

1 34.726(1). Gonzales reiterated the importance of filing the petition with the district court
2 within the one year mandate, absent a showing of "good cause" for the delay in filing.
3 Gonzales, 53 P.3d at 902.

4 3. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005),
5 the Nevada Supreme Court held as follows:

6 Given the untimely and successive nature of [defendant's]
7 petition, the district court *had a duty imposed by law* to consider
8 whether any or all of [defendant's] claims were barred under
9 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
10 . . . [and] the court's failure to make this determination here
11 constituted an arbitrary and unreasonable exercise of discretion.

12 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,
13 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties
14 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can
15 they empower a court to disregard them.) Thus, a Defendant's petition will not be considered
16 on the merits if it is subject to the procedural bars and no good cause is shown. Id.

17 4. "In order to demonstrate good cause, a petitioner must show that an
18 impediment external to the defense prevented him or her from complying with the state
19 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
20 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
21 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
22 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
23 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

24 5. Such an external impediment could be "that the factual or legal basis for a
25 claim was not reasonably available to counsel, or that 'some interference by officials' made
26 compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
27 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
28 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

6. In addition, to find good cause there must be a "substantial reason; one that

1 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
2 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
3 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
4 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
5 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
6 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
7 797 (1995).

8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
10 Corpus (Post-Conviction) shall be, and it is, hereby denied.

11 DATED this 13th day of September, 2010.

12 
13 DISTRICT JUDGE 8

14
15 DAVID ROGER
16 DISTRICT ATTORNEY
Nevada Bar #002781

17
18 BY 
19 THOMAS M. CARROLL
20 Chief Deputy District Attorney
Nevada Bar #004232

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 BARBARA SCHIFALACQUA
6 Deputy District Attorney
7 Nevada Bar #010436
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

JAN 25 11 37 AM '11

John A. Johnson
CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

06C226586
ODM
Order Denying Motion
1185163



10 THE STATE OF NEVADA,

11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka,
14 Freddy A. Martinez, #1361243

15 Defendant.

Case No.
Dept No.

C226586
C225856-1
XIV

17 **ORDER DENYING DEFENDANT'S MOTION FOR PETITION FOR WRIT OF**
18 **HABEAS CORPUS**

19 DATE OF HEARING: July 14, 2010
20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 14th day of July, 2011, the Defendant not being present, represented in proper person, the
23 Plaintiff being represented by DAVID ROGER, District Attorney, through BARBARA
24 SCHIFALACQUA, Deputy District Attorney, and the Court having heard the arguments of
25 counsel and good cause appearing therefor,

26 ///

27 ///

28 ///

RECEIVED

JAN 25 2011

CLERK OF THE COURT

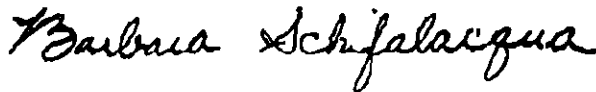
1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Writ of Habeas
2 Corpus, shall be, and it is DENIED, Court lacks jurisdiction.

3 DATED this _____ day of January, 2011.

4
5 
6 DISTRICT JUDGE

8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781

11 

12 BARBARA SCHIFALACQUA
13 Deputy District Attorney
14 Nevada Bar #010436
15
16
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28 jm

FILED

MAR 08 2011

Heather Ungermann
CLERK OF COURT

1 NOED

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 FREDDY MARTINEZ,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

06C226586
NOED
Notice of Entry of Decision and Order
1273886



Case No: 06C226586
Dept No: XIV

NOTICE OF ENTRY OF
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on January 21, 2011, the court entered a decision or order in this matter, a
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is
15 mailed to you. This notice was mailed on March 8, 2011.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

17 By: *Heather Ungermann*
18 Heather Ungermann, Deputy Clerk

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 8 day of March 2011, I placed a copy of this Notice of Entry of Decision and
21 Order in:

22 The bin(s) located in the Office of the District Court Clerk of:
23 Clark County District Attorney's Office
Attorney General's Office – Appellate Division

24 ☒ The United States mail addressed as follows:

25 Freddy Martinez # 1003276
26 P.O. Box 7000
Carson City, NV 89702

Philip Kohn, Public Defender
309 S. Third St., 2nd Flr.
Las Vegas, NV 89101

27 *Heather Ungermann*
28 Heather Ungermann, Deputy Clerk

1 **ORDR**

2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **THOMAS M. CARROLL**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004232**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

FILED

JAN 21 1 33 PM '11

[Signature]
CLERK OF COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **-vs-**

11 **FREDYS MARTINEZ, #1361243**

12 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

**FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER**

DATE OF HEARING: July 14, 2010

TIME OF HEARING: 9:00 A.M.

18 **THIS CAUSE** having come on for hearing before the Honorable Donald Mosley,
19 **District Judge**, on the 14 day of July, 2010, the Petitioner not being present, proceeding in
20 **forma pauperis**, the Respondent being represented by **DAVID ROGER**, District Attorney, by
21 **and through Barbara Schifalacqua**, Deputy District Attorney, and the Court having
22 **considered the matter**, including briefs, transcripts, no arguments of counsel, and documents
23 **on file herein**, now therefore, the Court makes the following findings of fact and conclusions
24 **of law:**

FINDINGS OF FACT

26 **1. On September 29, 2006**, Fredys Martinez (hereinafter "Defendant") was
27 **charged by way of Grand Jury Indictment with: Count I – Burglary While in Possession of a**
28 **Deadly Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon**

CLERK OF THE COURT

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1 (Felony – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon
2 (Felony – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a
3 Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).

4 2. Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury
5 found Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II –
6 Battery with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a
7 Deadly Weapon. The jury found Defendant not guilty of Count IV.

8 3. Defendant was present in court with counsel on May 24, 2007, and sentenced
9 as follows: as to Count I – SIXTY (60) to ONE HUNDRED EIGHTY (180) months; as to
10 Count II – FORTY-EIGHT (48) to ONE HUNDRED TWENTY (120) months, to run
11 concurrently with Count I; and as to Count III – SIXTY (60) months to LIFE, plus an equal
12 and consecutive term of SIXTY (60) months to LIFE for the use of a deadly weapon, the
13 entire sentence to run concurrently to Counts I and II. Defendant was given two hundred
14 eighty-one (281) days credit for time served.

15 4. Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice
16 of Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
17 May 7, 2008. Remittitur issued on June 3, 2008.

18 5. On April 2, 2010, Defendant filed a motion for appointment of counsel. The
19 State's opposition was filed on April 9, 2010. Defendant's motion was denied on April 14,
20 2010, and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal
21 on April 22, 2010.

22 6. Defendant filed a Motion to Vacate his Judgment of Conviction on April 21,
23 2010. The court denied Defendant's motion without requiring a response from the State on
24 May 5, 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but
25 such a petition would be time barred now anyway as Remittitur issued in his case in 2008.

26 7. Defendant subsequently filed a motion for an evidentiary hearing on May 13,
27 2010, the State filed its opposition to the motion on May 21, 2010, and the motion was
28 denied on May 26, 2010. On June 3, 2010, Defendant filed a notice of appeal.

1 8. Defendant filed the instant Petition for Writ of Habeas Corpus on April 30,
2 2010. The State filed its Response on July 9, 2010.

3 9. On July 14 2010, the court held a hearing regarding Defendant's petition.
4 Defendant was not present and the court did not entertain arguments from either party.

5 10. Defendant's Judgment of Conviction was filed on May 31, 2007. He filed a
6 direct appeal on June 5, 2007. The Nevada Supreme Court ultimately dismissed Defendant's
7 appeal and Remittitur issued on Tuesday, June 3, 2008.

8 11. Consequently, Defendant had until Wednesday, June 3, 2009, to file his post-
9 conviction habeas petition.

10 12. Defendant filed the instant petition on April 30, 2010, almost one (1) year after
11 deadline with which to file a post-conviction petition had passed.

12 13. Defendant's petition is extremely untimely and is time barred as outside the
13 one-year time limitation.

14 14. A petition subject to procedural bars may be considered on its merits if good
15 cause is shown.

16 15. Defendant pled no facts to explain the delay in filing his petition. Thus,
17 Defendant has not demonstrated good cause to overcome the procedural bar.

18 CONCLUSIONS OF LAW

19 1. The mandatory provisions of NRS 34.726 state:

20 Unless there is good cause shown for delay, a petition that
21 challenges the validity of a judgment or sentence must be filed
22 within 1 year after entry of the judgment of conviction or, if an
23 appeal has been taken from the judgment, **within 1 year after**
24 **the Supreme Court issues it's Remittitur.** For the purposes of
25 this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 26 (a) That the delay is not the fault of the petitioner; and
27 (b) That dismissal of the petition as untimely will unduly
28 prejudice the petitioner. (Emphasis added).

26 2. The one year time bar is strictly construed. In Gonzales v. State, 118 Nev. 61,
27 590 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed
28 two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS

1 34.726(1). Gonzales reiterated the importance of filing the petition with the district court
2 within the one year mandate, absent a showing of "good cause" for the delay in filing.
3 Gonzales, 53 P.3d at 902.

4 3. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005),
5 the Nevada Supreme Court held as follows:

6 Given the untimely and successive nature of [defendant's]
7 petition, the district court *had a duty imposed by law* to consider
8 whether any or all of [defendant's] claims were barred under
9 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
... [and] the court's failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

10 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,
11 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties
12 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can
13 they empower a court to disregard them.) Thus, a Defendant's petition will not be considered
14 on the merits if it is subject to the procedural bars and no good cause is shown. Id.

15 4. "In order to demonstrate good cause, a petitioner must show that an
16 impediment external to the defense prevented him or her from complying with the state
17 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
18 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
19 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
20 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
21 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

22 5. Such an external impediment could be "that the factual or legal basis for a
23 claim was not reasonably available to counsel, or that 'some interference by officials' made
24 compliance impracticable." Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
25 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
26 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
27 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

28 6. In addition, to find good cause there must be a "substantial reason; one that

1 affords a legal excuse." Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
2 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
3 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
4 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
5 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
6 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
7 797 (1995).

8 ORDER

9 THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas
10 Corpus (Post-Conviction) shall be, and it is, hereby denied.

11 DATED this 13th day of September, 2010.

12 
13 DISTRICT JUDGE 8

14
15 DAVID ROGER
16 DISTRICT ATTORNEY
17 Nevada Bar #002781

18 BY


19 THOMAS M. CARROLL
20 Chief Deputy District Attorney
21 Nevada Bar #004232
22
23
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26
27
28

FILED

MAR 08 2011

Heather Ungermann
CLERK OF COURT

NOED

DISTRICT COURT
CLARK COUNTY, NEVADA

FREDDY MARTINEZ,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

06C226586
NOED
Notice of Entry of Decision and Order
1273888



Case No: 06C226586
Dept No: XIV

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on January 25, 2011, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on March 8, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: *Heather Ungermann*
Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 8 day of March 2011, I placed a copy of this Notice of Entry of Decision and Order in:

The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office - Appellate Division

☒ The United States mail addressed as follows:

Freddy Martinez # 1003276
P.O. Box 7000
Carson City, NV 89702

Philip Kohn, Public Defender
309 S. Third St., 2nd Flr.
Las Vegas, NV 89101

Heather Ungermann
Heather Ungermann, Deputy Clerk

3

ORIGINAL

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FILED

JAN 25 11:37 AM '11

John A. Leary
CLERK OF THE COURT

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **BARBARA SCHIFALACQUA**
6 **Deputy District Attorney**
7 **Nevada Bar #010436**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka,
14 Freddy A. Martinez, #1361243

15 Defendant.

Case No.
Dept No.

C226586
C225856-1
XIV

17 **ORDER DENYING DEFENDANT'S MOTION FOR PETITION FOR WRIT OF**
18 **HABEAS CORPUS**

19 DATE OF HEARING: July 14, 2010
20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 14th day of July, 2011, the Defendant not being present, represented in proper person, the
23 Plaintiff being represented by DAVID ROGER, District Attorney, through BARBARA
24 SCHIFALACQUA, Deputy District Attorney, and the Court having heard the arguments of
25 counsel and good cause appearing therefor,

26 ///

27 ///

28 ///

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CLERK OF THE COURT

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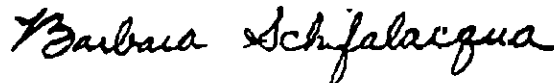
2

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion for Writ of Habeas
2 Corpus, shall be, and it is DENIED, Court lacks jurisdiction.

3 DATED this _____ day of January, 2011.

4
5 
6 DISTRICT JUDGE 8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10 

11 BARBARA SCHIFALACQUA
12 Deputy District Attorney
13 Nevada Bar #010436
14
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DISTRICT COURT
CLARK COUNTY, NEVADA
FILED

Fredys.A. Martinez # 1003276

MAR 21 2011

1. Northern Nevada Correctional
2 Center

3 P.O. Box 7000

Case No. 06C226586

4 Carson City, NV 89702.

DEPT No: XIV

5

6 Fredys.A. Martinez

3.14.2011

7 Petitioner

8 V.S.

NOTICE OF APPEAL

9

10 THE STATE OF NEVADA

11 Respondent.

12 Please Take Notice that the petitioner
13 Appeals to the Nevada Supreme Court
14 From the District Courts decision entered
15 on March 8, 2011.

16 This notice is made and based upon all
17 papers, documents, and exhibits filed in
18 this case.

19 Date this 14th Day of MARCH 2011

20

21

Respectfully Submitted,

22

06C226586
NOASC
Notice of Appeal (criminal)
1302678

23

By: Fredys.A. Martinez

24

Fredys.A. Martinez

25

Petitioner in proper person.

26

27

28

29

30

CLERK OF THE COURT
RECEIVED
MAR 21 2011

4

Certification of service by mailing

I, Fredys. A. Martinez. Do here by certify that pursuant to the provisions of F.R.C.P. Rule 5(b) and on this date I did serve the foregoing, "motion" for I have leave to amend petition for writ of NOTICE OF APPEAL to the Nevada Supreme Court, To respond to order from this Court," upon respondents counsel, by placing same in the United States Postal Service postage being fully prepaid and addressed as follows.

Ms. Catherine Cortez Masto
Attorney General for Nevada
Nevada Attorney General Office
100 N. Carson Street
Carson City, Nevada 89701

Date this 14th day of MARCH 2011

By: ~~Fredys. A. Martinez~~

Fredys. A. Martinez #1003276
Petitioner in proper person.

1003276
Freddy S. A. Martinez
N.N.C.C.
P.O. BOX 7000
CARSON CITY, NV 89702

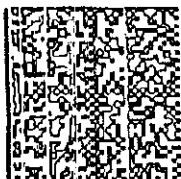
NORTHERN NEVADA
CORRECTIONAL CENTER

LEGAL MAIL

CONFIDENTIAL

STEVEN D. GRIESON, Clerk of The Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

FIRST CLASS



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MAR 24 2011

John L. Blum
CLERK OF COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

FREDDY MARTINEZ,

Defendant(s),

) Case No: 06C226586

) Dept No: XIV

06C226586

ASTA

Case Appeal Statement
1308948



CASE APPEAL STATEMENT

1. Appellant(s): Freddy Martinez

2. Judge: Donald Mosley

3. Appellant(s): Freddy Martinez

Counsel:

Freddy Martinez #1003276
P.O. Box 7000
Carson City, NV 89702

4. Respondent: THE STATE OF NEVADA

Counsel:

David Roger, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

7. Appellant Represented by Appointed Counsel On Appeal: N/A

8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

9. Date Commenced in District Court: September 29, 2006

10. Brief Description of the Nature of the Action: Criminal

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

11. Previous Appeal: Yes

Supreme Court Docket Number(s): 49608; 55890; 56153; 57197

12. Child Custody or Visitation: N/A

Dated This 24 day of March 2011.

Steven D. Grierson, Clerk of the Court

By:



Marie Kramer, Deputy Clerk
200 Lewis Ave
PO Box 551601
Las Vegas, Nevada 89155-1601
(702) 671-0512

Case No: C226586

Dept No: XIV

FILED

MAR 25 2011

Ann. L. Johnson
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

The State of Nevada
Fredys A. Martinez
Plaintiff

-vs-

STATE OF NEVADA

Defendant

08C226586
DROA
Designation of Record on Appeal
1313820



**DESIGNATION OF RECORD
On APPEAL**

COMES NOW, Fredys A. Martinez, Defendant in proper persona, and
herein designates the record on appeal to be certified by the Clerk of the Court and transcribed to the
Clerk of the Nevada Supreme Court.

All Motions, Pleading, and Transcripts.

Dated this 17th day of MARCH, 2011.

Fredys A. Martinez
Defendant Signature

Fredys A. Martinez #1003276
(Print Name) In Proper Persona

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 17th day of MARCH 2011 I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:



Case No: C226586

Dept No: XIV

FILED

MAR 25 2011

06C226586
MOT
Motion
1313845



John L. Blum
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

Fredys A. Martinez
Petitioner

4-4-11

vs

STATE OF NEVADA
Respondent

MOTION FOR APPOINTMENT
OF COUNSEL PURSUANT TO
NRS 34.750

Petitioner, Fredys A. Martinez, pursuant to NRS 34.750
(1) (2) request the Honorable Court to appoint counsel to
represent him in this Appeal to Habeas Corpus petition for the
following reasons:

1. Petitioner is not able to afford counsel, see motion to proceed in Forma Pauperis and Affidavit in support filed with the court.
2. The issues involved in this matter are very complex.
3. The issues involved in this case will require investigation which the petitioner cannot do while confined in prison.
4. Petitioner has very limited knowledge of the law and process thereof.
5. The ends of justice would best be served in this case if an attorney was appointed to represent the petitioner.

Dated this 17th day of MARCH, 2011

131 *Fredys A. Martinez*

3

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 17th day of MARCH 2011, I mailed a true a correct copy of the foregoing document to the following:

~~Arredondo Martinez~~
STEVEN D. GRIESON. Clerk of the Court
200 LEWIS AVENUE 3RD FLOOR, P.O. BOX 552212
LAS VEGAS, NV 89155-1160

Philip J. Kohn
Clark County Public Defender
3095. Third ST. RM 226
~~Box, Third~~ Box 552610
Las Vegas, NV 89155-2610

David Roger
Clark County District Attorney
Regional Justice Center
200 Lewis Avenue
P.O. Box 552212
Las Vegas, NV 89155-2212

CATHERINE CORTEZ MASTO, Attorney General
100 N. CARSON ST, CARSON CITY, NV 89701

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

APPEAL FOR Habeas CORPUS

(Title of Document)

filed in case number: 6226586



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:

(State specific state or federal law)

-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)

Date: 3.17.2011

Fred A. Martinez
(Signature)

Fred A. Martinez
(Print Name)

(Attorney for)

Fredys A. Martinez #1003276

NORTHERN NEVADA CORRECTIONAL CENTER
P.O. Box 7000
CARSON CITY NV 89702-7000

PETITIONER, IN PRO SE

FILED

MAR 25 2011

John J. Blum
CLERK OF COURT

08C226586
MOT
Motion
1313868



Fredys A. Martinez

Petitioner,

vs.

STATE OF NEVADA
et. al.,

Respondents.

Case No. C226586

XIV

4-4-11

MOTION TO EXTEND PRISON
COPYWORK LIMIT FOR

COMES NOW, the Petitioner Fredys A. Martinez, in proper person and pro se, who hereby submits his motion and moves This Honorable Court for an Order extending Petitioner's prison copywork limit for purposes of the pursuant to any applicable Local Rules of Practice, the Rules of Civil Procedure, and/or Rules Governing

This motion is further made and based on Petitioner's Motion to Proceed In Forma Pauperis and the attached monthly financial statement, as well as the points and authorities herein.

Petitioner is an indigent inmate who has reached or exceeded the \$100.- (one-hundred dollar) prison copywork limit allowed per NDOP A.R. 720, and Petitioner will not be allowed to make any further copywork unless the Court enters such an Order.

Petitioner believes and alleges that he is entitled to redress in the Petitioner will need to prepare and serve copies of all pleadings in this action upon the Court and Respondents pursuant to and Petitioner will need a copy of these pleadings for his own use.

6 Petitioner believes this request would best serve the
7 interests of judicial economy and time, for without such an order,
8 it is likely the pleadings would have to be served by the Court.

9 Petitioner is not seeking a "blanket order" for unlimited
10 copies, but only an Order for those copies that are, or may be,
11 necessary for the instant action.

12 Petitioner does not yet know what pleadings he will need to
13 file, but lists the following possible pleadings for this action:

1. Any statement of additional claims and/or supplemental/amended pleadings IN THIS ACTION;
2. Any possible opposition to a State's motion to dismiss (with supporting exhibits, if necessary), to show fair presentation, exhaustion, cause and prejudice, and/or equitable tolling, etc., IN THIS ACTION;
3. Any reply/traverse to a State's answer/opposition to the Petition for writ of IN THIS ACTION;
4. Any request for expansion of record (if necessary) with exhibits (if needed) IN THIS ACTION;
5. Any motion, opposition or reply that may be necessary in THIS ACTION;
6. Any request for production of documents, admissions, interrogatories and/or leave of Court for same, IN THIS ACTION;
7. Any request for Judicial Notice, IN THIS ACTION;

1 8. Any appeal documents (should Petitioner
2 need to appeal) such as a notice of appeal,
3 request for certificate of appealability
4 (COA), etc., IN THIS ACTION;

5 9. Any motion for relief or to alter/amend
6 judgment, if necessary, IN THIS ACTION;

7 10. Objections to any report/recommendation
8 of the Magistrate Judge IN THIS ACTION.

9 The foregoing list is intended to be illustrative rather
10 than exhaustive, as Petitioner does not yet know what pleadings
11 will be necessary.

12 Petitioner's liberty interests are at stake in this
13 , and Petitioner believes the above related pleadings
14 are necessary in the instant action because, for obvious reasons,
15 they will go to the very issues before the Court and will allow
16 Petitioner to present his claims and defenses in a meaningful
17 manner and time. Petitioner will be unable to properly litigate
18 IN THIS ACTION without the requested extension of his prison
19 copywork limit. See generally, GLUTH v. KANGAS, 951 F.2d 1504, at
20 1510 [#18](9th Cir. 1991)(limiting copywork to those number of
21 copies required to be filed, served, and one copy for the inmates
22 records).

23 Petitioner swears under penalty of perjury under the laws of
24 the United States of America and pursuant to NRS 208.165 that the
25 foregoing is true and correct.

26 CONCLUSION AND RELIEF SOUGHT

27 WHEREFORE, Petitioner prays that This Court will enter an
28 Order directed to the Nevada Department of Corrections, Northern
29 Nevada Correctional Ctr, directing prison authorities to allow the

1 Petitioner to make the necessary copies of his pleadings for this
2 action and case number, exceeding the prison copy limit, until the
3 conclusion of this case.

4 DATED THIS 17th day of MARCH, 20 11.

5

6

Respectfully submitted,

7

8



9

Fredy A. Martinez #1003276
Northern Nevada Correctional Center
P.O. Box 7000
Carson City NV 89702-7000

10

11

PETITIONER, IN PRO SE.

12

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CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner\Defendant named herein and that on this 17th day of MARCH 20 11, I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:



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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

APPEAL For Habeas Corpus

(Title of Document)

filed in case number: C226586

☒

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:

(State specific state or federal law)

-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)

Date: 3.17.2011


(Signature)

Fredy A. Martinez
(Print Name)

(Attorney for)

Case No: C226586

Dept No: XIV

FILED

MAR 25 2011

De. L. L.
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

The State of Nevada
Fredys. A. Martinez
Plaintiff

-vs-

STATE OF NEVADA

Defendant

08C226586
NOASC
Notice of Appeal (criminal)
1313808



NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that WRIT OF HABEAS CORPUS, hereby appeals
the judgement of conviction entered in this Honorable court on or about the 13th day of
September, 2010.

Dated this 17th day of MARCH, 2011.

Fredys. A. Martinez
Defendant Signature

Fredys. A. Martinez #1007276
(Print Name) In Proper Persona

RECEIVED
MAR 25 2011
CLERK OF THE COURT

Fredys. A. Martinez #1003276
N. N. C.C.
P.O. Box 7000
CARSON CITY, NV 89702-7000

COMMUNICATIONS

1.73

3763

1 ASTA

FILED

MAR 29 2011

Alfonso J. Salazar
CLERK OF COURT

2
3
4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 FREDDY MARTINEZ,)

11 Defendant(s),)

) Case No: 06C226586

) Dept No: XIV

) 06C226586

) ASTA

) Case Appeal Statement

) 1318349



12
13
14 CASE APPEAL STATEMENT

15 1. Appellant(s): Freddy Martinez

16 2. Judge: Donald Mosley

17 3. Appellant(s): Freddy Martinez

18 Counsel:

19 Freddy Martinez #1003276

20 P.O. Box 7000

21 Carson City, NV 89702

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney

25 200 Lewis Ave.

26 Las Vegas, NV 89101

27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

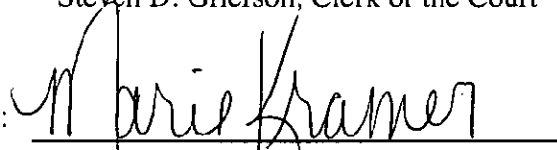
6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: September 29, 2006
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Unknown
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 49608; 55890; 56153; 57197; 58023
8 12. Child Custody or Visitation: N/A
9

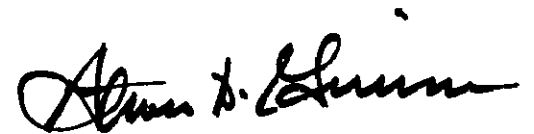
10 Dated This 29 day of March 2011.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Marie Kramer, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
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28



CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
J. TIMOTHY FATTIG
Chief Deputy District Attorney
Nevada Bar #006639
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

FREDDY MARTINEZ, aka,
Fredys A. Martinez, #1361243
Defendant.

CASE NO: 06C226586-1

DEPT NO: XIV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF
COUNSEL**

DATE OF HEARING: April 4, 2011
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
J. TIMOTHY FATTIG, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in State's Opposition to Defendant's Motion for Appointment of
Counsel.

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

///

///

///

1 **POINTS AND AUTHORITIES**

2
3 **STATEMENT OF THE CASE**

4 On September 29, 2006, Freddy Martinez, aka, Fredys A. Martinez ("Defendant")
5 was charged by way of Grand Jury Indictment with the following: Count I – Burglary While
6 in Possession of a Deadly Weapon (Felony – NRS 205.060); Count II – Battery with use of a
7 Deadly Weapon (Felony – NRS 200.481); Count III – First Degree Kidnapping with use of a
8 Deadly Weapon (Felony – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault
9 with use of a Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).

10 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
11 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Battery
12 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
13 Weapon. The jury found Defendant not guilty of Count IV. On May 24, 2007, Defendant
14 was sentenced as follows: as to Count I – SIXTY (60) to ONE HUNDRED EIGHTY (180)
15 months in the Nevada Department of Corrections; as to Count II – FORTY-EIGHT (48) to
16 ONE HUNDRED TWENTY (120) months; Count II to run concurrent with Count I; and as
17 to Count III – SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY
18 (60) months to LIFE for the use of a deadly weapon; Count III to run concurrent with Counts
19 I and II; with two hundred eighty-one (281) days credit for time served.

20 Judgment of Conviction was filed on May 31, 2007. Defendant filed a pro per Notice
21 of Appeal on June 4, 2007. Defendant's counsel then filed a Notice of Appeal on June 19,
22 2007. The Nevada Supreme Court affirmed Defendant's conviction on May 7, 2008.
23 Remittitur issued on June 3, 2008.

24 On April 2, 2010, Defendant filed a Motion for Appointment of
25 Counsel. The State filed an Opposition on April 9, 2010. On April 14, 2010 a hearing was
26 held wherein the court denied Defendant's Motion because any petition he might file would
27 be time barred. Defendant filed a Notice of Appeal on April 22, 2010. On June 9, 2010, the
28 Nevada Supreme Court affirmed the district court's denial of Defendant's Motion. Remittitur

1 was issued on July 7, 2010.

2 Defendant filed a Motion to Vacate his Judgment of Conviction on April 21, 2010.
3 On May 5, 201, the court denied Defendant's Motion without requiring a response from the
4 State. The court noted that the proper vehicle for such a claim was a Petition for Writ of
5 Habeas Corpus but such a petition would be time barred as Remittitur from the order
6 affirming Defendant's conviction was issued in 2008. Defendant filed a Notice of Appeal on
7 June 3, 2010. On November 12, 2010, the Nevada Supreme Court affirmed the district
8 court's denial of Defendant's Motion. Remittitur was issued on December 7, 2010.

9 On April 30, 2010, Defendant filed a Petition for Writ of Habeas Corpus. Defendant
10 then filed a Motion For an Evidentiary Hearing on May 13, 2010. The State filed an
11 Opposition to Defendant's Motion on May 21, 2010. On May 24, 2010, Defendant filed an
12 Answer and Response to the State's Opposition. On May 26, 2010, a hearing was held
13 wherein Defendant's Motion was denied as being premature.

14 The State filed a Response and Motion to Dismiss Defendant's Petition on July 9,
15 2010. On July 14, 2010, a hearing was held wherein the court denied Defendant's Petition as
16 being time barred. The Notice of Entry of Decision and Order was filed on March 8, 2011.
17 On March 21 and 25, 2011, Defendant filed a Notice of Appeal. The Nevada Supreme Court
18 has not yet ruled on this most recent appeal.

19 On March 25, 2011, Defendant filed the instant Motion for Appointment of Counsel.
20 The State responds as follows:

21 **ARGUMENT**

22
23 **THE DISTRICT COURT DOES NOT HAVE JURISDICTION OVER THIS**
24 **CASE AT THIS TIME**

25 "Jurisdiction in an appeal is vested *solely* in the supreme court until the remittitur
26 issues to the district court." (Emphasis added) Buffington v. State, 110 Nev. 124, 126, 868
27 P.2d 643, 644 (1994). While an appeal is pending district courts do not have jurisdiction
28 over the case until remittitur has issued. Id. Here, Defendant filed a Petition for Writ of

1 Habeas Corpus, which was dismissed by the district court on July 14, 2010. Defendant filed
2 a Notice of Appeal to the Nevada Supreme Court on March 21 and 25, 2011. This appeal is
3 still pending. Therefore, the district court does not have jurisdiction over this case until
4 remittitur is used from the Nevada Supreme Court.

5 **CONCLUSION**

6 Based on the foregoing, the State respectfully requests the Defendant's Motion for
7 Appointment of Counsel be DENIED.

8 DATED this 1st day of April, 2011.

9 Respectfully submitted,

10 DAVID ROGER
11 Clark County District Attorney
Nevada Bar #002781

12
13 BY /s/ J. Timothy Fattig
14 J. TIMOTHY FATTIG
15 Chief Deputy District Attorney
Nevada Bar #006639

16 **CERTIFICATE OF MAILING**

17
18 I hereby certify that service of the above and foregoing, was made this 1st day of
19 April, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

20
21 FREDDY MARTINEZ, BAC #1003276
22 NORTHERN NEVADA CORRECTIONAL CENTER
P.O. BOX 7000
CARSON CITY, NV 89701

23
24 /s/ J. Motl
Secretary for the District Attorney's Office

25
26
27
28 jn/TJF/jm

Case No: C226586

Dept No: XIV

FILED

APR 19 2011

[Signature]
CLERK OF COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

The State of Nevada
Fredys A. Martinez
Plaintiff

-vs-

STATE OF NEVADA

Defendant

06C226586
DROA
Designation of Record on Appeal
1362843



DESIGNATION OF RECORD
On APPEAL

COMES NOW, Fredys A. Martinez, Defendant in proper persona, and
herein designates the record on appeal to be certified by the Clerk of the Court and transcribed to the
Clerk of the Nevada Supreme Court.

All Motions, Pleading, and Transcripts.

Dated this 11 day of April, 2011.

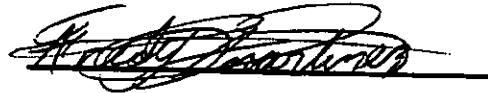
[Signature]
Defendant Signature

RECEIVED
APR 19 2011
CLERK OF THE COURT

Fredys A. Martinez
(Print Name) In Proper Persona

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5 (b), I hereby certify that I am the petitioner/Defendant named herein and that on this 11 day of April 2011 I deposited in the United States Mails in Carson City, Nevada a true a correct copy of the foregoing addressed to:



PURSUANT TO N.R.S. 208.165, I understand that a false statement or answer to any question in this declaration will subject me to penalties of perjury. I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF NEVADA THAT THE FOREGOING IS TRUE AND CORRECT. See N.R.S. 208.165.

Signed at

(Location)

(Signature)

(Date)

(Inmate number)

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

(Title of Document)

filed in case number: _____

☐ 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:

(State specific state or federal law)

-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)

Date: _____

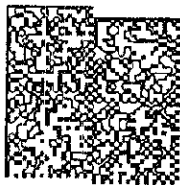
(Signature)

(Print Name)

(Attorney for)

Fredys. A. Martinez #1003276
N. N. C. C.
P.O. Box 7000
CARSON CITY, NV 89701
NORTHERN NEVADA
CORRECTIONAL CENTER

FIRST CLASS



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04/13/2011
Mailed From 89701
US POSTAGE

CHARLES J. SHORT, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160

LEGAL MAIL

46324

Case No: C226586

Dept No: XIV

FILED

APR 19 2011

[Signature]
CLERK OF COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF CLARK

The State of Nevada
Fredys A. Martinez
Plaintiff

-vs-

STATE OF NEVADA

Defendant

06C226586
NOASC
Notice of Appeal (criminal)
1362838



NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN that Martinez Fredys A., hereby appeals
the judgement of conviction entered in this Honorable court on or about the 1st day of
April, 2011.

Dated this 11 day of April, 2011.

[Signature]
Defendant Signature

Fredys A. Martinez
(Print Name) In Proper Persona

RECEIVED
APR 19 2011
CLERK OF THE COURT

FILED

APR 22 2011

John L. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff(s),

vs.

FREDDY MARTINEZ,

Defendant(s),

) Case No: C226586

) Dept No: XIV

06C226586

ASTA

Case Appeal Statement

1368121



CASE APPEAL STATEMENT

1. Appellant(s): Freddy A. Martinez

2. Judge: Donald Mosley

3. Appellant(s): Freddy A. Martinez

Counsel:

Freddy A. Martinez #1003276

P.O. Box 7000

Carson City, NV 89701

4. Respondent: THE STATE OF NEVADA

Counsel:

David Roger, District Attorney

200 Lewis Ave.

Las Vegas, NV 89101

(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes

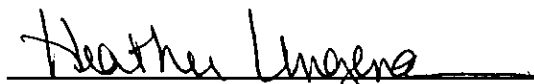
6. Appellant Represented by Appointed Counsel In District Court: Yes

- 7
- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
 - 2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
 - 3 9. Date Commenced in District Court: September 29, 2006
 - 4 10. Brief Description of the Nature of the Action: Criminal
 - 5 Type of Judgment or Order Being Appealed: Misc. Order
 - 6 11. Previous Appeal: Yes
 - 7 Supreme Court Docket Number(s): 49608, 55890, 56153, 57197, 58023, 58050
 - 8 12. Child Custody or Visitation: N/A

9
10 Dated This 22 day of April 2011.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 57197
District Court Case No. C226586

FILED

JUN 09 2011

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

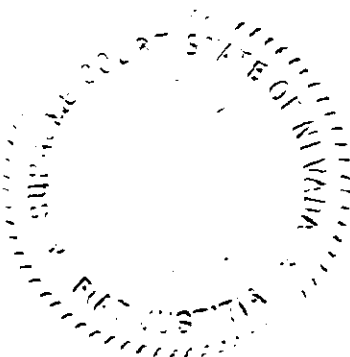
Judgment, as quoted above, entered this 9th day of May, 2011.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 03, 2011.

Tracie Lindeman, Supreme Court Clerk

By: Tiffany Maccagno
Deputy Clerk

08C226586
CCJA
NV Supreme Court Clerks Certificate/Judge
1481626



Tracie
6

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 57197

FILED

MAY 09 2011

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *H. Ingerson*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Appellant filed his petition on April 30, 2010, almost two years after issuance of the remittitur on direct appeal on June 3, 2008. Martinez v. State, Docket No. 49608 (Order of Affirmance, May 7, 2008). Thus, appellant's petition was untimely filed. NRS 34.726(1). Appellant's petition was procedurally barred absent a demonstration of cause for the delay and undue prejudice. Id. In documents submitted after the filing of his petition, appellant appeared to claim that he had cause due to a language barrier and because he was not informed of the resolution of his direct appeal. We conclude that the district court did not err in denying

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

RECEIVED

JUN 08 2011

CLERK OF THE COURT

SUPREME COURT
OF
NEVADA

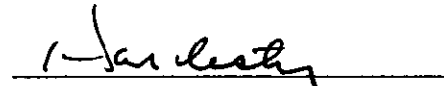
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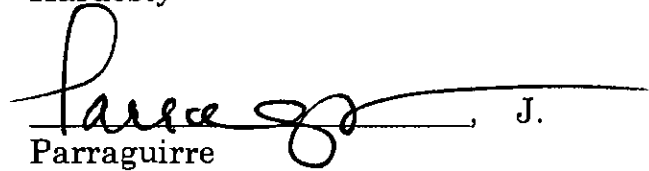
11-13674

the petition as procedurally barred as appellant failed to demonstrate that an impediment external to the defense excused his procedural defects. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003).² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

 J.
Saitta

 J.
Hardesty

 J.
Parraguirre

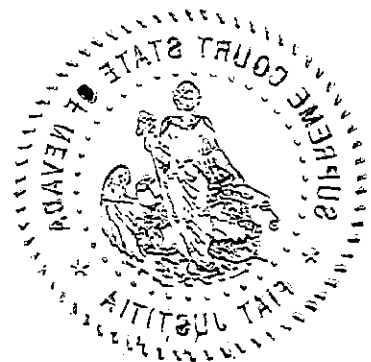
²To the extent that appellant claimed that he was innocent, appellant did not demonstrate actual innocence because he failed to show that "it is more likely than not that no reasonable juror would have convicted him in light of . . . new evidence." Calderon v. Thompson, 523 U.S. 538, 559 (1998) (quoting Schlup v. Delo, 513 U.S. 298, 327 (1995)); see also Pellegrini v. State, 117 Nev. 860, 887, 34 P.3d 519, 537 (2001); Mazzan v. Warden, 112 Nev. 838, 842, 921 P.2d 920, 922 (1996).

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance.

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(O) 1947A 





This document is a full, true and correct copy of the original on file and on record in my office.

June 3, 2011

W.E. *Macca*
Supreme Court Clerk, State of Nevada
Deputy

By _____

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 57197
District Court Case No. C226586

REMITTITUR

TO: Steven Grierson, District Court Clerk

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

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

DATE: June 03, 2011

Tracie Lindeman, Clerk of Court

By: Tiffany Maccagno
Deputy Clerk

cc (without enclosures):

Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 09 2011.

HEATHER LOFQUIST

Deputy

District Court Clerk

RECEIVED
JUN 08 2011
CLERK OF THE COURT
11-16333

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 58215
District Court Case No. C226586

FILED

JUN 15 2011

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER this appeal DISMISSED."

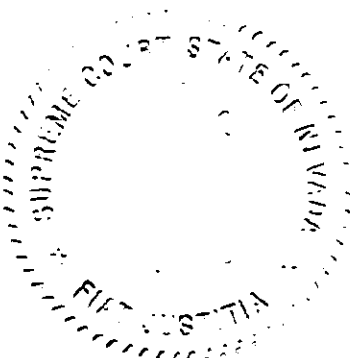
Judgment, as quoted above, entered this 11th day of May, 2011.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
June 09, 2011.

Tracie Lindeman, Supreme Court Clerk

By: Tiffany Maccagno
Deputy Clerk

06C226586
CCJD
NV Supreme Court Clerks Certificate/Judge
1470779



IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58215

FILED

MAY 11 2011

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion for appointment of counsel and motion to extend prison copy work limit. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

Because no statute or court rule permits an appeal from an order denying the aforementioned motions, we lack jurisdiction. Castillo v. State, 106 Nev. 349, 352, 792 P.2d 1133, 1135 (1990). Accordingly, we ORDER this appeal DISMISSED.

Saitta J.
Saitta

Hardesty J.
Hardesty

Parraguirre J.
Parraguirre

RECEIVED
JUN 14 2011
CLERK OF THE COURT

SUPREME COURT
OF
NEVADA

(O) 1947A

11-14035

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

SUPREME COURT
OF
NEVADA

(O) 1947A 





CERTIFIED COPY

This document is a full, true and correct copy of the original on file and of record in my office.

DATE June 9, 2011

Supreme Court Clerk, State of Nevada

By Smaccagno Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 58215
District Court Case No. C226586

REMITTITUR

TO: Steven Grierson, District Court Clerk

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

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

DATE: June 09, 2011

Tracie Lindeman, Clerk of Court

By: Tiffany Maccagno
Deputy Clerk

cc (without enclosures):

Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUN 15 2011.

Deputy HEATHER LOFQUIST
District Court Clerk

RECEIVED
JUN 15 2011
CLERK OF THE COURT

Martinez: 18 or 19 an hour, I know it all already, everything, but she has made everything stagnant for me. I can't make a lot of money because....I...yes...feel that....every time that we want to make a lot of money she is going to take it out of the bank and she is going to take it, do you understand me?.....and I love hare a lot, that's why... I have found another and I have always been like this....because of her.

Officer Chavez: Yes....but you also..... You

Martinez: I think that now, who is pressuring her, now is her son, her son is already 16 years old....and it's him I believe that he is...she owes respect is him.....I think.....

Officer Chavez: I don't believe it's her son....it's hard....

Martinez: And nothing can be done, now.....

Officer Chavez: Noise... Yeah!.... Were you going to do something?

2nd Officer: I was going to start typing...

Officer Chavez: Oh, Ok, ..bro.. sorry....bro....

2nd Officer: I figure that Español is going to be the only way to do this, right?

Officer Chavez: Right! Right!

2nd Officer: Cause it's gonna to back and forth, right?

Officer Chavez: Yeah, you'll be lost, I am just saying

2nd Officer: No, I am going to do the whole thing, I am going to summarize everything. Do you (illegible)? You're good?

Ok, ok, Nah! you're good

Officer Chavez: Yeah!, I'm good This soda is for him though, this soda is gonna be for him, so I am going leave one handcuff on...

2nd Officer: Do you have a key?

Officer Chavez: Um...Huh

2nd Officer: Ok, that's what I wanted to know. Are you cool with that?

Officer Chavez: Absolutely, that's fine, yeah don't worry about it, that's cool.....

2nd Officer: If you need me just yell.....

Officer Chavez: All right.

Noise

Officer Chavez: Ahhhh (Noise) Ok,.... put your hand here....Ok...all righty....I know that (illegible)feeling good so that(illegible) and you already drank your soda,(illegible conversation)

Martinez: (Illegible) in confidence

Officer Chavez: (illegible conversation)

Ahhhhhhhhyaya, nananan ay yayay

Officer Chavez: Only, your only go by Freddy Martinez, and your birthdate?

Martinez: it's, it's on 8- 28- of 69

Officer Chavez: on 8-28?

Martinez: of 69.

Officer Chavez: the 8-28.... of 69?

Martinez: Uh um, yes

Officer Chavez: and... ah.... Where do you live? Your address.....



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Martinez: on 4615 E Lake Mead, Trailer72
 Officer Chavez: E. Lake Mead?
 Martinez: Yes.. Trailer 72
 Officer Chavez: E. Lake Mead, 72?
 Martinez: Yes.... Trailer 72, Trailer.....
 Officer Chavez: 72.... this is Las Vegas, Nevada89125 and your telephone?
 Martinez: I don't have one there...
 Officer Chavez: Why?
 Martinez: There is my neighbor's phone in my wallet....
 Officer Chavez: Ok...(illegible) ahhhh, Then were are only going to talk about your story.... of your story...Illegible, Because there is something that is, that doesn't look very good, on the other side.
 Martinez: Yes....no....yes....no, on that side they are going to hound me....illegible...they are ferocious, waiting all the time...
 Officer Chavez: I can see that there is something that is.....
 Officer Chavez: Ready, ahhh, This is... ah, is Detective Chavez, Illegible, detail, 40408 conducting interview of event 06-0616-10637, ahhh....location of interview is, 4750 W. mmm...Oakey, Las Vegas, NV 89...ahh... 121 ahhh...interview is taking place on today's date which is August the 16th the year 2006 the time right now is ahhh....19:... excuse me at 18:43, 18:43. Subject that I'll be interviewing.... last name of Martinez, first name, of Freddy. Date of birth 08/28 of 69.... ahh, he resides at 4615 E Lake Mead, Space No. 72..Las Vegas, Nevada, 89115, ah... no telephone number. Also this interview is going to be conducted in Spanish....Do you want me to call you Freddy?
 Martinez: Yes
 Officer Chavez: Fred, Freddy.
 Martinez: Yes... Yes, It's Ok.....
 Officer Chavez: Freddy, what do you like?
 Martinez: Freddy
 Officer Chavez: (Illegible) Ok ahhh..., I know that today, the Mesquite Police detained you, and that you had a problem with ... Your wife...
 Martinez: Yes
 Officer Chavez: Ah, and we're, ah, we are going...ah and we went over there, and we picked you up around more or less 5 in the afternoon, We went in the car, well, our car, and Detective Carter, you sat in the back, well.... you were handcuffed and I sat in the back with you, and Detective Carter in front driving and do you remember that I read your rights.....
 Martinez: Rights....
 Officer Chavez: All of your rights, all in English, because you know English, but also, in Spanish, right...
 Martinez: Yes
 Officer Chavez: Ok... ahhh, you have the right to remain silent, anything you say can be used against you in a court of law, you also have the right to

have an attorney present, if you can't afford an attorney one will be appointed before questioning, do you understand these rights?

Martinez: Yes.....

Officer Chavez: Ok..... And also all in Spanish...

Martinez: In Spanish, yes.....

Officer Chavez: Ok... You have the right to stay silent, everything that you say, could be used in court, you have the right to have an attorney, if you can't afford an attorney, the court will give you one free, understand.....rights...oh, Ok.... aaay,

Martinez: Yes

Officer Chavez: (Illegible).... How is my Spanish.....

Martinez: It's good, it's good.....

Officer Chavez: If you don't understand my Spanish, please, tell me..... and I will work on trying to find another way to tell you.... 1

Martinez: No.....it's good...it's very good.....

Officer Chavez: Ok.... ay.. ay.. ay..(illegible) What happened now?... Because truthfully, no..Freddy... because it's best to tell the truth...Because sometimes things happen and, and.... no...

Martinez: Ok... ok, I have never been in..... ah, this story with her in a recorder....never..... I have always had problems... there with her because like that, she has me see T.V....(illegible)I have a no driver's license ticket and they are charging me all that money

Ok, but, now, I have spend 16 years with her, and in 16 years... I have taken care of her son and her, in good and bad times, I have paid all the bills....

Officer Chavez: Her, what is her name?....

Martinez: Bianca Marina Hernandez.....

Officer Chavez: Aha.....

Martinez: And her son's name is Franklin Martinez, and... well.. ah... I have spent 16 years with her.....

Officer Chavez: How did you meet?

Martinez: Ah... I arrived in ... 89, in....89 and until (illegible) and that's where we met, she had just moved in with my brother, and from then on our romance began.....and...to this date

Officer Chavez: But she was with your brother, did she marry your brother??

Martinez: She didn't marry, only like that.....

Officer Chavez: They only lived together, ok..... and.....

Martinez: Yes

Officer Chavez: And... They had a boy?

Martinez: Yes

Officer Chavez: And what's the boy's name again,?

Martinez: Franklin Martinez

Officer Chavez: Franklin? Ok.. Ok... Franklin Martinez

Martinez: And ...everything that she owns, and everything that she has accomplished until now, is because of me, if you don't...if you don't believe me you can visit my neighborhood, my friends and

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How I have behaved ...towards them... and they will tell you....
both of the...they wear jewelry because of me.....

Officer Chavez: Ok, ok.....

Martinez: Do you understand me?...

Officer Chavez: Aha

Martinez: And well... now lives with ... some friends, but she says....she says
that she does not have anything... that she does not have a
relationship or anything....

Officer Chavez: Ok, ok..... illegible trying to get the direction of things....you,
Was having a relationship with your brother, they had a son and
his name is Franklin...ah...

Martinez: Um hum, yesand their love ended.....

Officer Chavez: And the love.... ended.....

Martinez: And it remained as a show only...

Officer Chavez: And it remained as a show only.....and how long ago it ended...
the...the....

Martinez: The love.....theirs?

Officer Chavez: No, well..... I don't say that love..... because some people say
that they stay together.....but..... love does not exist..... How long
let's say they stayed together let's saylike a family?

Martinez: Around what... ahhh like around three years.....

Officer Chavez: Around three years...

Martinez: Yes... now, afterwards everything on that side..... everything was
separated

Officer Chavez: Okyou say that around three years.....

Martinez: Yes, around there, around three, five years...school was
starting.....

Officer Chavez: School was starting..... and himwhat? he went away?

Martinez: Yes, yes he was..... or..... They would always see each other, but
he would always go to my country Honduras.... and he would
return..... And her and I we would stay..... it all ready charged...

Officer Chavez: So, when you stayed here with Bianca and Franklin, the boy....

Martinez: With her, yes.....

Officer Chavez: Did you have sex at that time?

Martinez: Yes, well, we have had all the time.....

Officer Chavez: And..... We are talking about relationships of that kind... sexual
relationships....

Martinez: Yes, well yes..... of that type..... until this day..... this date, we
have never separated..... about having sex.....

Officer Chavez: Yes

Martinez: We haven't had problems, we haven't had any kind of problems,
the only thing is that I want her to tell me the truthI want her to
tell me if she has another man or not.....

Officer Chavez: Um hum.....

Martinez: That is to say.... well... she..... has always told me lies..... and I
don't want any more lies, so that I can focus on my job, on my

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life....so that I can live.... because.... many of my friends work in construction, we make money and the women take it away and then they leave, that's what I don't want.... understand me.....

Officer Chavez: Aha.....

Martinez: Because... I don't now... that is not fair , it's not fair..... they should speak with the truth, and they should get out of the way..... they should go away and not return to see me they shouldn't visit..... they shouldn't even speak.....

Officer Chavez: And what?.... and what are you looking for?

Martinez: The truth..... if she has another man or not.....because living in the other apartments or living here I have always supported her, rent and everything..... fixing of the car and everything..... everything she has now it's because of me..... and I don't want to continue..... do you understand me, supporting her..... and ..her being with another person, do you understand me?...

Officer Chavez: aha ...ok

Martinez: That's what I don't want.....

Officer Chavez: And her ?..... how long ago she moved?.....because how long ago you and her?.... You and her lived together.?....

Martinez: Yes we were together... ah..... at the trailer... with everything.....

Officer Chavez: The trailer is located at this address?..... here at 4615 Lake Mead?.....

Martinez: Yes, it's in her name....

Officer Chavez: It's in her name?... For how long?.....

Martinez: A month more or less.....

Officer Chavez: But..... For how long have you been living there?

Martinez: Around two years.....

Officer Chavez: Around two years.... ok...and who lived there or who was living there?

Martinez: Lived there..... the three of us...but about a month ago.....

Officer Chavez: When we talk about the three of you, it's you.....

Martinez: Franklin, Bianca and I.....and around..... a month ago they arrived. Ah it was around what time.....

Officer Chavez: Ok

Officer Chavez: Listen, in the two years that you were together..... or lived together, let's say..... were you living as a couple?

Martinez: We lived there together..... but always showing respect to the son....

Officer Chavez: Ok, OkBecause the son looks at you like an uncle?

Martinez: yes

Officer Chavez: Ok.... Then...never in front of the son...

Martinez: No

Officer Chavez: And..... in front of other people?

Martinez: Neither....

Officer Chavez: And why not?

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Martinez: Because she never allowed me to legalize it.... She didn't....you understand me, she never told me...legalize me as your wife..

Officer Chavez: Ok...But you did have sex?

Martinez: Yes

Officer Chavez: And when did you have sex?

Martinez: When we could, because I would sometimes work.... when I worked, or....he....he would go to school.....the boy went to school....she worked somewhere else, she sometimes had to loose a day of work a week so that I could be with her..... because... ah.... her friends, my friends, my family, and we couldn't....

Officer Chavez: (Illegible) And that lasted for almost two years?

Martinez: Yes, there yes..... but all my life has been like that...like that all my life.....

Officer Chavez: Only secrets...

Martinez: Yesonly secrets all my life..... only secrets for 16 years....

Officer Chavez: Uh hum..... And you never told your brother?

Martinez: He.....they know, they know ... she.... would always say, always would tell him....that, what a pity.... that I.... was his brother, because if I wasn't she would marry me..... she would always tell him, she.... and... well.... what I want is to know the truth... for her to give me the liberty of leaving me or returning to her.....Because to tell you the truth I don't hate either of them, I love them more than my own life.... both of them, they are both my life, but... if they don't want.....they don't want to be with me...then they should tell me the truth...straight up and it's over.....everything is over.

Officer Chavez: But the truthlike what? How do you say, I mean, what?

Martinez: Like the truth.... they should tell me, you know what Freddy, forget about us ... forget about us, we have already, we have already..... don't worry about us, we.... or... I already have another man... or... something like that, but tell the truth.... or that It's because of my son or my son can't live with you, and.... you understand me.... something, something that she might have in her heart, she can tell me, but listen...what is the motive, if its because of the boy.... because I know that she still loves me, she loves me a lot, the boy also,....Because I know that she is ill, she's very sick....and that's my worry.... that is why I am always checking on her...I worry about her health, and I well, I don't want...other people.... that do not know her history, her life, about her health, that they would lean on her too much.....maybe wanting her to do a lot of housework because at the house she would never do anything....she lived like a queen.....like a princess....

Officer Chavez: Um Hum

Martinez: She wouldn't do anything... I would cook.... I would take her coffee to the bed....she wouldn't do anything...her son and I would do everything, would wash the dishes..... and would do everything

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because we knew that she was ill.....there.... I see how fatigued she is I can see her appearance fallen... I see her, even if she doesn't want me to...but I see her....

Officer Chavez: But..... tell me something..... Why did she move from the house? How long has it been since she moved from the house?

Martinez: It's been.... it has been one month. They arrived... I left and all of a sudden the took everything..... that is how they took everything out from the house.....I don't fight for the material things, material things I can recuperate from morning to night I am not interested. I am interested in them.....ah..

Officer Chavez: But... Why did they leave?

Martinez: I don't know..... I don't know.....the truth...she... she has a...a.... she has the kinds of friends that I do not visit....it's a friendship that I do not... they are not my friends....eh...I have other friends.. she has her friends, then...

Officer Chavez: but..... but why didn't your... don't leave.... I'll leave?and....why didn't you leave?

Martinez: Because everything, everything that..... I have paid for.... everything I have paid for.....and it don't....

Officer Chavez: Illegible

Martinez: yes.....if she would have told me... I would have left. Ah...but... I believe that ... I am almost sure that she has another man.....that's why I did what I did... I took her in front of him..... In front of him so that he can see that I am not a coward like him..... taking my things when my back is turned....ah...

Officer Chavez: When you back is turned...and.. what happened now?

Martinez: Only, I only waited for him to leave and so that she would ask me for a ride to work in my car, now, then I got her in the car since.....since....she says that I am not her husband, boyfriend.....no, but.... to both of us, yes we are, in our hearts...we are....to the world no, but since to us we are... that is why...

Officer Chavez: So.... You waited for her, waited this morning....

Martinez: Yes.... I waited until they came out....both of them....

Officer Chavez: Out of his house.....

Martinez: Yes, his... because they never , they never told me where they live or anything.... by chance I saw where she went inI never followed her or nothing.....nothing...nothing...

Officer Chavez: Aha

Martinez: If, there's a God in the sky....that never.... never....you understand me.... because I have a clean heart toward her... I was driving on the street, looking for a public telephone, I was going to make a call...and all of a sudden....I saw her.....that she went into that house... I didn't go to knock at her door, or anything like that, because I have respect for her friends...I don't get involved in anything....I just saw that she was putting a lot of pressure..... she wouldn't appear at the house.....and I said to my self, well,

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wow

Officer Chavez: Yes

Martinez: What's going on there....there's got to be something going on t here

Officer Chavez: Something...

Martinez: Something.... and then I tried to.... investigate it.... and three days ago I got a ticket.....he was driving my car..... and.....then I followed in the other car...to stop them.....because I had signaled them and they stopped in front of my house...he... driving my car.....then I signaled her.....to get down.....to come in....to come in the house...I thought that my nephew was driving the car.....when I saw two people...and....I was going toward them when I saw this person was driving the car.....and I said how is this? You want...then I told myself, in my car, with my girl, in my house, you are going to play it like that....no, it's impossible...then I followed and I went through..... Pecos and Lake Mead.....no.. Lamb and Lake Mead.....

Officer Chavez: Um hum

Martinez: And there was a police officer and he gave me a ticket.....he left in my car, they let him.... I think... (illegible) he left and did not come back... my nephew returned with her drivers license, no him... and from there I started to... then with more resentment.... And wanting to know the truth... what was hidden and there I made the decision to... not one more day or one les day...I want to know what is going on...

Officer Chavez: Um hum

Martinez: Is it the nephew... is it the nephew...or is it because...there is another partner...or is it really because she no longer loves me... why...I feel it is a lie.....because I ...it's been 16 years that I have had her like a, something made of crystal so that she would not break...

Officer Chavez: Umhum

Martinez: Everything for her, everything for her and the boy....everything....and I don't want them to go suffer with someone else...because neither will I let another person mistreat them....

Officer Chavez: Well yes.....and this morning...what happened?... Did you see her?...leaving, no?

Martinez: Yes...she was coming out a lot of times to check...like...like she could foresee....she foresaw...because I could foresee everything...then she came out three times, she came out three times to check everything in the back and in the front...and then I told myself....no...there is something here...I said there is something here...there is a cat.....locked up...then I am going to wait until she comes out...I said...this is the last time...he comes back....and.....yes.....I went to her....the apartments, and crossed

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the street...and was on the other side and came out...behind her he came...

Officer Chavez: Umhum

Martinez: then I told her...to get in the car.....and I took the car and her...

Officer Chavez: Umhum

Martinez: In front of him....

Officer Chavez: You (illegible) on the passenger side...no? Passenger

Martinez: Ah hah..

Officer Chavez: and what did you have in your hand?

Martinez: I had a ...unfortunately a small knife.....that is what I had in my hand.....like... small... and in those moments that person started to run...when he saw me...he went to run back...yes...I am not involved with that situation... Why would I get scared and start to run back....

Officer Chavez: He ran....you had a knife in your hand...

Martinez: yes, it was a small one....like...

Officer Chavez: Yes, yes...a small one...black...

Martinez: Ah huh, yes that one....

Officer Chavez: Umhum

Martinez: And it was there that...she received some scratches ...in her leg.....

Officer Chavez: With what?

Martinez: With the knife in her leg, she...

Officer Chavez: With the knife.....

Martinez: When we were in the car, the passenger over here we were struggling in the car..

Officer Chavez: (Illegible) in her legs...

Martinez: No...we were struggling and the gears would get stuck when I changed the gears it would get stuck, they would get stuck, and I wanted to know the truth....

Officer Chavez: (Illegible)

Martinez: I had already started.....I had already started and I could not leave it half done, because if I leave it like that , all the time I have left myself half done...and the police have always half taken me...I never discover the truth...I have wanted to discover it and never...because she always puts a Restraining Order....or something and I never discover this....exactly the truth and I ask her and ask her and she does not give it to me...and then I say...this is the last time, the last time I am going to do.....

Officer Chavez: And you only put the knife in her legs just to scare her?

Martinez: Yes...because I want to know the truth.....

Officer Chavez: Because you want to know the truth...because you put it very, very difficult...and you put the knife on her leg so that she would tell you the truth...but...

Martinez: No, no, no.... in other words...I was in the passenger side...

Martinez: It's because she was in the passenger seat... supposedly that man was going to drive...the car...

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Officer Chavez: No...you got in the passenger side...

Martinez: No...she was sitting waiting for that man to come...he was going to drive the car...and then I told her to move ...to drive and then she moved...and the man stayed there...and that is when we left...and when, when she received the scratches there on her leg....

Officer Chavez: With the knife...(illegible) to go to the other side.....

Martinez: No....I only told her to I told her to go to the other side...to go on to the other side...and no...why? And for what?...well I only want to know what's going on here...I want to know the truth.....and well, she does not tell me anything...she only tells me that she loves her son very much....well...I also love him....they are both my life....yes....but I worry about her health a lot.. her health, because I know her health is delicate.....

Officer Chavez: Tell me something...Freddy...uh....something happened.....on Nellis...because you were driving crazy...

Martinez: (Illegible) Nellis...no...

Officer Chavez: Yes...on Nellis, yes, yes a car overturned.....

Martinez: There she was complaining, because I told her that we were leaving, that we were leaving

Officer Chavez: To where?

Martinez: That we were leaving from Vegas, both of us....that we were both leaving from Vegas...and...and that I was going to leave the son in my mother's care and my brother was going to pick up the boy...then that is when she had a nervous attack...to her...and she started to kick and throw everything everywhere... but no...I was going to Mesquite to talk with some...with my co-workers from work...because I had one week with no work...so that they would give me back my employment...that is the only... and that trip was only, to make that man angry....so that he would look for me...and talk to me...if in fact he is really her husband...

Officer Chavez: Clearly...

Martinez: Or if he has any doubt in regards.....from me for her...that he also look for me and ask me who am I to her....just for that I did it....to get my job back and for that..

Officer Chavez: Umhumm

Martinez: Who had that car keys....she had them...If i would have had bad intentions I would have thrown them away...I would have never gotten to where there were Hispanic people... where she could scream with a high voice or something...I would have preferred to go to a English town...where they would not understand...but there is no bad intention...in my heart...there is nothing...

Officer Chavez: Because she said that...that you told her...you are going to be mine, you are mine I am going to kill you...I am going to kill you...and when I kill you I am going to kill myself.....

Martinez: Yes...she had the car keys...

Officer Chavez: No...but you were driving for her....

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Martinez: I want to get the truth out... I want to get the truth... but not by hitting, no... by... by words by words but she does not want to tell me... nobody... not even the family where she lives, not nobody...

Officer Chavez: So you only told her..... to scare her?....

Martinez: Yes... so she would tell me what was happening... it's already 16 years... already... of... already...

Officer Chavez: Yes.....

Martinez: I only want to know the truth... what is going on... if there is another person.... there is another person... ok... if she feels secure that this other person will defend her... and will support her like I have supported and defended her in these 16 years, Freddy will place himself aside and will leave... calmly, his heart will be clean and he will leave without any pain or remorse that.... that if my Bianca is going to be sick the day of tomorrow and I will not be there to be able to help her.. to take her a glass of water or a hot plate food.... All I want is the truth so that I can live calmly... that is the only thing....

Officer Chavez: And why did you hit her in the cheek here on her face?

Martinez: I did not hit her....

Officer Chavez: Yes... it was... you...

Martinez: No, maybe yes.... we struggled some... to put her seatbelt on maybe... she received an injury because she did not want to put her seatbelt on, and since she was upset from her nerves, that she was going to throw herself from the car..... maybe at that moment... or something...

Officer Chavez: And who pulled her hair, some three or four times....

Martinez: No...

Officer Chavez: Who pulled.... her hair? Who? Because we checked her at the hospital... we took her to the hospital and she has had her hair pulled....

Martinez: I tell you that maybe with the seatbelt, in the struggle....

Officer Chavez: You pulled her hair....

Officer Chavez: Because she said it was you...

Martinez: Who else... who else was there, if we are the only two there... the both of us are at guilty of everything that has happened there in the car, and no one else from the 16 years... only both of us are guilty of that, ah..... but maybe not in the pull of the seatbelt that was for here and there because she did not want to put it on....

Officer Chavez: I want you to tell me something Freddy, I want you to tell me the truth because I understand... because, I understand that you have been very kind with me and I also have been kind to you... an I truthfully... I understand what one goes through in these things because I understand.....

Martinez: Yes... (Illegible)

Officer Chavez: Yes, exactly...ah.. and what happened in the Desert...when you were driving before you reached Logandale.... What happened...the you stopped on the way....

Martinez: It was, it was... (silence)

Officer Chavez: It was south.... well on the way from Las Vegas to Mesquite...it was before you got to Logandale....

Martinez: Ok, there, we have a friend...there.. I have a friend there where there are some farmyards of... of cows, through there one goes and well.... The car was already getting to empty and it barely had anymore gasoline...and I wanted to get to his house....to see if he would let me borrow...to get to Mesquite I had...and then I looked at the gage and would not make it there...and then I got on the freeway...and getting on the freeway and went to the store...

Officer Chavez: But before going to the store...you stopped over here in the desert...you stopped the car, you got down from the car and opened the door for her...

Martinez: Oh, that...that was here leaving from Vegas...

Officer Chavez: Yes leaving Vegas...

Martinez: Leaving from Vegas...there were they ride the motorcycles...

Officer Chavez: Ah ha ...there

Martinez: There, it was there...we had and why am I going to lie to you...we had sex...but normal, like we have always had it....without violence or anything...the two of us....whatever it was.....I am a man...illegible

Officer Chavez: And where did that happen?

Martinez: Here leaving Vegas, by the Nellis Base,...there, where they race the motorcycles, it was not there, in Moapa.... Or Logandale...no

Officer Chavez: Before Logandale, Where there are races?...

Martinez: Before passing the races...before there...yes...passing the races

Officer Chavez: Passing.....

Martinez: Yes there where they race the motorcycles, there

Officer Chavez: And where did it happened where...on the floor or in the car?...

Martinez: In the car on the back seat...

Officer Chavez: Back seat... Where you drive or the passenger?...

Martinez: No behind...of...of...

Officer Chavez: Oh, behind... and how did that happened?

Martinez: Well...I told her...I told her that....that, if she wanted to make love with me....

Officer Chavez: Ah ha

Martinez: I got down and opened the rear door and she got down...and she arranged herself in the rear seat...and yes we did it...but that was not....forced...or anything. That was not forced, or with force neither without her consentbecause....

Officer Chavez: And why did you get down upset?.....

Martinez: I pretended to be so upset because I wanted to get the truth out, but never to her....never, never to hurt her....



Officer Chavez: Why did you get out of the car very upset?
Martinez: Yes, yes....
Officer Chavez: And by closing the door you can see, that you are....
Martinez: Apparently... apparently it looks like I was very upset...but ...she would tell me to go back...for the son that here son here and I would tell her only no...this...I would tell her that, my brother was going to pick up her boy, but no, but never sincerely...with the heart, I tell you officer, I don't have hate towards her...I want the truth so that I can relax my mind, because those two are my life...for them I have given my life here in the United States...already 16 years...I want the truth...since the boy was 2 days born I have him.....I would clean his diapers as a baby, I would do it,
Officer Chavez: And with sadness...why...you
Martinez: To school I would walk him...I would go and pick him up...at the school
Officer Chavez: Let me tell you something...the truth is I talked to Bianca.... And Bianca truthfully loves you a lot...
Martinez: ..I know that she loves me a lot...
Officer Chavez: How can she not....she loves you a lot, but she said that what happened today..... was... not you...
Martinez: Well, yes, man.....
Officer Chavez: that you pulled her by her arm and you pulled her into the car, you opened the door and you wanted to have sex forcing her, but that way no, but that it was the way... that you did it....
Martinez: Officer...it's 16 years....that, I have loved that woman and I continue loving her, like the first day, but lately that family got involved and a lot of lies from her to me, it was like there was someone that wanted to steal her from me.....and she doesn't have the strength to tell me.....
Officer Chavez: I understand, and you have the right to know,....because of the 16 years.....you have the right to know.... and one gets upset and I understand, Freddy...I understand....I don't want you to think that I look at you like a bad person.....ok, I don't want you to think that....because I have seen it on many occasions, and in people that I know...because of thatI am here, giving you time and now is the time to talk, because I know it's a lot better, Freddy.....when the doors of love close...I know that you got angry because you didn't want to lose her love...right?
Martinez: No, I accept losing, look Officer, I accept to loose if this person that is there after me, is going to protect them for me and is going to love them like I have protected them....she has looked for me (illegible...illegible) I need to be put aside of the family, for her get out of the way...and not to continue with her lies any more
Officer Chavez: I believe that both of you have problems, you have your own problems...like everyone does....and, Bianca she also, has her

problems. Bianca loves you a lot, Bianca told me. And I am only telling you what she said... but she says that you are becoming very violent... that's why she left the house.....

Martinez: Officer, how am I not, going to become violent?... they arrive to take out everything that is....

Officer Chavez: But she said that it was because of the violence before that... that was the reason why she had to leave the house... because before she moved... you were becoming very violent...

Martinez: This last time that I was in jail... (illegible) I spent around 30 days.. the court.... I did what the judge told me... when I got out of there, I was on the street... she was also on the street... and I worked night and day for them... and they throw everything in the trash, no... other families... other people... (illegible) there are noble women, there.... And it's not fair.....

Officer Chavez: You love her....no...

Martinez: Too much.....

Officer Chavez: What she wants to know is.... why..... I believe..... I asked her... what.... I told her that I was going to tell her the truth, she wants to know.... yes.... she wanted to know the truth... and she wanted to know why you raped her today...

Martinez: No, no it wasn't..... from my heart, maybe..... what I did, but.... and it wasn't because of anger towards her... if not maybe, because I feel anger toward that person, toward that man... I don't know who he is.... I have not investigated his life yet... I don't know what significance he has in her life... because she doesn't tell me anything... doesn't.... why doesn't she introduce him to me?..... tells me... this is a friend... like that, like that... why not?

Officer Chavez: Because she says that you are very jealous.....

Martinez: When one loves,... you become jealous,... too much.... the one that is not jealous does not love... truthfully, and I... because she wants to be there all the time... before we would spend our time from yard sale to yard sale, the three of us... on the weekend we would go (illegible) and now we don't, now she spends more time with the family than with us.....

Officer Chavez: (Illegible)

Martinez: Ahhh

Officer Chavez: Control was lost.... or there isn't almost....

Martinez: Well, I am very patient, I feel a lot of love for her.... very patient.... she took everything, everything... and I never said anything... because I know that she is sick... her health is very delicate... I... I... want her to speak the truth I love her excessively... but... I want her to speak the truth.....

Officer Chavez: Bianca, she told me one thing... she said.... I love him a lot.... he is my family, but I feel very dirty with what he did... and... (illegible) what got in his mind?... what did he want... (illegible)... (coughing)

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Martinez: In all of this Officer....my only intention was...to get a reaction from the man....if there is something between them.....

Officer Chavez: But the man wasn't there..... *

Martinez: Yes, yes.. he was there.....

Officer Chavez: Not when you had sex....no

Martinez: Ah no, not then, when we were there I was, I was already on my way to Mesquite, (illegible) sex....we have always had sex....in many places, the same way...in the car...

Officer Chavez: But she says that it was never like that, now she says that you raped her..... *

Martinez: Not the same way, maybe she was angry....I was angry.....maybe....but the same way that we have done it in other occasions, at other times....I treated her the same way, without, without , without violence or anything.....

Officer Chavez: But you had (illegible)grabbed her in the car.....

Martinez: No.....

Officer Chavez: Yes..

Martinez: Yes, I had grabbed my wife in my arms, it was so that she wouldn't jump from the car, I was not going to let the love of my life kill herself....just like that, because she is much more quick-tempered than I am, her nerves betray her very badly....

Officer Chavez: It was that she was very scared, because what you did to her today, she had never seen you that way...in your life, in her life and well, with the knife, threatening her with the knife, telling her "I am going to kill you"....let's talk, we're leaving Las Vegas.....

Martinez: Everything that would have been said was jokingly...because there's 16 years of proof of what I did for her....proof of 16 years...I believe....

Officer Chavez: Because what you did today is not even to have spent 20 years...illegible....

Martinez: What I did, what I did today....what I want to get is...for her to talk to me.....to be sincere with me, I have looked for her in many ways....I have spoken with her and well....she does not tell me anything...she changes the subject.....

Officer Chavez: (Illegible)....you told her: "You are going to be mine, I am going to kill you, and then I am going to kill myself" you said that, no..... *

Martinez: No...

Officer Chavez: You told me yes, before you said yes....

Martinez: No, how am I going to kill me with a knife like this....

Officer Chavez: No, but you told her this....you said the words.....

Martinez: That we were leaving, that we were going to leave Vegas and that we were not returning to Vegas, again...and that her son was going to be picked up by his.....

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Officer Chavez: Bt you told me, when I asked you that you had told her that you were going to kill her...that they were just words, that you weren't going to do it, and I do believe that....

Martinez: That could be, yes...that when we were struggling...I had said that, but not from the heart.....

Officer Chavez: Anger.....

Martinez: She could have told me many things too, but I know that they aren't from her heart, also.....it was anger...to reconsider things.....

Officer Chavez: When she said that she wanted to return to her house... constantly, no.....

Martinez: Hum....

Officer Chavez: She told you, take me back with my son.....

Martinez: Yes. But I needed, I needed to get to Mesquite to get my job, when you arrived to arrest me....even.... when you guys arrived, I was talking to my co-workers.....to get my job back, if that is my car and everything....why shouldn't I take it...it has cost me, I knew that she didn't get to work until one in the morning...during that time I could go to Mesquite and return...that's why, but no, no.....

Officer Chavez: Bianca was very scared, very, Bianca loves you, but you scared....

Martinez: I...also...I.... also...I am never going to separate her from her son...never...never....never...

Officer Chavez: And, why did you tell her that?

Martinez: So that she would tell me, I want to get the truth out of her, that I...that if she's hiding something... to tell me...the truth, if she has another man, or something, so that she would tell me...I want her to tell me.....if that person is using her...that he is not mistreating her, that he is not asking her to do jobs...that would be....don't you understand, because if it's like that...she's is not going to last more than three years.....

Officer Chavez: Let me tell you something....Freddy....I talked to her...she told me....that she has never had sexual relations with you and that you would always treat herlike her wife, or you would be mine, or you stay with me...but she never loved you...that she always told you, I love you a lot, but only as my family...you are not.....

Martinez: Look, Officer, when this, when all this started, she told me, let's run away and we ran away once... we were as husband and wife....

Officer Chavez: Where?

Martinez: from San Diego to Los Angeles and we had to return, return because the boy was too small....we returned.....she told me Freddy, wait for me...wait until my son grows up...so that he can defend himself...so that we can be together...ok, I waited...my word, I waited.....the boy is already grown up, now she can tell the truth.....to break our deal or the deal that we agreed to.. or something....she should tell me the truth....I.....

Officer Chavez: ok, I waited...my word, I waited.....the boy is already grown up, now she can tell the truth.....to break our deal or the deal that we agreed to.. or something....she should tell me the truth....I....

Officer Chavez: You know that you can't take a person by force.....

Martinez: I wasn't taking her by force.....

Officer Chavez: How can you say no?... you had the car....you wouldn't let her get out of the car.....

Martinez: If I let her get out of the car....look....the car is in her name, if I let her down, so that I can go do that in Mesquite... she was angry, she would call the police for having taken her car... at that moment she was angry...that's how she is...if I let her out of the car angry, she would just call the police and she would tell them that I have stolen the car.....

Officer Chavez: And, what happened?

Martinez: Well, I stole both of them (laughing)

Officer Chavez: You stole both of them....

Martinez: (Laughing), I didn't take one, I took both of them.....

Officer Chavez: Ok, but that's what I am telling you, you cannot take by force, that is what I am telling you.....

Martinez: Officer, it's nothing against her, it's nothing, if she doesn't tell me the truth, and I wanted to find the reaction, ok, yes, like a man, if you are a gentleman, and you are with a woman.....when a man has sexual relations with a woman....you have to react when another rooster comes and takes the woman when she is with you...he has to respond...react, has towhat.....what ...what is happening here, and I did it, but he did not react, what he did was run...then, I wasn't doing anything else there....

Officer Chavez: You had a knife in your hands.....

Martinez: I did not have anything.....

Officer Chavez: You had the knife in your hand, you had the knife in your hand.....

Martinez: With the little blade that it had.....

Officer Chavez: And you think that you can't hurt with that blade?...that you can't kill?...

Martinez: He is double my size.....

Officer Chavez: You think that a blade can't kill someone?

Martinez: He had an ice box in his hands.....couldn't he use it as a shield?

Officer Chavez: When he left running he thought that you were pointing a gun at him...

Martinez: I will never carry a gun....

Officer Chavez: But how is he going to know? He doesn't even know you.....

Martinez: Then he should investigate a woman's first fall....

Officer Chavez: When a person has a pair of guns and you the little knife, from a distance, what is he going to think? eh....that you have a gun.....

Martinez: I won't, I won't speak anything else, now I am going to pay for that, I don't know.....how the case is going to affect me...I don't

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Martinez: If she would already be open mouthed, dying and she would tell her son, son go find your uncle Freddy... I want to speak to him... would you go? Or you wouldn't go? one... the heart...

Officer Chavez: Well.....

(Silence)

Officer Chavez: Well, is there something that you want me to tell Bianca.... Umm?

Martinez: Only... that I love her to death and that I don't have anything against her..... that I don't like that lately..... she has only distanced herself from us..... the family that has taken care of her and protected her for a long time... and has dedicated herself to other families with a short time.... I don't know.....

Officer Chavez: And what do you want to say about what happened today?

Martinez: That it wasn't.... that it wasn't... that everything that went on today wasn't against her..... that I am sorry and to forgive me.... I showed it to her.... returning her keys to the car, that she was driving..... It is not harm what I want to do..... but, always with her... first.....

Officer Chavez: (Illegible)... until you passed Logandale... from there to Logandale.....

Martinez: For her to forgive, to forgive.... what we did in the back seat, it happened without it being my intention... but.... I don't know, I don't know... something in me made me take, forgive me for that... but....

Officer Chavez: When you finished the sex..... you came in her, did you ejaculate in her?

Martinez: Yes

Officer Chavez: Why did you do it?

Martinez: Because I have always done it.... I have done it all my life.... in 16 years.....

Officer Chavez: It seems like it upset her..... that....

Martinez: Well, I have done it all my life..... I can't do it outside, when I haven't done it.... if she gets upset... I am speaking with the truth... I don't lie... I speak with the truth..... if she already got upset... then.... it's that there is another person present there.....

Officer Chavez: Um hum... yes... ok...

Martinez: Then, with what you are telling me... illegible... you're giving me.... you're giving me the information that I needed... that tells me that they are a couple..... I am going to tell my brother..... (noise).... that no more money that way... that if he wants to buy something for his son... buy it..... but not a lot of money that way.... because it's not fair, ... it has already been, how long..... around three years... that I have been following the trail on this situation..... three years..... and I never loosened my money bags..... that 300 and 400 dollars a week to her for.... for the bills... because I know that she is.... and now, also her jobs or everything that she ever owned..... me.... because this person is

know how much jail I am going to get for this, and that's it...I don't know how long...now I could loose the trailer again, I will return to the streets....but it doesn't matter....now without worrying about them....because even if she's been there I have paid her bills...her rent, her insurance payment, her car payment....even when she was living with this person...but they can't continue sayingI can't be their clown.....

Officer Chavez: No...they can't.....and you already loved too much....it's too much....it's enough of the anger that you felt....of all anger....

Martinez: It all stops there.....

Officer Chavez: It's enough of anger....you can't consider what was given.....

Martinez: That's enough... (illegible). I paid for both, that's it... I.... my brother..... my nephew....we are going forward...we're not going to continue being stuck....that's it, no more....enough with the pride of being a man....that's it no more.....

Officer Chavez: But, look at what you did.....you lost your brother....your brother doesn't want to see you anymore.....

Martinez: My brother?.....until they die.....

Officer Chavez: He does not want to see you.....

Officer Chavez: You lost your nephew...then, you lost Bianca...you lost Bianca's friendship.....everything was lost.....

Martinez: Nothing has been lost.....nothing.....I haven't lost my brother, David, or my nephew Franklin, nor Bianca, have I lost, because what I have cultivated in them all my life, has been pure love....pure...for them, nothing against, if I have done this, they know that I am very intelligent...even though I have thoroughly analyzed to come to this conclusion, to figure out this puzzle....and it hasn't taken me one day....it has taken me many years...and the jail is going to serve me, also.....because I will be there in that cell, that one (laughing) will be analyzing.....or working in the kitchens....analyzing many things....but officerthis, this is the last.....(illegible).

Officer Chavez: I know, because she does not want to see you again, she never wants to see you again.....

Martinez: She does not want to see me...but she's going to see me.....over there, in a hospital...where she's going to end up.....

Officer Chavez: And why do you want to go see her?

Martinez: Because she's sick....she has a very serious illness.....

Officer Chavez: And, why are you going?....She doesn't love you, Why are you going?....Why are you punishing yourself?..... Why do you drive yourself crazy?.....What do you want to prove?

Martinez: No, no, no,...that is because there is affection.....

Officer Chavez: No. She doesn't want to, love never lies while it's alive.....

Martinez: Ok, ok...but what if she asks me, because she feels guilty, in her conscience, would you go? or wouldn't you go?

Officer Chavez: The truth.....you would be crazy if you do it.....

always there...no...besides...all of the jewelry that she
has...because of me...besides the ones that are in the house...or
the ones that have been pawned, or they are pawned...all because
of me...not because I sell drugs...or illicit, dirty
deals...no...because sweat runs down from my forehead...and
everything that she is...that they would stay with someone that is
a parasite...and this person doesn't even pay their bills...her
car...this is what makes me feel sorry...when I got out of jail,
they had evicted them...and everything, everything I bought for
her...I got her a big screen TV...with a sound system and
everything...and they took everything...everything...even the
curtains and I said, take it...I am going to investigate the
truth...What I want is to work for me, everything that they took I
will have it back in four or five months...work in peace,
working very hard...and then know that this person is not going to
appear on Friday and tell me that I have no money for
insurance...or that I don't have money for gas...or for rent...I
can't work in peace with a person like that...like that, I don't
want that person...she needs to disappear from my...monetary
affairs...she needs to think that I don't exist...like she should
think that I don't work...like that...

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Officer Chavez:

Yes, I understand...

Martinez:

We finished it... (Laughter) slowly...

Officer Chavez:

Ok, I'll only go to the tape...the time right now is
19:38...19:38...Ahhhhhhh!

Martinez:

Can you take me to the bathroom?...

Officer Chavez:

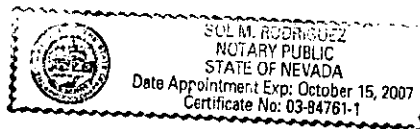
Uh mmmmm, all right...

END

I, Rose Marie Fernandez, duly sworn, depose and say:

- Dated at Las Vegas, Nevada this 18th day of January, 2007.**

STATE OF NEVADA)
) SS.
COUNTY OF CLARK)



Signed and sworn to before me, a Notary Public, this 18th day of January, 2007

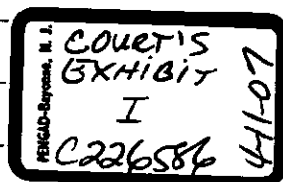
Sof M. Rodriguez
Notary Public in and for said County and State

WITNESS WAS THE

CAR RELATIVE TO THE

RESTAURANT ?

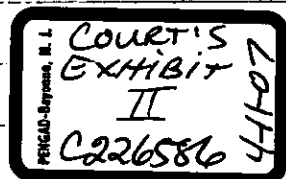
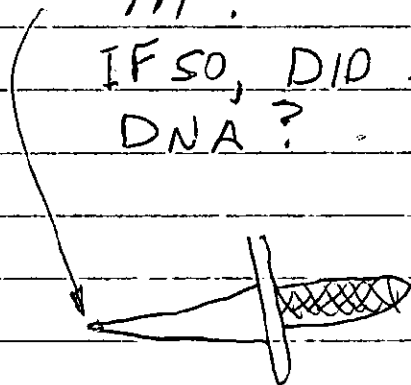
10



REQUEST FOR INFORMATION FROM JUROR #6

① WAS THERE DNA EVIDENCE
PROVIDE ON THE ALLEGED KNIFE
TIP?

IF SO, DID IT MATCH BIANCA HERNANDEZ
DNA?



REQUEST FOR INFORMATION JUROR #6

WHAT IS THE NORMAL HEALING
TIME OF A VAGINAL ABRASION?



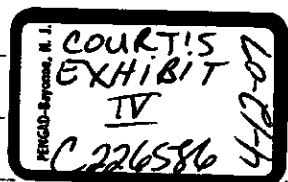
WAS A DRUG TEST

PERFORMED ON THE

ALLEGED VICTIM?

IS THAT NORMAL

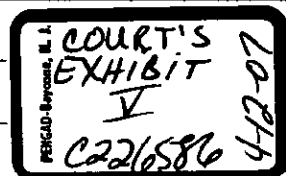
PROCEEDING?



How long into your interview
with Ms. Hernandez was it before
she told you about the penetration?

~~She told me about the penetration~~

#4

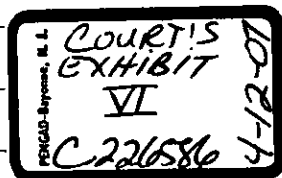
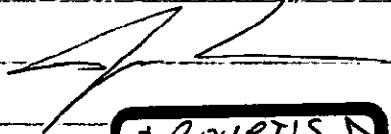


SPANISH TRANSLATION
OF INTERVIEW BETWEEN
DETECTIVE CHAVEZ AND
FREDDIE MARTINEZ

(OR)

SPANISH ~~W~~ AUDIO RECON ONLY

JIM EAGAN

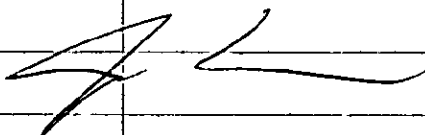


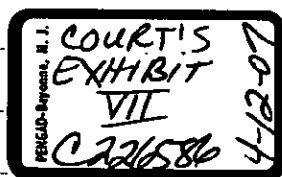
The jury is not allowed
to do its own translation,

Judge Bell

WHAT IS ON
THIS?

JIM EAGAN

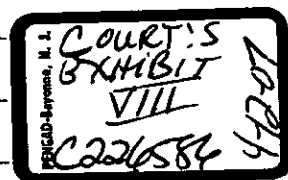






CAN WE FIND THE
DEFENDENT GUILTY OF
1ST DEGREE KIDNAPING BUT
FIND THE DEFENDENT NOT
GUILTY OF COUNT 4?

Jim EAGAN



Each count has to
be considered separately.
of one another.

Judge Bell

**THE SEALED MINUTES
PORTION OF THIS CASE
WILL FOLLOW VIA. U.S.
MAIL WITH THE
CONFIDENTIAL PRE-
SENTENCE
INVESTIGATION
REPORT.**

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****November 09, 2009**

06C226586

The State of Nevada vs Freddy Martinez

November 09, 2009**9:00 AM****Motion**

**DEFT'S PRO PER
MTN TO MAKE
ADDITIONAL
FUNDS Court Clerk:
Linda Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT:	Chen, Alexander G.	Attorney
	Frierson, Jason M.	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present today, that he gives no specifics and the time has passed for a Writ of Habeas Corpus. As the circumstances do not warrant, COURT ORDERED, Pro Per Motion DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 14, 2010**

06C226586

The State of Nevada vs Freddy Martinez

April 14, 2010**9:00 AM****Motion**

**DEFT'S PRO PER
MTN FOR APPT OF
CNSL/023 Relief
Clerk: Roshonda
Mayfield
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Carroll, Thomas M. Attorney

JOURNAL ENTRIES

- Court advised, this is a pro per motion where the Deft. is requesting to have counsel appointed. Upon review it appears the writ is time barred and there is no need for appointment of counsel. Therefore, COURT ORDERED, motion DENIED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 05, 2010**

06C226586

The State of Nevada vs Freddy Martinez

May 05, 2010**9:00 AM****Motion to Vacate**

**DEFT'S PRO PER
MOTION TO
VACATE A
J.O.C./24 Court
Clerk: Linda Skinner
Reporter/Recorder:
Marcia Leonard
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT: Morton, Carrie A. Attorney

JOURNAL ENTRIES

- Court noted Defendant is in prison and not present today. He went to trial in front of Judge Bell in 2007 and was found not guilty on Count 4 and incorrectly thinks all the counts should be stricken. Court stated this is the wrong vehicle, that he should have filed a Writ of Habeas Corpus, however, to file one now would be time barred as the Judgment of Conviction was signed in 2007. COURT ORDERED, Pro Per Motion DENIED.
NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****May 26, 2010**

06C226586

The State of Nevada vs Freddy Martinez

May 26, 2010**9:00 AM****Motion**

**DEFT'S PRO PER
MTN FOR AN
EVIDENTIARY
HEARING/26 Court
Clerk: Linda Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES**

PRESENT: Turner, Robert B. Attorney

JOURNAL ENTRIES

- Court advised Defendant is in prison and not present today, that he is asking for an Evidentiary Hearing to decide the writ, however, this motion is premature. Court advised the Writ is set for 7/14 and on that date it will be decided if an Evidentiary Hearing is necessary and if one is, it will be set and Defendant will be transported for it. COURT ORDERED, matter OFF CALENDAR as it is premature.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****July 14, 2010**

06C226586

The State of Nevada vs Freddy Martinez

July 14, 2010**9:00 AM****Petition for Writ of Habeas
Corpus****PTN FOR WRIT OF
HABEAS CORPUS
Court Clerk: Linda
Skinner
Reporter/Recorder:
Maureen Schorn
Heard By: Donald
Mosley****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:** Schifalacqua, Barbara Attorney

JOURNAL ENTRIES

- Court advised Defendant is in prison and not present today, that the Judgment of Conviction was filed on 6/3/08 and this Petition was filed on 4/30/10. Court stated it is extremely untimely with no good cause given. As this Court lacks jurisdiction, COURT ORDERED, DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 09, 2010

06C226586

The State of Nevada vs Freddy Martinez

August 09, 2010

9:00 AM

**Motion for Appointment of
Attorney**

**Pro Per's Motion for
Appointment of
Counsel**

HEARD BY: Mosley, Donald

COURTROOM: RJC Courtroom 12B

COURT CLERK: Linda Skinner; Karina Kennedy

RECORDER:

REPORTER: Maureen Schorn

PARTIES

PRESENT:

JOURNAL ENTRIES

- The Court NOTED it was not sure what the Deft is asking for and there is no cause therefore,
COURT ORDERED, Motion DENIED based on the merits this could be duplicative.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor**COURT MINUTES****April 04, 2011**

06C226586

The State of Nevada vs Freddy Martinez

April 04, 2011**9:00 AM****All Pending Motions****HEARD BY:** Mosley, Donald**COURTROOM:** RJC Courtroom 12B**COURT CLERK:** Linda Skinner**RECORDER:****REPORTER:** Bill Nelson**PARTIES****PRESENT:**Fattig, John T
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- DEFT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS
34.750...DEFT'S PRO PER MOTION TO EXTEND PRISON COPYWORK LIMIT FOR

Court noted Defendant is in prison and not present today; that he is asking for counsel and wants the amount allotted for copies to be extended. Court advised it is not satisfied there is a need for the appointment of counsel and as to the latter, it should have been addressed by the Attorney General's Office, however, ORDERED, both Motions are DENIED.

NDC

THE CONFIDENTIAL PRE-
SENTENCE
INVESTIGATION REPORT
WILL FOLLOW VIA U.S.
MAIL

Certification of Copy and Transmittal of Record

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

Pursuant to the Supreme Court order dated June 23, 2011, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises of three volumes with pages numbered 1 through 678.

STATE OF NEVADA

Plaintiff(s),

VS.

FREDDY MARTINEZ

Defendant(s),

Case No: 06C226586
Dept No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 21 day of July 2011.

Steven D. Grierson, Clerk of the Court

Marie Kramer, Deputy Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 09 2011 03:09 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

FREDDY MARTINEZ,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 06C226586
} SC No: 58050
}

RECORD ON APPEAL VOLUME 3

ATTORNEY FOR APPELLANT
FREDDY MARTINEZ # 1003276
PROPER PERSON
P.O. BOX 7000
CARSON CITY, NV 89702

ATTORNEY FOR RESPONDENT
DAVID ROGER, ESQ.
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

06C226586

STATE OF NEVADA VS.
FREDDY MARTINEZ

I N D E X

VOLUME:

PAGE NUMBER:

1	1 - 235
2	236 - 479
3	480 - 678

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3	05/24/2010	ANSWER AND RESPONSE	527 - 549
1	06/06/2007	CASE APPEAL STATEMENT	128 - 129
1	06/19/2007	CASE APPEAL STATEMENT	130 - 132
3	04/23/2010	CASE APPEAL STATEMENT	504 - 505
3	06/04/2010	CASE APPEAL STATEMENT	554 - 555
3	11/18/2010	CASE APPEAL STATEMENT	581 - 582
3	03/24/2011	CASE APPEAL STATEMENT	608 - 609
3	03/29/2011	CASE APPEAL STATEMENT	623 - 624
3	04/22/2011	CASE APPEAL STATEMENT	635 - 636
3	07/21/2011	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
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1	06/04/2007	DESIGNATION OF RECORD ON APPEAL	125 - 126
3	03/25/2011	DESIGNATION OF RECORD ON APPEAL	610 - 611
3	04/19/2011	DESIGNATION OF RECORD ON APPEAL	629 - 633
3	07/21/2011	DISTRICT COURT MINUTES	
3	07/21/2011	DOCUMENTARY EXHIBITS (UNFILED)	648 - 678
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3	01/21/2011	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	588 - 592
1	09/29/2006	INDICTMENT	1 - 3
1	09/29/2006	INDICTMENT WARRANT	4 - 4
1	10/03/2006	INDICTMENT WARRANT RETURN	5 - 9
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3	03/25/2011	MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO NRS 34.750	612 - 614
1	11/17/2006	MOTION TO COMPEL DISCLOSURE OF EXCULPATORY EVIDENCE	34 - 42
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3	10/23/2009	MOTION TO MAKE ADDITIONAL FUNDS AVAILABLE FOR NDOC INMATE'S LEGAL ACCOUNT	480 - 483
2	06/06/2008	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT - AFFIRMED	470 - 479
3	07/13/2010	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGEMENT - DISMISSED	561 - 564
3	12/16/2010	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED	583 - 587
3	06/09/2011	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED	637 - 642
3	06/15/2011	NEVADA SUPREME COURT CLERKS CERTIFICATE JUDGMENT - DISMISSED	643 - 647
1	06/04/2007	NOTICE OF APPEAL	127 - 127
1	06/19/2007	NOTICE OF APPEAL	133 - 135
3	04/22/2010	NOTICE OF APPEAL	501 - 503
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3	11/16/2010	NOTICE OF APPEAL	578 - 580
3	03/21/2011	NOTICE OF APPEAL	604 - 607
3	03/25/2011	NOTICE OF APPEAL	621 - 622
3	04/19/2011	NOTICE OF APPEAL	634 - 634
3	03/08/2011	NOTICE OF ENTRY OF DECISION AND ORDER	595 - 600
3	03/08/2011	NOTICE OF ENTRY OF DECISION AND ORDER	601 - 603
1	11/20/2006	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	43 - 58

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<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
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3	09/03/2010	ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	576 - 577
3	01/25/2011	ORDER DENYING DEFENDANT'S MOTION FOR PETITION FOR WRIT OF HABEAS CORPUS	593 - 594
3	01/06/2010	ORDER DENYING DEFENDANT'S MOTION TO MAKE ADDITIONAL FUNDS AVAILABLE FOR NDOC INMATES [SIC] LEGAL ACCOUNT	487 - 488
3	04/24/2010	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL	506 - 507
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3	05/11/2010	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	515 - 515
1	12/23/2006	ORDER RE-SETTING CRIMINAL JURY TRIALS PRESENTLY SCHEDULED ON JANUARY 25, 2007 IN DEPT XXIV	72 - 73
1	11/28/2006	ORDER RELEASING MEDICAL RECORDS	63 - 64
3	04/30/2010	PETITION FOR WRIT OF HABEAS CORPUS (POST- CONVICTION)	508 - 514
3	07/21/2011	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	
1	04/12/2007	PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL	116 - 120
1	08/10/2007	REPORTER'S TRANSCRIPT OF APRIL 11, 2007 (CONTINUED)	165 - 235
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2	08/10/2007	REPORTER'S TRANSCRIPT OF APRIL 12, 2007	336 - 423
1	08/03/2007	REPORTER'S TRANSCRIPT OF APRIL 5, 2007	159 - 164
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3	04/01/2011	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	625 - 628
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1	04/12/2007	VERDICT	121 - 122

75

District Court

FILED

56

Clark County, Nevada

OCT 23 2009

State of Nevada

Plaintiff

Vs.

Fredys. A. Martinez

Defendant

Clerk of Court 226586

Dept No: VII # XIV

Docket No: 1003276

Dated: 10.18.2009

11/9/09 msh/29

Motion to make additional funds available for
NDOC inmate's legal account

Now comes the defendant Fredys. A. Martinez,
And moves that this honorable court to immediately grant the
defendants request of allotting additional funds for his
NDOC inmate legal account. The current availability of funds for
indigent NDOC inmates to send out legal documents
and make legal copies, is capped by this facility
at \$100.00. Although the defendant has already reached
this limit, the defendant urgently requests that
additional funds to his legal account be made
available immediately, so that he can continue sending
out legal documents, and making legal copies that could prove
to be vital to the defendants case. The defendants case
is still open, current, and pending, and these funds will
greatly assist the defendant in completing his legal process.

RECEIVED

OCT 23 2009

CLERK OF THE COURT

p.1

The courts denial of this request would serverly hinder the defendants ability to properly obtain legal research materials, legal copies, and the mailing of important legal documents. A delay of this nature, could have serious ramifications in the outcome of the defendants case. Such outcomes may include, but are not limited to; the defendant becoming "time barred", "proceedurally barred" due to the inability to properly utilize court procedure and law, or to have this court render judgements against him for failure to respond to this court, due to the inability of having postage available to mail out the proper legal documents. In the interest of justice in this great state of Nevada, this honorable must grant this motion, and make additional funds immediately available to the defendants NDOC inmate legal account, for ~~the~~ reason stated in this motion.

Dated on the 18th day of October 2009.

Respectfully Submitted,

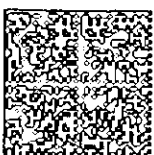
~~Fredy A. Martinez~~

Fredy A. Martinez #1003276

Fredy. A. Martinez #1003276
LoveLock. CORR. CTR.
1200 PRISON Road
LoveLock, NV 89419

INMATE LEGAL
MAIL CONFIDENTIAL

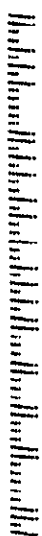
EDWARD A. FRIEDLAND, Clerk of the Court
200 LEWIS AVENUE, 3RD Floor
Las Vegas, NV 89155-1160



UNITED STATES POSTAGE
FITNEY BOWES
02 1M \$00.440
0004215355 OCT 21 2009
MAILED FROM ZIP CODE 89419

LEGAL MAIL

8915534500 0000



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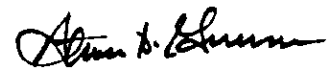
OCT 21 2009

Lovelock Correctional Center

76

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11/03/2009 06:35:01 AM



CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
MICHAEL WATSON
Deputy District Attorney
Nevada Bar #009219
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

FREDDYS A. MARTINEZ,
#1003276
Defendant.

CASE NO: C226586X

DEPT NO: XIV

**OPPOSITION TO DEFENDANT'S MOTION TO MAKE ADDITIONAL FUNDS
AVAILABLE FOR NDOC INMATES [sic] LEGAL ACCOUNT**

DATE OF HEARING: NOVEMBER 9, 2009
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through Michael Watson, Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion to Make Additional Funds Available for NDOC Inmates [sic] Legal Account.

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

///

///

///

1 POINTS AND AUTHORITIES

2 NRS 209.246 allows deductions from a prisoner's individual account for postage,
3 photocopying, and legal supplies related to legal documents and litigation. NRS 209.246 (3)
4 (2009). NRS 209.221 allows for the establishment of the Offenders' Store Fund, which
5 under subsection 5, requires that money be transferred from the Offender's Store Fund to
6 cover costs under NRS 209.246 if an offender has insufficient funds in his individual
7 account, and that funds will be transferred back to the Offenders' Store Fund once funds are
8 available in the offender's individual account. NRS 209.221 (5) (2009).

9 NRS 209.221 (8) sets out the process in which a prisoner must follow to establish that
10 he has insufficient funds in his individual account.

11 8. If an offender has insufficient money in his individual account in the
12 Prisoner's Personal Property Fund to repay or defray costs assessed to the
13 offender pursuant to NRS 209.246, the offender shall sign a statement
under penalty of perjury concerning his financial situation. Such a
statement must include, but is not limited to, the following information:

- 14 (a) The value of any interest the offender has in real estate;
15 (b) The value of the personal property of the offender;
16 (c) The assets in any bank account of the offender; and
17 (d) The employment status of the offender.

18 NRS 209.221 (8) (2009).

19 The defendant is requesting the Court order additional funds be added to his personal
20 property fund account, but had not followed the proper process in such a request. The
21 process as required in NRS 209.221 does not require a defendant to go through the Court for
22 a remedy.

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 The defendant has provided no grounds to support this motion or to bypass the
2 requirements laid out in NRS 209.221, therefore the motion should be denied.

3 DATED this 2nd day of November, 2009.

4 Respectfully submitted,

5 DAVID ROGER
6 Clark County District Attorney
7 Nevada Bar #002781

8
9 BY /s/ MICHAEL WATSON

10 Michael Watson
11 Deputy District Attorney
12 Nevada Bar #009219

13
14 **CERTIFICATE OF MAILING**

15 I hereby certify that service of the above and foregoing, was made this 2nd day of
16 November, 2009, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

17
18 FREDDY MARTINEZ #1003276
19 LOVELOCK CORRECTIONAL CENTER
20 1200 PRISON RD
21 LOVELOCK, NV 89419

22 M. Gregory
23 Secretary for the District Attorney's
24 Office

25
26
27
28 WATSM/mg

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ALEXANDER CHEN
Deputy District Attorney
Nevada Bar #010539
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

JAN 06 2010

John J. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

FREDDY A. MARTINEZ,
#1361243
Defendant.

Case No. C226586
Dept No. XIV

ORDER DENYING DEFENDANT'S MOTION TO MAKE ADDITIONAL FUNDS
AVAILABLE FOR NDOC INMATES [SIC] LEGAL ACCOUNT

DATE OF HEARING: 11/09/2009

TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
9th day of November, 2009, the Defendant not being present, IN PROPER PERSON, the
Plaintiff being represented by DAVID ROGER, District Attorney, through ALEXANDER
CHEN, Deputy District Attorney, and the Court having heard the arguments of counsel and
good cause appearing therefor,

///

///

///

///

RECEIVED

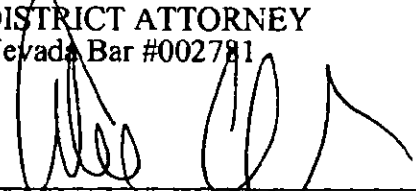
JAN 06 2010

CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion to Make Additional Funds
2 Available for NDOC Inmates [sic] Legal Account, shall be, and it is DENIED.

3 DATED this 29 day of December, 2009.

4
5 
6 DISTRICT JUDGE *ag*

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781
11 

12 ALEXANDER CHEN
13 Deputy District Attorney
14 Nevada Bar #010539
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Case No. C226586
Dept. No. XIV

FILED
APR 02 2010
John J. Sullivan
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * * *

FREDYS A. MARTINEZ [#] 003276)
Petitioner,)
-vs-)
STATE OF NEVADA)
Respondent.)

4/14/10

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW Petitioner, FREDYS A. MARTINEZ, in pro se,
and moves the Court for an order appointing counsel in the
instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers,
pleadings and documents on file herein; and the points and
authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. See Application to
Proceed In Forma Pauperis on file herein.

The substantive issues and procedural requirements of this
case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate,
take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: SEE ATTACHED.

23
CW

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APR 02 2010
CLERK OF THE COURT

1 There ✓ are are not additional facts in support of
2 this motion attached hereto on separate page(s).

3 Counsel would assist Petitioner with a clearer presentation
4 of his issues before this Court and would likewise facilitate
5 and ease this Court's task of discerning the issues and
6 adjudicating same upon their merits.

7 Discretion lies with the Court to appoint counsel under NRS
8 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254
9 (1997). The Court is to consider: (1) the complexity of the
10 issues; (2) whether Petitioner comprehends the issues; (3)
11 whether counsel is necessary to conduct discovery; and (4) the
12 severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

13 Under similar discretionary standards, Federal courts are
14 encouraged to appoint counsel when the interests of justice so
15 require - a showing which increases proportionately with the
16 increased complexities of the case and the penalties involved in
17 the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.
18 1986). Attorneys should be appointed for indigent petitioners
19 who cannot "adequately present their own cases." Jeffers v.
20 Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

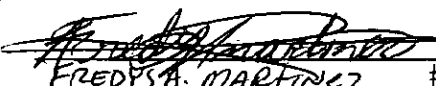
21 Although Petitioner need meet but one (1) of the enumerated
22 criteria of NRS 34.750 in order to merit appointment of counsel,
23 he meets all of them. He also presents a classic example of one
24 meriting counsel under the interest of justice test bespoken by
25 the Ninth Circuit. Indeed, Petitioner's sentence, coupled with
26 the other factors set forth above, demonstrate that appointment
27 of counsel to him would not only satisfy justice, but
28 fundamental fairness, as well.

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CONCLUSION

For the reasons set forth above, the Court should appoint
counsel to represent Petitioner in and for all further
proceedings in this habeas corpus action.

Dated this 19 day of MARCH, 2010.

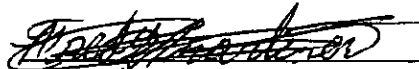

FREDY A. MARTINEZ #003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the
foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address
on this 19 day of MARCH, 2010, by placing same
in the U.S. Mail via prison law library staff:

Attorney For Respondent

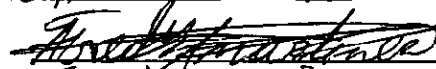

FREDY A. MARTINEZ

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
MOTION FOR APPOINTMENT OF COUNSEL DOES not contain the social
security number of any person.

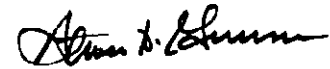
Dated this 19 day of MARCH, 2010.


FREDY A. MARTINEZ

Petitioner In Pro Se

79

E-FILE LITE
ORIGINAL


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **JAMES R. SWEETIN**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #005144**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

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

10 **THE STATE OF NEVADA,**
11 **Plaintiff,**
12 **-vs-**
13 **FREDYS A. MARTINEZ,**
14 **#1361243**
15 **Defendant.**

CASE NO: C226586
DEPT NO: XIV

16 **STATE'S OPPOSITION TO DEFENDANT'S MOTION**
17 **FOR APPOINTMENT OF COUNSEL**

18 **DATE OF HEARING: APRIL 14, 2010**
19 **TIME OF HEARING: 9:00 AM**

20 **COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through**
21 **JAMES R. SWEET, Chief Deputy District Attorney, and hereby submits the attached Points**
22 **and Authorities in Opposition to Defendant's Motion for Appointment of Counsel.**

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

26 **//**

27 **//**

28 **//**

1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary while in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Batter
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counse on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to ONE
14 HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 Defendant filed the instant motion on April 2, 2010. The State's opposition is as
23 follows.

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ARGUMENT

I. DEFENDANT IS NOT ENTITLED TO APPOINTMENT OF AN ATTORNEY.

Defendant is not entitled to appointment of an attorney. In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel provision as being coextensive with the Sixth Amendment to the United States Constitution.”

NRS 34.750 provides, in pertinent part:

“[a] petition may allege that the Defendant is unable to pay the costs of the proceedings or employ counsel. If the court is satisfied that the allegation of indigency is true and the petition *is not dismissed summarily*, the court may appoint counsel at the time the court orders the filing of an answer and a return. In making its determination, the court may consider whether:

- (a) The issues are difficult;
- (b) The Defendant is unable to comprehend the proceedings; or
- (c) Counsel is necessary to proceed with discovery.”

(emphasis added).

Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a) [entitling appointed counsel when petition is under a sentence of death], one does not have “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings. Id. at 164.

The Nevada Supreme Court has observed that a defendant “must show that the requested review is not frivolous before he may have an attorney appointed.” Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS 177.345(2)). Defendant cannot make the threshold showing that any petition he might file will not be summarily dismissed as time barred. Therefore, his request for appointment of counsel should be denied.

1 CONCLUSION

2 Based on the foregoing arguments, the State respectfully requests that Defendant's
3 motion be denied.

4 DATED this 9th day of April, 2010.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9 BY /s/ JAMES R. SWEETIN
10 JAMES R. SWEETIN
11 Chief Deputy District Attorney
12 Nevada Bar #005144
13
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17
18

19 CERTIFICATE OF MAILING

20 I hereby certify that service of the above and foregoing, was made this 9th day of
21 April, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

22 FREDYS MARTINEZ, BAC#1003276
23 LOVELOCK CORRECTIONAL CENTER
24 1200 PRISON ROAD
25 LOVELOCK, NV 89149

26 /s/ HOWARD CONRAD
27 Secretary for the District Attorney's Office
28

hjc/SVU

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Live to file.

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FREDYS MARTINEZ # 1003276
1200 PRISON RD
LOVELOCK NV 89419

FILED

APR 21 2010

Pro se

CLERK OF COURT

Petitioner

v.

C 220586

State of Nevada "et al"

Respondent

Dept. # XIV

In Clark County D.C.
Nevada.

5/5/10

A Motion to Vacate A. J.O.C.

The defd was convicted by trial to, N.R.S. 205.060-200.481-N.R.S. 193.165-200.310-200.320. and in good cause appearing, (because he was not found guilty at trial to count 4), but sentenced to life" he is pleading he should have been acquitted of all counts of the verdict should of been "Unanimous" cause and prejudice a, Fundamental Miscarriage of Justice. Citing, Schlup V. Delo 513 U.S. 298, 326., 115 S.Ct. 851, 130 L. Ed. 2d 808 (1995) reasonable doubt and a colorable claim of actual innocence of a crime he did not committed as

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CLERK OF THE COURT

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1 sentence by the honorable Judge
2 Stewart L. Bell, on May the 24,
3 of 2007, *Kitzelman v. Rautzahn* 68
4 Nev 342., Represented by the,
5 O.P.D. 309 So. 3rd St 2nd fl, L.V.
6 N.V. Case No. 06F15924X, and,
7 Affirmed
8 on direct appeal, Doc. No. 49608.

9 The omitted claims have merit
10 and are procedurally default due to
11 lack of communication. See *Kitchen v.*
12 U.S. 227 F 3d 1014 (7th Cir. 2000) a
13 significant and obvious issue is
14 the petitioner is from the country
15 of Honduras Central America, no or
very little english.

He now contends the translation of
statements where boched leading to
incompetent or misleading evidence
See *Baltazar-Monterrosa v. State* 137
P. 3d 1141, (Nev. 2006).

He now also contends he did not
get a fair trial because his state-
ments to the jury where not interpreted
a denial of due process, See *Caballero*
v. Seventh Judicial Dist. Court ex rel.
County of White Pine, 167 P. 3d 419-420, (Nev.
2007). ~~Amended Petition~~ 4-8-2010 See next page.

ff

PROPER PERSON SETTINGS

CASE #C226586

DEPARTMENT:14

DEFENDANT:FREDYS A MARTINEZ # 1003276

DATE FILED:April 2, 2010

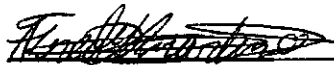
MATTERS TO BE HEARD:MOTION FOR APPOINTMENT OF COUNSEL.

HEARING DATE: 4/14/2010

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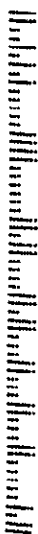
- ☒ **DISTRICT ATTORNEY**
- ☐ **PUBLIC DEFENDER**
- ☒ **PROPER PERSON**
- ☐ **ATTORNEY GENERAL**
- ☐ **ATTORNEY OF RECORD**



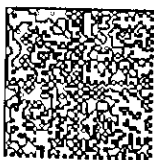
Fredy A. Martinez #1003276.
LoveLock, CORR, CTR.
1200 PRISON Road.
LoveLock, NV 89419-5110.

INMATE LEGAL
MAIL CONFIDENTIAL

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CHARLES J. SHORT, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160



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Lovelock Correctional Center

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APR 22 2010

leave to file
CLERK OF COURT

Fredys A. Martinez, Pro se

Respondent

ID No. 1003276

V

C-220586

State of Nevada

Dept 14

Appellee

Notice of Appeal

The matter came on before the
8th J.D.C. in and for the county of
Clark in the above name case Motion
for Appointment of Counsel denied,
the 9th day of April of 2010. In good
faith, see *Ellis v. U.S.* 78 S.Ct 974 (1958),
Citing, *Caballero v. J.D.C.* 167 P.3d
415-123 Nev 316, (Nev. 2007).

DATE: 4.19.2010

28 U.S.C. § 1746.

L.C.C.

1200 Prison Rd.

Lovelock, NV

8949

[Signature]

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CLERK OF THE COURT

Fredys. A. Martinez #1003276
LoveLock, CORR. CTR.
1200 Prison Road
LoveLock, NV89419.

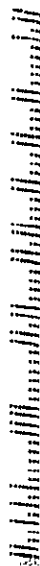


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STEVEN D. GRIERSON, Clerk of the Court.
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160.

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Louisiana Correctional Center

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CLERK OF COURT

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4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

) Case No: C226586

) Dept No: XIV

9 vs.)

10 FREDYS A. MARTINEZ,)

11 Defendant(s),)

12
13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): FREDYS A. MARTINEZ

16 2. Judge: DONALD M. MOSLEY

17 3. Appellant(s): FREDYS A. MARTINEZ

18 Counsel:

19 Fredys A. Martinez #1003276
20 1200 Prison Rd.
21 Lovelock, NV 89419

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Misc. Order

6 11. Previous Appeal: Yes

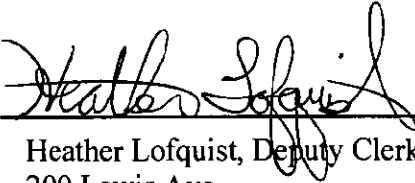
7 Supreme Court Docket Number(s): 49608

8 12. Child Custody or Visitation: N/A

9
10 Dated This 23 day of April 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Lofquist, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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1 **ORDR**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 THOMAS M. CARROLL
6 Chief Deputy District Attorney
7 Nevada Bar #004232
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

FILED

APR 24 9 08 AM '10

Ann L. Loring
CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka,
14 Fredys A. Martinez, #1361243

15 Defendant.

Case No. C226586
Dept No. XIV

17 ORDER DENYING DEFENDANT'S PRO PER MOTION FOR APPORINTMENT OF
18 COUNSEL

19 DATE OF HEARING: April 14, 2010
20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court on the
22 14th day of April, 2010, the Defendant not being present, represented in proper person, the
23 Plaintiff being represented by DAVID ROGER, District Attorney, through THOMAS M.
24 CARROLL, Chief Deputy District Attorney, and the Court having heard the arguments of
25 counsel and good cause appearing therefor,

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CLERK OF THE COURT

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1 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Counsel,
2 shall be, and it is DENIED.

APR 22 2010

3 DATED this _____ day of April, 2010.

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DISTRICT JUDGE

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10 
11 THOMAS M. CARROLL
12 Chief Deputy District Attorney
13 Nevada Bar #004232
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Case No. C220580

Dept. No. 44 XIV

FILED

APR 30 2010

John J. [illegible]
CLERK OF COURT

IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF Clark

* * * * *

Fredy S. Martinez

Pro Se, Petitioner,

-vs-

JACK PALMER, "et al"

Respondent.

State of Nevada

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS: Atty. Gen. Catherine C. Masto.

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing

CLERK OF COURT

APR 30 2010

1 future petitions challenging your conviction and sentence.

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

10 (7) When the petition is fully completed, the original and
11 one copy must be filed with the clerk of the state district
12 court for the county in which you were convicted. One copy must
13 be mailed to the respondent, one copy to the Attorney General's
14 Office, and one copy to the district attorney of the county in
15 which you were convicted or to the original prosecutor if you
16 are challenging your original conviction or sentence. Copies
17 must conform in all particulars to the original submitted for
18 filing.

19 PETITION

20 1. Name of institution and county in which you are presently
21 imprisoned or where and how you are presently restrained of your
22 liberty: Lovelock Correctional Center, Pershing County, Nevada.

23 2. Name and location of court which entered the judgment of
24 conviction under attack: Clark County the honor-
25 able Judge, Stewart L. Bell

26 3. Date of judgment of conviction: May 30, 07

27 4. Case number: C-220586

28 5. (a) Length of sentence: life/with

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

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

Yes ☐ No ☒

If "yes," list crime, case number and sentence being
served at this time: Factually illegal, 930 P.2d
100.112 Nev. 1533 Pongolo V. State, (1996)

7. Nature of offense involved in conviction being challenged:
N.B.S. 205.060-200.451-193.165-200.300
N.B.S. 200.304-200.310 N.B.S. 200.320

8. What was your plea? (check one)

- 1
2 (a) Not guilty X
3 (b) Guilty _____
4 (c) Guilty but mentally ill _____
5 (d) Nolo contendere _____

6 9. If you entered a plea of guilty or guilty but mentally ill
7 to one count of an indictment or information, and a plea of not
8 guilty to another count of an indictment or information, or if a
9 plea of guilty or guilty but mentally ill was negotiated, give
details: there was no examination. See Porter v.

Horn 276 F. Supp. 2d 278, (E.D.Pa. 2003).

10 10. If you were found guilty or guilty but mentally ill after
11 a plea of not guilty, was the finding made by: (check one)

- 12 (a) Jury X (b) Judge without a jury _____

13 11. Did you testify at the trial? Yes _____ No X

14 12. Did you appeal from the judgment of conviction?
15 Yes X No _____

16 13. If you did appeal, answer the following:

- 17 (a) Name of court: The State Supreme Court
18 (b) Case number or citation: 49608
19 (c) Result: 5-7-08
20 (d) Date of result: _____
(Attach copy of order or decision, if available.)

21 14. If you did not appeal, explain briefly why you did not:

N/A

22 15. Other than a direct appeal from the judgment of conviction
23 and sentence, have you previously filed any petitions,
24 applications or motions with respect to this judgment in any
25 court, state or federal? Yes X No _____

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

28 (a) (1) Name of court: Clark County

(2) Nature of proceeding: Motion to Vacate
A.J.O.C. not filed.

(3) Grounds raised: N/A

(4) Did you receive an evidentiary hearing on your
petition, application or motion? Yes _____ No X

Yes ___ No X

If yes, state what court and the case number: N/A

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

P.D.O. Mr Philip J Khon.

Co. Mrs Kathleen M Hamers

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

Yes ___ No X

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

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

(a) Ground one: The right to A Fair Trial.

U.S.C.A. Const Amend 6th & 14th.

Supporting FACTS (Tell your story briefly ~~without~~ citing cases or law.): The Judge did not have

an interpreter, A denial of due process
rendering the proceedings fundamentally
unfair, he was prejudice he cause he
could not communicate with jury, see

Laballero V. Seventh J.D.C., 107 P.3d 415,
123 Nev. 310 (Nev. 2007).

(b) Ground two: Miranda Rights.

U.S.C.A. Const Amend, 5th.

Supporting FACTS (Tell your story briefly ~~without~~ citing cases or law.): Upon his arrest he did not

understand way or could not have been
advised of the proceeding, Miranda or,
clearly advised, see Suarez V. Superior
Court Ca. 283 Fed. Appx. 470 (9th Cir 2008).

1 exhaustion requirement, procedurally default
2 N.R.S. 34.810, N.R.S. 34.720, (1)(a)(b).

3 (c) Ground three: A Fundamental Miscarriage
4 of Justice, Cause and Prejudice.

5 Supporting FACTS (Tell your story briefly without
6 citing cases or law.): found not guilty as to
7 count 4 raises the bar to counsel, and a
8 dequate procedure, he should have been
9 acquitted on all counts. See Porter V. Horn
10 276 F. Supp 278-291-294-296-297, (E.D. Pa.
11 2003). Coleman V. Thompson, 501 U.S. 722-750.

12 (d) Ground four: A Catch All Claim, Ineffective
13 Appeal Counsel omitted Trial Counsel Claim.

14 Supporting FACTS (Tell your story briefly without
15 citing cases or law.): he was prejudiced due to
16 communication and multiple representation
17 See Cyler V. Sullivan 100 S.Ct 1708, the 6th
18 Amend. entitles effective assistance
19 Hudson V. Hunt 235 F.3d 892 (2000),
20 E.V. H. V. Lucey 105 S.Ct. 830 (1985),
Kitchen V. US 277 F.3d 1014 (2000),
F.R.C.I.V.P. 8(a). Respectfully.

21 WHEREFORE, petitioner prays that the court grant petitioner
22 relief to which he may be entitled in this proceeding.

23 EXECUTED at Lovelock Correctional Center on the 27 day of
24 the month of April of the year 20__.

25 *[Signature]* #
1003276
26 Lovelock Correctional Center
1200 Prison Road
27 Lovelock, Nevada 89419

28 Petitioner In Pro Se

VERIFICATION

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

[Signature]

#

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, Fredys A. Martinez, hereby certify, pursuant to N.R.C.P. 5(b), that on this 29 day of the month of April of the year 2010, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Jack Palmer, Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada

Catherine Cortez Masto
Nevada Attorney General
100 No. Carson Street
Carson City, Nevada 89701-4717

David Roger
Clark County District Attorney
200 Lewis Ave

L.V., Nevada 89155

(District Attorney of County of Conviction)

[Signature]
1003236

#

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

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Fredys-A. Martinez #1003276.
Love Lock, CORR, CTR.
1200 Prison Road
Love Lock, NV 89419-

PPOW

**DISTRICT COURT
CLARK COUNTY, NEVADA**

FILED
MAY 11 2010
Shirley L. Hines
CLERK OF COURT

FREDYS MARTINEZ,

Petitioner,

vs.

STATE OF NEVADA,
Respondent,

Case No: C226586

Dept No: 14

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on April 30, 2010. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent shall, within 45 days after the date of this Order, answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS 34.360 to 34.830, inclusive.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 14th day of July, 2010, at the hour of

9 o'clock for further proceedings.

Jury Trial
JOC

Direct Appeal
Remittitur
WNC Filed
Untimely

5-31-07

6-6-08

4-30-10

Donald L. Hines
District Court Judge

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0014

Fredys Martinez

Pro Se

L.C.C. Doc. 1003270

1200 Prison Rd

LoveLock NV 89419

FILED

MAY 13 2010

John H. [Signature]
CLERK OF COURT

In the 87th J.D.C. In and for
The County of Clark

5/20/10

Fredys Martinez

N.R.S. 34.770. (3).

Petitioner

v.

C-22-0586

State of Nevada

Dept. 14

Motion for An Evidentiary Hearing

Come's Now we request the

honorable court to produce the

prisoner, above name to determine

the legality of restraint, 50 P.3d

092, 118 Nev. 500, Gebers v. State,

(Nev. 2002). and,

MC1

26

CLERK OF THE COURT

MAY 13 2010

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1 in good cause appearing, David
2 Roger, D.A., by and through Chief
3 Thomas J. Moreo, D.D.A., and the
4 court to consider the matter upon
5 his trial counsel, appellate records
6 and counsel, trial, briefs, transcript
7 , arguments by Atty Gen, state
8 opp's with any opinion here in.

9 As additionally, pleading on the
10 merits, a defd has a constitutional
11 right to witnesses, See U.S.N. Oliver,
12 908 F.2d 260, 262 (8th Cir. 1990). The
13 6th amendment clearly includes
14 conflict free representation, See
15

1 Guyler v. Sullivan, 446 U.S. 335,

2 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980).

3 he claims he did not waive his

4 right to testify and by doing so

5 he was prejudiced, in so far as the

6 outcome of the proceeding would

7 have been different, ~~see~~ U.S. v. Gomez

8 908 F.2d 497-500 (9th Cir.).

9 Closing Argument

10 He held a right to a jury instruct

11 -ion on his theory of innocence, *Id.*,

12 U.S. v. Ravel, 930 F.2d 721-726 (9th

13 Cir.) is based on requested relief as

14 may be granted, F.R.Civ.P. 8 (a).

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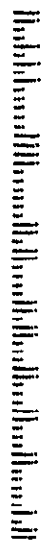
Fredys. A. Martinez #1003276
Love Lock, CORR, CTR
1200 Prison Road
Love Lock, NV 89419-5110



STEVEN D. GRIERSON
CLERK OF THE COURT
200 LEWIS AVENUE 3RD FLOOR
Las Vegas, NV 89155-1160

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MAIL CONFIDENTIAL
LEGAL MAIL

8910136300



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Lowndes Correctional Center

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CLERK COURT

1 ORDR

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 CARRIE A. MORTON
6 Deputy District Attorney
7 Nevada Bar #0010160
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,

13 Plaintiff,

14 -vs-

15 FREDDY MARTINEZ, aka
16 Fredys A. Martinez,
17 #1361243

18 Defendant.

Case No. C226586
Dept No. XIV

19 ORDER DENYING DEFENDANT'S PRO PER MOTION TO VACATE A J.O.C.

20 DATE OF HEARING: 5/5/10
21 TIME OF HEARING: 9:00 A.M.

22 THIS MATTER having come on for hearing before the above entitled Court on the
23 5th day of May, 2010, the Defendant not being present, IN PROPER PERSON, the Plaintiff
24 being represented by DAVID ROGER, District Attorney, through CARRIE A. MORTON,
25 Deputy District Attorney, and the Court having heard the arguments of counsel and good
26 cause appearing therefor,

27 ///

28 ///

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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion to Vacate a J.O.C.,
2 shall be, and it is denied.

3 DATED this 18th day of May, 2010.

4
5 
6 DISTRICT JUDGE 8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
10 Nevada Bar #002781

11 
12 CARRIE A. MORTON
13 Deputy District Attorney
14 Nevada Bar #0010160
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Allen L. Schuman

CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **THOMAS M. CARROLL**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004232**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDYS A. MARTINEZ,
#1361243

Defendant.

CASE NO: C226586

DEPT NO: XIV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR EVIDENTIARY
HEARING**

DATE OF HEARING: 05/26/2010
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Opposition to Defendant's Motion for Evidentiary Hearing.

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

...

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary while in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Battery
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counsel on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to
14 ONE HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 On April 2, 2010, Defendant filed a motion for appointment of counsel. The State's
23 opposition was filed on April 9, 2010. Defendant's motion was denied on April 14, 2010,
24 and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal on
25 April 22, 2010.

26 Defendant filed a Motion to Vacate his Judgment of Conviction on April 21, 2010.
27 The court denied Defendant's motion without requiring a response from the State on May 5,
28 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but such a

1 petition would be time barred now anyway as Remittitur issued in his case in 2008.
2 Defendant subsequently filed a Petition for Writ of Habeas Corpus (Post-Conviction) on
3 April 30, 2010.

4 Defendant filed the instant motion on May 13, 2010. The State's opposition is as
5 follows.

6 **ARGUMENT**

7 **I. DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING**

8 Defendant appears to be requesting an evidentiary hearing for his petition, which is
9 scheduled to be heard on July 14, 2010. Defendant's Motion, May 13, 2010. Defendant's
10 petition can be resolved without expanding the record as his petition is procedurally barred.
11 Therefore, there is no need to hold an evidentiary hearing. Marshall v. State, 110 Nev. 1328,
12 885 P.2d 603 (1994). Defendant's request should be denied.

13 **CONCLUSION**

14 Based on the foregoing arguments, the State respectfully requests that Defendant's
15 motion be denied.

16 DATED this 21st day of May, 2010.

17 Respectfully submitted,

18 DAVID ROGER
19 Clark County District Attorney
Nevada Bar #002781

20
21
22 BY /s/ THOMAS M. CARROLL
23 THOMAS M. CARROLL
24 Chief Deputy District Attorney
25 Nevada Bar #004232
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CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 21st day of May, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

FREDDY MARTINEZ #1003276
LOVELOCK CORRECTIONAL CENTER
1200 PRISON RD
LOVELOCK, NV 89419

M. Gregory

Secretary for the District Attorney's
Office

90

FILED

MAY 24 2010

56

1 Fredys Martinez
2 Respondent

Christina
CLERK OF COURT

ID No. 1003276

C 226586

V.

3 State of Nevada
4 Defendant

Dept. 14.

5 In the 8th J.D.C. In And
6 the County of Clark

7 Answer and Response, N.B.S. 34.360,
8 N.B.S. 34.830, and in good cause, see
9 Strickland standard, of review, the
10 right to a reasonable trial defense, 466
11 U.S. 668, 80 L Ed 2d 674, 104 S Ct 2052,
12 (1984), may not be overlooked, U.S. C.A.
13 Const Amend, 6th.

14 Motion for An Evidentiary
15 Hearing

16 Come's Now Judge, D.M. Mosley
17 should make the determination on
18 the merits, grounds, authorities in
19 support of his pleading, Id, Geber's V.
20 State 50 P 3d 1096, (Nov. 2002), N.B.S.
21 34.770 (1)(2)(3).

28 U.S.C. 1746

Handwritten signature

5.17.2010

5.17.2010

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MAY 21 2010

CLERK OF THE COURT

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SOME PAGES IN THIS DOCUMENT ARE LIGHT OR UNREADABLE
IN ORIGINAL FORM AND HAVE BEEN DARKENED AS MUCH AS POSSIBLE.

THE IMAGES THAT FOLLOW ARE THE BEST POSSIBLE

To: The Heavy Court: 5.17.2010

From: Fred, A. Martinez #1003276

DATE: 3.15.2010

To my lawyer: Mr. William A. Bissett

Concerning my appeal at the Supreme Court.

I received your letter you had send me

dated 26th 2010. I will be sending you
the papers concerning my case.

The last letter that I've received from you
before this one was in 05-23-02 in the
court of law there. I've been waiting
for a letter to you about my situation
with B. and that about all the cases
that they had made. Very many rights
that I was given. The court VV
had seen and I was not allowed to
see them. They were never sent to me. I was
from the court to the court.

I am going to the court to see the
court. I will be sending you the calls
to my lawyer 2007 in which I was
given the court and my case in the
Supreme Court.

I am going to the court to see the
court. I will be sending you the calls
to my lawyer 2007 in which I was
given the court and my case in the
Supreme Court.

DATE: 3.15.2010

Mr. Kedric: My Lawyer Ms. Kathleen M. H. had sended you a letter because you had never answer me any of my letters. In her letter Ms. Kathleen was asking you for copies of my direct appeal.

But you'd never sended any papers to her if you been taking about a press of appeal in my future courts.

Thanks Federal Courts.

~~Handwritten signature~~

To: The Heavy Court: 5.17.2010

1.30.2010

Fredy A. Martinez #1003276

Esta carta ha dirigido a la Jébis Cort.
par que el esta de Nevada.

me esta cobrando un secuestro con arma
mortal, emprimen grado, Robo con arma
mortal, y Pleito con arma mortal.
emprimen lugar.

La primera persona que llamo la policía de
Las Vegas, que fue X Jose, Kiros, Castillo, el
visigiera miro que cosa era la que llo llevaba
en mis manos, la segunda persona que disen
que me se cuestre hi ella sabe que llo tenia
en mis manos ella era mi ~~muje~~ mi mujer
por que tenia relaciones sexuales con ella por-
mas de dieciseis años ella dise que no sabe con que
letras que la pierda para mi podria ser que se
lastimo por ir peliando con mi go par que me que-
ria acer chocar que llo tubia un accidente y
asi poder me robar todas mis bienes materiales
que llo tenia a nombre de ella la traia los dos
Catos Ford el del dos mil tres y el clasico
del mil 1.974. o del 78. y del oro y la plata
embestigen en las casas de empeño si el año
2006 ella empeño mi oro y tambien la tele con
el sistema que esta mba mas pagando en la agencia
Ray y delas go calles Boka nsa, y, Ester todo esto ella
la planio por que ella Bianca Capm. H. sabia que llo yba
para mi taba jo a, mes kite en Nevada gracias

ellos les vendian siempre.

Fredy A. Martinez #1003276

This letter is addressed to: The Heavy Court;
Because the state of Nevada is charging
me, of kidnapping with a lethal weapon
in first degree, armed robbery, and fight
with a deadly weapon.

First of all: the first person that called
the police of Las Vegas was: José Quiroz
Castillo, but he'd never saw what I had
on my hands. The second person that
they said I've kidnapped doesn't even
know what I had on my hand.

She was my wife. Because I had sexual
relations with her for more than sixteen
years. She said that she doesn't know
what it was that I'd used to scratch her leg.
In my opinion it could be possible that she'd
scratched her self when she was fighting
with me, because she was trying to make me
crash, to make me have an accident so she
can keep all my personal property. (Materials)
things that I had under her name:
like the trailer, the two Ford Cars, the
one from 2003 model, and the classic model
1974 or 78, and all the gold and silver.

~~Fredy Martinez~~ 5.17.2010

Investigate in the pawn shop during the year 2006, to see if she'd pawned my gold, and the T.V. with the surround system that we were paying at the agency, on the streets of Bonanza and Easter.

All this she had planned because she; Bianca M. H. Knew that I was going to my work (Job) in Mesquit NV. Thanks.

~~Handwritten signature~~ 6.17.2010

1.30.2010.

Fredys A. Martinez #1003276

Esta carta la diñida ala corte pesada, veris cort
el motivo de esta carta es porque des de el día
de mi arresto a biolado mis derechos sibilés y
umanos y en el juiso el juez no permito
que el Jurado es cu Chako mide claración
en donde el dectective Chabes me esta
Forsando a que me aga culpable de un
crimen que no ise también de quella ybaa
matar a Bianca eso es una gran mentira
porque llo puse mi bida ^{por ella} en infinidades de beses
incluso despues de la operasion que le isieron
en el cerebro ella pierde la memoria cuando
y le dan ataques de estetica bella toma
medisina de por vida tres beses al día lloles-
pido de que pidan el reporte medico de Bianca
M.H. en el G.M.C. y todas las llamadas delas
personas quella maran ala policía delas vegas
de nevada y de mes kite y el bide del día
de mi arresto y el reporte delos policías o de
los dectectives que le quitaron las llaves a
Bianca para tomarle fotos ala cajueta del
Corto el reporte de la de claración de mis
compañeros de trabajo y de mi patren, toni, y del
seper del tta que ellos no quèeren gastar
tiempo ni dinero en las embestigaciones conmigo
por que soi ispano icren que no tengo papeles llo
tengo asilo Político Por Favor allu den me orasias

Dios les bendiga en todo.

This letter it is addressed to the Heavy Court, and the reason for this letter is because since the first day of my arrest, my civil rights had been violated.

And during the trial the judge never allowed the jury to hear my declaration. About when the detective Chavez, is forcing me to declare my self guilty of a crime I've never did, and also about me trying to kill Bianca. Thats a big lie. Because I had put my life for her in many times. Even after the surgery she had done on her head (brain).

Because she loses her memory when she gets hysteria attacks, for this matter she has to take medicine for life, three times a day.

Now I please ask you to get Bianca's Medical report in the G. M. C. hospital.

And all the records from all the calls people made when they called the police of Las Vegas, NV. and from Mesquit as well, and the video from the day of my arrest, and the police report, and the detective's report, who take the car keys from Bianca, to take pictures of the car's trunk.

And also a copy of the declaration of my co-workers, and from my boss, Toni, the trailer park supervisor.

They don't want to spend money neither money on the investigations about me. Because I'm Hispanic and they think that I don't have papers.

But I do have Political Asylum.

Help me. Thank's.

~~Fredys H. Martinez~~ 5.17.2010

parte #2

To: The Heavy Court: 5.17.2010

4

1.30.2010

A KEDRIC yo le emando cartas por todo el año, 2009, y el nunca contestó una carta mía. También lle mande a ppe una orden de restricción de por vida en contra de estas personas la carta la ise notorizada para el aboga de mi apelación en la suprema corte para que el KEDRIC, Bassett, para que el la actibara en contra de Bianca, Marina, Herminio Hernandez, y de, Franklin, M.H. y de su hijo, y de, Jose, Kiro, Castillo, esta orde de restricción es de por vida en los estados unidos, y en Canada o en cual quier país de extradición a los estados unidos por que ellos me han echo mucho daño a mi y solo vus can midinero ellos nosaben de mi asilo politico que tengo en los estados unidos por que nunca tenia una licencia de manejar conmigo lo todo lo ponía a nombre de Bianca por sí caía a la cárcel por mucho tiempo por los fikes de trafico lo quiero mucho a Bianca y a su hijo ellos eran la personas que mas quería en este mundo asta de mi propia familia me abia alejado por ellos lo yo no les guardo rencor ni odio pero no los quiero cerca de mi futura vida Dios que les vendiga en donde quiera que se encuentren lo les pido que embes tigen bien este caso y que los abogados que me axinen dia le gen conmigo y que mantengan mis cartas y las llamadas porque boia des pedir o, KEDRIC, Bassett, por no informarme

I'd asked for a restraining Order against this persons, for life, all this by means of a Notarized Letter. To my appeal lawyer, for his use in the supreme Court, Mr. Kedric Bassett. So he can use it against; Bianca Marina Hernandez and her son, Franklin Martinez and Jose Quiroz Castillo.

This Restraining Order, is for life, against them in the U.S.A, in Canada, or any country of extradition to the United States.

Because they had done a lot of damage to me, and they just want my money. they don't know about my Political Asylum that I have, in the U.S.A. Because I never had a driver licence, with me.

Everything I had I'd put under Bianca's name in case I go to jail for a long period of time, because of my traffic tickets.

I love Bianca and her son, they were the two persons that I'd loved the most in this world. I'd even got away from my own family. I don't have resentment neither hate for them, but I don't want them near my future life. God bless them anywhere they are.

I'm just asking you to investigate this case very well, and that the lawyers that are assign to me, have a dialogue with me, and to please answer my letters, and to answer my phone calls, because I'm going to terminate;

— Mr. Kedric Bassett, for not keep me inform.

~~Aineda Martinez~~ 5.17.2010

I don't have resentment neither hate for them. But I don't want them near my future life. God bless them any where they are.

I'm just asking you to investigate this case very well. And that the lawyers that are assign to me, to have a dialogue with me, and to please answer my letters, and to answer my phone calls, because I'm going to terminate;

Mr. Kedric Bassett, for not keep me inform.

~~Randy Harrison~~ 5.17.2010

parte #3

To: The Heavy Court: 5.17.2010

(5)

1.30.2010.

Yo a mi abogado de apelación de Juicio le estube mandando cartas todo el año 2009 pidiéndole información de como iba mi caso de apelación de Juicio en la Suprema Corte pero el nunca me contesto ninguna de esas cartas ni me manda los papeles de que resolvio en la Corte. Yo me sitaba en la Corte, si la negaron o si la repaso el tiempo para las siguientes apelaciones pero si así fuera lo le pido que me abra mi caso otra vez en la Corte Pesada, Javis Cort. lo les pido un abogado y un interprete porque yo no leo ni escribo ingles, y ni tengo dinero para copias legales, y ni para pagar traductor de mis cartas yo hice el proceso de la ley en los casos de ninguna clase lo les pido que me ayuden en mi siguiente paso de mi apelación de Juicio, abia pensado despedir ya a Kedric, Bassett, por no haberme mantenido informado respecto a la apelación de Juicio yo le estube mandando cartas legales y que las de medico contra medicos y contra la institución por violar mis derechos positivispanos tambien contra la de la libreria legal pero no puedo sacarle copias a esos otros papeles lo les mando unas copias de al guapas de estos papeles por que no puedo desaherme de los originales o de al gotras copias que tengo, gracias por su tiempo Dios les bendiga entodo y por todo Gracias.

Fredy, Arcangel, Martinez, 1972, nato marcos.

Part #3

5

During the whole year 2009 I was writing to my appeal lawyer asking for information about my case, and how things were going at the Supreme Court. But he'd never answer any of my letters neither send me any papers telling me what happened in Court. at this point I don't even know if I'm still on Court. if my appeal was denied, or if the time is over for my next appeals. If this is my situation. I please ask you to reopen my case once again. at the heavy Court.

I please ask you for a lawyer and a interpreter, because I can't read or write English, and I don't have any money to pay legal copies, neither to pay a translator of my letters, and I don't even know how the law works or the processes on any type of case. I'm asking you for help in the next step of my appeal.

I had ~~thinked~~ about terminating Mr: Kedric Bassett, for not keeping me inform on my appeal case.

I've been sending legal letters and medical complains against doctors and against the institution, for the violation of my rights for being Hispanic. ~~Andy Martinez~~ 5.17.2010

Also against the law library, but I can't make no copies of those papers.

I could send you copies of some of those copies. but I don't want to give the originals away, or some other copies that I have with me.

Thanks for your time, God bless you on everything, and for everything.

Thanks.

~~André Montenegro~~

5.17.2010

I'm asking to the Federal Authority, to please make all the investigations, that the authorities from the Nevada State never did.

So they can provide more information for my defence of this three charges.

Because after my trial, they had violated all my rights since the day of my arrest, and during my trial, and after the trial, and in the prisons.

The D.A. accused me of many things in my trial that I did not even know the victims were accusing me of.

Because everything that Bianca Marina H. Said, was all plan by her, so she could keep all my property, and my cars, my Gold Jewellery.

I was not beating her like the D.A. Said, Show me pictures of the bruises on Bianca's face, and the Bruises on her left hand, and also tell me where on the (Fwy 15) NORTH.

I had sex with my wife. I had sex with her in different places besides the house, and the car. I please ask you to analyse the first call, and the second call the van driver did ask him who was beating who. Because she was trying make me crash. So I had to stop near a trailer park so she could calm down, this was by the main entrance of the Trailer Park. After she had calmed down, we left and she used a deadly weapon against me.

~~Andre B. B. B. B. B.~~ 5.17.2010

parte #5

To: The Heavy Court: 5.17.2010

(7)

1.30-2010

antes de que llo y ella tubieramos xeso por que ella sabia de que todo las mentiras de ella abian llegado asu fin llo todas las beses que tenia xeso con ella le pedia per miso tambien esedia le pedi per miso sino me cree en lleven nos aun dected detector de mentiras a los dos llo no la se cuestre ella mellebo todas las cosas de la traila para este apartamento con el pretesto que iban a setar el parqueo delas trailas endonde viviamos y las pso al apartamento dela mamá de Jose, quiros, Castillo, que era su amiga y que ella la cuidaba en las noches por que estaba enferma esta señora del Corazon y como Bianca trabajaba cono enfermera de Familias desabilidades ella tambien medi jo que, Jose, era ~~Omosexual~~ Omosexual para que llo no le quitara la alluda del caro y las alajas y dela latele pantalla gigante con sistema y di vidi llo si empte he trabajado casi solo por chas ~~o~~ Como contrajista llose di ferentes clase de trabajo, llo pare ese dia antes de echargasolina en me apareserbasian india en el yunque para buscar un galon de gasolina esedia llo no tenia dinero sino que asta mesquite me abian gastado la gasolina que siempre llenabamos el tanque pero ese dia solo ~~tenia~~ tenia un cuarto de tanque des pues me pate con un hombre que trabajaba en las makinas para aser caretetas llo le pedi dinero a ella y ella medi jo que no tenia

Part #5

Before me and her (Bianca) had sex. Because she knew that all her lies had come to the end, everytime I had sex with her, I would ask for permission (Her).

And on that day I'd ask her for permission, and if you don't believe me, take us both to a lie detector.

I'd never kidnapped her. She took all my things from my trailer, to this apartment with the excuse that they were about to closed the trailer park, where we were living at. So she took my things to: Jose's Quiroz Castillo's Mom. She was her friend, a friend that she (Bianca) some times took care of at night time. Because she (her friend) was sick from heart disease.

And Because Bianca was working as a Nurse for disable families,

She (Bianca) also told me that Jose was homosexual. So I would not stop helping her, or take away, my car, and my gold Jewell, my neither the BIG SCREEN T.V. with the System and D.V.D.

Most of the time I used to work by myself, or as a contractor.

I know how to do different types of Jobs. On the way to Mesquite I've run out of gas, so I stopped on that day at Moapa Indian Reservation and went to the local Yonk Yard, to loof for a gas container. I did not have money with me and I asked her (Bianca) but she told me she did not have any. (she was with me)

parte #6

To: The Heavy Court: 5.17.2010

1:30.2010

dinero con ella pero ella dijo en el juicio que
sitena dinero con ella, ese día en la gasolinera
le pregunte que si me prestaba una de las pul-
seras de oro que lleve abia comprado para bendela
pero ella me dijo que no lleve, pete todas sus
decisiones, la Fiscal dice que le dije a Bianca
que nunca iba a bol ber a ber a su hijo Franklin
eso es mentira, por que si asi fuera lle
nunca le uviere da do las llaves del carro
eso es mentira de la Fiscal y de los
detectives y de, Bianca tal bes presionada
por los detectives y por los Fiscales que
les ofrecen dinero a ella lla lo isieron unaves
y no lo dudo que lo bol bieron a aser estabes
lle les pido todas las evidencias del dia de
mi caso que no aportaron a mi juicio de que
ustedes lo ~~exijan~~ ~~exijan~~ ~~exijan~~ video de mi
a esto reporte de quien te ~~nia~~ las llaves del
carro la de claracion de mis compañeros de
trabajo, la de claracion del supervisor de la
Contrusion, y el por que el juez, Bel, no perm-
itio que el Jurado es cuchara mi declaracion
con el detective Chabes en donde este
me esta asiendo presion diciendo que lo diga
que lo ise por que estaba enojado. y porque permitio
segr el juicio sin el tener su propio interprete
para interpretar mi declaracion al Jurado, y por que
no me diere un mis juicio en los cargos que quede.

On that day at the gas station I asked her if I could borrowed one of her bracelets that I bought her, so I could sell it. but she said no, and I'd respected her decision.

The D.A. said that I told Bianca,

That she was never gona be able to see her son Franklin again.

Thats a lie. Because if that would be truth I would not have give her the car keys.

That was a D.A's and detectives Lie, and Bianca's as well.

May be she was pressurized by the D.As and the detectives. the offered money to her. They already did it ones before and I have no doubt they did it again.

This time I'm asking for all the evidences that they did not provide on the day of my trial. Please ask for the video from the day of my arrest. a report about who had the car keys. My co-workers declaration. my supervisor's statement. Because the Judge Mr. Bell, did not permitted the Jury to heard my declaration abou detective Mr. Chavez, puting pressure on me, telling me to declare that I did it. Because I was mad.

8

Because I was mad.

And why he (the Judge) permitted the Jury to continued with out having his own interpetor. To interpetor my declaration to the Jury.

And why they did not give me the same Judgement in the charges.

~~And why they~~ 5.17.2010

Parte #4

To: The Heavy Court: 5.17.2010

#6

1.30-2010

Yo les pido a las autoridades federales que por favor que hagan todas las investigaciones que no hicieran las autoridades del estado de Nevada para aportarlas para que ello fuera defendido en estos tres cargos que que de des pues del juicio ellos amblado todos mis derechos desde el dia de mi arresto y en el juicio y des pues del juicio y en las prisiones.

La Fiscal me acusa de muchas cosas en el juicio que no me sabia de que me estaban acusando su puesta mente las victimas porque todo lo que Bianca Marina H. dijo todo fue echo planiado para que darse contoda mis cosas y cosas y ala las de ote, yo no le iba dando de golpes como dice la Fiscal que me enseñen los golpes marcados de la cara de Bianca y los morados de la mano izquierda y que me muestre en que parte del frigate el 15 Norte no tube sexo con mi mujer no tenia sexo con ella en diferentes parte aparte de la casa y del carro. No le pido que analisen la primera llamada, y la segunda llamada que iso un chofer de una veh de quien era que iba golpiando a quien porque ella era la que queria que no chocara y no me tube que parar cerca de un parqueo de trailas para que ella se calmara esta era la entrada principal de estas trailas y des pues que ella se tranquilizo nos fuimos y ella uso una deli una arma mortal en contra mia

Fredys. A. Martinez #1003276.
Love Lock, CORR, CTR.
1200 Prison Road.
Love Lock, NV 89419.

STEVEN D. GRIERSON, Clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS NV 89155-1160

Case No. C226586

Dept. No. XIV

FILED

JUN 3 3 53 PM '10

Steven D. Grierson
CLERK OF THE COURT

IN THE 8TH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

* * * * *

Fredys, Martinez, pro se

Plaintiff,

-vs-

NOTICE OF APPEAL

STATE OF NEVADA

Defendant.

NOTICE IS GIVEN that Plaintiff, Prisoner And
in pro se, hereby appeals to the Nevada Supreme Court the
Motion to Vacate A, I.O. C.
as filed/entered on the 21 day of April, 2010,
(complete if applicable) and the petitioner a
bove name, as filed/entered on the 21 day of
April, 2010, in the above-entitled Court.

Dated this 28 day of MAY, 2010.

Fredys A. Martinez
Fredys A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

RECEIVED

JUN - 1 2010

CLERK OF THE COURT

CLERK OF THE COURT

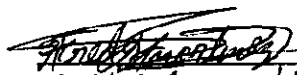
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JUN - 2 2010

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CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 21 day of April, 2010, by placing same in the U.S. Mail via prison law library staff:

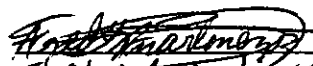

Fredy A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Plaintiff In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. C226586 does not contain the social security number of any person.

Dated this 28 day of MAY, 2010.


Fredy A. Martinez #1003276

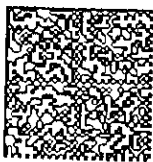
Plaintiff In Pro Se

Fredys, A. Martinez #1003276.
LOVELOCK, CORR. CTR.
1200 Prison Road.
LOVELOCK, NV 89419.

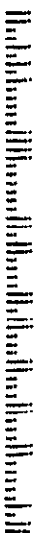
LEGAL MAIL

89410136300

STEVEN D. GRIERSON, clerk of the Court
200 LEWIS AVENUE, 3RD FLOOR
LAS VEGAS, NV 89155-1160



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Lowell Correctional Center

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John L. Johnson
CLERK OF COURT

ASTA .

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

FREDDY MARTINEZ aka Fredys A. Martinez,

Defendant(s),

) Case No: C226586

) Dept No: XIV

CASE APPEAL STATEMENT

1. Appellant(s): FREDYS A. MARTINEZ

2. Judge: DONALD M. MOSLEY

3. Appellant(s): FREDYS A. MARTINEZ

Counsel:

Fredys A. Martinez #1003276
1200 Prison Rd.
Lovelock, NV 89419

4. Respondent: THE STATE OF NEVADA

Counsel:

David Roger, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

5 Type of Judgment or Order Being Appealed: Misc. Order

6 11. Previous Appeal: Yes

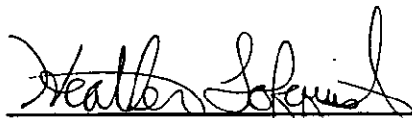
7 Supreme Court Docket Number(s): 49608, 55890

8 12. Child Custody or Visitation: N/A

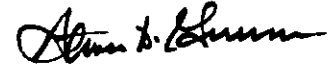
9
10 Dated This 4 day of June 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Heather Lofquist, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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CLERK OF THE COURT

1 **RSPN**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **THOMAS M. CARROLL**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #004232**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

9 **THE STATE OF NEVADA,**
10 **Plaintiff,**

11 **-vs-**

12 **FREDYS A. MARTINEZ,**
13 **#1361243**
14 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

15 **STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION**
16 **FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

17 **DATE OF HEARING: 07/14/2010**
18 **TIME OF HEARING: 9:00 AM**

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached
21 Points and Authorities in Reponse to Defendant's Petition for Writ of Habeas Corpus (Post-
22 Conviction).

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

26 ...

27 ...

28 ...

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary While in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Battery
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counsel on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to
14 ONE HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 On April 2, 2010, Defendant filed a motion for appointment of counsel. The State's
23 opposition was filed on April 9, 2010. Defendant's motion was denied on April 14, 2010,
24 and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal on
25 April 22, 2010.

26 Defendant filed a Motion to Vacate his Judgment of Conviction on April 21, 2010.
27 The court denied Defendant's motion without requiring a response from the State on May 5,
28 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but such a

1 petition would be time barred now anyway as Remittitur issued in his case in 2008.
2 Defendant subsequently filed a motion for an evidentiary hearing on May 13, 2010, the State
3 filed its opposition to the motion on May 21, 2010, and the motion was denied on May 26,
4 2010. On June 3, 2010, Defendant filed a notice of appeal.

5 Defendant filed the instant petition on April 30, 2010. The State's response is as
6 follows.

7 ARGUMENT

8 **I. DEFENDANT'S PETITION IS TIME BARRED**

9 The mandatory provisions of NRS 34.726 state:

10 1. Unless there is good cause shown for delay, a petition that challenges the
11 validity of a judgment or sentence must be filed within 1 year after entry of the
12 judgment of conviction or, if an appeal has been taken from the judgment,
13 *within 1 year after the supreme court issues its remittitur*. For the purposes
14 of this subsection, good cause for delay exists if the petitioner demonstrates to
the satisfaction of the court:

- 15 (a) That the delay is not the fault of the petitioner; and
- 16 (b) That dismissal of the petition as untimely will unduly prejudice the
17 petitioner. . .

18 NRS 34.726(1) (Emphasis added).

19 The one-year time bar is strictly construed. In Gonzales v. State, 118 Nev. 590, 593,
20 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was
21 filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS
34.726(1). Gonzales reiterated the importance of filing the petition with the district court
within the one year mandate, absent a showing of "good cause" for the delay in filing.
Gonzales, 118 Nev. at 593, 590 P.3d at 902.

22 Here, Defendant filed a direct appeal on June 5, 2007 and Remittitur issued on
23 Tuesday, June 3, 2008. Consequently, Defendant had until Wednesday, June 3, 2009, to file
24 his post-conviction habeas petition. Defendant filed the instant petition on April 30, 2010,
25 almost one (1) year after the one-year time limitation. Therefore, Defendant's petition is
26 untimely and must be dismissed. Gonzales, 118 Nev. at 593, 590 P.3d at 902.

27 **II. APPLICATION OF PROCEDURAL BARS IS MANDATORY**

28 The Nevada Supreme Court has specifically held that the district court has a duty to

1 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
2 disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070
3 (2005), the Nevada Supreme Court held as follows:

4 Given the untimely and successive nature of [defendant's]
5 petition, the district court ***had a duty imposed by law*** to consider
6 whether any or all of [defendant's] claims were barred under
7 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
8 . . . [and] the court's failure to make this determination here
9 constituted an arbitrary and unreasonable exercise of discretion.

10 [Emphasis added.] 121 Nev. at 234. (See also State v. Haberstroh, 119 Nev. 173,
11 180-81, 69 P.3d 676, 681-82 (2003) wherein the Nevada Supreme Court held that parties
12 cannot stipulate to waive, ignore or disregard the mandatory procedural default rules nor can
13 they empower a court to disregard them.) Defendant is required to show good cause to
14 overcome the procedural bars before his petition may be considered on the merits. Thus, a
15 Defendant's petition will not be considered on the merits if it is subject to the procedural
16 bars and no good cause is shown. Id.

17 **III. DEFENDANT HAS NOT DEMONSTRATED GOOD CAUSE OR**
18 **ACTUAL PREJUDICE SUFFICIENT TO OVERCOME THE ONE-**
19 **YEAR TIME BAR**

20 Defendant has not offered any good cause or demonstrated actual prejudice sufficient
21 to overcome the procedural bars. "In order to demonstrate good cause, a petitioner must
22 show that an impediment external to the defense prevented him or her from complying with
23 the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506
24 (2003); citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v.
25 State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66,
26 769 P.2d 72, 41 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252
27 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988). Such an external
28 impediment could be "that the factual or legal basis for a claim was not reasonably available
to counsel, or that 'some interference by officials' made compliance impracticable."
Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488,
106 S.Ct. 2639, 2645 (1986)). Clearly, any delay in filing of the petition must not be the
fault of the petitioner. NRS 34.726(1)(a).

1 In addition, to find good cause there must be a "substantial reason; one that affords a
2 legal excuse." Hathaway, 119 Nev. at 248, 71 P.3d at 506 (quoting Colley v. State, 105 Nev.
3 235, 236, 773 P.2d 1229, 1230 (1989).

4 Defendant does not provide any explanation as to why his petition was almost a year
5 late. Thus, Defendant's petition should be dismissed.

6 **CONCLUSION**

7 Based on the foregoing arguments, the State respectfully requests that Defendant's
8 petition be dismissed.

9 DATED this 14th day of July, 2010.

10 Respectfully submitted,

11 DAVID ROGER
12 Clark County District Attorney
13 Nevada Bar #002781

14 BY /s/ THOMAS M. CARROLL
15 THOMAS M. CARROLL
16 Chief Deputy District Attorney
17 Nevada Bar #004232

18 **CERTIFICATE OF MAILING**

19 I hereby certify that service of the above and foregoing, was made this 14th day of
20 July, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

21 FREDYS A. MARTINEZ BAC#1003276
22 LOVELOCK CORRECTIONAL CENTER
23 1200 PRISON RD
24 LOVELOCK, NV 89419

25 M. Gregory
26 Secretary for the District Attorney's
27 Office
28

95

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

JUL 13 2010

FREDYS A. MARTINEZ A/K/A FREDDY A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55890

Tracie Lindeman
CLERK OF COURT

District Court Case No. C226586

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows: "ORDER this appeal DISMISSED."

Judgment, as quoted above, entered this 9th day of June, 2010.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 7th day of July, 2010.

Tracie Lindeman, Supreme Court Clerk

By: *A. Ingersoll*
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 55890

FILED

JUN 09 2010

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

ORDER DISMISSING APPEAL

This is a proper person appeal from an order denying a motion for appointment of counsel. Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

No statute or court rule permits an appeal from an order denying a motion for appointment of counsel. Castillo v. State, 106 Nev. 349, 792 P.2d 1133 (1990). Accordingly, we lack jurisdiction, and we

ORDER this appeal DISMISSED.

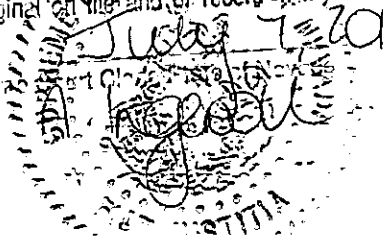
Cherry J.
Cherry

Saitta J.
Saitta

Gibbons J.
Gibbons

cc: Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk



CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: July 7, 200
A circular notary seal for the State of Florida. The outer ring contains the text "NOTARY PUBLIC" at the top and "STATE OF FLORIDA" at the bottom. Inside the ring, there is a signature and the date "JUL 7 200".

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 55890

District Court Case No. C226586

REMITTITUR

TO: Steven D. Grierson, Clark District Court Clerk

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

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

DATE: July 7, 2010

Tracie Lindeman, Clerk of Court

By: _____

Deputy Clerk

cc (without enclosures):

Hon. Donald M. Mosley, District Judge
Attorney General/Carson City
Clark County District Attorney
Fredys A. Martinez

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on JUL 13 2010.

Deputy

HEATHER LOFQUIST

District Court Clerk

10-15920

124

1 Fredys A. Martinez #1003276
2 Lovelock Correctional Center
3 1200 Prison Road
4 Lovelock, Nevada 89419

5 Petitioner In Pro Se

FILED

JUL 23 2010

Ann L. Blum
CLERK OF COURT

6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

8 * * * * *

9 Fredys A. Martinez,)

Case No. C226586

10 Petitioner,,)

XIV

11 -vs-)

MOTION FOR
APPOINTMENT OF COUNSEL

12 STATE OF NEVADA,)

13 Respondents.)

8-9-2010

14
15 COMES NOW Petitioner, Fredys A. Martinez, in pro se, and moves
16 this Court for an order appointing him counsel in and for the instant § 2254
17 habeas corpus proceeding.

18 This motion is made and based upon 18 U.S.C. § 3006A(g), 28 U.S.C.
19 § 1915(e)(1), 28 U.S.C. § 2254(h); all papers, pleadings and documents on file
20 herein; and the following points and authorities.

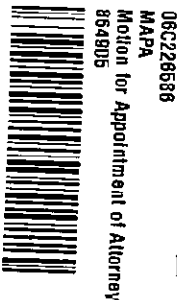
21 POINTS AND AUTHORITIES

22 I. STATEMENT OF FACTS

23 Petitioner is unable to afford counsel. See Application to Proceed In
24 Forma Pauperis on file herein.

25 The substantive issues and procedural matters in this case are too complex
26 for Petitioner's comprehension and abilities.

27 Petitioner, by reason of his incarceration, cannot investigate, take
28 depositions, or otherwise discover evidentiary materials on his own accord.



RECEIVED
JUL 22 2010
CLERK OF THE COURT

1 Petitioner's sentence structure is 5 to 10, 4-10, life + 5, and a 5 to life

2 There ___ are ___ are not additional facts attached hereto on additional
3 page(s) to be incorporated herein.

4 Counsel could not only assist Petitioner with a much better presentation
5 of the substantive and procedural issues before this Court, e.g., merits of the
6 claims, AEDPA's § 2254(d) test, exhaustion, etc., but counsel would likewise
7 make much easier this Court's task of discerning the issues and adjudicating
8 them as upon a competent counsel's ability to present same to the Court.

9 The ends of justice would best be served in this case via the appointment
10 of counsel, as Petitioner's sentence structure, in conjunction with the
11 complexities of the legal issues herein, plead for such an appointment.

12 **II. ARGUMENT FOR APPOINTMENT**

13 Appointment of counsel in § 2254 cases is authorized within 18 U.S.C.
14 § 3006A(g) and 28 U.S.C. §§ 1915(e)(1); 2254(h). This Court may appoint
15 counsel where the "interests of justice" so require. Jeffers v. Lewis, 68 F.3d
16 295, 297-98 (9th Cir. 1995). This interest is best served when indigent
17 petitioners who are unable to "adequately present their cases" are appointed
18 counsel to do so for them. Id.

19 Although appointment is usually within this Court's sound discretion, a
20 handy formula for this Court's consideration is a balancing of the complexities
21 of the issues with a consideration of the severity of the petitioner's penalty.
22 Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.), cert. denied, 481 U.S. 1023
23 (1987). Ultimately, however, absent a due process implication, this Court has
24 discretion to appoint counsel when it feels that it promotes justice in doing
25 so. Id. See Brown v. United States, 623 F.2d 54, 61 (9th Cir. 1980)(court
26 must appoint counsel where the complexities of the case are such that denial of
27 counsel would amount to denial of due process); Hawkins v. Bennett, 423 F.2d
28 948 (8th Cir. 1970)(counsel must be appointed where petitioner is a person of

1 such limited education as to be incapable of presenting his claims fairly).

2 Petitioner submits that the facts above, in conjunction with these legal
3 principles, compel appointment of counsel. Indeed, the complexities of the
4 issues in relation to Petitioner's sentence, implicate the need of counsel to
5 promote not only justice, but fairness, as well. Jeffers, 68 F.3d at 297-98.

6 **III. CONCLUSION**

7 For the reasons set forth above, this Court should appoint counsel to
8 represent Petitioner in and for all further proceedings in this § 2254 habeas
9 corpus action.

10 Dated this 18 day of Jul, 20010.

11 Respectfully submitted,

12 ~~Fred A. Martinez~~
13 Fred A. Martinez #1003276
14 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

15 Petitioner In Pro Se

16 / / /

17 / / /

18 / / /

19 / / /

20 / / /

21

22

23

24

25

26

27

28

- 3 and LAST -

CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing Habeas corpus-court (post conviction) to the below address(es) on this 27 day of April, 20010, by placing same into the hands of prison staff for posting in the U.S. Mail, pursuant to FRCP 5(b):

David Roger
Clark, County District Attorney
200 Lewis Ave
Las Vegas, Nevada 89155

Counsel for conviction

() check for additional addresses below

Fredys A. Martinez 1003276
#

Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Fredys A. Martinez In Pro Se

ADDRESS(ES) Continued from Above: (If applicable)

_____, Nevada 89____

_____, Nevada 89____

RECEIVED

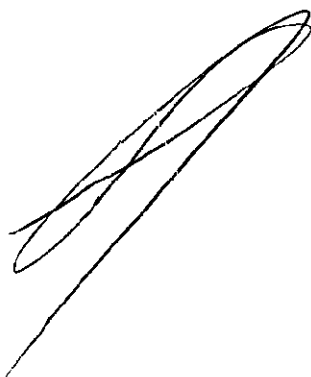
JUL 19 2010

LCC Law Library

MAILED

JUL 20 2010

Locust Correctional Center

A handwritten signature, possibly reading "L. J. Smith", is written in dark ink across the middle of the page.

**E-FILE LITE
ORIGINAL**

Alvin L. Shuman
CLERK OF THE COURT

OPPS
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
THOMAS M. CARROLL
Chief Deputy District Attorney
Nevada Bar #004232
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

FREDYS A. MARTINEZ, 1361243

Defendant.

CASE NO: C226586

DEPT NO: XIV

**STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF
COUNSEL**

DATE OF HEARING: 08/09/10
TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through THOMAS M. CARROLL, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For Appointment Of Counsel.

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

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...

06C226586
OPPM
Opposition to Motion
884812



1 POINTS AND AUTHORITIES

2 STATEMENT OF THE CASE

3 On September 29, 2006, Fredys Martinez (hereinafter "Defendant") was charged by
4 way of Grand Jury Indictment with: Count I – Burglary while in Possession of a Deadly
5 Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon (Felony
6 – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon (Felony
7 – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a Deadly
8 Weapon (Felony – NRS 200.364, 200.366, 193.165).

9 Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury found
10 Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II – Battery
11 with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a Deadly
12 Weapon. The jury found Defendant not guilty of Count IV. Defendant was present in court
13 with counsel on May 24, 2007, and sentenced as follows: as to Count I – SIXTY (60) to
14 ONE HUNDRED EIGHTY (180) months; as to Count II – FORTY-EIGHT (48) to ONE
15 HUNDRED TWENTY (120) months, to run concurrently with Count I; and as to Count III –
16 SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60) months to
17 LIFE for the use of a deadly weapon, the entire sentence to run concurrently to Counts I and
18 II. Defendant was given two hundred eighty-one (281) days credit for time served.

19 Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice of
20 Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
21 May 7, 2008. Remittitur issued on June 3, 2008.

22 On April 2, 2010, Defendant filed a motion for appointment of counsel. The State's
23 opposition was filed on April 9, 2010. Defendant's motion was denied on April 14, 2010,
24 and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal on
25 April 22, 2010. The Nevada Supreme Court dismissed Defendant's appeal and Remittitur
26 issued on July 7, 2010.

27 Defendant filed a Motion to Vacate a Judgment of Conviction on April 21, 2010. The
28 court denied Defendant's motion without requiring a response from the State on May 5,

1 2010. The court noted that Defendant should have filed a Petition for Writ of Habeas
2 Corpus (Post-Conviction) but such a petition would be time barred now anyway as
3 Remittitur issued in his case in 2008. On June 3, 2010, Defendant filed a notice of appeal.
4 This appeal is still pending.

5 On April 30, 2010, Defendant filed a Petition for Writ of Habeas Corpus (Post-
6 Conviction). The State filed it's response to Defendant's petition on July 9, 2010 and the
7 untimely the petition was summarily dismissed on July 14, 2010.

8 On May 13, 2010, Defendant filed a motion for an evidentiary hearing, the State filed
9 its opposition to the motion on May 21, 2010, and the motion was denied on May 26, 2010.

10 Defendant filed the instant motion on July 23, 2010. The State's response is as
11 follows.

12 **ARGUMENT**

13 **I. THE DISTRICT COURT LACKS JURISDICTION OVER THIS CASE**

14 This court does not have jurisdiction to entertain Defendant's instant motion because
15 on June 3, 2010, Defendant filed a Notice of Appeal with the Nevada Supreme Court
16 challenging the denial of his Motion to Vacate a Judgment of Conviction. Jurisdiction in an
17 appeal is vested *solely* in the supreme court until the remittitur issues to the district court."
18 Buffington v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994). [Emphasis added.]
19 Defendant divested this court of jurisdiction when he filed the Notice of Appeal on June 3,
20 2010, and therefore, his instant motion should be dismissed. To the extent this court chooses
21 to consider Defendant's motion on its merits, the State responds as follows:

22 **II. DEFENDANT'S IS NOT ENTITLED TO APPOINTMENT OF** 23 **COUNSEL**

24 Defendant is not entitled to appointment of counsel because his untimely Petition for
25 Writ of Habeas Corpus (Post-Conviction) was summarily dismissed on July 14, 2010. In
26 Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court ruled that the
27 Sixth Amendment provides no right to counsel in post-conviction proceedings. In McKague
28 v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court similarly

1 observed that "[t]he Nevada Constitution...does not guarantee a right to counsel in post-
2 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision
3 as being coextensive with the Sixth Amendment to the United States Constitution."

4 NRS 34.750 provides, in pertinent part:

5 "[a] petition may allege that the Defendant is unable to
6 pay the costs of the proceedings or employ counsel. If the court
7 is satisfied that the allegation of indigency is true and the petition
8 **is not dismissed summarily**, the court may appoint counsel at
9 the time the court orders the filing of an answer and a return. In
10 making its determination, the court may consider whether:

- 11 (a) The issues are difficult;
- 12 (b) The Defendant is unable to comprehend the
- 13 proceedings; or
- 14 (c) Counsel is necessary to proceed with
- 15 discovery." (emphasis added).

16 Under NRS 34.750, it is clear that the court has discretion in determining whether to
17 appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a)
18 [entitling appointed counsel when petition is under a sentence of death], one does not have
19 "[a]ny constitutional or statutory right to counsel at all" in post-conviction proceedings. Id.
20 at 164.

21 The Nevada Supreme Court has observed that a defendant "must show that the
22 requested review is not frivolous before he may have an attorney appointed." Peterson v.
23 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
24 177.345(2)). Defendant cannot make the threshold showing that any further petition he
25 might file will not be summarily dismissed as untimely because his last petition was
26 summarily dismissed as untimely on July 14, 2010. Therefore, his request for appointment
27 of counsel should be denied.

28 ...

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1 CONCLUSION

2 Based on the foregoing arguments, the State respectfully requests that Defendant's
3 motion be DENIED.

4 DATED this 5th day of August, 2010.

5 Respectfully submitted,

6 DAVID ROGER
7 Clark County District Attorney
8 Nevada Bar #002781

9 BY /s/ THOMAS M. CARROLL
10 THOMAS M. CARROLL
11 Chief Deputy District Attorney
12 Nevada Bar #004232

13 CERTIFICATE OF MAILING

14 I hereby certify that service of the above and foregoing, was made this 5th day of
15 August, 2010, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

16
17 FREDYS A. MARTINEZ BAC#1003276
18 LOVELOCK CORRECTIONAL CENTER
19 1200 PRISON RD
20 LOVELOCK, NV 89419

21 M. Gregory
22 Secretary for the District Attorney's
23 Office
24
25
26
27
28

ORIGINAL

FILED

SEP 3 11 23 AM '10

Dea L. L. L.
CLERK COURT

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **BARBARA SCHIFALACQUA**
6 **Deputy District Attorney**
7 **Nevada Bar #0010436**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

08C226586
ODM
Order Denying Motion
920303



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 FREDDY MARTINEZ, aka,
14 Fredys A. Martinez, #1361243

15 Defendant.

Case No. C226586
Dept No. XIV

17 ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL

18 DATE OF HEARING: August 9, 2010
19 TIME OF HEARING: 9:00 A.M.

20 THIS MATTER having come on for hearing before the above entitled Court on the
21 9th day of August, 2010, the Defendant not being present, represented in proper person, the
22 Plaintiff being represented by DAVID ROGER, District Attorney, through BARBARA
23 SCHIFALACQUA, Deputy District Attorney, and the Court having heard the arguments of
24 counsel and good cause appearing therefor,

RECEIVED
SEP 9 2010
CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the Defendant's Motion for Appointment of Counsel,
2 shall be, and it is DENIED.

3 DATED this 30th day of August, 2010.

4
5 
6 DISTRICT JUDGE 8

7
8 DAVID ROGER
9 DISTRICT ATTORNEY
Nevada Bar #002781

10 
11 BARBARA SCHIFALACQUA
12 Deputy District Attorney
13 Nevada Bar #010436
14
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28 jm

1 Case No. C226586

2 Dept. No. XIV

FILED

NOV 16 2010

Ann L. ...
CLERK OF COURT

3
4
5
6 IN THE 8th JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF Clark

8 * * * * *

9 Fredys Martinez)

10 Pro Se, Petitioner,)

11 -vs-)

12 State of Nevada)

13 Respondent.)

NOTICE OF APPEAL

14
15 NOTICE IS GIVEN that Petitioner, Fredys, prisoner And
16 in pro se, hereby appeals to the Nevada Supreme Court the
17 Findings of Fact, Conclusions of Law and Order denying /
18 dismissing Petition for Writ of Habeas Corpus, which was filed /
19 entered on the 14 day of July, 2010.

20 Dated this 8 day of NOVEMBER, 2010.

21
22 Fredys Arcangel Martinez
~~Theresa Martinez~~ #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

Fredys Martinez

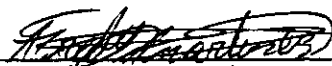
26
27
28
RECEIVED
NOV 16 2010
CLERK OF THE COURT

08C226586
NOASC
Notice of Appeal (criminal)
1054938



CERTIFICATE OF SERVICE

I do certify that I mailed a true and correct copy of the foregoing NOTICE OF APPEAL to the below address(es) on this 8 day of NOVEMBER, 2010, by placing same in the U.S. Mail via prison law library staff:

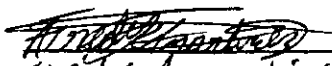

Fredy A. Martinez #1003276
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding NOTICE OF APPEAL filed in District Court Case No. C226586 does not contain the social security number of any person.

Dated this 8 day of NOVEMBER, 2010.


Fredy A. Martinez #1003276

Petitioner In Pro Se

Fredys. A. Martinez #1003276
LoveLock, CRR, CTR
1200 Prison Road
LoveLock, NV 89419



MAILED

NOV 09 2010

Las Vegas Correctional Center

LEGAL MAIL

9910136001



CHARLES J. SHORT, Clerk of the Court
200 LEWIS AVE NVE, 3 RD FLOOR
LAS VEGAS, NV 89155-1160

FILED

NOV 18 2010

Alvin J. Blum
CLERK OF COURT

1 ASTA

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**
6

7 STATE OF NEVADA,)

8 Plaintiff(s),)

9 vs.)

10 FREDDY MARTINEZ #1003276,)

11 Defendant(s),)

) Case No: C226586

) Dept No: XIV
)

06C226586

ASTA

Case Appeal Statement

1057388



12
13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): FREDDY MARTINEZ

16 2. Judge: DONALD MOSELY

17 3. Appellant(s): FREDDY MARTINEZ

18 Counsel:

19 FREDDY MARTINEZ #1003276
20 1200 PRISON RD.
21 LOVELOCK, NV 89419

22 4. Respondent: THE STATE OF NEVADA

23 Counsel:

24 David Roger, District Attorney
25 200 Lewis Ave.
26 Las Vegas, NV 89101
27 (702) 671-2700

28 5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

1 7. Appellant Represented by Appointed Counsel On Appeal: N/A

2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A

3 9. Date Commenced in District Court: September 29, 2006

4 10. Brief Description of the Nature of the Action: Criminal

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

6 11. Previous Appeal: Yes

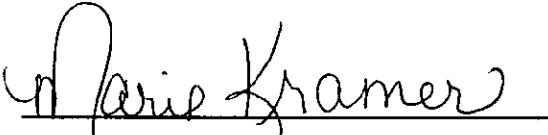
7 Supreme Court Docket Number(s): 49608; 55890; 56153

8 12. Child Custody or Visitation: N/A

9
10 Dated This 18 day of November 2010.

11 Steven D. Grierson, Clerk of the Court

12
13 By:



14 Marie Kramer, Deputy Clerk

15 200 Lewis Ave

16 PO Box 551601

17 Las Vegas, Nevada 89155-1601

18 (702) 671-0512

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A.
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 56153
District Court Case No. 06C226586

FILED

DEC 16 2010

Amanda Ingersoll
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

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

JUDGMENT

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

"ORDER the judgment of the district court AFFIRMED."

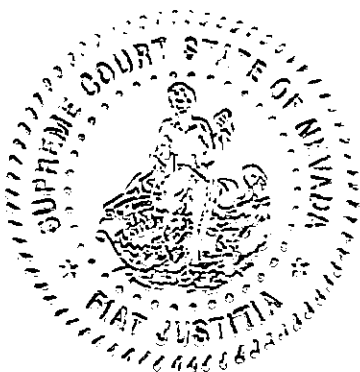
Judgment, as quoted above, entered this 12th day of November, 2010.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
December 07, 2010.

Tracie Lindeman, Supreme Court Clerk

By: Amanda Ingersoll
Deputy Clerk

06C226586
CCJA
NV Supreme Court Clerks Certificate/Judgn
1107904



IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY
A. MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 56153

FILED

NOV 12 2010

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

ORDER OF AFFIRMANCE

This is a proper person appeal from an order of the district court denying "a motion to vacate."¹ Eighth Judicial District Court, Clark County; Donald M. Mosley, Judge.

The record on appeal supports the decision of the district court to deny relief. To the extent that appellant sought to modify or correct an illegal sentence, appellant's claims fell outside the very narrow scope of claims permissible in those motions. Edwards v. State, 112 Nev. 704, 708, 918 P.2d 321, 324 (1996). To the extent that appellant sought to challenge

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

the validity of his judgment of conviction, his claims must be raised in a post-conviction petition for a writ of habeas corpus.² Accordingly, we

ORDER the judgment of the district court AFFIRMED.³

Hardesty J.
Hardesty

Douglas J.
Douglas

Pickering J.
Pickering

cc: Hon. Donald M. Mosley, District Judge
Freddy A. Martinez a/k/a Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

²We express no opinion as to whether appellant could meet the procedural requirements of NRS chapter 34.

³We have reviewed all documents that appellant has submitted in proper person to the clerk of this court in this matter, and we conclude that no relief based upon those submissions is warranted. To the extent that appellant has attempted to present claims or facts, in those submissions which were not previously presented in the proceedings below, we have declined to consider them in the first instance:



Supreme Court State of Nevada
CERTIFIED
This document is a full, true and correct copy of
the original on file and of record in my office
DATE: Dec 1 2010
Supreme Court Clerk, State of Nevada
By H. J. General Deputy

IN THE SUPREME COURT OF THE STATE OF NEVADA

FREDYS A. MARTINEZ A/K/A FREDDY A.
MARTINEZ,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 56153
District Court Case No. 06C226586

REMITTITUR

TO: Steven Grierson, District Court Clerk

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

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

DATE: December 07, 2010

Tracie Lindeman, Clerk of Court

By: Amanda Ingersoll
Deputy Clerk

cc (without enclosures):

Hon. Donald M. Mosley, District Judge
Fredys A. Martinez
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on DEC 16 2010

HEATHER LOFQUIST

Deputy

District Court Clerk

1 **ORDR**

2 **DAVID ROGER**

3 **Clark County District Attorney**

4 **Nevada Bar #002781**

5 **THOMAS M. CARROLL**

6 **Chief Deputy District Attorney**

7 **Nevada Bar #004232**

8 **200 Lewis Avenue**

9 **Las Vegas, Nevada 89155-2212**

10 **(702) 671-2500**

11 **Attorney for Plaintiff**

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **FREDYS MARTINEZ, #1361243**

18 **Defendant.**

CASE NO: C226586

DEPT NO: XIV

06C226586

FFCO

Findings of Fact, Conclusions of Law and C
1179105



19 **FINDINGS OF FACT, CONCLUSIONS OF**
20 **LAW AND ORDER**

21 **DATE OF HEARING: July 14, 2010**

22 **TIME OF HEARING: 9:00 A.M.**

23 **THIS CAUSE** having come on for hearing before the Honorable Donald Mosley,
24 **District Judge**, on the 14 day of July, 2010, the Petitioner not being present, proceeding in
25 **forma pauperis**, the Respondent being represented by DAVID ROGER, District Attorney, by
26 **and through Barbara Schifalacqua**, Deputy District Attorney, and the Court having
27 **considered the matter**, including briefs, transcripts, no arguments of counsel, and documents
28 **on file herein**, now therefore, the Court makes the following findings of fact and conclusions
of law:

29 **FINDINGS OF FACT**

30 **1. On September 29, 2006**, Fredys Martinez (hereinafter "Defendant") was
31 **charged by way of Grand Jury Indictment with: Count I – Burglary While in Possession of a**
32 **Deadly Weapon (Felony – NRS 205.060); Count II – Battery with use of a Deadly Weapon**

33 **CLERK OF THE COURT**

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1 (Felony – NRS 200.481); Count III – First Degree Kidnapping with use of a Deadly Weapon
2 (Felony – NRS 200.310, 200.320, 193.165); and Count IV – Sexual Assault with use of a
3 Deadly Weapon (Felony – NRS 200.364, 200.366, 193.165).

4 2. Defendant's jury trial began on April 11, 2007. On April 12, 2007, the jury
5 found Defendant guilty of: Count I – Burglary while in Possession of a Weapon; Count II –
6 Battery with use of a Deadly Weapon; and Count III – First Degree Kidnapping with use of a
7 Deadly Weapon. The jury found Defendant not guilty of Count IV.

8 3. Defendant was present in court with counsel on May 24, 2007, and sentenced
9 as follows: as to Count I – SIXTY (60) to ONE HUNDRED EIGHTY (180) months; as to
10 Count II – FORTY-EIGHT (48) to ONE HUNDRED TWENTY (120) months, to run
11 concurrently with Count I; and as to Count III – SIXTY (60) months to LIFE, plus an equal
12 and consecutive term of SIXTY (60) months to LIFE for the use of a deadly weapon, the
13 entire sentence to run concurrently to Counts I and II. Defendant was given two hundred
14 eighty-one (281) days credit for time served.

15 4. Judgment of Conviction was filed on May 31, 2007. Defendant filed a Notice
16 of Appeal on June 5, 2007. The Nevada Supreme Court affirmed Defendant's conviction on
17 May 7, 2008. Remittitur issued on June 3, 2008.

18 5. On April 2, 2010, Defendant filed a motion for appointment of counsel. The
19 State's opposition was filed on April 9, 2010. Defendant's motion was denied on April 14,
20 2010, and the court's order was filed on April 24, 2010. Defendant filed a Notice of Appeal
21 on April 22, 2010.

22 6. Defendant filed a Motion to Vacate his Judgment of Conviction on April 21,
23 2010. The court denied Defendant's motion without requiring a response from the State on
24 May 5, 2010. The court noted that Defendant should have filed a Writ of Habeas Corpus but
25 such a petition would be time barred now anyway as Remittitur issued in his case in 2008.

26 7. Defendant subsequently filed a motion for an evidentiary hearing on May 13,
27 2010, the State filed its opposition to the motion on May 21, 2010, and the motion was
28 denied on May 26, 2010. On June 3, 2010, Defendant filed a notice of appeal.

1 8. Defendant filed the instant Petition for Writ of Habeas Corpus on April 30,
2 2010. The State filed its Response on July 9, 2010.

3 9. On July 14 2010, the court held a hearing regarding Defendant's petition.
4 Defendant was not present and the court did not entertain arguments from either party.

5 10. Defendant's Judgment of Conviction was filed on May 31, 2007. He filed a
6 direct appeal on June 5, 2007. The Nevada Supreme Court ultimately dismissed Defendant's
7 appeal and Remittitur issued on Tuesday, June 3, 2008.

8 11. Consequently, Defendant had until Wednesday, June 3, 2009, to file his post-
9 conviction habeas petition.

10 12. Defendant filed the instant petition on April 30, 2010, almost one (1) year after
11 deadline with which to file a post-conviction petition had passed.

12 13. Defendant's petition is extremely untimely and is time barred as outside the
13 one-year time limitation.

14 14. A petition subject to procedural bars may be considered on its merits if good
15 cause is shown.

16 15. Defendant pled no facts to explain the delay in filing his petition. Thus,
17 Defendant has not demonstrated good cause to overcome the procedural bar.

18 CONCLUSIONS OF LAW

19 1. The mandatory provisions of NRS 34.726 state:

20 Unless there is good cause shown for delay, a petition that
21 challenges the validity of a judgment or sentence must be filed
22 within 1 year after entry of the judgment of conviction or, if an
23 appeal has been taken from the judgment, **within 1 year after**
24 **the Supreme Court issues its Remittitur.** For the purposes of
25 this subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 24 (a) That the delay is not the fault of the petitioner; and
25 (b) That dismissal of the petition as untimely will unduly
prejudice the petitioner. (Emphasis added).

26 2. The one year time bar is strictly construed. In Gonzales v. State, 118 Nev. 61,
27 590 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed
28 two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS