

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed  
Jun 09 2010 12:58 p.m.  
Tracie K. Lindeman

BRENDAN DUNCKLEY,  
Appellant,  
vs.

Sup. Ct. Case No. 55545  
Case No. CR07-1728  
Dept. 4

THE STATE OF NEVADA,  
Respondent.

\_\_\_\_\_ /

**CERTIFIED COPIES**

**VOLUME 3 OF 7**

**RECORD ON APPEAL**

**CR07-1728\_DOCUMENTS\_VOL3**

**Brendan Dunckley, #1023236**  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, NV 89419

**Gary Hatlestad, Deputy District Attorney**  
Washoe County District Attorney's Office  
P.O. Box 30083  
Reno, NV 89520-3083

**APPELLANT**

**RESPONDENT**

1 CODE  
 2 THE O'MARA LAW FIRM, P.C.  
 3 WILLIAM M. O'MARA  
 4 NEVADA BAR NO. 00837  
 5 DAVID C. O'MARA  
 6 NEVADA BAR NO. 08599  
 7 311 East Liberty St.  
 8 Reno, Nevada 89501  
 9 775-323-1321  
 10 775-323-4082 (fax)

11 Attorneys for Defendant

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IN THE SECOND JUDICIAL DISTRICT COURT  
 FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA	)	
	)	
Plaintiff,	)	Case No. CR07-1728
	)	
vs.	)	
	)	Dept No. 4
BRENDAN DUNCKLEY,	)	
	)	<b>RESPONSE TO DEFENDANT'S NOTICE</b>
Defendants.	)	<b>AND MOTION FOR WITHDRAWAL OF</b>
	)	<b>ATTORNEY OR RECORD AND TRANSFER</b>
	)	<b>OF RECORDS</b>

COMES NOW, David C. O'Mara, Esq., of the O'Mara Law Firm, P.C. hereby responds to Defendant, Brendan Dunckley's notice and motion for withdrawal of attorney of record and transfer of records.

On June 10, 2009, the O'Mara Law Firm sent Mr. Dunckley a copy of his entire file, save and except various CDs which are not allowed. See Exhibit 1. Indeed, Mr. O'Mara advised Mr. Dunckley that he could not send the CDs but would provide them to Mr. Dunckley's new counsel.

Thereafter, Mr. Dunckley requested the various documents, included, a copy of the preliminary hearing transcript and various documents filed by the District Attorney's office. These documents were copied and thereafter sent to Mr. Dunckley on July 6, 2009. See Exhibit 2.

Thus, it is believed that Mr. Dunckley is in possession of his entire file. Additionally, Mr. O'Mara will make the file available to Mr. Dunckley's new counsel as soon as Mr. O'Mara is notified of the new counsel.

Further, on July 23, 2009, Mr. O'Mara and the O'Mara Law Firm filed a Notice of Withdrawal.

DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara  
DAVID C. O'MARA

**AFFIRMATION**

(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document  
filed in Case No. CR07-1096.

  X   Document does not contain the social security  
number of any person

-OR-

       Document contains the social security number of a  
person as required by:

       A specific state or federal law, to wit:

-or-

       For the administration of a public program

-or-

       For an application for a federal or state grant

-or-

       Confidential Family Court Information Sheet (NRS 125.130,  
NRS 125.230 and NRS 125B.055)

DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara

DAVID C. O'MARA, ESQ.

CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile

☐ Federal Express or other overnight delivery

☐ Messenger Service

addressed as follows:

Brendan Dunckley  
Inmate No. 1023236  
Lovelock Correctional Center  
1200 Prison Rd.  
Lovelock, Nevada 89419

Deputy District Attorney  
One South Sierra Street, 4<sup>th</sup> Floor  
P.O. Box 30083  
Reno, Nevada 89520

DATED: July 23, 2009

  
/s/ Adrian M. Weis

ADRIAN M. WEIS

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LIST OF EXHIBITS

<u>Exhibit #</u>	<u>Description</u>	<u># Pages</u>
Exhibit 1	Letter from David O'Mara to Brendan Dunckley, dated June 10, 2009	1
Exhibit 2	Letter from David O'Mara to Brendan Dunckley, dated July 6, 2009	1

# EXHIBIT “1”



**O' M A R A**  
**LAW FIRM, PC**

P.O. Box 2270  
311 E. Liberty Street  
Reno, Nevada 89505  
(Tel) 775-323-1321  
(Fax) 775-323-4082

June 10, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley  
Inmate # 1023236  
Lovelock Correctional Center  
1200 Prison Rd  
Lovelock, NV 89419

**Re: *Brendan Dunckley vs. The State of Nevada, Case No. 52383***

Dear Mr. Dunckley,

Enclosed for your records are the following:

1. The Supreme Court's Order of Affirmance.
2. My Notice of Withdrawal as your attorney.
3. Copy of the police reports, transcripts and other documents in my file, but were not included in the Supreme Court Appendix.
4. The original documents from the DMV, the Culinary Institute of America, and the Internal Revenue Service.
5. I also have in my possession various audio recording, which include 911 calls, calls from the jail, your arrest and home interview, and the victim's interview. Because the prison will not allow me to mail these directly to you, please have your new attorney contact my office so I can provide him with a copy.

At this time, I will no longer be representing you, in either the Supreme Court, or the District Court. However, please be advised that should you wish to decide to file a Petition for a Writ



O'MARA  
LAW FIRM, PC

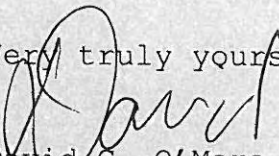
Mr. Brendan Dunckley

June 10, 2009

Page 2

of Habeas Corpus, you should obtain private counsel or file the petition yourself. In any event, you should do this immediately. I, however, can not assist you on this matter.

Very truly yours,



David C. O'Mara

DCO/aw

Enclosure

# EXHIBIT “2”

**O'MARA**  
**LAW FIRM, PC**

P.O. Box 2270  
311 E. Liberty Street  
Reno, Nevada 89505  
(Tel) 775-323-1321  
(Fax) 775-323-4082

July 6, 2009

VIA U.S. MAIL

Mr. Brendan Dunckley  
Inmate # 1023236  
Lovelock Correctional Center  
1200 Prison Rd  
Lovelock, NV 89419

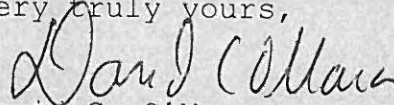
**Re: *Brendan Dunckley vs. The State of Nevada, Case No.***  
**52383**

Dear Mr. Dunckley,

I am in receipt of your June 22, 2009, letter regarding the production of your entire criminal file.

In this regard, I believe I have sent you the contents of your file, but I have enclosed a copy of the notice and motion of intent to introduce other bad acts for your records and the transcript of the preliminary hearing.

Very truly yours,

  
David C. O'Mara

DCO/aw

Enclosure

1 CODE  
2 THE O'MARA LAW FIRM, P.C.  
3 WILLIAM M. O'MARA  
4 NEVADA BAR NO. 00837  
5 DAVID C. O'MARA  
6 NEVADA BAR NO. 08599  
7 311 East Liberty St.  
8 Reno, Nevada 89501  
9 775-323-1321  
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11 Attorneys for Defendant

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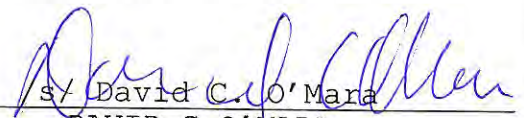
IN THE SECOND JUDICIAL DISTRICT COURT  
FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA	)	
	)	
Plaintiff,	)	Case No. CR07-1728
	)	
vs.	)	
	)	Dept No. 4
BRENDAN DUNCKLEY,	)	
	)	<b>WITHDRAWAL OF ATTORNEY</b>
Defendants.	)	
	)	
	)	

Pursuant to Supreme Court Rule 46, David C. O'Mara, Esq., of The O'Mara Law Firm, P.C., hereby withdraws as attorney for Defendant Brendan Dunckley in the above-entitled matter. The above-referenced case was on appeal and later affirmed by the Nevada Supreme Court. The Supreme Court Remittur and Order Affirming were filed on June 3, 2009. Mr. Dunckley has filed a motion for withdrawal of attorney of record and transfer of records on July 7, 2009.

1 DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

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4 s/ David C. O'Mara  
5 DAVID C. O'MARA

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The undersigned does hereby affirm that the preceding document  
filed in Case No. CR07-1096.

-OR-

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

-or-

\_\_\_\_For the administration of a public program

-or-

\_\_\_\_ For an application for a federal or state grant

-or-

\_\_\_\_ Confidential Family Court Information Sheet (NRS 125.130,  
NRS 125.230 and NRS 125B.055)

DATED: July 23, 2009

THE O'MARA LAW FIRM, P.C.

/s/ David C. O'Mara  
DAVID C. O'MARA, ESQ.



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CERTIFICATE OF SERVICE

I hereby certify under penalties of perjury that on this date I served a true and correct copy of the foregoing document by:

☒ Depositing for mailing, in a sealed envelope, U.S.

Postage prepaid, at Reno, Nevada

☐ Personal delivery

☐ Facsimile

☐ Federal Express or other overnight delivery

☐ Messenger Service

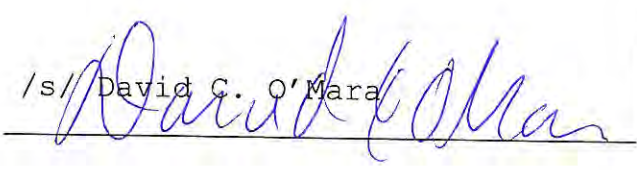
addressed as follows:

Brendan Dunckley  
Inmate No. 1023236  
Lovelock Correctional Center  
1200 Prison Rd.  
Lovelock, Nevada 89419

Deputy District Attorney  
One South Sierra Street, 4<sup>th</sup> Floor  
P.O. Box 30083  
Reno, Nevada 89520

DATED: July 23, 2009

/s/ David C. O'Mara



FILED

09 SEP 30 PM 4:48

HOWARD W. CONYERS

BY *[Signature]*  
DEPUTY

BRENDAN DUNCKLEY #1023236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

LOVELOCK, NEVADA 89419

IN THE SECOND JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY,

PETITIONER

CASE NO: CR07-1728

VS.

CR07-1728

JACK PALMER, WARDEN

DEPT. NO: 4

RESPONDANT

REQUEST FOR SUBMISSION OF MOTION

IT IS REQUESTED THAT THE MOTION(S) FOR WITHDRAWAL OF ATTORNEY  
OF RECORD AND TRANSFER OF RECORDS, INCLUDING AFFIDAVIT IN SUPPORT AND  
ATTORNEY O'MARA'S RESPONSE, WHICH WERE FILED ON THE 7<sup>TH</sup> AND 23<sup>RD</sup> DAY  
OF JULY, 2009 RESPECTFULLY.

ALSO REQUEST FOR MODIFICATION OF SENTENCE FILED ON THE 8<sup>TH</sup>  
DAY OF JULY, 2009, IN ADDITION TO SUBMISSION OF CONSIDERATION OF THE PET-  
ITION OF POST-CONVICTION WRIT OF HABEAS CORPUS, AND ALL INCLUDED PLEADINGS  
AND SUPPORTING DOCUMENTATION FILED ON JULY 21, 2009.

THE UNDERSIGNED CERTIFIES THAT A COPY OF THIS REQUEST HAS  
BEEN MAILED TO ALL COUNSEL OF RECORD.

DATED THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2009

*Brendan Dunckley*

BRENDAN DUNCKLEY (1023236)  
LOVELOCK CORRECTIONAL CENTER  
1200 PRISON ROAD  
LOVELOCK, NEVADA 89419

PETITIONER PRO SE.

348

CR07-1728  
STATE VS BRENDAN DUNCKLEY ( 2 Pages  
District Court 09/30/2009 04:48 PM  
Washoe County 3860  
NOC  
TELETYPE

SECOND JUDICIAL DISTRICT COURT  
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION  
(PURSUANT TO NRS 239B.030)

THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PRO-  
CEDING DOCUMENT, REQUEST FOR SUBMISSION OF MOTION, FILED  
IN CASE NUMBER: CRO7-1728 AND CRO7P1728.

☒ DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY  
PERSONS.

-OR-

☐ DOCUMENT CONTAINS THE SOCIAL SECURITY NUMBER OF A  
PERSON AS REQUIRED BY:

☐ A SPECIFIC STATE OR FEDERAL LAW

-OR-

☐ FOR ADMINISTRATION OF A PUBLIC PROGRAM

-OR-

☐ FOR AN APPLICATION OF A FEDERAL OR OF A  
STATE GRANT.

-OR-

☐ CONFIDENTIAL FAMILY COURT INFORMATION SHEET  
(NRS 125.130, NRS 125.230 AND NRS 125B.055)

DATED: 9/28/09

*Brendan Dunkley*

BRENDAN DUNKLEY (1023236)  
ATTORNEY PRO PER

1 **CODE 3025**  
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
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9 **STATE OF NEVADA,**

10 **Plaintiff,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **BRENDAN DUNKLEY,**

13 **Defendant.**  
14 \_\_\_\_\_

15 **ORDER**

16 On May 8, 2009, the Nevada Supreme Court entered an Order of Affirmance. On  
17 July 7, 2009, the Defendant filed a Motion for Withdrawal of Attorney of Record and  
18 Transfer of Records: Brendan Dunckley and an Affidavit in Support of that Motion. On July  
19 23, 2009, counsel of record, David O'Mara, Esq., filed a Notice of Withdrawal of Attorney  
20 and a Response to Defendant's Notice and Motion for Withdrawal of Attorney of Record  
21 and Transfer of Records. On September 30, 2009, the Defendant formally submitted the  
22 Motion to the Court for decision.  
23

24 This Court having reviewed the pleadings filed herein, with good cause appearing  
25 and in the interest of justice,  
26

27 ///

28 ///

1 IT IS HEREBY ORDERED that the Motion for Withdrawal of Counsel of Record is  
2 granted. Counsel David O'Mara, Esq., is relieved of any further representation of the  
3 Defendant in this matter.

4 IT IS HEREBY FURTHER ORDERED that the Motion for Transfer of Records is  
5 denied as moot as all the records in the possession of David O'Mara Esq., have already  
6 been provided to the Defendant.  
7

8 Dated this 21 day of October, 2009.

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11 Connie J. Stinheim  
12 DISTRICT JUDGE  
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## CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 23<sup>rd</sup> day of October, 2009, I deposited in the county mailing system, a true copy of the attached document, addressed to:


Kelli Vilorio, Esq.  
Deputy District Attorney  
Via Inter-Office Mail

Brendan Dunckley  
Inmate no. 1023236  
1200 Prison Road  
Lovelock, Nevada 89419  
Via U.S. Postal Service

David O'Mara, Esq.  
Attorney at Law  
311 East Liberty Street  
Reno, Nevada 89501  
U.S. Postal Service

I hereby certify that on the 23<sup>rd</sup> day of October, 2009 I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.  
Chief Deputy District Attorney

  
Marci L. Stone



**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 10-23-2009:11:49:18  
**Clerk Accepted:** 10-23-2009:11:55:01  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Ord Granting/Denying in Part  
**Filed By:** Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

**The following people were served electronically:**

GARY HATLESTAD, ESQ. for STATE OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

KELLI VILORIA, ESQ.  
BRENDAN DUNCKLEY  
STATE OF NEVADA

1 **CODE 3370**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **STATE OF NEVADA,**

10 **Plaintiff,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **BRENDAN DUNKLEY,**

13 **Defendant.**  
14 \_\_\_\_\_/

15 **ORDER**

16 On July 8, 2009, the Defendant, in pro per, filed a Motion for Modification of  
17 Sentence. Since that date there has been no response from the State.

18 Therefore, pursuant to DCR 13, in the interests of justice,

19  
20 IT IS HEREBY ORDERED that the State shall file a response to the Motion for  
21 Modification of Sentencing within ten (10) days of this order or the Court will deem that  
22 failure to oppose is an admission that the Motion is meritorious and will grant the same.

23 Dated this 26 day of October, 2009.

24  
25  
26 *Connie J. Steinheimer*  
27 **DISTRICT JUDGE**  
28

1 **CERTIFICATE OF MAILING**

2 I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the  
3 27<sup>th</sup> day of October, 2009, I deposited in the county mailing system, a true copy of the  
4 attached document, addressed to:

5  
6 Kelli Vilorio, Esq.  
7 Deputy District Attorney  
Via Inter-Office Mail

8 Brendan Dunckley  
9 Inmate #1023236  
10 Lovelock Correctional Center  
1200 Prison Road  
11 Lovelock, Nevada 89419  
Via U.S. Postal Service

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21 Marci L. Stone

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 10-27-2009:08:42:38  
**Clerk Accepted:** 10-27-2009:08:43:01  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Order...  
**Filed By:** Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

**The following people were served electronically:**

GARY HATLESTAD, ESQ. for STATE OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

KELLI VILORIA, ESQ.  
BRENDAN DUNCKLEY  
STATE OF NEVADA

1 CODE #2645  
2 RICHARD A. GAMMICK  
3 #001510  
4 P. O. Box 30083  
5 Reno, Nevada 89520-3083  
6 (775)328-3200  
7 Attorney for Plaintiff

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR07-1728

16 BRENDAN DUNCKLEY,

Dept. No. 4

17 Defendant.  
18 \_\_\_\_\_/

19 OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE

20 COMES NOW, the State of Nevada, by and through counsel, to submit this Opposition  
21 to Dunckley's Motion for Modification of Sentence. This Opposition is based on the  
22 accompanying points and authorities.

23 Points and Authorities

24 Dunckley contends that his sentence should be modified because he is innocent, and his  
25 convictions, albeit based on guilty pleas, were the result of "perjured . . . false facts. These are  
26 not valid grounds for modifying a sentence.

27 A motion to correct an illegal sentence may only challenge the facial legality of the  
28 sentence: either the district court was without jurisdiction to impose a sentence or the sentence  
29 was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev. 704, 708, 918  
30 P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes a valid conviction

1 and may not, therefore, be used to challenge alleged errors in proceedings that occur prior to  
2 the imposition of sentence.’ ” *Id.* (quoting *Allen v. United States*, 495 A.2d 1145, 1149  
3 (D.C.1985)). A motion to modify a sentence “is limited in scope to sentences based on  
4 mistaken assumptions about a defendant's criminal record which work to the defendant's  
5 extreme detriment.” *Id.* A motion to modify or correct a sentence that raises issues outside the  
6 very narrow scope of issues permissible may be summarily denied. *Id.* at 708-09 n. 2.

7 Since Dunckley’s motion fails to allege proper grounds justifying a modification of his  
8 lawful sentence, his motion should be denied.

9 AFFIRMATION PURSUANT TO NRS 239B.030

10 The undersigned does hereby affirm that the preceding document does not contain the  
11 social security number of any person.

12 DATED: November 4, 2009.

13 RICHARD A. GAMMICK  
14 District Attorney

15 By /s/ GARY H. HATLESTAD  
16 GARY H. HATLESTAD  
17 Chief Appellate Deputy  
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**Brendan Dunckley #1023236**  
**Lovelock Correctional Center**  
**1200 Prison Road**  
**Lovelock, NV 89419**

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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 11-04-2009:10:28:48  
**Clerk Accepted:** 11-04-2009:10:38:46  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Opposition to Mtn  
**Filed By:** GARY HATLESTAD, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

**The following people were served electronically:**

GARY HATLESTAD, ESQ. for STATE OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

KELLI VILORIA, ESQ.  
BRENDAN DUNCKLEY  
STATE OF NEVADA

Code  
3880

FILED

09 NOV 13 PM 4:05

1 BRENDAN DUNCKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT

7 OF THE STATE OF NEVADA IN AND FOR

8 THE COUNTY OF WASHOE

9

10 STATE OF NEVADA,

11 PLAINTIFF

12 VS.

13 BRENDAN DUNCKLEY,

14 DEFENDANT.

CASE NO: CR07-1728

DEPT. NO: 4

15 RESPONSE TO STATES OPPOSITION TO

16 MOTION FOR MODIFICATION OF SENTENCE

17

18 COMES NOW, DEFENDANT BRENDAN DUNCKLEY, IN PRO PER,

19 TO SUBMIT THIS RESPONSE TO THE STATES OPPOSITION TO

20 THE DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE

21 FILED ON JULY 8, 2009. THE RESPONSE TO STATE OPPOSITION

22 IS BASED ON ACCOMPANYING POINTS AND AUTHORITY.

23 POINTS AND AUTHORITY

24

25 The State claims in their opposition that

26 the motion fails to allege the proper grounds

27 required to justify a modification of sentence.

28 Specifically the state claims and asserts

DC-990012673-0901  
CR07-1728 BRENDAN DUNCKLEY 14 Pages  
STATE VS BRENDAN DUNCKLEY 11/13/2009 04:05 PM  
District Court 3880  
Washoe County  
IFLORES  
DOC

1 THAT THE "DEFENDANT) DUNCKLEY CLAIMS THAT HIS SENTENCE  
2 SHOULD BE MODIFIED BECAUSE HE IS INNOCENT, AND HIS  
3 CONVICTIONS, ALBET BASED ON GUILTY PLEAS, WERE THE  
4 RESULT OF "PERJURED... FALSE FACTS." THESE ARE NOT  
5 GROUNDS VALID TO MODIFY A SENTENCE". (QUOTING LINES 20-  
6 22)

7 DEFENDANT RESPECTFULLY DISAGREES, THAT IS THE VERY  
8 REASON TO MODIFY A SENTENCE, PROVABLE INNOCENCE.  
9 IN THE MOTION THE DEFENDANT IS NOT FOCUSING ON  
10 INNOCENCE, BUT THAT THE STATE KNEW OF THE INNO-  
11 CENCE AND STILL PROCEEDED TO INSIST ON THE INCA-  
12 RCERATION WHEN IT KNEW IT TO BE BASED ON FALSE  
13 PERJURED TESTIMONY WITH REGARDS TO BOTH CHARGES.

14 NOW THE STATE MENTIONS 'BASED ON GUILTY PLEAS'  
15 THAT BRINGS UP "PLEAS BASED ON MISINFORMATION  
16 IS VOID" (SIERRA V. STATE, 100 NEV. 614, 691 P.2d 431, 432-33  
17 (1984)) TRUE THE COURTS HAVE FOUND REPEATEDLY THAT  
18 THE VALID GROUNDS TO MODIFY A SENTENCE IS TO THE MIST-  
19 AKEN ASSUMPTION OF THE DEFENDANTS CRIMINAL HISTORY,  
20 WHICH WORKS TO THE EXTREME DETRIMENT OF THE DEFENDANT.

21 SINCE THE ABOVE QUOTATION IS THE STATED ENTIRE  
22 ARGUMENT IN OPPOSITION, THE STATE HAS MADE THE  
23 DEFENDANTS CASE. SO TO CLARIFY THE MAIN IDEA OF THE  
24 ACTUAL MOTION THAT THE STATE CLAIMS FAILED TO MEET  
25 THE REQUIRED GROUNDS, THE DEFENDANT SHALL ONCE  
26 AGAIN SHOW HOW ADA VILORIA'S COMMENTS AND ACTIONS  
-2- 27 AT SENTENCING WERE BOTH INACCURATE BUT ALSO  
28 GROSSLY MISREPRESENTED THE DEFENDANTS CRIMINAL HISTORY.

1 "HOPEFULLY TODAY WILL BE THE END OF BRENDAN DUNKLEY  
2 AND WHAT WE HAD TO DEAL WITH HIM" (SENTENCING TRANSCRIPTS  
3 PG. 11; 22-23) "THIS HAS BEEN TEN (10) YEARS OF INAPPRO-  
4 PRIATE CONDUCT, TEN (10) YEARS OF SEXUAL ATTACKS  
5 MOSTLY ON YOUNG WOMAN WHO WERE 12 YEARS OLD" (SENT.  
6 TRAW. PG. 11; 24-12; 1, 2) BY ADA VILORIA STATING THAT  
7 IT HAS BEEN TEN (10) YEARS THAT THE STATE HAS HAD  
8 TO DEAL WITH THE DEFENDANT, IT IMPLYS THAT THE  
9 DEFENDANT HAS HAD EXTENSIVE CONTACT WITH THE JUD-  
10 ICIAL SYSTEM. YET THAT IS NOT THE CASE. BY MAKING  
11 THAT ONE COMMENT IT CAST A FALSE LIGHT ON THE  
12 DEFENDANTS CRIMINAL HISTORY/RECORD, THAT DID NOT EXIST.

13 ALSO THE STATE CONTENDS THAT 'INNOCENCE' IS  
14 NOT A VALID REASON TO MODIFY A SENTENCE. BUT IN  
15 U.S. V. MALCOLM, (432 F.2d 809, 816 (2d cir 1970)) IT  
16 STATED A VERY IMPORTANT AND RELEVANT FACT: "IF  
17 JUSTICE IS TO BE DONE, A SENTENCING JUDGE SHOULD  
18 KNOW ALL THE MATERIAL FACTS." TO SOLIDIFY THAT  
19 FACT, WITH RESPECT THE DEFENDANT POINTS TO OTHER CASE  
20 LAW: "IF A COURT RELIES ON INFORMATION WHICH IS  
21 MATERIALLY FALSE OR UNRELIABLE'..., THE DEFENDANT'S  
22 DUE PROCESS RIGHTS ARE VIOLATED" (U.S. V. KERR, 876 F.2d  
23 1440, 1445 (9th cir 1989)) (SEE ALSO US V Columbus, 881 F.2d  
24 785, 787 (9th cir. 1989))

25 DEFENDANT DID NOT JUST ASSERT HIS INNOCENCE  
26 IN THE MOTION, HE VALIDLY SHOWED BOTH THE  
-3- 27 FALSE ALLEGATIONS TOWARDS HIS CRIMINAL HISTORY  
28 ON THE PART OF THE STATE, THE DETRIMENT IT CAUSED

1 THE DEFENDANT. ESPECIALLY SINCE THE FACT THAT THE  
2 DEFENDANT HAS PROVEN THE EXISTANCE OF EVIDENCE IN THE  
3 POSSESSION OF THE STATE THAT PROVES THE INNOCENCE OF  
4 THE DEFENDANT IN BOTH CHARGES/COUNTS. ALSO THAT THE  
5 STATE 1) HAD IN ITS POSSESSION EVIDENCE IT KNEW  
6 TO BE BOTH IMPEACHABLE TOWARDS THEIR CASE AND ALSO  
7 MATERIALLY RELIVANT TO ATTACK THE BASE FOUNDATION  
8 OF THE CHARGES AGAINST THE DEFENDANT, AND 2) FAILED TO  
9 INFORM THE JUDGE OF THE EXISTANCE OF THIS EVIDENCE,  
10 INSTEAD MAKING STATEMENTS AND ARGUMENTS IT KNEW  
11 TO BE FALSE, THAT IS WHAT THE MOTION WAS DISCUSSING.  
12 NOT ATTEMPTING TO SIMPLY CLAIM INNOCENCE IN THE  
13 WRONG 'VENUE'. BUT IN THE PROCESS DEFENDANT PROVED  
14 BOTH THE REQUIRED GROUNDS WITHIN THE 'SCOPE' OF  
15 A MOTION FOR MODIFICATION OF SENTENCE, AND ALSO PROVED  
16 ACTUAL/FACTUAL INNOCENCE SIMULTANEOUSLY.

17 TO CHALLENGE A VALIDITY OF A SENTENCE TO BE  
18 MODIFIED. REQUIRES THAT THE DEFENDANT PROVE MISREPRE-  
19 SENTATION OF CRIMINAL HISTORY LEADING TO EXTREME DETRIMENT  
20 OF THE DEFENDANT. THE DEFENDANT HAS PROVEN BOTH  
21 REQUIRED ELEMENTS.

22 IN ADDITION PLEASE NOTE THAT THE STATE SAID ON  
23 LINE 21 OF PAGE 1 OF THE OPPOSITION "CONVICTIONS" AND  
24 "PLEAS" (EMPHASIS ADDED). BY THE STATE PLURALIZING  
25 THESE TWO WORDS THEY NOW INTRODUCE THE SECOND  
26 CHARGE. SINCE THE ORIGINAL MOTION HAD FOCUSED ON  
-4- 27 COUNT ONE AND THE GUILTY PLEA MEMORANDUM IN ITS  
28 ENTIRETY. THE STATE HAS OPENED THE "WINDOW<sup>364</sup> TO NOW



1 ALLOW THE DEFENDANT TO INTRODUCE HOW THE COMMENTS  
2 OF ADA VILORIA IN RESPECT COUNT TWO WAS ALSO FALSE  
3 STATEMENTS KNOWN TO BE UNSUPPORTED, YET ALSO TO BE  
4 IN POSSESSION OF IMPEACHABLE MATERIALLY RELIANT  
5 EVIDENCE, THAT TO WAS FAILED TO PRODUCE AND INTRODUCE  
6 FOR THE JUDGES CONSIDERATION. WITH RESPECT TO THE  
7 STATE I PRESENT THE FOLLOWING FOR THE STATES CONSIDERA-  
8 TION: IN THE ACCOUNT OF JESSICA H. THE DEFENDANT IS ACCUSED  
9 OF FORCING HIS PENIS INTO HER MOUTH AND SHE BIT IT. RES-  
10 ULTING IN THE CHARGE OF SEXUAL ASSAULT (NRS 200.366)  
11 EXCEPT WHEN THE STATE MADE REFERANCE TO THIS "ATTACK"  
12 AT SENTENCING ON PAGE 12, 13 AND SPECIFICALLY ON PAGE 14  
13 LINE 17 "WITH HIM SHOWING HIS PENIS INTO HER MOUTH". BUT  
14 THAT COMMENT WAS FALSE AND THE STATE KNEW IT TO BE  
15 FALSE AND BASED ON QUESTIONABLE TESTIMONY. THESE STATEMENTS  
16 HAD NO OTHER REASON TO BE STATED EXCEPT TO INTENTIONALLY  
17 MISLEAD AND UNDUVELY PREJUDICE THE DEFENDANT IN THE  
18 EYES OF THE JUDGE IN REGARD TO SENTENCING.

19 ON MAY 21, 2007 WHICH IS EVEN PRIOR TO THE  
20 ORIGINAL PRELIMINARY HEARING HELD ON JULY 2, 2007, A DNA  
21 LAB RESULT REPORT WAS GENERATED. ON MARCH 10, 2007 AT  
22 THE SCENE OF THE "ATTACK" A DNA SAMPLE WAS OBTAINED  
23 FROM BRENDAN DUNCKLEY. DEFENDANT WAS IN FULL VIEW OF  
24 NUMEROUS BY-STANDERS AT ALL TIME UNTIL POLICE HAD  
25 ARRIVED ON SCENE. HE WILLINGLY AGREED TO THE DNA  
26 TEST AND VISUAL INSPECTION OF HIS PENIS FOR MARKS  
-5- 27 AS JESSICA CLAIMED SHE GAVE HER ATTACKER WHEN  
28 SHE BIT HIM, AFTER THE PENIS WAS SHOVED INTO HER

1 MOUTH. YET ON MAY 21, 2007 THE DNA SWABS OBTAINED  
2 THAT NIGHT HAD A RESULT: "NO DNA FOREIGN TO THE  
3 SOURCE, BRENDAN DUNKLEY, WAS OBTAINED FROM THE  
4 GENITAL SWABS." (INCLUDED) AS PER THE WASHOE COUNTY  
5 SHERIFF'S FORENSIC SCIENCE DIVISION. THERE WAS NO  
6 DNA TRANSFER. ADD TO THAT THE STATEMENTS OF RPD  
7 OFFICERS THE NIGHT OF "ATTACK" IN THE REPORT "NO  
8 VISIBLE INJURY TO BRENDAN'S PENIS SHAFT, HEAD OR BASE"  
9 DEFENDANT HUMBLY REQUESTS THAT THE COURTS  
10 CONSIDER AND ALLOW ENTRANCE OF THIS DOCUMENT INTO  
11 EVIDENCE, PROVING THAT THE STATE HAD MATERIAL EVIDENCE  
12 THAT BY ANY EXAMINATION WOULD PROVE TO BE BOTH  
13 IMPEACHABLE AND DETRIMENTAL TO THE STATES CASE, AND  
14 BECAUSE OF THAT FAILED TO EVER INTRODUCE IT INTO  
15 EVIDENCE / RECORD. THE QUESTION BEFORE THE COURT IS  
16 HAD THAT EVIDENCE BEEN INTRODUCED WOULD IT HAVE  
17 AFFECTED THIS CASE AND THE ULTIMATE OUTCOME. THIS  
18 EVIDENCE PROVES THAT THE ORIGINAL CHARGE OF NRS 193..  
19 330 AND 200,366 REQUIRING 'PENETRATION' IS IMPOSSIBLE  
20 TO HAVE OCCURED. SCIENTIFICALLY PROVEN BY THE STATE  
21 OF THE DEFENDANTS INNOCENCE, YET NOT ONLY DID THE  
22 STATE NEVER INTRODUCE THIS EVIDENCE, BUT WENT AS  
23 FAR AS CHALLENGING / OPPOSING THE STATE RECOMMENDA-  
24 TION OF 2 TO 5 YEARS FOR COUNT TWO AND REQUESTING  
25 A MAXIMUM SENTENCE OF 2 TO 20 YEARS. CONTINUALLY  
26 INTENTIONALLY MISREPRESENTING THE FACTS. IF ADA  
-6- 27 VILORIA STATES SHE HAD NO KNOWLEDGE THEN HOW  
28 CAN SHE PROPERLY REPRESENT THE PEOPLE AND ~~386~~SENT

1 THE WHOLE CASE AND ALL EVIDENCE FOR CONSIDER-  
2 ATION. WHICH IS THE ONLY WAY TO ENSURE JUSTICE  
3 IS DONE. BUT SUCH 'ERROR' IS NOT THE CASE. PAGE  
4 AFTER PAGE, REPORT AFTER REPORT, DOCUMENT AFTER  
5 DOCUMENT PROVES THE EXACT OPPOSITE, IT PROVES  
6 THAT THE MISLEADING THE RECORD AND COURTS IN  
7 REGARDS TO THE DEFENDANTS CRIMINAL HISTORY, SPE-  
8 CIFICALLY THE IMMEDIATE HISTORY, THAT THE STATE  
9 KNEW DID NOT ACTUALLY EXIST WAS INTENTIONAL AND  
10 THE ACTIONS OF ADA VILORIA WAS IREHENSABLE AND INEX-  
11 USABLE. THE SEVERE DETRIMENT IT CAUSED THE DEFENDANT  
12 IS UNFATHONABLE.

13 SUCH ACTION IS NOTED IN A CASE "WHETHER THE  
14 D.A. DID SO INTENTIONALLY OR NOT, NONETHELESS MISREPRESE-  
15 NTATION DID OCCUR DURING SENTENCING. THESE MISREPRESENTATIONS  
16 WHETHER CONSIDERED INDEPENDENTLY, CLEARLY CREATED A  
17 MATERIALLY UNTRUE FOUNDATION UPON WHICH THE SENTENCE  
18 IMPOSED IN THIS CASE RESTED" STATE V EIGHTH JUDICIAL DISTRICT  
19 Court, (100 NEV. 90, 677 P.2d 1044 (1984))

20 ALSO PLEASE NOTE THAT IN BOTH THE RULES OF  
21 CRIMINAL PROCEDURE RULE 11(h)(2) AND HANSEN V. STATE, (824  
22 P.2d 1384 (dt UNK)) IT STATES: "THAT ENTERING INTO A PLEA  
23 UNDER MISTAKEN LEGAL ADVICE THAT NO DEFENSE TO MISCOND-  
24 UCT EXISTS, ESTABLISHES FAIR AND JUST REASON TO WITHDRAW  
25 A PLEA". THE MISTAKEN LEGAL 'ADVISE' OF THE STATE PRODUCING  
26 A GUILTY PLEA MEMORANDUM BASED ON TESTIMONY IT KNEW  
-7- 27 TO BE PERJURED AS THE ONLY SUPPORT AND EVIDENCE WOULD  
28 WARRANT A REVERSAL OF THE GUILTY PLEA MEMORANDUM 367 THE

1 DEFENDANT UNDERSTANDS THAT IT IS ALL BASED ON THE  
2 FALSE ALLEGATIONS OF ADA VILORIA. IN SIMPLE TERMS IF  
3 AS THE EVIDENCE PROVES THE STATE WAS IN POSSESSION OF  
4 EVIDENCE IT KNEW TO BE IMPORTANT EVIDENCE THAT COULD  
5 'TORPEDO' THEIR CASE AND PROVE THE DEFENDANTS INNOCENCE,  
6 AND STILL PROSECUTED THE DEFENDANT, THAN ADA VILORIA  
7 KNEW THAT EVERYTHING OUT OF HER MOUTH WAS KNOWN  
8 BY HERSELF TO BE FALSE. (SIERRA V. STATE) (US. V. KERR)

9 THE DEFENDANT, HUMBLy APPRECIATES THE STATES ATTEMPT  
10 TO OPPOSE THE MOTION, BUT AGAIN RESPECTFULLY DISAGREES,  
11 DUE TO THE DEFENDANTS CONTENTION THAT BECAUSE THE STATE  
12 HAD EVIDENCE / INFORMATION PROVING THE INNOCENCE OF THE  
13 DEFENDANT. BECAUSE IT HAD ALL THIS EVIDENCE AND STILL  
14 PROCEEDED FOWARD WITH 1) PRELIMINARY HEARING, 2) ACCEPTANCE /  
15 INTRODUCTION OF GUILTY PLEA MEMORANDUM, 3) ARGUING AT SENTENCING  
16 FOR THE MAXIMUM PENALTY, AND CONTINUED FIGHT TO KEEP  
17 DEFENDANT INCARCERATED. WITH THESE FACTS IN MIND, THE  
18 DEFENDANT DIRECTS FOCUS ON "WHEN POLICE OR PROSECUTORS  
19 CONREAL SIGNIFICANT EXCULPATORY EVIDENCE OR IMPEACHING  
20 MATERIAL IN ITS POSSESSION, IT IS ORDINARILLY INCUMBANT  
21 ON THE STATE TO SET THE RECORD STRAIGHT," (CANION V. COLE,  
22 91 P.2D 355, 208, ARIZ. 133 (2004)) (ALSO REF TO ABA STANDARD  
23 3-3.11) BY THE STATE MISSING OR IGNORING THE ABOVE  
24 THREE OPPORTUNITIES TO CORRECT THE ERRORS IS NOT HARMLESS.  
25 CONSIDERING THE STATE WAS GIVEN NUMEROUS CHANCES TO  
26 SET THE RECORD STRAIGHT. WITH LETTERS TO DA GAMMICK ON  
-8- 27 APRIL 19, 2009, ADA G. HATHSTAD ON JUNE 15, 2009 & OCTOBER 20, 2009.  
28 LETTERS TO ADA VILORIA & JUDGE STEINHEIMER ON JUNE 26 2009

1 YET AT NO POINT HAS THE STATE RESPONDED OR ATTEMPTED  
2 TO CORRECT THE RECORD OF THE GROSS AND SEVERE MIS-  
3 REPRESENTATION OF THE 'CRIMINAL HISTORY' OF THE DEFENDANT.

4 AS PER THE SPECIFIC DEFINITION SO GRACIOUSLY  
5 PROVIDED BY THE STATE "WHICH WORK TO THE DEFENDANT'S  
6 EXTREME DETREMENT." THE DEFENDANT CLAIMS THAT THERE  
7 IS NO MORE SEVERE DETREMENT THAN THE INTENTIONAL  
8 CONVICTION AND INCARCERATION OF A INNOCENT MAN BASED  
9 ON FALSE INFORMATION. THERE IS NO REAL EXCUSE FOR THE  
10 STATES ACTIONS TO MALICIOUSLY AND INTENTIONALLY WITHHOLD  
11 EXTREMELY RELEVANT INFORMATION FROM THE JUDGE, AND TO MAKE  
12 FALSE ACCUSATIONS ATTACKING THE DEFENDANT, ALL TO SAVE FACE  
13 AND PRESERVE THE CONVICTION RECORD. SUCH ACTIONS ARE  
14 INEXCUSABLE AND PREVENTIVE.

15 BECAUSE THERE IS NO REAL EXCUSE FOR SUCH  
16 BEHAVIOR THAT IS EVIDENT BY THE STATES OPPOSITION IT  
17 IS NOT A SUBSTANTIAL ARGUMENT, NOT WHEN THE ENTIRE  
18 ARGUMENT CONSISTS OF ONE SENTENCE. CORRECTION ONE  
19 SENTENCE AND A LEGAL LESSON ON THE DIFFERENCE BETWEEN  
20 MODIFICATION OF SENTANCE AND A MOTION TO CORRECT A ILLEGAL  
21 SENTENCE. THIS IS CONSIDERABLY UNDERSTANDABLE SINCE THE  
22 RESPONDANT HIMSELF CHIEF APPELLATE DEPUTY G. HATHRESTAD  
23 RECEIVED TWO LETTERS, AND FAILED TO HONOR ABA STANDARD  
24 3-3.11 AND CANON V. COLE, MAKING HIM JUST AS  
25 CULPABLE AS ADA VILORIA, TO ALLOW THIS FARSE AND  
26 MISCARRIAGE OF JUSTICE TO CONTINUE UNCORRECTED. BY THE  
-9- 27 STATE CLAIMING ITS ENTIRE ARGUMENT IN OPPOSITION OF  
28 THE MOTION BEING ONE SENTENCE IT FAILED TO DISPOSE ON

1 THE BASE ARGUMENT THAT WAS PROVEN BY THE  
2 DOCUMENTATION IN THE ORIGINAL MOTION, AS WELL AS  
3 THE INCLUDED DNA LAB RESULT.

4 SINCE THE STATE FAILED TO ADEQUATELY OPPOSE  
5 THE MOTION FOR MODIFICATION OF SENTENCE, WHICH IS  
6 SUPPORTED BY SUBSTANTIAL DOCUMENTATION, AND THE  
7 STATES FAILURE TO PRODUCE ANY ARGUMENT, DEFENSE OR  
8 CONTRADICTION TO THE DOCUMENTS. THEREFORE SINCE THE  
9 STATE HAS FAILED TO OPPOSE THE AUTHENTICITY OF THE  
10 DOCUMENTS, IT SHOULD BE DEEMED MERITORIOUS. ALSO  
11 WITH THE USE OF 'CONVICTIONS' AND 'PLEAS' ON LINE 21  
12 THE DNA REPORT BE CONSIDERED AS EVIDENCE, SINCE THE  
13 STATE OPENED THAT DOOR ALLOWING THE CONSIDERATION OF  
14 BOTH CHARGES.

15 WITH THE GROSS AND OBVIOUSLY INTENTIONAL  
16 DECEPTION OF THE COURTS BY BOTH FAILING TO PRESENT  
17 MATERIALLY IMPORTANT EVIDENCE/INFORMATION, AND THE COMMENTS  
18 OF ADA VILORIA THAT WERE KNOWINGLY THE EXACT OPPOSITE OF  
19 THE ACTUAL EVIDENCE SHE POSSESSED. STATE V. CARTER, (91 P.3d  
20 1162, 278 KAN. 74 (2004)) STATES: "NO RULE GOVERNING ORAL  
21 ARGUMENT IS MORE FUNDAMENTAL THAN THAT REQUIRING  
22 COUNSEL TO CONFINE REMARKS TO MATTERS IN EVIDENCE;  
23 STATING FACTS NOT IN RECORD IS CLEARLY IMPROPER." THAT  
24 IS EXACTLY WHAT ADA VILORIA DID EXCEPT TO AN EXTREME  
25 BY KNOWINGLY COMMENTING ON TOPICS SHE KNEW TO  
26 BE CONTRADICTED BY 'SECRET' EVIDENCE. ALL TO PRESENT  
-16- 27 A FALSE IMAGE OF THE BEHAVIOR AND CRIMINAL HISTORY  
28 OF DEFENDANT, BRENDAN DUNCKLEY.

1 DUE TO THE OBVIOUS DISREGARD FOR THE DEFENDANTS  
2 DUE PROCESS RIGHTS, AND BY THE MALICIOUS ARGUMENTS  
3 BY ADA VILORIA FOR NOT ONLY INCARCERATION OF AN INNO-  
4 CENT MAN, BUT FOR THE MAXIMUM PUNISHMENT. THE  
5 DEFENDANT HAS PROVIDED NUMEROUS GOOD FAITH EFFORTS TO  
6 ALLOW THE STATE TO CORRECT THIS MISCARRIAGE OF  
7 JUSTICE ON THEIR OWN, BUT THEY HAVE FAILED TO DO  
8 SO. THIS MOTION WAS ONLY RESPONDED TO BECAUSE THE  
9 COURTS ORDERED A RESPONSE. EXCEPT THAT DOES NOT  
10 CHANGE THE ONE HUNDRED AND TWENTY-FIVE (125) DAYS  
11 IT TOOK TO RESPOND. THAT GOES TO SUPPORT THE BELIEF  
12 THAT A 'X' IN THE WIN COLUMN IS THE MOST IMPORTANT  
13 THING.

14 BECAUSE OF ALL THE OVERWHELMING EVIDENCE PROV-  
15 IDED TO SUPPORT THE MOTION FOR MODIFICATION OF SENTENCE,  
16 ALL THE WHILE THIS EVIDENCE AND MOTION/RESPONSE HAS  
17 MET THE REQUIREMENTS NEEDED WITHIN THE 'SCOPE' REQUIRED.

18 SO WITH THAT THE DEFENDANT, HUMBLLY REQUESTS  
19 SINCE THE STATE HAS FAILED TO CONTRADICT OR DISPROVE  
20 THE WEIGHT AND GRAVITY OF THE EVIDENCE PROVIDED, WITH  
21 THE STATES FAILURE TO SUCCESSFULLY OPPOSE, IT IS THEREFORE  
22 REQUESTED THAT WITH THE INCLUSION OF THE DNA  
23 REPORT THAT THE COURTS GRANT THE MOTION, TO FIND IT  
24 IS WITH MERIT AND WARRENTS A FULL VACATING OF THE  
25 GUILTY PLEA MEMORANDUM, COUNT ONE IN ITS ENTIRETY, INCLUDING  
26 ALL ORIGINAL CHARGES AND ALTERNATIVES, ALSO A VACATING OF  
-11- 27 COUNT TWO AND ALL ORIGINAL CHARGES AND ALTERNATIVES. ALSO  
28 TO CLEAR DEFENDANT, BRENDAN DUNCKLEY OF ALL RECORDS

1 ALL CRIMINAL DATA BASES, TO FULLY EXPUNGE ANY RECORD  
2 OF ARRESTS RELATING TO THIS CASE AND ALL RELATED  
3 CHARGES. TO REQUEST THAT ALL CONDITIONS OF THE CONVICTION  
4 ALSO BE LIFTED IN REGARD TO LIFE TIME SUPERVISION.  
5 TO REMOVE DEFENDANT FROM ANY AND ALL LISTS THAT  
6 ASSOCIATE HIM WITH CONVICTED / REGISTERED SEX OFFENDERS.  
7 TO HAVE ALL HIS CONSTITUTIONAL RIGHTS RESTORED.

8 DUE TO THE SEVERE, AND MALICE INTENDED  
9 ACTIONS BY ADA VILORIA, WARRENT THE REQUESTED  
10 ACTIONS / REMEDIES, TO CORRECT MANIFESTED AND EXTREME  
11 MISLAKMAHE OF JUSTICE. THE STATES ACTIONS HAVE DESTROYED  
12 THE DEFENDANT'S LIFE, FAMILY, HARMED HIS CHILDREN, DESTROYED  
13 HIS MARRIAGE, REPUTATION, GOOD NAME. IN THE INTREST OF  
14 JUSTICE THE STATE HAS RESPONDED AND HAD 125 DAYS TO  
15 MAKE A SOLID OPPOSITION, SINCE THEY OBVIOUSLY CANT  
16 CONDONE OR EXCUSE THEIR ACTIONS, AN IMMEDIATE DECISION IS  
17 RESPECTFULLY REQUESTED TO FIX THIS MANIFESTED INJUSTICE.

18 AFFIRMATION PURSUANT TO NRS 239B.030

19 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING  
20 DOCUMENT CONTAINS NO SOCIAL SECURITY NUMBERS OF ANY PERIOD.

21  
22 DATED: NOVEMBER 6, 2009

23  
24 BRENDAN Dunchley

25 BRENDAN DUNCKLEY (#1023236)  
26 L.C.C.  
1200 PRISON ROAD  
LOVELORN, NEV. 89419

27 PRO PER



Jan 28, 2008 4:55PM

me Lab

No. 9776 P. 3/3

L1806-07-1

WASHOE COUNTY SHERIFF'S OFFICE  
MICHAEL HALEY, SHERIFF  
FORENSIC SCIENCE DIVISION  
911 PARR BLVD.  
RENO, NV 89512-1000  
PHONE (775) 328-2800  
FAX (775) 328-2831



LABORATORY NUMBER:	L1806-07-1
AGENCY:	RENO P.D.
AGENCY CASE #:	07-9446
SUSPECT:	DUNCKLEY, BRENDAN
VICTIM:	HAMBRICK, JESSICA
PERSON REQUESTING:	DET BROOME
DATE OF SUBMISSION:	4/6/2007
OFFENSE:	SEXUAL ASSAULT

Received from the Washoe County Sheriff's Office Evidence Section on 04/09/2007

<u>CONTROL #</u>	<u>DESCRIPTION</u>
P149340	RPD Tag 070001934, Item 1: Genitals and control swabs
P149341	RPD Tag 070002369, Item 1: Reference saliva standard from Jessica Hambrick

RESULTS OF EXAMINATION:

For additional DNA results in this case refer to Laboratory report L4130-05, which includes the analysis of the Brendan Dunckley reference standard.

No DNA foreign to the source, Brendan Dunckley, was obtained from the genitals swab. No DNA results were obtained from the control swab.

PCR quantitation was completed at the *Sp15.33* genetic locus. PCR amplification was completed at the following STR genetic loci: D8S1179, D21S11, D7S820, CSF1PO, D3S1358, TH01, D13S317, D16S939, D2S1338, D19S433, vWA, TPOX, D18S51, D5S818, and FGA. The sex determining Amelogenin locus was also examined.

The above listed evidence was returned to the Washoe County Sheriff's Office Evidence Section.

JEFFREY M. ROLANDS, CRIMINALIST

5-21-7  
Date

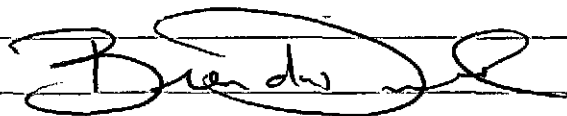
## CERTIFICATE OF MAILING

PURSUANT TO NRCP 5(b) I HERBY CERTIFY THAT I  
BRENDAN DUNCKLEY, DEFENDANT TURNED OVER THE TRUE COPY  
OF THIS DOCUMENT TO PRISON OFFICIALS FOR MAILING, THROUGH  
U.S. MAIL SERVICE. AT LOVELOCK CORRECTIONAL CENTER, IN  
PERUWIA COUNTY NEVADA, LETTERS WERE MAILED TO ADDRESSES  
BELOW BY MEANS OF BRASS SLIP NO: 1518069

WASHOE COUNTY DISTRICT ATTORNEY  
% GARY HATTESTAD  
P.O. BOX 30083  
RENO NEVADA 89520-3083

Second Judicial District Courts  
% Clerk of the Court  
P.O. Box 30083  
RENO, NEVADA 89520-3083

NOVEMBER 9, 2009



BRENDAN DUNCKLEY #1023236  
L.C.C.  
1200 PRISON ROAD  
LOVELACK, NEVADA 89415

Pro Per.

FILED

1 BRENDAN DUNCKLEY (#1023236)

09 NOV 25 PM 2:25

2 LOVELOCK CORRECTIONAL CENTER

HOWARD W. CONYERS

3 1200 PRISON ROAD

BY *[Signature]*  
DEPUTY

4 LOVELOCK, NEVADA 89419

5

6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE

7

STATE OF NEVADA IN AND FOR THE COUNTY OF

8

WASHOE

9

10 THE STATE OF NEVADA,

CASE NO: CR07-1728

11

PLAINTIFF

DEPT. NO: 4

12

V.S.

13

BRENDAN DUNCKLEY,

14

DEFENDANT

15

16

MOTION FOR JUDGEMENT IN THE INTREST OF JUSTICE

17

18

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

19

SUBMITS TO THIS COURT HIS MOTION FOR JUDGEMENT

20

IN THE INTREST OF JUSTICE.

21

IN REGARDS AND CONNECTION TO THE MOTION

22

FILED BEFORE THE COURTS ON JULY 8, 2009 - A

23

MOTION FOR MODIFICATION OF SENTENCING, THIS MOTION

24

AND FORMAL REQUEST FOR JUDGEMENT IS SUPPORTED

25

BY POINTS AND AUTHORITIES. AND PURSUANT TO DCR 13,

26

IN THE INTREST OF JUSTICE, THE DEFENDANT DOES

-1-

27

HEREBY OFFER THIS MOTION FOR THE COURTS CON-

28

SIDERATION

375

## POINTS AND AUTHORITY

ON OCTOBER 26, 2009, THE HONORABLE JUDGE CONNIE J. STEINHEIMER ISSUED AN ORDER TO THE STATE TO SUBMIT A RESPONSE TO THE MOTION FILED ON JULY 8, 2009. ON NOVEMBER 4, 2009 THE STATE FILED ITS RESPONSE. IN ANSWER TO THE STATE, DEFENDANT FILED A RESPONSE TO STATE OPPOSITION ON NOVEMBER 9, 2009. THIS MOTION IS IN RESPECT TO AND IN CONNECTION TO THAT RESPONSE.

FROM JULY 8, 2009 UNTIL THE COURT ORDERED RESPONSE ON NOVEMBER 4, 2009 TOTALLED ONE HUNDRED AND TWENTY DAYS (120). BUT THE COURT NEEDS TO ACTUALLY EXAMINE THE RECORD CORRECTLY. THE STATE IN FACT HAD ALL THE INFORMATION IN ITS POSSESSION SINCE THOMAS FRUGOLI INITIALLY SIGNED AND ACCEPTED THE LETTER FOR WASHOE COUNTY DISTRICT ATTORNEY RICHARD GAMMICK. THAT LETTER HAD ALL THE SAME 'EVIDENCE' THAT THE MOTION CONTAINED. AS DID THE LETTER DATED JUNE 15, 2009 ADDRESSED TO ADA GARY HATLESTAD, WHICH WAS COPIED AND FOWARDED TO NEVADA A.G. SO THE STATE ACTUALLY HAD THE CORRECT TOTAL OF ONE HUNDRED AND NINTY-EIGHT DAYS (198), MORE THAN ENOUGH TIME TO BUILD A DEFENSE TO THE ACCUSATION OF DUE PROCESS VIOLATIONS. NOT TO MENTION THE WILLFULL WITHHOLDING OF EXCULPATORY EVIDENCE, PROSECUTORIAL MISCONDUCT, A OBVIOUS MALICE AND FORETHOUGHT BY THE AGGONS

1 OF ADA VILORIA.

2 EXCEPT IN THE STATES 'OPPOSITION TO MOTION', THE  
3 STATES ENTIRE ARGUMENT WAS ONE SENTENCE LONG. AT  
4 NO TIME DOES THE STATE REBUT THE DOCUMENTATED  
5 EVIDENCE, POLICE REPORTS, DNA RESULT, COURT PAPERWORK.  
6 A VALID AND SIMILAR ANALOGOUS AUTHORITY IS FOUND  
7 IN BRAGEN V. POINDEXTER, 249 F.3d 476 (2001) IN THAT  
8 CASE IT IS DISCUSSING PROSECUTORIAL VINDICTIVENESS, THAT  
9 IS NOT THE EXACT SITUATION HERE (BUT IS BORDERLINE). IN  
10 IT THE COURTS RULED IN RESPONSE TO A MOTION CLAIMING  
11 THE MISCONDUCT "IF THE GOVERNMENT FAILS TO PRESENT  
12 EVIDENCE SUFFICIENT TO REBUT [PRESUMPTION OF PROSECUTORIAL  
13 VINDICTIVENESS STANDS AND] THE COURT MUST FIND IT  
14 TO BE MERITORIOUS." (EMPHASIS [ ] ADDED)

15 "CONVICTION OBTAINED BY KNOWING USE OF PERJURED  
16 TESTIMONY IS FUNDAMENTALLY UNFAIR, AND MUST BE SET  
17 ASIDE IF THERE IS ANY REASONABLE LIKELIHOOD THAT  
18 FALSE TESTIMONY/EVIDENCE/COMMENTS COULD HAVE AFFECTED  
19 THE JUDGEMENT OF THE TRIER" GRISBY V. BLODGETT,  
20 180 F.3d 365 (1997)

21 UNDER RCP RULE 11 TO INQUIRE INTO THE FACTS  
22 IS A CONTINUING DUTY, AND CAN NOT IGNORE REALITIES  
23 ONCE FACTS COME TO THEIR ATTENTION WHICH INDICATES  
24 THAT EARLIER RELIANCE WAS MISPLACED" RCP Rule 11.

25 "REVERSAL OF CONVICTION AND VACATING OF THE  
26 CHARGES WHEN PROSECUTION FAILS TO PROVIDE DEFENSE  
-3- 27 WITH EXCULPATORY EVIDENCE... IS REQUIRED IF OMITTED  
28 EVIDENCE, WHEN EVALUATED IN CONTEXT OF THE ENTIRE

1 RECORD, CREATES A REASONABLE DOUBT AS TO DEFENDANT'S

2 GUILT THAT DID NOT OTHERWISE EXIST." PEOPLE V.

3 HERNANDEZ, 686 P.2d 1325 (1984)

4 IN QUOTING ADA HATLESTAD HIS ENTIRE BASIS FOR

5 REQUESTING THE COURTS DENY THE MOTION IS " SINCE

6 DUNCKLEY'S MOTION FAILS TO ALLEGE PROPER GROUNDS

7 JUSTIFYING A MODIFICATION OF HIS LAWFUL SENTENCE,

8 HIS MOTION SHOULD BE DENIED" (Pg 2 LINE 7, 8)

9 I RESPECTFULLY ASK FOR THE COURTS TO FORGIVE

10 ME AS I AM NOT A LEGAL SCHOLAR. AT NO POINT HAVE

11 I CLAIMED SUCH, SO I REQUEST A LITTLE LEWAY IN THE

12 FOLLOWING REBUTAL TO THAT ARGUMENT. BUT I WAS

13 UNDER THE ASSUMPTION THAT "THE PROSECUTOR'S DUTY

14 IS TO NEVER MERELY CONVICT, BUT TO SEE THAT

15 JUSTICE IS DONE, BY SEEKING TRUTH OF THE MATTER AND

16 TO ENSURE THAT THE JURY TRIES THE CASE SOLEY

17 ON THE BASIS OF ACTUAL FACTS PRESENTED TO THEM"

18 PEOPLE V. MARTIN, 686 P.2d 1351

19 "PROSECUTOR DOES NOT REPRESENT AN ENTITY

20 WHOSE INTRESTS INCLUDE WINNING AT ALL COSTS,

21 PROSECUTOR'S CLIENT IS SOCIETY, WHICH SEEKS JUSTICE NOT

22 VICTORY" US V DOE, 860 F.2d 488 (1988)

23 "PROSECUTOR'S PRIMARY DUTY IS NOT TO CONVICT

24 BUT TO SEE THAT JUSTICE IS DONE" SUPREME COURT

25 RULES, RULE 181 SUBSECTION 3.

26 "PROSECUTOR MAY NOT BRING CRIMINAL CHARGES

27 AGAINST AN INDIVIDUAL UNLESS SUPPORTED BY PROBABLE

28 CAUSE, AND ONCE CHARGES ARE INSTITUTED, MUS 378

1 REVEAL TO THE COURTS ANY INFORMATION WHICH NEGATES  
2 EXISTANCE OF PROBABLE CAUSE" PEOPLE V. TREVINO, 704 P.2d  
3 719, 217 CAL RPT 652, 39 C.3d 667 (1985).

4 TO SIMPLY CLAIM "HEY I'M INNOCENT TRUST ME"  
5 WOULD BE AN ABSURD ATTEMPT TO JUSTIFY THE  
6 GRANTING OF THE MOTION. EXCEPT THAT IS NOT THE  
7 CASE. ACTUAL AND FACTUAL INNOCENCE IS CLAIMED ALONG  
8 WITH THE INTENTIONAL MISREPRESENTATION OF THE  
9 CRIMINAL HISTORY -> DETRIMENT RESULT. OVER AND OVER  
10 THE COURTS STATE 'DUTY TO SEE JUSTICE IS DONE'.

11 WITH THE STATES DISMISSAL OF THE 'EFFORT' TO  
12 REBUT THE EVIDENCE SIMPLY BECAUSE "DEFENDANT HAS  
13 FAILED TO MEET THE GROUNDS."

14 I AM NOT A LEGAL SCHOLAR AS I STATED  
15 BEFORE BUT I HAVE A STRANGE BELIEF THAT IF  
16 EVIDENCE COMES FOWARD THAT PROVES THE INNOCENCE  
17 OF A CONVICTED INDIVIDUAL BEYOND A REASONABLE  
18 DOUBT. JUSTICE DEMANDS IT BE CORRECTED. YET THE  
19 STATE INSTEAD HAS CHOSEN TO HIDE BEHIND A 'TECHN-  
20 ICALITY' FORGETTING IT HAS A DUTY TO CORRECT THE  
21 RECORD.

22 ALSO "A CLAIM OF ACTUAL INNOCENCE REQUIRES  
23 FACTUAL INNOCENCE... AND IN CASES WHERE THE GOVERN-  
24 MENT HAS FORGONE MORE SERIOUS CHARGES... THE  
25 CLAIM OF ACTUAL/FACTUAL INNOCENCE AND EVIDENCE  
26 MUST EXTEND TO THOSE AS WELL" BOUSLEY V. US,  
- 5- 27 118 S.Ct 1604, 523 U.S. 614. DEFENDANT HAS PROVEN  
28 ACTUAL/FACTUAL INNOCENCE TO ALL CHARGES.

1 THE OVERWHELMING EVIDENCE THAT HAS BEEN IN  
2 THE STATES POSSESSION FOR ONE HUNDRED AND  
3 NINTY-EIGHT DAYS (198), AND TO BE TECHNICAL THE  
4 STATE HAD IN ITS POSSESSION EXCULPATORY EVIDENCE THAT  
5 PROVES THE COMPLETE INNOCENCE OF DEFENDANT. THEY  
6 HAD IT ALL FOR NINE HUNDRED AND TEN DAYS (910)  
7 (DATE OF DNA RESULT 5/21/07 TO PRESENT) AT NO TIME  
8 HAS THE STATE PRESENTED THESE DOCUMENTS FOR  
9 THE COURTS CONSIDERATION. NOR HAS IT PROVIDED A  
10 CORRECTION IN THE LAST 198 DAYS, NOT EVEN IN A  
11 OPPOSITION. IT PROVES THAT THERE IS NO EXCUSE OR  
12 INVALID OBJECTION TO THE CLAIM OF ACTUAL INNOCENCE.  
13 THE STATES 'OPPOSITION' IS WHOLLY WITHOUT MERIT.

14 TO HIDE THE INTENTIONAL CONVICTION OF AN  
15 INNOCENT MAN IS EQUALLY APPALING AS IS TO  
16 IGNORE AND HIDE BEHIND 'GROUNDS' AFTER THE  
17 DOCUMENTS PROVE SUCH. TO ALLOW IT TO BE UN-  
18 CORRECTED IS THE EXACT OPPOSITE TO SEEKING THAT  
19 JUSTICE IS DONE. ESPECIALLY WHEN ALL THE EVIDENCE  
20 PROVES NOT GUILTY BEYOND A REASONABLE DOUBT. SUCH  
21 AS TO DEMAND THE CORRECTION OF THIS MANIFEST  
22 INJUSTICE.

23 "IF THE GOVERNMENT, POLICE AND PROSECUTORS  
24 COULD ALWAYS BE TRUSTED TO DO THE RIGHT  
25 THING, THERE WOULD BE NO NEED FOR THE BILL  
26 OF RIGHTS" US V. US DISTRICT COURT FOR CENTRAL CAL,  
27 858 F.2d 534 (1988)  
28 (PLEASE SEE WASHOE COUNTY DA SEAL TRUTH / JUST380)



1 IT IS WITH HUMBLE RESPECT, THAT THE DEFENDANT,  
2 BRENDAN DUNCKLEY REQUESTS THAT THE COURTS ALLOW  
3 LEEWAY IN ITS DECISION. TO ALSO CONSIDER OTHER  
4 APPROPRIATE REMEDY, OUTSIDE THE ORIGINAL 'GROUNDS'  
5 NEEDED TO MEET A MODIFICATION OF SENTENCE. TO FIND  
6 THAT WITH THE STATES FAILURE TO PRESENT EVEN A  
7 SCINTILLA OF REBUTAL EVIDENCE, THAT ITS OPPOSITION  
8 BE FOUND TO BE WITHOUT MERIT.

9 REMEDY JUSTIFIABLE IN THIS CASE WOULD BE  
10 THE COMPLETE VACATING OF THE ORDER OF CONVICTION  
11 FILED ON CASE NUMBER CR071728. ALSO TO INCLUDE  
12 ALL CHARGES BROUGHT FORWARD BY THE STATE OF NEVADA ON  
13 APRIL 16, 2007. SINCE THE ORIGINAL CHARGES FOR RUC  
14 2007-033884. WERE DISMISSED ON JULY 2, 2007 AND  
15 BOUND OVER TO CR071728. ALL CHARGES BE ALSO  
16 REMOVED FROM RECORD PER NRS. 179A.160.

17 THE STATE HAS CONTINUALLY SHOWN THAT THEY HAVE  
18 ABSOLUTELY NO EVIDENCE TO SUPPORT A CONVICTION. ESPECIALLY  
19 IF THE CONVICTION/DEAL RESTS ON HIGHLY SUSPECT EVIDENCE. AND  
20 ALL EVIDENCE ACTUALLY PRESENTED PROVES INNOCENCE AND  
21 THE VINDICTIVE INCARCERATION OF A US CITIZEN KNOWN  
22 TO BE INNOCENT. THE STATES ENTIRE 'OPPOSITION' IS  
23 CLEARLY DEFECTIVE AND SERIOUSLY FLAWED.

24 SO IN THE INTREST OF JUSTICE, DEFENDANT, REQUESTS  
25 THE IMMEDIATE RELEASE FROM CUSTODY OF NDOC. AND  
26 RESTORATION OF ALL LIBERTIES AND CONSTITUTIONAL RIGHTS.  
-7- 27 TO ALLOW A KNOWN INNOCENT MAN TO RETURN TO  
28 HIS FAMILY.

1 IN ADDITION TO THE GROUNDS MET BY THE  
2 MOTION FILED ON JULY 8, 2009 AND RESPONSE  
3 DATED NOVEMBER 9, 2009, DEFENDANT ALSO Humbly  
4 REQUESTS PER DANIELS V. STATE, 956 P.2d 111, 114  
5 NEV. 261 (1998) "AS A MATTER OF APPARENT FIRST  
6 IMPRESSION, DEFENDANT SEEKING DISMISAL OF ALL  
7 CHARGES BASED ON STATES FAILURE TO PRESENT  
8 EVIDENCE MUST SHOW THAT EVIDENCE WAS  
9 "MATERIAL" AND THE FAILURE OF THE STATE TO GATHER/  
10 PRESENT THE EVIDENCE WAS THE RESULT OF MERE  
11 NEGLIGENCE, GROSS NEGLIGENCE OR, A BAD FAITH ATTEMPT  
12 TO PREJUDICE THE DEFENDANT."

13 "A PROSECUTOR SHOULD NOT INTENTIONALLY AVOID  
14 PURSUIT OR INTRODUCTION OF EVIDENCE BECAUSE HE OR  
15 SHE BELIEVE IT WILL DAMAGE THE PROSECUTOR'S CASE  
16 OR AID THE ACCUSED." AMERICAN BAR ASSOCIATION CODE OF  
17 STANDARDS - (STANDARD 3-3.11)

18 ALL ACTIONS OF THE STATE, EVIDENCE, LACK OF REBUTAL  
19 DOCUMENTS ALL WARRANT A FULL VACATING OF ALL CHARGES, IN  
20 ADDITION TO ANY OTHER REMEDIES THE COURT SEES FIT TO  
21 AWARD TO CORRECT THIS MISCARRIAGE OF JUSTICE.

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING  
24 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY OF ANY PERSON

25  
26 DATED NOVEMBER 19, 2009

27 

28 BRENDAN DUNCLEY #102382  
PRO PER

## CERTIFICATE OF MAILING

PURSUANT TO NRCP 5(6), I HEREBY CERTIFY  
THAT I BRENDAN DUNCLEY, DEFENDANT, DID DEPOSIT  
INTO US MAIL A SEALED ENVELOPE ADDRESSED AS  
follows: By Submitting Letters to Lovelock Correctional  
Center Prison Staff for mailing.



BRENDAN DUNCLEY (#1023236)

Second Judicial District Court

Clerk of Courts

P.O. BOX 30083

Reno, Nevada 89520-3083

Washoe County District Attorney

% Gary Hatlestad

P.O. BOX 30083

Reno, Nevada 89520-3083

1 CODE #3860  
2 RICHARD A. GAMMICK  
3 #001510  
4 P. O. Box 30083  
5 Reno, Nevada 89520-3083  
6 (775)328-3200  
7 Attorney for Respondent

8  
9 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,  
10  
11 IN AND FOR THE COUNTY OF WASHOE

12 \* \* \*

13 THE STATE OF NEVADA,

14 Plaintiff,

15 v.

Case No. CR07-1728

16 BRENDAN DUNCKLEY,

Dept. No. 4

17 Defendant.

18 REQUEST FOR SUBMISSION

19 It is requested that Defendant's Motion for Modification of Sentence, filed on July 8,  
20 2009, be submitted to the court for decision.

21 AFFIRMATION PURSUANT TO NRS 239B.030

22 The undersigned does hereby affirm that the preceding document does not contain the  
23 social security number of any person.

24 DATED: November 25, 2009.

25 RICHARD A. GAMMICK  
26 District Attorney

By /s/ GARY H. HATLESTAD  
GARY H. HATLESTAD  
Chief Appellate Deputy

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**Brendan Dunckley #1023236**  
**Lovelock Correctional Center**  
**1200 Prison Road**  
**Lovelock, NV 89419**

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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 11-25-2009:10:59:48  
**Clerk Accepted:** 11-25-2009:11:10:08  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Request for Submission  
**Filed By:** GARY HATLESTAD, ESQ.

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

GARY HATLESTAD, ESQ. for STATE OF NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.

1 **CODE 3370**  
2  
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4  
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**  
14 \_\_\_\_\_ /

15 **ORDER**

16 On July 8, 2009, the Defendant filed a Motion for Modification of Sentence.  
17 On October 27, 2009, the Court ordered the State to respond to the Motion for Modification  
18 of Sentence within ten (10) days of the date of the Order. On November 4, 2009, the State  
19 filed an Opposition to the Motion for Modification of Sentence. On November 13, 2009, the  
20 Defendant filed a Response to the State's Opposition to the Motion for Modification of  
21 Sentence. On November 25, 2009, the Motion for Modification of Sentence was formally  
22 submitted to the Court for decision.

23 Mr. Dunckley contends that his sentence should be modified because he is  
24 innocent, and his convictions, albeit based on guilty pleas, were the result of  
25 "perjured...false facts."  
26

27 A motion to correct an illegal sentence may only challenge the facial legality  
28 of the sentence: either the court was without jurisdiction to impose a sentence or the  
sentence was imposed in excess of the statutory maximum. *Edwards v. State*, 112 Nev.

1 704, 708, 918 P.2d 321, 324 (1996). "A motion to correct an illegal sentence 'presupposes  
2 a valid conviction and may not, therefore, be used to challenge alleged errors in  
3 proceedings that occur prior to the imposition of sentence'" *id.* (quoting *Allen v. United*  
4 *States*, 495 A.2d 1145, 1149 (D.C. 1985)). A motion to modify a sentencing "is limited in  
5 scope to sentences based on mistaken assumptions about a defendant's criminal record  
6 which work to the defendant's extreme detriment." *id.* A motion to modify or correct a  
7 sentence that raises issues outside the very narrow scope of issues permissible may be  
8 summarily denied. *id.* At 708-09 n.2.

9 Thus, since Mr. Dunckley's motion fails to allege proper grounds to grant a  
10 modification of his sentence, his motion must be denied.

11 The Court, having reviewed the pleadings filed herein, and arguments  
12 presented, and with good cause appearing and in the interests of justice finds as follows:  
13

14 IT IS HEREBY ORDERED that Motion for Modification of Sentence is  
15 DENIED.

16 Dated this 9 day of February, 2010.

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19 DISTRICT JUDGE  
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CERTIFICATE OF SERVICE

I certify that I am an employee of JUDGE CONNIE STEINHEIMER, and that on the 10<sup>th</sup> day of February, 2010, I deposited in the county mailing system, a true copy of the attached document, addressed to:

Brendan Dunckley  
Inmate no. 1023236  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419  
Via U.S. Postal Service

I hereby certify that on the 10<sup>th</sup> day of February, 2010, I electronically filed the foregoing with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Gary Hatlestad, Esq.  
Deputy District Attorney

  
Marci L. Stone

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 02-10-2010:10:59:38  
**Clerk Accepted:** 02-10-2010:10:59:47  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Order...  
**Filed By:** Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

ROBERT STORY, ESQ. for BRENDAN  
DUNCKLEY

GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY

STATE OF NEVADA

KELLI VILORIA, ESQ.

FILED

10 FEB 17 AM 11:28

HOWARD W. CONYERS

BY

*[Signature]*

1 BRENDAN DUNCKLEY (#1023236)

2 LOVELOCK CORRECTIONAL CENTER

3 200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF

7 NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA, CASE NO: CRO7-1728

10 v. PLAINTIFF

DEPT. NO: 4

11 BRENDAN DUNCKLEY,

12 DEFENDANT, /

13

14 REQUEST FOR SUBMISSION

15

16 IT IS REQUESTED THAT DEFENDANT'S MOTION FOR MODIFI-

17 CATION OF SENTENCE, FILED ON JULY 8, 2009, BE SUBMITTED TO THE

18 COURT FOR DECISION.

19

THE MOTION WAS FILED ON JULY 8, 2009, A SIMILAR REQUEST

20 WAS FILED ON NOVEMBER 25, 2009. AFTER A MEETING ON TUESDAY

21 FEBRUARY 9, 2009 WITH COUNSEL ROBERT STORY, IT WAS CONFIRMED

22 HE WAS APPOINTED TO REPRESENT DEFENDANT IN CASE CRO7P1728,

23 THIS MOTION IS UNDER CASE NO: CRO7-1728.

24 IN THE INTREST OF JUSTICE, AND DUE TO THE EXTREME

(1) 25 WEIGHT OF EVIDENCE, PROVING PROSECUTORIAL MISCONDUCT,

CR07-1728  
STATE VS BRENDAN DUNCKLEY ( 3 Pages  
District Court 02/17/2010 11:28 AM  
Washoe County  
3860  
TJ nbf

1 INTENTIONAL MISREPRESENTATION OF THE DEFENDANT'S CRIMINAL  
2 HISTORY, WITHHOLDING CRUCIAL SCIENTIFIC EVIDENCE FROM BEING  
3 INTRODUCED AND CONSIDERED BY THE COURTS. TO INTENTIONALLY  
4 COMMENT ON THE RECORD OF ALLEGATIONS THE STATE KNEW TO  
5 BE FALSE.

6 AS PER DCR 13.3(3) A TIME LIMIT OF TEN (10) DAYS TO  
7 FILE A RESPONSE, NO CONTACT OR ACKNOWLEDGEMENT OF THE FILING,  
8 WITH THE FILING OF THE SUBMISSION REQUEST ON NOVEMBER 25,  
9 2009, THE STATE AGREED THE ORIGINAL MOTION WAS FILED ON  
10 JULY 8, 2009.

11 IT WAS A TOTAL OF ONE-HUNDRED AND FORTY-NINE (149)  
12 DAYS FROM FILE DATE TO SUBMISSION OF RESPONSE. THEN THE  
13 OPPOSITION FAILED TO ADEQUATELY DISPUTE ANY OF THE DOCUMENTED  
14 EVIDENCE PROVIDED. NOW A TOTAL OF TWO-HUNDRED AND FORTY-SEVEN  
15 (247) DAYS THIS MOTION HAS BEEN FILED AND AWAITING A DECISION.  
16 WITH OVERWHELMING EVIDENCE PROVING MASSIVE CASE OF  
17 PROSECUTORIAL MISCONDUCT, BRADY VIOLATION, AND INTENTIONAL MISREP-  
18 RESENTATION OF DEFENDANT'S CRIMINAL HISTORY AND BEHAVIOR.

19 A SPEEDY DECISION IN THIS MATTER IS HEREBY REQUESTED  
20 AND SUBMITTED.

21 AFFIRMATION PURSUANT TO NRS. 239B.030

22

23 THE UNDERSIGNED DOES HEREBY AFFIRM THAT THE PROCEEDING  
24 DOCUMENT DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF  
(2) 25 ANY PERSON.

1

2 DATED: FEBRUARY 10, 2010

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*Brendan Dunchley*

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BRENDAN DUNCKLEY (#1023236)

8

LOVELOCK CORRECTIONAL CENTER

9

1200 PRISON ROAD

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LOVELOCK, NEVADA 89419

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DEFENDANT - PRO PER

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(REQUEST FOR SUBMISSION)

DC-9900015049-020  
CR07-1728 BRENDAN DUNCKLEY (D 1 Page  
STATE VS BRENDAN DUNCKLEY (D 1 Page  
District Court 02/17/2010 11:28 AM  
Washoe County 1360  
NDC

CODE: 1360

BRENDAN DUNCKLEY #1023236  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

DEFENDANT In Pro Se

FILED

10 FEB 17 AM 11:28

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\*\*\*\*\*

THE STATE OF NEVADA, ) Case No. CR07-1728

PLAINTIFF, ) Dept. No. 4

-VS-

BRENDAN DUNCKLEY, )

DEFENDANT. )

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the  
preceeding REQUEST FOR Submission  
to the below address(es) on this 10<sup>th</sup> day of FEBRUARY,  
2010, by placing same into the hands of prison staff for  
posting in the U.S. Mail:

CLERK OF THE COURT - 2<sup>nd</sup> Judicial District  
DEPT. 4  
P.O. Box 30083  
RENO, Nevada 89520-3083

Attorney For DEFENDANT PRO PER / Clerk.

(X) check for additional address(es) below

GARY HANSTAD  
% W.C.D.A.  
P.O. Box 30083  
RENO, NEVADA 89520-3083

ATTORNEY FOR PLAINTIFF (STATE)

Brendan Dunckley  
BRENDAN DUNCKLEY #1023236  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

DEFENDANT In Pro Se

CR07-1728  
STATE VS BRENDAN DUNCKLEY ( 2 Pages  
District Court 03/01/2010 03:31 PM  
Washoe County 2515  
DOC

CODE \$2515

BRENDAN DUNCKLEY #1023236

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Plaintiff In Pro Se

FILED

10 MAR -1 PM 3:31

HOWARD W. CONYERS

BY

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

\* \* \* \* \*

BRENDAN DUNCKLEY, )

Case No. CR07-1728

Plaintiff, )

Dept. No. 4

-vs-

THE STATE OF NEVADA, )

Defendant. )

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Plaintiff, BRENDAN DUNCKLEY, in  
pro se, hereby appeals to the Nevada Supreme Court the MOTION FOR

MODIFICATION OF SENTENCE, filed

JULY 8, 2009 ☒ (check if applicable) and DECISION FOR MOTION

FOR MODIFICATION OF SENTENCE (RECEIVED on 2/15/10), filed

FEBRUARY 10, 2010, in the above-entitled Court, the Honorable Judge C.

STEINHEIMER.

Dated this 22<sup>nd</sup> day of FEBRUARY, 2010.

Brendan Dunckley

BRENDAN DUNCKLEY #1023236

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Plaintiff In Pro Se

1  
2  
3 CERTIFICATE OF SERVICE BY MAIL

4 I do certify that I mailed a true and correct copy of the  
5 foregoing NOTICE OF APPEAL  
6 to the below address(es) on this 22<sup>nd</sup> day of FEBRUARY,  
7 20 10, by placing same in the U.S. Mail via prison law library  
8 staff, pursuant to NRCF 5(b):

9 WASHOE COUNTY DISTRICT ATTORNEY  
10 40 GARY HATLESTAD (ADA)  
11 P.O. BOX 30083  
12 RENO, NEVADA, 89520-3083

&

13 CLERK OF THE COURTS  
14 SECOND JUDICIAL DISTRICT COURT  
15 40 DEPT. 4.  
16 P.O. BOX 30083  
17 RENO, NV, 89520-3083

18 Brendan Dinchley  
19 BRENDAN DUNKLEY # 1023236  
20 Lovelock Correctional Center  
21 1200 Prison Road  
22 Lovelock, Nevada 89419

23 PLAINTIFF In Pro Se

24 AFFIRMATION PURSUANT TO NRS 239B.030

25 The undersigned does hereby affirm that the preceding  
26 NOTICE OF APPEAL - MOTION FOR MODIFICATION OF SENTENCE filed in  
27 District Court Case No. CRO7-1728 does not contain the  
28 social security number of any person.

Dated this 22<sup>nd</sup> day of FEBRUARY, 20 10.

29 Brendan Dinchley  
30 BRENDAN DUNKLEY 1023236  
31 PLAINTIFF In Pro Se



1 **Code 1310**

2  
3  
4  
5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **THE STATE OF NEVADA,**

13 **Respondent.**  
14 \_\_\_\_\_/

15 **CASE APPEAL STATEMENT**

- 16 1. Brendan Dunckley is the Appellant.
- 17 2. This appeal is from the Order Denying Motion for Modification of Sentence  
18 filed on February 10, 2010 by the Honorable Connie J. Steinheimer.
- 19 3. The parties in District Court consisted of The State of Nevada, Plaintiff, and  
20 the Brendan Dunckley, Defendant.
- 21 4. The parties in the Nevada Supreme Court consist of Brendan Dunckley,  
22 Appellant, and The State of Nevada, Respondent.
- 23 5. Counsel on appeal consists of:
- 24 Brendan Dunckley, #1023236, Appellant in Proper Person  
25 Lovelock Correctional center  
26 1200 Prison Road  
Lovelock, NV 89419
- 27 Gary Hatlestad, Esq., Deputy District Attorney, Attorney for Respondent  
28 Washoe County District Attorney's Office  
P.O. Box 30083

1 Reno, NV 89520

2 6. Appellant represented himself in Proper Person in District Court.

3 7. Appellant is representing himself in Proper Person on appeal.

4 8. Fee not applicable in this case.

5 9. Proceedings commenced by the filing of an Information on July 12, 2007.

6  
7  
8 Dated this 1st day of March, 2010.

9 HOWARD W. CONYERS  
10 CLERK OF THE COURT

11  
12 By: /s/ Teresa Prince  
13 Deputy Clerk  
14  
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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 03-01-2010:16:39:59  
**Clerk Accepted:** 03-01-2010:17:02:45  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Case Appeal Statement  
**Filed By:** Teresa Prince

You may review this filing by clicking on the following link to take you to your cases.

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**The following people were served electronically:**

ROBERT STORY, ESQ. for BRENDAN  
DUNCKLEY  
GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.

1 **Code 1350**

2  
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5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8  
9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **THE STATE OF NEVADA,**

13 **Respondent.**  
14 \_\_\_\_\_/

15  
16 **CERTIFICATE OF CLERK**

17 I hereby certify that the attached documents submitted electronically are  
18 certified copies of the original pleadings on file with the Second Judicial District Court, in  
19 accordance with the Nevada Rules of Appellate Procedure, NRAP 3(e).

20 Dated this 2nd day of March, 2010.

21 **HOWARD W. CONYERS**  
22 **CLERK OF THE COURT**

23  
24 By: /s/ Teresa Prince  
25 Deputy Clerk  
26  
27  
28

1 **Code 1365**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8  
9 **BRENDAN DUNCKLEY,**

10 **Appellant,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **THE STATE OF NEVADA,**

13 **Respondent.**

14 /

15  
16 **CERTIFICATE OF TRANSMITTAL**

17 I hereby certify that this Notice of Appeal and other required documents  
18 (certified copies pursuant to NRAP 3(e), were electronically filed from the Second Judicial  
19 District Court to the Nevada Supreme Court.

20 Dated this 2nd day of March, 2010.

21 **HOWARD W. CONYERS**  
22 **CLERK OF THE COURT**

23  
24 By: /s/ Teresa Prince  
25 Deputy Clerk  
26  
27  
28

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 03-02-2010:07:23:44  
**Clerk Accepted:** 03-02-2010:07:23:57  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Certificate of Clerk  
Certificate of Transmittal  
**Filed By:** Teresa Prince

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DUNCKLEY  
GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.

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03-02-2010:01:42:41 PM  
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**From:** [efiling@nvcourts.nv.gov](mailto:efiling@nvcourts.nv.gov)  
**To:** [Prince, Teresa](#)  
**Subject:** Acceptance of Electronic Document. DUNCKLEY (BRENDAN) VS. STATE.  
**Date:** Tuesday, March 02, 2010 12:33:17 PM

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**ACCEPTANCE OF ELECTRONIC DOCUMENT SUBMITTED FOR FILING**

Case Title: DUNCKLEY (BRENDAN) VS. STATE  
Docket Number: 55545  
Case Category: Criminal Appeal  
District Court Information: CR07-1728, THE STATE OF NEVADA VS. BRENDAN DUNCKLEY

Submitted by: Washoe Co Clerk  
Date Submitted: Mar 02 2010 07:34 a.m.  
Official File Stamp: Mar 02 2010 12:32 p.m.  
Document Category: Notice of Appeal Documents  
Document Title: NOTICE OF APPEAL

**Filing Status:** **Accepted and Filed**

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**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 03-02-2010:13:42:41  
**Clerk Accepted:** 03-02-2010:13:43:15  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Supreme Ct Accept - eFile Doc  
**Filed By:** Teresa Prince

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DUNCKLEY  
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NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.



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FORWARDED # CONTENTS

BY 88 COUNTY

DC-9900015265-066  
CRO7-1728 BRENDAN DUNCKLEY 15 Pages  
STATE VS BRENDAN DUNCKLEY 03/03/2010 09:26 AM  
District Court 2490  
Washoe County  
IFLOREC

BRENDAN DUNCKLEY(\*1023236)

LOVELOCK CORRECTIONAL CENTER

200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

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6

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7

IN AND FOR THE COUNTY OF WASHOE

8

9

THE STATE OF NEVADA,

10

PLAINTIFF

CASE NO: CRO7-1728

11

VS.

DEPT. NO: 4

12

BRENDAN DUNCKLEY,

13

DEFENDANT, /

14

15

MOTION FOR WITHDRAWAL OF GUILTY PLEA

16

17

COMES NOW, DEFENDANT, BRENDAN DUNCKLEY, AND

18

SUBMITS TO THIS COURT HIS MOTION FOR WITHDRAWAL OF

19

GUILTY PLEA MEMORANDUM, ENTERED ON MARCH 6, 2008.

20

THIS MOTION IS MADE BASED ON THE COURT'S INHERENT

21

AUTHORITY AND THE DEFENDANT'S RIGHT TO WITHDRAW A

22

GUILTY PLEA TO CORRECT A MANIFEST INJUSTICE, UNDER,

23

NRS. 176.165. ALL PAPERS, PLEADINGS AND DOCUMENTS

24

ON FILE HEREIN; AND THE FOLLOWING POINTS AND

25

AUTHORITY.

26

1 POINTS AND AUTHORITY

2 SUPPORTING FACTS

3 A "MANIFEST INJUSTICE" JUSTIFYING WITHDRAWAL OF  
4 GUILTY PLEA IS ONE THAT IS OBVIOUS, DIRECTLY OBSERVABLE,  
5 OVERT, NOT OBSCURE. THE FOUR INDICIA OF MANIFEST INJUSTICE  
6 GENERALLY RECOGNIZED BY STATE COURTS, FOR PURPOSE OF A  
7 MOTION TO WITHDRAW A GUILTY PLEA, ARE: 1) DENIAL OF EFFECT-  
8 IVE ASSISTANCE OF COUNSEL; 2) PLEA WAS NOT RATIFIED BY THE  
9 DEFENDANT, OR THE DEFENDANT'S AGENT; 3) INVOLUNTARY PLEA; OR,  
10 4) VIOLATION OF PLEA AGREEMENT BY THE PROSECUTION.

11 LET THE RECORD SHOW THIS MOTION WILL PROVE THAT  
12 A MANIFEST INJUSTICE HAS INDEED OCCURED IN THIS CASE. ON  
13 MARCH 6, 2008 A 'GUILTY PLEA MEMORANDUM' WAS INTRODUCED  
14 AND ACCEPTED BY THE COURTS IN REFERENCE OF CASE NUMBER  
15 CRO7-1728, THE STATE OF NEVADA VS. BRENDAN DUNKLEY.  
16 ON THE SAME DATE A GUILTY PLEA 'CANVASS' WAS PERFORMED  
17 BY JUDGE CONNIE STEINHEIMER.

18 SPECIAL NOTICE SHOULD BE ON PAGE 4; 10 OF THE  
19 GUILTY PLEA MEMORANDUM, IN IT, IT STATES: "THAT I AM  
20 NOT ELEHIBLE FOR PROBATION UNLESS PSYCHOSEXUAL EVALUATION  
21 IS COMPLETED..." REFERRING TO COUNT II ATTEMPTED SEXUAL  
22 ASSAULT. ON PAGE 5; 2 - IN REFERENCE TO COUNT I LEWDNESS  
23 WITH A CHILD UNDER 14 "ORIGINAL COUNT I AND ALLOW  
24 ME THE OPPORTUNITY TO QUALIFY FOR PROBATION, WHICH  
25 WOULD OTHERWISE BE UNAVAILABLE.

1 AT THE HEARING ON MARCH 6, 2008 UPON ACCEPTANCE  
2 OF THE GUILTY PLEA, THE FOLLOWING QUESTIONS AND COMMENTS  
3 WERE MADE BY JUDGE CONNIE STEINHEIMER. ON PAGE 6; 18-  
4 19: "DO YOU HAVE ANY QUESTIONS ABOUT THE MODIFICATION  
5 TO THE TYPED DOCUMENT?" REFERRING TO PGS, 4; 25, 5; 2  
6 ALLOWING PROBATION TO BE A POSSIBLE SENTENCING OPTION.  
7 ALSO ON PAGE 10; 9-12: "NOW, DO YOU UNDERSTAND THAT  
8 PROBATION IS NOT AVAILABLE ON THESE CHARGES UNLESS  
9 YOU ARE CERTIFIED BY A PROFESSIONAL PURSUANT TO NRS  
10 176.139, NOT TO REPRESENT A HIGH RISK TO REOFFEND  
11 AS TO BOTH COUNTS."

12 ALSO AT THE HEARING ON MARCH 6, 2008, DEFENSE ATTORNEY  
13 DAVID O'MARA REFERED TO PROBATION BEING A SENTENCING  
14 OPTION WHEN HE STATED: "YOUR HONOR, THERE'S BEEN NEGOTIATIONS  
15 WITH THE DISTRICT ATTORNEY'S OFFICE TO SET THIS  
16 OUT FIVE TO SIX MONTHS SO THAT MR. DUNCKLEY CAN GET  
17 SEXUAL OFFENDER THEROPY DURING THAT PERIOD OF TIME. AND  
18 BASICALLY THE D.A. IS GIVING HIM EVERY OPPORTUNITY TO TRY  
19 TO QUALIFY FOR PROBATION AND TO DO THINGS THAT WILL  
20 BE BENEFICIAL FOR HIM TO PRESENT TO YOU AT SENTENCING.  
21 (PAGE 12; 24 TO Pg 13; 7)

22 FURTHER INFERENCE THAT PROBATION WAS INFACIT AN  
23 AVAILABLE SENTENCING POSSIBILITY, PROVIDED DEFENDANT KEEPS  
24 HIS END OF THE "CONTRACT" WAS ADA VILORIA COMMENTING ON  
25 MARCH 6, 2008 - Pg. 13; 8-14: "YOUR HONOR, MY AGREEMENT

1 IS JUST TO SEE IF THIS DEFENDANT IS WORTHY OF ANY  
2 TYPE OF GRANT OF PROBATION, WHETHER HE CAN EARN IT OR  
3 NOT. I WANT TO SEE WHAT HE DOES BETWEEN NOW AND THEN  
4 SO I DO NOT OBJECT TO ANY TYPE OF CONTINUANCE THAT  
5 MR. O'MARA IS ASKING FOR TO SET OUT THE SENTENCING  
6 DATE."

7 ON AUGUST 5, 2008 THE IDEA OF PROBATION BEING  
8 ALLOWED FOR THE CRIMES AS ACCEPTABLE SENTENCING OPTION,  
9 DEFENSE ATTORNEY CONTINUED THIS 'FARSE' ON Pg. 4; 10, 11: " I  
10 WANT TO MAKE THE COURT AWARE OF THE FACT THAT PROBA-  
11 TION IN BOTH THESE CHARGES IS AVAILABLE IN THIS CASE."  
12 THEN Pg. 6; 2, 3: "GRANT MR. DUNKLEY THE OPPORTUNITY TO BE ON  
13 PROBATION FOR BOTH THESE CHARGES." (Pg 7; 6, 7, Pg 10; 3) Pg 10; 14  
14 "SO HE DOES QUALIFY FOR PROBATION." AND FINALLY ON Pg 11; 12,  
15 13: "I RESPECTFULLY REQUEST THAT YOU ALLOW FOR PROBATION."

16 ASSISTANT DISTRICT ATTORNEY VILORIA ON AUGUST 5, 2008  
17 STATED ON PAGE 12; 11, 12: "STATE'S CONCERN ARE THAT THE  
18 COMMUNITY HAVE TO BE SAFE. AND IF BRENDAN DUNKLEY  
19 IS GIVEN PROBATION, IT WILL NOT BE." ANAMITLY FIGHTING  
20 AND ARGUING AGAINST ANY TYPE OF PROBATION BEING AWARDED.  
21 ALSO SPECIFICALLY ON PAGE 27; 18, 19: JUDGE STEINHEIMER  
22 STATED: "I KNOW YOU PLED TO SOMETHING THAT ALLOWS  
23 FOR A LESSER SENTENCE, BUT IT DOES NOT ALLOW FOR  
24 PROBATION." (EMPHASIS ADDED) PROBATION FOR NRS 201.230 OR  
25 NRS 193.330 IS NOT EVEN ALLOWED IN SENTENCING GUIDELINES

## ARGUMENTS

"A PLEA AGREEMENT IS CONSTRUED ACCORDING TO WHAT THE DEFENDANT REASONABLY UNDERSTOOD WHEN HE OR SHE ENTERED THE PLEA" SULLIVAN V. STATE, 96 P.3d 761, 120 NEV. 537, 2008 WL 2566743 (1999); GUNN V. IGNACIO, 263 F.3d 965 (NEV. 2001).

"TO DETERMINE WHETHER A PLEA BARGAIN IS VIOLATED, THE COURT MUST LOOK AT WHAT THE PARTIES HAD REASONABLY UNDERSTOOD TO BE THE TERMS OF THE AGREEMENT, AND TYPICALLY THE GOVERNMENT MUST BEAR RESPONSIBILITY FOR ANY LACK OF CLARITY IN THOSE TERMS, BECAUSE THEY HAD CRAFTED THE AGREEMENT" US V. JOHNSON, 199 F.3d 1015 120 S. CT. 2206, 530 US 1207, 147 L. Ed2d. 239 (1999)

"DISTRICT JUDGE'S ACCEPTANCE OF DEFENDANT'S GUILTY PLEA TO A CRIME OF SEXUAL ASSAULT WAS FATALLY DEFECTIVE BECAUSE RECORD DOES NOT INDICATE THAT DEFENDANT WAS INFORMED THAT SEXUAL ASSAULT WAS NOT A PROBATIONABLE OFFENSE." MEYER V. STATE, 603 P.2d 1066, 95 NEV. 885. (NEV. 1979)

"ACCEPTANCE OF GUILTY PLEA IS FATALLY DEFECTIVE IF RECORD DOES NOT AFFIRMATIVELY SHOW THAT DEFENDANT WAS INFORMED THAT PROBATION IS NOT AVAILABLE... ACCEPTANCE OF A GUILTY PLEA WITHOUT DEFENDANT BEING INFORMED THAT PROBATION IS NOT AVAILABLE REQUIRES THAT DEFENDANT

1 BE ALLOWED TO WITHDRAW HIS GUILTY PLEA "SKINNER  
2 V. STATE, 930 P.2d 748, 113 Nev. 49 (NEV. 1997)

3 ONE OF THE FOUR INDICIA TO ESTABLISH A "MANIF-  
4 EST INJUSTICE" IS A INVOLUNTARY PLEA. SINCE A VALID  
5 ENTRANCE AND ACCEPTANCE OF A PLEA THAT IS BOTH  
6 KNOWINGLY AND VOLUNTARY REQUIRES THAT DEFENDANT  
7 BE FULLY AND ACCURATLY INFORMED OF BOTH THE CRIMES  
8 AND THE TRUE SENTENCING GUIDELINES FOR SUCH CRIMES.

9 "REQUIREMENT OF VOLUNTARY GUILTY PLEA IS THAT  
10 THE PLEA BE ENTERED WITH UNDERSTANDING OF CONSEQUENCES  
11 OF PLEA, INCLUDING POSSIBLE RANGE OF PUNISHMENT, IS NOT  
12 MET WHEN A DEFENDANT IS EXPRESSLY GIVEN MISINFORMATION  
13 BY THE STATE OR DISTRICT COURT AT TIME OF ENTRY OF HIS  
14 PLEA TO EFFECT THAT MANDATORY MINIMUM SENTENCE HE  
15 MIGHT RECEIVE IS MUCH LESS THAN WHAT IS ACTUALLY POSSIBLE  
16 UNDER THE STATUTE... RECORDS SHOW IT DID NOT AFFIRM-  
17 ATIVELY DEMONSTRATE FULL UNDERSTANDING BY DEFENDANT OF  
18 CONSEQUENCES OF PLEA, AND THUS DID NOT REFLECT THAT  
19 PLEA WAS ENTERED KNOWINGLY AND VOLUNTARY." SIEBBA V.

20 STATE, 691 P.2d 431, 100 NEV. 614 (NEV. 1984)

21 "ANY DOUBT AS TO WHETHER PLEA WAS VOLUNTARY MUST  
22 BE RESOLVED IN FAVOR OF THE DEFENDANT" STATE V. SCHUMER,  
23 973 P.2d 230, 293 MONT. 54. (MONT. 1999)

24 THE RECORD IS CLEAR. NOT AT ANY POINT DID  
25 ADA VILORIA, DAVID O'MARA NOR JUDGE STEINHEIMER CORRECT

1 THE INFORMATION IN REGARDS TO PROBATION BEING A  
2 OPTION. AT NO POINT DID THE "OFFICERS OF THE STATE / COURT"  
3 STATE TO THE DEFENDANT THAT NRS. 201.230 AND NRS  
4 193.330 DONT EVEN ALLOW FOR PROBATION TO EVEN  
5 BE CONSIDERED. THUS INTENTIONALLY MISINFORMING THE  
6 DEFENDANT, AND FALSELY IMPLYING, AND LEADING DEFENDANT  
7 TO BELIEVE PROBATION WAS AVAILABLE. WITH THE NUMEROUS  
8 COMMENTS AND REFERENCE TO SUCH BY ADA VILORIA, DAVID  
9 O'MARA AND JUDGE STEINHEIMER ON MARCH 6, 2008 AND  
10 AUGUST 5, 2008.

11 WHEN ADA VILORIA FOUGHT AT SENTENCING FOR  
12 NOT GRANTING PROBATION (Pg 12;12) AND Pg 14;12,13: "WE  
13 CREATED THIS ALLEGATION OR THIS PLEA BARGAIN SO THAT  
14 THIS DEFENDANT COULD ASK YOU FOR PROBATION". THE  
15 CONTINUAL FACT THAT PROBATION IS NOT EVEN AVAILABLE  
16 BY LAW, BUT THAT WAS KEPT 'HIDDEN' ALLOWING THE  
17 DEFENDANT TO BELIEVE IF HE KEPT HIS END OF THE  
18 'CONTRACT' HE WOULD 'QUALIFY FOR PROBATION'. (SEE  
19 SULLIVAN V. STATE & GUNN V. IGNACIO) THEREFORE MEETING  
20 THE REQUIRED 'INDICIA' OF NUMBER 3 - INVOLUNTARY PLEA.

21 AS STATED THE COMMENTS AND MISINFORMATION  
22 WAS NOT JUST INVOLVING ADA VILORIA SOLEY. BUT IT  
23 ALSO INCLUDED DEFENSE ATTORNEY DAVID C. O'MARA,  
24 "ENTERING A PLEA UPON MISTAKEN LEGAL ADVICE  
25 THAT NO DEFENSE TO MISCONDUCT EXISTS, ESTABLISHES FAIR

1 AND JUST REASON TO WITHDRAW PLEA." HANSEN V. STATE,  
2 824 P.2d 1384 (ALASKA 1992)  
3 BY NOT ONLY NOT CORRECTING THE RECORD, BUT  
4 TO ADVISE AND ALLOW DEFENDANT TO SIGN AND ENTER  
5 A PLEA OF GUILTY, WITH THE FULL KNOWLEDGE HE THINKS  
6 PROBATION IS AN OPTION. A BELIEF AND UNDERSTANDING  
7 THAT ALONG WITH ADA VILORIA, DEFENSE ATTORNEY O'MARA  
8 CONTINUALLY COMMENTED ON AND REFERED TO. SUCH ADVICE  
9 WOULD NEVER HAVE BEEN GIVEN BY A DEFENSE ATTORNEY  
10 WHO WAS TRUELY WORKING AS AN ADVISARY TO THE STATE.  
11 HIS 'ADVICE' AND COMMENTS INCOURAGING THE MISINFORMATION  
12 AND FARSE ON PART OF THE STATE FELL BELOW A BAR  
13 OF STANDARDS ATTORNEY'S HOLD THEMSELVES TO. THE BASIC  
14 AND FULL KNOWLEDGE OF THE CRIME IS A 'BASIC/BEGINNER'  
15 REQUIREMENT OF A COMPETANT ATTORNEY. DAVID O'MARA HAS  
16 PROVEN HE WAS NOT ACTING AND ADVISING HIS CLIENT IN  
17 A COMPETANT WAY. HIS MISADVICE AND DECEPTION PREJUDICED  
18 THE DEFENDANT LEADING HIM TO PLEAD GUILTY. BY HIS IN-  
19 COMPETANT PREJUDICIAL ADVICE /ACTION, BOTH 'PRONGS' OF  
20 STRICKLAND V. WASHINGTON HAVE BEEN MET. YET ANOTHER 'INDICIA' OF  
21 NUMBER 1) DENIAL OF EFFECTIVE ASSISTANCE OF COUNSEL. A VALID  
22 'MANIFEST INJUSTICE' TO ALLOW REVERSAL /WITHDRAWAL OF PLEA.  
23 "THE BEST COURSE OF ACTION FOR THE DISTRICT COURTS  
24 DURING PLEA CANVASS IS TO AFFIRMATIVELY STATE THAT  
25 PROBATION IS NOT A SENTENCING OPTION FOR THE CHARGED CRIME"



1 RIKER V. STATE, 905 P.2d 706, 111 NEV. 1316 (NEV. 1995)

2 THE DISTRICT COURT HAS IN ITS DISCRETION AND  
3 POWER TO GRANT THE DEFENDANT'S MOTION TO WITHDRAW  
4 HIS GUILTY PLEA FOR ANY SUBSTANTIAL REASON IF IT IS  
5 JUST AND FAIR. INTENTIONAL MISREPRESENTATION OF THE  
6 LAW AND STATUTES, INCLUDING THE STATUTE OF SENTENCING,  
7 STRUCTURE IS A STRONG AND VALID REASON TO ALLOW THE  
8 WITHDRAWAL OF PLEA.

9 "COUNSEL'S DELIBERATE MISREPRESENTATION CONCERNING  
10 SENTENCING, THAT INDUCES A GUILTY PLEA IS A VALID AND  
11 JUST CAUSE CONSTITUTING INEFFECTIVE ASSISTANCE OF COUNSEL"  
12 PEOPLE V. DIGUGLIELMO, 33 P.3d 1248 (COLO. 2001)

13 THIS 'COUNSEL' CAN REFER TO BOTH DEFENSE AND  
14 PROSECUTING ATTORNEYS. SINCE BOTH HAVE A DUTY AS OFFICERS  
15 OF THE COURT TO SEEK JUSTICE. IN THE DEFENDANT'S IMME-  
16 DIATE CASE AND THE RECORD SHOW THAT IT IS SO  
17 OBVIOUS, DIRECTLY OBSERVABLE, AND BOTH OVERT AND NOT  
18 OBSCURE THAT SUCH MISINFORMATION WAS INFACIT INTENTIONAL  
19 INTENTIONAL WITH THE INTENT TO INDUCE A GUILTY PLEA.

20 BUT IN SUCH A CASE 'INDUCE' IS INCORRECT WORD. COERSION  
21 IS MORE APPROPRIATE. THE ONLY REASON WOULD BE  
22 THAT 'COUNSEL' DID NOT KNOW PROBATION WAS NOT AVAILABLE.  
23 THAT IS FAR FROM LIKELY TO BE THE CASE HERE.

24 NRS. 176.165 STATES: "... TO CORRECT A MANIFEST  
25 INJUSTICE, THE COURT AFTER SENTENCING MAY SET ASIDE THE

1 JUDGEMENT OF CONVICTION, AND PERMIT THE DEFENDANT  
2 TO WITHDRAW HIS PLEA." (RULE OF CRIM. PROC. RULE 11(H)(1))  
3 PURSUANT TO BRYANT V. STATE WHEN A DEFENDANT  
4 BRINGS FOWARD A MOTION TO WITHDRAW A GUILTY PLEA  
5 THE TRIAL COURT HAS A DUTY TO REVIEW THE ENTIRE RECORD  
6 TO DETERMINE WHETHER THE PLEA IS VALID. ESPECIALLY IF  
7 THE DEFENDANT CAN PROVE A CREDIBLE CLAIM OF  
8 FACTUAL INNOCENCE, AND LACK OF PREJUDICE TO THE STATE.  
9 ALSO THE STATE VIOLATED THE 'PLEA BARGAIN' TO EST  
10 ABLISH NUMBER 4) VIOLATION OF PLEA BARGAIN BY PROSECUTOR.  
11 WITH THE GUILTY PLEA BEING CONSTRUED AND GOVERNED  
12 UNDER CONTRACT LAW NOT CRIMINAL, THE STATE BREACHED IT  
13 BY MEANS OF FRAUD. SINCE ADA VILORIA CREATED AND GENERATED  
14 THE GUILTY PLEA MEMORANDUM, SHE KNEW IT WAS FALSE AND  
15 INVALID, BECAUSE SHE KNEW THAT THE STATE LAW RESTRICTS  
16 THE CONSIDERATION OF PROBATION FOR THE CRIMES CHARGED.  
17 BY HER ACTIONS AND COMMENTS AT THE HEARINGS SHE  
18 INTENTIONALLY COMMITTED FRAUD BY ENTERING / INTRODUCING  
19 A CONTRACT UNDER FALSE PRETENSE, THEREFORE UNDER  
20 CONTRACT LAW VOIDING THE 'CONTRACT'. ALSO A TRUE AND  
21 JUST MANIFEST INSJUSTICE ALLOWING WITHDRAWAL OF GUILTY PLEA.  
22 " IF MISINFORMATION AS TO SENTENCE EXISTS IT RENDERS  
23 A GUILTY PLEA INVOLUNTARY MADE, AND IT MUST BE VACATED,  
24 EVEN IF THE ACTUAL SENTENCE IMPOSED WAS WITHIN THE PERIMETER".  
25 TAYLOR V. WARDEN, NSP, 607 P.2d 587, 96 NEV. 272 (NEV. 1980)

1 SINCE A MOTION TO WITHDRAW A PLEA IS INCIDENT  
2 TO PROCEEDINGS IN TRIAL COURT AND IS THEREFORE NOT  
3 SUBJECT TO STATUTORY TIME LIMITATIONS APPLICABLE TO  
4 A PETITION FOR WRIT OF HABEAS CORPUS.

5 "WHEN STATE ENTERS INTO A PLEA AGREEMENT IT  
6 IS HELD TO THE MOST METICULOUS STANDARDS OF BOTH  
7 PROMISE AND PREFORMANCE, VIOLATIONS OF TERMS OR OF  
8 "SPIRIT" OF PLEA BARGAIN REQUIRES AN IMMEDIATE REVERSAL"  
9 CITI V STATE, 807 P.2d 724, 107 NEV. 89 (NEV. 1991): &  
10 STATZ V. STATE, 944 P.2d 813, 113 NEV. 987 (NEV. 1997)

11  
12 CONCLUSION

13  
14 THE REVIEW OF BOTH THE RECORD AND THIS MOTION  
15 IT IS CLEAR THAT THE DEFENDANT WAS INFACIT INTENTION-  
16 ALLY MISINFORMED, BY BEING LED TO BELIEVE PROBATION WAS  
17 A VALID SENTENCING OPTION, BY ADA VILORIA, DAVID O'MARA AND  
18 EVEN JUDGE STEINHEIMER STATING PROBATION WAS AN  
19 OPTION, AND NOT AFFIRMATIVELY STATING TO DEFENDANT  
20 IT IS NOT AN OPTION, ACTUALLY THERE WAS TWENTY-THREE  
21 DIRECT REFERENCES TO PROBATION BEING AN OPTION. SUCH  
22 BEHAVIOR SHOWS SUCH MISINFORMATION INVALIDATES THE  
23 PLEA MAKING IT BOTH NOT KNOWINGLY GIVEN NOR VOLUNTARY.  
24 AS MENTIONED IN THIS MOTION DEFENDANT HAS  
25 PROVEN NOT ONE, NOT TWO BUT THREE OF THE FOUR INDICIA.

1 ALLOWING REVERSAL OF GUILTY PLEA. MORE THAN SATISFIED  
2 THE PICTURE OF A "MANIFEST INJUSTICE" AS PER NRS. 176.165.  
3 WHEN A DEFENDANT ENTERS INTO A PLEA AGREEMENT  
4 THAT INCLUDES AS A MATERIAL ELEMENT A REFERENCE  
5 FOR AN ILLEGAL SENTENCE, THE GUILTY PLEA IS INVALID.  
6 AND MUST BE VACATED. BECAUSE THE BASIS THAT THE  
7 DEFENDANT ENTERED THE PLEA INCLUDED THE IMPERMISSIBLE  
8 INDUCEMENT OF AN ILLEGAL SENTENCE, PROBATION, WHICH  
9 IS NOT AN OPTION, LEGALLY. NO SOUND PUBLIC POLICY  
10 SUPPORTS ALLOWING A DEFENDANT TO BARGAIN FOR AN  
11 ILLEGAL SENTENCE. THUS SUCH A PLEA AGREEMENT CAN  
12 NOT BE ALLOWED TO STAND.

13 SINCE PROPER INTERPRETATION OF A PLEA AGREEMENT  
14 IS A QUESTION OF LAW: IT IS NOT JUST BASED ON THE  
15 SUBJECTIVE UNDERSTANDINGS OF THE DEFENDANT, BUT RATHER  
16 ON THE MEANING A REASONABLE PERSON WOULD HAVE  
17 ATTACHED TO IT UNDER THE CIRCUMSTANCES. WHEN A  
18 PARTY ATTEMPTS TO FASHION A SENTENCE TO INDUCE A  
19 GUILTY PLEA, THAT IN ITSELF IS CONTRARY TO LAW, SUCH  
20 A PLEA MUST BE REGARDED AS INVALID AND INVOLUNTARY.

21 VIOLATIONS OF A PLEA BARGAIN BY AN OFFICER OF  
22 THE STATE SUCH AS ADA VILORIA, DAVID O'MARA AND  
23 EVEN JUDGE STEINHEIMER RAISES THE NECESSITY TO PROTE  
24 CT THE CONSTITUTIONAL RIGHTS OF THE DEFENDANT, AS A  
25 REMEDY, ALLOWING WITHDRAWAL OF GUILTY PLEA.

1 THE REMEDY FOR THIS, BREACH, COERCION, INTENTIONAL  
2 MISREPRESENTATION, MANIFEST INJUSTICE IS THAT THE  
3 DEFENDANT BE ALLOWED TO WITHDRAW HIS GUILTY PLEA,  
4 BY ALLOWING SUCH TO ALSO ALLOW DEFENDANT TO RETURN  
5 TO STATUS OF NOT GUILTY. REQUIRING THE STATE TO PROVE  
6 HIS GUILT BEYOND A REASONABLE DOUBT, AND UNTIL  
7 SUCH TIME BE CONSIDERED INNOCENT.

8 SINCE THE PLEA WAS INFECT NOT ENTERED KNOW-  
9 INGLY NOR VOLUNTARY, THE MOTION AND RECORD ESTABLISH  
10 THAT PLEA OF GUILTY WAS CONSTITUTIONALLY INVALID.  
11 THE DEFENDANT ASKS THAT HE BE ALLOWED TO RETURN  
12 TO THE STATUS OF NOT GUILTY.

13 DEFENDANT ALSO REQUESTS THAT WITH THE WITHDRAWAL  
14 OF HIS GUILTY PLEA, RETURN TO NOT GUILTY STATUS, THAT THE  
15 ORDER OF CONVICTION ENTERED ON AUGUST 11, 2008 BE  
16 REVERSED AND CONVICTIONS BE VACATED.

17 IN THE INTEREST OF JUSTICE AND AS ATTORNEY  
18 PRO PER FOR CASE NUMBER: CR07-1728, IN ACCORD  
19 WITH DCR 13(3) A IMMEDIATE DECISION IS REQUESTED.  
20 FOR "JUSTICE DELAYED IS CLEARLY JUSTICE DENIED." DOUGAN  
21 V. GUSTAVENSON, 835 P.2d 795, 799, 108 NEV. 517 (NEV. 1992)  
22 IF TEN (10) DAYS PASS FROM SERVICE OF THIS MOTION TO  
23 THE STATE, AND NO OPPOSITION IS FILED BY THE STATE,  
24 DEFENDANT REQUESTS THAT SUCH FAILURE TO  
25 OPPOSE THE MOTION FOR WITHDRAWAL OF GUILTY PLEA,

1 BE VIEWED AND CONSTRUED AS AN ADMISSION BY THE  
2 STATE THAT THE MOTION IS MERITORIOUS AND AS  
3 A CONSENT TO GRANTING THE SAME, AND ANY  
4 OTHER RELIEF YOUR HONOR SEES FIT TO GRANT  
5 DEFENDANT.

6  
7  
8 DATED THIS 26<sup>TH</sup> DAY OF FEBRUARY, 2010  
9  
10

11 *Brendan Dunchley*  
12

13 BRENDAN DUNCHLEY # 1023236  
14

15 LOVELOCK CORRECTIONAL CENTER  
16

17 1200 PRISON ROAD  
18

19 LOVELOCK, NEVADA 89419  
20  
21  
22  
23  
24  
25  
26

1  
2  
3 CERTIFICATE OF SERVICE BY MAIL

4 I do certify that I mailed a true and correct copy of the  
5 foregoing MOTION FOR WITHDRAWAL OF GUILTY PLEA  
6 to the below address(es) on this 26<sup>th</sup> day of FEBRUARY,  
7 2010, by placing same in the U.S. Mail via prison law library  
8 staff, pursuant to NRCP 5(b):

9 WASHOE COUNTY DISTRICT ATTORNEY  
10 % GARY HARESTAD  
11 P.O. BOX 30083  
12 RENO NEVADA 89520-3083

13 &  
14 CLERK OF THE COURTS  
15 SECOND JUDICIAL DISTRICT  
16 % DEPT 4.  
17 P.O. BOX 30083  
18 RENO, NEVADA 89520-3083

19 Brendan Dinchley  
20 BRENDAN DUNCKLEY #1023256  
21 Lovelock Correctional Center  
22 1200 Prison Road  
23 Lovelock, Nevada 89419

24 DEFENDANT In Pro Se

25 AFFIRMATION PURSUANT TO NRS 239B.030

26 The undersigned does hereby affirm that the preceding  
27 MOTION FOR WITHDRAWAL OF GUILTY PLEA filed in  
28 District Court Case No. CR07-1722 does not contain the  
social security number of any person.

Dated this 26<sup>th</sup> day of FEBRUARY, 2010.

29 Brendan Dinchley  
30 BRENDAN DUNCKLEY

DEFENDANT In Pro Se

FILED

10 MAR -4 PM 2:36

HOWARD W. CONYERS

BY [Signature]  
DEPUTY

1 BRENDAN DUNKLEY #1023236  
2 LOVELOCK CORRECTIONAL CENTER  
3 1200 PRISON ROAD  
4 LOVELOCK, NEVADA 89419  
5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE  
7 OF NEVADA IN AND FOR THE COUNTY OF WASHOE  
8

9 THE STATE OF NEVADA,  
10 PLAINTIFF,  
11 VS.

CASE NO.: CR07-1728  
DEPT. NO.: 4

12 BRENDAN DUNKLEY,  
13 DEFENDANT,  
14

15 SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA  
16

17 COMES NOW, DEFENDANT, BRENDAN DUNKLEY, IN THIS  
18 SUPPLEMENT TO HIS MOTION TO WITHDRAW GUILTY PLEA.

19 AS STATED PRIOR, A GUILTY PLEA MEMORANDUM WAS ENTERED  
20 AND THE GUILTY PLEA ENTERED ON MARCH 6, 2008. IN THE  
21 MOTION IT IS A STRONG ARGUMENT THAT PROBATION WAS OFFERED,  
22 AS A VALID SENTENCING OPTION.

23 THIS FACT IS CONFIRMED IN THE STATE CASE FILED WITH  
24 THE NEVADA SUPREME COURT CASE NUMBER 52383. THE RESPOND-  
25 ANT (STATE) HAS HELPED TO CONFIRM AND SOLIDIFY THE NEED TO

26 ALLOW WITHDRAWAL OF GUILTY PLEA, UPON INTENTIONAL MISREPRESENTATION

27 PLEASE NOTE ON PAGE 1; 12 OF "RESPONDANT'S ANSWERING BRIEF" IN  
28 CASE 52383: "PROBATION WAS AVAILABLE FOR EACH OFFENSE;" Pg 4; 17, 18:  
29 "UNDER LAW EXISTING AT TIME PROBATION WAS AVAILABLE;" Pg 5; 23:  
30 "MISTAKEN ABOUT IT'S AVAILABILITY;" AND Pg 6; 1-4(b): "WAS FULLY AWARE THAT  
31 PROBATION WAS AVAILABLE IF DUNKLEY WAS CERTIFIED AS NOT REPRESENTING  
32 A HIGH RISK TO REOFFEND, THIS TOPIC (PROBATION) CAME UP BOTH IN THE  
33



1 GUILTY PLEA MEMORANDUM, AT THE CHANGE OF PLEA HEARING, AND AT  
2 SENTENCING HEARING."

3 DEFENSE ATTORNEY STATED IN HIS "OPENING BRIEF" FOR CASE  
4 NUMBER: 52383, ON PAGE 4; 26: "ADVISE THE COURT THAT MR. DUNCKLEY  
5 WAS ELIGIBLE FOR PROBATION;" PG. 7; 12: "FAILED TO CONSIDER NEVADA LAWS  
6 AT TIME CRIMES WERE COMMITTED;" PG. 8; 27-9; 2: "IN THIS CASE, MR.  
7 DUNCKLEY GAVE UP SEVERAL OF HIS CONSTITUTIONAL RIGHTS BY PLEADING  
8 GUILTY TO OFFENSES THAT PROVIDED FOR PROBATION." THIS FACT IS OF  
9 EXTREME IMPORTANCE, THIS WILL BE ADDRESSED AGAIN LATER.

10 THE SUPREME COURT IN ITS AFFIRMATION STATED ON PAGE 2: "THAT  
11 DESPITE THE PSI REPORT'S FAILURE TO EXPLICITLY STATE THAT DUNCKLEY  
12 WAS ELIGIBLE FOR PROBATION, THE DISTRICT COURT WAS INFORMED OF HIS  
13 ELIGIBILITY." AND ON PAGE 3: "THE DISTRICT COURT WAS EXPLICITLY INFORMED  
14 THAT PROBATION WAS AN OPTION IN THE GUILTY PLEA MEMORANDUM, DURING  
15 THE PLEA HEARING, AND DURING SENTENCING."

16 PROBATION WAS A POSSIBLE SENTENCING OPTION PER THE "OFFER," BY  
17 THE STATE. EXCEPT FOR THE FACT THAT THE STATE NEVER SPECIFIED THAT THE  
18 SENTENCING GUIDELINES OF 1997 WOULD APPLY. IF THAT IS THE CASE IT IS  
19 EXTREMELY IMPORTANT TO NOTICE IN 1997. EFFECTIVE OCTOBER 1, 1997,  
20 PROBATION WAS NO LONGER A VALID SENTENCING OPTION.

21 AS NOTES SPECIFICALLY IN THE FOLLOWING "HISTORICAL AND  
22 STATUTORY NOTES FOR NRS 201.230." NOTICE IN "LAWS 1997, C.524 EFFECTIVE  
23 DATE OCTOBER 1, 1997, "... DELETED FORMER SUBSECS. 2 THROUGH 6, WHICH RELATED TO  
24 THE PAROLE AND PROBATION OF VIOLATORS..." STRIKING AND REMOVING SUBSECS 2-  
25 6 OF LAW 1997, C.641, EFFECTIVE DATE JULY 17, 1997. IN 1999, C.105 EFFECTIVE  
26 MAY 11, 1999, IT CORRECTED THE CLERICAL ERROR ON NRS 201.230 (1997) BEING  
27 UNDER SUBSEC 2(b) A PROBATIONABLE OFFENSE, WHICH IT WAS NOT.

28 SO IN FACT OF LAW AND AS PER NEVADA REVISED STATUTE 201.230  
29 IN OCTOBER 1, 1997 AND AFTER, PROBATION IS NOT A SENTENCING OPTION THAT CAN  
30 BE CONSIDERED BY A DISTRICT COURT JUDGE IN REGARDS TO SENTENCING.

31 SINCE THE ALLEGED OFFENSE OCCURED BETWEEN 8/14/98 AND 8/13/00,  
32 PROBATION IS NOT AVAILABLE. AND SINCE THE DEFENDANT WAS IN FACT  
33

1 MISINFORMED AND IT IS NOT AVAILABLE, THE GUILTY PLEA CAN NOT  
2 BE CONSIDERED TO HAVE BEEN ENTERED KNOWINGLY OR VOLUNTARY.  
3 "MISINFORMATION AS TO SENTENCE RENDERS A GUILTY PLEA INVOLU-  
4 NTARY MADE, IT MUST BE VACATED ... "TAYLOR V. WARDEN, N.S.P., 607 P.2d 587  
5 96 NEV. 272 (NEV. 1980)

6 "DUE PROCESS CLAUSES OF THE FOURTEENTH AMENDMENT OF THE FEDERAL  
7 CONSTITUTION AND OF THE STATE CONSTITUTION PROTECT DEFENDANT FROM BEING  
8 SENTENCED BASED ON MISINFORMATION." STATE V. WINKLE, 60 P.3d 465, 313 MONT.  
9 111 (MONT. 2002); STATE V. MASON, 82 P.3d 903, 319 MONT. 117 (MONT. 2003); STATE V  
10 PHILLIPS, 159 P.3d 1078, 337 MONT. 248 (MONT. 2007); HIRT V. STATE, 206 P.3d 908  
11 350 MONT. 162 (MONT. 2009)

12 "WHEN A PLEA AGREEMENT IS INVOLUNTARY BASED ON MISINFORMATION  
13 ABOUT THE STANDARD RANGE OF THE SENTENCE, DEFENDANT'S RIGHT TO CHOOSE  
14 TO EITHER SPECIFICALLY ENFORCE THE PLEA AGREEMENT OR TO WITHDRAW  
15 THE PLEA IS NOT LIMITED TO THE SITUATION WHERE THE DEFENDANT IS  
16 INFORMED OF A STANDARD RANGE AND SUBSEQUENTLY BECOMES AWARE THAT  
17 THE RANGE IS GREATER; RATHER, THE REMEDY IS TRIGGERED WHEN THE DEFENDANT  
18 ENTERS A PLEA THAT IS BASED ON MISINFORMATION." STATE V. MOUN, 29 P.3d 734  
19 108 WN. APP. 59. (WASH APP. DIV. 3 2001)

20 THERE IS ABSOLUTELY NO QUESTION AS TO WHETHER PROBATION  
21 WAS A FACTOR IN CONSIDERING WHETHER TO PLEAD OR TO NOT ENTER A  
22 PLEA.

23 DEFENDANT GAINED ABSOLUTELY NOTHING FROM THIS 'DEAL'. BUT  
24 GAVE UP SO MUCH. UPON FULL REVIEW THERE IS NO EXCUSE FOR ADA  
25 VILORIA'S ACTIONS, TO INTENTIONALLY PRESENT A 'DEAL' SHE KNEW TO  
26 BE BASED ON FALSE PREMISE, A LEGAL SMOKE AND MIRRORS. ADD  
27 TO THAT THE OBVIOUS CONSTITUTIONAL MAGNITUDE OF HER OTHER  
28 ACTIONS. TO WITHHOLD KEY EVIDENCE. IN THIS CASE, THAT WOULD HAVE  
29 AFFECTED THE DECISION TO PLEAD OUT OR GO TO TRIAL.

30 WITHHOLDING THE DNA TEST FROM DEFENSE FOR NINE  
31 MONTHS, RESULTS THAT UNCONDITIONALLY CLEAR THE DEFENDANT  
32 OF COMMITTING ANY TYPE OF SEXUAL ASSAULT ON JESSICA, ATTEMPTED  
33

1 OR ANY OTHER.

2 SUCH ACTIONS ALL ADD UP TO A VALID, STRONG, JUST AND  
3 FAIR REASONS TO ALLOW WITHDRAWAL OF GUILTY PLEA. THE ONLY  
4 PARTY PREJUDICED IN THIS MATTER IS THE DEFENDANT, A STATE THAT  
5 WOULD CONTINUE IF THE MOTION TO WITHDRAW GUILTY PLEA IS DENIED.

6  
7  
8  
9 DATED THIS 1<sup>ST</sup> DAY OF MARCH, 2010

10  
11  
12  
13 *Brendan Dunchley*

14  
15 BRENDAN DUNCHLEY #1023236

16 LOVELOCK CORRECTIONAL CENTER

17 1200 PRISON ROAD

18 LOVELOCK, NEVADA 89419

19  
20 DEFENDANT PRO PER  
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HISTORICAL AND STATUTORY NOTES  
NRS. 201.230

4 - LAWS 1997, C. 455, APPLICABLE ONLY TO OFFENSES COMMITTED ON OR AFTER OCT, 1, 1997, IN SUBSEC. 1, INCREASED THE PUNISHMENT TO A CATEGORY A FELONY, WITH A TERM OF IMPRISONMENT OF LIFE WITH THE POSSIBILITY OF PAROLE, WITH ELIGIBILITY FOR PAROLE AFTER 10 YEARS. THE PUNISHMENT HAD PREVIOUSLY BEEN THAT OF A CATEGORY B FELONY, WITH THE A TERM OF IMPRISONMENT BETWEEN 2 AND 10 YEARS.

11 - LAWS 1997, C. 524, EFFECTIVE OCTOBER 1, 1997, DELETED THE SUBSEC. 1 DESIGNATION, AND DELETED FORMER SUBSECS. 2 THROUGH 6, WHICH RELATED TO THE PAROLE OR PROBATION OF VIOLATORS OF THIS SECTION.

14 - LAWS 1997, C. 641, EFFECTIVE JULY 17, 1997, REWROTE SUBSEC. 2, INSERTING SUBSECS. 3 THROUGH 6 AND INCORPORATING FORMER PAR (b) OF SUBSEC. 2 IN SUBSEC. 6. SUBSEC. 2 FORMERLY READ:

17 "2. A PERSON CONVICTED OF VIOLATING ANY OF THE PROVISIONS OF SECTION 1 MUST NOT BE:

19 "(a) PAROLED UNLESS A BOARD CONSISTING OF:

20 "(1) THE ADMINISTRATOR OF THE MENTAL HYGIENE AND MENTAL RETARDATION DIVISION OF THE DEPARTMENT OF HUMAN RESOURCES;

22 "(2) THE DIRECTOR OF THE DEPARTMENT OF PRISONS; AND

23 "(3) A PSYCHOLOGIST LICENSED TO PRACTICE IN NEVADA OR A PSYCHIATRIST LICENSED TO PRACTICE MEDICINE IN NEVADA, CERTIFYS THAT THE PERSON SO CONVICTED WAS UNDER OBSERVATION WHILE CONFINED IN AN INSTITUTION OF THE DEPARTMENT OF PRISONS AND IS NOT A MENACE TO THE HEALTH, SAFETY OR MORALS OF OTHERS. FOR THE PURPOSE OF THIS PARAGRAPH, THE ADMINISTRATOR AND DIRECTOR MAY EACH DESIGNATE A PERSON TO REPRESENT HIM ON THE BOARD."

30 "(b) BE RELEASED ON PROBATION UNLESS A PSYCHOLOGIST LICENSED TO PRACTICE IN NEVADA OR A PSYCHIATRIST LICENSED TO PRACTICE MEDICINE IN NEVADA CERTIFIES THAT THE PERSON SO CONVICTED IS NOT A MENACE TO THE HEALTH, SAFETY OR MORALS OF OTHERS"

1 - LAWS 1999, C. 105, EFFECTIVE MAY 11, 1999, RATIFIED TECHNICAL  
2 CORRECTIONS TO SECTIONS OF NRS, AND MULTIPLE AMENDMENTS OF  
3 SECTIONS OF NRS, CORRECTING CERTAIN EFFECTIVE DATES, AND  
4 MADE CERTAIN OTHER CORRECTIONS IN STATUTES.

5 - LAW 2003, C. 461, § 2, REWROTE THIS SECTION WHICH  
6 PREVIOUSLY READ:

7 "A PERSON WHO WILLFULLY AND LEWDLY COMMITS ANY  
8 LEWD OR LASCIVIOUS ACT, OTHER THAN ACTS CONSTITUTING THE CRIME  
9 OF SEXUAL ASSAULT, UPON OR WITH THE BODY, OR ANY PART OR  
10 MEMBER THEREOF, OF A CHILD UNDER THE AGE OF 14 YEARS, WITH  
11 THE INTENT OF AROUSING, APPEALING TO, OR GRATIFYING THE LUST OR  
12 PASSIONS OR SEXUAL DESIRES OF THAT PERSON, OR OF THAT CHILD, IS  
13 GUILTY OF A CATEGORY A FELONY AND SHALL BE PUNISHED BY  
14 IMPRISONMENT IN STATE PRISON FOR LIFE WITH THE POSSIBILITY OF  
15 PAROLE, WITH ELIGIBILITY FOR PAROLE BEGINNING WHEN A MINIMUM  
16 OF 10 YEARS HAS BEEN SERVED, AND MAY BE FURTHER PUNISHED  
17 BY A FINE OF NOT MORE THAN \$10,000."

18 - LAWS 2005, C. 507, § 33, AMENDED THE SECTION BY RE -  
19 WRITING SUBSEC. 2, WHICH PRIOR THERETO READ AS FOLLOWS:

20 "2. EXCEPT AS OTHERWISE PROVIDED IN SUBSEC. 3, A PERSON  
21 WHO COMMITS LEWDNESS WITH A CHILD IS GUILTY OF A CATEGORY A  
22 FELONY AND SHALL BE PUNISHED BY IMPRISONMENT IN THE STATE PRISON  
23 FOR:

24 "(a) LIFE WITH THE POSSIBILITY OF PAROLE, WITH ELIGIBILITY FOR  
25 PAROLE BEGINNING AFTER 10 YEARS HAS BEEN SERVED, AND MAY BE FURTHER  
26 PUNISHED BY A FINE OF NOT MORE THAN \$10,000; OR,

27 "(b) A DEFINITE TERM OF 20 YEARS, WITH ELIGIBILITY FOR PAROLE  
28 AFTER A MINIMUM OF 2 YEARS HAS BEEN SERVED, AND MAY FURTHER  
29 BE PUNISHED BY A FINE OF NOT MORE THAN \$10,000.

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing SUPPLEMENTAL TO MOTION FOR WITHDRAWAL OF PEA to the below address(es) on this 1<sup>st</sup> day of MARCH, 2010, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

WASHOE COUNTY D.A.  
% GARY HATLESTAD  
P.O. Box 30083  
RENO, NEVADA 89520-3083

S

CLERK OF THE COURT  
SECOND JUDICIAL DISTRICT  
% DEPT. 4,  
P.O. Box 30083  
RENO, NEVADA 89520-3083

Brendan Dunchley  
BRENDAN DUNCHLEY #1023236  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

DEFENDANT In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding MOTION TO WITHDRAWAL OF GUILTY PLEA 'SUPPLEMENTAL' filed in District Court Case No. CR07-1728 does not contain the social security number of any person.

Dated this 2<sup>nd</sup> day of MARCH, 2010.

Brendan Dunchley  
BRENDAN DUNCHLEY

DEFENDANT In Pro Se

CR07-1728  
24

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

**FILED**  
Electronically  
03-04-2010:09:34:29 AM  
Howard W. Conyers  
Clerk of the Court  
Transaction # 1356985

BRENDAN DUNCKLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 55545**

District Court Case No. CR071728

**RECEIPT FOR DOCUMENTS**

TO: Brendan Dunckley #1023236  
Attorney General/Carson City and Catherine Cortez Masto, Attorney  
General  
Washoe County District Attorney and Gary H. Hatlestad, Deputy District  
Attorney  
✓ Howard W. Conyers , District Court Clerk

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

03/02/10	Filed Certified Copy of proper person Notice of Appeal. Appeal docketed in the Supreme Court this day.
03/02/10	Filing Fee Waived: Criminal.

DATE: March 02, 2010

Tracie Lindeman, Clerk of Court

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 03-04-2010:09:34:29  
**Clerk Accepted:** 03-04-2010:09:36:23  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Supreme Court Receipt for Doc  
**Filed By:** Michelle Purdy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

ROBERT STORY, ESQ. for BRENDAN  
DUNCKLEY  
GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.



C207-1728  
D4

IN THE SUPREME COURT OF THE STATE OF NEVADA

**FILED**

Electronically

03-18-2010:01:28:05 PM

Howard W. Conyers

Nevada Court

Transaction # 1382922

BRENDAN DUNCKLEY,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 55545

**FILED**

MAR 16 2010

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

ORDER DIRECTING TRANSMISSION OF RECORD

Having reviewed the documents on file in this proper person appeal, this court has concluded that its review of the complete record is warranted. See NRAP 10(a)(1). The clerk of the district court shall have 90 days from the date of this order within which to transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The record shall also include any presentence investigation reports submitted in this matter in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

Paragon C.J.

cc: Brendan Dunckley  
Attorney General/Carson City  
Washoe County District Attorney  
Washoe District Court Clerk✓

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 03-18-2010:13:28:05  
**Clerk Accepted:** 03-18-2010:13:30:57  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Supreme Ct Order Directing  
**Filed By:** Michelle Purdy

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

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**The following people were served electronically:**

ROBERT STORY, ESQ. for BRENDAN  
DUNCKLEY  
GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.

FILED

10 MAR 22 PM 4:50

HOWARD W. CONYERS

BY

DEPT. NO. 4

CR07-1728  
STATE VS. BRENDAN DUNCKLEY  
District Court  
Washoe County  
3860  
SATTINCH

BRENDAN DUNCKLEY #1023236

LOVELOCK CORRECTIONAL CENTER

1200 PRISON ROAD

4 LOVELOCK, NEVADA 89419

5

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF

7 NEVADA IN AND FOR THE COUNTY OF WASHOE

8

9 THE STATE OF NEVADA,

10

PLAINTIFF,

CASE NO: CR07-1728

11

VS.

DEPT. NO:

4

12

BRENDAN DUNCKLEY,

13

DEFENDANT,

14

15

REQUEST FOR SUBMISSION OF MOTION

16

17

IT IS REQUESTED THAT PURSUANT TO DCR 13 (3) WHICH

18

STATES IN PART:

19

" WITHIN 10 DAYS AFTER SERVICE OF THE MOTION THE OPPOSING

20 PARTY SHALL SERVE AND FILE HIS MOTION IN WRITTEN OPPOSITION

21 THERETO, TOGETHER WITH A MEMORANDUM OF POINTS AND AUTHORITY

22 AND SUPPORTING AFFIDAVITS. IF ANY STATING FACTS SHOWING WHY THE

23 MOTION SHOULD BE DENIED. FAILURE OF THE OPPOSING PARTY TO SERVE

24 AND FILE HIS MOTION, AND HIS WRITTEN OPPOSITION MAY BE CONSTRUED

25 AS AN ADMISSION THAT THE MOTION IS MERITORIOUS AND A CONSENT

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1 TO GRANTING THE SAME "

2 THAT THE MOTION FOR WITHDRAWAL OF GUILTY PLEA AND THE  
3 SUPPLEMENTAL TO THE MOTION FOR WITHDRAWAL OF GUILTY PLEA,  
4 WHICH WAS FILED AND SERVED ON THE THIRD (3<sup>RD</sup>) DAY OF  
5 MARCH, 2010, IN CASE NUMBER CRO7-1728.

6 IT IS ALSO REQUESTED THAT PER DCR13(3) SINCE THE STATE  
7 "OPPOSING PARTY" HAS FAILED TO RESPOND, OPPOSE OR BRING FORTH  
8 ANY REASON OR ARGUMENT AS TO WHY THIS MOTION SHOULD BE  
9 DENIED, IT BE DEEMED TO BE FULLY MERITORIOUS.

10 SINCE THE MOTION IS IN FULL 'SCOPE' OF THE 'MANIFEST  
11 INJUSTICE' DESCRIBED IN NRS 176.165 ALLOWING THE COURTS TO  
12 GRANT WITHDRAWAL OF A GUILTY PLEA AFTER SENTENCE HAS BEGUN.  
13 SEVERE MISINFORMATION PERTAINING TO SENTENCE BY RECORD OF  
14 ONE HUNDRED AND TWELVE (112) TIMES PROBATION WAS MENTIONED IN  
15 DIRECT CONFLICT OF NRS 201.230 LAWS 1997 C. 524. THE MOTION  
16 IS FULLY SUPPORTED BY SIGNIFICANT CASE LAW REQUIRING THIS  
17 COURT TO ACT.

18 IT IS THEREFORE REQUESTED THAT DUE TO THE SUBSTANTIAL  
19 SUPPORT AND 'FOUNDATION' PROVIDED, THE STATES FAILURE TO SHOW WHY  
20 THIS MOTION SHOULD BE DENIED THAT THIS COURT GRANT THE  
21 MOTION IN ITS ENTIRETY.

22 THEREFORE IT IS REQUESTED THE FOLLOWING REMEDY:

23 IT IS ORDERED THAT THE DEFENDANT, BRENDAN DUNCLEY IN  
24 CASE NUMBER: CRO7-1728, BE ALLOWED TO WITHDRAW HIS GUILTY  
25 PLEA AGREEMENT ENTERED ON MARCH 6, 2008 IN THE ABOVE REFERENCED

1 CASE.

2 IT IS FURTHER ORDERED, THAT DEFENDANT, BRENDAN DUNCKLEY BE  
3 RETURNED TO THE STATE OF NOT GUILTY, WHERE HE FOUND HIMSELF PRIOR  
4 TO HIS ENTRANCE OF THE GUILTY PLEA.

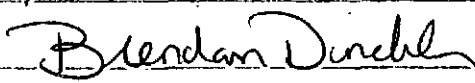
5 IT IS FURTHER ORDERED, THAT SINCE NO PREJUDICE AGAINST THE  
6 STATE EXISTS IN THE WITHDRAWAL OF THE GUILTY PLEA AGREEMENT THAT  
7 REVERSAL OF ORDER OF CONVICTION IN CASE: CR07-1728 BE GRANTED.

8 IT IS FURTHER ORDERED, THAT THE DEFENDANT HAS RETURNED TO  
9 THE STATUS OF INNOCENT, UNTIL THE STATE PROVES HIS GUILT BEYOND A  
10 REASONABLE DOUBT.

11 IT IS FURTHER ORDERED, THAT DEFENDANT BE ALLOWED TO POST A  
12 BAIL IN CASE NO: CR07-1728, AS WAS THE CASE PRIOR TO ENTRANCE  
13 OF HIS GUILTY PLEA, UP UNTIL SENTENCING COMMENCED ON AUGUST 5,  
14 2008.

15 THE UNDERSIGNED CERTIFIES THAT A FULL AND TRUE COPY OF THIS REQUEST  
16 HAS BEEN MAILED TO ALL COUNSEL OF RECORD

17  
18 DATED THIS 18<sup>TH</sup> DAY OF MARCH, 2010

19   
20 BRENDAN DUNCKLEY (DEFENDANT PRO SE)

21 IT IS SO ORDERED:

22 JUDGE CONNIE STEINHEIMER

23 DATE

24

25

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1 **CODE 3370**  
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**  
8

9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**  
14 \_\_\_\_\_/

15 **ORDER**

16 On July 8, 2009, the Defendant filed a Motion for Modification of Sentence.  
17 On October 27, 2009, the Court ordered the State to respond to the Motion for Modification  
18 of Sentence within ten (10) days of the date of the Order. On November 4, 2009, the State  
19 filed an Opposition to the Motion for Modification of Sentence. On November 13, 2009, the  
20 Defendant filed a Response to the State's Opposition to the Motion for Modification of  
21 Sentence. On November 25, 2009, the Motion for Modification of Sentence was formally  
22 submitted to the Court for decision. On February 10, 2010, the Court entered an Order  
23 Denying the Motion for Modification of Sentence. On February 17, 2010, the Motion for  
24 Modification of Sentence was again formally submitted to the Court for Decision.

25 The Court, having reviewed the pleadings filed herein, and a decision having  
26 already been made on the Motion for Modification of Sentence,  
27  
28

1 IT IS HEREBY ORDERED that Motion for Modification of Sentence shall not  
2 be considered again and the decision rendered by this Court on February 10, 2010,  
3 remains in effect.

4 Dated this 10 day of <sup>April</sup>~~March~~, 2010.

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6 Connie J. Steinheimer  
7 DISTRICT JUDGE  
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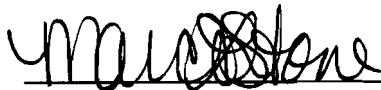
CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 12<sup>th</sup> day of April, 2010, I electronically filed the Order Denying Defendant's Order with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad, Esq.  
Chief Deputy District Attorney

I further certify that on the 12<sup>th</sup> day of April, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service, a true copy of the same, addressed to:

Brendan Dunckley  
Inmate no. 1023236  
Lovelock Correctional Center  
1200 Prison Road  
Lovelock, Nevada 89419

  
\_\_\_\_\_  
Marci L. Stone



**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 04-12-2010:09:26:20  
**Clerk Accepted:** 04-12-2010:09:27:34  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Order...  
**Filed By:** Marci Trabert

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

If service is not required for this document (e.g., Minutes), please disregard the below language.

**The following people were served electronically:**

ROBERT STORY, ESQ. for BRENDAN  
DUNCKLEY  
GARY HATLESTAD, ESQ. for STATE OF  
NEVADA

**The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):**

BRENDAN DUNCKLEY  
STATE OF NEVADA  
KELLI VILORIA, ESQ.

1 **CODE 3370**

2  
3  
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5  
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**  
7 **IN AND FOR THE COUNTY OF WASHOE**

8  
9 **THE STATE OF NEVADA,**

10 **Plaintiff,**

**Case No. CR07-1728**

11 **vs.**

**Dept. No. 4**

12 **BRENDAN DUNCKLEY,**

13 **Defendant.**

14 \_\_\_\_\_ /  
15 **ORDER**

16 On February 10, 2010, an Order Denying Motion for Modification of Sentence  
17 was filed. On March 1, 2010, the Defendant filed a Notice of Appeal to the Supreme  
18 Court. On March 3, 2010, the Defendant filed a Motion to Withdraw Guilty Plea. On  
19 March 4, 2010, the Defendant filed a Supplemental Motion to Withdraw Guilty Plea. On  
20 March 22, 2010, the Defendant formally submitted the Motion to Withdraw Guilty Plea to  
21 the Court for decision.

22 The Court, having reviewed the pleadings filed herein, finds that at this time it  
23 is inappropriate to render a decision on the Motion to Withdraw Guilty Plea based on the  
24 case having been appealed to the Supreme Court for review.

25 Therefore, with good cause appearing and in the interests of justice,

26 **IT IS HEREBY ORDERED** that the decision on the Motion to Withdraw Guilty

27 **///**  
28

1 Plea is stayed pending the outcome of the appeal to the Supreme Court. Once a decision  
2 has been rendered by the Supreme Court, the Motion to Withdraw Guilty Plea may be  
3 resubmitted to the Court for decision.

4 Dated this 23<sup>rd</sup> day of April, 2010.

6  
7 Connie J. Steinheimer  
8 DISTRICT JUDGE  
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CERTIFICATE OF SERVICE

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 23<sup>rd</sup> day of April, 2010, I electronically filed the Order to set Oral Arguments on Motion for Discovery with the Clerk of the Court by using the ECF system, which sent a notice of electronic filing to the following:

Gary Hatlestad, Esq.  
Chief Deputy District Attorney

I further certify that on the 26<sup>th</sup> day of April, 2010, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true and correct copy of the same to the following:

Robert Story, Esq.  
Attorney at Law  
245 E. Liberty Street, Ste. 530  
Reno, Nevada 89501

Brendan Dunckley  
Inmate no. 1023236  
1200 Prison Road  
Lovelock, Nevada 89419

Marci L. Stone  
Marci L. Stone

**\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\***  
**PROOF OF SERVICE OF ELECTRONIC FILING**

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**A filing has been submitted to the court RE:** CR07-1728  
**Judge:** CONNIE STEINHEIMER  
**Official File Stamp:** 04-23-2010:16:16:49  
**Clerk Accepted:** 04-23-2010:16:17:10  
**Court:** Second Judicial District Court - State of Nevada  
**Case Title:** STATE VS. BRENDAN DUNCKLEY (D4)  
**Document(s) Submitted:** Order...  
**Filed By:** Marci Trabert

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-

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NEVADA

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STATE OF NEVADA  
  
KELLI VILORIA, ESQ.