

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Jun 24 2013 10:24 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

BARRON HAMM,
Appellant(s),
vs.

Case No: C256384
SC No: 62688

STATE OF NEVADA,
Respondent(s),

RECORD ON APPEAL VOLUME 2

ATTORNEY FOR APPELLANT
BARRON HAMM # 1052277,
PROPER PERSON
P.O. BOX 650
INDIAN SPRINGS, NV 89070

ATTORNEY FOR RESPONDENT
STEVEN B. WOLFSON,
DISTRICT ATTORNEY
200 LEWIS AVE.
LAS VEGAS, NEVADA 89101

I N D E X

<u>VOLUME:</u>	<u>PAGE NUMBER:</u>
1	1 - 239
2	240 - 401

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
1	08/18/2010	"EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HEARING"	225 - 229
1	09/08/2009	"MOTION TO DISMISS COUNSEL"	132 - 134
1	03/12/2010	AMENDED INDICTMENT	173 - 174
1	08/09/2010	CASE APPEAL STATEMENT	217 - 218
2	02/26/2013	CASE APPEAL STATEMENT	368 - 369
2	06/22/2013	CERTIFICATION OF COPY AND TRANSMITTAL OF RECORD	
2	07/11/2012	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	276 - 276
2	02/12/2013	CRIMINAL ORDER TO STATISTICALLY CLOSE CASE	357 - 357
1	09/28/2010	DECISION AND ORDER	234 - 236
2	12/19/2012	DEFENDANT'S RESPONSE AND OBJECTION TO STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT.	334 - 337
2	11/30/2012	DEFENDANT'S RESPONSE WHY PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL SHOULD ISSUE	314 - 319
2	06/22/2013	DISTRICT COURT MINUTES	
2	06/20/2013	DOCUMENTARY EXHIBITS (UNFILED)	377 - 401
2	01/29/2013	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	344 - 349
1	03/12/2010	GUILTY PLEA AGREEMENT	175 - 182
1	07/22/2009	INDICTMENT	1 - 7
1	07/22/2009	INDICTMENT WARRANT	8 - 8
1	07/23/2009	INDICTMENT WARRANT RETURN	9 - 10
1	05/20/2010	JUDGMENT OF CONVICTION (PLEA OF GUILTY)	192 - 193
1	07/27/2009	MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS	11 - 11
1	03/23/2010	MEDIA REQUEST AND ORDER FOR CAMERA ACCESS TO COURT PROCEEDINGS	183 - 183
2	11/30/2012	MOTION AND ORDER FOR TRANSPORTATION OF INMATE	320 - 325

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
		FOR COURT APPEARANCE OR, IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE	
2	10/31/2012	MOTION FOR APPOINTMENT OF COUNSEL (HABEAS CORPUS)	290 - 292
2	11/16/2012	MOTION FOR CLARIFICATION	302 - 304
2	07/29/2011	MOTION FOR ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS	240 - 242
2	02/25/2013	MOTION FOR RECONSIDERATION; AND FOR APPOINTMENT OF COUNSEL FOR "DIRECT APPEAL"	361 - 367
1	12/11/2009	MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATIVE COUNSEL	146 - 151
1	07/26/2010	MOTION TO WITHDRAW COUNSEL	203 - 211
1	07/21/2010	MOTION TO WITHDRAWAL AS ATTORNEY OF RECORD	194 - 202
2	02/13/2012	MOTION TO WITHDRAWAL PLEA	248 - 268
1	10/14/2010	NEVADA SUPREME COURT CLERK'S CERTIFICATE JUDGMENT - DISMISSED	237 - 239
1	08/05/2010	NOTICE OF APPEAL	212 - 216
2	02/22/2013	NOTICE OF APPEAL	358 - 360
2	02/04/2013	NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER	350 - 356
1	11/03/2009	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	137 - 145
1	02/09/2010	NOTICE OF EXPERT WITNESSES [NRS 174.234(2)]	152 - 167
1	03/08/2010	NOTICE OF WITNESSES [NRS 174.234(1)(A)]	168 - 170
1	07/27/2009	NOTIFICATION OF MEDIA REQUEST	12 - 12
1	03/23/2010	NOTIFICATION OF MEDIA REQUEST	184 - 184
1	08/31/2009	ORDER	109 - 110
2	11/10/2011	ORDER	246 - 247
2	05/07/2012	ORDER	274 - 275
1	09/14/2009	ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS	135 - 136
2	04/19/2013	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR	374 - 376

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
		RECONSIDERATION; AND FOR APPOINTMENT OF COUNSEL FOR "DIRECT APPEAL"	
2	01/29/2013	ORDER DENYING DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE; ORDER DENYING DEFENDANT'S PRO PER MOTION FOR CLARIFICATION	341 - 343
2	01/17/2013	ORDER DENYING DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	338 - 340
2	11/02/2012	ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS	293 - 294
1	08/24/2009	PETITION FOR WRIT OF HABEAS CORPUS	101 - 108
2	10/31/2012	PETITION FOR WRIT OF HABEAS CORPUS (POSTCONVICTION)	277 - 289
1	05/07/2010	PRE-SENTENCE INVESTIGATION REPORT (UNFILED) CONFIDENTIAL	185 - 191
1	08/06/2009	RECEIPT FOR GRAND JURY TRANSCRIPT(S)	100 - 100
1	08/03/2009	REPORTER'S TRANSCRIPT OF JULY 14, 2009	13 - 65
1	08/03/2009	REPORTER'S TRANSCRIPT OF JULY 21, 2009	66 - 99
2	11/26/2012	REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	305 - 309
1	08/12/2010	REQUEST OF STATUS OF MOTIONS	219 - 224
1	08/31/2009	RETURN TO WRIT OF HABEAS CORPUS	111 - 129
1	08/27/2010	STATE'S OPPOSITION TO DEFENDANT'S EX PARTE MOTION FOR APPOINTMENT OF COUNSEL AND REQUEST FOR EVIDENTIARY HERAING	230 - 233
2	08/15/2011	STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS	243 - 245
2	02/22/2012	STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA	269 - 273
2	03/15/2013	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION & APPOINTMENT OF COUNSEL	370 - 373
2	12/11/2012	STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION	330 - 333

I N D E X

<u>VOL</u>	<u>DATE</u>	<u>PLEADING</u>	<u>PAGE NUMBER :</u>
		FOR TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE	
2	11/14/2012	STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PRO PER PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL	295 - 301
2	11/27/2012	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CLARIFICATION	310 - 313
2	11/30/2012	STATE'S RESPONSE TO DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT	326 - 329
1	03/10/2010	SUPPLEMENTAL NOTICE OF WITNESSES [NRS 174.234(1)(A)]	171 - 172
1	09/01/2009	WRIT OF HABEAS CORPUS	130 - 131

Case No. C-256384
Dept. No. 07

FILED

JUL 29 2011

John L. Hamm
CLERK OF COURT

In The EIGHTH Judicial District Court of THE
State of Nevada in and For the County of Clark

Barron Hamm
Petitioner
- VS -

State of Nevada
Respondent

Motion For an order Granting
Request for Sentencing Transcripts

09C256384
MODR
Motion for Order
1551524



8-10-11
8:45 AM

comes now, The petitioner, Barron Hamm, Proceeding Pro Per, within
the above entitled cause of Action and respectfully request that
this Court grant relief for the petitioner in regards to this action.

This motion is made based upon the matters set forth here.

The Petitioner request that he Be granted a copy of the
sentencing Transcripts in case no. C-256384 that took place
on MAY 14 2010 in District Court Dept. 7

These documents are necessary in order to prepare a writ
of Habeas Corpus.

Thank You for your time and consideration in this matter.

RECEIVED

JUL 29 2011

CLERK OF THE COURT

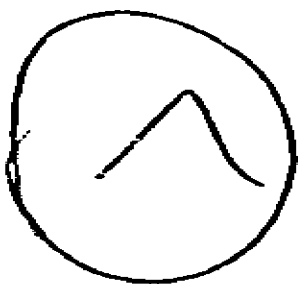
Sincerely
Barron Hamm J.M.
Barron Hamm (7-20-2011) *B*
Date

Barron Hamm #1052277

E.S.P.

P.O. Box 1989

Eliz N.Y. 89301



[Handwritten signature]

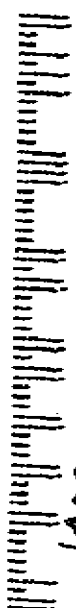
LINDA MARIE BELL
District Judge

Eighth Judicial District Court
Regional Justice Center
200 Lewis Ave
Las Vegas NV 89155-2367



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Sc/0 J. H.
ELY STATE PRISON

JUL 20 2011

7/21/11


CLERK OF THE COURT

1 **OPPS**
2 **DAVID ROGER**
3 Clark County District Attorney
4 Nevada Bar #002781
5 **FRANK M. PONTICELLO**
6 Chief Deputy District Attorney
7 Nevada Bar #000370
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,)

10 Plaintiff,)

CASE NO: C256384-1

11 -vs-)

DEPT NO: VII

12 **BARRON HAMM,**
13 #2707761)

14 Defendant.)

15 STATE'S OPPOSITION TO DEFENDANT'S MOTION FOR AN ORDER GRANTING
16 REQUEST FOR SENTENCING TRANSCRIPTS

17 DATE OF HEARING: 09/14/11

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

19 COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
20 FRANK M. PONTICELLO, Chief Deputy District Attorney, and hereby submits the
21 attached Points and Authorities in Response to Defendant's Motion for an Order Granting
22 Request for Sentencing Transcripts.

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

26 ///

27 ///

28 ///

///

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. DEFENDANT HAS NO RIGHT TO FREE TRANSCRIPTS**

3 The State is not required to furnish transcripts at its expense upon the unsupported
4 request of a petitioner claiming inability to pay for them. The petitioner must satisfy the
5 court that the points raised have merit, which will tend to be supported by a review of the
6 record before a defendant may have trial records supplied at State expense. Peterson v.
7 Warden, 87 Nev. 134, 135-36, 483 P.2d 204, 205 (1971).

8 An indigent appellant's right to have access to needed transcripts was established in
9 Griffin v. Illinois, 351 U.S. 12, 76 S.Ct. 585 (1956). The protection of indigents from
10 preclusive monetary requirements has been extended to other post-conviction proceedings.
11 See Douglas v. Green, 363 U.S. 192, 80 S.Ct. 1048 (1960) (docket fees in habeas corpus
12 proceedings). However, the United States Supreme Court reiterated in Eskridge v.
13 Washington State Board of Prison Terms and Paroles, 357 U.S. 214, 216, 78 S.Ct. 1061,
14 1062 (1958), what it had said in Griffin: "We do not hold that a State must furnish a
15 transcript in every case involving an indigent defendant."

16 Furthermore, in George v. State, 122 Nev. 1, 127 P.3d 1055 (2006), the Nevada
17 Supreme Court held that while an indigent defendant is entitled to transcripts of all
18 proceedings for the specific purpose of effecting a direct appeal, it affirmed its holding in
19 Peterson with regard to transcripts in other post-conviction proceedings.

20 Here, Defendant has failed to make the necessary threshold showing of need for state-
21 supplied court documents because Defendant has not stated with any particularity the basis
22 for his request. Per Peterson, Defendant must satisfy the court that the points raised have
23 merit, which will tend to be supported by a review of the record. However, Defendant has
24 not done that here.

25 As such, Defendant has not been deprived of his right of redress or access to the
26 courts, and thus is not entitled to court documents at State expense. Defendant has failed to
27 show that there is any merit to his claims for which the court documents he requests are
28 necessary. See Peterson, supra.

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CONCLUSION

For the foregoing reasons, the State respectfully requests Defendant's Motion for an Order Granting Request for Sentencing Transcripts be denied.

DATED this 12th day of August, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/FRANK M. PONTICELLO
FRANK M. PONTICELLO
Chief Deputy District Attorney
Nevada Bar #000370

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 15th day of August, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
ESP
PO BOX 1989
ELY NV 89301

/s/P. Manis
Secretary for the District Attorney's
Office

FMP/pm

ORIGINAL

8

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
VICTORIA VILLEGAS
Chief Deputy District Attorney
Nevada Bar #002804
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

Nov 10 9 51 AM '11

Sharon D. Shuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

Case No. 09-C-256384
Dept No. VII

ORDER

DATE OF HEARING: September 14, 2011
TIME OF HEARING: 8:45 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 14th day of September, 2011, the Defendant not being present, IN PROPER PERSON, the Plaintiff being represented by DAVID ROGER, District Attorney, through BRIAN KOCHVAR, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

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09C256384
OADP
Order Admitting Defendant to Probation &
1691563



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CLERK OF THE COURT

1 IT IS HEREBY ORDERED that the DEFENDANT'S PRO PER MOTION FOR AN
2 ORDER GRANTING REQUEST FOR SENTENCING TRANSCRIPTS For, shall be, and it
3 is DENIED WITHOUT PREJUDICE. The Court advised she will reconsider if Defendant
4 provides a reason he needs the transcripts

5 DATED this 8 day of ^{November}~~October~~, 2011.

6
7 
8 DISTRICT JUDGE
9

10 DAVID ROGER
11 DISTRICT ATTORNEY
12 Nevada Bar #002781

13 
14 VICTORIA VILLEGAS
15 Chief Deputy District Attorney
16 Nevada Bar #002804
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28 09F09275X/GANG:jh

FILED

FEB 13 2012

Ann L. Johnson
CLERK OF COURT

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

2/24/12
8:45am

THE STATE OF NEVADA,
Plaintiff

CASE NO. C 256384

DEPT. NO. V II

v.

BARRON HAMM JR.
12707761 Defendant.
1052277

09C256384
MWPL
Motion to Withdraw Plea
1788507



MOTION TO WITHDRAWAL PLEA

COMES NOW, Defendant, BARRON HAMM -, proceeding in proper
person, and moves this Honorable Court for an Order granting him permission to withdrawal his Plea
Agreement in the the case number C-256-384, on the date of 14 in the month
of 05 in the year 2010 where defendant was then represented by scott coffee as
counsel. This Motion is based on all papers and pleadings on file with the Clerk of the Court which are
hereby incorporated by this reference, and Points and Authorities herein and attached Affidavit of
Defendant.

Dated this 30 day of January, 2012

Respectfully submitted,

Barron Hamm
Defendant in Proper Person

RECEIVED

FEB 09 2012

CLERK OF THE COURT

1 BARRON HAMM
/ In Propria Personam
2 Post Office Box 650 [HDSP]
3 Indian Springs, Nevada 89018
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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA)

vs.)

BARRON HAMM # 105227)

Case No. C-256-384

Dept No. VII

Docket _____

NOTICE OF MOTION

YOU WILL PLEASE TAKE NOTICE, that Motion to withdraw

guilty plea

will come on for hearing before the above-entitled Court on the _____ day of _____, 20____,
at the hour of _____ o'clock _____ M. In Department _____, of said Court.

CC:FILE

DATED: this 30 day of January, 2012.

BY: BARRON HAMM 105227
BARRON HAMM #105227
/In Propria Personam

1 Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating
2 additional grounds and facts supporting same.

3 23. (a) GROUND ONE: Constitution Amendment No # 6/14

4 ineffective Assistance of Counsel, due process

5
6
7 23. (a)

8 Defendant(s) are entitled to the assistance of Counsel to defend
9 against allegations of wrongdoings, see: United States - Constitution
10 Amendment No # 6.

11 Such Counsel must be effective in representing the accused,
12 see: Strickland - vs - Washington, 446, U.S. 668, 104, S. Ct.
13 2052 (1984)

14 In Nevada, the Appropriate vehicle for review of whether
15 Counsel was effective is A Post-conviction relief proceeding
16 see: McKague - vs - Warden, 112, Nev. 159, 912, P. 2d, 255, 257,
17 N.Y. (1996)

18 In order to assert a claim for ineffective assistance of Counsel,
19 the defendant must prove that he was denied "reasonable effective
20 Assistance" of Counsel by satisfying the two-prong test of
21 Strickland - v - Washington, 446, U.S. 668, 686-687, 104, S. Ct. 2052,
22 2063; 2064 (1984) see: State - v - Love, 109, Nev. 1136, 865, P2d, 322,
23 323 (1993)

24 A Court MAY evaluate the questions of deficient performance and
25 prejudice in either order and need not consider both issues if the
26 defendant fails to make A Sufficient Showing on one. see: Means -
27 v - State, 120, Nev. 1001, 1011, 103, P 3d, (2004)

1 Under this test, the defendant must show first that his counsel's
2 representation fell below an objective standard of reasonableness,
3 and second, that but for counsel's errors, there is a
4 reasonableness probability that the result of the proceedings
5 would have been different. Strickland 466 U.S. at 687-688 and
6 694. "A reasonable probability is a probability sufficient to
7 undermine confidence in the outcome. *Wiggins-v-Smith*, 539
8 U.S. 510, 533 (2003)

9 Under the guidelines of Strickland, a reviewing court must begin
10 an evaluation of an ineffective assistance of counsel claim with
11 a strong presumption that counsel's conduct was within the
12 range of reasonable professional assistance. *Means-v-State*,
13 120 Nev. at 1011-1012,

14 A petitioner must prove his "factual allegation underlying his
15 ineffective assistance of counsel claim by a preponderance of the
16 evidence" *Means* 120 Nev. At 1013. (emphasis added)

17 The benchmark for assessing claims of ineffective assistance of
18 counsel is "whether counsel's conduct so undermined the proper
19 functioning of the adversarial process that the trial or proceedings
20 cannot be relied on as having produced a just result.

21 See: *Numes-v-Mueller*, 350 F.3d 1045, 1051 (9th Cir. 2003)

22 (Quoting, *Strickland-v-Washington* 466 U.S. 668, 686- (1984)

23 In reviewing an ineffective assistance of counsel claim, the court
24 should first determine whether counsel made a "sufficient
25 inquiry into the information... pertinent to his client's case,
26 See: *Doleman-v-State*, 112 Nev. 843, 921 P.2d 278, 280 (1996)
27 Citing, *Strickland*, 466 U.S. at 690-691-

• Once this decision is made, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his client's case, Doleman 921 P2d at 280

Strategy decisions are "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances", Doleman - 921 P2d at 280. See also, Howard vs State, 106 Nev. 713, 800 P2d 175, 180, (1990). Strickland 466 U.S. At 691.

As discussed above (supra) the burden of proof for an ineffective assistance of counsel allegation is by a preponderance of the evidence.

"A lawyer shall provide competent representation to a client",

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

Middleton v Warden Nevada State Prison, 98 P3d 694, N. 10 (Nev 2004)

(Quoting SCR 151)

Attorney's Appointed to represent defendants should be competent. See, Ex parte v Kramer, 61 Nev. 174, 22 P2d 862, 877, (1942) Ineffective assistance of counsel denies a defendant of due process, Id.

Counsel has A duty to thoroughly investigate plausible options in order to formulate strategies to effectively represent a Defendant.

See, Dawson v State, 108 Nev. 112, 117, 825 P2d 593 (1992)

If Counsel has thoroughly investigated plausible option in order to create a strategy to represent the defendant then such strategy decisions are almost unchallengeable. Id.

Hence, under this line of reasoning, if Counsel did not thoroughly investigate plausible option, then Counsel's Strategy Choices are able to be Challenged, and must past Constitutional requirements.

This case involves two constitutional doctrines that have been merging for years: The right to effective assistance of counsel and the voluntariness of guilty plea agreements.

First, the right to counsel is an enumerated right.

The Sixth Amendment to the United States Constitution provides that, [i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense, as talked about above. Here, this defendant does not contend that his plea was "involuntary" or "unintelligent" as a practical matter.

The record plainly shows that when the court canvassed him, the defendant acknowledged committing the acts in the charges against him, but this defendant claims that his plea was "involuntary" as a result of ineffective assistance of Counsel.

This defendant urges this court to restore his constitutional right to voluntarily choose between the courses of action that were and are available to him.

Here, this defendant entered a plea of guilty to the underline offenses of the charged information on the advice of counsel, with no benefit that would be beneficial to this defendant whatsoever, as put in plain language... There is no way that this 17 year old defendant could understand what was going on, and the consequence of his plea of guilty.

The statutory provisions governing the withdrawal of a Guilty Plea are codified in NRS. 176.165. That contemplates that a defendant may file a motion to withdraw a plea both before and after imposition of the sentence. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. See; Hargrove (116 Nev. 562) -v- STATE, 100 Nev. 498, 501-02 686, Pad.

222, 224-25 (1984) the court explicitly recognized the right to appeal from an order denying such a motion when the motion is brought subsequent to entry of the judgment of conviction. Further, in subsequent decisions, the court has consistently considered such appeals. See, Barajas - v - State, 115 Nev. 440, 991 P2d 474, (1999). Moreover, the court has indicated that a motion to withdraw a plea exists independently from provisions governing post-conviction relief.

Bryant - v - State, 102 Nev. 268, 272, 721 P2d 364, 368 (1986)

(A) defendant must raise a challenge to the validity of his or her guilty plea in the District Court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding under NRS. 34.360, or NRS. 177.215.

This defendant is therefore seeking to withdraw the guilty plea that was entered in the District Court upon the advice of counsel, and although this defendant admitted the facts which support all the elements of the offense(s) to which this defendant pleaded guilty to, he did not understand the consequence of his plea, nor by entering a plea of guilty did this defendant benefit by the negotiations.

The record indicates that trial counsel was aware that he could have filed a motion to suppress this alleged confession that was made in a locked room at the Metro Police Department, as the defendant was talking to his mother, as a tape recorder was left on, and recorded this alleged conversation.

If counsel had fully conducted his investigation, then without this alleged tap-recorder conversation, without the permission of this defendant or his mother, this information would have been suppressed, and the arresting of this defendant would have never taken place.

Here, Counsel clearly violated his affirmative duty to conduct a thorough pretrial investigation. Strickland, and many subsequent Supreme Court cases have addressed Counsel's duty to investigate a defendant's case, "without any type of investigation it becomes prejudicial to the defendant."

Even if the Court affords trial Counsel a heavy measure of deference, his decision not to investigate the suppression of this Constitutional violation of this defendant's rights, the back bone of the States case, would fall below an objective standard of reasonableness. For instance, the U.S. Supreme Court has recognized that the "ABA Standards for Criminal Justice are guides to determining what is reasonable" in ineffective assistance cases."

Accordingly, ABA Criminal Justice Standard 4-4.1 says, "Counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction."

Furthermore, The ABA maintains that this duty to investigate exists regardless of the accused's admissions or statements to defense counsel of facts constituting guilt or the accused's stated desire to plead guilty. Thus, in this case, even though the State may allege that they could amass evidence against the accused, and even though this defendant admitted on record at his guilty plea hearing to committing the alleged acts, trial Counsel's failure to begin his investigation until right before sentencing fell below the ABA's objective standard of reasonableness, - the first prong of the "Strickland" test.

From the outset, this defendant requested an investigation into the blatant use of a violation of his Constitutional rights as to the tape-recorded statements

that was the heart of the States Case, made in a room at the Metro Police Department, between this defendant and his mother. Moreover, Counsel in fact did a motion to suppress this conversation, and would not file it, but nevertheless provided a copy to this defendant, so this Court never got a chance to rule on this motion, thereby denying this defendant the Constitutional right to appeal. Further, Counsel at no time was informed by this defendant not to file the motion to suppress this conversation, and by not filing this motion, Counsel's representation fell below an objective standard of reasonableness, Strickland v. Washington, 446 U.S. 668, 104 S. Ct. 2052, (1984)

Because Counsel overstepped the Constitutional boundary that requires a defendant's informed consent before making decisions that materially affect his case,

Certain decision regarding the waiver of basic Constitutional right, cannot be made for this defendant by Counsel alone. This defendant argues that trial Counsel essentially usurped his right to knowingly and intelligently control the direction of his case.

Indeed, the underlying purpose of the Constitution's guarantee of the effective assistance of Counsel is "that partisan advocacy ... will best promote the ultimate objective" of fairness.

CONTINUATION REPORT

ID/Event Number: 090503-0318

Page 17 of 17

was video and audio taped to preserve the conversation. Initially when asked, Hamm stated he went to the party by himself and not with any of his friends. He further stated he was not a member of the ATM gang but eventually said he was a member of a dance click. Eventually Hamm stated he went to the party with friends of his he only knew as Antwon, Little Shorty and Lulu. At some point the party ended and Little Shorty got into a verbal altercation with Jazmin Flemming.

Hamm stated he ran from the party when he heard gunshots but later changed his story. He said he did indeed re-enter the apartment but he had no idea how the shots got fired. Hamm eventually asked for his mother Wanda Clark and Detective Wildemann brought her to the interview room from the lobby. After a brief discussion with Hamm and Ms. Clark, Detective Wildemann excused himself. On the video tape, Ms. Clark asked Hamm if he told the truth, Hamm replied he did tell the truth, he then lowered his voice and told his mother, "I did shoot the boy though, I did do that, I told you I shot him and I got scared." Ms. Clark told her son, "You can't say that, you can never say that. You just hung yourself!"

Following Hamm's interview, detectives felt that probable cause existed and arrested Hamm for Murder with a Deadly Weapon.

Exhibit 1

1 to get him to admit that, I gave him what I like to call
2 an out or an explanation, what I said was possibly an
3 accidental discharge took place in which he's holding
4 the gun and it accidentally fires or goes off.

5 Q. And is that, so that's an interview tactic
6 that you use during the interview; correct?

7 A. Yes.

8 Q. Was allowing Barron Hamm and his mother to
9 be alone in the room another interview tactic that you
10 were using?

11 A. Yes.

12 Q. You told him he would be allowed to let him
13 speak with his mother and you in fact did let him do
14 that?

15 A. Yes.

16 MS. JIMENEZ: Thank you.

17 I have no further questions for this
18 witness. Do any of the grand jurors have any questions?

19 THE WITNESS: Yes, sir.

20 BY A JUROR:

21 Q. Yeah. I take it it's not necessary to tell
22 him the mic is still on when you left the room?

23 A. No, sir.

24 Q. And I take it also that the weapon was
25 never recovered?

1 A. I'm sorry, could you repeat that?

2 Q. The weapon was never recovered?

3 A. We were not able to recover the weapon no,
4 sir.

5 BY A JUROR:

6 Q. Was he read his rights or Miranda?

7 A. He was not in custody, he was not
8 Mirandized, there's no need for me to do that, I'm not
9 obligated to do that.

10 Q. You said after the interview you told him
11 he was under arrest and took him down to the Detention
12 Center.

13 A. Right. At that point he's in custody, he's
14 under arrest, and I didn't interview him anymore.

15 Q. At that time he was given his Miranda
16 rights?

17 A. I don't believe I ever Mirandized him. I
18 didn't give him anymore questioning, no more questioning
19 took place.

20 BY MS. JIMENEZ:

21 Q. Let me just follow-up on that last
22 question.

23 When Barron Hamm initially came down to the
24 station he came of his own free will; correct?

25 A. Correct.

1 Q. If he had said to you I want to end the
2 interview, I want to leave, would you have allowed him
3 to do that?

4 A. Yes.

5 Q. And so he was arrested, that was at the
6 conclusion of the interview; correct?

7 A. Correct.

8 Q. Prior to that during, you know, at some
9 point during the interview if he wanted to leave he
10 would have been allowed to do that?

11 A. Yes.

12 MS. JIMENEZ: Nothing further.

13 BY A JUROR:

14 Q. I have a question. Did your investigation
15 reveal any prior conflicts between Barron and the
16 victim?

17 A. No. No. We knew that they were
18 acquaintances but no, no prior conflict between the two.

19 BY THE FOREPERSON:

20 Q. So there was no, no motive for doing this,
21 just out of the blue?

22 A. Other than the fact that he had made
23 demands in the apartment and that Jared Fleming had
24 run, other than that I can't give you a motive at this
25 point.

1 THE FOREPERSON: By law, these proceedings
2 are secret and you are prohibited from disclosing to
3 anyone anything that has transpired before us, including
4 evidence and statements presented to the Grand Jury, any
5 event occurring or statement made in the presence of the
6 Grand Jury, and information obtained by the Grand Jury.

7 Failure to comply with this admonition is a
8 gross misdemeanor punishable by a year in the Clark
9 County Detention Center and a \$2,000 fine. In addition,
10 you may be held in contempt of court punishable by an
11 additional \$500 fine and 25 days in the Clark County
12 Detention Center.

13 Do you understand this admonition?

14 THE WITNESS: Yes, sir.

15 THE FOREPERSON: Thank you, sir, for your
16 testimony. You are excused.

17 THE WITNESS: Thank you.

18 MS. VILLEGAS: We don't have anymore
19 witnesses. We'd like to submit this case for your
20 deliberation. I understand there is a couple of you
21 that were not here last week. Since we do not have a
22 transcript of the hearing you cannot deliberate. I
23 think there is, what, two? Two jurors I think have to
24 step outside.

25 MS. JIMENEZ: And also just before

Exhibit 7

1 PHILIP J. KOHN, PUBLIC DEFENDER
2 NEVADA BAR NO. 0556
3 309 South Third Street, Suite 226
4 Las Vegas, Nevada 89155
(702) 455-4685
Attorney for Defendant

5
6 DISTRICT COURT
CLARK COUNTY, NEVADA

7 THE STATE OF NEVADA,
8
9 Plaintiff,
10 v.
11 BARRON HAMM,
#2707761
12 Defendant.

CASE NO. C256384X
DEPT. NO. VII
DATE: March , 2010
TIME: 9:00 a.m.

13 MOTION TO SUPPRESS PURSUANT TO NRS 179.505

14 Comes now the defendant, by and through counsel Deputy Public Defender Scott L.
15 Coffee, with the this motion to suppress any and all oral communications between the defendant,
16 seventeen year old **BARRON HAMM**, and his mother which were unlawfully intercepted and/or
17 surreptitiously recorded without either party's consent in violation of **NRS 179.410** to **NRS**
18 **179.515**, inclusive, and/or in violation of **NRS 200.650** and/or in violation of any right to privacy
19 guaranteed the United States Constitution and/or the Constitution of the State of Nevada . Said
20 motion is based upon the attached points and authorities.
21
22

23 DATED this ____ day of March, 2010.

24
25 PHILIP J. KOHN
26 CLARK COUNTY PUBLIC DEFENDER

27 By: _____
28 SCOTT L. COFFEE, #5607
Deputy Public Defender

EXHIBIT 3

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF FACTS

1
2
3 In the instant case, Barron Hamm voluntary went to the police station for an interview in
4 regards to the shooting of Jared Flemming. The interview took place within the confines of an
5 interview room, behind a closed door. After Hamm repeatedly denied being involved in the
6 shooting Detective Wildemann ask Hamm if he would say the same thing if your mom was
7 present. Shortly after Wildemann's this question, Hamm was joined in the interview by his
8 mother. Pleasantries were exchanged and then Hamm was left alone with his mother in the
9 interview room.
10

11 Upon leaving the room, Hamm and his mother, Wanda Clark, believing they were alone,
12 have a discussion about facts of the case. Unbeknownst to either Hamm or his mother, the entirety
13 of what they believed to be a private conversation was surreptitiously intercepted and recorded by
14 LVPD. The state has indicated an intention to admit the entirety of this intercepted conversation.
15

LAW

16
17 NRS 179.505 allows for the filing of a motion to suppress the contents of "...any
18 intercepted wire or oral communication, or evidence derived there from, on the grounds that: (a)
19 the communication was unlawfully intercepted."
20

21 An "oral communication" is defined by NRS 179.440 as "...any verbal message uttered by
22 a person exhibiting an expectation that such communication is not subject to interception, under
23 circumstances justifying such expectation."
24

25 In the instant case we have a conversation, i.e. "verbal messages", between the defendant
26 and his family. The circumstances of the conversation, getting the story straight before relaying it
27 to the police, clearly indicate that the participants of the conversation exhibited an expectation that
28 the communication was "...not subject to interception".

1 Given the forgoing, the only real question as to whether there was an "oral
2 communication" for the purposes of **NRS 179.440** is whether the circumstances of the situation
3 justify the expectation that conversation was not subject to interception. While a police interview
4 room might not always justify such expectation, there are several compelling factors in this
5 instance which indicate the expectation of privacy was justified: 1) the defendant was told he was
6 not under arrest; 2) the interview took place away from the public eye in a closed room; 3) there
7 was no indication that the family was informed they were being taped; and 4) the officers told the
8 family they were leaving the room so a conversation could take place.
9

10 Each of the forgoing facts weighs in favor of a justified expectation that the conversation
11 was not subject to interception, but the fourth factor is the most compelling. In short, the agents of
12 the state purposely created a situation in which the family expected they were having a private
13 conversation, hence the state should be precluded from now claiming that such an expectation was
14 unjustified--- any other conclusion invites abuse of the right the statutes were designed to protect.
15 In short, this was an "oral communication" as defined by **NRS 179.440**.
16

17 Under **NRS 179.430** "Intercept" means the aural acquisition of the contents of any wire or
18 oral communication through the use of any electronic, mechanical or other device or of any
19 sending or receiving equipment." For example, a conversation recorded by virtue of a bugging
20 device, such as a suction cup attached to a phone, has been intercepted for purposes of this statute.¹
21

22 In the instant case the conversation in question, including audio---in the words of **NRS**
23 **179.430** "aural acquisition"--- was recorded on video taped. Given the expansive definition of
24 interception set forth by statute, it's clear an interception took place.

25 Having established an intercepted oral communication, we now must turn to whether said
26 interception was lawful. The lawful interception of an "oral communication" normally requires a
27

28

¹ See, for example, **Rupley v. State**, 93 Nev. 60 (1977)

1 court order prior to the interception.² Further, pursuant to **NRS 179.500**, any "interception" of an
2 "oral communication" is inadmissible unless the party offering the "oral communication" provides
3 proof that said interception was authorized by court order. Absent such proof the contents of such
4 intercepted "oral communication" are generally inadmissible.³ In the instant case the state did not
5 receive a court order prior to intercepting the oral communication between the Cardonas; hence
6 absent some recognized expectation the conversation is inadmissible.
7

8 While exceptions to warrant requires exist, for example phone conversations recorded in
9 the ordinary course of business by police officers or conversation recorded by informants who are
10 "wired"⁴ and telephone conversations being used by law enforcement officers during the ordinary
11 course of their duties.⁵ This is not a case which involves an informant or a telephone conversation
12 recorded in the ordinary course of an officer's duties. In short, the specific exceptions previously
13 set forth by the court or statute do not apply in this case.
14

15 Here, in addition to the running afoul Nevada's wire tap statutes, the surreptitious
16 recording of Hamm and his mother runs foul of the **NRS 200.650** prohibition against such
17 recording. Under **NRS 200.650** any such recording must be authorized by at least one party to the
18 conversation. This is the reason conversations between knowingly "wired" informant and suspect
19

20 ² See **NRS 179.460-470** which outline the situations in which the granting of such an order
21 would be appropriate and the prerequisites for the issuance of an order.

22 ³ See Rupley, supra.

23 ⁴ See Bonds v. State, 92 Nev. 307 (1977) holding that a person engaging in illegal activity
24 takes his chances that the conversation there person he's dealing with is an informer hence no
25 expectation of privacy and no "oral communication" for purposes of **NRS 179.440**. Note that
26 Bonds rationale only applies so long as at least one party consents to the recording least run afoul
of prohibition against the unauthorized surreptitious use of a listening device set forth in **NRS**
200.650. Here there was no consent by any party to the recording of the conversation.

27 ⁵ See **NRS 179.425** and Reyes v. State, 107 Nev. 191 (1991) for a full description of how
28 "telephone exception" applies to what might otherwise be termed an "interception" for purposes of

1 do not fall within the purview of the "wire tap" statutes, but such an exception ceases to exist in
2 the absence of the informant's consent.⁶ Here there was no consent by any party and the state may
3 not avail itself of the "informant exception".⁷

4 CONCLUSION

5 Based upon the forgoing and pursuant to NRS 179.505, NRS 200.650, the United States
6 Constitution and the Constitution of the State Nevada, the defense respectfully moves this
7 honorable court to suppress any and all surreptitiously recorded conversations between the
8 defendant and his family, said recording having been obtained in violation of the law of the state of
9 Nevada.
10

11 DATED this ____ day of January, 2010.

12
13 PHILIP J. KOHN
14 CLARK COUNTY PUBLIC DEFENDER

15 By: _____
16 SCOTT L. COFFEE, #5607
17 Deputy Public Defender
18
19
20
21

22 NRS 179.430. Here the conversation was video taped and the exceptions set forth in NRS
23 179.425 are inapplicable.

24 ⁶ See Summers v. State, 102 Nev. 195 (1986).

25 ⁷ In Summers at 200, the Supreme court noted "In State v. Bonds, 92 Nev. 307, 550 P.2d
26 409 (1976) we held that the warrantless, electronic recording of a communication from a
27 "transmitter-type listening device" attached to a police informant did not constitute the interception
28 of either a wire communication or an oral communication. Consequently, we held that the
interceptor of such a communication need not first secure an order permitting the interception.
NRS 179.470; NRS 179.475. *Such an interception must, however, satisfy the authorization
requirements set forth in NRS 200.650* (footnotes omitted, emphasis added)

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NOTICE OF MOTION

TO: CLARK COUNTY DISTRICT ATTORNEY, Attorney for Plaintiff:

YOU WILL PLEASE TAKE NOTICE that the Public Defender's Office will bring the above and foregoing Motion on for hearing before the Court on the 19th day of January, 2010, at 9:00 a.m.

DATED this ____ day of January, 2010.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: _____
SCOTT L. COFFEE, #5607
Deputy Public Defender

CERTIFICATE OF FACSIMILE

A COPY of the above and foregoing Order was sent via facsimile to the District Attorney's Office (383-8465) on this ____ day of January, 2010.

By _____
An employee of the Clark County Public
Defender's Office

Therefore, pursuant to the facts and the law stated herein, Defendant requests that his guilty plea be withdrawn.

Dated this 30 day of January, 2012

Respectfully Submitted,

Barron Hamm

CERTIFICATE OF SERVICE BY MAILING

I, Barron Hamm, hereby certify, pursuant to NRCP 5(b), that on this 30 day of January, 2012 I mailed a true and correct copy of the foregoing Motion to withdrawal Plea, by depositing it in the High Derest State Prison legal mail service provided through the Law Library, with First class Postage prepaid, and addressed to the following:

DAVID ROGER'S OFFICE
OF District Attorney
200 ~~200~~ Lewis AVE
PO. Box 552212
Las Vegas N.V. 89155-2212

CHARLES J. Short
clerk of the court
200 Lewis AVE 3rd Floor
Las Vegas N.V. 89155-1160

CC: File

Dated this 30 day of January, 2012

BY: Barron Hamm #1052277
Barron Hamm #1052277

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding Motion to

Withdrawal guilty Plea.
(Title of Document)

filed in District Court Case number C-256-384

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

-OR-

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

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

(State specific law)

-or-

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

Barron Hamm
Signature

01-30-2012
Date

BARRON HAMM
Print Name

with withdrawal plea
Title

I Implore that I ~~may~~ receive
Evidentary hearing do to the facts
Listed in the above motion.

~~Be~~ I Beleive I have suffer
Manifest unjustic. Do to the fact
That I didn't have proper representation
By attorney scott L coffee He has lied to
me my family about certain motion
Beeing Filed & if were filed it would prepare
a better defence in my Behalf.

with that in the above facts
I Implore that I be granted
a chance to withdrawl my guilty plea
on soie grounds that everyone is
Supose to have fair trial your Honor.

x Bastion Hamm #1052577
RespectFully Submitted

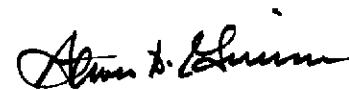
BARRON HAMM #1052277³⁷⁶³

P.O. BOX 650

INDIAN SPRING N.V. 89070

\$1.50
BS-180495

15



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
BRIAN KOCHEVAR
Chief Deputy District Attorney
Nevada Bar #005691
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09-C256384

DEPT NO: VII

STATE'S OPPOSITION TO DEFENDANT'S MOTION TO WITHDRAW GUILTY PLEA

DATE OF HEARING: February 24, 2012

TIME OF HEARING: 8:45 A.M.

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through BRIAN KOCHEVAR, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion To Withdraw Guilty Plea.

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

///

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, Defendant Barron Hamm was charged by way of Indictment with
4 Count 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); Count 2 –
5 Assault With a Deadly Weapon (Felony – NRS 200.471); Count 3 – Murder With Use of a
6 Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and Count 4 – Carrying
7 Concealed Firearm or Other Deadly Weapon (Felony – NRS 202.350(1)(d)(3)).

8 On March 12, 2010, Defendant pled guilty to Count 1 – Second Degree Murder With
9 Use of a Deadly Weapon and Count 2 – Assault With a Deadly Weapon. An Amended
10 Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same day.

11 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows: Count
12 1 – to life with a minimum parole eligibility of ten (10) years plus a consecutive term of two
13 hundred forty (240) months with a minimum parole eligibility of ninety-six (96) months for
14 the use of a deadly weapon; and Count 2 – to a maximum of seventy-two (72) months with a
15 minimum parole eligibility of twenty-four (24) months; Count 2 to run consecutive to Count
16 1; with three hundred seventy-five (375) days credit for time served. Judgment of
17 Conviction was filed on May 20, 2010.

18 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
19 Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur issued on
20 October 6, 2010.

21 Defendant filed the instant motion on February 13, 2012. The State’s Opposition
22 follows.

23 **ARGUMENT**

24 **A. DEFENDANT KNOWINGLY, VOLUNTARILY AND**
25 **INTELLIGENTLY ENTERED HIS GUILTY PLEA**

26 “[A] motion to withdraw a plea of guilty...may be made only before sentence is
27 imposed or imposition of sentence is suspended” unless it is necessary “to correct manifest
28 injustice.” NRS 176.165; Baal v. State, 106 Nev. 69, 72, 787 P.2d 391, 394 (1990). The

determination of whether there was a “manifest injustice” depends on whether the plea was entered voluntarily and knowingly. Baal, 106 Nev. at 72, 787 P.2d at 394. In determining whether a guilty plea was freely, knowingly, and voluntarily entered, the Court reviews the totality of the circumstances surrounding the plea. Bryant v. State, 102 Nev. 268, 271, 721 P.2d 364, 367 (1986) (*superseded by statute*). However, a guilty plea is presumptively valid. Wilson v. State, 99 Nev. 362, 373, 664 P.2d 328, 334 (1983). In addition, when a guilty plea is accepted by the trial court after proper canvassing as to whether the defendant freely, knowingly, and intelligently entered his plea, such plea will be deemed properly accepted. Baal, 106 Nev. at 72, 787 P.2d at 394. However, the failure to conduct a ritualistic oral canvass does not require that the plea be invalidated. State v. Freese, 116 Nev. 1097, 13 P.3d 442 (2000).

In the present case, Defendant argues that his plea was not knowing and voluntary because he was too young to realize that his counsel did not properly investigate and move to suppress tape recorded statements Defendant made to his mother admitting that he murdered the victim. However, Defendant signed the Guilty Plea Agreement (hereinafter “GPA”) which expressly acknowledged that his plea was knowing, voluntary, and intelligent, and in his best interest:

“My decision to plead guilty is based upon the plea agreement in this case which is as follows: The State will retain the full right to argue on the charge of Second Degree Murder. Both parties agree to stipulate to a sentence of eight (8) to twenty (20) years for the deadly weapon enhancement. Both parties also agree to stipulate to a sentence of twenty-four (24) to seventy-two (72) months for the charge of Assault with a Deadly Weapon and agree to run the sentence consecutive to Count 1. Further, this agreement is conditional on the Court agreeing to and following through with the stipulated portion of the sentence.” (GPA at 1).

“I understand that as a consequence of my plea of guilty to Count 1, the Court must sentence me to life with the possibility of parole with eligibility for parole beginning at ten (10) years; OR a definite term of twenty five (25) years with eligibility for parole beginning at ten (10) years. I also understand that due to my use of a deadly weapon in the commission of my crime, the Court, after considering all the factors required by law, must impose a consecutive sentence of one (1) to twenty

1 (20) years which must not be greater than the sentence imposed for the
2 underlying crime.” (GPA at 2).

3 **“I understand that as a consequence of my plea of guilty to Count 2,**
4 **the Court must sentence me to imprisonment in the Nevada Department of**
5 **Corrections for a minimum term of not less than one (1) years and a**
6 **maximum term of not more than six (6) years. The minimum term of**
7 **imprisonment may not exceed forty percent (40%) of the maximum term**
8 **of imprisonment...”** (GPA at 2).

9 “I have discussed the elements of all of the original charge(s) against me
10 with my attorney and I understand the nature of the charge(s) against me.”
11 (GPA at 4).

12 “I understand the State would have to prove each element of the charge(s)
13 against me.” (GPA at 4).

14 “I have discussed with my attorney any possible defense, defense strategies
15 and circumstances which might be in my favor.” (GPA at 4).

16 **“All the foregoing elements, consequences, rights and waiver of rights**
17 **have been thoroughly explained to me by my attorney.”** (GPA at 4)
18 (Emphasis added).

19 “I believe that pleading guilty and accepting this plea bargain is in my best
20 interest, and that a trial would be contrary to my best interest.” (GPA at 5).

21 “I am signing this agreement voluntarily, after consultation with my
22 attorney, and I am not acting under duress or coercion or by virtue of any
23 promises of leniency, except for those set forth in this agreement.” (GPA at
24 5).

25 “My attorney has answered all my questions regarding this guilty plea
26 agreement and its consequences to my satisfaction and I am satisfied with
27 the services provided by my attorney.” (GPA at 5).

28 As this court can see, the GPA is replete with evidence that Defendant understood the
terms of his guilty plea and had discussed with his attorney the consequences stemming
therefrom. Consequently, Defendant’s plea was irrefutably entered freely, knowingly, and
voluntarily. Looking at the totality of the circumstances, therefore, Defendant has not
satisfied his burden of proving that “manifest injustice” (as defined in NRS 176.165) exists
to warrant the withdrawal of his plea. Therefore, Defendant is not entitled to relief and his

1 motion should be denied.

2 **B. DEFENDANT'S CLAIMS OF INEFFECTIVE ASSISTANCE OF**
3 **COUNSEL SHOULD HAVE BEEN RAISED IN A POST-**
4 **CONVICTION PETITION FOR WRIT OF HABEAS CORPUS**

5 Defendant makes various claims of ineffective assistance of trial counsel, however
6 those claims should have been raised in a timely Post-Conviction Petition for Writ of Habeas
7 Corpus. See NRS 34.724; see also NRS 34.726; see also NRS 34.810(a). As such, those
8 portions of Defendant's Motion to Withdraw Guilty Plea should be summarily dismissed.

9 **CONCLUSION**

10 For the foregoing reasons, the State respectfully requests that this court deny
11 Defendant's Motion to Withdraw Guilty Plea.

12 DATED this 22nd day of February, 2012.

13 Respectfully submitted,

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

16
17 BY /s/BRIAN KOCHER
18 BRIAN KOCHER
19 Chief Deputy District Attorney
Nevada Bar #005691

20 **CERTIFICATE OF MAILING**

21 I hereby certify that service of the above and foregoing, was made this 22nd day of
22 February, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

23 BARRON HAMM, BAC#1052277
24 PO BOX 650 [HDSP]
25 INDIAN SPRINGS, NV 89018

26 /s/A. FLETCHER
27 Secretary for the District Attorney's
28 Office

09F09275X/GANG:abf

ORIGINAL

FILED

MAY 07 2012

Ann L. Blum
CLERK OF COURT

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 SONIA V. JIMENEZ
6 Chief Deputy District Attorney
7 Nevada Bar #008818
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

09C256384
ORDR
Order
1844839



10 THE STATE OF NEVADA,
11 Plaintiff,

12 -vs-

13 BARRON HAMM,
14 #2707761

15 Defendant.

Case No. 09C256384
Dept No. VII

ORDER

DATE OF HEARING: February 24, 2012
TIME OF HEARING: 8:45 A.M.

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 24th day of February, 2012, the Defendant not being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through MARIA
22 LAVELL, Deputy District Attorney, and the Court hearing no arguments of counsel and
23 good cause appearing therefore,

24 //

25 //

26 //

27 //

28 //

RECEIVED

MAY 07 2012

CLERK OF THE COURT

1 THE COURT stated it appears the motion would have been more properly brought as
2 a post-conviction petition and, even then, it would be untimely. Under the circumstances of
3 the case, there does not appear to be any basis to grant the motion.

4 IT IS HEREBY ORDERED that the Defendant's Motion to Withdraw Plea, shall be,
5 and it is, DENIED.

6 DATED this 1 day of May, 2012.



DISTRICT JUDGE



11 STEVEN B. WOLFSON
12 DISTRICT ATTORNEY
13 Nevada Bar #001565



14 SONIA V. JIMENEZ
15 Chief Deputy District Attorney
16 Nevada Bar #008818

27 09F09275X/GANG:abf

COSCC

FILED

JUL 11 11 05 AM '12

DISTRICT COURT
CLARK COUNTY, NEVADA

CLERK COURT

THE STATE OF NEVADA VS
BARRON HAMM

CASE NO.: 09C256384
DEPARTMENT 7

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☒ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Other Manner of Disposition

09C256384
COSCC
Criminal Order to Statistically Close Case
1889331



DATED this 10th day of July, 2012.

LINDA BELL
DISTRICT COURT JUDGE

RECEIVED

JUL 11 2012

CLERK OF THE COURT

CASE NO: C256384

DEPT NO: VII 9

09C266384

PWHC

Petition for Writ of Habeas Corpus

1991472



FILED

OCT 31 2012

Alvin L. Williams
CLERK OF COURT

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

BARRON HAMM,
PETITIONER,

v.

STATE OF NEVADA, DEPT OF CORRECTIONS
WARDEN D.W. NEVIN [HDSP]
HIGH DESERT STATE PRISON
P.O. BOX 650, INDIAN SPRINGS,
RESPONDENT

PETITION FOR WRIT OF HABEAS CORPUS
(POSTCONVICTION)

(7) When the petition is fully completed, the original and one copy must be filed with the clerk of the state district court for the county in which you were convicted. One copy must be mailed to the respondent, one copy to the Attorney General's Office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: ~~ELY STATE PRISON~~ HOSP
~~WHITE PINE COUNTY~~ HIGH DESERT STATE PRISON / CLARK COUNTY

2. Name and location of court which entered the judgment of conviction under attack: CLARK
~~WHITE PINE COUNTY~~ EIGHT Judicial District Court

3. Date of judgment of conviction: MAY 14, 2010

4. Case number: C-256-384

5. (a) Length of sentence: 20 to Life

(b) If sentence is death, state any date upon which execution is scheduled: _____

N/A

6. Are you presently serving a sentence for a conviction other than the conviction under attack in this motion? Yes _____ No X

If "yes", list crime, case number and sentence being served at this time: N/A

7. Nature of offense involved in conviction being challenged: second degree
MURDER & Assault with a deadly weapon

8. What was your plea? (check one):

(a) Not guilty _____ (b) Guilty X (c) Nolo contendere _____

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

N/A

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

(a) Jury _____ (b) Judge without a jury _____

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

12. Did you appeal from the judgment of conviction? Yes _____ No X

13. If you did appeal, answer the following:

(a) Name of Court: N/A

(b) Case number or citation: _____

(c) Result: _____

(d) Date of result: N/A

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

14. If you did not appeal, explain briefly why you did not: I was informed by my attorney that he was gonna do it for me when he never filed any thing in my behalf ATTORNEY WAS INEFFECTIVE AND VIOLATED MY APPEAL RIGHTS.

15. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

Yes X No

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

(a)(1) Name of court: 8th Judicial Court

(2) Nature of proceeding: withdrawal of guilty plea APPOINTMENT OF COUNSEL / EVIDENTIARY HEARING

(3) Grounds raised: ineffective assistance of counsel / constitutional amendment violation

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

Yes No X N/A

(5) Result: N/A

(6) Date of result:

(7) If known, citations of any written opinion or date of orders entered pursuant to such result:

I NEED A LAWYER AND A HEARING POLICE VIOLATED MY RIGHT TO PRIVACY / SPEECH

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

(1) Name of court: N/A

(2) Nature of proceeding:

(3) Grounds raised:

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

Yes No X

(5) Result: N/A

(6) Date of result:

(7) If known, citations of any written opinion or date of orders entered pursuant to such a result:

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

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

(1) First petition, application or motion? Yes No X

Citation or date of decision: N/A

(2) Second petition, application or motion? Yes No X

Citation or date of decision: N/A

(3) Third or subsequent petitions, applications or motions? Yes No X

Citation or date of decision: N/A

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

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

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

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

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

18. If any of the grounds listed in No. 's 23(a), (b), (c) and (d), or listed on any additional pages you have attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

19. Are you filing this petition more than one year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. (You must relate specific facts in response to this question. Your response may be included on paper which is 8 1/2 by 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) ATTORNEY STATED HE WOULD FILE BUT HE DID NOT!

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? Yes _____ No X
If yes, state what court and case number: _____

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: SCOTT L. COFFEE

22. Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes _____ No X
If yes, specify where and when it is to be served, if you know: N/A

23. State concisely every ground on which you claim that you are being held unlawfully. summarize briefly the facts supporting each ground. If necessary you may attach pages stating additional grounds and facts supporting same.

Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

23. (a) GROUND ONE: Constitution Amendment No # 6 - 14

ineffective Assistance of Counsel;

VIOLATION OF DUE PROCESS;

23. (a) SUPPORTING FACTS (Tell your story briefly without citing cases or law):

Defendant(s) are entitled to the assistance of Counsel to defend
against allegations of wrongdoings, see: United States - Constitution
Amendment No # 6.

Such Counsel must be effective in representing the accused,
See: Strickland - vs - Washington, 416, U.S. 668, 104, S. Ct.
2052 (1984)

In Nevada, the Appropriate vehicle for review of whether
Counsel was effective is A Post-conviction relief proceeding
See: McKague - vs - Warden, 112, Nev. 159, 912, P. 2d, 255, 257,
N. 4, (1996)

In order to assert a claim for ineffective assistance of Counsel,
the defendant must prove that he was denied "reasonable effective
Assistance" of Counsel by satisfying the two-prong test of
Strickland - v - Washington, 416, U.S. 668, 686-687, 104, S. Ct 2052,
2063, 2064 (1984) See: State - v - Love, 109, Nev. 1136, 865, P2d, 322,
323 (1993)

A Court may evaluate the questions of deficient performance and
prejudice in either order and need not consider both issues if the
defendant fails to make A Sufficient Showing on one. See: Means -
v - State, 120, Nev. 1001, 1011, 103, P 3d, (2004)

Under this test, the defendant must show first that his counsel's representation fell below an objective standard of reasonableness, and second, that but for counsel's errors, there is a reasonable probability that the result of the proceedings would have been different. Strickland 466 U.S. at 687-688 and 691, "A reasonable probability is a probability sufficient to undermine confidence in the outcome. Wiggins-v-Smith, 539 U.S. 510, 533 (2003)

Under the guidelines of Strickland, a reviewing court must begin an evaluation of an ineffective assistance of counsel claim with a strong presumption that counsel's conduct was within the range of reasonable professional assistance. Means-v-State, 120 Nev. at 1011-1012,

A petitioner must prove his "factual allegation underlying his ineffective assistance of counsel claim by a preponderance of the evidence" Means 120 Nev. At 1013, (emphasis added)

The benchmark for assessing claims of ineffective assistance of counsel is "whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial or proceedings cannot be relied on as having produced a just result.

See: Nunes-v-Mueller, 350 F.3d 1045, 1051 (9th Cir. 2003)

(Quoting, Strickland-v-Washington 466 U.S. 668, 686 (1984)

In reviewing an ineffective assistance of counsel claim, the court should first determine whether counsel made a "sufficient inquiry into the information... pertinent to his client's case,

See: Doleman-v-State, 112 Nev. 843, 921 P.2d, 278, 280 (1996)

Citing, Strickland, 466 U.S. at 690-691-

Once this decision is made, the court should consider whether counsel made "a reasonable strategy decision on how to proceed with his clients case, Doleman 921. P2d. at 280

Strategy decisions are "tactical" decision and will be "virtually unchallengeable absent extraordinary circumstances", Doleman - 921. P2d. at 280. See also, Howard vs State, 106 Nev. 713, 800, P2d. 175, 180, (1990). Strickland 466. U.S. At 691.

As discussed above (supra) the burden of proof for an ineffective assistance of counsel allegation is by a preponderance of the evidence. "A lawyer shall provide competent representation to a client",

Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonable necessary for the representation.

Middleton v Warden Nevada State Prison, 98, P2d. 694, N. 10 (Nev 2004)

(Quoting SCR 151)

Attorneys Appointed to represent defendants should be competent. See, Ex parte v Kramer, 61 Nev. 174, 122 P2d. 862, 877, (1942) Ineffective assistance of counsel denies a defendant of due process, Id.

Counsel has A duty to thoroughly investigate plausible options in order to formulate strategies to effectively represent a Defendant.

See, Dawson v State, 108 Nev. 112, 117, 825 P2d. 593 (1992)

If Counsel has thoroughly investigated plausible option in order to create a strategy to represent the defendant then such strategy decisions are almost unchallengeable, Id.

Hence, under this line of reasoning, if Counsel did not thoroughly investigate plausible option, then Counsel's Strategy Choices are able to be Challenged, and must past Constitutional requirements.

This case involves two constitutional doctrines that have been merging for years: The right to effective assistance of counsel and the voluntariness of guilty plea agreements.

First, the right to counsel is an enumerated right.

The Sixth Amendment to the United States Constitution provides that, [i]n all criminal prosecutions, the accused shall enjoy the right... to have the Assistance of Counsel for his defense, as talked about above. Here, this defendant does not contend that his plea was "involuntary" or "unintelligent" as a practical matter.

The record plainly shows that when the court canvassed him, the defendant acknowledged committing the acts in the charges against him, but this defendant claims that his plea was "involuntary" as a result of ineffective assistance of Counsel.

This defendant urges this court to restore his constitutional right to voluntarily choose between the courses of action that were and are available to him.

Here, this defendant entered a plea of guilty to the underline offenses of the charged information on the advice of counsel, with no benefit that would be beneficial to this defendant whatsoever, as put in plain language... There is no way that this year old defendant could understand what was going on, and the consequence of his plea of guilty.

The statutory provisions governing the withdrawal of a Guilty Plea are codified in NRS 726.165. That contemplates that a defendant may file a motion to withdraw a plea both before and after imposition of the sentence. To correct manifest injustice, the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea. See; Hargrove (116 Nev. 562) -v- STATE, 100 Nev. 498, 501-02 686, 2d.

222, 224-25 (1984) the court explicitly recognized the right to appeal from an order denying such a motion when the motion is brought subsequent to entry of the judgment of conviction. Further, in subsequent decisions, the court has consistently considered such appeals. See, Barajas - v - State, 115 Nev. 440, 991 P2d. 474, (1999). Moreover, the court has indicated that a motion to withdraw a plea exists independently from provisions governing post-conviction relief.

Bryant - v - State, 102 Nev. 268, 272, 721 P2d. 364, 368 (1986)

(A) defendant must raise a challenge to the validity of his or her guilty plea in the District Court in the first instance, either by bringing a motion to withdraw the guilty plea, or by initiating a post-conviction proceeding under NRS. 34.360, or NRS. 177.315.

This defendant is therefore seeking to withdraw the guilty plea that was entered in the District Court upon the advice of Counsel, and although this defendant admitted the facts which support all the elements of the offense(s) to which this defendant pleaded guilty to, he did not understand the consequence of his plea, nor by entering a plea of guilty did this defendant benefit by the negotiations,

The record indicates that trial Counsel was aware that he could have filed a motion to suppress this alleged confession that was made in a locked room at the Metro Police Department, as the defendant was talking to his mother, as a tape recorder was left on, and recorded this alleged conversation,

If Counsel had fully conducted his investigation, then without this alleged tap-recorder conversation, without the premission of this defendant or his mother, this information would have been suppressed, and the arresting of this defendant would have never took place.

Here, Counsel clearly violated his affirmative duty to conduct a thorough pretrial investigation. Strickland and many subsequent Supreme Court cases have addressed Counsel's duty to investigate a defendant's case, "without any type of investigation it becomes prejudicial to the defendant."

Even if the Court affords trial Counsel a heavy measure of deference, his decision not to investigate the suppression of this Constitutional violation of this defendant's rights, the back bone of the States case, would fall below an objective standard of reasonableness. For instance, the U.S. Supreme Court has recognized that the "ABA Standards for Criminal Justice are guides to determining what is reasonable" in ineffective assistance cases."

Accordingly, ABA Criminal Justice Standard 4-4.1 says, "Counsel should conduct a prompt investigation of the circumstances of the case and explore all avenues leading to facts relevant to the merits of the case and the penalty in the event of conviction,"

Furthermore, The ABA maintains that this duty to investigate exists regardless of the accused's admissions or statements to defense Counsel of facts constituting guilt or the accused's stated desire to plead guilty. Thus, in this case, even though the State may allege that they could amass evidence against the accused, and even though this defendant admitted on record at his guilty plea hearing to committing the alleged acts, trial Counsel's failure to begin his investigation until right before sentencing fell below the ABA's objective standard of reasonableness, - the first prong of the "Strickland" test.

From the outset, this defendant requested an investigation into the blatant use of a violation of his Constitutional rights as to the tape-recorded statements

CERTIFICATE OF SERVICE BY MAIL

I, BARRON HAMM, hereby certify pursuant to N.R.C.P. 5(b), that on this 19 day of the month of OCTOBER, of the year 2002, I mailed a true and correct copy of the foregoing **PETITION FOR WRIT OF HABEAS CORPUS** addressed to:

[Signature]
Respondent prison or jail official

[X]
Address

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

WILFSON
District Attorney of County of Conviction

200 LEWIS AVE
LAS VEGAS, NV 89135
Address

[Signature]
Signature of Petitioner

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

PETITION FOR WRIT OF HABEAS CORPUS
(Title of Document)

filed in District Court Case No. C 256 384

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

-OR-

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

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

(State specific law)

-OR-

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

Banner H
(Signature)

10/19/12
(Date)

BARON HAMM[#] 1052277
P.O. Box 650 HDSF
INDIAN SPRINGS, WV
89070



ppow
BARRON HAMM
DEFENDANT/IN PROPER PERSON
POST OFFICE BOX 650 [HOSP]
INDIAN SPRINGS, NV 89070

FILED

OCT 31 2012

John J. Johnson
CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
PLAINTIFF,
VS.
BARRON HAMM,
DEFENDANT.

CASE No: C256384X

DEPT No: ~~1111~~ 9

(POSTCONVICTION)

MOTION FOR APPOINTMENT OF COUNSEL (HABEAS CORPUS)

COMES NOW THE DEFENDANT, BARRON HAMM, IN PROPER PERSON
AND REQUESTS THIS HONORABLE COURT TO GRANT THE APPOINTMENT OF
COUNSEL FOR HABEAS CORPUS POSTCONVICTION RELIEF.

THE DEFENDANT WAS SEVENTEEN AT THE TIME OF THE OFFENSE.
THE CASE IS EXTREMELY DIFFICULT AND THE DEFENDANT LACKS COURT KNOWLEDGE
THE CONVICTION AND SENTENCE ARE SEVERE AND THE FACTS IN THIS CASE
ARE LEGALLY BEING CHALLENGED AND COUNSEL IS REQUIRED TO BENEFIT
THE LAWS AND PROTECTION OF THE DEFENDANT IN THE INTEREST OF JUSTICE.
SAID MOTION IS BASED UPON THE ATTACHED POINTS AND AUTHORITIES.

DATED THIS 19 DAY OF OCTOBER, 2012

By: Barron HAMM JR.
DEFENDANT

CLERK OF THE COURT
OCT 30 2012
MAILED

POINTS AND AUTHORITIES

STATEMENT OF FACTS:

THE INSTANT CASE IS THE SEVENTEEN YEAR OLD DEFENDANT BEING CHARGED WITH MURDER AND THAT THE STATE OBTAINED EVIDENCE ILLEGALLY UNDER NRS 179.440 AND THAT DEFENDANT WAS FORCED TO PLEAD GUILTY DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL AND DUE PROCESS VIOLATIONS.

DEFENDANT WAS CONVICTED OF SECOND DEGREE MURDER AND ASSAULT WITH A DEADLY WEAPON. DEFENDANT WAS SENTENCED TO 20 YEARS TO LIFE IN PRISON.

LEGAL ARGUMENT:

THE CASE IS COMPLEX AND THE CHARGES ARE SERIOUS AND COMPLICATED. THE COURT IN APPOINTING COUNSEL FOR POSTCONVICTION RELIEF MAY CONSIDER THE CIRCUMSTANCES IN THE CASE AND IN THIS CASE A EXHIBITARY IS NEEDED AND COUNSEL WOULD BE ABLE TO SHOW THE COURT THE LEGAL REMEDIES WHICH WOULD BENEFIT THE DEFENDANT WHO IS UNFAMILIAR WITH THE COMPLEXION OF THE COURT SYSTEM.

THE DEFENDANT WAS SEVENTEEN AT THE TIME OF ARREST, THEREFORE, WITH HIS CLAIM OF INEFFECTIVE ASSISTANCE OF COUNSEL AND OTHER VIOLATIONS OF LAW WITHIN THE PETITION FOR HABEAS CORPUS COUNSEL IS REQUIRED AS A DEFENDANT HAS A RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL THROUGH THE COURT SYSTEM TO OFFER A SYSTEM OF PROTECTION.

IN THIS CASE, BEING COMPLICATED AND INVESTIGATION NEEDED SURELY WARRANTS APPOINTMENT OF COUNSEL AS PROVIDED BY THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF NEVADA.

CONCLUSION:

BASED UPON THE FOREGOING, THE DEFENDANT PRAYS FOR THE MOTION TO APPOINT COUNSEL BE GRANTED IN THE INTEREST OF JUSTICE. THAT THIS HONORABLE COURT ISSUE AN ORDER FOR COUNSEL TO PREPARE IT'S ARGUMENT FOR THE PETITION OF HABEAS CORPUS.

WHEREFORE, DEFENDANT REQUESTS AN EVIDENTIARY HEARING WHICH WILL SHOW THE VIOLATIONS OF LAW UNDER NRS 200.650 NRS 200.650 NRS 179.460 -470 AND BONDS V. STATE, 92 NEV. 307 NRS 179.440.

DATED THIS 19 DAY OF OCTOBER, 2012.

By: Barron Hamm
DEFENDANT / IN PROPER PERSON

VERIFICATION

UNDER PENALTY OF PERJURY, THE UNDERSIGNED DECLARES THAT HE IS THE DEFENDANT / PETITIONER NAMED IN THE FOREGOING MOTION AND KNOWS THE CONTENTS THEREOF, THAT THE PLEADING IS TRUE OF HIS OWN KNOWLEDGE.

BARRON HAMM
DEFENDANT / PETITIONER

OPWH—AB510

FILED

2012 NOV -21 A 9:20

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Debra M. ...
CLERK OF THE COURT

Barron Hamm #1052277

Petitioner,

Case No: C256384

Dept No: IXI

vs.

State of Nevada, Dept. of Corrections, Warden

**ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS**

D.W.Nevin (HDSP) High Desert State Prison

Respondent,

Petitioner filed a petition for writ of habeas corpus on October 31, 2012. The Court has reviewed the petition and has determined that a response would assist the Court in determining whether Petitioner has been awarded all appropriate good-time credits as provided in Assembly Bill 510 and, and good cause appearing therefore,

IT IS HEREBY ORDERED that Respondent 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 set out in NRS 209.

IT IS HEREBY FURTHER ORDERED that this matter shall be placed on this Court's

Calendar on the 10th day of January, 2013, at the hour of

9 o'clock for further proceedings.

IT IS SO ORDERED this 15th day of November, 2012

RECEIVED

NOV 01 2012

CLERK OF THE COURT

Jennifer P. ...
District Court Judge

09C256384

OPWH

Order for Petition for Writ of Habeas Corpus

1002538



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1 PPOW

FILED

2012 NOV -2 P 2: 23

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5 JAY COLE #1061675,

6 Petitioner,

7 vs.

8 D.W. NEVEN, WARDEN, HDSP,

9 Respondent,

Case No: 10C262892

Dept No: 3

CLERK OF THE COURT

ORDER FOR PETITION FOR
WRIT OF HABEAS CORPUS


11 Petitioner filed a petition for writ of habeas corpus (Post-Conviction Relief) on
12 October 30, 2012. The Court has reviewed the petition and has determined that a response would assist
13 the Court in determining whether Petitioner is illegally imprisoned and restrained of his/her liberty, and
14 good cause appearing therefore,

15 **IT IS HEREBY ORDERED** that Respondent shall, within 45 days after the date of this Order,
16 answer or otherwise respond to the petition and file a return in accordance with the provisions of NRS
17 34.360 to 34.830, inclusive.

18 **IT IS HEREBY FURTHER ORDERED** that this matter shall be placed on this Court's

19
20 Calendar on the 10th day of January, ~~2012~~²⁰¹³, at the hour of

21
22 9:00 o'clock for further proceedings.

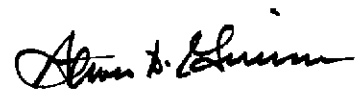
23
24
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District Court Judge

NOV 02 2012

RECEIVED

CLERK OF THE COURT



CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: VII

**STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PRO PER
PETITION FOR WRIT OF HABEAS CORPUS (POST CONVICTION) AND
MOTION TO APPOINT COUNSEL**

**DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.**

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Petition For Writ Of Habeas Corpus (Post-Conviction).

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

//

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
28

Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would be untimely.

On October 31, 2012, Defendant filed the instant Motion to Appoint Counsel and Petition for Writ of Habeas Corpus (Post-Conviction) to which the State's Response follows.

ARGUMENT

GROUND 1 - DEFENDANT'S PETITION IS TIME BARRED UNDER NEVADA REVISED STATUTE 34.726.

Defendant's Petition for Writ of Habeas Corpus is time barred with no good cause shown for delay. Pursuant to NRS 34.726:

1. Unless there is good cause shown for delay, a petition that challenges the validity of a judgment or sentence must be filed within 1 year of the entry of the judgment of conviction or, if an appeal has been taken from the judgment, within 1 year after the Supreme Court issues its remittitur. For the purposes of this subsection, good cause for delay exists if the petitioner demonstrates to the satisfaction of the court:

(a) That the delay is not the fault of the petitioner; and

(b) That dismissal of the petition as untimely will unduly prejudice the petitioner.

The Defendant's petition does not fall within this statutory time limitation. The Supreme Court of Nevada has held that NRS 34.726 should be construed by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to run from the date the judgment of conviction is filed or a remittitur from a timely direct appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

Since the Defendant did not file a direct appeal, the one-year time bar began to run from the date his Judgment of Conviction was filed – May 20, 2010. The instant Petition was not filed until October 31, 2012. This is in excess of the one-year time frame.

Additionally, the one-year time limit for preparing petitions for post-conviction relief under NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the Nevada Supreme Court rejected a habeas petition that was filed two (2) days late

1 despite evidence presented by the defendant that he purchased postage through the prison
2 and mailed the Notice within the one-year time limit. The Petition in this case was filed over
3 a year late.

4 Furthermore, the Nevada Supreme Court has held that the district court has *a duty* to
5 consider whether a defendant's post-conviction petition claims are procedurally barred. State
6 v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005). The Court found that
7 "[a]pplication of the statutory procedural default rules to post-conviction habeas petitions is
8 mandatory," noting:

9 Habeas corpus petitions that are filed many years after conviction
10 are an unreasonable burden on the criminal justice system. The
11 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

12 121 Nev. at 231, 112 P.3d at 1074. Additionally, the Court noted that procedural bars
13 "cannot be ignored [by the district court] when properly raised by the State." 121 Nev. at
14 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
15 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

16 In this case, Defendant filed the instant Petition for Writ of Habeas Corpus outside of
17 the one-year time limit. Defendant's Judgment of Conviction was entered on May 20, 2010.
18 Defendant did not file the instant Petition until October 31, 2012, which is over the one-year
19 time prescribed in NRS 34.726. Absent a showing of good cause for this delay, Defendant's
20 claim must be dismissed because of its tardy filing.

21 **GROUND II - DEFENDANT HAS NOT SHOWN GOOD CAUSE FOR THE**
22 **DELAYED FILING OF THIS PETITION.**

23 In the instant Petition, Defendant has not established good cause for the delay in filing
24 the Petition. "Generally, 'good cause' means a 'substantial reason; one that affords a legal
25 excuse.'" Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting* Colley v.
26 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). "In order to demonstrate good cause,
27 a petitioner must show that an impediment external to the defense prevented him or her from
28 complying with State procedural default rules." Hathaway, 71 P.3d at 506 *citing* Pellegrini v.

1 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353,
2 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).

3 An impediment external to the defense can be demonstrated by a showing “that the factual or
4 legal basis for the claim was not reasonably available to counsel or that some interference by
5 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

6 In this case, the Defendant has not given any legally relevant excuse for failure to file
7 his Petition in a timely manner. Defendant has not stated any facts that would show good
8 cause for not raising the Constitutional claims in this petition in his prior petition. Defendant
9 does not allege that these Constitutional claims were not available during trial or post
10 conviction. Therefore, since the Defendant cannot show good cause or actual prejudice for
11 failing to comply with the one-year time limit for Petitions, the instant Petition should be
12 dismissed.

13 **GROUND III – DEFENDANT IS NOT ENTITLED TO THE APPOINTMENT OF**
14 **COUNSEL**

15 In Coleman v. Thompson, 501 U.S. 722 (1991), the United States Supreme Court
16 ruled that the Sixth Amendment provides no right to counsel in post-conviction proceedings.
17 In McKague v. Warden, 112 Nev. 159, 912 P.2d 255 (1996), the Nevada Supreme Court
18 similarly observed that “[t]he Nevada Constitution...does not guarantee a right to counsel in
19 post-conviction proceedings, as we interpret the Nevada Constitution’s right to counsel
20 provision as being coextensive with the Sixth Amendment to the United States
21 Constitution.”

22 NRS 34.750 provides, in pertinent part:

23 [a] petition may allege that the Defendant is unable to pay the
24 costs of the proceedings or employ counsel. If the court is
25 satisfied that the allegation of indigency is true and the petition is
26 not dismissed summarily, the court may appoint counsel at the
time the court orders the filing of an answer and a return. In
making its determination, the court may consider whether:

- 27 (a) The issues are difficult;
28 (b) The Defendant is unable to comprehend the
proceedings; or
(c) Counsel is necessary to proceed with discovery.

1 (Emphasis added).

2 Under NRS 34.750, it is clear that the court has discretion in determining whether to appoint
3 counsel if the petition is not summarily dismissed. McKague specifically held that, with the
4 exception of cases in which appointment of counsel is mandated by statute, one does not
5 have “[a]ny constitutional or statutory right to counsel at all” in post-conviction proceedings.
6 Id. at 164.

7 The Nevada Supreme Court has observed that a petitioner “must show that the
8 requested review is not frivolous before he may have an attorney appointed.” Peterson v.
9 Warden, Nevada State Prison, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
10 177.345(2)).

11 In this case, Defendant has failed to demonstrate that any requested review would not
12 be frivolous or that any petition he might file would not be dismissed summarily as untimely
13 per NRS 34.726. Because Defendant has failed to make the requisite showing for
14 appointment of counsel, his request should be denied.

15 **CONCLUSION**

16 For the foregoing reasons, the Defendant’s late Petition for Writ of Habeas Corpus
17 Post Conviction and Motion to Appoint Counsel should be DISMISSED.

18 DATED this 13th day of November, 2012.

19 Respectfully submitted,

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

23 BY /s/ Robert J. Daskas for
24 DANIELLE PIEPER
25 Chief Deputy District Attorney
26 Nevada Bar #008610
27
28

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 13th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/tj/M-1

Ann L. Lamm

CLERK OF THE COURT

9

118
VA
BARRON HAMM
DEFENDANT/IN PROPER PERSON
POST OFFICE BOX 650 HOSP
INDIAN SPRINGS, NV 89070

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,

CASE No: C756384
DEPT No: IX1

VS.

BARRON HAMM,
DEFENDANT.

12/10/12

9:00AM

MOTION FOR CLARIFICATION

COMES NOW BARRON HAMM, DEFENDANT, IN PROPER PERSON AND REQUESTS FOR THIS HONORABLE COURT TO CLARIFY THE COURT'S ORDER FOR PETITION FOR WRIT OF HABEAS CORPUS AND WHY THIS COURT HAS THE NEVADA DEPT OF CORRECTIONS EXPIRING AB 510 GOOD TIME CREDITS. DEFENDANT'S PETITION IS FOR A NEW TRIAL OR FREEDOM.

THEREFORE, DEFENDANT'S REQUEST IS FOR AN ENTIRE FULL EXPLANATION OF THIS COURT'S PREVIOUS ORDER.

DEFENDANT WOULD LIKE A UNDERSTANDING TO WHAT'S GOING ON. ALSO THE DEFENDANT WOULD BENEFIT WITH APPOINTED COUNSEL.

THE MOTION FOR CLARIFICATION IS SUBMITTED IN THE INTEREST OF JUSTICE AND UNDER PENALTY OF PERJURY THE FACTS ARE TRUE AND CORRECT.
EXECUTED ON NOVEMBER 7, 2012 BY: Barron Lamm

10522277

CERTIFICATE OF service By MAIL

I Barron Hamm, here ~~by~~ certify pursuant to N.R.C.P. 5(b) that on this 07 day of the month of October, of the year 2012 I mailed true & correct copy of the foregoing motion for clarification & addressed to

N/A
Respondent Prison or Jail official
X

Attorney General
Heroes' Memorial Building
100 North Carson Street
Carson City, Nevada 89710-4717

WOLFSON
District Attorney of county of
conviction

200 LEWIS AVE
Las Vegas, Nevada 89155
Address

x Barron Hamm
Signature of Petitioner

Barrod Hamm # 1052277
PO Box 650 H.D.S.P.
Indian Springs, Nevada 89070

CONFIDENTIAL

LEGAL MAIL

95101530000

|||||

Clerk of the Court
200 Lewis Ave. 3rd Floor
Las Vegas N.V. 89155

LAS VEGAS NV 89155 Hasler
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ZIP 89101
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DIA

BARRON HAMM
P.O. BOX 650 HOSP
INDIAN SPRINGS, NV 89070

Allen L. Shuman
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,
VS.
BARRON HAMM,
DEFENDANT.

CASE No: C256384

DEPT No: 9

12/19/12

9:00AM

REQUEST FOR MOTION TO BE IMMEDIATELY HEARD
BY COURT

BARRON HAMM, DEFENDANT, IN PROPER PERSON,
RESPECTFULLY REQUESTS FOR THIS HONORABLE COURT TO REVIEW THE
PETITION FOR WRIT OF HABEAS CORPUS THAT'S ON FILE.

THIS MOTION IS MADE BASED ON THE PAPERS, AND PLEADINGS ON FILE,
THE POINTS AND AUTHORITIES ATTACHED HERETO.

DATED THIS 15TH DAY OF NOV 2012.

BARRON HAMM JR
DEFENDANT / PROPER PERSON 1052277

POINTS AND AUTHORITIES

I, BARRON HAMM, DEFENDANT, IN PROPER PERSON SUBMITS THIS AFFIDAVIT IN SUPPORT OF THE FOREGOING MOTION.

1. THE PETITION FOR WRIT OF HABEAS CORPUS HAS ALREADY BEEN FILED.
2. THE DEFENDANT HAS LISTED NUMEROUS GROUNDS FOR COURT'S REVIEW.
3. THE PETITION SHOWS MANY VIOLATIONS OF LAW.
4. THE DEFENDANT IS INCARCERATED AND SEEKS RELIEF.
5. THE PETITION FOR WRIT OF HABEAS CORPUS SHOULD BE REVIEWED IMMEDIATELY AND RULED UPON AS THE PETITION WILL SHOW THE DEFENDANT IS UNLAWFULLY BEING DETAINED.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT. NRS 53.045

EXECUTED THIS 15th DAY OF NOV 2012.

Barron Hamm Jr.
DEFENDANT 1052277

NOTICE OF MOTION

PLEASE TAKE NOTICE THAT THE UNDERSIGNED WILL BRING THE
FOREGOING REQUEST FOR MOTION TO BE IMMEDIATELY HEARD BY COURT
ON FOR HEARING ON THE 29 DAY OF NOVEMBER, 2012, AT THE
HOUR OF 8⁴⁰ AM IN THE EIGHTH JUDICIAL DISTRICT COURT.

12/19/12

9:00AM

DATED THIS 15th DAY OF NOV 2012.

Barron Hamm Sr. 1052277

DEFENDANT / PROPER PERSON

P.O. BOX 650 HOSP

INDIAN SPRINGS, NV 89070

CERTIFICATE
OF
SERVICE BY MAIL

I BARRON HAMM JR, hereby certify Pursuant to N.R.C.P. 5(b),
That on this 15 day of the month of November, of the
Year 2012, I mailed a true and correct copy of the
Foregoing IMMEDIATELY HEARD addressed to;

N/A

Respondent prison or Jail Official

X

Addressed

WOLFSON

District Attorney of count of
conviction

200 LEWIS AVE.

Las Vegas Nevada, 89155

Addressed

Attorney General

Heroes' Memorial Building

100 North Carson street

Carson City, Nevada 89710-4717

Barron Hamm Jr 1052277

Signature of Petitioner

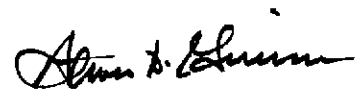
N HAMM #705227Z

650

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BARBON HAMM #705227Z
PO BOX 650
INDIAN SPRING'S NEW ~~89070~~

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11/20/2012
US POSTAGE
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CLERK OF THE COURT

RSPN

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE K. PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
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-

BARON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: VII

STATE'S RESPONSE TO DEFENDANT'S MOTION FOR CLARIFICATION

DATE OF HEARING: DECEMBER 10, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE K. PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Motion for Clarification.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, Defendant Barron Hamm was charged by way of Indictment with
4 Count 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); Count 2 –
5 Assault With a Deadly Weapon (Felony – NRS 200.471); Count 3 – Murder With Use of a
6 Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and Count 4 – Carrying
7 Concealed Firearm or Other Deadly Weapon (Felony – NRS 202.350(1) (d) (3)).

8 On March 12, 2010, Defendant pled guilty to Count 1 – Second Degree Murder with
9 Use of a Deadly Weapon and Count 2 – Assault with a Deadly Weapon. An Amended
10 Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same day.

11 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows: Count
12 1 – to life with a minimum parole eligibility of ten (10) years plus a consecutive term of two
13 hundred forty (240) months with a minimum parole eligibility of ninety-six (96) months for
14 the use of a deadly weapon; and Count 2 – to a maximum of seventy-two (72) months with a
15 minimum parole eligibility of twenty-four (24) months; Count 2 to run consecutive to Count
16 1; with three hundred seventy-five (375) days credit for time served. Judgment of
17 Conviction was filed on May 20, 2010.

18 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
19 Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur issued on
20 October 6, 2010.

21 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
22 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
23 Plea. On February 24, 2012, the district court denied Defendant’s Motion to Withdraw
24 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
25 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
26 be untimely.

27 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
28 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its

1 Response and Motion to Dismiss. The matter is set for hearing on January 10, 2013, at 9:00
2 AM.

3 On November 16, 2012, Defendant filed the instant Motion for Clarification to which
4 the State's Response follows.

5 **ARGUMENT**

6 **I.**

7 **DEFENDANT'S MOTION IS NON-MERITORIOUS**

8 Defendant filed an untimely Petition for Writ of Habeas Corpus (Post-Conviction) on
9 October 31, 2012, to which the State filed a Response and Motion to Dismiss on November
10 14, 2012. This matter is set for hearing on January 10, 2013, so the Defendant has more than
11 the fifteen (15) days he is entitled to per NRS 34.750(4) to respond to the State's Motion to
12 Dismiss his untimely Petition.

13 Neither Defendant's Petition nor the State's Response and Motion to Dismiss made
14 any mention of "good time" credits or AB 510, so Defendant's reference to "good time"
15 credits and AB 510 in his instant motion makes no sense.

16 Since Defendant's Petition is subject to summary dismissal per NRS 34.726, he is not
17 entitled to appointment of counsel per NRS 34.750 which states in pertinent part:

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

- 21 (a) The issues are difficult;
22 (b) The Defendant is unable to comprehend the
proceedings; or
23 (c) Counsel is necessary to proceed with
discovery." (emphasis added).

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CONCLUSION

Based on the foregoing arguments, Defendant's Motion for Clarification should be DENIED.

DATED this 27th day of November, 2012.

Respectfully submitted,

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

BY /s/ Robert J. Daskas for
DANIELLE K. PIEPER
Chief Deputy District Attorney
Nevada Bar #008610

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 27th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
Secretary for the District Attorney's Office

KC/DP/sam/M-1

RSPN
BARRON HAMM
P.O. BOX 650 HDSP
INDIAN SPRINGS, NV
89070

7
FILED

NOV 30 2012

CLERK OF COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA,
PLAINTIFF,

VS.

BARRON HAMM,
DEFENDANT.

CASE No: 09C256384

DEPT No: ~~VII~~ IX

09C256384
RSPN
Response
2039775



DEFENDANT'S RESPONSE WHY PETITION FOR WRIT OF HABEAS
CORPUS (POST CONVICTION) AND MOTION TO APPOINT COUNSEL SHOULD
ISSUE.

DATE OF HEARING: JANUARY 10, 2013

TIME OF HEARING: 9:00 A.M.

COMES NOW, BARRON HAMM, IN PROPER PERSON, AND HEREBY
SUBMITS THE ATTACHED POINTS AND AUTHORITIES FOR WHY PETITION
FOR HABEAS CORPUS AND MOTION TO APPOINT COUNSEL MUST ISSUE.

THIS RESPONSE IS MADE AND BASED UPON ALL THE PAPERS AND
PLEADINGS ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES IN
SUPPORT HEREOF, AND ORAL ARGUMENT AT THE TIME OF HEARING, IF
DEEMED NECESSARY BY THIS HONORABLE COURT.

POINTS AND AUTHORIZED
STATEMENT OF THE CASE

ON JULY 22, 2009, BARRON HAMM (HEREIN AFTER "DEFENDANT") WAS CHARGED BY WAY OF INDICTMENT WITH NUMEROUS STACKING SERIOUS FELONIES.

- THE DEFENDANT WAS A JUVENILE (MINOR) AT TIME OF ARREST -

ON MARCH 12, 2010, DEFENDANT PLED GUILTY TO - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON AND - ASSAULT WITH A DEADLY WEAPON.

ARGUMENT AND LAW

THE DEFENDANT WAS A JUVENILE AT THE TIME OF ARREST AND WAS UNFAMILIAR WITH THE RULES OF CRIMINAL PROCEDURE.

COUNSEL IN PETITIONER'S CASE ACTED UNREASONABLY UNDER STRICKLAND V. WASHINGTON, 466 U.S. 688, 104 S. CT 2052 (1984) BY NOT ADVISING PETITIONER HE HAD A CONSTITUTIONAL RIGHT TO APPEAL HIS JUDGMENT OF CONVICTION BY HIS PLEA OF GUILTY; IN ADDITION THE DISTRICT COURT EXACERBATED COUNSEL'S ERRORS BY INFORMING PETITIONER THAT HE AUTOMATICALLY WAIVED HIS RIGHT TO HIS FIRST DIRECT APPEAL BY ENTERING A PLEA OF GUILTY.

THERE IS GOOD CAUSE SHOWN FOR DELAY, AS DEFENDANT REQUESTED COUNSEL TO FILE THE DIRECT APPEAL AFTER SENTENCING. HOWEVER, COUNSEL FAILED TO DO SO. THEREFORE RESULTING IN THE DELAY. THAT DELAY IS NOT THE FAULT OF THE PETITIONER AND THAT DISMISSAL OF THE PETITION AS UNTIMELY WILL UNDOUBTLY PREJUDICE THE PETITIONER.

OBVIOUSLY, A DEFENDANT CANNOT CONSENT TO FOREGO AN APPEAL, UNLESS HE KNOWS OF THE RIGHT TO APPEAL, AND KNOWINGLY AND INTELLIGENTLY WAIVES SUCH RIGHTS.

ARGUMENT AND LAW

SINCE 1967, NEVADA HAS PROVIDED FOR THE RIGHT TO A DIRECT APPEAL FROM A JUDGMENT OF CONVICTION, BASED UPON A GUILTY PLEA.

SEE NRS 177.015 (3) AND NRS 178.397.

IN 1994 IN PARTICULAR, THE NEVADA SUPREME COURT WAS CALLED UPON SEVERAL TIMES TO REITERATE THIS SINCE THE STATE HAS ARGUED AND BELIEVED IN THE FOLLOWING CASES, THAT THOSE WHO ENTER A GUILTY PLEA DO NOT HAVE A RIGHT TO A FIRST DIRECT APPEAL.

IN THE INSTANT CASE THIS COURT MUST CONSIDER THE DEFENDANT'S AGE AND MENTAL CAPACITY DURING THE CRIMINAL COURT PROCESS. HERE WE HAVE DOUBLE FAILURE AS COUNSEL WAS INEFFECTIVE.

NRS 34.750 PROVIDES, IN PERTINENT PART:

THE COURT MAY APPOINT COUNSEL AND IN THIS CASE ISSUES ARE EXTREMELY DIFFICULT AND THE SEVERE CHARGES AND SENTENCE CLEARLY SHOW THAT COUNSEL IS NECESSARY TO PROCEED WITH DISCOVERY.

- THE DEFENDANT WAS A JUVENILE DURING THE OFFENSE. -

IN THIS CASE, DEFENDANT CLEARLY DEMONSTRATES WHY THIS COURT SHOULD GRANT COUNSEL, HIS REQUEST SHOULD BE GRANTED.

BEING THAT THE DEFENDANT WAS A JUVENILE AT TIME OF ARREST AND THE PETITION WILL SHOW THAT THE ARREST WAS ILLEGAL AND IT IS APPARENT, THE VIOLATIONS IN THIS CASE ARE MORE EXTENSIVE THAN ONE MIGHT IMAGINE. ON THE ISSUE OF AVAILABLE REMEDIES, PETITIONER IS ENTITLED TO RELIEF, BY WAY OF A CONDITIONAL WRIT. THE WRIT SHOULD ORDER HANN'S RELEASE FROM STATE CUSTODY.

(3)

CONCLUSION

FOR THE FOREGOING REASONS, THE DEFENDANT'S LATE PETITION FOR WRIT OF HABEAS CORPUS POST CONVICTION AND MOTION TO APPOINT COUNSEL SHOULD BE GRANTED.

DATED THIS 17 DAY OF NOVEMBER, 2012

RESPECTFULLY SUBMITTED,

By: Burton Hamm PETITIONER
DEFENDANT / PRO SE

UNDER PENALTY OF PERJURY THE UNDERSIGNED DECLARES THAT THE FOREGOING RESPONSE IS TRUE AND CORRECT.

EXECUTED THIS 17 DAY OF NOVEMBER, 2012.

Burton Hamm
DEFENDANT

P.O. BOX 650 HOSP
INDIAN SPRINGS, NV
89070

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FOREGOING WAS MADE THIS 17 DAY OF NOVEMBER, 2012, BY DEPOSITING A COPY IN THE U.S. MAIL, POSTAGE PRE-PAID, ADDRESSED TO:

WOLFSON
200 LEWIS AVE
RJC
LAS VEGAS, NV 89155

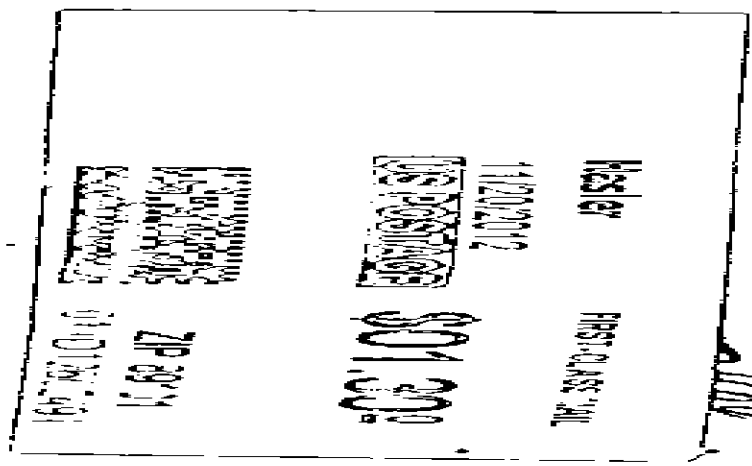
By: Barton Hamm
DEFENDANT / PROPER PERSON

BHARATI HANU 105277

PO BOX 650 H.D.S.

INDIAN SPRINTING NY 99070

1.30



BARRONHAMM

NDOC No. 1052277

Barron Hamm

Ann D. Blum

CLERK OF THE COURT

In proper person

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

BARRONHAMM
1052277

Petitioner,

v.

HD: December 24, 2012

Time: 9:00 am

Case No. C 251-334

The STATE of Nevada

Dept. No. 111 1X

Respondent.)

MOTION AND ORDER FOR TRANSPORTATION
OF INMATE FOR COURT APPEARANCE
OR, IN THE ALTERNATIVE,
FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

Petitioner, BARRONHAMM, proceeding pro se, requests
that this Honorable Court order transportation for his personal appearance or, in the
alternative, that he be made available to appear by telephone or by video conference
at the hearing in the instant case that is scheduled for JANUARY 10, 2013
at 9:00 P.M.

1 In support of this Motion, I allege the following:

2 1. I am an inmate incarcerated at H.D.S.P. HIGH DESERT STATE PRISON.
3 My mandatory release date is LIFE SENTENCE.

4
5 2. The Department of Corrections is required to transport offenders to and
6
7 from Court if an inmate is required or requests to appear before a Court in this state.

8
9 NRS 209.274 Transportation of Offender to Appear Before Court states:

10 "1. Except as otherwise provided in this section, when an offender is
11 required or requested to appear before a Court in this state, the
12 Department shall transport the offender to and from Court on the day
13 scheduled for his appearance.

14 2. If notice is not provided within the time set forth in NRS 50.215, the
15 Department shall transport the offender to Court on the date scheduled
16 for his appearance if it is possible to transport the offender in the usual
17 manner for the transportation of offenders by the Department. If it is
18 not possible for the Department to transport the offender in the usual
19 manner:

20 (a) The Department shall make the offender available on the date scheduled
21 for his appearance to provide testimony by telephone or by video conference,
22 if so requested by the Court.

23 (b) The Department shall provide for special transportation of the offender to
24 and from the Court, if the Court so orders. If the Court orders special
25 transportation, it shall order the county in which the Court is located to
26 reimburse the Department for any cost incurred for the special transportation.

27 (c) The Court may order the county sheriff to transport the offender to and
28 from the Court at the expense of the county."

29 3. My presence is required at the hearing because:

1 ☒ I AM NEEDED AS A WITNESS.

2 My petition raises substantial issues of fact concerning events in which I
3 participated and about which only I can testify. *See U.S. v. Hayman*, 342 U.S.
4 205 (1952) (District Court erred when it made findings of fact concerning
5 Hayman's knowledge and consent to his counsel's representation of a witness
6 against Hayman without notice to Hayman or Hayman's presence at the
7 evidentiary hearing).

8 ☒ THE HEARING WILL BE AN EVIDENTIARY HEARING.

9 My petition raises material issues of fact that can be determined only in my
10 presence. *See Walker v. Johnston*, 312 U.S. 275 (1941) (government's contention
11 that allegations are improbable and unbelievable cannot serve to deny the
12 petitioner an opportunity to support them by evidence). The Nevada
13 Supreme Court has held that the presence of the petitioner for habeas corpus
14 relief is required at any evidentiary hearing conducted on the merits of the
15 claim asserted in the petition. *See Gebers v. Nevada*, 118 Nev. 500 (2002).

16 4. The prohibition against ex parte communication requires that I be present
17 at any hearing at which the state is present and at which issues concerning the claims
18 raised in my petition are addressed. U.S. Const. amends. V, VI.

19 5. If a person incarcerated in a state prison is required or is requested to
20 appear as a witness in any action, the Department of Corrections must be notified in
21 writing not less than 7 business days before the date scheduled for his appearance in
22 Court if the inmate is incarcerated in a prison located not more than 40 miles from
23 Las Vegas. NRS 50.215(4). If a person is incarcerated in a prison located 41 miles or
24 more from Las Vegas, the Department of Corrections must be notified in writing not
25 less than 14 business days before the date scheduled for the person's appearance in
26 Court.

27 6. HIGH DESERT STATE PRISON is located approximately
28 60 miles from Las Vegas, Nevada.

1 7. If there is insufficient time to provide the required notice to the Department
2 of Corrections for me to be transported to the hearing, I respectfully request that this
3 Honorable Court order the Warden to make me available on the date of the
4 scheduled appearance, by telephone, or video conference, pursuant to NRS
5 209.274(2)(a), so that I may provide relevant testimony and/or be present for the
6 evidentiary hearing.

7 8. The rules of the institution prohibit me from placing telephone calls from
8 the institution, except for collect calls, unless special arrangements are made with
9 prison staff. Nev. Admin. Code DOC 718.01. However, arrangements for my
10 telephone appearance can be made by contacting the following staff member at my
11 institution: RE-ENTRY OFFICER MILDEN HOSP
12 whose telephone number is ON COURT FILE

13
14 Dated this 17 day of NOVEMBER, 2012.

15
16 x Bawlon Hamlet

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18
19 DEFENDANT / PROPER PERSON.
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CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, certify pursuant to NRC 5(b), that on this 17 day of NOVEMBER, 2012, I served the foregoing Motion and Order for Transportation of Inmate for Court Appearance or, in the Alternative, Motion for Appearance by Telephone or Video Conference, by mailing a true and correct copy thereof in a sealed envelope, upon which first class postage was fully prepaid, addressed to:

DISTRICT ATTORNEY
200 LEAKS AVE
RJC
345 LEAKS, NV 89455

and that there is regular communication by mail between the place of mailing and the recipient address.

x BALLOON
DEFENDANT / PRO SE

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding RESPONSE WIT

PETITION FOR WRIT OF HABEAS CORPUS AND MOTION TO APPOINT COUNSEL
(Title of Document)

filed in District Court Case number C-256,384

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

-OR-

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

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

(State specific law)

-or-

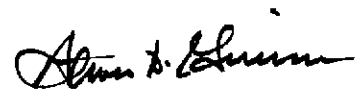
B. For the administration of a public program or for an application
for a federal or state grant.

Barron Hamm
Signature

11/17/12
Date

BARRON HAMM
Print Name

DEFENDANT / PRO SE
Title



CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

**STATE'S RESPONSE TO DEFENDANT'S PRO PER REQUEST
FOR MOTION TO BE IMMEDIATELY HEARD BY COURT**

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Request For Motion To Be Immediately Heard By Court.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court also noted that from February
28

1 13, 2012, any Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would
2 attempt to file would be untimely.

3 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
4 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its
5 Response and Motion to Dismiss Defendant's Petition and Response to Defendant's Motion
6 for Appointment of Counsel. The matter is set to be heard on January 10, 2013, at 9:00 AM.

7 On November 16, 2012, Defendant filed a Motion for Clarification. The State filed its
8 Response on November 27, 2012. The matter is set for hearing on December 10, 2012.

9 On November 26, 2012, Defendant filed the instant Request for Motion to be
10 Immediately Heard by Court to which the State's Response follows.

11 **ARGUMENT**

12 Defendant asks that his Petition for Writ of Habeas Corpus (Post-Conviction) filed on
13 October 31, 2012, and presently set for hearing on January 10, 2013, be heard immediately.
14 Since the State filed its Response and Motion to Dismiss Defendant's Untimely Petition on
15 November 14, 2012, it has no objection to this matter being heard immediately.

16 **CONCLUSION**

17 The State has no objection to this matter being heard immediately.

18 DATED this 30th day of November, 2012.

19 Respectfully submitted,

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

23 BY /s/ Danielle Pieper

24 DANIELLE PIEPER
25 Chief Deputy District Attorney
26 Nevada Bar #008610
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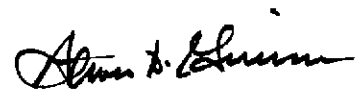
CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 30th day of November, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/tj/M-1



CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION FOR
TRANSPORTATION OF INMATE FOR COURT APPEARANCE, OR IN THE
ALTERNATIVE, FOR APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion For Transportation Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or Video Conference.

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

//

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 - Burglary While in Possession of a Firearm (Felony - NRS
5 205.060); COUNT 2 - Assault With a Deadly Weapon (Felony - NRS 200.471); COUNT 3 -
6 Murder With Use of a Deadly Weapon (Felony - NRS 200.010, 200.030, 193.165); and
7 COUNT 4 - Carrying Concealed Firearm or Other Deadly Weapon (Felony - NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, Defendant pled guilty to COUNT 1 - Second Degree Murder
10 With Use of a Deadly Weapon and COUNT 2 - Assault With a Deadly Weapon. An
11 Amended Indictment and Guilty Plea Agreement ("GPA") were filed in open court the same
12 day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 - to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 -
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
20 was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, and the Nevada
22 Supreme Court dismissed Defendant's appeal on September 10, 2010. Remittitur issued on
23 October 6, 2010.

24 On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
25 February 22, 2012, the State filed its Opposition to Defendant's Motion to Withdraw Guilty
26 Plea. On February 24, 2012, the District Court denied Defendant's Motion to Withdraw
27 Guilty Plea. In the court minutes from this hearing the court also noted that from February
28

1 13, 2012, any Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would
2 attempt to file would be untimely.

3 On October 31, 2012, Defendant filed a Motion to Appoint Counsel and Petition for
4 Writ of Habeas Corpus (Post-Conviction). On November 14, 2012, the State filed its
5 Response and Motion to Dismiss Defendant's Petition and Response to Defendant's Motion
6 for Appointment of Counsel. The matter is set to be heard on January 10, 2013, at 9:00 AM.
7 On November 16, 2012, Defendant filed a Motion for Clarification. The State filed its
8 Response on November 27, 2012. The matter is set for hearing on December 10, 2012.

9 On November 26, 2012, Defendant filed the instant Request for Motion to be
10 Immediately Heard by Court. The matter is set for hearing on December 24, 2012.

11 On November 30, 2012, Defendant filed the instant Motion For Transportation Of
12 Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or
13 Video Conference to which the State's Response follows.

14 ARGUMENT

15 In his Motion, Defendant requests that this Court issue an Order to transport him to
16 the January 10, 2012, hearing regarding his time-barred Petition for Writ of Habeas Corpus
17 (Post-Conviction). A defendant must be present only at those hearings in which the Court
18 deems it necessary to expand the record. See Gebers v. State, 118 Nev. 500, 50 P.3d 1092
19 (2002). In the instant matter, Defendant has not shown, nor is there is any need, for the court
20 to receive evidence or take testimony from any party before ruling on his Motion for
21 Clarification. Furthermore, Defendant erroneously asserts in his Motion that this hearing is
22 an Evidentiary Hearing, which it is not. Further, the District Court does not provide for
23 telephone or video appearances by prison inmates. Defendant has not shown why his
24 presence would be required, therefore, Defendant need not be present and his Motion for
25 Transportation of Inmate or, in the Alternative, for Appearance by Telephone or Video
26 Conference should be denied.

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CONCLUSION

Based on the foregoing, the State respectfully requests that Defendant's Motion For Transportation Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or Video Conference be DENIED.

DATED this 11th day of December, 2012.

Respectfully submitted,

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

BY /s/ Danielle Pieper
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 11th day of December, 2012, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

KC/DP/rj/M-1

FILED

DEC 19 2012

CLERK OF COURT

BARRON HAMM
DEFT/ PROPER PERSON
P.O. BOX 650 HOSP
INDIAN SPRINGS, NV
89070

DISTRICT COURT
CLARK COUNTY, NEVADA

09C256384
RSPN
Response
2007124



THE STATE OF NEVADA,
PLAINTIFF,

CASE No: 09C256384

Vs.

BARRON HAMM,
DEFENDANT. -

DEPT No: IX

DEFENDANT'S RESPONSE AND OBJECTION TO STATE'S OPPOSITION TO
DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF INMATE FOR COURT.

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 AM

COMES NOW, DEFENDANT, BARRON HAMM, IN PROPER PERSON, AND HEREBY
SUBMITS THE ATTACHED POINTS AND AUTHORITIES IN SUPPORT FOR AN ORDER
FOR TRANSPORTATION OF INMATE FOR COURT.

THIS RESPONSE IS MADE AND BASED UPON ALL THE PAPERS AND PLEADINGS
ON FILE HEREIN, THE ATTACHED POINTS AND AUTHORITIES IN SUPPORT HERE OF.

EXECUTED THIS 12 DAY OF DECEMBER, 2012

By: Barron Hamm

RECEIVED
DEC 18 2012
CLERK OF THE COURT

POINTS AND AUTHORITIES
LEGAL ARGUMENT

THE DEFENDANT MUST BE PRESENT IN THIS CASE AS THE HEARING FOR PETITION FOR WRIT OF HABEAS CORPUS IS A FORM OF APPEAL AND IN THE INSTANT CASE MR HAMM SUFFERED NUMEROUS VIOLATIONS OF THE UNITED STATES AND NEVADA CONSTITUTION. HENCE, DEFENDANT'S RIGHT TO APPEAL WAS VIOLATED AS DEFENSE COUNSEL FAILED TO FILE THE NOTICE OF APPEAL. THEREFORE, IT IS NECESSARY TO EXPAND THE RECORD. SEE GEBERS V. STATE 118 NEV. 500, 501 P.3D 1092.

THE STATE HAS SUBMITTED IT'S OPPOSITION, HOWEVER, THE STATE CLAIMS THE TRANSPORTATION ORDER SHOULD BE DENIED BECAUSE IT'S FOR THE MOTION FOR CLARIFICATION WHICH IS SET FOR DECEMBER 10, 2012.

IN THIS RESPONSE THE DEFENDANT IS REQUESTING TO BE TRANSPORTED TO COURT ON JANUARY 10, 2013 FOR THE HEARING AND WOULD REQUEST FOR THIS COURT TO REMAND DEFENDANT TO THE CLARK COUNTY DETENTION CENTER FOR ALL FUTURE HEARINGS.

CONCLUSION

BASED ON THE FOREGOING, THE DEFENDANT RESPECTFULLY REQUESTS THAT DEFENDANT'S MOTION FOR TRANSPORTATION OF INMATE FOR COURT BE GRANTED.

DATED THIS 12 DAY OF DECEMBER, 2012

By Brian Hamm S.M.
DEFENDANT/PRO SE.

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT SERVICE OF THE ABOVE AND FOREGOING WAS
MADE THIS 12TH DAY OF DECEMBER, 2012, BY DEPOSITING A COPY IN
THE U.S. MAIL, POSTAGE PRE-PAID, ADDRESSED TO:

CLERK OF COURT
200 LEWIS AVE 3RD FLOOR
INDIAN SPRINGS, NV
89155

By: Brown Hand J.C.
DEFENDANT / PRO SE

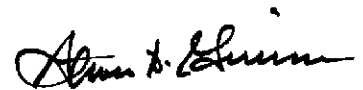
BARRON HAMM #1052277
P.O. BOX 650 H.D.S.P.
INDIAN SPRINGS NEVADA, 89070

Hasler LEGAL MAIL
12/14/2012
US POSTAGE
NSF 3762
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STEVEN D. GRIFFIN
CLERK OF THE COURT
200 LEWIS AVENUE 3rd Floor
~~Las Vegas NV~~
LAS VEGAS NEVADA 89155.



30 JRDEN11 89101



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
FRANK PONTICELLO
Chief Deputy District Attorney
Nevada Bar #00370
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: C256384

DEPT NO: IV

ORDER DENYING DEFENDANT'S PRO PER REQUEST FOR MOTION TO BE
IMMEDIATELY HEARD BY COURT

DATE OF HEARING: DECEMBER 19, 2012

TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
19th day of December, 2012, the Defendant not being present, IN PROPER PERSON, the
Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through FRANK
PONTICELLO, Chief Deputy District Attorney, and good cause appearing therefor,

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1 IT IS HEREBY ORDERED that the Defendant's Pro Per Request For Motion To Be
2 Immediately Heard By Court, shall be, and it is DENIED, hearing set for January 10, 2013
3 STANDS.

4 DATED this 14th day of January, 2013.

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

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11 FRANK PONZICELLO
12 Chief Deputy District Attorney
Nevada Bar #00370

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DISTRICT JUDGE

For David Barker

For Teglati

1 CERTIFICATE OF SERVICE

2 I certify that on the 16th day of January, 2013, I mailed a copy of the foregoing Order

3 to:

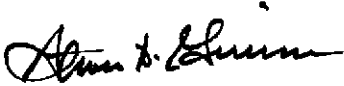
4 BARRON HAMM #1052277
5 HIGH DESERT STATE PRISON
6 P.O. BOX 650
7 INDIAN SPRINGS, NV 89018

8 BY:

9 
10 R. JOHNSON

11 Secretary for the District Attorney's Office
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CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: C256384

DEPT NO: XI

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR TRANSPORTATION OF
INMATE FOR COURT APPEARANCE, OR IN THE ALTERNATIVE, FOR
APPEARANCE BY TELEPHONE OR VIDEO CONFERENCE

ORDER DENYING DEFENDANT'S PRO PER MOTION FOR CLARIFICATION

DATE OF HEARING: JANUARY 10, 2013


TIME OF HEARING: 9:00 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the
10th day of January, 2013, the Defendant not being present, IN PROPER PERSON,
Defendant's presence being WAIVED, the Plaintiff being represented by STEVEN B.
WOLFSON, District Attorney, through JONATHAN COOPER, Deputy District Attorney,
and good cause appearing therefor,

IT IS HEREBY ORDERED that the Defendant's Pro Per Motion For Transportation
Of Inmate For Court Appearance, Or In The Alternative, For Appearance By Telephone Or
Video Conference, shall be, and it is DENIED, as it does not entertain oral argument in these
matters.

1 COURT FURTHER ORDERED, Defendant's Pro Per Motion For Clarification, shall
2 be, and it is DENIED.

3 DATED this 28th day of January, 2013.

4
5 
6 DISTRICT JUDGE

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

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11 JONATHAN COOPER
12 Deputy District Attorney
13 Nevada Bar #012195
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CERTIFICATE OF SERVICE

I certify that on the 29th day of January, 2013, I mailed a copy of the foregoing Order

to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:

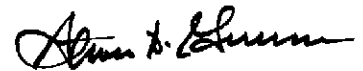

R. JOHNSON

Secretary for the District Attorney's Office

rj/M-1

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff



CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable JUDGE JENNIFER TOGLIATTI, District Judge, on the 10th day of January, 2013, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JONATHAN COOPER, 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 July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471);

1 COUNT 3 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
2 193.165); and COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony –
3 NRS 202.350(1)(d)(3)).

4 2. On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree
5 Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
6 Amended Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same
7 day.

8 3. On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
9 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
10 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
11 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
12 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
13 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
14 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
15 was filed on May 20, 2010.

16 4. Defendant filed an untimely Notice of Appeal on August 5, 2010, and the
17 Nevada Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur
18 issued on October 6, 2010.

19 5. On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
20 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
21 Plea. On February 24, 2012, the District Court denied Defendant’s Motion to Withdraw
22 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
23 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
24 be untimely.

25 6. On October 31, 2012, Defendant filed a Motion to Appoint Counsel and
26 Petition for Writ of Habeas Corpus (Post-Conviction) to which the State filed its Response
27 and Motion to Dismiss on November 14, 2012. The Court entertained Defendant’s Petition
28 on January 10, 2013.

1 7. Defendant Petition was time barred pursuant to NRS 34.726.

2 8. Defendant did not show good cause for the late filing of his Petition.

3 9. Defendant was not entitled to the appointment of counsel as he failed to
4 demonstrate that any petition he might file would not be dismissed summarily as untimely
5 per NRS 34.726 or that any requested review would not be frivolous.

6 **CONCLUSIONS OF LAW**

7 1. Pursuant to NRS 34.726:

8 1. Unless there is good cause shown for delay, a petition that
9 challenges the validity of a judgment or sentence must be filed
10 within 1 year of the entry of the judgment of conviction or, if an
11 appeal has been taken from the judgment, within 1 year after the
12 Supreme Court issues its remittitur. For the purposes of this
13 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 12 (a) That the delay is not the fault of the petitioner; and
13 (b) That dismissal of the petition as untimely will
unduly prejudice the petitioner.

14 2. The Supreme Court of Nevada has held that NRS 34.726 should be construed
15 by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As
16 per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to
17 run from the date the judgment of conviction is filed or a remittitur from a timely direct
18 appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

19 3. The one-year time limit for preparing petitions for post-conviction relief under
20 NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the
21 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
22 evidence presented by the defendant that he purchased postage through the prison and
23 mailed the Notice within the one-year time limit. The Petition in this case was filed over a
24 year late.

25 4. The Nevada Supreme Court has held that the district court has *a duty* to
26 consider whether a defendant's post-conviction petition claims are procedurally barred.
27 State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070 (2005). The Court
28

1 found that “[a]pplication of the statutory procedural default rules to post-conviction habeas
2 petitions is mandatory,” noting:

3 Habeas corpus petitions that are filed many years after conviction
4 are an unreasonable burden on the criminal justice system. The
5 necessity for a workable system dictates that there must exist a
time when a criminal conviction is final.

6 121 Nev. at 231, 112 P.3d at 1074. Additionally, the Court noted that procedural bars
7 “cannot be ignored [by the district court] when properly raised by the State.” 121 Nev. at
8 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
9 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

10 5. Generally, ‘good cause’ means a ‘substantial reason; one that affords a legal
11 excuse.’” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting* Colley v.
12 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). “In order to demonstrate good cause,
13 a petitioner must show that an impediment external to the defense prevented him or her from
14 complying with State procedural default rules.” Hathaway, 71 P.3d at 506 *citing* Pellegrini v.
15 State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353,
16 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 74 (1989).
17 An impediment external to the defense can be demonstrated by a showing “that the factual or
18 legal basis for the claim was not reasonably available to counsel or that some interference by
19 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

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

27 //

28 //

1 7. NRS 34.750 provides, in pertinent part:

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

- 8 (a) The issues are difficult;
9 (b) The Defendant is unable to comprehend the
10 proceedings; or
11 (c) Counsel is necessary to proceed with discovery.

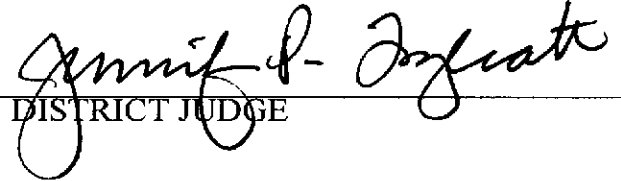
12 8. Under NRS 34.750, it is clear that the court has discretion in determining
13 whether to appoint counsel if the petition is not summarily dismissed. McKague specifically
14 held that, with the exception of cases in which appointment of counsel is mandated by
15 statute, one does not have "[a]ny constitutional or statutory right to counsel at all" in post-
16 conviction proceedings. *Id.* at 164.

17 9. The Nevada Supreme Court has observed that a petitioner "must show that the
18 requested review is not frivolous before he may have an attorney appointed." *Peterson v.*
19 *Warden, Nevada State Prison*, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
20 177.345(2)).

21 **ORDER**

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

24 DATED this 28th day of January, 2013.

25 
DISTRICT JUDGE

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

BY 
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195

CERTIFICATE OF SERVICE

I certify that on the 17th day of January, 2013, I mailed a copy of the foregoing proposed Findings of Fact, Conclusions of Law, and Order to:

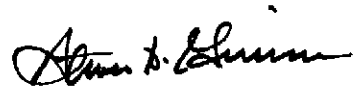
BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:


R. JOHNSON

Secretary for the District Attorney's Office

KC/JC/jr/M-1



CLERK OF THE COURT

NEO

**DISTRICT COURT
CLARK COUNTY, NEVADA**

BARRON HAMM,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 09C256384

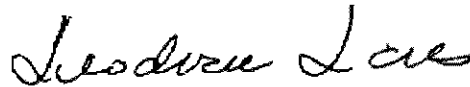
Dept No: IX

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

PLEASE TAKE NOTICE that on January 29, 2013, 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 February 4, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Teodora Jones, Deputy Clerk

CERTIFICATE OF MAILING

I hereby certify that on this 4 day of February 2013, I placed a copy of this Notice of Entry in:

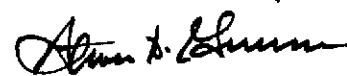
The bin(s) located in the Office of the District Court Clerk of:
Clark County District Attorney's Office
Attorney General's Office – Appellate Division-

☒ The United States mail addressed as follows:

Barron Hamm # 1052277
P.O. Box 650
Indian Springs, NV 89018



Teodora Jones, Deputy Clerk



CLERK OF THE COURT

ORDR

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: IX

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: JANUARY 10, 2013
TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the Honorable JENNIFER TOGLIATTI, District Judge, on the 10th day of January, 2013, the Petitioner not being present, PROCEEDING IN FORMA PAUPERIS, the Respondent being represented by STEVEN B. WOLFSON, Clark County District Attorney, by and through JONATHAN COOPER, 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 July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471);

1 COUNT 3 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030,
2 193.165); and COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony –
3 NRS 202.350(1)(d)(3)).

4 2. On March 12, 2010, Defendant pled guilty to COUNT 1 – Second Degree
5 Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a Deadly Weapon. An
6 Amended Indictment and Guilty Plea Agreement (“GPA”) were filed in open court the same
7 day.

8 3. On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
9 COUNT 1 – to LIFE with a minimum parole eligibility of TEN (10) YEARS plus a
10 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
11 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
12 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
13 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
14 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. Judgment of Conviction
15 was filed on May 20, 2010.

16 4. Defendant filed an untimely Notice of Appeal on August 5, 2010, and the
17 Nevada Supreme Court dismissed Defendant’s appeal on September 10, 2010. Remittitur
18 issued on October 6, 2010.

19 5. On February 13, 2012, Defendant filed a Motion to Withdraw Guilty Plea. On
20 February 22, 2012, the State filed its Opposition to Defendant’s Motion to Withdraw Guilty
21 Plea. On February 24, 2012, the District Court denied Defendant’s Motion to Withdraw
22 Guilty Plea. In the court minutes from this hearing the court noted that by that time, any
23 Petition for Writ of Habeas Corpus (Post-Conviction) Defendant would attempt to file would
24 be untimely.

25 6. On October 31, 2012, Defendant filed a Motion to Appoint Counsel and
26 Petition for Writ of Habeas Corpus (Post-Conviction) to which the State filed its Response
27 and Motion to Dismiss on November 14, 2012. The Court entertained Defendant’s Petition
28 on January 10, 2013.

1 7. Defendant Petition was time barred pursuant to NRS 34.726.

2 8. Defendant did not show good cause for the late filing of his Petition.

3 9. Defendant was not entitled to the appointment of counsel as he failed to
4 demonstrate that any petition he might file would not be dismissed summarily as untimely
5 per NRS 34.726 or that any requested review would not be frivolous.

6 **CONCLUSIONS OF LAW**

7 1. Pursuant to NRS 34.726:

8 1. Unless there is good cause shown for delay, a petition that
9 challenges the validity of a judgment or sentence must be filed
10 within 1 year of the entry of the judgment of conviction or, if an
11 appeal has been taken from the judgment, within 1 year after the
12 Supreme Court issues its remittitur. For the purposes of this
13 subsection, good cause for delay exists if the petitioner
demonstrates to the satisfaction of the court:

- 14 (a) That the delay is not the fault of the petitioner; and
15 (b) That dismissal of the petition as untimely will
16 unduly prejudice the petitioner.

17 2. The Supreme Court of Nevada has held that NRS 34.726 should be construed
18 by its plain meaning. Pellegrini v. State, 117 Nev. 860, 873, 34 P.3d 519, 528 (2001). As
19 per the language of the statute, the one-year time bar proscribed by NRS 34.726 begins to
20 run from the date the judgment of conviction is filed or a remittitur from a timely direct
21 appeal is filed. Dickerson v. State, 114 Nev. 1084, 1087, 967 P.2d 1132, 1133-34 (1998).

22 3. The one-year time limit for preparing petitions for post-conviction relief under
23 NRS 34.726 is strictly applied. In Gonzales v. State, 118 Nev. 590, 53 P.3d 901 (2002), the
24 Nevada Supreme Court rejected a habeas petition that was filed two (2) days late despite
25 evidence presented by the defendant that he purchased postage through the prison and
26 mailed the Notice within the one-year time limit. The Petition in this case was filed over a
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consider whether a defendant's post-conviction petition claims are procedurally barred.
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2 petitions is mandatory,” noting:

3 Habeas corpus petitions that are filed many years after conviction
4 are an unreasonable burden on the criminal justice system. The
5 necessity for a workable system dictates that there must exist a
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7 “cannot be ignored [by the district court] when properly raised by the State.” 121 Nev. at
8 233, 112 P.3d at 1075. The Nevada Supreme Court has granted no discretion to the district
9 courts regarding whether to apply the statutory procedural bars; the rules *must* be applied.

10 5. Generally, ‘good cause’ means a ‘substantial reason; one that affords a legal
11 excuse.’” Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003) *quoting* Colley v.
12 State, 105 Nev. 235, 236, 773 P.2d 1229, 1230 (1989). “In order to demonstrate good cause,
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18 legal basis for the claim was not reasonably available to counsel or that some interference by
19 officials made compliance impracticable.” Hathaway, 71 P.3d at 506.

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

27 //

28 //

1 7. NRS 34.750 provides, in pertinent part:

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

- 8 (a) The issues are difficult;
9 (b) The Defendant is unable to comprehend the
10 proceedings; or
11 (c) Counsel is necessary to proceed with discovery.

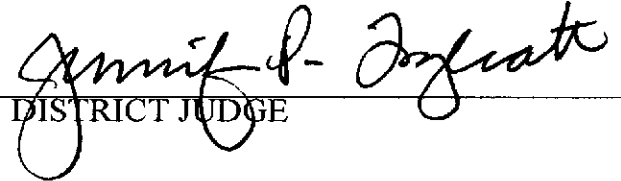
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15 statute, one does not have "[a]ny constitutional or statutory right to counsel at all" in post-
16 conviction proceedings. *Id.* at 164.

17 9. The Nevada Supreme Court has observed that a petitioner "must show that the
18 requested review is not frivolous before he may have an attorney appointed." *Peterson v.*
19 *Warden, Nevada State Prison*, 87 Nev. 134, 483 P.2d 204 (1971) (citing former statute NRS
20 177.345(2)).

21 **ORDER**

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

24 DATED this 28th day of January, 2013.

25 
DISTRICT JUDGE

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

BY 
JONATHAN COOPER
Deputy District Attorney
Nevada Bar #012195

1 CERTIFICATE OF SERVICE

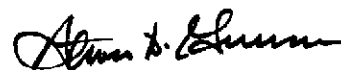
2 I certify that on the 17th day of January, 2013, I mailed a copy of the foregoing
3 proposed Findings of Fact, Conclusions of Law, and Order to:

4 BARRON HAMM #1052277
5 HIGH DESERT STATE PRISON
6 P.O. BOX 650
7 INDIAN SPRINGS, NV 89018

8 BY: R. Johnson
9 R. JOHNSON
10 Secretary for the District Attorney's Office
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KC/JC/jr/M-1

COSCC



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

THE STATE OF NEVADA VS
BARRON HAMM

CASE NO.: 09C256384
DEPARTMENT 11

CRIMINAL ORDER TO STATISTICALLY CLOSE CASE

Upon review of this matter and good cause appearing,
IT IS HEREBY ORDERED that the Clerk of the Court is hereby directed to
statistically close this case for the following reason:

DISPOSITIONS:

- ☐ Nolle Prosequi (before trial)
- ☐ Dismissed (after diversion)
- ☐ Dismissed (before trial)
- ☐ Guilty Plea with Sentence (before trial)
- ☐ Transferred (before/during trial)
- ☐ Bench (Non-Jury) Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction
- ☐ Jury Trial
 - ☐ Dismissed (during trial)
 - ☐ Acquittal
 - ☐ Guilty Plea with Sentence (during trial)
 - ☐ Conviction

X Other Manner of Disposition

DATED this 4th day of February, 2013.


ELIZABETH GONZALEZ
DISTRICT COURT JUDGE

RECEIVED

FEB 12 2013

14

CLERK OF THE COURT

FILED

FEB 22 2013

Shirley
CLERK OF COURT

1 BARRONHAMM JR #1052277
2 In Proper Person
3 P.O. Box 650 H.D.S.P.
4 Indian Springs, Nevada 89018

5 DISTRICT COURT

6 COUNTY NEVADA

09C256384
NOASC
Notice of Appeal (criminal)
2247430



8 STATE OF Nevada,

9 Plaintiff,

10 -v-

11 BARRONHAMM JR #1052277,

12 Defendant,

Case No. C-256-384

Dept. No. 4 XI

Docket

14 NOTICE OF APPEAL

15 Notice is hereby given that the Defendant BARRON
16 HAMM, by and through himself in proper person, does now appeal
17 to the Supreme Court of the State of Nevada, the decision of the District
18 Court Denial of Petition for A writ of HABEAS corpus
19 Postconviction relief & Appointment of counsel

21 Dated this date, 22 of February, 2013.

23 Respectfully Submitted,

24 Barron Hamm Jr
25 #1052277
26 In Proper Person

RECEIVED
FEB 22 2013

CLERK OF THE COURT

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal Denial of petition of writ of Habeas corpus
(Title of Document)

filed in District Court Case number 0256-384

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

-OR-

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

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

(State specific law)

-or-

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

Barron Hamm Jr.
Signature

Feb 02-25-2013
Date

Barron Hamm Jr.
Print Name

Defendant Pro Se
Title

CERTIFICATE OF SERVICE BY MAILING

I, BARRON HAMM J.C., hereby certify, pursuant to NRCP 5(b), that on this 06
day of February, 2013, I mailed a true and correct copy of the foregoing, "Notice of
appeal on the district court's denial petition for writ of Habeas corpus"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

Clock on clerk of Justice

200 LEWIS AVE.

Las Vegas NV. 89155

DATED: this 06 day of February, 2013.

Barron Hamm J.C.

BARRON HAMM J.C.

1052377

/In Propria Persona

Post Office box 650 [HDSP]

Indian Springs, Nevada 89018

DA/FP

48

IN THE DISTRICT COURT OF
CLARK COUNTY, NEVADA

EX PARTE

BARROW HAMM

CASE NO: 09C ~~26~~ 384

Dept. ~~IX~~

Electronically Filed
02/25/2013 11:45:01 AM

MOTION FOR RECONSIDERATION
AND FOR APPOINTMENT
OF COUNSEL FOR
"DIRECT APPEAL"

Alvin D. Quinn
CLERK OF THE COURT

HD: March 18, 2013

Time: 9:00am

As this CASE has NOT been properly
Appealed - "Directly," MOVANT now seeks
redress pursuant to the Sixth, Eighth,
AND Fourteenth, Amendments to the
UNITED STATES Constitution; AND NEVADA
R.C.P. 3.20.

This good-Court has Jurisdiction to Act
pursuant to NRS 34.726; AND STATE V.
Eighth Judicial District Court, 121 Nev. 225,
112 p.3d 1070 (2005), where the District Court
has a Constitutional duty to Consider whether
A defendant's claims are IN-FACT Time Barred,
As A result OF CONCIous AND informed decisions.

MOVANT CAN show good-cause For
Any untimeliness, AND deficient Filings;
that he has IN-FACT been severely harmed
AND prejudiced by ineffective Counsel.

Pg 1

FACTS IN SUPPORT
OF
MOTION TO RECONSIDER

HAMM WAS ONLY A MINOR AT THE TIME OF ARREST, ON MAY 04, 2009; HE HAS PERSISTENTLY ASSERTED THAT HIS CONSTITUTIONAL RIGHTS WERE BEING VIOLATED FROM THE INVESTIGATING OFFICERS, AND THAT ALL OF HIS DEFENSE LAWYERS HAVE BEEN INEFFECTIVE AT PRESERVING AND PROTECTING HIS RIGHT TO DUE PROCESS, AS A MINOR.

MOVANT hereby shows that the delay in filing for a direct appeal, AND (A) subsequent filings, were NOT the FAULT OF THE MOVANT but, were A RESULT OF DEFENSE COUNSEL'S FAILURE to inquire into MR. HAMM'S CONCERNS, AND desire for appeal. This is reversible error. AND

THAT (b), the denial of appointment of appellate counsel will only perpetuate the prejudice to the MOVANT, N.R.S. 34.726; BECAUSE he is UNABLE to understand the complex research AND preparation necessary, to, "properly" have-presented A MEANINGFUL defense, on Direct Appeal, Counsel should have been appointed then.

IN STRICTLAND V. WASHINGTON,
466 U.S. 668, 80 L.Ed 2d. 674, 104 S.Ct.
At 2052, the United States Supreme Ct.
in its watershed-Precedent, has held
that a defendant only needs to show
that his representation has forced him
to represent himself pro-se in a
losing attempt to establish prima facie
evidence of ineffective assistance of
counsel. The life sentence of a young (17)-
year old, may be considered highly prejudicial.

And where MR HAMM's defense counsel
failed to even enter a "Notice of Appeal,"
he/she has acted in a manner that is
considered to be, "professionally unreasonable."
see: ROE V. FLORES - ORTEGA, 528 U.S. 470, At
987, 145 L.Ed 2d 985, 120 S.Ct 1029 (2000)

IN the case at hand, HAMM WAS TRANSFERRED
quickly to Ely C.C. (see inclosed letters) he had
repeatedly tried to communicate to his appointed
counsel, AND yet, the CLARK County Public Defender's
Office refuses his requests.

The public defenders office CANNOT consider
its decision to "Not-File" the Direct Appeal, OR
its "notice of intent to appeal," AS A strategic
one, AND MOUNTS TRANSFERS hindered his ability
to act pro-se.

pg 3

MOVANT Further shows that the Similarity between his untimely Filings And the FLORES-ORTEGA CASE, Are profound. (id. At 145 LEd 2d 985)

There the CALIFORNIA Court sentenced the defendants ON second-degree-murder; the Notice OF Direct Appeal WAS Never Filed, AS sub Judice.

The United States District Court For the Eastern District OF OF California denied relief. Then the U.S. Court OF Appeals- For the Honorable Ninth Circuit-Reversed; saying that the Accused WAS entitled to relief because the petitioner, like MR. HAMM, only Needs to show[evidence] that counsel's Failure to File A Notice OF Appeal WAS IN-FACT prejudicial to the petitioner, when done "without the petitioner's consent." (160 F.3d 534, 1998 U.S. App. Lexis 27933). AND it WAS.

ON certiorari, the United States Supreme Court in AN opinion by SANDRA DAY O'CONNOR, granted Further-Declaratory-relief, in A rare-UNANIMOUS-decision it held:

"THAT. STRICKLAND V WASHINGTON (1994) 466 U.S. 668, 80 LEd. 2d 674, 104 S.Ct. 2052; provides the proper Framework For evaluating such claims." id. (At 986)

PS 4

- Wherefore; MR. HAMM ONLY seeks
to have AN Appellate LAW Firm Appointed
to review: ① the sentencing enhancements;
② The possible procedural Due Process
Errors, in the pretrial preparations; AND
③ The Mitigating Age-FACTORS; AND the
④ possible coercion which led up to
the entering of the plea-DEAL;
⑤ The FACT that MOVANT WAS NEVER MANDAMIZED.

STANDING ALONE these issues MAY NOT
STATE CAUSE FOR review, BUT, this MOVANT
CAN show possible Due-Process violations
have occurred in each of the AFORE MENTIONED
AREAS OF pretrial litigation.

Therefore; Counsel's Failures creates reverse-
able error, AND in conclusion MOVANT seeks
this motion to Reconsider the FACTS herein, AND
order AN Attorney be Appointed to represent
the MOVANT ON ANY Meritorious issue RAISED.

OR, Accept this Formal Notice OF
Appeal From MR. HAMM.

AND it is so Prayed.

Dated: Feb. 15, 2013

Sincerely Barron HAMM JR.
Barron HAMM JR. 35
#1052277

CERTIFICATE
OF

SERVICE BY MAIL

I Barron Hamm, hereby certify Pursuant to N.R.C.P. 5(b),
That on this 17 day of the month of February, of the
year 2013, I mailed true & correct copy of the
Foregoing Motion For Reconsideration; & For
Appointment of counsel for direct "Appeal" addressed to
N/A

Respondant, prison or jail official

county of clerk
Eight Judicial District
court.

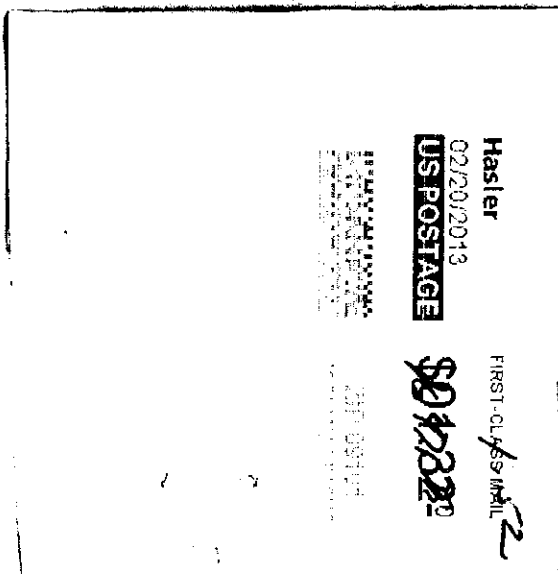
CLERK OF the court's

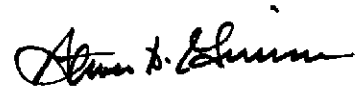
200 Lewis AVE. 3rd Floor

Las Vegas Nev. 89155

~~Barron Hamm~~ ^{II} 1052277
~~Barron Hamm~~

BARRON HAMM[#] 1052277
P.O. Box 650 [H.D.S.P.]
INDIAN SPRINGS N.V. 89070





CLERK OF THE COURT

ASTA

**DISTRICT COURT
CLARK COUNTY, NEVADA**

STATE OF NEVADA,

Plaintiff(s),

vs.

BARRON HAMM,

Defendant(s).

Case No: 09C256384
Dept No: XI

CASE APPEAL STATEMENT

1. Appellant(s): Barron Hamm
2. Judge: Jennifer Togliatti
3. Appellant(s): Barron Hamm

Counsel:

Barron Hamm #105227
P.O. Box 650
Indian Springs, NV 89070

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

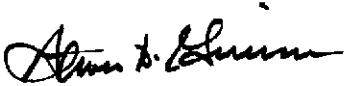
- 1 7. Appellant Represented by Appointed Counsel On Appeal: N/A
2 8. Appellant Granted Leave to Proceed in Forma Pauperis: N/A
3 9. Date Commenced in District Court: July 22, 2009
4 10. Brief Description of the Nature of the Action: Criminal
5 Type of Judgment or Order Being Appealed: Post-Conviction Relief
6 11. Previous Appeal: Yes
7 Supreme Court Docket Number(s): 56559
8 12. Child Custody or Visitation: N/A
9

10 Dated This 26 day of February 2013.

11 Steven D. Grierson, Clerk of the Court

12 
13

14 Heather Ungermann, Deputy Clerk
15 200 Lewis Ave
16 PO Box 551601
17 Las Vegas, Nevada 89155-1601
18 (702) 671-0512
19
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25
26
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28


CLERK OF THE COURT

OPPS

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610
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-

BARRON HAMM,
#2707761

Defendant.

CASE NO: 09C256384

DEPT NO: XI

STATE'S OPPOSITION TO DEFENDANT'S PRO PER MOTION
FOR RECONSIDERATION & APPOINTMENT OF COUNSEL

DATE OF HEARING: MARCH 18, 2013

TIME OF HEARING: 9:00 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through DANIELLE PIEPER, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Pro Per Motion for Reconsideration and Appointment of Counsel.

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 22, 2009, BARRON HAMM (hereinafter "Defendant") was charged by way
4 of Indictment with COUNT 1 – Burglary While in Possession of a Firearm (Felony – NRS
5 205.060); COUNT 2 – Assault With a Deadly Weapon (Felony – NRS 200.471); COUNT 3
6 – Murder With Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); and
7 COUNT 4 – Carrying Concealed Firearm or Other Deadly Weapon (Felony – NRS
8 202.350(1)(d)(3)).

9 On March 12, 2010, pursuant to negotiations, Defendant pleaded guilty to COUNT 1
10 – Second Degree Murder With Use of a Deadly Weapon and COUNT 2 – Assault With a
11 Deadly Weapon. An Amended Indictment and Guilty Plea Agreement ("GPA") were filed
12 in open court the same day.

13 On May 14, 2010, Defendant was sentenced, pursuant to the GPA, as follows:
14 COUNT 1 – to Life with a minimum parole eligibility of TEN (10) YEARS plus a
15 consecutive term of TWO HUNDRED FORTY (240) MONTHS with a minimum parole
16 eligibility of NINETY-SIX (96) MONTHS for the use of a deadly weapon; and COUNT 2 –
17 to a maximum of SEVENTY-TWO (72) MONTHS with a minimum parole eligibility of
18 TWENTY-FOUR (24) MONTHS; COUNT 2 to run consecutive to COUNT 1; with THREE
19 HUNDRED SEVENTY-FIVE (375) DAYS credit for time served. The Judgment of
20 Conviction was filed on May 20, 2010.

21 Defendant filed an untimely Notice of Appeal on August 5, 2010, which the Nevada
22 Supreme Court dismissed on September 10, 2010. Remittitur issued on October 6, 2010.

23 Defendant filed a Motion to Withdraw his guilty plea on February 13, 2012. The
24 State opposed Defendant's motion on February 22, 2012, and the Court denied Defendant's
25 motion on February 24, 2012.

26 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) and Motion
27 for Appointment of Counsel on October 31, 2012. The State filed its Response and Motion
28 to Dismiss Defendant's petition and Motion for Counsel on November 14, 2012. On January

1 10, 2013 the Court denied Defendant's post-conviction petition as time barred with no good
2 cause showing and denied Defendant's Motion to Appoint Counsel. Findings of Fact,
3 Conclusions of Law, and Order issued on January 29, 2013 and the Notice of Entry was filed
4 on February 4, 2013. On February 22, 2013, Defendant filed a Notice of Appeal to the
5 Nevada Supreme Court.

6 Defendant filed the instant Motion for Reconsideration and Appointment of Counsel
7 on February 25, 2013. The State responds as follows:

8 **ARGUMENT**

9 **I. THE DISTRICT COURT DOES NOT HAVE JURISDICTION TO CONSIDER**
10 **DEFENDANT'S MOTION.**

11 Jurisdiction in an appeal is vested solely in the Nevada Supreme Court until the
12 remittitur issues to the District Court. Under the relevant statutes, the Nevada Supreme
13 Court has control and supervision of an appealed matter from the filing of the notice of
14 appeal until the issuance of the certificate of judgment. NRS 177.155; 177.305; Buffington
15 v. State, 110 Nev. 124, 126, 868 P.2d 643, 644 (1994).

16 On February 22, 2013, Defendant filed a Notice of Appeal of the district court's
17 denial of his Petition for Writ of Habeas Corpus (Post-Conviction) and Motion to Appoint
18 Counsel. As a result, the district court no longer has jurisdiction to entertain the instant
19 Motion for Reconsideration and Appointment of Counsel until Remittitur in his Nevada
20 Supreme Court case issues. Defendant's request for appointment of counsel in the instant
21 matter must be directed to the Nevada Supreme Court. See NRS 177.155.

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CONCLUSION

For the foregoing reasons, the State respectfully requests that Defendant's Motion for Reconsideration and for Appointment of Counsel be dismissed.

DATED this 15th day of March, 2013.

Respectfully submitted,

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

BY /s/ Pamela Weckerly for
DANIELLE PIEPER
Chief Deputy District Attorney
Nevada Bar #008610

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing was made this 15th day of March, 2013, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY: /s/ R. Johnson
R. JOHNSON
Secretary for the District Attorney's Office

GS/DP/rj/M-1

1 **ORDR**

2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 TREVOR HAYES
6 Deputy District Attorney
7 Nevada Bar #009581
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

Electronically Filed
04/19/2013 12:07:09 PM


CLERK OF THE COURT

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

11 -vs-

12 BARRON HAMM,
13 #2707761

14 Defendant.

CASE NO: C256384

DEPT NO: XI

15 ORDER DENYING DEFENDANT'S PRO PER MOTION FOR RECONSIDERATION;
16 AND FOR APPOINTMENT OF COUNSEL FOR "DIRECT APPEAL"

17 DATE OF HEARING: MARCH 18, 2013

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

19 THIS MATTER having come on for hearing before the above entitled Court on the
20 18th day of March, 2013, the Defendant not being present, IN PROPER PERSON, the
21 Plaintiff being represented by STEVEN B. WOLFSON, District Attorney, through
22 TREVOR HAYES, Deputy District Attorney, without argument, based on the pleadings and
23 good cause appearing therefor,

24 ///

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2013-03-18 PM 1:00 RCVD

1 IT IS HEREBY ORDERED that the Defendant's Pro Per Motion For
2 Reconsideration; And For Appointment Of Counsel For "Direct Appeal", shall be, and it is
3 DENIED as the Court currently has no jurisdiction to entertain the Motion as the appeal has
4 already been filed of the Order which is being sought for reconsideration.

5 DATED this 17th day of ~~March~~^{April}, 2013.

6
7 
8 DISTRICT JUDGE

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

12 
13 TREVOR HAYES
14 Deputy District Attorney
15 Nevada Bar #009581
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CERTIFICATE OF SERVICE

I certify that on the 19th day of April, 2013, I mailed a copy of the foregoing Order
to:

BARRON HAMM #1052277
HIGH DESERT STATE PRISON
P.O. BOX 650
INDIAN SPRINGS, NV 89018

BY:


R. JOHNSON

Secretary for the District Attorney's Office

ryj/M-1

Grand Jury Case # 09AGJ.036X

Exhibit " 1 "

Date 7/14/09

7
1 IND
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 SONIA JIMENEZ
6 Chief Deputy District Attorney
7 Nevada Bar #008818
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,)

11 Plaintiff,)

12 -vs-)

13 BARRON HAMM,
14 #2707761)

15 Defendant(s).)
16)
17

Case No.
Dept. No.

INDICTMENT

18 STATE OF NEVADA)
19 COUNTY OF CLARK) ss.

20 The Defendant(s) above named, BARRON HAMM, accused by the Clark County
21 Grand Jury of the crimes of BURGLARY WHILE IN POSSESSION OF A FIREARM
22 (Felony - NRS 205.060); ASSAULT WITH A DEADLY WEAPON (Felony - NRS
23 200.471); MURDER WITH USE OF A DEADLY WEAPON (Felony - NRS 200.010,
24 200.030, 193.165); and CARRYING CONCEALED FIREARM OR OTHER DEADLY
25 WEAPON (Felony - NRS 202.350 (1)(d)(3)); committed at and within the County of Clark,
26 State of Nevada, on or about the 3rd day of May, 2009, as follows:

27 ///

28 ///

1 COUNT 1 – BURGLARY WHILE IN POSSESSION OF A FIREARM

2 did then and there wilfully, unlawfully, and feloniously enter, while in possession of a
3 firearm, with intent to commit assault and/or assault with use of a deadly weapon, that
4 certain building occupied by JAZMIN FLEMMING and/or JARED FLEMMING, located at
5 2675 Nellis Avenue, # 1142, Clark County, Nevada.

6 COUNT 2 – ASSAULT WITH A DEADLY WEAPON

7 did then and there wilfully, unlawfully, feloniously and intentionally place another
8 person, to-wit: JARED FLEMMING and/or HEATHER HERNANDEZ and/or TYJUAN
9 BELL and/or MALIQUE HALEY and/or MICHAEL VILLANUEVA, in reasonable
10 apprehension of immediate bodily harm with use of a deadly weapon, to-wit: a firearm, by
11 pointing the firearm at said individuals and yelling for everyone to get on the ground and/or
12 for everyone to lay on the ground.

13 COUNT 3 – MURDER WITH USE OF A DEADLY WEAPON

14 did then and there wilfully, feloniously, without authority of law, and with malice
15 aforethought, kill JARED FLEMMING, a human being, by shooting the said JARED
16 FLEMMING in the back, with a deadly weapon, to-wit: a firearm, the said actions of the
17 Defendant resulting in the death of the said JARED FLEMMING, the Defendant being
18 responsible under one or more of the following principles of criminal liability, to-wit: (1) by
19 having premeditation and deliberation in its commission; and/or (2) the killing occurring
20 during the perpetration or attempted perpetration of a burglary.

21 ///

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28 ///

1 COUNT 4 - CARRYING CONCEALED FIREARM OR OTHER DEADLY WEAPON

2 did then and there wilfully, intentionally, unlawfully and feloniously carry concealed
3 upon his person, a firearm or other deadly weapon, to-wit: a handgun.

4 DATED this _____ day of July, 2009.

5
6 DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781
7

8
9 BY

10 SONIA JIMENEZ
Chief Deputy District Attorney
Nevada Bar #008818

11
12 ENDORSEMENT: A True Bill
13

14 _____
Foreperson, Clark County Grand Jury
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1 Names of witnesses testifying before the Grand Jury:
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19 DA#09AGJ036X/09F09275X/ds
20 LVMPD EV# 0905030318
21 (TK5)
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Grand Jury Case # 09AGJ036X

Exhibit # 2

Date 7/14/09

INSTRUCTION NO. _____

Every person who, by day or night, enters any house, room or apartment with the intent to commit assault therein has committed the crime of Burglary.

“Assault” means intentionally placing another person in reasonable apprehension of immediate bodily harm.

INSTRUCTION NO. _____

It is not necessary that the State prove the defendant actually committed an assault inside the house, room or apartment, after he entered in order for you to find he has committed the crime of burglary. The gist of the crime of burglary is the unlawful entry with criminal intent. Therefore, a burglary was committed if the defendant entered the house, room or apartment with the intent to commit an assault regardless of whether or not that crime occurred.

INSTRUCTION NO. _____

Consent to enter is not a defense to the crime of burglary so long as it is shown that entry was made with the specific intent to commit an assault therein.

INSTRUCTION NO. _____

Every person who commits the crime of burglary, who has in his possession or gains possession of any firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the structure, or upon leaving the structure, has committed the crime of burglary while in possession of a weapon.

INSTRUCTION NO. _____

"Deadly weapon" means any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death, or, any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

INSTRUCTION NO. _____

An Assault With a Deadly Weapon is an intentional placing of another person in reasonable apprehension of immediate bodily harm, by or through the use of a deadly weapon.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. _____

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

INSTRUCTION NO. _____

Malice aforethought means the intentional doing of a wrongful act without legal cause or excuse or what the law considers adequate provocation. The condition of mind described as malice aforethought may arise, from anger, hatred, revenge, or from particular ill will, spite or grudge toward the person killed. It may

also arise from any unjustifiable or unlawful motive or purpose to injure another, proceeding from a heart fatally bent on mischief or with reckless disregard of consequences and social duty. Malice aforethought does not imply deliberation or the lapse of any considerable time between the malicious intention to injure another and the actual execution of the intent but denotes an unlawful purpose and design as opposed to accident and mischance.

INSTRUCTION NO. _____

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

Malice may be implied when no considerable provocation appears, or when all the circumstances of the killing show an abandoned and malignant heart.

INSTRUCTION NO. _____

There are certain kinds of murder which carry with them conclusive evidence of malice aforethought. One of these classes of murder is murder committed in the perpetration or attempted perpetration of burglary. Therefore, a killing which is committed in the perpetration of a burglary is deemed to be murder of the first degree, whether the killing was intentional or unintentional or accidental. This is called the Felony-Murder rule.

The specific intent to perpetrate or attempt to perpetrate burglary must be proven by slight or marginal evidence for purposes of this grand jury hearing.

INSTRUCTION NO. _____

Every person found to be carrying any pistol, revolver, firearm or other dangerous or deadly weapon concealed on his person is guilty of the crime of Carrying a Concealed Weapon.

INSTRUCTION NO. _____

"Concealed Weapon" means any pistol, revolver, firearm or other dangerous or deadly weapon, whether loaded or unloaded, which is carried upon a person in such a manner as not to be discernible by ordinary observation.

"Carrying upon a person" means actually on the person or in a container carried by the person.

Grand Jury Case # 09ASJ036X

Exhibit " 28 "

Date 7/14/09 _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: Marique Haley EVENT#: 090
ADDRESS: _____ INTERVIEWED BY: C Brown
PHONE NUMBER: _____ LOCATION: 4171 Barber
DATE & TIME: 5/6/09

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Marique Haley

STATEMENT:

DATE & TIME: 5/6/09

I am a 100% sure this is Burger B.

SIGNED: Marique Haley

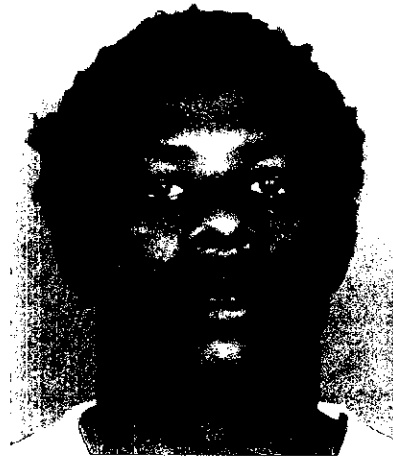
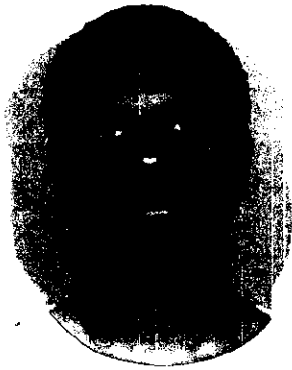
DATE & TIME: 5/6/09 1650

OFFICER'S NAME & P#:

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

[Signature] 4407

Clark County Juvenile Justice Services.



MM



Grand Jury Case # 09AGJ036X
Exhibit " 29 "
Date 7/14/09 _____

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: AUSTON CHILDS
ADDRESS: _____
PHONE NUMBER: _____

EVENT#: 090503-0318
INTERVIEWED BY: WILKEMANN
LOCATION: _____
DATE & TIME: 5-7-09 1314

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: Auston Childs

STATEMENT:

DATE & TIME: _____

I am 100% sure the pic picture was Burger B.

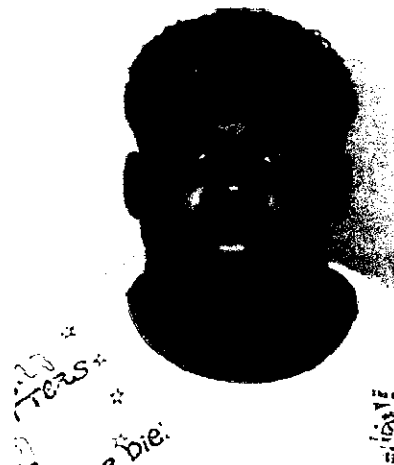
SIGNED: _____

DATE & TIME: _____

OFFICER'S NAME & P#: _____

LVMPD 104 (REV. 5-96) • AUTOMATED/WP12

Clark County Juvenile Justice Services.



Grand Jury Case # 09AGJ036X

Exhibit # 30

Date 7/14/09

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: TYJUAN Bell
ADDRESS: _____
PHONE NUMBER: _____

EVENT#: 090503-0318
INTERVIEWED BY: WILLIAM/Bell
LOCATION: _____
DATE & TIME: 5-7-09 1345

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

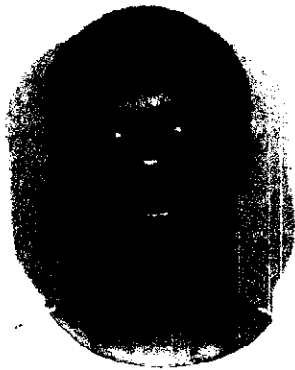
SIGNED: Tyjuan Bell
DATE & TIME: _____

STATEMENT:

SIGNED: _____
DATE & TIME: _____

OFFICER'S NAME & P#: _____

Clark County Juvenile Justice Services.



TDB



Grand Jury Case # 09A63036X

Exhibit " 31

Date 7/14/09

LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

EVENT#: _____
INTERVIEWED BY: WILDEMAN/BUNN
LOCATION: 300 Caesars Ave
DATE & TIME: 7-14-09 @ 1445

NAME: Bernard Bynum
ADDRESS: _____
PHONE NUMBER: _____

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

SIGNED: K Bernard Bynum

STATEMENT:

DATE & TIME: _____

I am 100% sure that the person circled was Bruce B.
He was at the party and he showed a gun while he was
dancing. I saw the gun.

M3516W

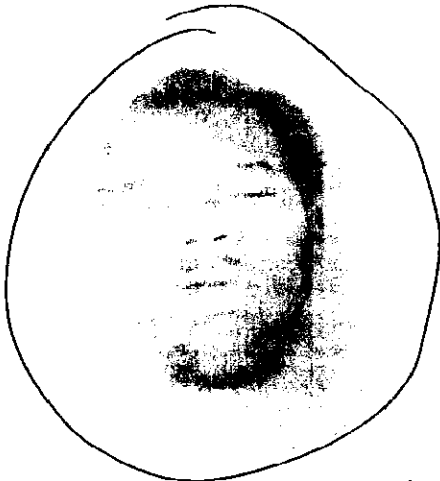
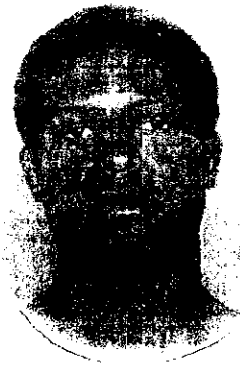
SIGNED: K Bernard Bynum

DATE & TIME: 7-14-09 @ 1450

OFFICER'S NAME & P#:

WILDEMAN/BUNN 3516 / 4407

LVMPD 104 (REV. 5-96) - AUTOMATED/WP12



BB 7/14/09

Grand Jury Case # 09ASJ036X

Exhibit " - 32

Date 7/14/09

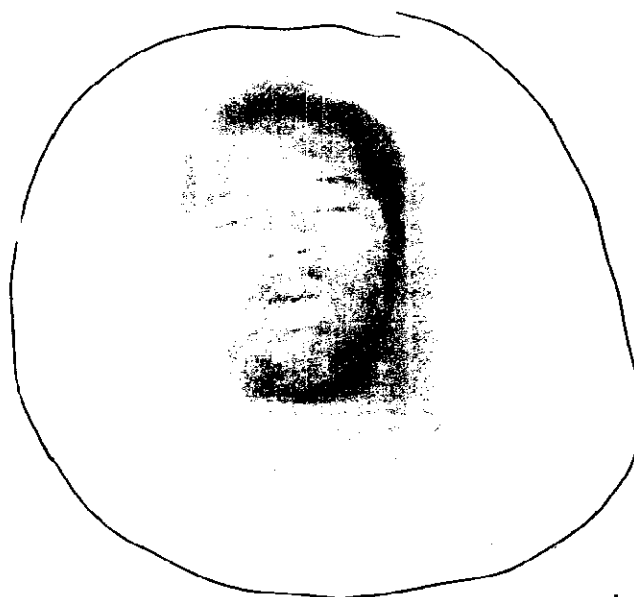
LAS VEGAS METROPOLITAN POLICE DEPARTMENT
PHOTO LINE-UP WITNESS INSTRUCTIONS

NAME: Michael Villanueva EVENT#: 090503-0318
ADDRESS: _____ INTERVIEWED BY: WILSON/BUR
PHONE NUMBER: _____ LOCATION: 300 Carson
DATE & TIME: 7-14-09 @ 1445

"In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. The fact that the photos are being shown to you should not cause you to believe or guess that the guilty person has been caught. You do not have to identify anyone. It is just as important to free innocent persons from suspicion as it is to identify those who are guilty. Please keep in mind that hair styles, beards, and mustaches are easily changed. Also, photographs do not always depict the true complexion of a person - it may be lighter or darker than shown in the photo. You should pay no attention to any markings or numbers that may appear on the photos. Also, pay no attention to whether the photos are in color or black and white, or any other difference in the type or style of the photographs. You should study only the person shown in each photograph. Please do not talk to anyone other than Police Officers while viewing the photos. You must make up your own mind and not be influenced by other witnesses, if any. When you have completed viewing all the photos, please tell me whether or not you can make an identification. If you can, tell me in your own words how sure you are of your identification. Please do not indicate in any way to other witnesses that you have or have not made an identification. Thank you."

STATEMENT: _____ SIGNED: Michael Villanueva
_____ DATE & TIME: 7-14-09 @ 1455
I'm pretty sure that the person I circled is the
man who did the shooting at the Party
1351110

OFFICER'S NAME & P#: WILSON/BUR SIGNED: Michael Villanueva
LVMPD 104 (REV. 5-95) • AUTOMATED/WP12 3516 / 4407
DATE & TIME: 7-14-09 @ 1456



9-14-09, M.V.
@ 1454

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 22, 2009**

09C256384

The State of Nevada vs Barron Hamm

July 22, 2009**11:30 AM****Grand Jury Indictment****GRAND JURY
INDICTMENT****Relief Clerk: Shelly****Landwehr/sl****Reporter/Recorder:****Cheryl Carpenter****Heard By: Linda Bell****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Mitchell, Scott S.

Attorney

JOURNAL ENTRIES

- Duane Schlismann, Grand Jury Foreman, 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 09AGJ036X to the Court. COURT ORDERED, the indictment may be filed and is assigned Case Number C256384, Department 14. Mr. Mitchell requested a bench warrant, COURT ORDERED, NO BAIL BENCH WARRANT. Exhibit(s) 1-34 lodged with Clerk of District Court.

BW(CUSTODY)

07/29/09 09:00 AM INITIAL ARRAIGNMENT (DEPT. 14)

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****July 27, 2009**

09C256384

The State of Nevada vs Barron Hamm

July 27, 2009**9:00 AM****Bench Warrant Return****BENCH WARRANT
RETURN Court
Clerk: Linda Skinner
Reporter/Recorder:
Cheryl Gardner
Heard By: Donald
Mosley****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Public Defender

Attorney

Villegas, Victoria A.

Attorney

JOURNAL ENTRIES

- Mr. Coffee advised this matter was taken to the Grand Jury before the Preliminary Hearing and that the Public Defender's Office needs to be appointed. COURT SO ORDERED. DEFENDANT ARRAIGNED, PLED NOT GUILTY AND WAIVED THE SIXTY (60) DAY RULE. COURT ORDERED, matter set for trial in ordinary course with priority. Mr. Coffee requested 21 days from the filing of the Grand Jury Transcript to file a writ. Court advised Defendants rights are reserved. CUSTODY

1/13/10 9:00 AM STATUS CHECK: DISCOVERY

3/9/10 9:00 AM CALENDAR CALL (#1)

3/15/10 1:30 PM JURY TRIAL (#1)

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 08, 2009

09C256384

The State of Nevada vs Barron Hamm

September 08, 2009	9:00 AM	Petition for Writ of Habeas Corpus	PTN FOR WRIT OF HABEAS CORPUS Court Clerk: Linda Skinner Reporter/Recorder: Maureen Schorn Heard By: Donald Mosley
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HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES

PRESENT:	Campbell, Donishia L.	Attorney
	Coffee, Scott L.	Attorney
	Hamm, Barron	Defendant
	Jimenez, Sonia V.	Attorney
	Public Defender	Attorney

JOURNAL ENTRIES

- Court noted the issue is probable cause primarily as to Count 1, that the Defense does not feel there was enough evidence presented to the Grand Jury to support this Count. Statements by Mr. Coffee in support of the Writ. Statements by Ms. Jimenez in opposition. COURT ORDERED, Writ DENIED. Mr. Coffee requested a stay to appeal to the Supreme Court. Court DENIED request.

CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****September 21, 2009**

09C256384

The State of Nevada vs Barron Hamm

September 21, 2009**9:00 AM****Motion to Dismiss****DEFT'S PRO PER
MTN TO DISMISS
COUNSEL/09 Court
Clerk: Tina Hurd
Reporter/Recorder:
Renee Vincent
Heard By: Linda Bell****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Coffee, Scott L.
Hamm, Barron
Jimenez, Sonia V.
Public DefenderAttorney
Defendant
Attorney
Attorney**JOURNAL ENTRIES**

- Court advised she read the motion and Deft. Hamm is indicating Mr. Coffee has not been communicating with his family. Mr. Coffee advised he met with Deft's family at the time of the Preliminary Hearing, 15 people, and provided discovery to them. They have his phone number and he returns phone calls. Mr. Coffee advised the family was not present at the time of the Writ. An unidentified family member present and stated they were not aware of the hearing and have not been able to contact Mr. Coffee. Colloquy between Court and Deft. COURT ORDERED, motion DENIED. CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 06, 2010**

09C256384

The State of Nevada vs Barron Hamm

January 06, 2010**9:00 AM****Motion to Dismiss****DEFT' PRO PER
MTN TO DISMISS
COUNSEL
AND APPOINTMENT
OF ALTERNATIVE
COUNSEL/10 Relief
Clerk: Carol
Donahoo
Reporter/Recorder:
Renee Vincent
Heard By: Bell, Linda****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**Coffee, Scott L.
Hamm, Barron
Public Defender
Turner, Robert B.Attorney
Defendant
Attorney
Attorney**JOURNAL ENTRIES**

- Upon Court's inquiry, Deft. Hamm stated he would like new counsel; colloquy. COURT ORDERED, matter CONTINUED. In the meantime, Mr. Coffee to meet with Deft. to try negotiate a solution.
CUSTODY

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 13, 2010**

09C256384

The State of Nevada vs Barron Hamm

January 13, 2010**9:00 AM****All Pending Motions****ALL PENDING
MOTIONS (1/13/10)****Relief Clerk: Susan****Jovanovich /sj****Reporter/Recorder:****Cheryl Carpenter****Heard By: Linda Bell****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Jimenez, Sonia V.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- STATUS CHECK: DISCOVERY...DEFT'S PRO PER MOTION TO DISMISS COUNSEL AND APPOINTMENT OF ALTERNATIVE COUNSEL

Mr. Coffee advised issues have been resolved between Deft. and himself, and Deft. is comfortable on having him remain in the case. Upon Court's inquiry, Mr. Coffee advised there are no remaining issues with Discovery; and requested any exculpatory information the State may have, to be provided. Ms. Jimenez advised she is aware of the obligations, and State will comply with the rules and procedures. Court so noted. COURT ORDERED, Deft's Motion is MOOT.

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 10, 2010

09C256384

The State of Nevada vs Barron Hamm

March 10, 2010

9:00 AM

Calendar Call

CALENDAR CALL

Court Clerk: Tina
Hurd

Reporter/Recorder:

Cheryl Carpenter

Heard By: Linda Bell

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**

Campbell, Donishia L.

Attorney

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Jimenez, Sonia V.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- Mr. Coffee announced ready for trial and advised they reviewed the State's file and will be picking up copies this morning. He does not anticipate a problem. Mr. Coffee advised he made a Brady request during the file review regarding anyone carrying a weapon at the party. Additionally, several of the witnesses have been represented by his office as juveniles. Mr. Coffee advised his review of the situation is it will not result in a conflict and they will not be using any confidential information. Mr. Coffee advised, also, he expects the issue that this was the victim's 14th birthday party to be raised and stated it does not seem to be part of the res gestae and he will be asking to remove that from the jury's consideration. Mr. Coffee requested a status check on Friday to make sure everything is set and, if there is a resolution, they will not have to scramble to be heard at the last minute. Conference at the bench. COURT ORDERED, this case will proceed to trial on Monday; matter set for status check on Friday and the Court will take up any pre-trial issues at that time.

CUSTODY

09C256384

3-12-10 8:45 AM STATUS CHECK: TRIAL READINESS

3-15-10 9:00 AM JURY TRIAL

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

09C256384

The State of Nevada vs Barron Hamm

March 12, 2010**8:45 AM****Status Check****STATUS CHECK:
TRIAL READINESS
Court Clerk: Tina
Hurd
Reporter/Recorder:
Renee Vincent
Heard By: Linda Bell****HEARD BY:****COURTROOM:****COURT CLERK:****RECORDER:****REPORTER:****PARTIES****PRESENT:**

Campbell, Donishia L.

Attorney

Coffee, Scott L.

Attorney

Hamm, Barron

Defendant

Jimenez, Sonia V.

Attorney

Public Defender

Attorney

JOURNAL ENTRIES

- Guilty Plea Agreement FILED IN OPEN COURT. NEGOTIATIONS: State retains full right to argue on the charge of Second Degree Murder. Parties stipulate to a sentence of 8-20 years for the deadly weapon enhancement. Parties also stipulate to a sentence of 24-72 months for the charge of Assault with a Deadly Weapon and agree to run the sentence consecutive to Count 1. Further, this agreement is conditional on the Court agreeing to and following through with the stipulated portion of the sentence. Ms. Jimenez advised, if the Court is not inclined to abide by the stipulations, either party may withdraw from the negotiations. Court acknowledged. DEFT. HAMM ARRAIGNED AND PLED GUILTY TO THE AMENDED INDICTMENT FILED IN OPEN COURT CHARGING--COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ASSAULT WITH A DEADLY WEAPON (F). COURT ACCEPTED plea and ORDERED, matter referred to the Division of Parole and Probation (P&P) and set for sentencing.

09C256384

CUSTODY

5-14-10 8:45 AM SENTENCING

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

May 14, 2010

09C256384

The State of Nevada vs Barron Hamm

May 14, 2010

8:45 AM

Sentencing

SENTENCING

Court Clerk: Tina
HurdReporter/Recorder:
Renee Vincent

Heard By: Linda Bell

HEARD BY:

COURTROOM:

COURT CLERK:

RECORDER:

REPORTER:

PARTIES**PRESENT:**Coffee, Scott L.
Hamm, Barron
Jimenez, Sonia V.
Public DefenderAttorney
Defendant
Attorney
Attorney**JOURNAL ENTRIES**

- Conference at the bench. DEFT. HAMM ADJUDGED GUILTY OF COUNT 1 - SECOND DEGREE MURDER WITH USE OF A DEADLY WEAPON (F) and COUNT 2 - ASSAULT WITH A DEADLY WEAPON (F). Matter argued and submitted. Sworn statements by Karen Kennedy Grill and the victim's mother Kimberly Brown Fleming. COURT ORDERED, in addition to the \$25.00 Administrative Assessment fee and \$150.00 DNA Analysis fee including testing to determine genetic markers, Deft. SENTENCED as follows: Count 1 - to a MAXIMUM term of LIFE with a MINIMUM parole eligibility of TEN (10) YEARS in the Nevada Department of Corrections (NDC) plus a CONSECUTIVE term of a MAXIMUM of TWO HUNDRED FORTY (240) MONTHS with a MINIMUM parole eligibility of NINETY SIX (96) MONTHS for use of a deadly weapon. Court stated her findings regarding the weapons enhancement. Count 2 - to a MAXIMUM term of SEVENTY TWO (72) MONTHS with a MINIMUM parole eligibility of TWENTY FOUR (24) MONTHS in the Nevada Department of Corrections (NDC), CONSECUTIVE to Count 1. 375 DAYS credit for time served. Deft. to PAY \$36,796.27 RESTITUTION to the Fleming Family and \$6,000.00 RESTITUTION to

09C256384

Victims of Violent Crimes. BOND, if any, EXONERATED.

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****August 04, 2010**

09C256384

The State of Nevada vs Barron Hamm

August 04, 2010**8:45 AM****Motion to Withdraw as
Counsel****HEARD BY:** Bell, Linda Marie**COURTROOM:** RJC Courtroom 15C**COURT CLERK:** Tina Hurd; Sandra Harrell**RECORDER:** Renee Vincent**REPORTER:****PARTIES****PRESENT:**

State of Nevada

Plaintiff

WATERS, WILLIAM M., ESQ

Attorney

Westmeyer, Daniel

Attorney

JOURNAL ENTRIES

- Defendant not present, incarcerated at NDC. Mr. Waters advised he will send file to Defendant.
COURT ORDERED, Motion to Withdraw is GRANTED.

NDC

CLERK'S NOTE: A copy of the above minute order was mailed to Barron Hamm #1052277 @ High
Desert State Prison PO BOX 650, Indian Springs, NV 89018./sjh

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 01, 2010

09C256384

The State of Nevada vs Barron Hamm

September 01, 2010 8:45 AM Motion for Appointment

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd; Shelly Landwehr

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- COURT FINDS, Deft. did not show a basis and did not file a petition. Further, Court noted it is unclear if Mr. Coffee will be filing an appeal. COURT ORDERED, motion, DENIED.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

August 10, 2011

09C256384

The State of Nevada vs Barron Hamm

August 10, 2011

8:45 AM

Motion for Order

HEARD BY: Bonaventure, Joseph T.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Frank Ponticello, DDA, present for the State of Nevada.

- Deft. Hamm not present, in Proper Person.

Mr. Ponticello submitted to the Court's discretion. Court advised this is a closed appeal, however, he would prefer a written Opposition. Mr. Ponticello requested thirty days. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 9-14-11 8:45 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

September 14, 2011

09C256384

The State of Nevada vs Barron Hamm

September 14, 2011 8:45 AM

Motion for Order

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Brian Kochevar, DDA, present for the State of Nevada.

- Deft. Hamm not present, in Proper Person.

Court advised Deft. Hamm has failed to provide any reason why he needs the transcripts and ORDERED, motion DENIED WITHOUT PREJUDICE. Court advised she will reconsider if Deft. provides a reason he needs the transcripts.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

February 24, 2012

09C256384

The State of Nevada vs Barron Hamm

February 24, 2012

8:45 AM

Motion to Withdraw Plea

HEARD BY: Bell, Linda Marie

COURTROOM: RJC Courtroom 15C

COURT CLERK: Tina Hurd

RECORDER: Renee Vincent

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Maria Lavell, DDA, present for the State of Nevada.

- Deft. Hamm not present, in Proper Person.

Court advised she read the motion and the State's opposition and no oral argument will be taken.

Court stated it appears the motion would have been more properly brought as a post-conviction petition and, even then, it would be untimely. Under the circumstances of the case, there does not appear to be any basis to grant the motion. COURT ORDERED, motion DENIED. State to prepare the Order.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 10, 2012

09C256384

The State of Nevada vs Barron Hamm

December 10, 2012 9:00 AM Motion for Clarification

HEARD BY: Cory, Kenneth

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison-Britt

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Jonathan Cooper, Deputy District Attorney, present for the State of Nevada.
Defendant Hamm not present.

Court noted the Defendant s request for counsel is premature and advised the Writ of Habeas Corpus is scheduled for 01/10/13. COURT ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 01/10/13 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 19, 2012

09C256384

The State of Nevada vs Barron Hamm

December 19, 2012 9:00 AM Motion

HEARD BY: Barker, David

COURTROOM: RJC Courtroom 11B

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison-Britt

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Frank Ponticello, Deputy District Attorney, present for the State of Nevada.
Defendant Hamm not present.

COURT ORDERED, motion DENIED, hearing set for 01/10/13 STANDS.

NDC

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

December 24, 2012

09C256384

The State of Nevada vs Barron Hamm

December 24, 2012 9:00 AM Motion

HEARD BY: Togliatti, Jennifer

COURTROOM: RJC Courtroom 10C

COURT CLERK: Athena Trujillo

RECORDER: Yvette G. Sison-Britt

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- Sam Martinez, Deputy Public Defender, present for the State of Nevada.
Defendant Hamm not present.

COURT noted Defendant's Motion is premature and ORDERED, matter CONTINUED.

NDC

CONTINUED TO: 01/10/13 9:00 AM

**DISTRICT COURT
CLARK COUNTY, NEVADA****Felony/Gross Misdemeanor****COURT MINUTES****January 10, 2013**

09C256384

The State of Nevada vs Barron Hamm

January 10, 2013**9:00 AM****All Pending Motions****HEARD BY:** Togliatti, Jennifer**COURTROOM:** RJC Courtroom 10D**COURT CLERK:** Athena Trujillo**RECORDER:** Yvette G. Sison-Britt**REPORTER:****PARTIES****PRESENT:****JOURNAL ENTRIES**

- Jonathan Cooper, Deputy District Attorney, present for the State of Nevada.
Defendant Hamm not present.

DEFENDANT'S PRO SE ORDER FOR TRANSPORTATION OF INMATE FOR COURT
APPEARANCE OR, IN THE ALTERNATIVE, BY TELEPHONE OR VIDEO CONFERENCE ...
PETITION FOR WRIT OF HABEAS CORPUS ... DEFENDANT'S PRO SE MOTION FOR
CLARIFICATION

COURT noted the Defendant was not transported because it does not entertain oral arguments on these matters and ORDERED, Defendant s presence WAIVED. COURT noted the Defendant requested to be transported, but as it does not entertain oral argument in these matters, ORDERED, Defendant's Pro Se Order for Transportation of Inmate for Court Appearance, or in the Alternative, by Telephone or Video Conference DENIED. With respect to the Petition for Writ of Habeas Corpus, State advised the Court of the Defendant's birth date. COURT noted the reasons listed are insufficient and the Defendant was not a minor and ORDERED, Motion DENIED. COURT FURTHER ORDERED, Motion for Clarification DENIED.

NDC

CLERK'S NOTE: A copy of this minute order has been mailed to:

PRINT DATE: 06/22/2013

Page 21 of 23

Minutes Date:

July 22, 2009

09C256384

Barron Hamm #1052277
High Desert State Prison
PO Box 650 HDSP
Indian Springs, NV 89070

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Felony/Gross Misdemeanor

COURT MINUTES

March 18, 2013

09C256384

The State of Nevada vs Barron Hamm

March 18, 2013

9:00 AM

Motion to Reconsider

HEARD BY: Gonzalez, Elizabeth

COURTROOM: RJC Courtroom 14C

COURT CLERK: Dulce Romea

RECORDER: Jill Hawkins

REPORTER:

PARTIES

PRESENT:

Hayes, Trevor
State of Nevada

Attorney
Plaintiff

JOURNAL ENTRIES

- Deft not present, in custody at the Nevada Department of Corrections.

Court stated it will not be taking any argument, and ORDERED, the Court currently has no jurisdiction to entertain the Motion as the appeal has already been filed of the Order which is being sought for reconsideration.

NDC

CLERK'S NOTE: Minutes distributed to Barron Hamm, Defendant, ID #1052277, High Desert State Prison, P.O. Box 650, Indian Springs, NV 89070. / dr 3-20-13

Certification of Copy and Transmittal of Record

State of Nevada }
County of Clark } SS:

Pursuant to the Supreme Court order dated April 25, 2013, I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, do hereby certify that the foregoing is a true, full and correct copy of the complete trial court record for the above referenced case. The record comprises two volumes with pages numbered 1 through 401.

STATE OF NEVADA,

Plaintiff(s),

vs.

BARRON HAMM,

Defendant(s),

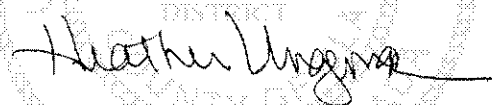
Case No: C256384

Dept No: XI

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 22 day of June 2013.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk