

FILED

Electronically
12-30-2011:09:41:39 AM
Craig Franden
Clerk of the Court
Transaction # 2674617

Code: 2515
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
245 East Liberty Street, Suite 530
Reno, Nevada 89501
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Attorneys for Petitioner Plaintiff Brendan Dunckley

Electronically Filed
Jan 03 2012 11:42 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

BRENDAN DUNCKLEY

Petitioner,

vs.

STATE OF NEVADA, et al.,

Respondents.

Case No. CR07-1728

Dept. No. 4

NOTICE OF APPEAL

Petitioner Brendan Dunckley hereby appeals to the Nevada Supreme Court the Order Denying Motion to Withdraw Guilty Pleas entered on December 29, 2011, and attached as Exhibit 1.

AFFIRMATION

Pursuant to NRS 239B.030

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

December 30, 2011.

STORY LAW GROUP

By: /s/ Robert W. Story
ROBERT W. STORY

Attorneys for Petitioner Brendan Dunckley

EXHIBIT INDEX

| | | |
|-----------|--|---------|
| Exhibit 1 | Declaration of Robert W. Story, Esq. | 1 page |
| Exhibit 2 | Order Denying Motion to Withdraw Guilty Plea | 2 pages |

EXHIBIT 1

EXHIBIT 1

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I am a member of Story Law Group with business offices located at 245 E. Liberty Street, Suite 530, Reno, Nevada 89501. I am over the age of 21 and not a party to this action.

I certify that all participants in the case are registered e-Flex users and that service will be accomplished by e-Flex.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on December 30, 2011.

By: /s/ Robert W. Story.
ROBERT W. STORY

EXHIBIT 2

EXHIBIT 2

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR07-1728

BRENDAN DUNCKLEY,

Dept. No. 4

Defendant.

ORDER DENYING MOTION TO WITHDRAW GUILTY PLEAS

This matter came before the Court on Dunckley's Motion to Withdraw Guilty Pleas. In his Motion, Dunckley alleged that his pleas are invalid because he was not advised that probation was not available for the crime of lewdness with a child under fourteen years, and attempted sexual assault, and the Court compounded the error by advising him that probation was available.

Since Dunckley committed the crime of lewdness with a child under the age of fourteen years, as alleged in Count I, between August 1998 and August 2000, the law in effect at that time controls. During that time frame probation was available for the offense of lewdness with a child under the age of fourteen years. *See* 1997 Statutes of Nevada, pp. 2504-5; *see also* 1997 Statutes of Nevada, pp. 1187, 2509; *see also* 1999 Statutes of Nevada, pp. 565, 1192. As a result, the Court finds and concludes that probation was available and correctly advised Dunckley

1 accordingly when advising him of the consequences of his pleas.

2 Furthermore, probation was also available for the crime of attempted sexual assault, as
3 alleged in Count II, which occurred in 2008. As above, the law in effect when the crime was
4 committed controls. During that time frame probation was available for the offense of
5 attempted sexual assault. See NRS 176A.100(1); NRS 176A.110(1), (3)(a). As a result, the Court
6 finds and concludes that probation was available and correctly advised Dunckley accordingly
7 when advising him of the consequences of his pleas.

8 Finally, the Court notes that Dunckley, at various locations in his moving papers, also
9 alludes to the ineffective assistance provided by his trial lawyer, David O'Mara, who, it is
10 alleged, misinformed him about the availability of probation. As noted above, probation was
11 available in this case, on both counts. It necessarily follows that Mr. O'Mara, by informing
12 Dunckley of the availability of probation, did not provide ineffective assistance.¹

13 It is therefor the judgment and order of the Court that Dunckley's Motion to Withdraw
14 his Guilty Pleas is denied.

15 DATED this 23 day of December, 2011.

16
17 Connie J. Steinheimer
18 DISTRICT JUDGE
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25 ¹The Court also notes that Dunckley filed a Petition for Writ of Habeas Corpus (Post-
26 Conviction), which was litigated at the same time as his motion. The former will be addressed
in a separate order. Accord, NRS 34.830.

Code: 1310
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Attorneys for Petitioner Plaintiff Brendan Dunckley

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

BRENDAN DUNCKLEY

Petitioner,

Case No. CR07-1728

vs.

Dept. No. 4

STATE OF NEVADA, et al.,

Respondents.

CASE APPEAL STATEMENT

Pursuant to NRAP 3(f)(3), Appellant Brendan Dunckley hereby files this Case Appeal Statement.

1. Appellant Brendan Dunckley.
2. Honorable Connie J. Steinheimer, District Judge.
3. Counsel for Appellant Brendan Dunckley:

Robert W. Story
Story Law Group
245 E. Liberty Street, Suite 530
Reno, Nevada 89501
4. Counsel for Respondent State of Nevada:

Gary H. Hatlestad
Chief Appellate Deputy
Post Office Box 30083
Reno, Nevada 89502-3083

1 5. All counsel are licensed to practice law in the State of Nevada.

2 6. Appellant Brendan Dunckley was represented by appointed counsel in the district
3 court and is represented by appointed counsel in the appeal.

4 7. Appellant Brendan Dunckley was granted leave to proceed in forma pauperis on
5 October 28, 2009.

6 8. On April 5, 2007, the State of Nevada filed a Criminal Complaint against Appellant
7 Brendan Dunckley.

8 9. The appeal is from an Order Denying Motion to Withdraw Guilty Plea entered on
9 December 29, 2011.

10 10. This case was previously the subject of a direct appeal: *Brendan Dunckley, Appellant,*
11 *v. The State of Nevada, Respondent*; Nevada Supreme Court Case Number 52383; Order of
12 Affirmance entered on May 8, 2009.

13 11. This case does not involve child custody or visitation.

14 12. This case does not involve the possibility of settlement.

15 13. This is not a fast track appeal.

16 **AFFIRMATION**

17 **Pursuant to NRS 239B.030**

18 The undersigned do hereby affirm that the preceding document does not contain the social
19 security number of any person.

20 December 30, 2011.

21 STORY LAW GROUP

22
23 By: /s/ Robert W. Story
24 ROBERT W. STORY

25 Attorneys for Petitioner Brendan Dunckley
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28

EXHIBIT INDEX

| | | |
|-----------|--------------------------------------|--------|
| Exhibit 1 | Declaration of Robert W. Story, Esq. | 1 page |
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EXHIBIT 1

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I am a member of Story Law Group with business offices located at 245 E. Liberty Street, 30, Reno, Nevada 89501. I am over the age of 21 and not a party to this action.

I certify that all participants in the case are registered e-Flex users and that service will be accomplished by e-Flex.

Gary Hatelstad
Chief Deputy District Attorney
Washoe County, Nevada

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this declaration was executed on December 30, 2011.

STORY LAW GROUP

By: /s/ Robert W. Story
ROBERT W. STORY

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR07-1728

DEPT. D4

HON. CONNIE J. STEINHEIMER

Report Date & Time

12/30/2011

2:29:43PM

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728

Case Type: CRIMINAL

Initial Filing Date:

7/3/2007

Parties

| | |
|------|------------------------------------|
| APPE | BRENDAN DUNCKLEY - @102844 |
| RESP | STATE OF NEVADA - STATE |
| PLTF | STATE OF NEVADA - STATE |
| DEFT | BRENDAN DUNCKLEY - @102844 |
| DATY | Gary Howard Hatlestad, Esq. - 1525 |
| CAA | Robert Story, Esq. - 1268 |

Charges

| <i>Charge No.</i> | <i>Charge Code</i> | <i>Charge Date</i> | <i>Charge Description</i> |
|-------------------|--------------------|--------------------|--|
| 1 | F650 | 2/28/2008 | AI LEWDNESS WITH A CHILD UNDER THE AGE OF FOURTEEN YEARS |
| 2 | F60 | 2/28/2008 | AI ATTEMPTED SEXUAL ASSAULT |

Plea Information

| <i>Charge No.</i> | <i>Plea Code</i> | <i>Plea Date</i> | <i>Plea Description</i> |
|-------------------|------------------|------------------|-------------------------|
| 1 | F650 | 3/6/2008 | PLED GUILTY |
| 2 | F60 | 3/6/2008 | PLED GUILTY |
| 3 | NC01 | | |
| 4 | NC01 | | |

Sentences

| <i>Date</i> | <i>Charge No.</i> | <i>Charge Desc</i> | <i>Time Served</i> | <i>Sentence Text</i> |
|-------------|-------------------|--------------------------|--|----------------------|
| 8/5/2008 | 1 | Life With Poss of Parole | NSP - LIFE MAX; 10 YEARS MIN; LIFETIME SUPERVISION; FEES; DNA TESTING | |
| 8/5/2008 | 2 | Nevada State Prison | NSP - 120 MOS MAX; 24 MOS MIN; TO BE SERVED CONCURRENTLY WITH CT 1; LIFETIME SUPERVISION | |

Release Information

Custody Status

| | | |
|----------|-------------|---|
| 3/6/2008 | BAIL - BOND | WITH COURT SERVICES SUPERVISION S.C. 1. CHECK-INS AT LEAST 1XPER WEEK; 2. NO ALCOHOL OR CONTROLLED SUBSTANCES |
| 3/6/2008 | BAIL - BOND | |

Hearings

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | <i>Disposed Date</i> |
|-------------------|--------------------------|--|----------------------|
| 1 D4 | ARRAIGNMENT | 7/17/2007 09:00:00 | 7/17/2007 |
| Event Extra Text: | | Disposition: D725 7/17/2007 INFORMATION | |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|----------------------------|-------------------|--------------------------|---|----------|----------------------|
| 2 | D4 | PRE-TRIAL MOTIONS | 10/19/2007 | 09:00:00 | 10/19/2007 |
| Event Extra Text: | | | Disposition: D870 10/19/2007 | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 3 | D4 | MOTION TO CONFIRM TRIAL | 3/4/2008 | 09:00:00 | 3/3/2008 |
| Event Extra Text: | | | Disposition: D844 3/3/2008 | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 4 | D4 | MOTION TO CONFIRM TRIAL | 3/6/2008 | 09:00:00 | 3/6/2008 |
| Event Extra Text: | | | Disposition: D655 3/6/2008 COUNTS I AND II OF THE AMENDED INFORMATION TRIAL DATE VACATED CT ORDERED CT SERVICES SUPERVISION TO DEFENDANT'S BAIL RELEASE S.C. 1. CHECK-INS AT LEAST 1XPER WEEK; 2. NO ALCOHOL OR CONTROLLED SUBSTANCES | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 5 | D4 | MOTION TO CONFIRM TRIAL | 3/13/2008 | 09:00:00 | 9/26/2007 |
| Event Extra Text: | | | Disposition: D844 9/26/2007 RESET FOR 3/18/07 | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 6 | D4 | MOTION TO CONFIRM TRIAL | 3/18/2008 | 09:00:00 | 10/8/2007 |
| Event Extra Text: | | | Disposition: D844 10/8/2007 RESET TO 3/4/07 | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 7 | D4 | TRIAL - JURY | 3/24/2008 | 10:00:00 | 3/6/2008 |
| Event Extra Text: (5 DAYS) | | | Disposition: D845 3/6/2008 | | |
| | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 8 | D4 | SENTENCING | 8/5/2008 | 09:00:00 | 8/5/2008 |
| Event Extra Text: | | | Disposition: D765 8/5/2008 | | |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728

Case Type: CRIMINAL

Initial Filing Date: 7/3/2007

| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|--|----|--------------------------|--|----------|----------------------|
| 9 | D4 | Request for Submission | 10/5/2009 | 16:44:00 | 10/23/2009 |
| Event Extra Text: MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS | | | Disposition: S200 10/23/2009 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 10 | D4 | Request for Submission | 11/25/2009 | 11:25:00 | 2/10/2010 |
| Event Extra Text: DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE | | | Disposition: S200 2/10/2010 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 11 | D4 | Tickle Start Code | 11/25/2009 | 07:00:00 | 11/25/2009 |
| Event Extra Text: HAS MOTION FOR MODIFICATION OF SENTENCE BEEN SUBMITTED | | | Disposition: T200 11/25/2009 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 12 | D4 | Request for Submission | 2/23/2010 | 10:50:00 | 4/12/2010 |
| Event Extra Text: MOTION FOR MODIFICATION OF SENTENCE | | | Disposition: S200 4/12/2010 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 13 | D4 | Request for Submission | 3/24/2010 | 09:00:00 | 4/23/2010 |
| Event Extra Text: MOTION | | | Disposition: S200 4/23/2010 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 14 | D4 | Request for Submission | 6/17/2010 | 13:46:00 | 7/8/2010 |
| Event Extra Text: MOTION FOR WITHDRAWAL OF GUILTY PLEA & SUPPLEMENTAL OF MOTION FOR WITHDRAWAL OF GUILTY PLEA | | | Disposition: S200 7/8/2010 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 15 | D4 | Request for Submission | 9/21/2010 | 16:29:00 | 10/15/2010 |
| Event Extra Text: MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO DEFENDANT'S SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA | | | Disposition: S200 10/15/2010 | | |
| <i>Department</i> | | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 16 | D4 | Tickle Start Code | 11/10/2010 | 07:00:00 | 11/10/2010 |
| Event Extra Text: HAS STATE FILED A RESPONSE TO THE MOTION TO WITHDRAW PLEA AND SUPPLEMENTAL MOTION | | | Disposition: T200 11/10/2010 | | |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|---|----|-------------------|--------------------------|--|----------|----------------------|
| 17 | D4 | | Request for Submission | 11/12/2010 | 14:48:00 | 12/6/2010 |
| Event Extra Text: MOTION TO WITHDRAW PLEA AND SUPPLEMENTAL MOTION | | | | Disposition: S200 12/6/2010 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 18 | D4 | | Request for Submission | 11/17/2010 | 15:00:00 | 1/7/2011 |
| Event Extra Text: MOTION TO WITHDRAW DEFENDANT'S GUILTY PLEA MEMORANDUM, SUPPLEMENTAL TO MOTION TO WITHDRAW GUILTY PLEA, AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY GUILTY PLEA | | | | Disposition: S200 1/7/2011 PARTIES TO SET FOR ORAL ARGUMENTS W/IN 15 DAYS | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 19 | D4 | | Tickle Start Code | 1/27/2011 | 07:00:00 | 1/24/2011 |
| Event Extra Text: HAVE ORAL ARGUMENTS ON THE MOTION TO WITHDRAW GUILTY PLEA BEEN SET? | | | | Disposition: T200 1/24/2011 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 20 | D4 | | ORAL ARGUMENTS | 4/22/2011 | 09:01:00 | 3/11/2011 |
| Event Extra Text: ON MOTION FOR WITHDRAWAL OF GUILTY PLEA | | | | Disposition: D875 3/11/2011 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 21 | D4 | | Request for Submission | 5/9/2011 | 15:00:00 | 5/31/2011 |
| Event Extra Text: MOTION TO WITHDRAW GUILTY PLEA MEMO AND ALL SUUPLEMENTAL MOVING PAPERS ASSOCIATED WITH THE ORIGINAL MOTION FILED 3-3-10 | | | | Disposition: S200 5/31/2011 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 22 | D4 | | Request for Submission | 6/3/2011 | 09:00:00 | 8/10/2011 |
| Event Extra Text: - MOTION FOR WITHDRAWAL OF GUILTY PLEA TAKEN UNDER ADVISEMENT AFTER ORAL ARGUMENTS | | | | Disposition: S200 8/10/2011 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 23 | D4 | | ORAL ARGUMENTS | 6/3/2011 | 09:00:00 | 6/3/2011 |
| Event Extra Text: ON MOTION FOR WITHDRAWAL OF GUILTY PLEA | | | | Disposition: D840 6/3/2011 | | |
| | | <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
| 24 | D4 | | CONFERENCE CALL | 8/12/2011 | 09:30:00 | 8/12/2011 |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

Event Extra Text: RENDER DECISION ON MOTION TO
WITHDRAW PLEA AND PETITION FOR WRIT OF HABEAS
CORPUS

Disposition:
D355 8/12/2011
COURT DENIED DEFT'S MTN TO W/DRAW PLEA; FOUND
THAT THE PLEA WAS KNOWINGLY MADE. COURT
FURTHER DENIED THE PETITION FOR WRIT OF
HABEAUS; FOUND THAT COUNSEL WAS NOT
INEFFECTIVE, AND THERE WAS NO PROSECUTORIAL
MISCONDUCT.

Agency Cross Reference

| <i>Code</i> | <i>Agency Description</i> | <i>Case Reference I.D.</i> |
|-------------|----------------------------|----------------------------|
| DA | District Attorney's Office | DA373085 |
| PC | PCN number | PCNRPD0726517C |
| PC | PCN number | PCNRPD0726524C |
| RJ | Reno Justice's Court | RCR2007033884 |
| RP | Reno Police Department | RP05034027 |
| RP | Reno Police Department | RP07009446 |
| SC | Supreme Court | SCN 52383 |
| SC | Supreme Court | SCN 55545 |

| | | | Actions |
|--------------------------|-------------|------------------------------|---|
| <i>Action Entry Date</i> | <i>Code</i> | <i>Code Description</i> | <i>Text</i> |
| 7/3/2007 | 1250 | Application for Setting | 7/17/07 @ 9:00 a.m. |
| 7/3/2007 | 1491 | Court Services Report | |
| 7/12/2007 | 1800 | Information | |
| 7/17/2007 | 1280 | ** 60 Day Rule - Waived | |
| 7/18/2007 | MIN | ***Minutes | Transaction 7032 - Approved By: NOREVIEW : 07-18-2007:11:54:22 ARRAIGNMENT - 7/17/07 |
| 7/19/2007 | 3700 | Proceedings | |
| 7/20/2007 | 3696 | Pre-Trial Order | |
| 7/24/2007 | BAIL | **Bailbond Posted | |
| 7/24/2007 | BAIL | **Bailbond Posted | |
| 8/16/2007 | 4185 | Transcript ... | 07/17/07 - ARRAIGNMENT |
| 9/26/2007 | 1250 | Application for Setting | MOTION TO CONFIRM TRIAL |
| 10/8/2007 | 1250 | Application for Setting | MOTION TO CONFIRM TRIAL |
| 10/19/2007 | 3980 | Stip and Order... | VACATING HEARING |
| 2/4/2008 | 2490 | Motion ... | MOTION TO ALLOW LEAVE TO FILE A BELATED NOTICE OF INTENT TO SEEK ADMISSION OF OTHER BAD ACT EVIDENCE FOR REBUTTAL PURPOSES |
| 2/4/2008 | 2610 | Notice ... | NOTICE OF INTENT TO SEEK ADMISSION OF OTHER ACTS EVIDENCE FOR PURPOSES OF REBUTTAL |
| 2/25/2008 | 3839 | Request Agree Ord Recp Discv | |
| 2/28/2008 | 1095 | Amended Information | |
| 3/3/2008 | 4025 | Stip & Ord to Continue | 3/4/08 MOTION TO CONFIRM TRIAL CONTINUED TO 3/6/08 AT 9:00 A.M. |
| 3/6/2008 | 1785 | Guilty Plea Memo/Agreement | |
| 4/2/2008 | 4185 | Transcript ... | MOTION TO CONFIRM TRIAL - MARCH 6, 2008 - Transaction 172843 - Approved By: TPRINCE : 04-02-2008:11:03:47 |
| 6/26/2008 | MIN | ***Minutes | MOTION TO CONFIRM TRIAL DATE/ARRAIGNMENT ON AMENDED INFORMATION - 3/6/08 - Transaction 260887 - Approved By: NOREVIEW : 06-26-2008:12:51:01 |
| 8/5/2008 | 4500 | PSI - Confidential | |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

| | | | |
|------------|------|--------------------------------|--|
| 8/5/2008 | 1695 | ** Exhibit(s) ... | A & B ADMITTED |
| 8/5/2008 | 2528 | Not/Doc/Re'd/Not/Cons/by Crt | NOTICE OF DOCUMENT RECEIVED BUT NOT CONSIDERED BY THE COURT |
| 8/11/2008 | 1850 | Judgment of Conviction | |
| 9/5/2008 | 4185 | Transcript ... | TRANSCRIPT OF PROCEEDINGS SENTENCING - Transaction 354459 - Approved By: NDELGADO : 09-08-2008:08:19:27 |
| 9/8/2008 | 2515 | Notice of Appeal Supreme Court | |
| 9/9/2008 | 1310 | Case Appeal Statement | |
| 9/10/2008 | 1350 | Certificate of Clerk | |
| 9/10/2008 | 1365 | Certificate of Transmittal | |
| 9/15/2008 | 1188 | Supreme Court Receipt for Doc | SUPREME COURT CASE NO. 52383 |
| 9/15/2008 | 1187 | **Supreme Court Case No. ... | SUPREME COURT CASE NO. 52383 |
| 9/16/2008 | MIN | ***Minutes | SENTENCING - 8/5/08 - Transaction 366951 - Approved By: NOREVIEW : 09-16-2008:11:34:28 |
| 9/17/2008 | EXON | **Cash Bail/Bond Exonerated | SLIP SENT ON 11/3/2008 |
| 9/17/2008 | EXON | **Cash Bail/Bond Exonerated | SLIP SENT ON 11/3/2008 |
| 10/6/2008 | 4133 | Supreme Court Notice | SUPREME COURT CASE NO. 52383 NOTICE TO (O'MARA LAW FIRM) TO FILE DOCKETING STATEMENT AND REQUEST FOR TRANSCRIPTS REQUEST FOR ROUGH DRAFT TRANSCRIPT BRENDAN DUCKLEY |
| 10/13/2008 | 3868 | Req to Crt Rptr - Rough Draft | SUPREME COURT CASE NO. 52383 |
| 5/11/2009 | 4134 | Supreme Court Order Affirming | NOTICE TO (O'MARA LAW FIRM) TO FILE DOCKETING STATEMENT AND REQUEST FOR TRANSCRIPTS REQUEST FOR ROUGH DRAFT TRANSCRIPT BRENDAN DUCKLEY |
| 6/3/2009 | 4145 | Supreme Court Remittitur | SUPREME COURT CASE NO. 52383 |
| 6/3/2009 | 4111 | Supreme Ct Clk's Cert & Judg | SUPREME COURT CASE NO. 52383 |
| 6/3/2009 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 52383 |
| 7/7/2009 | 2490 | Motion ... | MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS: BRENDAN DUNCKLEY |
| 7/7/2009 | 1075 | Affidavit ... | AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS: BRENDAN DUNCKLEY |
| 7/8/2009 | 2380 | Mtn to Modify ... | MOTION FOR MODIFICATION OF SENTENCE |
| 7/23/2009 | 3880 | Response... | RESPONSE TO DEFENDANT'S NOTICE AND MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS - Transaction 920636 - Approved By: TWHITE : 07-23-2009:16:29:45 |
| 7/23/2009 | 2590 | Notice Withdrawal of Attorney | DAVID O'MARA, ESQ - BRENDAN DUNCKLEY - Transaction 920655 - Approved By: ASMITH : 07-23-2009:16:38:43 |
| 9/30/2009 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 10/5/2009 SUBMITTED BY: IFLORES DATE RECEIVED JUDGE OFFICE: 10/7/09 |
| 9/30/2009 | 1325 | ** Case Reopened | |
| 10/23/2009 | S200 | Request for Submission Complet | |
| 10/23/2009 | 1315 | ** Case Closed | |
| 10/23/2009 | NEF | Proof of Electronic Service | Transaction 1117929 - Approved By: NOREVIEW : 10-23-2009:12:02:25 |
| 10/23/2009 | 3025 | Ord Granting/Denying in Part | GRANTING MOTION FOR WITHDRAWAL OF COUNSEL OF RECORD (DAVID O'MARA, ESQ.) AND DENYING TRANSFER OF RECORDS AS MOOT DUE TO THE RECORDS ALREADY BEING PROVIDED TO DEFT - Transaction 1117888 - Approved By: NOREVIEW : 10-23-2009:11:55:01 |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

| | | | |
|------------|-------|--------------------------------|---|
| 10/27/2009 | 3370 | Order ... | STATE HAS 10 DAYS TO RESPOND TO THE MOTION FOR MODIFICATION OF SENTENCE OR THE COURT WILL DEEM THE FAILURE TO RESPOND AN ADMISSION THAT THE MOTION IS MERITORIOUS AND GRANT THE SAME - Transaction 1122189 - Approved By: NOREVIEW : 10-27-2009:08:43:01 |
| 10/27/2009 | 1325 | ** Case Reopened | |
| 10/27/2009 | NEF | Proof of Electronic Service | Transaction 1122194 - Approved By: NOREVIEW : 10-27-2009:08:44:11 |
| 11/4/2009 | 2645 | Opposition to Mtn ... | OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE - Transaction 1135098 - Approved By: ASMITH : 11-04-2009:10:38:46 Transaction 1135130 - Approved By: NOREVIEW : 11-04-2009:10:42:48 |
| 11/4/2009 | NEF | Proof of Electronic Service | |
| 11/13/2009 | 3880 | Response... | RESPONSE TO STATE'S OPPOSITION TO MOTION FOR MODIFICATION OF SENTENCE |
| 11/25/2009 | 3860 | Request for Submission | DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE - Transaction 1174781 - Approved By: AZION : 11-25-2009:11:10:08 DOCUMENT TITLE: DEFENDANT'S MOTION FOR MODIFICATION OF SENTENCE PARTY SUBMITTING: GARY HOWARD HATLESTAD ESQ DATE SUBMITTED: 11-25-09 SUBMITTED BY: AZION DATE RECEIVED JUDGE OFFICE: 11/30/09 MOTION FOR JUDGMENT IN THE INTEREST OF JUSTICE |
| 11/25/2009 | 2490 | Motion ... | |
| 11/25/2009 | NEF | Proof of Electronic Service | Transaction 1175017 - Approved By: NOREVIEW : 11-25-2009:11:27:13 |
| 11/25/2009 | T200 | Tickle End Code | |
| 2/10/2010 | 2842 | Ord Denying Motion | ORDER DENYING MOTION FOR MODIFICATION OF SENTENCE - Transaction 1313307 - Approved By: NOREVIEW : 02-10-2010:10:59:47 |
| 2/10/2010 | S200 | Request for Submission Complet | |
| 2/10/2010 | NEF | Proof of Electronic Service | Transaction 1313386 - Approved By: NOREVIEW : 02-10-2010:11:01:36 |
| 2/17/2010 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION FOR MODIFICATION OF SENTENCE PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 2/23/2010 SUBMITTED BY: IFLORES DATE RECEIVED JUDGE OFFICE: 2/24/10 |
| 2/17/2010 | 1360 | Certificate of Service | |
| 3/1/2010 | 2515 | Notice of Appeal Supreme Court | |
| 3/1/2010 | 1310E | Case Appeal Statement | Transaction 1351033 - Approved By: NOREVIEW : 03-01-2010:17:02:45 |
| 3/1/2010 | NEF | Proof of Electronic Service | Transaction 1351254 - Approved By: NOREVIEW : 03-01-2010:17:19:48 |
| 3/2/2010 | 1350 | Certificate of Clerk | Transaction 1351299 - Approved By: NOREVIEW : 03-02-2010:07:23:57 |
| 3/2/2010 | 1365 | Certificate of Transmittal | Transaction 1351299 - Approved By: NOREVIEW : 03-02-2010:07:23:57 |
| 3/2/2010 | NEF | Proof of Electronic Service | Transaction 1351300 - Approved By: NOREVIEW : 03-02-2010:07:24:32 |
| 3/2/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - Transaction 1353277 - Approved By: NOREVIEW : 03-02-2010:13:43:15 Transaction 1353290 - Approved By: NOREVIEW : 03-02-2010:13:46:26 |
| 3/2/2010 | NEF | Proof of Electronic Service | |
| 3/3/2010 | 2490 | Motion ... | MOTION FOR WITHDRAWAL OF GUILTY PLEA |
| 3/4/2010 | 1188 | Supreme Court Receipt for Doc | SUPREME COURT CASE NO. 55545 / RECEIPT FOR DOCUMENTS - Transaction 1356985 - Approved By: NOREVIEW : 03-04-2010:09:36:23 Transaction 1357002 - Approved By: NOREVIEW : 03-04-2010:09:39:12 |
| 3/4/2010 | NEF | Proof of Electronic Service | |
| 3/4/2010 | 4105 | Supplemental ... | SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA |
| 3/18/2010 | 4126 | Supreme Ct Order Directing... | SUPREME COURT CASE NO. 55545 / ORDER DIRECTING TRANSMISSION OF RECORD - Transaction 1382922 - Approved By: NOREVIEW : 03-18-2010:13:30:57 Transaction 1382940 - Approved By: NOREVIEW : 03-18-2010:13:34:54 |
| 3/18/2010 | NEF | Proof of Electronic Service | |
| 3/22/2010 | 1325 | ** Case Reopened | |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

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| 3/22/2010 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 3-24-10 SUBMITTED BY: S STINCHFIELD DATE RECEIVED JUDGE OFFICE: 3/25/10 |
| 4/12/2010 | S200 | Request for Submission Complet | |
| 4/12/2010 | NEF | Proof of Electronic Service | Transaction 1424446 - Approved By: NOREVIEW : 04-12-2010:09:29:27 |
| 4/12/2010 | 3370 | Order ... | MOTION FOR MODIFICATION OF SENTENCIN SHALL NOT BE CONSIDERED AGAIN AND THE DECISION RENDERED BY THIS COURT ON 2/10/10 REMAINS IN EFFECT - Transaction 1424420 - Approved By: NOREVIEW : 04-12-2010:09:27:34 |
| 4/23/2010 | NEF | Proof of Electronic Service | Transaction 1449089 - Approved By: NOREVIEW : 04-23-2010:16:18:12 |
| 4/23/2010 | 3370 | Order ... | DECISION ON MOTION TO WITHDRAW GUILTY PLEA IS STAYED PENDING OUTCOME OF APPEAL TO THE SUPREME COURT OF NEVADA/ONCE DECISION IS RENDERED, THE MOTION TO W/DRAW GUILTY PLEA MAY BE RESUBMITTED - Transaction 1449086 - Approved By: NOREVIEW : 04-23-2010:16:17:10 |
| 4/23/2010 | S200 | Request for Submission Complet | |
| 6/9/2010 | 1350 | Certificate of Clerk | RECORD ON APPEAL - Transaction 1532288 - Approved By: NOREVIEW : 06-09-2010:11:42:23 |
| 6/9/2010 | NEF | Proof of Electronic Service | Transaction 1533268 - Approved By: NOREVIEW : 06-09-2010:14:22:08 |
| 6/9/2010 | 1365 | Certificate of Transmittal | RECORD ON APPEAL - Transaction 1532288 - Approved By: NOREVIEW : 06-09-2010:11:42:23 VOLUME 4 SEALED PSI SENT CERTIFIED MAIL - CMR 7010 0290 0002 6392 5840 |
| 6/9/2010 | NEF | Proof of Electronic Service | Transaction 1532293 - Approved By: NOREVIEW : 06-09-2010:11:43:46 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 1 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 2 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 3 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 5 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 6 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/9/2010 | 4109 | Supreme Ct Accept - eFile Doc | SUPREME COURT CASE NUMBER 55545 - RECORD ON APPEAL - VOLUME 7 - Transaction 1533249 - Approved By: NOREVIEW : 06-09-2010:14:18:55 |
| 6/16/2010 | 1188 | Supreme Court Receipt for Doc | SUPREME COURT CASE NO. 55545 / RECEIPT FOR DOCUMENTS - Transaction 1546203 - Approved By: NOREVIEW : 06-16-2010:13:03:02 |
| 6/16/2010 | NEF | Proof of Electronic Service | Transaction 1546208 - Approved By: NOREVIEW : 06-16-2010:13:04:24 |
| 6/17/2010 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION FOR WITHDRAWAL OF GUILTY PLEA & SUPPLEMENTAL OF MOTION FOR WITHDRAWAL OF GUILTY PLEA PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 6/17/2010 SUBMITTED BY: IFLORSE DATE RECEIVED JUDGE OFFICE: 6/23/10 |
| 7/8/2010 | S200 | Request for Submission Complet | |
| 7/8/2010 | NEF | Proof of Electronic Service | Transaction 1587706 - Approved By: NOREVIEW : 07-08-2010:13:57:48 |
| 7/8/2010 | 3370 | Order ... | ORDER (RE: MOTION TO WITHDRAW GUILTY PLEA STAYED PENDING OUTCOME OF APPEAL TO THE SUPREME COURT) - Transaction 1587642 - Approved By: NOREVIEW : 07-08-2010:13:51:28 |
| 7/14/2010 | 4105 | Supplemental ... | |
| 9/16/2010 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 55545/ORDER OF AFFIRMANCE - Transaction 1721484 - Approved By: NOREVIEW : 09-16-2010:08:54:30 |
| 9/16/2010 | NEF | Proof of Electronic Service | Transaction 1721654 - Approved By: NOREVIEW : 09-16-2010:09:05:29 |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

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| 9/21/2010 | 3860 | Request for Submission | MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO DEFENDANT'S SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA - Transaction 1732980 - Approved By: LMATHEUS : 09-21-2010:16:01:27 - Transaction 1732980 - Approved By: LMATHEUS : 09-21-2010:16:01:27 DOCUMENT TITLE: MOTION TO SUBMIT MOTION TO WITHDRAW GUILTY PLEA AND ALSO DEFENDANT'S SUPPLEMENTAL MOTION TO WITHDRAW GUILTY PLEA - Transaction 1732980 - Approved By: LMATHEUS : 09-21-2010:16:01:27 PARTY SUBMITTING: BRENDAN DUNCKLEY, PRO PER DATE SUBMITTED: 9/21/10 SUBMITTED BY: LMATHEUS DATE RECEIVED JUDGE OFFICE: 9/22/10 Transaction 1733200 - Approved By: NOREVIEW : 09-21-2010:16:07:47 |
| 9/21/2010 | NEF | Proof of Electronic Service | |
| 10/15/2010 | NEF | Proof of Electronic Service | Transaction 1785971 - Approved By: NOREVIEW : 10-15-2010:16:07:11 |
| 10/15/2010 | 3370 | Order ... | STATE SHALL FILE A RESPON TO THE MOTION TO WITHDRAW PLEA AND SUPPLEMENTAL MOTION W/IN 20 DAYS OF THE DATE OF THIS ORDER - Transaction 1785948 - Approved By: NOREVIEW : 10-15-2010:16:04:53 |
| 10/15/2010 | S200 | Request for Submission Complet | |
| 10/15/2010 | 4145 | Supreme Court Remittitur | SUPREME COURT CASE NO. 55545/REMITTITUR - Transaction 1786258 - Approved By: NOREVIEW : 10-15-2010:16:44:05 Transaction 1786266 - Approved By: NOREVIEW : 10-15-2010:16:45:50 |
| 10/15/2010 | NEF | Proof of Electronic Service | |
| 10/15/2010 | 4134 | Supreme Court Order Affirming | SUPREME COURT CASE NO. 55545/ORDER OF AFFIRMANCE - Transaction 1786258 - Approved By: NOREVIEW : 10-15-2010:16:44:05 |
| 10/15/2010 | 4111 | Supreme Ct Clk's Cert & Judg | SUPREME COURT CASE NO. 55545/CLERK'S CERTIFICATE - Transaction 1786258 - Approved By: NOREVIEW : 10-15-2010:16:44:05 |
| 10/21/2010 | 2645 | Opposition to Mtn ... | OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA, SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA - Transaction 1795929 - Approved By: AZION : 10-21-2010:09:11:25 Transaction 1795969 - Approved By: NOREVIEW : 10-21-2010:09:12:56 |
| 10/21/2010 | NEF | Proof of Electronic Service | |
| 11/3/2010 | 3880 | Response... | DEFENDANT'S RESPONSE TO STATE'S OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA, SUPPLEMENTAL TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENTAL IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA |
| 11/5/2010 | 2610 | Notice ... | NOTICE OF CHANGE OF ADDRESS |
| 11/10/2010 | T200 | Tickle End Code | |
| 11/17/2010 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION TO WITHDRAW DEFENDANT'S GUILTY PLEA MEMORANDUM, SUPPLEMENTAL TO MOTION TO WITHDRAW GUILTY PLEA, AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 11/17/10 SUBMITTED BY: JYOST DATE RECEIVED JUDGE OFFICE: |
| 12/6/2010 | S200 | Request for Submission Complet | |
| 12/30/2010 | 2475 | Mtn to Strike... | MOTION TO STRIKE STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA MEMORANDUM & MOTION FOR SUBMISSION OF DECISION Transaction 1939440 - Approved By: NOREVIEW : 01-03-2011:11:12:20 |
| 1/3/2011 | NEF | Proof of Electronic Service | |
| 1/3/2011 | 2645 | Opposition to Mtn ... | OPPOSITION TO MOTION TO STRIKE STATE'S OPPOSITION TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN CONSIDERATION OF MOTION TO WITHDRAW GUILTY PLEA - Transaction 1939390 - Approved By: AZION : 01-03-2011:11:06:30 |
| 1/7/2011 | S200 | Request for Submission Complet | PARTIES TO SET FOR ORAL ARGUMENTS W/IN 15 DAYS |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

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| 1/7/2011 | 3347 | Order to Set | PARTIES SHALL APPEAR W/IN 15 DAYS TO SET ORAL ARGUMENTS ON THE MOTION TO WITHDRAW GUILTY PLEA, SUPPLEMENT TO MOTION TO WITHDRAW GUILTY PLEA AND SUPPLEMENT IN CONSIDERATION OF MTN TO W/DRAW GUILTY PLEA - Transaction 1952861 - Approved By: NOREVIEW : 01-07-2011:14:15:37 Transaction 1952871 - Approved By: NOREVIEW : 01-07-2011:14:17:24 |
| 1/7/2011 | NEF | Proof of Electronic Service | |
| 1/21/2011 | 2490 | Motion ... | MOTION FOR SETTING OF ORAL ARGUMENT ON MOTION(S) TO WITHDRAW PLEA |
| 1/24/2011 | 1250E | Application for Setting eFile | ORAL ARGUMENTS on MOTION FOR WITHDRAWAL OF GUILTY PLEA: APRIL 22, 2011 @ 9:00 A.M. - Transaction 1984323 - Approved By: NOREVIEW : 01-24-2011:14:46:07 |
| 1/24/2011 | T200 | Tickle End Code | |
| 1/24/2011 | NEF | Proof of Electronic Service | Transaction 1984328 - Approved By: NOREVIEW : 01-24-2011:14:47:51 |
| 3/11/2011 | 1250E | Application for Setting eFile | ORAL ARGUMENTS ON MOTION FOR WITHDRAWAL OF GUILTY PLEA - JUNE 3, 2011 AT 9:00 A.M. (VACATES APRIL 22, 2011 HEARING) - Transaction 2087471 - Approved By: NOREVIEW : 03-11-2011:13:13:57 Transaction 2087490 - Approved By: NOREVIEW : 03-11-2011:13:17:04 |
| 3/11/2011 | NEF | Proof of Electronic Service | |
| 3/18/2011 | 2490 | Motion ... | MOTION FOR DEFAULT BENCH DECISION FOR THE MOTION(S) TO WITHDRAW GUILTY PLEA, AND SUPPLEMENTALS IN CONSIDERATION OF MOTION TO WITHDRAW PLEA |
| 3/28/2011 | 2175 | Mtn for Reconsideration | MOTION FOR RECONSIDERATION OF SETTING |
| 5/9/2011 | 3860 | Request for Submission | DOCUMENT TITLE: MOTION TO WITHDRAW GUILTY PLEA MEMO AND ALL SUUPLEMENTAL MOVING PAPERS ASSOCIATED WITH THE ORIGINAL MOTION FILED 3-3-10 PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 5-9-11 SUBMITTED BY: S STINCHFIELD DATE RECEIVED JUDGE OFFICE: 5/11/11 Transaction 2255978 - Approved By: NOREVIEW : 05-31-2011:11:58:57 |
| 5/31/2011 | NEF | Proof of Electronic Service | |
| 5/31/2011 | 3370 | Order ... | MOTION TO WITHDRAW GUILTY PLEA MEMO AND ALL SUPPLEMENTAL MOVING PAPERS ARE SET FOR ORAL ARGUMENTS ON JUNE 2, 2011, AT 9:00 A.M. - Transaction 2255971 - Approved By: NOREVIEW : 05-31-2011:11:57:13 |
| 5/31/2011 | 3370 | Order ... | CORRECTED ORDER - MOTION FOR WITHDRAWAL OF GUILTY PLEA MEMO SET FOR HEARING ON 6/3/11 AT 9:00 A.M. - Transaction 2256017 - Approved By: NOREVIEW : 05-31-2011:12:09:25 Transaction 2256023 - Approved By: NOREVIEW : 05-31-2011:12:10:48 |
| 5/31/2011 | NEF | Proof of Electronic Service | |
| 5/31/2011 | S200 | Request for Submission Complet | |
| 7/13/2011 | 4185 | Transcript ... | MOTION TO WITHDRAW PLEA - JUNE 3, 2011 - Transaction 2342908 - Approved By: NOREVIEW : 07-13-2011:13:22:48 |
| 7/13/2011 | NEF | Proof of Electronic Service | Transaction 2342927 - Approved By: NOREVIEW : 07-13-2011:13:26:47 |
| 7/26/2011 | MIN | ***Minutes | MOTION FOR WITHDRAW OF PLEA - 6/3/11 - Transaction 2368996 - Approved By: NOREVIEW : 07-26-2011:14:16:42 |
| 7/26/2011 | NEF | Proof of Electronic Service | Transaction 2369011 - Approved By: NOREVIEW : 07-26-2011:14:18:43 |
| 8/10/2011 | S200 | Request for Submission Complet | |
| 8/18/2011 | MIN | ***Minutes | CONFERENCE CALL - TELEPHONIC DECISION - 8-12-11 - Transaction 2415266 - Approved By: NOREVIEW : 08-18-2011:08:23:31 |
| 8/18/2011 | NEF | Proof of Electronic Service | Transaction 2415272 - Approved By: NOREVIEW : 08-18-2011:08:25:07 |
| 12/29/2011 | 2842 | Ord Denying Motion | ORDER DENYING MOTION TO WITHDRAW GUILTY PLEAS - Transaction 2672273 - Approved By: NOREVIEW : 12-29-2011:10:57:11 |
| 12/29/2011 | NEF | Proof of Electronic Service | Transaction 2672315 - Approved By: NOREVIEW : 12-29-2011:10:59:58 |
| 12/30/2011 | 2515 | Notice of Appeal Supreme Court | APPELLANT, BRENDAN DUNCKLEY - Transaction 2674617 - Approved By: LMATHEUS : 12-30-2011:10:33:02 |
| 12/30/2011 | NEF | Proof of Electronic Service | Transaction 2674863 - Approved By: NOREVIEW : 12-30-2011:10:35:29 |
| 12/30/2011 | 1310 | Case Appeal Statement | Transaction 2675034 - Approved By: LMATHEUS : 12-30-2011:11:27:54 |

Case Description: STATE VS. BRENDAN DUNCKLEY (D4)

Case ID: CR07-1728 **Case Type:** CRIMINAL **Initial Filing Date:** 7/3/2007

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| <u>12/30/2011</u> | 1350 | Certificate of Clerk | CERTIFICATE OF CLERK AND TRANSMITTAL - NOTICE OF APPEAL - Transaction 2675781 - Approved By: NOREVIEW : 12-30-2011:14:23:47 |
| <u>12/30/2011</u> | NEF | Proof of Electronic Service | Transaction 2675186 - Approved By: NOREVIEW : 12-30-2011:11:30:25 |
| <u>12/30/2011</u> | NEF | Proof of Electronic Service | Transaction 2675791 - Approved By: NOREVIEW : 12-30-2011:14:26:19 |

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE**

Case History - CR07P1728

DEPT. D4

HON. CONNIE J. STEINHEIMER

Report Date & Time

12/30/2011

2:35:15PM

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| Case ID: | CR07P1728 | Case Description: POST: BRENDAN DUNCKLEY (D4) | Case Type: | POST CONVICTION | Initial Filing Date: | 7/21/2009 |
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Parties

| | |
|------|------------------------------------|
| PETR | BRENDAN DUNCKLEY - @102844 |
| RESP | STATE OF NEVADA - STATE |
| DA | Gary Howard Hatlestad, Esq. - 1525 |
| CAA | Robert Story, Esq. - 1268 |

Charges

| <i>Charge No.</i> | <i>Charge Code</i> | <i>Charge Date</i> | <i>Charge Description</i> |
|-------------------|--------------------|--------------------|---------------------------|
|-------------------|--------------------|--------------------|---------------------------|

Plea Information

| <i>Charge No.</i> | <i>Plea Code</i> | <i>Plea Date</i> | <i>Plea Description</i> |
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Release Information

Custody Status

Hearings

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|-------------------|--------------------------|-------------------------------|----------|----------------------|
| 1 | D4 Tickle Start Code | 3/11/2010 | 07:00:00 | 3/11/2010 |

Event Extra Text: SUPPLEMENTAL PETITION

Disposition:
T200 3/11/2010

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|-------------------|--------------------------|-------------------------------|----------|----------------------|
| 2 | D4 Tickle Start Code | 6/11/2010 | 07:00:00 | 6/11/2010 |

Event Extra Text: HAS EVIDENTIARY HEARING SET?

Disposition:
T200 6/11/2010

| <i>Department</i> | <i>Event Description</i> | <i>Sched. Date & Time</i> | | <i>Disposed Date</i> |
|-------------------|--------------------------|-------------------------------|----------|----------------------|
| 3 | D4 Tickle Start Code | 7/13/2010 | 07:00:00 | 7/1/2010 |

Event Extra Text: HAS EVIDENTIARY HEARING BEEN SET ON THE
PETITION FOR POST CONVICTION

Disposition:
T200 7/1/2010

Case Description: POST: BRENDAN DUNCKLEY (D4)

Case ID: CR07P1728 Case Type: POST CONVICTION Initial Filing Date: 7/21/2009

| Department | | Event Description | Sched. Date & Time | | Disposed Date |
|---|----|------------------------|--|----------|---------------|
| 4 | D4 | EVIDENTIARY HEARING | 11/9/2010 | 10:00:00 | 11/2/2010 |
| Event Extra Text: WRIT OF HABEAS CORPUS (POST CONVICTION) | | | Disposition: D844 11/2/2010 vacated due to trial schedule-reset for 4/1/11 | | |
| Department | | Event Description | Sched. Date & Time | | Disposed Date |
| 5 | D4 | EVIDENTIARY HEARING | 4/1/2011 | 09:00:00 | 2/14/2011 |
| Event Extra Text: WRIT OF HABEAS CORPUS (POST CONVICTION) | | | Disposition: D870 2/14/2011 | | |
| Department | | Event Description | Sched. Date & Time | | Disposed Date |
| 6 | D4 | EVIDENTIARY HEARING | 4/22/2011 | 09:00:00 | 3/11/2011 |
| Event Extra Text: ON PETITION FOR WRIT OF HABEAS CORPUS (POST - CONVICTION) | | | Disposition: D875 3/11/2011 | | |
| Department | | Event Description | Sched. Date & Time | | Disposed Date |
| 7 | D4 | Request for Submission | 6/3/2011 | 14:30:00 | 8/10/2011 |
| Event Extra Text: - PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) TAKEN UNDER ADVISEMENT AFTER EVIDENTIARY HEARING | | | Disposition: S200 8/10/2011 | | |
| Department | | Event Description | Sched. Date & Time | | Disposed Date |
| 8 | D4 | EVIDENTIARY HEARING | 6/3/2011 | 09:00:00 | 6/3/2011 |
| Event Extra Text: ON PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) | | | Disposition: D840 6/3/2011 | | |
| Department | | Event Description | Sched. Date & Time | | Disposed Date |
| 9 | D4 | CONFERENCE CALL | 8/12/2011 | 09:30:00 | 12/29/2011 |
| Event Extra Text: RENDER DECISION ON MOTION TO WITHDRAW PLEA AND PETITION FOR WRIT OF HABEAS CORPUS | | | Disposition: D435 12/29/2011 | | |

Agency Cross Reference

Code Agency Description Case Reference I.D.

| Actions | | | |
|-------------------|------|----------------------------|--|
| Action Entry Date | Code | Code Description | Text |
| 7/21/2009 | 2385 | Mtn Proceed Forma Pauperis | |
| 7/21/2009 | 1030 | Affidavit in Support... | AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED IN FORMA PAUPERIS |

Case Description: POST: BRENDAN DUNCKLEY (D4)

Case ID: CR07P1728 **Case Type:** POST CONVICTION **Initial Filing Date:** 7/21/2009

| | | | |
|------------|------|-----------------------------|---|
| 7/21/2009 | 3862 | **Criminal Submit | DOCUMENT TITLE: IFP/AFFIDAVIT IN SUPPORT OF APPLICATION TO PROCEED IN FORMA PAUPERIS/EX PARTE MOTION FOR APPOINTMENT OF COUNSEL/PETITION FOR WRIT OF HABEAS CORPUS/SUPPORTING DOCUMENTATION FOR PETITION FOR WRIT OF HABEAS CORPUS PARTY SUBMITTING: BRENDAN DUNCKLEY DATE SUBMITTED: 7/21/2009 SUBMITTED BY: IFLORES DATE RECEIVED JUDGE OFFICE: |
| 7/21/2009 | 4105 | Supplemental ... | SUPPORTING DOCUMENTATION FOR PETITIONER'S POST-CONVICTION WRIT OF HABEAS CORPUS PETITION PART NO. V |
| 7/21/2009 | 4105 | Supplemental ... | SUPPORTING DOCUMENTATION FOR PETITIONER'S POST-CONVICTION WRIT OF HABEAS CORPUS PETITION PART NO. IV |
| 7/21/2009 | 4105 | Supplemental ... | SUPPORTING DOCUMENTATION FOR PETITIONER'S POST-CONVICTION WRIT OF HABEAS CORPUS PETITION PART III |
| 7/21/2009 | 4105 | Supplemental ... | SUPPORTING DOCUMENTATION FOR PETITIONER'S POST-CONVICTION WRIT OF HABEAS CORPUS PETITION PART NO. II |
| 7/21/2009 | 3585 | Pet Writ Habeas Corpus | |
| 7/21/2009 | 1670 | Ex-Parte Mtn... | EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTARY HEARING |
| 10/28/2009 | NEF | Proof of Electronic Service | Transaction 1124849 - Approved By: NOREVIEW : 10-28-2009:10:51:48 |
| 10/28/2009 | 3370 | Order ... | ALLOWING FOR THE APPOINTMENT OF COUNSEL AND REFERRING THE MATTER TO THE ADMINISTRATOR OF THE COURT APPOINTED COUNSEL FOR SELECTION OF COUNSEL - Transaction 1124817 - Approved By: NOREVIEW : 10-28-2009:10:48:30 |
| 10/28/2009 | 3035 | Ord Grant in Forma Pauperis | AND REFERRING MATTER TO DEPARTMENT 4 FOR DECISION ON THE MTN FOR APPOINTMENT OF COUNSEL - Transaction 1124817 - Approved By: NOREVIEW : 10-28-2009:10:48:30 |
| 12/14/2009 | NEF | Proof of Electronic Service | Transaction 1205489 - Approved By: NOREVIEW : 12-14-2009:10:52:00 |
| 12/14/2009 | 2715 | Ord Appointing Counsel | RECOMMENDATION AND ORDER APPOINTING COUNSEL (ROBERT STORY, ESQ.) AND SETTING FORTH BRIEFING SCHEDULE - Transaction 1205412 - Approved By: NOREVIEW : 12-14-2009:10:37:54 |
| 1/20/2010 | 2502 | ** Notes ... | DEFENDANT HAS BEEN PROVIDED A COPY OF ENTIRE FILE ON THIS DATE |
| 3/11/2010 | T200 | Tickle End Code | |
| 3/17/2010 | 3980 | Stip and Order... | FOR EXTENSION OF TIME IN WHICH TO FILE SUPPLEMENTAL PETITION (FIRST REQUEST) - Transaction 1378784 - Approved By: NOREVIEW : 03-17-2010:10:14:27 |
| 3/17/2010 | NEF | Proof of Electronic Service | Transaction 1378830 - Approved By: NOREVIEW : 03-17-2010:10:22:27 |
| 3/23/2010 | 4100 | Supplemental Petition | SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS |
| 3/23/2010 | 3862 | **Criminal Submit | DOCUMENT TITLE: SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS PARTY SUBMITTING: ROBERT STORY DATE SUBMITTED: 3-23-10 SUBMITTED BY: S STINCHFIELD DATE RECEIVED JUDGE OFFICE: 3/25/10 |
| 4/1/2010 | 1665 | Ex-Parte Application... | EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES |
| 4/22/2010 | 2777 | Order Approving ... | RECOMMENDATION AND ORDER FOR PAYMENT OF ATTORNEY'S FEES - SEALED |
| 5/5/2010 | 1130 | Answer ... | ANSWER TO PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - Transaction 1468124 - Approved By: IXFLORES : 05-05-2010:11:35:55 |
| 5/5/2010 | NEF | Proof of Electronic Service | Transaction 1468252 - Approved By: NOREVIEW : 05-05-2010:11:37:05 |
| 6/11/2010 | T200 | Tickle End Code | |
| 6/17/2010 | NEF | Proof of Electronic Service | Transaction 1549405 - Approved By: NOREVIEW : 06-17-2010:15:02:04 |

Case Description: POST: BRENDAN DUNCKLEY (D4)

Case ID: CR07P1728 **Case Type:** POST CONVICTION **Initial Filing Date:** 7/21/2009

| | | | |
|------------|-------|-------------------------------|---|
| 6/17/2010 | 3347 | Order to Set | EVIDENTIARY HEARING ON THE PETITION AND SUPPLEMENTAL PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) W/IN 15 DAYS - Transaction 1549375 - Approved By: NOREVIEW : 06-17-2010:14:58:22 |
| 6/30/2010 | 1665 | Ex-Parte Application... | EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES |
| 7/1/2010 | 1250E | Application for Setting eFile | EVIDENTIARY HEARING (PETITION FOR WRIT OF HABEAS CORPUS - POST CONVICTION): NOVEMBER 9, 2010 @ 10:00 A.M. (1 DAY) - Transaction 1577245 - Approved By: NOREVIEW : 07-01-2010:16:27:33 |
| 7/1/2010 | T200 | Tickle End Code | |
| 7/1/2010 | NEF | Proof of Electronic Service | Transaction 1577275 - Approved By: NOREVIEW : 07-01-2010:16:32:02 |
| 7/16/2010 | 2777 | Order Approving ... | RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - SEALED |
| 10/7/2010 | 1260 | Application Produce Prisoner | |
| 10/7/2010 | 3862 | **Criminal Submit | DOCUMENT TITLE: ORDER TO PRODUCE PRISONER PARTY SUBMITTING: GARY HATLESTAD DATE SUBMITTED: 10-8-10 SUBMITTED BY: S STINCHFIELD DATE RECEIVED JUDGE OFFICE: MOTION FOR ORDER TO PRODUCE PRISONER |
| 10/11/2010 | 2490 | Motion ... | |
| 10/12/2010 | 3862 | **Criminal Submit | DOCUMENT TITLE: MOTION FOR ORDER TO PRODUCE THE PRISONER PARTY SUBMITTING: BRENDAN DUNCKLEY, PRO PER DATE SUBMITTED: 10-12-10 SUBMITTED BY: LMATHEUS DATE RECEIVED JUDGE OFFICE: Transaction 1776019 - Approved By: NOREVIEW : 10-12-2010:16:58:49 |
| 10/12/2010 | 3340 | Ord to Produce Prisoner | Transaction 1776032 - Approved By: NOREVIEW : 10-12-2010:17:01:25 |
| 10/12/2010 | NEF | Proof of Electronic Service | |
| 10/25/2010 | 1230 | Application for Fees | MOTION FOR FEES FOR COPY COSTS |
| 11/1/2010 | 1665 | Ex-Parte Application... | SEALED - EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES |
| 11/3/2010 | 1250E | Application for Setting eFile | EVIDENTIARY HEARING-WRIT OF HABEAS CORPUS (POST CONVICTION): APRIL 1, 2011 @ 9:00 A.M. (VACATES NOVEMBER 9, 2010 HEARING) - Transaction 1822819 - Approved By: NOREVIEW : 11-03-2010:10:29:32 Transaction 1822827 - Approved By: NOREVIEW : 11-03-2010:10:30:54 |
| 11/3/2010 | NEF | Proof of Electronic Service | |
| 11/9/2010 | 2777 | Order Approving ... | RECOMMENDATION AND ORDER GRANTING DEFENSE FEES |
| 11/15/2010 | 2777 | Order Approving ... | RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES - SEALED |
| 2/10/2011 | 1665 | Ex-Parte Application... | SEALED - EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES (RECOMMENDATION AND ORDER RECEIVED - MS) |
| 2/14/2011 | 4045 | Stipulation to Continuance | STIPULATION FOR CONTINANCE OF HEARING DATE - EVIDENTIARY HEARING CONTINUED FROM APRIL 1, 2011 TO APRIL 22, 2011 AT 9:00 A.M. - Transaction 2031396 - Approved By: AZION : 02-14-2011:10:18:26 Transaction 2031422 - Approved By: NOREVIEW : 02-14-2011:10:20:04 |
| 2/14/2011 | NEF | Proof of Electronic Service | |
| 3/8/2011 | 2777 | Order Approving ... | SEALED - RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES |
| 3/11/2011 | 1250E | Application for Setting eFile | EVIDENTIARY HEARING ON PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) - JUNE 3, 2011 AT 9:00 A.M. (VACATES APRIL 22, 2011 HEARING) - Transaction 2087480 - Approved By: NOREVIEW : 03-11-2011:13:15:36 Transaction 2087508 - Approved By: NOREVIEW : 03-11-2011:13:18:19 |
| 3/11/2011 | NEF | Proof of Electronic Service | |
| 3/11/2011 | 3105 | Ord Granting ... | ORDER GRANTING STIPULATION FOR CONTINUANCE OF HEARING DATE (CONTINUE EVIDENTIARY HEARING FROM APRIL 1, 2011 TO APRIL 22, 2011) - Transaction 2087504 - Approved By: NOREVIEW : 03-11-2011:13:19:25 Transaction 2087544 - Approved By: NOREVIEW : 03-11-2011:13:25:03 |
| 3/11/2011 | NEF | Proof of Electronic Service | |
| 6/21/2011 | 1670 | Ex-Parte Mtn... | SEALED - EX PARTE APPLICATION FOR INTERIM CLAIM FOR FEES - Transaction 2300734 - Approved By: JYOST : 06-21-2011:14:38:42 (RECOMMENDATION AND ORDER RECEIVED - MS) |

Case Description: POST: BRENDAN DUNCKLEY (D4)

Case ID: CR07P1728 **Case Type:** POST CONVICTION **Initial Filing Date:** 7/21/2009

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|------------|------|--------------------------------|---|
| 6/21/2011 | NEF | Proof of Electronic Service | Transaction 2300887 - Approved By: NOREVIEW : 06-21-2011:14:40:55 |
| 7/1/2011 | 2777 | Order Approving ... | SEALED - RECOMMENDATION AND ORDER FOR PAYMENT OF INTERIM ATTORNEY'S FEES |
| 7/13/2011 | 4185 | Transcript ... | MOTION TO WITHDRAW PLEA - JUNE 3, 2011 - Transaction 2342913 - Approved By: NOREVIEW : 07-13-2011:13:23:43 |
| 7/13/2011 | NEF | Proof of Electronic Service | Transaction 2342930 - Approved By: NOREVIEW : 07-13-2011:13:26:47 |
| 7/26/2011 | MIN | ***Minutes | PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) - 6/3/11 - Transaction 2369050 - Approved By: NOREVIEW : 07-26-2011:14:24:33 |
| 7/26/2011 | NEF | Proof of Electronic Service | Transaction 2369078 - Approved By: NOREVIEW : 07-26-2011:14:27:08 |
| 8/10/2011 | S200 | Request for Submission Complet | |
| 8/18/2011 | MIN | ***Minutes | CONFERENCE CALL - TELEPHONIC DECISION - 8-12-11 - Transaction 2415325 - Approved By: NOREVIEW : 08-18-2011:08:43:15 |
| 8/18/2011 | NEF | Proof of Electronic Service | Transaction 2415335 - Approved By: NOREVIEW : 08-18-2011:08:45:13 |
| 12/29/2011 | 1750 | Findings, Conclusions & Judg | FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT - Transaction 2672262 - Approved By: NOREVIEW : 12-29-2011:10:55:16 |
| 12/29/2011 | NEF | Proof of Electronic Service | Transaction 2672281 - Approved By: NOREVIEW : 12-29-2011:10:57:49 |
| 12/30/2011 | 2515 | Notice of Appeal Supreme Court | APPELLANT, BRENDAN DUNCKLEY - Transaction 2674644 - Approved By: LMATHEUS : 12-30-2011:10:36:58 |
| 12/30/2011 | NEF | Proof of Electronic Service | Transaction 2674881 - Approved By: NOREVIEW : 12-30-2011:10:38:48 |
| 12/30/2011 | 1310 | Case Appeal Statement | Transaction 2675054 - Approved By: LMATHEUS : 12-30-2011:11:25:52 |
| 12/30/2011 | NEF | Proof of Electronic Service | Transaction 2675175 - Approved By: NOREVIEW : 12-30-2011:11:28:49 |
| 12/30/2011 | 3868 | Req to Crt Rprr - Rough Draft | Transaction 2674700 - Approved By: SHAMBRIG : 12-30-2011:11:56:50 |
| 12/30/2011 | NEF | Proof of Electronic Service | Transaction 2675283 - Approved By: NOREVIEW : 12-30-2011:11:58:16 |

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

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

Case No. CR07-1728

BRENDAN DUNCKLEY,

Dept. No. 4

Defendant.

ORDER DENYING MOTION TO WITHDRAW GUILTY PLEAS

This matter came before the Court on Dunckley's Motion to Withdraw Guilty Pleas. In his Motion, Dunckley alleged that his pleas are invalid because he was not advised that probation was not available for the crime of lewdness with a child under fourteen years, and attempted sexual assault, and the Court compounded the error by advising him that probation was available.

Since Dunckley committed the crime of lewdness with a child under the age of fourteen years, as alleged in Count I, between August 1998 and August 2000, the law in effect at that time controls. During that time frame probation was available for the offense of lewdness with a child under the age of fourteen years. *See* 1997 Statutes of Nevada, pp. 2504-5; *see also* 1997 Statutes of Nevada, pp. 1187, 2509; *see also* 1999 Statutes of Nevada, pp. 565, 1192. As a result, the Court finds and concludes that probation was available and correctly advised Dunckley

1 accordingly when advising him of the consequences of his pleas.

2 Furthermore, probation was also available for the crime of attempted sexual assault, as
3 alleged in Count II, which occurred in 2008. As above, the law in effect when the crime was
4 committed controls. During that time frame probation was available for the offense of
5 attempted sexual assault. See NRS 176A.100(1); NRS 176A.110(1), (3)(a). As a result, the Court
6 finds and concludes that probation was available and correctly advised Dunckley accordingly
7 when advising him of the consequences of his pleas.

8 Finally, the Court notes that Dunckley, at various locations in his moving papers, also
9 alludes to the ineffective assistance provided by his trial lawyer, David O'Mara, who, it is
10 alleged, misinformed him about the availability of probation. As noted above, probation was
11 available in this case, on both counts. It necessarily follows that Mr. O'Mara, by informing
12 Dunckley of the availability of probation, did not provide ineffective assistance.¹

13 It is therefor the judgment and order of the Court that Dunckley's Motion to Withdraw
14 his Guilty Pleas is denied.

15 DATED this 23 day of December, 2011.

16
17 Connie J. Steinheimer
18 DISTRICT JUDGE
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25 ¹The Court also notes that Dunckley filed a Petition for Writ of Habeas Corpus (Post-
26 Conviction), which was litigated at the same time as his motion. The former will be addressed
in a separate order. Accord, NRS 34.830.

FILED

Electronically

06-26-2008:12:50:42 PM

Howard W. Conyers

Clerk of the Court

Transaction # 260887

CASE NO. CR07-1728

TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCANLEY

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

3/6/08

MOTION TO CONFIRM TRIAL DATE/ARRAIGNMENT ON AMENDED INFORMATION

8/5/08

HONORABLE

CONNIE

Deputy District Attorney Kelli Vioria, Esq., represented the State.

9:00 a.m.

STEINHEIMER

Defendant present with counsel David O'Mara, Esq. Probation Officer Laura

Sentencing

DEPT. NO.4

Pappas also present.

M. Stone

(Clerk)

Defendant handed copy of Amended Information; indicated to the Court that name as set forth on same was his true name; waived reading and enter a plea of guilty to Lewdness with a Child Under the Age of Fourteen Years and Attempted Sexual Assault as set forth therein.

B. Van Auken

(Reporter)

Negotiations recited to the Court by defense counsel. Court interrogated defendant, fully advised him of his rights; found plea freely and voluntarily entered. Defendant advised the Court that he understood the guilty plea memorandum. Clerk read aloud charge to which the defendant pled. Possible penalty for offense charged related to defendant. Court accepted plea after finding defendant had been fully advised by counsel.

COURT ORDERED matter referred to Probation Department for PSI and continued for entry of judgment, consideration of probation report and imposition of sentence.

COURT FURTHER ORDERED that the Defendant be supervised by Court Services while released on bail with the following special conditions: That the Defendant check-in with Court Services 1 time per week; and that he abstain from the use of alcoholic beverages and controlled substances.

Trial ordered vacated.

Defendant remained out of custody on bail.

FILED

Electronically
07-18-2007:11:53:59 AM
Ronald A. Longtin, Jr.
Clerk of the Court
Transaction # 7032

CASE NO. CR07-1728 **TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCKLEY**

**DATE, JUDGE
OFFICERS OF**

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

| | | |
|-------------|--|--------------------|
| 7/17/07 | <u>ARRAIGNMENT</u> | |
| HONORABLE | Deputy District Attorney Kelli Vilorio, Esq., represented the State. Defendant | 10/19/07 |
| CONNIE | present with counsel David O'Mara, Esq. Probation officer Lupe Garrison also | 9:00 a.m. |
| STEINHEIMER | present. | Pre-Trial |
| DEPT. NO.4 | Defendant handed copy of Information; indicated to the Court that name as set | Motions |
| M. Stone | forth on same was his true name; waived reading and entered a plea of not | (3 Hours) |
| (Clerk) | guilty to the charge set forth therein. | |
| S. Loder | Defendant waived the 60-Day Rule and COURT ORDERED this matter set for | 3/13/07 |
| (Reporter) | jury trial. | 9:00 a.m. |
| | COURT FURTHER ENTERED ORDER that all pre-trial motions shall be filed | Mtn to |
| | and served no later than September 17, 2007; all responses to those pre-trial | Confirm Trl |
| | motions shall be filed and served no later than September 28, 2007; and all | |
| | replies to those responses shall be filed and served no later than October 5, | 3/24/07 |
| | 2007. | 10:00 a.m. |
| | Defendant remained out of custody. | Jury Trial |
| | | (5 Days) |

FILED

Electronically

09-16-2008:11:34:10 AM

Howard W. Conyers

Clerk of the Court

Transaction # 366951

CASE NO. CR07-1728

TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCKLEY

**DATE, JUDGE
OFFICERS OF
COURT PRESENT**

APPEARANCES-HEARING

CONT'D TO

8/5/08

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

HONORABLE Deputy District Attorney Kelli Vilorio, Esq., represented the State.
CONNIE Defendant present with counsel, David O'Mara, Esq. Probation Officer Lupe
STEINHEIMER Garrison also present.
DEPT. NO.4 Court noted receipt of report.
R. Cotter Court noticed document received.
(Clerk) Defense counsel did not concur with the recommendation; presented
L. Young argument on behalf of defendant.
(Reporter) **EXHIBITS A & B** marked and offered by Defense counsel; no objection by

State's counsel; ordered admitted into evidence.
Pam McFerren made a statement on behalf of the Defendant.
State's counsel did not concur with the recommendation. Probation Officer
Garrison stood on recommendation. Defendant made statement on his own
behalf.

COURT ORDERED JUDGMENT ENTERED and sentenced defendant to
the Nevada Department of Prisons for the maximum term of life with the
minimum parole eligibility of ten (10) years, for Count I; and that he be
punished by imprisonment in the Nevada Department of Prisons for the
maximum term of one hundred twenty (120) months with the minimum
parole eligibility of twenty-four (24) months, for Count II, to be served
concurrently with sentence imposed in Count I; with credit for four (4) days
time served, and by submission to a DNA Analysis Test for the purpose of
determining genetic markers. Defendant is further ordered to pay a Twenty-
Five Dollar (\$25.00) administrative assessment fee, a One Hundred Fifty
Dollar (\$150.00) DNA testing fee, and a Nine Hundred Fifty Dollar (\$950.00)
Psychosexual Evaluation Fee to the Clerk of the Second Judicial District
Court.

COURT FURTHER ORDERED that the Defendant serve a special sentence
of lifetime supervision to commence after any term of imprisonment or after
any period of release on parole.

FILED

Electronically

07-26-2011:02:16:02 PM

Howard W. Conyers

Clerk of the Court

Transaction # 2368996

CASE NO. CR07-1728

TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCANLEY

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

6/3/11

MOTION FOR WITHDRAWAL OF GUILTY PLEA

HONORABLE Chief Deputy District Attorney Gary Hatlestad, Esq., represented the State.

CONNIE Defendant present representing himself.

STEINHEIMER Motion for Withdrawal of Guilty Plea by Defendant; presented argument;

DEPT. NO.4 objection and argument by State's counsel; reply by Defendant.

M. Stone **COURT** took matter under advisement.

(Clerk)

S. Loder

(Reporter)

FILED

Electronically

08-18-2011:08:22:50 AM

Howard W. Conyers

Clerk of the Court

Transaction # 2415266

CASE NO. CR07-1728 **TITLE: THE STATE OF NEVADA VS. BRENDAN DUNCKLEY**

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/12/11

CONFERENCE CALL – TELEPHONIC DECISION

HONORABLE

Chief Deputy District Attorney Gary Hatlestad, Esq., was present

CONNIE

telephonically representing the State. Defendant Brendan Dunckley was

STEINHEIMER

present telephonically representing himself.

DEPT. NO.4

COURT ENTERED ORDER denying the Defendant's Motion to Withdraw

R. Woosley

Guilty Plea, based upon the defendant knowingly entering his plea at the

(Clerk)

time of the hearing.

Not Reported

(Reporter)

FILED

Electronically

08-18-2011:08:42:38 AM

Howard W. Conyers

Judge of the Court

Transaction # 2415325

CASE NO. CR07P1728 **TITLE: BRENDAN DUNCKLEY VS. THE STATE OF NEVADA**

DATE, JUDGE

OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

8/12/11

CONFERENCE CALL – TELEPHONIC DECISION

HONORABLE

CONNIE

STEINHEIMER

DEPT. NO.4

R. Woosley

(Clerk)

Not Reported

(Reporter)

Robert Story, Esq., present telephonically with Petitioner Brendan Dunckley, who also present telephonically. Chief Deputy District Attorney Gary Hatlestad, Esq., was present telephonically representing the State.

COURT ENTERED ORDER finding that based upon counsel not being ineffective, and that no prosecutorial misconduct having occurred, the Petition for Writ of Habeas Corpus is denied.

1 **Code 1350**

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4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **BRENDAN DUNCKLEY,**

9 **Petitioner,**

10 **vs.**

Case No. CR07-01728

11 **THE STATE OF NEVADA, et al,**

Dept. No. 4

12 **RESPONDENTS.**

13 _____ /
14
15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of
17 Nevada, County of Washoe; that on the 30th day of December, 2011, I electronically filed
18 the Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

21 Dated this 30th day of December, 2011.

22 **CRAIG FRANDEN**
23 **ACTING CLERK OF THE COURT**

24 By /s/Mary Fernandez
25 Mary Fernandez
26 Deputy Clerk
27
28