

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 8

ATTORNEY FOR APPELLANT
ROY D. MORAGA # 31584,
PROPER PERSON
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I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 220
2	221 - 441
3	442 - 662
4	663 - 882
5	883 - 1101
6	1102 - 1320
7	1321 - 1341
8	1342 - 1449

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
6	01/10/2006	AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL	1117 - 1120
3	10/03/1991	AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	442 - 442
4	03/05/1996	AFFIDAVIT IN SUPPORT OF MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	757 - 758
4	02/20/1996	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	702 - 704
4	03/11/1996	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS	764 - 766
3	10/03/1991	AFFIDAVIT IN SUPPORT OF OF REQUEST TO PROCEED IN FORMA PAUPERIS	443 - 445
4	02/20/1996	AFFIDAVIT OF DEFENDANT	705 - 706
4	03/11/1996	AFFIDAVIT OF PETITIONER	767 - 768
6	01/10/2006	AFFIDAVIT OF PETITIONER	1121 - 1122
8	02/15/2012	AFFIDAVIT OF PETITIONER	1420 - 1422
5	04/30/1998	AFFIDAVIT OF ROY D. MORAGA	887 - 888
5	09/27/2004	AFFIDAVIT OF ROY D. MORAGA	1061 - 1062
1	06/13/1990	AMENDED INFORMATION	118 - 121
3	11/13/1991	AMENDED JUDGMENT OF CONVICTION (JURY TRIAL)	461 - 463
4	07/31/1992	ANSWER IN OPPOSITION TO MOTION FOR RETURNING SEIZED PROPERTY	670 - 680
4	10/29/1996	CASE APPEAL STATEMENT	859 - 861
5	06/15/1998	CASE APPEAL STATEMENT	910 - 911
5	09/28/1998	CASE APPEAL STATEMENT	947 - 948
5	02/18/2004	CASE APPEAL STATEMENT	1044 - 1045
6	02/10/2005	CASE APPEAL STATEMENT	1102 - 1103
6	03/02/2007	CASE APPEAL STATEMENT	1214 - 1216
6	03/05/2007	CASE APPEAL STATEMENT	1219 - 1220

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
6	09/18/2012	CASE APPEAL STATEMENT	1317 - 1318
5	02/25/2002	CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT	968 - 968
5	01/17/1997	CERTIFICATE OF MAILING	886 - 886
4	08/05/1996	CERTIFICATE OF MAILING OF MOTION TO WITHDRAW AS COUNSEL	830 - 830
8	06/19/2013	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
1	12/28/1989	CRIMINAL BINDOVER	1 - 11
3	01/27/1992	CRIMINAL SETTING SLIP	469 - 469
1	06/27/1990	DESIGNATION OF RECORD ON APPEAL	140 - 141
3	11/13/1991	DESIGNATION OF RECORD ON APPEAL	464 - 465
3	02/13/1992	DESIGNATION OF RECORD ON APPEAL	471 - 471
4	10/07/1996	DESIGNATION OF RECORD ON APPEAL	849 - 850
5	06/13/1998	DESIGNATION OF RECORD ON APPEAL	907 - 908
5	09/22/1998	DESIGNATION OF RECORD ON APPEAL	944 - 945
6	02/10/2005	DESIGNATION OF RECORD ON APPEAL	1104 - 1105
8	06/19/2013	DISTRICT COURT MINUTES	
3	02/20/1992	EX PARTE APPLICATION FOR PREPARATION OF TRANSCRIPTS	472 - 472
8	02/15/2012	EX PARTE MOTION FOR APPOINTMENT OF COUNSEL	1417 - 1419
5	02/09/2004	EX PARTE MOTION FOR EXCESS FEES	1030 - 1036
4	02/20/1996	EX PARTE MOTION FOR FEES FOR EXPERT SERVICES	707 - 711
5	09/27/2004	EXTRAORDINARY WRIT OF MANDAMUS	1063 - 1069
3	10/03/1991	FINANCIAL CERTIFICATE	446 - 447
6	01/10/2006	FINANCIAL CERTIFICATE	1123 - 1124
6	02/08/2007	FINDING OF FACT AND CONCLUSIONS OF LAW	1201 - 1206
4	09/06/1996	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	833 - 838
6	08/13/2012	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	1275 - 1281
1	01/09/1990	INFORMATION	12 - 14

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
1	03/15/1990	INSTRUCTIONS TO THE JURY	42 - 66
1	07/07/1990	JUDGMENT OF CONVICTION (JURY TRIAL)	146 - 147
1	03/13/1990	JURY LIST	41 - 41
1	06/04/1990	MOTION AND NOTICE OF MOTION TO AMEND INFORMATION	85 - 117
4	02/20/1996	MOTION AND NOTICE OF MOTION TO COMPEL, PRODUCTION OF SEMAN AND BLOOD	712 - 726
1	02/05/1990	MOTION AND NOTICE OF MOTION TO ENDORSE NAMES ON INFORMATION	31 - 34
5	10/18/2004	MOTION AND ORDER FOR FAILURE TO PROSECUTE AND REINSTATE MOTION TO VACATE AND/OR AMEND JUDGMENT	1075 - 1082
6	02/22/2006	MOTION AND ORDER TO TRANSPORT AND PRODUCE INMATE FOR HEARING	1169 - 1173
6	03/05/2007	MOTION FOR APPOINTMENT OF COUNSEL ON APPEAL	1221 - 1222
5	06/01/1998	MOTION FOR ENLARGEMENT OF TIME	905 - 906
8	04/09/2012	MOTION FOR ENLARGEMENT OF TIME	1429 - 1441
4	04/11/1996	MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL POINTS AND AUTHORITIES	791 - 794
8	02/15/2012	MOTION FOR JUDICIAL ACTION ON PETITION	1415 - 1416
3	10/03/1991	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	448 - 448
4	02/20/1996	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	727 - 727
4	03/05/1996	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	759 - 759
4	03/11/1996	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	769 - 769
5	02/25/2002	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS	969 - 971
6	01/10/2006	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND FOR APPOINTMENT OF COUNSEL	1125 - 1126
4	08/26/1993	MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; AFFIDAVIT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS; MOTION FOR AMENDED JUDGMENT OF CONVICTION TO INCLUDE JAIL TIME CREDITS AND AFFIDAVIT OF PETITION	683 - 693

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
6	08/06/2012	MOTION FOR RECONSIDERATION	1257 - 1270
5	12/16/2003	MOTION FOR RELEASE OF DNA EVIDENCE UNDER NEVADA OPEN RECORDS ACT	996 - 1006
4	07/21/1992	MOTION FOR RETURNING SEIZED PROPERTY	667 - 669
4	03/11/1996	MOTION FOR RETURNING SEIZED PROPERTY	770 - 773
3	01/02/1992	MOTION TO APPOINT COUNSEL FOR APPEAL	466 - 468
5	04/30/1998	MOTION TO MODIFY OR IN THE ALTERNATIVE CORRECT ILLEGAL SENTENCE	889 - 890
5	02/25/2002	MOTION TO PRESERVE EVIDENCE AND ORDER	972 - 980
5	08/06/1998	MOTION TO STRIKE	918 - 924
2	09/26/1991	MOTION TO TRANSFER SENTENCING BACK TO DEPARTMENT VII	439 - 441
5	10/31/2002	MOTION TO VACATE AND/OR AMEND JUDGMENT	982 - 987
4	04/09/1996	MOTION TO WITHDRAW AS COUNSEL	785 - 788
4	08/02/1996	MOTION TO WITHDRAW AS COUNSEL	826 - 829
5	10/19/2004	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED	1083 - 1088
6	09/13/2007	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - AFFIRMED	1241 - 1248
4	10/30/1995	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	698 - 701
5	04/30/1999	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	949 - 951
5	06/01/1999	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	952 - 959
5	06/01/1999	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	960 - 967
6	05/02/2005	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	1113 - 1116
3	10/04/1991	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - REMAND	454 - 458
1	06/27/1990	NOTICE OF APPEAL	142 - 143

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
3	10/30/1991	NOTICE OF APPEAL	460 - 460
4	09/27/1996	NOTICE OF APPEAL	847 - 848
5	06/13/1998	NOTICE OF APPEAL	909 - 909
5	09/22/1998	NOTICE OF APPEAL	946 - 946
5	02/17/2004	NOTICE OF APPEAL	1038 - 1039
6	02/10/2005	NOTICE OF APPEAL	1106 - 1106
6	03/02/2007	NOTICE OF APPEAL	1217 - 1218
6	09/17/2012	NOTICE OF APPEAL	1312 - 1316
6	02/22/2006	NOTICE OF CHANGE OF ADDRESS	1174 - 1174
8	09/19/2011	NOTICE OF CHANGE OF ADDRESS	1411 - 1414
6	02/13/2007	NOTICE OF ENTRY OF DECISION AND ORDER	1207 - 1213
6	08/21/2012	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	1282 - 1289
4	04/17/1996	NOTICE OF ENTRY OF ORDER	796 - 799
4	09/20/1996	NOTICE OF ENTRY OF ORDER	839 - 846
4	10/28/1996	NOTICE OF ENTRY OF ORDER	851 - 858
5	05/29/1998	NOTICE OF ENTRY OF ORDER	901 - 904
5	07/07/1998	NOTICE OF ENTRY OF ORDER	914 - 917
6	04/08/2005	NOTICE OF ENTRY OF ORDER	1109 - 1112
5	02/26/2002	NOTICE OF HEARING - CRIMINAL	981 - 981
8	03/14/2012	NOTICE OF MOTION	1423 - 1423
3	10/03/1991	NOTICE OF MOTION MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	449 - 453
4	03/05/1996	NOTICE OF MOTION MOTION FOR WITHDRAWAL OF ATTORNEY OF RECORD AND TRANSFER OF RECORDS	760 - 763
1	06/29/1990	ORDER	144 - 145
1	08/02/1990	ORDER	148 - 149
4	08/17/1992	ORDER	681 - 682
6	03/30/2005	ORDER	1107 - 1108

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
8	04/29/2011	ORDER	1342 - 1410
3	02/10/1992	ORDER APPOINTING COUNSEL	470 - 470
6	03/23/2007	ORDER DENYING DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	1239 - 1240
5	06/30/1998	ORDER DENYING DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME	912 - 913
5	01/07/2004	ORDER DENYING DEFENDANT'S MOTION FOR RELEASE OF DNA EVIDENCE UNDER NEVADA OPEN RECORDS ACT	1028 - 1029
6	10/05/2012	ORDER DENYING DEFENDANT'S MOTION TO RECONSIDER	1319 - 1320
5	05/28/1998	ORDER DENYING DEFENDANT'S PRO PER MOTION TO MODIFY OR IN ALTERNATIVE CORRECT ILLEGAL SENTENCE	899 - 900
5	08/27/1998	ORDER DENYING DEFENDANT'S PRO PER MOTION TO STRIKE	942 - 943
3	10/23/1991	ORDER FOR APPOINTMENT OF COUNSEL	459 - 459
5	11/21/2002	ORDER FOR APPOINTMENT OF COUNSEL FOR POST- CONVICTION RELIEF	988 - 988
5	02/11/2004	ORDER FOR PAYMENT OF EXCESS FEES	1037 - 1037
6	01/12/2006	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	1162 - 1162
2	09/13/1991	ORDER FOR PRODUCTION OF INMATE	437 - 438
6	04/21/2006	ORDER FOR PRODUCTION OF INMATE ROY D. MORAGA, BAC # 31584	1186 - 1187
6	05/05/2006	ORDER FOR PRODUCTION OF INMATE ROY D. MORAGA, BAC # 31584	1188 - 1189
6	06/05/2006	ORDER FOR PRODUCTION OF INMATE ROY D. MORAGA, BAC # 31584	1199 - 1200
4	08/27/1996	ORDER FOR TRANSCRIPTS	832 - 832
6	01/27/2006	ORDER GRANTING DEFENDANT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ORDER DENYING DEFENDANT'S PRO PER MOTION FOR APPOINTMENT OF COUNSEL	1167 - 1168
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	473 - 474

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	475 - 476
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	477 - 478
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	479 - 480
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	481 - 482
3	02/20/1992	ORDER RE: PREPARATION OF TRANSCRIPTS	483 - 484
2	01/09/1991	ORDER RELEASING EVIDENCE	435 - 435
1	06/13/1990	ORDER TO AMEND INFORMATION	122 - 122
1	02/15/1990	ORDER TO ENDORSE NAMES ON INFORMATION	39 - 40
4	04/17/1996	ORDER TO WITHDRAW AS ATTORNEY OF RECORD	800 - 801
2	01/09/1991	PETITION FOR RELEASE OF EVIDENCE	436 - 436
4	02/20/1996	PETITION FOR WRIT OF HABEAS CORPUS (POST- CONVICTION)	728 - 748
6	01/10/2006	PETITION FOR WRIT OF HABEAS CORPUS (POST- CONVICTION)	1127 - 1161
1	05/16/1990	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	75 - 84
1	03/15/1990	PROPOSED VERDICT	71 - 74
3	02/26/1992	RECEIPT OF COPY	485 - 485
3	02/26/1992	RECEIPT OF COPY	486 - 486
3	02/28/1992	RECEIPT OF COPY	487 - 487
3	03/02/1992	RECEIPT OF COPY	488 - 488
3	03/02/1992	RECEIPT OF COPY	489 - 489
4	08/27/1993	RECEIPT OF COPY	694 - 694
5	12/17/2003	RECEIPT OF COPY	1007 - 1007
4	04/09/1996	RECEIPT OF COPY AND CERTIFICATE OF MAILING	789 - 790
4	04/15/1996	RECEIPT OF COPY OF MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL POINTS AND AUTHORITIES	795 - 795
4	08/05/1996	RECEIPT OF COPY OF MOTION TO WITHDRAW AS COUNSEL	831 - 831
5	01/05/2004	REPLY TO STATE'S OPPOSITION TO DEFENDANT'S	1023 - 1027

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
		MOTION FOR RELEASE OF DNA EVIDENCE UNDER NEVADA OPEN RECORDS ACT	
6	08/28/2012	REPLY TO STATE'S OPPOSITION TO PETITIONER'S MOTION FOR RECONSIDERATION	1290 - 1297
6	05/24/2006	REPLY TO STATE'S RESPONSE AND OPPOSITION TO MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	1190 - 1198
5	01/05/2005	REPLY TO STATE'S RESPONSE TO EXTRAORDINARY WRIT OF MANDAMUS AND MOTION TO DISMISS	1099 - 1101
4	01/13/1997	REPORTER'S TRANSCRIPT OF APRIL 17, 1996	862 - 866
4	01/13/1997	REPORTER'S TRANSCRIPT OF AUGUST 12, 1996	867 - 871
4	01/13/1997	REPORTER'S TRANSCRIPT OF AUGUST 21, 1996	872 - 875
1	01/24/1990	REPORTER'S TRANSCRIPT OF DECEMBER 26, 1989	15 - 30
3	03/04/1992	REPORTER'S TRANSCRIPT OF FEBRUARY 15, 1990	490 - 491
1	02/12/1990	REPORTER'S TRANSCRIPT OF JANUARY 11, 1990	35 - 38
6	03/12/2007	REPORTER'S TRANSCRIPT OF JANUARY 23, 2006	1223 - 1226
5	05/04/2004	REPORTER'S TRANSCRIPT OF JANUARY 5, 2004	1046 - 1052
4	01/13/1997	REPORTER'S TRANSCRIPT OF JULY 15, 1996	876 - 877
4	01/13/1997	REPORTER'S TRANSCRIPT OF JULY 19, 1996	878 - 882
1	06/13/1990	REPORTER'S TRANSCRIPT OF JUNE 13, 1990 (UNFILED)	123 - 139
6	03/12/2007	REPORTER'S TRANSCRIPT OF JUNE 26, 2006	1227 - 1233
1	10/11/1990	REPORTER'S TRANSCRIPT OF MARCH 12, 1990 (CONTINUED)	150 - 220
2	10/11/1990	REPORTER'S TRANSCRIPT OF MARCH 12, 1990 (CONTINUATION)	221 - 264
3	03/27/1992	REPORTER'S TRANSCRIPT OF MARCH 12, 1990	520 - 657
2	10/11/1990	REPORTER'S TRANSCRIPT OF MARCH 13, 1990	265 - 387
2	10/11/1990	REPORTER'S TRANSCRIPT OF MARCH 15, 1990	388 - 434
5	01/13/1997	REPORTER'S TRANSCRIPT OF MARCH 6, 1996	883 - 885
3	04/14/1992	REPORTER'S TRANSCRIPT OF MARCH 7, 1990	658 - 662

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
4	04/14/1992	REPORTER'S TRANSCRIPT OF MARCH 9, 1990	663 - 664
5	05/14/2004	REPORTER'S TRANSCRIPT OF MAY 11, 1998	1057 - 1060
5	05/04/2004	REPORTER'S TRANSCRIPT OF NOVEMBER 13, 2002	1053 - 1056
3	03/04/1992	REPORTER'S TRANSCRIPT OF OCTOBER 11, 1991	492 - 494
3	03/04/1992	REPORTER'S TRANSCRIPT OF OCTOBER 14, 1991	495 - 499
3	03/04/1992	REPORTER'S TRANSCRIPT OF OCTOBER 21, 1991	500 - 511
3	03/04/1992	REPORTER'S TRANSCRIPT OF OCTOBER 9, 1991	512 - 514
3	03/04/1992	REPORTER'S TRANSCRIPT OF SEPTEMBER 23, 1991	515 - 519
4	05/26/1992	REQUEST FOR RECORDS	665 - 666
6	08/28/2012	REQUEST TO FILE EXHIBIT 1	1298 - 1311
8	03/23/2012	RESPONSE TO DEFENDANT'S MOTION FOR JUDICIAL ACTION AND OPPOSITION TO DEFENDANT'S MOTION TO APPOINT COUNSEL	1424 - 1428
4	09/29/1993	SECOND AMENDED JUDGMENT OF CONVICTION (JURY TRIAL)	695 - 697
8	04/17/2012	STATE'S OPPOSITION TO DEFENDANT MOTION FOR ENLARGEMENT OF TIME	1442 - 1445
8	04/17/2012	STATE'S OPPOSITION TO DEFENDANT MOTION FOR ENLARGEMENT OF TIME	1446 - 1449
5	11/27/2002	STATE'S OPPOSITION TO DEFENDANT'S MOTIO TO VACATE AND/OR AMEND JUDGMENT	989 - 993
6	03/16/2007	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR APPOINTMENT OF COUNSEL	1234 - 1238
5	12/26/2003	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE OF DNA EVIDENCE UNDER NEVADA OPEN RECORDS ACT	1008 - 1022
6	02/27/2006	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR TRANSPORT	1175 - 1178
4	04/01/1996	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO COMPEL PRODUCTION OF SEMAN AND BLOOD, PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) AND MOTION TO PROCEED IN FORMA PAUPERIS	774 - 784

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
5	05/08/1998	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO MODIFY OR IN THE ALTERNATIVE CORRECT ILLEGAL SENTENCE	891 - 898
6	08/09/2012	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO RECONSIDER	1271 - 1274
6	01/19/2006	STATE'S OPPOSITION TO MOTION FOR APPOINTMENT OF COUNSEL	1163 - 1166
6	05/16/2012	STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	1249 - 1256
6	02/27/2006	STATE'S RESPONSE AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	1179 - 1185
5	08/17/1998	STATE'S RESPONSE TO DEFENDANT'S MOTION TO STRIKE	925 - 941
5	12/15/2004	STATE'S RESPONSE TO EXTRAORDINARY WRIT OF MANDAMUS	1089 - 1098
4	06/27/1996	STATE'S SUPPLEMENTAL OPPOSITION TO PETITIONER'S FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	816 - 822
5	06/11/2003	STIPULATION AND ORDER	994 - 995
4	05/20/1996	SUBSTITUTION OF ATTORNEYS	802 - 803
4	07/16/1996	SUPPLEMENT REPLY AND OPPOSITION FOR WRIT OF HABEAS CORPUS	823 - 825
5	09/27/2004	SUPPLEMENTAL ACT	1070 - 1074
4	02/20/1996	SUPPLEMENTAL BRIEF AND POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	749 - 756
7	11/04/2011	SUPPLEMENTAL BRIEF IN SUPPORT OF THE PETITION FOR WRIT OF HABEAS CORPUS AND ILLEGAL SENTENCE PURSUANT TO NRS 126.555	1321 - 1341
5	02/17/2004	SUPPLEMENTAL BRIEF TO STATES OPPOSITION TO DEFENDANT'S MOTION FOR RELEASE OF DNA EVIDENCE UNDER NEVADA OPEN RECORDS ACT	1040 - 1043
4	06/13/1996	SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR WRIT OF HABEAS CORPUS	804 - 815
1	03/15/1990	VERDICT COUNT I	67 - 67

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
1	03/15/1990	VERDICT COUNT II	68 - 68
1	03/15/1990	VERDICT COUNT III	69 - 69
1	03/15/1990	VERDICT COUNT VI	70 - 70

FILED

APR 29 2011

Lacey Donaldson
CLERK OF COURT

FILED

2011 APR 19 AM 10:38

LACEY DONALDSON
DISTRICT COURT CLERK

CEE

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

ROY D. MORAGA,

Petitioner,

vs.

ROBERT LEGRAND, WARDEN,

Respondent.

Alt-640265-W
C 092174
ORDER *XXIX*

This matter comes before the Court on the Respondent's motion for change of venue (motion). The Petitioner filed the petition for writ of habeas corpus (post-conviction) (petition) in this Court, challenging the validity of a conviction from Clark County, Nevada. Having reviewed the parties' moving papers, the Court finds that the proper venue for the petition is the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. See NRS 34.738. Accordingly, the Court grants the motion, and the petition shall be transferred to Clark County for further proceedings.

IT IS SO ORDERED this 18th day of April, 2011.

[Signature]
DISTRICT COURT JUDGE

SUBMITTED BY:

CATHERINE CORTEZ MASTO
Attorney General
JEFFREY M. CONNER
Deputy Attorney General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1200

THE FOREGOING INSTRUMENT IS A CORRECT COPY OF THE ORIGINAL ON FILE IN THIS OFFICE, LACEY DONALDSON, COUNTY CLERK AND CLERK OF THE SIXTH JUDICIAL COURT IN AND FOR THE COUNTY OF PERSHING, STATE OF NEVADA.

DATE: 4/19/11 BY: *CEE*
DEPUTY

CLERK OF THE COURT

RECEIVED
APR 29 2011

ROY D. MORAGA #3454
NNCC P.O. BOX 100
CARSON CITY, NV 89702
OPP.

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2011 APR 18 PM 1:51

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

LACET J. HALL
DISTRICT COURT CLERK

ROY D. MORAGA, CASE NO. PJ-10-0754
Petitioner, Dept. NO. 2

-vs-

ROBERT LEGRAND, WARDEN, / OPPOSITION TO STATES
Respondant, / MOTION FOR CHANGE OF VENUE

COMES NOW, Petitioner, ROY D. MORAGA, in Pro Per AND
Submits his Opposition to this Honorable Court. This
Opposition is supported by the following Points and Authorities.

POINTS AND AUTHORITIES

ON DECEMBER 8, 2010 this Petitioner Filed his Writ of Habeas
Corpus. ON PAGES 2, 14, 4, 15 AND Throughout his petition
the LOCATION OF his ORIGINAL CONVICTION. THIS WAS READ AND
EVIDENT by the Petition. Also it is Obvious the Courts
Knew this since it stated in it's Order OF Feb. 25, 2011
where it Said: "The Court HAS Reviewed the Petition
AND has determined that a response would be Assist
this Court in determining whether Petitioner MORAGA is
UNLAWFULLY COMMITTED, detained, Confined or restrained
OF his liberty." Emphasis Added.

ON April 1, 2011 the state Responded, AND it's ONLY Argument
in response WAS that Petitioner Filed the Petition in
the wrong Court. Absolutely NO Argument Against ANY
OF the 'issues' Raised, that CONCERNED this Court enough
to Warrant a Response.

As the state has filed it's response to the petition in direct response to the court's order, an unchallenged issues should be deemed as meritorious. "Where a party allows an issue to stand unchallenged, the court may infer a concession that the argument has merit" Colton v. MURPHY, (71 Nev. 21, 22) (Nev. 1955); NRAP 31(c) Any opposition Respondant has to Appellant's position on this issue must be supported with relevant authority. State v. Haberstroh, (119 Nev. 123, 187) (Nev. 2003) So as the state has responded the issues should be deemed meritorious. There is no valid argument to respond to in direct regard to the states response the courts ordered a specific response, to respond to the petition and assist the court to determine whether this petitioner was being held against the law. But instead they chose to argue that the court erroneously accepted jurisdiction of this case. Not only did this court accept jurisdiction by first file stamp, then accepted jurisdiction by reviewing the entire petition, finally this court knew exactly where the conviction was "finalized" but chose to accept it's jurisdiction.

The state argues that NRS 34.728(1) means that the only place a petition for writ of habeas corpus can be filed is in the original place of conviction. In this Petitioners case the Eight Judicial District. Except the NRS as well as Federal Criminal Codes and Rules; Rule 2(a); 28 U.S.C. § 2242 All state that

the Person Restraining the Petitioner (i.e.; Warden Legrand) is named as respondent, and the A.G. is served in Carson City.

This court obviously is aware of this statute as it stated "in accordance with the provisions of NRS 34.360 through NRS 34.830" and 34.738(1) is clearly inside these statutes.

In addition to the above listed areas in which this court accepted jurisdiction is the fact that the court also issued a new case number, so to change the number from C92174 to PI-10-0234.

There is no argument that this court knew the law, as the states entire argument is this court did not know the very law it is entrusted to uphold and enforce. As there is no fair nor just reason to warrant the change of venue motion, and as the state has yet to challenge the 'issue' of the instant petition this petitioner submits this opposition and his conclusion.

CONCLUSION AND PRAYER FOR RELIEF

As stated Above the state has Failed to Argue or oppose Any of the 'Issues' of the Pctitioner's writ of habeas Corpus. Due to the fact that Since the state has been Ordered to respond within "45 days" AND Completely ignored this Courts Request For Assistance; the entire writ of habeas Corpus Should be viewed As Meritorious.

All relief requested by the petitioner in his Original Pleadings is ONCE AGAIN Prayed For.

This Petitioner Prays that this Honorable Court see the State's 'Response' For what it Truly is, Nothing more then a Legal Act of Prestadigitation. But this Court As this Pctitioner KNOWS A MAN'S Freedom and 'Newly Discovered evidence' is NOT A 'game of Smoke and mirror'.

CERTIFICATE OF MAILING

I, Roy D. MORAGA, do hereby Certify that I mailed a True and Correct Copy of the Foregoing Notice of Change of Address to the Following

Pershing County Clerk and Treasurer

P.O. Box 820

Lovelock, NEVADA 89419

Jim Shirley, Esq.

Pershing District Attorney

P.O. Box 299

Lovelock, Nevada 89419

Roy D. MORAGA # 31584

P.O. Box 7000

CARSON CITY, NV 89702

by: Roy D. Moraga

Dated: 3-2-11

C.C.

R.D.M.

DECLARATION AND CERTIFICATE OF SERVICE

I, Roy D. MORAGA, declare under Penalty of Perjury AND under the LAWS OF the UNITED STATES OF AMERICA that the Foregoing is True AND Correct. Per 28 U.S.C. § 1746 AND 18 U.S.C. § 1621.

Roy D. Moraga

I Roy D. MORAGA, declare that a True AND Correct Copy of Petitioners Opposition to States Motion For Change of Venue was Placed in Pre-Paid USPS First Class this 13th day of April 2011 Addressed To: Pershing County Clerk and Treasurer.

P.O. Box 820
Lovelock, NV 89419

District Attorney
Pershing County
P.O. Box 299
Lovelock, NV 89419

Jeffrey M. Conner
Deputy Attorney General
100 N. Carson St.
CARSON CITY, NV 89201-4717

Robert Legrand, Warden
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419

Roy D. MORAGA* 31584
NNCC P.O. Box 7000
CARSON CITY, NV 89202

By Roy D. Moraga
Roy D. MORAGA* 31584
NNCC P.O. Box 7000
CARSON CITY, NV 89202
Petitioner IN Pro Per

ORIGINAL

FILED

Case No. PI 10-0754

2011 APR -4 PM 2: 05

Dept. No. 2

LACE, DONALDSON
DISTRICT COURT CLERK
Bequith

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

ROY D. MORAGA,

Petitioner,

vs.

ROBERT LEGRAND, WARDEN,

Respondent.

MOTION FOR
CHANGE OF VENUE

The Respondent, Robert Legrand, by and through counsel of record Catherine Cortez Mastro, Attorney General of Nevada, and Jeffrey M. Conner, Deputy Attorney General, move this Court for an order for a change of venue on the Petitioner, Roy D. Moraga's ("Moraga") Petition for Writ of Habeas Corpus (Post-Conviction) ("Petition"). This Motion is made pursuant to NRS 34.738, and is supported by the accompanying memorandum of points and authorities, together with all other pleadings, papers and exhibits on file herein.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

Moraga was tried and convicted of two counts of sexual assault in Clark County, Nevada, and received a sentence of life without the possibility of parole after the district court adjudicated Moraga a habitual criminal. Moraga filed the Petition on December 8, 2010, in Pershing County, asserting three grounds for relief, all based on allegations that he is actually innocent.

...

...

1 II.

2 ARGUMENT

3 Moraga asserts three different grounds for relief in his Petition, each of which is a collateral
4 attack on the validity of his conviction from his conviction in Clark County. Pursuant to
5 NRS 34.738(1), "[a] petition that challenges the validity of a conviction or sentence must be filed with
6 the clerk of the district court for the county in which *the conviction occurred*." Moraga was convicted
7 in Clark County, but filed the Petition in Pershing County. Accordingly, the Court should order a
8 change of venue to Clark County.

9 III.

10 CONCLUSION

11 Moraga was tried and convicted in Clark County, and has filed the Petition attacking the validity
12 of his conviction in Pershing County. NRS 34.782(1) requires a petition challenging the validity of a
13 conviction to be filed in the same county where the petitioner was tried and convicted. Accordingly, the
14 Court should order the Petition to be transferred to Eight Judicial District Court of the State of Nevada
15 in and for the County of Clark.

16 RESPECTFULLY SUBMITTED this 1st day of April, 2011.

17 CATHERINE CORTEZ MASTO
Attorney General

18 By: 

19 JEFFREY M. CONNER
20 Deputy Attorney General
Appellate Division
21 100 North Carson Street
Carson City, Nevada 89701-4717
22 (775) 684-1200
23
24
25
26
27
28

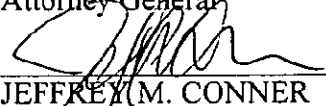
AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document, MOTION FOR CHANGE OF VENUE, filed in case number PI 10-0754, does not contain the social security number of any person.

DATED this 1st day of April, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By:


JEFFREY M. CONNER
Deputy Attorney General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1200

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 1st day of April, 2011, I served a copy of the foregoing MOTION FOR CHANGE OF VENUE, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Roy D. Moraga
NDOC #31584
Northern Nevada Correctional Center
P O Box 7000
Carson City, Nevada 89702



ORIGINAL

FILED

Case No. PI 10-0754

Dept. No. 2

2011 MAR 18 PM 2:06

LACEY DONALDSON
DISTRICT COURT CLERK

[Signature]

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

ROY D. MORAGA,

Petitioner,

vs.

ROBERT LEGRAND, WARDEN,

Respondent.

NOTICE OF REPRESENTATION
OF RESPONDENT

The State of Nevada, by and through counsel, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada, hereby notifies the Court and respective parties to this action that Deputy Attorney General JEFFREY M. CONNER has assumed responsibility for representing the interests of the named respondent, and the Attorney General of the State of Nevada, and the interests of the State of Nevada in the above-entitled action

RESPECTFULLY SUBMITTED this 17th day of March, 2011.

CATHERINE CORTEZ MASTO
Attorney General

By:

[Signature]
JEFFREY M. CONNER
Deputy Attorney General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1200

Office of the Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717

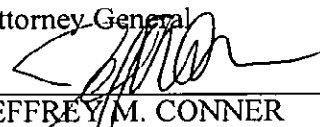
AFFIRMATION
(Pursuant to NRS 239B.030)

The undersigned does hereby affirm that the preceding document, NOTICE OF REPRESENTATION OF RESPONDENT, filed in case number PI 10-0754, does not contain the social security number of any person.

DATED this 17th day of March, 2011.

CATHERINE CORTEZ MASTO
Attorney General

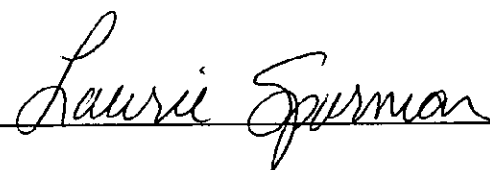
By:


JEFFREY M. CONNER
Deputy Attorney General
Appellate Division
100 North Carson Street
Carson City, Nevada 89701-4717
(775) 684-1200

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 17th day of March, 2011, I served a copy of the foregoing NOTICE OF REPRESENTATION OF RESPONDENT, by placing said document in the U.S. Mail, postage prepaid, addressed to:

Roy D. Moraga
NDOC #31584
Northern Nevada Correctional Center
P O Box 7000
Carson City, Nevada 89702



FILED

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

2011 MAR 10 PM 2:28

Roy D. MORAGA,
Petitioner,

CASE NO. PI 10-0754

JACLYN DONALDSON
DISTRICT COURT CLERK

Dept. NO. 2

Bequette

-vs-

ROBERT LEGRAND, WARDEN
Respondent

NOTICE OF CHANGE
OF ADDRESS

PLEASE TAKE NOTICE that the Petitioner gives
his NOTICE OF Change of Address, All papers,
documents and Responses be mailed to him at the
Address below.

Respectfully Submitted,

Roy D. Moraga

Roy D. MORAGA * 31584

NNCC P.O. Box 7000

CARSON City, Nevada 89702

Petitioner In Pro Se

Dated: 3-2-11

C.C.

R.D.M.

FILED

CASE NO. PI 10-0754
DEPT. NO. 2

2011 FEB 25 PM 3:27

LACEY DONALDSON
DISTRICT COURT CLERK

D. Bequette

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

ROY D. MORAGA,
Petitioner,

vs.

AFFIDAVIT OF MAILING

ROBERT LEGRAND, WARDEN,
Respondent.

I, Dawn Bequette, being first duly sworn depose and say: That I am, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action; that I am a Deputy Clerk of the Sixth Judicial District Court and that on the 25th day of February, 2011, I deposited in the United States Post Office at Lovelock, Nevada, a copy of Order and the Notice of Entry of Order, that was enclosed in a sealed envelope upon which first class postage was fully prepaid, addressed to:

Roy D. Moraga #31584
1200 Prison Rd./LCC
Lovelock, NV 89419

Office of the Attorney General
100 North Carson St.
Carson City, NV 89701

Dawn Bequette
Deputy Court Clerk

FILED

2011 FEB 25 PM 3:27

CASE NO. PI 10-0754
DEPT. NO. 2

LACEY DONALDSON
DISTRICT COURT CLERK

Bequith

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERSHING

ROY D. MORAGA,
Petitioner,

**NOTICE OF ENTRY
OF ORDER**

vs.

ROBERT LEGRAND, WARDEN,
Respondent.

PLEASE TAKE NOTICE that on February 25, 2011, the Court
entered an order in this matter, a true and correct copy of which is
attached to this notice.

DATED: February 25, 2011

(Seal)

Lacey Donaldson

Clerk of Court

By *Dawn Bequith*
Deputy

FILED

2011 FEB 25 PM 3:27

LACEY DONALDSON
DISTRICT COURT CLERK
[Signature]

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

-000-

ROY D. MORAGA,

Petitioner,

vs.

ORDER TO RESPOND

ROBERT LEGRAND, WARDEN,

Respondent.

Petitioner Roy D. Moraga filed in this Court a Petition for Writ of Habeas Corpus (Post-Conviction) on December 8, 2010. The Court has reviewed the Petition and has determined that a response would assist this Court in determining whether Petitioner Moraga is unlawfully committed, detained, confined or restrained of his liberty. The State shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 through 34.830, inclusive.

IT IS SO ORDERED.

DATED: February 24, 2011.

[Signature]
DISTRICT JUDGE

FILED

2011 FEB 25 PM 3:27

LACEY DONALDSON
DISTRICT COURT CLERK

B. Quinn

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

-000-

ROY D. MORAGA,

Petitioner,

vs.

ORDER TO RESPOND

ROBERT LEGRAND, WARDEN,

Respondent.

Petitioner Roy D. Moraga filed in this Court a Petition for Writ of Habeas Corpus (Post-Conviction) on December 8, 2010. The Court has reviewed the Petition and has determined that a response would assist this Court in determining whether Petitioner Moraga is unlawfully committed, detained, confined or restrained of his liberty. The State shall, within 45 days after the date of this Order, answer or otherwise respond to the Petition and file a return in accordance with the provisions of NRS 34.360 through 34.830, inclusive.

IT IS SO ORDERED.

DATED: February 24, 2011.


DISTRICT JUDGE

FILED

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERDUE

28 FEB 22 PM 1:33

Roy D. MORAGA,

CASE NO. PI 100-154 LACEY BUNALOSON
DISTRICT COURT CLERK

Petitioner,

Dept. NO. 2 CEl

VS

LEGRAND, WARDEN

MOTION FOR JUDICIAL

Respondent.

ACTION ON PETITION

Petitioner, Roy D. MORAGA, in pro se, Submits his Motion For Judicial Action on petition, moving the Court to TAKE ACTION ON the pending Petition For writ of habeas Corpus on file herein, in Accordance with the Statutory and decisional Authorities below. This motion is based upon All papers and Pleadings on file herein; NRS 34.740 and NRS 34.745; and the Following points and Authorities.

POINTS AND AUTHORITIES

The Petition For writ of habeas Corpus was filed on December 8, 2010. Filing occurred over 2 months ago; however, the Court has yet to take any action thereon as contemplated by NRS 34.740 and NRS 34.745, which require, inter alia, that the "petition must be examined expeditiously," NRS 34.740, followed by a direction to Respondent to respond or answer the petition, NRS 34.745 (1) & (2). This requirement of speed is not only a statutory command, but is recognized by the Courts towards the effective and prompt adjudication of habeas actions and the serious questions they present.

CARAFUS v. LaVallee, 391 U.S. 234, 88 S.Ct. 1556, 1560 (1968). See Also Peyton v. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 1552 (1968) (habeas requires "Prompt Adjudication"); Smith v. Idaho, 392 F.3d 350, 356 (9th Cir. 2004) (prompt resolution of prisoner's claims is a principle function of habeas). This court is therefore moved to expeditiously order Respondents to file a response or answer and a return to the instant petition so as to satisfy the Authorities Above, and as justice requires.

CONCLUSION

This court should promptly take judicial action on the pending petition in accordance with NRS 34.740 and NRS 34.745.

Dated this 17th day of February, 2011.

Roy D. Moraga
Roy D. MORAGA * 31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner IN Pro Se

CERTIFICATE OF SERVICE BY MAIL

I do certify that I mailed a true and correct copy of the foregoing MOTION FOR JUDICIAL ACTION ON Petition to the below address(es) on this 17th day of February, 2011, by placing same in the U.S. Mail via prison law library staff, pursuant to NRCP 5(b):

Jim Shirley, Esq
 Pershing County District Attorney
 P. O. Box 299
 Lovelock, Nevada 89419

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

Petitioner In Pro Se

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding Motion for judicial action on Petition filed in District Court Case No. PI 10-0254 does not contain the social security number of any person.

Dated this 17th day of February, 2011.

Roy D. Moraga
ROY D. MORAGA

Petitioner In Pro Se

FILED

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF PERMITS

ROY D. MORAGA,
Petitioner,

CASE NO. PI-10-07

Dept. NO. 2

CHINA GILES
DISTRICT COURT CLERK

-vs-

LE GRAND, WARDEN,
Respondent.

EX PARTE SUPPLEMENTAL
MOTION FOR APPOINTMENT
OF COUNSEL

Comes NOW Petitioner, ROY D. MORAGA, in Pro Se, and
MOVES the Court for an Order Appointing Counsel
in the instant petition for writ of habeas Corpus
(Post-Conviction).

This motion is made and based upon NRS 34.750; and
All papers, pleadings and documents on file herein; and
the points and authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford Counsel. See Application
to proceed IN FORMA PAUPERIS on file herein.

The Substantive issues and procedural requirements of
this case are difficult and incomprehensible to petitioner.
Petitioner, due to his incarceration, CANNOT investigate, take
depositions or otherwise proceed with discovery herein.
Petitioner's Sentence is; 10yrs. CS, 10yrs. CS, Lifewith CS,
Lifewithout CS.

There are NOT Additional Facts in Support of This
Motion Attached hereto on Separate page(s).

(1)

COUNSEL WOULD ASSIST petitioner with a Clearer presentation of his issues before this Court AND WOULD likewise Facilitate AND ease this Court's task of discerning the issues AND Adjudicating Same upon their Merits.

Discretion lies with the Court to Appoint Counsel under NRS 34.750 Crump v. Warden, 113 Nev. 293, 934 P.2d 242, 254 (1997). The Court is to consider (1) The Complexity of the issues; (2) Whether petitioner Comprehends the issues; (3) Whether Counsel is Necessary to conduct discovery; AND (4) the Severity of petitioner's Sentence. NRS 34.750 (1)-(1)(C).

The Sixth Amendment right to counsel does NOT Apply in habeas Corpus Actions. However, 18 U.S.C.S. § 3006A (a) (2)(B) Authorizes a district Court to Appoint Counsel to represent a FINANCIALLY eligible habeas petitioner whenever a Court determines that the interests of justice so require. The decision to Appoint Counsel lies within the discretion of the Court, AND Absent an Order For an evidentiary hearing, Appointment is MANDATORY ONLY when the Circumstances of a particular case indicate that Appointed Counsel is NECESSARY to prevent a due process Violation.

The Access to the legal Law Library does NOT exist AT the Lovelock Correctional Center For the inmates To utilize. (See Koerschner v. Warden, 508 F. Supp. 2d 849 (2007).

(2.)

DECLARATION OF MORAGA

I, Roy D. MORAGA, do hereby declare under penalty of perjury that I AM the petitioner, AND that I have read the foregoing Motion for Appointment of Counsel AND know the contents thereof, AND As to those matters, I believe them to be true and correct.

pursuant to 28 U.S.C. §1746, NRS 53.045

Dated this 27th day of December, 2010

Roy D. Moraga

Roy D. MORAGA**31584

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Petitioner IN Pro Se

(3)

Case No. PI 10-0754
~~892774~~
Dept. No. 2

FILED

2010 DEC -8 AM 9:11

DONNA GILES
DISTRICT COURT CLERK

CE

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * * *

Roy D. MORAGA,)

Petitioner,)

-vs-)

LEGRAND, WARDEN,)

Respondent.)

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW Petitioner, Roy D. MORAGA, in pro se,
and moves the Court for an order appointing counsel in the
instant petition for writ of habeas corpus (post-conviction).

This motion is made and based upon NRS 34.750; all papers,
pleadings and documents on file herein; and the points and
authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. See Application to
Proceed In Forma Pauperis on file herein.

The substantive issues and procedural requirements of this
case are difficult and incomprehensible to Petitioner.

Petitioner, due to his incarceration, cannot investigate,
take depositions or otherwise proceed with discovery herein.

Petitioner's sentence is: 10 yrs CS, 10 yrs CS, Life with CS, Life
without.

1 There ____ are ✓ are not additional facts in support of
2 this motion attached hereto on separate page(s).

3 Counsel would assist Petitioner with a clearer presentation
4 of his issues before this Court and would likewise facilitate
5 and ease this Court's task of discerning the issues and
6 adjudicating same upon their merits.

7 Discretion lies with the Court to appoint counsel under NRS
8 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254
9 (1997). The Court is to consider: (1) the complexity of the
10 issues; (2) whether Petitioner comprehends the issues; (3)
11 whether counsel is necessary to conduct discovery; and (4) the
12 severity of Petitioner's sentence. NRS 34.750(1)-(1)(c).

13 Under similar discretionary standards, Federal courts are
14 encouraged to appoint counsel when the interests of justice so
15 require - a showing which increases proportionately with the
16 increased complexities of the case and the penalties involved in
17 the conviction. Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir.
18 1986). Attorneys should be appointed for indigent petitioners
19 who cannot "adequately present their own cases." Jeffers v.
20 Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995).

21 Although Petitioner need meet but one (1) of the enumerated
22 criteria of NRS 34.750 in order to merit appointment of counsel,
23 he meets all of them. He also presents a classic example of one
24 meriting counsel under the interest of justice test bespoken by
25 the Ninth Circuit. Indeed, Petitioner's sentence, coupled with
26 the other factors set forth above, demonstrate that appointment
27 of counsel to him would not only satisfy justice, but
28 fundamental fairness, as well.

1 CONCLUSION

2 For the reasons set forth above, the Court should appoint
3 counsel to represent Petitioner in and for all further
4 proceedings in this habeas corpus action.

5 Dated this 10 day of November, 2010.

6 Roy D. Moraga
7 Roy D. MORAGA # 31584
8 Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419

9 Petitioner In Pro Se

10 CERTIFICATE OF SERVICE

11 I do certify that I mailed a true and correct copy of the
12 foregoing MOTION FOR APPOINTMENT OF COUNSEL to the below address
13 on this 10 day of November, 2010, by placing same
14 in the U.S. Mail via prison law library staff:

15 Jim Shirley, CSJ.
16 Peoshing County District Attorney
17 P.O. Box 299
Lovelock, Nevada 89419
18 Attorney For Respondent

19 Roy D. Moraga
20 Roy D. MORAGA # 31584

21 Petitioner In Pro Se

22 AFFIRMATION PURSUANT TO NRS 239B.030

23 The undersigned does hereby affirm that the preceding
24 MOTION FOR APPOINTMENT OF COUNSEL DOES not contain the social
25 security number of any person.

26 Dated this 10 day of November, 2010.

27 Roy D. Moraga
28 Roy D. MORAGA # 31584

Petitioner In Pro Se

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion

To Appoint Counsel
(Title of Document)

filed in District Court Case number C92174

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

-OR-

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

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

(State specific law)

-or-

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

Roy D. Moraga
Signature

11-10-10
Date

Roy D. MORAGA
Print Name

Motion
Title

Case No. 192100

Dept. No. 2

FILED

2010 DEC -8 AM 9:11

DONNA GILES
DISTRICT COURT CLERK

CGH

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * * *

ROY D. MORAGA,)

Petitioner,)

-vs-

LEGRAND, WARDEN,)

Respondent.)

PETITION FOR WRIT
OF HABEAS CORPUS
(POST-CONVICTION)

INSTRUCTIONS: ACTUAL INNOCENCE CLAIM - Newly Discovered Evidence
Per NRS 34.360; NRS 34.500(2)(3) et. seq.

(1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.

(2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.

(3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

(4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.

(5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing

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

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

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

15 PETITION

16 1. Name of institution and county in which you are presently imprisoned or where and who you
17 are presently restrained of your liberty: HDSP, CLARK COUNTY

18 2. Name the location of court which entered the judgment of conviction under attack: E16th
19 Judicial District Court, Department 8

20 3. Date of judgment of conviction: 6-13-90

21 4. Case number: C 92124

22 5. (a) Length of sentence: 10 yrs CS, 10 yrs CS, Life with CS, Life with
23 out.

24 (b) If sentence is death, state any date upon which execution is scheduled: N/A

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

27 Yes ☐ No ☒ If "Yes", list crime, case number and sentence being served at this time:

28 7. Nature of offense involved in conviction being challenged: Burglary (2 counts)
SEXUAL ASSAULT (2 counts)

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

2 (a) Not guilty X

3 (b) Guilty _____

4 (c) Nolo contendere _____

5 9. If you entered a guilty plea to one count of an indictment or information, and a not guilty plea
6 to another count of an indictment or information, or if a guilty plea was negotiated, give details: _____
7 _____
8 _____

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

10 (a) Jury X

11 (b) Judge without a jury _____

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

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

14 Yes X No _____

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

16 (a) Name of court: NEVADA Supreme Court

17 (b) Case number or citation: 21488

18 (c) Result: Dismissed

19 (d) Date of appeal: 1-18-91

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

21 14.) If you did not appeal, explain briefly why you did not: N/A
22 _____
23 _____

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

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

(a) (1) Name of court: UNITED STATES DISTRICT COURT

(2) Nature of proceedings: Writ of Habeas Corpus / with different case numbers concerning one Petition

(3) Grounds raised : See Attached .

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

Yes ☐ No ☒

(5) Result: Pending

(6) Date of result: N/A

(7) If known, citations of any written opinion or date of orders entered pursuant to each result: N/A

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

(1) Name of Court: Eighth Judicial District Court

(2) Nature of proceeding: Motion to Preserve Evidence

(3) Grounds raised: _____

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

Yes ☒ No ☐

(5) Result: Evidence is Preserved

(6) Date of result: JANUARY 7, 2004

(7) If known, citations or any written opinion or date of orders entered pursuant to each result: NEVADA SUPREME COURT, CASE NO. 42828

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

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

3 (1) First petition, application or motion?

4 Yes ____ No ____

5 Citation or date of decision: _____

6 (2) Second petition, application or motion?

7 Yes ____ No ____

8 Citation or date of decision: _____

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

13 were Appalled

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

17 (a) Which of the grounds is the same: NO

18
19 (b) The proceedings in which these grounds were raised: N/A

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

24 N/A

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

7 U.S. SUPREME COURT AND ADVANCES MADE ON DNA EVIDENCE
8 THAT WOULD PROVE MY INNOCENCE.

9 19. Are you filing this petition more than one (1) year following the filing of the judgment of
10 conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay.
11 (You must relate specific facts in response to this question. Your response may be included on paper
12 which is 8 1/2 x 11 inches attached to the petition. Your response may not exceed five handwritten or
13 typewritten pages in length). NO

14
15 20. Do you have any petition or appeal now pending in any court, either state or federal, as to the
16 judgment under attack?

17 Yes ☒ No ☐

18 If "Yes", state what court and the case number: NINTH CIRCUIT COURT OF
19 APPEALS CASE NO. 08-17721

20 21. Give the name of each attorney who represented you in the proceeding resulting in your
21 conviction and on direct appeal: ROGER HILLMAN; WILLIAM P. HENRY; CARL J.
22 CHRISTENSEN P.D.; ROY GARCIA; MARK BALLIS; DAVID SCHIECK;
23 LINDA BELL; RICHARD PALMA; PAUL TURNER; SAMUEL T. BULL;

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

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

27
28

23. State concisely every ground on which you claim your rights were violated. Summarize briefly the facts supporting each ground, and if necessary, you may attach additional pages which state additional grounds and facts supporting the same.

(a) Ground One: My Conviction and Sentence are in Violation of Nev. Const. Art. 1, 8 and U.S. Constitutional Amends 5, 6, 8, 14 in Violation of Due Process of Law.

Supporting FACTS (tell your story briefly without citing cases or law): See Attached ground ONE. DNA Testing of the Samples Taken will exonerate me of Rape.

"That the Above is based upon the Facts as set Forth in Petitioners ground ONE.

(b) Ground Two: My State Court Conviction and Sentences are Unconstitutional because the evidence will indicate I did not commit the crime and exact DNA Test now exist to exonerate me.

Supporting FACTS (tell your story briefly without citing cases or law): At the Time of my Trial, DNA Testing Did Not exist to prove my innocence and I now request the Testing to be done to exonerate me and Release me From Custody.

(c) Ground Three: I am entitled to Release From Custody pursuant to NRS 34.360 and NRS 34.500 (2)(3) upon the findings of the DNA Test results.

Supporting Facts (tell your story briefly without citing cases or law): NEVADA LAW provides I can pursue DNA Testing under statute of habeas Corpus procedures

(d) Ground Four: _____

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

GROUND ONE

I ALLEGE my state COURT CONVICTION AND Sentence ARE UNCONSTITUTIONAL IN VIOLATION OF NEV. CONST. ART. 1, § 8; UNITED STATES CONSTITUTIONAL AMENDMENTS 5, 6, 8 AND 14; AND AS A RESULT AN INNOCENT MAN IS DEPRIVED OF HIS LIBERTY THAT IS FUNDAMENTALLY UNFAIR AND OFFENDS THE PRINCIPLES OF DUE PROCESS OF LAW. JUST AS DNA EVIDENCE IS USED TO PERSECUTE THE GUILTY, THAT SAME DNA EVIDENCE EXISTS IN THIS FACTUAL SITUATION TO EXONORATE PETITIONER MORAGA, AND RELEASE HIM FROM CUSTODY.

1. ON OR ABOUT THE 5th DAY OF DECEMBER 1989, PETITIONER ROY DANIELS MORAGA (PETITIONER), WAS CHARGED WITH TWO COUNTS OF BURGLARY AND TWO COUNTS OF SEXUAL ASSAULT. ON JUNE 13, 1990 AN AMENDED INFORMATION WAS FILED CHARGING PETITIONER AS A HABITUAL CRIMINAL. AFTER ENTERING A PLEA OF NOT GUILTY, A JURY TRIAL WAS HELD FROM MARCH 12, 1990 UNTIL MARCH 14, 1990. MR. MORAGA WAS SUBSEQUENTLY CONVICTED ON ALL FOUR COUNTS AND HE WAS ADJUDGED A HABITUAL CRIMINAL.

ULTIMATELY, HE WAS SENTENCED TO TWO CONSECUTIVE TEN YEAR SENTENCES PLUS A CONSECUTIVE LIFE SENTENCE WITH THE POSSIBILITY OF PAROLE, PLUS A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE.

2. The petitioner filed for relief seeking DNA Testing of the evidence in this case. On June 13, 1996, through counsel, Mr. MORAGA filed a Supplemental points and Authorities in support of Petition for writ of habeas corpus. Petitioner MORAGA argued that Trial Counsel was ineffective for failing to have DNA Testing performed on the semen and blood samples to establish that he was not the source of the semen found in the "VAGINAL VAULT" of the alleged victim. He also argued that Trial Counsel was ineffective for failing to properly prepare him to testify, and that Trial Counsel was ineffective for failing to interview witnesses concerning his lack of sexual ability while intoxicated. The court denied the petition and found, in part, that because Mr. MORAGA offered the defense of consent at trial, any identification issues which could be resolved through DNA Testing were moot. Findings of fact, conclusions of law Order (9-6-96).

Further, the court determined that trial counsel was not ineffective because a time limit existed for DNA Testing, and waiting beyond that year compromised the integrity of the testing, citing *People v. Karush*, 802 P.2d 278, 298 (CA1 1990).

The court also explained that a defendant must show both a reasonable probability that the evidence was favorable, and that it could be produced. *Id.*

Additionally, the court Found that Mr. MORAGA waived the issues of DNA Testing by NOT raising it in the District Court or on direct Appeal. (See exhibit A).

First: The problem in the History of this case is Mr. Hillman, who was Mr. MORAGA'S Trial Counsel has proven to be an incompetent idiot as an Attorney. In this particular case, Mr. MORAGA told Mr. Hillman that he had consensual sex with the Alleged victim Ms. Hawk approximately four (4) weeks earlier prior to the Alleged Rape and witnesses existed to prove four weeks earlier Ms. Hawk had consensual sexual intercourse with Mr. MORAGA. The witness of this event was the bartender of the Players lounge who told both MORAGA and HAWK to go get a motel room because they were "making out" so heavily in the bar they were drawing attention from other bar patrons. (See exhibit B).

SECONDLY; During Mr. MORAGA'S Testimony at Trial he testified he was in Ms. Hawk's residence the night of the Alleged Rape. The misunderstanding on this point is when Mr. MORAGA was asked about what happened between Ms. Hawk and himself, he was referring to what happened four weeks (prior to) the Alleged Rape and not on the day of the Alleged Rape.

this testimony has been continuously falsified and twisted around by the prosecution to try to convince anybody hearing this case that Mr. MORAÑA admitted to, and testified to having consensual sex with Ms. Hawk on the day of the alleged rape where no sex occurred between the two on that day.

Mr. MORAÑA was so poorly prepared to testify by incompetent counsel that his testimony does not reflect the actual chain of events as it happened, no sexual relation occurred between Ms. Hawk and Mr. MORAÑA on the day of the alleged rape and the testing of the DNA samples will prove that Mr. MORAÑA is innocent of sexual assault.

Thirdly: Further the state district court determined on 9-6-96 that trial counsel was not ineffective because a time limit existed for DNA testing, and waiting beyond that year "compromised" the integrity of the testing, citing People v. Karush, 802 P.2d 278, 298 (CA1 1990). Lets address this issue - Defense counsel was "counsel" for Mr. MORAÑA during the "year" and in addressing this point, Lets go to the United States Supreme Court opinion in District Attorneys Office for the third Judicial District et al v. Osborne, 557 U.S. (2009),

where the Court Addressed the issue of "Newly Available DNA Testing that will prove them to be Actually innocent". Id.

As in this case Osborne, supra in Addressing post conviction statutes; "A (State) ~~prisoner~~ prisoner MAY Challenge his Conviction when "there exists evidence of material Facts, Not previously presented and heard by the court, that requires Vacation of the conviction or sentence in the interests of Justice". Id at 10.

The issue here is Mr. MORAGA did NOT have Sex with the Alleged Victim on the day or night it was Alleged and the DNA Samples Taken From Mr. MORAGA AND MS. HAWK were ONLY Tested for blood Type AND Not the "STR" Testing that is so Accurate it is the standard to persecute the guilty or exonerate the innocent.

This testing does NOT recognize "Timelines" AS this court stated in its denial of relief that "A Timeline existed for DNA Testing" in this case. Instead, the testing that exists today did Not exist at the time of MORAGA'S Trial (1990) and the samples exist today and are in the custody of LVMPD Crime Lab.

IN Closing on this ~~issue~~ ground it must be Noted that at NO Time did the State prove Mr. MORAGA'S guilt. The State simply took Full Advantage of Mr. MORAGA'S incompetent Attorney at Trial then put

Words in Mr. MORAGA's mouth that he never intended and was misunderstood.

Therefore, Mr. MORAGA Respectfully Requests the New PCR/STR Test be conducted to exonerate him of Sexual Assault; under the provisions of NRS 34.500(2)(3).

GROUND TWO

I Alleged my state court conviction and sentences are unconstitutional in violation of Nev. Const. Art 1, 88 and U.S. Const. Amends. 5, 6, 8, 14 because the evidence will indicate Mr. MORAGA did not commit the crime and exact DNA tests now exist to exonerate him.

"Writ of habeas Corpus is Available to every person unlawfully committed, detained, confined or restrained of his liberty." NRS 34.360

"Habeas Corpus Lies to release one who is charged with an act not constituting an offence." See Eureka County Bank, 126 P.2d 655, 35 Nev. 80

1. In this instant case, at the time of Mr. MORAGA's trial in 1990, the precision exact science of PCR/STR DNA testing did not exist.

2. In this case, LVMPD Crime Lab only tested for blood typing.

3. Blood typing does not positively identify a criminal suspect.

4. MR. MORAGA denied having Sexual intercourse with the Alleged Victim ms. HAWK and he Claims today As he did with his Attorney At the Time of his Trial that the Semen Samples taken From ms. HAWK were From a different Source.
5. That MR. MORAGA States he will be exonerated and proven innocent of rape if the Court Allows PCR/STR DNA Testing on the Samples held by LVMPD Crime Lab.
6. that habeas Corpus is AN Appropriate Method For persons seeking Access to evidence For DNA Testing, See Osborne, Id At 2.
7. that MR. MORAGA relies on a right to be released upon proof of Actual innocence', in both State AND Federal Court.
8. That, to deny MR. MORAGA'S request to Conduct DNA testing would result in a state procedure that "offends some [Fundamental] principle of justice" and transgresses any recognized principle of Fundamental fairness in operation as condemned in Medina v. California, 505 U.S. 437, 446, 448.
9. STR testing is extremely discriminating, CAN be used on Small Samples, AND is "Rapidly becoming the Standard" See Future of forensic DNA testing 18, N. 9. See Osborne, Supra AT Footnote 3).

10. That the STR Testing was Technologically impossible at the Time of Mr. MORAGA'S Trial AND NO DNA Tests were conducted on the Samples taken for the Trial other than blood Typing."

11. That Mr. MORAGA Asserts the DNA Samples are evidence of Material Facts, Not previously presented and heard by the Court that requires VACATION of this Conviction in the interests of Justice.

12. That Mr. MORAGA Should be exempt from any of the states procedural default Claims due to "Newly discovered evidence" pursued with due diligence that establishes by Clear and Convincing evidence that Mr. MORAGA is innocent.

13. That a "friend" of Mr. MORAGA has offered to pay for the testing of the DNA provided the Court will recognize the test results based on DNA Testing Standards currently used to persecute the guilty or exonerate the innocent.

14. That this Court is Authorized to issue Mr. MORAGA a remedy under Nevada Law where he can prove his Actual Innocence under Nevada's Post Conviction Statutes.

15. That the State of Nevada cannot prove beyond a Reasonable doubt that Mr. MORAGA is the perpetrator of Rape Against Ms. Hawk.

16. That the Above is based upon the Facts as set forth in petitioners ground one.

17. That an evidentiary hearing is required in this case to ensure due process of law.

18. That, Mr. MORAGA is entitled to a release from custody based upon the findings of the STR DNA testing under Nevada's Habeas Corpus Laws.

GROUND THREE

Mr. MORAGA is entitled to Release from Custody pursuant to NRS 34.500(2)(3) upon the findings of the testing of the DNA Samples.

(1) Petitioner incorporates the facts set forth in ground one and two of this Petition.

(2) NRS 34.360 provides; "Every person unlawfully committed, detained, confined or restrained of his Liberty, under any pretense whatever, may prosecute a writ of habeas Corpus to inquire into the cause of such imprisonment or restraint"

A. In this case, Mr. MORAGA claims he did not have sexual intercourse with Ms. Hawk on the time she alleged it took place, Mr. MORAGA and Ms. Hawk did have consensual sexual intercourse some 4 (four) weeks prior to the alleged Rape.

B. That Mr. MORAGA claims the samples taken from Ms. Hawk (DNA Samples) do not and will not match him and when tested the results will prove the semen samples are from another source other than Mr. MORAGA.

-4 B-

(3) NRS 34.500 provides; "If it appears ~~on~~ ON the return of the writ of habeas Corpus that the petitioner is in custody by virtue of process from any court of this state, or Judge or officer thereof, the petitioner may be discharged in any one of the following cases;

(A) Subsection 2 of NRS 34.500 provides, "When the imprisonment was at first lawful, yet by some act, omission or event, which has taken place afterwards, the petitioner has become entitled to be discharged."

(i) in this case, this claim is exempt from otherwise applicable time limits if "newly discovered evidence" pursued with due diligence, "establishes by clear and convincing evidence that the applicant is innocent."

See District Attorneys Office for Third Judicial District v. Osborne, 557 U.S. (2009).

In this case, the requested tests were technologically impossible at the time of Mr. MORAGA'S trial in 1990 and therefore is subject to newly discovered evidence as the DNA testing is an act and event that is subject to take place afterwards and therefore, Mr. MORAGA will be entitled to discharge pursuant to NRS 34.500(2), (4)

(A) NRS 34.500 Subsection (3) provides that Mr. MORAGA is entitled to discharge from custody "when the process is defective in some manner of substance required by law, rendering it void;"

- 5 B -

(i) IN this case, LVMPD Crime Lab experts took Semen Samples from ms. HAWK'S VAGINA based upon her statements that she had been Sexually Assaulted by mr. MORAGA, mr. MORAGA denies he Sexually Assaulted ms. HAWK and relies upon DNA Testing of the Samples taken from ms. HAWK'S VAGINA to prove his innocence.

This Testing was not Available at the Time of Trial and this test will prove the State no longer has probable cause to incarcerate mr. MORAGA, thus, rendering the Trial process defective and rendering the Judgement Against mr. MORAGA void. (See) Sheriff Clark County v. Roylance, 871 P2d 359, 110 Nev. (1994).

(ii) Where Technological Advances are made on DNA Sample materials, mr. MORAGA believes he has a 4th Amendment right under the United States Constitution for the prosecutor to comply with the standards set forth in Brady v. Maryland, 373 U.S. 83 where the U.S. Supreme Court required prosecutors to disclose material exculpatory evidence to the defendant before Trial. However, in this case the technology did not exist to exonerate mr. MORAGA in 1990, therefore due process demands the principles of fundamental fairness on an actual innocence claim that can determine that innocence by showing new evidence that establishes innocence. See eg. 18 U.S.C. § 3600(2).

IN this case consistent with the Rules under NRS 34.500(3) the discovery of the new DNA Testing Technology is for "Good Cause" (See) Bracy v. Gramley, 520 U.S. 899, 908-909 (1997)

(5) The state did not prove beyond a reasonable doubt that MR. MORAÑA was guilty of the crime of sexual assault.

RELIEF SOUGHT

MR. MORAÑA Respectfully requests pursuant to State and Federal Constitutional Laws that the DNA Test Samples be Tested under STR/PCR or the Advanced DNA Technology that can remove him as the perpetrator Against ms. HAWK and exonerate him of Criminal wrong doing and Release him From Custody.

1 WHEREFORE, Petitioner, prays that the court grant _____
2 relief ti which he may be entitled in this proceeding.

3 EXECUTED at Lovelock Correctional Center
4 on the 10 day of November 2010.

5
6 Roy D. Moraga
Signature of Petitioner

7
8 **VERIFICATION**

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

13
14 Roy D. Moraga
Signature of Petitioner

15
16
17 _____
Attorney for Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Petition for

Writ of habeas Corpus (Post-Conviction)
(Title of Document)

filed in District Court Case number C 92174

☒ 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:
NRS 34.360; NRS 34.500(2)(3) et seq.
(State specific law) Newly Discovered evidence

-or-

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

Roy D. Moraga
Signature

11-10-10
Date

ROY D. MORAGA
Print Name

Petition
Title

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VERIFICATION

Under penalty of perjury, the undersigned declares that he is the petitioner named in the foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and as to such matters he believes them to be true.

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

Petitioner In Pro Se

CERTIFICATE OF SERVICE BY MAIL

I, Roy D. MORAGA, hereby certify, pursuant to N.R.C.P. 5(b), that on this 10 day of the month of November of the year 2010, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Warden LEGRAND
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada

Catherine Cortez Masto
Nevada Attorney General
100 No. Carson Street
Carson City, Nevada 89701-4717

Jim Shirley, ESQ
Pershing County District Attorney
P.O. Box 299
Lovelock, Nevada 89419

(District Attorney of County of Conviction)

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

Petitioner In Pro Se

COPY

RECEIVED

OCT 28 1996

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

NEVADA PUBLIC DEFENDER

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,
9 Plaintiff,

10 -vs-

11 ROY MORAGA
12 #938554

13 Defendant.
14

Case No. C92174
Dept. No. X
Docket K

15 NOTICE OF ENTRY OF ORDER

16 TO: STATE PUBLIC DEFENDER

17 YOU WILL PLEASE TAKE NOTICE that an Order was entered in the above-entitled action,
18 a copy of which is attached hereto.

19 DATED this 28 day of ^{Oct.} ~~September~~, 1996.

20 STEWART L. BELL
21 DISTRICT ATTORNEY
22 Nevada Bar #000477

23 BY Vicki J. Monroe
24 VICKI J. MONROE
25 Deputy District Attorney
26 Nevada Bar #003776
27
28

Exhibit A

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Order is hereby acknowledged this 20 day of October, 1996.

BY [Signature]
309 S. Third St., Fourth Floor
Las Vegas, Nevada 89155

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

FILED

SEP 6 12 50 PM '96

Amelia Johnson
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8 Plaintiff,

9 -vs-

10 ROY MORAGA,
11 #938554

12 Defendant(s).
13

Case No.. C92174
Dept. No. X
Docket K

14 **FINDINGS OF FACT, CONCLUSIONS OF**
15 **LAW AND ORDER**

16 DATE OF HEARING: 7/19/96

17 TIME OF HEARING: 9:00 A.M.

18 THIS CAUSE having come on for hearing before the Honorable Jack Lehman, District Judge,
19 on the 19th day of July, 1996, the Petitioner not being present, represented by DAVID SCHIECK, ESQ.,
20 the Respondent being represented by STEWART L. BELL, District Attorney, by and through VICKI
21 J. MONROE, Deputy District Attorney, and the Court having considered the matter, including briefs,
22 transcripts, arguments of counsel, and documents on file herein, now therefore, the Court makes the
23 following findings of fact and conclusions of law:
24

25 **FINDINGS OF FACT**

26 1. Defendant was arrested for the December 5, 1989, sexual assault and rape of a woman
27 in her home. Defendant plead not guilty and a jury trial was had wherein Defendant was found guilty
28

1 of two counts of Burglary and two counts of Sexual Assault. Thereafter on June 30, 1990, Defendant
2 was sentenced to life in the Nevada State Prison without the possibility of parole after being
3 adjudicated a habitual criminal. Defendant's direct appeal to the Nevada Supreme Court was denied
4 on August 27, 1991. However, the Court remanded Defendant's case to the District Court for
5 resentencing. The Supreme Court concluded that the District Court had erroneously imposed one
6 sentence for multiple offenses.

7 2. On October 21, 1991, Defendant was resentenced in Department X of the Eighth
8 Judicial District to ten years for each of the Burglary counts, to run consecutive to each other, and
9 consecutive to a sentence of life imprisonment without the possibility of parole for Count III - Sexual
10 Assault. Defendant was adjudicated a habitual criminal as to Count IV and sentenced to another
11 consecutive term of life imprisonment without the possibility of parole. Defendant then appealed the
12 second sentencing, specifically contesting the validity of the judgments of conviction used to
13 adjudicate him a habitual criminal. The Nevada Supreme Court denied the same on October 4, 1995.

14 3. On December 5, 1989, between the hours of 1:30 a.m. and 5:30 a.m., Defendant
15 entered the victim's residence located at 1000 Dumont, Apartment 227, Las Vegas. Once inside,
16 Defendant took a woman's Seiko watch and approximately \$25 from a coffee table in the living room,
17 an unknown amount of cash from the victim's bedroom dresser, and a key to the apartment which was
18 laying on a table near the front door. Defendant then left the apartment. At approximately 7:30 a.m.,
19 the victim returned to find the items missing. Las Vegas Metropolitan Police were contacted and a
20 report of the entry submitted.

21 4. Approximately noon of the same day, the victim (a 46 year-old female) was awakened
22 by Defendant knocking at her front door. After informing Defendant that he had awakened her and
23 asking him to leave, the victim returned to her room. Almost two hours later, the victim was
24 awakened by a noise, only to find Defendant outside her bedroom on the stairs. Defendant grabbed
25 the victim and after a brief struggle, the victim was able to momentarily free herself. However,
26 Defendant regained his hold and pushed the victim down the stairs. Thereafter Defendant raped the
27 victim, instructed her to shower and raped her again. When Defendant exited the room, the victim
28 contacted her daughter and requested her to contact the police.

5. Around 2:15 p.m., LVMPD detained Defendant at in the 900 block of Sierra Vista and after a positive identification by the victim, he was arrested and transported to the Clark County Detention Center.

II

CONCLUSIONS OF LAW

6. Defendant, for the first time in his collateral attack, challenges the length of time he was incarcerated before he was brought before a magistrate. Specifically, after remaining silent on the issue in appealing from two judgments of conviction, Defendant now alleges that he was incarcerated some 210 hours before his initial arraignment, and that no probable cause determination was made. Defendant did not preserve this issue below or raise it in his direct appeal and as such, it has been waived. NRS 34.810(1) provides in part:

The court shall dismiss a petition if the court determines that:

(b) The petitioner's conviction was the result of a trial and the grounds for the petition could have been:

- (1) Presented to the trial court;
- (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or post-conviction relief; or
- (3) Raised in any other proceeding that the petitioner has taken to secure relief from his conviction and sentence, unless the court finds both cause for the failure to present the grounds and actual prejudice to the petitioner.

NRS 34.810(3) imposes the burden upon the defendant of proving specific facts that demonstrate good cause for his failure to present such a claim in earlier proceedings and of showing actual prejudice to the defendant. Accordingly, the waiver of claims doctrine mandates the dismissal of Defendant's instant claim. Kimmel v. Warden, 101 Nev. 6, 692 P.2d 1282 (1985); Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983). Defendant's Petition is barren as to why his allegations surrounding probable cause determination were not raised in either of his direct appeals.

7. Defendant took the stand at trial and offered a defense of "consent" to the charges of

1 Sexual Assault. An excerpt from his offered testimony is as follows:

2 PROSECUTOR: Basically, Mr. Moraga, what you are saying to
3 us is you are really confirming everything
4 everybody already testified to. You are just
5 saying that the sex that happened between you
6 and Ms. Hawk was with her consent; is that
7 right?

8 DEFENDANT: That's right. (3 ROA 550).

9 8. Any issues of identification that DNA testing might hope to resolve has been rendered
10 moot by offering the defense of "consent" to the sexual assault. Moreover, Defendant has waived
11 this issue by (1) not preserving it below and (2) not raising the identification in his direct appeal
12 pursuant to NRS 34.810.

13 9. Nor was Defendant's counsel ineffective for not testing DNA evidence at the time of
14 trial. In People v. Kaurish, 802 P.2d 278, 298 (Cal. 1990),¹ a habeas petitioner claimed
15 ineffective representation because his counsel failed to independently test dried stains on
16 impounded clothing. Counsel therein did not know that a time limit existed for testing the
17 material, such that the test results would be reliable: counsel admitted that he did not learn of the
18 time limit until one year after the clothing was impounded. As such, the integrity of any future
19 testing was jeopardized. The California Supreme Court refused to find any prejudice inured to
20 that defendant. The Court noted that more was required than speculation that timely testing
21 would have shown a favorable result: there must have been a *reasonable probability* that such
22 evidence would be produced. Kaurish, at 298. No such reasonable probability can be gleaned
23 from the record herein.

24 10. In his last appeal from the judgment of conviction entered on remand, Defendant
25 specifically challenged the validity of his habitual criminal status. The Nevada Supreme Court
26 specifically denied his contentions and in a Order Dismissing Appeal, affirmed the District Court's
27 conclusion that Defendant was a habitual criminal and the State had met its burden beyond a
28 reasonable doubt. As such, that Order becomes the law of the case and forecloses Defendant's
successive attempt at relief on this issue. Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975).

¹ *cert denied*, Kaurish v. California, 502 U.S. 837, 112 S.Ct. 121 (1990).

1 Defendant duplicates his complaints surrounding his adjudication as a habitual criminal. The Supreme
2 Court confirmed that adjudication and, therefore, the Supreme Court's ruling, issued on Defendant's
3 direct appeal, became the law of this case and forecloses Defendant's ability to revive this claim.

4 11. The United States Supreme Court has clearly established the appropriate test for
5 determining whether a defendant received constitutionally defective counsel. A defendant's burden
6 is two-fold. First, a convicted defendant must show that his counsel's performance was objectively
7 deficient such that counsel was not functioning as the 'counsel' envisioned by Sixth Amendment
8 guarantees. Second, the defendant must show that the deficient performance prejudiced the defendant
9 in a way that effectively deprived him of a fair trial. Strickland v. Washington, 466 U.S. 668, 687,
10 104 S.Ct. 2052, 2064 (1984). Defendant is unable to show any prejudice inured by his assertion that
11 his trial counsel should have moved to suppress a key that was found as the result of a warrantless
12 search. Defendant cannot show that the outcome of his trial would have been different with the
13 suppression of the house key.

14 CONCLUSION

15 Based on the forgoing Findings of Fact and Conclusions of Law, Defendant's Petition for Writ
16 of Habeas Corpus (Post-Conviction) is DENIED.

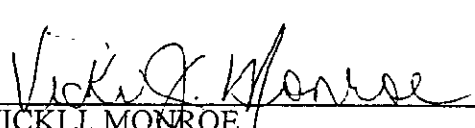
17 ORDER

18 THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall
19 be, and it is, hereby denied.

20 DATED this 28th day of August, 1996.

21
22 
23 DISTRICT JUDGE 

24 STEWART L. BELL
25 DISTRICT ATTORNEY
Nevada Bar #000477

26 BY 
27 VICKI J. MONROE
28 Deputy District Attorney
Nevada Bar #003776

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RECEIPT OF COPY

RECEIPT OF COPY of the above and foregoing Findings of Fact is hereby acknowledged this

6 day of August, 1996.

David M. Schieck
ATTORNEY FOR DEFENDANT

BY David M. Schieck / MT
302 E. Carson #600 1115A
Las Vegas, NV 89101, Nevada

kollins/kl

GROUND FIVE

DEFENSE COUNSEL'S NUMEROUS FAILURES PRIOR TO AND DURING TRIAL DENIED MR. MORAGA HIS RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION.

A defendant in a criminal case is entitled to the effective assistance of counsel during all phases of a criminal proceeding. Because of counsel's errors, as more particularly set forth below, Mr. Moraga did not receive reasonably competent representation and was, therefore, prejudiced because had his lawyer performed competently he would have had a better outcome at trial. Accordingly, this court cannot conclude that the outcome was reliable.

A. Failure to investigate witnesses

During testimony at trial it was shown that Mr. Moraga and Ms. Hawk had met outside of a bar called the Player's Lounge. Ms. Hawk was drinking inside her car and invited Mr. Moraga to join her. Mr. Moraga testified that Ms. Hawk began crying and after comforting her the two began to kiss. In order to continue drinking the two traveled to a different, unnamed, bar a short distance away. While inside this bar Mr. Moraga testified that himself and Ms. Hawk began to "make out" so heavily that the bartender told them to go and get a motel room.

Mr. Moraga's trial attorney was aware that there were witnesses that would be able to support Mr. Moraga's contention that he and Ms. Hawk had been physical prior to the alleged rape. Had Mr. Hiilman, the trial attorney, done some investigation of the case he could have called to testify at trial; the bartender, a person drinking at the bar, a person who was in the parking lot of the Player's Lounge or any other number of people who might have witnessed the pair kissing. Testimony from someone who could support Mr. Moraga's contentions would have been a great boost at trial. Such supportive testimony likely would have changed the outcome of the trial.

B. Failure to prepare Mr. Moraga for testimony

During his testimony at trial Mr. Moraga proved that he was poorly prepared. The first example of this misunderstanding came when Mr. Moraga testified about what had happened while he was in Ms. Hawk's residence the night of the alleged rape. Ms. Hawk asked Mr. Moraga what had happened when the two had gone out drinking a week or so earlier. Earlier in his testimony Mr. Moraga

Roy D. MORAGA 58Y
Lovelock Correctional Center
1200 Prison Road
Lovelock, NEVADA 89149

SIXTH JUDICIAL DISTRICT COURT
PERSHING COUNTY

Roy D. MORAGA,
Petitioner,
vs.

CASE NO. C92124
Dept. NO. _____

LEGRAND, WARDEN,
Defendant.

DECLARATION OF MORAGA

STATE OF NEVADA) ss
PERSHING COUNTY)

I, Roy D. MORAGA, do hereby declare under Penalty of Perjury that I am the Petitioner named Above, and that I have read the foregoing Petition and know the contents thereof, and as to those matters. I believe them to be True and Correct.

1. That I am innocent Pursuant to § 3600(a)(1), and 42 U.S.C. § 14136.

2. That I did Not Commit Sexual Assault upon MS. HAWK.

3. That my DNA exists with the LVMPD Crime Lab.

4. That I Swear under penalty of perjury under NRS 208.165, 28 U.S.C. § 1746 that the DNA evidence taken From myself and MS. HAWK will Not match as me being the Source of the Semen taken From MS. HAWK'S Vagina.

5. That I Swear under penalty of perjury that when the DNA Test results are known it will Show the Semen taken From MS. HAWK'S Vagina that I was Not the Source of the Semen and Prove my innocence.

PURSUANT TO 28 U.S.C. § 1746, NRS 208.165, 3600(a)(1),
AND 42 U.S.C. § 14136.

by Roy D. Moraga

Roy D. MORAGA # 31584

Lovlock Correctional Center

1200 Prison Road

Lovlock, Nevada 89149

Petitioner In Pro Per

Dated this 10 day of November 2010 at
Lovlock Correctional Center.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion To

Proceed IN Forma PAUPERIS
(Title of Document)

filed in District Court Case number C92124

☒ 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:

NRS 12.015(1)
(State specific law)

-or-

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

Roy D. Moraga
Signature

11-10-10
Date

ROY D. MORAGA
Print Name

MOTION
Title

PI 10-0754

FILED

Case No. 092174

Dept. No. 2

2010 DEC -8 AM 9:11

DONNA GILES
DISTRICT COURT CLERK

CEL

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * * *

Roy D. MORAGA,)

Petitioner,)

-vs-

LEGRAND, WARDEN,)

Respondent.)

ORDER TO PROCEED
IN FORMA PAUPERIS

Upon consideration of Petitioners's Application to Proceed
In Forma Pauperis and it appearing that there is not sufficient
income, property or resources with which to commence and
maintain the action, and with good cause appearing:

IT IS HEREBY ORDERED that Petitioner, Roy D. Moraga,
shall be permitted to proceed In Forma Pauperis in this action,
with no fees, costs or securities being necessary towards the
filing or issuance of any writ, process, pleading or papers.

IT IS FURTHER ORDERED that the Sheriff shall make personal
service of any necessary pleadings in this action without fees.

IT IS SO ORDERED.

Dated this 6th day of December, 2010.

[Signature]
District Court Judge

LCC

PI 10-0754

Case No. P9217706
Dept. No. 2

FILED

NOV 18 2010

DONNA GILES
CLERK OF DISTRICT COURT
BY [Signature] DEPUTY
RCUD

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * * *

Roy D. MORAGA 31584

Petitioner.

-vs-

LEBRAND, WARDEN

Respondent.

CERTIFICATE OF INMATE'S
INSTITUTIONAL ACCOUNT

I, the undersigned, do certify that Roy Moraga,
NDOC # 31584, above-named, has a balance of \$ 44.61 on
account to his credit in the prisoners' personal property fund
for his use at Lovelock Correctional Center, in Pershing County.

I further certify that said prisoner owes departmental
charges in the amount of \$ 0 and that the solitary
security to his credit is a savings account established pursuant
to NRS 209.247(5) with a balance of \$ 68.50 which is
inaccessible to him.

Dated this 5th day of November, 2010.

[Signature]
Accounting Technician
Inmate Services Division
Nevada Department of Corrections

Submitted by: Roy D. Moraga # 31584 on 11/2/10

PI 10-0754
Case No. 69217406
Dept. No. 2

FILED

2010 NOV 18 AM 11:55

DONNA GILES
DISTRICT COURT CLERK
Donna Giles

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF PERSHING

* * * * *

Roy D. MORAGA,)
 Petitioner,)
-vs-)
LEGRAND, WARDEN,)
 Respondent.)

APPLICATION TO PROCEED
IN FORMA PAUPERIS

COMES NOW Petitioner, Roy D. MORAGA, in
pro se, and moves the Court for an order granting him leave to
proceed in the above-entitled action without paying the costs
and/or security of proceeding herein.

This motion is made and based upon NRS 12.015 and the
attached affidavit and certificate of inmate's institutional
account.

Dated this 10 day of November, 2010.

Roy D. Moraga
Roy D. MORAGA # 31564
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419
Petitioner In Pro Se

LCC LL FORM 26.012

Affidavit in Support of Application
to Proceed In Forma Pauperis

State of Nevada)
) ss:
County of Pershing)

COMES NOW, Roy D. MORAGA, who first being duly sworn and on my own oath, do hereby depose and state the following in support of my foregoing motion:

(1) Because of my poverty I am unable to pay the costs of the proceedings in the foregoing action or to give security therefore; I am entitled to relief. This application is made in good faith.

(2) I swear that the responses below are true and correct and to the best of my knowledge, information and belief:

(a) I am ✓ am not presently employed. I currently earn salary or wages per month in the following amount at Lovelock Correctional Center or, if I am not presently employed, the date of my last employment and the amount of salary or wages I earned per month were as follows: '30.⁰⁰ to '50.⁰⁰ per month by my Mother

(b) I have NOT received any money from any of the following sources within the past 12 months: business, profession, self-employment, rent payments, pensions, interests or dividends, annuities, insurance payments, gifts or inheritances. Money, if any, placed on my prison account from sources such as family or friends, is in the amount as indicated on the attached Certificate of Inmate's Institutional Account, which reflects the total amount of money in my prison account.

(c) I do NOT own any real estate, stocks, bonds, notes, automobiles or other valuable property, and I do not have any money in a checking account.

(d) I do ✓ do not have persons dependent upon me for support. The person(s) I support, if any, are as follows, with my relationship to them and the amount of my contribution towards their support being as follows: _____

(3) I swear under the penalty of perjury that the above is true and correct and to the best of my personal knowledge, and that the foregoing is rendered without notary per NRS 208.165.

Dated this 10 day of November, 2010.

Roy D. Moraga
Roy D. MORAGA # 31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, NV 89419
Pctitioner In Pro Se

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AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby affirm that the preceding
APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS does not
contain the social security number of any person.

Dated this 10 day of November, 2010.

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

Petitioner In Pro Se

/ / /
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Case #: PI-10-0754

Judge: MONTERO, MICHAEL R

Date Filed: 11/18/10 Department: 02

Case Type: HABCOR HABEAS CORPUS

Title/Caption: Roy D. Moraga
-vs-
Legrand, Warden

Defendant(s)
LEGRAND

Attorney(s)
ATTORNEY GENERAL

Plaintiff(s)
MORAGA, ROY D.

Attorney(s)
PRO PER

Disp/Judgment: XBDT Date: 04/19/11

Filings:

Date	Pty	Filing	Fees
✓11/18/10	P	APPLICATION TO PROCEED IN FORMA PAUPERIS	FILED
✓11/18/10	P	CERTIFICATE OF INMATE'S INSTITUTIONAL ACCOUNT	FILED
✓12/08/10	C	ORDER TO PROCEED IN FORMA PAUPERIS	FILED
✓12/08/10	P	PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION)	FILED
✓12/08/10	P	MOTION FOR APPOINTMENT OF COUNSEL	FILED
✓12/29/10	P	EX PARTE SUPPLEMENTAL MOTION FOR APPOINTMENT OF COUNSEL	FILED
✓2/22/11	P	MOTION FOR JUDICIAL ACTION ON PETITION	FILED
✓2/25/11	C	ORDER TO RESPOND	FILED
✓2/25/11	C	NOTICE OF ENTRY OF ORDER	FILED
✓2/25/11	C	AFFIDAVIT OF MAILING	FILED
✓3/10/11	P	NOTICE OF CHANGE OF ADDRESS	FILED
✓3/18/11	D	NOTICE OF REPRESENTATION OF RESPONDENT	FILED
✓4/04/11	D	MOTION FOR CHANGE OF VENUE	FILED
✓4/18/11	P	OPPOSITION TO STATES MOTION FOR CHANGE OF VENUE	FILED
✓4/19/11	C	ORDER	FILED

Events:

Date	Time Code	Event
11/18/10		FILE PUT IN JUDGE'S BOX
12/30/10		MOTION COUNSEL IN JUDGE'S BOX
2/24/11		CASE FILE RETURNED BY JUDGE WAGNER'S LAW CLERK/NO ORDER
4/04/11		CASE FILE SENT TO JUDGE MONTERO
4/19/11		CASE FILE RETURNED BY JUDGE WAGNER/ORDER FILED
4/19/11		CASE TRANSFERRED TO EIGHTH JUDICIAL DISTRICT PER CT ORDER

LACEY DONALDSON
Clerk and Treasurer

CLERK - TREASURER
Pershing County

CAROL ELERICK
Deputy

DAWN BEQUETTE
Deputy

Date: April 19, 2011

To: Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV. 89155-2311

Please find enclosed:

Case #PI 10-0754
Entitled: Roy D. Moraga vs Robert LeGrand, Warden

This case was ordered to your jurisdiction on April 19, 2011 by the
Honorable Michael R. Montero.

Sincerely,



Carol Elerick
Deputy Court Clerk

cc
Encl.

CERTIFIED MAIL™



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UNITED STATES POSTAGE
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PERSHING COUNTY CLERK AND TREASURER

P.O. Box 820
Loveclerk, NV 89419

To:

Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, NV. 89155-2311

RETURN POSTAGE GUARANTEED

FILED *56*

SEP 19 2011

DISTRICT COURT

CLARK COUNTY, NEVADA

Roy D. MORAGA

Petitioner

CASE NO. ~~A-640265~~ C092174

Dept. NO. 295

[Signature]
CLERK OF COURT

v.s.

ROBERT LEGRAND, WARDEN
Respondent

NOTICE OF CHANGE OF
ADDRESS

PLEASE TAKE NOTICE that the Petitioner,
Roy D. MORAGA, and gives his Notice of
Change of Address to this Court.

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

This notice is based upon All papers, pleadings
and documents Filed in this Action.

Respectfully Submitted,
Roy D. Moraga
Roy D. MORAGA *31584
Petitioner Pro Per

Dated: 9-7-11

RECEIVED
SEP 19 2011
CLERK OF THE COURT

CERTIFICATE OF SERVICE

I, Roy D. MORAGA, hereby Certify, pursuant to NRCP 5(b) that on the 2th day of September 2011, I mailed a True and Correct Copy of the Foregoing Notice of Change of Address to the Following:

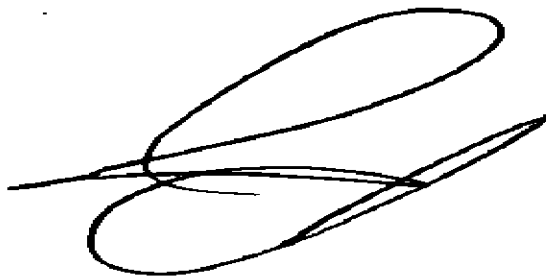
Jeffrey M. CONNER
Deputy Attorney General
100 N. CARSON ST.
CARSON CITY, NV 89701-4717

Clerk of the Court
200 Lewis Ave, 3rd FL.
LAS VEGAS, NV 89155-1160

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

Dated: 9-7-11

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

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

RECEIVED

SEP 07 2011

ICC Law Library

ROY J. MORAGA # 31584
Lovelock Correctional Center
1200 Prison Rd,
Lovelock, Nevada 89419

RECEIVED

20 SEP 2011 PM 31



Clerk of the Court

200 Lewis Ave., 3rd Fl.

LAS VEGAS, NEVADA
81155-1160

23

DISTRICT COURT
FILED
CLARK COUNTY NEVADA C092174

Roy D. MORAGA, FEB 15 1 00 PM CASE NO. A-11-640265-6J

Petitioner, *Am. to Petitioner* Dept. NO. 29

- v -

CLERK OF THE COURT

ROBERT LEGRAND, Warden
Respondent.

MOTION FOR JUDICIAL
ACTION ON PETITION

Petitioner, Roy D. MORAGA, in pro se, Submittes his Motion For Judicial Action on Petition, Moving the Court to take Action on the pending Petition For writ of habeas Corpus, Supplemental Brief on file hercin, in Accordance with the Statutory and decisional Authorities below. This motion is based upon All papers and Pleadings on File, hercin; NRS 34.740 AND NRS 34.745; and the following points and Authorities.

POINTS AND AUTHORITIES

The petition For writ of habeas Corpus was Filed ON December 8, 2010 in Lovelock's Pershing County. A Change OF Venue was Granted AND ON April 29, 2011 the District Court Accepted Jurisdiction of this case. Filing Occurred over 1 year and 2 months Ago; however, the Court has yet to take any Action thereon As Contemplated by NRS 34.740 AND NRS 34.745, which require, inter Alia, that the "Petition must be examined expeditiously" NRS 34.740, followed by a direction to respondent to respond or ANSWER the petition, NRS 34.745 (1) & (2).

RECEIVED
FEB 13 2012
CLERK OF THE COURT

This requirement of Speed is not only a Statutory Command, but is recognized by the courts Towards the effective and prompt Adjudication of habeas Actions and the Serious questions they present.

CARAFAS V. La Vallee, 391 U.S. 234, 88 S.Ct. 1556, 1560 (1968). See Also Peyton V. Rowe, 391 U.S. 54, 88 S.Ct. 1549, 1552 (1968)

(habeas requires "Prompt Adjudication"); Smith V. Idaho, 392 F.3d 350, 356 (9th Cir. 2004) (prompt resolution of prisoner's claims is a principle function of habeas). This court is therefore moved to expeditiously Order Respondents to file a response, or answer and a return to the instant petition so as to satisfy the Authorities Above, and as justice requires.

CONCLUSION

This court should promptly take judicial Action on the pending petition in Accordance with NRS 34.740 and NRS 34.745.

Dated this 6th day of February 2012

Roy D. Moraga

Roy D. MORAGA #31584

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Petitioner IN Pro Se

cl

DISTRICT COURT
FILED
CLARK COUNTY, NEVADA

C092174

ROY D. MORAGA, 15 2 01 PM

CASE NO. A-11-640265-11

Petitioner,

Dept. NO. 29

v.

Debra L. Johnson
CLERK OF THE COURT

ROBERT LEGRAND, Warden

EX PARTE MOTION FOR
APPOINTMENT OF
COUNSEL

Respondent.

COMES NOW Petitioner, ROY D. MORAGA, in Pro Se,
AND moves the court for an Order Appointing
Counsel in the instant Petition for writ of Habeas
Corpus, Supplemental Brief pursuant to NRS §
176.555, NRS 34.360; NRS 34.500(2)(3) et. Seq.
Actual INNOCENCE Claim- Newly Discovered evidence.

This motion is made and Based upon All papers,
pleadings and documents on file herein;

POINTS AND AUTHORITIES

Petitioner is UNABLE to Afford Counsel.

The Substantive issues and procedural
requirements of this case are difficult AND
incomprehensible to Petitioner. Petitioner, due to
his incarceration, CANNOT investigate, take depositions
or otherwise proceed with discovery herein.

Petitioner's Sentence's are; 10 years CS, 10 years CS,
Life with CS and Life without as a habitual Criminal
CS. Counsel would Assist Petitioner with a
clearer presentation of his issues before this court
and would likewise facilitate and ease this court's
task of discerning the issues and adjudicating same
upon their merits.

(1)

3

Discretion lies with the court to Appoint Counsel under NRS 34.750 Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254 (1997). The court is to consider (1) the complexity of the issues; (2) whether Petitioner comprehends the issues; (3) whether Counsel is Necessary to conduct discovery; and (4) the Severity of Petitioner's Sentence. NRS 34.750(1)-(1)(C).

The Sixth Amendment right to Counsel does Not Apply in habeas Corpus Actions. However, 18 U.S.C.S. § 3006A (a) (2) (B) Authorizes a district court to Appoint Counsel to represent a financially eligible habeas petitioner whenever a court determines that the interests of justice so require. The decision to Appoint Counsel lies within the discretion of the court, and Absent an Order for an evidentiary hearing, Appointment is Mandatory only when the Circumstances of a particular case indicate that Appointed Counsel is Necessary to prevent a due process violation.

The Access to the legal Law Library does Not exist at the Lovelock Correctional Center for the inmates to utilize. See Koerschner v. Warden, 508 F. Supp. 2d 849 ~~2007~~ (2007).

DECLARATION OF PETITIONER

I, Roy D. MORAGA, do hereby declare under penalty of perjury that I am the Petitioner, and that the foregoing motion for Appointment of Counsel and the contents of this motion, that I know them to be true and correct, to those matters, I believe them are true.

pursuant to 28 U.S.C. § 1746, NRS 53.045,
NRS 208.165.

Dated this 6th day of February 2012.

Roy D. Moraga

Roy D. MORAGA™ 31584

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nev. 89419

Petitioner Pro Se

(3)

28

DISTRICT COURT

CLARK COUNTY, NEVADA CO92174

ROY D. MORAGA, FEB 15 2 01 PM '12 CASE NO. AH-440265-W

Petitioner, Dept. No 29

-V-

CLERK OF THE COURT

ROBERT LEGRAND, Warden AFFIDAVIT OF
Respondent PETITIONER

I, Roy D. MORAGA, do hereby Swear under penalty of perjury that I make this Affidavit in Support of the Motion For Judicial Action on Petition, and the Supplemental Brief - 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

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby Affirm that the preceding MOTION For Judicial Action ON Petition, AND EX PARTE MOTION FOR Appointment of Counsel Does NOT Contain the Social Security Number of any person.
Dated this 6th day of February 2012.

Roy D. Moraga

Roy D. MORAGA 31584

Petitioner IN Pro Se

CERTIFICATE OF SERVICE

I, Roy D. MORAGA, hereby Certify, pursuant to NRC P 5(b) that on this 6th day of February 2012, I mailed a True and Correct Copy of the Foregoing "Motion For Judicial Action ON Petition, EX Parte Motion For Appointment of Counsel." by depositing it in the Lovelock Correctional Centers Legal Library, First-Class Postage, Fully prepaid Addressed as follows:

Steven D. Grierson,
Clerk of the Court
200 Lewis Ave. 3rd Floor
Las Vegas, NV 89155-1160

Office of the Attorney General
100 N. CARSON St.
CARSON City, NV 89201-4217

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

Respectfully Submitted,
Roy D. Moraga
Roy D. MORAGA #31584
Petitioner Pro Se

Name Roy D. MORAGA 31584
Address 1200 Prison Road
City Love Lock State NEVADA
Email _____
Telephone _____

FILED

MAR 14 1 30 PM '12

Ann L. Schum
CLERK OF THE COURT

FILED
FEB 28 2 50 PM '12
DATE
Ann L. Schum
CLERK OF THE COURT

District Court
Clark County, Nevada

X Roy D. MORAGA,
Petitioner,
Plaintiff,
vs.
X ROBERT LEGRAND, Warden
Respondent,
Defendant.

C092174
Case No.: A-11-640265-4
Department: 29

Notice of Motion

Please take notice that the hearing on Motion For Judicial Action on
Petition, EX PARTE Motion For Appointment of Counsel
will be heard on April 20 ²⁰¹² ~~2011~~ in Department 5 Floor _____ Courtroom 15 b
at the hour of 9:00 AM/PM.

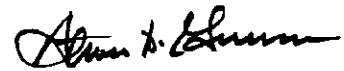
Dated this _____ day of _____, 2011

X Roy D. Moraga

RECEIVED
MAR 13 2012
CLERK OF THE COURT

Notice of Motion - 1

RECEIVED
FEB 28 2012
CLERK OF THE COURT



CLERK OF THE COURT

1 **RSPN**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES R. SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

7
8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 ROY MORAGA,
14 #0938554

15 Defendant.

C092174

CASE NO: ~~A-11-640265-W~~

DEPT NO: V

16
17 **STATE'S RESPONSE TO DEFENDANT'S MOTION FOR JUDICIAL ACTION AND**
18 **OPPOSITION TO DEFENDANT'S MOTION TO APPOINT COUNSEL**

19 DATE OF HEARING: APRIL 20, 2012
20 TIME OF HEARING: 8:30 A.M.

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through JAMES R. SWEETIN, Chief Deputy District Attorney, and
23 hereby submits the attached Points and Authorities in Response to Defendant's Motion for
24 Judicial Action and Opposition to Defendant's Motion to Appoint Counsel.

25 This response is made and based upon all the papers and pleadings on file herein, the
26 attached points and authorities in support hereof, and oral argument at the time of hearing, if
27 deemed necessary by this Honorable Court.

28 //

//

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 9, 1990, Roy Moraga (hereinafter "Defendant") was charged by way of
4 Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of
5 Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Defendant entered a
6 plea of not guilty and his case proceeded to trial. Defendant was found guilty of all counts.
7 On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was
8 sentenced to Life without the possibility of parole under the "large" habitual criminal statute,
9 NRS 207.010. Judgment of Conviction was filed on July 7, 1990.

10 Defendant timely appealed from his Judgment of Conviction. On August 27, 1991,
11 the Nevada Supreme Court affirmed Defendant's conviction but remanded for the district
12 court to resentence Defendant on the underlying counts rather than solely under the habitual
13 criminal statute. Remittitur issued on September 17, 1991.

14 Pursuant to the Nevada Supreme Court's Remand Order, on August 27, 1991, the
15 district court resented Defendant to the following: as to Count I – ten (10) years in the
16 Nevada Department of Corrections ("NDC"); as to Count II – ten (10) years in NDC
17 consecutive to Count I; as to Count III – Life with parole eligibility beginning after five (5)
18 years had been served, consecutive to Count II; and as to Count IV – pursuant to NRS
19 207.010, Life without the possibility of parole, consecutive to Count III. The Amended
20 Judgment of Conviction was filed on November 13, 1991.¹

21 Defendant again appealed his sentence, and on October 4, 1995, the Nevada Supreme
22 Court dismissed Defendant's appeal. Remittitur issued on October 24, 1995.

23 On February 26, 1996, Defendant filed his first Petition for Writ of Habeas Corpus
24 (Post-Conviction). Subsequently, Defendant filed numerous Supplements. The State
25 responded on June 27, 1996. On September 6, 1996, the district court filed its Findings of
26 Fact, Conclusions of Law and Order denying Defendant's Petition. Defendant appealed, and

27
28

¹ A Second Amended Judgment of Conviction was filed on September 29, 1993 to reflect one hundred eighty (180) days credit for time served.

1 on April 20, 1999, the Nevada Supreme Court dismissed his appeal. Remittitur issued on
2 May 18, 1999.

3 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on
4 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.
5 The district court filed its Findings of Fact, Conclusions of Law and Order dismissing
6 Defendant's Petition on February 8, 2007. Defendant appealed, and on September 13, 2007,
7 the Nevada Supreme Court affirmed. Remittitur issued on September 11, 2007.

8 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on
9 December 8, 2010. However, Defendant's third Petition was filed in the wrong court. When
10 the Petition was transferred to the Eighth Judicial District Court, it was assigned Case No.
11 11A640265-W. As a result, Defendant's Petition never came before the court. On February
12 8, 2012, Defendant filed the instant Motion for Judicial Action seeking to have his Petition
13 heard along with a Motion to Appoint Counsel. The State's response is as follows.

14 **ARGUMENT**

15 **I. THE STATE CONCURS WITH DEFENDANT'S MOTION FOR** 16 **JUDICIAL ACTION**

17 As Defendant's Petition was assigned a case number which resulted in his Petition
18 never having been heard, the State concurs that a hearing must be set on this matter.
19 Therefore, pursuant to NRS 34.745, the State respectfully requests that this court set a
20 hearing date at least forty-five (45) days out to allow the State to submit a Response to
21 Defendant's Petition.

22 **II. DEFENDANT IS NOT ENTITLED TO APPOINTED COUNSEL**

23 In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court
24 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.
25 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court
26 similarly held: "[t]he Nevada Constitution...does not guarantee a right to counsel in post-
27 conviction proceedings, as we interpret the Nevada Constitution's right to counsel provision
28 as being coextensive with the Sixth Amendment to the United States Constitution."

1 NRS 34.750 provides, in pertinent part:

2 “[a] petition may allege that the Defendant is unable to pay the
3 costs of the proceedings or employ counsel. If the court is
4 satisfied that the allegation of indigency is true **and the petition
5 is not dismissed summarily**, the court may appoint counsel at
6 the time the court orders the filing of an answer and a return. In
7 making its determination, the court may consider whether:

8 (a) The issues are difficult;

9 (b) The Defendant is unable to comprehend the proceedings; or

10 (c) Counsel is necessary to proceed with discovery.”

11 (Emphasis added).

12 Under NRS 34.750, it is clear that the court has discretion in determining whether to
13 appoint counsel. McKague specifically held that with the exception of NRS 34.820(1)(a)
14 (entitling appointed counsel when petitioner is under a sentence of death), one does not have
15 “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings.
16 McKague, 112 Nev. at 164. The Nevada Supreme Court has observed that a Defendant
17 “must show that the requested review is not frivolous before he may have an attorney
18 appointed.” Peterson v. Warden, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute
19 NRS 177.345(2)).

20 Defendant has not made any showing, substantive or otherwise, that a review of his
21 case would not be frivolous pursuant to Peterson. In fact, Defendant does not even attempt to
22 show why a review of his case would not be frivolous. Furthermore, Defendant has not
23 shown that the issues are difficult or counsel is necessary pursuant to NRS 34.750, nor has
24 he shown why his untimely Petition will not be dismissed summarily pursuant to NRS
25 34.726. Because Defendant has not met the threshold test pursuant to NRS 34.750 and
26 Peterson, he is not entitled to have counsel appointed, and his motion should be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that this court deny Defendant's Motion to Appoint Counsel and set a hearing date on Defendant's Petition for Writ of Habeas Corpus (Post-Conviction).

DATED this 23rd day of March, 2012.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JAMES R. SWEETIN
JAMES R. SWEETIN
Chief Deputy District Attorney
Nevada Bar #005144

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 23rd day of March, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY MORAGA, BAC#31584
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NV 89419

/s/ HOWARD CONRAD
Secretary for the District Attorney's Office

hjc/SVU

DISTRICT COURT C092174
CLARK COUNTY, NEVADA FILED
THE STATE OF NEVADA,

Plaintiff,

- V.S. -

Roy MORAGA,
#0938554

Defendant.

CASE NO: A-11-640265-W.

Dept. NO: V

MOTION FOR ENLARGEMENT
OF TIME

(First Request)

Defendant, Roy MORAGA, in pro se, Submits his
MOTION For Enlargement of Time, Moving this
Court to grant him an additional 45 days
to Serve and File his Reply to the State's
Opposition to defendant's Motion to Appoint
Counsel.

This motion is made and based upon All papers,
pleadings and documents on file herein; and
the Attached Affidavit of Defendant.

Dated this 2nd day of April 2012.

Roy D. Moraga

RECEIVED

APR 09 2012

CLERK OF THE COURT

RECEIVED

APR - 8 2012

CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY NEVADA
THE STATE OF NEVADA,
Plaintiff,

-VS-

Roy MORAGA,
0938554

CASE NO: A-11-646265-W
Dept. NO: V

Defendant.

AFFIDAVIT OF DEFENDANT

I, Roy D. MORAGA, do hereby Swear under penalty
of perjury, and that I make this Affidavit in
Support of my Motion for Enlargement of Time,
1. that I am the defendant in this Action.

2. that there is NO Access to the Legal Law Library at
Lovelock Correctional Center for me to utilize.

3. that I need Additional Time to File legal papers.

that 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

CERTIFICATE OF SERVICE BY MAIL

Pursuant to N.R.C.P. Rule 5(b), I hereby Certify that I am the defendant named herein and that on this 2nd day of April 2012, I mailed a True and Correct Copy of the foregoing document to the following:

District Court Clerks Office
Clerk of the Court, Steve D. Grierson
200 Lewis Ave, 3rd Floor
LAS VEGAS, NEVADA 89101

James R. Sweetin
Chief Deputy District Attorney
200 Lewis Ave
LAS VEGAS, NV 89155-2212

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

By: Roy D. Moraga
Roy D. MORAGA # 31584

MOT
Roy D. MORAGA #31584
LOVELOCK CORRECTIONAL CENTER
1200 PRISON ROAD
LOVELOCK, NEVADA 89419

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA

Respondent,

CASE NO: A-11-640265-W

-VS-

Dept. NO: V

Roy MORAGA,

#0938554

Petitioner.

MOTION FOR APPOINTMENT
OF COUNSEL

COMES NOW Petitioner, Roy MORAGA, in Pro Se,
AND moves the court for an order appointing counsel
in the instant Petition for writ of Habeas Corpus
(post-conviction).

This motion is based upon NRS 34.750; All
papers and documents on file herein; and the points
and authorities below.

POINTS AND AUTHORITIES

Petitioner is unable to afford counsel. See Application
to proceed In Forma Pauperis on file herein.

The substantive issues and procedural requirements
of this case are difficult and incomprehensible to
Petitioner.

Petitioner, due to his incarceration, cannot investigate,
take depositions or otherwise proceed with discovery
herein.

Petitioner's Sentence is: Count I - 10 years consecutive
Count II - 10 years consecutive, Count III - 5 years to life
consecutive, Count IV Life without habitual criminal
consecutive.

There Are Additional Facts in Support of this Motion Attached hereto on Separate page(s).

Counsel would assist Petitioner with a clearer presentation of his issues before this Court and would likewise facilitate and ease this Court's task of discerning the issues and adjudicating same upon their merits.

Discretion lies with the Court to Appoint Counsel under NRS 34.750. Crump v. Warden, 113 Nev. 293, 934 P.2d 247, 254 (1997). The Court is to consider: (1) the complexity of the issues; (2) whether Petitioner comprehends the issues; (3) whether Counsel is necessary to conduct discovery; and (4) the severity of Petitioner's sentence. NRS 34.750 (1)(c).

Under similar discretionary standards, Federal Courts are encouraged to Appoint Counsel when the interests of justice so require - a showing which increases proportionately with the increased complexities of the case and penalties involved in the conviction.

Chaney v. Lewis, 801 F.2d 1191, 1196 (9th Cir. 1986). Attorneys should be Appointed for indigent petitioners who cannot "adequately present their own cases."

Jeffers v. Lewis, 68 F.3d 295, 297-98 (9th Cir. 1995). Although Petitioner need meet but one (1) of the enumerated criteria of NRS 34.750 in order to merit Appointment of Counsel he meets all of them. He also presents a classic example of one meriting Counsel under the interest of justice test bespoken by the Ninth Circuit. Indeed, Petitioner's

Sentence, coupled with the other Factors set Forth Above, demonstrate that Appointment of Counsel to him would Not only Satisfy justice, but Fundamental Fairness, As Well.

CONCLUSION

For the reasons set Forth Above, the Court Should Appoint Counsel to represent Petitioner in AND For All Further proceedings in this habeas Corpus Action.

Dated this 2nd day of April 2012

Roy D. Moraga

Roy D. MORAGA* 31584

Lovelock Correctional Center

1200 Prison Road

Lovelock, Nevada 89419

Petitioner TN Pro Se

CERTIFICATE OF SERVICE

I, do certify that I mailed a True and Correct Copy of the Foregoing Motion For Appointment of Counsel to the below Address on this 2nd day of April, 2012 by Placing Same in the U.S. Mail via prison Law Library staff: District Court Clerks Office

Clerk of the Court, Steve D. Grierson

200 Lewis Ave, 3rd Floor

LAS VEGAS, NEV. 89101

James R. Sweetin

Chief Deputy District Attorney

200 Lewis Ave

LAS VEGAS, NEV. 89155-2212

By: Roy D. Moraga

AFFIRMATION PURSUANT TO NRS 239B.030

The undersigned does hereby Affirm that the preceding
MOTION FOR APPOINTMENT OF COUNSEL DOES
NOT CONTAIN the Social Security Number of ANY
person.

Dated this 2nd day of April 2012.

Roy D. Moraga

Roy D. MORAGA #31584

Petitioner In Pro se

Memorandum

Points & Authorities

This request For the Assignment of Counsel is based upon Lovelock Correctional Center's denial of access to the courts, through the lack of physical access to the Law Library, and the lack of meaningful Assistance by prison officials to file legal papers, and the "pager" or "runner" System employed, and the lack of legal assistants actually trained in the Law.

I.

Petitioner is presently incarcerated at the Lovelock Correctional Center under Sentence of the court. Petitioner has NO physical access to a law Library, AND CANNOT obtain "active Assistance" of a person with some actual meaningful training in the Law. Lovelock Correctional Center employs a "pager" or "runner" System which does require petitioner to know what cases he will need in advance before ordering, and then the case is a Computer generated printout.

Petitioner asserts that he is not trained in the law, has NO training in filling out petitions, briefs or motions, and is unable to find assistance from any prison authorities to help in the preparation and filing of my meaningful legal papers.

(1)

"It remains firmly established law that 'the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.'" Koerschner v. Warden, 508 F. Supp. 2d 849 (2007); Lewis v. Casey, 518 U.S. 343, 346, 116 S.Ct. 2174, 2177 (1996); (Quoting Bounds, 430 U.S. at 828, 97 S.Ct. at 1498); See also Lewis, 518 U.S. at 356, 116 S.Ct. at 2182.

Lovelock Correctional Center is denying and violating petitioner's Fifth USCA right to due process, AND Fourteenth USCA rights to due process/equal protection of the law when he could find no assistance from any prison authorities to help in the preparation and filing of any meaningful papers. Lovelock Correctional Center is denying this petitioner access to the courts, by the denial of physical access to the law library, and the employing of a "pager" or "runner" system that requires advance knowledge of the case to be ordered and reviewed, AND Lovelock Correctional Center lacks adequate and meaningful assistance of persons trained in the law. The best Lovelock Correctional Center can offer in a person trained in the law is an inmate whom is "self-taught", disciplinary infraction free for 12 months and has a high school, 12th grade education.

(2).

Since 2007, when Koerschner v. Warden, 508 F.Supp. 2d 849 (2007) was decided, Lovelock Correctional Center's prison authorities/administration has done nothing to fix and upgrade these problems. As a matter of fact, new problems have arisen. Inmates may no longer access out of state Pacific Reporter cases. Inmates at Lovelock Correctional Center whom do not know the law, must rely on other inmates who claim to know something about the law, usually to their detriment.

These issues of denial and lack of access to the courts by Lovelock Correctional Center has been addressed, yet the State of Nevada refuses to change it's practices. IN Koerschner v. Warden, 508 F.Supp. 2d 849, at 859 States:

The paging system now being employed at Lovelock arguably may be more restrictive and inadequate than those found constitutionally deficient in past cases. The policy not only limits an inmate such as (508 F. Supp. 2d 860) limiting petitioner to five (now ten) specifically identified cases or items per request, but it further provides that the inmate may not keep a printout of a case more than three days (now ten days) and may not have more than five cases (now ten cases) or other legal materials in his cell at any time. Over and above the difficulty of knowing specifically what to request in advance, it would be exceedingly difficult for anyone, much less a lay inmate, to prepare and file meaningful legal papers to present

(3)

CONSTITUTIONAL Claims under such restrictions on Access to, retention, and use of Supporting Authority. Moreover, even for an inmate who knows what he needs to see in advance, he must attempt to convey his request through and to persons who potentially have attained the reading level only of a Freshman (now Senior) in high School. Worse yet, if the inmate does not know what Specific Citations or materials to ask for in advance, his only recourse is to ask for assistance from a person who may only have a Ninth grade (now 12th grade) reading level and a clean recent disciplinary record as his qualifications, who then will ask another similarly "qualified" inmate in the not improbable event that he does not know the answer.

Petitioner relies on the description of Lovelock Correctional Center contained in Koerschner v. Warden, 508 F. Supp. 2d 849 (2007) at 861 States:

The Court therefore is not sanguine that the Lovelock procedures satisfy the minimum constitutional standard under Bonds and Lewis of providing adequate access to the courts by assisting inmates "in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law." The Lovelock procedure quite arguably provides the appearance of both but the substance of neither.

(4)

Access to courts is constitutional right, grounded in the First Amendment. Chappell v. Rich, 340 F.3d 1279 (2003). This right guarantees the right to redress all grievances, combined with the Fifth and Fourteenth U.S.C.A. rights to due process and equal protection. The Fifth U.S.C.A. right to due process guarantees the opportunity to be heard at a meaningful time and in a meaningful manner. Armstrong v. Monzo, 380 U.S. 545, 85 S.Ct. 1187 (1965); Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 892 (1976).

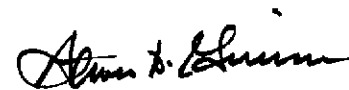
The Fourteenth U.S.C.A. rights to due process / equal protection Clause essentially requires that all persons similarly situated (inmate class) be treated alike. City of Cleburne v. Cleburne Living Center, 473 U.S. 432, 105 S.Ct. 3249 (1985).

Without the valuable resources of physical access to a law library, and meaningful assistance petitioner will be prejudiced by Lovelock Correctional Center's prison authorities in not being able to file meaningful legal papers. Assignment of counsel is hereby requested.

(5)

Roy D. MORAÑA* 31584
Lovelock Correctional Center
1200 Prison Road
Lovelock, Nevada 89419





CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #5144
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ROY MORAGA,
#0938554

Defendant.

CASE NO: 11-A640265-2
(89-C092174)

DEPT NO: VI

**STATE'S OPPOSITION TO DEFENDANT MOTION FOR ENLARGEMENT OF
TIME**

DATE OF HEARING: April 20, 2012
TIME OF HEARING: 8:30 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through JAMES SWEETIN, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in State's Opposition to Defendant's Motion For Enlargement Of Time.

This Opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2
3 **STATEMENT OF THE CASE**

4 On January 9, 1990, Roy Moraga (hereinafter "Defendant") was charged by way of
5 Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of
6 Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Defendant entered a
7 plea of not guilty and his case proceeded to trial. Defendant was found guilty of all counts.
8 On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was
9 sentenced to Life without the possibility of parole under the "large" habitual criminal statute,
10 NRS 207.010. Judgment of Conviction was filed on July 7, 1990.

11 Defendant timely appealed from his Judgment of Conviction. On August 27, 1991,
12 the Nevada Supreme Court affirmed Defendant's conviction but remanded for the district
13 court to resentence Defendant on the underlying counts rather than solely under the habitual
14 criminal statute. Remittitur issued on September 17, 1991.

15 Pursuant to the Nevada Supreme Court's Remand Order, on October 21, 1991, the
16 district court resented Defendant to the following: as to Count I – ten (10) years in the
17 Nevada Department of Corrections ("NDC"); as to Count II – ten (10) years in NDC
18 consecutive to Count I; as to Count III – Life with parole eligibility beginning after five (5)
19 years had been served, consecutive to Count II; and as to Count IV – pursuant to NRS
20 207.010, Life without the possibility of parole, consecutive to Count III. The Amended
21 Judgment of Conviction was filed on November 13, 1991.¹

22 Defendant again appealed his sentence, and on October 4, 1995, the Nevada Supreme
23 Court dismissed Defendant's appeal. Remittitur issued on October 24, 1995.

24 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus
25 (Post-Conviction). Subsequently, Defendant filed numerous Supplements. The State
26 responded on April 1, 1996. On September 6, 1996, the district court filed its Findings of

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28

¹ A Second Amended Judgment of Conviction was filed on September 29, 1993 to reflect one hundred eighty (180) days credit for time served.

1 Fact, Conclusions of Law and Order denying Defendant's Petition. Defendant appealed, and
2 on April 20, 1999, the Nevada Supreme Court dismissed his appeal. Remittitur issued on
3 May 18, 1999.

4 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on
5 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.
6 The district court filed its Findings of Fact, Conclusions of Law and Order dismissing
7 Defendant's Petition on February 8, 2007. Defendant appealed, and on August 16, 2007, the
8 Nevada Supreme Court affirmed. Remittitur issued on September 11, 2007.

9 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on
10 December 8, 2010. However, Defendant's third Petition was filed in the wrong court. When
11 the Petition was transferred to the Eighth Judicial District Court, it was assigned Case No.
12 11A640265-W. As a result, Defendant's Petition never came before the court. On February
13 8, 2012, Defendant filed a Motion for Judicial Action seeking to have his Petition heard
14 along with a Motion to Appoint Counsel. The State filed a Response to Defendant's Motion
15 for Judicial Action and Motion to Appoint Counsel, concurring with Defendant that his
16 Petition must be placed on calendar but opposing his Motion to Appoint Counsel.

17 On April 20, 2012, Defendant filed the instant Motion for Enlargement of Time. The
18 State's opposition follows.

19 **ARGUMENT**

20 **I. DEFENDANT IS NOT ENTITLED TO ENLARGEMENT OF TIME**

21 Defendant seeks an enlargement of time in order to file a Reply to the State's
22 Opposition to Defendant's Motion for Appointment of Counsel. Specifically, Defendant is
23 requesting an additional forty-five (45) days to complete this relatively simple motion.
24 However, Defendant fails to provide good cause for his request. See State v. Nelson, 118
25 Nev. 399, 46 P.3d 1232 (2002). As such, Defendant's Motion must be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that this court deny Defendant's Motion for Enlargement of Time and Motion to Appoint Counsel.

DATED this 17th day of April, 2012.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JAMES SWEETIN

JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #5144

CERTIFICATE OF MAILING

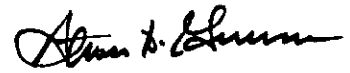
I hereby certify that service of the above and foregoing, was made this 17th day of April, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY D. MORAGA BAC #31584
LOVELOCK CORRECTIONAL CENTER
1200 PRISON RD
LOVELOCK, NV 89419

/s/ J. MOTL

Secretary for the District Attorney's Office

jg/JS/jm



CLERK OF THE COURT

1 **OPPS**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JAMES SWEETIN
6 Chief Deputy District Attorney
7 Nevada Bar #005144
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

10 ROY MORAGA,
11 #0938554, Petitioner,

12 -vs-

13 ROBERT LEGRAND, Warden,
14 Lovelock Correctional Center

15 Respondent.

C 092174

CASE NO: ~~11-A640265-2~~

DEPT NO: V

16
17 **STATE'S OPPOSITION TO DEFENDANT MOTION**

18 **FOR ENLARGEMENT OF TIME**

19 DATE OF HEARING: APRIL 20, 2012

20 TIME OF HEARING: 8:30 A.M.

21 COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County
22 District Attorney, through JAMES SWEETIN, Chief Deputy District Attorney, and hereby
23 submits the attached Points and Authorities in State's Opposition to Defendant's Motion for
24 Enlargement of Time.

25 This Opposition is made and based upon all the papers and pleadings on file herein,
26 the attached points and authorities in support hereof, and oral argument at the time of
27 hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On January 9, 1990, Roy Moraga (hereinafter "Defendant") was charged by way of
4 Information with two (2) counts of Burglary (Felony – NRS 205.060) and two (2) counts of
5 Sexual Assault (Felony – NRS 200.364, 200.366). On January 11, 1990, Defendant entered a
6 plea of not guilty and his case proceeded to trial. Defendant was found guilty of all counts.
7 On June 13, 1990, pursuant to an Amended Information filed the same day, Defendant was
8 sentenced to Life without the possibility of parole under the "large" habitual criminal statute,
9 NRS 207.010. Judgment of Conviction was filed on July 7, 1990.

10 Defendant timely appealed from his Judgment of Conviction. On August 27, 1991,
11 the Nevada Supreme Court affirmed Defendant's conviction but remanded for the district
12 court to resentence Defendant on the underlying counts rather than solely under the habitual
13 criminal statute. Remittitur issued on September 17, 1991.

14 Pursuant to the Nevada Supreme Court's Remand Order, on October 21, 1991, the
15 district court resented Defendant to the following: as to Count I – ten (10) years in the
16 Nevada Department of Corrections ("NDC"); as to Count II – ten (10) years in NDC
17 consecutive to Count I; as to Count III – Life with parole eligibility beginning after five (5)
18 years had been served, consecutive to Count II; and as to Count IV – pursuant to NRS
19 207.010, Life without the possibility of parole, consecutive to Count III. The Amended
20 Judgment of Conviction was filed on November 13, 1991.¹

21 Defendant again appealed his sentence, and on October 4, 1995, the Nevada Supreme
22 Court dismissed Defendant's appeal. Remittitur issued on October 24, 1995.

23 On February 20, 1996, Defendant filed his first Petition for Writ of Habeas Corpus
24 (Post-Conviction). Subsequently, Defendant filed numerous Supplements. The State
25 responded on April 1, 1996. On September 6, 1996, the district court filed its Findings of
26 Fact, Conclusions of Law and Order denying Defendant's Petition. Defendant appealed, and

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¹ A Second Amended Judgment of Conviction was filed on September 29, 1993 to reflect one hundred eighty (180) days credit for time served.

1 on April 20, 1999, the Nevada Supreme Court dismissed his appeal. Remittitur issued on
2 May 18, 1999.

3 Defendant filed his second Petition for Writ of Habeas Corpus (Post-Conviction) on
4 January 10, 2006. The State filed a Response and Motion to Dismiss on February 27, 2006.
5 The district court filed its Findings of Fact, Conclusions of Law and Order dismissing
6 Defendant's Petition on February 8, 2007. Defendant appealed, and on August 16, 2007, the
7 Nevada Supreme Court affirmed. Remittitur issued on September 11, 2007.

8 Defendant filed his third Petition for Writ of Habeas Corpus (Post-Conviction) on
9 December 8, 2010. However, Defendant's third Petition was filed in the wrong court. When
10 the Petition was transferred to the Eighth Judicial District Court, it was assigned Case No.
11 11A640265-W. As a result, Defendant's Petition never came before the court. On February
12 8, 2012, Defendant filed a Motion for Judicial Action seeking to have his Petition heard
13 along with a Motion to Appoint Counsel. The State filed a Response to Defendant's Motion
14 for Judicial Action and Motion to Appoint Counsel, concurring with Defendant that his
15 Petition must be placed on calendar but opposing his Motion to Appoint Counsel.

16 On April 20, 2012, Defendant filed the instant Motion for Enlargement of Time. The
17 State's opposition follows.

18 **ARGUMENT**

19 **I. DEFENDANT IS NOT ENTITLED TO ENLARGEMENT OF TIME**

20 Defendant seeks an enlargement of time in order to file a Reply to the State's
21 Opposition to Defendant's Motion for Appointment of Counsel. Specifically, Defendant is
22 requesting an additional forty-five (45) days to complete this relatively simple motion.
23 However, Defendant fails to provide good cause for his request. See State v. Nelson, 118
24 Nev. 399, 46 P.3d 1232 (2002). As such, Defendant's Motion must be denied.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that this court deny Defendant's Motion for Enlargement of Time and Motion to Appoint Counsel.

DATED this 17th day of April, 2012.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565

BY /s/ JAMES SWEETIN

JAMES SWEETIN
Chief Deputy District Attorney
Nevada Bar #5144

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 17th day of April, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ROY D. MORAGA BAC #31584
LOVELOCK CORRECTIONAL CENTER
1200 PRISON RD
LOVELOCK, NV 89419

/s/ J. MOTL

Secretary for the District Attorney's Office

jg/JS/jm

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 Nevada

Attorney
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 June 14, 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 eight with pages numbered 1342 through 1449.

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 19 day of June 2013.

Steven D. Grierson, Clerk of the Court



Teodora Jones, Deputy Clerk