

REUARD T. Polk #72439
L.C.C. P.O. Box 359
Lovelock, Nevada 89419

FILED

MAR 29 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY [Signature]
DEPUTY CLERK

In The Supreme Court of the State of Nevada
* * *

REUARD TRUMAN Polk
~ Petitioner ~
-VS-
Jack Palmer
~ Respondent ~

Case No. 49176
Docket No. _____

Original Jurisdiction Petition Writ
of Habeas Corpus Pursuant to the
Nevada Constitution Article 6 section 4
and Blair v. Crawford 275 F.3d 1156
(9th Cir. 2002.)

Comes, Now the petitioner, REUARD T. Polk,
in his proper person and hereby files this
Original Jurisdiction Petition Writ of Habeas
Corpus requesting the Nevada Supreme Court
to exercise its original jurisdiction to issue
writs pursuant to Blair v. Crawford 275 F.3d
(9th Cir. 2002) and the Nevada Constitution
section 4, challenging the judgment of
the 8th Judicial District
Court, Clark County, Las Vegas, Nevada 89101, on

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JANETTE M. BLOOM
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07-07183

the date of 4/1/02 at department 6: Case number 00-C-166490-C.

This Petition is made and based upon the claims enumerated and raised herein.

This Petition is further made and based upon the contents of the Affidavit in Support of the forthcoming Petition, Legal Points, Authorities and Arguments incorporated herein and any and all exhibits in Support of the forthcoming Petition.

Furthermore, it is made and based upon any oral arguments at the time of any and all allocated hearings if deemed appropriate by this court and all legal documents, pleadings, papers and other documentary instruments on file herewith in objection to the petitioner's unconstitutional confinement of life and liberty without the "Due Process of Law."

Dated this 26th day of March 2007.

Respectfully Submitted

151. *Rd Polk*

REWARD T. Polk

L.L.C. P.O. Box 359

Lockhart, Nevada 89419

②

Procedural Facts

On March 3, 1999 the petitioner was conditionally released from the Family and Youth Services Facility on juvenile probation extending juvenile jurisdiction to the petitioner's (21) twenty-first birthday pursuant to juvenile justice case number: J241117.

On March 13, 1999 an arrest warrant pursuant to this case was issued.

On April 15, 1999 a subsequent arrest warrant was issued by the juvenile court for the petitioner's failure to comply with the terms and conditions of juvenile probation.

On August 14, 1999 the petitioner surrendered himself after being on the run for (5) five months.

On August 16, 1999 the petitioner came before the juvenile court to answer to the warrants that had been lodged against him.

During this time the petitioner was not represented by counsel, received a notice of charges for either arrest warrant, nor was the arrest warrant issued on March 13, 1999 pursuant to this case executed.

The juvenile court also on this day, above stated, found and concluded that the petitioner had violated the terms and conditions of juvenile (3)

probation by committing a criminal act and sentenced the petitioner to (30) thirty-days in the county jail.

While at the county jail the prosecutor chose not to execute the arrest warrant pursuant to this case.

The petitioner was released on September 16, 1999.

On November 8, 1999 the petitioner was arrested, detained and released after approximately (5) five-days for Possession of A Stolen Vehicle.

On January 12, 2000 the criminal complaint pursuant to this case was filed.

On January 13, 2000 the termination of juvenile jurisdiction and wardship order was filed.

Also, on this day, above stated, a summons pursuant to this case was issued.

On February 23, 2000 the petitioner was apprehended.

During the course of proceedings the petitioner was sent to the Lakes Crossing Mental Health Facility for evaluation after be declared incompetent to stand trial.

On November 8, 2000 the petitioner returned having been declared competent to stand trial.

On July 25, 2001 the petitioner, through

counsel of record, Christopher Oran filed a Motion to Dismiss the information alleging:

1.) the petitioner was being held in violation of his right to be free from double jeopardy 2.) that the unnecessary delay in filing charges prejudiced his right to a fair trial as guaranteed by the 5th and 14th Amendment of the Fed. Constitution. 3.) the forced administration of anti-psychotic medication. 4.) cumulative error.

On August 8, 2001 the trial court denied the Motion.

On December 18, 2001 the petitioner filed an Original Jurisdiction Writ of Habeas Corpus Petition alleging: 1.) double jeopardy 2.) Prosecutorial Misconduct a.) involuntariness of the petitioner confession b.) Pre-Accusation Delay. c.) Failure to certify the petitioner as an adult. 3.) Cumulative error.

Also in this petition the petitioner requested an evidentiary hearing to further substantiate his claims.

On January 23, 2002 the petition was denied by the Nevada Supreme Court.

En Banc Reconsideration was denied on April 3, 2002.

On January 3, 2002 the petitioner filed in open court a Pre-Trial Writ of Habeas Corpus (5)

alleging 1.) Double Jeopardy 2.) Prosecutorial Misconduct: a.) Pre-Accusation Delay b.) involuntariness of petitioner's confession c.) failure to certify petitioner as an adult. 3.) Forced Anti-psychotic med. Administration. 4.) Cumulative error.

This petition was denied on the same day.

The petitioner was convicted on January 10, 2002.

On April 1, 2002 the petitioner was sentenced by the trial court.

On September 11, 2002 the petitioner direct appeal opening brief was filed.

On August 25, 2003 the Nevada Supreme Court affirmed the petitioner's conviction.

However, before this affirmation the petitioner submitted and filed a consolidated Motion to Compel Specific Performance; Release Pending Appeal and for Judicial Notice docket number 39457 to supplement direct appellate counsel, David Schiek's opening brief, on December 6, 2002.

This motion was denied on April 1, 2003.

On July 1, 2004 the petitioner filed a Petition Writ of Habeas Corpus alleging, inter alia, 1.) Double Jeopardy 2.) Involuntariness of petitioner confession 3.) failure to certify the petitioner as an adult 4.) due process violation

for unnecessary, wantless or intentional delay.

Along with the petition was filed an Affidavit in support of said petition, Memorandum of Exhibits, Affidavit of Complaint, Request for an Evidentiary Hearing and Memorandum of Points, Authorities and Argument.

The order denying the petition and evidentiary hearing were filed on September 14, 2004.

The Nevada Supreme Court affirmed the lower courts decision on January 25, 2005.

The rescript was issued on February 23, 2005.

Ground (A.)

The petitioner alleges that his sentence and conviction are invalid under the Fed. Constitution's guarantees to due process and to be free from self-incrimination due to detective Timothy Moniot's coercive, promissory and/or threatening tactics to obtain a statement from the petitioner in absence of a knowing, voluntary and intelligent waiver of his Miranda rights in violation of the Federal Constitution's 5th and 14th Amendment, as well as Nevada Constitution Art. 1 sect. 8.

Substantive Facts in Support of Ground (A.)

On August 14, 1999 detective Timothy Moniot having custody of the petitioner under arrest illegally extorted from the petitioner statements pursuant to this case by the threat of violence.

That is to say, that on the above-stated date said detective was called to investigate the apprehension of a suspect wanted for questioning pursuant to this matter.

When said detective arrived at the juvenile facility where the petitioner was being held, said detective asked whether the petitioner would like to give a statement pursuant to this case now before this court.

That before the petitioner responded said detective

[REDACTED]

motioned or gestured toward his gun holster.

The petitioner believed he was in danger and proceeded to comply with the detectives requests to sign a Miranda waiver and answer his questions.

Also at this time the petitioner was without the assistance of anti-psychotic medication.

That during interrogation when the petitioner would become less compliant or the detective believed the petitioner to be lying he would make inference of a lie detector test and would motion toward his gun holster when doing so.

That the petitioner is of the belief that the prosecutor was aware of this due to the state's attempt to suppress the statement for an opportune time.

That is to say that on December 27, 2000 and again on January 10, 2001 the petitioner through counsel of record Christopher Orsini motioned the court to order the prosecuting attorney, Mary K. Holthus, to produce a coerced statement given by the petitioner during a custodial interrogation.

That on the above mentioned dates the state told the court, "they had no such statement in their possession."

That on March 26, 2001 the petitioner was scheduled to go to trial, but was post-poned due to unforeseen circumstances.

That on April 18, 2001 the state suddenly locates

[REDACTED]

the statement given by the petitioner, the same statement, the petitioner had been trying to obtain four (4) months prior to that date.

Then introduces the statement on that date during an O.R. or Bail Reduction Hearing to show cause as to why the petitioner should not be released.

When questioned by the court about the delay in locating the statement the prosecutor told the judge they had just received a copy of the statement from records division at the police department."

However, the retrieval stamp indicates it was retrieved on March 13, 2001.

Thirty-five (35) days before the date of the Bail Hearing.

That officers David Newton and Timothy Beck knowingly made false or fictitious statements in an official police report.

That is to say that when the above stated officers were dispatched to the location where the petitioner surrendered himself the only conversation between the petitioner and the officers was when the petitioner asked, "why he was being taken to the juvenile facility in spite of being (18) eighteen years of age."

The officers replied, "you know why."

No other words were exchanged.

However in the official police report that followed the officers make and represent the fact that, "the petitioner turned himself in because, "he was ashamed

of what he had done."

When in truth and in fact the petitioner never made such a statement.

Wherefore the petitioner prays that a writ of Habeas Corpus issue allocating an evidentiary hearing and upon evidence adduced vacate the judgment, set aside the sentence and grant a new trial excluding the use of the petitioner's statement.

The petitioner does hereby make all facts, details and arguments to be inclusive in all other grounds as if stated and alleged therein.

Legal Points, Authorities and Argument.

The requirement that a statement be voluntary is extracted from the fifth and fourteenth amendment in the Federal Constitution and article 1 section 8 of the Nevada Constitution.

Nevertheless before one can prevail on this type of claim there are a few or several matters to consider.

- 1.) That the statement was in fact illegally obtained
- 2.) The trial court committed error by allowing its use.
- 3.) That the statement had an injurious and

substantial influence on the jury. (Henry v. Hermann 197 F.3d 1021 (9th Cir. 1999); Taylor v. Maddox 366 F.3d 992 (9th Cir. 2004); Hunter v. U.S. 395 F.3d 810 (7th Cir. 2005).)

(1.) The petitioner alleges the confession was illegally obtained.

The petitioner asserts that by detective Timothy Moniot motioning toward his gun holster when asking the petitioner if he would like to give a statement pursuant to this case lead the petitioner to believe he was in actual danger, also considering the petitioner was without the assistance of his anti-psychotic medication for his schizophrenia only heightened the effect of the detectives threat.

This the only reason the petitioner quietly consented to signing a Miranda waiver, because the detectives actions implied any resistance would result in harm. to the petitioner.

Furthermore if the confession was voluntary then there was no need for the detective to use the inference of a lie detector test while motioning toward his gun holster to get the petitioner to answer his questions.

In Hutto v. Ross 429 U.S. 28, @30 the U.S. Supreme Court held:

"a statement is voluntary if

it is not extracted
by some or any sort of
threat or violence or obtained
by any direct or indirect
promises."

Considering the totality of the circumstances
the petitioner in the past never admitted to
any alleged commission of a crime.

Why start now?

(2) The trial court committed error by allowing
its use.

When the petitioner filed his pretrial
writ of habeas corpus on January 3, 2002
judge Joseph T. Bonaventure denied the petition
because he felt, "it was a re-hash of the violations
submitted in the Motion for Dismissal of the charges."

By the judge electing to refuse to entertain the
pre-trial writ of habeas corpus he was unable
to ascertain the seriousness of the allegation the
petitioner was asserting.

The judge erred by accessing that the petitioner
was raising the same issues in the Motion for
Dismissal of the Charges and a Pre-Trial Writ of
Habeas Corpus, a completely different and separate
vehicle from the former.

(3.) The confession had an injurious and substantial
influence on the jury.

After the jury deliberated and rendered a verdict of guilty on January 7, 2002.

Juror number (5) five related to the petitioner's attorney that he "felt the statement had been coerced out of the petitioner and had the petitioner's statement not been apart of evidence submitted by the state he would have rendered a decision of not guilty."

Undoubtedly the prosecution's entire case was the thumb-screw that wielded the jury's decision.

As there was no other evidence that indicated or even implied the petitioner had committed the alleged crime he stands convicted of.

Needless to say, if juror number (5) five felt this way it is easy to presume so did the other jurors as he was the foreman, or at least the petitioner thinks.

Furthermore, juror number (5) five questioned the petitioner's attorney as to why he did not challenge the involuntariness of the petitioner's statement.

There should be no question that the confession had an injurious and substantial influence on the jury.

Relief Request.

The petitioner is aware that the Nevada

Supreme Court does not review matters^[2] evidence^[3] or proof^[3] outside the record, then petitioner would request that an evidentiary hearing be allocated, which is in the Nevada Supreme Courts power to grant.

The factual allegations contained in this ground require an evidentiary hearing as the allegations are, "neither naked or bare and is not belied or repelled by the record."^[4]

However the petitioner cannot substantiate this claim without the following:

I.) The petitioner needs the video and audio data on August, 12 1999 when the petitioner was threatened by detective Timothy Moniot to show said detectives tactics to obtain the petitioner's involuntary confession.

II.) The petitioner needs juror number (5) Five's testimony to show how he felt the petitioner's statement was coerced and whether or not the other jurors felt the same way in regards to the petitioner's involuntary confession.

If this information and material were obtained the petitioner is of the belief he, "would be entitled to relief" in the form of a new trial excluding the petitioner's statement.^[5]

Ground (B).

The petitioner alleges that his sentence and conviction are invalid as he was denied the right to due process and to be free from double jeopardy due to juvenile court proceedings which result in a finding that the petitioner had violated a criminal statute and the subsequent finding that the petitioner was unfit for treatment as a juvenile in violation of the 5th and 14th Amendment of the Federal Constitution as well as the Nevada Constitution Art. I sect. 8. and N.R.S. 62.195

Substantive Facts in Support of ground (B.)

On September 28, 1998 the petitioner at the time was a minor of the age of (17) seventeen years, was accused of (1) count of Battery with Substantial Bodily Harm, (1) count of Attempted Robbery and (1) count of Battery by the juvenile court case number 0241117.

After conducting trial on December 21, 1998 Fernando Guzman, the juvenile hearing judge, found the petitioner guilty of one count of battery and adjudged the petitioner a delinquent child in accordance with state law and scheduled a Dispositional Report/and Hearing to commence on

on January 13, 1999.

The petitioner failed to appear on the above-mentioned date and the juvenile court issued a bench warrant.

The petitioner was apprehend for the above-stated bench warrant on January 14, 1999.

On February 8, 1999 the juvenile court scheduled the petitioner to be sentenced, pursuant to the battery charges on March 3, 1999.

On March 3, 1999 hearing judge, Robert Gatson, found and concluded that because the petitioner was over the age of eighteen years of age, had been detained cumulatively for (4) four months pursuant to the battery charges, failed to appear for the sentencing date on January 13, 1999 and had a serious charge pending in the adult court system; juvenile wardship should terminate immediately upon release and accredited time served pursuant to the battery charges.

This termination of juvenile wardship was to be carried out by Steve Barber.

However Steve Barber failed to do so.

On March 13, 1999 an arrest warrant was issued pursuant to this case in the adult court.

On April 14, 1999 Gail Kasserer procured the issuance of an arrest warrant by filing a petition in the juvenile court alleging the petitioner had violated the terms and conditions of juvenile probation.

However, in truth and in fact the petitioner was not on juvenile probation.

Nevertheless, it is the petitioner's belief that the following documents were fraudulently appropriated into the petitioner's juvenile record to make it appear he was on juvenile probation.

(1.) The Formal Probation Order which specifies that a Parental Consent Decree is attached and signed by the petitioner's legal guardian does not exist.

(2.) The Dispositional Report recommending the petitioner be allocated to probation pursuant to the above specified battery charges filed on January 11, 1999; represents the fact and states the petitioner had a preliminary hearing in the adult court on an unrelated matter scheduled for January 27, 1999.

Notwithstanding, this information, was, concerning the preliminary hearing, not available on January 11, 1999 when the Dispositional Report was filed because the preliminary hearing specified

was not scheduled until January 14, 1999 by the adult court.

This purports that the Dispositional Report was not filed on the date specified by the clerk's stamp, but sometime after the 14 of January 1999.

Thereby making the above-stated report suspect.

3.) Although the petitioner is not a handwriting expert it seems and the petitioner is of the belief that the government official's signature's surrounding the battery charges and allocation to probation all have the same penmanship.

On August 14, 1999 the petitioner surrendered himself to the authorities.

The petitioner was then taken to the juvenile detention facility.

On August 16, 1999 juvenile court minutes state the petitioner came before juvenile magistrate Fernando Guzman where attorney Susan B. Roske was appointed to represent the petitioner.

However in truth and in fact this did not take place.

On August 17, 1999 came before juvenile hearing master Fernando Guzman, where the petitioner involuntary confession was used and admitted into evidence to demonstrate the petitioner had violated a criminal statute.

then subsequently found the petitioner was unfit for treatment as a juvenile.

However the court minutes fail to state that this took place.

The judge then ordered that juvenile wardship terminate as soon as possible and sentenced the petitioner to (30) thirty-days county time.

This was carried out and the petitioner was released from county jail on September 16, 1999.

On January 12, 2000 Mary K. Holthus, district attorney filed the complaint pursuant to this case; this case that the juvenile judge used the involuntary confession to demonstrate the petitioner had violated a criminal statute during the hearing on August 17, 1999. The case the petitioner is currently convicted of.

Wherefore the petitioner prays a writ of habeas corpus issue and an evidentiary hearing allocated and upon evidence adduced in support of this claim set aside the sentence vacate the judgement and dismiss the charges on grounds of double jeopardy.

The petitioner does hereby make all facts, details and argument to be inclusive in all other grounds as if stated and alleged therein.

Legal Points Authorities and Argument.

The petitioner asserts the Double Jeopardy Clause applies to adjudicatory proceedings when they have the potential to deprive a defendant of his liberty.

N.R.S. 62.195 (b) states in pertinent part:

"... criminal proceedings and other juvenile proceedings based upon the same conduct are barred if the court has begun taking evidence or has accepted a child's admission of the alleged facts in the petition. No child may be prosecuted as an adult when previously prosecuted as a child."

This statute being in accordance with the Federal Constitution's guarantee to be free from double jeopardy and Doctrine of Collateral Estoppel.

The petitioner argues that when juvenile hearing master Fernando Guzman recieved the petitioner's involuntary confession into evidence to ascertain whether the petitioner violated a criminal statute as a means of revoking his juvenile probation jeopardy

attached.

As a result of the judge's reliance on the petitioner's involuntary confession the petitioner was sentenced to (30) thirty-days county time.

This was an adjudicatory proceeding which deprived the petitioner of his liberty.

The petitioner is being punished twice for the same offense; First by the juvenile courts reliance, to revoke juvenile probation, on the petitioner's involuntary confession to access whether a criminal statute had been violated and now by the adult court system.

Relief Requested

The petitioner is aware that the Nevada Supreme Court does not review matters^[1], evidence^[2] or proof^[3] outside the record, then the petitioner would request that an evidentiary hearing be allocated which is within the Nevada Supreme Courts power to grant.

The factual allegations contained in this ground are neither naked or bare and is not belied or repelled by the record.^[4]

However the petitioner cannot substantiate this claim without the following:

I.) Although the juvenile court minutes

states the petitioner juvenile probation was revoked and was sentenced to (30) thirty-days county time.

It does not represent that the judge Fernando Guzman, ascertained that the petitioner violated a criminal statute borne out by the petitioner's involuntary confession that was admitted into evidence.

The petitioner needs the court room data on video and audio to show this taking place.

If this information and material were obtained the petitioner would be entitled to relief^[57] in the form of the sentence being set aside and the judgment vacated with the charges being dismissed as the petitioner has been punished twice for the same offense.

Ground (C)

The petitioner alleges that he is in custody in violation of his right to due process due to the prosecutor's intentional, wantless and unnecessary delay in bringing a public accusation, executing an arrest warrant or filing a criminal complaint prejudiced his right to a fair trial in violation of the Federal Constitutions 5th and 14th Amendment as well as the Nevada Constitution Art. 1 sect. 8.

Substantive Facts in Support of Ground (C.)

From August 6, 1996 up until October 9, 1999 the petitioner was being seen by child psychiatrist Dr. Alli.

The psychiatrist diagnosed the petitioner with numerous mental illnesses, but never medicated the petitioner at his request.

The petitioner's family has a long history of mental illnesses.

That the petitioner was released from the Family and Youth Services Facility supposedly on juvenile probation even though the petitioner was (5) five months past his (18) eighteenth birthday.

This extended juvenile jurisdiction and wardship to the petitioner's (21) twenty-first birthday.

On March 14, 1999 the arrest warrant pursuant to this case was issued.

On April 8, 1999 detectives attempted to apprehend the

[REDACTED]

petitioner when they were made aware of his location, but to no avail.

On or about June 1999 the petitioner was involuntarily committed to a Mental Health Facility for an attempted suicide.

During the petitioner's stay at the facility he was diagnosed with split personality disorder, schizophrenia and bipolaria.

The case worker assigned to represent the petitioner never assessed whether the petitioner had any warrants out for his arrest.

Approximately (3) three or (2) two weeks later after the petitioner's arrival at the mental health facility the petitioner was released and pre-scribed anti-psychotic medication to be refilled upon depletion.

On August 14, 1999 the petitioner turned himself in by having an operator dispatch a patrol unit to his location to resolve all pending cases.

At which time a detective, Timothy Moniot, coerced a statement pursuant to this case from the petitioner.

That on August 16, 1999 the petitioner was sentenced to (30) thirty-days county time pursuant to case number J241117 for violating terms and conditions of juvenile probation.

Also at this time no inquiry was made pursuant to this case, no certification or full investigation as required by law ensued, neither was the petitioner represented by counsel during the revocation and sentence matter

[REDACTED]

brought before the court on the afore mentioned date of August 16, 1999, in the juvenile court.

That during the petitioner's stay at the Clark County Detention Center the petitioner was being forced to take anti-psychotic medication against his will.

That is to say, that upon arrival at the detention center psychiatrists asked if the petitioner had prior mental health history.

The petitioner replied, "yes."

The psychiatrist then asked if the petitioner felt he needed any medication at that time.

The petitioner said, "No."

On August 24, 1999 Dr. Mantis conducted an evaluation of the petitioner at the request of one of the officers at the detention center.

The psychiatrist found that the petitioner was suffering from paranoid delusions, hallucinations and had trouble communicating, in turn recommending the petitioner be sent to the 'psych' ward and be given medication.

That during the petitioner's stay at the psych ward the petitioner made vehement refusals to be given anti-psychotic medication but, to no avail.

That when the petitioner would refuse to take the medication orally, nurses and officers would hold the petitioner down and administer the medicine intravenously.

On September 15, 1999 the petitioner was released

[REDACTED]

from the detention center having completed his sentence pursuant to the juvenile revocation hearing.

Also at this time the petitioner was not charged pursuant to this case even though an arrest warrant had been issued and attempts made to apprehend the petitioner (7) seven months prior to being in state custody on this occasion.

On October 21, 1999 officers again tried to apprehend the petitioner, but were unsuccessful.

On October 28, 1999 Dr. Alli the petitioner's child-hood psychiatrist moved his practice.

On November 8, 1999 the petitioner was cited and arrested for Possession of a Stolen Vehicle, case number 9918650X, for approximately (5) five days.

The state chose not to pursue the new case the petitioner was cited for, nor this case now before this court despite the fact an arrest warrant had now been issued for (a) nine months prior to the petitioner being in state custody for a third (3) time.

On January 2, 2000 the complaint pursuant to this case was written up also at this time the juvenile court filed their termination of juvenile wardship order, terminating juvenile jurisdiction over the petitioner.

On January 12, 2000 a summons was issued by Joseph Bonaventure for the petitioner to appear in court.

However the petitioner was a transient.

[REDACTED]

On February 23, 2000 the petitioner was stopped for a disturbance in the neighborhood he was located at, at which time the officers noticed the petitioner had an arrest warrant for this case in the computer, where the officers then arrested the petitioner.

The prosecution of this ensued after an arrest warrant had been issued (1) eleven months earlier and the petitioner being in custody on three (3) different occasions.

On or about November 8, 2000 petitioner's counsel of record for trial Christopher Oram waived the petitioner's speedy trial right without the consent of the petitioner.

On or about July 31, 2001 the petitioner through counsel of record filed a Motion to Dismiss citing 1.) Pre-Arrest Delay or Speedy Trial violation. 2.) Conspiracy and 3.) Egregious and Outrageous Government conduct.

Trial did not take place until (7) seven months after this motion was filed on January 8, 2002.

Wherefore the petitioner prays a writ of habeas corpus issue and an evidentiary hearing be held to determine the facts and circumstances attendant upon the delay and thereafter upon evidence adduced vacate the judgment set aside the sentence and dismiss the information on the issues set forth herein.

The petitioner does hereby make all facts, details and

arguments to be inclusive in all other grounds as if stated and alleged therein.

Legal Points, Authorities and Argument

All cases in post-confession, pre-accusation delays have set out various parameters or factors to be considered before an accused can prevail on a 'due process' violation claim.

The factors to be considered are: 1.) Length of the Delay. 2.) Reason for the Delay and 3.) Substantial, Actual and Non-Speculative Prejudice and deprivation of Constitutional rights.

So the petitioner presents the following argument in accordance with: (Barker v. Wingo 407 U.S. 514; Marion v. U.S. 92 S. Ct. 455; Lavasoo v. U.S. 431 U.S. 783; Dickey v. Florida 90 S. Ct. 1564.)

1.) Length of the Delay.

The U.S. Supreme Court has held in Marion, supra, at 158 "... [I]f prejudice can result from the shortest and most meaningful delay. The length of the delay is only to be used as a triggering mechanism when weighing the other factors."

Furthermore, in accordance with this

ruling the Nevada Supreme court followed the same prescription in *Autrey v. State*

P. 2d stated "the statute of limitations does not define ones rights..."

The petitioner asserts it was nine (9) months of delay in filing charges attributable to the state.

The facts remain that the arrest warrant pursuant to this case was issued on March 13, 1999.

The petitioner surrendered himself on August 14, 1999.

Why the state chose not to execute the arrest warrant for this case remains a mystery.

Not to mention after the petitioner surrendered himself on the above specified date was housed at the county jail for (30) thirty-days.

Furthermore, on November 8, 1999 the petitioner was again housed at the clark county detention center for approximately (5) five days.

Yet, another opportune time to execute the arrest warrant for this case.

However the prosecution of this case would not ensue until (11) months after the issuance of the arrest warrant. Even though petitioner was amenable to the state.

2.) Reason for the Delay.

Although there is no uniformity concerning

a valid reason for the delay to be excused by the court the majority of cases in this type of situation have ruled that if the delay was (1.) reasonably avoidable, (2.) the prosecutor's good faith decision not to serve the accused, (3.) for the convenience of the state, (4.) failure of the state to locate an accused housed in its [state] own facility or (5.) used to gain a tactical advantage over the accused such conduct would weigh heavily against the state and would require a dismissal of the charges.

All cases dealing in this situation have determined the prosecutor is in a better position to give a reason for the delay.

Nevertheless, an accused can still prevail on this type of claim "if it were shown at trial that the state used the delay to gain a tactical advantage over the accused," this being consistent with the Nevada Supreme Court's ruling in, *Autrey*, supra.

It is the petitioner's belief that the only valid reason the state could possibly give for delaying to charge the petitioner was to await the termination of wardship and jurisdiction of the juvenile courts.

This is underlined by the fact that the petitioner was in custody of the state on (3) three separate and unrelated occasions after the issuance of

the arrest warrant, pursuant to this case.

It was only after the juvenile court filed its termination of wardship order on January 13, 2000 did the prosecutor file the criminal complaint and the court issue a summons.

This is exactly the same incident that took place in *Gidley v. State* 765 P.2d 1292 (Wash) wherein the accused cited *Dickey, supra*;

"... civil action must be dismissed if the delay is the result of the prosecution. If in that no valid reason for the delay existed. If it was for the exclusive convenience of the state. Deliberate delay to circumvent juvenile justice system violates 'due process'.
see also, *Sanders v.*

641 F.2d 659 (9th Cir.

The petitioner could possibly end his argument here, but because *Autrey, supra*, necessitates the petitioner to show the tactical advantage over the accused gained, he makes out the next argument.

a.) Tactical Advantage over the accused gained by the delay.

First, the petitioner alleges that by the state delaying the petitioner's privilege to argue against

transfer of this case from the juvenile court to adult court, has been tainted, to receive a less harsh sentence.

It is well known that the juvenile court could have sentenced the petitioner to a less harsh punishment than the one he is serving.

Had the prosecutor opted not to delay in filing charges this advantage would have never been gained.

Second, the delay put the prosecutor in a position to make false statements to the court hiding the petitioner's access to evidence or other material having potential evidentiary value.

When the petitioner requested the prosecutor Mary K. Holthus, through Counsel for the petitioner Christopher Oran, by way of discovery to produce the statement elicited by detective Timothy Moniot

The prosecutor indicated, "they had no such statement."

This discovery matter was brought before the court again (2) two weeks later.

Again the prosecution informed the court, "they had no such statement."

Approximately (21) four months after the first discovery request the prosecutor was notified that a Bail Hearing was to be had for the petitioner.

On the date of the Bail Hearing (1) one-day after the prosecutor was notified of the hearing, the

statement elicited by detective Timothy Moniot is located.

The statement was then used to show why the petitioner should be in continued custody and not admitted to bail.

Clearly the prosecutor could have at any time after the first discovery request produced the statement.

It was only after the prosecutor became aware that the petitioner could have possibly been released on bail did she demonstrate the ready availability of the petitioner's statement, to herself.

This vantage point was gained by the delay and this tactic was used to secure the denial of bail for the petitioner.

Furthermore it is the petitioner's humble opinion had this tactic not been used to procure the petitioner's denial of bail the prosecutor would have circumventively introduced the statement at trial.

Third, as a result of the prosecutor's afore-mentioned action counsel was unable to challenge the admissibility of the statement before the bail hearing.

Another advantage gained by the delay.

Fourth, the prosecutor was able to circumvent the notice requirement of their intention to use said statement prior to the bail hearing.

No delay, No circumvention.

3.) Actual, Substantial and Non-Speculative Prejudice and Deprivation of Constitutional Rights.

The petitioner contends that the delay in bringing charges in this case violated the 'due process' clause of the Fifth and Fourteenth amendment in the Federal Constitution as, well as the Nevada Constitution article 1 section 8 in the following ways:

a.) The petitioner in ground (a) alleged that his statement was involuntary.

The petitioner has a right to be free from self-incrimination and the right to be free from the use of illegally obtained evidence under *Miranda v. Arizona* 384 U.S. 436.

The petitioner's frame of mind was an intricate fact to be considered in the reason for the petitioner giving such a statement.

Taking into account that the petitioner was on anti-psychotic medication when he first turned himself in.

This venture to determine the petitioner's frame of mind when he first surrendered himself would be frivolous now since he has regained some semblance of lucidity.

Had the delay not taking place this information would have been readily available.

To determine the petitioner's mental stability

now would only be limited to what the expert sees and what's on paper, whereby the petitioner has been prejudiced to show his mental veracity at the time of delay.

b.) The petitioner had a right to offer the statements and testimony of favorable witness and to compel their attendance at trial under the compulsory process under the sixth amendment in the federal constitution.

i.) However due to the delay the petitioner was unable to locate his childhood psychiatrist Dr. Alli because he moved his practice during the time the delay was taking place.

Had he been able to testify the petitioner would have went with an Insanity defense. Which would have been supported by Dr. Alli's testimony.

Dr. Alli would have stated and testified that the petitioner has a long family history of mental illnesses and that the petitioner could have inherited the illnesses through hereditary taint.

Dr. Alli could have also testified that as a product of his failure to prescribe anti-psychotic medication to the petitioner at an earlier age in contravention of the petitioner's wishes the petitioner's behavior was a product of not being properly medicated.

This would have undeniably been of

importance to the defense.

ii.) Also due to the delay counsel for trial, Christopher Oran, was unable to obtain mental health records from the facility located on 6161 West Charleston Blvd, Las Vegas Nevada.

It could have been this evidence that possibly could have been presented to even allow the question or instruction of insanity to be presented to the judge and jury.

Notwithstanding the mental health facility previously stated was unable to find the relevant records on the petitioner.

The bulk of the petitioner's argument is this; the petitioner's defense relied wholly on expert testimony and factual determinations at the time of the delay, which could have been provided by numerous sources and readily available.

Nonetheless, to ascertain these questions now to those needed then, during the delay, would be in adverse proportion to what the court now sees and to what is limited on paper.

It was held in *Geelan v. Liffeld* 520 F.2d 585 @ 589 (4th. Cir.):

citing *Williams v. U.S.* 250 F.2d 19, 22-23:

"[W]hen prosecution has been delayed determining Mens Rea is increased, passage of time

makes proof of any fact more difficult. When the fact is as subtle as a mental state the difficulty is immeasurably enhanced."

The only differences between, Geelan, supra, and the petitioner's case is that Geelan was civilly committed to a mental health facility for a number of years before the prosecutor decided to file criminal charges on the accused previously stated.

Here the petitioner was in state custody on other matters on (3) three separate occasions for a cumulative stay of (2) two months.

Nonetheless, it was the prosecutor's decision not to file charges until a later date although the accused was housed in its own facility and both individuals were unable to present an insanity defense as a result thereof.

Relief Requested.

The petitioner is aware that the Nevada Supreme Court does not review matters¹⁷, evidence¹⁷ or proof¹³⁷ outside the record, then the petitioner would request an evidentiary hearing be allocated which is within the Nevada Supreme Court power to grant.

The Factual allegations contained in this ground require an evidentiary hearing as the allegations are neither naked or bare and is not belied or repelled by the record.^[47]

However, the petitioner cannot substantiate this claim without the Following:

I.) The testimony of the prosecutor is needed to give a reason for the delay.

II.) The testimony of Timothy Meniot, Sergeant and Juvenile officials to indicate their opinion on the petitioner's frame of mind when he first surrendered himself.

III.) The testimony of the petitioner's child-hood psychiatrist if he can be located to demonstrate the petitioner's mental instability.

IV.) Juvenile court documents preferably the in court video and audio data to demonstrate the petitioner's demeanor.

If this information and material were obtained the petitioner is of the belief "he would be entitled to relief" ^[57] in the form of a dismissal of the charges as the delay prejudiced his right to a fair trial.

Ground (D)

The petitioner alleges that his sentence and conviction are invalid under the Federal Constitution's guarantee to the right to the due process of law due to the state's failure to conduct a full investigation and properly certify the petitioner for adult court proceedings in violation of the Federal Constitution 5th and 14th Amendment as well as the Nevada Constitution Art. 1 sect. 8.

Substantive Facts in Support of Ground (D)

On March 3, 1999 the petitioner was conditionally released from the family and youth services facility pursuant to case number juvenile justice J241117 at which time the petitioner was allocated to juvenile probation extending the jurisdiction and wardship of the petitioner to his (21) twenty-first birthday.

On April 15, 1999 an arrest warrant was issued by Gail Lassiter at the behest of Steve Barber both persons being juvenile probation officers, against the petitioner for failing to abide by the terms and conditions of juvenile probation.

However, in truth and in fact the petitioner was not on juvenile probation.

Nevertheless it would appear so due to fraudulent, forged, manufactured or misleading documents appropriated into the petitioner's juvenile record borne out by the following:

[REDACTED]

1.) The Formal Probation Order validating the petitioner's appropriation to probation specifies that a parental consent decree is attached thereto the Order.

However this document cannot and will not be located in the petitioner's juvenile record.

2.) The Dispositional Report recommending the petitioner be put on probation was written upon January 10, 1999 and filed on January 11, 1999.

The report makes and represents the fact that the petitioner was to go before the adult court system for a preliminary hearing pursuant to case number 98F17396X to be executed on January 27, 1999.

However this information could not have been known to the individual or public official making the report due to the fact the petitioner did not receive that preliminary hearing until (3) three days after the report was filed.

3.) This purports the signature of the judges and the clerk's stamp to be forged or false.

On August 14, 1999 the petitioner turned himself in pursuant to this case at which time an arrest warrant had been lodged against the petitioner since March 14, 1999. and being that the petitioner was on juvenile probation a certification proceeding should have ensued.

However, this did not happen instead the state delayed the prosecution of this case even an arrest warrant had been issued (5) five months prior to the petitioner being in custody on this occasion.

[REDACTED]

That is to say that if the petitioner was on probation for the juvenile court when he was released on March 3, 1999 then the juvenile courts had extended their jurisdiction pursuant to state law, since the petitioner was over (18) eighteen years of age when he was sentenced to probation for the juvenile courts.

That the alleged crime was committed while the petitioner was on juvenile probation and still before the petitioner had reached the age of (18) eighteen years old.

That when the petitioner turned himself in on August 14, 1999 pursuant to this case and the juvenile probation violation; a certification proceeding did not take place nor a full investigation.

The only hearing conducted was a probation revocation hearing.

That after the revocation hearing took place the petitioner was sentenced to (30) thirty days county time for failing to abide by the terms and conditions of juvenile probation.

At this time the state chose not to execute the warrant that had been issued pursuant to this case.

Also during the juvenile revocation hearing the petitioner neither received notice of the charges nor was an attorney appointed to represent the petitioner.

The petitioner never had an opportunity to appeal the juvenile courts decision.

The petitioner does hereby make all facts, details and arguments to be inclusive in all other grounds as if stated and alleged therein.

Legal Points Authorities and Argument.

The petitioner argues that before this matter could have proceeded in the adult court system a certification and a full investigation hearing was needed to determine whether the charges could have been prosecuted under juvenile jurisdiction.

At the time of the alleged commission of the crime the petitioner was under juvenile jurisdiction as a result of the petitioner supposedly being put on juvenile probation until his (21) twenty-first birthday.

During this time the provisions of N.R.S. 62.080 stated in pertinent part:

subsection 2.) Except as otherwise provided in subsection (3) upon a motion by the district attorney and AFTER A FULL Investigation, the juvenile court shall certify a child for proper criminal proceedings as an adult to any court that would have jurisdiction to try the

offense if committed by an adult if the child is charged with a sexual offense involving the use of force or violence against the victim.

A child within the meaning of N.R.S. 62. A030 (1) is: (b) a person who is less than 21 years of age and subject to the jurisdiction of the juvenile court for an unlawful act that was committed before the person reached 18 years of age.

As the court can hopefully see the mandatory language of the above-stated statutes required the petitioner to be certified only after a full investigation before the adult court could retain jurisdiction of the charges and the petitioner, neither of which took place.

Relief Requested.

The petitioner therefore prays that a writ of habeas corpus issue and this matter remanded back to the juvenile court to determine whether the petitioner should or could have been certified as an adult. In accordance with (Powell v. Hacker 453 F.3d 652 (9th Cir. 1975); Elvick v. State 965 P.2d 288 (Nev. 1998); Kelly v. Kaiser 992 F.2d 1509 (9th Cir. 2001).)

Verification

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

151. Ed Polk

Petitioner In-Pro Se

Certificate of Service by Mail

I do hereby certify that I mailed a true and correct copy of the foregoing Original Jurisdiction Writ of Habeas Corpus Petition to the address below on this 26th day of March 2007 by placing the same into the hands of prison law library staff for posting in the U.S. Mail, pursuant to N.R.C.P. 5:

Jack Palmer
Lovechuck Correctional
Center [via inter-departmental
mail.

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

151. Ed Polk

Signature of Petitioner In Pro Se.