

FILED

JUN 14 2011

*Tracie K. Lindeman*  
 CLERK OF COURT  
 Electronically Filed  
 Jun 17 2011 04:26 p.m.  
 Tracie K. Lindeman  
 Clerk of Supreme Court

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

DISTRICT COURT

CLARK COUNTY NEVADA

8 CARY PICKETT,9 PETITIONER,

10 -v-

11 THE STATE OF NEVADA,12 RESPONDENT,Case No. C 262523-2Dept. No. XVIII

Docket \_\_\_\_\_

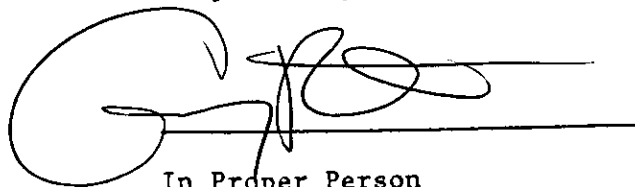
14 NOTICE OF APPEAL15 Notice is hereby given that the PETITIONER, Cary Pickett

16 \_\_\_\_\_, 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 DENYING PETITION FOR WRIT OF HABEAS CORPUS19 MAY 19, 201121 Dated this date, JUNE 8, 2011.

Respectfully Submitted,



In Proper Person

10C262523-2  
 NOASC  
 Notice of Appeal (criminal)  
 1468977




RECEIVED  
 JUN 14 2011  
 CLERK OF THE COURT

**CERTIFICATE OF SERVICE BY MAILING**

I, Cary Pickett, hereby certify, pursuant to NRCP 5(b), that on this 8  
day of JUNE, 20 11, 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  
David Rodgers  
200 S Lewis  
Las Vegas NV 89115

DATED: this 8 day of JUNE, 20 11.

  
Cary Pickett # 5759  
Appealant/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 C262523

☒ 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]  
Signature

June 8, 2011  
Date

Cary Pickett  
Print Name

Appellant  
Title

IN THE SUPREME COURT OF THE STATE OF NEVADA

CARY JERARD PICKETT,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 58191

**FILED**

MAY 09 2011

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

ORDER RE: ENTRY OF WRITTEN JUDGMENT OR ORDER  
AND RECORD ON APPEAL

This is a proper person appeal from a decision denying a post-conviction petition for a writ of habeas corpus. This court's review of this appeal indicates that, as of the date of this order, the district court has not entered a written order denying the petition. The criminal court minutes indicate that the district court orally denied the petition in court on April 6, 2011. Prior to the entry of a final, written judgment or order, and the timely filing of a notice of appeal, the district court technically retains jurisdiction over appellant's case. See Bradley v. State, 109 Nev. 1090, 1094-95, 864 P.2d 1272, 1275 (1993). In a criminal case, a notice of appeal filed after announcement of the decision, but before entry of the written judgment or order is deemed to have been filed after such entry and on the day thereof. NRAP 4(b)(2). Thus, a copy of the written judgment or order is essential to a determination of this court's jurisdiction to consider this appeal.

Accordingly, the district court shall have 30 days from the date of this order within which to: (1) enter a written judgment or order or (2) inform this court that it is reconsidering its decision. In the event the

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JUN 14 2011  
CLERK OF THE COURT

district court enters a written judgment or order (or has already entered a written judgment or order of which this court is unaware), the clerk of the district court shall immediately transmit a certified copy of the judgment or order to the clerk of this court.

Further, the clerk of the district court shall, within 60 days from the date of this order, transmit to the clerk of this court a certified copy of the complete trial court record of this appeal. See NRAP 11(a)(2). The record shall not include any physical, non-documentary exhibits or the original documentary exhibits filed in the district court, but copies of documentary exhibits submitted in the district court proceedings shall be transmitted as part of the record on appeal. The record shall also include any presentence investigation reports submitted in a sealed envelope identifying the contents and marked confidential. See NRS 176.156(5).

It is so ORDERED.

 \_\_\_\_\_, C.J.

cc: Hon. David B. Barker, District Judge  
Cary Jerard Pickett  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk

FILED

MAY 31 2011

*Steven D. Grierson*  
CLERK OF COURT

1 NOED

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5 CARY PICKETT,

6 Petitioner,

7 vs.

8 THE STATE OF NEVADA,

9 Respondent,

Case No: 10C262523-2  
Dept No: XVIII

10 NOTICE OF ENTRY OF  
DECISION AND ORDER

11 PLEASE TAKE NOTICE that on May 19, 2011, the court entered a decision or order in this matter, a  
12 true and correct copy of which is attached to this notice.

13 You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you  
14 must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is  
15 mailed to you. This notice was mailed on May 31, 2011.

16 STEVEN D. GRIERSON, CLERK OF THE COURT

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

19 CERTIFICATE OF MAILING

20 I hereby certify that on this 31 day of May 2011, I placed a copy of this Notice of Entry of Decision and  
21 Order in:

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

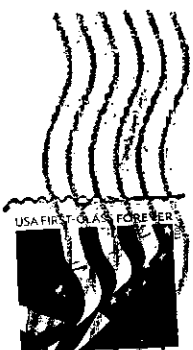
- 24 ☒ The United States mail addressed as follows:  
25 Cary Pickett # 57591  
26 P.O. Box 650  
Indian Springs, NV 89070

27 *Heather Ungermann*  
28 Heather Ungermann, Deputy Clerk

Leary Packet 5759/  
P.O. Box 1680  
Indian Springs NV  
89070

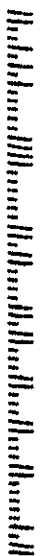
LAS VEGAS NV 890

06 JUN 2011 PM 3 T



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200 S. Nevada Ave  
Las Vegas NV - 89155

83101+6300



JUN 17 2011

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

CARY PICKETT,

Defendant(s),

Case No: 10C262523-2

Dept No: XVIII

## CASE APPEAL STATEMENT

1. Appellant(s): Cary Pickett

## 2. Judge: David Barker

3. Appellant(s): Cary Pickett

**Counsel:**

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

4. Respondent: THE STATE OF NEVADA

**Counsel:**

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

5. Respondent's Attorney Licensed in Nevada: Yes

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

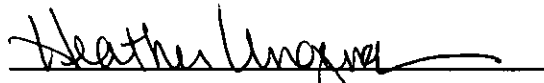


- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A  
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A  
3 9. Date Commenced in District Court: March 3, 2010  
4 10. Brief Description of the Nature of the Action: Criminal  
5 Type of Judgment or Order Being Appealed: Writ of Habeas Corpus  
6 11. Previous Appeal: Yes  
7 Supreme Court Docket Number(s): 58191  
8 12. Child Custody or Visitation: N/A  
9

10 Dated This 17 day of June 2011.

11 Steven D. Grierson, Clerk of the Court  
12

13 By:



14 Heather Ungermann, Deputy Clerk  
15 200 Lewis Ave  
16 PO Box 551601  
17 Las Vegas, Nevada 89155-1601  
18 (702) 671-0512  
19  
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DEPARTMENT 18  
**CASE SUMMARY**  
**CASE No. 10C262523-2**

**State of Nevada**  
**vs**  
**Cary Pickett**

§  
§  
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§  
§  
§  
§

Location: **Department 18**  
Judicial Officer: **Barker, David**  
Filed on: **03/03/2010**  
Conversion Case Number: **C262523**  
Defendant's Scope ID #: **0725059**  
Lower Court Case Number: **10F02742**  
Supreme Court No.: **58191**

**CASE INFORMATION**

<b>Offense</b>	<b>Deg</b>	<b>Date</b>	<b>Case Type:</b>
1. BURGLARY.	F	01/01/1900	<b>Felony/Gross Misdemeanor</b>
2. CONSPIRACY TO COMMIT A CRIME	F	01/01/1900	<b>Case Flags: Bail Set</b>
2. ROBBERY	F	01/01/1900	<b>Appealed to Supreme Court</b>
3. ROBBERY	F	01/01/1900	<b>Custody Status - Nevada</b>
3. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900	<b>Department of Corrections</b>
4. EX-FELON NOT TO POSSESS FIREARM.	F	01/01/1900	

**Related Cases**

10C262523-1 (Multi-Defendant Case)

**DATE**

**CASE ASSIGNMENT**

**Current Case Assignment**

Case Number	10C262523-2
Court	Department 18
Date Assigned	03/03/2010
Judicial Officer	Barker, David

**PARTY INFORMATION**

		<i>Lead Attorneys</i>
<b>Defendant</b>	<b>Pickett, Cary J</b>	<b>Pro Se</b>
<b>Plaintiff</b>	<b>State of Nevada</b>	<b>Roger, David J.</b> 702-671-2700(W)

**DATE**

**EVENTS & ORDERS OF THE COURT**

**INDEX**

03/03/2010	 Criminal Bindover <i>CRIMINAL BINDOVER</i>	
03/03/2010	Hearing <i>INITIAL ARRAIGNMENT</i>	
03/08/2010	 Information <i>INFORMATION</i>	10C262523- 20003.tif pages
03/10/2010	 Information <i>INFORMATION</i>	10C262523- 20004.tif pages



DEPARTMENT 18  
**CASE SUMMARY**  
**CASE No. 10C262523-2**

03/11/2010	<b>Initial Arraignment</b> (10:30 AM) (Judicial Officer: Williams, Kevin) Events: 03/03/2010 Hearing <i>INITIAL ARRAIGNMENT Court Clerk: Karina Kennedy/klk/Sylvia Courtney Reporter/Recorder: Kiara Schmidt Heard By: Kevin Williams</i>
03/11/2010	Conversion Case Event Type <i>SENTENCING</i>
03/11/2010	 Memorandum <i>GUILTY PLEA AGREEMENT</i>
03/11/2010	 Memorandum <i>GUILTY PLEA AGREEMENT</i>
03/26/2010	 Order <i>ORDER FOR PRODUCTION OF INMATES</i>
05/10/2010	 <b>Sentencing</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 03/11/2010 Conversion Case Event Type <i>SENTENCING Court Clerk: Sharon Chun Reporter/Recorder: Richard Kangas Heard By: David Barker</i>
05/14/2010	 Judgment <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
05/14/2010	Judgment <i>JUDGMENT OF CONVICTION/RESTITUTION</i>
05/14/2010	Judgment <i>JOC/GENETIC TESTING (WAIVED 05-14-10)</i>
05/14/2010	Judgment <i>ENTRY IN ERROR</i>
05/19/2010	 Judgment <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
05/19/2010	Judgment <i>JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
05/19/2010	Judgment <i>JOC/GENETIC TESTING (WAIVED 05-19-10)</i>
07/13/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF FEBRUARY 25, 2010</i>
07/13/2010	 Reporters Transcript <i>REPORTER'S TRANSCRIPT OF FEBRUARY 25, 2010</i>
07/28/2010	 Amended Judgment of Conviction <i>AMENDED JUDGMENT OF CONVICTION (PLEA OF GUILTY)</i>
09/24/2010	 Amended Judgment of Conviction <i>Second Amended Judgment of Conviction (Plea of Guilty)</i>

10C262523-  
20008.tif pages

DEPARTMENT 18  
**CASE SUMMARY**  
**CASE No. 10C262523-2**

01/03/2011	 Motion to Withdraw As Counsel Filed By: Defendant Pickett, Cary J <i>Motion to Withdraw As Attorney of Record</i>
01/19/2011	 <b>Motion to Withdraw as Counsel</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 01/03/2011 Motion to Withdraw As Counsel <i>Motion to Withdraw As Attorney of Record</i>
01/27/2011	 Petition for Writ of Habeas Corpus Filed by: Defendant Pickett, Cary J <i>PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND REQUEST FOR EVIDENTIARY HEARING</i>
01/27/2011	 Brief Filed By: Defendant Pickett, Cary J <i>Petitioner's brief in support of petition for writ of habeas corpus (post conviction)</i>
01/27/2011	 Certificate Filed By: Defendant Pickett, Cary J <i>Financial Certificate</i>
01/27/2011	 Application to Proceed in Forma Pauperis Filed By: Defendant Pickett, Cary J
02/11/2011	 Order for Petition for Writ of Habeas Corpus
02/28/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>REPORTER'S TRANSCRIPT OF MARCH 11, 2010</i>
03/22/2011	 Response <i>State's Response to Defendant's Petition for Writ of Habeas Corpus (Post-Conviction)</i>
04/05/2011	 Reply Filed by: Defendant Pickett, Cary J <i>Petitioner's Reply to State's Response to Writ of Habeas Corpus (Post-Conviction)</i>
04/06/2011	 <b>Petition for Writ of Habeas Corpus</b> (8:15 AM) (Judicial Officer: Barker, David) Events: 02/11/2011 Order for Petition for Writ of Habeas Corpus
04/18/2011	 Notice of Appeal (criminal) Party: Defendant Pickett, Cary J
04/18/2011	 Memorandum Filed By: Defendant Pickett, Cary J <i>Memorandum/Affidavit in Support of Appeal from Eighth Judicial District Court Writ of Habeas Corpus.</i>
04/20/2011	 Case Appeal Statement
05/19/2011	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada

**CASE SUMMARY****CASE No. 10C262523-2**05/31/2011  Notice of Entry of Decision and Order06/14/2011  Notice of Appeal (criminal)  
Party: Defendant Pickett, Cary J

DATE	FINANCIAL INFORMATION
<b>Defendant</b> Pickett, Cary J	
Total Charges	25.00
Total Payments and Credits	25.00
<b>Balance Due as of 6/17/2011</b>	<b>0.00</b>

1 **ORDR**

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

FILED

2011 MAY 19 P 2:12

*Sharon L. Johnson*  
CLERK OF THE COURT

7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 CARY J. PICKETT,  
13 #0725059

14 Defendant.

10C262523-2

FFCO

Findings of Fact, Conclusions of Law and C  
1422159

CASE NO: 10C262523-2

DEPT NO: XVIII

14 FINDINGS OF FACT, CONCLUSIONS OF  
15 LAW AND ORDER

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

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

25 FINDINGS OF FACT

26 1. On February 3, 2010, Cary J. Pickett, hereinafter "Defendant," was charged by  
27 way of Criminal Complaint with five (5) counts of Burglary While in Possession of a  
28 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

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.<sup>1</sup>

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 <sup>1</sup> 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           ///

28           ///

1 ORDER

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

4 DATED this MAY 19 2011 day of May, 2011.

5  
6 DISTRICT JUDGE AS

7  
8 DAVID ROGER  
9 DISTRICT ATTORNEY  
Nevada Bar #002781

10  
11 BY



12 ROY L. NELSON, III.  
13 Chief Deputy District Attorney  
Nevada Bar #007842  
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27

28 10F02742B/GCU: ts/RN/ckb

FILED

MAY 31 2011

*Steven D. Grierson*  
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

6

ORIGINAL

FILED

2011 MAY 19 P 2:12

*John H. Lanning*  
CLERK OF THE COURT

1 **ORDR**  
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

12 **THE STATE OF NEVADA,**

13 **Plaintiff,**

14 **-vs-**

15 **CARY J. PICKETT,**  
16 **#0725059**

17 **Defendant.**

CASE NO: 10C262523-2

DEPT NO: XVIII

10C262523-2  
FFCO  
Findings of Fact, Conclusions of Law and C  
1422169



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

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

22 **THIS CAUSE** having come on for hearing before the Honorable David Barker,  
23 **District Judge,** on the 6th day of April, 2011, the Petitioner not being present, Proceeding In  
24 **Forma Pauperis,** the Respondent being represented by DAVID ROGER, District Attorney,  
25 **by and through Stephanie Graham,** Deputy District Attorney, and the Court having  
26 **considered the matter,** including briefs, transcripts, no arguments of counsel, and documents  
27 **on file herein,** now therefore, the Court makes the following findings of fact and conclusions  
28 **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

RECEIVED

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.<sup>1</sup>

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  

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<sup>1</sup> 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  
27               effective assistance of counsel.

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ORDER

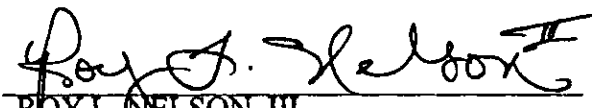
THEREFORE, IT IS HEREBY ORDERED that the Petition for Writ of Habeas Corpus (Post-Conviction) shall be, and it is, hereby denied.

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



**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 11, 2010

10C262523-2

State of Nevada

vs

Cary Pickett

March 11, 2010

10:30 AM

Initial Arraignment

INITIAL  
ARRAIGNMENT  
Court Clerk: Karina  
Kennedy/klk/Sylvia  
Courtney  
Reporter/Recorder:  
Kiara Schmidt Heard  
By: Kevin Williams

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Almase, Caesar V.	Attorney
	Pickett, Cary J	Defendant
	Robinson, Lynn M.	Attorney

**JOURNAL ENTRIES**

- AS TO DEFT DANIELS: Deft present and in custody. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. DANIELS ARRAIGNED AND PLED GUILTY TO CT-1-BURGLARY WHILE IN POSSESSION OF A FIREARM (F), CT-2-CONSPIRACY TO COMMIT ROBBERY (F), CT-3-ROBBERY WITH USE OF A DEADLY WEAPON (F) and CT-4-POSSESSION OF FIREARM BY EX-FELON (F). Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for SENTENCING.

AS TO DEFT PICKETT: Deft present and in custody. NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. DEFT. PICKETT ARRAIGNED AND PLED GUILTY TO CT-1-BURGLARY WHILE IN POSSESSION OF A FIREARM (F), CT-2-CONSPIRACY TO COMMIT

ROBBERY (F), CT-3-ROBBERY WITH USE OF A DEADLY WEAPON (F) and CT-4-POSSESSION OF FIREARM BY EX-FELON (F). Court ACCEPTED plea and, ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for SENTENCING.  
CUSTODY(BOTH)  
05.10.10 8:15 A.M. SENTENCING (DEPT 18)(BOTH)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 10, 2010

10C262523-2

State of Nevada  
vs  
Cary Pickett

May 10, 2010

8:15 AM

Sentencing

**SENTENCING**  
Court Clerk: Sharon  
Chun  
Reporter/Recorder:  
Richard Kangas  
Heard By: David  
Barker

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 11B

COURT CLERK: Sharon Chun

RECORDER: Richard Kangas

REPORTER:

**PARTIES**

<b>PRESENT:</b>	Almase, Caesar V.	Attorney
	Nelson III, Roy L.	Attorney
	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

PRINT DATE: 06/17/2011

Page 3 of 6

Minutes Date: March 11, 2010

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;

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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**January 19, 2011**

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10C262523-2

State of Nevada

vs

Cary Pickett

---

**January 19, 2011**

**8:15 AM**

**Motion to Withdraw as  
Counsel**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Roshonda Mayfield

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

**PRESENT:** Almase, Caesar V. Attorney

**JOURNAL ENTRIES**

- Upon review of the materials provided, COURT ORDERED, motion GRANTED pursuant to EDCR 7.40. Further, counsel is to forward a copy of the file to the Defendant and keep record of the contact.

NDC

CLERK'S NOTE: A copy of this minute order has been mailed to: #57591 P.O. Box 650 Indian Springs, Nevada 89070. (rm 1/20/11)

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Felony/Gross Misdemeanor**

**COURT MINUTES**

**April 06, 2011**

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10C262523-2

State of Nevada

vs

Cary Pickett

---

**April 06, 2011**

**8:15 AM**

**Petition for Writ of Habeas  
Corpus**

**HEARD BY:** Barker, David

**COURTROOM:** RJC Courtroom 11B

**COURT CLERK:** Roshonda Mayfield

**RECORDER:** Richard Kangas

**REPORTER:**

**PARTIES**

**PRESENT:** Graham, Stephanie Attorney  
State of Nevada Plaintiff

**JOURNAL ENTRIES**

- Court advised, the Defendant has filed a post conviction relief action under 4 grounds. Following review of the matter, COURT ORDERED, petition DENIED as there has been no supportive evidence provided for consideration.

NDC

CLERK'S NOTE: A copy of this minute order has been mailed to the Defendant at: High Desert State Prison #57591 P.O. BOX 650 Indian Springs, Nevada 89070. (rm 4/6/11)

## EXHIBIT LIST

Sentencing 5-10-10  
TRIAL OR HEARING DATE \_\_\_\_\_

Case No. <u>C 262523</u>	Clerk: Sharon Chun
Dept. <u>XVIII</u> Judge: <b>DAVID BARKER</b>	Recorder: Richard Kangas
Plf(s): <u>State of Nevada</u>	Plf's Counsel: <u>Roy Nelson</u>
vs	
Def(s): <u>Cary Gerard Piccetti</u>	Def's Counsel: <u>Caesar Almase</u>

EXHIBIT LIST FOR: State -

Exhibit No.	Description	Date Offered	Obj.	Adm.	Date Admitted
1	Certified Copy - Jcc C226282; 2/21/07	5-10-10	-	✓	5-10-10
2	- C 145127, 10/17/97			✓	5-10-10
3	- C 143146, 10/17/97			✓	5-10-10
4	- C 119000, 7/28/94			✓	5-10-10
5	- C 109725, 12/10/93			✓	5-10-10
6	- C 107733X, 5/9/93			✓	5-10-10
7	- C 99915X, 6/24/91			✓	5-10-10
[All in Support of Habitual Criminal Enhancement]					

T:\DEPT 18\EXHIBIT LIST FORMS-GENERIC.doc

# Certification of Copy

State of Nevada }  
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

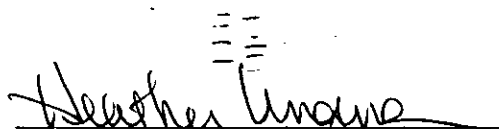
NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT  
DOCKET ENTRIES; FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER; NOTICE OF  
ENTRY OF DECISION AND ORDER; DISTRICT COURT MINUTES; EXHIBITS LIST

STATE OF NEVADA,	)	
	)	
Plaintiff(s),	)	Case No: C262523-2
	)	Dept No: XVIII
vs.	)	
	)	
CARY PICKETT,	)	
	)	
Defendant(s),	)	
	)	

now on file and of record in this office.

**IN WITNESS THEREOF**, I have hereunto  
Set my hand and Affixed the seal of the  
Court at my office, Las Vegas, Nevada  
This 17 day of June 2011.

Steven D. Grierson, Clerk of the Court

  
Heather Ungermann, Deputy Clerk