

EX #2

ORIGINAL

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1997 OCT 17 A 8:51

JACP
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 435-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY PICKETT, aka
Cary Jerard Pickett, #0725059

Defendant.

Case No. C143146
Dept. No. XI
Docket S

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 28th day of August, 1997, the Defendant GARY PICKETT, aka Cary Jerard Pickett, appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s) of GRAND LARCENY (CATEGORY B FELONY), committed on or about the 3rd day of May, 1997, in violation of NRS 205.220 and

WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria Persona, being present in court with his counsel JORDAN SAVAGE, ESQ., as Stand By Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada Department of Prisons, suspended; placed on probation for an indeterminate period not to exceed five (5) years. Conditions: 1. Search Clause for controlled substances and weapons. 2. Complete Drug Court Program, noting weapons were not involved. 3. Complete long-term

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1 counseling, vocational and educational programs as deemed necessary by the Division of Parole
2 and Probation. 4. Complete eight (8) hours community service per month within the first three
3 (3) years of probation. 5. Pursuant to NRS 176.185, Defendant to be supervised in the Nevada
4 Division of Parole and Probation's House Arrest Program for the first four (4) months of
5 probation. Defendant to receive eighty-nine (89) days credit for time served. Court referred
6 matter to Drug Court, and Ordered, set for further proceedings on October 6, 1997 at 9:00
7 o'clock a.m. in Department X.

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

10 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
11 State of Nevada.

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14 DISTRICT JUDGE

243

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26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TK1)

EX #3
ORIGINAL

16

1 JOCP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

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1997 OCT 17 A 9:53

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 CARY JERARD PICKETT, aka
12 Gary Pickett, #0725059

13 Defendant.

Case No.
Dept. No.
Docket

C145127
XI
S

JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 18th day of September, 1997, the Defendant CARY JERARD
17 PICKETT, aka Gary Pickett, appeared before the Court herein with his counsel and entered a
18 plea of guilty to the crime(s) of BURGLARY (CATEGORY B FELONY), committed on or
19 about the 7th day of August, 1997, in violation of NRS 205.060 and

20 WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria
21 Persona, being present in court with his counsel JORDAN, SAVAGE, ESQ., as Stand By
22 Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above
23 entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in
24 addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of
25 thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada
26 Department of Prisons, to be served consecutive to sentence imposed in Case No. C143146,
27 suspended; placed on probation for an indeterminate period not to exceed five (5) years.
28 Conditions: 1. Search Clause for controlled substances and stolen property. 2. Complete Drug

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1 Court Program, noting there was no use of weapons in this incident. 3. Complete long-term
2 counseling, vocational and educational programs as deemed necessary. 4. Defendant to be
3 supervised in the Nevada Division of Parole and Probation's House Arrest Program for the first
4 four (4) months of probation. Defendant to receive thirty-five (35) days credit for time served.
5 Court referred matter to Drug Court, and Ordered, set for further proceedings on October 6,
6 1997 at 9:00 o'clock a.m. in Department X.

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

9 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
10 State of Nevada.

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14 DISTRICT JUDGE
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DA#97-145127X/pm
LVMPD EV#9708071616
BURG-F
(TK1)

1 REX BELL
 2 DISTRICT ATTORNEY
 3 Nevada Bar #001799
 4 200 S. Third Street
 5 Las Vegas, Nevada 89155
 6 (702) 455-4711
 7 Attorney for Plaintiff
 8 THE STATE OF NEVADA

FILED

DEC 19 10 35 AM '93

CLARK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 GARY PICKETT,
 13 aka Cary Jerard Pickett
 14 #0725059

15 Defendant.

CASE NO. C109725

DEPT. NO. V

DOCKET NO. H

16 AMENDED

17 JUDGMENT OF CONVICTION (PLEA)

18 WHEREAS, on the 15th day of December, 1992, the defendant GARY
 19 PICKETT aka Cary Jerard Pickett, appeared before the Court herein
 20 with his counsel and entered a plea of guilty to the crime of
 21 ATTEMPT GRAND LARCENY (Felony) committed on the 11th day of
 22 November, 1992, in violation of NRS 205.220, 193.330; and

23 WHEREAS, thereafter on the 21st day of January, 1993, the
 24 defendant being present in Court with his counsel MARK CICHOSKI,
 25 Deputy Public Defender, and JAY L. SIEGEL, Deputy District
 26 Attorney, also being present; the above entitled Court did adjudge
 27 the defendant guilty thereof by reason of his plea of guilty and
 28 sentenced defendant to THREE (3) years in the Nevada State Prison

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1 to run concurrent with C107733. Credit for time served 14 days.
2 \$25.00 Administrative Assessment Fee.

3 WHEREAS, on the 18th day of November, 1993, Defendant's Motion
4 for Amended Judgment of Conviction to Include Jail Time Credits is
5 granted and Defendant given an additional 30 days credit for time
6 served.

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

10 DATED this 17th day of December, 1993, in the City of Las
11 Vegas, County of Clark, State of Nevada.

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14 DISTRICT JUDGE 51
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26 92-109725X/kjh
27 LVMPD DR#9211111354
28 ATT G/L - F
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CLERK

1 REX BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #001799
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

DISTRICT COURT
CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA)
11)
12)

Plaintiff,)
)
)

12 vs.)
)
)

13 GARY PICKETT, aka)
14 Cary Jerard Pickett ID#0725059)
15 Defendant.)

CASE NO. C109725

DEPT. NO. V

DOCKET NO. H

JUDGMENT OF CONVICTION (PLEA)

17 WHEREAS, on the 15th day of December, 1992, the Defendant GARY
18 PICKETT, aka Cary Jerard Pickett, appeared before the Court herein
19 with his counsel and entered a plea of guilty to the crime of
20 ATTEMPT GRAND LARCENY (Felony), committed on the 11th day of
21 November, 1992, in violation of NRS 205.220, 193.330; and

22 WHEREAS, thereafter on the 21st day of January, 1993, the
23 Defendant being present in Court with his counsel MARK D. CICHOSKI,
24 Deputy Public Defender, and JAY L. SIEGEL, Deputy District
25 Attorney, also being present; the above entitled Court did adjudge
26 the Defendant guilty thereof by reason of his plea of guilty and,
27 in addition to a \$25.00 Administrative Assessment Fee, sentenced
28 Defendant to three (3) years in the Nevada Department of Prisons

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1 concurrent with C107733. Defendant granted fourteen (14) days
2 credit for time served.

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

6 DATED this 4th day of March, 1993, in the City of Las
7 Vegas, County of Clark, State of Nevada.

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11 DISTRICT JUDGE
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27 DA#92-109725X/da
28 LVMPD DR#92-11111354
ATT GL - F

1 REX BELL
 2 DISTRICT ATTORNEY
 3 Nevada Bar #001799
 4 200 S. Third Street
 5 Las Vegas, Nevada 89155
 6 (702) 455-4711
 7 Attorney for Plaintiff
 8 THE STATE OF NEVADA

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 MAR 9 10 30 AM '93

Loetta Bowman
 CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
 8
 9 Plaintiff,
 10 vs.

11 CARY JERARD PICKETT
 12 aka Cary Jerrold Pickett
 13 #0725059
 14 Defendant.

CASE NO. C107733X

DEPT. NO. III

DOCKET NO. E

14 AMENDED
 15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 27th day of August, 1992, the Defendant, CARY
 17 JERARD PICKETT aka Cary Jerrold Pickett, appeared before the Court
 18 herein with his counsel and entered a plea of guilty to the crime
 19 of COUNT I - BURGLARY (FELONY), committed on the 9th day of June,
 20 1992, in violation of NRS 205.060; and

21 WHEREAS, thereafter, on the 10th day of December, 1992, the
 22 Defendant being present in Court with his counsel DEBORAH OWEN, and
 23 KAREN L. VAN DE POL, Chief Deputy District Attorney, also being
 24 present; the above entitled Court did adjudge Defendant guilty
 25 thereof by reason of his plea of guilty and sentenced Defendant, in
 26 addition to a \$25 Administrative Assessment Fee, to: three (3)
 27 years in the Nevada State Prison with whatever credit for time
 28 served defendant is entitled to. Count II dismissed.

WHEREAS, on the 2nd day of March, 1993, Defendant not being

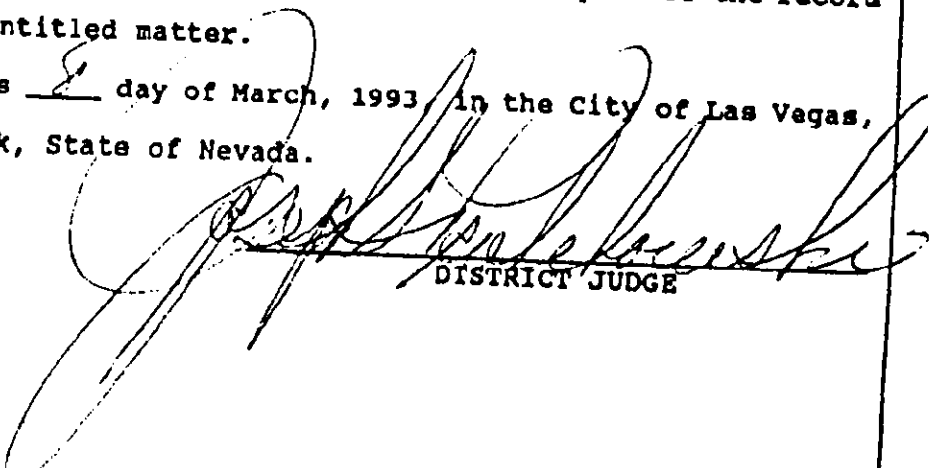
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1 present, represented by DEBORAH OWENS and STEVEN S. OWENS, Deputy
2 District Attorney, also being present the Court amended Judgment of
3 Conviction to reflect Defendant given ten (10) days credit for time
4 served.

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

8 DATED this 8 day of March, 1993 in the City of Las Vegas,
9 County of Clark, State of Nevada.


DISTRICT JUDGE

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Burg - P
TK J

EX-7

FRANKIE SUE DEL PAPA
Attorney General
By: WILLIAM P. HENRY
Senior Deputy Attorney General
Nevada Bar No. 101
401 South Third Street, #500
Las Vegas, NV 89101
(702) 486-3420
Attorneys for Plaintiff

87
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JUL 28 12 37 PM '94

Loretta Loomis
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

STATE OF NEVADA,

Plaintiff,

vs.

CARY PICKETT a/k/a
GARY PICKETT,

Defendant.

CASE NO. C119000
DEPT. NO. VIII
DOCKET "M"

JUDGMENT OF CONVICTION

Date of Hearing: 7/08/94
Time of Hearing: 9 a.m.

On the 13th day of April, 1994, defendant CARY PICKETT a/k/a GARY PICKETT pled guilty to the crime of Count I - Escape, a felony, in violation of NRS 212.090.

On the 8th day of July, 1994, defendant CARY PICKETT a/k/a GARY PICKETT, being present with his counsel Douglas P. DeJulio, Deputy Public Defender, and William P. Henry, Senior Deputy Attorney General, also being present, the above-entitled court, in addition to requiring payment of a Twenty-five Dollar (\$25) administrative assessment, adjudged the defendant guilty of

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ATTORNEY
GENERAL'S
OFFICE

NEVADA

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1 Count I - Escape, a felony, and imposed a sentence of two and one-
2 half (2-1/2) years in the Nevada Department of Prisons to run
3 consecutively with the sentence imposed in Case No. C109725.

4 Pursuant to plea negotiation between counsel, Count II was
5 dismissed.

6 THEREFORE, the clerk of the above-entitled court is directed
7 to enter this Judgment of Conviction as part of the record of the
8 above-entitled matter.

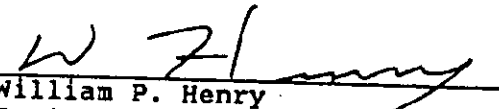
9 DATED this 26 day of July, 1994.

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11 
12 DISTRICT COURT JUDGE 

13 SUBMITTED BY:

14 FRANKIE SUE DEL PAPA
15 Attorney General

16 By:

17 
18 William P. Henry
19 Senior Deputy Attorney General
20 Nevada Bar No. 101
21 401 South Third Street, #500
22 Las Vegas, NV 89101
23 Attorneys for Plaintiff
24
25
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27
28

ATTORNEY
GENERAL'S
OFFICE

NEVADA

10-1077

Cary PICKETT 57591

P.O. Box 650

Indian Springs NV

89070



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1 Cary Pickett, NDOC# 57591
2 P.O. Box 650
3 Indian springs, NV 89070
4

FILED
APR 18 2011
CLERK OF COURT

5 Cary Pickett,
6 Petitioner

D.C. Case No. 10C262523-2


7 vs.

18

8 State of Nevada Et. Al
9 Warden Scillia HDSP

10
11 MEMORANDUM/AFFIDAVIT IN SUPPORT
12 OF APPEAL FROM EIGHTH JUDICIAL DISTRICT
13 COURT WRIT OF HABEAS CORPUS

14
15 To: The Honorable Supreme Court
16 Justices State of Nevada

10C262523-2
MEMO
Memorandum
1360847


17 State of Nevada)
18 County of Clark) ss.

19
20 Cary Pickett, Petitioner in pro-per, under penalty of perjury
21 being duly sworn, deposes and says that:

22 1. That the Eighth Judicial District court denied my petition
23 for Writ of Habeas Corpus citing Petitioner as failing to provide
24 proof to support his four (4) grounds for relief at his April 6,
25 2011 hearing.

26 2. That the assertions raised in two (2) of the grounds raised
27 in my petition are true and alleged ineffective assistance of
28 counsel claims that warranted the Eighth Judicial District Court

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CLERK OF THE COURT

1 to conduct an evidenciary hearing in order to provide the proof
2 required by the Court as proof.

3 3. That the allegation of counsel's ineffectiveness related
4 directly to his failure to investigate or ask any questions to
5 assert^{on} petitioner's prior felonies for constitutionally validity
6 prior to advising Petitioner to stipulate/plead guilty to habitual
7 criminal status and that two (2) of his prior convictions were in
8 fact invalid.

9 4. That being Petitioner was sentenced by the District Court
10 and two (2) invalid J.O.C.'s were used to adjudicate Petitioner
11 should cause concern to this Court as to how all three (3) entities
12 in the advocacy process could have missed (A) Defense Counsel
13 (B) the Prosecution and (C) the Court.


14 5. That the petition also asserted improperly adjudicated as
15 a habitual offender as the Court made its decision to adjudicate
16 Petitioner using two (2) prior convictions (#143146 and 145127)
17 that according to Nevada law were invalid for purposes of enhance-
18 ment under N.R.S. 207.010 being that Petitioner was not represented
19 by counsel and the State failed to acknowledge or disclosed to the
20 Court the truth of those convictions (J.O.C.'s) and further did
21 not provide any proof of valid waiver of counsel, however the Court
22 although Petitioner also submitted copies of those J.O.C.'s as
23 proof the Eighth Judicial District Court ignored them as proof
24 according to its ruling.

25 6. That based on Nevada Law, the adjudication process is the
26 responsibility of the State and the Cort to insure that only valid
27 prior convictions be used to support an enhanced sentence before
28 a defendant is adjudicated a habitual offender and not as claimed

1 by the State and the Court that even if invalid convictions are u
2 used how many valid ones remain would allow a sentence to stand;
3 clearly the Court and the State got the standard wrong.

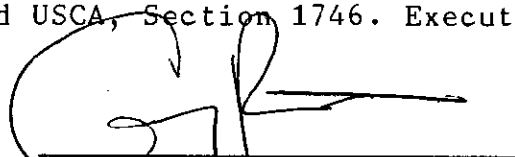
4 7. That this Court based on a review of the allegation and
5 ruling of th Eighth Judicial District Court should vacate his
6 sentence under N.R.S. 207.010 or in the alternative remand his case
7 back for an evidenciary hearing.

8
9 DATED: this 12th day of April, 2011.

10
11 
12 Cary Pickett, 57591
13 P.O. Box 650
14 Indian Springs, NV 89070

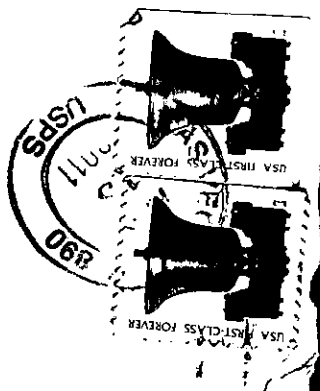
15 UNDER PENALTY OF PERJURY STATEMENT

16 I declare (or certified, verify, or state) under penalty of
17 perjury that the forgoing is true and correct in accordance with
18 N.R.S. 208.165 and USCA, Section 1746. Executed on April 12, 2011.

19
20 
21 Cary Pickett-57591
22
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27
28

Cary Pickett 57591
P.O. Box 1650
Indian Springs NV
89070

Clerk of the Court
200 S Lewis Ave
Las Vegas NV 89155



1 Cary Pickett 57591
2 Defendant In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

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APR 18 2011
CLERK OF COURT

5 DISTRICT COURT
6 CLARK COUNTY NEVADA

10C262523-2
NOASC
Notice of Appeal (criminal)
1380837



7 Warden Scillia
8 State of Nevada ETAL,
9 Respondent,

Case No. 10C262523-2

10 -v-

Dept.No. XVIII

11 Cary Pickett,
12 Petitioner,
13 _____/

Docket _____

14 NOTICE OF APPEAL

15 Notice is hereby given that the petitioner, Cary J.
16 Pickett, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court DENIAL of his writ of Habeas Corpus Hearing date April
19 6 2011, date of written order UNKNOWN

20 _____
21 Dated this date, April 12, 2011.

22
23 Respectfully Submitted,

24
25 _____
26 In Proper Person

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28 APR 18 2011
CLERK OF THE COURT

CERTIFICATE OF SERVICE BY MAILING

I, CARY PICKETT, hereby certify, pursuant to NRCP 5(b), that on this 12th
day of April, 2011, I mailed a true and correct copy of the foregoing, "Notice
of Appeal"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

District Attorney office
David Rogers
200 S. LEWIS Ave
Las Vegas NV. 89155

Warden Scilla H.O.S.P
P.O. Box 650
Indian Spring NV. 89070

DATED: this 12 day of April, 2011.



CARY PICKETT # 57591
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal
(Title of Document)

filed in District Court Case number 10C 262523-2

☒ Does not contain the social security number of any person.

-OR-


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

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

(State specific law)

-or-

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



Signature

4-12-11
Date

CARY PICKETT 57591
Print Name

Petitioner in pro-per
Title

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APR 20 2011

John J. Williams
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 CARY PICKETT,)

11 Defendant(s),)
12

) Case No: 10C262523-2

) Dept No: XVIII
)

10C262523-2

ASTA

Case Appeal Statement

1384373



13
14 **CASE APPEAL STATEMENT**

15 1. Appellant(s): Cary Pickett

16 2. Judge: David Barker

17 3. Appellant(s): Cary Pickett

18 Counsel:

19 Cary Pickett #57591

20 P.O. Box 650

Indian Springs, NV 89070

21 4. Respondent: THE STATE OF NEVADA

22 Counsel:

23 David Roger, District Attorney

24 200 Lewis Ave.

Las Vegas, NV 89101

25 (702) 671-2700

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

27 6. Appellant Represented by Appointed Counsel In District Court: No
28

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: March 3, 2010

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

Type of Judgment or Order Being Appealed: Post-Conviction Relief

11. Previous Appeal: No

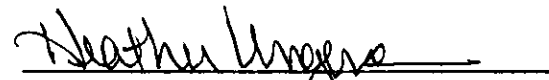
Supreme Court Docket Number(s): N/A

12. Child Custody or Visitation: N/A

Dated This 20 day of April 2011.

Steven D. Grierson, Clerk of the Court

By:



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

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROY L. NELSON, III.
Chief Deputy District Attorney
Nevada Bar #007842
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

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2011 MAY 19 P 2:12

Steven L. Johnson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARY J. PICKETT,
#0725059

Defendant.

CASE NO: 10C262523-2

DEPT NO: XVIII

10C262523-2
FFCO
Findings of Fact, Conclusions of Law and C
1422159



FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: April 6, 2011
TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable David Barker, District Judge, on the 6th day of April, 2011, the Petitioner not being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through Stephanie Graham, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 3, 2010, Cary J. Pickett, hereinafter "Defendant," was charged by way of Criminal Complaint with five (5) counts of Burglary While in Possession of a Firearm, seven (7) counts of Robbery With Use of a Deadly Weapon, five (5) counts of

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CLERK OF THE COURT

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1 Conspiracy to Commit Robbery, and six (6) counts of Possession of a Firearm by an Ex-
2 Felon.

3 2. On March 10, 2010, pursuant to negotiations, Defendant was charged by way
4 of Information with one count each of Burglary While in Possession of a Firearm,
5 Conspiracy to Commit Robbery, Robbery With Use of a Deadly Weapon, and Possession of
6 a Firearm by an Ex-Felon. On March 11, 2010, pursuant to a written Guilty Plea Agreement,
7 Defendant pled guilty to the same charges.

8 3. On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced
9 as follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
10 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
11 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
12 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
13 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE
14 (25) YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
15 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
16 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
17 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-
18 EIGHT (88) DAYS credit for time served.

19 4. A Judgment of Conviction was filed on May 19, 2010.¹

20 5. Defendant did not file a Direct Appeal.

21 6. Defendant filed the instant petition on January 27, 2011.

22 7. Defendant's counsel rendered effective assistance.

23 8. Defendant stipulated to habitual criminal treatment as part of his plea
24 agreement.

25 9. Defendant has failed to provide any evidence supporting his claim that two out
26 of seven of his previous felony convictions which were the basis for his treatment as a
27

28 ¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

1 habitual criminal were constitutionally infirm.

2 10. Even if counsel had successfully challenged two of Defendant's previous
3 convictions as constitutionally infirm, five would have remained for the court to consider.
4 Defendant therefore cannot demonstrate prejudice.

5 11. Since Defendant stipulated to treatment as a habitual criminal, any arguments
6 by counsel against such treatment at sentencing would have been futile. Counsel cannot be
7 deemed ineffective for failing to make futile arguments.

8 12. Defendant's bare allegation that his counsel failed to make mitigation
9 arguments at sentencing is insufficient for relief.

10 13. The totality of the circumstances, including the relevant portions of
11 Defendant's GPA, the plea canvass, and taking into account the presence of counsel,
12 demonstrates Defendant's guilty plea was entered knowingly and voluntarily.

13 14. Defendant's claim that he was improperly sentenced as a habitual criminal is
14 not cognizable in a petition for post-conviction relief since Defendant's conviction was
15 based upon a plea of guilty.

16 15. Defendant has failed to provide evidence for consideration which supports the
17 grounds alleged.

18 CONCLUSIONS OF LAW

19 1. In order to assert a claim for ineffective assistance of counsel a defendant must
20 prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-
21 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
22 (1984). See also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
23 test, the Defendant must show first that his counsel's representation fell below an objective
24 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
25 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
26 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
27 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada).

28 ///

1 2. The court begins with the presumption of effectiveness and then must
2 determine whether or not the petitioner has proved disputed factual allegations underlying
3 his ineffective-assistance claim by a preponderance of the evidence. Means v. State, 120
4 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

5 3. Judicial review of a lawyer's representation is highly deferential, and a
6 defendant must overcome the presumption that a challenged action might be considered
7 sound strategy. State v. LaPena, 114 Nev. 1159, 1166, 968 P.2d 750, 754 (1998) (quoting
8 from Strickland, 466 U.S. at 689, 104 S.Ct at 2052 (1984)). Strategy or decisions regarding
9 the conduct of defendant's case are "virtually unchallengeable absent extraordinary
10 circumstances." Doleman v. State, 112 Nev. 843, 848, 921 P.2d 278, 280 (1996) (quoting
11 Howard v. State, 106 Nev. 713, 722, 800P.2d 175, 180 (1990)).

12 4. Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only
13 be withdrawn to correct "manifest injustice." See also Baal v. State, 106 Nev. 69, 72, 787
14 P.2d 391, 394 (1990). The law in Nevada clearly establishes that a plea of guilty is
15 presumptively valid and the burden is on a defendant to show that the plea was not
16 voluntarily entered. Bryant v. State, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (citing
17 Wingfield v. State, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does
18 not exist if defendant entered his plea voluntarily. Baal, 106 Nev. at 72, 787 P.2d at 394. To
19 determine whether a guilty plea was voluntarily entered the Court will review the totality of
20 the circumstances surrounding the defendant's plea. Bryant, 102 Nev. at 271, 721 P.2d at
21 367.

22 5. NRS 34.810(1)(a) states in relevant part:

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

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

27 ///

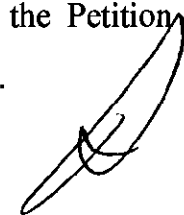
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ORDER

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

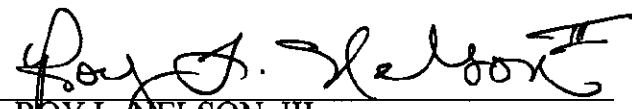
DATED this MAY 19 2011 day of May, 2011.



DISTRICT JUDGE

AS

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 

ROY L. NELSON, III.
Chief Deputy District Attorney
Nevada Bar #007842

10F02742B/GCU: ts/RN/ckb

FILED

MAY 31 2011

Heather Ungermann
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

NOED

CARY PICKETT,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

10C262523-2
NOED
Notice of Entry of Decision and Order
1441241



Case No: 10C262523-2
Dept No: XVIII

NOTICE OF ENTRY OF
DECISION AND ORDER

PLEASE TAKE NOTICE that on May 19, 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 May 31, 2011.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: *Heather Ungermann*
Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 31 day of May 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:
Cary Pickett # 57591
P.O. Box 650
Indian Springs, NV 89070

Heather Ungermann
Heather Ungermann, Deputy Clerk

ORIGINAL

FILED

2011 MAY 19 P 2:12

Ann L. Lamm
CLERK OF THE COURT

10C262523-2

FFCO

Findings of Fact, Conclusions of Law and C
1422150



DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

CARY J. PICKETT,
#0725059

Defendant.

CASE NO: 10C262523-2

DEPT NO: XVIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: April 6, 2011

TIME OF HEARING: 8:15 A.M.

THIS CAUSE having come on for hearing before the Honorable David Barker, District Judge, on the 6th day of April, 2011, the Petitioner not being present, Proceeding In Forma Pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through Stephanie Graham, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On February 3, 2010, Cary J. Pickett, hereinafter "Defendant," was charged by way of Criminal Complaint with five (5) counts of Burglary While in Possession of a Firearm, seven (7) counts of Robbery With Use of a Deadly Weapon, five (5) counts of

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MAY 19 2011

CLERK OF THE COURT

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1 Conspiracy to Commit Robbery, and six (6) counts of Possession of a Firearm by an Ex-
2 Felon.

3 2. On March 10, 2010, pursuant to negotiations, Defendant was charged by way
4 of Information with one count each of Burglary While in Possession of a Firearm,
5 Conspiracy to Commit Robbery, Robbery With Use of a Deadly Weapon, and Possession of
6 a Firearm by an Ex-Felon. On March 11, 2010, pursuant to a written Guilty Plea Agreement,
7 Defendant pled guilty to the same charges.

8 3. On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced
9 as follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
10 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
11 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
12 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
13 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE
14 (25) YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
15 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
16 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
17 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-
18 EIGHT (88) DAYS credit for time served.

19 4. A Judgment of Conviction was filed on May 19, 2010.¹

20 5. Defendant did not file a Direct Appeal.

21 6. Defendant filed the instant petition on January 27, 2011.

22 7. Defendant's counsel rendered effective assistance.

23 8. Defendant stipulated to habitual criminal treatment as part of his plea
24 agreement.

25 9. Defendant has failed to provide any evidence supporting his claim that two out
26 of seven of his previous felony convictions which were the basis for his treatment as a
27

28

¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

1 habitual criminal were constitutionally infirm.

2 10. Even if counsel had successfully challenged two of Defendant's previous
3 convictions as constitutionally infirm, five would have remained for the court to consider.
4 Defendant therefore cannot demonstrate prejudice.

5 11. Since Defendant stipulated to treatment as a habitual criminal, any arguments
6 by counsel against such treatment at sentencing would have been futile. Counsel cannot be
7 deemed ineffective for failing to make futile arguments.

8 12. Defendant's bare allegation that his counsel failed to make mitigation
9 arguments at sentencing is insufficient for relief.

10 13. The totality of the circumstances, including the relevant portions of
11 Defendant's GPA, the plea canvass, and taking into account the presence of counsel,
12 demonstrates Defendant's guilty plea was entered knowingly and voluntarily.

13 14. Defendant's claim that he was improperly sentenced as a habitual criminal is
14 not cognizable in a petition for post-conviction relief since Defendant's conviction was
15 based upon a plea of guilty.

16 15. Defendant has failed to provide evidence for consideration which supports the
17 grounds alleged.

18 CONCLUSIONS OF LAW

19 1. In order to assert a claim for ineffective assistance of counsel a defendant must
20 prove that he was denied "reasonably effective assistance" of counsel by satisfying the two-
21 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
22 (1984). See also State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
23 test, the Defendant must show first that his counsel's representation fell below an objective
24 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
25 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
26 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
27 430, 432, 683 P.2d 504, 505 (1984) (adopting Strickland two-part test in Nevada).

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2 determine whether or not the petitioner has proved disputed factual allegations underlying
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4 Nev. 1001, 1012, 103 P.3d 25, 33 (2004).

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7 sound strategy. State v. LaPena, 114 Nev. 1159, 1166, 968 P.2d 750, 754 (1998) (quoting
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ORDER

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

DATED this MAY 19 2011 day of May, 2011.

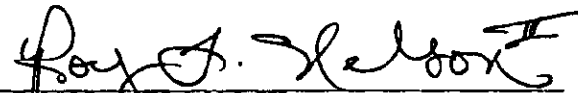


DISTRICT JUDGE

18

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY



ROY L. NELSON, III.
Chief Deputy District Attorney
Nevada Bar #007842

10F02742B/GCU: ts/RN/ckb

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1 **GMEM**
2 **DAVID ROGER**
3 **DISTRICT ATTORNEY**
4 **Nevada Bar #002781**
5 **ROY L. NELSON III**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #007842**
8 **200 Lewis Avenue**
9 **Las Vegas, NV 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

FILED IN OPEN COURT
MAR 11 2013

STEVEN D. GRIERSON
CLERK OF THE COURT

Sylvia Courtney
SYLVIA COURTNEY DEPUTY

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

10 **THE STATE OF NEVADA,**

11 **Plaintiff,**

12 **-vs-**

13 **CARY PICKETT, aka,**
14 **Cary Jerard Pickett, #0725059**

15 **Defendant.**

CASE NO: C262523
DEPT NO: XVIII

16 **GUILTY PLEA AGREEMENT**

17 I hereby agree to plead guilty to: **COUNT 1 - BURGLARY WHILE IN**
18 **POSSESSION OF A FIREARM (Felony - NRS 205.060 / Category B); COUNT 2 -**
19 **CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480, 200.380 / Category**
20 **B); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS**
21 **200.380, 193.165 / Category B) and COUNT 4 - POSSESSION OF FIREARM BY EX-**
22 **FELON (Felony - NRS 202.360 / Category B), as more fully alleged in the charging**
23 **document attached hereto as Exhibit "1".**

24 My decision to plead guilty is based upon the plea agreement in this case which is as
25 follows:

26 The State has agreed to dismiss the remaining counts. Defendant stipulates to large
27 habitual treatment under NRS 207.010. Parties stipulate to a 2-5 year sentence on Count 1.
28 Defendant treated as habitual under Count 2 and receive 10-25 year sentence, consecutive to

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1 Count 1, for a total of 12-30 years in the Nevada Department of Corrections. All other
2 counts to run concurrent.

3 CONSEQUENCES OF THE PLEA

4 I understand that by pleading guilty I admit the facts which support all the elements of
5 the offense(s) to which I now plead as set forth in Exhibit "1".

6 I understand that as a consequence of my plea of guilty as to Count 1, the Court
7 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
8 term of not less than two (2) years and a maximum term of not more than fifteen (15) years.
9 The minimum term of imprisonment may not exceed forty percent (40%) of the maximum
10 term of imprisonment. I understand that I may also be fined up to \$10,000.00.

11 I understand that as a consequence of my plea of guilty as to Count 2, the Court
12 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
13 term of not less than one (1) year and a maximum term of not more than six (6) years. The
14 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term
15 of imprisonment. I understand that I may also be fined up to \$5,000.00.

16 I understand that as a consequence of my plea of guilty as to Count 3, the Court
17 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
18 term of not less than two (2) years and a maximum term of not more than fifteen (15) years,
19 plus a consecutive minimum term of not less than one (1) year and a maximum term of not
20 more than fifteen (15) years for the use of a deadly weapon enhancement. The minimum
21 term of imprisonment may not exceed forty percent (40%) of the maximum term of
22 imprisonment.

23 I understand that as a consequence of my plea of guilty as to Count 4, the Court
24 must sentence me to imprisonment in the Nevada Department of Corrections for a minimum
25 term of not less than one (1) year and a maximum term of not more than six (6) years. The
26 minimum term of imprisonment may not exceed forty percent (40%) of the maximum term
27 of imprisonment. I understand that I may also be fined up to \$5,000.00.

28 I understand that the law requires me to pay an Administrative Assessment Fee.

1 Further, I understand that if I am sentenced under the under the "small" habitual
2 criminal enhancement, the Court must sentence me to a term not less than FIVE (5) years
3 and a maximum of TWENTY (20) years in the Nevada Department of Corrections. I
4 understand that if I am sentenced under the "large" habitual criminal enhancement the Court
5 must sentence me to LIFE without the possibility of parole; life with the possibility of
6 parole, parole eligibility begins after a minimum term of TEN (10) years has been served;
7 OR a definite term of TWENTY FIVE (25) years, parole eligibility begins after a minimum
8 of TEN (10) years has been served.

9 I understand that, if appropriate, I will be ordered to make restitution to the victim of
10 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
11 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
12 reimburse the State of Nevada for any expenses related to my extradition, if any.

13 I understand that I am eligible for probation for the offense to which I am
14 pleading guilty to in Count 1, 2, and 4. I understand that, except as otherwise provided by
15 statute, the question of whether I receive probation is in the discretion of the sentencing
16 judge.

17 I understand that I am not eligible for probation for the offense to which I am
18 pleading guilty to in Count 3.

19 I also understand that I must submit to blood and/or saliva tests under the Direction of
20 the Division of Parole and Probation to determine genetic markers and/or secretor status.

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

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

27 I have not been promised or guaranteed any particular sentence by anyone. I know
28 that my sentence is to be determined by the Court within the limits prescribed by statute.

1 I understand that if my attorney or the State of Nevada or both recommend any
2 specific punishment to the Court, the Court is not obligated to accept the recommendation.

3 I understand that if the State of Nevada has agreed to recommend or stipulate a
4 particular sentence or has agreed not to present argument regarding the sentence, or agreed
5 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
6 when the offense could have been treated as a felony, such agreement is contingent upon my
7 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
8 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
9 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
10 right to argue for any lawful sentence.

11 I understand if the offense(s) to which I am pleading guilty to was committed while I
12 was incarcerated on another charge or while I was on probation or parole that I am not
13 eligible for credit for time served toward the instant offense(s).

14 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
15 United States, I may, in addition to other consequences provided for by federal law, be
16 removed, deported, excluded from entry into the United States or denied naturalization.

17 I understand that the Division of Parole and Probation will prepare a report for the
18 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
19 sentencing, including my criminal history. This report may contain hearsay information
20 regarding my background and criminal history. My attorney and I will each have the
21 opportunity to comment on the information contained in the report at the time of sentencing.
22 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
23 may also comment on this report.

24 WAIVER OF RIGHTS

25 By entering my plea of guilty, I understand that I am waiving and forever giving up
26 the following rights and privileges:

27 ///

28 ///

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

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

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

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

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

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

VOLUNTARINESS OF PLEA

I have discussed the elements of all of the original charge(s) against me with my attorney and I understand the nature of the charge(s) against me.

I understand that the State would have to prove each element of the charge(s) against me at trial.

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

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

I believe that pleading guilty and accepting this plea bargain is in my best interest, and that a trial would be contrary to my best interest.

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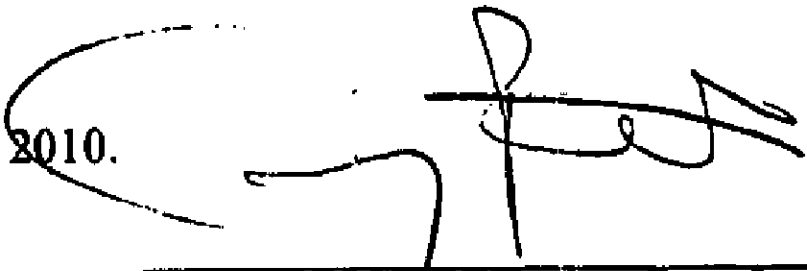
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1 I am signing this agreement voluntarily, after consultation with my attorney, and I am
2 not acting under duress or coercion or by virtue of any promises of leniency, except for those
3 set forth in this agreement.

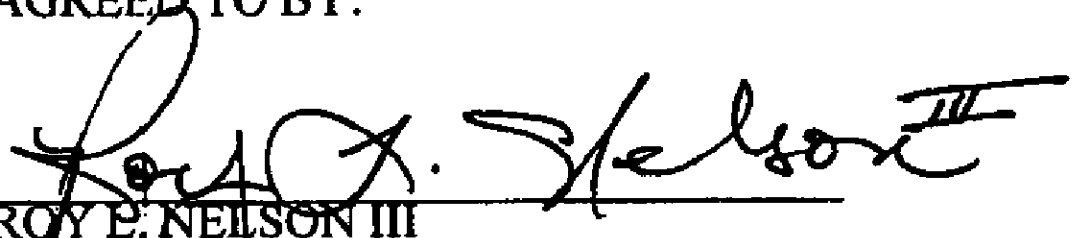
4 I am not now under the influence of any intoxicating liquor, a controlled substance or
5 other drug which would in any manner impair my ability to comprehend or understand this
6 agreement or the proceedings surrounding my entry of this plea.

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

10 DATED this 11 day of March, 2010.

11 
12 CARY PICKETT, aka, Cary Jerard Pickett
Defendant

13 AGREED TO BY:

14 
15 ROY E. NELSON III
16 Chief Deputy District Attorney
17 Nevada Bar #007842
18
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1 CERTIFICATE OF COUNSEL:

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

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
5 to which guilty pleas are being entered.

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

8 3. All pleas of guilty offered by the Defendant pursuant to this agreement are
9 consistent with the facts known to me and are made with my advice to the Defendant.

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

11 a. Is competent and understands the charges and the consequences of pleading
12 guilty as provided in this agreement.

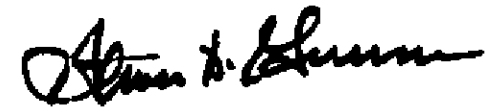
13 b. Executed this agreement and will enter all guilty pleas pursuant hereto
14 voluntarily.

15 c. Was not under the influence of intoxicating liquor, a controlled substance or
16 other drug at the time I consulted with the defendant as certified in paragraphs
17 1 and 2 above.

18 Dated: This 11 day of March, 2010.

19 
20 ATTORNEY FOR DEFENDANT

21
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27
28 10F02742B/GCU:abf



CLERK OF THE COURT

1 **INFO**

2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **ROY L. NELSON III**
6 Chief Deputy District Attorney
7 Nevada Bar #007842
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

12 I.A. 3/11/10
13 10:30 A.M.
14 **ALMASE**

DISTRICT COURT
CLARK COUNTY, NEVADA

15 **THE STATE OF NEVADA,**

16 Plaintiff,

17 -vs-

18 **CARY PICKETT, aka,**
19 Cary Jerard Pickett, #0725059

20 Defendant.

Case No: C262523
Dept No: XVIII

INFORMATION

21 **STATE OF NEVADA** }
22 **COUNTY OF CLARK** } ss.

23 **DAVID ROGER**, District Attorney within and for the County of Clark, State of
24 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

25 That **CARY PICKETT**, aka, Cary Jerard Pickett, the Defendant(s) above named,
26 having committed the crimes of **BURGLARY WHILE IN POSSESSION OF A FIREARM**
27 (Felony - NRS 205.060); **CONSPIRACY TO COMMIT ROBBERY** (Felony - NRS
28 199.480, 200.380); **ROBBERY WITH USE OF A DEADLY WEAPON** (Felony - NRS
200.380, 193.165) and **POSSESSION OF FIREARM BY EX-FELON** (Felony - NRS
202.360), on or between October 11, 2009 and November 14, 2009, within the County of
Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
and provided, and against the peace and dignity of the State of Nevada,

///

///

EXHIBIT "1"

1 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did, then and there wilfully, unlawfully, and feloniously enter, while in possession of
3 a firearm, with intent to commit robbery, that certain building occupied by BEANO'S BAR,
4 located at 7200 West Lake Mead, Las Vegas, Clark County, Nevada and/or
5 ROADRUNNER SALOON, located at 5990 Centennial Center, Las Vegas, Clark County,
6 Nevada and/or TRIPLE BAR, located at 4420 North Decatur Boulevard, North Las Vegas,
7 Clark County, Nevada and/or RAE'S BAR, located at 2531 Wigwam Parkway, Henderson,
8 Clark County, Nevada and/or TIMBERS BAR, located at 7240 West Azure, Suite No. 170,
9 Las Vegas, Clark County, Nevada and/or TENAYA LODGE, located at 5717 Sky Pointe
10 Drive, Las Vegas, Clark County, Nevada.

11 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

12 did, together with co-defendant ALAN DANIELS, aka, Alan Demetrius Daniels, then
13 and there meet with each other and between themselves, and each of them with the other,
14 wilfully, unlawfully, and feloniously conspire and agree to commit a crime, to-wit: robbery,
15 and in furtherance of said conspiracy, Defendant did commit the acts as set forth in Count 3,
16 said acts being incorporated by this reference as though fully set forth herein.

17 COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON

18 did, then and there wilfully, unlawfully, and feloniously take personal property, to-
19 wit: lawful money of the United States and a cellular telephone, from the person of JUSTIN
20 SANCHEZ and/or GEORGE MATTIE and/or DELTON LEMA and/or AARON
21 PARDUHM and/or JOSHUA KIEHL, or in their presence, by means of force or violence or
22 fear of injury to, and without the consent and against the will of the said JUSTIN SANCHEZ
23 and/or GEORGE MATTIE and/or DELTON LEMA and/or AARON PARDUHM and/or
24 JOSHUA KIEHL, said Defendant using a deadly weapon, to-wit: a handgun, during the
25 commission of said crime, the Defendants being criminally liable under one or more of the
26 following principles of criminal liability, to-wit: (1) by directly committing this crime and/or
27 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
28 committed, by providing counsel and/or encouragement and by entering into a course of

1 conduct whereby the Defendants pointed handguns at the said victims and took said items
2 (3) pursuant to a conspiracy to commit this crime.

3 **COUNT 4 - POSSESSION OF FIREARM BY EX-FELON**

4 did, then and there wilfully, unlawfully, and feloniously own or have in his
5 possession, or under his control, a weapon, to-wit: a handgun, the said Defendant being an
6 ex-felon, having in 2006, in Case No. C226282 been convicted of Transport of a Controlled
7 Substance and/or having in 1997, in Case No. C145127 been convicted of Burglary and/or
8 having in 1997, in Case No. C143146 been convicted of Grand Larceny and/or having in
9 1993, in Case No. C109725 been convicted of Attempt Grand Larceny, in the Eighth Judicial
10 District Court, Clark County, felonies under the laws of the State of Nevada.

11
12 DAVID ROGER
13 DISTRICT ATTORNEY
14 Nevada Bar #002781

15 BY /s/ROY L. NELSON III
16 ROY L. NELSON III
17 Chief Deputy District Attorney
18 Nevada Bar #007842

19 UNDER NO CIRCUMSTANCES IS THE LANGUAGE CONTAINED
20 HEREINAFTER TO BE READ TO A JURY HEARING THE PRIMARY OFFENSE FOR
21 WHICH THE DEFENDANT IS PRESENTLY CHARGED.

22 Defendant CARY PICKETT, aka, Cary Jerard Pickett, hereinbefore named, is placed
23 on notice that, in accordance with the authorization of NRS 207.010, punishment imposed
24 pursuant to the above-stated habitual criminal statute will be urged upon the Court if said
25 Defendant is found guilty on the primary offenses of BURGLARY WHILE IN
26 POSSESSION OF A FIREARM (Felony - NRS 205.060); CONSPIRACY TO COMMIT
27 ROBBERY (Felony - NRS 199.480, 200.380); ROBBERY WITH USE OF A DEADLY
28 WEAPON (Felony - NRS 200.380, 193.165) and POSSESSION OF FIREARM BY EX-
FELON (Felony - NRS 202.360), for which the Defendant is presently charged.

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2 by the Court in its discretion ONLY after the finding of guilty of Defendant on the primary
3 charge herein.

4 That said Defendant CARY PICKETT, aka, Cary Jerard Pickett, has been seven (7)
5 times convicted of crimes, which, under the laws of the situs of the crime and/or the State of
6 Nevada, amount to felonies, to-wit:

7 1. That in 2006, the Defendant was convicted in Clark County, Nevada, for the crime
8 of Transporting a Controlled Substance, in Case No. C226282.

9 2. That in 1997, the Defendant was convicted in Clark County, Nevada, for the crime
10 of Burglary, in Case No. C145127.

11 3. That in 1997, the Defendant was convicted in Clark County, Nevada for the crime
12 of Grand Larceny, in Case No. C143146.

13 4. That in 1994, the Defendant was convicted in Clark County, Nevada for the crime
14 of Escape, in Case No. C119000.

15 5. That in 1993, the Defendant was convicted in Clark County, Nevada for the crime
16 of Attempt Grand Larceny, in Case No. C109725.

17 6. That in 1993, the Defendant was convicted in Clark County, Nevada for the crime
18 of Burglary, in Case No. C107733.

19 7. That in 1991, the Defendant was convicted in Clark County, Nevada for the crime
20 of Attempt Grand Larceny, in Case No. C99915.

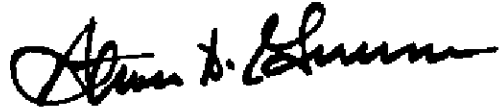
21 DAVID ROGER
22 DISTRICT ATTORNEY
Nevada Bar #002781

23 BY /s/ROY L. NELSON III
24 ROY L. NELSON III
25 Chief Deputy District Attorney
Nevada Bar #007842

26 **DO NOT READ TO THE JURY**

27 DA#10F02742BGCU:abf
28 LVMPD; NLVPD; HPD EV#0910230605; 0911130506; 0911140728; 0908310560;
0907040926; 0910110978; 0926503; 0923087
BURG WFA; CONSP ROBB; RWDW; EX FEL POSS FA - F(TK10)

EXHIBIT 2


CLERK OF THE COURT

1 **INFO**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 ROY L. NELSON III
6 Chief Deputy District Attorney
7 Nevada Bar #007842
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

7 I.A. 3/11/10
10:30 A.M.
8 ALMASE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 CARY PICKETT, aka,
13 Cary Jerard Pickett, #0725059

14 Defendant.

Case No: C262523
Dept No: XVIII

INFORMATION

15 STATE OF NEVADA }
16 COUNTY OF CLARK } ss.

17 DAVID ROGER, District Attorney within and for the County of Clark, State of
18 Nevada, in the name and by the authority of the State of Nevada, informs the Court:

19 That CARY PICKETT, aka, Cary Jerard Pickett, the Defendant(s) above named,
20 having committed the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM
21 (Felony - NRS 205.060); CONSPIRACY TO COMMIT ROBBERY (Felony - NRS
22 199.480, 200.380); ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS
23 200.380, 193.165) and POSSESSION OF FIREARM BY EX-FELON (Felony - NRS
24 202.360), on or between October 11, 2009 and November 14, 2009, within the County of
25 Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made
26 and provided, and against the peace and dignity of the State of Nevada,

27 ///

28 ///

1 COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did, then and there wilfully, unlawfully, and feloniously enter, while in possession of
3 a firearm, with intent to commit robbery, that certain building occupied by BEANO'S BAR,
4 located at 7200 West Lake Mead, Las Vegas, Clark County, Nevada and/or
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11 COUNT 2 - CONSPIRACY TO COMMIT ROBBERY

12 did, together with co-defendant ALAN DANIELS, aka, Alan Demetrius Daniels, then
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20 SANCHEZ and/or GEORGE MATTIE and/or DELTON LEMA and/or AARON
21 PARDUHM and/or JOSHUA KIEHL, or in their presence, by means of force or violence or
22 fear of injury to, and without the consent and against the will of the said JUSTIN SANCHEZ
23 and/or GEORGE MATTIE and/or DELTON LEMA and/or AARON PARDUHM and/or
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25 commission of said crime, the Defendants being criminally liable under one or more of the
26 following principles of criminal liability, to-wit: (1) by directly committing this crime and/or
27 (2) by aiding or abetting in the commission of this crime, with the intent that this crime be
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8 having in 1997, in Case No. C143146 been convicted of Grand Larceny and/or having in
9 1993, in Case No. C109725 been convicted of Attempt Grand Larceny, in the Eighth Judicial
10 District Court, Clark County, felonies under the laws of the State of Nevada.

11
12 DAVID ROGER
13 DISTRICT ATTORNEY
14 Nevada Bar #002781

15 BY /s/ROY L. NELSON III
16 ROY L. NELSON III
17 Chief Deputy District Attorney
18 Nevada Bar #007842

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27 ROBBERY (Felony - NRS 199.480, 200.380); ROBBERY WITH USE OF A DEADLY
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13 4. That in 1994, the Defendant was convicted in Clark County, Nevada for the crime
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15 5. That in 1993, the Defendant was convicted in Clark County, Nevada for the crime
16 of Attempt Grand Larceny, in Case No. C109725.

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21 DAVID ROGER
22 DISTRICT ATTORNEY
Nevada Bar #002781

23 BY /s/ROY L. NELSON III
24 ROY L. NELSON III
25 Chief Deputy District Attorney
Nevada Bar #007842

26 **DO NOT READ TO THE JURY**

27 DA#10F02742BGCU:abf
LVMPD; NLVPD; HPD EV#0910230605; 0911130506; 0911140728; 0908310560;
0907040926; 0910110978; 0926503; 0923087
28 BURG WFA; CONSP ROBB; RWDW; EX FEL POSS FA - F(TK10)

EXHIBIT 3

COP.

FILED

FEB 28 8 25 AM '11

[Signature]
CLERK OF DISTRICT COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

CARY PICKETT, aka,
Cary Jerard Pickett,

Defendant.

CASE NO. C262523

DEPT. XVIII
(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE KEVIN V. WILLIAMS, HEARING MASTER
THURSDAY, MARCH 11, 2010

**RECORDER'S TRANSCRIPT OF HEARING RE:
ARRAIGNMENT**

APPEARANCES:

For the State:

ROY NELSON, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CAESAR V. ALMASE, ESQ.,
Attorney at Law

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

1 THURSDAY, MARCH 11, 2010

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: Cary Pickett. Yes, Mr. Almase?

6 MR. ALMASE: Good morning, your Honor.

7 THE COURT: Good morning, sir.

8 MR. ALMASE: Mr. Pickett is present in custody. You want me to do it?

9 MR. NELSON: Either way. Whatever you want.

10 THE COURT: Why don't you go ahead and let Mr. Nelson put it on there. Go
11 ahead, Mr. Nelson.

12 MR. NELSON: Judge, it's my understanding this morning he's going to plead
13 guilty to one count of burglary while in possession of a firearm, count two,
14 conspiracy to commit robbery, count three, robbery with use of a deadly weapon,
15 and count four, possession of a firearm by ex-felon. There's a signed guilty plea
16 agreement dated March 11th, today, Judge.

17 The State agreed to dismiss the remaining counts. The Defendant
18 stipulates to the large habitual criminal treatment under NRS 207.010. The parties
19 stipulate to a two- to five-year sentence with regard to count one. The Defendant
20 will agree that he'll be treated as a large habitual under count two and receive a
21 sentence of ten to twenty-five years. That will run consecutive to count one for a
22 total of twelve to thirty years in the Nevada Department of Corrections. All the other
23 counts will run concurrent, Judge.

24 THE COURT: Now did you hear that -- those negotiations put on the record
25 by the State, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What is your true name, Mr. Pickett?

3 THE DEFENDANT: Cary Jerard Pickett.

4 THE COURT: How old are you?

5 THE DEFENDANT: Forty-four.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: Thirteen years.

8 THE COURT: Read, write, and understand the English language?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay, move just a little closer to the microphone if you would

11 there, Mr. Pickett.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Understand what you're charged with?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What is your plea?

16 THE DEFENDANT: Guilty.

17 THE COURT: Before I can accept your guilty plea, I must be assured it's

18 freely and voluntarily given. Has anyone threatened you to get you to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anyone threatened anyone closely associated with you in

21 order to get you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: You understand the penalty range for count one is two to

24 fifteen years, Nevada Department of Prisons?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand the penalty range for count two is one to
2 six years, Nevada Department of Prisons, up to a \$5,000 fine?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the penalty range for count three which
5 you're pleading guilty to, robbery with use of a deadly weapon, is one to fifteen
6 years -- two to fifteen years for the robbery; do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand there's an additional
9 one- to fifteen-year penalty for use of a deadly weapon; you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand the penalty range for count four is one to
12 six years, Nevada Department of Prisons, up to a \$5,000 fine?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand that sentencing is strictly up to the
15 Court and no one can promise you probation, leniency, or any special treatment?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you further understand, sir, that you stipulated to the use
18 of the large habitual criminal which carries the following penalty ranges: Life without
19 the possibility of parole, life with the possibility of parole with parole eligibility
20 beginning after ten years, or a definite term of twenty-five years in the Nevada
21 Department of Prisons with parole eligibility beginning after ten years; you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that you have stipulated to the last
25 type of sentencing which is ten to twenty-five years; you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand it's consecutive to count one?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And is one of the reasons you're pleading guilty here today is
5 because in truth and fact you are guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I have a copy of your guilty plea agreement in my hand. Did
8 you read it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Understand it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understand by pleading guilty you're giving up the several
13 valuable Constitutional rights listed in the guilty plea agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Discuss those rights with your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have any questions about those rights?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have any questions regarding negotiations?

20 THE DEFENDANT: No, sir.

21 THE COURT: Did you sign this guilty plea agreement freely and voluntarily
22 on page six, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay, listen closely, Mr. Pickett. This is what they said you
25 did. Count one, burglary while in possession of a firearm, it says that you did

1 willfully, unlawfully, and feloniously enter, while in possession of a firearm, with the
2 intent to commit robbery, that certain building occupied by Beano's Bar, located on
3 West Lake Mead, Las Vegas, Clark County, Nevada, the Roadrunner Saloon,
4 located on Centennial Center, Las Vegas, Clark County, Nevada, the Triple Bar,
5 located on North Decatur Boulevard, Las Vegas, Clark County, Nevada, Rae's Bar,
6 located on Wigwam Parkway, Clark County, Nevada, Timbers Bar, located on West
7 Azure, Suite 170, Las Vegas, Clark County, Nevada, and/or the Tenaya Lodge,
8 located on Sky Pointe Drive, Las Vegas, Clark County, Nevada; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And it says here in regards to count two that you did meet with
11 Alan Daniels and between yourselves you willfully, unlawfully conspired and agreed
12 to commit the crime of robbery, and in furtherance of that conspiracy you did the act
13 set forth in count three?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And in regards to count three, robbery with use of a deadly
16 weapon, it says you did willfully, unlawfully, and feloniously take personal property,
17 lawful money of the United States, and cellular phone from the person of Justin
18 Sanchez, and/or George Mattie, and/or Delton Lema, Aaron Parduhm, Jushua Kiehl,
19 in their presence by means of force, fear, or violence of injury thereto, without the
20 consent and against the will of those individuals; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And during the commission of the crime either you or your
23 co-defendant used a handgun; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay, in regards to count four, possession of a firearm by an

1 ex-felon, it says you did willfully, unlawfully, and feloniously own or have in your
2 possession or under your control a weapon, and that was a handgun, and that at
3 that time you were an ex-felon, 'cause in 2006 you had been convicted in Case
4 Number C226282 of transport of controlled substance, a felony under the laws of
5 the State of Nevada, and also in 1997 you had previously been convicted of a -- in
6 Case Number 145127 of burglary; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And in Case C21 -- 143 [sic] and you had been convicted of
9 grand larceny; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And in -- that was in 1993 -- excuse me. And then for a final
12 case you had was C109725 in 1993 where you'd been convicted of attempt grand
13 larceny; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So you had possession of a firearm after being convicted of
16 felonies; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Anything else there, Mr. Nelson?

19 MR. NELSON: No, Judge.

20 THE COURT: Okay, Court accepts the Defendant's guilty plea as being freely
21 and voluntarily given. Listen closely now, sir. We're going to set your sentencing
22 date on --

23 THE CLERK: May 10th, 8:15, Department 18.

24 MR. NELSON: Thank you, Judge.

25 THE COURT: Uh-huh. Have a good day there, Mr. Nelson.

1 MR. ALMASE: Thank you, Judge.

2 (Whereupon, the proceedings concluded)

3 * * * * *

4
5 ATTEST: I do hereby certify that I have truly and correctly transcribed the
6 audio/video proceedings in the above-entitled case to the best of my ability.

7 

8 Kiara Schmidt, Court Recorder/Transcriber

EXHIBIT 4

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor COURT MINUTES May 10, 2010

10C262523-2 The State of Nevada vs Cary J Pickett

May 10, 2010 8:15 AM Sentencing SENTENCING DEFT PICKETT

HEARD BY: Barker, David COURTROOM: RJC Courtroom 11B

COURT CLERK: Sharon Chun

RECORDER: Richard Kangas

REPORTER:

PARTIES

PRESENT: Almase, Caesar V. Attorney for Deft
 Nelson III, Roy L. Attorney for State
 Pickett, Cary J Defendant

JOURNAL ENTRIES

- The State lodged seven (7) certified copies of Deft Pickett's prior judgments of Convictions in support of their request for Habitual Criminal enhancement. Exhibits were marked as State's Exhibits and admitted. COURT FOUND documents to be accurate and sufficient to support and FOUND DEFT PICKETT AN HABITUAL CRIMINAL pursuant to NRS 207.010.

DEFT. PICKETT ADJUDGED GUILTY of COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM (F); COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (F); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (F); AND COUNT 4 - POSSESSION OF FIREARM BY EX-FELON (F).

In addition to the \$25.00 Administrative Assessment fee, COURT ORDERED, Deft Pickett to PAY RESTITUTION in the AMOUNT of \$11,948.60 JOINTLY and SEVERALLY with co-deft, an INDIVIDUAL RESTITUTION of \$1,550.00, and SENTENCED, as follows:

COUNT 1 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC);

COUNT 2 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC);

COUNT 3 - Habitual Criminal Enhancement with a MAXIMUM term of TWENTY-FIVE (25) YEARS and a MINIMUM of TEN (10) YEARS in the NV Dept of Corrections, SENTENCE CONSECUTIVE TO COUNT 1;

PRINT DATE: 09/27/2010

Page 1 of 2

Minutes Date: May 10, 2010

COUNT 4 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT TO COUNT 2.

COURT REITERATED that COUNTS 1 AND 3 ARE CONSECUTIVE and COUNTS 2 and 4 ARE CONCURRENT, with 88 DAYS CREDIT for time served.

COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted.

If bond, exonerated.

9/27/10-MINUTES CORRECTED TO REFLECT CORRECT DEFT'S NAME, AND THE SENTENCING MINUTE ORDER OF DEFT PICKETT HAS NOW BEEN SEPARATED FROM THE SENTENCING MINUTE ORDER OF DEFT DANIELS. /SSC

FILED

APR 05 2011

Cary Pickett # 57591
High Desert State Prison
P.O. Box 650
Indian Springs NV 894070

File Return *John A. Blum*
CLERK OF COURT

IN THE EIGHTH Judicial District Court of
THE STATE OF NEVADA IN and for Clark County

State of Nevada
Ward Scilla,

Respondent,

Case No: 10C-262523-2

vs.

Dept No: XVII

CARY PICKETT

Petitioner,

Evidentiary Hearing
Requested

Petitioner's reply to States response to writ of Habeas
Corpus (Post-conviction)

Date of Hearing: April 6, 2011

Time of Hearing: 8:15 AM

Come Now, petitioner in pro-se, and hereby submits
the attached points and authorities in Reply to States
Response to petitioner's petition for writ of Habeas

This Reply 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 time of hearing or
Evidentiary hearing, if deemed necessary by this Honorable
Court.

CLERK OF THE COURT

APR 05 2011

RECEIVED

Page
1

10C262523-2
RPLY
Reply
1333675



ARGUMENTS

I. Contrary to the state's argument, DEFENSE COUNSEL'S failure to conduct ANY investigation into his client's prior convictions or mitigating evidence prior to advising his client to stipulate to the Habitual criminal statute is INEFFECTIVENESS.

The state argues that the petitioner fails to satisfy the two prong test of "reasonably effective assistance" of COUNSEL as set forth in *Strickland v. Washington*, 466 U.S. 688-87 104 S.Ct 2052, 2063-64. The right to be represented by COUNSEL is a right to be effectively represented at all critical stages of the criminal process. The Constitution guarantees an accused "adequate legal assistance" *Cuyler v. Sullivan*, 466 U.S. 335.

AN ATTORNEY must make a reasonable investigation in preparation for trial or a reasonable decision NOT to investigate. Strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. *Kirksey v. State of Nevada* 923 P2d 1102. IN the case at bar defense COUNSEL conducted NO investigation nor made any inquiry into the prior felony convictions to ascertain validity prior to advising his client to stipulate (Plead)

1 guilty to the habitual criminal statute.

2 NRS 34.810 (1)(a) provides that a court shall dis-
3 miss a post-conviction habeas petition - challenging a
4 conviction based on a guilty plea unless the petition
5 alleges "that the plea was involuntarily or unknowingly
6 entered or that the plea was entered without effective
7 assistance of counsel" A petitioner is entitled to
8 an evidentiary hearing only if he supports his claim
9 with specific factual allegations that if true would
10 entitle him to relief" The fact that counsel did
11 not know at entry of plea nor at sentencing that
12 two of his client prior J.O.C. he was without
13 counsel "in pro-per" and that the state did not
14 as legally required produce valid waiver of rights
15 of counsel for those two conviction ^{§§} 143146 and
16 145127 demonstrates counsel failure to investigate
17 and nowhere does the record demonstrate this fail-
18 ure to investigate was some strategic move.

19
20 II. Petitioner argues that plea of guilty / stipulating to
21 the habitual criminal statute was not knowingly or
22 intelligently made.

23
24 Petitioner has only asserted that his plea / stipulation
25 to the habitual is invalid, the state fails to address
26 the "Bait and Switch" pulled off in the course of this
27 prosecution in (Ex-1 of petitioners brief in support
28 of his petition for writ of habeas corpus pg 2) the

1 state clarifies for both the court and the defen-
2 dant "with regards to robbery with the use of a
3 deadly weapon, that will be the charge that he will
4 plead to the large habitual on." Taylor v. Warden
5 609 P2d 587, the court must "consider as a whole,
6 the process by which the plea was obtained was
7 fundamentally fair". The petitioner had a reasonable
8 expectation based upon the aforementioned clarification
9 "plead to the large habitual" his plea agreement would
10 be specific in waiver of right or acknowledgement
11 in reference to the habitual offender adjudica-
12 tion process itself, not a simple "treated as" or
13 "Treatment" under NRS 207.010, those terms are
14 ambiguous and any ambiguities in a plea agree-
15 ment must be levied against the state U.S. v.
16 ANDERSON, 970 F 2d 602.

17 IN PARKERSON v. STATE OF NEVADA 678 P2d 1155
18 in regards to stipulating to habitual as part of a
19 guilty plea two things should be demonstrated the
20 "record must show, that the defendant understands
21 that an habitual criminal determination" and "an en-
22 suing life sentence may be a consequence of his
23 or her plea" in this case 10-25 yrs, nowhere
24 in the plea canvass does the defendant acknow-
25 ledge that he understood that a later de-
26 termination will have to be made all language
27 indicates an automatic result "treated as a hab-
28 itual" and sentenced to "10-25 yrs"

1 III. Contrary to the state's argument that the petitioners
2 improper adjudication and sentence is not cognizable,
3 due-process at sentencing was violated.
4

5 AT SENTENCING, the district Attorney ROY NELSON
6 submitted to the court what was purported to be
7 (7) certified copies of petitioner's prior judgement of
8 conviction in support of his being adjudicated as a
9 habitual offender, upon review of those same J.O.C's
10 provided to the defense only (i) cc# C 226282 EX-1
11 (Attached) bear's a certification seal "Certified copy
12 document Attached is a true and correct copy of the original
13 on file" and dated all other J.O.C's EX 2-7 have NO such
14 certification seal "under NEVADA Law admission into evidence
15 of Exemplified copy of felony conviction is a prima facie
16 evidence of conviction of prior felony" Williams v. Wolff
17 497 F. supp 122 (i) certified copy out of (7) does not meet
18 the procedural requirements of NRS 207.010.

19 IF the state produces record of Judgement of
20 conviction from proceeding in which defendant was not
21 represented by counsel, as it did in the case at bar in
22 petitioners (cc# 143146 and 145127 EX-2 and 3), state has
23 the burden to produce evidence to demonstrate the defen-
24 dant validly waived right to counsel Davenport v. State
25 915 P.2d 878, here the state did not produce any valid
26 waiver of counsel as require when J.O.C's clearly on their
27 face in both 143146 and 145127 "the Defendant, IN propria
28 persona" (without counsel), instead the state argues

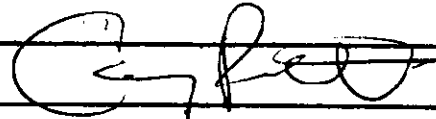
1 that EVEN "if" clearly invalid convictions were successfully
2 challenged there would be (5) remaining to be considered,
3 demonstrating his deliberate indifference to ~~petitioner's~~
4 petitioner's right to due-process. The standard is set
5 IN McNulty v. State of NEVADA 826 P 2d 567 "IN order
6 to USE prior convictions for ENHANCEMENT purposes, it is
7 ESSENTIAL that those convictions be constitutionally valid
8 SEE Baldasar v. ILLINOIS 466 U.S. 222.

9 The court went on to rely on the District Attorney's
10 preparation and instead of factually determining that
11 each submitted prior conviction WERE in fact constitu-
12 tionally valid, "The constitutional validity of prior convict-
13 ions is a legal status to which a defendant may not stip-
14 ulate. No matter what the plea bargain, the district court
15 must make it's own determination as to the constitutional
16 validity of prior convictions" the "question of the validity
17 of the prior convictions must be determined by the district
18 court as a matter of law" Staley v. State 787 P2d 396.
19 where records of the defendants prior convictions are devoid
20 of an affirmative showing that the defendant had been repre-
21 sented by counsel in any of those proceedings or had
22 validly waived his right to counsel, the defendant could
23 NOT be sentenced as a habitual criminal Hamlet v State
24 455 P 2d 915.

CONCLUSION

For the foregoing reasons, petitioner request that his sentence under NRS. 207.010 be vacated or for the court conduct an evidentiary hearing into allegations asserted in his petition. Petitioner also request the opportunity for oral argument

Respectfully submitted



Cary Pickett 57591

Dated this 30th day of March 2011

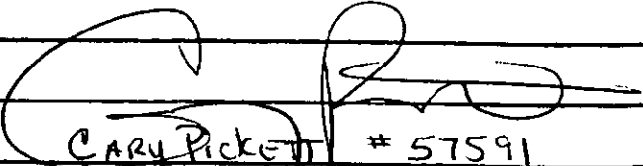
Certificate of Service by Mailing

I Cary Pickett, hereby certify, pursuant to NRCP 5(b), that on this 30th day of March, I mailed a true and correct copy of the foregoing petitioner's reply to states response to writ of habeas Corpus (Post-conviction) by depositing it in the High Desert State Prison, Legal First-Class Postage, fully pre-paid addressed as follows

District Attorney
David Rodgers
200 Lewis Street
Las Vegas NV 89101

Warden H.D.S.P.
Scalia
P.O. Box 650
Indian Springs NV 89070

Dated this 30th day of March 2011


CARY PICKETT # 57591
PETITIONER IN PROPER-PERSON
P.O. Box 650 H.D.S.P.
Indian Springs NV 89070

2

ORIGINAL

FILED

FEB 21 3 42 PM '07

CLERK OF THE COURT

1 JOCP
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 200 Lewis Avenue
6 Las Vegas, Nevada 89155-2212
7 (702) 671-2500
8 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 CARY JERARD PICKETT,
12 #0725059

13 Defendant.

Case No: C226282

Dept No: 1

14 JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)

16 The Defendant previously appeared before the Court with counsel and entered a plea
17 of guilty to the crime(s) of **TRANSPORT OF A CONTROLLED SUBSTANCE**
18 (Category B, Felony), in violation of NRS 453.321; thereafter, on the 14th day of February,
19 2007, the Defendant was present in court for sentencing with his counsel, JAMES L.
20 BUCHANAN II, ESQ., and good cause appearing,

21 **THE DEFENDANT IS HEREBY ADJUDGED** guilty of said offense(s) and, in
22 addition to the \$25.00 Administrative Assessment Fee, \$60.00 Drug Analysis fee and
23 \$150.00 DNA Analysis fee are IMPOSED, the Defendant is sentenced as follows: to a
24 MINIMUM of TWELVE (12) MONTHS and a MAXIMUM of THIRTY (30) MONTHS in
the Nevada Department of Corrections (NDC), SUSPENDED; placed on PROBATION for
FIVE (5) YEARS.

CONDITIONS:

- 1. Enter and complete Drug Court.

CLERK OF THE COURT

FEB 21 2007

RECEIVED

CLERK OF THE COURT

FEB 20 2007

RECEIVED

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- 2. Search Clause for illegal substances.
- 3. Maintain full-time employment.

DATED this 20 day of February, 2007.

Kenneth C. Long
DISTRICT JUDGE

CERTIFIED COPY
DOCUMENT ATTACHED IS A
TRUE AND CORRECT COPY
OF THE ORIGINAL ON FILE
Alma L. B. [Signature]
CLERK OF THE COURT

FEB 24 2010
2

P:\WP\DOCS\UUDG\613\61359101.doc

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

4 2. The constitutional right to a speedy and public trial by an impartial jury, free of
5 excessive pretrial publicity prejudicial to the defense, at which trial I would be entitled to the
6 assistance of an attorney, either appointed or retained. At trial the State would bear the
7 burden of proving beyond a reasonable doubt each element of the offense charged.

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

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

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

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

16 VOLUNTARINESS OF PLEA

17 I have discussed the elements of all of the original charge(s) against me with my
18 attorney and I understand the nature of the charge(s) against me.

19 I understand that the State would have to prove each element of the charge(s) against
20 me at trial.

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

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

25 I believe that pleading guilty and accepting this plea bargain is in my best interest,
26 and that a trial would be contrary to my best interest.

27 ///

28 ///

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

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

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

10 DATED this ____ day of March, 2010.

11
12 CARY PICKETT, aka, Cary Jerard Pickett
Defendant

13
14 AGREED TO BY:

15 
16 ROY E. NELSON III
17 Chief Deputy District Attorney
Nevada Bar #007842
18
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28

1 CERTIFICATE OF COUNSEL:

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

4 1. I have fully explained to the Defendant the allegations contained in the charge(s)
to which guilty pleas are being entered.

5 2. I have advised the Defendant of the penalties for each charge and the restitution
6 that the Defendant may be ordered to pay.

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

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

9 a. Is competent and understands the charges and the consequences of pleading
10 guilty as provided in this agreement.

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

12 c. Was not under the influence of intoxicating liquor, a controlled substance or
13 other drug at the time I consulted with the defendant as certified in paragraphs
1 and 2 above.

14 Dated: This _____ day of March, 2010.

15
16 ATTORNEY FOR DEFENDANT
17
18
19
20
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22
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24
25
26
27

28 10F02742B/GCU:abf

97C143146

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 14, 1997

97C143146

The State of Nevada vs Gary Pickett

July 14, 1997

9:00 AM

Request

DEFT'S PRO PER
REQUEST TO
RECEIVE
FERETTA CANVASS
Court Clerk: SUSAN
BURDETTE/sb
Reporter/Recorder:
CATHY NELSON
Heard By: Douglas,
Michael L

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Bloxham, Ronald C.	Attorney
	Justice, Patricia R.	Attorney
	Pickett, Gary	Defendant
	Public Defender	Attorney

JOURNAL ENTRIES

- Upon Court's inquiry, Deft. stated he wishes to represent himself as he and Ms. Justice have a conflict of interest; she does not believe he can win this case; she has insulted him and requested a psychological evaluation; he requested a substitution of counsel and she suggested that he represent himself. Court stated the penalty and admonished Deft. that if he represents himself at trial, the Court will not make any exceptions for him. Ms. Justice stated the defenses Deft. wants her to take at trial would be obvious ineffective assistance of counsel and it would be unethical to go forward. Following further statements by Deft., COURT ORDERED, matter CONTINUED; Ms. Justice to contact and discuss with Deft. Court stated he will have his office contact Mr. Savage for possible

PRINT DATE: 08/11/2010

Page 2 of 41

Minutes Date: June 05, 1997

97C143146

appointment -- not as counsel of record but as stand-by counsel if Deft. wishes to go forward and represent himself. Deft. requested a copy of the discovery. COURT ORDERED, DENIED. Ms. Justice requested this matter be recalled at 2:00 p.m., and COURT SO ORDERED.

At 2:00 P.M., matter recalled with all parties present. COURT ORDERED, State excused. Court noted the Calendar Call and Jury Trial, noted that Deft. wishes to go forward and represent himself, and noted Ms. Justice's request to make certain representations on the record this date. Ms. Justice concurred and make in-camera representations as to this case. Statements by Deft. as to his defense. Court found that Deft. has a right a trial that is based on physical identification of physical evidence available.

CUSTODY

07-17-97 9:00 AM DEFT'S REQUEST: PRO PER MOTION TO RECEIVE FERETA CANVASS
CANVASS ... CALENDAR CALL ... POSSIBLE CONFIRMATION OF COUNSEL (J. (SAVAGE)
07-21-97 10:00 AM JURY TRIAL

97C143146

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 14, 1997

97C143146

The State of Nevada vs Gary Pickett

August 14, 1997

9:00 AM

All Pending Motions

**ALL PENDING
MOTIONS (08-14-97)
Court Clerk: SUSAN
BURDETTE/sb
Reporter/Recorder:
JANICE LISTON
Heard By: Michael
Douglas**

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

PRESENT:	Noxon, Arthur G.	Attorney
	Pickett, Gary	Defendant
	Savage, Jordan S.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: TRIAL STATUS ... STATE'S MOTION TO AMEND INFORMATION

As to STATUS CHECK: TRIAL STATUS: Upon Court's inquiry, Mr. Noxon noted the State is ready for trial. Deft. requested discovery as to the photos. Mr. Noxon lodged the photos and copies of Deft's four (4) prior convictions with Mr. Savage. Mr. Noxon requested that Deft. advise the State, so they can respond, if he challenges any of those convictions.

As to STATE'S MOTION TO AMEND INFORMATION: Mr. Noxon noted the State wishes to seek Habitual Criminal treatment. Deft. objected to the State filing Habitual Criminal treatment at this late date. Response by Mr. Noxon that per Statute, any time up to 15 days prior to sentencing, the State may file Habitual Criminal charges and will obtain the Statute and respond if the Court so wishes, noting the State is within the limit. He further stated that if Deft. wishes to discuss negotiations, he will do so. Court cited NRS 207.010, and ORDERED, State's Motion to Amend Information

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Minutes Date:

June 05, 1997

97C143146

GRANTED, noting it is the State's prerogative to go forward with it, if appropriate. ORDER TO AMEND INFORMATION signed and FILED IN OPEN COURT. AMENDED INFORMATION FILED IN OPEN COURT. COURT ORDERED, Calendar Call and Jury Trial dates STAND. Mr. Noxon stated he will contact Mr. Savage as to negotiating this matter.

CUSTODY

08-28-97 9:00 AM CALENDAR CALL

09-02-97 10:00 AM JURY TRIAL

97C143146

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 14, 1999

97C143146

The State of Nevada vs Gary Pickett

April 14, 1999

9:00 AM

All Pending Motions

ALL PENDING
MOTIONS (04-14-99)
Court Clerk: JOYCE
BROWN
Reporter/Recorder:
CATHY NELSON
Heard By: Michael
Douglas

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT: Weckerly, Pamela C. Attorney

JOURNAL ENTRIES

- DEFT'S PRO PER MOTION FOR EXTENSION OF TIME, MOTION FOR TRANSCRIPTS, JUDGMENT OF CONVICTION, MOTION FOR PRE-SENTENCING REPORT, SENTENCING TRANSCRIPT, GUILTY PLEA MEMORANDUM, PRE-TRIAL AND ALL POST-TRIAL HEARING TRANSCRIPTS AND AMENDED INFORMATION TO RESPOND TO STATE'S OPPOSITION TO PETITIONERS WRIT OF HABEAS CORPUS...DEFT'S PRO PER PETITION FOR A WRIT OF HABEAS CORPUS (POST-CONVICTION)...DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

AS TO THE FIRST MOTION LISTED, COURT ORDERED motion DENIED. Court advised it would be appropriate to have the file sent to the Defendant by the previous Counsel, Mr. Savage, if he still had it.

AS TO DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS, COURT ORDERED motion GRANTED.

AS TO THE DEFT'S PRO PER PETITION FOR A WRIT OF HABEAS CORPUS (POST-CONVICTION), Court advised it was untimely; good cause had not been shown in this matter; and

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Minutes Date: June 05, 1997

97C143146

ORDERED, pursuant to NRS 34.726 the Petition was DENIED. Additionally, Court noted for the record, against the Court's advice, Mr. Pickett represented himself. Court further advised the petition was without merit; the Defendant had signed off on the negotiations; and he was canvassed thoroughly; as to Counsel, it was by his own design; and Court had ordered stand-by Counsel for him. State to prepare the order.

NDP

Exhibit # 2

ORIGINAL

FILED

1997 OCT 17 A 8:51

JACP
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 435-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

GARY PICKETT, aka
Cary Jerard Pickett, #0725059

Defendant.

Case No. C143146
Dept. No. XI
Docket S

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 28th day of August, 1997, the Defendant GARY PICKETT, aka Cary Jerard Pickett, appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s) of GRAND LARCENY (CATEGORY B FELONY), committed on or about the 3rd day of May, 1997, in violation of NRS 205.220 and

WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria Persona, being present in court with his counsel JORDAN SAVAGE, ESQ., as Stand By Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada Department of Prisons, suspended; placed on probation for an indeterminate period not to exceed five (5) years. Conditions: 1. Search Clause for controlled substances and weapons. 2. Complete Drug Court Program, noting weapons were not involved. 3. Complete long-term

File Return copy

OCT 14 1997

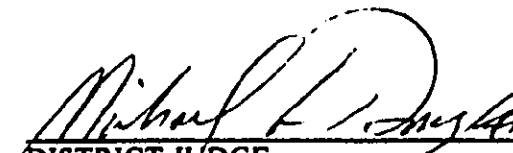
CE-05

CT 20 1997

1 counseling, vocational and educational programs as deemed necessary by the Division of Parole
2 and Probation. 4. Complete eight (8) hours community service per month within the first three
3 (3) years of probation. 5. Pursuant to NRS 176.185, Defendant to be supervised in the Nevada
4 Division of Parole and Probation's House Arrest Program for the first four (4) months of
5 probation. Defendant to receive eighty-nine (89) days credit for time served. Court referred
6 matter to Drug Court, and Ordered, set for further proceedings on October 6, 1997 at 9:00
7 o'clock a.m. in Department X.

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

10 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
11 State of Nevada.

12
13 
14 DISTRICT JUDGE ds

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25
26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TKI)

INDIVIDUAL RESTITUTION of \$3,034.50, and SENTENCED, as follows: COUNT 1 - A MAXIMUM of ONE-HUNDRED-EIGHTY (180) MONTHS and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 - A MAXIMUM term of LIFE in the NV Dept of Corrections, with the possibility of Parole when a MINIMUM of TEN (10) YEARS has been served, CONSECUTIVE TO COUNT 1; COUNT 4 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT TO COUNT 2.

COURT REITERATED that COUNTS 1 AND 3 ARE CONSECUTIVE and COUNTS 2 AND 4 ARE CONCURRENT. COURT FURTHER ORDERED, SENTENCING IN THIS CASE IS TO BE SERVED CONSECUTIVE TO THE SENTENCE IMPOSED IN CASE NO. C156246, with ZERO (0) DAYS CREDIT for time served. COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted.

If bond, exonerated.

=====

AS TO DEFT PICKETT: The State lodged seven (7) certified copies of Deft Pickett's prior Judgments of Convictions in support of their request for Habitual Criminal enhancement. Exhibits were marked as State's Exhibits and admitted. COURT FOUND documents to be accurate and sufficient to support and FOUND DEFT DANIELS AN HABITUAL CRIMINAL pursuant to NRS 207.010.

DEFT. PICKETT ADJUDGED GUILTY of COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM (F); COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (F); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (F); AND COUNT 4 - POSSESSION OF FIREARM BY EX-FELON (F). In addition to the \$25.00 Administrative Assessment fee, COURT ORDERED, Deft Pickett to PAY RESTITUTION in the AMOUNT of \$11,948.60 JOINTLY and SEVERALLY with co-deft, an INDIVIDUAL RESTITUTION of \$1,550.00, and SENTENCED, as follows: COUNT 1 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 - Habitual Criminal Enhancement with a MAXIMUM term of TWENTY-FIVE (25) MONTHS and a MINIMUM of TEN (10) MONTHS in the NV Dept of Corrections, SENTENCE CONSECUTIVE TO COUNT 1; COUNT 4 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT TO COUNT 2.

COURT REITERATED that COUNTS 1 AND 3 ARE CONSECUTIVE and COUNTS 2 and 4 ARE CONCURRENT, with 88 DAYS CREDIT for time served.

COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted.

If bond, exonerated.

CLERK'S NOTE 7/27/10 - AS TO DEFT PICKETT. COUNT 3 HAS BEEN CORRECTED PER ABOVE MINUTE. (S.CHUN)

PRINT DATE: 08/11/2010

Page 4 of 5

Minutes Date:

March 11, 2010

INDIVIDUAL RESTITUTION of \$3,034.50, and SENTENCED, as follows: COUNT 1 - A MAXIMUM of ONE-HUNDRED-EIGHTY (180) MONTHS and a MINIMUM of SIXTY (60) MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 - A MAXIMUM term of LIFE in the NV Dept of Corrections, with the possibility of Parole when a MINIMUM of TEN (10) YEARS has been served, CONSECUTIVE TO COUNT 1; COUNT 4 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT TO COUNT 2.

COURT REITERATED that COUNTS 1 AND 3 ARE CONSECUTIVE and COUNTS 2 AND 4 ARE CONCURRENT. COURT FURTHER ORDERED, SENTENCING IN THIS CASE IS TO BE SERVED CONSECUTIVE TO THE SENTENCE IMPOSED IN CASE NO. C156246, with ZERO (0) DAYS CREDIT for time served. COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted.

If bond, exonerated.

=====

AS TO DEFT PICKETT: The State lodged seven (7) certified copies of Deft Pickett's prior Judgments of Convictions in support of their request for Habitual Criminal enhancement. Exhibits were marked as State's Exhibits and admitted. COURT FOUND documents to be accurate and sufficient to support and FOUND DEFT DANIELS AN HABITUAL CRIMINAL pursuant to NRS 207.010.

DEFT. PICKETT ADJUDGED GUILTY of COUNT 1 - BURGLARY WHILE IN POSSESSION OF A FIREARM (F); COUNT 2 - CONSPIRACY TO COMMIT ROBBERY (F); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (F); AND COUNT 4 - POSSESSION OF FIREARM BY EX-FELON (F). In addition to the \$25.00 Administrative Assessment fee, COURT ORDERED, Deft Pickett to PAY RESTITUTION in the AMOUNT of \$11,948.60 JOINTLY and SEVERALLY with co-deft, an INDIVIDUAL RESTITUTION of \$1,550.00, and SENTENCED, as follows: COUNT 1 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 2 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC); COUNT 3 - Habitual Criminal Enhancement with a MAXIMUM term of TWENTY-FIVE (25) MONTHS and a MINIMUM of TEN (10) MONTHS in the NV Dept of Corrections, SENTENCE CONSECUTIVE TO COUNT 1; COUNT 4 - A MAXIMUM of SIXTY (60) MONTHS and a MINIMUM of TWENTY-FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONCURRENT TO COUNT 2.

COURT REITERATED that COUNTS 1 AND 3 ARE CONSECUTIVE and COUNTS 2 and 4 ARE CONCURRENT, with 88 DAYS CREDIT for time served.

COURT FURTHER ORDERED, DNA fee and testing WAIVED, having been previously submitted.

If bond, exonerated.

CLERK'S NOTE 7/27/10 - AS TO DEFT PICKETT. COUNT 3 HAS BEEN CORRECTED PER ABOVE MINUTE. (S.CHUN)

PRINT DATE: 08/11/2010

Page 4 of 5

Minutes Date:

March 11, 2010

1 LAS VEGAS, CLARK COUNTY, NV, THURS., FEB. 25, 2010

2 10:25 A.M.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: With respect to Mr. Pickett.

6 MR. NELSON: Judge, it's my understanding
7 this morning, he will unconditionally waive his
8 preliminary hearing. In district court he will plead
9 guilty to one count of robbery with the use of a
10 deadly weapon naming all victims, one count of
11 conspiracy to commit robbery, one count of burglary
12 while in possession of a firearm naming all bars, one
13 count of felon possession of a firearm.

14 He will stipulate to the large habitual
15 under NRS 207.010. Both of the parties stipulate to
16 a term of years of 12 years to a maximum term of 30
17 years in the Nevada Department of Corrections.

18 With regard to robbery with use of a
19 deadly weapon, that will be the charge that he will
20 plead to the large habitual on. The conspiracy to
21 commit robbery will be a two-to-five-year sentence to
22 run consecutive to his 10-to-25-year sentence.

23 MR. ALMASE: And obviously the remaining
24 counts will run concurrent.

25 MR. NELSON: That's correct.

1 THE COURT: Mr. Picket, did you understand
2 the terms of the negotiations?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand also that
5 one of the things you are being asked to do this
6 morning is to unconditionally waive your right to a
7 preliminary hearing which means that if you get to
8 district court and you change your mind about the
9 negotiations you won't be able to come back to this
10 court to have a preliminary hearing as to these
11 charges?

12 Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And understanding that, is it
15 still your intention to unconditionally waive your
16 right to a preliminary hearing?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Then it appearing to this
19 Court from the amended criminal complaint on file
20 herein that the crimes of conspiracy to commit
21 robbery, robbery with use of a deadly weapon, allege
22 burglary while in possession of a deadly weapon have
23 been committed and the Defendant, Cary Pickett,
24 having unconditionally waived his right to a
25 preliminary hearing on said charges shall be held to

1 answer said charges in the Eighth Judicial District
2 Court, Department --

3 THE CLERK: 18, March 11th at 10:30, lower
4 level basement, Courtroom 1A.

5 -oOo-

6
7 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED
8 TRANSCRIPT OF PROCEEDINGS.

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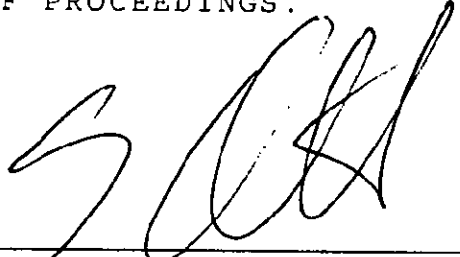
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Shawn E. Ott, CCR No. 577

1 CASE NO. C262523
2 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
3 COUNTY OF CLARK, STATE OF NEVADA
4 -oOo-
5
6 THE STATE OF NEVADA,)
7 Plaintiff,)
8 vs.) CASE NO. 10F02742B
9 CARY PICKETT,)
10 Defendant.)
11
12 REPORTER'S TRANSCRIPT OF
13 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING
14
15 BEFORE THE HON. KAREN BENNETT-HARON
16 JUSTICE OF THE PEACE
17 Thursday, February 25, 2010
18 10:25 A.M.
19
20 APPEARANCES:
21 For the State: ROY NELSON, ESQ.
22 Deputy District Attorney
23 For the Defendant: CAESAR ALMASE, ESQ.
24
25 Reported by: SHAWN E. OTT, CCR NO. 577

Exhibit #2

"D" ORIGINAL

FILED

1997 OCT 17 A 8:51

JOCP
STEWART L. BELL
DISTRICT ATTORNEY
Nevada Bar #000477
200 S. Third Street
Las Vegas, Nevada 89155
(702) 455-4711
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

GARY PICKETT, aka
Cary Jerard Pickett, #0725059

Defendant.

Case No. C143146
Dept. No. XI
Docket S

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 28th day of August, 1997, the Defendant GARY PICKETT, aka Cary Jerard Pickett, appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s) of GRAND LARCENY (CATEGORY B FELONY), committed on or about the 3rd day of May, 1997, in violation of NRS 205.220 and

WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria Persona, being present in court with his counsel JORDAN SAVAGE, ESQ., as Stand By Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada Department of Prisons, suspended; placed on probation for an indeterminate period not to exceed five (5) years. Conditions: 1. Search Clause for controlled substances and weapons. 2. Complete Drug Court Program, noting weapons were not involved. 3. Complete long-term

OCT 14 1997

CE-05

CT 20 1997

1 counseling, vocational and educational programs as deemed necessary by the Division of Parole
2 and Probation. 4. Complete eight (8) hours community service per month within the first three
3 (3) years of probation. 5. Pursuant to NRS 176.185, Defendant to be supervised in the Nevada
4 Division of Parole and Probation's House Arrest Program for the first four (4) months of
5 probation. Defendant to receive eighty-nine (89) days credit for time served. Court referred
6 matter to Drug Court, and Ordered, set for further proceedings on October 6, 1997 at 9:00
7 o'clock a.m. in Department X.

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

10 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
11 State of Nevada.

12
13 
14 DISTRICT JUDGE ds

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25
26 DA#97-143146X/pm
27 LVMPD EV#9705030904
28 G/L-F
(TK1)

Exhibit #3
ORIGINAL

16

1 JOCP
2 STEWART L. BELL
3 DISTRICT ATTORNEY
4 Nevada Bar #000477
5 200 S. Third Street
6 Las Vegas, Nevada 89155
7 (702) 435-4711
8 Attorney for Plaintiff

FILED

1997 OCT 17 A 8:53

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 -vs-

11 CARY JERARD PICKETT, aka
12 Gary Pickett, #0725059

Case No.
Dept. No.
Docket

C145127
XI
S

13 Defendant.
14

15 JUDGMENT OF CONVICTION (PLEA)

16 WHEREAS, on the 18th day of September, 1997, the Defendant CARY JERARD
17 PICKETT, aka Gary Pickett, appeared before the Court herein with his counsel and entered a
18 plea of guilty to the crime(s) of BURGLARY (CATEGORY B FELONY), committed on or
19 about the 7th day of August, 1997, in violation of NRS 205.060 and

20 WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria
21 Persona, being present in court with his counsel JORDAN, SAVAGE, ESQ., as Stand By
22 Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above
23 entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in
24 addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of
25 thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada
26 Department of Prisons, to be served consecutive to sentence imposed in Case No. C143146,
27 suspended; placed on probation for an indeterminate period not to exceed five (5) years.
28 Conditions: 1. Search Clause for controlled substances and stolen property. 2. Complete Drug

CE-05

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OCT 14 1997

1 Court Program, noting there was no use of weapons in this incident. 3. Complete long-term
2 counseling, vocational and educational programs as deemed necessary. 4. Defendant to be
3 supervised in the Nevada Division of Parole and Probation's House Arrest Program for the first
4 four (4) months of probation. Defendant to receive thirty-five (35) days credit for time served.
5 Court referred matter to Drug Court, and Ordered, set for further proceedings on October 6,
6 1997 at 9:00 o'clock a.m. in Department X.

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

9 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
10 State of Nevada.

11
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13 
14 DISTRICT JUDGE
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DA#97-145127X/pm
LVMPD EV#9708071616
BURG-F
(TK1)

Exhibit #1

1 CASE NO. C262523

2 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP
3 COUNTY OF CLARK, STATE OF NEVADA

4 -ooo-

5 COPY

6 THE STATE OF NEVADA,)

7 Plaintiff,)

8 vs.)

CASE NO. 10F02742B

9 CARY PICKETT,)

10 Defendant.)

11
12 REPORTER'S TRANSCRIPT OF
13 UNCONDITIONAL WAIVER OF PRELIMINARY HEARING

14
15 BEFORE THE HON. KAREN BENNETT-HARON

16 JUSTICE OF THE PEACE

17 Thursday, February 25, 2010

18 10:25 A.M.

19
20 APPEARANCES:

21 For the State: ROY NELSON, ESQ.
22 Deputy District Attorney

23 For the Defendant: CAESAR ALMASE, ESQ.

24
25 Reported by: SHAWN E. OTT, CCR NO. 577

File Return
copy

1 LAS VEGAS, CLARK COUNTY, NV, THURS., FEB. 25, 2010

2 10:25 A.M.

3 -oOo-

4 P R O C E E D I N G S

5 THE COURT: With respect to Mr. Pickett.

6 MR. NELSON: Judge, it's my understanding
7 this morning, he will unconditionally waive his
8 preliminary hearing. In district court he will plead
9 guilty to one count of robbery with the use of a
10 deadly weapon naming all victims, one count of
11 conspiracy to commit robbery, one count of burglary
12 while in possession of a firearm naming all bars, one
13 count of felon possession of a firearm.

14 He will stipulate to the large habitual
15 under NRS 207.010. Both of the parties stipulate to
16 a term of years of 12 years to a maximum term of 30
17 years in the Nevada Department of Corrections.

18 With regard to robbery with use of a
19 deadly weapon, that will be the charge that he will
20 plead to the large habitual on. The conspiracy to
21 commit robbery will be a two-to-five-year sentence to
22 run consecutive to his 10-to-25-year sentence.

23 MR. ALMASE: And obviously the remaining
24 counts will run concurrent.

25 MR. NELSON: That's correct.

1 THE COURT: Mr. Picket, did you understand
2 the terms of the negotiations?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Do you understand also that
5 one of the things you are being asked to do this
6 morning is to unconditionally waive your right to a
7 preliminary hearing which means that if you get to
8 district court and you change your mind about the
9 negotiations you won't be able to come back to this
10 court to have a preliminary hearing as to these
11 charges?

12 Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And understanding that, is it
15 still your intention to unconditionally waive your
16 right to a preliminary hearing?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Then it appearing to this
19 Court from the amended criminal complaint on file
20 herein that the crimes of conspiracy to commit
21 robbery, robbery with use of a deadly weapon, allege
22 burglary while in possession of a deadly weapon have
23 been committed and the Defendant, Cary Pickett,
24 having unconditionally waived his right to a
25 preliminary hearing on said charges shall be held to

1 answer said charges in the Eighth Judicial District
2 Court, Department --

3 THE CLERK: 18, March 11th at 10:30, lower
4 level basement, Courtroom 1A.

5 -ooo-

6
7 ATTEST: FULL, TRUE, ACCURATE AND CERTIFIED
8 TRANSCRIPT OF PROCEEDINGS.

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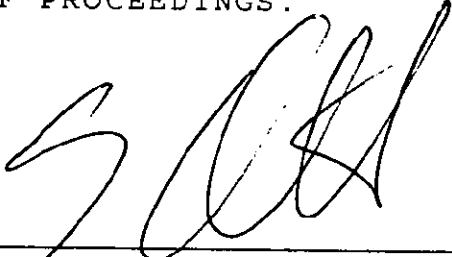
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Shawn E. Ott, CCR No. 577

FILED

FEB 11 2011

Steph L. Blum
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

CARY PICKETT,

Petitioner,

vs.

WARDEN SCILLIA AT
HIGH DESERT STATE PRISON,
Respondent,

Case No: C262523
Dept No: 18

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS

Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on January 27, 2011. 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,

MC **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 6th day of April, 2011, at the hour of

8:15
9:00 A o'clock for further proceedings.

Dated: JAN 31 2011

[Signature]
District Court Judge

10C262523-2
OPWH
Order for Petition for Writ of Habeas Corpus
1228432



RECEIVED

FEB 11 2011

CLERK OF THE COURT

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[Signature]
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

10C262523-2
RTRAN
Recorders Transcript of Hearing
1259854



THE STATE OF NEVADA,

Plaintiff,

vs.

CARY PICKETT, aka,
Cary Jerard Pickett,

Defendant.

CASE NO. C262523

DEPT. XVIII

(ARRAIGNMENT HELD IN DEPT. LLA)

BEFORE THE HONORABLE KEVIN V. WILLIAMS, HEARING MASTER
THURSDAY, MARCH 11, 2010

RECORDER'S TRANSCRIPT OF HEARING RE:
ARRAIGNMENT

APPEARANCES:

For the State:

ROY NELSON, ESQ.,
Chief Deputy District Attorney

For the Defendant:

CAESAR V. ALMASE, ESQ.,
Attorney at Law

RECEIVED

RECORDED BY: KIARA SCHMIDT, COURT RECORDER

CLERK OF THE COURT
FEB 28 2011

1 THURSDAY, MARCH 11, 2010

2 * * * * *

3 P R O C E E D I N G S

4
5 THE COURT: Cary Pickett. Yes, Mr. Almase?

6 MR. ALMASE: Good morning, your Honor.

7 THE COURT: Good morning, sir.

8 MR. ALMASE: Mr. Pickett is present in custody. You want me to do it?

9 MR. NELSON: Either way. Whatever you want.

10 THE COURT: Why don't you go ahead and let Mr. Nelson put it on there. Go
11 ahead, Mr. Nelson.

12 MR. NELSON: Judge, it's my understanding this morning he's going to plead
13 guilty to one count of burglary while in possession of a firearm, count two,
14 conspiracy to commit robbery, count three, robbery with use of a deadly weapon,
15 and count four, possession of a firearm by ex-felon. There's a signed guilty plea
16 agreement dated March 11th, today, Judge.

17 The State agreed to dismiss the remaining counts. The Defendant
18 stipulates to the large habitual criminal treatment under NRS 207.010. The parties
19 stipulate to a two- to five-year sentence with regard to count one. The Defendant
20 will agree that he'll be treated as a large habitual under count two and receive a
21 sentence of ten to twenty-five years. That will run consecutive to count one for a
22 total of twelve to thirty years in the Nevada Department of Corrections. All the other
23 counts will run concurrent, Judge.

24 THE COURT: Now did you hear that -- those negotiations put on the record
25 by the State, sir?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: What is your true name, Mr. Pickett?

3 THE DEFENDANT: Cary Jerard Pickett.

4 THE COURT: How old are you?

5 THE DEFENDANT: Forty-four.

6 THE COURT: How far did you go in school?

7 THE DEFENDANT: Thirteen years.

8 THE COURT: Read, write, and understand the English language?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay, move just a little closer to the microphone if you would
11 there, Mr. Pickett.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Understand what you're charged with?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What is your plea?

16 THE DEFENDANT: Guilty.

17 THE COURT: Before I can accept your guilty plea, I must be assured it's
18 freely and voluntarily given. Has anyone threatened you to get you to plead guilty?

19 THE DEFENDANT: No, sir.

20 THE COURT: Has anyone threatened anyone closely associated with you in
21 order to get you to plead guilty?

22 THE DEFENDANT: No, sir.

23 THE COURT: You understand the penalty range for count one is two to
24 fifteen years, Nevada Department of Prisons?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand the penalty range for count two is one to
2 six years, Nevada Department of Prisons, up to a \$5,000 fine?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand the penalty range for count three which
5 you're pleading guilty to, robbery with use of a deadly weapon, is one to fifteen
6 years -- two to fifteen years for the robbery; do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And do you understand there's an additional
9 one- to fifteen-year penalty for use of a deadly weapon; you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand the penalty range for count four is one to
12 six years, Nevada Department of Prisons, up to a \$5,000 fine?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And do you understand that sentencing is strictly up to the
15 Court and no one can promise you probation, leniency, or any special treatment?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you further understand, sir, that you stipulated to the use
18 of the large habitual criminal which carries the following penalty ranges: Life without
19 the possibility of parole, life with the possibility of parole with parole eligibility
20 beginning after ten years, or a definite term of twenty-five years in the Nevada
21 Department of Prisons with parole eligibility beginning after ten years; you
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And do you understand that you have stipulated to the last
25 type of sentencing which is ten to twenty-five years; you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you understand it's consecutive to count one?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And is one of the reasons you're pleading guilty here today is
5 because in truth and fact you are guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: I have a copy of your guilty plea agreement in my hand. Did
8 you read it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Understand it?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Understand by pleading guilty you're giving up the several
13 valuable Constitutional rights listed in the guilty plea agreement?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Discuss those rights with your attorney?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have any questions about those rights?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have any questions regarding negotiations?

20 THE DEFENDANT: No, sir.

21 THE COURT: Did you sign this guilty plea agreement freely and voluntarily
22 on page six, sir?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay, listen closely, Mr. Pickett. This is what they said you
25 did. Count one, burglary while in possession of a firearm, it says that you did

1 willfully, unlawfully, and feloniously enter, while in possession of a firearm, with the
2 intent to commit robbery, that certain building occupied by Beano's Bar, located on
3 West Lake Mead, Las Vegas, Clark County, Nevada, the Roadrunner Saloon,
4 located on Centennial Center, Las Vegas, Clark County, Nevada, the Triple Bar,
5 located on North Decatur Boulevard, Las Vegas, Clark County, Nevada, Rae's Bar,
6 located on Wigwam Parkway, Clark County, Nevada, Timbers Bar, located on West
7 Azure, Suite 170, Las Vegas, Clark County, Nevada, and/or the Tenaya Lodge,
8 located on Sky Pointe Drive, Las Vegas, Clark County, Nevada; is that correct?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And it says here in regards to count two that you did meet with
11 Alan Daniels and between yourselves you willfully, unlawfully conspired and agreed
12 to commit the crime of robbery, and in furtherance of that conspiracy you did the act
13 set forth in count three?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And in regards to count three, robbery with use of a deadly
16 weapon, it says you did willfully, unlawfully, and feloniously take personal property,
17 lawful money of the United States, and cellular phone from the person of Justin
18 Sanchez, and/or George Mattie, and/or Delton Lema, Aaron Parduhm, Jushua Kiehl,
19 in their presence by means of force, fear, or violence of injury thereto, without the
20 consent and against the will of those individuals; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And during the commission of the crime either you or your
23 co-defendant used a handgun; is that correct?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay, in regards to count four, possession of a firearm by an

1 ex-felon, it says you did willfully, unlawfully, and feloniously own or have in your
2 possession or under your control a weapon, and that was a handgun, and that at
3 that time you were an ex-felon, 'cause in 2006 you had been convicted in Case
4 Number C226282 of transport of controlled substance, a felony under the laws of
5 the State of Nevada, and also in 1997 you had previously been convicted of a -- in
6 Case Number 145127 of burglary; is that correct?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And in Case C21 -- 143 [sic] and you had been convicted of
9 grand larceny; is that correct?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And in -- that was in 1993 -- excuse me. And then for a final
12 case you had was C109725 in 1993 where you'd been convicted of attempt grand
13 larceny; is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So you had possession of a firearm after being convicted of
16 felonies; is that correct?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Anything else there, Mr. Nelson?

19 MR. NELSON: No, Judge.

20 THE COURT: Okay, Court accepts the Defendant's guilty plea as being freely
21 and voluntarily given. Listen closely now, sir. We're going to set your sentencing
22 date on --

23 THE CLERK: May 10th, 8:15, Department 18.

24 MR. NELSON: Thank you, Judge.

25 THE COURT: Uh-huh. Have a good day there, Mr. Nelson.

1 MR. ALMASE: Thank you, Judge.

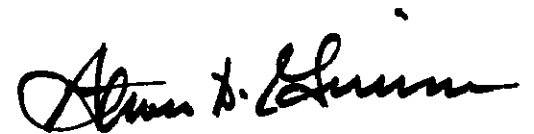
2 (Whereupon, the proceedings concluded)

3 * * * * *

4
5 ATTEST: I do hereby certify that I have truly and correctly transcribed the
6 audio/video proceedings in the above-entitled case to the best of my ability.

7 

8 Kiara Schmidt, Court Recorder/Transcriber



CLERK OF THE COURT

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	
Plaintiff,)	CASE NO: 10C262523-2
)	
-vs-)	DEPT NO: XVII
)	
CARY J. PICKETT,)	
#0725059)	
)	
Defendant.)	

STATE'S RESPONSE TO DEFENDANT'S PETITION FOR WRIT OF HABEAS
CORPUS (POST-CONVICTION)

DATE OF HEARING: April 6, 2011
TIME OF HEARING: 8:15 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through H. LEON SIMON, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

This response 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 **STATEMENT OF THE CASE**

3 On February 3, 2010, Cary J. Pickett, hereinafter "Defendant," was charged by way of
4 Criminal Complaint with five (5) counts of Burglary While in Possession of a Firearm, seven
5 (7) counts of Robbery With Use of a Deadly Weapon, five (5) counts of Conspiracy to
6 Commit Robbery, and six (6) counts of Possession of a Firearm by an Ex-Felon. On March
7 10, 2010, pursuant to negotiations, Defendant was charged by way of Information with one
8 count each of Burglary While in Possession of a Firearm, Conspiracy to Commit Robbery,
9 Robbery With Use of a Deadly Weapon, and Possession of a Firearm by an Ex-Felon. On
10 March 11, 2010, pursuant to a written Guilty Plea Agreement, Defendant pled guilty to the
11 same charges.

12 On May 10, 2010, Defendant was adjudged a Habitual Criminal and sentenced as
13 follows: as to Count 1 – Burglary While in Possession of a Firearm, to a MAXIMUM of
14 SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24)
15 MONTHS; as to Count 2 – Conspiracy to Commit Robbery, to MAXIMUM of SIXTY (60)
16 MONTHS with a MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; as to
17 Count 3 – Robbery with Use of a Deadly Weapon, to a MAXIMUM of TWENTY-FIVE
18 (25) YEARS with a MINIMUM parole eligibility of TEN (10) YEARS, Count 3 to run
19 CONSECUTIVE to Count 1; as to Count 4 – Possession of a Firearm by an Ex-Felon, to a
20 MAXIMUM of SIXTY (60) MONTHS with a MINIMUM parole eligibility of TWENTY-
21 FOUR (24) MONTHS, Count 4 to run CONCURRENT with Count 2, with EIGHTY-
22 EIGHT (88) DAYS credit for time served. A Judgment of Conviction was filed on May 19,
23 2010.¹ Defendant did not file a Direct Appeal. Defendant filed the instant petition on January
24 27, 2011. The State's response is as follows.

25 ///

26 ///

27 _____

28 ¹ Due to clerical errors, an Amended Judgment of Conviction was filed on September 24, 2010.

1 **ARGUMENT**

2 **I**

3 **DEFENSE COUNSEL WAS NOT INEFFECTIVE WITH REGARDS TO**
4 **DEFENDANT’S HABITUAL CRIMINAL TREATMENT**
5 **(GROUNDS 1 AND 4)**

6 In order to assert a claim for ineffective assistance of counsel a defendant must
7 prove that he was denied “reasonably effective assistance” of counsel by satisfying the two-
8 prong test of Strickland v. Washington, 466 U.S. 668, 686-87, 104 S.Ct. 2052, 2063-64
9 (1984). *See also* State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this
10 test, the Defendant must show first that his counsel's representation fell below an objective
11 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
12 probability that the result of the proceedings would have been different. Strickland, 466 U.S.
13 at 687-88, 694, 104 S.Ct. at 2065, 2068; Warden, Nevada State Prison v. Lyons, 100 Nev.
14 430, 432, 683 P.2d 504, 505 (1984) (*adopting Strickland* two-part test in Nevada).
15 “Effective counsel does not mean errorless counsel, but rather counsel whose assistance is
16 ‘[w]ithin the range of competence demanded of attorneys in criminal cases.’” Jackson v.
17 Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975), *quoting*
18 McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449 (1970).

19 In considering whether trial counsel has met this standard, the court should first
20 determine whether counsel made a “sufficient inquiry into the information that is pertinent to
21 his client's case.” Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); *citing*
22 Strickland, 466 U.S. at 690-691, 104 S.Ct. at 2066. Once such a reasonable inquiry has been
23 made by counsel, the court should consider whether counsel made “a reasonable strategy
24 decision on how to proceed with his client's case.” Doleman, 112 Nev. at 846, 921 P.2d at
25 280, *citing Strickland*, 466 U.S. at 690-691, 104 S.Ct. at 2066. Finally, counsel's strategy
26 decision is a “tactical” decision and will be “virtually unchallengeable absent extraordinary
27 circumstances.” Doleman, 112 Nev. at 846, 921 P.2d at 280; Howard v. State, 106 Nev. 713,
28 722, 800 P.2d 175, 180 (1990); Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

1 Based on the above law, the court begins with the presumption of effectiveness and
2 then must determine whether or not the petitioner has proved disputed factual allegations
3 underlying his ineffective-assistance claim by a preponderance of the evidence. Means v.
4 State, 120 Nev. 1001, 1012, 103 P.3d 25, 33 (2004). The role of a court in considering
5 allegations of ineffective assistance of counsel is “not to pass upon the merits of the action
6 not taken but to determine whether, under the particular facts and circumstances of the case,
7 trial counsel failed to render reasonably effective assistance.” Donovan v. State, 94 Nev.
8 671, 675, 584 P.2d 708, 711 (1978), *citing* Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th
9 Cir. 1977).

10 This analysis does not mean that the court “should second guess reasoned choices
11 between trial tactics nor does it mean that defense counsel, to protect himself against
12 allegations of inadequacy, must make every conceivable motion no matter how remote the
13 possibilities are of success.” Donovan, 94 Nev. at 675, 584 P.2d at 711. In essence, the court
14 must “judge the reasonableness of counsel's challenged conduct on the facts of the particular
15 case, viewed as of the time of counsel's conduct.” Strickland, 466 U.S. at 690, 104 S.Ct. at
16 2066.

17 “There are countless ways to provide effective assistance in any given case. Even the
18 best criminal defense attorneys would not defend a particular client in the same way.”
19 Strickland, 466 U.S. at 689, 104 S.Ct. at 689. “Strategic choices made by counsel after
20 thoroughly investigating the plausible options are almost unchallengeable.” Dawson v. State,
21 108 Nev. 112, 117, 825 P.2d 593, 596 (1992), *citing* Strickland, 466 U.S. at 690, 104 S. Ct.
22 at 2066; *see also* Ford v. State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

23 Even if a defendant can demonstrate that his counsel's representation fell below an
24 objective standard of reasonableness, he must still demonstrate prejudice and show a
25 reasonable probability that, but for counsel's errors, the result would have been different.
26 McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999), *citing* Strickland, 466
27 U.S. at 687. “A reasonable probability is a probability sufficient to undermine confidence in
28 the outcome.” Id., *citing* Strickland, 466 U.S. at 687-89, 694.

1 First, Defendant claims his counsel was ineffective because he failed to challenge two
2 of the prior convictions used as the basis to have him adjudicated a habitual criminal as
3 unconstitutional. Defendant also argues that had counsel informed him that he could
4 challenge the prior convictions he would not have stipulated to be adjudicated a habitual
5 criminal. However, this argument is wholly without merit. The State specified a total of
6 seven (7) prior felonies in the Information to be considered by the court when sentencing.
7 Ex. 2. Moreover, the State lodged seven (7) certified copies of the Judgments of Convictions
8 in support of its request for habitual criminal treatment. Ex. 4. As such, even if Defendant
9 could have successfully challenged the constitutionality of two (2) of those convictions there
10 would be five (5) remaining to be considered.

11 Second, Defendant claims his counsel should have argued against habitual criminal
12 treatment at sentencing. However, Defendant effectively stipulated to such treatment when
13 the State specified the previous felonies in the Information (Ex. 2), the GPA contained the
14 stipulation (Ex. 1 p. 1), and the court reminded him of the penalty ranges he would be facing
15 under the large habitual criminal statute (Ex. 3 p. 4). *See Hodges v. State*, 119 Nev. 479, 78
16 P.3d 67 (2003). Counsel cannot be deemed ineffective for failing to make futile arguments.
17 *See Ennis v. State*, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006). Furthermore, it should
18 also be noted that Defendant's attorney effectively negotiated with the State to substantially
19 reduce the amount of prison time Defendant was facing if convicted. The State provided
20 notice that it intended to seek habitual criminal treatment. Had Defendant been convicted of
21 all sixteen (16) charges he would have been facing a possible sixteen (16) life sentences.

22 Defendant has also failed to explain how or why two of his previous convictions are
23 allegedly infirm. Moreover, Defendant has also failed to specify what "mitigation"
24 arguments his counsel could have made on his behalf that would have had a reasonable
25 probability of success in avoiding being treated as a habitual criminal. Claims asserted in a
26 petition for post-conviction relief must be supported with specific factual allegations, which
27 if true, would entitle the petitioner to relief. *Hargrove v. State*, 100 Nev. 498, 502, 686 P.2d
28 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and

1 repelled by the record. Id. It should also be noted that Defendant was facing twenty-three
2 (23) felony counts. It is highly unlikely he would have insisted on going to trial. As such, he
3 has failed to demonstrate prejudice.

4 II

5 **DEFENDANT'S PLEA WAS ENTERED KNOWINGLY AND VOLUNTARILY** 6 **(GROUND 2)**

7 Pursuant to NRS 176.165, after sentencing, a defendant's guilty plea can only
8 be withdrawn to correct "manifest injustice." *See also Baal v. State*, 106 Nev. 69, 72, 787
9 P.2d 391, 394 (1990). The law in Nevada clearly establishes that a plea of guilty is
10 presumptively valid and the burden is on a defendant to show that the plea was not
11 voluntarily entered. *Bryant v. State*, 102 Nev. 268, 272, 721 P.2d 364, 368 (1986) (*citing*
12 *Wingfield v. State*, 91 Nev. 336, 337, 535 P.2d 1295, 1295 (1975)). Manifest injustice does
13 not exist if defendant entered his plea voluntarily. *Baal*, 106 Nev. at 72, 787 P.2d at 394.

14 To determine whether a guilty plea was voluntarily entered the Court will review the
15 totality of the circumstances surrounding the defendant's plea. *Bryant*, 102 Nev. at 271, 721
16 P.2d at 367. A proper plea canvass should reflect that:

17 " (1) the defendant knowingly waived his privilege against self-
18 incrimination, the right to trial by jury, and the right to confront his
19 accusers; (2) the plea was voluntary, was not coerced, and was not the
20 result of a promise of leniency; (3) the defendant understood the
21 consequences of his plea and the range of punishments; and (4) the
22 defendant understood the nature of the charge, i.e., the elements of the
23 crime." *Wilson v. State*, 99 Nev. at 367, 664 P.2d at 331 (*citing Higby*
24 *v. Sheriff*, 86 Nev. 774, 476 P.2d 950 (1970)).

22 The Nevada Supreme Court suggests in *Patton v. Warden* that the presence and advice of
23 counsel is a significant factor in determining the voluntariness of a plea of guilty. 91 Nev. 1,
24 2, 530 P.2d 107, 107 (1975).

25 This standard requires the court to personally address the defendant at the time he
26 enters his plea in order to determine whether he understands the nature of the charges to
27 which he is pleading. *Bryant*, 102 Nev. at 271, 721 P.2d at 367. A court may not rely simply
28 on a written plea agreement without some verbal interaction with a defendant. Id. Thus, a

1 “colloquy” is constitutionally mandated, and a “colloquy” is but a conversation in a formal
2 setting, such as that occurring between an official sitting in judgment of an accused at plea.
3 *See Id.* However, the court also need not conduct a ritualistic oral canvass. *State v. Freese*,
4 116 Nev. 1097, 13 P.3d 442 (2000). The guidelines for voluntariness of pleas of guilty “do
5 not require the articulation of talismanic phrases. It required only ‘that the record
6 affirmatively disclose that a defendant who pleaded guilty entered his plea understandingly
7 and voluntarily.’” *Heffley v. Warden*, 89 Nev. 573, 575, 516 P.2d 1403, 1404 (1973); *Brady*
8 *v. United States*, 397 U.S. 742, 747-748, 90 S. Ct. 1463, 1470 (1970).

9 In the instant case, Defendant’s plea was clearly entered knowingly and voluntarily.
10 First, Defendant was represented by counsel. *Patton*, *supra*. Second, Defendant signed a
11 guilty plea agreement which was filed on March 11, 2010. The relevant portions of said
12 agreement are as follows:

13 My decision to plead guilty is based upon the plea agreement in this case
14 which is as follows:

15 The State has agreed to dismiss the remaining counts. Defendant stipulates to
16 large habitual treatment under NRS 207.010. The parties stipulate to a 2-5 year
17 sentence on Count 1. Defendant treated as habitual under Count 2 and receive
10-25 year sentence, consecutive to Count 1, for a total of 12-30 years...all
other counts to run concurrent.

18 CONSEQUENCES OF THE PLEA

19 “I understand that by pleading guilty I admit the facts which support all the
20 elements of the offense(s) to which I now plead as set forth in Exhibit ‘1.’

21 I understand that as a consequence of my plea of guilty of Count 1, the Court
22 must sentence me to imprisonment in the Nevada Department of Corrections
23 for a minimum term of not less than two (2) years and maximum term of not
more than fifteen (15) years...

24 I understand that as a consequence of my plea of guilty of Count 2, the Court
25 must sentence me to imprisonment in the Nevada Department of Corrections
26 for a minimum term of not less than one (1) year and maximum term of not
27 more than six (6) years...

28 I understand that as a consequence of my plea of guilty of Count 3, the Court
must sentence me to imprisonment in the Nevada Department of Corrections

1 for a minimum term of not less than two (2) years and maximum term of not
2 more than fifteen (15) years, plus a consecutive minimum term of not less than
one (1) year and a maximum term of not more than fifteen (15) years for the
use of a deadly weapon enhancement...

3 I understand that as a consequence of my plea of guilty of Count 4, the Court
4 must sentence me to imprisonment in the Nevada Department of Corrections
5 for a minimum term of not less than one (1) year and maximum term of not
more than six (6) years...

6 ...

7 ... Further, I understand that if I am sentenced under the "large" habitual
8 criminal enhancement the Court must sentence me to LIFE without the
possibility of parole; life with the possibility of parole, parole eligibility begins
9 after a minimum term of TEN (10) years has been served; OR a definite term
10 of TWENTY-FIVE (25) years, parole eligibility begins after a minimum of
TEN (10) years has been served.

11 I have not been promised or guaranteed any particular sentence by anyone. I
12 know that my sentence is to be determined by the Court within the limits
prescribed by statute.

13 I understand that if my attorney or the State of Nevada or both recommend any
14 specific punishment to the Court, the Court is not obligated to accept the
recommendation.

15 WAIVER OF RIGHTS

16 By entering my plea of guilty, I understand that I am waiving and forever
17 giving up the following rights and privileges:

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

20 2. The constitutional right to a speedy and public trial by an impartial
jury, free of excessive pretrial publicity prejudicial to the defense, at which
21 trial I would be entitled to the assistance of an attorney, either appointed or
retained. At trial the State would bear the burden of proving beyond a
22 reasonable doubt each element of the offense charged.

23 3. The constitutional right to confront and cross-examine any witness
24 who would testify against me.

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

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

27 6. The right to appeal the conviction, with the assistance of an attorney,
28

1 either appointed or retained, unless the appeal is based upon reasonable
2 constitutional jurisdictional or other grounds that challenge the legality of the
proceedings and except as otherwise provided in subsection 3 of NRS 174.035.

3 VOLUNTARINESS OF PLEA

4 I have discussed the elements of all of the original charge(s) against me with
my attorney and I understand the nature of the charge(s) against me...

5 I understand that the State would have to prove each element of the charge(s)
6 against me at trial.

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

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

10 I believe that pleading guilty and accepting this plea bargain is in my best
interest.

11 I am signing this agreement voluntarily, after consultation with my attorney....

12 I am not now under the influence of any intoxicating liquor, a controlled
13 substance or other drug....

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

16 Ex. 1 p. 1-6.

17 The relevant portion of Defendant's plea canvass is as follows:

18 THE STATE: Judge, it's my understanding this morning he's going to plead
19 guilty to one count of burglary while in possession of a firearm,
20 count two, conspiracy to commit robbery, count three, robbery
with use of a deadly weapon, and count 4, possession of a
21 firearm by ex-felon. There's a signed guilty plea agreement dated
March 11th, today, Judge.

22 The State agreed to dismiss the remaining counts. The Defendant
23 stipulates to the large habitual criminal treatment under NRS
207.010. The parties stipulate to a two-to-five-year sentence with
24 regard to count one. The Defendant will agree that he'll be
25 treated as a large habitual under count two and receive a sentence
of ten to twenty-five years. That will run consecutive to count
26 one for a total of twelve to thirty years in the Nevada Department
of Corrections. All other counts will run concurrent, Judge.

27 THE COURT: Now did you hear that - - those negotiations put on the record by
28

1 the State, sir?

2 DEFENDANT: Yes, sir.

3 ...

4 THE COURT: Understand what you're charged with?

5 DEFENDANT: Yes, sir.

6 ...

7 THE COURT: Before I can accept your guilty plea, I must be assured it's freely
8 and voluntarily given. Has anyone threatened you to get you to
9 plead guilty?

10 DEFENDANT: No, sir.

11 THE COURT: Has anyone threatened anyone closely associated with you in
12 order to get you to plead guilty?

13 DEFENDANT: No, sir.

14 THE COURT: You understand the penalty range for count two [one] is two to
15 fifteen years, Nevada Department of Prisons?

16 DEFENDANT: Yes, sir.

17 THE COURT: You understand the penalty range for count two is one to six
18 years, Nevada Department of Prisons...

19 DEFENDANT: Yes, sir.

20 THE COURT: Do you understand the penalty range for count three which
21 you're pleading guilty to, robbery with use of a deadly weapon,
22 is one to fifteen years - - two to fifteen years for the robbery; do
23 you understand that?

24 DEFENDANT: Yes, sir.

25 THE COURT: And do you understand there's an additional one-to-fifteen-year
26 penalty for use of a deadly weapon, you understand that?

27 DEFENDANT: Yes, sir.

28

1 THE COURT: And you further understand, sir, that you stipulated to the use of
2 the large habitual criminal which carries the following penalty
3 ranges: Life without the possibility of parole, life with the
4 possibility of parole with parole eligibility beginning after ten
5 years, or a definite term of twenty-five years in the Nevada
6 Department of Prisons with parole eligibility beginning after ten
7 years ; you understand that?
8
9 DEFENDANT: Yes, sir.
10
11 THE COURT: And do you understand that you have stipulated to the last type
12 of sentencing which is ten to twenty-five years; you understand
13 that?
14
15 DEFENDANT: Yes, sir.
16
17 THE COURT: Do you understand it's consecutive to count one?
18
19 DEFENDANT: Yes, sir.
20
21 THE COURT: And is one of the reasons you're pleading guilty here today is
22 because in truth and fact you are guilty?
23
24 DEFENDANT: Yes, sir.
25
26 THE COURT: I have a copy of your guilty plea agreement in my hand. Did you
27 read it?
28
29 DEFENDANT: Yes, sir.
30
31 THE COURT: Understand it?
32
33 DEFENDANT: Yes, sir.
34
35 THE COURT: Understand that by pleading guilty you're giving up the several
36 valuable Constitutional rights listed in the guilty plea agreement?
37
38 DEFENDANT: Yes, sir.
39
40 THE COURT: Discuss those rights with your attorney?
41
42 DEFENDANT: Yes, sir.
43
44 THE COURT: Have any questions about those rights?
45
46 DEFENDANT: No, sir.
47
48 THE COURT: Did you sign this guilty plea agreement freely and voluntarily on
49 page six, sir?
50
51 DEFENDANT: Yes, sir.
52
53 THE COURT: ...in 2006 you had been convicted in Case Number C226282 of
54 transport of a controlled substance, a felony under the law of the
55 State of Nevada, and also in 1997 you had previously been

1 convicted of a - - in Case Number 145127 of burglary; is that
2 correct?

3 DEFENDANT: Yes, sir.

4 THE COURT: and in Case C21—143(sic) you had been convicted of grand
5 larceny, is that correct?

6 DEFENDANT: Yes, sir.

7 THE COURT: And in - - that was in 1993 - - excuse me. And then for a final
8 case you had was C109725 in 1993 where you'd been convicted
9 of attempt grand larceny; is that correct?

10 DEFENDANT: Yes, sir.

11 Ex. 3 p. 3-7.

12 After reviewing both the relevant portions of Defendant's GPA, the plea canvass, and
13 taking into account the presence of counsel, it is clear Defendant entered his plea freely,
14 knowingly, and voluntarily. As such, there is no manifest injustice and Defendant's petition
15 should be denied.

16 III

17 DEFENDANT'S CLAIM THAT HE WAS IMPROPERLY SENTENCED AS A 18 HABITUAL CRIMINAL IS NOT COGNIZABLE

19 (GROUND 3)

20 Defendant also argues that he was improperly sentenced under the habitual criminal
21 statute. NRS 34.810(1)(a) states in relevant part:

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

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

27 As such, this claim is not cognizable since Defendant's conviction was upon a plea of guilty.
28 Furthermore, since this claim could have been raised on direct appeal but was not, it has
been waived per NRS 34.810(1)(b)(2).

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CONCLUSION

Based on the foregoing arguments, Defendant's petition should be denied.

DATED this 22ND day of March, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ H. Leon Simon

H. LEON SIMON
Chief Deputy District Attorney
Nevada Bar #000411

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 22ND day of
March, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

CARY PICKETT, BAC #57591
HIGH DESERT STATE PRISON
PO BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ D. Jason

Secretary for the District Attorney's Office

TS/HLS/djj

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 15 2011 09:03 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

CARY PICKETT,
Appellant(s),

vs.

STATE OF NEVADA,
Respondent(s),

} Case No: 10C262523-2
} SC No: 58191

RECORD ON APPEAL
VOLUME
2

ATTORNEY FOR APPELLANT
CARY PICKETT # 57591
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

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

10C262523-2

STATE OF NEVADA VS.
CARY PICKETT

I N D E X

VOLUME:

PAGE NUMBER:

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ORIGINAL

19

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EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

v.

CARY PICKETT,
#0725059

Defendant.

Case No.: C262523

Dept. No.: XVIII

DATE: January 19, 2011

TIME: 9:00 AM 8:15

MOTION TO WITHDRAW AS ATTORNEY OF RECORD

COMES NOW Caesar Almase of the Almase Law Group, attorney of record for the above-named Defendant, Cary Pickett, and hereby moves this Honorable Court to withdraw as attorney in the instant matter.

This Motion is based upon Declaration of Counsel, and argument of Counsel at the time set for hearing of this motion.

DATED this 3 of January, 2011.

By:

Caesar Almase #7974
520 S. 9th Street
Las Vegas, NV 89101
(702) 474-0404
Attorney For Defendant

10C262523-2
MWCN
Motion to Withdraw As Counsel
1140084



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DECLARATION

CAESAR ALMASE makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; that I am the appointed attorney of record for the Defendant in the instant matter, and that I am familiar with the facts and circumstances of this case.
2. Your declarant received a letter from Mr. Pickett in which it was requested that your declarant file a Motion to Withdraw as Attorney of Record, in order that Mr. Pickett may file proper person pleadings.
3. Your declarant has mailed a copy of this foregoing motion to Mr. Pickett at PO Box 650, Indian Springs, NV 89070, along with a copy of his entire file, including all discovery.


DECLARANT

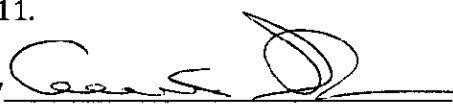
NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

PLEASE TAKE NOTICE that Caesar Almase has set the foregoing motion for hearing on the 19th day of January, 2011, at 8:15 am in District Court Department XVIII.

DATED this 3 day of January 2011.

By


Caesar Almase #7974
520 S. 9th Street
Las Vegas, NV 89101
(702) 474-0404
Attorney For Defendant

RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing is hereby acknowledged this _____ day of January 2011.

CLARK COUNTY DISTRICT ATTORNEY

By _____

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of January 2011, I mailed a true and correct copy of the foregoing:

Motion to Withdraw as Attorney of Record and a copy of the entire file for C262523, postage prepaid, by regular mail addressed to:

Cary Pickett, Inmate ID #57591
PO Box 650
Indian Springs, NV 89070

MARIA LEIVA, LEGAL OFFICE ASSISTANT

CERTIFICATE OF MAILING

I hereby certify that on the 3 day of January 2011, I mailed a true and correct copy of the foregoing:

Motion to Withdraw as Attorney of Record and a copy of the entire file for C262523, postage prepaid, by regular mail addressed to:

Cary Pickett, Inmate ID #57591
PO Box 650
Indian Springs, NV 89070


MARIA LEIVA, LEGAL OFFICE ASSISTANT

PIFP

Cary Pickett 57591
(your name)

P.O. Box 650

(your street address)

Indian Springs NV 89070

(your city, state & zip code)

(your telephone number)

FILED
JAN 27 2011
CLERK OF COURT

10C262523-2
PIFP
Application to Proceed In Forma Pauperis
1188743



IN PROPER PERSON

DISTRICT COURT
CLARK COUNTY, NEVADA

Cary Pickett

Plaintiff(s),

vs.

Warden Scilla H.D.S.P.

Defendant(s).

CASE NO.: C262523

DEPT. NO.: 18

APPLICATION TO PROCEED IN FORMA PAUPERIS

(Filing Fees/Service Only)

Pursuant to NRS 12.015, and based on the following Affidavit, I request permission from this Court to proceed without paying court costs or other costs and fees as provided in NRS 12.015 because I lack sufficient financial ability.

RECEIVED
JAN 27 2011
CLERK OF THE COURT

I

AFFIDAVIT

STATE OF NEVADA)
COUNTY OF CLARK) SS:

I, Cary Pickett, after being duly sworn, depose and state as follows:
(your name)

I wish to file with this Court the concurrently submitted pleading. I cannot pay the costs of filing because I lack sufficient income, assets or other resources. Including myself, there are 1 adults and 0 children in my household. Their age(s) is/are _____, _____, _____, _____, _____, and _____.

My total monthly income before taxes is:

From all sources including employment, self-employment, social security, child support, etc:\$ 0

Any other household income from another member of the household:\$ 0

List where you work and your job title:\$ 0

The following represents a list of my assets and their value

	<u>Value</u>	<u>Loan Balance</u>
Automobile <u>0</u> (year and type of car)	\$ <u>0</u>	\$ <u>0</u>
Mobile Home, House or Other Real Estate <u>0</u> (size, type and/or year of account)	\$ <u>0</u>	\$ <u>0</u>
Bank Accounts <u>0</u> (name of bank and type of account)	\$ <u>0</u>	\$ <u>0</u>
Other <u>0</u>	\$ <u>0</u>	\$ <u>0</u>
	\$ <u>0</u>	\$ <u>0</u>

///

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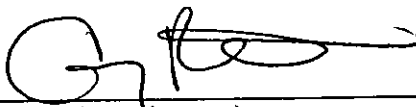
///

1 My total monthly expenses are:

2 Rent or Mortgage \$ 0
3 Phone, Gas, Electricity, and Other Utilities \$ 0
4 Food \$ 0
5 Child Care \$ 0
6 Insurance \$ 0
7 Medical \$ 0
8 Transportation \$ 0
9 Other
10 \$ 0
11 (List other expenses)

12 TOTAL MONTHLY EXPENSES \$ 0
13 (Total from above lines)

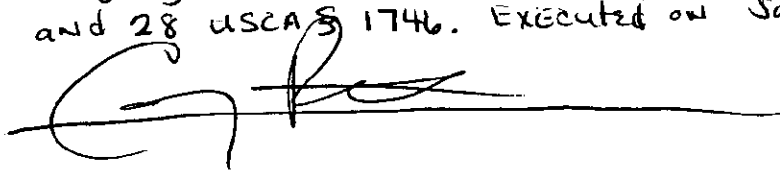
14 I request the Court hold a hearing on this Application if the Court is inclined to deny same, so
15 that I may testify as to my indigent status.

16
17 
18 Affiant (your signature)

19 SUBSCRIBED and SWORN to before me
20 this 11th day of January, 2011.

21
22 _____
23 Notary Public

24 I declare (or certify, verify, or state) under penalty of
25 Perjury that the foregoing is true and correct in accordance
26 w/NRS 208.165 and 28 USC § 1746. Executed on Jan 11
27 2011

28 

HOSP

10C262523-2
CRTF
Certificate
1198729



REC'D INBANK 18 DEC 9

FILED
JAN 27 2011
Clerk of Court

1 CASE NO. 262523
2 DEPT. NO. _____
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8 IN THE MATTER OF

9 Cary Pickett 57591
Name

FINANCIAL CERTIFICATE

10 ON MOTION FOR LEAVE TO PROCEED
11 IN FORMA PAUPERIS

12
13 I, hereby certify that the Petitioner named herein above has the sum of \$ 829.80 on account
14 to his credit at the facility where he is confined. I further certify that the Petitioner likewise has the
15 following securities to his credit according to the records of said facility:

16 \$ 200.00 in savings
17
18

19 DATED: this 9th day of December 20 10

20
21 RECEIVED
22 JAN 27 2011
23 CLERK OF THE COURT
24
25
26
27
28

[Signature]
NEVADA DEPARTMENT OF CORRECTIONS
INMATE SERVICES ACCOUNTANT OR
AUTHORIZED OFFICER IF FACILITY

23 ///
24 ///
25 ///
26 ///
27 ///
28 ///

1 CARY PICKETT 51591
2 Petitioner/In Propria Persona
3 Post Office Box 650 [HDSP]
4 Indian Springs, Nevada 89018

10C262523-2
PWHC
Petition for Writ of Habeas Corpus
1188690



FILED
JAN 27 2011
CLERK OF COURT

District Court
Clark County, Nevada

8 CARY PICKETT

9 Petitioner,

10 vs.

11 Scallia

12 WARDEN THOMAS DESSERT

13 STATE PRISON

14 Respondent(s).

Case No. C262523

Dept. No. 18

Docket

Evidentiary Hearing Requested

15 **PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)**

16 **INSTRUCTIONS:**

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

RECEIVED

JAN 28 2011

CLERK OF THE COURT

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

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

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

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: High Desert State Prison, Clark County

18 2. Name the location of court which entered the judgment of conviction under attack: 5th
19 Judicial District Court

20 3. Date of judgment of conviction: Amended J.O.C Oct. 2010

21 4. Case number: C 26 2523

22 5. (a) Length of sentence: 10 - 25 years

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

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

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

27 7. Nature of offense involved in conviction being challenged: Habitual offender enhan-
28 cement / Robbery with use of weapon, Burglary while in poss-
ession of a firearm, conspiracy to commit robbery, possession of
firearm by ex-felon

1 8. What was your plea? (Check one)

2 (a) Not guilty _____

3 (b) Guilty X

4 (c) Nolo contendere _____

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: I
7 pled guilty to 4 felony counts and stipulated to treatment as a
8 habitual offender as to one count

9 10. If you were found guilty after a plea of not guilty, was the finding made by: (check one)

10 (a) Jury _____

11 (b) Judge without a jury _____

12 11. Did you testify at trial? Yes _____ No _____

13 12. Did you appeal from the judgment of conviction?

14 Yes _____ No X

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

16 (a) Name of court:

17 (b) Case number or citation:

18 (c) Result:

19 (d) Date of appeal:

20 (Attach copy of order or decision, if available).

21 14.) If you did not appeal, explain briefly why you did not: was not aware of the
22 constitutional violations related to stipulating to treatment as
23 habitual offender until recently

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

27

28

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

2 (a) (1) Name of court: _____

3 (2) Nature of proceedings: _____

4 _____

5 (3) Grounds raised : _____

6 _____

7 _____

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

9 Yes ____ No ____

10 (5) Result: _____

11 (6) Date of result: _____

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

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

15 (1) Name of Court: _____

16 (2) Nature of proceeding: _____

17 (3) Grounds raised: _____

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

19 Yes ____ No ____

20 (5) Result: _____

21 (6) Date of result: _____

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

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

26

27

28

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

3 (1) First petition, application or motion?

4 Yes ____ No ____

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ____ No ____

8 Citation or date of decision: _____

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

13
14 17. Has any ground being raised in this petition been previously presented to this or any other
15 court by way of petition for habeas corpus, motion or application or any other post-conviction
16 proceeding? If so, identify:

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

18
19 (b) The proceedings in which these grounds were raised: _____

20
21 (c) Briefly explain why you are again raising these grounds. (You must relate specific facts in
22 response to this question. Your response may be included on paper which is 8 1/2 x 11 inches attached
23 to the petition. Your response may not exceed five handwritten or typewritten pages in length). _____

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

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

15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes _____ No X

18 If "Yes", state what court and the case number: _____
19 _____

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: CAESAR AlmasE
22 _____
23 _____

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

26 Yes _____ No X If "Yes", specify where and when it is to be served, if you know: _____
27 _____
28 _____

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

3 23. (a) GROUND ONE: Ineffective assistance of counsel, in violation of
4 5th, 6th, and 14th amendment of the U.S. Constitution and Nevada Constitution
5 Article 1 sections 3, 6, and 8 and Article 4 section 21, because counsels re-
6 presentation fell below objective level of reasonableness prior to guilty plea.

7 23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
8 Counsel's performance was deficient falling below an objective
9 standard of reasonableness, because prior to advising the defendant
10 to stipulate to treatment as a habitual offender defense counsel
11 did not explain or even discuss the process necessary for him
12 to be adjudicated as a habitual offender.

13
14 Counsel's performance was below an objective standard because
15 an attorney has a legal responsibility to properly inform his
16 client of the legal standard of any rights being waived or of
17 the direct consequences of his plea, in the case at bar counsel
18 clearly got the standard wrong. He caused the petitioner to
19 believe that the only criteria / standard needed for him to be
20 sentenced as a habitual offender was 3 or more prior felony
21 convictions and that he could "stipulate" to "treatment as a
22 habitual offender" where the plea agreement is ambiguous and
23 very unclear as to exactly what the term "treatment as a
24 habitual offender" actually means. The truth is that the
25 plea agreement called for the defendant to waive his rights
26 associated with his adjudication process i.e., his right to
27 challenge the validity of prior convictions, present any.

GROUND 1 CONTINUED

1 mitigating evidence To Provide the court with factors
2 against adjudicating defendant to status of a habitual
3 offender. Defense counsel, the prosecutor nor the court
4 advised the defendant that those right existed, the pet-
5 tioner believed that he could actually plead guilty to
6 a charge of habitual criminality, then basically agree
7 to the state's recommendation for the midrange sentence
8 of 10-25 yrs, rather than being sentenced to life senten-
9 ces, further counsel never inquired of his client as to
10 the validity of his prior convictions, had counsel asked
11 he would have learned that his client was without coun-
12 sel in (2) of his prior convictions cc# 143146 + 145127 and
13 all prior convictions were non-violent and about the (2) afore-
14 mentioned constitutionally invalid convictions are remote and may
15 not be construed by the court as fitting the intent of law to be
16 adjudicated a habitual offender, counsel also did not inquire
17 as to mitigating factors and evidence existing that could be
18 presented to the court to support a case against being ad-
19 judicated a habitual offender when in fact documented
20 mitigating factor's and evidence does exist.

21
22 Counsel's error's prejudiced the petitioner, because counsel's
23 error's lead to a reasonable probability that the results
24 of the proceedings would have been different had the
25 error's not occurred. Had the petitioner understood or had
26 been advised the he could challenge prior convictions that
27 are unconstitutional as (2) of his are, that he could not

1 or was not in actuality pleading guilty to a charge of
2 habitual criminality or that his stipulation to "treatment
3 as a habitual offender" did not mean a automatic finding or
4 adjudication to the status of a habitual offender upon the
5 finding of 3 prior felony convictions this petitioner would
6 not have stipulated to "treatment as a habitual offender" as
7 part of his guilty plea and counsel would have had the needed
8 information to act as an advocate for his client instead of
9 merely a messenger for the prosecutor.

10
11 This petitioner understands that his guilty plea and subse-
12 quent convictions and sentences on his underlying charges
13 are valid, knowing and intelligently made and has not asked
14 the court to disturb those, however the stipulation and
15 sentencing as a habitual offender upon counsel advise must
16 be reviewed to determine what counsel advised. The defendant
17 about the rights or process for him to be adjudicated and does the
18 record demonstrate that the petitioner was advised by counsel
19 who also ~~sign~~ signed the plea agreement that he the
20 petitioner understood that adjudication as a habitual offender
21 would be a process or that he would be waiving any rights
22 associated with that process ie challenging constitutionally
23 invalid convictions or convictions born of the same information
24 and to present factors in mitigation against the habitual off-
25 ender status in fact this petitioner believes that regardless
26 defense counsel would be obligated to insure the court
27 had all the correct information to properly rule.

23. (b) GROUND TWO: Pleading to habitual criminal / stipulating to "Treatment as a habitual offender" was not a voluntary, knowing or intelligent action in violation of the 5th, 6th and 14th amendments of the U.S. Const and NEVADA Const. Article 1 sections 3, 6, and 8 and Article 4 section 21

23. (b) SUPPORTING FACTS (Tell your story briefly without citing cases or law): Petitioner fully incorporates the supporting facts and allegations set forth in ground one as fully set forth herein. The petitioner was told by the state that he was pleading guilty to the "large habitual" on Feb 25, 2010 during the unconditional waiver of preliminary hearing, hearing the state advised for the record the terms of the negotiated plea causing the petitioner to unconditionally waive his right to a preliminary hearing, after setting forth the charges the petitioner would be pleading guilty to the state clarified the terms as the applied to the habitual offender in that the state unequivocally affirmed as follows; "with regards to robbery with use of a deadly weapon, that will be the charge that he will plead to the large habitual on", (Exhibit #1)

The state informed both the court and the defendant that he the defendant was in fact pleading to the habitual criminal the court in determining if a tendered plea is knowing and intelligent must look to what the defendant understood at time of plea this petitioner did believe that he was pleading to a charge of habitual criminality, even the term stipulate to "treatment as a habitual offender" is ambiguous and very unclear as to any actual definition, however the term does connote or imply the same as a guilty plea and must be

1 construed that by stipulation the defendant is waving certain rights
 2 or functions associated with the adjudication process, the issue
 3 with "stipulate to treatment as a habitual offender" is that neither
 4 the defendant or the court is ever actually informed of what is fact-
 5 ually agreed upon, waived or mutually acknowledged between parties
 6 therefore for all intent and purpose there is no stipulation, because
 7 due process demands that a defendant pleading guilty who waives any
 8 rights be specifically made aware, be informed and advised of those
 9 rights both in his written plea agreement as well as canvassed so that
 10 the record will demonstrate that at the time of his plea the defen-
 11 dant knows and understands the rights he is giving up.

12
 13 The plea agreement that the defendant received "10 minutes or so before
 14 he was to enter his plea differed from the agreement stated at the
 15 waiver of preliminary hearing ^{from} ~~as~~ the defendant will plead guilty to
 16 the large habitual "to" "treatment as a habitual offender" causing
 17 the plea memo to become unclear and ambiguous. The state is the
 18 party who proposed the negotiated plea and authored the plea memorandum
 19 but the state neither verbally for the record or in the written plea
 20 memo does the state ever make known to the defendant or the
 21 court what rights are being waived or terms are being agreed
 22 upon either by acknowledgement or omission as relating to the
 23 habitual offender adjudication process that would define use of
 24 the term "treated as a habitual or treatment as a habitual offen-
 25 der"

26 For Example: By entering my plea to the large habitual
 27 I understand that I am waiving and forever giving up the
 28 following rights and privileges: 1. To challenge the validity

1 of prior convictions used to adjudicate me by the court 2. Present
2 EVIDENCE or statements in mitigation against the habitual cri-
3 minal 3. Oppose being sentenced to 10-25 prior to the courts
4 finding or at the very minimum (example) Both parties
5 stipulate that: 1. Only prior convictions that the defendant
6 was represented by counsel will be submitted by the state
7 to the court to support adjudication of the defendant as
8 a habitual offender pursuant to his guilty plea 2. Not oppose
9 sentence of 10-25 yrs 3. and only present evidence in mit-
10 igation so that the court will have the appropriate required
11 factor's against adjudication, however defendant will stand
12 silent and not argue the charge of habitual criminality be
13 dismissed.

14
15 This petitioner asserts that this court must determine that the defendant
16 believed that he was pleading guilty to the habitual criminal and
17 that he did so believing that upon having 3 or more prior felony
18 convictions automatically made him a habitual offender, what the
19 court is being ask to also determine is what need be afforded to
20 the defendant when the habitual offender becomes his "direct conseq-
21 uences" pursuant to guilty plea that incorporates the habitual offender
22 statute, because there can not be any reasoning that the require-
23 ment pursuant to a guilty plea canvass based on primary offenses
24 can be said to qualify as informing a defendant who has plead
25 guilty to the habitual criminal of the convictions and conseq-
26 uence as they relate to or apply toward the habitual crim-
27 inal adjudication process.

1 The court has to ultimately determine 1. what the defendant himself
2 understood 2. was the process as a whole fundamentally fair under
3 which he tendered his plea. This petitioner was arrested on Feb
4 11, 2010 the in less than two weeks during a hearing to consolidate
5 his case with his now co-defendant on or about Feb 23, 2010 he
6 was presented with the states offer to plead guilty to four felony
7 charges and the habitual criminal and given two days to make his
8 decision. The 23rd of Feb 2010 was also the very 1st time petitioner
9 met his court appointed lawyer and that evening defense counsel
10 came to the jail gave the defendant a copy of discovery that was
11 in excess of 300 pages briefly reviewed with defendant various pol-
12 ice reports from the incidents, counsel did not discuss with the
13 defendant any aspects of the habitual criminal adjudication process
14 his prior convictions or factors in mitigation against the habitual
15 criminal in hindsight the meeting could indicate that defense counsel
16 himself may not have had any prior experience with the habitual
17 criminal adjudication process, however he still within hours of act-
18 ually receiving this case and simultaneously meeting his client did
19 advise defendant to plead guilty to the large habitual criminal.
20 Two days later the petitioner did waive his preliminary hearing so
21 that as stated by the state he would "plead to the large habitual"
22 and his other four felony charges and was set to enter his formal
23 plea a few weeks later on March 11, 2010 between Feb 25 and Mar
24 11, 2010 there was no other meeting with defense counsel and
25 defendant on Mar 11, 2010 approximately 10 mins before defendant
26 was called to enter his plea counsel gave defendant for the first
27 time a copy of the plea memo the defendant after a basic scan
28 of the agreement did ask counsel to seek a two week con-

1 uance, counsel offered to go into a side room and discuss any ques-
2 tions the defendant might have and the defendant told counsel
3 that that was not enough time for him to get to thoroughly re-
4 view the agreement and again request counsel to request a two
5 week or even one week continuance. The defendant saw defense
6 counsel go over to the state then return in second saying that the
7 state refused to agree to a continuance the defendant sent counsel
8 back a second time and upon counsel's return was informed by
9 defense counsel that the state according to counsel word would
10 not agree to an extension because "he thinks your trying to get
11 into your girlfriends head" referring to another co-defendant (female)
12 and that "he made a deal with her and dont want to put off her re-
13 lease" or something to that effect, at that point the defendant asked
14 counsel what would the judge say if we ask for a continuance and
15 was told he would give a continuance, counsel for a third time went back
16 to the state and upon his return stated that the state would only
17 agree to a four day continuance the defendant wanted to continue his
18 plea hearing and believed that his co-defendant Daniels was also seeking
19 a continuance, however just as the state and the defense came to an under-
20 standing the co-defendant plead guilty to his charges one of which was a
21 conspiracy charge naming the petitioner as part of the plea fearing
22 a worse situation given the state's refusal to consent to a continuance
23 the petitioner entered his plea also. This petitioner hereby request an
24 evidentiary hearing in this matter as he believes that his plea memo
25 and canvass was not sufficient to support a voluntary, intelligent and
26 knowing plea of guilty as it applies to the habitual criminal adjud-
27 cation process waiver of rights and functions associated with that
28 process.

23. (c) **GROUND THREE:** Improperly adjudicated to habitual offender status in violation of the 6th and 14th amendments to the United States constitution and Article I sections 8(1) and 15 of the Nevada Constitution.

23. (c) **SUPPORTING FACTS** (Tell your story briefly without citing cases or law): The Court adjudicated petitioner to status of habitual offender relying solely on terms of a unclear ambiguous plea memorandum and prior number of convictions, the court did not weigh factors both "for" and "against" the harsher punishment only factors "for" and the court did not make a independent finding that it was in fact "Just and proper" to adjudicate defendant to a status of habitual offender.

During petitioners sentencing / adjudication hearing the state submitted certified copies of the defendants prior judgements of convictions to support the charge of habitual criminality two (2) of those prior judgement should not have been submitted because they clearly say that the defendant was in proper person without counsel cases # 143146 and 145127 when those conviction by guilty plea were obtained and the state did not also provide any proof that counsel had been validly waived the court upon receiving those judgements scanned them for possible stamps of certification but did not read them but stated that "these appear to be in order" certified copies of judgement of conviction may be accepted by the court if those judgement on there face appear to be constitutionally valid two (2) of the judgement submitted by the state and accepted by the court upon ^{reading} ~~read~~ the very first line would render those con-

GROUND 3 CONTINUED

1 victions invalid, but were not properly submitted by the state or
2 admitted into the proceeding by the court, even if the state
3 would argue that absent the use of those convictions the
4 petitioner would have had a least three (3) other valid conviction
5 making that error harmless would be wrong as the finding of
6 (3) prior conviction do not make the habitual status automatic,
7 further the court never asked the defense if any of the prior
8 judgments could be challenged using constitutionally invalid
9 prior convictions as well as convictions counted as separate
10 that were part of a single indictment or information.

11
12 The court also inadvertently denied or at the very least discouraged
13 the petitioner from providing the court with mitigating evidence
14 or a statement in mitigation, so that the court would have
15 factor's "against" the habitual criminal. The court asked the
16 defendant if he would like to "make a statement in mitigation",
17 however before the defendant could respond the court did
18 state that "I am inclined to go with the plea recommendation"
19 or something to that effect, whatever the exact language the
20 statement itself indicated to the defendant that 1. The court
21 was predisposed to it's decision without factors against the
22 habitual criminal 2.) that his belief that the habitual criminal
23 was automatic upon (3) or more prior felony convictions. The pet-
24 itioner asserts that he was improperly adjudicated a habitual
25 criminal without being allowed to challenge his prior convictions, with-
26 out any factors against the enhancement, without a determination that
27 it was just and proper based on invalid prior convictions and an
28 ambiguous unclear plea memo.

1 23. (d) GROUND FOUR: INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING
2 COUNSEL'S REPRESENTATION AT SENTENCING FELL BELOW AN OBJECTIVE LEVEL OF REASONABLE-
3 NESS AT SENTENCING PREJUDICING DEFENDANT CREATING A PROBABILITY RESULTS WOULD
4 HAVE BEEN DIFFERENT VIOLATING U.S. CONST 5TH 6TH + 14TH NEW CONST ARTICLE 1 SEC
5 3, 6, AND 8 AND ARTICLE 4 SECTION 21

6 23. (d) SUPPORTING FACTS (Tell your story briefly without citing cases or law):
7 COUNSEL'S PERFORMANCE AT SENTENCING WAS DEFICIENT AND WAS
8 BELOW AN OBJECTIVE STANDARD OF REASONABLENESS BECAUSE COUNSEL
9 DID NOT PROVIDE TO THE COURT ANY INFORMATION, ARGUMENT OR
10 EVIDENCE IN MITIGATION "AGAINST" IMPOSITION OF THE HABITUAL
11 CRIMINAL OFFENDER STATUS, DUE TO COUNSEL FAILURE TO INQUIRE
12 OF HIS CLIENT AS TO WHAT INFORMATION IN MITIGATION EXISTED.
13 THIS PETITIONER HAS NEVER PARTICIPATED IN A HABITUAL OFFENDER
14 ADJUDICATION AND HAD NO KNOWLEDGE OF THE COURT'S NEED
15 OF MITIGATING EVIDENCE OR CHALLENGING PRIOR UNCONSTITUTIONAL
16 CONVICTION, THEREFORE IT WAS OF COUNSEL OWN MAKING
17 THAT HE DID NOT OR COULD SUBMIT FACTOR "AGAINST" THE
18 HABITUAL OFFENDER STATUS FOR THE COURT'S CONSIDERATION AL-
19 THOUGH MANY DOCUMENTABLE FACTORS IN MITIGATION DID EXIST.

20 THE DEFENDANT IN THIS CASE STIPULATED TO "TREATMENT AS A HABIT-
21 UAL OFFENDER". WHAT IS UNCLEAR IS EXACTLY WHAT THE DEFENDANT
22 STIPULATED TO DO IS UNCLEAR, HOWEVER THERE IS NOTHING IN THE
23 TERMS OF THE PLEA AGREEMENT PREVENTS COUNSEL FROM ADVOCATING
24 AND OR PARTICIPATING IN THE ADJUDICATION HEARING PROCESS BY
25 CHALLENGING PRIOR UNCONSTITUTIONAL CONVICTIONS AND PROVIDING
26 THE COURT WITH MITIGATING EVIDENCE AND FACTORS, BUT DUE
27 TO COUNSEL'S OWN FAILURE TO INQUIRE HE WAS UNPREPARED TO

28

GROUND 4 CONTINUED

1 challenges prior unconstitutional conviction and was unable
2 to present arguments and evidence in mitigation. For the
3 court to be fully ~~inf~~ informed prior to adjudicating
4 his client as a habitual offender

5
6 I was prejudiced by counsel's ineffective representation at
7 sentencing, because had counsel investigated my case
8 or simply asked me any questions regarding my prior
9 convictions and my efforts over the past few years to
10 adjust back into society as a productive member or
11 what circumstances caused the defendant to participate in the
12 events of this prosecution then counsel would have been able
13 to effectively represent petitioner at sentencing had coun-
14 sel done so there is a reasonable probability the court
15 could have dismissed the habitual offender charge

(a) Ground Five: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(b) Ground Six: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(c) Ground Seven: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(d) Ground Eight: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(a) Ground Nine: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(b) Ground Ten: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(c) Ground Eleven: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

(d) Ground Twelve: _____

Supporting FACTS (Tell your story briefly without citing cases or law.): _____

1 WHEREFORE, petitioner, prays that the court grant habeas
2 relief to which he may be entitled in this proceeding.

3 EXECUTED at High desert state prison
4 on the 19th day of January, 2010.

5
6 
7 Signature of Petitioner

8 **VERIFICATION**

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

13
14 
15 Signature of Petitioner

16
17
18 _____
19 Attorney for Petitioner
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE BY MAILING

I, Cary Pickett, hereby certify, pursuant to NRCP 5(b), that on this 11th
day of January, 20 11, I mailed a true and correct copy of the foregoing, "

by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

District Attorney
David Rodgers
200 Lewis Street
Las Vegas NV 89101

Warden H.D.S.P
Billie
P.O. Box 650
Indian Springs NV 89020

CC:FILE

DATED: this 11 day of January, 20 11.

Cary Pickett # 5757
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding petition For

Writ of Habeas Corpus

(Title of Document)

filed in District Court Case number _____

☒ Does not contain the social security number of any person.

-OR-

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

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

(State specific law)

-or-

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



Signature

Jan 18, 2011

Date

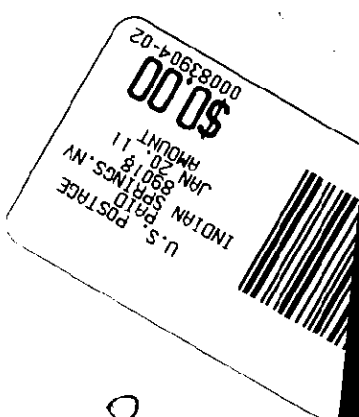
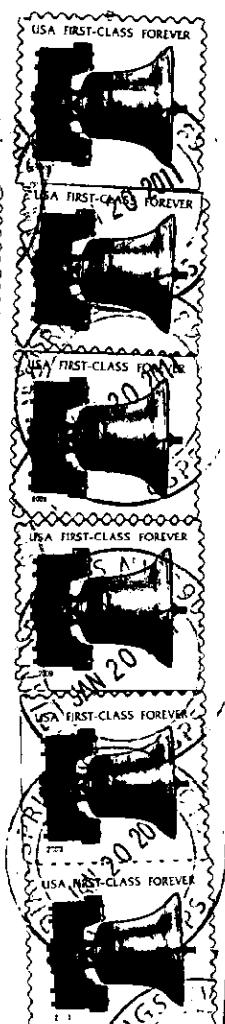
CARY PICKETT

Print Name

Petition Writ Habeas Corpus

Title

Guert Dec. 2002
Plea



Cary Pickett 57591
P.O. Box 650
Indian Springs NV 89070

1 Cary Pickett, #57591
2 High Desert State Prison
3 22010 Cold Creek Road
4 P.O. Box 650
5 Indian Springs, Nevada

FILED
JAN 27 2011
CLERK OF COURT

6 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE
7 STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK

9 Warden Scillia,)
10 H.D.S.P.)
11 Respondent,)

Case No. C262523
Dept. No. 12

11 vs.

12 Cary Pickett,)
13 Petitioner,)

10C262523-2
BREF
Brief
1188724



16 PETITIONER'S BRIEF IN SUPPORT OF PETITION
17 FOR WRIT OF HABEAS CORPUS (POST CONVICTION)

19 COMES NOW, Petitioner, Cary Pickett, in Proper Person, and
20 respectfully submits his brief in support of his Writ of Habeas
21 Corpus (Post Conviction).

22 This brief is submitted and made, and based, pursuant to
23 NRS 34.720, the supporting Points and Authorities attached herein,
24 as well as all papers, pleadings, and documents on file herein.
25 Also pursuant to the Fourteenth Amendment to the United States
26 Constitution, which guarantees Equal Protection and Due Process
27 of Law to all citizens of this Great Nation.

28 ///

RECEIVED

JAN 27 2011

CLERK OF THE COURT

1 Points and Authorities

2 I. Ineffective Assistance of Counsel

3 Counsel for petitioner, Casear Amase, did not render to the
4 defendant "reasonably effective assistance given the totality of
5 the circumstances" a right guaranteed by the Sixth Amendment to
6 criminal defendants. According to the plea negotiations offered by
7 the state defense counsel was called to actually advise his client
8 on two separate crucial matters, his plea of guilty on his primary
9 amended charges and also the large habitual criminal; in the case
10 at bar, this defendant alleges that on the latter prior to advis-
11 ing or agreeing with his client in regards to the large habitual,
12 defense counsel was ineffective.

13 When deciding to enter into a plea agreement with the state,
14 a criminal defendant has a right to reasonably effective assist-
15 ance of counsel more so when that plea agreement, as in this case,
16 involves both the intricacies of law and the advocacy of the public
17 prosecutor after the plea, which is the habitual offender adjud-
18 ication process, therefore a criminal defense attorney who does
19 not provide his client with the guiding hand that the constitution
20 guarantees has to be deemed as ineffective. The proper standard
21 to determine if counsel performance was deficient is the two prong
22 test as setforth in Strickland v. Washington 466 U.S. 668 supra.

23 The court must look to the harsh and penal nature of the
24 habitual offender statute and the proported errors counsel is
25 to have made prior to advising the defendant to plead guilty/stip-
26 ulate to a charge of habitual criminality as part of his guilty
27 plea to determine as a whole affirms misrepresentation of counsel.

28 ///

1 The errors that counsel made are: not requesting a continu-
2 ance to consult with his client and the laws that apply to plead-
3 ing guilty or stipulating to the habitual criminal, on February
4 23 counsel met with his client for the first time during a motion
5 to consolidate his case with the other charged suspect at that
6 time counsel was approached by the state and presented an offer
7 to relay to the defendant and told that the state would only
8 afford the defense (2) days to give a decision, being that the plea
9 offer included pleading to the large habitual combined with the
10 new appointment and discovery that exceeded 350 pages, counsel
11 should have requested a continuance for his own needs as well as
12 his client's. Counsel also after only 30 minutes of consultation
13 with his client at the jail also on the same day he first met his
14 client with only the understanding that his client believed that
15 based on having (3) prior convictions he was a habitual criminal
16 advised his client that it was best or O.K. to plead guilty to the
17 large habitual, even though the Nevada Supreme Court in Staley v.
18 State 787 P.2d 396 ruled that a defendant pleading guilty can not
19 stipulate to status as a habitual offender or further in Walker v.
20 Deeds 50 F.3d 670 the habitual criminal "is not automatic on the
21 finding of comission of (3) felonies," therefore his advise to
22 plead guilty/stipulate to the large habitual was error, even if
23 a determination could be made that a criminal defendant could in
24 fact stipulate/plead to the habitual criminal before counsel could
25 advise his client to do so he would need to make sure that his
26 client's substantial rights are not prejudiced in that counsel
27 would have to have inquired if any of his prior convictions were
28 obtained when he did not have legal counsel, determine if prior

1 convictions were old and remote and if any mitigating evidence
2 existed that would or could convince the court to dismiss a charge
3 of habitual criminality, to advise the defendant to plead/stipulate
4 to the habitual criminal and not to inform his client that he will
5 be waving certain substantive rights because at the time of advise
6 on February 23, 2010 the day he first met his client and received
7 the offer from the state he had no idea what rights his client
8 would be waiving with the adjudication process nor where those
9 rights outline in his plea memo prior to counsel signing the memo-
10 randum. Defense counsel has a duty to assist his client by bringing
11 his expertise at law not only if the defendant goes to trial but
12 also when deciding to accept a negotiated plea, in this case coun-
13 sel did not, and committed the following errors prior to advising
14 his client to accept a plea: 1. Did not request a continuance to
15 determine if it was lawful for a defendant pleading guilty to plead
16 or stipulate to the habitual criminal before advising the defendant
17 on the matter. 2. Failed to inform the defendant that adjudication
18 is a process and not automatic upon the finding of (3) prior felony
19 convictions. 3. Failed to inform his client of substantive rights
20 associated with the habitual adjudication process that he would be
21 waving by stipulation. 4. Failed to inquire of the state exactly
22 what rights his defendant stipulates to waive. The aforementioned
23 errors committed by counsel prejudiced the defendant because his
24 decision to plead/stipulate to the large habitual was uninformed
25 not based on the connotations and consequences, but a misguided
26 perception that (3) prior felony convictions automatically made
27 him a habitual offender.

28 Petitioner fully incorporates the supporting facts setforth

1 herein as fully setforth in ground four ineffective assistance of
2 counsel a sentencing where counsel's errors were 1. Counsel failed
3 to challenge prior Judgment of Conviction that was constitutionally
4 invalid. 2. Counsel failed to present evidence and factors in
5 mitigation against the habitual offender.

6
7 II. Stipulating to Treatment as Habitual
8 Offender Not Knowing and Intelligent Plea

9 Although the Nevada Supreme Court has ruled that a
10 defendant pleading guilty can not stipulate to status as
11 habitual offender "questions of validity of prior convictions
12 must be determined by District Court as a matter of law, with
13 punishment dependant upon Courts excercise of its discretion"
14 Staley v. State, 787 P.2d 396, 106 Nev. 75 (1990); the State
15 nontheless did solicit Pickett, in this case to "stipulate" to
16 treatment as a habitual offender as part of his guilty plea.

17 In reviewing an attack on a guilty plea a court must consider
18 whether the plea was voluntarily entered as well as whether,
19 "consider as a whole, the process by which the plea was obtained
20 was fundamentally fair, Taylor v. Warden, Nevada State Prison
21 (1980), 609 P.2d 587, 96 Nev. 272. This defendant asserts that
22 even the term as written in his guilty plea memorandum
23 "Defendant stipulate to large habitual treatment under N.R.S.
24 207.010" is ambiguous to be reviewed by the district court, U.S.
25 v. Anderson, 970 F2d 602, and "Defendant treated as habitual under
26 count 2 and receive 10-25 years sentence" is fundamentally
27 unfair as it implies that there is no process and adjudication
28 is automatic Taylor v. Warden, see: Exhibit A (Guilty Plea

1 Agreement). The defendant is asked to "stipulate" to what?

2 1. Not oppose notice of charge of habitual criminality?

3 2. Three or more prior felony convictions?

4 3. Not to challenge constitutional validity of prior
5 convictions?

6 4. Or not to oppose sentence recommendation if adjudicated
7 a habitual offender?

8 NRS.174.035 (1) demands either a showing that the defendant
9 himself (not just his attorney) understood the elements of the
10 offense to which the plea was entered, or a showing that the
11 defendant himself has made a factual statement to the court
12 which constitute an admission to the offense plead to, NRS
13 207.010, Nevada Law requires a criminal information to "charge"
14 a separate offense of being a habitual criminal. Hardison v.
15 State, 437 P.2d 868 (1968), 84 Nev.125 and "Before a defendant
16 may be sentenced as a habitual criminal, the state must duly
17 file an allegation of habitual criminality" Grey v State", 178
18 P.3d 154(2008).

19 Under Nevada Law, decision to adjudicate a person as a
20 "habitual criminal" is not automatic on findings of commission
21 of (3) felonies, see: Walker v. Deeds, 50 F.3d 670 (1995),
22 therefore a plea memorandum that charges habitual criminality
23 has to insure that the defendant understands the "direct
24 consequences" of his guilty plea, thus must inform the defendant
25 himself of the adjudication process and the rights that attach,
26 N.R.P.C. 3.8 (D) the prosecutor has a duty to "Make a timely
27 disclosure to the defense.. in connection with sentencing,
28 disclose to the defense and to the tribunal all unprivileged

1 **mitigating information known to the prosecutor..."** The
2 adjudication process for NRS 207.010, has to be construed as
3 part of the nature of the charge i.e., element of the offense to
4 the defendant pleading guilty, therefore **the details of the**
5 **process** must be expressly outlined in his plea agreement or the
6 court can not determine that a particular defendant actually
7 understood the "Direct consequences" of his guilty plea, NRS
8 207.010, has a "**immediate impact on sentencing**", therefore has
9 to be thoroughly canvassed at plea entry and outlined in the
10 plea agreement to be knowing and intelligent.

11 When a defendant, as in this case does not know when he
12 decides to enter his plea to a criminal information that does
13 charge habitual criminality that his convictions **#5 cc#143146** and
14 **#6 cc#145127**, obtained without his right to counsel can not be
15 used because the record will prove by a preponderance of the
16 evidence that:

- 17 1. Self representation was not a voluntary election as
18 he did state to the court **"I did not ask to**
19 **represent myself, I asked for alternate counsel and**
20 **she suggested that I represent myself"** contrary to
21 **Faretta v. California**, Supra 95 S.Ct.2525, 422 U.S.
22 806, 45 L.Ed.2d 562 U.S.Cal.1975, see: exhibit(B).
- 23 2. Later after the defendant was compelled to represent
24 himself, and after his canvass the state did file
25 notice of intent to seek habitual treatment the
26 court failed to inquire as to if the defendant still
27 would represent himself see: exhibit(C), because of
28 greater penalty possibility see **Scott v. State**, 877

1 P.2d 503 110 Nev.622(1994. Those convictions are
2 constitutionally invalid. Then that defendant has
3 not been properly informed enough to be said to
4 Have made a knowing or intelligent Plea, Waiver or
5 stipulation, no matter how it may be phrased.

6 The State with full knowledge that defendant was not
7 represented by counsel in case #143146/#145127, bearing, "the
8 burden of proving the convictions where constitutionally valid"
9 Burns v. State, 495 P2d, 88 Nev.215 (1972), further the
10 aforementioned were "part of a single information" Rezin v.
11 State, could only be counted as (1) conviction had they been
12 able to be used for purpose of the habitual enhancement, did
13 present to the Court all prior convictions as separate and
14 valid. See Exhibit E

15 The critical factor being that "In proving prior
16 convictions for purposes of defendant to be habitual criminal,
17 burden is on the state to show that either attorney was present
18 or validly waived at time of prior prosecutions Hamlet v. State,
19 455 P.2d 915, 85 Nev.385 (1969).

20 With regards to incorrect or insufficient information as to
21 sentencing the proper test to be applied is whether defendant
22 would have plead differently "stipulated in this case to
23 treatment as a habitual offender" had he been correctly
24 informed, upon which issue the state must bear the burden of
25 proof. "Misinformation as to sentencing renders the plea
26 involuntarily made and it must be vacated" Paige v. United
27 States, 443 F.2d 781.

28 ///

III. Due Process at Sentencing

Defendant asserts that the trial court was obstructed from affording him due process at his sentencing, based upon insufficient or misinformation as to sentencing. When the state did solicit the defendant to stipulate to "treatment as a habitual offender" and neither the **State, Defense Counsel** nor the **Hearing Master** who excepted his guilty plea, advised or informed defendant that adjudication as a habitual offender is a procedural process "**not an automatic one; person alleged to be habitual offender is subject to broadest kind of judicial discretion**" Clark v. State, 851 P.2d 426, 109 Nev.426 (1993).

The State deprived the Trial Court of it's ability to make "**an actual judgment**" on the question that it is "**Just and Proper**" to punish and segregate the defendant as a habitual criminal **by not informing the defendant of the rights he had associated with the adjudication process** insuring the Court only had factors "**for**" (Defendants prior convictions) see: exhibit (E) and none "**against**" in which to weigh it's decision. The Nevada Supreme Court nor the United States District Court (Nevada) did not reach to the merits of **Pickett's, post-conviction writ** due to a procedural time bar he has always maintained that his waiver of counsel and convictions in cc#143146 and cc#145127, were unconstitutional. See: exhibit (D).

This Defendant standing silent during his adjudication, is a direct indication of his knowledge of the Habitual Adjudication process "**None**", surely had he known, convictions 5 and 6, would have been challenged and eliminated from the process. All of the defendant's prior convictions are for non-

1 violent offenses, mostly property crimes relating to his long
2 drug addiction, but without convictions 5 and 6, The Court would
3 have to weigh nonviolent and remote convictions 16 to 19 years
4 prior and give consideration to Tillema v. State, (1996) 914 P.2d
5 605, 112 Nev.9, the court found only that the copies of
6 defendant's prior convictions sufficient to adjudicate him as a
7 habitual criminal, but did not make an "Actual Judgment" on the
8 question of whether it is "just and proper" for the defendant to
9 be punished as a habitual offender Walker v. Deeds, 50 F.3d 670,
10 but as previously mentioned not all of those convictions were
11 valid and the state was aware of this.

12 "The District Court has inherent authority to
13 correct a judgment or sentence found on
14 mistakes is in accord with the constitutional
15 considerations underlying the sentencing
16 process. The United States Supreme Court has
17 expressly held that where a defendant is
18 sentenced on the basis of materially untrue
19 assumptions concerning his criminal record
20 "results whether caused by carelessness or
21 design is inconsistent with due process of law"
22 Townsend v. Burke, 736,741, 68 S.Ct. 1252,
23 1255, 92 L Ed. 1690 (1948). Further, the cases
24 clearly established that constitutionally
25 violate "materially untrue assumptions"
26 concerning a criminal record may either arise
27 as a result of sentencing Judges correct
28 perception of misapprehension. (Emphasis in
original) Id. 677 P.2d at 1048 n3."

22 Defendant would ask that this Court not perceive this
23 request to be pointing the finger at the Court and saying "you
24 were wrong" as that is not the case. Defendant is merely
25 requesting that the Court reconsider the sentence that was
26 pronounced based upon mistakes of facts in the States allegation
27 of habitual criminality and the defendant "stipulating to
28 treatment as a habitual offender" as a part of his guilty plea.

1

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3

5

1 agreement, the District Attorney, Defense Counsel or the Hearing
2 Master advised or informed the defendant that:

- 3 1. Adjudicating a criminal Defendant is procedural
- 4 2. Discretionary dependant upon many factors and the
5 Court discretion, but not automatic solely due to
6 (3) prior convictions
- 7 3. And that the allegation/charge could actually be
8 dismissed
- 9 4. The legislative Intent may not be applicable
10 based on the nature of his prior convictions and
11 Drug Addiction which the Court will view as a
12 whole
- 13 5. Prior conviction constitutionally infirm could
14 not be used for the process.

15 Without any knowledge of the aforementioned; procedures,
16 the defendants guilty plea was accepted, discussing with the
17 defendant only the elements, waiver of rights and nature of
18 charges for the underlying offenses and not the Habitual
19 Criminal charge itself does not insure an understanding of the
20 charge stipulated to that has the greater impact.

21 May 10, 2010, the defendant was sentence in accordance with
22 the written plea agreement. The State did present certified
23 copies of all of his prior conviction (2) of which the State
24 knew or should have known should not have been submitted, the
25 defendant stood silent as he believed he was required to do,
26 further demonstrating how misinformed or rather uninformed he
27 really was. The decision to adjudicate Defendant was based on
28 only the information the State wanted the Court to weigh, the

1 defendants prior convictions. This motion follows as it is at
2 this time the defendant did become aware of his rights and the
3 relevant case Authorities, therefore request relief from the
4 Court.

5 **CONCLUSION**

6 Thereby, pursuant to the Facts and Laws stated herein,
7 being that the State failed to properly inform Defendant of
8 valuable rights associated with the adjudication process of
9 NRS.207.010, a duty the State was required to perform, as the
10 aforementioned statute had an immediate impact on sentencing,
11 further the submission of invalid prior conviction to the Court
12 depriving the Court by misinformation of its ability to make an
13 actual Judgment as to NRS.207.010.

14 The Defendant has been deprived of Due Process of Law at
15 sentencing and request that his sentence be modified/corrected
16 as follows: his sentence pursuant to NRS.207.010, be vacated,
17 the charge of habitual criminality be dismiss
18
19
20

21 Dated: this 19, day of January, 20 11.

22 Respectfully Submitted,
23 

24 Cary Pickett, #57591

25 H.D.S.P

26 P.O.Box 650

27 Indian Springs, Nevada 89018

28 In Proper Person

ORIGINAL

16

Exhibit # 3
D

FILED

OCT 17 A 8 53

DISTRICT COURT
CLARK COUNTY, NEVADA

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

9 THE STATE OF NEVADA,

Plaintiff,

-vs-

11 CARY JERARD PICKETT, aka
12 Gary Pickett, #0725059

Defendant.

Case No.
Dept. No.
Docket

C145127
XI
S

JUDGMENT OF CONVICTION (PLEA)

WHEREAS, on the 18th day of September, 1997, the Defendant CARY JERARD PICKETT, aka Gary Pickett, appeared before the Court herein with his counsel and entered a plea of guilty to the crime(s) of BURGLARY (CATEGORY B FELONY), committed on or about the 7th day of August, 1997, in violation of NRS 205.060 and

WHEREAS, thereafter on the 25th day of September, 1997, the Defendant, In Propria Persona, being present in court with his counsel JORDAN, SAVAGE, ESQ., as Stand By Counsel, and ARTHUR G. NOXON, Deputy District Attorney, also being present; the above entitled Court did adjudge the Defendant guilty thereof by reason of his plea of guilty and, in addition to the \$25.00 Administrative Assessment Fee, sentenced Defendant to a minimum of thirty-six (36) months and a maximum of one-hundred twenty (120) months in the Nevada Department of Prisons, to be served consecutive to sentence imposed in Case No. C143146, suspended; placed on probation for an indeterminate period not to exceed five (5) years. Conditions: 1. Search Clause for controlled substances and stolen property. 2. Complete Drug

CE-05

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15077

5

1 Court Program, noting there was no use of weapons in this incident. 3. Complete long-term
2 counseling, vocational and educational programs as deemed necessary. 4. Defendant to be
3 supervised in the Nevada Division of Parole and Probation's House Arrest Program for the first
4 four (4) months of probation. Defendant to receive thirty-five (35) days credit for time served.
5 Court referred matter to Drug Court, and Ordered, set for further proceedings on October 6,
6 1997 at 9:00 o'clock a.m. in Department X.

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

9 DATED this 16th day of October, 1997, in the City of Las Vegas, County of Clark,
10 State of Nevada.

11
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13 
14 DISTRICT JUDGE
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25
26
27
28

DA#97-145127X/pm
LVMPD EV#9708071616
BURG-F
(TK1)

1 **GMEM**
 2 **DAVID ROGER**
 3 **DISTRICT ATTORNEY**
 4 **Nevada Bar #002781**
 5 **ROY L. NELSON III**
 6 **Chief Deputy District Attorney**
 7 **Nevada Bar #007842**
 8 **200 Lewis Avenue**
 9 **Las Vegas, NV 89155-2212**
 10 **(702) 671-2500**
 11 **Attorney for Plaintiff**

12
 13 **DISTRICT COURT**
 14 **CLARK COUNTY, NEVADA**

15 **THE STATE OF NEVADA,**

16 **Plaintiff,**

17 **-vs-**

18 **CARY PICKETT, aka,**
 19 **Cary Jerard Pickett, #0725059**

20 **Defendant.**

21 **CASE NO: C262523**
 22 **DEPT NO: XVIII**

23 **GUILTY PLEA AGREEMENT**

24 I hereby agree to plead guilty to: **COUNT 1 - BURGLARY WHILE IN**
 25 **POSSESSION OF A FIREARM (Felony - NRS 205.060 / Category B); COUNT 2 -**
 26 **CONSPIRACY TO COMMIT ROBBERY (Felony - NRS 199.480, 200.380 / Category**
 27 **B); COUNT 3 - ROBBERY WITH USE OF A DEADLY WEAPON (Felony - NRS**
 28 **200.380, 193.165 / Category B) and COUNT 4 - POSSESSION OF FIREARM BY EX-**
FELON (Felony - NRS 202.360 / Category B), as more fully alleged in the charging
document attached hereto as Exhibit "1".

My decision to plead guilty is based upon the plea agreement in this case which is as follows:

The State has agreed to dismiss the remaining counts. Defendant stipulates to large habitual treatment under NRS 207.010. Parties stipulate to a 2-5 year sentence on Count 1. Defendant treated as habitual under Count 2 and receive 10-25 year sentence, consecutive to

Count 1, for a total of 12-30 years in the Nevada Department of Corrections. All other counts to run concurrent.

CONSEQUENCES OF THE PLEA

I understand that by pleading guilty I admit the facts which support all the elements of the offense(s) to which I now plead as set forth in Exhibit "1".

I understand that as a consequence of my plea of guilty as to Count 1, the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than two (2) years and a maximum term of not more than fifteen (15) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$10,000.00.

I understand that as a consequence of my plea of guilty as to Count 2, the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than six (6) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$5,000.00.

I understand that as a consequence of my plea of guilty as to Count 3, the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than two (2) years and a maximum term of not more than fifteen (15) years, plus a consecutive minimum term of not less than one (1) year and a maximum term of not more than fifteen (15) years for the use of a deadly weapon enhancement. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment.

I understand that as a consequence of my plea of guilty as to Count 4, the Court must sentence me to imprisonment in the Nevada Department of Corrections for a minimum term of not less than one (1) year and a maximum term of not more than six (6) years. The minimum term of imprisonment may not exceed forty percent (40%) of the maximum term of imprisonment. I understand that I may also be fined up to \$5,000.00.

I understand that the law requires me to pay an Administrative Assessment Fee.

1 Further, I understand that if I am sentenced under the under the "small" habitual
2 criminal enhancement, the Court must sentence me to a term not less than FIVE (5) years
3 and a maximum of TWENTY (20) years in the Nevada Department of Corrections. I
4 understand that if I am sentenced under the "large" habitual criminal enhancement the Court
5 must sentence me to LIFE without the possibility of parole; life with the possibility of
6 parole, parole eligibility begins after a minimum term of TEN (10) years has been served;
7 OR a definite term of TWENTY FIVE (25) years, parole eligibility begins after a minimum
8 of TEN (10) years has been served.

9 I understand that, if appropriate, I will be ordered to make restitution to the victim of
10 the offense(s) to which I am pleading guilty and to the victim of any related offense which is
11 being dismissed or not prosecuted pursuant to this agreement. I will also be ordered to
12 reimburse the State of Nevada for any expenses related to my extradition, if any.

13 I understand that I am eligible for probation for the offense to which I am
14 pleading guilty to in Count 1, 2, and 4. I understand that, except as otherwise provided by
15 statute, the question of whether I receive probation is in the discretion of the sentencing
16 judge.

17 I understand that I am not eligible for probation for the offense to which I am
18 pleading guilty to in Count 3.

19 I also understand that I must submit to blood and/or saliva tests under the Direction of
20 the Division of Parole and Probation to determine genetic markers and/or secretor status.

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

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

27 I have not been promised or guaranteed any particular sentence by anyone. I know
28 that my sentence is to be determined by the Court within the limits prescribed by statute.

1 I understand that if my attorney or the State of Nevada or both recommend any
2 specific punishment to the Court, the Court is not obligated to accept the recommendation.

3 I understand that if the State of Nevada has agreed to recommend or stipulate a
4 particular sentence or has agreed not to present argument regarding the sentence, or agreed
5 not to oppose a particular sentence, or has agreed to disposition as a gross misdemeanor
6 when the offense could have been treated as a felony, such agreement is contingent upon my
7 appearance in court on the initial sentencing date (and any subsequent dates if the sentencing
8 is continued). I understand that if I fail to appear for the scheduled sentencing date or I
9 commit a new criminal offense prior to sentencing the State of Nevada would regain the full
10 right to argue for any lawful sentence.

11 I understand if the offense(s) to which I am pleading guilty to was committed while I
12 was incarcerated on another charge or while I was on probation or parole that I am not
13 eligible for credit for time served toward the instant offense(s).

14 I understand that as a consequence of my plea of guilty, if I am not a citizen of the
15 United States, I may, in addition to other consequences provided for by federal law, be
16 removed, deported, excluded from entry into the United States or denied naturalization.

17 I understand that the Division of Parole and Probation will prepare a report for the
18 sentencing judge prior to sentencing. This report will include matters relevant to the issue of
19 sentencing, including my criminal history. This report may contain hearsay information
20 regarding my background and criminal history. My attorney and I will each have the
21 opportunity to comment on the information contained in the report at the time of sentencing.
22 Unless the District Attorney has specifically agreed otherwise, then the District Attorney
23 may also comment on this report.

24 WAIVER OF RIGHTS

25 By entering my plea of guilty, I understand that I am waiving and forever giving up
26 the following rights and privileges:

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