

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Aug 31 2011 08:52 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

4

SUPPLEMENT

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 PICKET

I N D E X

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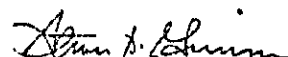
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FILED

Aug 26 2 55 PM '11


 CLERK OF THE COURT

TRAN

ORIGINAL
 DISTRICT COURT
 CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

 CARY PICKETT, #0747918
 aka Cary Jerard Pickett,

Defendant.

CASE NO. C262523

DEPT. NO. XVIII

BEFORE THE HONORABLE DAVID B. BARKER, DISTRICT COURT JUDGE

MONDAY, MAY 10, 2010

 RECORDER'S TRANSCRIPT RE:
 SENTENCING

 10C282523-2
 TRAN
 Reporters Transcript
 1587241


APPEARANCES:

FOR THE STATE:

 ROY NELSON, ESQ.
 Chief Deputy District Attorney

FOR THE DEFENDANT:

CAESAR V. ALMASE, ESQ.

RECORDER/TRANSCRIBER:

RICHARD L. KANGAS

CLERK OF THE COURT

AUG 26 2011

RECEIVED

1 LAS VEGAS, CLARK COUNTY, NEVADA

2 MONDAY, MAY 10, 2010, 9:31 A.M.

3 * * * * *

4 THE COURT: Next case.

5 THE BAILIFF: Your Honor please, bottom of page 8.

6 THE COURT: Bottom of page 8, C262523, State of Nevada versus
7 Cary Pickett. The record should reflect the presence of Mr. Pickett, again in
8 custody with counsel, a representative of the State. This is the time set for
9 sentencing. Any legal cause or reason why judgment should not be entered?

10 MR. ALMASE: No, Your Honor.

11 THE COURT: Hearing no reason to delay adjudication, the
12 defendant is adjudicated guilty of: burglary while in possession of a firearm,
13 Count 1; Count 2, conspiracy to commit robbery; Count 3, robbery with use of a
14 deadly weapon; Count 4, possession of firearm by ex-felon.

15 My notes reflect the State's agreed to dismiss the remaining counts;
16 the defendant stipulates to large habitual criminal treatment under NRS 270.010.
17 The parties stipulate to two to five years on Count 1; the defendant treated as
18 habitual on Count 2, receive ten to twenty-five. So it's structured under habitual
19 criminal on the low of the three options available there, consecutive to Count 1,
20 for a total of twelve to thirty years Nevada Department of Corrections; other
21 counts to run concurrent.

22 Is that an accurate statement of the negotiations?

23 MR. ALMASE: That's correct, Judge.

24 THE COURT: Mr. Nelson, do you have any additional documents
25 you wish to offer in support of adjudication pursuant to 207.010?

1 MR. NELSON: I do, Judge. And with regard to Mr. Daniels earlier, I
2 handed the Court two judgments of convictions. Can I just make sure those are
3 marked and admitted as Court Exhibits 1 and 2?

4 THE COURT: Yes.

5 THE CLERK: They are, Your Honor.

6 THE COURT: They've already been marked by my clerk as Court's
7 Exhibits 1 and 2. And actually, let's keep the photocopies that you offered to
8 both me and the defense on that.

9 MR. NELSON: Yes, Judge.

10 THE COURT: All right.

11 MR. NELSON: Judge, I have I believe seven in total judgments of
12 conviction with regard to Cary Pickett.

13 THE COURT: I only counted six.

14 MR. NELSON: Okay. It might be six then.

15 One is C99915X; that is a certified judgment of conviction out of
16 Nevada for attempt grand larceny, which was treated as a felony.

17 I have C107733X, which is a judgment of – Nevada judgment of
18 conviction; that felony is for burglary, from 1992.

19 I have C109725, which is a certified Nevada judgment of conviction
20 from 1992 for attempt grand larceny.

21 I have C119000, a 1994 certified judgment of conviction for a felony
22 of escape.

23 I have C143146, which is a certified judgment of conviction for grand
24 larceny from 1997.

25 I have C145127, which is a certified judgment of conviction from

1 Nevada for the felony offense of burglary.

2 And I have C226282, which is a felony, certified judgment of
3 conviction from Nevada for transporting a controlled substance.

4 THE COURT: That's the one I didn't have, or didn't see.

5 MR. NELSON: And I ask that those be marked as Court Exhibits
6 and admitted.

7 THE CLERK: State's Exhibits?

8 THE COURT: Yeah, State's Exhibits in support of adjudication.

9 Mr. Almase, have you had an opportunity to review those certified
10 copies of judgments of conviction to determine whether or not to challenge any
11 for constitutional – on any constitutional grounds?

12 MR. ALMASE: Actually, Judge, I haven't received a copy of them,
13 but – here we go. If there's an issue with any of the representations by Mr.
14 Nelson, I would reserve the right to address that at a later date, however I see no
15 reason why there's any constitutional basis to challenge these judgments of
16 conviction at this point, Judge.

17 THE COURT: It does appear, as for his Codefendant Mr. Daniels,
18 that the D.A. did supply in advance copies, photocopies of those convictions.
19 And as I'm required to do, I went through and made an independent
20 determination of whether there's a certified copy of judgment of conviction for
21 each one, and I did that. The only one I didn't have was the transport controlled
22 substance, and when I looked at that this morning it does appear to be a certified
23 copy of a felony as stated, so it does appear to be an accurate –

24 MR. ALMASE: Very well, Judge.

25 THE COURT: All right. But –

1 MR. NELSON: Judge, I would also note –

2 THE COURT: – but the minutes will reflect that Mr. Almase reserves
3 any right to challenge those if necessary. But at this point there's no basis to
4 delay the process.

5 MR. ALMASE: Thank you, Judge.

6 MR. NELSON: I'd also note that he's registered in Nevada for all
7 seven of the felony convictions.

8 THE COURT: Okay. All right, the Court makes a finding that the
9 State has provided, and I've independently analyzed those as I'm required to do,
10 and the defendant is eligible for habitual criminal enhancement pursuant to
11 207.010.

12 Mr. Pickett, you're no different than Mr. Daniels. And the fact
13 remains that I support negotiations; I try to help the process. It's just part of the
14 realities of what we deal with here. With this multiple number of convictions you
15 would be eligible potentially for a life-without sentence, but the structure as
16 agreed upon and stipulated to was at the low range of that, the ten to twenty-five.
17 And it would be my inclination to follow that. Do you have anything else, any
18 additional information you would like to offer in mitigation, anything you'd like to
19 tell me?

20 THE DEFENDANT: No, sir. If you're inclined to follow the
21 recommendation, that's fine.

22 THE COURT: All right. Mr. Almase, anything else?

23 MR. ALMASE: Judge, I would just like to say that Mr. Pickett has
24 always taken responsibility for his actions, and he at no time tried to shirk what
25 occurred here. He's a very articulate individual, and I'm hopeful that he gets the

1 rehabilitation necessary and when he is paroled out that he will stay on the right
2 side of the law.

3 THE COURT: All right. In accordance with the law of the State of
4 Nevada: On Count 1, 24 to 60 months Nevada Department of Corrections. On
5 Count 2, the defendant is enhanced pursuant to habitual criminal; the sentence
6 will be 10 to 25 years, a minimum 10, maximum 25 years in Nevada Department
7 of Corrections consecutive to Count 1. Count 3, we'll do – since Count 3 really
8 isn't part of the structure, we'll do 24 to 60 –

9 MR. NELSON: Judge, maybe we could –

10 THE COURT: We can't do it. Yeah.

11 MR. NELSON: Why don't you just do Count 2, 24 to 60 and
12 adjudicate him under the NRS 207.010 for Count 3. That way you won't have to
13 mess around with the deadly weapon enhancement. I think that's the way –

14 THE COURT: You guys want –

15 MR. NELSON: – Mr. Almase and I intended it, and I may have
16 written it wrong in the plea.

17 THE COURT: Okay. Count 1, 24 to 60 months; Count 2, 24 to 60.
18 Count 3, adjudication pursuant to habitual criminal 207.010; the sentence will be
19 10 on the bottom, 25 on the top, consecutive to Count 1. Count 3, 24 to 60 –

20 MR. NELSON: That's Count 4.

21 THE COURT: Counts 1 and 3 will run consecutive; Counts 2 and 4
22 will run concurrent. Correct, to the balance?

23 MR. NELSON: You just said Count 3 24 to 60, I just believe –

24 THE COURT: Oh, I'm sorry.

25 MR. NELSON: – you meant Count 4.

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THE COURT: I apologize.

MR. NELSON: Okay. Thank you.

THE COURT: Count 4, possession of firearm by ex-felon, will be 24 to 60.

MR. NELSON: Thank you, Judge.

THE COURT: Count 3 is the 10 to 25.

THE CLERK: Okay. And 1 and 3 are consecutive?

THE COURT: 1 and 3 are consecutive pursuant to the agreement, Counts 2 and 4 concurrent. The spirit of the negotiations is that the total sentence will be 12 on the bottom, 30 on the top; and that's the understanding of the Court in the structure of the sentence.

Twenty-five dollar (\$25) administrative assessment fee. Restitution joint and several with the codefendant of \$11,948.60. P&P is also indicating Mr. Pickett to be individually responsible for restitution in the \$1,550. No DNA sample is necessary because of the prior efforts to collect – or the prior successful efforts to collect a DNA sample from Mr. Pickett. The \$250 IDF fee does appear to be appropriate.

Is there any CTS against this sentence?

MR. ALMASE: 88 days.

THE COURT: 88 days CTS. Anything else, gentlemen?

MR. NELSON: That's it, Judge.

MR. ALMASE: No, Your Honor.

THE COURT: All right. Next case.

MR. ALMASE: Thank you, Judge.

PROCEEDING CONCLUDED AT 9:39 A.M.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-video recording in the above-entitled proceeding to the best of my ability.

Richard L. Kangas

RICHARD L. KANGAS
Court Recorder/Transcriber

ORIGINAL

**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****PRESENT:**

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****PRESENT:**

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: 08/31/2011

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
---------------------------------	----------------------	-------------------------

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**

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
State of NevadaAttorney
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)

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

Marie Kramer
Marie Kramer, Deputy Clerk