has to do with the change in the judgment of conviction, the
4 amended judgment of conviction. All it matters is that the amended
5 judgment of conviction -- well for instance, I think there's a line in here,
6 relates to restitution. It puts in something about the restitution that
7 wasn't in there before. And so that his claims do not rerelease to that is
8 non-issue under *Whitehead*. But yes, that's the exact crux of what
9 you're -- we're asking you to decide.

10 You said it at the hearing at sentencing specifically. And I
11 believe the plea agreement said that to. It was left off of the judgment of
12 conviction. And we're arguing that under *Whitehead* there is room to
13 interpret that cases meaning because the restitution terms were not left
14 off, there's a specific line in the case that's directly says if the restitution
15 terms are left out of the judgment of conviction, then the amended
16 judgment of conviction is what you go from for tolling the limits of filing a
17 writ of habeas corpus. So under the plain language we think that Mr.
18 Leal should prevail as to that hurdle.

19 THE COURT: Well joint and several -- as you know, in joint
20 and several liability if Ms. -- if the wife paid zero restitution, he's on the
21 hook for the full amount, correct?

22 MS. LOWE: Right.

23 THE COURT: And if she paid all of it, he wouldn't have to pay
24 a penny. And so me ordering restitution didn't change anything.
25 Actually just the joint and several just inured to his benefit in the event

1 that Ms. Leal paid any restitution. The restitution amount, no matter
2 what, is still due and owing. Let's saying I think it was 757 -- \$757,000
3 and change perhaps.

4 And so and I'm looking at *Whitehead* right now. It says the
5 setting the amount of restitution at the evidentiary hearing is not
6 analogous to correcting an error. Rather it's an integral part of the
7 sentence. So isn't -- then I imposed the full amount of restitution, which
8 is due and owing from him from his wife. And if she decides not to pay --

9
10 MS. LOWE: Yes, you did.

11 THE COURT: -- he has to pay it all.

12 MS. LOWE: Yes, you did.

13 THE COURT: Anything further, counsel?

14 MS. LOWE: No, Your Honor.

15 THE COURT: All right. Thank you. I do find that the petition -
16 - the second petition is untimely. I do not find good cause to overlook
17 the untimeliness nature of the petition. I also find it to be successive.
18 This issue could have been brought up on the first petition and well as
19 on appeal.

20 Issues of the plea, the Court does not find anything in the plea
21 or argument that his plea was not freely knowingly and voluntarily
22 entered. The only time he started to complain about the plea was after
23 he received his sentence. And I think I recall this case, because at the
24 time it was my impression as the Judge and as the fact finder that he did
25 not show good faith effort to resolve the restitution before sentencing

1 and that's why I sentenced him as I did. And so for all those reasons I
2 am denying the petition.

3 I am adopting the State's procedural history as set forth in
4 their briefs. State, Mr. Bongard, I'm going to ask you to prepare formal
5 findings of fact conclusions of law for the Court to review. And I'll set a
6 three week status check for that. If you can just get that to the Court, if
7 it's an order I'll sign it. If not then we'll address any issues regarding
8 your proposed findings.

9 MR. BONGARD: Thank you, Your Honor. If I may ask one
10 question regarding that?

11 THE COURT: Yes.

12 MR. BONGARD: The Court is finding the claims untimely and
13 successive, no cause and prejudice. Is the Court also finding claims
14 previously raised barred by law of the case?

15 THE COURT: Yes.

16 MR. BONGARD: Thank you, Your Honor.

17 THE COURT: All right. Thank you. Have a good day,
18 counsel.

19 MS. LOWE: Thank you.

20 MR. BONGARD: Thank you, Your Honor.

21 THE CLERK: Judge, the three week status check, is that on
22 your regular calendar?

23 THE COURT: Let's put it on -- we're going to put that on a
24 regular calendar. That's just so we don't forget, counsel, we -- you don't
25 have to show -- I mean, you don't have to show up. It will just be on our

1 tickler system that, you know, we're expecting findings of fact. If it's not
2 submitted, then we'll put it back on calendar. But I just want it on
3 calendar just so no one forgets. So here's the date.

4 THE CLERK: September 16, at 8:30.

5 MR. BONGARD: That was 9-16?

6 THE CLERK: September 16.

7 THE COURT: 1 - 6.

8 MR. BONGARD: Thank you.

9 THE COURT: Thank you, counsel.

10 MR. BONGARD: I see Ms. Lowe's not on. I will email her
11 with that information as well as the proposed draft --.

12 THE COURT: All right, thank you.

13 MR. BONGARD: -- before sending it to the Court.

14 THE COURT: Thank you.

15 MR. BONGARD: Thank you, Your Honor.

16 [Hearing concluded at 9:03 a.m.]

17

18

19

20

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

23

24

25



Jessica Kirkpatrick
Court Recorder/Transcriber



1 NOASC
2 LOWE LAW, L.L.C.
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Attorney for Petitioner JACK LEAL

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY NEVADA

10 JACK LEAL,
11 Petitioner,
12 vs.
13 WARDEN CALVIN JOHNSON
14 Respondent.

Case No.: A-20-814369-W stemming
from

C-17-322664-2 DEPT NO XVII

NOTICE OF APPEAL

15
16 NOTICE is hereby given that JACK LEAL, Petitioner above named, hereby
17 appeals to the Supreme Court of Nevada from the Findings of Fact, Conclusions of
18 Law and Order not yet entered but orally ordered by the Honorable District Court
19 Judge Michael P. Villani and from the final Judgment of Conviction entered
20 August 23, 2017 [Amended JOC May 9, 2019] after a plea agreement and hearing
21 on April 24, 2017, and August 17, 2017 Sentencing.
22
23
24
25
26
27
28

1 The writ of habeas corpus hearing was held on the briefings August 27, 2021, and
2 an immediate oral ruling was made at the conclusion of arguments denying relief.
3

4 An evidentiary hearing was denied.

5 DATED this 29th day of August 2021.
6

7 Respectfully Submitted,
8 /s/ Diane C. Lowe, Esq.
9 DIANE C. LOWE, ESQ.
10 Nevada Bar #14573
11 Lowe Law, L.L.C.
12 7350 West Centennial Pkwy #3085
13 Las Vegas, NV 89131
14 Telephone: (725)212-2451
15 Facsimile: (702)442-0321

16 Attorney for Petitioner Jack Leal
17

18 **CERTIFICATE OF SERVICE VIA ELECTRONIC FILING EMAIL Service**
19 **and Email**

20 I hereby certify that service of the above and foregoing was made this 29th day of
21 August 2021 by Electronic Filing email service to: District Attorney's Office
22

23 Email Address:

24 Motions@clarkcountyda.com
25
26
27
28

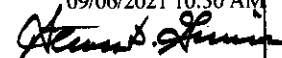
1 And to the Nevada Attorney General's Office at mbongard@ag.nv.gov and
2 wiznetfilings@ag.net.gov
3

4 I further certify that I served a copy of this document by mailing a true and correct
5 copy thereof, post pre-paid, addressed to:
6

7
8 Jack Leal NDOC 1183500
9 Southern Desert Correctional Center
10 Three Lakes Valley Conservation Camp
11 PO Box 208
12 Indian Springs, Nevada 89070-0208
13
14

15
16 /s/ Diane C Lowe, Esq

17 Attorney for Jack Leal
18
19
20
21
22
23
24
25
26
27
28


CLERK OF THE COURT

1 **ORDD**
AARON D. FORD
2 Attorney General
MICHAEL J. BONGARD (Bar No. 007997)
3 Senior Deputy Attorney General
State of Nevada
4 Office of the Attorney General
1539 Avenue F, Suite 2
5 Ely, NV 89301
(775)289-1632 (phone)
6 (775)289-1653 (fax)
MBongard@ag.nv.gov
7 Attorneys for Respondents

8 **DISTRICT COURT**

9 **CLARK COUNTY NEVADA**

10 JACK LEAL,

11 Petitioner,

12 vs.

13 JERRY HOWELL, WARDEN, SOUTHERN
DESERT CORRECTIONAL CENTER,

14 Respondents.

Case No.: A-20-814369-W
Department XVII

15
16 **ORDER DIMISSING PETITION FOR WRIT OF HABEAS CORPUS**

17 On August 27, 2021, the matter came before the Court for argument on Petitioner's Petition for Writ
18 of Habeas Corpus and the Supplemental Petitions for Writ of Habeas Corpus. Appearing via Bluejeans was
19 Petitioner's Counsel, Diane C. Lowe, Esq., and Senior Deputy Attorney General Michael Bongard,
20 representing Respondents. Mr. Leal, in the custody of the Nevada Department of Corrections, appeared via
21 Bluejeans from the Clark County Detention Center.

22 The Court, having reviewed the claims in the counseled petition, pro se petition, and counseled and
23 pro-se supplemental petitions, and Respondents' answer to the petition, heard argument from the parties.

24 **Procedural History**

25 The Court adopts the procedural history of the case from Respondents' answer to the petition, as set
26 forth below:

27 On November 29, 2016, the State filed a criminal complaint in the Las Vegas Township Justice
28 Court charging Leal with: one count of Racketeering, 12 counts of Theft in the Amount of \$3500 or More;

1 one count of Fraud or Deceit in the Course of Enterprise or Occupation (Racketeering); and one count of
2 Multiple Transactions Involving Fraud or Deceit in the Course of an Enterprise and Occupation. On April
3 11, 2017, Leal unconditionally waived his preliminary hearing, which included a conflict-of-interest waiver.

4 In Eighth Judicial District Court case number C-17-322664-2, the State filed a criminal information
5 in the district court charging Leal with one count of Multiple Transactions Involving Fraud or Deceit in the
6 Course of an Enterprise and Occupation.

7 On April 24, 2017, the parties filed a guilty plea agreement in open court and appeared for entry of
8 plea. Leal executed a second conflict of interest waiver. Leal pled guilty to the charge in the information
9 agreeing to pay restitution jointly and severally in the amount of \$757,420.

10 The parties appeared for sentencing on August 17, 2017. The Court sentenced Leal to a maximum
11 term of one hundred eighty (180) months in the Nevada Department of Corrections, with a minimum term
12 of seventy-two (72) months, ordering restitution in the amount of \$757,420.00. The clerk filed the judgment
13 of conviction on August 23, 2017.

14 Leal filed a notice of appeal on September 14, 2017.

15 Leal filed his opening brief on February 1, 2018, in Supreme Court case number 74050.¹ After full
16 briefing, the Nevada Court of Appeals affirmed Leal's conviction. The Nevada Supreme Court subsequently
17 denied Leal's petitions for review and reconsideration. Remittitur issued December 24, 2018.

18 On March 21, 2019, Leal filed his post-conviction state habeas corpus petition in case number C-17-
19 322664-2. In that petition, Leal alleged: (1) the original information failed to put Leal on notice of the
20 charges; (2) counsel was ineffective for failing to obtain a conflict waiver; and (3) counsel coerced petitioner
21 into entering his plea. The Court denied the claims in the petition and Leal filed a notice of appeal.

22 Leal filed his pro se informal brief in case number 79243 on December 30, 2019.² The Nevada Court
23 of Appeals affirmed the denial of Leal's petition and denied rehearing. Remittitur issued January 21, 2021.

24 ///

25 ///

27 ¹ The Supreme Court transferred the matter to the Court of Appeals for disposition.

28 ² The Supreme Court again transferred the matter to the Court of Appeals for disposition.

1 On May 9, 2019, the Court entered an amended judgment of conviction which corrected the original
2 judgment of conviction by ordering restitution be paid jointly and severally pursuant to the terms of the plea
3 agreement.

4 On April 28, 2020, Leal filed a counseled State Habeas Petition. In that petition, Leal raises three
5 claims: (1) Ineffective assistance of counsel for failure to present mitigating factors at sentencing, due to the
6 difficulty of selling property to pay restitution, (2) Ineffective assistance of counsel for failure to correct
7 errors in the pre-sentence report prior to sentencing, and (3) Ineffective assistance of counsel for failure to
8 correct or explain errors in Leal's criminal history prior to sentencing.

9 On May 27, 2020, Leal filed a pro se State Habeas Petition. In that petition, Leal raises the following
10 claims: (1) the guilty plea was involuntary, (2) ineffective assistance of trial counsel (consisting of five
11 subclaims), and (3) ineffective assistance of appellate counsel for failing to raise a claim that petitioner never
12 received a copy of his pre-sentence investigation report.

13 Leal then filed a Pro Se Supplemental Petition for Writ of Habeas Corpus on December 8, 2020. In
14 his supplemental petition, Leal alleged his plea was invalid because of duress, undue influence, and coercion.

15 Finally, on May 5, 2021, Leal filed a counseled-Supplemental Petition for Writ of Habeas Corpus.
16 That petition raised challenges to the voluntariness of his plea and effectiveness of trial counsel.

17 Respondent filed an Answer to these petitions on July 27, 2021, and a Notice of Supplemental
18 Authority on August 11, 2021.

19 After hearing from the parties on August 27, 2021, the Court makes the following findings:

20 **Nevada's Procedural Bars Prohibit Consideration of Leal's Claim**

21 **1.) NRS 34.726**

22 A petitioner must file their habeas corpus petition within one-year after the filing of the judgment of
23 conviction or within one-year of the issuance of the remittitur at the conclusion of the direct appeal. NRS
24 34.726(1). A petitioner may justify filing an untimely petition if they demonstrate cause for a "delay [that] is
25 not the fault of the petitioner" and show that "dismissal of the petition as untimely will unduly prejudice the
26 petitioner. NRS 34.726(1)(a) and (b).

27 ///

28 ///

1 The Court finds that the Remittitur from the conclusion of Leal's direct appeal issued December 24,
2 2018. The Court finds that all of Leal's pro se and counseled petitions filed in this matter are subject to
3 dismissal unless Leal demonstrates cause and prejudice to excuse the default.

4 In the supplemental counseled petition, Leal argues the May 9, 2019, Amended Judgement of
5 Conviction either restarts the one-year time limit in NRS 34.726(1), or alternatively provides cause for his
6 untimely filing. Leal's counseled supplemental petition cites *Whitehead v. State*, 128 Nev. 259, 285 P.3d
7 1053 (2012), in support of his argument.

8 The Court finds that the Nevada Supreme Court recognized that an amended judgment may establish
9 cause to excuse the untimely filing of a state habeas petition. In *Sullivan v. State*, 120 Nev. 537, 96 P.3d 761
10 (2004), the Nevada Supreme Court established that an amended judgment of conviction does not restart the
11 one-year time period in NRS 34.726(1). The Court in *Sullivan* first found "No specific language in NRS
12 34.726 expressly provides that the one-year time period restarts if the judgment of conviction is amended."
13 120 Nev. at 540, 96 P.3d at 764. The Court also recognized that the spirit behind the Legislature's enactment
14 of NRS 34.726 was "one of limiting habeas petitioners to one time through the [post-conviction] system
15 absent extraordinary circumstances." 120 Nev. at 541, 96 P.3d at 764 (citation omitted).

16 While finding that an amended judgment did not restart the time period in NRS 34.726(1), the Court
17 in *Sullivan* found that "if the claims presented in a petition filed within one year of the entry of the amended
18 judgment challenge the proceedings leading to a substantive amendment to the judgment and could not have
19 been raised in prior proceedings, there may be no delay attributable to the 'fault of the petitioner.'" 120 Nev.
20 541, 96 P.3d at 764 (citation omitted).

21 The Court finds that Leal's citation to *Whitehead* is misplaced. In *Whitehead*, the Nevada Supreme
22 Court found that a petitioner's state habeas petition was not untimely where the original judgment of
23 conviction failed to comply with Nevada law. The *Whitehead*, the Nevada Supreme Court distinguished
24 *Sullivan*. In *Whitehead*, the Court found the first judgment of conviction entered in Whitehead's case did not
25 constitute a final judgment of conviction under Nevada law because that order never set a final amount for
26 restitution. 128 Nev. at 263, 285 P.3d at 1055. The Court in *Whitehead* further concluded that "[an]
27 intermediate judgment is not sufficient to trigger the one-year period under NRS 34.726 for filing a
28 postconviction petition for a writ of habeas corpus." *Id.*

1 Addressing the arguments of counsel in Leal’s case, the Court finds that the Judgment of Conviction
2 entered against Leal in Case Number C-17-322644-2 on August 23, 2017, constituted a final judgment. That
3 judgment set forth Leal’s restitution obligation in the amount of \$757,420.00. The Court also finds that the
4 May 9, 2019, Amended Judgment merely corrected the original judgment to conform to the requirement of
5 joint and several liability for the repayment of restitution as bargained for by the parties in the plea agreement.
6 During argument on the petitions, Leal, through counsel, conceded the August 23, 2017, judgment complied
7 with NRS 176.105(1). That statute requires a judgment of conviction imposing restitution set forth the
8 amount of restitution in a specific dollar amount.

9 The Court further finds that the subject of the Amended Judgment of Conviction—ordering payment
10 of restitution jointly and severally with Leal’s co-defendant—corrects the original judgment to conform to
11 the plea agreement. The Court further finds if it changed the terms of Leal’s sentence in any way, such a
12 change inured to the benefit of Leal.

13 In determining whether NRS 34.726(1) applies to Leal’s petitions filed in this matter, the Court finds
14 that it cannot ignore the application of NRS 34.726(1) once raised by Respondents. *State v. Eighth Judicial*
15 *District Ct. (Riker)*, 121 Nev. 225, 231, 112 P.3d 2070, 1074 (2005). The Court also finds that none of the
16 claims in Leal’s pro se or amended petition address the subject of the Amended Judgment of Conviction—
17 joint and several liability for the payment of restitution. The Court further finds that Leal failed to provide
18 good cause or prejudice to excuse his untimely filing of his petitions.

19 Based upon the record, the facts, and the relevant law, the Court finds that all claims in Leal’s
20 petitions filed in this matter are untimely and subject to dismissal pursuant to NRS 34.726(1).

21 **2.) NRS 34.810(1) and (2)**

22 When a petitioner’s judgment and sentence result from the entry of a plea, a state habeas petition
23 may challenge only those claims “involving the voluntariness of the plea itself and the effectiveness of
24 counsel.” *Kirksey v. State*, 112 Nev. 980, 999, 923 P.2d 1102, 1114 (1996); NRS 34.810(1)(a).

25 Claims also subject to dismissal in a state habeas petition are those claims raised for a second time
26 or claims that could have been raised in a prior proceeding. NRS 34.810(2)

27 The Nevada Supreme Court recently addressed NRS 34.810(1)(a). *Gonzales v. State*, ___ P.3d ___,
28 137 Nev. Adv. Op. 40 (July 29, 2021).

1 In *Gonzales*, the Court concluded that NRS 34.810(1)(a) essentially codified the United States
2 Supreme Court's holding in *Tollett v. Henderson*, 411 U.S. 258, 265 (1973), which recognized that "[A]
3 guilty plea represents a break in the chain of events which has preceded it in the criminal process." 137 Nev.
4 Ad. Op. 40, *3, citing 411 U.S. at 267.

5 In *Gonzales*, the Nevada Supreme Court reaffirmed *Kirksey*, concluding the entry of a plea waives
6 constitutional claims occurring prior to the entry of the plea. *Id.*, citing to *Webb v. State*, 91 Nev. 469, 470,
7 538 P.2d 164, 165 (1975) and *Kirksey v. State*, 112 Nev. at 999, 923 P.2d at 1114.³

8 The Court takes judicial notice of Leal's first state habeas corpus petition filed in Eighth Judicial
9 District Court Case Number C-17-322664-2, and the Nevada Court of Appeals' affirmance of the denial of
10 the petition in Case Number 79243.

11 The Court finds that if the rules in NRS 34.810(1)(a) and (2) apply, the Court must apply the default
12 provisions of Nevada law. *State v. Eighth Judicial District Ct. (Riker)*, 121 Nev. at 231, 112 P.3d at 1074.
13 The Court also recognizes that a petitioner may excuse the application of the default rules by demonstrating
14 good cause and actual prejudice. NRS 34.810(3).

15 As cause to excuse a default of claims, Leal again argues that the May 9, 2019, Amended Judgment
16 constitutes a new judgment. However, for the reasons discussed above, the Amended Judgment merely
17 corrected the existing judgment to conform with the plea agreement, which called for restitution to be paid
18 "jointly and severally." The Court also reaffirms its finding that the August 23, 2017, judgment complied
19 with NRS 176.105(1) by setting forth a specific dollar amount and therefore constituted a final judgment.
20 The Court finds that Leal failed to set for good cause to excuse the application of NRS 34.810(1)(a) and (2).

21 Leal also argued prejudice, citing that the Court imposed different sentences for Leal and his co-
22 defendant. However, the Court finds that the difference in the sentences imposed upon Leal and his co-
23 defendant resulted in part due to Leal's inaction prior to sentencing, waiting until a week prior to sentencing
24 to place a lien on his property to secure restitution. The Court finds that any disparity in the sentences does
25 not constitute prejudice to overcome the default of claims in his petitions.

26
27 ³ The Court in *Gonzales* also found ineffective assistance of counsel claims arising after the plea
28 remain valid. *Id.* at *4.

1 Based upon the Nevada Supreme Court's holding in *Sullivan*, the Court finds that the amended
2 judgment of conviction did not entitle Leal to a new round of state habeas proceedings. The Court finds that
3 the claims barred pursuant to NRS 34.810(1)(a) are: (1) the pro se petition's claim that trial counsel failed to
4 litigate an alleged jurisdictional defect regarding property located out of state (Ground 2(c))⁴; (2) the pro se
5 petition's claim that counsel represented both co-defendant for a period of time without a conflict-of-interest
6 waiver; and (3) The pro se petition's claim that counsel was ineffective for challenging an allegedly defective
7 charging document.

8 The Court finds that the claims barred pursuant to NRS 34.810(2) because Leal failed to raise them
9 in his March 2019 petition are: (1) all grounds in Leal's first counseled petition filed in this matter; and (2)
10 Grounds 2(a), 2(b), 2(c), and 3 of the original pro se petition.

11 The Court finds the following claims barred pursuant to NRS 34.810(2) because Leal raised them
12 for a second time in this proceeding: (1) Grounds 1, 2(d), and 2(e) in the original pro se petition; (2) Leal's
13 supplemental pro se petition; and (3) Grounds A and B in the supplemental counseled petition.

14 **The Law of the Case Doctrine Prevents Consideration of Those Claims Addressed in Prior Proceedings**

15 Claims previously litigated by the parties and rejected by an appellate court are subject to the law of
16 the case doctrine. *Hsu v. Cty. of Clark*, 123 Nev. 625, 629–30, 173 P.3d 724, 728 (2007). Nevada recognizes
17 two exceptions to the law of the case doctrine. *Id.* at 631-33, 173 P,3d at 729-31 (recognizing a “fundamental
18 miscarriage of justice” exception and an exception for intervening case law).

19 The Court takes notice of the appellate proceedings in the Nevada Court of Appeals, case numbers
20 79243 and 74050. That Court previously rejected Leal's claims: (1) that his plea was unknowing and not
21 entered intelligently and voluntarily; (2) that counsel was ineffective for failing to obtain a waiver of conflict;
22 (3) that counsel was ineffective for failing to challenge an insufficient charging document; (4) that Leal's
23 plea was coerced.

24 The Court finds that no intervening case law calls into question the Nevada Court of Appeals'
25 affirmance of the denial of Leal's first state habeas petition, nor has Leal demonstrated that applying the law
26 of the case doctrine would result in a fundamental miscarriage of justice.

27 _____
28 ⁴ The Court adopts Respondents numbering of the claims in Ground 2 as set forth on pages 4 of
the Answer.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

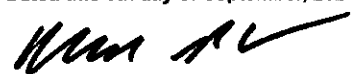
Conclusion

Based upon the pleadings and exhibits submitted in this case, as well as the record in Leal's criminal and appellate cases, the Court finds Leal's petitions procedurally barred. The Court also finds that no cause or prejudice exists to evade application of NRS 34.726(1) and NRS 34.810. The Court further finds that Leal's claims that his plea was coerced or otherwise not knowing, intelligent, and voluntary, or that counsel was ineffective for failing to obtain a waiver of conflict are barred pursuant to the law of the case.

Therefore, good cause appearing:

IT IS THE ORDER OF THE COURT, the Petitioner for Writ of Habeas Corpus in this matter is **DENIED**.

DATED this _____ day of _____, 2021.
Dated this 6th day of September, 2021



DISTRICT JUDGE
A29 B19 1145 3E3D
Michael Villani
District Court Judge

Submitted by:

/s/Michael J. Bongard
Senior Deputy Attorney General
Counsel for Respondents

Approved as to Form:

/s/Diane C. Lowe
Diane C. Lowe, Esq.
Counsel for Jack Leal

1 CSERV

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Jack Leal, Plaintiff(s)

CASE NO: A-20-814369-W

7 vs.

DEPT. NO. Department 19

8 Jerry Howell, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 9/6/2021

14 Amanda White

awhite@ag.nv.gov

15 Michael Bongard

mbongard@ag.nv.gov

16 Rikki Garate

rgarate@ag.nv.gov

17 Michael Bongard

mbongard@ag.nv.gov

18 Diane Lowe

dianelowe@lowelawllc.com

19 District Attorney District Attorney

motions@clarkcountyda.com

20 Attorney General

wiznetfilings@ag.nv.gov

21 Lisa Clark

lclark@ag.nv.gov

22 Kristine Santi

santik@clarkcountycourts.us

23
24
25
26 If indicated below, a copy of the above mentioned filings were also served by mail
via United States Postal Service, postage prepaid, to the parties listed below at their last
27 known addresses on 9/7/2021

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Joye Blanscett

7401 W. Charleston Blvd
Las Vegas, NV, 89117-1401



1 ANOASC
2 LOWE LAW, L.L.C.
3 DIANE C. LOWE, ESQ. Nevada Bar No. 14573
4 7350 West Centennial Pkwy #3085
5 Las Vegas, Nevada 89131
6 (725)212-2451 – F: (702)442-0321
7 Attorney for Petitioner JACK LEAL

8 EIGHTH JUDICIAL DISTRICT COURT

9 CLARK COUNTY NEVADA

10 JACK LEAL,

11 Petitioner,

12 vs.

13 WARDEN CALVIN JOHNSON

14 Respondent.

Case No.: A-20-814369-W stemming
from C-17-322664-2 DEPT NO XVII

S. Ct. No 83451

AMENDED NOTICE OF APPEAL

15
16 NOTICE is hereby given that JACK LEAL, Petitioner above named, hereby submits
17 this Amended Notice of Appeal per NRAP 4(a)(6)&(7) wherein he seeks to appeal
18 from the September 6, 2021 ‘Order Dismissing Petition for Writ of Habeas Corpus’
19 instead of what was called in the original notice of appeal the ‘Findings of Fact,
20 Conclusions of Law and Order’. All else is the same including the case appeal
21 statement previously submitted whereby he appeals to the Supreme Court of Nevada
22 from the Order by the Honorable District Court Judge Michael P. Villani and from
23 the final Judgment of Conviction entered August 23, 2017 [Amended JOC May 9,
24
25
26
27
28

1 2019] after a plea agreement and hearing on April 24, 2017, and August 17, 2017

2 Sentencing.
3

4
5 The writ of habeas corpus hearing was held on the briefings August 27, 2021, and
6 an immediate oral ruling was made at the conclusion of arguments denying relief.
7

8 An evidentiary hearing was denied.

9 DATED this 10th day of September 2021.
10

11 Respectfully Submitted,
12 /s/ Diane C. Lowe, Esq.
13 _____
14 DIANE C. LOWE, ESQ.
15 Nevada Bar #14573
16 Lowe Law, L.L.C.
17 7350 West Centennial Pkwy #3085
18 Las Vegas, NV 89131
19 Telephone: (725)212-2451
20 Facsimile: (702)442-0321

21
22 Attorney for Petitioner Jack Leal
23

24 **CERTIFICATE OF SERVICE VIA ELECTRONIC FILING EMAIL Service**

25 I hereby certify that service of the above and foregoing was made this 10th day of

26 September 2021 by Electronic Filing email service to: District Attorney's Office

27 Email Address:
28

1 Motions@clarkcountyda.com

2

3

4 And to the Nevada Attorney General's Office at wiznetfilings@ag.net.gov

5 I further certify that I served a copy of this document by mailing a true and correct

6

7 copy thereof, post pre-paid, addressed to:

8

9

10 Jack Leal NDOC 1183500

11

11 Southern Desert Correctional Center

12

12 Three Lakes Valley Conservation Camp

13

13 PO Box 208

14

14 Indian Springs, Nevada 89070-0208

15

16

17

17 /s/ Diane C Lowe, Esq

18

19

20

19 Attorney for Jack Leal

21

22

23

24

25

26

27

28