

1 He had her brush her hair, as he had found her hair brush while
2 going through her purse. (Exhibit H, p. 224). She brushed her
3 hair, and then cleaned her brush, dropping the hair from the
4 brush in the back seat of the car. (Exhibit H, p. 225).

5 He finished going through her purse, and stole her lunch
6 money for the month (\$25.00 to \$30.00). (Exhibit H, p. 226).
7 He stopped the car, pulled her out and told her to walk for ten
8 steps before taking the tape off her eyes. (Exhibit H, p. 226).
9 He had already taken his bandana off her head. (Exhibit H, p.
10 226). She took the black tape off ten steps later, put it
11 inside her purse, and later gave it to Detective Michael
12 McLaughlin. (Exhibit H, p. 227).

13 She had been released near Valley High School and knew a
14 family from church who lived nearby, so she went to their house.
15 (Exhibit H, p. 227). When Mrs. Suttor answered the door, Angela
16 said she had been attacked and she wanted to call her parents.
17 (Exhibit H, pp. 227-228). Her parents and the police arrived
18 shortly thereafter. (Exhibit H, p. 228). When her mother
19 arrived, she saw that Angela was shocked and upset, crying and
20 quite disheveled. (Exhibit H, p. 192). Detective McLaughlin
21 and her mother took Angela to the hospital. (Exhibit H, p.
22 228).

23 About three weeks later, in early December of 1983, Wayne
24 Bennett Cannady, a Water Department employee of the City of
25 Arcadia, California, was leaving work at about 3:25 p.m., when
26 he saw a black man wearing a bandana across his face entering a
27 blue car near a water tunnel on 5th Avenue in Arcadia,
28 California. (Exhibit H, pp. 437-439). Cannady thought it

1 unusual for a man to wear a bandana across his face during the
2 day, but proceeded on Huntington Drive to the freeway on-ramp.
3 (Exhibit H, p. 440).

4 On the on-ramp, he noticed this same car was behind him.
5 (Exhibit H, p. 440). Sensing something was afoot, he slowed his
6 vehicle on the freeway to get this car's license number.
7 (Exhibit H, p. 440). He committed the license plate number to
8 memory, and reported it to the Monrovia Police Department.
9 (Exhibit H, pp. 441-442). In court, however, he only remembered
10 that it was a car with Nevada license plates. (Exhibit H, p.
11 442).

12 Detective Crawford, of the Monrovia Police Department
13 testified that Mr. Cannady had provided him with the license
14 plate number of a vehicle which he had observed being driven by
15 a man wearing a mask. (Exhibit H, pp. 470-472). He contacted a
16 fellow detective in Boulder City, Nevada, who gave him the
17 address of the registered owner of the vehicle, Andre Dupree
18 Boston, the defendant. (Exhibit H, pp. 472-473). The next day
19 he proceeded with his partner, Detective Mark N. Carpenter,
20 Monrovia Police Department, to 8711 Thorpe, Westminster,
21 California. (Exhibit H, pp. 472-474).

22 The two detectives had been investigating the sexual
23 assault of Audra Sharp, a fifteen year old Monrovia, California,
24 high school girl who had been abducted on her way home from
25 school and sexually assaulted by a black man in camouflage pants
26 wearing a bandana over his face. (Exhibit H, pp. 317-326). Her
27 attacker had used a knife to subdue her, used black electrical
28 tape on her eyes, and started his melee of sexual assaults in a

1 water tunnel near 5th Avenue in Arcadia, California. (Exhibit
2 H, pp. 318-320). He had originally only put one piece of tape
3 on her eyes; this allowed her to see what was occurring.
4 (Exhibit H, pp. 320-321).

5 Her attacker later put Audra in his car and drove her
6 around for a series of sexual assaults. (Exhibit H, pp.
7 323-330). Before he put the extra black tape on her eyes, she
8 saw that his car was a blue Chevrolet Chevette with a blue
9 interior, bucket seats, a stick shift, and that there were two
10 leather bracelets in the car bearing the names "Andre" and
11 "Marie". (Exhibit H, pp. 323-324). She also saw the license
12 plate of the vehicle, 005 AJV, and remembered this as the "A"
13 for "Audra" and the "JV" for "Junior Varsity". (Exhibit H, pp.
14 324-325). This is the same license plate number given by Wayne
15 Cannady to Detective Steven Crawford. (Exhibit H, pp. 470-472).

16 As the two detectives arrived at 8711 Thorpe, Westminster,
17 California, they saw the defendant and his wife sitting on the
18 curb next to their vehicle, a Chevy Chevette with the Nevada
19 license plate "005 AJV". (Exhibit H, pp. 450-452). The defen-
20 dant's wife signed a Consent to Search Form for the vehicle.
21 (Exhibit H, pp. 453-454). The detectives searched the vehicle
22 that day. (Exhibit H, p. 454). They also obtained Consent to
23 Search Forms for the residence, which both the defendant and his
24 wife signed. (Exhibit H, p. 453).

25 In the residence, the detective found a pair of camouflage
26 pants and a camouflage tee shirt. (Exhibit H, pp. 457-458). In
27 the vehicle the detectives found two black Karate-type knives
28 and two leather bracelets. (Exhibit H, pp. 461-463). Detective

1 Carpenter also noticed that the left rear window was cracked and
2 had been taped with black electrical tape. (Exhibit H, p. 463).
3 After impounding the vehicle and obtaining a search warrant, it
4 was searched two days later by Detective McLaughlin from Las
5 Vegas. (Exhibit H, pp. 455-456).

6 Detective McLaughlin also brought Henry Truzkowski, an
7 identification specialist, to help search the vehicle. (Exhibit
8 H, p. 492). McLaughlin noted that the left rear window as
9 broken. (Exhibit H, p. 492). He also photographed the defendant
10 and subsequently conducted a photo-lineup for Barbara, Angela
11 and Kathy Kukal. (Exhibit H, pp. 493-494). Angela picked the
12 defendant as the man who had attacked her. (Exhibit H, p. 495).
13 Barbara and Kathy picked him as the man who had broken into
14 their house. (Exhibit H, p. 495).

15 Truzkowski, in searching the car, found a tissue box in the
16 right rear of the vehicle. (Exhibit H, p. 361). He also found
17 three wads of tissue on the right rear floor of the vehicle
18 which were submitted to the police crime lab for testing. Said
19 tests revealed the presence of semen, vaginal secretions, and
20 vaginal acid phosphatase. (Exhibit H, pp. 362, 423). He also
21 found a roll of black electrical tape in the glove compartment
22 of the vehicle. (Exhibit H, p. 363). Truzkowski further found
23 a clump of 50 to 75 hairs that were subsequently compared and
24 found to be consistent with the hair of the victim, Angela
25 Kukal. (Exhibit H, pp. 421-422).

26 Following a jury trial, BOSTON was found guilty and
27 sentenced to serve fourteen (14) life sentences and ninety-two
28 (92) years in prison. (Exhibit B). BOSTON then directly

1 appealed to the Nevada Supreme Court and the Nevada Supreme
2 Court entered its Order Dismissing Appeal on October 24, 1989.
3 (Exhibit E). The only issue on direct appeal was the
4 sufficiency of the evidence.

5 However, subsequent to the conviction, yet prior to the
6 order dismissing appeal, BOSTON filed a pro per petition for
7 writ of habeas corpus in the Nevada Supreme Court on December
8 21, 1988. (Exhibit F). On December 27, 1988, the Nevada
9 Supreme Court entered an order denying that petition for writ of
10 habeas corpus. (Exhibit G). In that order, the court stated
11 that because petitioner was not incarcerated within the State of
12 Nevada, the court lacked jurisdiction to hear that petition.

13 BOSTON filed the present petition before this Court on July
14 20, 1990, and this Court entered its order directing a response
15 by October 1, 1990.

16 III. ARGUMENT

17 A. Preface.

18 In his present petition before this Court, BOSTON raises
19 the following claims:

20 1. "Petitioner was denied the right to effective
21 assistance of counsel at the certification hearing."

22 2. "Petitioner was denied effective assistance of
23 counsel because counsel failed to investigate, and that he
24 was not prepared to proceed at preliminary hearing."

25 3. "Petitioner was denied the effective assistance
26 of counsel because counsel failed to investigate the

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1 possibility of the defense of insanity at the time the acts
2 were committed."

3 4. "Petitioner was denied substantial due process in
4 that the defense was denied the right to a speedy trial."

5 B. The Petitioner Is Not In The Custody Of The Respondents;
6 Therefore, The "In Custody" Requirement Of The Statute Governing
7 Habeas Remedies In Federal Courts Is Not Satisfied.

8 Petitioner BOSTON's habeas corpus action is based on 28
9 U.S.C. § 2254(a) which provides remedies in federal courts for
10 unlawful state custody. Section 2254(a) states:

11 The Supreme Court, a Justice thereof, a circuit
12 judge, or a district court shall entertain an applica-
13 tion for a writ of habeas corpus in behalf of a person
14 in custody pursuant to the judgment of a state court
only on the ground that he is in custody in violation
of the constitution or laws or treaties of the United
States. (Emphasis added).

15 In the situation where the custody has resulted from a
16 criminal judgment that was entered subsequent to the one that
17 the petitioner seeks to challenge, the custody requirement has
18 not been satisfied if the challenged conviction does not affect
19 the term the petitioner is serving. Ward v. Knoblock, 738 F.2d
20 134, 138 (6th Cir. 1984), cert. denied, 469 U.S. 1193, 105 S.Ct.
21 970, 83 L.Ed.2d 974 (1985).

22 In the case at hand, it is clear that petitioner is in
23 prison in California pursuant to convictions in California. / It
24 is equally clear that he is not in the custody of Nevada and has
25 not yet started to serve any term of imprisonment in the State
26 of Nevada. This is not a situation of consecutive sentences in
27 the same jurisdiction as contemplated in Peyton v. Rowe, 391
28 U.S. 54, 88 S.Ct. 1549, 20 L.Ed.2d 426 (1968). Therefore, he

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1 has not satisfied the "in custody" requirement of Section
2 2254(a).

3 C. The Petitioner Has Failed To Exhaust State Remedies On All
4 Grounds.

5 A federal court should not entertain a petition for habeas
6 corpus relief unless the petitioner has exhausted available and
7 adequate state court remedies with respect to each of the claims
8 contained in the petition. Rose v. Lundy, 455 U.S. 509, 510
9 (1982); Lindquist v. Gardner, 770 F.2d 876, 877 (9th Cir. 1985);
10 Szeto v. Rushen, 709 F.2d 1340, 1341 (9th Cir. 1983); Gutierrez
11 v. Griggs, 695 F.2d 1195, 1197 (9th Cir. 1983). In this regard,
12 state court remedies have not been exhausted until the petitioner
13 unsuccessfully presents his constitutional claims to the highest
14 available state court through direct appeal or state collateral
15 review proceedings. See Preiser v. Rodriguez, 411 U.S. 475,
16 490-94 (1973); Garrison v. McCarthy, 653 F.2d 374, 376 (9th Cir.
17 1981). The exhaustion doctrine is satisfied "if a petitioner
18 presents his claim to the highest state court and that court
19 disposes of the claim on the merits" Hayes v. Kincheloe,
20 784 F.2d 1434, 1437 (9th Cir. 1986). The exhaustion requirement
21 is also satisfied if a federal habeas petitioner demonstrates at
22 the time he files his federal petition that "no state remedies
23 are still available to the petitioner and the petitioner had not
24 deliberately by-passed the state remedies." Bronson v. Swinney,
25 648 F.Supp. 1094, 1101 (D.Nev. 1986), quoting Batchelor v. Cupp,
26 693 F.2d 859, 862 (9th Cir. 1982), cert. denied, 463 U.S. 1212
27 (1983).

28 . . .

1 Federal statutory law provides in relevant part that:

2 An application for a writ of habeas corpus in behalf
3 of a person in custody pursuant to the judgment of a
4 State court shall not be granted unless it appears
5 that the applicant has exhausted the remedies avail-
6 able in the courts of the State, or that there is
7 either an absence of available State corrective
8 process or the existence of circumstances rendering
9 such process ineffective to protect the rights of the
10 prisoner An applicant shall not be deemed to
11 have exhausted the remedies available in the courts of
12 the State, within the meaning of this section, if he
13 has the right under the law of the State to raise, by
14 any available procedure, the question presented.

15 28 U.S.C. § 2254(b) & (c). This exhaustion requirement is a
16 matter of comity designed to afford state courts the first
17 opportunity to remedy a constitutional violation. Sweet v.
18 Cupp, 640 F.2d 233, 236 (9th Cir. 1981). Even a petition
19 containing both exhausted and unexhausted claims must be dismis-
20 sed "leaving the prisoner with the choice of returning to state
21 court to exhaust his claims or of amending or resubmitting the
22 habeas petition so as to present only exhausted claims to the
23 district court." Rose v. Lundy, 455 U.S. at 510. Under the
24 futility doctrine, however, a habeas corpus petitioner "may be
25 excused from exhausting state remedies if the highest state
26 court has recently addressed the issue raised in the petition
27 and resolved it adversely to the petitioner in the absence of
28 intervening United States Supreme Court decisions on point or
any other indication that the state court intends to depart from
the prior decisions." Id. (citations omitted). Both the
federal district court and court of appeals may examine the
issue of exhaustion sua sponte. Batchelor v. Cupp, 693 F.2d at
862, citing Campbell v. Crist, 647 F.2d 956, 957 (9th Cir.
1981).

1 It has been said that the requirement of exhaustion of
2 state remedies cannot be waived or conceded by the state "unless
3 the interest of justice so requires." Ventura v. Cupp, 690 F.2d
4 740, 741 (9th Cir. 1982), citing Sweet v. Cupp, 640 F.2d 233,
5 237 n.5 (9th Cir. 1981). Recently, however, the United States
6 Supreme Court reiterated the limiting principle that the failure
7 to exhaust state remedies does not necessarily deprive an
8 appellate court of jurisdiction to consider the merits of habeas
9 corpus application. Granberry v. Greer, 481 U.S. 129, 134-35,
10 107 S.Ct. 1671, 1675-76 (1987). The Court said this while
11 considering the issue of how federal appellate courts ought to
12 handle a non-exhausted habeas petition when a state has not
13 raised the objection of failure to exhaust in the federal
14 district court. In Granberry, the Court observed that:

15 When the State answers a habeas corpus petition, it
16 has a duty to advise the District Court whether the
17 prisoner has, in fact, exhausted all available state
18 remedies. . . . As this case demonstrates, however,
19 there are exceptional cases in which the State fails,
20 whether inadvertently or otherwise, to raise an
21 arguably meritorious nonexhaustion defense. The
22 State's omission in such a case makes it appropriate
23 for the court of appeals to take a fresh look at the
24 issue. The court should determine whether the interest
25 of comity and federalism will be better served by
26 addressing the merits forthwith or by requiring a
27 series of additional state and district court proceed-
28 ings before reviewing the merits of the petitioner's
claim.

23 If, for example, the case presents an issue on
24 which an unresolved question of fact or of state law
25 might have an important bearing, both comity and
26 judicial efficiency may make it appropriate for the
27 court to insist on complete exhaustion to make sure
28 that it may ultimately review the issue on a fully
informed basis. On the other hand, if it is perfectly
clear that the applicant does not raise even a color-
able federal claim, the interests of the petitioner,
the warden, the state attorney general, the state
courts, and the federal courts will all be well served

1 even if the state fails to raise the exhaustion
2 defense, the district court denies the habeas petition,
3 and the court of appeals affirms the judgment of the
4 district court forthwith.

5 Id. at 134-35, 107 S.Ct. at 1675 (citations omitted). The Court
6 also stated that a federal appellate court could hold that a
7 nonexhaustion defense has been waived by the state if the
8 district court reached the merits when the state failed to
9 assert the defense and "it is evident that a miscarriage of
10 justice has occurred" Id. at 135, 107 S.Ct. at 1676.

11 In the case at hand, petitioner has not filed any petition
12 for post-conviction relief pursuant to Chapter 177. NRS 177.315
13 provides as follows:

14 1. Any person convicted of a crime and under
15 sentence of death or imprisonment in the state prison
16 who claims that the conviction was obtained, or that
17 the sentence was imposed, in violation of the Consti-
18 tution of the United States or the constitution of
19 this state may, without paying a filing fee, apply for
20 post-conviction relief from the conviction or sentence.

21 2. The remedy provided in this section is not a
22 substitute for nor does it affect any remedies which
23 are incident to the proceedings in the trial court,
24 the remedy of direct review of the sentence or convic-
25 tion or the writ of habeas corpus. It comprehends and
26 takes the place of all other common law, statutory or
27 other remedies which have heretofore been available
28 for challenging the validity of the conviction or
sentence, and must be used exclusively in place of
them.

3. Unless there is good cause shown for delay,
a proceeding under NRS 177.315 to 177.385, inclusive,
must be filed within 1 year after entry of judgment of
conviction or, if an appeal has been taken from such
judgment, within 1 year after the final decision upon
or pursuant to the appeal.

4. The execution of a sentence shall not be
stayed for the period provided in subsection 3 simply
because a petition for post-conviction relief may be
filed within that period. A petition for post-
conviction relief must actually be filed or the
petitioner must show other reasons why a stay should
be granted.

1 Nevada law further provides that a habeas petitioner may
2 not file a petition for writ of habeas corpus unless he
3 previously filed a petition for post-conviction relief pursuant
4 to Chapter 177. Nevada Revised Statutes 34.725, which was added
5 to NRS Chapter 34 in 1987, provides:

6 A petitioner may not file a petition for writ of
7 habeas corpus unless he previously filed a petition
8 for post-conviction relief pursuant to NRS 177.315 to
9 177.385, inclusive, or demonstrates good cause for the
10 failure to file a petition for post-conviction relief
or meet the time requirements for filing a petition
for post-conviction relief and actual prejudice to the
petitioner.

11 * Even though BOSTON is not in the custody of the respondents,
12 he is entitled to file a petition for post-conviction relief
13 pursuant to Chapter 177 in the Eighth Judicial District Court in
14 which he was convicted. He has not attempted to avail himself
15 of this remedy, and as a matter of comity, this Court should
16 require him to exhaust any state remedies available. / A pro per
17 petition for writ of habeas corpus before the Nevada Supreme
18 Court that was denied does not preclude his filing of a petition
19 for post-conviction relief pursuant to Chapter 177 of the Nevada
20 Revised Statutes. The order denying petition for writ of habeas
21 corpus by the Nevada Supreme Court noted that BOSTON is
22 presently incarcerated in a correctional institution in
23 Tehachapi, California. The Nevada Supreme Court then held
24 "[b]ecause petitioner is not incarcerated within the State of
25 Nevada, the district courts of this state lack jurisdiction
26 under NRS Chapter 34 to grant the relief requested in this
27 petition." This denial does not, of course, preclude relief
28 under Chapter 177. In fact, the respondents note that the

1 petitioner is within the filing deadlines for petitions for
2 post-conviction relief pursuant to Chapter 177. BOSTON could
3 still file a petition for post-conviction relief pursuant to
4 Chapter 177 without having to show good cause and prejudice, as
5 long as he does so in a timely fashion.

6 IV. CONCLUSION

7 This petition should be dismissed because respondents do
8 not have custody of petitioner. Petitioner has also failed to
9 exhaust his available state remedies since he has failed to file
10 a petition for post-conviction relief pursuant to Nevada Revised
11 Statutes Chapter 177.

12 Wherefore, in accordance with the foregoing, the respondents
13 respectfully request that the petition be dismissed.

14 RESPECTFULLY SUBMITTED this 25th day of September, 1990.

15 BRIAN MCKAY
16 Attorney General

17 By: Stuart J. Newman
18 Stuart J. Newman
19 Deputy Attorney General
20 Criminal Justice Division
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General of the State of Nevada and on this 28th day of September, 1990, I served a copy of the foregoing MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY, by mailing a copy thereof to:

ANDRE' D. BOSTON
D-03868 3A-102
P.O. Box 1902-B
Tehachapi, California 93561

Jack R. Dery

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED

Nov 23 2 56 PM '90

THE STATE OF NEVADA,
Plaintiff,

vs.

ANDRE DUPREE BOSTON,
Defendant.

CASE NO. C84650

DEPT. NO. V

RESPONSE TO DEFENDANT'S PETITION FOR
POST-CONVICTION RELIEF

DATE OF HEARING: 12-13-90
TIME OF HEARING: 9:00 A.M.

COMES NOW, the STATE OF NEVADA, through REX BELL, District Attorney, by and through RONALD C. BLOXHAM, Chief Deputy District Attorney, and files this Response to Defendant's Petition for Post-Conviction Relief.

This Response is made and based upon all the files, papers and pleadings on file herein, Points and Authorities in support hereof, as well as oral arguments of counsel, if deemed necessary by this Court.

DATED this 28th day of November, 1990.

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799
Nevada Bar #001398

BY: Ronald C. Bloxham
RONALD C. BLOXHAM
Chief Deputy District Attorney

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1 house, called the police and returned to the area to find the
2 people gone. Angela's school books and papers were all that
3 remained. This was at 5070 Reno Court.

4 Upon driving Angela away from the area of Reno Court, the
5 black male indicated that he was the person who was in the Kukal
6 house on October 1, 1983. The black male further made statements
7 that indicated that he thought Angela was Kathleen and that he had
8 been watching her on previous days.

9 During the crimes, the black male threatened to kill Angela if
10 she did not cooperate.

11 At the questioning by the black male, Angela indicated she was
12 a virgin and he said she wouldn't be after this ordeal. The black
13 male then forced Angela to remove her clothing whereafter he
14 committed sexual intercourse on her. During the attack, the black
15 male commented on how "tight" her vagina was and that he might have
16 to "loosen her up." After intercourse, the black male forced
17 Angela to perform fellatio on him. After intercourse again, the
18 black male sodomized Angela.

19 There were other acts of sexual assault and the black male
20 also took money from Angela's purse during the ordeal.

21 During the various sexual assaults, Angela was bleeding
22 vaginally and the black male used tissues to clean Angela's vagina.
23 Angela believed the tissue box to be in the backseat of the
24 vehicle. Angela bled on the seats of the vehicle.

25 At approximately 9:00 a.m., the black male drove Angela to the
26 area of the 2900 block of Berman Street where he forced her out of

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1 the car. The black male told her to take ten steps after which she
2 could remove the tape from her eyes. Angela thereafter sought
3 help.

4 Crime lab personnel did respond and recovered tissues with
5 blood like substances near the curb in the 2900 block of Berman.
6 Tissues were also recovered in a desert area which was possibly
7 where the black male took Angela.

8 Angela described the interior of the car to be a "blue-grey
9 color and green, it was more blue than green." Angela reported
10 that she could hear the driver shifting gears.

11 Angela was taken to the hospital where vaginal, rectal and
12 oral swabs were obtained.

13 Subsequent criminalistic work showed negative for spermatozoa
14 but both the vaginal and rectal swabs showed a high level of acid
15 phosphatase. The crotch area of Angela's pants and panties
16 contained human blood ABO "O" and high levels of phosphatase.

17 On December 2, 1983, sixteen year old Audra Sharp was walking
18 home from school at approximately 3:00 p.m. in Monrovia,
19 California. At that time a black male wearing a bandanna over his
20 face approached her and displayed a knife. The black male forced
21 Audra down a tunnel and thereafter placed tape on her eyes. He
22 also placed the bandanna over her eyes. During the ordeal, the
23 black male threatened to kill Audra if she did not cooperate. The
24 black male was wearing camouflage pants.

25 The black male forced Audra to an area hidden somewhat by
26 bushes where he sexually assaulted Audra by performing sexual

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1 intercourse on her.

2 The black male thereafter forced Audra to a vehicle which she
3 later described as a blue Chevette. She observed two bracelets
4 which had "Maria" and "Andre" on them. She described the vehicle
5 to be a stick shift with bucket seats. She further described the
6 carpet, seats and linings to be different colors of blue. She
7 later saw the license plate and reported it to be California
8 License No. 005AJB or 005AJV.

9 While driving around, the black male kept telling Audra to
10 commit fellatio on him. Audra was forced to do so. Thereafter,
11 Audra was taken to a garage where he forced her out of the car. At
12 that point the black male attempted to place his penis into Audra's
13 vagina again. He stated that she needed to be "loosened up" since
14 her vagina was tight. He threatened to cut her vagina to "loosen"
15 her up. He thereafter performed sexual intercourse on Audra.

16 Thereafter, the black male forced Audra back into the car and
17 drove around more during which time Audra was again required to
18 perform fellatio.

19 The black male forced Audra out of the car on other occasions
20 during which time he sodomized her.

21 Upon release by the black male, Audra immediately sought help
22 and notified the police. The Monrovia Police Department
23 immediately traced the license number provided by Audra. The
24 police checked California licensing and discovered that license
25 returned to a different vehicle.

26 On December 6, 1983, Wayne Connady reported to the Monrovia

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1 Police Department. He observed a blue Corvette parked near one of
2 the crime scenes in Monrovia on December 1st or 2nd. As he passed
3 the vehicle he saw a black male with a bandanna covering the lower
4 part of his face. Since this appeared unusual he committed the
5 license number to memory. It was Nevada 005AJV or AVJ.

6 Based upon this information that the license plate was a
7 Nevada issue, checks were made with Nevada authorities. License
8 005 AJV Nevada returned to Maria C. Butler of 1916 Houston, Las
9 Vegas, Clark County, Nevada.

10 Nevada authorities went to 1916 Houston where they learned
11 Maria Butler had been in Las Vegas during November with Andre
12 Boston. Also, it was learned that Maria Butler lived at 8711
13 Thorpe, Westminister, California.

14 Detectives from Monrovia joined with officers from
15 Westminister and went to 8711 Thorpe.

16 Maria Butler and Andre Boston were observed to be driving a
17 blue Chevette with Nevada License No. 005AJV.

18 A search of the vehicle revealed a Kleenex box in the right
19 rear floor area and various tissue wads in the vehicle.
20 Additionally, a roll of tape was found which was similar to the
21 tape recovered from Angela Kukal in color, texture, width and
22 thickness.

23 Also, the vehicle contained numerous items described by Audra
24 including the two bracelets containing the names "Andre" and
25 "Maria".

26 Subsequent testing revealed human blood on the seat covers of

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1 the vehicle.

2 The police officers obtained consent to search the house of
3 8711 Thorpe. At that location, numerous items were recovered
4 including camouflage pants.

5 A photo lineup was prepared. Audra Sharp immediately
6 identified the photograph of Andre Boston as the person who
7 committed the crimes. Also, photographs showing the defendant's
8 entire body were taken.

9 A photo lineup was prepared by the Las Vegas Metropolitan
10 Police Department. On December 11, 1983, Kathleen Kukal and
11 Barbara Kukal positively identified the photograph of Andre Boston
12 as the person who burglarized their home on October 1, 1983.
13 Angela Kukal positively identified the photograph as the person who
14 committed the crimes against her on November 14, 1983.

15 The photo lineup was also shown to Carole St. Pierre, Laurel
16 St. Pierre and Lisa Williams on December 11, 1983. All three of
17 these people identified Andre Boston as the person they saw in the
18 area of Reno Court prior to the abduction of Angela Kukal.

19 The California authorities began prosecution of Andre Boston
20 for the crimes against Audra Sharp. Andre Boston pled guilty to
21 various counts and on March 26, 1984, he was sentenced.

22 The defendant was hospitalized in two mental hospitals in
23 1983, prior to October. The defendant was also evaluated by
24 numerous psychiatrists and psychologists in 1984 while in prison.

25 On January 13, 1984, fourteen petitions were filed in the
26 Juvenile Division of the Eighth Judicial District Court in and for

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1 the State of Nevada. These fourteen petitions alleged that Andre
2 Boston committed the crimes which are the subject of the present
3 case.

4 On September 20, 1985, Form V of the Interstate Compact
5 Agreement on Detainers and accompanying documents were sent to the
6 California Institution for Men at Chino, California. This was done
7 after the Clark County District Attorney's Office was informed that
8 Andre Boston was located at that institution.

9 On September 24, 1985, the authorities at Chino notified the
10 Clark County District Attorney's Office that Andre Boston was not
11 at their facility.

12 On December 11, 1985, the Clark County District Attorney's
13 Office was informed that Andre Boston was at the Folsom Prison in
14 California.

15 Form V and the accompanying documents were again prepared and
16 sent to Folsom on January 22, 1986.

17 On July 10, 1987, Folsom Prison informed the Clark County
18 District Attorney's Office that Andre Boston was housed at
19 Tehachapi Prison in California.

20 On July 24, 1987, Form V and the accompanying documents were
21 sent to Tehachapi.

22 On March 10, 1988, a representative of the Clark County
23 District Attorney's Office telephoned Tehachapi. The
24 representative of Tehachapi stated that the defendant refused to
25 sign the documents for his return to Nevada.

26 Further telephone calls by the Clark County District

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1 Attorney's Office caused a court hearing to be held to determine
2 whether the identification of the defendant had been sufficiently
3 established to permit the defendant's extradition to Nevada.

4 On May 27, 1988, Judge Jason G. Brent, Municipal Court Judge
5 for Kern County found probable cause to believe the defendant was
6 the same Andre Boston sought in this case and extradition was
7 permitted.

8 On or about June 16, 1988, the defendant was returned to
9 Nevada.

10 On June 20, 1988, the defendant first appeared in the Eighth
11 Judicial District Court, Juvenile Division. A certification
12 hearing was set for July 5, 1988.

13 On July 5, 1988, the defendant was certified to stand trial as
14 an adult. The defendant was represented by the Public Defender's
15 Office throughout the juvenile certification process.

16 On July 25, 1988, John Fadgen confirmed as counsel and the
17 Public Defender withdrew.

18 On July 26, 1988, a preliminary hearing was held. At the
19 conclusion of the preliminary hearing the defendant was held to
20 answer on some fourteen charges.

21 On August 11, 1988, the defendant was arraigned in District
22 Court. The defendant pled not guilty and a trial date of September
23 12, 1988 was set. The defendant invoked his right to a trial
24 within sixty days from the filing of the information.

25 The matter proceeded to trial on September 12, 1988, and
26 concluded on September 15, 1988. The jury found the defendant

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1 guilty of burglary, lewdness with a minor, assault with a deadly
2 weapon, battery with intent to commit a crime with use of a deadly
3 weapon, robbery with use of a deadly weapon, attempt to dissuade a
4 witness with use of a deadly weapon and six counts of sexual
5 assault with use of a deadly weapon.

6 On October 20, 1988, the defendant was sentenced on the
7 convictions.

8 On January 24, 1989, the Public Defender was appointed to
9 represent the defendant on appeal.

10 On October 24, 1989, the Nevada Supreme Court filed an Order
11 Dismissing Appeal.

12 On October 22, 1990, the defendant filed the present Petition
13 for Post-Conviction Relief and Motion to Proceed in Forma Pauperis.

14 ARGUMENT

15 I

16 THE DEFENDANT HAS MET THE REQUIREMENTS

17 TO PROCEED IN FORMA PAUPERIS.

18 NRS 12.015 does provide the method by which a court can
19 determine indigency for the purpose of waiving the costs of certain
20 proceedings. The statute requires that a party file an affidavit
21 setting forth with particularity facts concerning income, property
22 and other resources, as well as a statement of the issues he
23 intends to present.

24 Since the defendant has provided an affidavit in support of
25 indigency, the State submits that that defendant appears to meet
26 the requirements of NRS 12.015 and does not oppose the defendant's

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1 Motion to Proceed in Forma Pauperis.

2 It is important to note that permitting the defendant to
3 proceed in forma pauperis only waives the payment of costs and
4 fees. It does not permit a defendant represented by counsel to
5 thereafter represent himself.

6 II

7 THE DEFENDANT HAS NOT BEEN DENIED THE
8 EFFECTIVE ASSISTANCE OF COUNSEL.

9 Petitioner's claim of ineffective assistance of counsel may
10 require the Court to hold an evidentiary hearing. See, e.g.,
11 Bolden v. State, 99 Nev. 181, 659 P.2d 886 (1983). However, in
12 Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984), the Nevada
13 Supreme Court upheld the District Court's ruling that defendant's
14 allegations were not sufficient to entitle him to an evidentiary
15 hearing on his Post-Conviction Motion to Withdraw Plea of Guilty.
16 The Court at 503 stated:

17 A defendant seeking post-conviction relief
18 is not entitled to an evidentiary hearing on
19 factual allegations belied or repelled by
20 the record.

21 The court also held that the defendant's Motion advanced merely
22 "naked" allegations and that the motion did not entitle the
23 defendant to an evidentiary hearing. A review of the issues
24 alleged by petitioner show only "naked" allegations belied by the
25 record. Therefore, an evidentiary hearing is not warranted.

26 The standard regarding whether defendant is denied effective
27 assistance of counsel is whether the defendant has received
28 reasonably effective assistance. Strickland v. Washington, 466

...

1 U.S. 668, 104 S.Ct. 2052 (1984). In Strickland, the United States
2 Supreme Court stated:

3 First, the defendant must show that coun-
4 sel's performance was deficient. This re-
5 quires showing that counsel made errors
6 so serious that counsel was not functioning
7 as the 'counsel' guaranteed the defendant
8 by the Sixth Amendment. Second, the de-
9 fendant must show that the deficient per-
10 formance prejudiced the defense. This
11 requires showing that counsel's errors
12 were so serious as to deprive the defendant
13 of a fair trial, a trial whose result is
14 reliable. Unless a defendant makes both
15 showings, it cannot be said that the con-
16 viction or death sentence resulted from
17 a breakdown in the adversary process that
18 renders the result unreliable.

19 104 S.Ct. at 2064. See, also Warden v. Lyons, 100 Nev. 430, 683
20 P.2d 504 (1984).

21 Petitioner's allegations of ineffective assistance of counsel
22 cover a number of minor points which lead him to conclude that the
23 trial could have been conducted differently and thereby achieved a
24 different result. In Nevada, it is presumed that defense counsel
25 has fully discharged his duties. This presumption can only be
26 overcome by strong and convincing proof to the contrary. Lenz v.
27 State, 97 Nev. 65, 624 P.2d 15 (1981); Donovan v. State, 94 Nev.
28 671, 584 P.2d 708 (1978). Petitioner's allegations fail to rebut
this presumption, either singly or in combination. The record in
this case strongly suggests that petitioner's conviction was not as
a result of ineffective assistance of counsel, but that the defense
itself was rendered ineffective by the strength of the
prosecution's case. See, e.g., Reid v. United States, 334 F.2d 915
(9th Cir. 1964) (defendant's conviction was not due to inadequate

...

1 representation but to evidence which was overwhelmingly against
2 defendant). In essence, petitioner's contentions involve trial
3 strategy and tactical decisions. Bean v. State, 86 Nev. 80, 465
4 P.2d 133, cert. denied, 400 U.S. 844 (1970), the court stated:

5 Trial lawyers will always disagree on how
6 a case should have been tried. Second
7 guessing is a characteristic of lawsuits
as Monday morning quarterbacking is in
football games.

8 86 Nev. at 92. In Strickland, the United States Supreme Court
9 stated:

10 Judicial scrutiny of counsel's performance
11 must be highly deferential. It is all too
12 tempting for a defendant to second-guess
13 counsel's assistance after conviction of
14 adverse sentence, and it is all too easy
for a court, examining counsel's defense
after it has proved unsuccessful, to con-
clude that a particular act or omission
of counsel was unreasonable.

15 104 S.Ct. at 2065.

16 Turning to the specific allegations of the defendant, he first
17 claims that his counsel at the juvenile certification hearing was
18 ineffective because he claims his age factor was ignored, time
19 delays were ignored and his suggestion of insanity was ignored.
20 There is no suggestion that he was not of sufficient age to be
21 certified as an adult. Additionally, there is no suggestion that
22 the defendant was insane at the time the crime was committed or at
23 any time prior to or subsequent to the crime.

24 The issue of delay in returning the defendant to Nevada could
25 have been presented to the trial court (it was) or could have been
26 presented on appeal. Failure to do so amounts to a waiver of such

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1 claims. See NRS 177.375. Additionally, it is the State's position
2 that the extradition procedure was properly followed.

3 NRS 179.177 et. seq. provides for the extradition of persons
4 who flee from justice and are found in another state.

5 NRS 179.187 provides for agreement between executive
6 authorities of two states for the return for prosecution of a
7 person who is found to be imprisoned in another state.

8 The Agreement on Detainers statutes likewise provide for
9 return of a person who is found to be serving a sentence of
10 imprisonment in another state.

11 In the case presently before the court, the defendant made no
12 demand for a final disposition of the case as provided for in the
13 Agreement on Detainers.

14 The defendant did, in fact, question identification which
15 necessitated a court hearing in Kern County. Once the issue was
16 resolved, the defendant was returned to Nevada on or about June 16,
17 1988.

18 A review of the record reflects that the State met all
19 requirements contained in the Agreement on Detainers.

20 In addressing the delay in bringing the defendant to trial, it
21 is clear that the defendant was aware of the charges from December,
22 1983. He failed or refused to sign the documents necessary to
23 return him to Nevada from the California prison system. It is
24 clear that no prejudice resulted from the delay. See, Barker v.
25 Wingo, 407 U.S. 514, 33 L.Ed.2d 101, 92 S.Ct. 2182 (1972) and
26 Sheriff v. Berman, 99 Nev. 102, 659 P.2d 298 (1983).

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1 The defendant next contends that defense counsel was denied a
2 continuance of the preliminary hearing. A review of the record
3 reflects that although the defense attorney did orally request a
4 continuance of preliminary hearing, the defendant apparently
5 thereafter refused to waive his right to a preliminary hearing
6 within 15 days. Also, defense counsel did not give specific
7 reasons for the requested continuance and did not thereafter object
8 and in fact appeared at the preliminary hearing and extensively
9 cross-examined the three witnesses called by the State.

10 The defendant next challenges the identification procedure and
11 complains that no pre-preliminary hearing lineup was conducted.
12 However, a photo lineup was shown to all three preliminary hearing
13 witnesses prior to the preliminary hearing. Therefore, the
14 defendant is incorrect in his position.

15 The defendant additionally complains that he was dressed in
16 "jail garb" on the day the jury was selected. The defendant's
17 claim is not supported by the record. If in fact he was dressed in
18 "jail garb" it was not distinguishable from street clothing.

19 The defendant next contends that it was error for the trial
20 court to permit evidence of other crimes in at trial. The issue
21 was argued before the trial court and the trial court stated "I
22 can't recall a case where there have been more factors that have
23 been almost identical". (See record on appeal, page 264). After
24 argument, submission of case authority and statutory authority, the
25 trial court admitted the evidence over defense counsel's objection.
26 The defendant has failed to establish that it was error to do so.

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1 The defendant next states that defense counsel failed to file
2 a petition for writ of habeas corpus, motion for mistrial, motion
3 for a new trial or motion for bail. The defendant fails to state
4 the grounds for each of these motions. From the record, it does
5 not appear that any of these suggested motions had any merit.

6 Finally, the defendant suggests that his trial counsel failed
7 to object to the Nevada sentence running consecutively to the
8 California sentence and that he received no credit for time served.
9 These two arguments ignore NRS 176.045 and 176.055. NRS 176.045
10 clearly gives the sentencing court discretion to run the sentences
11 consecutively. NRS 176.045 forbids the granting of credit for time
12 served under the present facts.

13 CONCLUSION

14 Based upon the above, the defendant's suggestion that he has
15 been denied the effective assistance of counsel is without merit
16 and should be denied.

17 DATED this 28th day of November, 1990.

18 Respectfully submitted,

19 REX BELL
20 DISTRICT ATTORNEY
21 Nevada Bar #001799
22 Nevada Bar #001398

23 BY: Ronald C. Bloxham
24 RONALD C. BLOXHAM
25 Chief Deputy District Attorney
26 ...
27 ...
28 ...

1 A RECEIPT OF COPY of the above and foregoing is hereby
2 acknowledged this 29 day of November, 1990.

3 OFFICE OF THE PUBLIC DEFENDER

4 BY: 
5 309 S. Third Street #226
6 Las Vegas, Nv. 89101

7 CERTIFICATE OF MAILING

8 I hereby certify that a true and correct copy of the above
9 and foregoing was mailed on November 28, 1990, to:

10 ANDRE DUPREE BOSTON
11 California Correctional Institute
12 P O Box 1902-B
13 Tehachapi, California 93581

14 BY: 
15 R. FARNSWORTH
16 Secretary

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LORETTA BOWMAN, COUNTY CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

By *Alona Ryn*
Deputy

STATE OF NEVADA,

CASE NO. C84650

DEPT. V

DOCKET "H"

Plaintiff,

vs.

Transcript of
Proceedings

ANDRE DUPREE BOSTON,

Defendant.

BEFORE THE HONORABLE JOHN F. MENDOZA, DISTRICT COURT JUDGE

DEFENDANT'S PRO PER MOTION TO PROCEED IN FORMA PAUPERIS

DEFENDANT'S PRO PER PETITION FOR POST CONVICTION RELIEF

FRIDAY, DECEMBER 14, 1990

APPEARANCES:

FOR THE PLAINTIFF: R. Bloxham, Deputy District
Attorney

FOR THE DEFENDANT: Robert Thompson, Deputy Public
Defender

SPECIAL RECORDER/TRANSCRIBER: S. Christofferson

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AA 000608

1 LAS VEGAS, NEVADA, FRIDAY, DECEMBER 14, 1990

2 THE COURT: State versus Andre Boston.

3 MR. THOMPSON: Your Honor, this matter is on for argument as
4 to whether or not an evidentiary hearing should be set on
5 defendant's petition for post conviction relief.

6 I might point out to the Court that there are several
7 grounds alleged in the petition. Initially, there are some of
8 them which I think could probably be disposed of by virtue of the
9 fact that the foundation existed where those issues could have
10 been raised on direct appeal. I'm not saying they should have
11 been, I'm just saying that the foundation was there such that the
12 challenge would have been appropriately made on direct appeal.

13 Those being the denial of a continuance at preliminary
14 hearing, the fact that the defendant allegedly was present in
15 court dressed in jail garb for a portion of the trial, and the
16 introduction of other crimes evidence at the trial.

17 Basically, what that leaves is assertions that the
18 defendant was denied effective assistance of counsel in the
19 failure of counsel to challenge suggestiveness and impropriety of
20 the photographic line-up conducted in the case. An evidentiary
21 hearing would be needed there to bring that line-up, that photo
22 line-up before the Court and to inquire of counsel whether or not
23 he had viewed that photographic display and whether or not he had
24 evaluated that matter as far as whether or not a challenge should

1 have been made. If he failed to do so, that may well make out a
2 case of ineffective assistance of counsel if he failed to do so
3 and should have.

4 The second, and perhaps greatest issue that the
5 defendant raises, is the failure to pursue an insanity defense.
6 Attached to the petition, the defendant has attached several
7 reports. Those include a social worker's report dated May of 1983
8 which by way of note, would be five months before--between five
9 and seven months before the incidents that were testified to at
10 trial.

11 That report refers to an Ingleside Hospital admission.
12 It's my understanding that Ingleside is a mental health care
13 facility. That there is reference to defendant getting
14 increasingly lower grades to his mother findings bizarre letters
15 threatening murder and rape, those letters being in his room, but
16 never having been mailed. The letters are signed, "Youth of
17 America, Thieves of Crime."

18 He also wrote, the report mentions, perverted sexual
19 letters explaining how girls had to die. A physician at Ingleside
20 told the family that defendant was a "time bomb." There was
21 report that he has difficulty controlling the welling up of
22 hostile impulses, that he handles conflict in a paranoid manner.
23 there is a physician's report on an admission to Camarrio State
24 Hospital, which I believe is a mental health care facility in

1 California. There is also a discharge summary from Ingleside
2 Hospital indicating that he threatened to kill a physician,
3 that he was dealing with stress in a paranoid fashion, had a
4 severe disorder involving impulse control, expressed--the report
5 expressed a danger that the impulses will be acted on, rather than
6 merely fantasized. And strongly recommended several months of
7 treatment in a facility like Camarrio.

8 An evidentiary hearing would be needed to find out
9 whether or not the above information was available to defense
10 counsel and if he made any efforts to investigate and evaluate the
11 possibility of an insanity defense.

12 Based on that, I would submit that an evidentiary
13 hearing should be set, if the Court is inclined to do that, I have
14 some representations that I would want to make as far as the
15 timing on it.

16 THE COURT: What are they, sir?

17 MR. THOMPSON: The representations being that I would ask for
18 at least thirty days down the road for this hearing. The
19 defendant is being housed in prison in Tehachapi, California. I'm
20 going to need to be having contact with him, contact with
21 attorneys on other cases that he's had, as well as trying to
22 gather the various medical documents that will be involved.

23 MR. BLOXHAM: Your Honor, in response to the allegations.
24 The State has filed a written response. However, if I could
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1 address the issues one by one from the defendant's petition for
2 post conviction relief, and I'm starting on page 11 of his
3 petition.

4 First of all, he alleges, under number 1, "Petitioner
5 was denied his Constitutional protections during the certification
6 hearing because his age factors were ignored, the time delay
7 factors were ignored, and the insanity issue...", he goes on.

8 Basically, Your Honor, he was a juvenile at the time he
9 committed these crime. We brought him back from California and a
10 certification hearing was held. Your Honor, he was represented by
11 the Public Defender's office at that certification hearing.
12 There's no suggestion that there was anything illegal or improper,
13 under the statutory scheme, for certification. The factors were
14 addressed and he was held to--he was certified to stand trial as
15 an adult. So, his allegations age factors, that's not true. They
16 were addressed by the Juvenile Court.

17 Going on to the next issue, "Defense counsel was denied
18 a continuance in order to investigate the case." Well, Your
19 Honor, when the Court looks at the record as I recall, and I think
20 our written response points this out, he was represented by the
21 Public Defender's office and the day before the preliminary
22 hearing, defense counsel came and substituted in. At that time,
23 defense counsel asked for a continuance. The defendant refused to
24 waive the 15-day rule and so defense counsel withdrew his motion.

1 I believe the record supports that. Therefore, a preliminary
2 hearing was held the next day. Defense counsel extensively cross
3 examined witnesses.

4 The third issue, "Defendant was denied the right to a
5 fair identification procedure." He, basically, says there should
6 have been a physical line-up. Your Honor, there was a
7 photographic line-up as we point out in our points and
8 authorities.

9 I'm reading from the record on appeal, also. I'm
10 reading from record on appeal, page 232. This is our victim who
11 was testifying. And I'm down at the bottom of the page. "What
12 happened at this time when you met with Detective McLaughlin?", he
13 was the investigative detective. "He showed us another
14 photographic line-up." "Question: Were you able to identify
15 anyone in this photographic line-up December 11th, 1983?" This
16 crime occurred in November of 1983. The photographic line-up is
17 the next month, within the next month. "Yes, I was." "Did you
18 complete a statement at the time in your own handwriting recording
19 which pictures you picked out?" "Answer: Yes, I did." "Which
20 picture did you pick out, number-wise?" "Number 2." "And was
21 that the individual who abducted you on November 14th, 1983?"
22 "Answer: Yes, it was." "Did you have any hesitation in
23 identifying?" "No, I did not."

24 There was a fair photographic line-up shown to the
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1 victim to her mother, to her sister, to other people in the area
2 and Detective McLaughlin thereafter testifies about it. Your
3 Honor, there was nothing improper about pre-trial identification
4 in this case. And to suggest that trial counsel was ineffective
5 because he didn't request a physical line-up prior to preliminary
6 hearing is just ridiculous.

7 The next issue is just as ridiculous under 4. It says,
8 "Petitioner was dressed in jail garb on the day that the jury was
9 selected." Your Honor, I tried this case. Your Honor was here,
10 the same staff was here. Your Honor, I can state that had he been
11 in jail garb, that would have been recorded in my notes. The
12 record belies such an allegation. And if defense counsel could
13 come forward with someone who was present, other than the
14 defendant, to claim that he was in jail garb, well, then it may
15 have some worthiness to be heard any further. But, I think that's
16 just as ridiculous as the prior one.

17 Additionally, Your Honor, if this jail garb was being
18 worn, it could not be told, could not be distinguished from other
19 street clothing.

20 Number 5, "During the trial of this case, a witness was
21 called for the prosecution who was the victim from the
22 petitioner's case in California." Your Honor, a tremendous
23 foundation was laid before that witness was permitted to testify.
24 There were so many connecting factors that, as I recall, and I

1 cited to the page in our response, that this Court indicated that
2 it could hardly remember any case that was more closely connected.
3 The same words were almost used, the same disguises, the same
4 bandanna, the same car, the same sexual acts were committed. On
5 and on and on. There were some many tieing factors that this
6 Court, after a full hearing--by the way, defense counsel objecting
7 and arguing strenuously against it--did permit that testimony.

8 The sixth point defendant raises, "Petitioner's attorney
9 had a duty to file a motion for mistrial or a motion for a new
10 trial." Your Honor, there is no suggestion that this defendant
11 did not receive a fair trial. This was a very clean case and
12 trial.

13 The last point that he raises, "Counsel made no
14 objection when the"--excuse me, it was at the time of sentencing
15 and he's suggesting that there was a real problem because,
16 "...counsel made no objection when the Court ordered that the
17 sentences be run consecutive to California cases."

18 Well, Your Honor, that's perfectly within the discretion
19 of this Court and it would be silly for defense attorney to then
20 say, "Your Honor, I object." Well, that's the Court's job is to
21 determine consecutive or concurrent time. The Court was merely
22 following the statute and ruling accordingly.

23 Your Honor, I think our response on page 13 sums this up
24 better than a lot of these other things that we're talking about.

1 And that is that the defendant was not denied the effective
2 assistance of counsel. In fact, his conviction was not due to
3 inadequate representation, but to evidence which was
4 overwhelmingly against the defendant. This case was an
5 overwhelming case in my judgment. The identification was very
6 good.

7 The factors, the car was identified, tied to his
8 girlfriend at the time, items in the car matched what the victim
9 was--the tape, in fact, matched what the victim was tied up with.
10 The tissue in the car, there was acid phosphate found on the
11 tissue. There was tissue in the desert where she had been raped
12 and sodomized. All of it came back consistent with the defendant,
13 consistent with the victim.

14 Your Honor, under the circumstances, the record belies
15 the suggestion that this defendant has been denied the effective
16 assistance of counsel. No hearing should be held. And I would
17 ask the Court to deny the defendant's petition for post conviction
18 relief accordingly. Thank you.

19 THE COURT: Submitted, gentlemen?

20 MR. THOMPSON: Submitted.

21 THE COURT: The petitioner's petition is denied. All we have
22 here are naked allegations which are belied substantially by the
23 record. I don't think that his conviction was a result of
24 ineffective assistance of counsel. I think he was very properly

1 and appropriately represented by counsel. And for those reasons,
2 counsel, the post conviction petition is denied.

3 * * * *

4 ATTEST: I do hereby certify that I have truly and correctly
5 transcribed the sound recordings of the proceedings in
6 the above case

7 Shirlee Christofferson
8 SHIRLEE CHRISTOFFERSON, Special Recorder/Transcriber
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FILED

DISTRICT COURT

CLARK COUNTY, NEVADA

DEC 18 10 26 AM '90

THE STATE OF NEVADA,
Plaintiff,

vs.

ANDRE DUPREE BOSTON,
Defendant.

CASE NO. C84650

DEPT. NO. V

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

DATE OF HEARING: 12-14-90

TIME OF HEARING: 9:00 A.M.

THIS CAUSE having come on for hearing before the above entitled Court on the 14th day of December, 1990, the Petitioner not being present, represented by ROBERT MILLER, Deputy Public Defender, the Respondent being represented by REX BELL, District Attorney, by and through RONALD C. BLOXHAM, Chief Deputy District Attorney, and the Court having considered the matter, including briefs and arguments of counsel, now therefore, the Court makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The crimes for which the Petitioner was convicted in Nevada occurred on October 1, 1983, and November 14, 1983.

2. On December 2, 1983, the Petitioner committed various crimes in California which were very similar to the crimes committed on November 14, 1983.

3. The petitioner was arrested in California in December of 1983 and a police investigator tied the petitioner to the Nevada crimes.

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1 4. On December 11, 1983, the victims and witnesses in the
2 Nevada case were shown a photographic lineup by the detectives from
3 the Las Vegas Metropolitan Police Department.

4 5. The State of Nevada proceeded to seek the return of the
5 petitioner to the State of Nevada. The petitioner resisted the
6 efforts but was returned to Nevada on or about June 16, 1988.

7 6. On July 5, 1988, a certification hearing was held in the
8 juvenile court for the Eighth Judicial District Court, State of
9 Nevada. The petitioner was represented by counsel and the
10 petitioner was properly certified to stand trial as an adult.

11 7. A preliminary hearing was conducted on July 26, 1988, with
12 defense counsel present. Defense counsel cross-examined the three
13 witnesses for the State.

14 8. A jury trial began on September 12, 1988, and ended on
15 September 15, 1988.

16 9. During the jury trial, the State was permitted to offer
17 evidence of the California crimes over the objection of defense
18 counsel. The evidence was properly admitted after the State
19 provided proper foundation and the court weighed the probative and
20 prejudicial value.

21 10. The petitioner thereafter appealed his conviction to the
22 Nevada Supreme Court and the court issued an Order Dismissing
23 Appeal which was filed on October 24, 1989.

24 11. On October 22, 1990, the petitioner filed the present
25 Petition for Post-Conviction Relief wherein he alleged that he had
26 been denied the effective assistance of counsel at trial.

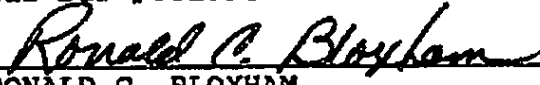
1 ORDER

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

4 DATED this 17th day of December, 1990.

5 
DISTRICT JUDGE

6 REX BELL, District Attorney
7 Nevada Bar #001799
8 Nevada Bar #001398

9 BY: 
RONALD C. BLOXHAM
Chief Deputy District Attorney

FILED

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DISTRICT COURT
CLARK COUNTY, NEVADA
CLERK

THE STATE OF NEVADA,
Plaintiff,
-vs-
ANDRE BOSTON,
Defendant.

Case No. C84650

Dept. No. V

NOTICE OF APPEAL

TO: THE STATE OF NEVADA

REX BELL, DISTRICT ATTORNEY, CLARK COUNTY, NEVADA and
DEPARTMENT V OF THE EIGHTH JUDICIAL DISTRICT COURT OF
THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK.

NOTICE is hereby given that ANDRE BOSTON, presently
incarcerated in the Nevada State Prison, appeals to the Supreme
Court of the State of Nevada from the order denying defendant's
Petition for Post-Conviction Relief filed on December 18, 1990.

DATED this 11th day of January, 1991.

MORGAN D. HARRIS
CLARK COUNTY PUBLIC DEFENDER

By Robert E. Miller
for ROBERT E. MILLER
NEVADA BAR #1060
DEPUTY PUBLIC DEFENDER

GE

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RECEIPT OF A COPY of the foregoing Notice of Appeal is
hereby acknowledged this 11 day of January, 1991.

REX A. BELL
CLARK COUNTY DISTRICT ATTORNEY

By *James D. [Signature]*

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V H

CLERK'S CERTIFICATE

OCT 25 10 45 AM '91

STATE OF NEVADA, ss.

Janette M. Bloom
CLERK

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of Andre Boston vs. The State of Nevada, Case No. 21871.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: ". . . we vacate the order of the district court denying appellant's petition for post-conviction relief. We remand this matter to the district court for further proceedings."

Judgment, as quoted above, entered this 30th day of September, 19 91.

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the Seal of said Supreme Court, at my office in
Carson City, Nevada, this 22nd day of
October, 19 91

JANETTE M. BLOOM
Clerk of Supreme Court of the State of Nevada

By *Jeannie C. Richardson*
Chief Deputy Clerk

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CEN1

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE BOSTON,

No. 21871

Appellant,

vs.

THE STATE OF NEVADA.

Respondent.

FILED

SEP 30 1991

CLERK OF SUPREME COURT
By S. R. WOOD
CHIEF DEPUTY CLERK

ORDER OF REMAND

This is an appeal from an order of the district court denying appellant's petition for post-conviction relief.

On November 7, 1988, appellant was convicted, pursuant to a jury trial, of one count each of burglary, lewdness with a minor with use of a deadly weapon, assault with a deadly weapon, battery with intent to commit a crime with use of a deadly weapon, robbery with use of a deadly weapon, attempt to dissuade a victim or witness from reporting a crime with use of a deadly weapon, and six counts of sexual assault with use of a deadly weapon. Appellant was sentenced to a total of fourteen consecutive terms of life plus a consecutive ninety-two years in the Nevada State Prison, with all sentences to run consecutive to a sentence appellant is serving in California. This court dismissed appellant's direct appeal. *Boston v. State*, Docket No. 19607 (Order Dismissing Appeal, October 24, 1989). During the pendency of appellant's direct appeal, appellant filed in this court a petition for a writ of habeas corpus, which this court dismissed on procedural grounds. *Boston v. State*, Docket No. 19615 (Order Denying Petition, December 27, 1988).

On October 22, 1990, appellant filed in the district court a petition for post-conviction relief. That petition was opposed by the state. The district court appointed counsel to represent appellant. On December 18, 1990, the district court

denied appellant's petition, without an evidentiary hearing. This appeal followed.

Appellant contends that the district court erred in denying his petition without an evidentiary hearing. Appellant points out that his petition made the claim that his counsel was ineffective for failing to investigate an insanity defense. Appellant further points out that his petition was supported by considerable documentation showing his extensive history of psychiatric disorders. Appellant argues that the record does not repel his claim, and concludes that he was entitled to an evidentiary hearing. We agree.

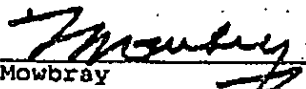
As a general rule, claims of ineffective assistance of counsel should be resolved following an evidentiary hearing. See, generally, Grondin v. State, 97 Nev. 454, 634 P.2d 456 (1981). Although naked claims for relief do not entitle a petitioner to an evidentiary hearing, when a petitioner makes claims which, if true, would entitle him to relief, and those claims are not repelled by the record, the petitioner is entitled to an evidentiary hearing. See Hargrove v. State, 100 Nev. 498, 686 P.2d 222 (1984).

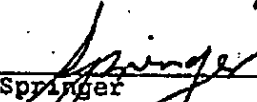
In the instant case, appellant claimed, inter alia, that there was a question as to his sanity when he committed the crimes for which he was convicted, and that his attorney was ineffective for failing to investigate an insanity defense. Appellant's claim was documented with copies of medical records. Further, there is nothing in the record which would repel appellant's claim. Therefore, appellant was entitled to an evidentiary hearing on his petition for post-conviction relief.


Accordingly, we vacate the order of the district court denying appellant's petition for post-conviction relief. We

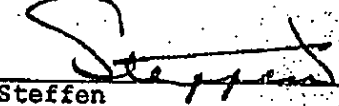
remand this matter to the district court for further proceedings.

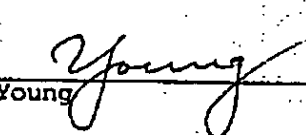
It is so ORDERED.

 C.J.
Mowbray

 J.
Springer

 J.
Rose

 J.
Steffen

 J.
Young

cc: Hon. Jeffrey D. Sobel, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney
Morgan D. Harris, Public Defender
Loretta Bowman, Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

REMITTITUR

DATE: October 22, 1991

TO: Honorable Loretta Bowman, Clerk

RE: Andre Boston vs. The State of Nevada

NO. 21871 DIST. CT. NO. C84650

Pursuant to NRAP Rule 41, enclosed is (are) the following:

- ☒ Certified copy of Judgment and copy of Order.
- ☐ Certified copy of Judgment and copy of Opinion.
- ☐ Certified copy of Judgment and Opinion.
- ☒ Receipt for Remittitur. (County Clerk please sign below and return. Retain the attached copy for your records.)
- ☐ Record on Appeal. Volumes _____
- ☒ Exhibits 15 _____
- ☐ Deposition(s) of _____
- ☐ Memorandum of Costs and Disbursements.
- ☐ Other _____

cc: Morgan D. Harris, Public Defender
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney

sp

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, of date OCT 25 1991

LORETTA BOWMAN

County Clerk

450

DISTRICT COURT
CLARK COUNTY, NEVADA

FILED IN OPEN COURT-
OCT 14 1992

LORETTA BOWMAN, COUNTY CLERK

By

Alona Candido

Deputy

STATE OF NEVADA,

CASE NO. C84650

Plaintiff,

DEPT. V
DOCKET "H"

vs.

Transcript of
Proceedings

ANDRE DUPREE BOSTON,

Defendant.

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

EVIDENTIARY HEARING

FRIDAY, SEPTEMBER 4, 1992

APPEARANCES:

FOR THE PLAINTIFF:

RONALD BLOXHAM, ESQ.
Deputy District Attorney

FOR DEFENDANT BOSTON:

ROBERT MILLER, ESQ.
Deputy Public Defender

RECORDED BY: DEBRA WINN, Special Reporter/Transcriber

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AA 000629

1 LAS VEGAS, NEVADA, FRIDAY, SEPTEMBER 4, 1992

2 THE COURT: So this is State versus Boston. Let's make sure
3 that we've got our video camera.

4 MR. BLOXHAM: I would ask the Court to take judicial notice
5 of when Mr. Fadgen confirmed, July 25th, 1988, and the preliminary
6 hearing proceedings and the trial dates just for the Court's
7 edification and Mr. Miller's.

8 THE COURT: I don't have a minute before--you're talking
9 about Justice Court level?

10 MR. BLOXHAM: The Justice Court minutes show that on July 25,
11 1988, Mr. Fadgen confirmed.

12 THE COURT: There is an "A" file. They're probably in that
13 "A" file, but they're not in the "B" file.

14 MR. BLOXHAM: Perhaps Mr. Miller could check his notes and
15 maybe we could even agree to it.

16 THE COURT: Okay. This is the time set for the evidentiary
17 hearing in State versus Boston.

18 It's my understanding that we're going to proceed with
19 one witness today?

20 MR. BLOXHAM: Your Honor, one witness and then, in thinking
21 about it, I thought, perhaps my testimony might be needed,
22 depending on what testimony is taken from Mr. Fadgen. And the
23 reason I say that--if we're on tape--are we taping--is I met with
24 Mr. Fadgen as Mr. Fadgen prepared to defend Mr. Boston. And if

1 Mr. Fadgen's memory is not as clear--Mr. Fadgen has handled
2 hundreds of jury trials. I've personally had three trials against
3 Mr. Fadgen myself, jury trials. An excellent trial attorney.

4 But I recall, specifically, preparing for this trial and
5 meeting with Mr. Fadgen. Depending on what Mr. Fadgen's memory is
6 and how it serves him, I may be asking permission to testify as
7 well.

8 THE COURT: Well, let's start with Mr.--what were you going
9 to Mr. Miller?

10 MR. MILLER: Well, I need to--we've kind of just slid into a
11 start on this. And there was, for the record, from my
12 conversations with Mr. Boston, there was an objection that I need
13 to put on the record right at the outset. And that was Mr.
14 Boston's objection to proceeding with the evidentiary hearing
15 without him being present. I know we discussed that before and
16 have not been able to come up with a way of getting him here.
17 Nonetheless, for the record, I think I need to put that objection
18 forward.

19 THE COURT: Well, for the record, I mean, we have it in other
20 transcripts. Why don't you briefly, again, tell us. The problem,
21 as I understand it, Mr. Bloxham, is we don't have a procedural
22 mechanism--and I think, Mr. Miller, you agree with that--to get
23 him back here. Mr. Boston wishes to proceed by way of post
24 conviction relief, if we had a way to get him here we would.

1 What we're doing this morning, of course, is video
2 taping this at some expense to the County so as to try to get Mr.
3 Boston the best sense of what's going on in his absence. We'd
4 love to have him here. But it's my understanding there is no
5 procedural mechanism to do this.

6 Is this correct, Mr. Bloxham?

7 MR. BLOXHAM: That's what I have been told, Your Honor. In
8 fact, I was looking for a letter in my file from a Deputy Attorney
9 General that, basically, said just that. That at the Court's
10 request, we started steps to see about bringing the defendant
11 here.

12 And in contacting the Attorney General's office, we were
13 told that there was no way to get the defendant to court because
14 he is in custody in prison in California, Tehachapi, specifically,
15 and he has been convicted in Nevada and he has appealed to the
16 Nevada Supreme Court and that matter has been resolved. We're
17 talking post conviction relief.

18 And so, there was just no way to remove him back--or
19 there was no way to extradite him. None of the procedures for
20 returning somebody with an untried case existed.

21 And I apologize. I started looking through my file,
22 like I said. Because I received a letter outlining those things.
23 I don't see it jumping out at me from the file.

24 But, because of that, it's my understanding Mr. Miller

1 did go down and visit with the defendant at Tehachapi. I don't
2 know whether he wants to have a deposition from Tehachapi with
3 myself and him, or just how he wants to proceed, by affidavits, or
4 whatever. Perhaps it will be answered by the testimony of Mr.
5 Fadgen.

6 THE COURT: You know, I would have certainly--and I've said
7 this before--I'll be glad to continue this matter until Mr. Boston
8 can be here. But I understand that that might be awhile.

9 MR. MILLER: We explored that once before in the previous
10 hearings on this. The Court specifically asked us to inquire as
11 to when he would be getting out in California. And if my memory
12 serves me correctly, the year 2010 is his sentence expiration down
13 in California.

14 THE COURT: Now, certainly, you know, it may not be me--it
15 may not be within my life time, but all things being equal, we'll
16 probably still have a court system here in 2010. Would he prefer
17 to wait and have it heard at that time?

18 MR. MILLER: I do not believe so.

19 THE COURT: Okay. Have you discussed that with him?

20 MR. MILLER: Yes.

21 THE COURT: Alright. Then why don't we proceed under the
22 best conditions that we can, which is with the video tape.

23 Why don't you call Mr. Fadgen. We can get him out of
24 here?

1 JOHN FADGEN

2 Was called as a witness, duly sworn, and testified as follows:

3 THE CLERK: Please state your name and spell your last name
4 for the record.

5 THE WITNESS: My name is John Fadgen, F-a-d-g-e-n.

6 DIRECT EXAMINATION

7 BY MR. BLOXHAM:

8 Q And, Mr. Fadgen, did you graduate from law school, sir?

9 A Yes, I did, American University, Washington D.C., 1963.

10 Q 1963? And did you then, thereafter, take any bar exams?

11 A Yes. Yes, I did. I took the District of Colombia bar
12 exam in 1963, Was admitted in District of Colombia. In 1964 in
13 Nevada.

14 Q Now, were you practicing law in the State of Nevada in
15 1988?

16 A Yes, I was.

17 Q And at the time--let me just ask you, in general, a
18 couple of questions that are--may not be fair. They may be hard
19 to answer. Can you give us a rough estimate of how many criminal
20 cases you've handled over the years? Would they be in the
21 thousands?

22 A Yes.

23 Q And can you give us a rough estimate of how many jury
24 trials concerning criminal matters you've perhaps had? Now, this,

1 again, may be an unfair question.

2 A Here in the State of Nevada or--

3 Q Anywhere, criminal jury trials.

4 A Hundreds.

5 Q Hundreds. What is your current employment, Mr. Fadgen?

6 A I'm employed with the U.S. House of Representatives.

7 Q And is that in Washington D.C.?

8 A Yes, it is.

9 Q And is that Mr. Bilbray's office?

10 A Yes, it is.

11 Q Okay. Now, directing your attention to September of
12 1988--and I'm asking these questions, you may not recall the year,
13 you may not have your file on this case, it may have been turned
14 over to appellate counsel on that. If I was to tell you that a
15 trial occurred on this case in September of 1988, do you recall
16 representing Andre Boston?

17 A Yes, I do.

18 Q Did you represent Andre Boston at the preliminary
19 hearing as well as the jury trial?

20 A Yes, I did.

21 Q And do you recall meeting and talking with Mr. Boston
22 prior to the preliminary hearing as well as the trial?

23 A Yes, I do.

24 Q Do you remember preparing for that trial?

1 A Yes.

2 Q In fact, specifically, were your offices over on 6th
3 Street, South 6th Street, prior to trial?

4 A Yes. As a matter of fact, I believe I met with you over
5 there at one time.

6 Q That was my next question. Do you recall me coming to
7 your office--

8 A Yes.

9 Q --and discussing the matter to trial as far as just
10 getting down the procedure, do we expect to start on time,
11 witnesses, telling you how long my case would take, and things
12 like that, so to speak?

13 A Yes, I do.

14 Q Okay.

15 THE COURT: You never paid any house calls on me, Mr.
16 Bloxham, when I was in private practice.

17 MR. BLOXHAM: I believe you were a lot further away.

18 THE COURT: I was right down the street in the Phoenix
19 Building.

20 MR. BLOXHAM: Oh. I don't believe we ever had a jury trial,
21 though, Your Honor.

22 THE COURT: No, I successfully avoided most of those. Go
23 ahead.

24 Q (by Mr. Bloxham) Well, in fact, for the record, Mr.

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1 Fadgen, do you--I recall specifically three jury trials you and I
2 have had together. Do you recall those?

3 A I remember one.

4 Q Domingas?

5 A Yes.

6 Q Michael Domingas.

7 A Yes.

8 Q Do you remember a felony DUI--

9 A Yes.

10 Q The name--

11 A Bevel.

12 Q Yes, Bevel. And then, of course, Andre Boston?

13 A Yes.

14 THE COURT: How many did you win?

15 THE WITNESS: Well, Domingas was seven trials, with seven
16 charges. We won the first five, I believe, jury trials and then
17 lost the sixth one. Lost Bevel also, to Mr. Bloxham.

18 Q (by Mr. Bloxham) Do you remember Michael Domingas being
19 tried and he ended up--you won five out of the seven trials that
20 were done against Michael Domingas. Isn't that correct?

21 A Yes.

22 Q In fact, wouldn't it be fair to say that we had a pretty
23 good State's case that you beat me in that Domingas case.
24 Wouldn't you agree with case?

1 A Yes.

2 Q He went on to other things, though, didn't he, Mr.
3 Domingas?

4 A Sorry to say, yes, he did.

5 Q It would have been better if he went to prison.

6 A Well, he did go to prison, ultimately, on the sixth
7 trial. Yeah, he did go on to worse things.

8 MR. BLOXHAM: Your Honor, for the Court's information, this
9 was one of the Ninja killers down in California, Michael Domingas.
10 He testified at the Homick trial. Just--that's quite an aside.

11 But, now, as you prepared for trial in the Boston
12 matter, Mr. Fadgen, did you feel like you had adequate time to
13 prepare?

14 A I'm sure, as I recall the preliminary hearing, I had to
15 get ready real quick. I don't remember the time sequence.

16 MR. BLOXHAM: Your Honor, I was to going to ask the Court to
17 take judicial notice that Mr. Fadgen confirmed on July 25, 1988
18 for the preliminary hearing, that the defendant insisted on his
19 preliminary hearing within 15 days. The Court refused, on that
20 basis, to continue that preliminary hearing and it proceeded on
21 the 26th of July. I don't know whether the Court can take that
22 judicial notice based on what it has before it. But I can
23 represent that's what my file shows.

24 THE COURT: Mr. Miller?

1 MR. MILLER: The cover sheet on the transcript--the
2 reporter's transcript of the preliminary hearing which was a part
3 of the record on appeal, bears out that preliminary hearing was
4 conducted before Judge Jansen on July 26th, 1988 with Mr. Fadgen
5 as counsel.

6 THE WITNESS: And I believe--my independent recollection is
7 Judge Jansen asked me--you know, I mean, we were stuck with the
8 15-day rule--if I could get ready as far as preliminary hearing.
9 Although it was a short time, the nature of the preliminary
10 hearing and the nature of the evidence, I felt that I could
11 adequately represent him at that time, even on that short of
12 notice.

13 THE COURT: You'd probably had hundreds and hundreds of
14 preliminary hearings I assume.

15 THE WITNESS: Yes, Your Honor, about 22 years' worth.

16 MR. BLOXHAM: Now, I was also going to ask the Court to take
17 judicial notice that the defendant was arraigned August 11th, 1988
18 and he did invoke his right to a trial within 60 days. And a
19 trial date of September 12th, 1988 was set.

20 THE COURT: That's exactly what the minutes reflect.

21 Q (by Mr. Bloxham) Now, as you were preparing for trial,
22 did you have in your possession, all of the discovery pertaining
23 to this case?

24 A I would say every bit of discovery given to me by the

1 District Attorney's office.

2 Q Okay. And, at that time as well as now, we had an open
3 file policy where what we had in our file was available to you.
4 Isn't that correct?

5 A Yes, I believe we just simply made a written request and
6 the discovery was provided.

7 Q Do you recall the discovery including medical reports on
8 the defendant?

9 A Well, let me take a step back, first of all. My memory
10 is hazy. Whether I--whether Mr. Boston was originally represented
11 by the Public Defender, I'm not sure. So, I may have gotten the
12 discovery from the Public Defender's office. I'm not certain of
13 that. But, in any event, I had the total package.

14 Q Okay. Do you recall whether or not--and I know this is
15 going back a couple of years, lots of cases--but do you recall any
16 medical reports containing information, psychiatric type of
17 reports on Andre Boston?

18 A Yes, I do.

19 Q Did you consider, as you prepared for trial, defenses,
20 including an insanity defense?

21 A Yes, I'm certain I did.

22 Q Did you proceed with an insanity defense at all?

23 A No, I did not.

24 Q Was that a conscious--or a conscious trial tactic that

1 you considered and then rejected?

2 A Yes, and I'm certain, also, in my discussions with Mr.
3 Boston that was brought up. But I don't have an independent
4 recollection of that. I know that we spent time preparing the
5 defense, went over the discovery, but I have no independent
6 recollection that--

7 Q What defense did you proceed with, sir, if you recall?

8 A The defense simply--the big problem, as I recall it, in
9 the trial was a similar act in California. As a matter of fact,
10 a very similar act in California. The defense, first of all,
11 focused on trying to keep that similar act out, as I recall.

12 Q Okay. Did Mr. Boston--what defense did he want to
13 proceed with?

14 A Well, he was insistent all along that he was not guilty
15 and was not the perpetrator of the crime.

16 Q So, throughout, his claim was, "It wasn't me"?

17 A Absolutely.

18 Q "Identity is wrong"?

19 A Yes, that is correct.

20 THE COURT: Now, Mr. Fadgen--excuse me for interrupting--
21 when you said you have no independent recollection, some things
22 about the issue of raising a sanity defense, you do remember that
23 you saw things that, at least, put you in a position of
24 considering that as a defense. What you don't remember is the

1 specific discussions with Mr. Boston about it?

2 THE WITNESS: That's correct. I remember the medical records
3 and I have reviewed a couple of those this morning supplied by Mr.
4 Miller. I recall seeing those particular documents, reviewing
5 them. And I'm certain I would had discussed those with Mr.
6 Boston. But, I do have no independent recollection of that.

7 THE COURT: Of the discussion?

8 THE WITNESS: Of the discussion, that's correct.

9 THE COURT: By the way, Mr. Bloxham, the reason that probably
10 the Attorney General's letter did not leap at you from your file
11 is that it has leapt all the way into the Court's file.

12 MR. BLOXHAM: That's where it went.

13 THE COURT: So, we'll file that in court today.

14 MR. BLOXHAM: Thank you.

15 THE COURT: Go ahead.

16 Q (by Mr. Bloxham) As you met with Mr. Boston in
17 preparing for trial, was he cooperative?

18 A Yes.

19 Q And open in his discussions with you?

20 A Yes, he was.

21 Q And he assisted you?

22 A Yes, he did.

23 Q Did he appear to be competent in assisting you?

24 A Yes, he did.

1 Q He understood the questions you asked and--

2 A Absolutely.

3 Q --made appropriate responses?

4 A He had absolutely no problem understanding my questions
5 nor communicating with me.

6 THE COURT: I take it had those things come up--had there
7 been a problem in communication, that you took to raise some
8 question as to his competence, you would have filed some kind of
9 motion with the Court to have him examined by a psychiatrist
10 before you proceeded to trial, wouldn't you?

11 THE WITNESS: I certainly would have, Your Honor. And I had
12 absolutely no question--I mean, he knew right from wrong, he knew
13 events, he knew sequence of events, he was very articulate and
14 well spoken, as I recall.

15 Q (by Mr. Bloxham) Now, do you--the last question here--
16 having tried the case, and, again, it goes back a couple of years
17 and you've had hundreds of cases, do you feel that Mr. Boston
18 received a fair trial?

19 A Yes, I do.

20 MR. BLOXHAM: Thank you.

21 Pass the witness, Your Honor.

22 THE COURT: Mr. Miller?

23 CROSS EXAMINATION

24 BY MR. MILLER:

1 Q Mr. Fadgen, going back and filling in, just some basic
2 details so that we have the trial in perspective here. The
3 charges that Mr. Boston was facing, tell me whether or not this is
4 a correct summary, if you will. One charge of burglary, burglary,
5 one charge of lewdness with a minor with the use, one charge of
6 assault with a deadly weapon, one charge of battery with intent to
7 commit a crime with use of a deadly weapon, one charge of--one
8 count of first degree kidnapping with use, six counts of sexual
9 assault with use--excuse me--seven counts of sexual assault with
10 use, with one of those counts eventually having been dismissed as
11 a result of trial, one count of robbery with use and one count of
12 attempt dissuading with use. Does that sound like a complete
13 listing of the crimes set forth in the Information?

14 A Yes, it does.

15 Q Okay. And the plea that--the pleas that were entered to
16 each and every one of those counts were all pleas of not guilty.
17 Is that correct?

18 A That is correct.

19 Q At no time were pleas of not guilty with reason of
20 insanity entered. Is that also correct?

21 A That is correct.

22 Q Alright. Did you, at any time during your
23 representation of Mr. Boston, ever seek out a psychological or
24 psychiatric evaluation of Mr. Boston concerning his competency to

1 stand trial?

2 A No, I did not.

3 Q Was there anything in his conversation with you, his
4 demeanor, his actions, that led you to believe that any such
5 evaluation was needed?

6 A Probably the opposite. As I said, he was very
7 articulate and did assist in his own defense. I had no question
8 in my mind that, even after reviewing the reports, that he was
9 sane.

10 Q Now, the companion question to that, I guess, did you
11 seek out any psychological or psychiatric evaluation of Mr. Boston
12 to get a determination, an expert opinion as to whether or not, at
13 the time that these offenses were allegedly committed, he knew
14 right from wrong?

15 A No, I did not.

16 Q Was there anything in your conversations with him, his
17 demeanor, or any information that was presented to you that you
18 felt indicated that he might not have known right from wrong at
19 the time of these offenses?

20 A No, there was not.

21 Q Okay. Now, the offenses that we're talking about, that
22 were charged in the Information involved two dates. One of those
23 being October, either the 1st or 3rd, my memory is slipping right
24 now. And the other--of 1983--and the second offense being

1 November 14th of 1983. Does that sound correct?

2 A I have no independent recollection of that. But I'll
3 take your word that those were the dates. I haven't looked at
4 the--

5 MR. MILLER: I would ask the Court to take notice that those
6 were the dates of offenses reflected in the Information.

7 MR. BLOXHAM: October 1st, 1983 and November 14th, 1983 are
8 correct, Your Honor. We will stipulate to that.

9 THE COURT: Fine.

10 MR. MILLER: Okay. Thank you.

11 Might I have some documents marked, Your Honor?

12 THE COURT: Sure.

13 MR. MILLER: May I approach the witness, Your Honor?

14 THE COURT: Sure.

15 Q (by Mr. Miller) Now, Mr. Fadgen, I'd like to hand you
16 the exhibits that--I'll just give all three of them to you right
17 now. Defendant's exhibits A, B, and C.

18 Now, as to A, which is a discharge summary offered by a
19 Dr. Wiechman, Harold C. Wiechman. Isn't that correct? It appears
20 on the top--

21 A Yes, it is.

22 Q --the very heading of the document, the first three
23 lines?

24 A That's correct.

1 Q Okay. And that is A. Isn't that correct?
2 A Yes, it is.
3 Q Defense exhibit A?
4 A Yes.
5 Q Did you have that--had you seen that document prior to
6 trial?
7 A Yes, I'm certain that I did.
8 Q Did you have a copy of it in your possession prior to
9 trial?
10 A Yes.
11 Q Alright. Had you read it and evaluated its contents?
12 A Yes, I had.

13 MR. MILLER: Your Honor, I might point out that these are
14 documents which--all three of these exhibits, A, B, and C, are
15 documents which are before the Court already by virtue of Mr.
16 Boston having attached them as portions of exhibit B on his
17 petition for relief.

18 Q (by Mr. Miller) Now, as to--Court's indulgence--as to
19 the one discharge summary, which I believe is A--

20 THE COURT: So, I can follow, which date would that be?

21 MR. MILLER: Okay, now. This would be--

22 THE COURT: The discharge--

23 MR. MILLER: The discharge summary--Dr. Wiechman's summary
24 would be the discharge summary of 4/28/83. Okay. That's the only

1 one that he, in fact, authored.

2 THE COURT: That's what I'm looking at. Go ahead.

3 Q (by Mr. Miller) In somewhat of a summary fashion, just
4 to bring out some of the points that are in that, isn't it true
5 that in that summary, the following facts--and I'll state a fact
6 and you tell me whether or not it is an accurate item that's
7 calculated in that report. Would that be--

8 A Could I have just one moment to review it?

9 Q Sure, sure.

10 A Okay. So you understand, you did allow me to review
11 them prior to the hearing, but I wanted to look them over again.

12 Q That's fine. In this report, discharge summary from
13 Ingleside Mental Health Center, authored by Dr. Wiechman, it makes
14 several statements. Among those, isn't included a statement that
15 psychological testing showed Mr. Boston to be very anxious with
16 great difficulty controlling hostile feelings, especially with
17 women? And I refer down to the third paragraph on the first page
18 of that.

19 A Yes, it does.

20 Q Okay. And doesn't that also go on to say that he had
21 some confusion between sexuality and aggression?

22 A Yes.

23 Q And going on further, "When placed in a less structured
24 setting, he became quite angry and at times reached the verge of

1 violence"?

2 A Could you direct my attention to what part of the report
3 that's in?

4 Q Alright. See the part that says, "Hospital course"?

5 A Okay.

6 Q Alright. Three lines into that. "...when placed on a
7 less structured..."?

8 A Yes, yes, it does.

9 Q Okay. And then coming down from there, "He threatened
10 Dr. Wiechman several times, threatening to kill him when he
11 wouldn't issue passes to Mr. Boston"?

12 A Yes, it does.

13 Q Alright. Okay. Final paragraph on that page. "Because
14 of the seriousness of letters and poor impulse control, the Doctor
15 felt that further hospitalization was needed and made plans to
16 transfer Mr. Boston to Camarillo Hospital. In fact, treatment in
17 Camarillo for a period of several months was strongly
18 recommended." Isn't that also--that statement also a part of this
19 report?

20 A Yes, it is.

21 Q Alright. On the second page of that report, look at the
22 right-hand, near the right margin, come up about five lines, six
23 lines from the very bottom, "...I feel strongly..."

24 A Okay.

1 Q Doesn't that report also contain the statement, "I feel
2 strongly that there is a danger that his impulses will be acted on
3 and not just fantasized"?

4 A Yes, it does.

5 Q Now, I'd like to direct your attention to--well, no,
6 let's pursue this.

7 So, you were aware of this document before you went into
8 trial. Correct?

9 A Yes, I was.

10 Q Okay. Did that indicate to you at all that there--that
11 the defendant might have had mental problems sufficient that he
12 might not have known right from wrong at the time that these
13 incidents were perpetrated?

14 A It put that thought in my mind, yes. And I'm certain I
15 discussed that with Mr. Boston.

16 Q Alright. Did you pursue any conversations--did you have
17 an conversations or contact of any sort with Dr. Harold C.
18 Wiechman?

19 A I did not.

20 Q Okay. Did you pursue any sort of verification or
21 follow-up to the things that are related in this report?

22 A In exhibit A?

23 Q In exhibit A, yes.

24 A No, no one at Ingleside Mental Health Center nor Dr.

1 Wiechman.

2 Q Okay.

3 THE COURT: Excuse me a second. Did you form, as I did,
4 during the about 22 years that I practiced, a conclusion that the
5 least preferable defense was insanity. And if there was a way to
6 try a case on a different theory of defense, it was preferable?

7 THE WITNESS: There is no question I did. I felt that the
8 insanity--an insanity defense in this case was not a viable
9 defense nor a viable defense as it related to Mr. Boston
10 personally.

11 Q (by Mr. Miller) Now, again, this is a discharge summary
12 from 1983 which would have, in fact, placed it just a few months
13 prior to the date of the incidents charged. Isn't that correct?

14 A That is correct.

15 Q Alright. Now, I'd like to direct your attention to the
16 social history evaluation. At the very top, it's a four-page
17 document, at the very top it says, "Referral and report" and then
18 has three dates, 3/16--excuse me--5/16/83, 5/16/83, 5/17/83. Have
19 you found that document?

20 A Yes, it's marked for identification, exhibit B, yes, I
21 have.

22 Q Exhibit B. Did you have that document in your
23 possession prior to going to trial with Mr. Boston?

24 A Yes, I did.

1 Q Had you reviewed it prior to trial?

2 A Yes, I did.

3 Q And, again, I'd like to go through the same exercise.
4 I realize it's a little laborious, but there are several points in
5 the document which I think we need to have brought out. And I'll
6 ask you statement by statement and we'll try to keep together on
7 where the references are as to whether certain statements are set
8 forth on this document.

9 Doesn't this document show admission--and I'm about four
10 or five lines down on the first page--an admission of the
11 defendant to Camarillo State Hospital on 5/6/83?

12 A Yes, it does.

13 Q Alright. And it also shows in the following sentence
14 that the referral source for that admission was Las Vegas Mental--
15 excuse me--Los Angeles Mental Health?

16 A Yes, it does.

17 Q Further on in that paragraph--well, in the next
18 sentence, "reasons for referral"--

19 A Yes.

20 Q Do you want me to hold up for a second?

21 A No, no, I've read section.

22 Q Okay. Doesn't it state that the referral followed or
23 was brought about by one: defendant being arrested for voyeurism
24 on a neighborhood woman, and two: defendant's mother finding

1 letters in which Andre described how he intended to kidnap, rape,
2 and murder three to six women, one of whom was a neighbor?

3 A Yes, it does.

4 Q Alright. The report goes on to state, doesn't it, that--
5 -then this was probably in the very next statement--"Defendant has
6 a six to eight week admission at Ingleside Hospital?

7 A Yes, it does.

8 Q Okay. That defendant had been running away from home
9 and getting increasingly lower school grades? Look under
10 "presenting problems."

11 A Yes, it does say that...

12 Q Alright. And doesn't the remainder of that paragraph--
13 okay, look at the very last sentence on that page. "There is
14 another letter which had..."?

15 A Yes.

16 Q Doesn't this report indicate that one of the letters
17 written by Mr. Boston contained in it a list of things to take
18 along on a kidnapping?

19 A Yes.

20 Q And also an indication, in the next sentence there, that
21 most of these letters were signed "Youth of American, Thieves of
22 Crime"?

23 A Yes.

24 Q Alright. Isn't there also an indication in this report

1 that defendant did not accept his race and wanted to be white?

2 A Yes.

3 Q What race is Mr. Boston?

4 A He was African American.

5 Q Isn't there also a description further on in this report
6 describing letters that defendant has written as being perverted
7 sex letters that explain how certain girls had to die?

8 A Yes.

9 Q Okay. And I'm assuming that you're about six or seven
10 lines up from the bottom of that page?

11 A Yes.

12 Q Isn't there also a statement made in this report that
13 Dr. Ingleside (sic) told the family that Andre was a time bomb?

14 A Could you direct me to that? I have independent
15 recollection.

16 Q Okay. Come up on that second page--

17 A Yes.

18 Q --come up one, two, three, four--one, two, three, four,
19 five, six, seven lines?

20 A Yes, I have it. And it does say that.

21 Q Okay. So you have this report and were aware of all
22 these--of its content and all of these statements before going
23 into trial. Isn't that correct?

24 A That's correct.

1 Q And yet, still--okay, let me ask you this. Did you
2 pursue any contact with the author of this report which was an M.
3 Sevren as shown at the bottom of the last page of that exhibit as
4 being a licensed social worker?

5 A No, I did not.

6 Q Okay. Was any investigation done to follow up or verify
7 the things that were--the various facts that we've gone over that
8 were stated in these reports?

9 A No, other than discussions, I'm certain, with Mr.
10 Boston.

11 Q Okay. At trial, Mr. Boston did not testify. Correct?

12 A That is correct.

13 Q And no witnesses were presented by the defense?

14 A That is correct.

15 Q No exhibits were introduced by the defense?

16 A That is correct.

17 Q And, in fact, no mention from beginning to end was made
18 in the trial of the insanity defense. Is that correct?

19 A That is correct.

20 Q From your review of these two--we'll do a very brief one
21 on exhibit C which is the third report by Dr. Thor-Alcyone. Did
22 you have that document in your possession prior to going to trial?

23 A I'm certain I did. A and B, after reviewing, have a
24 recollection of reading or having read in the past. C does not

1 refresh my memory. But I'm certain I have that.

2 Q If these documents, the facts in them, had been
3 introduced at trial, in your opinion, do you think that you could
4 have gotten an insanity defense jury instruction?

5 A That's a very good question. I'm not certain that I
6 would have.

7 Q As you review these documents, and having had hundreds
8 of trials and done preparation and investigation, or at least
9 directed the investigation for hundreds of cases, do the
10 statements contained in exhibits A, B, and C strike you as hints
11 or clues that would bear further exploring of whether or not this
12 person who is described as a "time bomb" and as having real
13 problems discerning between violence tendencies, and sexualism--or
14 sexuality rather, that that, perhaps, is an avenue you needed to
15 explore to discern whether or not that person was capable of
16 knowing right from wrong at the time that these alleged acts
17 occurred?

18 A I think that--and, of course, this is going back to my
19 state of mind after reviewing these documents, discussing them
20 with Mr. Boston in 1988, it would have been my professional
21 opinion at that time that even with this testimony, an insanity
22 defense would not have been a viable defense.

23 Q Did Mr. Boston ever indicate to you that he wanted to
24 enter a plea of not guilty by reason of insanity?

1 A Mr. Boston indicated, I'm certain, the opposite. He was
2 vehement that he was not the person who perpetrated these crimes
3 and that he had absolutely nothing to do with--was not the person
4 who committed, or allegedly committed the crimes in the
5 Information. And that was his position from the first time I met
6 him until the last time I met with him after--or talked with him
7 at the time of sentencing.

8 Q Okay. I have one completion question on that. At any
9 time prior to trial, or during the course of the trial, did Mr.
10 Boston indicate to you that he wanted to pursue a sanity defense?

11 A An insanity?

12 Q An insanity defense?

13 A Absolutely not, no. It was--it was discarded, I'm sure,
14 in discussions. He took the position he was not the person who
15 committed the crimes and that continued to be his position all the
16 way through.

17 MR. MILLER: Your Honor, I would move for the admission of
18 exhibits--defense exhibits--proposed exhibits A, B, and C.

19 MR. BLOXHAM: We have no objection, Your Honor.

20 THE COURT: The same will be admitted.

21 MR. MILLER: Thank you. No further question.

22 MR. BLOXHAM: Just briefly on redirect.

23 REDIRECT EXAMINATION

24 BY MR. BLOXHAM:

1 Q One thing you would consider in determining whether an
2 insanity defense would be viable would be the facts of the crime
3 as well. Isn't that correct, sir?

4 A Yes.

5 Q And your memory may not be complete as far as the
6 individual facts of the crime. But did you see anything that Mr.
7 Boston did during the commission of the crime which would give
8 rise to a "I didn't know right from wrong"?

9 A No, there was nothing. And I have some independent
10 recollection of the facts, not in any detail, but there was
11 nothing in the facts of the alleged crimes that, in any way,
12 indicated that he did not know right from wrong.

13 Q In fact, he blindfolded the one girl. Didn't he?

14 A Correct, yes, he did.

15 Q And he wore a mask over his face before blindfolding
16 her?

17 A Yes, he did.

18 Q And he used a weapon and he threatened her?

19 A Yeah, he was charged with using a weapon.

20 Q In all of these facts combined, there wasn't one single
21 fact that would tend to show someone not knowing that he was doing
22 wrong. That's kind of a confusing statement.

23 A No, I understand the question. As I've said, I reviewed
24 all of the discovery which, of course, included all of the police

1 reports, in addition to the psychiatric evaluations in California.
2 In reviewing the police reports with Mr. Boston, as I said, he
3 indicated he was not the person who committed the crime. Assuming
4 that at the time, there certainly was nothing in the reports that
5 indicated that the person, whether it be Mr. Boston or some other
6 person, as Mr. Boston said, there was absolutely no indication
7 that that individual didn't know right from wrong.

8 MR. BLOXHAM: Thank you.

9 Nothing further, Your Honor.

10 THE COURT: Mr. Miller?

11 MR. MILLER: No further questions, Your Honor.

12 THE COURT: Thanks for coming, John.

13 Now, in terms of procedure, where do we go from here?

14 MR. MILLER: Counsel approach the bench?

15 THE COURT: Sure.

16 (Whereupon a bench conference was held, not recorded)

17 THE COURT: We'll take a brief recess.

18 (Whereupon the Court took a brief recess)

19 THE COURT: Alright. We're back on the record. I gather,
20 procedurally, this should be shown to Mr. Boston and we'll work
21 from there. Why don't we put it on a status check in four months?

22 MR. MILLER: That would be fine, Your Honor. We'd request
23 that opportunity to review this with Mr. Boston and see where
24 we're going to go from there.

1 THE CLERK: It will be January 5th at 9:00 a.m.
2 MR. BLOXHAM: Your Honor, may we request that the testimony
3 of Mr. Fadgen be transcribed for the record so that we'll have
4 that in the file?
5 THE COURT: You just did request it.
6 MR. BLOXHAM: Okay. Thank you.
7 MR. MILLER: While we're requesting, may I request--I would
8 request a copy of the video tape.
9 THE COURT: You also want me to order it, I gather.
10 MR. MILLER: I've got to have a copy of the video tape to
11 take down to Mr. Boston.
12 THE COURT: Do you want to request it and have me order it,
13 or do you just want to request it?
14 MR. MILLER: On mine, I'd like an order with.
15 MR. BLOXHAM: We'd like the Court to order both.
16 THE COURT: Okay.
17 MR. BLOXHAM: We understand--who is paying for this? Is it
18 the County?
19 THE COURT: Well, you know with my high salary, I just
20 figured I'd throw this in as part of my contribution to the
21 justice system.
22 MR. BLOXHAM: I'd be happy to, but I don't get a high salary.
23 THE COURT: I think this is being done free as a public
24 service by the court reporter, isn't it?

1 VIDEO RECORDER: I don't believe so.

2 (Colloquy between Court and counsel)

3 * * * *

4 ATTEST: I do hereby certify that I have truly and correctly
5 transcribed the sound recordings of the proceedings in
6 the above case.

7 *Shirley Christofferson*
8 SHIRLEE CHRISTOFFERSON, Special Recorder/Transcriber
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FILED

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Shirlee Christofferson
DISTRICT COURT
CLARK COUNTY, NEVADA
* * *

STATE OF NEVADA,

CASE NO. C84650

Plaintiff,

DEPT. V
DOCKET "H"

vs.

Transcript of
Proceedings

ANDRE DUPREE BOSTON,

Defendant.

BEFORE THE HONORABLE JEFFREY D. SOBEL, DISTRICT COURT JUDGE

HEARING: JUDGE'S DECISION

THURSDAY, OCTOBER 14, 1993

APPEARANCES:

FOR THE PLAINTIFF:

MARY KAY SINICKI, ESQ.
Deputy District Attorney

FOR DEFENDANT BOSTON:

PROPER PERSON

RECORDED BY: SHIRLEE CHRISTOFFERSON, Court Reporter

548

AA 000662

1 LAS VEGAS, NEVADA, THURSDAY, OCTOBER 14, 1993

2 THE COURT: State versus Boston.

3 I'm going to deny the post-conviction relief. I'm going
4 to make a series of findings which I direct the State to prepare.

5 And first is that I find that John Fadgen's
6 representation, based on his testimony, was certainly adequate
7 under the Strickland standard, and was adequate in general. I had
8 no problems with it whatsoever.

9 He made a choice consistent, actually, with what he has
10 represented to be the desire of the defendant at that time of
11 mistaken identity which would be inconsistent with pursuing an
12 insanity defense in terms of persuasion.

13 And I agree with the State's position relying on
14 Bejarano, B-e-j-a-r-a-n-o versus State that it was not ineffective
15 for Bejarano's counsel or Mr. Fadgen to consciously decide not to
16 pursue an insanity defense.

17 And I also find, under the second prong of Strickland,
18 that Mr. Boston did not reach his burden to show that even if
19 something had been wrongly done by Mr. Fadgen that this would
20 have--doing it the right way, as Mr. Boston asserts, which is to
21 present the insanity defense, that he's carried his burden to show
22 that there was any likelihood of a different result.

23 And the matter is off calendar and the State is directed
24 to prepare those Findings of Facts, Conclusions of Law.

1 MS. SINICKI: Judge, could the State get a copy of the
2 transcript so that we can--

3 THE COURT: Sure.

4 MS. SINICKI: Thanks.

5 * * * *

6 ATTEST: I do hereby certify that I have truly and correctly
7 transcribed the sound recordings of the proceedings in
8 the above case.

9 
10 SHIRLEE CHRISTOFFERSON, COURT REPORTER

1 REX BELL
2 DISTRICT ATTORNEY
3 Nevada Bar #001799
4 200 S. Third Street
5 Las Vegas, Nevada 89155
6 (702) 455-4711
7 Attorney for Plaintiff
8 THE STATE OF NEVADA

FILED

MAR 18 11 33 AM '94

Letitia L. L...
CLERK

9 DISTRICT COURT

10 CLARK COUNTY, NEVADA

11 THE STATE OF NEVADA,	)	CASE NO.	C84650
12 Plaintiff,	)	DEPT. NO.	V
13 -vs-	)	DOCKET NO.	H
14 ANDRE DUPREE BOSTON,)		
15 Defendant.)		

16 FINDINGS OF FACT; CONCLUSIONS OF LAW;
17 AND ORDER

18 DATE OF HEARING: 10-14-93
19 TIME OF HEARING: 9:00 A.M.

20 THIS CAUSE having come on for hearing before the Honorable
21 JEFFREY D. SOBEL, District Court Judge, on the 14th day of October,
22 1993, on the Defendant's Petition for Post-Conviction Relief, and
23 the Court having considered the matter, including briefs and
24 arguments of counsel; now therefore, the Court makes the following
25 Findings of Fact and Conclusions of Law:

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FINDINGS OF FACT

1. On September 15, 1988, the Defendant was convicted by jury trial for the crimes charged in the present case.

2. The Defendant appealed his Nevada conviction. The Nevada Supreme Court issued an Order Dismissing Appeal which was filed by the Supreme Court on October 24, 1989.

3. Thereafter, the Defendant filed a Petition for Post-Conviction Relief. The matter was heard without an evidentiary hearing and the Defendant's Petition was denied on December 14, 1990.

4. The Nevada Supreme Court, in an Order of Remand, filed September 30, 1991, found that the Defendant was entitled to an evidentiary hearing on the issue of his claim that his trial attorney was ineffective for failing to investigate the insanity defense for trial. The matter was remanded for an evidentiary hearing.

5. Since the Defendant is an inmate in the California Prison System, he could not be returned to Nevada. Therefore, on September 4, 1992, an evidentiary hearing was held in the Defendant's absence. It was videotaped and recorded by a court recorder. The record was taken to the Defendant by his attorney and the Defendant thereafter filed an affidavit in response.

6. On September 4, 1992, hearing, trial counsel JOHN FADGEN, Esquire, testified that he had practiced law since 1963. He had handled thousands of criminal cases and hundreds of jury trials.

7. Mr. FADGEN testified that he had adequate time to prepare to represent the Defendant, that the Defendant was helpful and cooperative and that the Defendant appeared competent in every way.

1 8. Mr. FADGEN had reviewed the medical reports from the
2 Defendant's prior hospitalization and had considered an insanity
3 defense. The insanity defense was not pursued as a conscious trial
4 tactic after discussions with the Defendant. Additionally, the
5 Defendant was insistent on pursuing a defense of mistaken identity.

6 9. The Court finds that trial counsel adequately interviewed
7 the Defendant and prepared for trial.

8 10. The Court finds no merit in the Defendant's allegation
9 that he appeared before the jury in jail clothing.

10 CONCLUSIONS OF LAW

11 The Court concludes that trial counsel provided effective
12 assistance of counsel to the Defendant. The decision to not pursue
13 an insanity defense was made by trial counsel after reviewing all
14 facts and evidence and after discussing the issue with the
15 Defendant. It was the Defendant's desire to pursue a defense of
16 mistaken identity and to not pursue an insanity defense. Given all
17 of the facts, trial counsel was not ineffective. See, Bejarano v.
18 State, 106 Nev. 840, 801 P.2d 1388 (1990), and Strickland v.
19 Washington, 466 U.S. 668 (1984).

20 The Court further concludes that even had an insanity defense
21 been pursued by Defendant BOSTON, he has failed to establish any
22 likelihood of a different result at trial.

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ORDER


Accordingly, based upon the foregoing Findings of Fact and Conclusions of law, IT IS HEREBY ORDERED that the Defendant BOSTON'S Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 8th day of March, 1994.


DISTRICT JUDGE

REX BELL
DISTRICT ATTORNEY
Nevada Bar #001799

BY


RONALD C. BLOXHAM
Chief Deputy District Attorney
Nevada Bar #001398

da

1 Andre' Boston
2 D-03868 C3-215U
3 44750 60 th Street West
4 Lancaster, California 93536

FILED

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Loretta Luman
CLERK

8 EIGHTH JUDICIAL DISTRICT COURT
9 STATE OF NEVADA

10
11 PEOPLE OF THE STATE OF NEVADA,

12 PLAINTIFF,

13 VS.

14 ANDRE' BOSTON,

15 DEFENDANT.

CASE NO: C-84650

NOTICE OF APPEAL

16
17 PLEASE TAKE NOTICE THAT ANDRE' BOSTON, DEFENDANT, HEREBY APPEALS
18 TO THE NEVADA SUPREME COURT FROM THE JUDGEMENT OF DENIED IN THE POST-
19 CONVICTION PETITION/PROCEEDINGS CONDUCTED IN THE EIGHTH JUDICIAL DISTRICT
20 COURT ON, 10-14-93. (FINDINGS OF FACTS IN THIS PREPARED AND FORWARDED TO
21 DEFENDANT ON 3-21, 1994).

22
23
24 DATED: 5-11-94

25 /s/ *Andre' Boston*
26 ANDRE' BOSTON
27

(R)

561
AA 000669

COUNTY CLERK

JUL 25 1994

RECEIVED

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLERK'S CERTIFICATE

FILED

STATE OF NEVADA, ss.

Nov 3 7 29 AM '94

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of said State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in the matter of ANDRE BOSTON V. THE STATE OF NEVADA, Case No. 26034.

JUDGMENT

The Court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, to the effect: "ORDER this appeal dismissed."

Judgment, as quoted above, entered this 7th day of October, 19 94

IN WITNESS WHEREOF, I have hereunto set my hand and
affixed the Seal of said Supreme Court, at my office in
Carson City, Nevada, this 26th day of
October, 19 94

JANETTE M. BLOOM

Clerk of Supreme Court of the State of Nevada

By

Jeannette C. Bloom
Chief Deputy Clerk

CE14

AA 000670

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE BOSTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 26034

FILED

OCT 07 1994

BY *[Signature]*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from an order of the district court denying appellant's petition for post-conviction relief. The record reveals that the district court entered its order denying appellant's petition on March 18, 1994. The state served notice of entry of that order on appellant on March 18, 1994. Appellant did not file his notice of appeal, however, until May 11, 1994, well after the expiration of the thirty-day appeal period prescribed by NRAP 4(b). An untimely notice of appeal fails to vest jurisdiction in this court. See Jordon v. Director, Dep't of Prisons, 101 Nev. 146; 696 P.2d 998 (1985). Accordingly, we conclude that we lack jurisdiction to consider this appeal, and we

ORDER this appeal dismissed.

[Signature], C. J.
[Signature], J.
[Signature], J.

cc: Hon. Jeffrey D. Sobel, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney
Andre Boston
Loretta Bowman, Clerk

IN THE SUPREME COURT OF THE STATE OF NEVADA

REMITTITUR

DATE: October 26, 1994
TO: Honorable Loretta Bowman, Clerk
RE: ANDRE BOSTON vs. THE STATE OF NEVADA

NO. 26034 DIST. CT. NO. C84650

Pursuant to NRAP Rule 41, enclosed is (are) the following:

-X. Certified copy of Judgment and copy of Order.
- Certified copy of Judgment and copy of Opinion.
- Certified copy of Judgment and Opinion.
-X. Receipt for Remittitur. (County Clerk please sign below and return. Retain the attached copy for your records.)
-X. Record on Appeal. Volumes Vols. 1 thru 3
- Exhibits
- Deposition(s) of
- Memorandum of Costs and Disbursements.
- Other

cc: Hon. Jeffrey D. Sobel, District Judge
Andre Boston, in Proper Person
Hon. Frankie Sue Del Papa, Attorney General
Hon. Rex Bell, District Attorney

Issued by: Janne C. Richard
Chief Deputy Supreme Court Clerk
sp

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on (date) NOV 3 1994

LORETTA BOWMAN
County Clerk

Case No.

C084650

Dept. No.

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ORIGINAL

FILED

JAN 05 2011

Alvin S. Johnson
CLERK OF COURT

IN THE EIGHTH JUDICIAL DISTRICT COURT

COUNTY OF CLARK, STATE OF NEVADA

Andre' Dupree Boston

Petitioner

v.

PETITIONER FOR WRIT
OF HABEAS CORPUS
(POST CONVICTION)

Anthony Scillia

Respondent.

INSTRUCTIONS:

- 1) The petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- 2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- 3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- 4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the Department of Corrections, name the warden or head of the institution. If you are not in a specific institution of the Department but within its custody, name the Director of the Department of Corrections.
- 5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- 6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If you petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.
- 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 the 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:

High Desert State Prison, Clark County Nevada

RECEIVED

JAN - 4 2011

CLERK OF THE COURT

88C084650
PWHC
Petition for Writ of Habeas Corpus
1144469



81

- 2) Name and location of court which entered the judgment of conviction under attack:
Eighth Judicial District Court, Las Vegas, Nevada
- 3) Date of judgment of conviction: September 15, 1988
- 4) Case Number: C-84650
- 5) (a) Length of sentence: Fourteen Consecutive Lives & ninety-two years. Consecutive.
(b) If sentence is death, state any date upon which execution is scheduled: _____
- 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:-

- 7) Nature of offense involved in conviction being challenged: Kidnap, Robbery, Burglary, Assault, Attempt to Dissuade Victim from reporting crime, sexual assault, etc.
- 8) What was your plea? (Check one)
a) Not guilty X
b) Guilty _____
c) Guilty but mentally ill _____
d) Nolo contendere _____
- 9) If you entered a plea of guilty or guilty but mentally ill to one count of an indictment of information, and a plea of not guilty to another count of an indictment of information, or if a plea of guilty or guilty but mentally ill was negotiated give details
: _____

- 10) If you were found guilty or guilty but mentally ill after a plea of not guilty, was the finding made by: (check one)
a) Jury X
b) Judge without Jury _____
- 11) Did you testify at the trial? Yes _____ No X
- 12) Did you appeal the judgment of conviction? Yes X No _____
- 13) If you did appeal, answer the following:
a) Name of court: Eighth Judicial District Court
b) Case number or citation: 88-C-084650-C
c) Result: Denied
d) Date of result: 12-18-90
(Attach copy of order or decision, if available.)
- 14) If you did not appeal, explain briefly why you did not:

- 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 our answer to No. 15 was "yes," give the following information:
a) 1) Name of court: Eighth Judicial District Court
2) Nature of proceeding: Petition for Post Conviction Relief
3) Grounds raised: SAME AS PRESENTED HEREIN

4) Did you receive an evidentiary hearing on your petition, application or motion? Yes X No _____

5) Result: _____

6) Date of result: 10-14-93

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

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

1) Name of court: Nevada Supreme Court

2) Nature of proceeding: Petition for Writ of Habeas Corpus

3) Grounds raised: SAME AS HEREIN PRESENTED SEE ATTACHED EXHIBIT "G"

4) Did you receive an evidentiary hearing on your petition, application, or motion? Yes _____ No X

5) Result: DENIED

6) Date of result: 12-27-1988

7) If known, citation of any written opinion or date of orders entered pursuant to such 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 and petition, application or motion?

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

Citation of date of decision: 12-27-1988

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

Citation of date of decision: 12-27-1988

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

Citation of date of decision: 11-24-1997

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 post conviction proceeding? If so, identify:

a) Which of the grounds is the same: ALL GROUNDS RAISED

b) The proceedings in which these grounds were raised: PRIOR HABEAS CORPUS PETITION/PETITION FOR POST CONVICTION RELIEF

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.) THE NEVADA SUPREME AND U.S. DISTRICT COURT REFUSED TO HEAR ANY CLAIMS CITING JURISDICTIONAL ISSUE DIRECTING ME TO APPLY WHEN IN CUSTODY IN STATE.

18) If any of the grounds listed on Nos. 23 a), b), c), and d), or listed on any additional pages you have attached were not previously presented in any 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.) NO GROUNDS HAVE BEEN CONSIDERED BY THE COURT BECAUSE OF JURISDICTIONAL ISSUES THEREFORE ALL GROUNDS ARE NEWLY PRESENTED.

19) Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reason 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.) THE NEVADA SUPREME COURT AND U.S. DISTRICT COURT BOTH DIRECTED ME TO WAIT UNTIL I WAS PHYSICALLY IN NEVADA TO SUBMIT MY CLAIMS TO BE HEARD. (See exhibit "H")

20) Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack? If yes, state which court and the case number: _____

21) Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: Trial counsel – John Fagden; Appellate Counsel – Robert Miller/Public Defender.

22) Do you have any future sentences to serve after you complete the sentence imposed by the judgment under attack? Yes No X

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.

a) Ground one: SENTENCE VIOLATES STATE CASE LAW PRECEDENCE

Supporting FACTS (tell your story briefly without citing cases or law.): (See attached Memorandum of Points and Authorities for clarification of the facts.)

b) Ground two: SENTENCE VIOLATES EIGHTH U.S CONSTITUTION AMENDMENT

Supporting FACTS (tell your story briefly without citing cases or law.): (See attached Memorandum of Points and Authorities for clarification of the facts.)

c) Ground three: EXCESSIVE SENTENCE VIOLATES PRINCIPLE OF REHABILITATION

Supporting FACTS (tell your story briefly without citing cases or law.): (See attached Memorandum of Points and Authorities for clarification of the facts.)

d) Ground four: SUSPENSION OF HABEAS CORPUS PRIVILEGES FOR 22 YEARS VIOLATES SPEEDY TRIAL, DUE PROCESS AND EQUAL PROTECTION OF THE LAW.

Supporting FACTS (tell your story briefly without citing cases or law.): (See attached Memorandum of Points and Authorities for clarification of the facts.)

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

EXECUTED at HIGH DESERT STATE PRISON on the 3 day of the month of January of the year 2011.

Andie' Boston

Signature of Petitioner

27846, 13A/2A, HIGH DESSERT STATE PRISON

PO Box 650, Indian Springs, NV. 89070-0650

Address

Andie' Boston

Signature of Attorney (if any)

Pro-Se

Attorney for petitioner

Address

Previous Petitions Applications, etc.

Question 16 (c) Continued

C) As to any fifth petition, application or motions give the same information:

- 1) Name of Court: Nevada Supreme Court
- 2) Nature of proceeding: Petition for Writ of Habeas Corpus
- 3) Grounds Raised: Same as herein presented
- 4) Did you receive an evidentiary hearing: No
- 5) Result: Denied to Jurisdictional ground, refer to District Court
- 6) Date of Result: Dec. 9, 2010 (see attachment C)
- 7) If known, citation of any written opinion or date of orders entered pursuant to such relief: None

Previous Petitions/Applications, etc.
Question 16 (c) Continued

(c) As to any third petition, application, or motion give the same information:

- (1) Name of Court: United States District Court- Central District of California
- (2) Nature of Proceeding: Petition For Writ Of Habeas Corpus
- (3) Ground Raised: Same as herein presented for Post Conviction
- (4) Did you receive an evidentiary hearing: No
- (5) Result: Denied
- (6) Date of Result: July 22, 1997 (See attachment 16 (c))
- (7) If known, citation of any written opinion or date of orders entered pursuant to such result: None

(c) As to any fourth petition, application, or motion give the same information:

- (1) Name of Court: United States Court of Appeal/Ninth Circuit
- (2) Nature of Proceeding: Appeal from District Court Denial
- (3) Ground Raised: Same as presented in the U.S. District Court Habeas Corpus(in Certificate of Probable Cause)
- (4) Did you receive an evidentiary hearing" No
- (5) Result: Denied
- (6) Date of Result: October 24, 1997 (See attachment 16 (c))
- (7) If known, citation of any written opinion or date of orders entered pursuant to such reilef: None

Question 23 (e)

(e) Ground Five: PETITIONER DENIED EFFECTIVE ASSISTANCE OF COUNSEL
BASED ON FAILURE TO INVESTIGATE MENTAL HEALTH HISTORY
AS A DEFENSE OR MITIGATION FACTOR AT SENTENCING.

Supporting FACTS: (See attached Memorandum of Points and Authorities for clarification of the facts.)

(f) Ground Six: IT WAS PLAIN AND CUMULATIVE ERROR TO NOT ADDRESS THE
VIOLATION OF HIS SPEEDY TRIAL RIGHT AND A VIOLATION OF
DUE PROCESS ACCORDINGLY.

Supporting FACTS: (See attached Memorandum of Points and Authorities for claraification of the facts.)

(g) Ground Seven: PETITIONER HAS BEEN SUBJECTED TO SEVERAL PENALTIES
FOR HIS DETAINER HOLD BY CALIFORNIA OFFICIALS
AND THAT ACCORDINGLY THESE CONDITIONS HAVE IMPLEMENTED
HIS SENTENCE ENTITLING HIM TO CREDIT FOR TIME SERVED
UNDER THE CONDITIONS.

Supporting Facts: (See attached Memorandum of Points and Authorities for clarification of the facts.)

A T T A C H M E N T 1 6 (c)

A T T A C H M E N T 1 6 (c)

AA 000680

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General Docket
United States Court of Appeals for the Ninth Circuit

Court of Appeals Docket #: 97-56307 Nature of Suit: 3530 Habeas Corpus Boston v. Roe, et al Appeal From: US District Court for Central California, Los Angeles		Docketed: 09/29/1997 Termed: 10/24/1997										
Case Type Information: 1) prisoner 2) state 3) habeas corpus												
Originating Court Information: District: 0973-2 : CV-95-00254-PMP Trial Judge: Philip M. Pro, U.S. District Judge Date Filed: 03/15/1995 Date Order/Judgment: 07/22/1997 Date NOA Filed: 08/21/1997												
Prior Cases: None												
Current Cases: <table border="1"> <thead> <tr> <th>Related</th> <th>Lead</th> <th>Member</th> <th>Start</th> <th>End</th> </tr> </thead> <tbody> <tr> <td></td> <td>96-56091</td> <td>97-56307</td> <td>09/29/1997</td> <td></td> </tr> </tbody> </table>			Related	Lead	Member	Start	End		96-56091	97-56307	09/29/1997	
Related	Lead	Member	Start	End								
	96-56091	97-56307	09/29/1997									

ANDRE BOSTON (D-03868 A1-223U; -: D-03868) Petitioner - Appellant	Andre Boston [COR LD NTC Pro Se] IRONWOOD STATE PRISON (BLYTHE) P.O. Box 2199 Blythe, CA 92226-2199
v.	
E. ROE Respondent - Appellee	Frankie Sue Del Papa, Esquire [COR LD NTC Dep State Atty Gen] AGNV - OFFICE OF THE NEVADA ATTORNEY GENERAL (LAS VEGAS) Suite 3900 555 East Washington Avenue Las Vegas, NV 89101
ATTORNEY GENERAL OF THE STATE OF CALIFORNIA Respondent - Appellee	Zaven V. Sinanian, Esquire Direct: 213/897-2394 [COR LD NTC Dep State Atty Gen]

AGCA - OFFICE OF THE CALIFORNIA
ATTORNEY GENERAL (SAN DIEGO)
110 West A Street
San Diego, CA 92101-5266

ANDRE B OSTON,

Petitioner - Appellant

v.

E. ROE; ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Respondents - Appellees

- 09/29/1997 ☐ 1 FILED REQUEST FOR CERTIFICATE OF PROBABLE CAUSE (SW)
- 09/29/1997 ☐ 2 Filed certificate of record on appeal RT filed in DC n/t [97-56307] (SW)
- 09/29/1997 ☐ 3 Received orig District Court case file in 2 VOL CLK RECORDS 1 VOL EXPANDO, WITH DC ORDER DENYING REEQUEST FOR CERTIFICATE OF PROBABLE CAUSE. TO BE TREATED AS A REQUEST FOR CPC PURSUANT TO FRAP 22 (b). (MOATT). (SW)
- 10/24/1997 ☐ 4 Order filed: The request for a certificate of probable cause is denied. No motions for reconsideration, modification or clarification of this order shall be filed or entertained. (Procedurally Terminated After Other Judicial Action; CPC Denial. David R. THOMPSON; Thomas G. NELSON.) [97-56307] (FT)
- 10/29/1997 ☐ 6 District court casefile returned. (Certified Mail#: p196-169-101) (FT)
- 12/09/1997 ☐ 8 Rec'd notice of change of address from Andre Boston for Appellant Andre Boston in 96-56091, Andre Boston for Appellant Andre Boston in 97-56307 dated 11/4/97. [96-56091, 97-56307] (FT)
- 12/12/1997 ☐ 9 Received letter from pro se re: Requesting status of appeals. Sent copy docket. (AH)
- 03/03/1999 ☐ 10 NO ORIGINAL RECORD (BL)

- ☒ Documents and Docket Summary
☐ Documents Only

☒ Include page numbers

Selected Pages: 0 Selected Size: 0 KB

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Transaction Receipt			
07/07/2009 11:06:12			
PACER Login:	rf2317	Client Code:	
Description:	Docket Report (filtered)	Search Criteria:	97-56307
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IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DUPREE BOSTON,
Petitioner,
vs.
ANTHONY SCILLIA, WARDEN,
Respondent.

No. 57230

FILED

DEC 09 2010

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This is a proper person petition for a writ of habeas corpus. Petitioner challenges the validity of his judgment of conviction and prior habeas corpus proceedings. We have reviewed the documents submitted in this matter, and without deciding upon the merits of any claims raised therein, we decline to exercise original jurisdiction in this matter. A challenge to the validity of the judgment of conviction must be raised in a post-conviction petition for a writ of habeas corpus filed in the district court in the first instance.¹ NRS 34.724(2)(b); NRS 34.738(1). Accordingly, we

ORDER the petition DENIED.

Cherry, J.
Cherry

Saitta, J.
Saitta

Gibbons, J.
Gibbons

¹We express no opinion as to whether petitioner could meet the procedural requirements of NRS chapter 34.

cc: Andre Dupree Boston
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

VERIFICATION

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

Andre' Boston

Petitioner

Pro-Se

Attorney for Petitioner

CERTIFICATE OF SERVICES BY MAIL

I, Andre' Dupree Boston hereby certify, pursuant to N.R.C.P. 5(b), that on this 3 day of the month of January of the year 2011, I mailed a true and correct copy of the foregoing PETITION FOR WRIT OF HABEAS CORPUS addressed to:

Attorney General
Heroes' Memorial Building
Capital Complex
Carson City, Nevada 89710

David Roger

District Attorney of County of conviction

200 Lewis Ave., Las Vegas, NV 89101

Address

Andre' Boston

Signature of Petitioner

AA 000688

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

Andre' Dupree Boston
Petitioner,

Case No. _____

v.

Anthony Scillia
Warden, Respondent(s)

PETITION FOR WRIT OF HABEAS CORPUS

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HIM TO CREDIT FOR TIME SERVED UNDER THE
CONDITIONS.

55

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3
4 IN THE EIGHTH JUDICIAL DISTRICT COURT
5 COUNTY OF CLARK STATE OF NEVADA
6
7

8 Andre' Dupree Boston

Case No. _____

9 Petitioner

10 v.

11 Anthony Scillia

12 Warden, et. al.

13 Respondent(s)
14

15 PETITION FOR WRIT OF HABEAS CORPUS
16

17 Petitioner, Andre' Dupree Boston hereby petitions this court for a Writ of
18 Habeas Corpus and alleges the following points and authorities in support thereof.

19 Petitioner contends that he is currently incarcerated by the state of Nevada
20 under the jurisdiction of the Nevada Department of Corrections.

21 Petitioner contends that his incarceration is the basis of a conviction that he
22 received in case no. C-84650 from the Eighth Judicial District Court, Department Five before
23 the Honorable Judge John F. Mendoza, in Las

1 Vegas, Nevada rendered on October 20, 1988.

2 Petitioner contends that his conviction is illegal
3 and is in violation of established state case law precedence,
4 the Nevada Constitution, and the U.S. Constitution 6th,
5 8th, and 14th Amendments.

6 Petitioner bases his contention on the below
7 points and authorities.

8

9

PROCEDURAL HISTORY

10 On or about January 13, 1984, petitioner was
11 arrested by the Nevada Prosecuting Authorities, while
12 he was in the custody of the County of Los Angeles, California-
13 Juvenile Hall based on information charged in the juvenile
14 petition of case no J-28884 by the Eighth Judicial District
15 Court, Family Law/Juvenile Division. A detainer hold was
16 lodged against petitioner with the California Authorities.
17 Petitioner was originally being detained in the Los Angeles
18 County- California Juvenile Hall on a legal matter pending
19 in the California jurisdiction (See exhibit "O")

20 On or about October 1986, Nevada Prosecuting
21 Authorities made their first attempt to extradite petitioner
22 in the Municipal Court of California, County of Sacramento.
23 At this hearing, Nevada Officials could not present evidence
24 establishing the identification of the petitioner as the
25 person wanted for the offenses in Nevada. The court granted
26 a two week extension for Nevada Officials to return with
27 sufficient identification evidence.

28 On or about November 1986, after the two week

1 continuance Nevada Officials returned to the Sacramento
2 California Municipal Court for the next appearance. Nevada
3 Officials were still unable to produce sufficient (or
4 any) evidence to establish petitioner's identification
5 for the charged offenses. The court denied extradition
6 and informed Nevada Officials that they could reapply
7 for a second request of extradition when they had sufficient
8 evidence of identification. (See exhibit M)

9 On or about April 1988, petitioner filed a Motion
10 To Dismiss the case with Nevada Prosecuting Officials
11 due to the violation of his speedy trial rights and failure
12 to prosecute the case.

13 On or about May 1988, Nevada Officials sought
14 extradition for a second time in the Municipal Court
15 of Kern County, California. After three (03) continuances
16 due to a lack of identification evidence, Nevada Officials
17 produced a fingerprint taken at the time of the arrest
18 in January 1984, while petitioner was in the custody
19 of the Los Angeles County, California Juvenile Hall. Extradition
20 was granted on this basis.

21 On or about June 16, 1988, petitioner was extradited
22 from California to the State of Nevada.

23 On or about July 5, 1988, petitioner appeared
24 before the Family Division of the Eighth Judicial District
25 Court for a Certification Hearing. (This appearance was
26 due to the fact that though petitioner was at that point
27 a 22 year old adult, at the time of arrest for the
28 information/petition in case no. J-28884, he was sixteen

1 years of age and a juvenile.) Certification for jurisdiction
2 by the Family Court was denied due to petitioner being
3 an adult at that time. Petitioner was bound over for a
4 Preliminary Hearing examination for July 25, 1988.

5 On or about July 24, 1988, petitioner retained
6 counsel, John Fagden.

7 On or about July 25, 1988, petitioner and his
8 counsel appeared in court and sought a continuance for
9 counsel to file other motions relative to discovery, suppression
10 of evidence, etc.. The motion was denied.

11 On or about July 26, 1988, preliminary hearing
12 was conducted and petitioner was bound over to the Nevada
13 Eighth Judicial District Court, Department Five, case
14 no. C-84650.

15 On or about August 11, 1988, petitioner was
16 arraigned in the Eighth Judicial District Court of Nevada.
17 Counsel motioned the court to withdrawn as the attorney
18 of record and the court denied the request.

19 On or about August 18, 1988, petitioner filed
20 a Motion To Dismiss. The court informed petitioner that
21 because he had an attorney of record, the motion would
22 need to be submitted by counsel.

23 On or about September 15, 1988, petitioner was
24 convicted by the jury in case no. C-84650. (See exhibit
25 "D")

26 On or about October 12 ,1988, a Presentence
27 Report was filed.

28 On or about October 20, 1988, petitioner was

1 sentenced to a term of fourteen consecutive Life sentences
2 and a consecutive term of ninety two additional and consecutive
3 years. Counsel was instructed by the court to file a
4 Notice of Appeal in this matter. (See exhibit "E")

5 On or about November 1988, petitioner submitted
6 a Petition For Writ of Habeas Corpus to the Nevada Supreme
7 court for the constitutional violations in case no C-84650.
8 (See exhibit "G")

9 On or about December 27, 1988, the Nevada Supreme
10 Court denied the Petition For Writ of Habeas Corpus, citing
11 jurisdictional reasons. (See exhibit "H")

12 On or about January 24, 1989 , the Nevada Supreme
13 ordered the appointment of counsel in the appeal matter.
14 (See exhibit "F")

15 On or about November 28, 1990, the Petitioner
16 submitted his Petition For Post Conviction Relief. (See exhibit "F")

17 On or about December 14, 1990, the Petition
18 For Post Conviction Relief was heard and then denied.
19 (See exhibit "F")

20 On or about October 24, 1991, there was an oral
21 Request by the Nevada Supreme Court for further proceedings
22 regarding the denial of a motion for an evidentiary hearing.
23 (See exhibit "F")

24 Petitioner hereby attaches and incorporates
25 by references the minute orders of the court for clarification
26 or relevant and subsequent proceedings. (See exhibit "E")

27 //

28 //

STATEMENT OF THE FACTS

On or about March 12, 1983, petitioner, then a 15 year old minor was admitted into the Ingleside Mental Health Center by his parents after he was picked up by police for allegedly peeping into a neighbor's window and because his parents found letters describing in detail individuals in his neighborhood and former neighborhood that petitioner listed as potential victims to kidnap, rob and assault. (See exhibit "A")

The physicians at Ingleside Mental Health Center felt and recognized that petitioner had serious mental health concerns and felt strongly that petitioner needed further hospitalization thus they recommended he be kept at their facility. (See exhibit "A")

After the family insurance ran out to cover the stay, the physicians at Ingleside felt strongly that petitioner's impulses would be acted upon and not just fantasized. The treating physician documented that petitioner was a "time bomb" waiting to explode and that this danger will be minimized in a structured setting. The physician stated that the danger would be minimized as the petitioner gets older and learns to rechannel his aggressive drives and better able to deal with his emerging sexuality. The physicians then strongly recommended treatment in the Camarillo State Mental Health Hospital. (See exhibit "A")

Petitioner was not able to be transferred as scheduled because there were problems in getting him evaluated and three days before the transfer date, petitioner

1 went awol/escaped. His parents were able to talk him into
2 returning to the hospital. (See exhibit "A")

3 During his stay, petitioner was on Mellaril
4 prn and the last week of his hospitalization at Ingleside
5 he was placed on Mellaril 50 mg., hs...(See exhibit "A")

6 Petitioner was diagnosed as a boy with a severe
7 disorder involving poor impulse control, and poorly developed
8 conflicting superego formation. The prognosis was guarded.
9 The history indicated that petitioner was very aggressive
10 and violent, and it was given at the time, an impression
11 of schizophrernia. (See exhibit "A")

12 On May 16, 1983, petitioner was transferred
13 to the Camarillo State Mental Health Hospital, in Camarillo,
14 California. (See exhibit "B")

15 After evaluating petitioner , the physicians
16 at Camarillo State Mental Health Hospital stated they
17 believed petitioner could benefit from treatment at their
18 facility

19 Petitioner remained at Camarillo until July
20 16, 1983. The reason for the discharge was not that petitioner
21 had completed their program, but that petitioner's family
22 wanted him home on his birthday, which was the next day.
23 Petitioner was discharged Against Medical Advice "AMA"-
24 Status on that day. (See exhibit "B")

25 Five months after petitioner was taken out of
26 Camarillo, he was arrested and charged with the allegations
27 contained in the information before the Family Division
28 of the Eighth Judicial District Court , case no. J-28884.

1 On January 13, 1984, petitioner was charged
2 with having committed various felonies in Nevada including
3 but not limited to: Kidnap, Robbery, Assault and Battery,
4 Sexual Assault, Attempt to Dissuade a Victim From Reporting
5 a Crime, Burglary, Lewd and Lascivious Conduct and more,
6 all with weapon(s) enhancements. Petitioner (who was
7 a juvenile) was arrested while in the custody of the Los
8 Angeles, California- Juvenile Hall.

9 After being arrested by Nevada Officials, petitioner
10 "still" a juvenile, had no assistance to counsel to advise
11 him of his constitutional right to a speedy trial or fair
12 trial or to assist him on any matter of defense while
13 awaiting trial, faced the serious charged aforementioned.

14 The Nevada Prosecuting Officials made their
15 first attempt to extradite petitioner in October 1986
16 (2½-3 years after the arrest for the charges and while
17 knowing the whereabouts of petitioner the entire time.)
18 The request to extradite was denied based on insufficient
19 evidence to establish identification after a two week
20 continuance for Nevada Officials to secure said evidence.
21 (See exhibit "N")

22 In April 1988, after two years from the first
23 extradition attempt with no discernible efforts being
24 made to bring petitioner to stand for the outstanding
25 charges, petitioner filed a Motion To Dismiss for violation
26 of Speedy Trial Rights.

27 After filing the Motion To Dismiss, the Nevada
28 Court ordered the District Attorney to file a response.

1 Following the submission of the response and reply thereto,
2 Nevada Prosecuting Officials again sought extradition
3 from the California Officials.

4 There were three (03) continuances held before
5 the hearing was conducted and on the day of the extradition
6 hearing, the only witness called to identify petitioner
7 was the arresting officer from 1984 who had fingerprinted
8 petitioner while in the Los Angeles County Juvenile
9 Hall. The evidence used to corroborate the identification
10 by the arresting officer was the fingerprint taken by
11 the arresting officer which was matched against the fingerprint
12 taken when petitioner first entered the California Department
13 of Corrections. Extradition was granted on this basis.

14 On June 16, 1988, petitioner was extradited
15 to the State of Nevada. (See exhibit "L")

16 On July 5, 1988, petitioner appeared before
17 the Family Division of the Eighth Judicial District Court
18 for a Juvenile Certification Hearing. Petitioner who had
19 been charged as a juvenile in 1983 when the information/petition
20 was issued, was at this point of the certification hearing
21 (1988) 22 years of age and ineligible for treatment in
22 the Juvenile Court System. Petitioner had been incarcerated
23 in a Maximum Security Prison and the judge felt this negated
24 placement in a juvenile facility. Petitioner was certified
25 for proceedings as an adult and set to be arraigned in
26 The Justice Court. Petitioner attempted to submit a Motion
27 to Dismiss for Speedy Trial violation. The Juvenile court
28 dismissed the motion without prejudice informing petitioner

1 to resubmit his motion in a higher court. (See exhibit
2 "C")

3 On July 11, 1988, petitioner was arraigned in
4 the Justice Court, and a preliminary hearing examination
5 date was set for July 26, 1988.

6 Petitioner retained attorney John Fagden on
7 July 24, 1988, and when counsel appeared in court he requested
8 a continuance to investigate the case and to file other
9 motions (discovery, suppression of evidence, etc..) The
10 Motion For Continuance was denied.

11 Preliminary Hearing examinations were held on
12 July 28, 1988. Petitioner was identified as the perpetrator
13 of the offenses and was thereafter bound over to Department
14 Five.

15 On August 11, 1988, petitioner was arraigned
16 in the Eighth Judicial District Court. Also on this day,
17 petitioner informed his attorney that he could no longer
18 afford payment for his representation. Counsel informed
19 petitioner that he would be motioning the court to withdraw
20 as counsel.

21 On August 18, 1988, petitioner filed a Pro-Se
22 Motion To Dismiss in the Eighth Judicial District Court.
23 The court informed petitioner that because he had counsel
24 of record the Motion To Dismiss would be forwarded to
25 counsel. Counsel never filed the motion prior to trial.

26 Prior to trial, counsel who had been denied
27 by the court to withdraw his representation, did nothing
28 to investigate any facet of the case. Petitioner requested

1 the court to allow him to proceed in Pro-Se/Pro-Per status
2 since his counsel was doing nothing to prepare for the
3 case. The court denied the request.

4 Petitioner brought to the attention of the court
5 and counsel that there was evidence to demonstrate petitioner's
6 mental status at the time of the crime may have been in
7 question. Petitioner attempted to file and submit a Motion
8 For a Plea of Guilty By Reason of Insanity, but counsel
9 refused to file the motion or to present the defense of
10 insanity. The court also failed sua sponte to investigate
11 the petitioner's mental history.

12 On September 12, 1988, immediately preceding
13 the selection of the jury, counsel submitted petitioner's
14 Motion To Dismiss at the petitioner's urging. The motion
15 was denied after a cursory viewing.

16 Trial commenced with the petitioner having no
17 witnesses on his behalf, no defense submitted, nor any
18 type of representation against the charges. The passage
19 of time and ineffective representation of counsel left
20 petitioner defenseless to the charges.

21 On September 15, 1988, petitioner was found
22 guilty of the charges in case no. C-84650.

23 On October 12, 1988, a PreSentence Report was
24 filed by the State of Nevada Department of Probation and
25 Parole.

26 Based on all of the factors of the case and
27 the PreSentence Report, counsel had a duty to raise mitigating
28 circumstances (petitioner's age at the time of the offense,

1 mental health history, lack of a prior record and etc..)
2 recommending a lower sentence than that being requested
3 by the Parole/Probation Department. Counsel did not in
4 any way perform his duty to petitioner in representation
5 of his case.

6 On October 20, 1988, petitioner was sentenced
7 to fourteen (14) consecutive life sentences and an additional
8 term of ninety-two (92) years. After sentencing, the District
9 Attorney argued for the sentences to be run consecutively.
10 Petitioner's counsel halfheartedly attempted to argue
11 in opposition of consecutive sentences. The court elected
12 to run the sentence in Nevada consecutive to the term
13 in California (which the court had been advised petitioner
14 would not parole from until the beginning of the next
15 century). The court further ordered no credit for time
16 served at all, despite the fact that petitioner had been
17 in constructive custody of Nevada (via the Detainer Hold)
18 and suffered penalties from said hold adversely affecting
19 his incarceration status for several years.

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Tracie K. Lindeman
Clerk of Supreme Court

Case No. 62931 Clerk of Supreme Court

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MARTIN HART, ESQ.
Nevada Bar #005984
The Law Offices of Martin Hart, LLC
229 South Las Vegas Blvd., Suite 200
Las Vegas, Nevada 89101
(702) 380-4278

Counsel for Respondent

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CATHERINE CORTEZ MASTO
Nevada Attorney General

MARTIN HART, ESQ.
Counsel for Respondent

PARKER P. BROOKS
Deputy District Attorney

JONATHAN E. VANBOSKERCK
Chief Deputy District Attorney

Employee, Clark County
District Attorney's Office

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C 84650

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

RECEIVED *Filed*

OCT-22-1990

COUNTY CLERK

ANDRE' BOSTON,

PETITIONER,

VS.

PEOPLE OF THE STATE OF

NEVADA, - BRIAN MCKAY,

RESPONDENTS.

PETITION FOR POST CONVICTION
RELIEF PURSUANT TO NRS. 177.315

Serv for 11-13-90

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
- (3) If you want an attorney appointed, you must complete the affidavit in Support of Request to Proceed in forma Pauperis. You must have an authorized officer at the prison complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.
- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or the head of the institution. If you are not in a specific institution but within it's custody, name the director of the department of prisons.

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- (5) You must include all grounds or claims for relief which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed.
- (7) When the petition is fully completed, the original and one copy must be filed with the clerk of the district court for the county in which you are imprisoned or restrained of your liberty. One copy must be mailed to the respondent, 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: CALIFORNIA

CORRECTIONAL INSTITUTE at TEHACHAPI, CALIFORNIA level IV-B

2. Name and location of court which entered the judgement of conviction under attack: EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF CLARK

3. Date of judgement of conviction: OCTOBER 20, 1988

4. Case number: C-84,650

5. (a) Length of sentence: 14 life sentences and 92 years

consecutively

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

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

If yes, list crime, case number, and sentence being served at this time: _____

CALIFORNIA CRIMINAL CASE NUMBER A565679 for kidnap, assault, sexual assault
received 50 years

7. Nature of offense involved in conviction being challenged: _____

Kidnap, robbery, attempted assault, assault, attempt to dissuade a victim from
reporting a crime, burglary, battery, sexual assault

8. What was your plea? (check one)

(a) Not guilty x

(b) Guilty _____

(c) Nolo contendere _____

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

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

(a) Jury x

(b) Judge without a jury _____

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

12. Did you appeal from the judgement of conviction? Yes x No _____

13. If you did appeal, answer the following:

(a) Name of the court: NEVADA SUPREME COURT

(b) Case number or citation: 19607

(c) Result: DISMISSED

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

14. If you did not appeal, explain briefly why you did not: _____

15. Other than direct appeal from the judgement of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgement 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: NEVADA SUPREME COURT

(2) Nature of proceeding: PETITION FOR WRIT OF HABEAS CORPUS

CASE NO. 19625

(3) Grounds raised: INEFFECTIVE ASSISTANCE OF COUNSEL (same as presented herein)

(4) Did you receive an evidentiary hearing on your petition, application or motion? Yes _____ No x

(5) Result: DISMISSED/DENIED

(6) Date of result: 12-27-88

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

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

(1) Name of court: _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, 224

application, or motion? Yes _____ No _____

(5) Result: _____

(6) Date of result: _____

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

(c) As to any third or subsequent additional petitions, 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 x No _____

Citation or date of decision: see appendix (a)

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

Citation or date of decision: _____

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

Citation or date of decision: _____

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

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, post-conviction relief pursuant to NRS. 177.315, motion or application? If so, identify:

(a) Which of the grounds is the same: see appendix (a)

(b) The proceedings in which these grounds were raised: _____

PETITION FOR WRIT OF HABEAS CORPUS see no. 15 of this petition

(c) Briefly explain why you are again raising these grounds: _____

see appendix (b) pg. 18 line 11

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: _____

19. Are you filing this petition more than 2 years following the filing of the judgement of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay: NO

20. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgement under attack? Yes x No _____
If yes state what court and the case number: see appendix (a) and (b)

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: TRIAL COUNSEL- JOHN FAGDEN,
APPELLATE COUNSEL- MORGAN HARRIS OF THE PUBLIC DEFENDERS OFFICE

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

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.

(a) Ground One: see appendix, the ground is supported by
x additional facts necessary for this court to consider the merits of the issues.
SUPPORTING FACTS (tell your story briefly without citing cases or law.)

(b) Ground Two: _____ 226

SUPPORTING FACTS(tell your story briefly without citing cases or law.)

(c) Ground Three: _____

SUPPORTING FACTS(tell your story brief without citing case or law.)

(d) Ground Four: _____

SUPPORTING FACTS (tell your story briefly without citing cases or law.)

WHEREFORE, petitioner prays that the court grant petitioner the relief to which he may be entitled in this proceeding.

EXECUTED this 16th day of Oct, 1990 at C.C.I Tehachapi
California

ANDRE' BOSTON
DC3268 3A-102U
P.O. BOX 1902-B
TEHACHAPI, CALIFORNIA 93581

/s/ Andre' Boston
PETITIONER

VERIFICATION

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

Dated: 10-16-40

/s/ Andre' Boston
PETITIONER - Andre' Boston

APPENDIX

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7 STATE OF NEVADA
8 IN THE EIGHTH JUDICIAL DISTRICT COURT
9 FOR THE COUNTY OF CLARK
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11 ANDRE' BOSTON,

12 PETITIONER,

CASE NO. _____

13 VS.

14 STATE OF NEVADA, et al.,

15 _____
RESPONDENTS.
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PETITION FOR POST-CONVICTION RELIEF

ANDRE' BOSTON
DO3868 3A-102U
P.O. BOX 1902-B
TEHACHAPI, CA. 93561

LEGAL RESIDENCE:
1468 NORTH ALLEN AVE.
PASADENA, CA. 91104

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

ANDRE' BCSTON

PETITIONER,

VS.

STATE OF NEVADA, DISTRICT
COURT-EIGHTH JUDICIAL,
DISTRICT ATTORNEY, AND THE
ATTORNEY GENERAL OF THE
STATE OF NEVADA,

RESPONDENTS.

CASE NO. _____

PETITION FOR POST-CONVICTION RELIEF

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STATEMENT OF THE FACTS

Andre' Dupree Boston, Petitioner herein, Petitions this Court on Post-Conviction Relief and allege the following facts and causes;

Petitioner contends that he was illegally convicted of criminal case No. 84650, in the Eighth Judicial District Court, Department V, the Honorable John F. Mendoza Judge, presiding.

On January 13, 1984, a Petition was filed against Petitioner alleging that Petitioner committed 14 felony violations, in case No. J28884. The depositions, and the investigative reports indicate that the crimes were directed at, and perpetrated against one victim. (see exh. (a)).

Also on January 13, 1984, Petitioner was incarcerated and detained in the State of California, in the custody of the Los Angeles County Juvenile Hall of Justice, and Ward of the Court, Petitioner was 16 years old.

Petitioner was formally arrested by the State of Nevada, Clark County Authorities in January 1984. The arrest was made while Petitioner was detained in the State of California while he awaited the disposition of California criminal case No. A565679. Petitioner was convicted of Cal. crim. case No. A565679 in 1984 from a plea of guilty, the Clark County Authorities, the Prosecuting Authorities knew of this fact.

After being arrested by the Clark County Authorities, State of Nevada, Petitioner had not had the assistance of counsel to advise him of his Constitutional right to a fair trial, or to assist him in any matters of defense while he awaited extradition.

The Prosecuting Authorities of the State of Nevada made their first attempt to extradite Petitioner in October 1986. The request to extradite Petitioner was made in the Municipal Court of the County of Sacramento.

1 At the first hearing, the Prosecuting Authorities failed to
2 present sufficient evidence to establish the identity of Petitioner as
3 that of the person who committed the crimes charged in the Petition.

4 The Court ordered that the Nevada Prosecuting Authorities had
5 two (2) weeks to appear back in Court with sufficient evidence to
6 establish whether or not Petitioner fits the identity of the person who
7 the victim (s) can testify committed the crimes charged in the Petition.
8 The second hearing was held in November 1986, the Nevada Prosecuting
9 Authorities were not able to provide sufficient evidence to establish
10 the identity of Petitioner as the person who committed the crimes
11 charged in the Petition, so the Court denied the request to extradite
12 Petitioner to the State of Nevada.

13 Two years had passed without the Nevada Prosecuting Authorities
14 making any other attempt to extradite Petitioner, and Petitioner
15 recognize that if he was extradited to the State of Nevada to answer to
16 the crimes alleged in the Petition, the State of Nevada would not be
17 able to guarantee Petitioner a fair trial, because Petitioner would
18 not be able to find any competent evidence or witnesses, Petitioner
19 would not be able to investigate, and Petitioner would not be able to
20 competently assist his Attorney with the facts, and the defenses of the
21 case, because of all of the time that had passed so Petitioner filed a
22 Motion to Dismiss. (see exh. (A)).

23 After the filing of the Motion to Dismiss, the Court ordered
24 the District Attorney to file a response. After the filing of the Response
25 and the Reply thereto, the State of Nevada Prosecuting Authorities
26 requested an extradition hearing to be held in the Municipal Court of
27 Kern County, State of California.
28

1 There were three (3) continuances before the hearing was had, and
2 on the day of the extradition hearing, the only witnesses who was called
3 to identify Petitioner was the arresting officer who arrested Petitioner
4 and fingerprinted Petitioner in the Los Angeles County Juvenile Hall in
5 1984. The evidence that was used to corroborate the identification by the
6 arresting officer, was the finger-print taken by the officer of Petitioner,
7 which was matched with the finger-print taken by the California Department
8 of Corrections when Petitioner was received in their custody, there was
9 no evidence to connect Petitioner to the crimes charged in the Petition.
10 Petitioner was extradited on June 16, 1988. (See Exh. (A)).

11 On July 5, 1988, Petitioner appeared in the Eighth Judicial District
12 Court, State of Nevada, County of Clark, Juvenile Division, for a
13 Certification hearing. As stated above, Petitioner was 16 years old at
14 that the crimes were committed, and at the time of arrest. Petitioner
15 was Certified to stand trial as an Adult, Petitioner then again submitted
16 the Motion to Dismiss, the Court dismissed the Motion without prejudice,
17 and stated that Petitioner can refile the Motion in a higher Court, after
18 being Certified as an Adult, a criminal complaint was filed against
19 Petitioner See Exh. (B).

20 On July 11, 1988, Petitioner was arraigned in the Justice Court,
21 and a preliminary hearing examination date was set for July 26, 1988.

22 Petitioner then retained an Attorney on July 24, 1988, and on July
23 25, 1988, Petitioner's Attorney, John Fadgen, appeared in Court so that
24 he can register with the Court as Attorney of record. Defense counsel
25 then made an oral Motion for continuance in order to investigate the
26 case and to have time to file other Motion, e.g., discovery, evidence
27 hearings, and suppress. The Motion for continuance was denied.
28

1 Preliminary hearings examinations were held on July 26, 1988.
2 Petitioner was identified as the perpetrator of the crimes, and was
3 thereafter bound over to department V.

4 On August 11, 1988, Petitioner was arraigned in the District
5 Court, dept. V., also on August 11, 1988, Petitioner informed the
6 that he could no longer afford payment for his appointment. The
7 Attorney informed Petitioner that he will be Motioning the Court for
8 withdrawal.

9 On August 18, 1988, Petitioner filed the Motion to Dismiss in the
10 District Court, Dept. V., and the Court told Petitioner
11 he has counsel of record, that the Motion to dismiss was
12 to defense counsel. Petitioner's Attorney never filed.

13 Prior to trial, Petitioner's Attorney dismissed
14 the case, and it must be noted that Petitioner was
15 Attorney, and Petitioner requested the Court to
16 in Pro-Per. the request was denied.

17 Petitioner brought to the attention of the Court
18 that there was evidence to demonstrate that
19 time that the crimes were committed. Petitioner
20 submit a Motion for plea of guilty by reason
21 attorney refuse to file the Motion, and Petitioner
22 present the defense of insanity, and although
23 Petitioner prior mental status, the Court
24 sua sponte, to present the insanity defense
25 concerning insanity of Petitioner's past.

26 EN.
27 1 Petitioner also tried to
28 of the photographic identification material
procedures were tainted, and very suggestive
preliminary hearing examination line-up.

1 On 3, 12, 1983, Ander Dupree Boston, Petitioner 15 years old was
2 admitted into the Ingleside Mental Center, by his parents, after he was
3 picked up by police for peeping into a neighbor's window, and because
4 they (his parents) were concerned after finding a series of letters
5 describing, in detail, specific woman and girls in the neighborhood, and
6 from their (Petitioner's family) former neighborhood, that Petitioner
7 listed as potential victims to kidnap, rape, and murder.

8 The Doctors at the Ingleside Mental Center recognized that Petitioner
9 had serious mental problems, and they strongly felt that Petitioner needed
10 further hospitalization and recommended that Petitioner be sent to
11 Camarillo Mental State Hospital.

12 Petitioner was not able to be transferred as scheduled because there
13 was problems in getting County facilities to evaluate him, so the delays
14 dragged on for several days, and three days before the transfer date,
15 Petitioner Avail'ed. Petitioner's parents were able to talk Petitioner into
16 going back into the Hospital.

17 During Petitioner stay, he was on P.R.N. Mellaril, and the last
18 week of his hospitalization, he was placed on Mellaril 50 mg h.s..

19 Petitioner was diagnosed as a boy with a severe disorder involving
20 impulse control, poorly developed conflicted superego formation. The
21 prognosis was Guarded. The history indicated that Petitioner was very
22 aggressive and violent, and it was given at that time an impression of
23 Schizophrenia.

24 The Doctor felt very strongly that there is a danger that Petitioner's
25 impulses will be acted on and not just fantasized. He then stated that the
26 danger will minimize in a structured setting, and as Petitioner gets older
27 and learn to rechannel his aggressive drives and better able to deal with
28 his emerging sexuality. The Doctor then strongly recommended treatment in

1 a facility such as Camarillo. The recommendation was made to Petitioner's
2 Parents.

3 On 5, 16, 1983, Petitioner was recieved at Camarillo State Hospital.
4 He remained there until 7, 16, 1983.

5 After coming to the conclusion as the Doctors at the Ingleside
6 Mental Center, the Doctors at Camarillo stated that the Doctors at
7 Ingleside told petitioner was a timebomb! (see exhibit (b)).

8 After evaluating Petitioner, the Doctors at Camarillo stated that
9 they believed Petitioner could benefit from their treatment on their
10 Unit 17, and the wide rang of therapy and activities on that program.

11 As stated above, Petitioner remained at the hospital until
12 7, 16, 1983. The reason for the discharge was not that Petitioner had
13 completed their program, but Petitioner's family wanted him home on his
14 birthday, which was the next day, on 7, 17, 1983.

15 Five Months after Petitioner was taken out of Comarillo State
16 Hospital, he was arrested and charged with allegations contained in
17 the Petition of case No. A565679, Cal., and Nevada Petition case No.
18 XVI J28994. See Exh. (a)).

19 Petitioner tried to submit the Motion for dismissal two (2) additional
20 times. Petitioner's Attorney ignored the Motions and Petitioner's efforts.

21 On September 15, 1985, Petitioner was convicted by Jury. After
22 Petitioner was convicted, a pre-sentence Report was filed on October 12,
23 1985, by the State of Nevada Department of Probation and Parole.

24 Based on all of the exhibits forementioned, and the pre-sentence
25 Report, Petitioner's Attorney had a duty to file a Motion recommending
26 a lower sentence then that of which the Probation Department requested.
27
28 //

1 The crux of this case was based on sexual assaults against one
2 victim, purportedly perpetrated by the accused five (5) years ago, while
3 the accused was only 16 years old, with indications that the accused was
4 suffering from a mental disorder at the time of the crimes.

5 All of the crimes shared the same objective, perpetrated on the
6 same day, at the same time, during one (1) continuance course of conduct.

7 Petitioner's Attorney failed to file any Motions for the sentencing
8 hearing, and considering all of the errors which committed before, during
9 and after trial, i.e.,
10

11 1. Petitioner was denied his Constitutional protections during the
12 Certification Hearing, because, his age factors were ignored, the
13 time delay factors were ignored, and the facts concerning the
14 insanity of Petitioner during the time that the crimes were committed
15 were ignored. All of these factors, Petitioner contends would have
16 had a bearing on the outcome of the hearing itself.
17

18 2. Defense counsel was denied a continuance in order to investigate
19 the case, and because the preliminary hearing examinations were
20 held the very next day, also because of the facts of the time delay
21 and Petitioner's past insanity, Petitioner's Attorney needed a
22 continuance, Petitioner was therefore prejudiced.
23

24 3. Petitioner was denied the right to fair identification procedures.
25 The case at bar is five (5) years old, and the victim in this case
26 stated that the perpetrator wore a mask, and the other witnesses
27 stated that the perpetrator was 5'5" 140 lbs, and had a mustash.
28 Considering the fact that the case was five (5) years old, and it was

1 five years since the last time the victim and the witnesses seen
2 the perpetrator, and sence the discription was vague, a pre-preliminary
3 hearing examination line-up was necessary, and because one was not
4 had, then the facts that Petitioner was the only person in the Court
5 room with jail garb on, and because Petitioner was the only black
6 person in the Court room, Petitioner contends that the victim and
7 the witnesses relied on speculation when they "picked him out",
8 identified him in Court during the preliminary hearing examination.
9

10 4. Petitioner was dressed in jail garb on the day that the jury was
11 selected, and defense counsel made an objection, it was obviously
12 an error that should have been furhter litigated.
13

14 5. During the trial of this case, a witnesses was called for the
15 prosecution, who was the victim from Petitioner's case in California,
16 criminal case No. A 565679. The reason that the Prosecutor called
17 this witness was to show a patern and plan of excution. An objection
18 was made by defense counsel, and the Court overruled the objection.
19 Petitioner contends that the reason that he was prejudiced by the
20 testimony of the witness, is because the witness never testified
21 during anyof the proceedings of the California case. There was a
22 statement given to the investigating officers of the case in Jan.
23 1994, but the legality of the statement was never challenged in
24 the case because there was no preliminary hearing examination, nor
25 was there ever a trial. The second reason that Petitioner contends
26 that the witness should not have been allowed to testify during trial
27 is because the California has been reopened, and a hearing date is
28 pending, so who's to say what really happened in the Cal. case?

1 Petitioner has no ther remedy sppedy or adequate at law,
2 therefore petitioner respectfully pray that this court hold an evidentiary
3 hearing to determine the truth of the allegations ascerted herain, and
4 after the hearing if the court determines that petitioner's rights have
5 been violated, consider the exhibits/evidence to determine whether or not
6 petitioner will ever be able to receive a fair trial.
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12 VERIFICATION

13
14 I declare under the penalty of perjury of the laws of the state of
15 Nevada and of the United States that the foregoing is true and correct.
16

17 Executed on this 16th day of Oct, 19 90
18 at CCI Tehachapi California
19

20
21 /s/ Andre' Boston
22 ANDRE' BOSTON-PETITIONER
23 PROCEEDING IN PRO-PER
24
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1
2 ARGUMENTS POINTS AND AUTHORITIES
3
4

5 1.

6 POST-CONVICTION IS A REMEDY AVAILABLE TO
7 PETITIONER AND APPROPRIATE FOR PRESENTING
8 THE CLAIMS
9

10 NRS. 177.315 states in part as follows:

- 11 1. Any person convicted of a crime and under sentence of death
12 or imprisonment in the state prison who claims that the
13 conviction was obtained, or that the sentence was imposed, in
14 violation of the Constitution of the United States or the
15 Constitution of this state may, without paying a filing fee,
16 apply for post-conviction relief from the conviction or
17 sentence.
18
19 2. The remedy provided in this section is not a substitute for
20 nor does it affect any remedies which are incident to the
21 proceedings in the trial court, the remedy of direct review
22 of the sentence or conviction or the writ of habeas corpus.
23 It comprehends and takes the place of all other common law,
24 statutory or other remedies which have heretofore been
25 available for challenging the validity of the conviction or
26 sentence, and must be used exclusively in place of them.
27
28 3. Unless there is good cause shown for delay, a proceeding
under NRS. 177.315 to 177.385, inclusive, must be filed within
1 year after the entry of judgement from conviction or, if
an appeal has been taken from such judgement, within 1 year
after the final decision upon or pursuant to the appeal.
4. The execution of a sentence shall not be stayed for the period
provided in subsection 3 simply because a petition for post-
conviction relief may be filed within that period. A petition
for post-conviction relief must actually be filed or the
petitioner must show other reasons why a stay should be
granted.

1 In absence of exceptional circumstances, a state prisoner is
2 not entitled to Federal Habeas Corpus where he has not exhausted his state
3 remedies which are adequate. Preiser V. Rodriguez 36 L.Ed 2d 439; or
4 effective Watson V. Patterson 358 F2d 297.....but the requirement is
5 satisfied where the remedy is inadequate, In re Hawk, 88 L.Ed 572; or
6 resort thereto would be futile, Reynolds V. Lockhart 497 F2d 314; or
7 where circumstances exist rendering state corrective process ineffective
8 to protect the applicant's rights. Prescher V. Crouse 431 F2d 209.

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PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL
AS GUARANTEED BY THE STATE AND UNITED STATES CONSTITUTION.

Petitioner stated in the statement of the facts, and supported by exhibits, numerous allegations against his trial Attorney, claims of errors during trial, after trial and before trial, errors and defenses which Petitioner Attorney was aware of, but ignored, and i.e., denied Petitioner the right to a fair trial.

Counsel failed to investigate matters of defense, counsel failed to object and challenge errors which violate Petitioner's right to a fair trial, counsel failed to raise crucial matters of defenses, counsel failed to file Motions for mistrial, Motions to dismiss, or Motions for New trial, and Motion at sentencing. Counsel was ineffective.

In the case of McQueen v. Swenson, 498 F. 2d 207, the Court ruled that in order for counsel to be effective, counsel must conduct appropriate investigations, both factual and legal, to determine what matters of defense can be raised and developed.

In the case of Newberry V. Wingo, 449 F. 2d 344, the United States Court of Appeals, held that if the trial Court proceed with criminal prosecution immediately after appointment of counsel for the defense, and without giving counsel an opportunity to prepare for the proceedings, entitled defendant to habeas corpus relief.

In this case at bar, defense counsel was denied a continuance after he was retained one day before preliminary hearing examinations, also see Williams V. Eriener, 291 F. Supp. 912, 921; counsel was appointed the morning before arraignment, his Motion for continuance was denied, the Court held that defendant was prejudiced.

1 The Court in the case of Rummel V. Estelle, 498 F. Supp. 793, 795,
2 ruled that counsel has a duty to interview potential witnesses, and make
3 an independent examination of the facts, circumstances, pleadings, and
4 laws involved...., investigation and preparation are the keys to effective
5 representation. Also see 6 A.L.R. 4th 1208 and 2 A.L.R. 4th 1.

6 Defense counsel also ignored all of the mitigating factors for
7 consideration at the sentencing stage of this case, this is error. In the
8 case of Voyles V. Watkins, 489 F. Supp. 901, the Court ruled that sentencing
9 is a crucial stage of the criminal proceedings at which [the defendant]
10 is entitled to the effective assistance of counsel.

11 The United States Supreme Court, in the case of Gardner V. Florida,
12 430 U.S. 358, 51 L. Ed. 2d 402, ruled that effective assistance of
13 counsel at sentencing, as at other stages, requires zealous, and not
14 merely perfunctory or Pro-forma representation.

15 Petitioner has attached, a number of Motions which counsel failed
16 to file, and it is demonstrated that the Motion pertain to crucial issues
17 which would have effected the outcome of Petitioner's case, counsel was
18 ineffective for failure to file all of the crucial defense Motions, see
19 Wilson V. Rhend, 417 F. 2d 1197.

20 Last but not least, Petitioner contends that his trial Attorney
21 deprived him and withdrew from him a meritorious defense, the defense of
22 of insanity at the time of the crime.

23 It is well settled that insanity at that time of the offense is a
24 legal defense, because, i.e., what it does is take away the necessary
25 mental intent to commit the act.

26 The legal capacity to commit a crime is an essential element of
27 responsibility, and no one can be held responsible for an act, or even
28 be guilty of a crime unless he has sufficient capacity, mental, and other-

1 wise to commit it; Wells V. California, 94 L. Ed. 510, 338 U.S. 836.

2 Without a criminal intent, there is no crime, and without the
3 mental capacity for it, there can be no criminal intent; State V. Jensen,
4 352 U.S. 948, 1 L.Ed 2d 241,

5 One who has suffered from insanity at that time of the commission
6 of the offense charged, cannot in a legal sense entertain a criminal intent;
7 Fox V. State of Nevada, 316 P. 2d 924, 73 Nev. 241, and cannot be held
8 criminally responsible for his acts, and statutes providing that insanity
9 shall be no defense to a criminal charge would be invalid; Hall V. Johnston,
10 91 F. 2d 363; Witnev V. Zerbest, 62 F. 2d 970; Edwards V. Steele, 112 F.
11 Supp. 362; Dixon V. Steele, 104 F. Supp. 904; United States V. Fore, 38 F.
12 Supp. 140.

13 As the term is used in connection with the defense of insanity,
14 by whatever test it may ascertained, may be said to be that the degree or
15 quantity of mental disorder which relieves one of criminal responsibility
16 of his actions. Sollars V. State of Nevada, 316 P. 2d 917, 73 Nev. 248.

17 The term "mental irresponsibility" as used alternatively with
18 "insanity" in criminal statutes, means something less than total or
19 permanent insanity; State V. Rio, 230 P. 2d 308.

20 Counsel failed to argue a perfect defense, counsel was ineffective;
21 see Smith V. Baldi, 192 P. 2d 540; Strickland V. Washington, 80 L. Ed 2d 674.

22 CONCLUSION

23 For the foregoing reasons, the judgment of conviction must be
24 reversed, and the Court must determine whether Petitioner will ever receive
25 a fair trial, because of all of the errors, and the lapses of time.

26
27
28 15/ Andre' Boston
ANDRE' DUPREE BOSTON, PETITIONER

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CERTIFICATE OF SERVICE BY MAIL

I, KEENAN VINSON, hereby certify that pursuant to N.R.C.P. 5(b), that on this 16 day of October, 1990, I mailed a true and correct of the foregoing Petition For Post-Conviction Relief addressed to:

ATTORNEY GENERAL
HEROES MEMORIAL BUILDING
CAPITOL COMPLEX
CARSON CITY, NV 89710

_____ COPY

DISTRICT COURT-EIGHTH JUDICIAL
CLERK OF THE COURT
200 S. 3d St.
LAS VEGAS, NV. 89101

_____ ORIGINAL AND A COPY

REX BELL
DISTRICT ATTORNEY
200 S. THIRD ST.
LAS VEGAS, NV. 89155

_____ COPY

I certify under the penalty of perjury that the above is true and correct
executed this 16 day of October, 1990

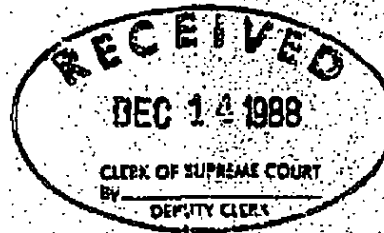
/s/ Keenan Vinson
SIGNATURE

Exhibit "A"

copy

California Prison Address:
Andre' D. Boston
D-03868 3A-102
P.O. Box 1502-B
Tehachapi, California 93561

LEGAL RESIDENCE: 2804 Samantha
North Las Vegas, Nevada 89030



SUPREME COURT OF NEVADA

PEOPLE OF THE STATE OF NEVADA,

PLAINTIFF AND APPELLEE,

V.

ANDRE' DUFRES' BOSTON

DEFENDANT, AND APPELLANT.

DOCKET NO. _____

LOWER COURT

DOCKET NO. C-84650

JUVENILE DIV.

DEPT. N. NO. XVI J 28384

In re Boston

Petitioner

On Habeas Corpus /

NOTICE OF LODGING OF DOCUMENTS

Petitioner hereby lodge with the court for consideration in connection with these proceedings the following documents from the above case name:

1. The Petition filed in this case;
2. The arrest warrant;
3. The search warrant, number 85-147;
4. The incident / crime report, number 85-72900;
5. Affidavit of Officer M. Carpenter;

- 6, Incident Report, No. 83-81854;
- 7, Follow up Reports, No. 83-81854;
- 8, Affidavit of Michael R. Mc Laughlin;
- 9, Copy of the Motion for Dismiss for speedy trial delay;
- 10, Response to the Motion to Dismiss, Case No. J 28884
- 11, Reply to the Response to the Motion, Case No. J 28884
- 12, Felony Complaint, Case No. J28884
- 13, Transportation Order, Case. No. J28884
- 14, Temporary Custody Record/Declaration of Arrest,
I.D. No. 920638.
- 15, Agreement on Detainer; form IV
- 16, Tech. Investigations service Report Case No. PX 760
- 17, Finger-print Card No. CA0194600
- 18, Finger-print Card No. Class K1079
- 19, Request to Schedule Court date, case No. J28884
- 20, Extradition minutes, case No. PW000760 (Kern Co. Court)
- 21, Dispositional Report, case No. J28884
- 22, Criminal Complaint case No. 5564
- 23, Motion to Dismiss, case No. C-84650
- 24, Motion for plea of guilty by reason of insanity,
case No. C84650
- 25, IngleSide Mental Health Center Discharge Summary,
Hospital No. 18551-01
- 26, Superior Court of California, Co. of L.A. Probation
Officer's Report, case No. A565679
- 27, State of Nevada Department of Probation and Parole,
Case No. B4650
- 28, Motion for New Trial, Case No. C-84650

29, Motion to Dismiss, Case No. CB4650

30, "" "" "" ""

31, Notice of Appeal, Case CB4650

32, "" "" ""

33, Schedule for Appeal Case C-84650

The documents are in two volumes, from exhibits a through and to e in the first volume, and from exhibits d through and to e in the second volume.

It is respectfully requested that the documents lodged pursuant to this notice be return to Petitioner upon completion of the instant proceedings. Petitioner is furnishing the Court with his only filed copy, of the above documents, and may require these documents to file any further Petitions for Post-conviction relief.

Dated 12.9.88

Respectfully submitted

/s/ Andre Costen
ANDRE DUFRERE BOSTON PETITIONER

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AA 000487

Exhibit "B"

REFERRAL AND REPORT

Clinic or Service _____ for Person _____

Reason for Referral: _____

Signature: _____ Date: _____ Unit: _____

Date Dictated:

5-16-83

REPORT

Date Typed:

5-16-83

5-17-83

Unit 17 - SOCIAL HISTORY EVALUATION

Identifying Information: Andre Boston is a fifteen year old, black male, religion unknown, born 7-17-67 in Illinois. He is single, with brown eyes, black hair, five feet nine inches tall, one hundred fifty-three pounds. He is well dressed and well groomed. His legal status is 5150 which has now been changed to 5250. Andre was admitted on 5-6-83. The referral source was the Los Angeles Mental Health. Reason for referral is that Andre was brought in by the PET team after his arrest for voyeurism on a neighborhood woman and after his mother found letters in which the patient described how he intended to kidnap, rape and murder three to six women; one of those was a neighbor. He has run away from home about three times recently and at one time was away for six weeks. He comes to us from Ingleside Hospital where he has been for six to eight weeks. His insurance ran out and Ingleside Hospital suggested a longer placement.

Significant others are his father, Elliott Boston, age thirty-three, Rosemary Boston, age thirty-two, his parents. The home telephone number is 714 861-4503. The mother's work telephone number is 213 413-1313, extension 259. The parents and two younger siblings, Elliott thirteen, and Telisa age ten, live at 21930 East Birdseye Road, Diamond Bar, California. Andre's Social Security number is 454-53-2634. The sources of information are the evaluations done at Ingleside Hospital and the accounts given by his parents.

Presenting Problems: Over the last few years Andre has been getting increasing lower grades at school and has been running away from home for periods up to six weeks. At these times he has been staying with friends. He has run away several times previously but this is the first time he's stayed out more than a day. The mother was quite concerned about finding bizarre letters, threatening to murder and rape neighborhood females. Andre had these letters in his room but never mailed them.

Plans to
I saw some of these letters which the mother brought in. One is a ransom note for \$690. It has explicit accounts of having kidnapped a teenage girl and writing letters of ransom to her father explaining explicitly accounts of rape, torture and possible murder. There is another letter which had a list of

PROBLEM NO. _____ Page 1 TITLE BOSTON, Andre 183373-0 ☒ Continued

REFERRAL AND REPORT

☐ CONSULTATION ☒ EVALUATION ☐ SERVICE

- | | | |
|--|---|--|
| <input type="checkbox"/> Audiometric | <input type="checkbox"/> Medical | <input type="checkbox"/> Psychological |
| <input type="checkbox"/> Dental | <input type="checkbox"/> Physical Therapy | <input type="checkbox"/> Rehabilitation |
| <input type="checkbox"/> Developmental | <input type="checkbox"/> Podiatry | <input checked="" type="checkbox"/> Social |
| <input type="checkbox"/> Education | <input type="checkbox"/> Psychiatric | <input type="checkbox"/> Speech |
| <input type="checkbox"/> Other: _____ | | |

Confidential Client/Patient Information
See W & I Code 5328

BOSTON, ANDRE
CAM 183373-0 W SGL BL 7-17-67
5-4-83 LA DET 5150 ILL
5-5-83 LA CERT 5250 IN

REFERRAL AND REPORT

Clinic or Service _____

(or) Person _____

Reason for Referral: _____

Signature: _____

Date: _____

Unit: _____

Date Dictated: _____

5-16-83

REPORT

Date Typed: _____

5-16-83

5-17-83

Unit 17 - SOCIAL HISTORY EVALUATION

(continued)

things, one mask, two pieces of tape, rope, one gun, one knife, two blankets, food and drink, \$10 in cash, a pair of scissors and a flashlight. Apparently this was written to remind him what to take on the kidnapping. Most of these letters are signed "Youth of America--Thieves of Crime". The mother was quite upset by these letters, naturally. She stated Andre has not accepted his race and wants to be white. All these letters are written about white young ladies. He calls black women derogatory names. The mother is upset about this because she is a black woman. She stated Andre has never been truthful. One time last July at 2:00 in the morning, Andre dressed all in black and had a mask over his head. He walked out at 2:00 in the morning, leaving the front door open. The mother was quite concerned about this. Andre has never admitted why he was going out dressed in such a manner and she was afraid because the father was out of the home at work and she was home alone with her ten year old daughter and anyone could have walked into the house.

Background Problems: Andre has never been able to discuss matters with his parents very easily. He usually sulks and says nothing. He has run away, including overnight, since the age of eight. The last time he ran away from home was December when he was gone six weeks. At this time family had just moved from Duarte to Diamond Bar and Andre was upset about the move, claiming that it was very difficult to make new friends in the new area. He went to stay with a family in Duarte but his parents did not know where he was. He went home on 3-11-83. Shortly afterwards the police picked him up for peeping in a woman's window. He was put on probation. His family then sent him to Ingleside Lodge where he stayed for about six weeks. While he was there the family found these ransom letters described above. He also wrote what can be called perverted sexual letters, explaining how these girls had to die. The doctor at Ingleside told the family that Andre was a timebomb. The family would like him to stay at Camarillo State Hospital for treatment.

Family Constellation and Dynamics: The family consists of the mother, father, and two other siblings, a boy and a girl. Since they have been a family they have moved from Texas to California, from Chicago and they moved two times in each place. The family earns about \$50,000 a year when both parents are employed. The father was recently in Saudi Arabia for thirteen months, working

PROBLEM NO. Page 2 TITLE BOSTON, Andre 183373-0

Continued

REFERRAL AND REPORT

☐ CONSULTATION ☒ EVALUATION ☐ SERVICE :

<input type="checkbox"/> Audiometric	<input type="checkbox"/> Medical	<input type="checkbox"/> Psychological
<input type="checkbox"/> Dental	<input type="checkbox"/> Physical Therapy	<input type="checkbox"/> Rehabilitation
<input type="checkbox"/> Developmental	<input type="checkbox"/> Podiatry	<input checked="" type="checkbox"/> Social
<input type="checkbox"/> Education	<input type="checkbox"/> Psychiatric	<input type="checkbox"/> Speech
<input type="checkbox"/> Other: _____		

Confidential Client/Patient Information

See W & I Code 5328

BOSTON, ANDRE

CAM 183373-0 M SCL BL 7-17-67

5-4-83 LA DET 5150

ILL

5-5-83 LA CERT 5255

UN

REFERRAL AND REPORT

Date of Service

(or) Person

Reason for Referral:

Signature:

Date:

Unit:

Date Dictated:

5-16-83

REPORT

Date Typed:

5-16-83

5-17-83

Unit 17 - SOCIAL HISTORY EVALUATION

(continued)

for Aramco. Since he has been home he has been unemployed except for part time jobs but is looking for a full time permanent job at this time. The mother said she had a hard childhood herself. Andre was born when she was sixteen. The family has been upwardly mobile and have worked hard to buy the house in Diamond Bar. When he was employed the father was the purchasing agent for Aramco. The mother is working for Ross-Loos. The two younger children are doing well. The other boy had some problems that have been straightened out.

Developmental History: As a baby, Andre cried a lot. He wanted to be with his mother all of the time. Since he was the only child and the first child in the family he is described as having been spoiled. Between the ages of two and three, he beat his head against the wall and had temper tantrums. He has had no serious illness. He has had treatment for a club foot at the age of six months and the surgery was successful. Andre has had no problems with peers except recently. He felt that peers are challenging to him and has become hostile to them. He is otherwise described as well behaved and a "gentleman".

Schooling: Andre was attending the tenth grade at school. There has been a slow decline in school since his earliest years. One IQ test indicates he has an IQ of about 110.

For hobbies Andre likes football, baseball, drawing, history and art.

Summary and Evaluation: A psychological from Ingleside describes Andre as passive with a helpless attitude which influences his judgment. His psychopathology shows itself mostly in unstructured situations. He handles conflicts in a paranoid manner. He has difficulty in controlling the welling up of hostile impulses. He needs to find out how to handle hostility in an acceptable manner and to react more actively to his environment. Andre perceives his father as absent or disinterested. His sexual behavior and aggression elicit considerable superego conflict, according to the psychological report.

Treatment Recommendations and Discharge Plan: Andre's parents both want him to receive treatment. They believe this is a preventative measure before Andre does something serious and hurts someone. Andre appears a timid, soft-spoken individual who has problems expressing his aggression and who seems overwhelmed.

PROBLEM NO. Page 3

TITLE BOSTON, Andre 183373-0

☒ Continued

REFERRAL AND REPORT

☐ CONSULTATION☒ EVALUATION☐ SERVICE☐ Audiometric☐ Medical☐ Psychological☐ Dental☐ Physical Therapy☐ Rehabilitation☐ Developmental☐ Podiatry☒ Social☐ Education☐ Psychiatric☐ Speech☐ Other:

Confidential Client/Patient Information

See W & I Code 5328

BOSTON, ANDRE

CAM 183373-0 M SGL BL

7-17-67

5-4-83 LA DET 5100

ILL

5-5-83 LA DET 5250

III

REFERRAL AND REPORT

Clinic of Service: _____

(or) Person: _____

Reason for Referral: _____

Signature: _____

Date: _____

Unit: _____

Date Dictated: _____

5-16-83

REPORT

Date Typed: _____

5-16-83

5-17-83

Unit 17 - SOCIAL HISTORY EVALUATION

(continued)

trying to control his hostile impulses. He has an identity problem and is not accepting of being black. We believe he could benefit by treatment on Unit 17. Because his parents do not want to have him home until he was evaluated or treated, the only alternative would be a placement. Andre and his parents do not want this and in view of the symptoms it is unlikely a placement would accept him before we know more about him. Since Andre has a great many positives and has an increasingly bizarre history of writing strange notes, we think he should try the program on Unit 17 and that he will benefit by the wide range of therapy and activities on that program.

M. Sevren
M. Sevren, L.C.S.W.
Unit Social Worker
cc

L.C.S.W.

PROBLEM NO. Page 4 TITLE BOSTON, Andre 183373-0

☐ Continued

REFERRAL AND REPORT

☐ CONSULTATION☒ EVALUATION☐ SERVICE☐ Audiometric☐ Medical☐ Psychological☐ Dental☐ Physical Therapy☐ Rehabilitation☐ Developmental☐ Podiatry☒ Social☐ Education☐ Psychiatric☐ Speech☐ Other: _____

Confidential Client/Patient Information

See W & I Code 5328

BOSTON, ANDRE

CAM 183373-0 M SCL BL

7-17-87

5-4-93 LA DET 5150

ILL

5-5-83 LA CERT 5250

ILL

Clinic or Service

Reason for Referral

Date

Signature

Title

REPORT

Date of Report: 5-5-83
Date Dictated: 5-5-83
Date Typed: 5-6-83

5-5-83 - ADMISSION NOTE

Allergies: None.

Med. taken in the last four hours: None.

Present Illness:

Patient is a 15 year-old, single, black, adolescent male, admitted to Camrillo State Hospital on a 5150 from Los Angeles Mental Health, alleging that the patient was brought in by the Psychiatric Emergency Team after his arrest for voyeurism on a neighbor female, and his mother found letters in which the patient described how he intended to kidnap, rape, and murder three to six blond women--one a neighbor. He has run away from home three times recently. Diagnosis is 309.90.

Mental Status Examination:

Oriented 3 times. Affect appropriate. Associations tight. Denies auditory or visual hallucinations, delusions, flight of ideas, ideas of reference, persecutory ideas, psychic or religious powers. Denies depression or suicidal ideation. Insight and judgment impaired.

Physical Status Examination:

Head and Neck: Pupils equal, react to light and accommodation, neck supple.

Lungs: Negative to percussion and auscultation.

Heart: Regular sinus rhythm, no murmurs.

Abdomen: No tenderness, no masses.

Extremities: No deformities.

Neurologically intact. Patient verbalizes no physical complaints.

Provisional Diagnoses:

Axis I: V/1.02 - Adolescent antisocial behavior.

Axis II: 799.90 - Diagnosis deferred.

Axis III: 000.00 - Without somatic disorder.

[Signature] N.D.
Jc

Consultation Continuation Page 1 ☐ Continued

CONSULTATION REFERRAL AND REPORT

ER

BOSTON, Andre CAM 1E3373-0

☐ Enter letter of service

A - Audiometric
B - Dental
C - Developmental
D - Education
X - Other

E - Medical
F - Nursing
G - Nutritional
H - Physical Therapy

I - Psychiatric
J - Psychological
K - Rehabilitation
L - Social
M - Speech

BOSTON, ANDRE
CAM 1E3373-0 H SGL BL 7-17-67
5-4-83 LA DET 5150 ILL
259 03

AA 000493

REFERRAL AND REPORT

Clinic or Service _____ for Person _____

Reason for Referral: _____

Signature: _____ Date: _____ Unit: _____

Date Dictated: 5-10-83 REPORT
Date Typed: 5-11-83

Unit 17

System Review: See separate form

Physical Examination: See separate form.

Present Illness: Other members of the treatment team present include Larry Watson, Ph.D., Psychologist; M. Sevren, LCSW, Ed Williams, RN, Lucy Silbert, LCSW. Andre is a 15 year old adolescent male admitted to Camarillo State Hospital on 5150 status. He had been arrested for voyeurism on a neighbor female. His mother had also found several threatening letters regarding harm to several blond women, one of them a neighbor. Andre also has a history of runaway from home times three recently. Chief complaint at the time of the interview was "I cut through a lady's back yard and she thought I was a burglar and had me arrested." Andre states that his family has moved yearly for several years and that the new location that they moved to in Diamond Bar was unsatisfactory to him because he had no been able to make new friendships. Patient states that he has ditched a lot of school and has frequent runaway behavior but has never seriously run afoul of the law previously. He denies ever being suicidal or experiencing psychotic symptoms.

Mental Status: Reveals a well developed, well nourished, intelligent appearing, robust adolescent male who is in no acute distress. There is no evidence of delusions or hallucinations. Associations are tight. Affect is appropriate.

Diagnosis:

Axis I: V71.02, Adolescent antisocial behavior

Axis II: 799.90, Diagnosis deferred

Axis III: 000.00, Without somatic disorder

Axis IV: 0 - unspecified

Axis V: 0 - unspecified

Treatment Plan: Includes group therapy, milieu therapy, individual therapy, occupational therapy and school therapy.

Kenneth Johnson, M.D.
Kenneth Johnson, M.D.
cb

Page 2

BOSTON, Andre 183373

PROBLEM NO. _____ TITLE _____ ☐ Continued

REFERRAL AND REPORT

- | | | |
|--|---|---|
| <input type="checkbox"/> CONSULTATION | <input type="checkbox"/> EVALUATION | <input type="checkbox"/> SERVICE |
| <input type="checkbox"/> Audiometric | <input type="checkbox"/> Medical | <input type="checkbox"/> Psychological |
| <input type="checkbox"/> Dental | <input type="checkbox"/> Physical Therapy | <input type="checkbox"/> Rehabilitation |
| <input type="checkbox"/> Developmental | <input type="checkbox"/> Podiatry | <input type="checkbox"/> Social |
| <input type="checkbox"/> Education | <input type="checkbox"/> Psychiatric | <input type="checkbox"/> Speech |
| <input type="checkbox"/> Other: _____ | | |

Confidential Client/Patient Information

DS 2733 (7/78)

See W & I Code 5378

ADDRESSOGRAPH

BOSTON, ANDRE

CAM 183373-0 2 SCL BL

4-4-83 LA DET 5150

5-5-83 LA CERT 5250

7-14-87

LLC

260 17
AA 000494

SEE DIRECTIONS ON BACK

Suggest follow-up contact with patient: ☐ 3 days from discharge ☐ 7 days from discharge ☐ 14 days from discharge ☐ Other:

Date of Release: 7/16/83 Patient with Live at (Street): 21520 F Bunker Rd Diamond Bar 91765 (City): (Zip): Phone No.: (714) 861-4503

☐ Alone ☐ Friend ☐ Own Home ☐ Hotel ☐ RCF ☐ ICF ☐ Other Hosp ☐ To Court ☐ Halfway House ☐ W/Other ☐ Farm/Ranch ☐ ADL ☐ Leave State ☐ FC ☐ SNF ☐ Locked Fac. ☐ To Jail ☐ Other:

CLIENT INCOME & RESOURCES

SSA # 454 53 2634 Amount \$ ☐ SSA filed pend ☐ SSI rec'd ☐ SSI approved ☐ SSI pending ☐ Medi-Cal # ☐ Trust Off. Is payee & must be notified of fin. plan, type living quarters & changes in living quarters in community. ☐ Employed ☐ AFDC ☐ Unemployment ☐ MND filed ☐ MND approved ☐ VA # ☐ VA Benefits ☐ Private Funds ☐ No funds - Live with others ☐ GI Bill ☐ Retirement Pension ☐ Other: ☐ DIB

Total Amount - All Sources \$

Payee is:

☐ PT: or Name Address Phone No.

CONSERVATOR/GUARDIAN/CARE PROVIDER/ SIGNIFICANT OTHERS

Relationship of Agency	Name and Address	Phone No.
Parents	Bill & Rosemary Bortone 1714 N. 14th St. Diamond Bar, CA 91765	(714) 861-4503
Relationship of Agency	Name and Address	Phone No.
Relationship of Agency	Name and Address	Phone No.

REFERRALS

Primary CC Agency - Name	Address	Phone No.
Los Angeles County M.H.	160 S. 1st St. Los Angeles	()
Person To Whom Referred	Date and Time of First Appt.	
Phone Referral Date	Community Person Confirming Appointment	Phone No.
Other Agency Referrals	Person To Whom Referred	Phone No.

PRIORITY PROBLEMS IDENTIFIED/TREATMENT GIVEN & PATIENT RESPONSE

Problems	Treatment Given	Patient Response
Receptive attempts	Individual, group therapy	Some improvement
Assertive verbally	Family consultation	
Impulsiveness	School	
	Recreational therapy	
	Ant. level section	

INTERDISCIPLINARY TEAM RECOMMENDATIONS FOR CONTINUING TREATMENT

Problems	Goals/Objectives
Family problems	Improve family communication
Unable to follow instructions	Improve attention

RECOMMENDED CONTINUING CARE PLAN AND DISCHARGE SUMMARY

\$500 Fine for Willful Disclosure of Confidential Client/Patient Information See W&I Code 5326-5330

MH 1946 (1/79)

Name - Last First Middle 17
 Ext. No. box ☐ M ☐ F Date of Birth
 Hospital Status Date of Admission Co. of Admission
 Current Legal Status BOSTON, ANDRE
 CAN 183373-0 H 301 32 7-1-87
 Health District 5-4-83 LA DIST 261
 5-5-83 LA DIST 261

AA 000495

NAIATIVE DISCHARGE SUMMARY

PRIOR HISTORY: Include number and frequency of prior hospitalizations and/or out-patient treatment.

CHIEF COMPLAINT/ PRECIPITATING EVENT: Give specifics, such as "Delusional, hallucinating as result of ingestion of unidentified street drugs."

PROGRESS IN HOSPITAL: Describe patient's response to various forms of therapy, including medications, and any significant test results, or medical conditions.

CONDITION AT DISCHARGE: Describe specifics e.g., "still exhibits some psychotic features, but beginning to socialize in groups," or "no longer hallucinating, but still assaultive to peers when provoked." Include both psychiatric and medical condition. Add somatic diagnoses, if any.

Threatening violence to family
 Reunions x 3
 Stress of moving
 about father
 Vagueness on a female
 neighbor.

Based

Discharge to parents

Name (printed)

R. North Johnson M.D.

Signature

R. North Johnson M.D.

Date

7/25/83

Telephone No.

1 1

RECOMMENDED CONTINUING CARE PLAN AND DISCHARGE SUMMARY

Name-Last

First

Case No.

Sex

Date of Birth

Marital Status

Date of Admission

Co. of Admission

Current Legal Class

Health District

\$500 Fine for Willful Disclosure of
 Confidential Client/Patient Information
 See W&A Code 332A-230

MM 3644 (1/79)

262

AA 000496

1 ANDRE' D. BOSTON
2 CLARK COUNTY DETENTION CENTER
3 330 S. CASINO CENTER BLVD.
4 LAS VEGAS , NEVADA 89101
5
6
7

8 DISTRICT COURT OF NEVADA

9 COUNTY OF CLARK

10 PEOPLE OF THE STATE OF NEVADA)

CASE NO. C-84650

11 PLAINTIFF,)

MOTION FOR NEW TRIAL

12 vs-)

13 ANDRE' D. BOSTON)

14 DEFENDANT.)
15

16 TO THE HONORABLE JOHN MENDOZA, JUDGE PRESIDING IN DEPARTMENT
17 FIVE OF THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF
18 NEVADA IN THE COUNTY OF CLARK;
19

20 Defendant hereby moves for a new trial and requests that
21 he be granted a hearing on his motion on the date set for
22 sentencing , Oct. 20, 1988, in Department Five.

23 The motion is based upon the evidence received at the
24 trial in this matter, and additional matters set forth hereafter
25 in this motion.

26 The consequences to the defendant, Andre' D. Boston from
27 the courts finding of guilty as charged in all counts against
28 him(except one) in the information, are so drastic and

1 practically speaking, so irreverisble that the defendant
2 requests the court to permit the assertion of additional
3 considerations regarding this case matter. The solitary
4 decision that must be made upon this matter last a virtual
5 lifetime. Responsibility for that decision must be shared
6 by both the counsel or the prosecution and the defense. In
7 view of the forementioned, defendant respectfully requests that
8 this court take into consideration the following facts.

9
10
11 I.

12 THE COURT ERRED BY NOT INVESTIGATING
13 THE ISSUES REGARDING THE DEFENDANT'S
14 POSSIBLE INSANITY DEFENSE.

15 The court is aware and has been aware(as the records of
16 this case will reflect) that the defendant possibly suffered
17 from some sort of psychiatric disorder because he had
18 previously(to the date of the alledged offenses) been in
19 psychiatric and state hospitals. His initial admittance into
20 these hospitals was based on a disorder the defendant had
21 regarding aggression, hostility, fantasies, and numerous
22 other symptoms which led evaluating psychologist and psychiatric
23 to describe the defendant as a time bomb. Since the defendant
24 counsel did not investigate or assert the possibility of the
25 defendant having an insanity issue, the court in view of
26 the information documented in the Dispositional/Certification
27 Hearing regarding the d.fendant's mental disorder, could and
28 should have by it's own motion investigate the issues of

1 this defendant's sanity at the time of the alledged offenses.
2 Especially considering that the records will reflect that
3 the defendant did suffer from a mental disorder during 1983,
4 and this disorder could have been present at the time of
5 any alledged offense. If any investigation had been sought
6 the defendant could have possibly had an Insanity defense
7 and sought the verdict of NOT GUILTY BY REASON OF INSANITY,
8 rather than no defense and a verdict of GUILTY AS CHARGED.
9 "One who suffers from insanity at the time of the commission
10 of the offense charged, cannot in a legal sense entertain
11 criminal intent.(U.S. v BUSIC 592 F2d 13) and cannot be held
12 responsible for his acts.(HALL v JOHNSON 91 F2d 363; FOX v
13 STATE OF NEVADA 316 F2d 924, 73 (75) Nev 241; HARTFORD v U.S.
14 362 F2d 63, 87 S.Ct. 174, 385 US 985, 17 L.Ed 2d 110; and
15 a statute providing that insanity shall be no defense to a
16 criminal charge would be invalid.(MATTER OF LOMAX app 367 A2d
17 1272 reh. 386 A2d 1185)

18
19 II.

20 THE PREJUDICIAL DELAY IN THE PROSECUTION OF
21 THIS CASE PROVIDED THE DEFENDANT WITH A
22 FAILURE TO PRESENT OR RELY UPON A FAIR
23 DEFENSE.

24 Because of the prejudicial delay regarding the prosecution
25 of this case, at trial the defendant/defense counsel did not
26 have an opportunity to present a fair defense to the allegation
27 charged.

28 Due to the passage of time, the defense did not have

1. A chance to adequately investigate this case. The defendant
2 does not recall the alleged events of 1983 and there was
3 no way he could recall if he might have been with someone
4 or someplace else at the time of the alleged offense and
5 their occurrence. The defense could not investigate the
6 alleged crime scenes to see if perhaps there may have been
7 evidence which could have exculcate defendant from the crimes
8 charged. There was several alleged crime scenes including
9 a desert crime scene, and after all these years defense counsel
10 could not investigate these scenes personally and first hand
11 , but in fact had to rely upon the alleged reliability, and
12 creditability of the prosecutions alleged evidence.

13 Because of the passage of time this defendant could not
14 defend himself against the crimes charged. All the defendant
15 could do was sit back and listen as the prosecution
16 produced witnesses who (after five years of no contact with
17 this case) gave picture perfect testimony as to certain
18 alleged events of 1983. There was no evidence produced in
19 the defendant favor. There was no investigation done to
20 obtain or seek to obtain any evidence which may have provided
21 the defendant with a defense of any nature. There were no
22 witnesses called by the defense because the passage of time
23 caused the location and residence of any witnesses in
24 the defendant's behalf (such as the defendant wife, or
25 friend GENE PALVEY with whom the defendant alleged lived
26 at certain times during 1983, or friend DINO D'Alessio with
27 whom defendant stayed with and spent much time with during
28 1983). The defendant could only and merely sit quietly as

1 he was accused repeatedly of certain acts and had no defense
2 to present to the courts to dispute these allegations. The
3 purpose of bringing an accused to trial as soon as possible
4 is to afford the defense and the prosecuting officials an
5 opportunity to present relevant facts pertaining to the case
6 and to have witnesses testify under oath competently
7 what they alledgedly know and the things they alledgedly saw
8 are still fresh on their minds.

9 In the case at bar, there are alot of discrepancies
10 pertaining to the identification of the assailant of the
11 alledged offenses. This is partially due to the passage of
12 time and partially to the fact that the assailant (through
13 the testimony of the alledged witnesses/victims.... some
14 described the assailant as clean shaven, while others describe
15 him as having a moustache.... some say that the assailant
16 had short hair, while others say he had medium length hair...
17 some say that the assailant was very muscular, while others
18 described him as being very slender and etc..) was not
19 identified honestly. However, because of a photo line up
20 (whose legality is still in question) this defendant became
21 the suspect of several alledged allegations and was identified
22 through prejudicial preliminary hearing identification
23 procedures. In view of all the above there is no way this
24 defendant did or could have been afforded the opportunity to
25 present a fair defense against the allegations charged.
26

27 III.

28 THE COURT ERRED IN ADMITTING EVIDENCE OF PRIOR

CONVICTION OF THE DEFENDANT.

N.R.S. 48.035 EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF
PREJUDICE, CONFUSION, OR WASTE OF TIME

"1. Although relevant, evidence is not admissible if it's
probative value is substantially outweighed by the danger
of unfair prejudice, of confusion of the issues, or of
misleading the jury."

In the case at bar, the prosecution introduced, through
the objection of defense counsel and the overruling of the
judge, a case matter that the defendant was convicted of
in 1984. This evidence and it's probative value were by far
outweighed by the prejudice caused to the defendant.

The evidence of this prior offense was introduced at
trial and the witnesses and victim of that case were allowed
to testify as to what happened at those offenses in 1983.
Their testimony was not limited to establishing proof of
motive, opportunity, intent, preparation, knowledge,
identity or absence of mistaken or accident testimony,
and the line of questioning of the prosecution was completely
unrestricted and it was led to believe that the defendant was
once again standing before a judge regarding a trial of the
already convicted acts. In essence the defendant through the
extreme prejudicial effects of the forementioned admitted,
unrestricted evidence was forced to stand trial for the prior
convicted offenses as well as the initial and instant offenses
all in one trial regarding merely the allegations brought
forth in the instant offense.

1 This evidence should not have been introduced and since it
2 was, limitations should have been placed on the line of
3 questioning of the prosecution regarding the possible unfair
4 prejudice caused by the unrestricted introduction of the
5 evidence of the defendant's prior conviction.

6 The defendant did not take the stand to testify.

7
8 IV.

9 DEFENDANT RECEIVED INEFFECTIVE AID OF
10 COUNSEL THROUGHOUT THE COURT PROCEEDINGS.

11 Defendant received ineffective aid of counsel throughout
12 the court proceedings because there was an apparent lack of
13 counsel interest in this case matter.

14 Defendant retained defense counsel on or about July 26, 1988.

15 On or about August 11, 1988 at the defendant informed counsel
16 that he could not make payment of counsel's fees and was
17 informed that counsel would be withdrawing.

18 Counsel was not permitted to withdraw or was court appointed,
19 because at the defendant's calendar call before trial, defense
20 counsel appeared and informed defendant that he was still
21 handling the defendant's case. At this point (Sept. 8, 1988)
22 defendant had not seen, nor heard from his counsel since
23 August 11, 1988 at defendant's arraignment. (see exhibit A)

24 Counsel did not file any pre trial motions pertaining to
25 this case which comes of a very complicated nature. There were
26 expert witnesses that defendant wanted to subpoena for expert
27 examinations/evaluations of the defendant in 1983. There were
28 questions concerning the suggestiveness of a photo line up,

SEPTEMBER 1, 1988

STATE OF NEVADA vs ANDRE DUPREE BOSTON

CASE #C84650

Rule 3.70. Papers which may not be filed.

Except as may be required by the provisions of NRS 34.730 to 34.830, inclusive, all motions, petitions, pleadings or other papers delivered to the clerk of the court by a defendant who has counsel of record will not be filed, but must be forwarded to that attorney for such consideration as counsel deems appropriate. This rule does not apply to applications made pursuant to EDCR 7.40(b)(2)(ii).

REASON FOR NEW RULE - To permit the clerk to forward to counsel all papers received from a defendant represented by an attorney.

YOUR MOTION TO DISMISS HAS BEEN FORWARDED TO YOUR ATTORNEY OF RECORD, MR. JOHN FADGEN.

THANK YOU

CLARK COUNTY CLERKS OFFICE

Rule 7.40. Appearances; Substitutions; Withdrawal or
Change of Attorney.

(a) When a party has appeared by counsel, he cannot thereafter appear on his own behalf in the case without the consent of the court. Counsel who has appeared for any party [shall] must represent that party in the case and shall be recognized by the court and by all parties as having control of his client's case. The court in its discretion may hear a party in open court although the party is represented by counsel.

(b) Counsel in any case may be changed only:

(1) When a new attorney is to be substituted in place of the attorney withdrawing, by the written consent of both attorneys and the client, all of which [shall] must be filed with the court and served upon all parties or their attorneys who have appeared in the action, or

(2) When no attorney has been retained to replace the attorney withdrawing, only by order of the court, [at such time as may be fixed by the court in an order shortening the time for the hearing of the motion] granted upon written motion therefor, and

1 pretrial identification and in court identification. Since
2 this case is five years old, there should have been some
3 concern over a physical line up prior to trial. There is an
4 insanity issue that counsel could have raised, and numerous
5 other pre trial motions that could have been filed by counsel
6 had there been a sincere and genuine interest in defending
7 this case.

8 Furthermore, upon being advised that counsel would be
9 withdrawing, defendant prepared and submitted (on Sept. 4, 1988)
10 to the court a motion that he wanted to be heard. But because
11 defendant still had an attorney of record (which he did not
12 know about because he had not heard from counsel since Aug.
13 11, 1988) his motion was forwarded to his attorney of record .
14 (see exhibit B) At this point, since defendant's counsel
15 was the attorney of record , he could have merely submitted
16 the defendant's prepared motion or a motion of his own
17 preparation regarding the issues that the defendant raised
18 (denial of the right to a Constitutionally guaranteed right
19 to a speedy trial). But counsel did neither. The court was
20 not made aware of defendant's motion until the day of trial,
21 at which time it was denied. Defendant prepared other motions
22 but could not file them because he had an attorney of record
23 and this attorney of record would not file defendant's motion
24 anyways. (see exhibit C)

25 Prior to trial defense counsel did not investigate the
26 crime scenes themselves.

27 Counsel did not investigate the possibility of defendant
28 having an insanity defense or a diminished capacity issue.

1 Counsel did not attempt to call or locate the witnesses
2 (expert-psychiatrist, psychologist) who could have testified
3 about the defendant's mental condition, disorder, and state
4 of mind in 1983, 1984, and 1987.

5 The forementioned reasons demonstrate and show that the
6 defendant did in fact receive the ineffective aid of counsel
7 throughout the court proceedings of his case.

8 //

9 //

10 //

11 //

12 //

13 //

14 //

15
16
17 CONCLUSION

18 The purpose of a trial is to allow the defense and the
19 prosecution the opportunity to bring to light certain facts
20 which are necessary in determining the guilt or innocence
21 of an accused. This procedure should be conducted in an orderly
22 manner in which the principles of liberty and justice are
23 preserved and thus become due process of law. Error of
24 substantial magnitude at a trial are extremely harmful and
25 could have an affect upon an innocently accused for a lifetime.
26 Therefore, when substantial error exist, the trial court judge
27 has the discretion to order a new trial so that the guilt or
28 innocence of an accused may be determined without prejudice,

1 and so that the subatantial errors of the trial may be
2 removed. For reasons more specifically set forth in this
3 motion, a new trial should be ordered without the flaws and
4 errors of the previous trial, so that this defendant's
5 guilt or innocence may be properly determined.
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11 VERIFICATION
12

13 I declare that I am the defendant in the above entitled
14 matter. I understand that a false statement will subject
15 me to the penalties of perjury under the laws of the state of
16 Nevada and of the United States. I declare that the foregoing
17 is true and correct.
18

19 DATED; 10-5-88
20

21 151 Andre' Boston

22 ANDRE'D. BOSTON, DEFENDANT
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EXHIBIT A

Boston Andrew Supers DETENTION BUREAU RECORD OF VISITORS 820638 5D18 3476

DATE	TIME	VISITOR'S NAME	RELATION	VISITOR'S SIGNATURE	INMATE'S SIGNATURE	CO
7-30	1230	S. Roske	Relay	S. Roske		1994
7-14	1430	A. Farrell	Relay	A. Farrell		CU 0574
7-16	1330	Friend Webster	Friend	Friend Webster		3038
7-17	2130	William M. Murrell	Friend	William M. Murrell		CU 0574
7-21	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
7-22	1930	John P. Murrell	Friend	John P. Murrell		CU 0574
7-23	1930	John P. Murrell	Friend	John P. Murrell		CU 0574
7-26	2130	William M. Murrell	Friend	William M. Murrell		CU 0574
7-28	2130	William M. Murrell	Friend	William M. Murrell		CU 0574
8-2	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
8-6	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
8-9	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
8-11	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
8-16	1930	William M. Murrell	Friend	William M. Murrell		CU 0574
8-17	2130	William M. Murrell	Friend	William M. Murrell		CU 0574
8-22	2130	William M. Murrell	Friend	William M. Murrell		CU 0574
8-24	2130	William M. Murrell	Friend	William M. Murrell		CU 0574

Inmate's Name:

ID No:

Cell:

5018

282

AA 000511

DATE	TIME IN OUT	VISITOR'S NAME	RELATION	VISITOR'S SIGNATURE	INMATE'S SIGNATURE	CO
8-31	2100	William [unclear]	Scientist	[Signature]	[Signature]	CU 278
9-2	2100	William [unclear]	Scientist	[Signature]	[Signature]	" "
9-7	2100	William [unclear]	Scientist	[Signature]	[Signature]	" "
9-11	1400	William [unclear]	Scientist	[Signature]	[Signature]	CU 354
9-12	2100	William [unclear]	Scientist	[Signature]	[Signature]	CU 3015

EXHIBIT B

1 This motion is based on the attached MEMORANDUM OF
2 POINTS AND AUTHORITIES, THE PAPERS OF THE CASE, and such
3 other evidence and arguments as may be adduced at the hearing
4 of the motion.
5

6 DATED; 8-18-88
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8 /s/ Andre D. Boston
9 ANDRE D. BOSTON, DEFENDANT
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1 ANY CONTINUOUS reminders of the case on their minds) the defendant
2 is brought to stand trial (preliminary hearing) on the now
3 very old allegations.

4 At preliminary hearing the defendant was the only
5 person other than court and legal representatives in the
6 courtroom. The defendant was not only the only person in the
7 courtroom, but he was the only black male (which the perpetrator
8 of the 1983 offenses happened to be) in the courtroom. In
9 addition to this suggestiveness, the defendant was in Clark
10 County Detention /Jail clothes, handcuffed, and sitting next
11 to defense counsel opposite the prosecuting officials.

12 Three alleged victims were brought in and asked to
13 identify the suspect of the five year old offense and the
14 defendant was positively identified.

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19 ARGUMENTS

20 I.

21 DEFENDANT CONTENDS THAT THE PHOTO
22 LINE UP OF THIS CASE WAS SUGGESTIVE.

23 On Oct. 1, 1983 an alleged burglary and assault took
24 place at the residence of 5010 RENO CT., Las Vegas, Nevada.

25 Immediately after the alleged incident or thereabouts
26 the Las Vegas Metropolitan Police Dept. were notified of this
27 alleged incident and a patrol unit was dispatched to investig-
28 ate the matter.

(i) If the application is made by the attorney, he [shall] must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and he [shall] must serve a copy of the application upon the client and all other parties to the action or their attorneys, or

(ii) If the application is made by the client, he [shall] must state in the application the address at which he may be served with notice of all further proceedings in the case in the event the application is granted, and [shall] must serve a copy of the application upon his attorney and all other parties to the action or their attorneys.

(c) No application for withdrawal or substitution [shall] may be granted if a delay of the trial or of the hearing of any other matter in the case would result.

REASON FOR CHANGE - Rule 7.40(b)(2) - To remove the requirement for an order shortening time.

EXHIBIT C

1 ANDRE' D. BOSTON
2 CLARK COUNTY DETENTION CENTER
3 330 S. CASINO CENTER BLVD.
4 LAS VEGAS , NEVADA 89101
5
6
7
8

9 DISTRICT COURT OF NEVADA
10 COUNTY OF CLARK

11 PEOPLE OF THE STATE OF NEVADA)

12 PLAINTIFF,)

13 vs.)

14 ANDRE' D. BOSTON)

15 DEFENDANT.)

CASE NO. C 84560
NOTICE OF MOTION,
AND MOTION TO
SUPPRESS SUGGESTIVE
AND PREJUDICIAL
IDENTIFICATION
EVIDENCE

16 TO; THE DISTRICT COURT, THE DISTRICT ATTORNEY, AND THE CLERK OF
17 THE COURT;
18

19 PLEASE TAKE NOTICE THAT as soon as the matter can be
20 heard, defendant ANDRE' D. BOSTON, will move the court for
21 an order to suppress the prejudicial and suggestive pre trial
22 identification.

23 This motion is made on the grounds that there has been
24 prejudicial pre trial identification in this case and this
25 defendant's rights under the due process clause of the
26 U.S. CONSTITUTION were violated.

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MEMORANDUM OF POINTS AND AUTHORITIES

FACTS

In the months of Oct. and Nov. of 1983, certain crimes alledged occurred in Clark County, Las Vegas, Nevada.

On Dec. 9th, 1983 through investigating procedures defendant Andre' D. Boston was arrested and formally charged with having committed the allegations in the petition of case no. C 84650.

It was also on this Dec. 9th, 1983 date that certain pictures were taken of the defendant to be used by the investigating Detectives for identification purposes.

On Dec. 11, 1983, there was a photo line up conducted by the investigating Detective, that was shown to several of the alledged witnesses and victims of the alledged offenses that occurred in the months of Oct. and Nov. of 1983.

This photo line up which was conducted and supervised by the investigating Detective contained the defendant's picture and was conducted in the homes of the alledged witness and victims.

It was also at this line up given in the alledged witnesses and victims homes unsupervised except by the investigating Detective, that the witnesses and victims (alledged) mysteriously selected this defendant as the suspect of various crimes.

On or about July 26, 1988 (five years after the alledged offenses, initial arrest/ formal charging and without

1 An incident/crime report was taken by the patrol unit
2 and statements were given right then an Identification unit
3 processed the alleged crime scene with negative results.

4 The victims gave statements indicating that the
5 suspect was a black male, very muscular, 175 lbs., but neither
6 the victim nor the mother thought that they could recognize
7 the suspect.

8 Another possible witness indicated she thought there
9 might have been another suspect involved but could give no
10 statement nor identify the suspect.

11 Yet amazingly enough, on Dec. 11, 1983 (2 months
12 after the alleged incident) at the photo line up conducted in
13 the residence of 5010 RENO CT. (the scene of the alleged
14 burglary) supervised by the investigating Detective of case
15 no. C 84650, the defendant is positively identified by the
16 victims of the alleged burglary.

17
18 2.

19 DEFENDANT CONTENDS THAT HE WAS
20 IDENTIFIED IN COURT AT THE
21 PRELIMINARY HEARING BY A VERY
22 SUGGESTIVE IDENTIFICATION
23 PROCEDURE.

24 The victims of the alleged burglary and assault were asked
25 to testify 5 years later in court and identify the person (if he was
26 in the courtroom) that they recognize as being the perpetrator of
27 certain offenses. The perpetrator of the alleged offense was a
28 black male.

The defendant who was present in the courtroom at the preliminary
hearing was handcuffed, dressed in jail clothing, sitting next to

1 defense counsel and the only black male in a courtroom where
2 the suspect of certain alleged offenses was a youthful black male.

3 Thus the preliminary hearing identification
4 procedures were extremely suggestive and prejudicial.
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8 CONCLUSION

9 The defendant has shown in this motion that the pre trial
10 identification procedures of this case were very suggestive
11 and as a result became prejudicial to this defendant. Because
12 of the prejudicial effect of the suggestiveness regarding the
13 forementioned identification evidence of this case and this
14 defendant, the identification evidence of this case should be
15 suppressed due to it's suggestiveness and prejudicial nature.
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19 VERIFICATION

20 I, Andre' B. Boston, do declare that I am the defendant in
21 the forementioned document, I understand that a false statement
22 will subject me to the penalties of perjury and I do declare
23 under the penalty of perjury of the laws of the state of Nevada
24 and of the United States that the foregoing is true, accurate,
25 and correct.

26 DATED: 8-18-88
27
28

/s/ Andre' Boston
ANDRE' D. BOSTON, DEFENDANT

1 ANDRE' D. BOSTON
2 CLARK COUNTY DETENTION CENTER
3 330 S. CASINO CENTER BLVD.
4 LAS VEGAS, NEVADA 89101
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9 DISTRICT COURT OF NEVADA
10 COUNTY OF CLARK

11 PEOPLE OF THE STATE OF NEVADA)
12 PLAINTIFF,)
13 VS.)
14 ANDRE' D. BOSTON)
15 DEFENDANT.)

CASE NO. C-00650
NOTICE OF INTENTION TO
DISMISS AND MOTION TO
DISMISS FOR VIOLATION
OF DUE PROCESS AND SPEEDY
TRIAL. & MEMORANDUM OF
POINTS AND AUTHORITIES.

16 TO: THE DISTRICT COURT, THE DISTRICT ATTORNEY, CLARK COUNTY,
17 AND THE CLERK OF THE COURT:

18 PLEASE TAKE NOTICE THAT as soon as the matter can be heard,
19 defendant, ANDRE' D. BOSTON will move the court for an order
20 dismissing this action.

21 This motion is made on the grounds that the
22 prejudicial delays in arraigning this defendant, giving this
23 defendant a preliminary hearing and bringing this defendant to
24 trial, violated this defendant's rights under the due process
25 and speedy trial clause of the State and U.S. Constitution.

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1 This motion is based on the attached memorandum of points and
2 authorities, the declaration, the papers in the case, and such others
3 evidence and arguments as may be adduced at the motion hearing.

4 DATED 8-18-88

5 Andre D. Boston
6 ANDRE D. BOSTON, DEFENDANT
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3 MEMORANDUM OF POINTS AND AUTHORITIES

4 FACTS

5 In the month of December, 1983, the authorities in
6 the state of California contacted the authorities in the state
7 of Nevada to check the registration of a car alleged to have
8 been used in a crime in California with Nevada license. The
9 authorities in California also explained to the Nevada
10 authorities the type of crime which a black man driving the
11 car in question alleged to have committed.

12 The authorities in Nevada were able to identify the
13 registration of the car and noticed that a crime had occurred
14 in Clark County.

15 Thereafter, on or about 12-05-1983, Andre' D. Boston
16 defendant, was arrested in California as the suspect who
17 allegedly used the above mentioned car and committed the
18 alleged crimes charged. Andre' D. Boston, defendant, was 16
19 years of age, and was housed at the Los Angeles County
20 Juvenile Hall.

21 Soon thereafter, Andre' D. Boston, defendant, was
22 arrested in California, the California authorities contacted
23 the authorities of Clark County, State of Nevada. Thereafter
24 the Clark County authorities came to Los Angeles County, State
25 of California and arrested defendant Andre' D. Boston, and
26 charged him with the allegations contained in the petition
27 of case no. C84650.

28 Petitioner was formally arrested on or about Dec.
9th, 1983 and charged by the investigating Nevada officials

1 with the allegations contained in the petition of case no. 894658.

2 The authorities in Clark County, State of Nevada
3 stayed in touch with the process of the defendant's criminal
4 case in California, and after defendant was convicted of the
5 criminal charges, the Clark County authorities started their
6 procedures for extraditing the defendant, Andre' D. Boston.

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9 ARGUMENTS POINTS AND AUTHORITIES

10 1.

11 DEFENDANT'S RIGHT TO DUE PROCESS AND TO
12 SPEEDY TRIAL HAS BEEN VIOLATED BECAUSE
13 THE PROSECUTING AUTHORITIES HAD THE
14 OPPORTUNITY TO BRING THE DEFENDANT TO
15 TRIAL BUT FAILED TO DO SO.

16 The Clark County prosecuting authorities arrested
17 the defendant in Dec. of 1983 and there after requested the
18 California authorities to allow extradition of the defendant
19 to CLARK COUNTY, state of Nevada upon final disposition of the
20 California matter.

21 Three years later on or about Oct. of 1986, Nevada
22 prosecuting officials finally requested an extradition hearing
23 which the California Magistrate denied based upon the
24 insufficiency of the evidence to establish identification. No
25 other attempts were made by the prosecuting officials of Nevada
26 to obtain sufficient evidence to present to the California
27 court and seek another extradition hearing at this time.

28 On or about May 5th, 1988 (five years after initial
arrest and formal charging, and two years after the denial of

1 the first extradition request with no other diligent and
2 good efforts or attempts being made to prosecute this case)
3 Nevada officials requested an extradition hearing. It was
4 held in Tehachapi, California, County of Kern and the Nevada
5 officials were granted extradition at this hearing. (this is
6 after the second two year delay, without any diligent and
7 good faith efforts being made to prosecute this case by the
8 prosecuting officials of Nevada)

9 The duty of the prosecuting officials to extradite
10 an accused is not obviated by the accused failure to waive
11 extradition; (THOMPSON V. STATE, Cr. 482 P.2d 627.)

12 A person arrested and detained pending the arrival
13 of requisition or demand for his extradition from another State
14 may not be detained for an indefinite term, but only for the
15 time within which a requisition might reasonably arrive, or for
16 the period of prescribed time by statute; (PEOPLE V. SWAZO 610
17 P2d 1072; US V. BRYANT 612 P2d 799.)

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DEFENDANT CONTENTS THAT BECAUSE OF THE
UNNECESSARY DELAY IN PROSECUTING THIS
CASE, HE HAS BEEN PREJUDICED AND DENIED
THE CONSTITUTIONALLY GUARANTEED RIGHT TO
A SPEEDY TRIAL AND CAN NEVER A FAIR TRIAL.

"While the primary concern in affording a speedy trial
is in prompting the fairness of the adjudicative process, in
(U.S. v MARION (1971) 404 US 307, 30 L.Ed 2d 468, 92 S. Ct. 455)
... the court acknowledged collateral effects of concern."
Arrest is a public act that may seriously interfere with the
defendant's liberty whether he is free on bail or not, and may
disrupt his employment, drain his financial resources, curtail
his associations, subject him to public obloquy and his friends."
(US v MARION "supra")

Defendant contends that the unnecessary delay
of 5 years in bringing him to trial, violated his constitution-
ally guaranteed 6 and 14 USCA RIGHTS. (AMENDMENTS 6 & 14)

- The right of every criminally accused to have a
speedy trial is beyond dispute. (State v. Steckman 474 P2d 367;
KLOPHER V. N. C. 306 NR 213, 87 Sct 9'8, 18 L.Ed 2d 1.)

- The purposes served by the sixth Amendment guarantee
of a speedy trial were delineated in (US V. EWEEL 393 US 116,
15 L.Ed 2d 627, 86 S.Ct. 773-) as follows; "To prevent un-due
and oppressive incarceration prior to trial, to minimize
anxiety and concern accompanying public accusation and to limit
the possibilities that long delay will impair the ability of the
accused to defend himself".

Defendant was arrested and formally charged
with the allegation of this pending case on Dec. 9, 1983. Since

1 another case matter (in California where defendant was housed)
2 was pending at the time of the formal arrest of the petitioner
3 (in this pending Nevada case matter), Nevada prosecuting
4 officials could not bring this defendant to stand trial for
5 the allegations against him then," at this point. However, the
6 other case matter (California) was completely decided in 1984,
7 and petitioner began to serve his conviction there." At this
8 point," Nevada officials had the opportunity to immediately
9 extradite defendant or request an extradition hearing, since he
10 was formally arrested and charged with the allegations of case
11 no. 084650.

12 - a person in custody for an offense in one state may
13 be surrendered to another state which requested his extradition.
14 Such surrender has been held to operate as a waiver of the
15 jurisdiction of the state over the person. - (SHELLEY v. BETO
16 370 F2d 1003.)

17 - The right created by the Federal Constitution is a
18 guarantee of which a state may avail itself to secure the
19 return of an offender against its laws; - (US ex rel McInery
20 v. SHELLEY 524 F. Supp 499)

21 Extradition being a Federal matter and not a state matter, the
22 federal law and not the state law is supreme. - (SMITH v. STATE
23 OF IDAHO 373 F2d 149 cert. den. 87 S. Ct. 2139, 388 US 919,
24 18 L. Ed 2d 1364; CHUNN v. CLARK 451 F2d 1005.)

25 - The scheme of interstate rendition contemplates a
26 prompt return of the fugitive as soon as the state from which
27 he demands him. - (SHERIFF CLARK COUNTY v. RANDOMO 515 F2d 1267
28 , 89 NEV 521 cert. den. 94 S.Ct. 1970; Martinez v. SHERIFF

2 In 1986, two and a half to three years later
3 (apparently) without any diligent or good faith efforts of
4 prosecuting this case and after formal arrest and charging of
5 this defendant) Nevada officials finally requested an extradition
6 hearing. This request to extradite was denied based on
7 insufficiency of the evidence to establish identification of
8 the defendant as the person sought, and after a 2 week
9 continuance in which the California Magistrate granted the
10 Nevada officials the opportunity to produce sufficient and
11 necessary evidence for a valid extradition.

12 - substantial compliance with the prescribed
13 procedures is necessary and sufficient for a valid extradition
14 - (REEVES v. COX 385 A2d 847, 118 N.H. 271)

15 No other attempts to request an extradition hearing
16 was made by Nevada prosecuting officials until May of 1988
17 (2 years after the denial of the first request and 5 years
18 after defendant was formally arrested and charged with this
19 case.)

20 In May of 1988 at a second extradition hearing,
21 Nevada officials were granted extradition and this defendant
22 was brought to Nevada to stand trial for the 5 years old
23 allegations against him.

24 -Delay of more than 3 years requires the court to
25 undertake a most careful examination of whether defendant's
26 right to a speedy trial had been violated. - (WILLIAMS v. STATE
27 OF KAN. LAND 375 F. Supp 745.)

28 The delay of 5 years (initial arrest until time for

1 defendant to stand trial on the charges pending) has pre-
2 judiced the defendant's ability to defend hi self adequately
3 against the allegations he is charged with.

4 - The fundamental right to a speedy trial, it is
5 origins tracing back at least to the Magna Carta, is designed
6 in part to insure that a criminal defendant is not rendered
7 unable to rebut charges against him because undue delay
8 has caused memories to dim or witnesses to disappear-(PITTS V.
9 State of N.C. 395 P2d 162, 181)

10 - to constitute a Federal Constitutional deprivation of
11 rights, failure to accord a speedy trail must be shown to
12 have resulted in prejudice attributable to the delay-(MRS 17P.556)

13 Defendant contends prejudice of his case by the
14 substantial delay of 5 years in the following ways; 1)
15 Defendant contends that because of the delay in bringing him
16 to trial he cannot have the opportunity to find and recover
17 evidence (documentary or physical) that may exclude this
18 defendant from the crime charged. (PEOPLE V. TORRES - (1964)
19 391 P2d 161)- which states "basic to the accused right to a
20 fair trial, is his opportunity to present competent and relevant
21 evidence on the material issues. 2) Defendant contends that
22 because of the delay in bringing him to trial he has been
23 denied the opportunity to conduct an investigation of the crime
24 itself and of the crime scene. The crime scene has changed
25 (after five years). 3) Defendant cannot find/locate any witness-
26 es who are competent enough to testify in his behalf because
27 of the prejudicial delays. Any potential witnesses for the
28 defense have either moved, died, or forgotten about what may

1 have happened five years ago. (U.S. Constitutional Amendments
2 5,6, and 14 - basic to the accused right to a fair trial, is
3 his opportunity to present relevant and competent evidence on
4 the material issues. (The U.S. Supreme Court has held that the
5 right of an accused to have compulsory process for obtaining
6 witnesses in his favor, is so FUNDAMENTAL and ESSENTIAL to a
7 fair trial that it is incorporated in the DUE PROCESS clause
8 of the 14th Amendment, so as to be applicable in state trials".
9 -(WASHINGTON V. TEXAS 388 U.S. 14, 18 L.Ed 2d 1019.) 4)

10 Defense (defendant) will not be able to question/ interview
11 the prosecutions alleged witness(s) and get a competent
12 testimony after five years and not having this case continuously
13 put on their minds. Since nothing was really said about this
14 case until 1988, it cannot have been a priority for prosecution
15 or continuously fresh on the alleged witness(s) minds. (There
16 are discrepancies in their statements and after five years,
17 this defendant/defense cannot competently investigate these
18 discrepancies.) 5) This defendant contends that because of the
19 prejudicial delays in prosecuting this case, there is no way he
20 can competently investigate the legality of the procedures
21 regarding a photographic line up given by the investigating
22 detective of this case in which several alleged witnesses
23 and alleged victims positively identified this defendant
24 as the perpetrator of alleged offenses. There is evidence and
25 evidence regarding discrepancies in the alleged witnesses/
26 victims voluntary statements that tend to show that the
27 investigating Detective gave a very illegal and suggestive
28 photographic line up. (CARVER V. STALL 537 F2d 1333: stated "

1 the totality of the circumstances test is the standard in de-
2 ciding whether an identification procedure is unnecessarily
3 suggestive and conducive to irreparable mistaken i.d.)

4 Failure to comply to standard i.d. procedures may violate
5 defendant's 5th, 6th, and 14th Amendments rights.

6 I.d. made prior to initiation of adversary proceedings
7 are scrutinized in light of the 5th and 14th Amendments.

8 Proscriptive against procedures which are unnecessarily
9 suggestive and conducive to irreparable mistaken i.d. - ("U.S. Cons.
10 Amendments 5 and 14 and PASSAN V. BLACKBURN 652 F2d 559; 72
11 L.Ed 2d 141.")

12 But procedural due process of law requires more than
13 fairness in the trial of an accused. It also requires fairness
14 in proceedings outside the trial or courtroom, which have or
15 may have a bearing on the judicial fate of the defendant. (
16 PEOPLE V. HO KIM YU (1914) 141 P 950)

17 For it is essential to the administration of justice that
18 the question of guilt or innocence of the accused be deter-
19 mined by an orderly legal proceeding/procedure in which his
20 substantial rights are to be respected. (PEOPLE V. O'BRYEN (1913)
21 130 P 1042; KILLPATRICK V. SUPERIOR COURT OF LOS ANGELES COUNTY (1957 2d
22 Dist.) 314 P2d 164.) 6) Defendant will not be able to communicate well with
23 or help his attorney (public defender) on matters of defense. Because of
24 the delay and the reason stipulated in #7 of this motion, regarding his
25 state of mind and mental state, defend, was suffering from a severe
26 mental defect and cannot recall what he was doing each and everyday in the
27 months of October and Nov. of 1983 (the months the petitions alleged said

1 crimes/ offenses too have occurred)?.) Defendant was not only merely 16 years
2 old and unaware of the true meaning and consequences of right and wrong,
3 but defendant has several documents from a private hospital "INGLE-
4 SIDE MENTAL HEALTH CENTER/ HOSPITAL, a state mental hospital "CAMARILLO
5 STATE HOSPITAL" and CALIFORNIA YOUTH AUTHORITIES officials which
6 demonstrates that the defendant before, at, and after the time of any
7 alleged offense, was suffering from a severe mental defect and cannot
8 recall where he was or what he may have alleged done. If this case had
9 been prosecuted upon final disposition of the California matter (Oct. 24,
10 1984) the defendant's mental state and competence may have been deter-
11 mined by tests and evaluations ordered by this court, but because of the
12 prejudicial delays in the prosecution of this case, this court cannot
13 now determine the defendant's mental state and competence at the time of
14 the alleged offense. His mental state and competence "now" are not in ques-
15 tion. The court must now rely upon the facts and findings contained
16 within these documents to determine the defendant's mental state, any
17 intent, and his competence in 1983.

18 A crime is usually composed of two elements, an act and an intent,
19 (US V. STALLWORTH 543 F2d 1038)

20 To constitute a crime, the act must be accompanied by a criminal
21 intent, (US. V. LESTER 363 F2d 68, 17 L. ED 2d 512; KING v. US 364 F2d
22 235; U.S. V. S. 510 F2d 1174)

23 The criminal intent or negligence must unite with the overt act,
24 or there must be union or joint operation of the criminal act and
25 intention. (U.S. V. LESTER 363 F2d 68)

26 The intent with which the actor performed is the controlling factor.
27 (U.S. V. OLDSMOBILE 173 F. Supp 956)

28 An intent acquired after the act has been committed is not controlling

1 (GAY V. U.S. 408 F2d 923 cert. den. 90 S.Ct. 65, 396 U.S. 823, 24 L.Ed 2d
2 74)

3 The general test of responsibility for crime, commonly known as the
4 M'Naghten rule which may be stated to be the capacity to understand the
5 nature and consequences of the act charged and the ability to distinguish
6 between right and wrong (CROW V. EYMAN 459 F2d cert. den. 93 S.Ct. 163,
7 409 U.S. 897; 34 L.Ed 2d 115 PINANA V. STATE(NEV) 352 F2d 824; 76 NEV 274;
8 K.V. V. STATE(NEV) 392 P2d 630; 80 NEV 291; WILLIAMS V. STATE (NEV) 451 P2d
9 848; 85 NEV 169 cert. den 90 S.Ct. 239; 396 U.S. 916, 24 L. Ed 2d 194)

10 Insanity provides a complete defense to a criminal charge. (GALIBIOS
11 V. STATE OF NEVADA 446 P2d 656, 81 NEV 608; U.S. V. KAUFMAN 89 S.Ct. 1068
12 394 U.S. 217, 22 L.Ed 2d 227 on remand 323 F. Supp 623 affd. 453 F2d 798)

13 A crime is not committed if the mind of the person doing
14 the act is innocent "Actus non facit reum, nisi mens rea". (U.S. V. H. L. BLAKE CO. 189 F. Supp. 930, 935)

15 One who suffers from insanity at the time of the commission
16 of the offense charged, cannot in a legal sense entertain cri-
17 minal intent. (U.S. V. BUSIC 592 F2d 13) and cannot be held
18 responsible for his acts. (HALL V. JOHNSON 91 F2d 363; FOX V.
19 STATE OF NEVADA 316 P2d 924, 73 (75) NEV 241; HARTFORD V. U.S.,
20 362 F2d 63, 87 S.Ct. 174, 385 U.S. 885, 17 L.Ed 2d 110; and
21 a statute providing that insanity shall be no defense to a
22 criminal charge would be invalid. (HATTER OF LOMAX app 367 A2d
23 1272 reh. 386 A2d 1185) R.) Defendant contends that "evidence
24 must be proven reliable." (MATA V. SIFNER 696 F2d 1241, 721 F2d
25 1251) and because of the prejudicial delays in prosecuting this
26 case, the defendant cannot accurately, and competently test or
27 disprove the alleged reliability, creditability, and validity
28

1 of any alledged evidence produced against him.

2 Defendant's case has been prejudiced by the delay. See
3 (JONES v. TUDMAN 360 F.Supp 1290); The right to a speedy trial
4 is of Constitutional dimension and denial of that right may be
5 subject of habeas review.

6 Delay of more than three years requires the court to under-
7 take a most careful examination of whether Defendant's right
8 to a speedy trial had been violated. (WILLIAMS v. STATE OF
9 MARYLAND 375 F Supp. 715)

10 A writ of habeas corpus may be issued by the courts to
11 release a prisoner who has been convicted in violation of his
12 right to a speedy trial, even though the delay resulted in his
13 detention in another state.: (U.S.C.A. CONSTITUTIONAL AMENDMENT
14 6, KANE v. State of Virginia 419 F2d 1369)

15 An affirmative demonstration of prejudice to the accused
16 was not essential to prove a denial of his right (constitutional)
17 to a speedy trial. (MOORE v. ARIZONA 414 U.S. 25, 38 L.Ed 2d
18 183; OWENS v. SUPERIOR COURT 28 C3d 238)

19 under the 14th amendment to the federal constitution, no
20 state may deprive any person of life, liberty, or property
21 without due process of law. (U.S. CONSTITUTION 14th AMENDMENT)

22 Any legal proceedings that regards and preserves the prin-
23 ciples of liberty and Justice must be held to be due process
24 of law. (PEOPLE v. HICKMAN (1928) 204 C 470, 268 P 909 applic-
25 ation den. 204 C 484, 270 P 117)

26 A safeguard of due process applies to each and every
27 aspect of criminal investigation and prosecution. (U.S. CONSTI-
28 TUTIONAL AMENDMENTS 5, 6, and 14th)

1
2 A fair trial does not include the right of the defendant to proceeding
3 which are planned, directed, or conducted by the defendant but, rather,
4 proceedings that will accord the accused the fullest opportunity to
5 preserve his rights and defend against the charges. (PEOPLE V. WHITTINGTON
6 "1977 1st Dist. " 71 Ca3d 806, 141 Cal Rptr 742; PEOPLE V. STRAWNER 3d Cal.
7 App 3d 370, 382 (108 Cal Rptr. 901)

8 The right to a fair trial is fundamental and extends to all criminal
9 trials regardless of the nature of the crime charged, (GORDON V.
10 JUSTICE COURT FOR YUBA JUDICIAL DIST. (1944) 12 C3d 323, 115 Cal Rptr.;
11 525 P2d 72; 71 ALR 3d 551, cert. den. 420 US 938; 42 L.ED 2d 415; 95
12 S.Ct. 1148; ANDERSINGER V. HAMLIN 407 US 25 (32 L. Ed 2d 530; 92 S.Ct.
13 2006)

14 A fair trial in a fair tribunal is a basic requirement of due process
15 (Re MURCHISON 349 US 133, 136 (19 L.Ed 942, 946; 75 S.Ct. 623)

16 Denial of a fair trial and impartial trial amounts to a denial of
17 due process of law and is a miscarriage of justice within the meaning
18 of CONSTITUTIONAL, (art. VI sec. 4¹)

19 Denial of a fair trial amounts to a denial of due process of law.
20 (PEOPLE V. LYONS (1950) 303 P2d 329; PEOPLE V. LYNCH 140 P2d 418;
21 PEOPLE V. MURPHY (1943) 141 p2d 755; PEOPLE V. ROBARIE 244 P2d 407)

22 The basic policy underlying the constitutional guaranty, to a speedy
23 trial, which is to protect the accused from having criminal charges
24 pending against him an undue length of time, protects every accused
25 and does not except a convict. (Re MUGICA (1968) 69 C2d 516, 72 Cal
26 Rptr. 645, 440 P2d 525.)

27 //

28 //

1 In considering possible prejudice to the defendant, as a
2 factor in determining whether there has been a denial of his
3 constitutional right to a speedy trial, prejudice caused by the
4 delay in bringing the defendant to trial is not confined to the
5 possible prejudice to his defense in the proceedings, but also
6 includes possible prejudice which an inordinate delay may have
7 in seriously interfering with his liberty, whether he is free
8 on bail or not, and creating anxiety in him, his family, and
9 his friends. (HOOKE V. ARIZONA supra (414 U.S. 27))

10 The sixth amendment's guarantee of a speedy trial gives
11 recognition to an accused's significant stakes, psychological,
12 physical and financial, in the prompt termination of a proceed-
13 ing which may ultimately deprive him of life or property. (
14 U.S. V. ROBERTS 515 F2d 612)

15 A person accused of an crime is entitled to a fair trial.
16 (In re WINCHESTER 53 Crd 528, 363 U.S. 812, 4 L.Ed.2d 1734)

17 The right to a fair trial is fundamental and extends to
18 all criminal trials. (GORDON V. JUSTICE COURT 12 Crd 323, 420
19 U.S. 938, 43 L.Ed 2d 415)

20 Basic to the accused's right to a fair trial, is his
21 opportunity to present relevant and competent evidence on the
22 material issues. United States Constitution Amendments 5, 6, & 14.
23 The United States Supreme court has held that the right of an
24 accused to have compulsory process for obtaining witnesses in
25 his favor is so fundamental and essential to a fair trial that
26 it is incorporated in the due process clause of the 14th Amend.
27 so as to be applicable in state trials. (WASHINGTON V. TEXAS
28 388 U.S. 14, 18 L.Ed 2d 1019)

INTERDISCIPLINARY PLAN OF CONTINUING TREATMENT

Patient participated in Plan: ☒ Yes ☐ No If no, why?

Patient in (N) - Agrees (A) - refuses (R)

N A R Medical/Psychiatric

☒ ☒ ☒ Psychotropic Meds

☒ ☒ ☒ Out-Psych. Services

☒ ☒ ☒ Non-Psychotropic Meds

☒ ☒ ☒ Special Diet/Regulation

☒ ☒ ☒ Physical Therapy/Prosthes

☒ ☒ ☒ Social Medical Problems

☒ ☒ ☒ Dental/Optometric/Audiologic

Psychosocial Casework

☒ ☒ ☒ Family Planning

☒ ☒ ☒ Family Treatment

☒ ☒ ☒ Day Treatment Program

☒ ☒ ☒ Substance Abuse Program

☒ ☒ ☒ Social/Recreational Activity

☒ ☒ ☒ Remotivation/Resocialization

☒ ☒ ☒ Outreach Field Services

N A R Financial/Legal

☒ ☒ ☒ Get ID Card

☒ ☒ ☒ Legal Aid Services

☒ ☒ ☒ Budgeting Assistance

☒ ☒ ☒ Activate Benefits from:

☒ ☒ ☒ OIA/FDC/SSI

☒ ☒ ☒ VA/Unemployment Insurance

☒ ☒ ☒ Private Insurance/Retirement/Union

Vocational/Educational

☒ ☒ ☒ Social Ed. Classes

☒ ☒ ☒ Sheltered Workshop

☒ ☒ ☒ Volunteer Work/Job

☒ ☒ ☒ Adult Ed./GED/College

☒ ☒ ☒ Vocational Evaluation & Counseling

☒ ☒ ☒ Dept. of Voc. Rehab. has had contact with Pt.

N A R Living Quarters

☒ ☒ ☒ New quarters & move

☒ ☒ ☒ Tel./Util. Services

☒ ☒ ☒ Attendant Care Services

☒ ☒ ☒ Consultation to Family/Relatives

☐ Other (Specify) _____

Type of Release: ☐ Disch. Direct ☐ Transfer ☐ Death

Circumstances: ☐ TETMT Completed ☐ Hosp. not required ☐ AWOL

☐ Expir. of Del. ☐ Expir. of Cert ☐ With Grantee

☐ DATA ☐ Cons. Term.

GLOBAL ASSESSMENT SCALE RATING

Initial: _____ Final: _____

History of Dangerous Behavior: ☐ No ☒ Yes ☐ Sell ☐ Others ☐ Property: Describe*Recurrent, acute threatening notes*Continuing Care Agency Notified ☒ Yes ☐ No

Name of Continuing Facility

Treatment Unit or Area

Name (Printed)

F.S.W.

Signature

Date

Phone No.

Provisional/Admission Diagnosis

DSM Code

Final Diagnosis

DSM Code

Symptoms

DSM Code

Secondary

Supply Given

Recommended Medication, Dose, Frequency, & Schedule at Discharge

☐ Car. & Will Take on Own ☐ Will Take But Need Supervision

☐ Will Take ☐ Under Supervision

Allergies

*NKA*Patient needs to see physician by 8/2/83 (date) for medications.Narrative Discharge Summary (page 3) ☐ is attached or ☐ follows within 5 days.

Name (Printed)

Signature

Date

Phone No.

RECOMMENDED CONTINUING CARE PLAN
AND DISCHARGE SUMMARY

Name - Last

First

Middle

Case No.

Date of Birth

Marital Status

Date of Admission

Co. of Admission

Current Legal

BOSTON, ANDRE

7-17-87

Residing District

5-4-83 LA 183 510

5-4-83

Residing District

5-5-83 LA 183 510

5-5-83

Residing District

5-16-83 LA 183 510

5-16-83

ESDC Form for Written Disclosure of
Confidential Client/Patient Information
See W&I Code ES25-2335

W&I Code ES25-2335
Revised 8-1-82

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AA000537

DISCHARGE SUMMARY

NAME: BOSTON, ANDREA ATTENDING HAROLD C. HOSPITAL 18531-01
 PHYSICIAN: WIECHMAN, M.D. NUMBER:
 AGE: 15 BIRTHDATE: 7/17/67 RESIDENCE: 21930 E. Birdseye Dr.
 Diamond Bar, CA 91765
 DATE ADMITTED: 3/12/83 DISCHARGE DATE: 4/28/83

Andrea is a 15-year-old Black male admitted here by his parents after he was picked up by police for apparently peeping into a neighbor's window. Andre at first denied this charge but later admitted to it. In addition, his parents found a series of letters describing in detail specific women and girls in the neighborhood and in the former neighborhood that Andre listed as kidnapping and murdering.

He was admitted here with a diagnosis of ADOLESCENT ADJUSTMENT REACTION with a great deal of paranoia and increasing paranoid defenses.

Psych testing showed Andre as a very anxious boy, great difficulty controlling hostile feelings especially towards women with some confusion between sexuality and aggression in much conflict over his own conflicted sexual feelings.

MENTAL STATUS: Andre was a muscular, at first quite friendly Black boy. He was overly controlled, polite, somewhat precocious intelligence. His affect was very guarded though and yet willing to relate. Insight and judgment were fair at that time. There was no psychotic indications nor there was any other time with the hospitalization.

HOSPITAL COURSE: Was difficult at times. Andre presented no problems when he was on our ICU although did test at limits a few times as all adolescents do. When placed on a less structured setting, he became quite angry and at times reached the verge of violence and when confronted by staff over his behavior, own limits were set. He threatened me on several occasions, threatened to kill me over pass issues when I would not give him passes and at one point when he had to be transferred to the intensive care unit because of violence he again threatened me. Andre would often go into a paranoid stance, especially confronted, controlled or when he felt he was being put down. This alternated with some very good insight for therapy, he was able to deal with issues, especially his conflicts over his autonomy with his mother and his anger over her control and intrusiveness. He would only be able to tolerate this for short periods of time and then he would either have to leave the room or become quite silent.

Because of the seriousness of the letters and his obvious poor impulse control, I felt strongly that Andre needed further hospitalization

INGLESIDE MENTAL HEALTH CENTER

NAME: BOSTON, ANDREA

DISCHARGE SUMMARY

HOSP NO: 18531-01 SOUTH UNIT

This information has been disclosed to the City Section 502
 whose confidentiality is protected by the Privacy Act of 1974
 Welfare and Institutions Code, and the Health Information Privacy Act of 1974
 Regulations (42 CFR Part 2) prohibit you from making any
 further disclosure without the specific written consent of the
 person to whom the information pertains or as otherwise permitted by law

700-0662-MR2-01-(03)

AA 060538

DISCHARGE SUMMARY
PAGE 2

and plans were made to transfer him to Camarillo. Because of the Roger S decision, Andre was required to sign a Roger S waiver, this he reluctantly agreed to do. There was some difficulty in the transfer although there was a bed available in Camarillo, we had difficulty getting a county facility to evaluate him. The delay dragged on for several days and past the point when I was scheduled to leave for a conference. The day before I was scheduled to leave and three days before his transfer to Camarillo, Andre AWAL'ed. His parents were notified of his whereabouts, were able to talk Andre into coming back into the hospital, he was readmitted and subsequently transferred to Camarillo.

During his hospital stay Andre was on p.r.n. Mellaril and the last week of his hospitalization he was placed on Mellaril 50 mg h.s. This tended to calm him down considerably without making him lethargic or other significant side effects. Structurally Andre presents as a boy with a severe disorder involving impulse control, poorly developed conflicted superego formation. He admits to no guilt nor do I see him able to tolerate guilt feelings although I believe they are probably denied. He seems to have an adequate sense of self but seems to be constantly fighting any effort of closeness seen as a threat of fusion. His basic defenses are denial and projection. His repressive barrier is inadequately developed but he does have a capacity for insight and empathy making a true sociopathic diagnosis unlikely. I feel strongly that there is a danger that his impulses will be acted on and not just fantasized. This danger will be minimized in a structured setting and as he gets older and learns to rechannel his aggressive drives and better able to deal with his emerging sexuality. I strongly recommend treatment in a facility such as Camarillo for the next several months and I made the recommendation to his parents.

DISCHARGE DIAGNOSIS: ADOLESCENCE ADJUSTMENT DISORDER.


HAROLD C. WIECHMAN, M.D.

ECV:dl

6/1/83-6/2/83

cc: Dr. H. C. Wiechman
Ross Loos

This information is being disclosed to you from records whose confidentiality is protected by State Section 87(2)(b) and Federal law. Federal Regulations 142 CFR Part 21 prohibit you from making any further disclosure without the specific written consent of the person to whom it pertains or as otherwise permitted by such regulations.

BOSTON, ANDRE

18531-01 - SOUTH UNIT

HAROLD C. WIECHMAN, M.D.

AA 000339

ADMIT DATE: 12 MARCH 1983

IDENTIFYING DATA: Andre Boston is a 15-year-old Black male who was admitted to this facility on 3/12/83 with a diagnosis of adolescence adjustment problem secondary to intense sexual aggressive conflict.

PAST MEDICAL HISTORY: Unremarkable. Patient gives a history of childhood measles and chickenpox but no mumps. Patient denies any family history of medical problems including hypertension, diabetes, heart disease. Patient reports his mother smokes.

SOCIAL HISTORY: Patient denies smoking or drinking or occasional drug use.

REVIEW OF SYSTEMS: Essentially unremarkable.

PHYSICAL EXAMINATION: Patient is an alert, well developed, young Black male in no acute distress at the time seen.

VITAL SIGNS: BP 120/70, pulse rate 80, respiratory rate 16, patient is afebrile.

HEENT: Within normal limits.

NECK: Supple. Carotid pulses are +2 and equal. There are no masses or organomegaly. The trachea is midline.

CHEST: Clear to auscultation and percussion. Anterior and posterior lung

CARDIAC: The PMI is in the 5th intercostal, midclavicular line. S1 and S2 are within normal limits. There is no S3, S4, or murmur.

ABDOMEN: Soft. Bowel sounds are active. There are no masses or organomegaly.

GENITALIA: Both testes are descended. There is no evidence of hernia.

EXTREMITIES: Without cyanosis, clubbing or edema. Capillary refill are +2 and equal. There are no masses.

NEUROLOGICAL EXAMINATION: Grossly physiologic.

ASSESSMENT POST HISTORY AND PHYSICAL EXAMINATION:

1. INCOMPLETE DATA BASE.
2. MENTAL DYSFUNCTION.

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-(CONTINUED)-

INGLESIDE MENTAL HEALTH CENTER
MEDICAL HISTORY AND PHYSICAL EXAMINATION

NAME: BOSTON, ANDRE
HOSP. NO: 18521-01 - SOUTH UNIT
PHYSICIAN: HAROLD C. WISCHMAN, M.D.

410-0582-MP36-01

AA 000540

HISTORY AND PHYSICAL

PAGE 2

PLAN: Routine Data Base will be obtained and reviewed and the patient followed up should there be any medical problems arise.

Jerome A. Robinson
JEROME A. ROBINSON, M.D.

JAR:bl
3/15/63-3/17/63
cc: School

This information has been disclosed to you under the
provisions of the Freedom of Information Act, 5 U.S.C. 552,
which confidentiality is protected by State Section 122,
Massachusetts Code, and/or Federal law. Federal
regulations (42 CFR Part 2) prohibit you from making any
further disclosure without the specific written consent of the
person to whom it pertains, or as otherwise permitted by such
regulations.

BOSTON, MA 02118

18531-01 - SOUTH UNIT

EARL C. KESSELMAN, M.D.

1 "Four factors are relevant to a consideration of whether
2 denial of a speedy trial assumes due process (or 6th Amendment)
3 proportions; the length of the delay, the reason for the
4 delay, the prejudice to the defendant and the waiver by the
5 defendant. (U.S. V SIMMONS 338 F2d 801, 807, cert den 380 U.S.
6 983, 85 S.Ct. 1352, 14 L.Ed 2d 276)

7 "These factors are to be considered together because they
8 are interrelated." (U.S. ex rel VON GERN V. FAY 313 F2d 620, 623)

9 Defendant contends that this motion demonstrates to the
10 court, how each of the four factors which determine a denial
11 of the right to a speedy trial applied in this case matter,
12 and situation.

13 "A period of four years is enough of a delay to satisfy the
14 first factor relevant to the violation of a right to a speedy
15 trial." (U.S. V. RICHARDSON 291 F. Supp. 441, 442)

16 Defendant contends that the delay of five years (from
17 initial arrest until the time the defendant was brought to
18 stand trial) satisfied the factor concerning the length of
19 the delay.

20 Defendant contends that the next factor, the reason for
21 the delay in the prosecution of this case, was unnecessary and
22 unjustified. The Nevada prosecuting officials have known about
23 the defendant's whereabouts since his initial arrest and formal
24 charging on Dec. 9th, 1983. Upon final disposition of the Calif.
25 case matter, (Oct. 21, 1984) Nevada prosecuting officials had the
26 opportunity to request an extradition hearing so that the
27 defendant could be brought to stand trial and receive a speedy
28 and fair trial. The prosecuting officials of Nevada should

INGLESIDE MENTAL HEALTH CENTER

DISCHARGE SUMMARY

NAME: BOSTON, ANDREA
 ATTENDING THOR-ALCYONE
 PHYSICIAN: REYES, M.D. HOSPITAL NUMBER: 18531-02
 AGE: 15 BIRTHDATE: 7/17/67 RESIDENCE: 21930 E. Birdseye Dr. Diamond Bar, CA 91765
 DATE ADMITTED: 5/3/83 DISCHARGE DATE: 5/5/83

DISCHARGE DIAGNOSIS: ADJUSTMENT DISORDER OF ADOLESCENCE WITH AGGRESSIVE BEHAVIOR, WITH POSSIBILITY OF SCHIZOPHRENIA AS SECONDARY DIAGNOSIS.

PROGNOSIS: Guarded.

GENERAL DATA: This is the case of a young male who AWOL'ed from this facility several days ago. He was under the care of Dr. Wiechman. At that point there was a plan to transfer him to Camarillo State Hospital for continuing treatment and that preparations have been made for this.

The history indicated the patient to be very aggressive and violent and it was given at that time an impression of schizophrenia. The plan for this particular admission was for him to stay here until the PAT team of Arcadia Mental Health to come and pick him up and bring him to Metropolitan State Hospital.

Additional History: The family is unable to take care of this young man and the undersigned simply covered for Dr. Wiechman during this particular admission until the patient can be transferred to Camarillo State Hospital.

No significant workup was done during this particular hospitalization because this patient has been in this facility for several weeks. The previous physical examination was essentially unremarkable. Psychological testing was done for him and was essentially that of an adolescent adjustment reaction with depressive features and secondary paranoid system with him. The psychosocial history was not done at this time but the previous psychosocial evaluation was done to assist the undersigned in understanding the various family processes going on. He was then discharged to LAC Mental Health Center to be transferred to Camarillo State Hospital after a day of stay in the hospital.

cc: Dr. T. Reyes/Ross Loos
 TR:bl
 7/4/83-7/13/83

THOR-ALCYONE REYES, M.D.

INGLESIDE MENTAL HEALTH CENTER

DISCHARGE SUMMARY

NAME: BOSTON, ANDREA
 HOSPITAL NUMBER: 18531-02 - SOUTH UNIT
 PHYSICIAN: THOR-ALCYONE REYES, M.D.
 This information has been disclosed to the public in violation of the confidentiality provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The disclosure was made in violation of the regulations (42 CFR Part 2) which prohibit the disclosure of this information without the specific written authorization of the individual to whom it pertains, or as otherwise permitted by law.

6700-0682-MR2-01-(03)

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 AA 000543

Exhibit

C

1 have occasioned no difficulty in extraditing the defendant
2 and bringing him to trial.

3 Defendant was denied the right to a speedy trial, because
4 in the same manner that the Nevada prosecuting officials
5 were granted extradition in May of 1988, they could have
6 been granted extradition in 1984 (upon final disposition of the
7 California case matter,) had they requested extradition or an
8 extradition hearing and exercised diligent and good faith
9 efforts in the prosecution of this pending case matter.

10 "If the presumption of innocence which cloaks every
11 defendant until a verdict of guilty is returned is to have
12 meaning, a defendant should not be required to move for a
13 prompt trial to establish his innocence. It is the government
14 which initiates the action and it is the government which
15 likewise has the duty of seeing that the defendant is speedily
16 brought to trial. (PEOPLE V. PROSSER 57 A.L.R. 2d 295)

17 Nevada prosecuting officials did not seek or request an
18 extradition hearing until Oct. of 1986 (2 years after final
19 disposition of the California case matter and 3 years after
20 initial arrest and formal charging).

21 Inbetween Oct. of 1984 and Oct. of 1986, Nevada prosecuting
22 officials had a substantial time period in which they could
23 have requested extradition or sought an extradition hearing
24 so that the prosecution of this pending case could have
25 proceeded without any further unnecessary delays, but they
26 did not and at this point the delay became unjustified.

27 "The government has a duty to press criminal cases to trial
28 to give them any necessary priority and to prevent whenever

1 possible, even the suggestion of staleness" (HOIGES V. U.S.
2 408 F2d 543, 551)

3 After the denial of the request to extradite at the
4 extradition hearing in Oct. of 1986 (for insufficiency of the
5 evidence to establish identification,) another unnecessary
6 delay period of 2 years passed without any diligent and good
7 faith efforts made by the prosecution/prosecuting officials
8 to extradite the defendant or in the prosecution of this case.

9 In May of 1988 (after the second two year delay period
10 with no diligent and good faith efforts being made during this
11 time,) another extradition hearing was held and the Nevada
✓ 12 officials were granted extradition at this hearing. (If the
13 prosecuting officials of Nevada had previously requested
14 extradition and provided the California Magistrate with any
15 sufficient evidence that a diligent and good faith effort of
16 prosecuting this case would have provided, they could have
17 been granted extradition and extraditing the defendant as
18 early as Oct. of 1984, or anytime inbetween then, and May of
19 1988.)

20 The reasons for the delay in the prosecution of this
21 case, and in bringing this defendant to stand trial and there-
22 by giving him the opportunity to receive a speedy and con-
23 sequently fair trial, were unnecessary and unjustified.

24 Defendant contends that the 3rd factor "the prejudice
25 from the delay" which is relevant in determining a denial of
26 the right to a speedy trial, was demonstrated by defendant and
27 shown how it applies to his case. Because of the forementioned
28 reasons within this motion concerning the prejudice caused by

1 the unnecessary delays in the prosecution of this case,
2 defendant contends that he has proven satisfactorily that
3 his case was prejudiced by the unnecessary delays.

4 Defendant contends that he NEVER waived his right to a
5 speedy trial as explained in this motion and thus satisfies
6 the 4th factor in considering the determining whether he was
7 denied his constitutionally guaranteed right to a speedy
8 trial.

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3.
DEPENDANT CONTENDS THAT HE NEVER WAIVED
HIS CONSTITUTIONALLY GUARANTEED RIGHT TO
DUE PROCESS, A SPEEDY TRIAL OR THE
ASSISTANCE OF COUNSEL TO HELP HIM
UNDERSTAND HIS RIGHTS.

Defendant has been incarcerated on this case since
Dec 9, 1983 when he was formally arrested and charged for
this case, and the prosecuting authorities of Nevada know of
his whereabouts since his initial arrest and charging by
them on Dec 9, 1983. The prosecuting officials of Nevada,
had they made a diligent good faith effort towards the
prosecution of this pending case, could have had this
defendant returned to their state throughout the years
from 1983, just as they did in June of 1988.

"The government has a duty to press criminal case to
trial, to give them any necessary priority and to prevent,
whenever possible, even the suggestion of staleness"...
(HODGES v. US 408 F2d 543, 551)

"It must be borne in mind that the prosecution,
not the defendant, is charged with bringing a case to
trial. The government may not sit back and argue that
defendant's inaction conclusively waived his right to
a speedy trial"... (HODGES v. US 364 F2d 684, 687, 688.)

"When the state sees fit to charge a defendant by
indictment with the commission of a crime, it is equally
the duty of the prosecutor to see that defendant is arraigned
and enters a plea, and is speedily brought to trial, as

1 it is to charge him with the offense in the first place...
2 (State V. Rosenberg 142p 621; In Re Clark 151 P748,155 P187
3 ,189.)

4 At the time of defendant's arrest he was merely 16
5 years of age.

6 Defendant was never appointed counsel or advisory legal
7 personnel from the time of initial arrest and formal charging in
8 Dec 9, 1983 unt 1 June of 1988 after extradition from Calif,
9 so he did not know what his rights were, and had no one to inform
10 him of these rights, what they consisted of, and how they could
11 possibly, mistakenly, accidentally, inadvertently, and unknowingly be
12 waived.

13 Defendant was not aware of his constitutionally guaranteed
14 rights and did not have counsel to advise him of such rights....
15 "the 6th Amendment of the U.S.C.A. guarantees that " In all Criminal
16 prosecutions, the accused shall enjoy the right to have the assistance
17 of counsel for his defense."

18 Criminal prosecutions begin when an indictment, information or
19 complaint is filed and accused is arrested.

20 Defendant has no prior juvenile arrest record, except for
21 misdemeanors runaways and trespassing which were dismissed, so
22 defendant has had no prior trial and/or court experience to indicate
23 he had any knowledge of the Judicial System and his constitutionally
24 guaranteed right to a speedy trial.

25 Defendant did not have the professional legal skill nor under-
26 standing regarding the law, to know that he had a right to a speedy
27 trial.

28 Defendant suffered from a mental disorder since 1983, and he had

1 been under the influence of certain psychiatric medications (as
2 documented in defendant's medical, psychiatric, and prison files, and
3 available upon court order if required.) so he was not in his right
4 state of mind and clearly without counsel to provide legal advice, did
5 not understand the legal proceedings regarding extradition, a speedy
6 trial, or the waiver concerning any Constitutionally guaranteed rights.

7 Defendant did not know he had a right to a speedy trial and prompt
8 disposition of this pending case.

9 Defendant never waived anything including extradition or a speedy
10 trial, because he DID NOT know what he would be waiving if he in fact
11 did waive extradition or a speedy trial.

12 Because the prosecuting officials may allege that the defendant
13 never waived extradition, "does not" mean defendant gave up or waived his
14 right to a speedy trial.

15 "The question of waiver of a federally guaranteed constitutional
16 right is of course, a federal question controlled by federal law. There
17 is a presumption against a waiver of constitutional rights..." (Classer
18 V. US 315 US 60, 70-71; 62 S.Ct. 457, 404-405, 80L. Ed 680.)

19 "For a waiver to be effective it must be clearly established that
20 there was an "intentional relinquishment or abandonment" of a known
21 right or privilege..." (Johnson V. Zerbst 304 US 458, 58 S. Ct 1019, 1023)
22 , 82L Ed 1461.

23 "Here inaction in asserting right to a speedy trial does not
24 result in that right being waived..." (Overruling Goss V. State 390 P2d
25 220 (USCA Amendments 6 and 14).)

26 "It would seem beyond the pale of "fair play" and repugnant to
27 the 5th Amendment requirements of due process, to find that a defendant
28 has waived his right to a speedy trial, even though disadvantaged by

1 The prosecution's unjustified delay, simply because he has not taken
2 the " relatively unlikely step of demanding an early trial ".....

3 (US V. MINN 291 F Supp 274.)

4 It is not the Defendant duty to prosecute this case, but merely
5 to defend his liberty against the allegations he is faced to stand
6 against.

7 "The trial of a criminal case should not be delayed because the
8 defendant does not think that it is in his best interest to seek prompt
9 disposition of the charge....(US V. ROBERTS 293 F. Supp 195.)

10 " Courts indulge every reasonable presumption against waiver of
11 fundamental Constitutional rights and do not presume acquiescence in the
12 loss of fundamental rights....(Johnson V. Zerbst 304 US 458,464; 58 S.
13 Ct 1019,1932, 82 L. Ed. 1461, 140 A.L.R. 357.)

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CONCLUSION

Defendant has shown from this motion that it is obvious that because of the prejudicial delay in bringing this case to trial, shows a lack of prosecution, and denies this defendant the opportunity to present an adequate defense, and in essence denies this defendant a fair trial, and that there is no way he will ever be guaranteed a fair trial in this case. The delays in bringing this defendant, and the prosecuting officials of the State of Nevada are responsible. Therefore, this case in the interest of justice, must be dismissed, for failure to prosecute, for the prejudice from the unnecessary delays which denied the defendant the right to fair trial, and all the foregoing reasons.

VERIFICATION

I declare that, I am the defendant in the above entitled matter. I understand that a false statement will subject me to the penalties of perjury, under the laws of the State of Nevada and of the United States, that the foregoing is true and correct.

DATED: 8-18-88

/s/ Andre P. Boston
ANDRE P. BOSTON
DEFENDANT

1 Pursuant to the Federal Rules of Criminal Procedure;
2 48"b" which states; (if there is unnecessary delay in presenting the
3 charge to a grand jury, or in filing an information against a defend-
4 ant who has been held to answer to the District Court , or if there is
5 unnecessary delays in bringing defendant to trial, the court may dismiss
6 the indictment, information or complaint,) this court has the discretion
7 to dismiss this case under rule 48"b" of the Fed. Rules of Crim. Procedures,
8 because there has been an unnecessary delay in bringing this defendant
9 to trial.

10
11 Furthermore, defendant has demonstrated to this court how his
12 U.S. constitutionally guaranteed rights under the 6th and 14th Amend-
13 ments has been violated by unnecessary delay of prosecution in this case,
14 and in view of such, this court has the discretion to dismiss this case

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CASE NO. C84650

Defendant declares as follows;

I

I am the defendant in the above entitled matter/action.

II

I am charged with having committed the crimes which are alleged in the petition of case no. C84650

III

I was arrested in the state of California on 12-05-1983, and to my understanding and belief, the authorities in the state of Nevada were contacted and told of my whereabouts. All of the papers that were sent to me concerning this, other than the extradition waiver papers, were given to my caseworker at the California Institution For Men, Chino Ca.. I received all of the papers which includes the petition. I had not been given an attorney to handle my defense and to advise me of my rights, and at the time that I was charged with case no. C84650, I was 16 years old. At one time I was taken to Sacramento Ca. for an extradition hearing, which was denied. I was then later extradited on 6-16-1988 and I'm presently being detained at the Clark County Detention Center. I have been incarcerated since 12-05-1983, and there is a detainer hold on me in California.

I declare under penalty of perjury, under the laws of the State of Nevada and of the United States, that the foregoing is true and correct. Executed this 18 day of Aug 1988, at The Clark County Detention Center, Las Vegas, Nevada.

/s/

Andre D. Boston
ANDRE D. BOSTON, DECLARANT

320

AA 000554

APPENDIX (A)

ANDRE' BOSTON

Name

DO3868

Prison Number

C.C.I. IV-B TEHACHAPI, CALIFORNIA

Place of Confinement

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ANDRE' BOSTON, Petitioner
(Full Name)

vs.

WILLIAM B. BU'NELL, Respondent
(Name of Warden, Superintendent,
jailor or authorized person having
custody of petitioner.)

and

The Attorney General of the State
of NEVADA, Additional
Respondent.

(NOTE: If petitioner is attacking a
judgment which imposed a sentence to
be served in the future, petitioner
must fill in the name of the state
where the judgment of conviction was
entered.)

CASE NO. CV-8-90-455-LDG-LRL
(To be supplied by the Clerk)

PETITION FOR A
WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. §2254
BY A PERSON IN STATE CUSTODY

1) Name and location of the court which entered the judgment of
conviction under attack: EIGHTH JUDICIAL DISTRICT COURT OF LAS
VEGAS, NEVADA

2) Date judgment of conviction was entered: OCTOBER 20, 1988

3) Case number: C-84650

4) Length and terms of sentence: 14 life sentences and 92 years
consecutively

a) In a capital case where death penalty has been imposed, date
of scheduled execution _____

#2-B Rev. 7/86

322
AA 000556

- 5) Are you presently serving a sentence imposed for a conviction other than the conviction under attack in this motion?

Yes ☒ No ☐

- 6) Nature of the offense involved: (all counts) kidnap, robbery,
burglary, attempt to dissuade a victim from reporting a crime, sexual assault

- 7) What was your plea? (check one)

a) Not Guilty ☒ b) Guilty ☐ c) Nolo Contendere ☐

- 8) If you entered a plea of guilty pursuant to a plea bargain, state the terms and conditions of the agreement: _____

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

a) A jury ☒ b) A judge without a jury ☐

- 10) Did you testify at trial (if any)? Yes ☐ No ☒

- 11) Did you appeal from the judgment of conviction?

Yes ☒ No ☐

- 12) If you did appeal, state the name and location of the court where the appeal was filed, the result, the case number and the date of the court's decision (or attach a copy of the court's opinion or order): SUPREME COURT OF NEVADA CASE NO. 19625 PETITION FOR WRIT OF HABEAS

CORPUS DENIED FOR LACK OF JURISDICTION SEE EXHIBIT (A). SUPREME COURT OF

NEVADA CASE NO. 19607 DIRECT APPEAL DISMISSED ON OCT. 24, 1989

13) If you did not appeal, explain briefly why you did not: _____

a) Did you seek permission to file a late appeal?

Yes ☐ No ☐

14) State concisely every ground on which you claim that you are being unlawfully held. Summarize briefly the facts supporting each ground. If necessary, you may attach up to two extra pages stating additional grounds or supporting facts. You should raise in this petition all available grounds for relief which relate to the conviction under attack.

CAUTION

Before proceeding in a federal court, you are required to exhaust the remedies available to you in the state courts as to each ground on which you request action by the federal court.

A)(1) Ground One: PETITIONER WAS DENIED THE RIGHT TO EFFECTIVE ASSISTANCE
OF COUNSEL AT THE CERTIFICATION HEARING

(2) Supporting Facts: (Without citing legal authority or argument state briefly the facts which support your claim.)

This case is five years old, petitioner was charged with the above mentioned allegations in Dec. of 1983. Petitioner was 16 years old when the felony petition was filed. Five years later on June 16, 1988, petitioner was extradited from the state of California to the state of Nevada to be held for the crimes alleged in the petition. On or about July 5th, 1988, petitioner appeared in the Juvenile District of the Eighth Judicial District Court for the purpose of a certification hearing (case no. J28884). The only facts recognized at the hearing were the 14 charges against petitioner, and the fact that petitioner was 20 years old and soon to be 21 in twelve days. Petitioner submitted to the court a motion to dismiss based on the prejudice that petitioner suffered because of the unnecessary delay in bringing this case to trial. The court denied the motion informing petitioner to resubmit the motion in a higher court. Petitioner then tried to bring to the court's attention, that five years ago, and 3 months before the crimes were allegedly committed, petitioner had just been discharged by his parents against medical advice from Camarillo State Hospital. Petitioner counsel failed to argue this issue as a condition affecting the discussion of the court to certify petitioner as an adult. If counsel would have asserted this issue along with the fact that petitioner was only 16 years of age at the time these acts were committed, petitioner contends that he would not have been held to answer as an adult and that this case would properly been dismissed -3- in the interest of justice.

{3} Statement of Exhaustion of State Remedies as to
Ground One:

Direct Appeal

(a) If you appealed from the judgment of conviction
did you raise this issue? Yes ☐ No ☒

(b) If you did not raise this issue in your direct appeal, explain briefly why you did not: Counsel on appeal was

ineffective in that he never conversed with petitioner relating to the direct appeal.

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(d) If your answer to (c) is "Yes", state the type of motion or petition, the name and location of the court where the motion or petition was filed, the result and date of the court's decision: Motion to dismiss, motion for a new trial;

SEE DOCUMENTS FILED AND LODGED (but never returned) IN THE NEVADA

STATE SUPREME COURT (I.d. EXH. (C))

(e) Did you receive an evidentiary hearing on your motion or petition? Yes ☐ No ☒

(f) Did you appeal from the denial of your motion or petition? Yes ☐ No ☒

(g) If your answer to (f) is "Yes", state whether this issue was raised in the appeal. Yes ☐ No ☐, and state the name and location of the court where the appeal was filed, the case number and the date of the court's decision (or attach a copy of the court's opinion or order):

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain: Petitioner was out to court in the state of

California and did not have access to the law library.

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue: Petitioner filed a Writ of Habeas Corpus in the Supreme Court

of Nevada (case no. 19625) raising all of the issues that are raised in

this petition. The petition was denied. SEE EXHIBIT (A) court opinion

B)(1) Ground Two: Petitioner was denied effective assistance of counsel because counsel failed to investigate, in that he was not prepared to proceed at preliminary hearing.

(2) Supporting Facts: (Without citing legal authority or argument state briefly the facts which support your claim.)

As stated in ground one petitioner was certified as an adult to stand trial for the crimes alleged in the petition. A felony complaint was filed in the justice court, and petitioner was arraigned on or about July 11, 1988. Petitioner retained counsel John Fagden on July 25, 1988. On the following day July 26, 1988, the day before preliminary hearing examinations was scheduled to be held. Petitioner appeared in court, at which time counsel registered with the court as attorney of record. Counsel at that time received a copy of the criminal complaint and the other papers concerning this case. Upon receiving petitioner's file, petitioner's attorney motioned the court for a continuance so that he can properly prepare and investigate the case and be ready to represent petitioner during preliminary hearing examinations. The court denied the motion for continuance and ordered the preliminary hearing to be held July 27, 1988. On July 27, 1988, preliminary hearing examinations were held. Counsel did not adequately cross examine the prosecution's witnesses because he never had an opportunity to interview them prior to preliminary hearing, and counsel did not represent petitioner's motion for plea of guilty by reason of insanity, nor did counsel represent petitioner's motion for dismissal based on the prejudice resulting from the unnecessary delays. Counsel was not prepared to defend the factors of the tainted identification because there was no pre preliminary line up. If counsel would have had enough time to investigate and prepare for this case prior to preliminary hearing, the motion to dismiss, the motion for a plea of guilty by reason of insanity, and the motion for pre preliminary hearing lineup would have been adequately presented to the court and an outcome more favorable to petitioner would have been reached.

(3) Statement of Exhaustion of State Remedies as to
Ground Two:

Direct Appeal

(a) If you appealed from the judgment of conviction
did you raise this issue? Yes ☐ No ☒

(b) If you did not raise this issue in your direct appeal,
explain briefly why you did not: ineffective counsel on appeal

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction
motion or petition for habeas corpus in a state trial
court? Yes ☒ No ☐

(d) If your answer to (c) is "Yes", state the type of
motion or petition, the name and location of the court
where the motion or petition was filed, the result and date
of the court's decision: Motion to dismiss, motion for a new

trial. SEE DOCUMENTS FILED AND LODGED (but never returned) IN THE

NEVADA SUPREME COURT (i.d. EXHIBIT (C))

(e) Did you receive an evidentiary hearing on your motion
or petition? Yes ☐ No ☒

(f) Did you appeal from the denial of your motion or
petition? Yes ☐ No ☒

(g) If your answer to (f) is "Yes", state whether
this issue was raised in the appeal, Yes ☐ No ☐
and state the name and location of the court where the
appeal was filed, the case number and the date of the
court's decision (or attach a copy of the court's opinion
or order): _____

(h) If your answer to questions (e), (f) or (g) is "No", briefly explain: Petitioner was out to court in the State of

California and did not have access to the law library.

Other Remedies

(i) Describe all other procedures (such as habeas corpus in the state supreme court, administrative remedies, etc.) you have used to exhaust your state remedies as to the issue: Petitioner filed a Writ of Habeas Corpus in the Supreme Court

of Nevada (case no.19625)raising all of the issues that are raised in

this petition.The petition was denied. See exhibit (a) court opinion.

C)(1) Ground Three: Petitioner was denied the effective assistance of counsel because counsel failed to investigate the possibility of the defense of insanity at the time the acts were committed.

(2) Supporting Facts: (Without citing legal authority or argument state briefly the facts which support your claim.)

On 3-12-1983, Andre' D. Boston, petitioner, 15 years old was admitted into Ingleside Mental Center, by his parents, after he was picked up by the police for peeping into a neighbor's window, and because they (his parents) were concerned after finding a series of letters describing, in detail, specific women and girls in the neighborhood, and from former neighborhoods, that petitioner listed as potential victims to kidnap, rape, and possibly murder. The doctors at Ingleside Mental Health Center recognized that petitioner had serious mental problems, and they strongly felt that petitioner needed further hospitalization and recommended that petitioner be sent to Camarillo State Hospital. Petitioner was not able to be transferred as scheduled because there was problems in getting county facilities to evaluate him, so the delays dragged on for several days, and three days before the transfer date, petitioner awal'ed. Petitioner parents talked petitioner into going back into the hospital. During petitioner's stay he was on P.R.N. Mellaril, and the last week of his hospitalization, he was placed on mellaril 50 mg. HS.. Petitioner was diagnosis as a boy with a severe disorder involving impulse control, poorly developed conflicted superego formation. The prognosis was guarded. The history indicates that petitioner was very aggressive and violent, and it was given at that time an impression of schizophrenia. The doctors felt that very strongly there was a danger that petitioner's impulses will be acted on and not just fantasized. The doctor further stated that the danger will minimize in a structured setting, and as petitioner gets older and learns to rechannel his aggressive drives and better able to deal with his emerging sexuality. The doctors then strongly recommended treatment in a facility such as Camarillo. The recommendation was made to petitioner's parents. On 5-16-1983, petitioner was received at Camarillo State Hospital. He remained there until 7-16-1983. After coming to the same conclusions as the doctors at Ingleside Mental Center, the doctors at Camarillo stated that doctors at Ingleside had informed them that petitioner was a timebomb. (see

GROUND THREE CONTINUED:

exhibit (B)) After evaluating petitioner, the doctors at Camarillo stated that they believed petitioner could benefit from their treatment on their Unit 17, and the range of therapy (wide) and the activities on that program. As stated above, petitioner remained at the hospital until 7-16-1983. The reason for the discharge was not that petitioner had completed their program, but that petitioner's family wanted petitioner home on his birthday which was the next day on 7-17-1983. Five months after petitioner was taken out of Camarillo State Hospital, he was arrested and charged with the allegations contained in the petition of case no. A565679 (California) and Nevada petition case no. XVI J28884. (In support of these facts see exhibit (B)). On July 26, 1988, in court after petitioner attorney registered as the attorney of record, petitioner handed his attorney a motion to dismiss, and a motion for a plea of not guilty by reason of insanity. On the day of preliminary hearing examination, petitioner discussed with his attorney (in court) the facts supporting the motion to dismiss, and the motion for plea of not guilty by reason of insanity. Petitioner attorney assured petitioner that he would be representing both motions when the time was appropriate. Petitioner did not see his attorney again until the day of jury selection for petitioner's trial. (see exhibit (c) no. 28) On the day of jury selection for petitioner's trial, Petitioner again discussed with his attorney the facts supporting the motion to dismiss and the motion for plea of not guilty by reason of insanity. Counsel again assured petitioner that he would be arguing both motions at the appropriate time. Trial commenced on September 12, 1988. On the day of trial and everyday until sentencing petitioner urged his attorney to argue the motion to dismiss and the motion for plea of not guilty by reason of insanity. Counsel had in his possession from July 26, 1988, pertinent information, medical reports, etc., which would indicate that petitioner was suffering from a mental disease at the time that the acts were committed. The name of the Hospital, and the names of the examining psychiatrists were contained in the information received by counsel. From July 26, 1988, all through trial and on the day of sentencing, petitioner repeatedly urged his attorney to argue and assert, and to investigate the possibility of the defense of insanity. Despite having the evidence which would have placed the duty on counsel to investigate the possibility of the defense of insanity at the time of the commission of the acts charged, counsel ignored the evidence and the pertinent information in his possession, (see exhibit B) and the possibility of insanity at the time of the commission of the acts were never sought to be investigated and asserted. Therefore, counsel deprived petitioner a potentially meritorious defense.

GROUND FOUR: Petitioner was denied substantial due process in that the defense was denied the right to a speedy trial.

Facts: Petitioner, a 16 years old youth, was formally arrested by the State of Nevada in California on or about Dec. 9th, 1983. Three years later, in October of 1986, the Nevada prosecuting authorities and petitioner appeared in court for extradition proceedings. After a two weeks continuance in which the Nevada prosecuting officials were given an opportunity to bring forth sufficient identification evidence, the request was denied by the California Magistrate for lack of and insufficiency of the evidence to establish identification. On or about May 5th, 1988, petitioner at 20 years of age filed a motion to dismiss the complaint against him to the Juvenile District of the Eighth Judicial District Court in Nevada # Juvenile Div. Dept N. No. XVI J28884. In response to the motion to dismiss the complaint against him, the prosecuting authority in Nevada initiated extradition proceedings at Kern County Municipal Court. Petitioner was thereafter extradited from the state of California to the State of Nevada and taken to trial. Before trial commenced, the state of Nevada, Eighth Judicial District Court denied the motion to dismiss for the denial of the right to a speedy trial. Petitioner argued in the motion to dismiss for the denial of the right to a speedy trial the following: (a) petitioner, at the age of 16, was charged with committing the alleged offenses. (b) petitioner, three months before the dates of the alleged offenses had just been taken out of Camarillo State Hospital by his mother, despite the doctor's opinion to retain him. (c) After the first extradition hearing in 1986 the State of Nevada did not attempt to secure petitioner's person until 2 years later and after petitioner motioned the court for release. If the prosecuting officials of Nevada had previously requested extradition and provided the California Magistrate with any sufficient evidence that a diligent and good faith effort of prosecuting this case would have

GROUND FOUR CONTINUED:

provided, they could have been granted extradition and extradited the petitioner as early as Oct. of 1984, or anytime inbetween then and May of 1988. (d) Petitioner was never advised by an attorney of his rights to a fair defense. (i.e. investigation, subpoena witnesses, discovery, view of the crime scenes, etc..) (e) Because so many years have past, petitioner cannot locate any witnesses in his behalf, petitioner cannot view the crime scene as it was then, petitioner cannot cross examine prosecution witnesses, and petitioner does not remember himself what happened back in 1983 on the dates in question because so much time passed and back in 1983 petitioner suffered from a mental disorder/disease. (f) Four factors are relevant to a consideration of whether denial of the right to speedy trial assumes due process (or 6th amendment) proportions; the length of the delay, the reason for the delay, the prejudice to the defendant, and the waiver by the defendant. (SEE exhibit D)

STATEMENT OF EXHAUSTION AS TO GROUND FOUR:

I have filed these issues, all of them, on Habeas Corpus to the Nevada Supreme Court. The court dismissed the petition for jurisdictional grounds which still exist. (see exhibit (A))

(3) Statement of Exhaustion of State Remedies as to
Ground Three:

Direct Appeal

(a) If you appealed from the judgment of conviction
did you raise this issue? Yes ☐ No ☒

(b) If you did not raise this issue in your direct appeal,
explain briefly why you did not: I was not Pro-se on direct

Appeal; I was appointed counsel by the State Supreme Court. Counsel
on appeal never contacted me, never sent me any copy of Briefs, and I
did not know that counsel existed until after the appeal was completed.

Post-Conviction Proceedings

(c) Did you raise this issue by means of a post-conviction
motion or petition for habeas corpus in a state trial
court? Yes ☒ No ☐

(d) If your answer to (c) is "Yes", state the type of
motion or petition, the name and location of the court
where the motion or petition was filed, the result and date
of the court's decision: Motion to dismiss, and Petition for a
writ of habeas corpus in the State Supreme Court.

(e) Did you receive an evidentiary hearing on your motion
or petition? Yes ☐ No ☒

(f) Did you appeal from the denial of your motion or
petition? Yes ☐ No ☒

(g) If your answer to (f) is "Yes", state whether
this issue was raised in the appeal, Yes ☐ No ☐,
and state the name and location of the court where the
appeal was filed, the case number and the date of the
court's decision (or attach a copy of the court's opinion
or order): _____

(h) If your answer to questions (e), (f) or (g) is "No",
briefly explain: See answer to (b)

Other Remedies

(i) Describe all other procedures (such as habeas corpus
in the state supreme court, administrative remedies, etc.)
you have used to exhaust your state remedies as to the
issue: I have filed these issues, all of them, on habeas corpus

to the State Supreme Court. The Court dismissed the Petition on
jurisdictional grounds which still exist. See Exh. (a)

- 15) Have all grounds for relief raised in this petition been presented
to the highest state court having jurisdiction?

Yes ☒ No ☐

- 16) If you answered "No" to question 15, state which grounds have not
been so presented and briefly give your reason(s) for not present-
ing them: _____
- _____
- _____

- 17) Have you previously filed any type of petition, application or
motion in a federal court regarding the conviction under attack?
Yes ☒ No ☐. If "Yes", state the location of the court,
the type of proceeding, the issues raised, the result and the date
of the court's decision for each petition, application or motion
filed: This court received a Petition for writ of Habeas Corpus, but the

Writ was dismissed on exhaustion grounds because petitioner's direct appeal
was at that time still pending. case no. CV-S-89-103 PMP (RJJ)

- 18) Do you have any petition, application, motion or appeal now pending in any court regarding the conviction under attack? Yes ☐ No ☒. If "Yes", state the name of the court and the nature of the proceeding: _____

- 19) Were you represented by an attorney at any time during the course of your arraignment and plea, trial (if any), sentencing, appeal (if any), or during the preparation, presentation or consideration of any petitions, motions or applications which you filed with respect to this conviction? Yes ☒ No ☐. If "Yes", state the name(s) and address(es) of any such attorney(s), the proceedings in which you were so represented and whether said attorney(s) was/were of your own choosing or if appointed by the court: The attorney was court appointed. John Fadden. He represented me during arraignment, trial and sentencing. State Public Defender represented me on appeal.

Wherefore, petitioner prays that the court grant him such relief to which he may be entitled in this proceeding.

Signature of Attorney (if any)

Andrie' Boster
Signature of Petitioner

(Attorney's full address and telephone number.)

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares under penalty of perjury that he is the petitioner in the above action, that he has read the above pleading and that the information contained therein is true and correct.
28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at LEE-IVK Tehachapi Ca on _____
(Location)

7-6, 19 90
(Date)

Andrie' Boster
(Signature)

EXHIBIT A

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREE DUPREE BOSTON,

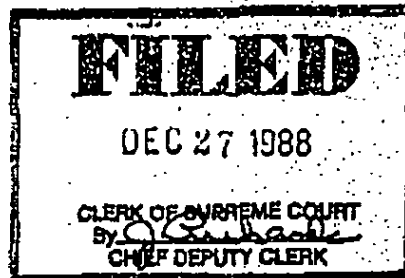
Petitioner,

vs.

ATTORNEY GENERAL OF THE STATE OF
NEVADA, THE HONORABLE BRIAN
MCKAY,

Respondent.

No. 19625

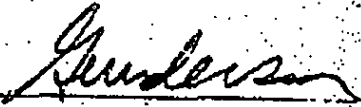
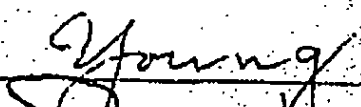
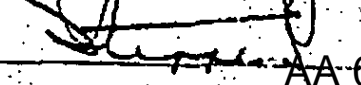


ORDER DENYING PETITION
FOR A WRIT OF HABEAS CORPUS

This is a proper person petition for a writ of habeas corpus. We note that petitioner is presently incarcerated in a correctional institution in Tehachapi, California.

Pursuant to Article 6, section 4 of the Nevada Constitution, this court may issue writs of habeas corpus only on behalf of persons actually held in custody within this state. Similarly, Article 6, section 6 of the Nevada Constitution authorizes the district courts of this state to issue writs of habeas corpus in favor of persons actually held in custody in their respective districts only. Because petitioner is not incarcerated within the State of Nevada, the district courts of this state lack jurisdiction under NRS Chapter 34 to grant the relief requested in this petition. See Nev. Const. art. 6 § 4 and 6; Marshall v. Warden, 83 Nev. 442, 434 P.2d 437 (1967). Accordingly, we deny this petition.

It is so ORDERED.

 C. J.
 J.

AA 000569 335

APPENDIX (E)

1 BRIAN McKAY
2 Attorney General
3 STUART J. NEWMAN
4 Deputy Attorney General
5 Criminal Justice Division
6 Heroes Memorial Building
7 Capitol Complex
8 Carson City, NV 89710
9 (702) 687-4170

6 Attorneys for Respondents.

8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF NEVADA

11	ANDRE BOSTON,	)	Case No. CV-S-90-455-LDG(LRL)
12)	
13	Petitioner,)	
14)	
15	vs.	)	MOTION TO DISMISS PETITION
16		)	FOR WRIT OF HABEAS CORPUS
17	WILLIAM B. BUNNELL and BRIAN	)	<u>BY A PERSON IN STATE CUSTODY</u>
18	McKAY,)	
19)	
20	Respondents.)	
21)	

22 Respondents, by and through counsel, BRIAN McKAY, Attorney
23 General of the State of Nevada, respectfully move this Court to
24 dismiss the petition for writ of habeas corpus filed herein.
25 This motion is made pursuant to the order of this Court entered
26 on August 2, 1990. This motion is based on Rules 4 and 11 of
27 the Governing Section 2254 Cases in the United States District
28 Courts, Rules 12(b)(1) and (5) of the Federal Rules of Civil
Procedure, the accompanying points and authorities, the index of
exhibits in support of motion to dismiss, and the exhibits
themselves. Respondents specifically allege herein that Boston
is not in the custody of the respondents and that he has failed

1 to exhaust all state remedies as to all issues raised in the
2 petition. In order to clarify the record, the respondents
3 reiterate that an answer is not being filed at this time.
4 Should an answer be required, the respondents will rely upon the
5 exhibits submitted in support of the motion to dismiss, as well
6 as any additional exhibits.

7 POINTS AND AUTHORITIES

8 I. STATEMENT OF THE CASE

9 On August 2, 1988, petitioner Andre D. Boston (hereinafter
10 BOSTON) was charged with burglary, lewdness with a minor with
11 use of a deadly weapon, assault with a deadly weapon, battery
12 with intent to commit with use of a deadly weapon, first degree
13 kidnapping with use of a deadly weapon, seven (7) counts of
14 sexual assault with use of a deadly weapon, robbery with use of
15 a deadly weapon, and attempting to dissuade a victim or witness
16 from reporting a crime with use of a deadly weapon. (Exhibit
17 A). Following a jury trial, BOSTON was found guilty and
18 sentenced to serve fourteen (14) life sentences and ninety-two
19 (92) years in prison. (Exhibit B).

20 Following his direct appeal to the Nevada Supreme Court, an
21 Order Dismissing Appeal was issued by the Nevada Supreme Court
22 on October 24, 1989. (Exhibit E).

23 Subsequent to the conviction, but prior to the filing of
24 the Order Dismissing Appeal, BOSTON filed a pro per petition for
25 writ of habeas corpus in the Nevada Supreme Court. (Exhibit F).
26 On December 27, 1988, the Nevada Supreme Court entered an order
27 denying that petition for writ of habeas corpus. (Exhibit G).
28 In that order, the Nevada Supreme Court noted that BOSTON was

1 presently incarcerated in a correctional institution in
2 Tehachapi, California. Because he was not incarcerated within
3 the State of Nevada, the Nevada Supreme Court lacked jurisdiction
4 under NRS Chapter 34 to grant the relief requested. See Exhibit
5 G.

6 II. STATEMENT OF FACTS

7 The facts relating to the underlying crimes are taken from
8 the respondent's answering brief on direct appeal. In addition,
9 respondents will supplement these facts with the facts germane
10 to the motion to dismiss.

11 On the morning of October 1, 1983, at about 4:30 a.m., at
12 5010 Reno Court, Las Vegas, Nevada, twelve year old Kathleen
13 Kukal was peacefully sleeping in her bedroom. She awoke and
14 noticed her cat was not on her bed. (Exhibit H, pp. 156-157).
15 She saw a man in her doorway who, after closing the door, came
16 toward her and placed his hand over her mouth. (Exhibit H, p.
17 157). He pushed her down onto her back, placed her bed covers
18 over her head, and told her that he would be gone soon. (Exhibit
19 H, pp. 157-158).

20 She heard him over by her dresser, and then by the side of
21 the bed where she felt his hand move alongside the side of her
22 thigh, under her nightgown. (Exhibit H, p. 158). As his hand
23 approached her vagina, she moved away and sat up. (Exhibit H,
24 p. 159). He placed a knife against her throat, told her to lie
25 back down, and placed the covers over her head again. (Exhibit
26 H, p. 159).

27 Once again he put his hand on her thigh; she again moved
28 away when she heard a noise that caused her attacker to move

1 toward the door. (Exhibit H, p. 159). He told Kathy to lie
2 still and went toward the door. (Exhibit H, p. 160). Kathy
3 then yelled, "Barb" (her mother's name). The intruder told her
4 to "shut up", and Kathy's mother called out her name "Kathy".
5 (Exhibit H, p. 160). Her mother tried to push the door open,
6 but the intruder was pushing back on the door to keep it closed.
7 (Exhibit H, p. 161).

8 The door suddenly flew open, and the man flashed his knife
9 in Barbara's face. (Exhibit H, p. 185. This caused Barbara to
10 draw back as the nude man ran by her, through the family room,
11 and up onto the kitchen counter in front of the open kitchen
12 window. (Exhibit H, pp. 185-186). He crouched on the kitchen
13 counter looking back at the shocked mother. (Exhibit H, p.
14 186). When she screamed and started toward the attacker he fled
15 through the open window. (Exhibit H, pp. 186-187). She later
16 found out the kitchen window screen had been removed and the
17 items usually found on the window sill were on the patio outside
18 the window. (Exhibit H, p. 187).

19 When Barbara heard Kathy call her name, she turned on the
20 hallway light, illuminating the general area. (Exhibit H, p.
21 185). Both Kathy and Barbara identified the defendant, in
22 court, as the man who had entered their house on October 1,
23 1983. (Exhibit H, pp. 166, 194). Barbara also testified that
24 she later found out that a knife was missing from her house
25 after the intrusion. (Exhibit H, pp. 200-201).

26 Later that year, on November 14, 1983, sixteen year old
27 Angela Kukal was walking to the bus stop, from the same house on
28 Reno Court, on her way to school at about 6:30 a.m. (Exhibit H,

1 pp. 203-205). As she reached 5070 Reno Court, a man jumped out
2 at her from the bushes wearing camouflage pants, a black bandana
3 with white stars on it which covered his face below his eyes.
4 He was brandishing a knife. (Exhibit H, pp. 204-205). Angela
5 tried to scream, and the man told her to "shut up." As she
6 tried to run away he grabbed her, put the knife to her throat
7 and dragged her into the bushes. (Exhibit H, pp. 207-208).

8 The attacker then told her to take her pants off as he had
9 her lie down on the grass. (Exhibit H, p. 208). He also told
10 her that he would kill her if she did not do as he said.
11 (Exhibit H, p. 208). As a result of this threat, she pulled her
12 pants and panties down to her mid-thigh and he touched her
13 vaginal area. Suddenly, a garage door opened and a man walked
14 out of his garage. (Exhibit H, pp. 208-209). He told her to
15 get dressed, that they would have to leave. (Exhibit H, p.
16 209).

17 He put tape over her eyes and had her run down the street
18 with him. (Exhibit H, p. 209). She left behind her Holt
19 geometry book and a folder. (Exhibit H, p. 210). Meanwhile,
20 Richard Forsberg, the man who had opened his garage door,
21 observed this man kneeling over Angela, had gone into the house
22 to call the police. (Exhibit H, pp. 281-282). When he returned,
23 they were gone. (Exhibit H, p. 282). The attacker had taken
24 her to the Newport Cove Apartments, had her sit down in a cement
25 block area, and left to get his car. (Exhibit H, p. 211).

26 Angela was able to pull the tape off, but the defendant
27 returned and told her not to do that or he would kill her.
28 (Exhibit H, pp. 211-212). He then retaped her eyes and covered

1 her face with his bandana. (Exhibit H, p. 212). He took her to
2 his car, put her in the back seat, and drove off. (Exhibit H,
3 p. 212). Subsequently the police arrived, recovered the geometry
4 book and folder, and established a command center at Angela's
5 house. (Exhibit H, pp. 191-192, 303).

6 By looking down underneath the tape, Angela was able to see
7 the interior of the car. She noticed the car had two doors,
8 bucket seats, a stickshift and a bluish-green interior. (Exhibit
9 H, pp. 212-213). During the ride the attacker asked her if she
10 had her bedroom broken into about a month earlier, and if she
11 was a virgin. (Exhibit H, pp. 213-214). She denied experiencing
12 a break-in and admitted that she was a virgin. (Exhibit H, p.
13 214).

14 He drove to a desert area, forced her to take her clothes
15 off and climb into the back seat. He then followed suit.
16 (Exhibit H, p. 215). She was positioned with her head on the
17 passenger side of the vehicle and her feet on the driver's side
18 of the vehicle. (Exhibit H, p. 215). He put his penis into her
19 vagina, without her consent. (Exhibit H, p. 215). As it hurt
20 Angela very badly, she put her feet against the car's back
21 window and broke the back window. (Exhibit H, p. 216). After
22 he removed his penis, Angela was bleeding from the vaginal area,
23 and he had her clean themselves off with Kleenex tissues. After
24 doing so, she dropped the tissues on the floor of the car.
25 (Exhibit H, pp. 217-218). He then forced her to perform oral
26 sex on him, without her consent. (Exhibit H, p. 218). After
27 this act of forced oral sex, they left the area. (Exhibit H, p.
28 218). He got into the front seat and drove, while she remained

1 helpless and unclothed in the back seat. (Exhibit H, p. 219).
2 They drove to a residential area and stopped. He disrobed
3 again, climbed into the back seat and put his penis into her
4 vagina, without her consent. (Exhibit H, p. 221).

5 After engaging in this sexual intercourse, he forced her to
6 have oral sex with him again. (Exhibit H, pp. 221-222). After
7 this act of oral sodomy, he told her that she was an "experienced
8 woman", and again put his penis into her vagina without her
9 consent. (Exhibit H, p. 222). He then got into the front seat,
10 clothed himself, threw Angela's clothes back to her and told her
11 to get dressed. (Exhibit H, p. 222). He also told her that he
12 had driven by her house and had seen police cars, and that he
13 had also driven by her school and seen a security guard.
14 (Exhibit H, p. 222). He said he couldn't drop her off at either
15 place, and that maybe he should drop her off in the desert or
16 keep her in a little house just to keep. (Exhibit H, p. 222).
17 Terrified, Angela kept telling him she did not want to die and
18 that she did not care where he dropped her off. (Exhibit H, p.
19 222).

20 He drove for awhile, then stopped and had her disrobe
21 again, crawled into the back seat and forced her to have sexual
22 intercourse again. (Exhibit H, p. 223). He told her to act
23 like she was enjoying it, although she could not. (Exhibit H,
24 p. 223). After finishing, he drove for awhile and told her he
25 was not sure whether he should kill her or not and that he had
26 to make a phone call. (Exhibit H, p. 223). He stopped the car,
27 got out and returned about a minute later, while Angela still
28 had the tape and bandana over her eyes. (Exhibit H, p. 224).