

No. C-263359

Dept. No. 8

FILED

NOV 08 2012

IN THE 8th JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR
THE COUNTY OF CLARK

Electronically Filed
Nov 09 2012 02:52 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MANUEL WINN

Petitioner/Plaintiff.

v.

STATE OF NEVADA.

Respondent/Defendant.

10C263359
NOASC
Notice of Appeal (criminal)
1995896



NOTICE OF APPEAL

Notice is hereby given that MANUEL WINN, Petitioner/Defendant above named,
hereby appeals to the Supreme Court of Nevada from the final judgment/order
(DENYING PRO. PER. PETITION FOR WRIT OF HABEAS CORPUS)
entered in this action on the 10 day of Oct., 2012.

Dated this 21 day of Oct., 2012.

Appellant
Ely State Prison
P.O. Box 1989
Ely, Nevada 89301-1989

RECEIVED

NOV 08 2012

CLERK OF THE COURT

1 of 9

Here APPEALANT, MANUEL WINN, seeks to
APPEAL to the SUPREME COURT OF NEVADA,
THE FINAL JUDGEMENT / ORDER, OF THE
8th JUDICIAL DISTRICT COURT, OF THE STATE
OF NEVADA, IN AND FOR THE COUNTY OF CLARK,
DENYING APPEALANTS "PETITION FOR WRIT
OF HABEAS CORPUS", (POST-CONVICTION RELIEF)

"STATEMENT OF FACTS", IN PERTINENT PARTS

APPEALANT RECEIVED NOTICE THAT MY DIRECT
APPEAL HAD BEEN DENIED - "ORDER OF AFFIRMANCE"
- FILED NOV. 18, 2011 REMITTITUR ISSUED DEC. 16, 2011.

THAT ON OR ABOUT THE 16th DAY OF DEC. 2011 APPEALANT
SERVED MY FORMER APPEALANT ATT. MARIO D. VALENCIA
A LETTER OF TERMINATION, THE SAME LETTER DID REQUEST
THAT MARIO D. VALENCIA FORWARD TO APPEALANT ALL
PAPERS, PLEADINGS AND DOCUMENTS IN HIS POSSESSION
WHICH HE DID RECEIVE FROM APPEALANTS TRIAL
ATT. ANTHONY M. GOLDSTEN, AND... ALL
MATERIAL DOCUMENTS ACQUIRED DURING HIS
REPRESENTATION ON APPEALANTS BEHALF, WHICH
BELONGS TO APPEALANT, PURSUANT TO N.R.S.
7.055

THAT ON THE 2nd DAY OF FEB. 2012, APPEALANT
DID RECEIVE A LETTER FROM MARIO D. VALENCIA

ACKNOWLEDGING Receipt of my Afore-mentioned Request(s), AND Informing APPEALANT that He would NOT Foreward MY CASE File, which was in his Possession.

That ON OR ABOUT the 1st day of Feb. 2012 APPEALANT Filed "MOTION For WITHDRAWAL OF ATTORNEY OF RECORD" AND "REQUEST FOR RECORDS/COURT CASE DOCUMENTS" in the 8th J.D.C. Dept. NO. 8.

That ON OR ABOUT the 13 day of Feb. 2012 the 8th J.D.C., in Dept. NO. 8, Heard APPEALANT'S Motion For WITHDRAWAL of Att. of Record, AND the Same was granted, Spencer Judd was APPOINTED, AND the remaining matters were continued.

Please NOTE: APPEALANT did NOT MOVE THE COURT FOR APPOINTMENT OF COUNSEL, AND... Judge DOUGLAS E. SMITH, APPOINTED Spencer Judd, to Chill APPEALANT'S litigation, to obstruct Justice, to With-hold APPEALANT'S Criminal Casefile, ACQUIRED by TRIAL ATT. ANTHONY M. Goldstein, AND APPEALANT ATT. MARIO D. Valencia, to DENY APPEALANT A FAIR-MEANINGFUL OPPORTUNITY to DRAFT A meritorious, Petition for WRIT of HABEAS CORPUS- Judge DOUGLAS E. SMITH, ACTED UNETHICALLY, AND in BAD FAITH.

That After Spencer's Appointment, to
Appellants Case Feb, 13, 2012, Spencer
Refused to Assist APPEALANT, Spencer
Refused to file ANY Post-conviction
WRIT OF HABEAS CORPUS, ON BEHALF OF
APPEALANT, SPENCER Refused to Write,
visit, except calls, OR IN ANY WAY
communicate with APPEALANT, SPENCER
Judd's Actions were unethical.

That on MAY 30, 2012, in the 8th J.D.C., Dept. 8,
SPENCER Judd APPEARED IN COURT, ON BEHALF
OF APPEALANT, AND Did Deliberately LIE to
the Court, STATEING "APPEALANT HAD
MOTIONED THE COURT FOR APPOINTMENT
OF COUNSEL".

That on MAY 30, 2012, in the 8th J.D.C.,
Dept. 8, Douglas E. Smith ORDERED
SPENCER Judd Relieved from further
Representation of APPEALANT.

That on JUNE 13, 2012, Judge Douglas
E. Smith, then DENIED APPEALANTS REQUEST(S)
FOR my CASE file, AND Illegally
Allowed SPENCER Judd, to Represent
APPEALANT, After SPENCER Judd HAD
BEEN officially Relieved of His Representation
OF APPEALANT, IN furtherance of their
collusion to DEPRIVE APPEALANT
OF HIS CIVIL AND APPEALANT LIBERTIES.
SPENCER Judd AND DOUGLAS E. SMITH ACTED

UNETHICALLY.

"That APPEALANT WAS FORCED TO FILE A PETITION FOR WRIT OF HABEAS CORPUS" - (POST-CONVICTION RELIEF), ON THE 15 DAY OF AUG. 2012, IN THE 8th, J.D.C., COUNTY OF CLARK, STATE OF NEVADA, IN DEPT. NO. 8, WITHOUT THE BENEFIT OF MY CRIMINAL CASE FILE, AS A DIRECT RESULT OF JUDGE DOUGLAS E. SMITH'S PERSONAL BIAS AND PREJUDICE, AGAINST APPEALANT AS STATED HERETO AND EVIDENCED IN THE RECORD OF TRIAL, DIRECT APPEAL, AND THE POST-CONVICTION PROCEEDINGS, APPEALED FROM, AND REFERENCE HEREIN.

That ON THE 16 DAY OF AUG. 2012, THE STATE DISTRICT COURT, DEPT. NO. 8, ISSUED AN ORDER, DIRECTING THAT RESPONDENTS 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 N.R.S. 34,360 TO 34,830 INCLUSIVE."

- That the matter shall be PLACED ON THE COURT'S CALENDAR ON THE 8TH DAY OF OCT. 2012, AT THE HOUR OF 8am O'clock, FOR FURTHER PROCEEDINGS."

That APPEALANT DID NOT RECEIVE RESPONDENTS RESPONSE TO APPEALANTS PETITION, UNTIL OCT. 4, 2012.

That APPEALANT Did Serve the 8th, J.D.C.,
Dept. NO. 8, with a FORMAL, NOTORIZED,
SWORN TO AFFIDAVIT OF BIA'S,
Prior to the Same Courts DENIAL
OF APPEALANTS Petition,

That The 8th, J.D.C., Dept. NO. 8,
Refused to File the AFOREMENTIONED
AFFIDAVIT OF BIA, UNTIL OCT. 11th, 2012
ONE DAY AFTER Judge DOUGLAS
E. Smith, ILLEGALLY, AND UNETHICALLY
Ruled ON APPEALANTS Petition

That on the 8th day of OCT. 2012, in the
8th, J.D.C., Dept. NO. 8, Judge DOUGLAS
E. Smith, did Abuse His discretion,
And did ORDER APPEALANTS Hearing on my
Petition FOR WRIT OF HABEAS CORPUS -
(POST-CONVICTION), CONTINUED, TO
OCT. 10th, 2012, IN ORDER to ALLOW
His CO-CONSPIRITOR, SPENCER Judd, to
AGAIN APPEAR IN COURT ON APPEALANTS
BEHALF, UNLAWFULLY, to Further thier
COLLUSION to DENY APPEALANT Civil Liberties
And A Fundamentally FAIR HEARING,

That on the 10th DAY OF OCT. 2012, DOUGLAS E.
SMITH did Allow SPENCER Judd to Enter
into the Record, IN OPEN COURT, LIES,
TO WIT... "SPENCER Judd Advised" these
ARE the Same ISSUES DENIED BY the SUPREME
COURT." KNOWING USE OF LIES, IS UNETHICAL,

That thereafter, Judge Douglas E. SMITH
DID AGAIN ABUSE HIS DISCRETION, AND
DID EXERCISE HIS BIA'S AGAINST
APPEALANT BY ORDERING APPEALANTS
PETITION FOR POST-CONVICTION RELIEF
DENIED, AND STATE SHALL PREPARE A
FINDINGS OF FACTS AND CONCLUSIONS
OF LAW CONSISTANT WITH THEIR REPLY.

That Judge Douglas E. SMITH,
RESPONDENTS, AND SPENCER JUDD,
REFUSED TO PROVIDE APPEALANT WITH
FINDINGS OF FACT(S) AND CONCLUSIONS
OF LAW, CONCERNING THE DENIAL OF
APPEALANTS PETITION FOR WRIT OF HABEAS
CORPUS, - (POST-CONVICTION RELIEF). NOR
WAS PETITIONER GIVEN ANY NOTION
CONCERNING THE DENIAL OF MY PETITION.
APPEALANTS MOTHER INFORMED APPEALANT
OF THE DENIAL, AND APPEALANT REQUESTED
THE MINUTES FROM THE CLERK OF THE COURT.
JUDGE DOUGLAS E. SMITH, AND SPENCER
JUDD, INTENTIONALLY WITHHELD THAT
INFORMATION FROM APPEALANT, IN ORDER
TO HAVE THE TOLLING OF TIME, EXPIRE
AGAINST APPEALANTS LIBERTY TO APPEAL
THE UNLAWFUL ORDER(S), FINAL DECISION(S)
COMPLAINED OF HEREIN,

THE SAME ACTIONS SWORN TO, STATED
HEREIN, AND EVIDENCED IN THE RECORD
OF THIS CASE, GAVE RISE TO THE INSTANT

NOTICE OF APPEAL.

FINALLY,

Because Appellant did NOT Receive A COPY OF Respondents Response, to Appellants Petition For WRIT OF HABEAS CORPUS (POST-CONVICTION RELIEF), UNTIL OCT. 4th, 2012, Thursday Evening, and... Appellants Petition was ARBITRARILY denied (4) - Four WORKING DAYS later, on OCT. 10th, 2012, Appellant WAS ALSO Denied the Liberty OF A MEANINGFUL OPPORTUNITY TO REPLY TO Respondents Response, Respondents Acted in Bad Faith.

NOTE,

Appellants Petition For WRIT OF HABEAS CORPUS (POST-CONVICTION RELIEF), ASSERTED 53 - FIFTY THREE GROUNDS FOR RELIEF, AND Respondents Response ACKNOWLEDGED ALL 53 GROUNDS, HOWEVER, Appellants DIRECT APPEAL ONLY RAISED 2 (TWO) ISSUES, which is in DIRECT ~~CONTRADICTION~~ to the deliberate lie Spencer Judd Presented to the COURT CONCERNING Appellants "Petition For WRIT OF HABEAS CORPUS" (POST-CONVICTION Relief), see TRANSCRIPT OF HEARING IN 8th, J.D.C., DEPT. NO. 8, ON OCT. 10th, 2012

CONCLUSION

APPEALANT MANUEL WINN, Respectfully
APPEALS the denial of my Petition for
WRIT OF HABEAS CORPUS (POST-CONVICTION
Relief), and Seeks the Following
Relief:

- (1) THAT JUDGE DOUGLAS E. SMITH
NOT BE ALLOWED TO CONTINUE HIS
PLAIN, DELIBERATE, GROSS, UNETHICAL,
DISHONORABLE, UNLAWFUL, COLLUSION
AGAINST APPEALANT, MY CIVIL RIGHTS,
UNDER COLOR OF STATE LAW, IN DIRECT
DEGRADATION TO 42 § U.S.C., 1985,
CONSPIRACY TO INTERFERE WITH CIVIL
RIGHTS, AND... OBSTRUCTION OF
JUSTICE, AND... N.R.S. 197.200 1(d)
- (2) That APPEALANTS UNLAWFUL CONVICTION
BE REVERSED, OR REVERSED AND
REMANDED FOR A NEW, FAIR, TRIAL,
BASED UPON the 53 Grounds Raised in APPEALANTS
Petition FOR WRIT OF HABEAS CORPUS. (POST-CONVICTION)
- (3) THAT JUDGE DOUGLAS E. SMITH,
BE IMPEACHED.
- (4) That This COURT, MAKE AN ORDER,
Ordering APPEALANTS Criminal Case file, in its
Intirety, From TRIAL to Direct APPEAL, BE GIVEN
to APPEALANT, IN ACCORDANCE with N.R.S. 7.055.
AND Nev. SUP. Ct. Rules 166(4), 173, 176 AND 203.

AFFIRMATION PURSUANT TO: N.R.S. 239B.010

I, HEREBY CERTIFY THAT I AM THE UNDERSIGNED
INDIVIDUAL AND THAT THE ATTACHED DOCUMENT
~~THAT IS ENTITLED:~~ "NOTICE OF APPEAL"

_____, DOES NOT
CONTAIN THE SOCIAL SECURITY NUMBER OF ANY
PERSON, UNDER THE PAINS AND PENALTIES OF
PERJURY, THIS, 21, DAY OF, OCT., 2012

SIGNATURE: _____

INMATE NAME PRINTED: MANUEL WINN

INMATE NUMBER: 76106

ADDRESS: ELY STATE PRISON, P.O. BOX 1989, ELY, NV 89301

CERTIFICATE OF SERVICE BY MAIL

I, MANUEL WINN, hereby certify pursuant to Rule 5(b) of the NRCP, that on this 21 day of OCT., 2002 I served a true and correct copy of the above-entitled NOTICE OF APPEAL postage prepaid and addressed as follows:

STEVEN D. GRIERSON
CLERK OF THE COURT

200 LEWIS AVE. 3rd Floor
LAS VEGAS, NV. 89155-1160

STEVEN B. WOLFSON
DISTRICT ATTORNEY

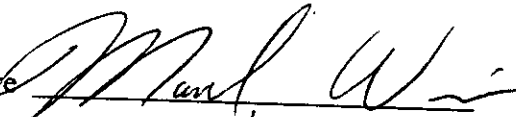
200 LEWIS AVE.
P.O. Box 552212

LAS VEGAS, NV. 89155-2212

CLERK, U.S. COURT OF APPEALS
FOR THE NINTH CIRCUIT
P.O. Box 193939
SAN FRANCISCO, CA. 94119-3939

SUPREME COURT OF NEVADA
OFFICE OF THE CLERK
201 S. CARSON Street, Suite #201
CARSON CITY, NV. 89701

Signature



Print Name

MANUEL WINN

Ely State Prison

P.O. Box 1989

Ely, Nevada 89301-1989

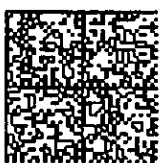
MANUEL WINK # 76106
P.O. Box 1989
ETI, NY. 89301

1.90z = \$5.65

(Legal - Confidential)

891019E600

STEVEN D. GRIERS C.C.
200 LEWIS AVE
LAS VEGAS, NV 89106



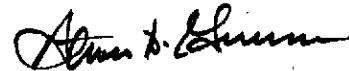
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11/1/2012 9:00 AM
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ASTA



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

MANUEL WINN aka MANUAL L. WINN,

Defendant(s).

Case No: 10C263359

Dept No: VIII

CASE APPEAL STATEMENT

1. Appellant(s): Manuel Winn

2. Judge: Douglas E. Smith

3. Appellant(s): Manuel Winn

Counsel:

Manuel Winn #76106
P.O. Box 1989
Ely, NV 89301

4. Respondent: The State of Nevada

Counsel:

Steven B. Wolfson, District Attorney
200 Lewis Ave.
Las Vegas, NV 89101
(702) 671-2700

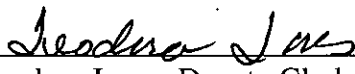
5. Respondent's Attorney Licensed in Nevada: Yes

6. Appellant Represented by Appointed Counsel In District Court: Yes

- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: No, June 13, 2012
3 9. Date Commenced in District Court: April 2, 2010
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Post-Conviction Relief
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 57313
8 12. Child Custody or Visitation: N/A
9

10 Dated This 9 day of November 2012.

11 Steven D. Grierson, Clerk of the Court
12

13 
14 Teodora Jones, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
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DEPARTMENT 8
CASE SUMMARY
CASE NO. 10C263359

The State of Nevada vs Manuel Winn

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§
§

Location: **Department 8**
Judicial Officer: **Smith, Douglas E.**
Filed on: **04/02/2010**
Case Number History:
Conversion Case Number: **C263359**
Defendant's Scope ID #: **0790785**
Lower Court Case Number: **09GJ00058**
Supreme Court No.: **56369**
57313

CASE INFORMATION

Offense	Deg	Date	Case Type: Felony/Gross Misdemeanor
1. BATTERY WITH USE OF A DEADLY WEAPON	F	01/01/1900	Case Flags: Appealed to Supreme Court
2. ATTEMPT.	F	01/01/1900	Custody Status - Nevada
2. ROBBERY	F	01/01/1900	Department of Corrections
2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	F	01/01/1900	
3. BURGLARY WITH USE OF DEADLY WEAPON	F	01/01/1900	
<i>Filed As:</i> BURGLARY.	F	04/02/2010	
4. ABUSE, NEGLECT OR ENDANGERMENT OF CHILD	G	01/01/1900	

Statistical Closures

10/26/2010 Jury Trial - Conviction - Criminal

Warrants

Bench Warrant - Winn, Manuel (Judicial Officer: Smith, Douglas E.)

04/07/2010 Quashed

04/02/2010 Issued

Fine: \$0 Bond: \$0

DATE

CASE ASSIGNMENT

Current Case Assignment

Case Number 10C263359
Court Department 8
Date Assigned 07/20/2010
Judicial Officer Smith, Douglas E.

PARTY INFORMATION

		<i>Lead Attorneys</i>
Defendant	Winn, Manuel	Judd, Spencer M. <i>Court Appointed</i> 702-606-4357(W)
Plaintiff	State of Nevada	Wolfson, Steven B 702-671-2700(W)

DATE

EVENTS & ORDERS OF THE COURT







INDEX

04/02/2010 **Grand Jury Indictment** (11:45 AM)
GRAND JURY INDICTMENT Court Clerk: Tina Hurd Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass








04/02/2010  Indictment

10C2633590001.tif pages






DEPARTMENT 8
CASE SUMMARY
CASE No. 10C263359

	(GRAND JURY) INDICTMENT Fee \$0.00	
04/02/2010	Hearing GRAND JURY INDICTMENT	10C2633590002.tif pages
04/02/2010	Hearing INITIAL ARRAIGNMENT	10C2633590003.tif pages
04/02/2010	Bench Warrant BENCH WARRANT ISSUED	10C2633590004.tif pages
04/02/2010	Order ORDER OF INTENT TO FORFEIT	10C2633590005.tif pages
04/02/2010	 Conversion Case Event Type INDICTMENT WARRANT	10C2633590007.tif pages
04/05/2010	 Conversion Case Event Type INDICTMENT WARRANT RETURN	10C2633590008.tif pages
04/07/2010	Initial Arraignment (9:00 AM) Events: 04/02/2010 Hearing INITIAL ARRAIGNMENT Relief Clerk: Roshonda Mayfield Reporter/Recorder: Kiara Schmidt Heard By: EUGENE MARTIN	
04/07/2010	Hearing ARRAIGNMENT CONTINUED	10C2633590009.tif pages
04/13/2010	 Motion DEFT'S PROPER MTN FOR DISMISSAL & SUB OF CN (VJ 4/21/10)	10C2633590010.tif pages
04/14/2010	Arraignment Continued (9:00 AM) Events: 04/07/2010 Hearing ARRAIGNMENT CONTINUED Court Clerk: Phyllis Irby/pi Reporter/Recorder: Kiara Schmidt Heard By: Randall Weed	
04/16/2010	Hearing STATUS CHECK: TRIAL SETTING	10C2633590011.tif pages
04/16/2010	 Reporters Transcript REPORTER'S TRANSCRIPT OF PROCEEDINGS - GRAND JURY HEARING 4/1/10	10C2633590012.tif pages
04/20/2010	 Objection STATES OBJECTION TO FUGITIVE DOCUMENT	10C2633590013.tif pages
04/20/2010	 Receipt RECEIPT FOR GRAND JURY TRANSCRIPTS - VOLUMES N/A	10C2633590014.tif pages
04/21/2010	Status Check (8:30 AM) Events: 04/16/2010 Hearing STATUS CHECK: TRIAL SETTING Relief Clerk: Nicole McDevitt Reporter/Recorder: Angela Lee Heard By: Wall, David	
04/22/2010	Hearing CONFIRMATION OF COUNSEL (A GOLDSTEIN)	10C2633590015.tif pages
04/26/2010	CANCELED Motion (8:30 AM) Events: 04/13/2010 Motion	







DEPARTMENT 8
CASE SUMMARY
CASE No. 10C263359

	<i>Vacated</i>	
04/28/2010	Status Check (8:30 AM) <i>STATUS CHECK: TRIAL SETTING</i>	
04/28/2010	Motion for Confirmation of Counsel (8:30 AM) Events: 04/22/2010 Hearing <i>CONFIRMATION OF COUNSEL (A GOLDSTEIN)</i>	
04/28/2010	All Pending Motions (8:30 AM) <i>ALL PENDING MOTIONS 04/28/10 Relief Clerk: Carole D'Aloia Reporter/Recorder: Angela Lee Heard By: David Wall</i>	
04/28/2010	Motion <i>ALL PENDING MOTIONS 04/28/10</i>	10C2633590016.tif pages
04/28/2010	Hearing <i>STATUS CHECK: TRIAL SETTING</i>	10C2633590017.tif pages
05/12/2010	Status Check (8:30 AM) Events: 04/28/2010 Hearing <i>STATUS CHECK: TRIAL SETTING Court Clerk: Melissa Benson Reporter/Recorder: Angela Lee Heard By: David Wall</i>	
05/12/2010	Plea (Judicial Officer: Smith, Douglas E.) 1. BATTERY WITH USE OF A DEADLY WEAPON Not Guilty 2. ATTEMPT. Not Guilty 2. ROBBERY Not Guilty 2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Not Guilty 3. BURGLARY WITH USE OF DEADLY WEAPON Not Guilty	
05/25/2010	 Motion <i>STATES MTN FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD</i>	10C2633590020.tif pages
05/25/2010	 Order <i>ORDER RELEASING MEDICAL RECORDS</i>	10C2633590021.tif pages
05/25/2010	 Notice of Witnesses and/or Expert Witnesses <i>NOTICE OF EXPERT WITNESSES AND SUPPLEMENTAL NOTICE OF WITNESSES</i>	10C2633590022.tif pages
05/25/2010	 Request <i>EX PARTE MOTION FOR RELEASE OF MEDICAL RECORDS</i>	10C2633590023.tif pages
05/25/2010	 Notice <i>NOTICE OF INTENT TO SEEK PUNISHMENT AS A HABITUAL CRIMINAL</i>	10C2633590025.tif pages
05/26/2010	 Notice of Witnesses and/or Expert Witnesses <i>SECOND SUPPLEMENTAL NOTICE OF WITNESSES</i>	10C2633590024.tif pages
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DEPARTMENT 8
CASE SUMMARY
CASE No. 10C263359

06/07/2010	 Request Filed by: Defendant Winn, Manuel <i>MOTION FOR DISMISSAL - PETITION FOR WRIT OF HABEAS CORPUS</i>	10C2633590027.tif pages
06/09/2010	Motion (8:30 AM) Events: 05/25/2010 Motion <i>STATES MTN FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD Court Clerk: Carol Foley & Sandra Harrell/sh Reporter/Recorder: Angela Lee Heard By: Wall, David</i>	
06/14/2010	 Ex Parte Filed By: Defendant Winn, Manuel <i>EX PARTE</i>	10C2633590030.tif pages
06/16/2010	Motion (8:30 AM) <i>STATES MTN FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD</i>	
06/16/2010	Motion (8:30 AM) Events: 06/02/2010 Motion <i>DEFT'S MTN TO REFER FOR COMPETENCY EVALUATION/14</i>	
06/16/2010	All Pending Motions (8:30 AM) <i>ALL PENDING MOTIONS 6/16/10 Court Clerk: Carol Foley Reporter/Recorder: Angela Lee Heard By: David Wall</i>	
06/16/2010	Motion <i>ALL PENDING MOTIONS 6/16/10</i>	10C2633590028.tif pages
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06/21/2010	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF EXPERT WITNESSES</i>	10C2633590031.tif pages
06/21/2010	 Notice of Witnesses and/or Expert Witnesses <i>SUPPLEMENTAL NOTICE OF EXPERT WITNESSES</i>	10C2633590032.tif pages
07/07/2010	Calendar Call (8:30 AM) <i>CALENDAR CALL Relief Clerk: Carole D'Aloia Reporter/Recorder: Julie Lever Heard By: LEE GATES</i>	
07/07/2010	Motion <i>DEFT'S PRO PER MOTION TO DISMISS COUNSEL</i>	10C2633590034.tif pages
07/08/2010	Further Proceedings (9:30 AM) Events: 06/16/2010 Hearing <i>FURTHER PROCEEDINGS: COMPETENCY (DEPT. V) Court Clerk: Sandra Jeter Reporter/Recorder: Rachelle Hamilton Heard By: Jackie Glass</i>	
07/08/2010	Hearing <i>FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT</i>	10C2633590036.tif pages
07/12/2010	CANCELED Jury Trial (1:30 PM) <i>Vacated</i>	
07/12/2010	 Opposition	10C2633590037.tif pages

DEPARTMENT 8
CASE SUMMARY
CASE No. 10C263359

	Filed By: Defendant Winn, Manuel <i>DEFTS OPPOSITION TO STATES MTN FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD ACTS ADMISSION OF OTHER BAD ACTS</i>	
07/12/2010	 Notice of Witnesses and/or Expert Witnesses <i>THIRD SUPPLEMENTAL NOTICE TO WITNESSES</i>	<i>10C2633590038.tif pages</i>
07/14/2010	Calendar Call (8:30 AM) <i>CALENDAR CALL</i>	
07/14/2010	Motion (8:30 AM) Events: 07/07/2010 Motion <i>DEFT'S PRO PER MOTION TO DISMISS COUNSEL</i>	
07/14/2010	Further Proceedings (8:30 AM) Events: 07/08/2010 Hearing <i>FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT Heard By: David Wall</i>	
07/14/2010	All Pending Motions (8:30 AM) <i>ALL PENDING MOTIONS 7/14/10 Court Clerk: Carol Foley Reporter/Recorder: Julie Lever Heard By: David Wall</i>	
07/14/2010	Motion <i>ALL PENDING MOTIONS 7/14/10</i>	<i>10C2633590039.tif pages</i>
07/14/2010	Hearing <i>STATUS CHECK: STATE'S BAD ACT MOTION</i>	<i>10C2633590041.tif pages</i>
07/14/2010	 Notice of Witnesses and/or Expert Witnesses Filed By: Defendant Winn, Manuel <i>DEFENDANTS NOTICE OF WITNESSES PURSUANT TO NRS 174.234</i>	<i>10C2633590042.tif pages</i>
07/15/2010	 Notice of Witnesses and/or Expert Witnesses <i>FOURTH SUPPLEMENTAL NOTICE OF WITNESSES</i>	<i>10C2633590044.tif pages</i>
07/16/2010	Overflow (9:00 AM) <i>OVERFLOW(20)M.THOMSON/A.GOLDSTEIN/ 2-3 DAYS/5-8 WITNESSES/REQUEST START TUESDAY Relief Clerk: Billie Jo Craig Reporter/Recorder: Richard Kangas Heard By: David Barker</i>	
07/16/2010	Status Check (9:00 AM) Events: 07/14/2010 Hearing <i>STATUS CHECK: STATE'S BAD ACT MOTION Heard By: David Barker</i>	
07/19/2010	CANCELED Jury Trial (1:00 PM) <i>Vacated</i>	
07/20/2010	 Jury Trial (10:00 AM) <i>TRIAL BY JURY</i>	
07/20/2010	 Amended Indictment	
07/20/2010	 Jury List	
07/20/2010	Disposition (Judicial Officer: Smith, Douglas E.) 4. ABUSE, NEGLECT OR ENDANGERMENT OF CHILD	






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Charges Amended/Dropped


















07/21/2010	 Jury Trial (9:30 AM) <i>TRIAL BY JURY</i>	
07/21/2010	Conversion Case Event Type <i>SENTENCING COUNTS 1 & 3</i>	10C2633590048.tif pages
07/21/2010	 Jury List <i>Amended Jury</i>	
07/21/2010	 Verdict <i>Guilty for Counts 1 and 3 Not Guilty for Count 2</i>	
07/21/2010	 Instructions to the Jury <i>Instruction to the Jury (Instruction No. 1)</i>	
07/26/2010	 Motion for New Trial Filed By: Defendant Winn, Manuel <i>Motion for New Trial</i>	
07/27/2010	 Request Filed by: Defendant Winn, Manuel <i>Request for Transcript of Proceedings</i>	
07/28/2010	 Request Filed by: Defendant Winn, Manuel <i>Request for Transcript of Proceedings</i>	
08/06/2010	 Transcript of Proceedings <i>Transcript of Various Portions of Proceedings Jury Trial Day 1 - Heard 07-20-10</i>	
08/06/2010	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition to Defendant's Motion for a New Trial</i>	
08/17/2010	 Order Filed By: Defendant Winn, Manuel <i>Order for Transcript of Proceedings</i>	
08/25/2010	 Motion (8:30 AM) (Judicial Officer: Smith, Douglas E.) 08/25/2010, 10/20/2010 Events: 07/26/2010 Motion for New Trial <i>Deft's Motion for New Trial</i>	
09/07/2010	 Transcript of Proceedings <i>- Heard 07-14-2010</i>	
09/30/2010	 Recorders Transcript of Hearing <i>Re: Overflow Calendar Call - 07-16-2010</i>	
10/20/2010	 Sentencing (8:30 AM) (Judicial Officer: Smith, Douglas E.) 10/20/2010, 11/01/2010, 11/10/2010	

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Events: 07/21/2010 Conversion Case Event Type
SENTENCING COUNTS 1 & 3/DISMISSAL COUNT 2
10/27/2010 *Continued to 11/01/2010 - At the Request of Interested Parties - State of Nevada; Winn, Manuel*














10/20/2010	 All Pending Motions (8:30 AM) (Judicial Officer: Smith, Douglas E.) <i>SENTENCING COUNTS 1 & 3/DISMISSAL COUNT 2; DEFT'S MOTION FOR NEW TRIAL</i>
10/26/2010	 Criminal Order to Statistically Close Case
11/10/2010	Disposition (Judicial Officer: Smith, Douglas E.) 1. BATTERY WITH USE OF A DEADLY WEAPON Guilty 2. ATTEMPT. Dismissed 2. ROBBERY Dismissed 2. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME. Dismissed 3. BURGLARY WITH USE OF DEADLY WEAPON Guilty
11/10/2010	Sentence (Judicial Officer: Smith, Douglas E.) 1. BATTERY WITH USE OF A DEADLY WEAPON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life without the possibility of parole Comments: Large Habitual Criminal Statute.
11/10/2010	Sentence (Judicial Officer: Smith, Douglas E.) 3. BURGLARY WITH USE OF DEADLY WEAPON Adult Adjudication Sentenced to Nevada Dept. of Corrections Term: Life without the possibility of parole Consecutive: Charge 1 (one) Credit for Time Served: 237 Days Comments: Large Habitual Criminal Statute. Fee Totals: ADMINISTRATIV ASSESSMENT FEE --- Crim fee sch DNA ANALYSIS FEE --- Crim fee sch - \$150 Indigent Defense Civil Assessment Fee --- Crim fee sch - ASK Fee Totals \$
11/12/2010	 Findings of Fact, Conclusions of Law and Order Filed By: Plaintiff State of Nevada
11/18/2010	 Judgment of Conviction <i>Judgment of Conviction (Jury Trial)</i>
11/30/2010	 Notice of Entry of Decision and Order

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12/03/2010	 Notice of Appeal (criminal) <i>Notice of Appeal (direct criminal appeal from conviction and sentence)</i>
12/03/2010	 Case Appeal Statement <i>Case Appeal Statement (direct criminal appeal)</i>
12/08/2010	 Notice of Motion <i>Notice of Motion and Motion to Amend JOC to Reflect Jury Verdict</i>
12/20/2010	 Notice of Appeal (criminal) Party: Defendant Winn, Manuel
12/28/2010	 Case Appeal Statement
01/10/2011	 Request <i>Request for Transcripts [Angela Lee]</i>
01/10/2011	 Request <i>Request for Transcripts [Jill Jacoby]</i>
01/10/2011	 Request <i>Request for Transcripts [Julie Lever]</i>
01/10/2011	 Request <i>Request for Transcripts [Kiara Schmidt]</i>
01/10/2011	 Request <i>Request for Transcripts [Rachelle Hamilton]</i>
01/10/2011	 Request <i>Request for Transcripts [Richard Kangas]</i>
01/26/2011	 Response <i>Response to State's Motion to Amend J.O.C. to Reflect Jury Verdict</i>
01/31/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings: Further Proceedings: Competency</i>
01/31/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings Grand Jury Indictment for April 2, 2010</i>
02/01/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript of Hearing Re: Arraignment for April 7, 2010</i>
02/01/2011	 Recorders Transcript of Hearing Party: Plaintiff State of Nevada <i>Recorder's Transcript of Hearing Re: Arraignment Continued for April 14, 2010</i>
02/02/2011	 Motion to Amend Judgment (8:30 AM) (Judicial Officer: Smith, Douglas E.)

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Events: 12/08/2010 Notice of Motion
Notice of Motion and Motion to Amend JOC to Reflect Jury Verdict
12/27/2010 *Continued to 02/02/2011 - At the Request of Interested Parties - State of Nevada; Winn, Manuel*

02/16/2011	 Amended Judgment of Conviction <i>(Jury Trial)</i>
02/19/2011	 Amended Notice <i>Amended Notice of Appeal</i>
02/25/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Sentencing Counts 1 & 3 Dismissal Count 2 - Heard 11/10/2010</i>
02/25/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Sentencing Counts 1 & 3 Dismissal Count 2 - Heard 11/01/2010</i>
02/25/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Defendant's Motion for New Trial - Heard 08/25/2010</i>
02/25/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Sentencing Counts 1&3 Dismissal Count 2 - Heard 10/20/2010</i>
03/31/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings Jury Trial Day 2 - Volume II</i>
03/31/2011	 Transcript of Proceedings Party: Plaintiff State of Nevada <i>Transcript of Proceedings Petrocelli Hearing and Jury Trial Day 1 - Volume 1</i>
12/22/2011	 NV Supreme Court Clerks Certificate/Judgment - Affirmed <i>Nevada Supreme Court Clerk's Certificate Judgment - Affirmed</i>
02/01/2012	 Motion Filed By: Defendant Winn, Manuel <i>Motion for Withdrawal of Attorney of Records or in the Alternative, Request for Records/Court Case Documents</i>
02/01/2012	 Motion Filed By: Defendant Winn, Manuel <i>Motion for Leave to Proceed In Forma Pauperis</i>
02/01/2012	 Affidavit in Support Filed By: Defendant Winn, Manuel <i>Affidavit in Support of Motion to Proceed In Forma Pauperis</i>
02/01/2012	 Motion Filed By: Defendant Winn, Manuel <i>Request for Records/ Court Case Documents</i>



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02/06/2012	 Opposition to Motion <i>State's Opposition to Defendant's Request for Records/Court Case Documents</i>
02/13/2012	Motion (8:00 AM) (Judicial Officer: Smith, Douglas E.) Events: 02/01/2012 Motion <i>Deft's Pro Per Motion for Withdrawal of Attorney of Records or in the Alternative, Request for Records/Court Case Documents</i>
02/13/2012	Motion (8:00 AM) (Judicial Officer: Smith, Douglas E.) 02/13/2012, 03/12/2012, 04/09/2012, 06/13/2012 Events: 02/01/2012 Motion <i>Deft's Pro Per Motion for Leave to Proceed In Forma Pauperis</i>
02/13/2012	Motion (8:00 AM) (Judicial Officer: Smith, Douglas E.) 02/13/2012, 03/12/2012, 04/09/2012, 06/13/2012 Events: 02/01/2012 Motion <i>Defendant's Pro Per Request for Records/ Court Case Documents</i>
02/13/2012	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; Deft's Pro Per Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/Court Case Documents; Deft's pro per Request for records/Court Case Documents</i>
03/12/2012	Confirmation of Counsel (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Confirmation of Counsel (S. Judd)</i>
03/12/2012	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; Confirmation of Counsel (S. Judd); Deft's Pro Per Request for Records/Court Case Documents</i>
04/09/2012	Status Check (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>STATUS CHECK: CASE STATUS</i>
04/09/2012	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; Status Check: Case Status; Deft's Pro per Request for Records/Court Case Documents</i>
04/25/2012	 Motion Filed By: Defendant Winn, Manuel <i>Motion to Adopt Petitioner's Pro Se Motion</i>
05/09/2012	 Motion (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Spencer Judd, Esq's Motion to Adopt Petitioner's Pro Se Motion to Proceed in Forma Pauperis</i>
05/30/2012	 Status Check (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>State's Request Status Check - Re-Set Briefing Schedule</i>
06/13/2012	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS; DEFT'S PRO PER REQUEST FOR RECORDS/COURT CASE DOCUMENTS</i>
06/21/2012	 Order Denying Motion Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion to Proceed in Forma Pauperis and Order Denying Defendant's Request for Records/Court Case Documents</i>

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08/15/2012	 Petition for Writ of Habeas Corpus Filed by: Defendant Winn, Manuel <i>Petition for Writ of Habeas Corpus (Post Conviction)</i>
08/15/2012	 Motion Filed By: Defendant Winn, Manuel <i>Motion for Withdrawal of Attorney of Record or in the Alternative, Request for Records/ Court Case Documents</i>
08/17/2012	 Order for Petition for Writ of Habeas Corpus
10/01/2012	 Ex Parte Motion Filed By: Defendant Winn, Manuel <i>Ex Parte Motion For Order To Transport Prisoner</i>
10/01/2012	 Motion Filed By: Defendant Winn, Manuel <i>Motion To Hold Mario D. Valencia Attorney Of Record In Contempt For Failing To Forward A Copy Of The Case File</i>
10/01/2012	 Response Filed by: Plaintiff State of Nevada <i>State's Response To Defendant's Petition For Writ of Habeas Corpus (Post Conviction)</i>
10/08/2012	 Petition for Writ of Habeas Corpus (8:00 AM) (Judicial Officer: Smith, Douglas E.) 10/08/2012, 10/10/2012 Events: 08/17/2012 Order for Petition for Writ of Habeas Corpus <i>Defendant's Pro Per Petition for Writ of Habeas Corpus (Post Conviction)</i>
10/08/2012	 Opposition to Motion Filed By: Plaintiff State of Nevada <i>State's Opposition To Defendant's Motion To Transport</i>
10/11/2012	 Affidavit Filed By: Defendant Winn, Manuel <i>"Affidavit Of Bias And Or Prejudice" (Judicial Misconduct)</i>
10/15/2012	Motion for Contempt (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Defendant's Pro Per Motion To Hold Mario D. Valencia Attorney Of Record In Contempt For Failing To Forward A Copy Of The Case File</i>
10/15/2012	Motion for Order (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Defendant's Pro Per Ex Parte Motion for Order to Transport Prisoner</i>
10/15/2012	 All Pending Motions (8:00 AM) (Judicial Officer: Smith, Douglas E.) <i>Defendant's Pro Per Motion To Hold Mario D. Valencia Attorney Of Record In Contempt For Failing To Forward A Copy Of The Case File; Def't's Pro Per Ex Parte Motion for Order to Transport Prisoner</i>
10/18/2012	 Order Denying Filed By: Plaintiff State of Nevada <i>Order Denying Defendant's Motion to Transport</i>
10/31/2012	 Finding of Fact and Conclusions of Law

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	Filed By: Plaintiff State of Nevada <i>Findings of Fact, Conclusions of Law and Order</i>	
11/05/2012	 Notice of Entry Filed By: Plaintiff State of Nevada <i>Notice of Entry of Findings of Fact, Conclusions of Law and Order</i>	
11/08/2012	 Notice of Appeal (criminal) Party: Defendant Winn, Manuel	

DATE

FINANCIAL INFORMATION

Defendant Winn, Manuel	
Total Charges	425.00
Total Payments and Credits	0.00
Balance Due as of 11/09/2012	425.00

ORIGINAL

Electronically Filed
10/31/2012 11:33:40 AM



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
SUSAN BENEDICT
Chief Deputy District Attorney
Nevada Bar #5873
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-

MANUEL WINN,
#0790785

Defendant.

CASE NO: 10C263359

DEPT NO: VIII

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

DATE OF HEARING: October 10, 2012
TIME OF HEARING: 8:00 A.M.

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 10th day of October, 2012, the Petitioner not being present, being represented by SPENCER M. JUDD, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through SUSAN BENEDICT, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On April 2, 2010, an Indictment was filed charging Manuel Winn ("Defendant") as follows: Count 1: Battery with use of a deadly weapon (Felony – NRS 200.481); Count 2: Attempt robbery with use of a deadly weapon (Felony – NRS 200.380, 193.330, 193.165);

Count 3: Burglary while in possession of a deadly weapon (Felony – NRS 205.060); and
Count 4: Child neglect or endangerment (Gross Misdemeanor – NRS 200.508). An
Amended Indictment was filed in open court on July 20, 2010, charging Defendant as
follows: Count 1: Battery with use of a deadly weapon; Count 2: Attempt robbery with use
of a deadly weapon; and Count 3: Burglary while in possession of a deadly weapon.

2. A jury trial commenced on July 20, 2010. On July 21, 2010, the jury returned a
verdict finding Defendant guilty as to battery with use of a deadly weapon and attempt
robbery with use of a deadly weapon, and not guilty as to burglary while in possession of a
deadly weapon.

3. On November 10, 2010, Defendant was adjudged guilty of counts 1 and 3 as
contained in the Amended Indictment and sentenced under the large habitual criminal statute
to imprisonment in the Nevada Department of Corrections as follows: Count 1: Life without
the possibility of parole; Count 3: Life without the possibility of parole, sentence to run
consecutive to count 1, with two hundred thirty-seven (237) days credit for time served. A
Judgment of Conviction was filed on November 18, 2010. An Amended Judgment of
Conviction was filed on February 16, 2011, to reflect that the charge of burglary while in
possession of a deadly weapon as contained in the Amended Indictment was dismissed.

4. Defendant filed a Notice of Appeal on December 3, 2010. An Amended Notice of
Appeal was filed on February 19, 2011. The Nevada Supreme Court filed an Order of
Affirmance on November 18, 2011. Remittitur issued December 16, 2011.

5. Defendant filed a Petition for Writ of Habeas Corpus on August 15, 2012. The State
filed a Response on October 1, 2012. The court denied Defendant's Petition on October 10,
2012.

6. Defendant's claim that the State withheld as evidence from the Grand Jury and from
him the weapon used until the first day of trial is waived per NRS 34.810(1)(b)(2) and
Franklin.

//

1 7. Defendant's claim that the trial prosecutor committed misconduct by continuing the
2 preliminary hearing in order to seek a Grand Jury Indictment is waived per NRS
3 34.810(1)(b)(2) and Franklin.

4 8. Defendant's claim that the Clark County District Attorney's Office committed
5 prosecutorial misconduct by not withdrawing from the case due to a conflict of interest in
6 that Defendant's sister, Deborah Winn, is an employee of the DA's Office in the Family
7 Support Division is waived per NRS 34.810(1)(b)(2) and Franklin.

8 9. Defendant's claim that the weapon used was not deadly but only a small steak knife
9 and that he was not given a chance to examine it prior to trial are waived per NRS
10 34.810(1)(b)(2) and Franklin. Additionally, witness Corrine Anderson and victim
11 Christopher Jackson both testified that they saw Defendant holding the knife and stab the
12 victim. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Thus, Defendant fails
13 to show how a better opportunity to investigate the steak knife would have been likely to
14 render a more favorable outcome.

15 10. Defendant's claim that the State should have informed the jury that Defendant's
16 fingerprints and DNA were not on the steak knife rather than that the steak knife had not
17 been tested for fingerprints or DNA is waived per NRS 34.810(1)(b)(2) and Franklin and is
18 nothing more than a bare allegation. At trial, there was no testimony as to the results of
19 requested DNA testing, nor was there any testimony about whether the knife was tested for
20 the presence of fingerprints. Transcript of Proceedings, July 20, 2010, pp. 194-95, 290. Thus,
21 it would have been misleading to inform the jury that Defendant's fingerprints and DNA
22 were not recovered from the knife at issue. Additionally, Defendant fails to show how a
23 better opportunity to investigate the steak knife would have been likely to render a more
24 favorable outcome.

25 11. Defendant's claim that the State withheld evidence that Defendant's fingerprints and
26 DNA were not present on the steak knife is waived per NRS 34.810(1)(b)(2) and Franklin
27 and nothing more than a bare allegation. Additionally, Defendant fails to show how a better
28 opportunity to investigate the steak knife would have been likely to render a more favorable

1 outcome. Even if Defendant's prints and DNA were not on the knife, Defendant cannot show
2 he would have been exonerated given that the victim and an eyewitness positively identified
3 him.

4 12. Defendant's claim that the testimony of Jackson was coerced and unconstitutionally
5 admitted against him at trial is without merit. At trial, Jackson testified that he was told by
6 Detective Scott Mendoza that he would be sentenced to prison for three years if he failed to
7 appear before the court and testify. Transcript of Proceedings, July 20, 2010, p. 219.
8 Detective Mendoza and Detective Joe Patton both testified that they did indeed approach
9 Jackson about testifying but that neither of them said that failure to testify would result in a
10 three-year sentence of imprisonment. Transcript of Proceedings, July 20, 2010, p. 284;
11 Transcript of Proceedings, July 21, 2010, pp. 18-19. Based on the testimony, the jury was
12 free to determine Jackson's credibility. Inasmuch as Defendant now raises a sufficiency-of-
13 the-evidence claim, this claim should have been raised on appeal but was not, and is
14 therefore waived per NRS 34.810(1)(b)(2) and Franklin, 110 Nev. 750, 877 P.2d 1058.

15 13. Defendant's claim that his convictions violated his constitutional rights because
16 Jackson was unable to positively identify Defendant at trial goes to the sufficiency of the
17 evidence to sustain the conviction and is waived per NRS 34.810(1)(b)(2) and Franklin.
18 Furthermore, a sufficiency-of-the-evidence claim was raised on appeal concerning
19 Defendant's conviction for attempt robbery with use of a deadly and the Nevada Supreme
20 Court concluded there was sufficient evidence. Order of Affirmance, November 11, 2011,
21 p.1. That decision is the law of the case.

22 14. Defendant's claim that confidential attorney-client communications were disclosed by
23 his counsel, Brent Percivel and Anthony Goldstein, is nothing more than a bare allegation,
24 and therefore insufficient.

25 15. Defendant's claim that defense counsel colluded with the trial prosecutor prior to a
26 preliminary hearing and that defense counsel made a motion to continue the preliminary
27 hearing solely to benefit the State (See Motion for Dismissal and Substitution of Counsel,
28 April 13, 2010), is without merit. Decisions to continue are strategic. Furthermore, even if

1 defense counsel had not moved to continue Defendant's preliminary hearing, the trial
2 prosecutor would have simply withdrawn the case and pursued a Grand Jury Indictment,
3 which was ultimately how Defendant was charged. Indictment, April 2, 2010; Motion for
4 Dismissal and Substitution of Counsel, April 13, 2010, p. 2. Thus, Defendant cannot show
5 that he was prejudiced in any way by defense counsel's motion to continue the preliminary
6 hearing.

7 16. Defendant's claim that Goldstein colluded with the trial prosecutors to not present any
8 defense evidence in retribution for a grievance filed by Defendant against Percival is a bare
9 allegation and, therefore, insufficient.

10 17. Defendant's claim that counsel was ineffective for failing to file any pretrial motions
11 due to collusion with the trial prosecutors is belied by the record. On June 2, 2010, defense
12 counsel filed a Motion for a Competency Evaluation of Defendant and filed an opposition to
13 the State's Motion to Allow Use of Other Bad Acts Evidence on July 12, 2010. Furthermore,
14 it is a strategic decision whether to file pretrial motions and how many. Finally, Defendant
15 has not shown that, had counsel filed the pretrial motions he allegedly requested, there was a
16 reasonably probability that the outcome of the matter would have been more advantageous to
17 Defendant.

18 18. Defendant failed to demonstrate how counsels' alleged failure to make a formal
19 discovery request prejudiced him. The State has an "open file" pretrial discovery policy, thus
20 no formal discovery request was needed.

21 19. Defendant's claim that counsel was ineffective for failing to file a pretrial Petition for
22 Writ of Habeas Corpus is without merit. At the Grand Jury, witness Corrine Anderson
23 testified as follows:

24 Q: What did you hear specifically if you remember?

25 A: I heard the guy who did the stabbing, he was saying "I want
26 my money, you better give me my money."

27 Q: And did you hear the other individual say anything?

28 A: The victim?

1 Q: Yes.

2 A: Okay. The victim was saying "I'll get you --"

3 Q: Did you hear him say anything?

4 A: Yes.

5 Q: And in what tone of voice was he saying what he said?

6 A: It was a frightened tone of voice. I mean this guy was really
7 scared, he was really afraid this guy was going to stab and kill
him.

8 Q: That was your impression based on his tone of voice?

9 A: Yes.

10 Q: What did you hear him say?

11 A: I hear him say "Man, this is just over \$5, I'll get you your
12 money." He was stabbed outside which I seen and he was saying
"Oh man, you just stabbed me in my wrist."

13 Transcript of Proceedings, April 1, 2010, pp. 30-31. Through other testimony, it was
14 established that Defendant was the person that stabbed Jackson. Transcript of Proceedings,
15 April 1, 2010, pp. 13, 28. The evidence presented at the Grand Jury was sufficient to support
16 a reasonable inference that Defendant committed the crimes charged. Therefore, in view of
17 the low burden of proof at this stage of the proceeding, filing a pretrial Petition for a Writ of
18 Habeas Corpus would have been futile, and counsel cannot be deemed ineffective for failing
19 to make a futile motion.

20 20. Defendant's claim that his trial counsel inappropriately withheld the State's Notice of
21 Intent to Seek Punishment as a Habitual Criminal and that, had Defendant been given such
22 Notice, he would have testified at trial to his "actual innocence," is a bare allegation that is
23 not credible, and thus insufficient. Second, Defendant's claim of "actual innocence" does not
24 meet the criteria set forth in Calderon.

25 21. Defendant has not shown counsel was ineffective for not raising his conflict of
26 interest claim before the trial court. First, Defendant's allegation that Goldstein was aware of
27 Defendant's sister's employment is a bare accusation unsupported by the record. Defense
28 counsel cannot be deemed ineffective per Strickland for failing to raise issues when the

1 grounds for such motions are unknown to him. Second, Defendant fails to demonstrate that
2 raising such a claim would have successfully disqualified the entire Clark County District
3 Attorney's Office. Defendant's sister is not an attorney with the DA's Office, but works in a
4 separate division. There is no support in the record that Defendant's sister was involved in
5 the case in any aspect. Furthermore, Defendant has not shown a reasonable probability that
6 the ultimate outcome of his case would have been more advantageous to Defendant had the
7 district court granted a motion to disqualify Clark County District Attorney's Office. Finally,
8 Defendant has failed to show that the prosecution of his case by the Nevada State Attorney
9 General's Office instead of the Clark County District Attorney's Office would have provided
10 a more favorable outcome, and thus cannot demonstrate prejudice per Strickland.

11 22. Defendant's claim that trial counsel was ineffective for failing to present any evidence
12 at trial is without merit. It was the decision of defense counsel to determine what witnesses,
13 if any, to call. Defendant does not name the witnesses he claims his counsel should have
14 called nor does he specify what each would have testified to that would have made it
15 reasonably probable the outcome of his case would have been different. Defendant therefore
16 has not satisfied either Strickland prongs.

17 23. Defendant's claim that Goldstein refused to investigate the witnesses Defendant
18 wanted to testify in his defense is without merit. What witnesses to call is for the attorney to
19 determine. Defendant has also failed to demonstrate prejudice by showing which of his
20 witnesses should have been called and how their testimony would have helped his case.

21 24. Defendant's claim that defense counsel was ineffective for failing to object to the
22 coerced testimony of Jackson is without merit. There was no legal basis to object solely
23 because Jackson was reluctant to testify. Therefore, such an objection would have been futile
24 and counsel cannot be deemed ineffective for failing to make futile objections. Furthermore,
25 defense counsel did object to the introduction of Jackson's testimony on the grounds that
26 defense counsel had been unaware Jackson was going to testify until the day of trial and the
27 objection was overruled. See Transcript of Proceedings, July 20, 2010, pp. 163-66.

1 25. Defendant's claim that defense counsel was ineffective for failing to offer
2 Defendant's affidavit as evidence at trial is without merit. Such evidence was not admissible
3 because cross-examination would have been impossible. Therefore, attempting to offer such
4 would have been futile.

5 26. Defendant's claim that defense counsel was ineffective for failing to object to
6 Detective Mendoza's testimony as "lies" is a bare allegation. Furthermore, such an objection
7 would have been futile as Defendant had ample opportunity to cross examine Detective
8 Mendoza and reveal any alleged prior inconsistent statements.

9 27. Defendant's claim that trial counsel was ineffective for failing to adequately
10 investigate Anderson and Detective Mendoza is without merit. Defendant's claims
11 concerning Anderson and Detective Mendoza are either bare allegations or belied by the
12 record. There is no support in the record that Anderson suffers from any mental health
13 problems. Detective Mendoza was cross-examined at trial concerning prior inconsistent
14 statements. Transcript of Proceedings, July 20, 2010, p. 289. Additionally, Defendant fails to
15 demonstrate that further investigation would have yielded a better result at trial. Anderson
16 was cross-examined as to his relationship with the victim, his prior inconsistent statements
17 regarding whether he actually witnessed the stabbing, and his testimony before the Grand
18 Jury that he heard Jackson threaten "I'll get you," during the altercation leading to the
19 stabbing. Transcript of Proceedings, July 20, 2010, p. 258-63. Furthermore, during cross-
20 examination, Detective Mendoza conceded he did not see the beginning of the altercation,
21 that the altercation could have involved several people and not just Defendant and Jackson,
22 that he could not remember if he requested fingerprints, and that he may have failed to return
23 defense counsel's calls in the days leading up to trial. Transcript of Proceedings, July 20,
24 2010, p. 287-96. The jury ultimately found Anderson and Detective Mendoza to be credible.
25 In light of such cross-examination, Defendant cannot show that evidence of Anderson's
26 mental health issues or prior inconsistent statements by Detective Mendoza would have lead
27 the jury to find that the testimony lacked credibility, even if such claims were true.

28 //

1 28. Defendant's claim that trial counsel should have investigated the lack of Defendant's
2 fingerprints and DNA on the knife is without merit. Even if Defendant's fingerprints and
3 DNA were not on the weapon, such evidence would not have led to a more favorable
4 outcome as the victim and another witness both saw Defendant stab the victim with the
5 knife. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Thus Defendant fails to
6 show how a better investigation would have rendered a more favorable outcome probable.

7 29. Defendant's claims that trial counsel withheld exculpatory evidence that Defendant's
8 fingerprints and DNA were not present on the steak knife and that he is actually innocent are
9 without merit. First, Defendant's claim that his fingerprints and DNA were not present on
10 the steak knife is a bare allegation. Second, even if Defendant's fingerprints and DNA were
11 not on the knife, such evidence would not prove his "actual innocence." This is especially
12 true in light of the fact that Jackson and Anderson both testified they saw Defendant stab the
13 victim with the knife. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Third,
14 Defendant's bare claim of "actual innocence" does not meet the standard set forth in
15 Calderon.

16 30. Defendant's claim that counsel refused to review his Presentence Investigation Report
17 (PSI) with him and did not provide him a copy until just prior to sentencing is belied by the
18 record. On November 1, 2010, Defendant stated in open court that he had just received his
19 PSI and that he wanted a chance to review it. Transcript of Proceedings, November 1, 2010,
20 pp. 2-3. Defendant's sentencing was subsequently continued to November 10, 2010. Thus,
21 Defendant had sufficient time to review his PSI. Furthermore, on November 10, 2010,
22 defense counsel stated that he had reviewed the PSI with Defendant on November 1, as well
23 as November 10. Transcript of Proceedings, November 10, 2010, pp. 2, 4. Based on the
24 record, Defendant's attorney sufficiently reviewed the PSI with Defendant and sufficiently
25 prepared for the penalty hearing.

26 31. Defendant's claim that he was coerced to invoke his right not to testify at trial by the
27 district court and by counsel is without merit. Defense counsel had a duty under Strickland to
28 recommend to Defendant whether counsel thought it advantageous for Defendant to testify

1 but the ultimate decision is for Defendant to make. Additionally, Defendant's claim is belied
2 by the record based on the canvass that took place between the district court and Defendant
3 at trial. Transcript of Proceedings, July 21, 2010, pp. 59-62. Defendant elected not to testify
4 and there is no evidence that such decision was the product of coercion or intimidation by
5 either Goldstein or the court beyond making Defendant aware of his constitutional rights and
6 the potential disadvantages of testifying.

7 32. Defendant's trial counsel was constitutionally effective.

8 33. Defendant's claim that Judge Wall erred in not discharging Goldstein as counsel is
9 waived per NRS 34.810(1)(b)(2) and Franklin.

10 34. Defendant's claim that Judge Barker erred in compelling Defendant to go to trial with
11 Goldstein as counsel is waived per NRS 34.810(1)(b)(2) and Franklin.

12 35. Defendant's claim that the trial court "forced a conflict of interest" between
13 Defendant and Goldstein by forcing Goldstein to go forward with trial without adequate time
14 to prepare for Jackson's surprise appearance is waived per NRS 34.810(1)(b)(2) and
15 Franklin.

16 36. Defendant's claim that the district court should have held an evidentiary hearing
17 regarding Defendant's request to discharge Goldstein is waived per NRS 34.810(1)(b)(2) and
18 Franklin.

19 37. Defendant's claim that the district court created a conflict of interest between
20 Defendant and Goldstein by inviting Goldstein to contradict Defendant concerning
21 Defendant's request to discharge Goldstein is waived per NRS 34.810(1)(b)(2) and Franklin.

22 38. Defendant's claim that the district court erred in allowing Clark County District
23 Attorney's Office to prosecute him even though Defendant's sister is employed by the DA's
24 Office in the Family Support Division is waived per NRS 34.810(1)(b)(2) and Franklin.

25 39. Defendant's claim that the trial court abused its discretion by allowing into evidence
26 the allegedly coerced testimony of Jackson is waived per NRS 34.810(1)(b)(2) and Franklin.
27 Additionally, there was conflicting testimony as to whether Jackson's testimony was coerced
28 and the jury found Jackson's testimony concerning the crimes credible.

1 40. Defendant's claim that the sentencing judge erred in denying Defendant's request to
2 continue his penalty hearing on November 10, 2010, when both the State and defense
3 counsel announced they were ready to proceed is waived per NRS 34.810(1)(b)(2) and
4 Franklin. Furthermore, the penalty hearing had been continued twice prior to November 10,
5 2010, and both parties announced they were ready to proceed with sentencing on November
6 10. Transcript of Proceedings, November 10, 2010, pp. 2-3. Thus, Defendant suffered no
7 prejudice from being denied his request to continue and his claim is without merit.

8 41. Defendant's claim that his sentence is too harsh and the result of the sentencing judge
9 being biased and conflicted is without merit. First, Defendant's claim that his sentencing as a
10 habitual criminal is too harsh was rejected by the Nevada Supreme Court. Order of
11 Affirmance, November 18, 2011, p. 2. That decision is the law of the case and further
12 consideration by this court is precluded. Secondly, Defendant's claim that the sentencing
13 judge was biased and conflicted is waived per NRS 34.810(1)(b)(2) and Franklin.

14 42. Defendant's claim that the district court erred in sentencing him as a habitual criminal
15 was raised and rejected on appeal. That ruling is the law of the case.

16 43. Defendant's claims that the Indictment and the jury instructions subjected him to
17 double jeopardy are waived per NRS 34.810(1)(b)(2) and Franklin.

18 44. Defendant's claim that his convictions for battery with a deadly weapon and attempt
19 robbery with a deadly weapon subjected him to double jeopardy under the facts of this case
20 is waived per NRS 34.810(1)(b)(2) and Franklin.

21 45. Defendant's claim that appellate counsel was ineffective for failing to raise claims on
22 direct appeal that Jackson's testimony should have been precluded because defense counsel
23 was unable to sufficiently prepare for Jackson's testimony is without merit. Appellate
24 counsel appropriately winnowed out this claim in order to focus on two central issues: the
25 sufficiency of the evidence to convict Defendant, and Defendant's sentence to habitual
26 criminal treatment. See Order of Affirmance, November 18, 2011, pp. 1-2. Furthermore,
27 Defendant cannot show a reasonable probability that the argument would have succeeded if
28 raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

1 46. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
2 that the Notice of Intent to Indict was insufficient in that it failed to provide the date, time
3 and location of the hearing is without merit. Appellate counsel appropriately determined to
4 exclude this issue in order to focus on stronger claims. Additionally, Defendant cannot show
5 a reasonable probability that the argument would have succeeded if raised on direct appeal,
6 and so cannot demonstrate prejudice under Strickland.

7 47. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
8 that the State refused to allow Defendant to testify before the Grand Jury is belied by the
9 record. Defendant was notified of the State's intention to seek an indictment and could have
10 invoked his statutory right to testify before the Grand Jury. See Motion for Dismissal and
11 Substitution of Counsel, April 13, 2010, p. 2. Thus, appellate counsel appropriately
12 determined to exclude this claim in order to focus on stronger arguments. Additionally,
13 Defendant cannot show a reasonable probability that the argument would have succeeded if
14 raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

15 48. Defendant's claim that appellate counsel was ineffective for failing to argue that the
16 photographic lineup used at the Grand Jury was unfair is without merit. Appellate counsel
17 appropriately determined to exclude this claim in order to focus on stronger arguments.
18 Additionally, Defendant cannot show a reasonable probability that the argument would have
19 succeeded if raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

20 49. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
21 that the trial prosecutor inappropriately used leading questions during the Grand Jury
22 proceedings is a bare allegation unsupported by specific facts. Furthermore, appellate
23 counsel appropriately determined to exclude this claim in order to focus on stronger
24 arguments. Finally, Defendant cannot show a reasonable probability that the argument would
25 have succeeded if raised on direct appeal, and so cannot demonstrate prejudice under
26 Strickland.

27 50. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
28 that inappropriate hearsay was presented to the Grand Jury is a bare allegation unsupported

1 by specific facts. Furthermore, appellate counsel appropriately determined to exclude this
2 claim in order to focus on stronger arguments. Finally, Defendant cannot show a reasonable
3 probability that the argument would have succeeded if raised on direct appeal, and so cannot
4 demonstrate prejudice under Strickland.

5 51. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
6 that Detective Mendoza gave testimony at the Grand Jury that conflicted with prior
7 statements is a bare allegation unsupported by specific facts. Furthermore, appellate counsel
8 appropriately determined to exclude this claim in order to focus on stronger arguments.
9 Finally, Detective Mendoza's testimony at trial substantially mirrored that presented to the
10 Grand Jury, and he was impeached with a prior inconsistent statement. Transcript of
11 Proceedings, July 20, 2010, p. 289. The jury ultimately found Detective Mendoza
12 sufficiently credible to convict Defendant on two counts. Further, Defendant cannot show a
13 reasonable probability that his argument would have succeeded if raised on direct appeal.

14 52. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
15 that the Notice of Intent to Seek Indictment was insufficient and that the trial prosecutor,
16 Percival, Justice of the Peace Nancy Oesterle and Detective Mendoza all colluded to
17 continue a scheduled preliminary hearing to provide the State time to locate Jackson is
18 without merit. Appellate counsel appropriately determined to exclude this claim in order to
19 focus on stronger arguments. Additionally, decisions to make motions to continue are
20 tactical and Defendant cannot show that the trial prosecutor was not permitted to seek an
21 Indictment by Grand Jury while he was awaiting a preliminary hearing. Thus, Defendant
22 cannot show a reasonable probability that his argument would have succeeded if raised on
23 direct appeal.

24 53. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
25 that there was insufficient evidence to indict is without merit. Appellate counsel
26 appropriately determined to exclude this claim in order to focus on stronger arguments.
27 Furthermore, there was sufficient evidence to indict Defendant, particularly in light of the
28 fact that the jury, by virtue of its verdict, concluded that the State proved Defendant's guilt

1 beyond a reasonable doubt as to all but one count. Therefore, Defendant cannot show a
2 reasonable probability that the argument would have succeeded if raised on direct appeal,
3 and so cannot demonstrate prejudice under Strickland.

4 54. Defendant's claim that appellate counsel was ineffective and "conflicted" is without
5 merit. Defendant fails to demonstrate that appellate counsel inappropriately exercised his
6 discretion in winnowing out weaker arguments, or that arguments Defendant desired
7 appellate counsel to make would have succeeded on direct appeal, and so cannot meet either
8 prong of Strickland. Additionally, Defendant's displeasure with appellate counsel does not
9 constitute a conflict of interest under Clark. Defendant does not meet the criteria established
10 to support a finding that an actual conflict of interest between Defendant and appellate
11 counsel existed.

12 55. Defendant's appellate counsel was constitutionally effective.

13 56. Defendant's claim that cumulative error warrants relief is without merit. The issue of
14 guilt was not close. Two witnesses testified that they saw Defendant stab the victim.
15 Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Additionally, the gravity of the
16 crime charged, stabbing someone with a steak knife over a \$5 debt, was significant. Finally,
17 the quantity and character of any errors was minimal. Thus, cumulative error does not
18 warrant relief.

19 57. Defendant's petition is appropriately resolved without an evidentiary hearing. None
20 of Defendant's specific factual allegations, even if true, entitles him to relief. Thus, no
21 expansion of the record is required and Defendant's petition is appropriately resolved
22 without an evidentiary hearing.

23 CONCLUSIONS OF LAW

24 1. Claims that could have been raised on appeal, but were not, are waived per NRS
25 34.810(1)(b)(2) and Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

26 2. In order to demonstrate prejudice due to a lack of investigation, a defendant must
27 demonstrate that increased investigation would have been likely to render a more favorable
28 outcome. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

1 3. Claims asserted in a petition for post-conviction relief must be supported with factual
2 allegations that, if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev.
3 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not sufficient, nor
4 are those belied and repelled by the record. Id.

5 4. The decision to move to continue a preliminary hearing is one of strategy, and
6 counsel's strategy decisions are “tactical” and will be “virtually unchallengeable absent
7 extraordinary circumstances.” Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052,
8 2066 (1984); Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); Howard v.
9 State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

10 5. In order to assert a claim of ineffective assistance of counsel, a defendant must prove
11 that he was denied “reasonably effective assistance” of counsel by satisfying the two-prong
12 test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also State v. Love, 109
13 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, Defendant must show first, that
14 his counsel's representation fell below an objective standard of reasonableness, and second,
15 that but for counsel's errors, there is a reasonable probability that the result of the
16 proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at
17 2065, 2068; Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting
18 Strickland two-part test in Nevada). “Effective counsel does not mean errorless counsel, but
19 rather counsel whose assistance is ‘[w]ithin the range of competence demanded of attorneys
20 in criminal cases.’” Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975)
21 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

22 6. In considering whether trial counsel has met this standard, the court should first
23 determine whether counsel made a “sufficient inquiry into the information that is pertinent to
24 his client's case.” Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at
25 690-691, 104 S. Ct. at 2066). Once such a reasonable inquiry has been made by counsel, the
26 court should consider whether counsel made “a reasonable strategy decision on how to
27 proceed with his client's case.” Id. Finally, counsel's strategy decisions are “tactical” and will
28

1 be "virtually unchallengeable absent extraordinary circumstances." Id.; Strickland, 466 U.S.
2 at 691, 104 S. Ct. at 2066; Howard, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

3 7. Based on the above law, the court begins with the presumption of effectiveness and
4 then must determine whether the defendant has demonstrated by "strong and convincing
5 proof" that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280,
6 1285 (1996) (citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); Davis v. State,
7 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a court in considering an
8 allegation of ineffective assistance of counsel is "not to pass upon the merits of the action not
9 taken but to determine whether, under the particular facts and circumstances of the case, trial
10 counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671,
11 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir.
12 1977)).

13 8. Analyzing effectiveness of counsel does not mean that the court "should second guess
14 reasoned choices between trial tactics nor does it mean that defense counsel, to protect
15 himself against allegations of inadequacy, must make every conceivable motion no matter
16 how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711. In
17 essence, the court must "judge the reasonableness of counsel's challenged conduct on the
18 facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S.
19 at 690, 104 S. Ct. at 2066.

20 9. "There are countless ways to provide effective assistance in any given case. Even the
21 best criminal defense attorneys would not defend a particular client in the same way." Id. at
22 689, 104 S. Ct. at 2065. "Strategic choices made by counsel after thoroughly investigating
23 the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825
24 P.2d 593, 596 (1992) (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066); see also Ford v.
25 State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

26 10. Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

different. McNelton v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

11. It is the decision of defense counsel to determine what witnesses, if any, to call. Strickland, 466 U.S. at 691, 104 S. Ct. at 2066; Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (1984). Further, defense counsel cannot create a defense when there is none. United States v. Cronin, 466 U.S. 648, 656 n.19, 104 S. Ct. 2039, 2045 n.19 (1984).

12. All that is needed to support an indictment is the slightest sufficient evidence to establish a reasonable inference that Defendant committed the crime charged. Stassi v. Sheriff, Washoe County, 86 Nev. 426, 470 P.2d 131 (1979); Robertson v. State, 84 Neb. 559, 445 P.2d 352 (1963).

13. Counsel cannot be deemed ineffective for failing to make a futile motion. Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

14. Under Calderon, a defendant must introduce new evidence in his habeas proceeding in light of which no reasonable juror would have convicted him. Id.

15. “The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings.” Hall, 91 Nev. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001) (citing McNelton, 115 Nev. at 414-15, 990 P.2d at 1275).

16. The disqualification of a prosecutor’s office rests with the sound discretion of the district court after considering all of the relevant facts and circumstances. Collier v. Legakes, 98 Nev. 307, 309, 646 P.2d 1219, 1220 (1982). Disqualification of an entire prosecutor’s office is required only “in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal could not be maintained without such action.” Id. at 310, 646 P.2d at 1221. The Nevada Supreme Court has

1 consistently affirmed the denial of a motion to disqualify an entire prosecuting agency when
2 one prosecutor had a potential conflict but did not participate in the prosecution. See, e.g.,
3 Collier, 98 Nev. at 310-11, 646 P.2d at 1221.

4 17. There is a strong presumption that appellate counsel's performance was reasonable
5 and fell within "the wide range of reasonable professional assistance." See United States v.
6 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104 S. Ct. at
7 2065). The federal courts have held that a claim of ineffective assistance of appellate counsel
8 must satisfy the two-prong test set forth by Strickland, 466 U.S. at 687-688, 694, 104 S. Ct.
9 at 2065, 2068. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United
10 States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir.
11 1991). In Jones v. Barnes, the Supreme Court recognized that part of professional diligence
12 and competence involves "winnowing out weaker arguments on appeal and focusing on one
13 central issue if possible, or at most on a few key issues." 463 U.S. 745, 751-52, 103 S. Ct.
14 3308, 3312-13 (1983). In particular, a "brief that raises every colorable issue runs the risk of
15 burying good arguments . . . in a verbal mound made up of strong and weak contentions." Id.
16 at 753, 103 S. Ct. at 3313. The Court also held that, "for judges to second-guess reasonable
17 professional judgments and impose on appointed counsel a duty to raise every 'colorable'
18 claim suggested by a client would disserve the very goal of vigorous and effective
19 advocacy." Id. at 754, 103 S. Ct. at 3314. Additionally, in order to satisfy Strickland's
20 second prong, a defendant must show that the omitted issue would have had a reasonable
21 probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992);
22 Heath, 941 F.2d at 1132.

23 18. A conflict of interest between a defendant and his counsel exists where counsel
24 pursues a civil action against the defendant on another matter. Clark v. State, 108 Nev. 324,
25 831 P.2d 1374 (1992).

26 19. "Relevant factors to consider in evaluating a claim of cumulative error are (1)
27 whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the
28 gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000).

1 20. A defendant "is not entitled to a perfect trial, but only a fair trial." Ennis, 91 Nev. at
2 533, 539 P.2d at 115.

3 21. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It
4 reads:

5 1. The judge or justice, upon review of the return, answer and all
6 supporting documents which are filed, shall determine whether
7 an evidentiary hearing is required. A petitioner must not be
8 discharged or committed to the custody of a person other than the
9 respondent *unless an evidentiary hearing is held*.

10 2. If the judge or justice determines that the petitioner is not
11 entitled to relief and an evidentiary hearing is not required, he
12 shall dismiss the petition without a hearing.

13 3. If the judge or justice determines that an evidentiary hearing
14 is required, he shall grant the writ and shall set a date for the
15 hearing.

16 (emphasis added).

17 The Nevada Supreme Court has held that if a petition can be resolved without
18 expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351,
19 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994). A
20 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
21 allegations, which, if true, would entitle him to relief unless the factual allegations are
22 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove, 100
23 Nev. 498 at 503, 686 P.2d at 225.

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ORDER

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


DATED this 29th day of October, 2012.



DISTRICT JUDGE *TA*

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

BY




SUSAN BENEDICT
Chief Deputy District Attorney
Nevada Bar #5873

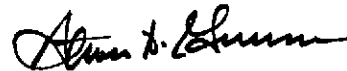
Certificate of Service

I J. Serpa certify that on the 25th day of October, 2012, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to SPENCER M. JUDD, at 9420 Mountainair Ave, Las Vegas, NV 89134, for his review.

BY:



J. Serpa
Employee of the District Attorneys Office



CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

MANUEL WINN,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 10C263359

Dept No: X

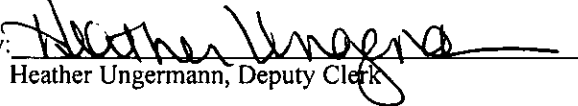
**NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND
ORDER**

PLEASE TAKE NOTICE that on October 31, 2012, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on November 5, 2012.

STEVEN D. GRIERSON, CLERK OF THE COURT

By:

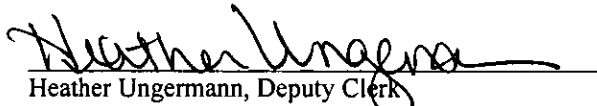

Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 5 day of November 2012, I placed a copy of this Notice of Entry of Decision and Order in:

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

- ☒ The United States mail addressed as follows:
Manuel Winn # 76106
P.O. Box 1989
Ely, NV 89301


Heather Ungermann, Deputy Clerk

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CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
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SUSAN BENEDICT
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200 Lewis Avenue
Las Vegas, Nevada 89155-2212
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Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

MANUEL WINN,
#0790785

Defendant.

CASE NO: 10C263359

DEPT NO: VIII

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

DATE OF HEARING: October 10, 2012

TIME OF HEARING: 8:00 A.M.

THIS CAUSE having come on for hearing before the Honorable DOUGLAS E. SMITH, District Judge, on the 10th day of October, 2012, the Petitioner not being present, being represented by SPENCER M. JUDD, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through SUSAN BENEDICT, Chief Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On April 2, 2010, an Indictment was filed charging Manuel Winn ("Defendant") as follows: Count 1: Battery with use of a deadly weapon (Felony - NRS 200.481); Count 2: Attempt robbery with use of a deadly weapon (Felony - NRS 200.380, 193.330, 193.165);

Count 3: Burglary while in possession of a deadly weapon (Felony – NRS 205.060); and
Count 4: Child neglect or endangerment (Gross Misdemeanor – NRS 200.508). An
Amended Indictment was filed in open court on July 20, 2010, charging Defendant as
follows: Count 1: Battery with use of a deadly weapon; Count 2: Attempt robbery with use
of a deadly weapon; and Count 3: Burglary while in possession of a deadly weapon.

2. A jury trial commenced on July 20, 2010. On July 21, 2010, the jury returned a
verdict finding Defendant guilty as to battery with use of a deadly weapon and attempt
robbery with use of a deadly weapon, and not guilty as to burglary while in possession of a
deadly weapon.

3. On November 10, 2010, Defendant was adjudged guilty of counts 1 and 3 as
contained in the Amended Indictment and sentenced under the large habitual criminal statute
to imprisonment in the Nevada Department of Corrections as follows: Count 1: Life without
the possibility of parole; Count 3: Life without the possibility of parole, sentence to run
consecutive to count 1, with two hundred thirty-seven (237) days credit for time served. A
Judgment of Conviction was filed on November 18, 2010. An Amended Judgment of
Conviction was filed on February 16, 2011, to reflect that the charge of burglary while in
possession of a deadly weapon as contained in the Amended Indictment was dismissed.

4. Defendant filed a Notice of Appeal on December 3, 2010. An Amended Notice of
Appeal was filed on February 19, 2011. The Nevada Supreme Court filed an Order of
Affirmance on November 18, 2011. Remittitur issued December 16, 2011.

5. Defendant filed a Petition for Writ of Habeas Corpus on August 15, 2012. The State
filed a Response on October 1, 2012. The court denied Defendant's Petition on October 10,
2012.

6. Defendant's claim that the State withheld as evidence from the Grand Jury and from
him the weapon used until the first day of trial is waived per NRS 34.810(1)(b)(2) and
Franklin.

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1 7. Defendant's claim that the trial prosecutor committed misconduct by continuing the
2 preliminary hearing in order to seek a Grand Jury Indictment is waived per NRS
3 34.810(1)(b)(2) and Franklin.

4 8. Defendant's claim that the Clark County District Attorney's Office committed
5 prosecutorial misconduct by not withdrawing from the case due to a conflict of interest in
6 that Defendant's sister, Deborah Winn, is an employee of the DA's Office in the Family
7 Support Division is waived per NRS 34.810(1)(b)(2) and Franklin.

8 9. Defendant's claim that the weapon used was not deadly but only a small steak knife
9 and that he was not given a chance to examine it prior to trial are waived per NRS
10 34.810(1)(b)(2) and Franklin. Additionally, witness Corrine Anderson and victim
11 Christopher Jackson both testified that they saw Defendant holding the knife and stab the
12 victim. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Thus, Defendant fails
13 to show how a better opportunity to investigate the steak knife would have been likely to
14 render a more favorable outcome.

15 10. Defendant's claim that the State should have informed the jury that Defendant's
16 fingerprints and DNA were not on the steak knife rather than that the steak knife had not
17 been tested for fingerprints or DNA is waived per NRS 34.810(1)(b)(2) and Franklin and is
18 nothing more than a bare allegation. At trial, there was no testimony as to the results of
19 requested DNA testing, nor was there any testimony about whether the knife was tested for
20 the presence of fingerprints. Transcript of Proceedings, July 20, 2010, pp. 194-95, 290. Thus,
21 it would have been misleading to inform the jury that Defendant's fingerprints and DNA
22 were not recovered from the knife at issue. Additionally, Defendant fails to show how a
23 better opportunity to investigate the steak knife would have been likely to render a more
24 favorable outcome.

25 11. Defendant's claim that the State withheld evidence that Defendant's fingerprints and
26 DNA were not present on the steak knife is waived per NRS 34.810(1)(b)(2) and Franklin
27 and nothing more than a bare allegation. Additionally, Defendant fails to show how a better
28 opportunity to investigate the steak knife would have been likely to render a more favorable

1 outcome. Even if Defendant's prints and DNA were not on the knife, Defendant cannot show
2 he would have been exonerated given that the victim and an eyewitness positively identified
3 him.

4 12. Defendant's claim that the testimony of Jackson was coerced and unconstitutionally
5 admitted against him at trial is without merit. At trial, Jackson testified that he was told by
6 Detective Scott Mendoza that he would be sentenced to prison for three years if he failed to
7 appear before the court and testify. Transcript of Proceedings, July 20, 2010, p. 219.
8 Detective Mendoza and Detective Joe Patton both testified that they did indeed approach
9 Jackson about testifying but that neither of them said that failure to testify would result in a
10 three-year sentence of imprisonment. Transcript of Proceedings, July 20, 2010, p. 284;
11 Transcript of Proceedings, July 21, 2010, pp. 18-19. Based on the testimony, the jury was
12 free to determine Jackson's credibility. Insomuch as Defendant now raises a sufficiency-of-
13 the-evidence claim, this claim should have been raised on appeal but was not, and is
14 therefore waived per NRS 34.810(1)(b)(2) and Franklin, 110 Nev. 750, 877 P.2d 1058.

15 13. Defendant's claim that his convictions violated his constitutional rights because
16 Jackson was unable to positively identify Defendant at trial goes to the sufficiency of the
17 evidence to sustain the conviction and is waived per NRS 34.810(1)(b)(2) and Franklin.
18 Furthermore, a sufficiency-of-the-evidence claim was raised on appeal concerning
19 Defendant's conviction for attempt robbery with use of a deadly and the Nevada Supreme
20 Court concluded there was sufficient evidence. Order of Affirmance, November 11, 2011,
21 p.1. That decision is the law of the case.

22 14. Defendant's claim that confidential attorney-client communications were disclosed by
23 his counsel, Brent Percivel and Anthony Goldstein, is nothing more than a bare allegation,
24 and therefore insufficient.

25 15. Defendant's claim that defense counsel colluded with the trial prosecutor prior to a
26 preliminary hearing and that defense counsel made a motion to continue the preliminary
27 hearing solely to benefit the State (See Motion for Dismissal and Substitution of Counsel,
28 April 13, 2010), is without merit. Decisions to continue are strategic. Furthermore, even if

1 defense counsel had not moved to continue Defendant's preliminary hearing, the trial
2 prosecutor would have simply withdrawn the case and pursued a Grand Jury Indictment,
3 which was ultimately how Defendant was charged. Indictment, April 2, 2010; Motion for
4 Dismissal and Substitution of Counsel, April 13, 2010, p. 2. Thus, Defendant cannot show
5 that he was prejudiced in any way by defense counsel's motion to continue the preliminary
6 hearing.

7 16. Defendant's claim that Goldstein colluded with the trial prosecutors to not present any
8 defense evidence in retribution for a grievance filed by Defendant against Percivel is a bare
9 allegation and, therefore, insufficient.

10 17. Defendant's claim that counsel was ineffective for failing to file any pretrial motions
11 due to collusion with the trial prosecutors is belied by the record. On June 2, 2010, defense
12 counsel filed a Motion for a Competency Evaluation of Defendant and filed an opposition to
13 the State's Motion to Allow Use of Other Bad Acts Evidence on July 12, 2010. Furthermore,
14 it is a strategic decision whether to file pretrial motions and how many. Finally, Defendant
15 has not shown that, had counsel filed the pretrial motions he allegedly requested, there was a
16 reasonably probability that the outcome of the matter would have been more advantageous to
17 Defendant.

18 18. Defendant failed to demonstrate how counsels' alleged failure to make a formal
19 discovery request prejudiced him. The State has an "open file" pretrial discovery policy, thus
20 no formal discovery request was needed.

21 19. Defendant's claim that counsel was ineffective for failing to file a pretrial Petition for
22 Writ of Habeas Corpus is without merit. At the Grand Jury, witness Corrine Anderson
23 testified as follows:

24 Q: What did you hear specifically if you remember?

25 A: I heard the guy who did the stabbing, he was saying "I want
26 my money, you better give me my money."

27 Q: And did you hear the other individual say anything?

28 A: The victim?

1 Q: Yes.

2 A: Okay. The victim was saying "I'll get you --"

3 Q: Did you hear him say anything?

4 A: Yes.

5 Q: And in what tone of voice was he saying what he said?

6 A: It was a frightened tone of voice. I mean this guy was really
7 scared, he was really afraid this guy was going to stab and kill
8 him.

9 Q: That was your impression based on his tone of voice?

10 A: Yes.

11 Q: What did you hear him say?

12 A: I hear him say "Man, this is just over \$5, I'll get you your
13 money." He was stabbed outside which I seen and he was saying
14 "Oh man, you just stabbed me in my wrist."

15 Transcript of Proceedings, April 1, 2010, pp. 30-31. Through other testimony, it was
16 established that Defendant was the person that stabbed Jackson. Transcript of Proceedings,
17 April 1, 2010, pp. 13, 28. The evidence presented at the Grand Jury was sufficient to support
18 a reasonable inference that Defendant committed the crimes charged. Therefore, in view of
19 the low burden of proof at this stage of the proceeding, filing a pretrial Petition for a Writ of
20 Habeas Corpus would have been futile, and counsel cannot be deemed ineffective for failing
21 to make a futile motion.

22 20. Defendant's claim that his trial counsel inappropriately withheld the State's Notice of
23 Intent to Seek Punishment as a Habitual Criminal and that, had Defendant been given such
24 Notice, he would have testified at trial to his "actual innocence," is a bare allegation that is
25 not credible, and thus insufficient. Second, Defendant's claim of "actual innocence" does not
26 meet the criteria set forth in Calderon.

27 21. Defendant has not shown counsel was ineffective for not raising his conflict of
28 interest claim before the trial court. First, Defendant's allegation that Goldstein was aware of
29 Defendant's sister's employment is a bare accusation unsupported by the record. Defense
30 counsel cannot be deemed ineffective per Strickland for failing to raise issues when the

1 grounds for such motions are unknown to him. Second, Defendant fails to demonstrate that
2 raising such a claim would have successfully disqualified the entire Clark County District
3 Attorney's Office. Defendant's sister is not an attorney with the DA's Office, but works in a
4 separate division. There is no support in the record that Defendant's sister was involved in
5 the case in any aspect. Furthermore, Defendant has not shown a reasonable probability that
6 the ultimate outcome of his case would have been more advantageous to Defendant had the
7 district court granted a motion to disqualify Clark County District Attorney's Office. Finally,
8 Defendant has failed to show that the prosecution of his case by the Nevada State Attorney
9 General's Office instead of the Clark County District Attorney's Office would have provided
10 a more favorable outcome, and thus cannot demonstrate prejudice per Strickland.

11 22. Defendant's claim that trial counsel was ineffective for failing to present any evidence
12 at trial is without merit. It was the decision of defense counsel to determine what witnesses,
13 if any, to call. Defendant does not name the witnesses he claims his counsel should have
14 called nor does he specify what each would have testified to that would have made it
15 reasonably probable the outcome of his case would have been different. Defendant therefore
16 has not satisfied either Strickland prongs.

17 23. Defendant's claim that Goldstein refused to investigate the witnesses Defendant
18 wanted to testify in his defense is without merit. What witnesses to call is for the attorney to
19 determine. Defendant has also failed to demonstrate prejudice by showing which of his
20 witnesses should have been called and how their testimony would have helped his case.

21 24. Defendant's claim that defense counsel was ineffective for failing to object to the
22 coerced testimony of Jackson is without merit. There was no legal basis to object solely
23 because Jackson was reluctant to testify. Therefore, such an objection would have been futile
24 and counsel cannot be deemed ineffective for failing to make futile objections. Furthermore,
25 defense counsel did object to the introduction of Jackson's testimony on the grounds that
26 defense counsel had been unaware Jackson was going to testify until the day of trial and the
27 objection was overruled. See Transcript of Proceedings, July 20, 2010, pp. 163-66.

1 25. Defendant's claim that defense counsel was ineffective for failing to offer
2 Defendant's affidavit as evidence at trial is without merit. Such evidence was not admissible
3 because cross-examination would have been impossible. Therefore, attempting to offer such
4 would have been futile.

5 26. Defendant's claim that defense counsel was ineffective for failing to object to
6 Detective Mendoza's testimony as "lies" is a bare allegation. Furthermore, such an objection
7 would have been futile as Defendant had ample opportunity to cross examine Detective
8 Mendoza and reveal any alleged prior inconsistent statements.

9 27. Defendant's claim that trial counsel was ineffective for failing to adequately
10 investigate Anderson and Detective Mendoza is without merit. Defendant's claims
11 concerning Anderson and Detective Mendoza are either bare allegations or belied by the
12 record. There is no support in the record that Anderson suffers from any mental health
13 problems. Detective Mendoza was cross-examined at trial concerning prior inconsistent
14 statements. Transcript of Proceedings, July 20, 2010, p. 289. Additionally, Defendant fails to
15 demonstrate that further investigation would have yielded a better result at trial. Anderson
16 was cross-examined as to his relationship with the victim, his prior inconsistent statements
17 regarding whether he actually witnessed the stabbing, and his testimony before the Grand
18 Jury that he heard Jackson threaten "I'll get you," during the altercation leading to the
19 stabbing. Transcript of Proceedings, July 20, 2010, p. 258-63. Furthermore, during cross-
20 examination, Detective Mendoza conceded he did not see the beginning of the altercation,
21 that the altercation could have involved several people and not just Defendant and Jackson,
22 that he could not remember if he requested fingerprints, and that he may have failed to return
23 defense counsel's calls in the days leading up to trial. Transcript of Proceedings, July 20,
24 2010, p. 287-96. The jury ultimately found Anderson and Detective Mendoza to be credible.
25 In light of such cross-examination, Defendant cannot show that evidence of Anderson's
26 mental health issues or prior inconsistent statements by Detective Mendoza would have lead
27 the jury to find that the testimony lacked credibility, even if such claims were true.

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1 28. Defendant's claim that trial counsel should have investigated the lack of Defendant's
2 fingerprints and DNA on the knife is without merit. Even if Defendant's fingerprints and
3 DNA were not on the weapon, such evidence would not have led to a more favorable
4 outcome as the victim and another witness both saw Defendant stab the victim with the
5 knife. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Thus Defendant fails to
6 show how a better investigation would have rendered a more favorable outcome probable.

7 29. Defendant's claims that trial counsel withheld exculpatory evidence that Defendant's
8 fingerprints and DNA were not present on the steak knife and that he is actually innocent are
9 without merit. First, Defendant's claim that his fingerprints and DNA were not present on
10 the steak knife is a bare allegation. Second, even if Defendant's fingerprints and DNA were
11 not on the knife, such evidence would not prove his "actual innocence." This is especially
12 true in light of the fact that Jackson and Anderson both testified they saw Defendant stab the
13 victim with the knife. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Third,
14 Defendant's bare claim of "actual innocence" does not meet the standard set forth in
15 Calderon.

16 30. Defendant's claim that counsel refused to review his Presentence Investigation Report
17 (PSI) with him and did not provide him a copy until just prior to sentencing is belied by the
18 record. On November 1, 2010, Defendant stated in open court that he had just received his
19 PSI and that he wanted a chance to review it. Transcript of Proceedings, November 1, 2010,
20 pp. 2-3. Defendant's sentencing was subsequently continued to November 10, 2010. Thus,
21 Defendant had sufficient time to review his PSI. Furthermore, on November 10, 2010,
22 defense counsel stated that he had reviewed the PSI with Defendant on November 1, as well
23 as November 10. Transcript of Proceedings, November 10, 2010, pp. 2, 4. Based on the
24 record, Defendant's attorney sufficiently reviewed the PSI with Defendant and sufficiently
25 prepared for the penalty hearing.

26 31. Defendant's claim that he was coerced to invoke his right not to testify at trial by the
27 district court and by counsel is without merit. Defense counsel had a duty under Strickland to
28 recommend to Defendant whether counsel thought it advantageous for Defendant to testify

1 but the ultimate decision is for Defendant to make. Additionally, Defendant's claim is belied
2 by the record based on the canvass that took place between the district court and Defendant
3 at trial. Transcript of Proceedings, July 21, 2010, pp. 59-62. Defendant elected not to testify
4 and there is no evidence that such decision was the product of coercion or intimidation by
5 either Goldstein or the court beyond making Defendant aware of his constitutional rights and
6 the potential disadvantages of testifying.

7 32. Defendant's trial counsel was constitutionally effective.

8 33. Defendant's claim that Judge Wall erred in not discharging Goldstein as counsel is
9 waived per NRS 34.810(1)(b)(2) and Franklin.

10 34. Defendant's claim that Judge Barker erred in compelling Defendant to go to trial with
11 Goldstein as counsel is waived per NRS 34.810(1)(b)(2) and Franklin.

12 35. Defendant's claim that the trial court "forced a conflict of interest" between
13 Defendant and Goldstein by forcing Goldstein to go forward with trial without adequate time
14 to prepare for Jackson's surprise appearance is waived per NRS 34.810(1)(b)(2) and
15 Franklin.

16 36. Defendant's claim that the district court should have held an evidentiary hearing
17 regarding Defendant's request to discharge Goldstein is waived per NRS 34.810(1)(b)(2) and
18 Franklin.

19 37. Defendant's claim that the district court created a conflict of interest between
20 Defendant and Goldstein by inviting Goldstein to contradict Defendant concerning
21 Defendant's request to discharge Goldstein is waived per NRS 34.810(1)(b)(2) and Franklin.

22 38. Defendant's claim that the district court erred in allowing Clark County District
23 Attorney's Office to prosecute him even though Defendant's sister is employed by the DA's
24 Office in the Family Support Division is waived per NRS 34.810(1)(b)(2) and Franklin.

25 39. Defendant's claim that the trial court abused its discretion by allowing into evidence
26 the allegedly coerced testimony of Jackson is waived per NRS 34.810(1)(b)(2) and Franklin.
27 Additionally, there was conflicting testimony as to whether Jackson's testimony was coerced
28 and the jury found Jackson's testimony concerning the crimes credible.

1 40. Defendant's claim that the sentencing judge erred in denying Defendant's request to
2 continue his penalty hearing on November 10, 2010, when both the State and defense
3 counsel announced they were ready to proceed is waived per NRS 34.810(1)(b)(2) and
4 Franklin. Furthermore, the penalty hearing had been continued twice prior to November 10,
5 2010, and both parties announced they were ready to proceed with sentencing on November
6 10. Transcript of Proceedings, November 10, 2010, pp. 2-3. Thus, Defendant suffered no
7 prejudice from being denied his request to continue and his claim is without merit.

8 41. Defendant's claim that his sentence is too harsh and the result of the sentencing judge
9 being biased and conflicted is without merit. First, Defendant's claim that his sentencing as a
10 habitual criminal is too harsh was rejected by the Nevada Supreme Court. Order of
11 Affirmance, November 18, 2011, p. 2. That decision is the law of the case and further
12 consideration by this court is precluded. Secondly, Defendant's claim that the sentencing
13 judge was biased and conflicted is waived per NRS 34.810(1)(b)(2) and Franklin.

14 42. Defendant's claim that the district court erred in sentencing him as a habitual criminal
15 was raised and rejected on appeal. That ruling is the law of the case.

16 43. Defendant's claims that the Indictment and the jury instructions subjected him to
17 double jeopardy are waived per NRS 34.810(1)(b)(2) and Franklin.

18 44. Defendant's claim that his convictions for battery with a deadly weapon and attempt
19 robbery with a deadly weapon subjected him to double jeopardy under the facts of this case
20 is waived per NRS 34.810(1)(b)(2) and Franklin.

21 45. Defendant's claim that appellate counsel was ineffective for failing to raise claims on
22 direct appeal that Jackson's testimony should have been precluded because defense counsel
23 was unable to sufficiently prepare for Jackson's testimony is without merit. Appellate
24 counsel appropriately winnowed out this claim in order to focus on two central issues: the
25 sufficiency of the evidence to convict Defendant, and Defendant's sentence to habitual
26 criminal treatment. See Order of Affirmance, November 18, 2011, pp. 1-2. Furthermore,
27 Defendant cannot show a reasonable probability that the argument would have succeeded if
28 raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

1 46. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
2 that the Notice of Intent to Indict was insufficient in that it failed to provide the date, time
3 and location of the hearing is without merit. Appellate counsel appropriately determined to
4 exclude this issue in order to focus on stronger claims. Additionally, Defendant cannot show
5 a reasonable probability that the argument would have succeeded if raised on direct appeal,
6 and so cannot demonstrate prejudice under Strickland.

7 47. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
8 that the State refused to allow Defendant to testify before the Grand Jury is belied by the
9 record. Defendant was notified of the State's intention to seek an indictment and could have
10 invoked his statutory right to testify before the Grand Jury. See Motion for Dismissal and
11 Substitution of Counsel, April 13, 2010, p. 2. Thus, appellate counsel appropriately
12 determined to exclude this claim in order to focus on stronger arguments. Additionally,
13 Defendant cannot show a reasonable probability that the argument would have succeeded if
14 raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

15 48. Defendant's claim that appellate counsel was ineffective for failing to argue that the
16 photographic lineup used at the Grand Jury was unfair is without merit. Appellate counsel
17 appropriately determined to exclude this claim in order to focus on stronger arguments.
18 Additionally, Defendant cannot show a reasonable probability that the argument would have
19 succeeded if raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

20 49. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
21 that the trial prosecutor inappropriately used leading questions during the Grand Jury
22 proceedings is a bare allegation unsupported by specific facts. Furthermore, appellate
23 counsel appropriately determined to exclude this claim in order to focus on stronger
24 arguments. Finally, Defendant cannot show a reasonable probability that the argument would
25 have succeeded if raised on direct appeal, and so cannot demonstrate prejudice under
26 Strickland.

27 50. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
28 that inappropriate hearsay was presented to the Grand Jury is a bare allegation unsupported

1 by specific facts. Furthermore, appellate counsel appropriately determined to exclude this
2 claim in order to focus on stronger arguments. Finally, Defendant cannot show a reasonable
3 probability that the argument would have succeeded if raised on direct appeal, and so cannot
4 demonstrate prejudice under Strickland.

5 51. Defendant's claim that appellate counsel was ineffective for failing to raise the issue
6 that Detective Mendoza gave testimony at the Grand Jury that conflicted with prior
7 statements is a bare allegation unsupported by specific facts. Furthermore, appellate counsel
8 appropriately determined to exclude this claim in order to focus on stronger arguments.
9 Finally, Detective Mendoza's testimony at trial substantially mirrored that presented to the
10 Grand Jury, and he was impeached with a prior inconsistent statement. Transcript of
11 Proceedings, July 20, 2010, p. 289. The jury ultimately found Detective Mendoza
12 sufficiently credible to convict Defendant on two counts. Further, Defendant cannot show a
13 reasonable probability that his argument would have succeeded if raised on direct appeal.

14 52. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
15 that the Notice of Intent to Seek Indictment was insufficient and that the trial prosecutor,
16 Percival, Justice of the Peace Nancy Oesterle and Detective Mendoza all colluded to
17 continue a scheduled preliminary hearing to provide the State time to locate Jackson is
18 without merit. Appellate counsel appropriately determined to exclude this claim in order to
19 focus on stronger arguments. Additionally, decisions to make motions to continue are
20 tactical and Defendant cannot show that the trial prosecutor was not permitted to seek an
21 Indictment by Grand Jury while he was awaiting a preliminary hearing. Thus, Defendant
22 cannot show a reasonable probability that his argument would have succeeded if raised on
23 direct appeal.

24 53. Defendant's claim that appellate counsel was ineffective for failing to raise the claim
25 that there was insufficient evidence to indict is without merit. Appellate counsel
26 appropriately determined to exclude this claim in order to focus on stronger arguments.
27 Furthermore, there was sufficient evidence to indict Defendant, particularly in light of the
28 fact that the jury, by virtue of its verdict, concluded that the State proved Defendant's guilt

beyond a reasonable doubt as to all but one count. Therefore, Defendant cannot show a reasonable probability that the argument would have succeeded if raised on direct appeal, and so cannot demonstrate prejudice under Strickland.

54. Defendant's claim that appellate counsel was ineffective and "conflicted" is without merit. Defendant fails to demonstrate that appellate counsel inappropriately exercised his discretion in winnowing out weaker arguments, or that arguments Defendant desired appellate counsel to make would have succeeded on direct appeal, and so cannot meet either prong of Strickland. Additionally, Defendant's displeasure with appellate counsel does not constitute a conflict of interest under Clark. Defendant does not meet the criteria established to support a finding that an actual conflict of interest between Defendant and appellate counsel existed.

55. Defendant's appellate counsel was constitutionally effective.

56. Defendant's claim that cumulative error warrants relief is without merit. The issue of guilt was not close. Two witnesses testified that they saw Defendant stab the victim. Transcript of Proceedings, July 20, 2010, pp. 216-17, 246-74. Additionally, the gravity of the crime charged, stabbing someone with a steak knife over a \$5 debt, was significant. Finally, the quantity and character of any errors was minimal. Thus, cumulative error does not warrant relief.

57. Defendant's petition is appropriately resolved without an evidentiary hearing. None of Defendant's specific factual allegations, even if true, entitles him to relief. Thus, no expansion of the record is required and Defendant's petition is appropriately resolved without an evidentiary hearing.

CONCLUSIONS OF LAW

1. Claims that could have been raised on appeal, but were not, are waived per NRS 34.810(1)(b)(2) and Franklin v. State, 110 Nev. 750, 877 P.2d 1058 (1994).

2. In order to demonstrate prejudice due to a lack of investigation, a defendant must demonstrate that increased investigation would have been likely to render a more favorable outcome. Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004).

1 3. Claims asserted in a petition for post-conviction relief must be supported with factual
2 allegations that, if true, would entitle the petitioner to relief. Hargrove v. State, 100 Nev.
3 498, 502, 686 P.2d 222, 225 (1984). "Bare" and "naked" allegations are not sufficient, nor
4 are those belied and repelled by the record. Id.

5 4. The decision to move to continue a preliminary hearing is one of strategy, and
6 counsel's strategy decisions are "tactical" and will be "virtually unchallengeable absent
7 extraordinary circumstances." Strickland v. Washington, 466 U.S. 668, 691, 104 S. Ct. 2052,
8 2066 (1984); Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); Howard v.
9 State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

10 5. In order to assert a claim of ineffective assistance of counsel, a defendant must prove
11 that he was denied "reasonably effective assistance" of counsel by satisfying the two-prong
12 test of Strickland, 466 U.S. at 686-87, 104 S. Ct. at 2063-64. See also State v. Love, 109
13 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test, Defendant must show first, that
14 his counsel's representation fell below an objective standard of reasonableness, and second,
15 that but for counsel's errors, there is a reasonable probability that the result of the
16 proceedings would have been different. Strickland, 466 U.S. at 687-88, 694, 104 S. Ct. at
17 2065, 2068; Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984) (adopting
18 Strickland two-part test in Nevada). "Effective counsel does not mean errorless counsel, but
19 rather counsel whose assistance is '[w]ithin the range of competence demanded of attorneys
20 in criminal cases.'" Jackson v. Warden, 91 Nev. 430, 432, 537 P.2d 473, 474 (1975)
21 (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S. Ct. 1441, 1449 (1970)).

22 6. In considering whether trial counsel has met this standard, the court should first
23 determine whether counsel made a "sufficient inquiry into the information that is pertinent to
24 his client's case." Doleman, 112 Nev. at 846, 921 P.2d at 280 (citing Strickland, 466 U.S. at
25 690-691, 104 S. Ct. at 2066). Once such a reasonable inquiry has been made by counsel, the
26 court should consider whether counsel made "a reasonable strategy decision on how to
27 proceed with his client's case." Id. Finally, counsel's strategy decisions are "tactical" and will
28

1 be "virtually unchallengeable absent extraordinary circumstances." Id.; Strickland, 466 U.S.
2 at 691, 104 S. Ct. at 2066; Howard, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990).

3 7. Based on the above law, the court begins with the presumption of effectiveness and
4 then must determine whether the defendant has demonstrated by "strong and convincing
5 proof" that counsel was ineffective. Homick v State, 112 Nev. 304, 310, 913 P.2d 1280,
6 1285 (1996) (citing Lenz v. State, 97 Nev. 65, 66, 624 P.2d 15, 16 (1981)); Davis v. State,
7 107 Nev. 600, 602, 817 P.2d 1169, 1170 (1991). The role of a court in considering an
8 allegation of ineffective assistance of counsel is "not to pass upon the merits of the action not
9 taken but to determine whether, under the particular facts and circumstances of the case, trial
10 counsel failed to render reasonably effective assistance." Donovan v. State, 94 Nev. 671,
11 675, 584 P.2d 708, 711 (1978) (citing Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir.
12 1977)).

13 8. Analyzing effectiveness of counsel does not mean that the court "should second guess
14 reasoned choices between trial tactics nor does it mean that defense counsel, to protect
15 himself against allegations of inadequacy, must make every conceivable motion no matter
16 how remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711. In
17 essence, the court must "judge the reasonableness of counsel's challenged conduct on the
18 facts of the particular case, viewed as of the time of counsel's conduct." Strickland, 466 U.S.
19 at 690, 104 S. Ct. at 2066.

20 9. "There are countless ways to provide effective assistance in any given case. Even the
21 best criminal defense attorneys would not defend a particular client in the same way." Id. at
22 689, 104 S. Ct. at 2065. "Strategic choices made by counsel after thoroughly investigating
23 the plausible options are almost unchallengeable." Dawson v. State, 108 Nev. 112, 117, 825
24 P.2d 593, 596 (1992) (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2066); see also Ford v.
25 State, 105 Nev. 850, 853, 784 P.2d 951, 953 (1989).

26 10. Even if a defendant can demonstrate that his counsel's representation fell below an
27 objective standard of reasonableness, he must still demonstrate prejudice and show a
28 reasonable probability that, but for counsel's errors, the result of the trial would have been

different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing Strickland, 466 U.S. at 687, 104 S. Ct. at 2064). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. (citing Strickland, 466 U.S. at 687-89, 694, 104 S. Ct. at 2064-65, 2068).

11. It is the decision of defense counsel to determine what witnesses, if any, to call. Strickland, 466 U.S. at 691, 104 S. Ct. at 2066; Rhyne v. State, 118 Nev. 1, 38 P.3d 163 (1984). Further, defense counsel cannot create a defense when there is none. United States v. Cronin, 466 U.S. 648, 656 n.19, 104 S. Ct. 2039, 2045 n.19 (1984).

12. All that is needed to support an indictment is the slightest sufficient evidence to establish a reasonable inference that Defendant committed the crime charged. Stassi v. Sheriff, Washoe County, 86 Nev. 426, 470 P.2d 131 (1979); Robertson v. State, 84 Neb. 559, 445 P.2d 352 (1963).

13. Counsel cannot be deemed ineffective for failing to make a futile motion. Ennis v. State, 122 Nev. 694, 137 P.3d 1095 (2006).

14. Under Calderon, a defendant must introduce new evidence in his habeas proceeding in light of which no reasonable juror would have convicted him. Id.

15. "The doctrine of the law of the case cannot be avoided by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." Hall, 91 Nev. at 316, 535 P.2d at 799. Under the law of the case doctrine, issues previously decided on direct appeal may not be reargued in a habeas petition. Pellegrini v. State, 117 Nev. 860, 34 P.3d 519 (2001) (citing McNelson, 115 Nev. at 414-15, 990 P.2d at 1275).

16. The disqualification of a prosecutor's office rests with the sound discretion of the district court after considering all of the relevant facts and circumstances. Collier v. Legakes, 98 Nev. 307, 309, 646 P.2d 1219, 1220 (1982). Disqualification of an entire prosecutor's office is required only "in extreme cases where the appearance of unfairness or impropriety is so great that the public trust and confidence in our criminal could not be maintained without such action." Id. at 310, 646 P.2d at 1221. The Nevada Supreme Court has

1 consistently affirmed the denial of a motion to disqualify an entire prosecuting agency when
2 one prosecutor had a potential conflict but did not participate in the prosecution. See, e.g.,
3 Collier, 98 Nev. at 310-11, 646 P.2d at 1221.

4 17. There is a strong presumption that appellate counsel's performance was reasonable
5 and fell within "the wide range of reasonable professional assistance." See United States v.
6 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990) (citing Strickland, 466 U.S. at 689, 104 S. Ct. at
7 2065). The federal courts have held that a claim of ineffective assistance of appellate counsel
8 must satisfy the two-prong test set forth by Strickland, 466 U.S. at 687-688, 694, 104 S. Ct.
9 at 2065, 2068. Williams v. Collins, 16 F.3d 626, 635 (5th Cir. 1994); Hollenback v. United
10 States, 987 F.2d 1272, 1275 (7th Cir. 1993); Heath v. Jones, 941 F.2d 1126, 1130 (11th Cir.
11 1991). In Jones v. Barnes, the Supreme Court recognized that part of professional diligence
12 and competence involves "winnowing out weaker arguments on appeal and focusing on one
13 central issue if possible, or at most on a few key issues." 463 U.S. 745, 751-52, 103 S. Ct.
14 3308, 3312-13 (1983). In particular, a "brief that raises every colorable issue runs the risk of
15 burying good arguments . . . in a verbal mound made up of strong and weak contentions." Id.
16 at 753, 103 S. Ct. at 3313. The Court also held that, "for judges to second-guess reasonable
17 professional judgments and impose on appointed counsel a duty to raise every 'colorable'
18 claim suggested by a client would disserve the very goal of vigorous and effective
19 advocacy." Id. at 754, 103 S. Ct. at 3314. Additionally, in order to satisfy Strickland's
20 second prong, a defendant must show that the omitted issue would have had a reasonable
21 probability of success on appeal. See Duhamel v. Collins, 955 F.2d 962, 967 (5th Cir. 1992);
22 Heath, 941 F.2d at 1132.

23 18. A conflict of interest between a defendant and his counsel exists where counsel
24 pursues a civil action against the defendant on another matter. Clark v. State, 108 Nev. 324,
25 831 P.2d 1374 (1992).

26 19. "Relevant factors to consider in evaluating a claim of cumulative error are (1)
27 whether the issue of guilt is close, (2) the quantity and character of the error, and (3) the
28 gravity of the crime charged." Mulder v. State, 116 Nev. 1, 17, 992 P.2d 845, 855 (2000).

20. A defendant "is not entitled to a perfect trial, but only a fair trial." Ennis, 91 Nev. at 533, 539 P.2d at 115.

21. NRS 34.770 determines when a defendant is entitled to an evidentiary hearing. It reads:

1. The judge or justice, upon review of the return, answer and all supporting documents which are filed, shall determine whether an evidentiary hearing is required. A petitioner must not be discharged or committed to the custody of a person other than the respondent *unless an evidentiary hearing is held*.

2. If the judge or justice determines that the petitioner is not entitled to relief and an evidentiary hearing is not required, he shall dismiss the petition without a hearing.

3. If the judge or justice determines that an evidentiary hearing is required, he shall grant the writ and shall set a date for the hearing.

(emphasis added).

The Nevada Supreme Court has held that if a petition can be resolved without expanding the record, then no evidentiary hearing is necessary. Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002); Marshall v. State, 110 Nev. 1328, 885 P.2d 603 (1994). A defendant is entitled to an evidentiary hearing if his petition is supported by specific factual allegations, which, if true, would entitle him to relief unless the factual allegations are repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove, 100 Nev. 498 at 503, 686 P.2d at 225.

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ORDER

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


DATED this 29th day of October, 2012.



DISTRICT JUDGE *TS*

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

BY

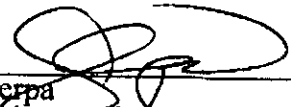


SUSAN BENEDICT
Chief Deputy District Attorney
Nevada Bar #5873

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Certificate of Service

I J. Serpa certify that on the 25th day of October, 2012, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to SPENCER M. JUDD, at 9420 Mountainair Ave, Las Vegas, NV 89134, for his review.

BY: 

J. Serpa
Employee of the District Attorneys Office

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 02, 2010**

10C263359

The State of Nevada vs Manuel Winn

April 02, 2010**11:45 AM****Grand Jury Indictment****GRAND JURY
INDICTMENT****Court Clerk: Tina
Hurd****Reporter/Recorder:
Rachelle Hamilton****Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Schubert, David
Thomson, MeganAttorney
Attorney**JOURNAL ENTRIES**

- Pamela Young, Grand Jury Foreperson, stated to the Court that at least twelve members had concurred in the return of the true bill during deliberation, but had been excused for presentation to the Court. The State presented Grand Jury case number 09BGJ058X to the Court. COURT ORDERED, the Indictment may be filed and is assigned case number C263359, Department 20. Ms. Thomson requested a warrant and argued bail. COURT ORDERED, ARREST WARRANT WILL ISSUE, BAIL SET AT \$35,000.00. Matter set for initial arraignment. Exhibit(s) 1-4 lodged with Clerk of District Court.

B.W. (CUSTODY)

4-7-10 9:00 AM INITIAL ARRAIGNMENT (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

April 07, 2010

10C263359

The State of Nevada vs Manuel Winn

April 07, 2010

9:00 AM

Initial Arraignment

INITIAL
ARRAIGNMENT
Relief Clerk:
Roshonda Mayfield
Reporter/Recorder:
Kiara Schmidt
Heard
By: EUGENE
MARTIN

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Keeler, Brett O.
Percival, Brent D.
Winn, Manuel

Attorney
Attorney
Defendant

JOURNAL ENTRIES

- Following statements by the Deft. and counsel regarding new counsel being retained. COURT ORDERED, matter CONTINUED at the request of defense. COURT FURTHER ORDERED, Deft. WINN is REMANDED on the warrant.

CUSTODY

4/14/10 9:00 A.M. ARRAIGNMENT CONTINUED (LLA)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 14, 2010**

10C263359

The State of Nevada vs Manuel Winn

April 14, 2010**9:00 AM****Arraignment Continued****ARRAIGNMENT
CONTINUED Court
Clerk: Phyllis Irby/pi
Reporter/Recorder:
Kiara Schmidt Heard
By: Randall Weed****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Percival, Brent D.
Rutledge, Brian S.
Winn, ManuelAttorney
Attorney
Defendant**JOURNAL ENTRIES**

- Mr. Percival advised Deft wants to WITHDRAW him as counsel, requested this matter be set for status check. COURT SO ORDERED.

CUSTODY

4-21-10 8:30 AM STATUS CHECK: TRIAL SETTING (DEPT. XX)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 21, 2010**

10C263359

The State of Nevada vs Manuel Winn

April 21, 2010**8:30 AM****Status Check****STATUS CHECK:
TRIAL SETTING
Relief Clerk: Nicole
McDevitt
Reporter/Recorder:
Angela Lee Heard
By: Wall, David****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Kramer, Kristen B.
Percival, Brent D.
Winn, ManuelAttorney
Attorney
Defendant**JOURNAL ENTRIES**

- Court noted Deft. has filed a Motion to Dismiss Counsel that is set on Monday. Ms. Kramer advised Deft. filed a Motion to Dismiss and the State has filed State's Objection to Fugitive Document but there is no objection to the withdrawal of counsel. Court noted Deft. has not been arraigned. Mr. Percival advised Deft. refused to participate in proceedings in Arraignment Court. Statements by Deft. regarding issues with counsel. Mr. Percival requested to join in Deft's Motion for Dismissal of Counsel. COURT ORDERED, Deft's Pro Per Motion for Dismissal and Substitution of Counsel GRANTED and Motion is VACATED from the 4/26/10 calendar. COURT FURTHER ORDERED, Anthony Goldstein, Esq. APPOINTED as Counsel and matter is CONTINUED.

CUSTODY

4/28/10 STATUS CHECK: TRIAL SETTING; CONFIRMATION OF COUNSEL (A. GOLDSTEIN)

CLERK'S NOTE: Clerk notified Mr. Goldstein of appointment and continuance telephonically. /nm

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 28, 2010**

10C263359

The State of Nevada vs Manuel Winn

April 28, 2010**8:30 AM****All Pending Motions****ALL PENDING
MOTIONS 04/28/10
Relief Clerk: Carole
D'Aloia
Reporter/Recorder:
Angela Lee Heard
By: David Wall****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Adams, Danae

Attorney

Goldstein, Anthony M.

Attorney

Percival, Brent D.

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES**- STATUS CHECK: TRIAL SETTING...CONFIRMATION OF COUNSEL (GOLDSTEIN A)**

Upon Court's inquiry, Mr. Goldstein CONFIRMED AS COUNSEL. Mr. Percival advised he has provided Mr. Goldstein with all discovery in this matter. Mr. Goldstein requested matter be continued one (1) week to speak with Defendant and get up to speed on this case before setting the trial. There being no objection by the State. COURT ORDERED, matter CONTINUED.

CUSTODY**5/12/10 8:30 AM STATUS CHECK: TRIAL SETTING**

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 12, 2010**

10C263359

The State of Nevada vs Manuel Winn

May 12, 2010**8:30 AM****Status Check****STATUS CHECK:****TRIAL SETTING****Court Clerk: Melissa
Benson****Reporter/Recorder:****Angela Lee Heard****By: David Wall****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.

Attorney

Trippiedi, Hagar

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES

- Counsel advised Deft. wanted a speedy trial but still needs to be arraigned. Parties waived reading of Information. DEFT. WINN ARRAIGNED, PLED NOT GUILTY and INVOKED THE 60-DAY RULE. COURT ORDERED, matter set for trial and counsel has 21 days after the filing of the Preliminary Hearing Transcript or today's date, whichever is later, to file the writ. State reserves all procedural objections in relation to the filing of the writ.

CUSTODY

7/7/10 8:30 AM CALENDAR CALL

7/12/10 1:30 PM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 09, 2010**

10C263359

The State of Nevada vs Manuel Winn

June 09, 2010**8:30 AM****Motion**

**STATES MTN FOR
COMPLETE STORY
OR IN THE
ALTERNATIVE FOR
ADMISSION OF
OTHER BAD Court
Clerk: Carol Foley &
Sandra Harrell/sh
Reporter/Recorder:
Angela Lee Heard
By: Wall, David**

HEARD BY:**COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.
Thomson, Megan
Winn, Manuel

Attorney
Attorney
Defendant

JOURNAL ENTRIES

- Ms. Thompson not present. COURT ORDERED, matter OFF CALENDAR and reset on 6/16/10 to be heard with Deft's Motion to Refer Defendant for Competency Evaluation currently scheduled that date.

Matter Recalled. Ms. Thompson now present and requests matter be heard today. Court noted matter will be heard on continued date.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 16, 2010**

10C263359

The State of Nevada vs Manuel Winn

June 16, 2010**8:30 AM****All Pending Motions****ALL PENDING
MOTIONS 6/16/10
Court Clerk: Carol
Foley
Reporter/Recorder:
Angela Lee Heard
By: David Wall****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Goldstein, Anthony M.
Kramer, Kristen B.
Winn, ManuelAttorney
Attorney
Defendant**JOURNAL ENTRIES**

- STATE'S MOTION FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD ACTS...DEFENDANT'S MOTION TO REFER DEFENDANT FOR COMPETENCY EVALUATION

Ms. Kramer advised the State has no objection to Motion to Refer Deft. for Competency Evaluation. COURT ORDERED, motion GRANTED. Order for Competency Evaluation signed in open court. Matter REFERRED to Dept. V.

State's motion may be reset.

Mr. Goldstein noted Deft. is sending letters to the Clerk of the Court and chambers, and he informed Deft. he should go through him.

CUSTODY

7/8/10 9:30 AM FURTHER PROCEEDINGS: COMPETENCY (DEPT. V)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 07, 2010**

10C263359

The State of Nevada vs Manuel Winn

July 07, 2010**8:30 AM****Calendar Call****CALENDAR CALL****Relief Clerk: Carole
D'Aloia****Reporter/Recorder:****Julie Lever Heard****By: LEE GATES****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.

Attorney

Thomson, Megan

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES

- Parties advised they are requesting a short trial continuance because Defendant is set for Further Proceedings on competency in Department V tomorrow. COURT ORDERED, trial date VACATED and RESET. Defendant advised he served Court with judicial notice of a conflict of interest regarding his attorney, Mr. Goldstein. Defendant stated he also filed a complaint with the Nevada Bar Association in relation to Mr. Goldstein. Statements by Mr. Goldstein who informed he was appointed to represent Defendant after Defendant made the same allegations against his first attorney. Further statements by Defendant.

CUSTODY

7/14/10 8:30 AM CALENDAR CALL...DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL

7/19/10 1:00 PM JURY TRIAL

CLERK'S NOTE: AFTER MATTER WAS CALLED COURT DIRECTED CLERK TO CALENDAR DEFENDANT'S PRO PER MOTION TO WITHDRAW COUNSEL FOR THE SAME DATE AS CALENDAR CALL. cd

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 08, 2010**

10C263359

The State of Nevada vs Manuel Winn

July 08, 2010**9:30 AM****Further Proceedings****FURTHER
PROCEEDINGS:
COMPETENCY
(DEPT. V) Court
Clerk: Sandra Jeter
Reporter/Recorder:
Rachelle Hamilton
Heard By: Jackie
Glass****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Goldstein, Anthony M.
Pandukht, Taleen R.
Winn, ManuelAttorney
Attorney
Defendant**JOURNAL ENTRIES**

- APPEARANCES CONTINUED: Christina Greene of the Specialty Courts present. Defendant WINN present in custody.

Court NOTED Drs. Slagle and Mortillaro indicate competent; therefore, FINDS defendant COMPETENT pursuant to the Dusky Standard as defendant is capable of understanding the nature of the charges against him/her and is able to assist counsel in his/her defense and ORDERED, matter TRANSFERRED back to the originating court for further proceedings.

CUSTODY

7/14/10 8:30 AM FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT - DEPT. XX

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 14, 2010

10C263359

The State of Nevada vs Manuel Winn

July 14, 2010

8:30 AM

All Pending Motions

ALL PENDING
MOTIONS 7/14/10
Court Clerk: Carol
Foley
Reporter/Recorder:
Julie Lever Heard
By: David Wall

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Goldstein, Anthony M.	Attorney
	Thomson, Megan	Attorney
	Winn, Manuel	Defendant

JOURNAL ENTRIES

- FURTHER PROCEEDINGS: RETURN FROM COMPETENCY COURT...DEFT'S PRO PER MOTION TO DISMISS COUNSEL...CALENDAR CALL

COURT ORDERED, Motion to Dismiss Counsel DENIED.

Counsel announced ready for trial. Ms. Thomson advised the State has 5-8 witnesses and the trial should be about two days, three at the most. Mr. Goldstein noted he does not have contact information of the named victim and the State said he will not be called. Ms. Thomson advised he cannot be located. COURT ORDERED, matter REFERRED to overflow calendar. Mr. Goldstein requested a Tuesday start date. Mr. Goldstein noted another attorney will appear for him Friday. Conference at bench.

As to bad acts motion (not on calendar today): Mr. Goldstein advised he has an Opposition and a Petrocelli hearing is required. Upon Court's inquiry, Ms. Thomson advised it is the same victim, but she thinks evidence will come in through other witnesses. Court noted he will let Judge Barker know about the motion, and witnesses do not have to be available Friday.

10C263359

M. THOMSON/A. GOLDSTEIN/2-3 DAYS 5-8 WITNESSES/REQUEST Tuesday START DATE
7/16/10 9:00 AM OVERFLOW CALENDAR (DEPT. XVIII)...STATUS CHECK: STATE'S MOTION
FOR COMPLETE STORY OR IN THE ALTERNATIVE FOR ADMISSION OF OTHER BAD ACTS
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 16, 2010**

10C263359

The State of Nevada vs Manuel Winn

July 16, 2010**9:00 AM****Overflow****OVERFLOW(20)M.T
HOMSON/A.GOLDS
TEIN/ 2-3 DAYS/5-8
WITNESSES/REQUE
ST START
TUESDAY Relief
Clerk: Billie Jo Craig
Reporter/Recorder:
Richard Kangas
Heard By: David
Barker****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.

Attorney

Roger, David J.

Attorney

Thomson, Megan

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES**- OVERFLOW (20)...STATUS CHECK: STATE'S BAD ACT MOTION (NOT ON CALENDAR)**

Mr. Goldstein announced ready for a 1 to 2-day Trial with 5 to 6 witnesses. Counsel requested a Tuesday start date. COURT ORDERED, matter set for Trial in Dept. VIII. Defendant complaining counsel not present to talk with regarding evidence requested and witnesses to call. Mr. Goldstein noted defendant had similar issues with Attorney Percival. Court directed counsel to talk with defendant today and get things straightened out. Court noted defendant requested a continuance and to dismiss counsel. COURT ORDERED, both requests are DENIED. Neither counsel nor the Court knew anything about the Writ of Mandamus defendant advised he filed in Pro Per with the

10C263359

Nevada Supreme Court. The State advised it would provide to counsel and defendant the complete Anderson statement.

AS TO STATUS CHECK: Matter not addressed as it was not on Calendar.

CUSTODY

7/20/10 10:00 AM JURY TRIAL

THOMSON/GOLDSTEIN 1-2 DAYS//5-6 WITNESSES

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 20, 2010**

10C263359

The State of Nevada vs Manuel Winn

July 20, 2010**10:00 AM****Jury Trial****TRIAL BY JURY****HEARD BY:****COURTROOM:****COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.

Attorney

Keeler, Brett O.

Attorney

State of Nevada

Plaintiff

Thomson, Megan

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES

- Amended Indictment FILED IN OPEN COURT. Arguments by counsel regarding Motion to Refer Deft for second psychiatric evaluation and Motion to Continue Trial. Counsel advised Deft. refused visits with counsel and if person has been found legally competent, they should be actively participating with trial preparations. Court pointed out Deft. does not have to cooperate or participate and it does not raise competency issues. Argument by the State. Further arguments by counsel. Court stated its findings and ORDERED, medical records will be allowed in for purposes of trial over the defense's objections. Further argument by counsel. Petrocelli hearing conducted. Testimony presented. (See worksheet). Arguments by counsel. Court stated its findings and ORDERED, testimony will be allowed during trial. POTENTIAL JURY PRESENT. CONFERENCE AT THE BENCH. Jury and alternates SELECTED & SWORN. OUTSIDE THE PRESENCE OF THE JURY. Argument by counsel regarding State calling victim to testify after advising he could not be located. State advised they had located the victim just this morning. Counsel advised he would be ineffective as counsel as he could not be prepared to examine the witness within minutes of starting trial. Court advised counsel should be prepared for any witness in which the State may call and will allow victim's testimony. JURY PRESENT. Clerk read Amended Indictment to the jury and stated Deft's plea thereto. Opening statements by counsel. Testimony and exhibits presented (See worksheets). CONFERENCE AT THE BENCH. Testimony and exhibits presented (See worksheets).

10C263359

CONFERENCE AT THE BENCH. Testimony and exhibits presented (See worksheets). Evening recess.

07-21-10 9:30 AM TRIAL BY JURY

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

July 21, 2010

10C263359

The State of Nevada vs Manuel Winn

July 21, 2010

9:30 AM

Jury Trial

TRIAL BY JURY

HEARD BY:

COURTROOM:

COURT CLERK: Katherine Streuber

RECORDER: Jill Jacoby

REPORTER:

PARTIES**PRESENT:**

Goldstein, Anthony M.

Attorney

Keeler, Brett O.

Attorney

State of Nevada

Plaintiff

Thomson, Megan

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES

- JURY PRESENT. Testimony and exhibits presented. (See worksheets). CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets). CONFERENCE AT THE BENCH. Testimony and exhibits presented. (See worksheets). CONFERENCE AT THE BENCH. State rested. OUTSIDE THE PRESENCE OF THE JURY. Court advised the Deft. of his right to testify or not testify. Deft. advised he wanted to testify. Counsel pointed out the Deft. refusing counsel's visits, he has been unable to prepare him to testify. Deft. stated he now does not wish to testify due to counsel's convincing argument. Jury Instructions settled. JURY PRESENT. Defense rested. Court instructed the jury. Closing arguments by counsel. CONFERENCE AT THE BENCH. Alternates selected. At the hour of 1:14 p.m. the jury retired to deliberate. At the hour of 3:35 the jury returned with verdict of COUNT 1 - GUILTY of BATTERY WITH USE OF A DEADLY WEAPON; COUNT 2 - NOT GUILTY; and COUNT 3 - GUILTY of ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON. Jury thanked and excused. COURT ORDERED, matter referred to the Division of Parole and Probation (P & P) and set for sentencing. FURTHER, Deft. is REMANDED and is to be held WITHOUT bail.

CUSTODY

10-20-10 8:30 AM SENTENCING COUNTS 1 & 3/DISMISSAL COUNT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 25, 2010

10C263359

The State of Nevada vs Manuel Winn

August 25, 2010

8:30 AM

Motion

Motion for New Trial

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Katherine Streuber

RECORDER: Jill Jacoby

REPORTER:

PARTIES**PRESENT:**

Fleck, Michelle, ESQ

Attorney

Goldstein, Anthony M.

Attorney

State of Nevada

Plaintiff

Winn, Manuel

Defendant

JOURNAL ENTRIES

- Counsel requested continuance as he had not received the transcript from department 20. COURT ORDERED, matter CONTINUED to date of sentencing.

CUSTODY

10-20-10 8:30 AM Deft's Motion for New Trial

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 20, 2010**

10C263359

The State of Nevada vs Manuel Winn

October 20, 2010**8:30 AM****All Pending Motions****SENTENCING
COUNTS 1 &
3/DISMISSAL
COUNT 2; DEFT'S
MOTION FOR NEW
TRIAL****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**

Goldstein, Anthony M.

Attorney

State of Nevada

Plaintiff

Thomson, Megan

Attorney

Winn, Manuel

Defendant

JOURNAL ENTRIES

- Argument by counsel regarding calling of victim, Mr. Jackson as witness at trial when State did not disclose to counsel prior to start of trial. Counsel further argued State did not disclose contact information of said victim. Argument by the State and noted their investigator found the witness on the date of trial with counsel being informed as soon as information was received from investigator. Court advised it had reviewed the transcript and ORDERED, motion DENIED. Counsel requested brief continuance of sentencing. There being no opposition, COURT ORDERED, matter CONTINUED.

CUSTODY

10-27-10 8:30 AM SENTENCING COUNTS 1 & 3/DISMISSAL COUNT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 01, 2010**

10C263359

The State of Nevada vs Manuel Winn

November 01, 2010**8:30 AM****Sentencing****SENTENCING
COUNTS 1 &
3/DISMISSAL
COUNT 2****HEARD BY:** Brennan, James**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**Goldstein, Anthony M.
State of Nevada
Thomson, Megan
Winn, ManuelAttorney
Plaintiff
Attorney
Defendant**JOURNAL ENTRIES**

- Parties requested a continuance for trial judge to impose sentence. COURT ORDERED, matter CONTINUED.

CUSTODY

11-10-10 8:30 AM SENTENCING COUNTS 1 & 3/DISMISSAL COUNT 2

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****November 10, 2010**

10C263359

The State of Nevada vs Manuel Winn

November 10, 2010**8:30 AM****Sentencing****SENTENCING
COUNTS 1 &
3/DISMISSAL
COUNT 2****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**Goldstein, Anthony M.
State of Nevada
Thomson, Megan
Winn, ManuelAttorney
Plaintiff
Attorney
Defendant**JOURNAL ENTRIES**

- Argument by Deft. regarding receipt of State's Notice of Intent to Seek Habitual Criminal Treatment. Argument by the State. Statement by Deft. Statement by counsel advising of Deft's want to proceed with appeal without present counsel and noted Deft's mental health issues. DEFT WINN ADJUDGED GUILTY of COUNT 1 - BATTERY WITH USE OF A DEADLY WEAPON (F) and COUNT 3 - ATTEMPT ROBBERY WITH USE OF A DEADLY WEAPON (F). COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee, a \$150.00 DNA analysis fee including testing to determine genetic markers and \$250.00 Indigent Defense Civil Assessment fee, Defendant SENTENCED under the Large Habitual Criminal statute to COUNT 1 - LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole and COUNT 3 - LIFE in the Nevada Department of Corrections (NDC) WITHOUT the possibility of parole, to run CONSECUTIVE to COUNT 1, with TWO HUNDRED THIRTY-SEVEN (237) DAYS credit for time served. FURTHER, counsel is WITHDRAWN and Clerk to contact Drew Christensen for appointment of Appellant counsel. COUNT 2 DISMISSED. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 02, 2011**

10C263359

The State of Nevada vs Manuel Winn

February 02, 2011**8:30 AM****Motion to Amend
Judgment****Notice of Motion and
Motion to Amend
JOC to Reflect Jury
Verdict****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**State of Nevada
Thomson, Megan
Valencia, Mario DPlaintiff
Attorney
Attorney**JOURNAL ENTRIES**

- COURT ORDERED, motion GRANTED. Clerk's office to prepare Amended Judgment of Conviction.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****February 13, 2012**

10C263359

The State of Nevada vs Manuel Winn

February 13, 2012**8:00 AM****All Pending Motions****Deft's Pro Per Motion
for Leave to Proceed
in Forma Pauperis;
Deft's Pro Per Motion
for Withdrawal of
Attorney of Record or
in the Alternative,
Request for
Records/Court Case
Documents; Deft's
pro per Request for
records/Court Case
Documents****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**State of Nevada
Wong, Hetty O.Plaintiff
Attorney**JOURNAL ENTRIES**

- COURT ORDERED, Deft's Motion for Withdrawal of Attorney of Record is GRANTED, Spencer Judd APPOINTED and remaining matters are CONTINUED. FURTHER, matter SET for confirmation of counsel.

NDC

03-12-12 8:00 AM Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; Confirmation of Counsel (Judd, S); Deft's pro per Request for records/Court Case Documents

PRINT DATE: 11/09/2012

Page 24 of 33

Minutes Date: April 02, 2010

CLERK'S NOTE: Clerk e-mail Mr. Judd regarding appointment and date of confirmation. 02/16/12
kls The above minute order has been distributed to: Manuel Winn #76106 c/o Ely State Prison, P.O.
Box 1989, Ely, NV 89301. 02/16/12 kls

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****March 12, 2012**

10C263359

The State of Nevada vs Manuel Winn

March 12, 2012**8:00 AM****All Pending Motions****Deft's Pro Per Motion
for Leave to Proceed
in Forma Pauperis;
Confirmation of
Counsel (S. Judd);
Deft's Pro Per
Request for
Records/Court Case
Documents****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**Judd, Spencer M.
State of Nevada
Villani, Jacob J.Attorney
Plaintiff
Attorney**JOURNAL ENTRIES**

- Spencer Judd CONFIRMED as counsel, advised he had not spoken with Deft. yet and requested a continuance. COURT ORDERED, motion and request CONTINUED and matter is SET for status check.

NDC

04-09-12 8:00 AM Deft's Pro Per Motion for Leave to Proceed in Forma Pauperis; Deft's Pro Per Request for Records/ Court Case Documents; Status Check: Case Status

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****April 09, 2012**

10C263359

The State of Nevada vs Manuel Winn

April 09, 2012**8:00 AM****All Pending Motions****Deft's Pro Per Motion
for Leave to Proceed
in Forma Pauperis;
Status Check: Case
Status; Deft's Pro per
Request for
Records/Court Case
Documents****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**Judd, Spencer M.
State of Nevada
Villani, Jacob J.Attorney
Plaintiff
Attorney**JOURNAL ENTRIES**

- Counsel advised he has been working on the file. COURT ORDERED, matters CONTINUED.

NDC

05-30-12 8:00 AM DEFT'S PRO PER MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS;
STATUS CHECK: CASE STATUS; DEFT'S PRO PER REQUEST FOR RECORDS/COURT CASE
DOCUMENTS

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 09, 2012

10C263359

The State of Nevada vs Manuel Winn

May 09, 2012

8:00 AM

Motion

Spencer Judd, Esq's
Motion to Adopt
Petitioner's Pro Se
Motion to Proceed in
Forma Pauperis

HEARD BY: Smith, Douglas E.

COURTROOM: RJC Courtroom 16D

COURT CLERK: Katherine Streuber

RECORDER: Jill Jacoby

REPORTER:

PARTIES**PRESENT:**

Judd, Spencer M.
Morgan, Shawn A.
State of Nevada

Attorney
Attorney
Plaintiff

JOURNAL ENTRIES

- Court advised service is good. There being no opposition by the State, COURT ORDERED, motion GRANTED. FURTHER, future motions are CONTINUED to June 13, 2012 as requested by counsel.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****May 30, 2012**

10C263359

The State of Nevada vs Manuel Winn

May 30, 2012**8:00 AM****Status Check****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Jill Chambers**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**

Judd, Spencer M.

Attorney

Roberts, Tara M.

Attorney

State of Nevada

Plaintiff

JOURNAL ENTRIES

- Mr. Judd advised Deft's Motion requested he have counsel appointed and has reviewed pleadings, noting he has nothing further to add. Court DENIED Deft's motion and relieved Mr. Judd from further representation.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****June 13, 2012**

10C263359

The State of Nevada vs Manuel Winn

June 13, 2012**8:00 AM****All Pending Motions****DEFT'S PRO PER
MOTION FOR
LEAVE TO
PROCEED IN
FORMA PAUPERIS;
DEFT'S PRO PER
REQUEST FOR
RECORDS/COURT
CASE DOCUMENTS****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**Judd, Spencer M.
State of Nevada
Villani, Jacob J.Attorney
Plaintiff
Attorney**JOURNAL ENTRIES**

- Court stated its findings and ORDERED, Deft's Motion for Leave is DENIED and Deft's Request for Records is DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 08, 2012**

10C263359

The State of Nevada vs Manuel Winn

October 08, 2012**8:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Louisa Garcia**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:**State of Nevada
Villani, Jacob J.
Winn, ManuelPlaintiff
Attorney
Defendant**JOURNAL ENTRIES**

- Court noted the Defendant was previously appointed counsel; however, counsel was contacted and advised he was not aware of today's appearance. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 10/10/12 8:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 10, 2012**

10C263359

The State of Nevada vs Manuel Winn

October 10, 2012**8:00 AM****Petition for Writ of Habeas
Corpus****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Tia Everett**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- Susan Benedict, Deputy District Attorney, present on behalf of the State. Defendant not present in custody with Nevada Department of Corrections and represented by Spencer Judd Esq.

Mr. Judd advised this was an appeal to the Supreme Court which was denied and he is not certain why this is on calendar. Court advised matter on calendar for a post conviction writ. MATTER TRAILED for Mr. Judd to review the Pro Per Petition. RECALLED. Upon Court's inquiry, Mr. Judd advised these are the same issues denied by the Supreme Court. COURT ORDERED, Petition for post conviction relief DENIED and State shall prepare a Findings of Fact and Conclusions of Law consistent with their reply.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****October 15, 2012**

10C263359

The State of Nevada vs Manuel Winn

October 15, 2012**8:00 AM****All Pending Motions****Defendant's Pro Per
Motion To Hold
Mario D. Valencia
Attorney Of Record
In Contempt For
Failing To Forward A
Copy Of The Case
File; Deft's Pro Per Ex
Parte Motion for
Order to Transport
Prisoner****HEARD BY:** Smith, Douglas E.**COURTROOM:** RJC Courtroom 16D**COURT CLERK:** Katherine Streuber**RECORDER:** Jill Jacoby**REPORTER:****PARTIES****PRESENT:** Clemons, Jennifer M. Attorney
State of Nevada Plaintiff**JOURNAL ENTRIES**

- There being no showing, COURT ORDERED, motions are DENIED. State to prepare Findings of Fact/Conclusions of Law.

NDC

CLERK'S NOTE: The above minute order has been distributed to: Manuel Winn #76106 c/o Ely State Prison, P.O. Box 1989, Ely, NV 89301. 10/16/12 kls

Exhibit List

Case: 10C263359 Party: Sort Order: Status Defendant Name: Winn, Manuel DOB

Exhibit ID	On Behalf Of	Status/Date	Return/Destroy Date	Type and Description	Exhibit Flag	Source	In Custody Of	Location
PG	Plaintiff			GRAND JURY EXHIBITS -4		State of Nevada	District Court Criminal/Civil 04/05/2010	Evidence Vault
Comment: ExhibitID : 189498								
1	Plaintiff	Admitted 07/21/2010	** Destroy ** 07/30/2012	Document Medical Records		Roger, David J.		
Comment: for complete list see document left side filing notice with exhibit								
Court 1	Plaintiff	Admitted 07/20/2010	** Destroy ** 07/30/2012	Document Juror #12 Question		Roger, David J.		
Comment: for complete list see document left side filing notice with exhibit								
-1	Plaintiff	Admitted 11/10/2010	Destroy 11/23/2012	Document charging documents and JOC for c072263		Roger, David J.		
Comment: for complete list see documents left side filing notice with exhibits								

STATE'S EXHIBITS

CASE NO. C263359

	Date Offered	Objection	Date Admitted
1- Medical Records	JUL 21 2010	NO	JUL 21 2010
2- Aerial Map	JUL 20 2010	NO	JUL 20 2010
3- Evidence Envelope	"		"
3A- Knife (Biohazard)			
4- Photo - Full body of Winn	JUL 20 2010	NO	JUL 20 2010
5- Photo - Winn's Face	"		"
6- Photo - 905 Store (Wide shot)			
7- Photo - Store front			
8- Photo - Store door			
9- Photo - Inside store Full view			
10- Photo - Inside door & cashier counter			
11- Photo - Ice Cream freezer & blood			
12- Photo - Blood on floor			
13- Photo - Wide view of cashier counter			
14- Photo - Cooler & path to exit door			
15- Photo - Path down chip aisle to cooler			
16- Photo - Path down candy aisle to ICE			
17- Photo - Cashier Counter facing Arm			
18- Photo - Cooler w/ stocking bins			
19- Photo - Soda w/ Stocking bins			
20- Photo - Soda w/ Dr. Pepper tipped over			
21- Photo - Dr. Pepper & Knife (wide shot)			
22- Photo - " " (close shot)			

STATE'S EXHIBITS

CASE NO. C263359

[illegible]

EXHIBITS

CASE NO.

	Date Offered	Objection	Date Admitted
1- Juror #12 Question	JUL 20 2010	NO	JUL 20 2010
2- Juror #1 Question	JUL 20 2010	NO	JUL 20 2010
3- Juror #4 Question	JUL 20 2010	NO	JUL 20 2010
4- Juror #6 Question	JUL 20 2010	NO	JUL 20 2010
5- Juror #12 Question	JUL 21 2010	NO	JUL 21 2010
6- Juror #1 Question	JUL 21 2010	NO	JUL 21 2010
7- Juror #2 Question	JUL 21 2010	NO	JUL 21 2010
8- Juror #12 Question	JUL 21 2010	NO	JUL 21 2010
9- Juror #12 Question	JUL 21 2010	NO	JUL 21 2010
10- Juror #8 Question	JUL 21 2010	NO	JUL 21 2010
11- Juror #12 Question	JUL 21 2010	NO	JUL 21 2010
12- Juror #12 Question	JUL 21 2010	NO	JUL 21 2010

Certification of Copy

State of Nevada }
County of Clark } SS:

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

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

STATE OF NEVADA,

Plaintiff(s),

vs.

MANUEL WINN aka MANUAL L. WINN,

Defendant(s).

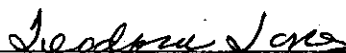
Case No: C263359

Dept No: VIII

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 9 day of November 2012.

Steven D. Grierson, Clerk of the Court


Teodora Jones, Deputy Clerk