

FILED

FEB 12 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY H. Ingold
DEPUTY CLERK

GARY LYNN Lewis
PO BOX 607 # 47615
CARSON CITY NEVADA 89702

In the Nevada Supreme Court

GARY L Lewis
Petitioner

NSC Case # 53256
8th JUD DIST # C129824

VS

EIGHTH JUDICIAL DIST COURT
State of Nevada, County
of Clark
Respondant

"First Amendment Petition"
Writ of Prohibition and/or
MANDAMUS. CHAP NRS 34 et seq
* "JUDICIAL NOTICE" FED R. CIV. P. 201*
NEV REV STAT 47.130-47.170.

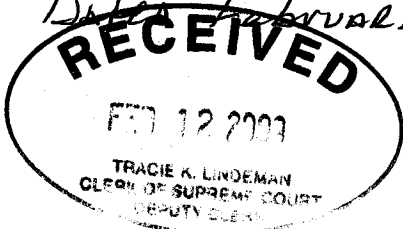
Petitioner GARY L Lewis Pro-se Petitioner files
this First Amendment Petitioner, for Writ of Prohibition
and/or Writ of Mandamus for Release. NRS Chapter 34 et seq

This Petition filed Pursuant to Haines v Kerner 404 US
519, 520 (1972) "Pro-se litigants entitled to be liberally construed".

"Petitioner's Conviction, Not based on ANY Information
Files, within the Case"

this Writ based on Papers document's and AFFIDAVIT
Attached herein, AS well AS Papers on file with the
Court in Case C129824

Dated February 8, 2009



Gary L Lewis
GARY L Lewis
#47615

09-03821

Procedural History

Petitioner GARY LYNN Lewis, was charged by way of information, in Clark County Nevada, on August 15, 1995, with Sexual Assault with a minor under sixteen years of age, while serving a Probation Violation in Case number C122079. The initial Arraignment was held Aug. 16, 1995 and Petitioner was represented by Public Defender Robert D. CARUSO. #1631. He waived the "60 DAY Rule".

ON JANUARY 31, 1996, at Calender Call, Tereasa Lowry the State's Prosecutor did not bother to show up for the hearing, it was trailed, and later recalled, the State was to prepare a transport order for March 20, 1996 as Petitioner was in NDOC custody. Petitioner represented by PD Robert Caruso at that hearing.

At the March 20, 1996, Calender Call, the Court vacated the March 25, 1996 Trial and Reset issue in ordinary course, stating that previously "waived 60 DAY Rule". MR. Caruso, then requested transfer of custody to Clark County Detention Center.

The Calender Call Hearing before Judge A. William Maupin on 6/12/1996. The State files a "Amended Information" that charged Defendant Lewis with 1 Count, "Sexual Assault" (A Felony). A Violation of NRS 200.364, 200.366 in Case number C-129824X. The State presented a Plea Agreement, devoid of any details except the Amended Information number C129824. The Court had Defendant sign the Plea Agreement, and ordered him transferred back to Jean Prison to serve his Probation Violation in Case # C122079. The Judge agreed and ordered it so.

At Sentencing, hearing July 24, 1996, the defense Counsel Robert D. Caruso, told the Court that the Defendant

was in fact illiterate, and just transported from Jean Nevada Prison, and needed time to read PSI Report to him. Court ordered matter continued. Defendant Remanded to Clark County Detention Center Pending Sentencing. So ordered, matter continues to July 31, 1996.

Public defender Stephen M Immerman, Represents the defendant, at the July 31, 1996 hearing as Mr Caruso, was not available and continued matter to August 2, 1996.

At Sentencing hearing August 2, 1996, the Judge ADJUDGED defendant GUILTY of Sexual Assault, in addition to \$2500 Administrative Fee, defendant Sentenced to Nevada Department of Corrections for a term of Life with the Possibility of Parole to be served "Concurrently" with Case # C122079. He Receives 0 DAYS Credit for time served, and Remanded to Jean Nevada NDOP.

(A)

Judicial Notice

Petitioner files this Judicial Notice Pursuant to Nevada Revised Statute 47.130-47.170, Fed R. Civ. 201

Fed R. Civ. 201, NRS 47.130(2)(b) Scope of the Rule, Kinds of facts

A JUDICIALLY NOTICED fact must be one not subject to reasonable dispute in that it is either (1) Generally known within the territorial Jurisdiction of the trial Court or (2) Capable of Accurate and Ready determination by resort to sources whose Accuracy cannot reasonably be questioned.

Fed R. Civ. 201(d) NRS 47.150(2)(b) "when Mandatory"

A Court shall take Judicial notice, if requested by a Party, and SUPPLIED with the Necessary information.

Fen Revid 201(e) Nev Rev Stat 47.160 "Opportunity to be heard"

A PARTY IS ENTITLED TO BE HEARD AS TO THE PROPRIETY OF TAKING JUDICIAL NOTICE AND THE TENOR OF MATTER TO BE NOTICED (IN RELEVANT PART)

Fen Revid 201(f) NRS 47.170 "Time for taking Notice"

JUDICIAL NOTICE MAY BE TAKEN AT ANY STAGE OF PROCEEDINGS

THE COURT WILL TAKE NOTICE THAT:

(1) DEFENDANT WAS CHARGED IN THE CLARK COUNTY JUSTICE COURT WITH A FELONY SEXUAL ASSAULT, A VIOLATION OF NEV REV STAT 200.364, 200.366 BY CRIMINAL COMPLAINT AND HELD ILLEGALLY ON THIS OFFENSE COMPLAINT UNTIL AUGUST 15, 1995, FOR WHICH IT HAS NO JURISDICTION.

(2) THE ORIGINAL INFORMATION WAS FILED AUGUST 15, 1995 IN A UNTIMELY FASHION. PER NRS 174.511, 18 USC 3161(a) 18 USC 3161(b) ANY INFORMATION OR INDICTMENT CHARGING AN INDIVIDUAL WITH THE COMMISSION OF AN OFFENSE, SHALL BE FILED WITHIN 30 DAYS FROM THE DATE ON WHICH SUCH INDIVIDUAL WAS ARRESTED OR SERVED A SUMMONS IN CONNECTION WITH THOSE CHARGES. "NEVADA'S LAW IS MORE RESTRICTED"

UNDER SPEEDY TRIAL ACT OF 1974, 18 USC 3162(a)(1) STATES:

IF IN THE CASE OF ANY INDIVIDUAL AGAINST WHOM A COMPLAINT IS FILED CHARGING SUCH INDIVIDUAL WITH AN OFFENSE NO INDICTMENT OR INFORMATION IS FILED WITHIN THE TIME LIMIT OF 18 USC 3161(b) 30 DAYS (OR) EXTENDED BY 18 USC 3161(h) (WHICH DOESN'T APPLY HERE) OF THIS CHAPTER, SUCH CHARGE AGAINST THAT INDIVIDUAL, CONTAINED IN THE COMPLAINT SHALL BE DISMISSED OR OTHERWISE DROPPED (IN RELEVANT PART)

(3) THE "AMENDED INFORMATION" FILED ON JUNE 12, 1996 WAS BARRED BY THE STATUTE OF LIMITATIONS AS IT HAS INHERITED THE CLOCK OF THE ORIGINAL INFORMATION, AND EVEN THEN.

(4) There was a "fatal Variance" between the Conviction Information on the Judgment. (And) the Criminal Information Listed on the "Criminal Complaint"; the "Criminal Information" (August 15 1995) or the "Amended CRIMINAL Information" (June 12, 1996)

(5) The Judgment of Conviction, States that:
whereas : on the 12th DAY of June 1996 the Defendant GARY LYNN Lewis APPEARED before the Court herein with his Counsel and entered a Plea of Guilty to the Crime of Sexual Assault (Category A Felony) Committed on the 9th day of July 1996) in Violation of NRS 200.364, 200.366 (in Relevant Part)

Query How Can You enter a Plea, to something You were Never CHARGED with because it was not Going to happen for Another Month?
ON A Different Date and Year?

(B) Jurisdiction of the Court

Under Federal Rules of Civil Procedure 60(b) the Court MAY Relieve A Party from the Final Judgment, ORDER, OR Proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, excusable Neglect
- (2) Newly discovered evidence
- * (3) "Fraud" whether (intrinsic or extrinsic) misrepresentation or MISCONDUCT by the OPPOSING Party ("EMPHASIS ADDED")
- * (4) "The Judgment is Void" ("EMPHASIS ADDED")

Petitioner now Requests Declaratory Judgment AS EXPLAINED hereafter 28 USC 2201, 2202 (28 USC 2254)

(c)(1) Petitioner was Denied his Constitutional Right to effective assistance of Counsel at the entry of Plea, and Sentencing, in Violation of his 5, 6, 8, 14 Amendments of the Constitution of the United States, As well as the Nevada Constitution.

Petitioner Gary Lynn Lewis, Avers his Counsel, in this matter, Appointed by Clark County Nevada, Robert D CARUSO, was denied his Civil RIGHTS under 1602 of Authority, (18 USC 241, 242) (in Conjunction with the Clark County District Attorney's office, represented by William D Kephart, # 3649, Teresa Lowey # 3901, Jennifer TobLiatti # 5152 Melanie A Tobiasson # 4515) as explained hereafter.

The Question of whether a defendant has received ineffective assistance of Counsel at trial in Violation of the Sixth and Fourteenth Amendment of US Constitution is a MIXED Question of Law and Fact. And is thus Subject to independent review State v Love 109 Nev 1136, 1138, 865 P2D 322, 323 (1993) The Court Should review a Claim of ineffective Assistance of Counsel under the reasonably effective Assistance Standards enunciated by the US Supreme Court in Strickland v Washington And adopted by the Nevada Court's in Ward v Lyons 100 Nev 430, 683 P2D 504, 510 (1984) See also Dawson v State 108 Nev 112, 115, 825 P2D 593, 595 (1992) Under this two Prong test, a defendant who challenges the advocacy of his or her's Counsel's representation must show (1) that Counsel's Performance was deficient and (2) that the defendant was Prejudiced by this deficiency Strickland v Washington 466 US 687 (1984)

(C)(2) Counsel, was ineffective, in failing to seek a Ruling of Jurisdiction, in the Justice Court on a Felony Complaint, of which the Court Cannot rule.

The Prosecutor in this matter filed a Criminal Felony Complaint, with the Justice Court in Clark County Township. Alleging Sexual Assault, A Violation of NRS 200.364, 200.366.

The Jurisdiction of the Justice Court's is Limited to Misdemeanor offenses, and even if it has Jurisdiction, it Cannot Proceed by a Criminal Complaint, by Nevada Law, it must be by Information or indictment See NRS 170.015, 173.015, 173.025.

In 1978, the Legislature, Affixed the Jurisdictions And Amended the Nevada Constitution Art 6 § 6, Art 6 § 8. while the District Court has Jurisdiction, it was lost, when the Prosecutor Proceeded by "Criminal Complaint" in the District Court (See index Statement)

The "Criminal Complaint" was Valid, in the District Court until August 15th 1995, And Petitioner was legally charged under that Complaint From July 10 1995 until August, 15, 1995. The Court Did not have Jurisdiction, Cf. 4.370 of Nev Rev Statute

Petitioner was denied Due Process, Equal Protection, right to Fundamental Fairness at trial, and ineffective Assistance of Counsel, in Violation of his 5th 6th 8th 14th Amendments of US Constitution the Justice Court never had Jurisdiction to Proceed in this matter.

(C)3)

Appointed Counsel was ineffective, for failing to raise the Jurisdictional Limits of Court had been exceeded in this matter. Denying Due Process, Equal Protection, Right to Redress Government for Grievances, And allowing without objection, Court to Violate Separation of Powers. Denying fundamental fairness at trial, in Violation of US Constitutional Amendments 1, 4, 5, 6, 8, 9, 14

The Court, allowed the Prosecutor to file a Criminal Complaint alleging a felony charge. Counsel should have known that the Prosecutor was exceeding his Statutory Jurisdiction.

The Nevada Law, States in NRS 172.015, 173.015 NRS 173.015 States Generally "ALL Charges are to be by "Information or indictment."

IF the Counsel in this matter had investigated the Nevada Revised Statutes he was hired to defend, he would have discovered, that the "Statutory Provisions" Cites above did have different factual contexts.

"To Hold otherwise, would render every Statute A Chameleon" the meanings of the words in a Statute cannot change with the Statutes Application See: CLARK V MARTINEZ 543 US 371, 125 SCT 716 (2005)

ADDITIONALLY the "CRIMINAL COMPLAINT", the first information, And the Second Amended, ALL list the Crime, AS CHARGED AS BEING JULY 10, 1995. Yet

The Petitioner was Convicted of a Crime on July 9th 1996. There was "No Charge on this Date" AND it constitutes A Violation of due Process. to take the Liberty for a offense without Notice, AND a MEANINGFUL OPPORTUNITY to defend" Jackson v Virginia 443 US 307, 314, 99 Sct 2781 (1979) CF: Stroone v United States 361 US 212, 217 80 Sct 270 (1960) (noting that A Court Cannot Permit a defendant to be tried on charges not made in a indictment Against him) Cole v Arkansas 333 US 196, 201, 68 Sct 514 (1948) holding that SPECIFIC notice of a Charge, AND chance to be heard in a trial of issues by that Charge, if desired Are Among the Constitutional RIGHTS of every Accused in a Criminal Proceeding in ALL Courts State or Federal. CF JACKSON v Gibson 169 F3D 1239, 1252 (10 Cir 99) "A Charging instrument MAY Violate the Sixth Amendment by failing to Provide a defendant with Adequate notice of the Nature and Cause of the Accusations filed Against him. See also Jones v Smith 231 F3D 1227, 1233 (9 Cir 2001) "noting the difference between a Constructive Amendment AND A Mere Variance"

Additionally Because the Judge entered A Judgment in this Case, it operated AS Acquittal of the Charged offense, AND Can operate AS Actual Collateral estoppel Covered within the Double Jeopardy Clause of the 5th 14th Amendments, of US Constitution.

The Court's findings operated AS Resolution Correct or not of the Charged offense AND Acquittals by Judge Can be Covered by the Same Standards AS A Jury Smalis v Pennsylvania

476 US 140, 145, 106 SCT 1745 (1986) See also Smith v Massachusetts 543 US 462, 125 SCT 1133, 1134 (2005) CF: Fong Foo v United States 369 US 141, 143 82 SCT 671 (1962)

Our SYSTEM Mandates that to be found Guilty of a Crime, a defendant must be charged AND Convicted according to Proper legal Procedures AND STANDARDS, Wilson v US 250 F2d 312, 324 (9 CIR 58) The Defendant in this Present Case, was denied that RIGHT. He was "Acquitted" by the Judge of the "information charged", yet convicted of something He was never charged with.

The Sixth Amendment Provides that: (in relevant part) that in Criminal Prosecutions the Accused shall enjoy the RIGHT to be informed of the nature AND Cause of the Accusation (USCA 6, 14) in this regard, the Due Process Clause, AND the Sixth Amendment Provide essentially the Same Protection to defendants Fowcett v Bablitch 962 F2d 617, 618 (7 CIR 92)

Petitioner was denied effective Assistance of Counsel, in failing to Review the Judgment of Conviction, and make the Court Aware that it was not legal AND Binding, AND in Violation of the Law. See ABA STANDARDS for Criminal Justice, the defense function STANDARD §§ 1.1(b) (Role of the defense Counsel) 3.2 (Interviewing the Client) AND (4.1) Duty to investigate.

The Petitioner was Denied effective Assistance of Counsel at trial, Denied Due Process, EQUAL Protection RIGHT to Fundamental Fairness, Cruel and Unusual Punishment, Slavery AND involuntary Servitude, AND Loss of Liberty without lawful Due Process in Violation of 1, 4, 5, 6, 8, 9, 13, 14 Amendments of US Constitution

(C)(4) Counsel was ineffective, in failing to have a mental evaluation performed on his client in that his client has a low IQ, and cannot read or write

In this matter, there was whole sale violation of Petitioners RIGHTS UNDER Color of Law, in violation of due Process.

The Attorney before Shearding his Client, Should have had a mental evaluation performed, as his client is of low IQ, Illiterate to the point he cannot read or write, and Counsel kept it quiet until the PSI Report was prepared See Court minutes

Counsel also had a fundamental Duty to advise him of weaknesses in the States Case, and failure to do this renders his Plea involuntary. Marshall v State 540 So2d 921 (FLA APP 1989)

Defense Counsel was ineffective for failing to investigate Petitioners background, or present any mitigating evidence whatsoever in this case at Sentencing. See Wiggins v Smith 539 US 510, 522, 123 SCT 2527 (2003) CF: Clark v Mitchell 425 F3D 270, 284 (6, 2005)

Counsel, was ineffective in this regard, as his client could not defend himself, and had no ability to understand the Plea Agreement presented, in violation of Due Process, equal Protection, RIGHT to Conflict free Counsel, that amounted to Conspiracy with State to convict a mentally challenged individual, with charges, he was never charged with on the date alleged which violates..

his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments

(D) Because the State is entitled to one and only one opportunity to require an ACCUSED to stand trial, and the charges, (where a information was filed are then subject to Statute of Limitations) the Conviction of a Second Uncharged offense Violates Double Jeopardy, Due Process equal Protection and Fundamental Fairness at trial, Due to Cumulative Errors, Gross Misconduct by the Prosecutor and the systematic deprivation of Petitioners right to effective Assistance of Counsel. in Violation of his 1, 3, 4, 5, 6, 8, 9, 13, 14 US Constitutional Amendments (18 USC 241, 242)

The Original Charges, once the Statute of Limitations has Run, and Conviction of a Second Uncharged offense, Amounts to Denial of Right to Redress Government for Grievances, Government intrusion in his Personal Life (USCA 3) Unlawful Seizure, (USCA 4) Violation of Due Process, equal Protection Life and Liberty, without due Process of Law, (USCA 5) Counsel was ineffective for failing to Appeal the Judgment, when it was ILLEGAL facially, (to the offense) Amounting to Cruel and Unusual Punishment, (USCA 8) by Powers not within the Governments Lawful Jurisdiction, (USCA 9) Amounting to Slavery and involuntary Servitude after the expiration of time to Prosecute July 10th 1995 Crime Charges (USCA 13) made Applicable to the States, by

the 14 Amendment Due Process Clause of the Federal Constitution.

Here the Proper Procedure, leading to a Conviction were not followed. The Purpose of the Nevada Revised Statutes, is to deter State Actors from using their Badge of Authority to deprive individuals of their Federally Guaranteed RIGHTS, AND to Provide relief in the Federal forum, when the State deterrence fails Wyatt v Cole 504 US 158 112 SCT 1827, 1830 (1992)

There was no Information filed as to the July 9th 1996, Conviction, nor was there a trial yet he was convicted. This Amounts to Slavery and Involuntary Servitude, and Government intrusion into his Personal Life without Due Process of Law, in Violation of his 1st, 3rd, 4th, 5th, 6th, 8th, 13, 14 Amendments of the US Constitution

Here Cumulative Errors Warrant Reversal.

To Show Prejudice the Claimant must Show a reasonable Probability that but for Counsel's errors the result of the trial would have been different Kirksey v State 112 NEV 980, 987 (N8) 923 P2D 1102, 1107 (1996) citing Strickland v Washington 466 US 668, 687 104 SCT 2052 (1984)

On the issue of the Judgment alone there is a reasonable Probability that the result of the trial would be different, the Cumulative impact of the trial Counsel's deficiencies Prejudices Petitioner Cooper v Fitzharris 586 F2D 1325, 1333 (9th Cir 78) (en banc) Cert denied 440 US

974. (1979) MAK v BLODGETT 970 F2D 614. (9C1292) (1993)
Morris by and through Ramsmyer v Wood 64 F3d 1432
(9C1295)

Petitioner is entitled to Immediate Release.
AND/OR EVIDENTIARY HEARING. Under NRS 34.770, A
Post Conviction habeas Petitioner is entitled to a
evidentiary hearing, only if he supports his claims with
specific factual allegations that if true would entitle
him to relief. Means v State 120 Nev Adv Rep 101, 103 P3d
25 (2004) Where a defendant makes a colorable claim of
ineffective assistance, and where there has not been a
state or federal hearing on this claim, the Court of Appeals
must remand to the District Court for a EVIDENTIARY
HEARING. Smith v McCormick 914 F2d 1153 (1990)

Petitioner is entitled to be Released AND for a
evidentiary hearing

Conclusion

Taken as a whole, Petitioner was denied his
RIGHT to effective Assistance of Counsel, Fundamental
Fairness AND due Process, In the instant matter
reversal is warranted.

Dated February 8 2009

Gary C Lewis
GARY C. Lewis
47615

Certificate of Service

I GARY L Lewis. Do Swear Pursuant to the Nevada Rules of Civil Proc 5(b) I Placed A true and Correct Copy of First Amendment Petition Postage Paid First Class US mail Addressed to.

EIGHTH JUDICIAL DIST COURT
DAVID ROGER DIST ATTY
200 E Lewis Ave.
Las Vegas Nevada 89155

District Attorney Catherine Masto
100 N Carson Carson City Nevada
89701

The Undersigned Affirms Pursuant to NRS 239. B.030
This document Contains No Social Security Numbers
FRCRP 49.1

February 9, 09

Gary L Lewis
#47615

OFFIDAVIT of GARY L Lewis

Carson County

Carson City Nevada: Being Duly Sworn and deposed Says:

I am the Petitioner, And believe ALL matters are true and Correct, And in order to Comply with Judicial notice, Attach true and Correct, Unredacted Copies of Court Documents. FedRevid 201 NRS 47.130-47.170

Under Penalty of Perjury NRS 208.165 28USC1746
Dates

February 9, 2008

Gary L Lewis

Prepared by Steven Braunstein #64697

GARY L Lewis.
#47615

DATE: 12/29/08
CASE NO. 95-C-129824-C

I N D E X

TIME 7:52 AM
JUDGE:Leavitt, Michelle

STATE OF NEVADA

[] vs Lewis, Gary L

[]

0001 D1 Gary L Lewis

?????? ## UNKNOWN ##

NO.	FILED/REC	CODE	REASON/DESCRIPTION	FOR	OC	SCH/PER	C
0001	08/03/95	CBO	/CRIMINAL BINDOVER Fee \$0.00				
0002	08/04/95	ARRN	/INITIAL ARRAIGNMENT	0001		08/16/95	
0003	08/15/95	INFO	/INFORMATION	0001		08/15/95	
0004	08/16/95	CALC	/CALENDAR CALL	0001		01/31/96	
0005	08/16/95	JURY	/TRIAL BY JURY (VJ 1-31-96)	0001	VC	02/05/96	
0006	09/01/95	TRAN	/REPORTER'S TRANSCRIPT OF PRELIMINARY HEARING	0001		08/01/95	
0007	10/27/95	ORDR	/ORDER FOR PRODUCTION OF INMATE	0001			
0008	12/14/95	ORDR	/ORDER FOR PRODUCTION OF INMATE	0001			
0009	01/17/96	SUBP	/SUBPOENA	0001	SC	02/05/96	
				0001	SV	01/16/96	
0010	01/31/96	CALC	/CALENDAR CALL	0001		03/20/96	
0011	01/31/96	JURY	/TRIAL BY JURY (VJ 3-20-96)	0001	VC	03/25/96	
0012	02/08/96	SUBP	/SUBPOENA	0001	SC	03/25/96	
				0001	SV	02/07/96	
0013	02/23/96	ORDR	/ORDER FOR PRODUCTION OF INMATE	0001			
0014	03/20/96	CALC	/CALENDAR CALL	0001		06/12/96	
0015	03/20/96	JURY	/TRIAL BY JURY (VJ 6-12-96)	0001	VC	06/17/96	
0016	06/12/96	SENT	/SENTENCING	0001	GR	08/02/96	
0017	06/12/96	INFO	/AMENDED INFORMATION	0001		06/12/96	
0018	06/12/96	MEMO	/GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION	0001			
0019	06/12/96	INFO	/AMENDED INFORMATION	0001		06/12/96	
0020	06/14/96	SUBP	/SUBPOENA	0001	SC	06/17/96	
				0001	SV	06/10/96	
0021	08/14/96	JUDG	/JUDGMENT OF CONVICTION - PLEA	0001			
0022	08/14/96	JMNT	/ADMINISTRATION/ASSESSMENT FEE	0001		08/15/96	
0023	07/13/07	CASO	/CASE (RE)OPENED			07/13/07	
0024	07/13/07	ASSG	/REASSIGNMENT OF JUDGE Maupin TO JUDGE Leavitt				
0025	07/13/07	HEAR	/DEFT'S REQUEST TO WDRAW PD AS ATTORNEY	0001	GR	07/19/07	
0026	07/19/07	CSCL	/CASE CLOSED	0001		07/19/07	

FILED

AUG 15 10 04 AM '95

Letitia S. ...

CLERK

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

5

6 I.A. 8/16/95
9:00 a.m.
7 PD

8

DISTRICT COURT

9

CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 GARY LYNN LEWIS,
14 #1302110,

15 Defendant.

16

CASE NO. C129824

DEPT. NO. VII

DOCKET NO. P

INFORMATION

17 STATE OF NEVADA)
18) ss:
COUNTY OF CLARK)

19 STEWART L. BELL, District Attorney within and for the County
20 of Clark, State of Nevada, in the name and by the authority of the
21 State of Nevada, informs the Court:

22 That GARY LYNN LEWIS, the Defendant, having committed the
23 crime of SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE
24 (FELONY - NRS 200.364, 200.366), on or about the 10th day of July,
25 1995, at and within the County of Clark, State of Nevada, contrary
26 to the form, force and effect of statutes in such cases made and
27 provided, and against the peace and dignity of the State of Nevada,
28 did then there wilfully, unlawfully, and feloniously sexually

CMC

CE11

CE31

1 assault and subject LARENZO RICHIE-BORRELL, a male child under
2 sixteen years of age, to sexual penetration, to-wit: anal
3 intercourse, by inserting his penis into the anus of the said
4 LARENZO RICHIE-BORRELL, against his will, or under conditions in
5 which Defendant knew, or should have known, that the said LARENZO
6 RICHIE-BORRELL was mentally or physically incapable of resisting or
7 understanding the nature of Defendant's conduct.

8
9 STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477

10
11 BY *Teresa M. Lowry*
12 TERESA M. LOWRY
13 Deputy District Attorney
Nevada Bar #003901
14

15	<u>NAME</u>	<u>ADDRESS</u>
16	CUSTODIAN OF RECORDS	SUNRISE HOSPITAL
17	GAITOR, CHRISTOPHER	1325 N. 23rd Street Las Vegas, NV 89101
18	ERRICHETTO, LINDA OR DESIGNEE	LVMPD P#1471
19	GAITOR, SEON	1208 Elenor Ave. Las Vegas, NV 89106
20	GAITOR, DORA	1208 Elenor Ave. Las Vegas, NV 89106
21	GAITOR, VANESSA	1325 N. 23rd Street Las Vegas, NV 89101
22	KNUDSEN, AUGUST	LVMPD P#329
23	MILLER, G. LOYAL	LVMPD P#1787
24	MONIOT, TIMOTHY	LVMPD P#4664
25	OLSEN, DR. K.	SUNRISE HOSPITAL
26	PHILLIP, DR. T.	SUNRISE HOSPITAL

1	RICHIE-BORRELL, LARENZO	800 Reed Pl. Las Vegas, NV 89106
2		
3	RICHIE, LADONNA	800 Reed Pl. Las Vegas, NV 89106
4	SCOTT, JON MARK ✓	LVMPD P#4532
5	SIMMONS, CASANDRA	1704 Carey North Las Vegas, NV 89030
6		
7	SKYES, RAYANDO	800 Reed Pl. Las Vegas, NV 89106
8		
9	WYSOCKI, DALE CLIFFORD ✓	LVMPD P#1416

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CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

2001 OCT -4 P 2:12

DA#95F06244X/ajc
LVMPD DR#9507100130
S/A MINOR UNDER 16 -F
(TK3)


CLERK OF THE COURT

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

—FILED IN OPEN COURT—
JUN 12 1996

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

LORETTA BOWMAN,

By *Lori Brown*
Clerk

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 GARY LYNN LEWIS,
13 #1302110,
14 Defendant.

CASE NO. C129824X
DEPT. NO. VII
DOCKET NO. P

AMENDED
INFORMATION

15
16 STATE OF NEVADA)
17) ss:
COUNTY OF CLARK)

18 STEWART L. BELL, District Attorney within and for the County
19 of Clark, State of Nevada, in the name and by the authority of the
20 State of Nevada, informs the Court:

21 That GARY LYNN LEWIS, the Defendant, having committed the
22 crime of SEXUAL ASSAULT (FELONY - NRS 200.364, 200.366), on or
23 about the 10th day of July, 1995, at and within the County of
24 Clark, State of Nevada, contrary to the form, force and effect of
25 statutes in such cases made and provided, and against the peace and
26 dignity of the State of Nevada, did then and there wilfully,
27 unlawfully, and feloniously sexually assault and subject LARENZO
28 RICHIE-BORRELL, to sexual penetration, to-wit: anal intercourse,

CE19

1 by inserting his penis into the anus of the said LARENZO RICHIE-
2 BORRELL, against his will.

3
4 STEWART L. BELL
DISTRICT ATTORNEY
5 Nevada Bar #000477

6
7 BY *Teresa M. Lowry*
8 TERESA M. LOWRY
Deputy District Attorney
9 Nevada Bar #003901
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DA#/95-129824X/ajc
LVMPD DR#9507100130
S/A - F
(TK3)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

2001 OCT -4 P 2 12

[Signature]
CLERK OF THE COURT

ORIGINAL

1 STEWART L. BELL
DISTRICT ATTORNEY
2 Nevada Bar #000477
200 S. Third Street
3 Las Vegas, Nevada 89155
(702) 455-4711
4 Attorney for Plaintiff
THE STATE OF NEVADA

—FILED IN OPEN COURT—
JUN 1 2 1996 19

LORETTA BOWMAN, CLERK

DISTRICT COURT

By Lori Brown
Deputy

CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,
10 Plaintiff,
11 -vs-
12 GARY LYNN LEWIS,
13 #1302110,
14 Defendant.
15

CASE NO. C129824X
DEPT. NO. VII
DOCKET NO. P

16 GUILTY PLEA AGREEMENT PURSUANT TO ALFORD DECISION

17 I hereby agree to plead guilty, pursuant to North Carolina v.
18 Alford, 400 U.S. 25 (1970), to: SEXUAL ASSAULT (FELONY - 200.364,
19 200.366), as more fully alleged in the charging document attached
20 hereto as Exhibit "1".

21 My decision to plead guilty by way of the Alford decision is
22 based upon the plea agreement in this case which is as follows:

23 The State retains the right to argue at the rendition of
24 sentence. The State will ~~not oppose concurrent~~ time between this
25 case and Case No. C122079X. RECOMMEND 12PC
C.C.L. TL

26 CONSEQUENCES OF THE PLEA

27 By pleading guilty pursuant to the Alford decision, it is my
28 desire to avoid the possibility of being convicted of more offenses

AMENDED BY ORDER OF THE COURT

LORETTA BOWMAN, CLERK

BY Lori Brown, Deputy

JUN 1 2 1996

CE19

1 or of a greater offense if I were to proceed to trial on the
2 original charge and of also receiving a greater penalty. I
3 understand that my decision to plead guilty by way of the Alford
4 decision does not require me to admit guilt, but is based upon my
5 belief that the State would present sufficient evidence at trial
6 that a jury would return a verdict of guilty of a greater offense
7 or of more offenses than that to which I am pleading guilty to.

8 I understand that the consequences of my plea of guilty by way
9 of the Alford decision are that I will be imprisoned for a period
10 of LIFE, with the possibility of parole; or twenty-five (25) years;
11 with a mandatory minimum of ten (10) years being served before I am
12 eligible for parole. I understand that the law requires me to pay
13 an Administrative Assessment Fee.

14 I understand that, if appropriate, I will be ordered to make
15 restitution to the victim of the offense to which I am pleading
16 guilty and to the victim of any related offense which is being
17 dismissed or not prosecuted pursuant to this agreement. I will
18 also be ordered to reimburse the State of Nevada for any expenses
19 related to my extradition, if any.

20 I understand that I am not eligible for probation for the
21 offense to which I am pleading guilty.

22 I understand that if more than one sentence of imprisonment is
23 imposed and I am eligible to serve the sentences concurrently, the
24 sentencing judge has the discretion to order the sentences served
25 concurrently or consecutively.

26 I also understand that information regarding charges not
27 filed, dismissed charges, or charges to be dismissed pursuant to
28 this agreement may be considered by the judge at sentencing.

1 I have not been promised or guaranteed any particular
2 sentence by anyone. I know that my sentence is to be determined by
3 the Court within the limits prescribed by statute. I understand
4 that if my attorney or the State or both recommend any specific
5 punishment to the Court, the Court is not obligated to accept the
6 recommendation.

7 I also understand that the Division of Parole and Probation
8 will prepare a report for the sentencing judge prior to sentencing.
9 This report will include matters relevant to the issue of
10 sentencing, including my criminal history. This report may contain
11 hearsay information regarding my background and criminal history.
12 My attorney and I will each have the opportunity to comment on the
13 information contained in the report at the time of sentencing.
14 Unless the District Attorney has specifically agreed otherwise,
15 then the District Attorney may also comment on this report.

16 WAIVER OF RIGHTS

17 By entering my plea of guilty pursuant to the Alford decision,
18 I understand that I am waiving and forever giving up the following
19 rights and privileges:

20 1. The constitutional privilege against self-incrimination,
21 including the right to refuse to testify at trial, in which event
22 the prosecution would not be allowed to comment to the jury about
23 my refusal to testify.

24 2. The constitutional right to a speedy and public trial by
25 an impartial jury, free of excessive pretrial publicity prejudicial
26 to the defense, at which trial I would be entitled to the
27 assistance of an attorney, either appointed or retained. At trial
28 the State would bear the burden of proving beyond a reasonable

1 doubt each element of the offense charged.

2 3. The constitutional right to confront and cross-examine any
3 witnesses who would testify against me.

4 4. The constitutional right to subpoena witnesses to testify
5 on my behalf.

6 5. The constitutional right to testify in my own defense.

7 6. The right to appeal the conviction, with the assistance of
8 an attorney, either appointed or retained, unless the appeal is
9 based upon reasonable constitutional jurisdictional or other
10 grounds that challenge the legality of the proceedings and except
11 as otherwise provided in subsection 3 of NRS 174.035.

12 VOLUNTARINESS OF PLEA

13 I have discussed the elements of all of the original charge
14 with my attorney, and I understand the nature of these charge
15 against me.

16 I understand what the State would have to prove each element
17 of the charge against me at trial.

18 I have discussed with my attorney any possible defenses,
19 defense strategies and circumstances which might be in my favor.

20 All of the foregoing elements, consequences, rights, and
21 waiver of rights have been thoroughly explained to me by my
22 attorney.

23 I believe that pleading guilty by way of the Alford decision
24 and accepting this plea bargain is in my best interest, and that a
25 trial would be contrary to my best interest.

26 I am signing this agreement voluntarily, after consultation
27 with my attorney, and I am not acting under duress, coercion, or by
28 virtue of any promises of leniency, except for those set forth in

1 this agreement.

2 I am not now under the influence of any intoxicating liquor,
3 a controlled substance or other drug which would in any manner
4 impair my ability to comprehend or understand this agreement or the
5 proceedings surrounding my entry of this plea.

6 My attorney has answered all my questions regarding this
7 guilty plea agreement and its consequences to my satisfaction and
8 I am satisfied with the services provided by my attorney.

9 DATED this 12 day of ~~August, 1995~~ June, 1996

10
11 Mary J. Lewis
12 GARY LYNN LEWIS
13 Defendant

14 AGREED TO BY:

15
16 James M. Leamy
17 Deputy District Attorney
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1 CERTIFICATE OF COUNSEL:

2 I, the undersigned, as the attorney for the Defendant named
3 herein, as an officer of the court hereby certify that:

4 1. I have fully explained to the Defendant the allegations
5 contained in the charge to which guilty plea are being entered and
6 the entry of a guilty plea pursuant to the Alford decision.

7 2. I have advised the Defendant of the penalties for each
8 charge and the restitution that the Defendant will be ordered to
9 pay.

10 3. All pleas of guilty offered by the Defendant pursuant to
11 this agreement and the Alford decision are consistent with the
12 facts known to me and are made with my advice to the Defendant.

13 4. To the best of my knowledge and belief, the Defendant:

14 a. Is competent and understands the charges and the
15 consequences of pleading guilty as provided in this
16 agreement.

17 b. Executed this agreement and will enter all guilty
18 pleas pursuant hereto voluntarily.

19 c. Was no under the influence of intoxicating liquor, a
20 controlled substance or other drug at the time I
21 consulted with the defendant as certified in paragraphs
22 1 and 2.

23 Dated: This 12 day of JUNE, 1996
24 August, 1995.

25 R. D. Cam
26 ATTORNEY FOR DEFENDANT

27 CERTIFIED COPY
28 DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE DOCUMENT ON FILE

2001 OCT -4 P 2:13

ajc

CLERK OF THE COURT

ORIGINAL

FILED

AUG 14 10 02 AM '96

Loetta Brown
CLERK

1 JOCP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 455-4711
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 GARY LYNN LEWIS,
12 #1302110

Defendant.

Case No. C129824
Dept. No. VII
Docket P

JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 12th day of June, 1996, the Defendant GARY LYNN LEWIS, appeared
17 before the Court herein with his counsel and entered a plea of guilty to the crime of SEXUAL
18 ASSAULT (CATEGORY A FELONY), committed on the 9th day of July, 1996, in violation of NRS
19 200.364, 200.366 and

20 WHEREAS, thereafter on the 2nd day of August, 1996, the Defendant being present in court
21 with his counsel ROBERT D. CARUSO, and WILLIAM D. KEPHART, Deputy District Attorney, also
22 being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea
23 of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to the
24 Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be
25 served CONCURRENTLY with C122079. Defendant is to receive ZERO days credit for time served.

26 ///

27 ///

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AUG 12 1996

AUG 15 1996

Le...

THEREFORE, the Clerk of the above entitled Court is hereby directed to enter this Judgment of Conviction as part of the record in the above entitled matter.

DATED this 13th day of August, 1996, in the City of Las Vegas, County of Clark, State of Nevada.

Chandra Muri
DISTRICT JUDGE

DA#95F06244X/lib
LVMPD DR#9507100130
SxAsslt - F
(TK3)

CERTIFIED COPY
DOCUMENT ATTACHED IS A
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OF THE DOCUMENT ON FILE

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-2-

CLERK OF THE COURT

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA vs Lewis, Gary L

08/16/95 09:00 AM 00 INITIAL ARRAIGNMENT

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA
 004515 Tobiasson, Melanie A.

 0001 D1 Lewis, Gary L
 PUBDEF Public Defender
 001631 Caruso, Robert D.

Y
Y

Y
Y
Y

DEFT. LEWIS ARRAIGNED, PLED NOT GUILTY to SEXUAL ASSAULT WITH A MINOR UNDER SIXTEEN YEARS OF AGE (F), AND WAIVED THE 60 DAY RULE. COURT ORDERED, this matter SET for trial.

CUSTODY

1-3-96 9:00 A.M. CALENDAR CALL

2-5-96 10:00 A.M. JURY TRIAL

01/31/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: TINA HURD, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA
 005152 Togliatti, Jennifer

 0001 D1 Lewis, Gary L
 PUBDEF Public Defender
 001631 Caruso, Robert D.

Y
Y

N
Y
Y

Mr. Caruso requested a continuance and stated he does not believe Ms. Lowry will have any opposition. COURT ORDERED, matter TRAILED for Ms. Lowry to appear.

LATER: Matter recalled with all present as before. Ms. Lowry not present. COURT ORDERED, trial date VACATED AND RESET; State to prepare an order to transport for March 20.

CUSTODY (COC-NDP)

3-20-96 9:00 AM CALENDAR CALL

CONTINUED ON PAGE: 002

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 001

3-25-96 10:00 AM JURY TRIAL

03/20/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
003901 Lowry, Teresa
0001 D1 Lewis, Gary L
PUBDEF Public Defender
001631 Caruso, Robert D.Y
Y
Y
Y
Y

Per stipulation of counsel, COURT ORDERED, trial date of 3-25-96 VACATED and RESET in the ordinary course, as deft. has previously waived his 60 day rights. Mr. Caruso requested that deft. be REMANDED to the custody of the Clark County Detention Center, as there is difficulty contacting the deft. while in the Nevada Department of Prisons. COURT SO ORDERED.

CUSTODY

6-12-96 9:00 A.M. CALENDAR CALL

6-17-96 10:00 A.M. JURY TRIAL

06/12/96 09:00 AM 00 CALENDAR CALL

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
003901 Lowry, Teresa
0001 D1 Lewis, Gary L
PUBDEF Public Defender
001631 Caruso, Robert D.Y
Y
Y
Y
Y

AMENDED INFORMATION, charging Deft. Lewis with COUNT I - SEXUAL ASSAULT (F), and GUILTY PLEA AGREEMENT FILED IN OPEN COURT. NEGOTIATIONS: The State retains the right to argue at the time of sentencing, but will recommend that time is concurrent with the probation violation deft. is presently serving. DEFT. LEWIS ARRAIGNED and PLED GUILTY PURSUANT TO THE ALFORD DECISION to SEXUAL ASSAULT (F). Penalty stated. Ms. Lowry recited the

CONTINUED ON PAGE: 003

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 002

facts which the State would rely upon for conviction. Court accepted plea, referred matter to P & P and ORDERED set for sentencing. At the request of Mr. Caruso, COURT ORDERED, Deft. to be transported back to Jean, where he is in custody on other charges. FURTHER, trial date VACATED.

CUSTODY

7-24-96 9:00 A.M. SENTENCING

CLERK'S NOTE: Guilty Plea Agreement Amended by Interlineation on page 1, line 24, changing "not oppose concurrent" to "recommend."

07/24/96 09:00 AM 00 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/Recorder

PARTIES: STATE OF NEVADA
003901 Lowry, Teresa
0001 D1 Lewis, Gary L
PUBDEF Public Defender
001631 Caruso, Robert D.

Y
Y
Y
Y
Y

Tom Tatten of the Division of Parole & Probation present. Upon inquiry of the Court, Mr. Caruso advised he is not ready to proceed this date, as deft. is illiterate and was just transported from Jean this morning. Therefore, additional time is needed in order for the PSI Report to be read to him. COURT ORDERED, matter CONTINUED. FURTHER, Deft. Lewis REMANDED TO the CLARK COUNTY DETENTION CENTER pending sentencing to enable Mr. Caruso to review the PSI Report with him.

CUSTODY

CONTINUED TO: 07/31/96 09:00 AM 01

CRIMINAL COURT MINUTES

95-C-129824-C STATE OF NEVADA

vs Lewis, Gary L

CONTINUED FROM PAGE: 003

07/31/96 09:00 AM 01 SENTENCING

HEARD BY: Stephen Huffaker, Senior Judge; Dept. VJ35

OFFICERS: TINA HURD, Court Clerk
TOM MERCER, Reporter/RecorderPARTIES: STATE OF NEVADA
003649 Kephart, William D.
0001 D1 Lewis, Gary L
PUBDEF Public Defender
003447 Immerman, Stephen M.Y
Y
Y
Y
Y

Roy Evans of the Division of Parole & Probation present. Mr. Immerman agreed to a continuance to Friday. COURT ORDERED, CONTINUED.

CUSTODY

CONTINUED TO: 08/02/96 09:00 AM 02

08/02/96 09:00 AM 02 SENTENCING

HEARD BY: A. William Maupin, Judge; Dept. 7

OFFICERS: LORI BROWN, Court Clerk
PATSY SMITH, Reporter/RecorderPARTIES: STATE OF NEVADA
003649 Kephart, William D.
0001 D1 Lewis, Gary L
PUBDEF Public Defender
001631 Caruso, Robert D.Y
Y
Y
Y
Y

Michael R.P. Leoni of the Division of Parole & Probation present. Conference at the bench between Court and counsel. DEFT. LEWIS ADJUDGED GUILTY of SEXUAL ASSAULT (F). Matter submitted. COURT ORDERED, in addition to the \$25.00 Administrative Assessment Fee,, Deft. SENTENCED to Nevada Department of Prisons for a term of LIFE WITH THE POSSIBILITY OF PAROLE, to be served CONCURRENTLY with C122079; and is to receive ZERO Days Credit for Time Served. At the request of Mr. Caruso, Deft. REMANDED to the prison in Jean.

CONTINUED ON PAGE: 005

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

GARY LYNN LEWIS,
Petitioner,
vs.

Supreme Court No. 53256

District Court Case No. C129824

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE
HONORABLE MICHELLE LEAVITT, DISTRICT JUDGE,
Respondents,
and
THE STATE OF NEVADA,
Real Party in Interest.

RECEIPT FOR DOCUMENTS

TO: Michelle Leavitt , District Judge
Gary Lynn Lewis #47615
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

02/12/09 Filing Fee Waived: Criminal.

02/12/09 Filed Proper Person Petition for Writ.
 'First Amendment Petition' Writ of Prohibition and/or Mandamus. CHAP NRS 34 et seq
 **Judicial Notice" Fed Revid 201* Nev Rev Stat 47.130-47.170.

DATE: February 12, 2009

Tracie Lindeman, Clerk of Court