

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman
Clerk of Supreme Court

ROY D. MORAGA,
Appellant(s),
vs.

Case No: C092174
SC No: 61734

STATE OF NEVADA,
Respondent(s),

RECORD ON APPEAL VOLUME 7

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ROY D. MORAGA #31584
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PETITIONER IN PRO PER

FILED

NOV - 4 2011

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

ROY D. MORAGA,
Petitioner,

vs.

ROBERT LEGRAND, WARDEN,
Respondent.

CASE NO. A-11-640245-WC 092174

DEPT. NO. 29

SUPPLEMENTAL BRIEF IN SUPPORT OF THE
PETITION FOR WRIT OF HABEAS CORPUS AND
ILLEGAL SENTENCE PURSUANT TO NRS § 126.555

COMES NOW, Petitioner ROY D. MORAGA, in pro per and for his
Supplemental Brief in Support of the Petition for writ of habeas
corpus and Illegal Sentence Pursuant to NRS § 126.555. The
habitual Criminal and states as follows:

POINTS AND AUTHORITIES

I.

ON or ABOUT JANUARY 9, 1990 ROY D. MORAGA (hereinafter REFERRED
to as MORAGA) WAS CHARGED WITH THE CRIMES OF BURGLARY
(TWO COUNTS) AND SEXUAL ASSAULT (TWO COUNTS). AN AMENDED INFORMATION
CHARGING MORAGA AS A HABITUAL CRIMINAL WAS FILED. ON JUNE 13, 1990
A JURY TRIAL WAS COMMENCED ON MARCH 12, 1990 AND THE TRIAL
WAS CONCLUDED ON MARCH 14, 1990 WITH A JURY VERDICT OF
GUILTY TO ALL FOUR COUNTS OF THE INFORMATION.

MORAGA WAS SENTENCED BY DISTRICT COURT JUDGE MICHAEL WENDALL
TO LIFE IN PRISON WITHOUT THE POSSIBILITY OF PAROLE AS A
HABITUAL CRIMINAL. MORAGA WAS REPRESENTED AT TRIAL BY
DEPUTY PUBLIC DEFENDER ROGER HILLMAN.

CLERK OF THE COURT

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CLERK OF THE COURT

(1)

MORAGA Appealed From the judgement of conviction with only one issue being raised on the direct Appeal, to wit; there was insufficient evidence adduced at trial to sustain the habitual criminal enhancement. The Nevada Supreme court determined that the issue raised on the direct Appeal was without merit, however the court determined that the habitual sentence imposed by the trial court was erroneous and the matter was remanded for a new sentencing. MORAGA was represented on his direct Appeal by Deputy Public Defender Roger Hillman.

ON remand, MORAGA was resentenced to two consecutive ten year sentences plus a consecutive 5 to life with the possibility of parole on the primary offenses, plus a life without the possibility of parole on the habitual criminal adjudication. MORAGA was represented on remand by Attorney Roy Garcia. MORAGA was resentenced by District Court Judge Jack Lehman not the Trial Judge, or Trial Attorney for MORAGA.

I. I.

MORAGA IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS PETITION AND SUPPLEMENTAL BRIEF IN SUPPORT OF ILLEGAL SENTENCE HABITUAL CRIMINAL ADJUDICATION

It has long been the holding of the Nevada Supreme court that if a petition for post conviction relief contains allegations, which if true, would entitle the petitioner to relief, an evidentiary hearing is required. *Bolden v. State*, 99 Nev. 181, 659 P.2d 886 (1983); *Grandin v. State*, 97 Nev. 454, 634 P.2d 456 (1981); *Doggett v. State*, 91 Nev. 748, 542 P.2d 1066 (1975).

IN MORAGA'S STATE habeas petition AND AGAIN IN his Federal petition, petitioner Argued that his Trial Counsel was ineffective for failing to object to Non-qualifying convictions that would have rendered petitioner ineligible to be Sentenced as a habitual Criminal.

IN both petitions, petitioner Sought AN evidentiary hearing to develop this claim, which the state courts and Federal district court denied. Petitioner thus has NOT received a full and fair opportunity to develop his claim. See *Earp*, 431 F.3d at 1169 ("It is evident from the record that [the Petitioner] has NEVER received an opportunity to develop his claim. . . . The issue was raised on habeas, and neither the state court nor the district court allow him an evidentiary hearing.") Consequently, petitioner is entitled to an evidentiary hearing to develop the facts of his claim if he has presented a colorable claim for relief. *Id.* at 1167, petitioner's (538 F.3d 1146) claim is colorable if he has alleged specific facts that, if true, would entitle him to relief. *Id.* at 1167 & N. 4.

III

At MORAGA'S resentencing hearing District Court Judge JACK Lehman stated that he did NOT have ANY Transcripts but ~~he~~ I know the Supreme Court had them or we would NOT be here today, and imposed Two consecutive Ten years for the Burglary counts, one life with the possibility of parole for one of the Sexual Assault to run consecutive to the Ten years count 1, 2 Burglary and imposed a consecutive life without AS a habitual Criminal MORAGA was Adjudged to be a habitual Criminal and was Sentenced to the maximum penalty of life without the possibility of Parole NRS 207.010(2).

The determination of habitual criminality was based on a Arizona conviction for Burglary nonviolent property crime felony valued at \$94.50- See; exhibit's EOR00783 to EOR00795. MORAGA further states that he did not validly waive his right to counsel in the prior felony proceeding. See State's exhibit EOR00784.

The States Second prior felony conviction submitted to Adjudicate MORAGA was based upon a Arizona conviction for an Attempted Aggravated Assault Class 4 Felony a nondangerous, nonrepetitive offense and that the defendant was also found to have previously convicted of the following felonies indicate NONE See States exhibit EOR00780, and as to the Attempted Aggravated Assault nondangerous, nonrepetitive offense. See States exhibit EOR00779 and there was no affirmative showing that MORAGA was represented by counsel or that he validly waived his right to counsel in the prior felony proceedings.

The States Third prior felony conviction submitted to Adjudicate MORAGA was based upon a Arizona conviction for Aggravated Assault- open-end a FAX and there was no affirmative showing that MORAGA was represented by counsel or that he validly waived his right to counsel in this prior felony proceeding. See States exhibit's EOR00773 to EOR00775.

ON MORAGA'S REMAND he WAS RESENTENCED TO (4) CONSECUTIVE TERMS (3) ON EACH PRIMARY OFFENSES AND ONE CONSECUTIVE SENTENCE FOR THE HABITUAL CRIMINAL CHARGE.

THIS WAS ERROR; THE PURPOSE OF THE HABITUAL CRIMINAL STATUS IS NOT TO CHARGE A SEPARATE SUBSTANTIVE CRIME, BUT TO ALLEGE A FACT WHICH MAY ENHANCE THE PUNISHMENT.

STATE V. BARDMESS, 54 NEV. 84, 7 P.2D 817 (1932).

ONLY ONE SENTENCE MAY BE IMPOSED. LISBY V. STATE, 82 NEV. 183, 414 P.2D 592 (1966).

THE DISTRICT COURT JUDGE JACK LEHMAN LACKED JURISDICTION TO SENTENCE MORAGA AS A HABITUAL CRIMINAL BECAUSE HE FAILED TO FILE A NOTICE OF HABITUAL CRIMINALITY WITH THE DISTRICT COURT BEFORE THE RESENTENCING HEARING AND FAILED TO PROVIDE THE JUDGE WITH ANY TRANSCRIPTS OR ANY OF THE STATES PRIOR FELONIES TO ADJUDICATE MORAGA AS A HABITUAL CRIMINAL AND THEN SENTENCE HIM TO THE MAXIMUM PENALTY OF LIFE WITHOUT THE POSSIBILITY OF PAROLE UNDER NRS 202.010 (2).

"ELEMENTS AND BURDEN OF PROOF. AT THE HEARING OF A PERSON ALLEGED TO BE A HABITUAL CRIMINAL TWO FACTS MUST BE PROVED: (1) IDENTITY OF THE PERSON; AND (2) CONVICTION OF PRIOR FELONIES; AND THE STATE'S PROOF UNDER THIS SECTION MUST BE BEYOND A REASONABLE DOUBT. HOWARD V. STATE, 422 P.2D 547 (1967)".

NEVADA'S LAW requiring a Court to review AND MAKE PARTICULARIZED FINDINGS that it is "just and proper" for a defendant to be Adjudged a habitual OFFENDER ALSO Creates a Constitutionally protected liberty interest in a Sentencing procedure, Because the state did NOT MAKE the requisite individualized determination that it was "just and proper" that MORAGA be Adjudged a habitual OFFENDER AS MANDATED by NEVADA LAW, MORAGA'S due process rights were Violated. MORAGA further states that A prior Conviction record For NONVIOLENT property Crimes Simply does NOT WARRANT the harsh SANCTION AVAILABLE under the habitual Criminality Statute. It may be an abuse OF discretion to Adjudge MORAGA a habitual Criminal Since his prior Felony is a minor property crime, As Such a ruling Serves Neither the purposes OF the Statute NOR the interests of justice, Since the Sentencing illegality For Four CONSECUTIVE Terms Could have been Corrected by lowering the minimum Terms rather increasing the MAXIMUM Terms imposed, the district Court UNNECESSARILY increased the Severity OF the Sentence in Violation OF the Double Jeopardy Clause OF Article 1, § 8 OF the NEVADA Constitution. Miranda v. State, 956 P.2d 1377 (1998). Before a defendant may be Sentenced as a habitual Criminal, the state must duly File an Allegation OF habitual Criminality. Grey v. State, 178 P.3d 154 (2008). As it was the state Failed to inform, or File the Allegation OF habitual Criminality with the new Judge Jack Lehman in order to Adjudicate MORAGA As a habitual Criminal.

At Trial Deputy District Attorney Deborah J. Lippis Clearly stated in open court that (2) of the (3) Convictions which were used to Adjudicate MORAGA as a habitual Criminal only one was Certified the state failed to indicate either the existence of Counsel or a valid Waiver of the right to Counsel. The burden is upon the State to prove, in the prior Criminal proceedings, an Attorney was either present or that the defendant validly waived his right to Counsel. See: *Fournier v. State*, 95 Nev. 591, 600 P.2d 213 (1979); *Hamlet v. State*, 85 Nev. 385, 455 P.2d 915 (1969).

Under Nevada Law, decision to Adjudicate person as "habitual Criminal" is not Automatic on Finding of Commission of three Felonies. NRS 202.010. *Walker v. Deeds*, 50 F.3d 670 (1995), Where exemplified Copies of Two of the three prior Convictions of defendant failed to indicate either the presence of Counsel or a valid Waiver of defendant's right to Counsel, Adjudication of defendant as a habitual Criminal based upon the three prior Convictions was improper. U.S.C.A. Const. Amend. 6. *Cohen v. State*, 625 P.2d 1120 (1981) 97 Nev. 166.

MORAGA Never had a hearing at either one of his Sentencing's to be Adjudicated as a habitual Criminal therefore Judge Wendall, and Judge Lehman did in fact Abuse their discretion's that Warrants reversal of MORAGA's habitual Criminality Conviction.

CONCLUSION

Based on the Allegations of the Supplemental Brief and the Authorities and Arguments contained herein it is respectfully requested that the Court grant an evidentiary hearing and that at the conclusion thereof the conviction of Roy MORAGA be reversed.

Dated this 25th day of October 2011.

Respectfully Submitted,
Roy D. Moraga

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby Affirm that the preceding Supplemental Brief in support of the petition for writ of habeas corpus and illegal sentence pursuant to NRS §176.555

Filed in District Court Case Number A-11-640265-W

☒ 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:

- OR -

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

Roy D. Moraga
Roy D. MORAGA

RELIEF SOUGHT

WHEREFORE MORAGA Respectfully Request pursuant to NEVADA LAW AND Federal Constitutional LAWS that the court order reversal of MORAGA'S habitual Criminal conviction, and that MORAGA receive ineffective of counsel for failing to object to NON-qualifying convictions that would have rendered MORAGA ineligible to be sentenced as a habitual Criminal, Grant an evidentiary hearing to develop his claim and if the court intended to Adjudge MORAGA for the 3rd Time as a habitual Criminal then he shall be punished by imprisonment in the state prison for not less than 10 years nor more than 20 years pursuant to NRS 207.010(1) and that MORAGA'S other primary offenses to run concurrent to the habitual Criminal Statute. MORAGA Further requests that if this court Applies NRS 207.010(1), that MORAGA be Released From Custody for serving 22 years of the 20 years pursuant to NRS 207.010(1), or parole him.

Respectfully Submitted,
Roy D. Moraga
Roy D. MORAGA # 31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Roy D. MORAGA # 31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, NEVADA 89419

Petitioner IN Pro Per

DISTRICT COURT
CLARK COUNTY, NEVADA

Roy D. MORAGA,
Petitioner,

vs.

ROBERT LEGRAND, WARDEN
Respondent.

CASE NO. A-11-640265-W

Dept. NO. 29

AFFIDAVIT OF PETITIONER

I, Roy D. MORAGA, do hereby Swear under penalty of perjury that I make this Affidavit in support of the Supplemental Brief and Petition for writ of habeas corpus and illegal Sentence pursuant to NRS § 176.555. And I have read the foregoing and know the contents thereof, and as to those matters, I believe them to be True, and Correct.

pursuant to NRS 208.165.

Respectfully Submitted,

Roy D. Moraga

Roy D. MORAGA # 31584

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

10-25-11

CERTIFICATE OF SERVICE

I, Roy D. MORAGA, hereby certify, pursuant to NRCP 5 (b) that on this 25th day of October 2011, I mailed a True and correct copy of the foregoing "Supplement Brief in Support of the Petition For writ of habeas Corpus and illegal Sentence pursuant to NRS § 176.555 by depositing it in the Lovelock Correctional Center, Legal Library, First-Class Postage, Fully prepaid Addressed as Follows:

STEVEN D. GRIERSON, Clerk of the court
200 Lewis Ave., 3rd Floor
LAS VEGAS, NEVADA 89155-1160

Office of the Attorney General
100 N. CARSON ST.
CARSON CITY, NEVADA 89201-4217

Roy D. MORAGA #31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

Respectfully Submitted
Roy D. Moraga
Roy D. MORAGA #31584
Petitioner Pro Per

Case 2:03-cv-00220-LPH-RAM Document 1-1
In the Superior Court of Yavapai County
STATE OF ARIZONA

STATE OF ARIZONA, }
County of Yavapai } ss:

I, ETHEL BOUTON, Clerk of the Superior Court of Yavapai County, State of Arizona, do hereby certify
and attest the foregoing to be a full, true and correct copy of the Indictment; Plea Agreement; and
Sentence of Probation. State of Arizona vs. Roy Daniels Moraga, Case No. 12891

as the same appear _____ of record in my office.

IN WITNESS WHEREOF, I have hereunto
set my hand and affixed the Seal of said Superior
Court at Prescott, this 10th day of

May, A. D., 1990

ETHEL BOUTON

Clerk, Superior Court

Amos E. Clark
by Deputy

Exhibit

EOR 00783

FILED

12⁰⁰ O'Clock, *A* M

JUN 6 1968

SUPERIOR COURT OF ARIZONA

YAVAPAI COUNTY
PRESCOTT, AZETHEL BOUTON, Clerk
By *[Signature]* Deputy

3 June 6, 1968 JAMES B. SULT Mary Slaughter
Div Date Judge or Commissioner Deputy

NO. 12891STATE OF ARIZONA
VSROY DANIELS MORAGA

County Attorney

By: Julia StonerWilliam T. Kiger
Defense CounselDATE OF BIRTH: 1/27/52

SENTENCE OF PROBATION

10:30 a.m./p.m. The State is represented by the above named Deputy County Attorney; the Defendant is present with counsel named above.

Court Reporter Sandra K Markham is present.

The Defendant is advised of the charge, the determination of guilt and is given the opportunity to speak.

Pursuant to A.R.S. Section 13-607, the Court finds as follows:

☐ **WAIVER OF COUNSEL** The Defendant knowingly, intelligently, and voluntarily waived his right to be represented by counsel after being advised of the right to be represented by counsel including the right to have counsel appointed free of charge if the Defendant is indigent.

☐ **WAIVER OF JURY TRIAL** The Defendant knowingly, intelligently, and voluntarily waived his right to a trial by jury after having been advised of his right to same. The determination of guilt was based upon a trial to the Court.

☒ **WAIVER OF TRIAL** The Defendant knowingly, intelligently, and voluntarily waived his right to a trial with or without a jury, his right to confront and cross examine witnesses, his right to testify or remain silent and his right to present evidence and call his own witnesses after having been advised of these rights. The determination of guilt was based upon a plea of guilty/no-contest.

☐ **JURY VERDICT** The determination of guilt was based upon a verdict of guilty after a jury trial.

(Continued)

Page 1*Exhibit*

EOR 00784

Case 3:03-cr-00320-LRM-BAM
ROY DANIELS MORAGA

-2-

CASE 12891

The defendant's plea was accepted and sentencing was set for April 11, 1988. A Presentence Report was ordered and the defendant was released on his own recognizance, at the stipulation of both parties.

PENALTIES:

The class 4 felony of this instant offense is designated as non-dangerous and non-repetitive.) It carries a presumptive sentence of 4 years; a minimum sentence of 2 years and a maximum sentence of 5 years. Probation is available and restitution will be required.

The maximum fine that can be imposed is \$150,000.00 plus a 37 1/2 surcharge. A \$100.00 assessment payable to the Victim's Compensation Fund will be levied.

Both parties stipulate the defendant will pay a \$100.00 assessment to the Victim's Compensation Fund and restitution in the amount of \$647.40 will be paid to Betty's Ore House.

Counts II and III of the Indictment will be dismissed or not charged and the State agrees not to allege any prior convictions of the defendant.

OFFICER'S VERSION:

Officers of the Jerome Police Department filed information regarding this report under DR 88-012. In the original report, Patrolman David Canfield, states that on January 10, 1988 at approximately 3:48 in the morning he received a report of a burglary in progress at Betty's Ore House on Main Street in Jerome, Arizona. The person reporting was Bill Lytle. He stated that someone had broken into the bar and fled North bound on 89A in light colored, full size, 1974 or 1975 pickup.

Clarkdale Police Department responded and watched the road for the described vehicle without any results. The Jerome officer contacted Mr. Lytle, who stated he had been sleeping in the hotel upstairs when he was awakened by a bell on the bar-room door. He looked out the front window of the hotel to see a vehicle leaving the scene. He then went down stairs and discovered the entry, immediately prior to phoning police.

The officer observed that suspects had apparently gained entry by breaking the glass on the bar door, then reaching through to open the dead-bolt lock on the inside. The cash drawer had been pried open and the money tray was lying on the floor in pieces. The officer also observed the liquor closet in the hall where the cash box is kept to be partially opened, and that several blades on the exhaust fan, in the rear of the kitchen, were bent inwards from the outside.

exhibit

EOR 00795

131275

STATE OF ARIZONA,

vs.

ROY DANIEL MORAGA

County Attorney

By: Fred Newton for
Herb Williams

RECEIVED

MAY 31 1983

ARIZONA STATE
DEPT. OF CORRECTIONS
RECORD SECTION

Mary Wisdom for M. Terribile,

Criminal Judgments-Clerk's O.

Dept. of Corrections

MCSO

APC

SENTENCE-IMPRISONMENT-DEPARTMENT OF CORRECTIONS

9:35 a.m.

The State is represented by the above-named counsel; the defendant is present with above-named counsel.

Court Reporter Frances Turpan, is present.

The defendant is advised of the charge, the determination of guilt and is given an opportunity to speak.

Having found no legal cause to delay rendition of judgment and pronouncement of sentence, the Court enters the following judgment and sentence:

IT IS THE JUDGMENT of the Court that the defendant is guilty of the crime of Count I: Attempted Aggravated Assault

a Class 4 felony, ~~nondangerous, nonrepetitive~~
nonrepetitive offense, in violation of A.R.S. 13-1001, 1204(A)(2),
& (B), 1203, 701, 702 and 801 committed on Jan 1, 1983
and _____

a Class _____ felony, dangerous/nondangerous, repetitive/
nonrepetitive offense, in violation of A.R.S. _____
committed on _____

SENTENCE-IMPRISONMENT-DOC

(CONTINUED).....

MAY 24 1983

MAY 25 1983

13
[Signature]

exhibit

EOR 00779

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

APPEAL
ACCORDS / JUDG
FORFEITURE
CHANGE OF VENUE
JURY FEES
RELANDS
SENTENCING

32-L

May 23, 1983

Hon. Cecil B. Patterson, Jr.

VIVIAN KRINGLE.

Clerk

M. d. Vega

CR 131275

STATE vs. Moraga

(CONTINUED).....

The defendant was also found to have been previously convicted of the following felonies:

1. none

a Class _____ felony, nondangerous/dangerous convicted on _____ in _____

2. _____
a Class _____ felony, nondangerous/dangerous convicted on _____ in _____

Upon consideration of all the facts, law and circumstances relevant here, the Court finds that suspension of sentence and a term of probation are not appropriate and that a sentence of incarceration with the Arizona Department of Corrections is appropriate. The Court further finds that there are circumstances sufficiently substantial to call for a ~~(mit)~~ Presumptive/~~Aggravated/Mitigated~~ term. These circumstances are as stated by the Court on the record.

As punishment for this/~~crime~~ crime(s)

As to Count I:

IT IS ORDERED that the defendant is committed to the Arizona Department of Corrections for a term of imprisonment for FOUR (4) years; which is the Presumptive/~~Aggravated/Mitigated~~ term to date from May 23, 1983 and defendant is to be given credit for 56 days served prior to sentencing.

As to _____

IT IS ORDERED that the defendant is committed to the Arizona Department of Corrections for a term of imprisonment for _____ years; which is the Presumptive/Aggravated/Mitigated term to date from _____ and defendant is to be given credit for _____ days served prior to sentencing.

SENTENCE-IMPRISONMENT-DISTRIBUTION CENTER

MAY 24 1983 (CONTINUED).....

MAY 25 1983

exhibit

EOR 00780

OFFICE DISTRIBUTION

IN THE SUPERIOR COURT

OF

MARICOPA COUNTY, STATE OF ARIZONA

APPEALS
BONDS / REFUND
OFFENSES
CRIMINAL JUSTICE
INVESTIGATIONS
REVENUES
SENTENCING

32-L

May 23, 1983

Hon. Cecil B. Patterson, Jr.

VIVIAN KRINGLE,
M. D. VegaClerk
Deputy

CR 131275

STATE vs. Moraga

(CONTINUED).....

The defendant is advised concerning rights of appeal and written notice of those rights is provided.

ORDERED exonerating any bond.

ORDERED granting motion to dismiss Count II

ORDERED authorizing the Sheriff of Maricopa County to deliver defendant to the custody of the Arizona Department of Corrections and authorizing the Department of Corrections to carry out the term of imprisonment set forth herein.

ORDERED that the Clerk shall remit to the Department of Corrections a copy of this order, plus all pre-sentence reports, probation violation reports, medical and psychological reports relating to the defendant and involving this cause.

FILED: Notice of Rights of Appeal, signed by the defendant.

ISSUED: Order of Confinement.

9:39 a.m. Hearing concludes.

Cecil B. Patterson Jr.
JUDGE OF SUPERIOR COURT

SENTENCE-IMPRISONMENT-DOC

MAY 24, 1983

Page

15

Exhibit

EOR 00781

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

THE STATE OF ARIZONA

ROY DANIELS HODAGA

CRIMINAL AND OTHER SUPERIOR COURTS
JURY TRIAL RIGHTS OF DEFENDANT



CONVICTION WITHIN 10

IT IS THE JUDGMENT OF THIS COURT THAT DEFENDANT IS GUILTY OF

AGGRAVATED ASSAULT, OPEN-END

ORDERED: Defendant's probation is suspended for a period of 12 months commencing from date of sentencing and during which defendant shall be under the supervision of the Adult Probation Department of this Court.

ORDERED: Defendant's probation is suspended on these terms and conditions of probation which are attached hereto, and defendant

DEFENDANT SHALL

- ☒ 1. Not to be a law-abiding citizen.
- ☒ 2. Report to the probation officer at least once each month in person or in person and at all other times required by the probation officer.
- ☒ 3. Refrain from drinking any or any amount of alcoholic beverages, whether medicinal, distilled, manufactured or otherwise, as directed by the probation officer.
- ☒ 4. Refrain from being employed or working as a merchant or at all times and shall have the probation officer advised of such employment or working and program thereof.
- ☒ 5. Refrain from drinking and pay all debts and obligations as directed or ordered by Court.
- ☒ 6. Submit to urinalysis testing as directed by the probation officer.
- ☐ 7. Make and pay restitution through the Clerk of the Superior Court of Maricopa County to the total amount of \$_____ in regular monthly payments of \$_____ each month beginning on _____ and on the _____ day of each month thereafter until paid in full.
- ☐ 8. Pay a fee to the Clerk of the Superior Court of Maricopa County in the amount of \$_____ on or before _____.
- ☐ 9. Be confined in the Maricopa County Jail in accordance with A.R.S. Sec. 13-1002 for a period of _____ months and (a) _____, (b) _____, (c) _____ beginning _____ and ending _____ on Friday and end at 6:00 p.m. on Sunday.
- ☐ 10. Be committed to the Arizona Department of Corrections for a period of _____ days to not less than _____ and defendant is to report to the Adult Probation Department at least once every 72 hours after release.
- ☒ 11. Submit to search and seizure of person or property at any time by any police officer or probation officer without the benefit of a search warrant.
- ☒ 12. Participate in any qualified drug or alcohol rehabilitation program, either residential or non-residential, as directed by the probation officer.

AND DEFENDANT SHALL

- ☒ 13. Not have the State of Arizona change state of residence without approval of the probation officer unless doing so.
- ☒ 14. Not drive any motor vehicle without a valid license.
- ☒ 15. Not knowingly associate with any person of known reputation nor with any person who has a criminal record or who is on probation or parole without approval of the probation officer.
- ☒ 16. Not possess or use any weapons including firearms or dangerous drugs or violation of any law.
- ☒ 17. Not possess or use any deadly weapon or firearm, without permission of the probation officer.
- ☒ 18. Not transport any gun or other weapons without permission of the probation officer.
- ☒ 19. Not travel outside the State of Arizona without permission of the probation officer.

Any of the Beale family by any means other than the state of Arizona rules
 DATED: 2/7/77

RECEIPT AND ACKNOWLEDGMENT

I HEREBY ACKNOWLEDGE RECEIPT OF A COPY OF THE PERIODIC TERMS AND REGULATIONS OF PROBATION. I UNDERSTAND THAT IF I VIOLATE ANY TERMS OR REGULATIONS, THE COURT MAY REVOKE AND TERMINATE MY PROBATION AND IMPOSE A CALIFORNIA SENTENCE ON ME IN ACCORDANCE WITH THE LAW.

DATED: 2-7-77

Ray D. Hodaga

IN THE SUPERIOR COURT

OF
MARICOPA COUNTY, STATE OF ARIZONA

12-n Feb. 7, 1977

JUDGE RAPP, PRESIDING

DATE	FILED
1977	1036
1977	1036
1977	1036
1977	1036
1977	1036
1977	1036
1977	1036
1977	1036
1977	1036

WILSOND PALMER, Clerk
Carol B. Dovelio, Deputy

CR 95949

STATE OF ARIZONA

County Attorney
by: Kim M. Stuart

Related
Cases:

ROY DANIELS MORAGA

Adult Probation Department

Maricopa County Sheriff's Office

P.D.-Robert A. Kertberg
Defense Counsel

95949

SENTENCE - PROBATION - NO JAIL

The State is represented by the above-named deputy;
the defendant is present with counsel above named. Court
Reported: Marilyn Sanchez

The defendant is advised of the charge, the
determination of guilt and is given an opportunity to speak.
The Court has reviewed the Pre-Sentence Report,
Having found no legal cause to delay, the Court
enters the following judgment and sentence:

IT IS THE JUDGMENT of the Court that the defendant
is guilty of the crime of Aggravated Assault, Open-End

commencing on: December 21, 1976

in violation of ARS 13-241, 13-245 (A)

As punishment for this crime,

ORDERED suspending imposition of sentence and placing
the defendant on probation for a period of FIVE (5) YEARS
commencing February 7, 1977, under the supervision of
the Probation Department of this Court, in accordance with the
formal Judgment and Order suspending sentence and imposing terms
of probation signed by the Court.

1-SENTENCE - PROBATION - NO JAIL
(Continued on next page)

Page 11

IN THE SUPERIOR COURT
OF
MARICOPA COUNTY, STATE OF ARIZONA

OFFICE OF PROBATION	
APPROVAL	
RECEIVED	
DATE	
TIME	
BY	
INITIALS	
SIGNATURE	

12-M Feb. 7, 1977 JON. EDWARD C. RAFF, PRESIDING WILSON D. PALMER, Clerk
Carol M. Novello

CR 95948

STATE OF ARIZONA vs. MORAGA (continued)

Related
Cases:

ORDERED defendant shall make and pay restitution through the Clerk of the Superior Court of Maricopa County in the total amount of \$ N/A in regular monthly payments of \$ each month beginning on and on the day of each month thereafter until paid in full.

ORDERED defendant shall pay a fine to the Clerk of the Superior Court of Maricopa County in the amount of \$ N/A on or before .

The written terms and conditions of probation are handed to the defendant for explanation and signature.

ORDERED releasing defendant, exonerating any bond ~~which was posted by, or for, defendant or on behalf of defendant.~~

The defendant is advised concerning the consequences of failure to abide the conditions of probation.

The defendant is advised concerning rights of appeal and written notice of those rights is provided.

FILED: Conditions of Probation, signed by defendant. (Copy provided defendant.); Notice of Appeal Rights, signed by defendant. (Copy provided defendant.)

ISSUED: ORDER OF RELEASE.

52-SENTENCE - PROBATION - NO JAIL

Page 54

1 Moraga has apprised me of and that is that he believes that
2 Judge Wendell did in fact sentence him on each of the four
3 separate counts at issue, but that his final decision was that
4 they were to run consecutive -- or concurrent with each other.

5 THE COURT: Concurrent. I would just point out to you
6 that that is not possible for the simple reason that we
7 wouldn't be here had he done that, and the Supreme Court had
8 the entire transcript of the proceedings before Judge Wendell
9 before it when it made its determination. So there is no
10 doubt that Mr. Moraga is wrong on that and Ms. Lippis, you
11 were there and evidently Judge Wendell did not actually do
12 that.

13 MR. LIPPIS: No, he did not, Your Honor.

14 THE COURT: So I don't have the transcript but I know the
15 Supreme Court had it.

16 MR. GARCIA: Right.

17 THE COURT: And they would not have sent it back for
18 remand, they would not have remanded it had he done that, but
19 you may proceed. That's preserved.

20 MR. GARCIA: Your Honor, I'm simply doing that to
21 preserve the record.

22 THE COURT: Yes.

23 MR. GARCIA: Your Honor, we've gone over the report. No
24 doubt Mr. Moraga has had serious problems with law enforcement

26
27 exhibit
28

THE SEALED PORTION
OF THESE MINUTES
WILL FOLLOW VIA
U.S. MAIL.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 25, 2012**

89C092174

The State of Nevada vs Roy D Moraga

April 25, 2012**8:30 AM****Status Check****HEARD BY:** Cadish, Elissa F.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** Keith Reed**RECORDER:** Jessica Kirkpatrick**REPORTER:****PARTIES****PRESENT:**Ferreira, Amy L.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- Court stated findings noting after the change of venue the Deft's case was calendared in Department V on a civil calendar in error, and was then recalendared in Department VI and ORDERED, Deft's Pro Per Motion for Judicial action GRANTED; matter set for hearing regarding the Deft's Petition For Writ Of Habeas Corpus; state's response to be filed by June 13th; Deft's Motion For Appointment Of Counsel CONTINUED.

NDC

7-16-12 HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S EXPARTE MOTION FOR APPOINTMENT OF COUNSEL

CLERK'S NOTE: The above minute order has been distributed to: Roy D. Moraga #31584, Love Lock Correctional Center, 1200 Prison Road, Love Lock NV. 89419

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 16, 2012**

89C092174

The State of Nevada vs Roy D Moraga

July 16, 2012**8:30 AM****All Pending Motions****HEARD BY:** Cadish, Elissa F.**COURTROOM:** RJC Courtroom 15B**COURT CLERK:** Keith Reed**RECORDER:** Jessica Kirkpatrick**REPORTER:****PARTIES****PRESENT:**Rinetti, Dena I.
State of NevadaAttorney
Plaintiff**JOURNAL ENTRIES**

- HEARING: DEFT'S PETITION FOR WRIT OF HABEAS CORPUS...DEFT'S EXPARTE MOTION FOR APPOINTMENT OF COUNSEL

In the absence of the Deft., Court advised there will not be any argument. Court stated findings and ORDERED, Deft's Petition For Writ of Habeas Corpus and Exparte Motion For Appointment of counsel DENIED.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Roy D. Moraga #31584, Ely State Prison, POB 1989, Ely Nv., 89301

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 27, 2012

89C092174

The State of Nevada vs Roy D Moraga

August 27, 2012

8:30 AM

Motion

HEARD BY: Cadish, Elissa F.

COURTROOM: RJC Courtroom 15B

COURT CLERK: Keith Reed

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT:

Rinetti, Dena I.
State of Nevada

Attorney
Plaintiff

JOURNAL ENTRIES

- In the absence of the Deft., Court noted there will not be any argument. Court stated findings noting the Deft. is seeking reconsideration of the ruling of July 16th due to his absence and ORDERED, Deft's Pro Se Motion For Reconsideration DENIED; there was no argument in the Deft's absence, and no basis for reconsideration.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Roy D. Moraga #31584. Love Lock Correctional Center, 1200 Prison Road, Love Lock Nv. 89419

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated May 22, 2013, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the supplemental trial court record for the above referenced case. The record comprises volume seven with pages numbered 1321 through 1341.

STATE OF NEVADA,

Plaintiff(s),

vs.

ROY D. MORAGA,

Defendant(s),

Case No: C092174

Dept No: VI

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 30 day of May 2013.

Steven D. Grierson, Clerk of the Court



Teodora Jones, Deputy Clerk