



COASTLINE
COMMUNITY COLLEGE

1144 Warner Avenue
Fountain Valley, CA 92708-2507
(714) 540-7600
<http://coastline.edu>
President: Ding-Je H. Curne, Ph.D.

August 2007

Mr. Andre Boston
P.O. Box 689
Soledad, CA 93960

Dear Mr. Boston:

On behalf of the faculty and staff at Coastline Community College, I want to congratulate you on making the Honors List for the 2007 Spring Semester. This achievement recognizes completion of at least 6.0 to 11.9 units (excluding summer) in courses awarding letter grades and in which a GPA of 3.75 to 4.0 is earned.

The attainment of honors at Coastline is especially impressive in that most of our students are not attending fulltime and are often balancing work, family, and educational commitments. Your accomplishment is due to your effort and dedication.

Again, congratulations and I wish you continued success in your academic pursuits. We hope you will continue to look to Coastline Community College for help in achieving your educational goals.

Sincerely,

Nancy S. Jones
President, Academic Senate

/ko

COAST COMMUNITY COLLEGE DISTRICT

Board of Trustees: Mary L. Hornbuckle, Walter G. Howald, Jim Moreno, Jerry Petterson, Armando R. Ruiz, and Paul Bunch, Student Trustee - Chancellor: Kenneth D. Yglesias, Ed.D.

Q-15
134



COASTLINE
COMMUNITY COLLEGE

11460 Warner Avenue
Fountain Valley, CA 92708-2597
(714) 546-7600
<http://coastline.edu>
President: Ding-Jo H. Currie, Ph.D.

April 29, 2005

Mr. Andre Boston
P.O. Box 689
Soledad, CA 93960

Dear Mr. Boston:

On behalf of the faculty and staff at Coastline Community College, I want to congratulate you on making the Honors List for the 2004 Fall Semester. This achievement recognizes completion of at least 6.0 to 11.9 units (excluding summer) in courses awarding letter grades and in which a GPA of 3.75 to 4.0 is earned.

The attainment of honors at Coastline is especially impressive in that most of our students are not attending full-time and are often balancing work, family, and educational commitments. Your accomplishment is due to your effort and dedication.

Again, congratulations and I wish you continued success in your academic pursuits. We hope you will continue to look to Coastline Community College for help in achieving your educational goals.

Sincerely,

Margaret Lovig
President, Academic Senate

/ko

COAST COMMUNITY COLLEGE DISTRICT

Board of Trustees: George E. Brown, Walter G. Howard, Jerry Patterson, Armando R. Ruiz, Student Trustee • Chancellor: Kenneth D. Yglesias, Ed.D.

15-110
125

Official Report of Test Results
TESTS OF GENERAL EDUCATIONAL DEVELOPMENT



D03868

issued by
OFFICIAL GED CENTERS
of the

GENERAL EDUCATIONAL DEVELOPMENT TESTING SERVICE
OF THE AMERICAN COUNCIL ON EDUCATION

Name of Examinee:

BOSTON ANDRE DUPREE
Last First Middle

Address: P. O. Box 1902-B
Tehachapi, CA 93581

Reported To:

Phone Number:

Date of Birth 7-17-67 Test Formal English Date Reported _____

Social Security Number

	Test Date	Form	Standard Score	Percentile Rank for U.S.
Test 1: Writing Skills Test	6-4-84	MR	47	
Test 2: Social Studies Test	5-17-84	MQ	49	47
Test 3: Science Test	5-24-84	MQ	49	
Test 4: Interpreting Literature and the Arts	5-15-84	MQ	51	55
Test 5: Mathematics Test	6-6-84	MR	43	23

Total

239

XX

Passed*

Standard Score
Average: 47

Failed*

(Copies of this report can be obtained from the center listed below.)

The scores on this report are the highest scores achieved by the examinee and not necessarily the most recent. If retest scores are lower than scores previously achieved, the retest scores are not reported.

Signature of Chief Examiner: Mary Kennel

Name of Center: HALL OF JUSTICE

Phone Number: (818) 855-3518

Address of Center: Hacienda La Puente Adult Education
211 W. Temple, Room 808

Center
Identification Number (if required)

3000071050

Los Angeles, CA 90012

Date: 2-18-93 176

**FEDERAL
EMERGENCY
MANAGEMENT
AGENCY
(FEMA)**

REFERENCES

Q-18
137

Emergency Management Institute



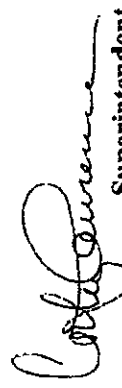
FEMA

ANDRE' BOSTON

has reaffirmed through completion of the Emergency Management Institute's Professional Development Series a commitment to Standards of Excellence in
Emergency Management.

Certificate of Achievement

On this Day, 10 January 2008


Superintendent
Emergency Management Institute

Q-19
138

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00005.A

An Introduction to Hazardous Materials

Issued this 10th Day of September, 2007


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form 16-31, October 05

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

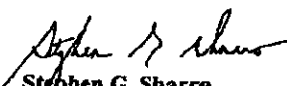
ANDRE BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of the independent study course:

IS-00008

Building for the Earthquakes of Tomorrow

Issued this 13th Day of June, 2005


Stephen G. Sharro
Director, Training Division

1.0 CEU

Q-20
139

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE BOSTON


has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of the independent study course:

IS-00002

Emergency Preparedness, USA

Issued this 17th Day of August, 2005

1.0 CEU


Stephen G. Sharro
Director, Training Division

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

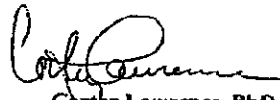
has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00010

Animals in Disaster, Awareness and Preparedness

Issued this 17th Day of September, 2007

1.0 CEU


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute
FEMA Form 10-26, October 05

12-21
140

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00120

An Orientation to Community Disaster Exercises

Issued this 17th Day of September, 2007


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 16-31, October 05

1.0 CEU

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00011

Animals in Disaster, Community Planning

Issued this 17th Day of September, 2007


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 16-31, October 05

1.0 CEU

1-22
141

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00230

Principles of Emergency Management

Issued this 1st Day of October, 2007


Cortez Lawrence, PhD

Superintendent
Emergency Management Institute

FEMA Form 10-31, October 05

1.0 CEU

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00139

Exercise Design

Issued this 1st Day of October, 2007


Cortez Lawrence, PhD

Superintendent
Emergency Management Institute

FEMA Form 10-31, October 05

1.5 CEU

Q-23
142

Emergency Management Institute



FEMA

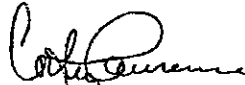
This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

**IS-00235
Emergency Planning**

Issued this 1st Day of October, 2007


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form IS-31, October 05

Emergency Management Institute



FEMA

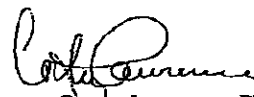
This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

**IS-00111
Livestock in Disaster**

Issued this 17th Day of September, 2007


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form IS-31, October 05

Q-24
143

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00275

**Role of the Emergency Operations Center
in Community Preparedness, Response & Recovery**

Issued this 18th Day of January, 2008


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form 16-31, October 85

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

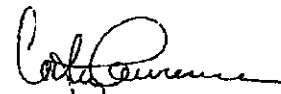
ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00301

Radiological Emergency Response

Issued this 18th Day of January, 2008


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form 16-31, October 85

65-25
144

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00279

Retrofitting Flood Prone Residential Structures

Issued this 18th Day of January, 2008


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.0 CEU

FEMA Form 16-31, October 05

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00386

Introduction to Residential Coastal Construction

Issued this 25th Day of February, 2008


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

1.4 CEU

FEMA Form 16-31, October 05

Q-26
145

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00346

Hazardous Materials for Medical Personnel

Issued this 25th Day of February, 2008

1.0 CEU


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 10-31, October 85

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00003

Radiological Emergency Management

Issued this 10th Day of September, 2007

1.0 CEU


Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 10-31, October 85

Q-27
146

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00244
Developing and Managing Volunteers

Issued this 10th Day of January, 2008

1.0 CEU

Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 16-31, October 05

Emergency Management Institute



FEMA

This Certificate of Achievement is to acknowledge that

ANDRE' BOSTON

has reaffirmed a dedication to serve in times of crisis through continued professional development and completion of this course:

IS-00241
Decision Making & Problem Solving

Issued this 10th Day of January, 2008

0.8 CEU

Cortez Lawrence, PhD
Superintendent
Emergency Management Institute

FEMA Form 16-31, October 05

Q-28
147

Certificate

of completion of an Advanced Workshop for training in nonviolence

ALTERNATIVES TO VIOLENCE PROJECT (AVP)

This certificate is awarded to

André Boston

Who has satisfactorily completed the
Advanced Course in Nonviolent Conflict Resolution
Under the sponsorship of AVP California

www.AVPCalifornia.org

Location: Soledad, California

Date: 6 February, 2007

Facilitators:

Alan Edgar

Sam Lewis

Jimmy H. Mejia
Jimmy Mejia

John Piccirillo
John Piccirillo

John Thibault
John Thibault

Q-31
150

Certificate

of completion of a
workshop for training in nonviolence
Alternatives to Violence Project (AVP)

This certificate is awarded to

Andre Boston

Who has satisfactorily completed the
Basic Course in Nonviolent Conflict Resolution
Under the sponsorship of AVP California
www.AVPCalifornia.org

Location: *Soledad, CA.*

Date: *June 8, 2006*

Facilitators:

Jimmy S. Meja

John A. Tate

Q-32
151

Certificate of Appreciation

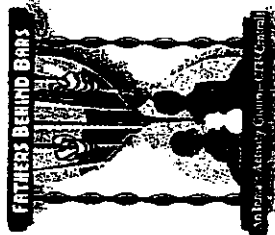
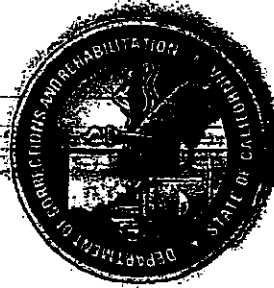
Awarded to:


André Boston

The Fathers Behind Bars Group is honored to present this "Certificate of Appreciation" to **André Boston**, for exceptional service, volunteer commitment, and unselfish dedication to giving back to the community.

You have earned our deepest gratitude and respect by doing this. . . and for committing yourself to help the community build playgrounds and not prisons.

Given this 15th day of May 2006, at Soledad, California, in the County of Monterey.



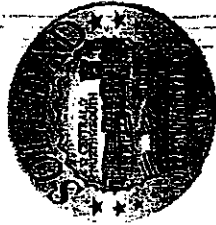

Jolee Seboldge, CC-III
Sponsor, Fathers Behind Bars Group
CTF Central Facility

Q-33
152

CORRECTIONAL TRAINING FACILITY
CERTIFICATE OF APPRECIATION



Presented To:




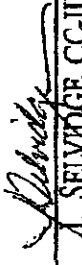
ANDRÉ BOSTON


The Correctional Training Facility and the Fathers Behind Bars Inmate Activity Group is honored to present this "Certificate of Appreciation" to you André Boston, D-03868, for your outstanding contribution in making the 2005 Annual CTF Children's Holiday Festival a success.

We thank you for your participation and the level of professionalism you have committed to this 35th annual Community Event. The Correctional Training Facility Administration deeply appreciates your efforts.

Presented on this 12th day of January, 2006, at Soledad, California, in the County of Monterey.


W. J. HILL
Associate Warden
CTF - Central Facility


J. SELVIDGE, CC-III
Fathers Behind Bars Group-Sponsor
CTF - Central Facility


A. P. KANE, Warden (A)

The Veterans Group of
Correctional Training Facility

Awards this
Certificate of Appreciation to

A. Boston

for Invaluable Contributions
and support to the V.G.C.T.F

W. Hill

W. Hill,
Associate Warden
C.T.F. - Central Facility

A.P. Kane

A.P. Kane,
Warden
Correctional Training Facility

154
11-35

Correctional Training Facility-Soledad
CERTIFICATE OF PARTICIPATION

Presented To:

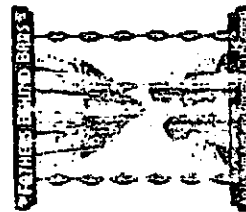
ANDRÉ BOSTON

A. Boston, D-03868, the Fathers Behind Bars Activity Group - Central Facility is honored to present this certificate for your participation in the Legal Services For Prisoners With Children Seminar on June 15, 2005, with L.S.P.C. Staff Attorney Cassie M. Pierson.

The knowledge and exercise of your parental rights will benefit society in many ways, as well as assist you in actively participating in the lives of your children and molding them into better citizens.

Presented on this 30th day of June, 2005, at Soledad, California, in the County of Monterey.

Cassie M. Pierson
CASSIE M. PIERSON, ESQ.
Legal Services for Prisoners With Children
L.S.P.C. Staff Attorney



John Seavidge
JOHN SEAVIDGE, CC-III
Fathers Behind Bars Activity Group
Staff Sponsor

Certificate of Participation

WE HEREBY COMMENT

Mr. Andre Boston (D-03868)

for participation in
6 Weeks of Music Relaxation Group Therapy
with Mary Martinez, Psychiatric Technician

"Outstanding Participation"

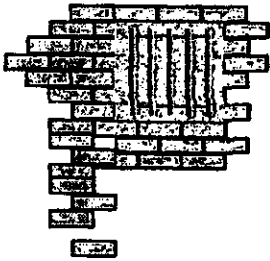
and award this certificate.

Awarded at CTF this 2nd day
of June 20 05

Mary Martinez
Psychiatric Technician CTF School

Bill Zehn, Ph.D.
Staff Psychologist CTF School

12-37
156



FATHERS BEHIND BARS
An Inmate Activity Group—Central Facility, Correctional Training Facility
P.O. Box 686, SOLEDAD, CA 93960 Tel: (831) 678-3951 FAX:(831) 678-4910

Date: May 11, 2005

Staff Sponsor

J. SELVIDGE

Staff Coordinators

M. CASACCA

C. PEREZ

R. CAUNTAY

J. HOLGUIN

K. ENG

T. HERNANDEZ

T. DUGAN

A. ANDERSON

Executive Officers

D. CONNOLLY

President

H. L. FINNEY

Vice President

D. LAM

Secretary

E. NAVARETTE

Vice Secretary

W. SIZEMORE

Treasurer

K. BLEVINS

Committee Coordinator

A. JACKSON

Sergeant-at-Arms

D. ARMSTRONG

Community Affairs

To: **ALL CENTRAL FACILITY FATHERS BEHIND BARS
MEMBERS AND APPLICANTS**

From: **JOLEE SELVIDGE, CC-III**
Sponsor - Fathers Behind Bars Group
Holiday Festival Coordinator
CTF -Central Facility

Subject: **APPOINTMENT OF HOLIDAY FESTIVAL COORDINATOR/
FATHERS BEHIND BARS GROUP MEMBER**

This memorandum is to inform all Fathers Behind Bars members and applicants that due to the groups new mission, effective immediately, André Boston, is officially the CTF Central Facility Holiday Festival Coordinator, and is also an official member of the Fathers Behind Bars Inmate Activity Group.

PREVIOUS EXPERIENCE:

When Friends Outside, Monterey County closed their doors in 2001, the Warden through the Associate Warden-Central Facility appointed inmates H.L. Finney and Gary Cardi as Institutional Coordinators for this event in-order to carry on this CTF tradition. Accordingly, Mr. Boston was contacted and served as the CTF North/South Facility Holiday Festival Coordinator in 2001, under the direction of CC-I Leo Hunter and myself.

Since his arrival at Central Facility in 2002, he has worked with the Fathers Behind Bars Group in the same capacity.

OFFICIAL DUTIES:

In his official capacity, Mr. Boston will serve as Co-Festival Coordinator along with Coordinator H.L. Finney, and will work with the CTF North and South Facility Fathers Behind Bars Groups through their Executive Body, Myself, the Staff Coordinators, and other Administrative Staff Members in-order to assure the overall success of this Tri-Facility event.

Thank you for your continuous efforts and support.

J. Selvidge
JOLEE SELVIDGE, CC-III
Sponsor - Fathers Behind Bars Group
Holiday Festival Coordinator
CTF -Central Facility

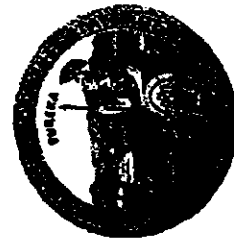
cc: W. Hill, Associate Warden-Central Facility
Central Facility FBB Group Coordinators
North and South Facility FBB Group Sponsors, Coordinators, & Group Presidents

FATHERS BEHIND BARS INMATE ACTIVITY GROUP

CORRECTIONAL TRAINING FACILITY
CERTIFICATE OF APPRECIATION

Presented To:


ANDRÉ BOSTON





The Correctional Training Facility is honored to present this "Certificate of Appreciation" to you as Holiday Festival Coordinator for the Fathers Behind Bars Inmate Activity Group. Your outstanding efforts in coordinating the 2004 CTF Children's Holiday Festival made it an enormous success.

We thank you for the exceptional service and the level of professionalism you have committed to this 34th annual Community Event. The Correctional Training Facility Administration deeply appreciates your efforts.

Presented on this 28th day of December, 2004, at Soledad, California, in the County of Monterey.


W. J. HILL, Associate Warden
CTF - Central Facility


J. SELVEDGE, CC-II
FBB - Group Sponsor


A. P. KANE, Warden (A)

The Correctional Training Facility

Awards A

Certificate of Appreciation to

A. BOSTON

For participation in the Annual Children's Holiday Festival
Sunday, December 15, 2002

L.G. Schwimmer
L.G. Schwimmer, Associate Warden (A)
Children's Holiday Festival Sponsor
CTF-Central Facility

J. Hamlet
J. Hamlet, Warden
Correctional Training Facility

Certificate of Completion

Awarded to

ALVARO BOSCHER

Who has successfully completed 14 weeks in

THE IMPACT PROGRAM

and

is hereby commended for his endeavor to increase his awareness

and empathy for the survivors of crime.

Presented this February 4, 2002, in the city of Soledad,
County of Monterey, California

J. Selvidge
J. SELVIDGE, CC II
SPONSOR

L. Hunter
L. HUNTER, CC
SPONSOR

(2-41)
160

COMMUNITY SERVICE AWARD IS PRESENTED TO

A. Boston, Committee Chairman

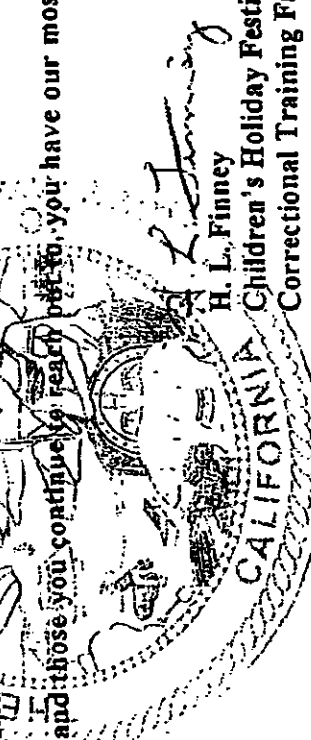
The Correctional Training Facility (CTF), Community Resource Manager is honored to present this Certificate of Appreciation for Outstanding dedication and contribution to the prisoners' children and victim's services non profit organizations. Your varied support and commitment displays an unwavering concern for these families. It offers them hope and an opportunity for a new life free of violence and abuse. This certificate is a token of our appreciation for your generosity and many efforts in providing many children a service, and doing a great work for our Community. You have made a wonderful contribution to many children that need help now.

On behalf of those you've help save, and those you continue to reach out to, you have our most sincerest and deepest gratitude. *Thank you.*

Beto Fumaono

B. T. Fumaono
Children's Holiday Festival Director
Correctional Training Facility

Jerry Smith
Community Resource Manager
Correctional Training Facility



H. L. Finney
H. L. Finney
Children's Holiday Festival Asst. Director
Correctional Training Facility

December 15, 2001

Lifetime Humanitarian Award for Outstanding Service

presented to:

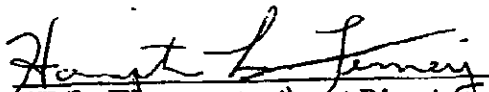
Andre D. Boston


The Correctional Training Facility Men's Advisory Council (MAC) is honored to present this Lifetime Humanitarian Award for outstanding dedication and service to humanity to **Andre Boston, D-03868**.


This award is in recognition for exceptional service, volunteer commitments, and professionalism. It is with genuine pleasure that we present this award as a token of our appreciation for your unselfish dedication to giving back to the community, including victim/offender reconciliation, and education. Also, for your deep concern for bringing about an environment of independence, and freedom from violence in the lives of families of prisoners.


You have earned our deepest gratitude and respect by doing this...and for committing yourself to help children build playgrounds and not prisons.

On behalf of the entire general population, the Men's Advisory Council proudly bestows this Lifetime Humanitarian Award on **Andre Boston**, Children's Holiday Festival Committee Chairman — North Facility Men's Advisory Council President, this fifteenth day of December, in the year 2001, at Soledad, California, in the County of Monterey.


H.L. Finney, Assistant Director
Children's Holiday Festival
Correctional Training Facility


Bobo Fuimaono, Director
Children's Holiday Festival
Correctional Training Facility


Barbara Crawford, CC-II
Co-Sponsor
Children's Holiday Festival
Correctional Training Facility


Jolee Selvidge, CC-II
Sponsor
Children's Holiday Festival
Correctional Training Facility

Q-43
162

THE WARDEN'S
COMMUNITY SERVICE AWARD
IS PRESENTED TO

A. BOSTON, COMMITTEE CHAIRMAN

The Correctional Training Facility (CTF), on behalf of the Warden and his staff, are proud to present this Community Service Award for outstanding dedication and service to the CTF Children's Holiday Festival. This award is being presented in recognition of the many hours of service, teamwork and coordination rendered on behalf of this event. The CTF Administration appreciates the exceptional level of professionalism and volunteer commitment to this community effort.

This award is hereby bestowed upon A. Boston, Committee Chairman, this Fifteenth Day of December, in the year 2001, at Soledad, California, in the County of Monterey.

Jose Solis
Jose Solis
Chief Deputy Warden - Central
Correctional Training Facility

Jill Brown
Jill Brown
Chief Deputy Warden - North
Correctional Training Facility

Jim Hamlet
Jim Hamlet, Warden
Correctional Training Facility


CORRECTIONAL TRAINING FACILITY
ANNUAL CHILDREN'S CHRISTMAS FESTIVAL 2001


ANDRE BOSTON

This Certificate is to give recognition to the above named individual for outstanding service, integrity, and personal commitment in the performance of his duties while participating in the CTF-North Facility Annual Children's Christmas Festival.

This Certificate also reflects the dedication, sincerity and positive approach that was given to this Annual Project, which was put together through the limited resources available to the participants who undertook this project, maintaining a working relationship between all participants involved, staff and Inmate Families alike.

For your unselfish efforts, we commend you for your positive enthusiasm and for a job well done!


J. SELVIDGE
FESTIVAL CO SPONSOR


B. CRAWFORD
FESTIVAL CO-SPONSOR


J. HAMLET, WARDEN
CORRECTIONAL TRAINING FACILITY

Certificate of Completion

This document certifies that

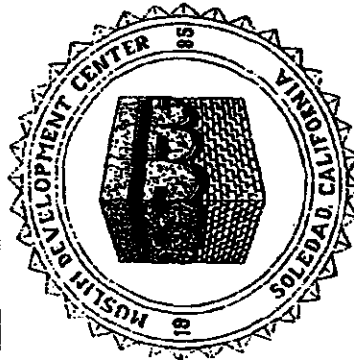
ANDRE BOSTON

has successfully completed

ENTREPRENEUR SALESMANSHIP LECTURE SERIES

awarded this 15 day of MAY 2001

Imam Anter Jemari, Muslim Chaplain
(Instructor)



(A-46)
165

Certificate of Completion

This document certifies that

ANDRE BOSTON

has successfully completed

FATHERHOOD II LECTURE SERIES

awarded this 15 day of MAY, 2001

Iman Antar Jaymah, Muslim Chaplain
(Instructor)



Q-47
166

STATE OF CALIFORNIA
CDC 154-B (11/79)

DEPARTMENT OF CORRECTIONS

Academic Education

CERTIFICATE OF COMPLETION

THIS IS TO CERTIFY THAT

Andre' Boston

HAS SUCCESSFULLY COMPLETED

Substance Abuse Course

Desert Oasis Adult School

T. Redman SA(CA)
SUPERVISOR OF ACADEMIC INSTRUCTION

LOG # 002

William P
ACADEMIC INSTRUCTOR

9/28/98

DATE

D03868

167
164B

STATE OF CALIFORNIA
CDC 184-B (11/78)

DEPARTMENT OF CORRECTIONS

Academic Education

CERTIFICATE OF COMPLETION

THIS IS TO CERTIFY THAT

Andre' Boston

HAS SUCCESSFULLY COMPLETED

Parenting Course

Desert Oasis Adult School

J. Rodriguez SALCA
SUPERVISOR OF ACADEMIC INSTRUCTION

LOG # 002

K. Williams
ACADEMIC INSTRUCTOR

9/28/98
DATE

D03868

249
168

STATE OF CALIFORNIA
CDC 184-B (11/92)

DEPARTMENT OF CORRECTIONS

Academic Education

CERTIFICATE OF COMPLETION

THIS IS TO CERTIFY THAT

Andre' Boston

HAS SUCCESSFULLY COMPLETED

Stress Management Course

Desert Oasis Adult School

T. Redman SA (A)
SUPERVISOR OF ACADEMIC INSTRUCTION

LOG # 002

B. Williams
ACADEMIC INSTRUCTOR

9/28/98

DATE

D03868

(Q-50)
168

STATE OF CALIFORNIA
(CDC 154-A (11/02))

DEPARTMENT OF CORRECTIONS

Academic Education

CERTIFICATE OF ACHIEVEMENT

THIS IS TO CERTIFY THAT

Andre Boston D03868

HAS DEMONSTRATED ACHIEVEMENT IN

Completion of Laubach Way to Reading

tutor training and 33 hours of tutoring.

T. Rodriguez, SA (A)
SUPERVISOR OF ACADEMIC INSTRUCTION

LOG # 0100

T. Rodriguez
ACADEMIC INSTRUCTOR

7-7-98

DATE

Q-57
171

DEPARTMENT OF CORRECTIONS

STATE OF CALIFORNIA
CDC 154-B (11/98)

Academic Education

CERTIFICATE OF COMPLETION

THIS IS TO CERTIFY THAT

Andre' Boston

HAS SUCCESSFULLY COMPLETED

Anger Management Course

Desert Oasis Adult School

T. Robinson SAI(A)
SUPERVISOR OF ACADEMIC INSTRUCTION

K. Williams
ACADEMIC INSTRUCTOR

LOG# 002

9/28/98
DATE

D03868

Q-51
170

LAUBACH LITERACY ACTION

VOLUNTEER TUTOR WORKSHOP

CERTIFICATE OF COMPLETION

This is to recognize that Andre Boston
 has satisfactorily completed a 12 hour workshop with emphasis on tutoring
Literacy sponsored by a Laubach Literacy Action member program,
 and/or conducted by an LLA certified trainer.

Ironwood State Prison

Program

Trainer

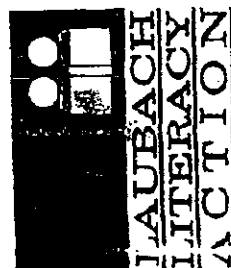
Executive Director, Laubach Literacy Action

President/CEO, Laubach Literacy International

7-7-98





Date

LLA 6



U.S. PROGRAM OF
 LAUBACH LITERACY INTERNATIONAL

Q-52
 172



YARD BEAUTIFICATION PROJECT

AWARDED TO:

BOSTON, D-03868

FOR ARTISTIC ABILITIES IN SPECIAL PROJECTS FOR THE YARD BEAUTIFICATION PROGRAM.

DECEMBER 25, 1996



M.P. MONTIERO, CAPTAIN

Q-54
173

APPENDICES AND ILLUSTRATIONS DOCUMENTATION

4-55
174

NAME and NUMBER

BOSTON, A.


D03868

EW236U


"TRUST" was the theme this AVP mini-workshop centered around, and the exercises were all geared toward developing the foundations of trust.

I observed twenty-nine (29) participants of a 2-hour Alternatives to Violence Project (AVP) follow-up class held Monday, November 27, 2006. I viewed the men interacting with all ethnicities. Each enthusiastically engaged in all exercises together, which were provided by Linda McCue and Robin Keeler (accredited AVP facilitators from the community). Mr. BOSTON is to be commended for his voluntary participation within the group, for his individual contribution to promoting a peaceful non-violent programming environment and for his continued interest in the AVP program. There were no bystanders – and each participant looks forward to this experience. Mr. BOSTON was an interactive participant, radiating positive energy and exuberance. The AVP/USA program will change your life daily as different or difficult situations arise. AVP's goals are to educate and publicize the transformations that can happen as a result of the workshops in which all participants are actively involved.

Original : Central File
cc : Inmate


J. Kramer
Associate Warden's Secretary
Correctional Training Facility

Noted:


C. Noll
Associate Warden
Correctional Training Facility

DATE 11/29/06

Alternatives to Violence Project (AVP)

LAUDATORY CHRONO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128 B

NAME and NUMBER

BOSTON, A.

D03868


EW236L

Mr. BOSTON voluntarily contributed 21 hours of his time, during a two-day period, in the *Alternatives to Violence Project (AVP) Advanced Workshop*, conducted on February 5 & 6, 2007. The AVP Program is an internationally recognized program designed to empower people to lead non-violent lives through affirmation, respect for all, community building, cooperation and trust. Workshop elements included principles of cooperation with coworkers, developing listening skills, promoting communication skills, as well as developing tools for stress and anger management. The goal of the Advanced workshop is to build on the skills and attitudes that lead to fulfilling and crime-free lives developed in the Basic workshop, allowing a deeper look at aspects of violence such as stereotyping, fear and anger. Inmates completing the Advanced workshop may participate more than once in the Advanced and the Training for Trainers workshops. The Advanced workshop builds on communications, cooperation, problem solving, and related topics such as gender issues and forgiveness. Mr. BOSTON is to be commended for successfully completing this AVP Advanced Workshop and his individual contribution to promoting a peaceful, non-violent programming environment at the Correctional Training Facility.

Original : Central File
cc : Staff Sponsor
Inmate


A. Edgar
Facilitator
Alternatives to Violence Project

Noted:


J.C. Sisk
Associate Warden (A)
CTF-Central Facility

DATE 02/06/2007

(LAUDATORY CHRONO CTF-Central Facility)

GENERAL CHRONO

Q-56
175

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128 B

NAME and NUMBER BOSTON, A. D03868 EW236L

On June 27, 2007, Mr. BOSTON attended a self-help seminar organized by the Fathers Behind Bars Group at the Correctional Training Facility, Central Facility. The seminar was conducted by a staff attorney for Legal Services for Prisoners with Children (LSPC); Cassie M. Pierson and Larry Braynen, the employment administrator of the Northern California Service League (NCSL). In this seminar, inmates learned valuable information concerning their legal rights during and after incarceration, as well as services available to provide assistance to them in their respective communities. Mr. BOSTON is to be commended for his voluntary participation in this informative seminar.

The Legal Services for Prisoners with Children, located at 1540 Market Street #490, San Francisco, California 94102, is an organization of dedicated volunteers that provide advocacy and support to prisoners and their family members. The Northern California Service League, located at 28 Boardman Place, San Francisco, California 94103 guides inmates with drug, alcohol or mental health problems into treatment programs and offers parenting, substance abuse, conflict resolution, and life skills classes.

Original : Central Files
cc : File
Inmate

Olga Chavez
OLGA CHAVEZ
Sponsor - Fathers Behind Bars Group
CTF - Central Facility



DATE 07/23/2007

Fathers Behind Bars Group (FBB)

LAUDATORY CHRONO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128-B (Rev. 4/74)

NAME and NUMBER BOSTON, A. D03868 EW-236L

On March 1, 2007, the Father Behind Bars Group at the Correctional Training Facility, Central Facility, organized a Donation Drive for the Soledad Junior R.O.T.C. Drill Team in Pensacola, Florida from April 11 - 15, 2007. You responded with a voluntary contribution to this worthy cause. Your donation and those of your fellow members of the inmate population represent a genuine sacrifice, where many of you make less than \$30.00 a month. The total contribution to this cause at Central Facility was approximately \$1000. You are to be commended for your generosity and willingness to give back to the community.

Original : Central File
cc: Staff Sponsor
: Inmate

Olga Chavez
OLGA CHAVEZ
Sponsor - Father behind Bars Group
Children's Holiday Festival Sponsor
CTF - Central Facility



DATE: 4/2/07 DONATION TO THE SOLEDAD HIGH SCHOOL JROTC DRILL TEAM

LAUDATORY CHRONO

6-59
176

NAME and NUMBER

BOSTON, A.

D03868

EW236L

This AVP mini-workshop centered around the theme "STEREOTYPING AND RACISM".

I observed thirty-four (34) participants of a 2-hour Alternatives to Violence Project (AVP) follow-up class held Monday, June 25, 2007. I received numerous comments from the participants that this workshop was beneficial. I viewed the men interacting with all ethnicities. Each enthusiastically engaged in all exercises together, which were provided by Linda McCue (an accredited AVP facilitator from the community). Mr. BOSTON is to be commended for his continued commitment to this valuable program. The exercises in this workshop were focused on understanding one's own stereotypes, those of others, and in just how many people of so many diverse backgrounds truly have in common.

Original : Central File
cc : Inmate

J. Kramer
J. Kramer
Associate Warden's Secretary
Correctional Training Facility

Noted:

J.A. Soares
J.A. Soares
Associate Warden (A)
Correctional Training Facility

DATE 07/24/07

Alternatives to Violence Project (AVP)

LAUDATORY CHRONO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128 B

NAME and NUMBER

BOSTON, A.

D03868

EW236L

This AVP mini-workshop centered around the theme "SELF ESTEEM".

I observed twenty (20) participants of a 2-hour Alternatives to Violence Project (AVP) follow-up class held Monday, April 09, 2007. I received numerous comments from the participants that this workshop was beneficial. I viewed the men interacting with all ethnicities. Each enthusiastically engaged in all exercises together, which were provided by Robin Keeler (an accredited AVP facilitator from the community). Mr. BOSTON is to be commended for his continued commitment to this valuable program. The exercises in this workshop were focused on building one's own self esteem and assisting other's in elevating their own through positive affirmations.

Original : Central File
cc : Inmate

J. Kramer
J. Kramer
Associate Warden's Secretary
Correctional Training Facility

Noted:

J.C. Sisk
J.C. Sisk
Associate Warden (A)
Correctional Training Facility

DATE 04/10/07

Alternatives to Violence Project (AVP)

LAUDATORY CHRONO

8-58
197

NAME and NUMBER BOSTON, A. D03868 EW-236U

Mr. BOSTON, A. is to be commended for his voluntary participation, for his individual contribution to promoting a peaceful non-violent programming environment and for his continued interest in the Alternatives to Violence Project (AVP) program at the Correctional Training Facility. Mr. BOSTON, A. was an interactive participant, exuding high energy and enthusiasm during a 2-hour AVP mini workshop conducted by two outside facilitators and nine inside facilitators on 9/25/2006. Mr. BOSTON, A. joined members from a variety of several different AVP workshops as a follow-up to the AVP Basic workshop he attended earlier this year. The AVP/USA program is an international non-sectarian group of dedicated volunteers from diverse national origins, races, and religious affiliations. The workshops teach principles of affirmation, communication, cooperation, developing tools for stress and anger management, community building and creative conflict resolution essential in the exploration of the many nonviolent solutions that are possible in almost every conflict - particularly when approached with a caring attitude toward others.


J. SiskAssociate Warden (A)
CTF-Central FacilityOriginal : Central File
cc: Staff Sponsor
: Inmate

DATE 9/28/2006

(LAUDATORY CTF- Central Facility)

GENERAL CHRONO

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS AND REHABILITATION
CDC-128 B

NAME and NUMBER BOSTON, A. D03868 EW236U

I observed thirty-five (35) participants of a 2-hour Alternatives to Violence Project (AVP) follow-up class held Monday, October 16, 2006. I viewed the men interacting with all ethnicities. Each enthusiastically engaged in all exercises together, which were provided by Mimi and Alan Edgar (accredited AVP facilitators from the community). Mr. BOSTON is to be commended for his voluntary participation within the group, for his individual contribution to promoting a peaceful non-violent programming environment and for his continued interest in the AVP program. There were no bystanders -- and each participant looks forward to this experience. Mr. BOSTON was an interactive participant, radiating positive energy and exuberance. The AVP/USA program will change your life daily as different or difficult situations arise. AVP's goals are to educate and publicize the transformations that can happen as a result of the workshops in which all participants are actively involved.


J. KramerAssociate Warden's Secretary
Correctional Training FacilityOriginal : Central File
cc : Inmate

Noted:


J. SiskAssociate Warden (A)
Correctional Training Facility

DATE 10/22/06

Alternatives to Violence Project (AVP)


LAUDATORY CHRONO

A-59
178

NAME and NUMBER BOSTON, A. D03868 EW-236U

Inmate BOSTON, A. was a voluntary participant in the Alternatives to Violence Project (AVP) Basic Workshop, conducted from 06-06-06 to 06-08-06. The AVP program is an internationally recognized program designed to empower people to lead nonviolent lives through affirmation, respect for all, community building, cooperation and trust. AVP is founded in and developed from the real life experiences of prisoners, and others, and building a spiritual base. AVP encourages every person's innate power to positively transform themselves and the world. The Basic Workshop is led by national and international facilitators, in conjunction with inmate facilitators from the prison's general population who have successfully completed training and certification by AVP/USA. The Basic Workshop consisted of three days of intensive, experiential sessions focused on personal growth and creative conflict management. Workshop elements included principles of cooperation with coworkers, developing listening skills, promoting communication skills, and developing tools for stress and anger management. The intent of the workshop is to develop comprehensive alternatives to violent situations, evolving non-violent solutions, which reflect a caring attitude towards each individual participant and others. Inmate BOSTON, A. is to be commended for his successful participation and completion of the AVP Workshop and his individual contribution to promoting a peaceful, non-violent programming environment at the Correctional Training Facility.

Original: Central File
cc: CCI
Inmate


W. J. HILL
Associate Warden
Correctional Training Facility

DATE 7/19/06 Laudatory Chrono for Alternatives to Violence Program Participation GENERAL CHRONO

NAME and NUMBER BOSTON, A. CDC #D03868 HOUSING EW-236U

Inmate BOSTON is a current member of the Central Facility Men's Advisory Council and was elected by his peers to the position of Chairman of their Executive Body. In that capacity he has served me as the Warden and as a leader for the MAC General Council. As a member of the Executive Body, I have called upon him to represent the Council and provide the population with a voice in administrative deliberations and decisions affecting the welfare and best interests of the inmates in Central Facility. He has supported me as a positive role model for his peers and by encouraging responsible behavior in interactions between staff and inmates alike. He has promoted the effective communication of my administrative concerns and the explanation of the nature and reasons for administrative actions with the inmate population. He has engaged in an enthusiastic dialogue with my administrative staff and encouraged his peers in conflict resolution through the utilization of appropriate channels to address inmate issues. Inmate BOSTON has served as the Chairman of the MAC Executive Body throughout my two-year term as Warden of the Correctional Training Facility. I take this opportunity to commend him for his actions on the behalf of Central Facility inmates, his responsible behavior and his persistent advocacy for promotion of a positive, non-violent programming environment.

Original: Central File
cc: Inmate


A. P. KANE
Warden
Correctional Training Facility

DATE 05-22-06 LAUDATORY CHRONO FOR MEN'S ADVISORY COUNCIL PARTICIPATION GENERAL CHRONO

Q-60
179

CDC-128-B

Inmate BOSTON-D-03868 has successfully completed the three week ANGER MANAGEMENT COURSE. YOU RACE WORKING WITH YOUR ANGER and more control over your behavior. A staff member, LICSW, was present for the entire course. A staff member, LICSW, was present for the entire course regarding incarcerated inmates. Through the program, Inmate BOSTON-D-03868 was able to become a participant in all aspects of the workshop. He is now committed to his progress to participate in the workshop. He is now committed to his progress to participate in the workshop. He is now committed to his progress to participate in the workshop.

Ong C-File
cc CCI
Inmate
Medical File
MH file

D-ROSKOPF, INC.
CONNECTIONS: Family Solidad

MEDICAL PSYCHIATRIC REVIEW

CDC-128f

Inmate **BOSTON** participated in the **LEGAL SERVICES FOR PRISONERS WITH CHILDREN SEMINAR** held at CTF-Central on June 15, 2005. L.S.P.C. staff attorney Cassie M. Pierson provided an informative 2 hour seminar discussing the services provided by L.S.P.C. and various topics of interest on the parental rights of prisoners. Attorney Pierson provided a lengthy question and answer session, addressing in detail the specific legal and social concerns of the inmates in attendance. Attorney Pierson also placed special emphasis on the importance of maintaining a healthy relationship with ones children and family, as well as the community, as an integral component in the successful rehabilitation of prisoners with children. Inmate **BOSTON'S** interest, participation and action in expanding his knowledge of parental rights is to be commended.

Orig: C-file
CC: CC-I
Inmate

J. Selvidge
J. Selvidge, CC-III
Sponsor-Fathers Behind Bars Group
CTF-Central Facility

GENERAL CHRONC

Q-61
120

CDC-128-C

Inmate **BOSTON, ANDRE** ID: 19868 has to be commended for his active participation in and completion of the Music Relinquishment Seminar. As a first-time editor and writer, he had a lot to deal with, tired days and emotions. Even though he had a lot to deal with, he was able to complete the seminar. The class also teaches positive affirmations, and many techniques. Music has been found to change our minds, music supports our minds, music helps us to deal with challenges in our daily living. Music is such a valuable tool and has the ability to nourish the mind, body and spirit.

Purpose: to enhance the quality of life in everyday living and promote a sense of well-being.

Inmate BOSTON's participation in this group demonstrates a desire for self-improvement.

Orig. C File
cc: CCI
Inmate
MFI file
Medical File

M. Martinez
Psychiatric Technician
Correctional Training Facility-Soledad

Date: June 2, 2005

BOSTON, ANDRE F. DEGEN, D.D.S., M.D., MEDICAL, PSYCHIATRIC, DENTAL

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128 B (8-87)

SB306L

Inmate BOSTON, D03868, SB306L, is an active member in the Men's Advisory Council and has participated in the 2001, Annual Correctional Training Facility Christmas / Holiday Festival. This Annual event helps to bridge the gap between inmates and their families during the holiday season, keeping with the Department of Corrections Mandates, where specifically, "The value of visiting as a means to establish and maintain meaningful family and community relationships is recognized and encouraged." This year approximately \$5,000.00 in inmate donations were raised and spent on toys and games for the children participating in this annual event. Inmate BOSTON assisted with the fundraising, coordination, development and production of this event and should be commended for his positive enthusiasm and professionalism in making this program a complete success.

ORIG : C-File
CC : Unit File
CC-1
: Inmate
: Writer

J. SELVIDGE
Festival Sponsor
CTF-NORTH FACILITY

INFORMATIVE CHRONO

Q-62
781

NAME and NUMBER

BOSTON

D-03868

EW-306U

Inmate BOSTON, D-03868, EW-306U is an active member of the MAC. The MAC is a voluntary Self Help Group that allows open two way communication between Offenders and Victims of Crime. This program allows the involved inmates the opportunity to gain insight and empathy as to the effects of Crime on it's victims. Inmate BOSTON has participated in the 200 Annual Correctional Training Facility Children's Holiday Festival as the Coordinator. This annual event helps to bridge the gap between inmates and their families during the holiday season. Keeping with Department of Corrections Mandates, where specifically, "The value of visiting as a means to establish and maintain meaningful family and community relationships is recognized and encouraged." This year approximately \$1700 in inmate donations were raised and spent on toys and games for the Children participating in this annual event. Inmate BOSTON assisted with the fundraising, coordination, development and production of this event and should be commended for his positive enthusiasm, and professionalism in making this program a complete success.

ORIG C-File
cc Unit File
CC-I
Inmate
Writer

L. HUNTER, CCI
FESTIVAL SPONSOR
CTF-NORTH FACILITY

DATE 12/27/02

INFORMATIONAL

CTF-N

INFORMATIVE CHRONO

STATE OF CALIFORNIA

NAME and NUMBER

BOSTON, A

D03868

RB306L

DEPARTMENT OF CORRECTIONS
CDC-128 B (8-87)

Inmate BOSTON, A, D03868, RB306L, has been an active member of the IMPACT Program during the Fall & Winter sessions. IMPACT is a 14-week series of classes focusing on the impact of crime on the individual, community and society, helping inmates to understand the ripple effect of their criminal behavior. Approximately 30 inmates are enrolled in each session. Each week, different topics are discussed, such as child abuse, domestic violence, sexual assault, murder, and robbery. Videos are shown, lectures are given by outside guest speakers, and presentations are made by Steering Committee members. IMPACT is a voluntary program of self-help, which offers its participants opportunity to gain insight and empathy for the victims of crime. Inmate BOSTON, A has presented contributions and involvement in the IMPACT program.

ORIG C-File
cc Unit File
CC-I
Inmate
Writer

J. SELVIDGE, CC II
IMPACT SPONCER
CTF-NORTH FACILITY

DATE 02/04/200

CTF-N

INFORMATIVE CHRONO

STATE OF CALIFORNIA
CDC 101 (1/92)

WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADES		GRADE	GRADE	
1 - EXCEPTIONAL		A. DEMONSTRATED SKILL AND KNOWLEDGE		F. TEAMWORK AND PARTICIPATION
2 - ABOVE AVERAGE	1	B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS	1	G. LEARNING ABILITY
3 - SATISFACTORY	1	C. ATTITUDE TOWARD SUPERVISORS AND STAFF	1	H. USE OF TOOLS AND EQUIPMENT
4 - BELOW AVERAGE	1	D. INTEREST IN ASSIGNED WORK	1	I. QUALITY OF WORK
5 - UNSATISFACTORY	1	E. EFFORT DISPLAYED IN ASSIGNED WORK	1	J. QUANTITY OF WORK

PAY STATUS: FROM: \$ TO: \$ FROM JOB NO. TO: JOB NO.

TOTAL # Hours Assigned: TOTAL # Hours Worked:

INMATE ASSIGNED TO: CAPT CLERK DATE ASSIGNED: 9-1-00 ACTUAL WORK CONSISTS OF: CLERK PERIOD COVERED BY REPORT:

RECOMMENDED FOR: ☐ REASSIGNMENT ☒ RETAIN ☐ PAY INCREASE ☐ PAY DECREASE INMATE'S INITIALS: A.B.

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE):

SUPERVISOR: L. PIERSON LENGTH OF SUPERVISION: WORK DETAIL: CLERK ETHNICITY: BIA

INMATE'S NAME: BOSTON CDC NUMBER: D-03868 INSTITUTION: SATF/SP DATE: 12-22-00 6-63 182

NAME and NUMBER

BOSTON

D-03868,

FDB2T2-213L

CDC-128-B (Rev. 4)

During my assignment to the CSATF/SP, Facility "D" Housing Unit # 2 as Floor Officer # 2, I have had many occasions to interact with Inmate BOSTON, D-03868. BOSTON is a member of the Facility "D" IAC Executive Body (Secretary), and in this capacity, BOSTON has always demonstrated a willingness to assist in resolving any problems that arose within Housing Unit 2. BOSTON was always professional and respectful in his interactions with staff and inmates. BOSTON always sought to view and resolve issues with as much of an unbiased and neutral perspective as was possible under the circumstances. His cooperation in resolving Housing Unit problems, assisted in maintaining the daily programming of the Unit. BOSTON is to be commended for his conduct, and demeanor as denoted in the aforementioned.

orig: C-File

cc: CC-I

Writer

Inmate

R. GALINDO,
Correctional Officer
CSATF/SP, Facility "D"

DATE 11-8-00

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER

BOSTON, A.

D-03868

FDB2T2-213L

CDC-128-B (Rev. 4)

As the CSATF, Facility "D" IAC Coordinator, I have had occasion to interact with inmate BOSTON, D-03868, who was assigned as the Facility "D" Captain's Clerk and also held the position of the IAC Executive Body Secretary. In the capacity of IAC Secretary, inmate BOSTON, displayed excellent communication skills, and maintained a responsible attitude and demeanor in his interactions with both staff and inmates. BOSTON always displayed an eagerness to assist in rectifying issues-conflicts-and/or problems on Facility "D". As the Captain's clerk, BOSTON was always receptive towards handling and efficiently completing any and all tasks assigned. BOSTON has proven to be an asset on Facility "D" and is to be commended for his conduct while on CSATF, Facility "D".

orig: C-File

cc: CC-I

Writer

Inmate

M. PERRY,
Correctional Lieutenant
CSATF, Facility "D"

DATE 11-7-00

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER A. BOSTON,

D-03868,

FDB2T2-213L

CDC-128-B (Rev. 4/74)

Inmate BOSTON, D-03868, is to be commended for his work skills, and participation in the Facility "D" IAC. BOSTON is assigned as the Facility "D" Captain Clerk, and also is a member of the Executive Body of the IAC (Secretary). BOSTON has always been willing to work and perform his assigned duties up to and beyond expected levels (including working overtime if necessary). As the IAC Secretary, BOSTON cooperated in assisting both the general population and administration alike in addressing concerns/issues. His cooperation proved an asset in assisting to maintain the daily and orderly functioning of Facility "D", and/or conflict resolution. He is to be commended for the above mentioned.

orig: C-File

cc: CC-I

Writer

Inmate

R. Jones,
Correctional Lieutenant
CSATF, Facility "D"

DATE 11-6-00

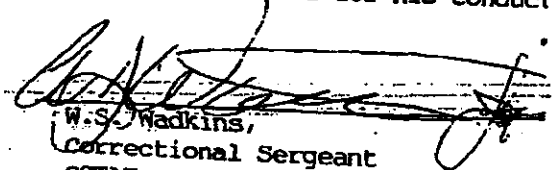
(LAUDATORY CHRONO)

GENERAL CHRONO

NUMBER BOSTON D-03868 T2-213L CDC-128-B (Rev. 4/7)

This chrono is being generated to commend Inmate Boston D-03868, for his exemplary conduct/behavior while at CSATF. While being assigned as the Facility "D" Captain's Clerk, Boston, also maintained on a voluntary basis the position of Inmate Advisory Council Secretary. In both capacities, Boston exhibited excellent communication skills, and was always willing to cooperate in a liaison capacity for conflict resolution in matters between inmates and staff. Boston always displayed a professional and courteous demeanor in his dealing with, both staff and inmates alike. Inmate Boston is to be commended for his conduct while at CSATF.

orig: C-File
CC-I
Writer
Inmate


W.S. Watkins,
Correctional Sergeant
CSTAF, Facility "D"

DATE 11-4-00

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON, A.


D-03868,

FDB2T2-213L

CDC-128-B (Rev. 4/7)

During my assignment as the CSATF Facility "D" Housing Unit 2 Control Booth Officer, I have observed inmate BOSTON, D-03868, FDB2T2-213L, to exhibit a very courteous and cooperative attitude. Inmate BOSTON is a member of the Facility "D" IAC (position- Secretary). At times when conflict management/resolution was necessary, Inmate BOSTON was always willing to assist in attempting to resolve matters. As an IAC member, BOSTON always rose to the occasion where IAC involvement was appropriate. BOSTON has always displayed a courteous, professional and helpful attitude in his dealings with both inmates and staff alike in Housing Unit # 2. Inmate BOSTON is to be commended for his conduct and helpful demeanor.

orig: C-file
cc: CC-I
Writer
Inmate


P.L. THOMPSON,
Correctional Officer
CSATF, Facility "D"

DATE 11-1-00

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON

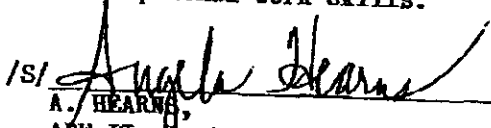
D-03868

C3-217U

CDC-128-B (Rev. 4/74)

This chrono is to commend Inmate BOSTON, D-03868, C3-217U on his exceptional work skills as a Teacher's Aide. During his tenure of assignment as a Teacher's Aide in the ABE-II Class I/M BOSTON exhibited a very positive attitude and motivated work skills. BOSTON displayed a very respectful and courteous attitude towards both staff and inmates alike. BOSTON was always eager to assist students whenever they required such, and applied him overall in the class wherever he was needed. BOSTON proved himself instrumental to the orderly and daily functioning of the ABE-II Class, and is to be commended for his exceptional work skills.

orig: C/File, Records
cc: Correctional Counselor-I
File
Inmate

/s/ 
A. HEARN,
ABE-II, Instructor
CSP/LAC, Facility "C" Education

DATE AUGUST 6, 1996

(LAUDATORY CHRONO)

GENERAL CHRONO

Q-65
284

This chrono is to commend Inmate BOSTON, D-03868, 3A-102L, for his positive programming, and excellent work skills. Inmate BOSTON has always displayed a most courteous disposition towards staff and other inmates. His work skills have demonstrated his standard of diligence, and dedication to always do the best that he possibly could to skillfully complete any task. He has maintained a positive program, and only engaged in activity which could enhance his positive programming potential. Inmate BOSTON, is an exceptional worker, and a responsible inmate who continuously goes above and beyond the call of duty to apply himself and maintain a positive program.

Orig: Records/C-File

cc: Program Administrator

Correctional Counselor-I
Inmate

/s/

M.S. Gonzales,
Correctional Officer
CCI/IVB, Third Watch

DATE 7-30-93

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON

D-03868

3A-102L

During Inmate BOSTON's tenure as the IVB Clinic Clerk, I observed him to exhibit excellent work habits. BOSTON remained ever ready, and always willing to assist in whatever capacity required to ensure the smooth daily operation of the IVB Clinic. He was always polite and courteous to both staff and inmates alike. His work skills have demonstrated his standard of diligence and dedication to skillfully complete any task assigned in the most efficient manner possible. Inmate BOSTON is an excellent worker and is to be commended for both his work skills and helpful attitude.

Orig: Records/C-File

cc: Program Administrator

Correctional Counselor-I
Inmate

/s/

B. Page,
M.F.A.
CCI/IVB, Third Watch

CDC-128-B (REV. 3/97)

NAME: BOSTON

CDC #: D03868

HOUSING: A-1 103U

The Above named inmate has successfully completed the Substance Abuse Program at Ironwood State prison. The SAP program consisted of 309 hours of instruction in ANGER MANAGEMENT, PARENTING, STRESS MANAGEMENT & SUBSTANCE ABUSE. The above inmate is commended for his interest and conduct throughout this program.

Kenya Williams
Kenya Williams, SAP Instructor (AI)

Original: C-File

Copy: Inmate

Education

DATE: 9/30/98

INFORMATIONAL CHRONO

INST./ISP

NAME AND NUMBER BOSTON

D03868

D2 213U

CDC-128-B (Rev. 4/74)

Inmate BOSTON, CDC# D03868, completed the TABE Test, Level A7, with a reading score of 12.0. Based on this score, he should be placed on the ABE III/GED or Vocation class waiting list.

original: C-File

cc: CCI

Education File

Inmate Assignment Office

Inmate

G. Szpval

Institutional Testing Coordinator

J. Mann

Supervisor of Academic Instruction

Orientation

PTR-D-225

Date Tested 3/8/00

TABE RESULTS

GENERAL CHRONO

NAME and NUMBER BOSTON

D-03868

3A-102L

CDC-128-B (Rev. 4/74)

While assigned to the CCI/IVB Facility, I have had the occasion to work various positions which have all placed me in contact with I/M BOSTON, D-03868. I/M BOSTON has always presented a courteous attitude towards staff and inmates alike. His work habits were always exceptional, and whenever approached with a task he would diligently apply himself to ensure the satisfactory completion of that task. He has continuously maintained a positive, and managed to avoid potential problems which might interfere with his otherwise excellent programming. I/M BOSTON should be commended for maintaining an excellent program here at CCI/IVB, and continuing to conduct himself in a most responsible manner.

Orig: Records/C-File

cc: Program Administrator

Correctional Counselor-I

Inmate

J. GANT,

Correctional Officer

CCI/IVB

DATE 8-12-93

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON

D-03868

3A-102L

CDC-128-B (Rev. 4/74)

Inmate BOSTON, D-03868, 3A-102L, worked in the IVB Medical Clinic as the Clinic Clerk from May of 1992, to January of 1993. During his nine (09) month tenure as the Clinic Clerk, his work habits were excellent. He was consistently accurate, neat, and punctual. Additionally, he was always willing to do whatever was required of him; whether related to his "job description" or not.

Mr. BOSTON, was always courteous to both Staff, and fellow inmate workers alike. He was an asset to the IVB Clinic.

Orig: Records/C-File

cc: Program Administrator

Correctional Counselor-I

Inmate

A. BELL,

M.T.A.

CCI/IVB, Second Watch
IVB Medical/Clinic Dept.

WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADES		GRADE	GRADE	
1 - EXCEPTIONAL	1	A. DEMONSTRATED SKILL AND KNOWLEDGE	1	F. TEAMWORK AND PARTICIPATION
2 - ABOVE AVERAGE	1	B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS	1	G. LEARNING ABILITY
3 - SATISFACTORY	1	C. ATTITUDE TOWARD SUPERVISORS AND STAFF	1	H. USE OF TOOLS AND EQUIPMENT
4 - BELOW AVERAGE	1	D. INTEREST IN ASSIGNED WORK	1	I. QUALITY OF WORK
5 - UNSATISFACTORY	1	E. EFFORT DISPLAYED IN ASSIGNED WORK	1	J. QUANTITY OF WORK

PAY STATUS: FROM: \$.23 TO: \$.28 FROM: JOB NO. - - - - - TO: JOB NO. C LIB 2201

TOTAL # Hours Assigned: TOTAL # Hours Worked:

INMATE ASSIGNED TO	DATE ASSIGNED	ACTUAL WORK CONSISTS OF	PERIOD COVERED BY REPORT
FAC C LIBRARY	4/17/95	LEGAL CLERK ASSISTING INMATES/LEGAL WORK & ADMIN. DUTIES.	7/1/95 - 9/30/95

RECOMMENDED FOR: ☐ REASSIGNMENT ☐ RETAIN ☒ PAY INCREASE ☐ PAY DECREASE

COMMENTS (IF MORE SPACE REQUIRED, USE REVERSE SIDE) INMATE BOSTON DISPLAYS EXCEPTIONAL LEGAL SKILLS IN THE AREA OF LAW.

SUPERVISOR	LENGTH OF SUPERVISION	WORK DETAIL	ETHNICITY
P. BOETSCH	1 YR. 2 MOS.	FAC C LIBRARY	BLACK

INMATE'S NAME	CDC NUMBER	INSTITUTION	DATE
BOSTON, A.	D-03868	C.S.P. - L.A.C.	9/30/95

NAME and NUMBER BOSTON, A.

D-03868

C3-225U

CDC-128-B (Rev. 4/74)

Inmate BOSTON D-03868, C3-225U is to be commended for his work skills and job performance as a CSP/LAC Facility "C" Legal Clerk. During his tenure of employment BOSTON has displayed a willingness to assist in not only his assigned duties, but also in other areas of library service. BOSTON's demeanor and attitude has always been one of a respectful nature towards staff and fellow inmates alike. His work skills have assisted in maintaining the daily and orderly functioning of the Facility "C" Library. BOSTON has proven to be an asset to the Library and should be commended for such.

orig: Records/C-File
cc: Assignment Lieutenant
Correctional Counselor-I
File
Inmate

15/ *P. Boetsch*
P. BOETSCH,
L.T.A.-I
CSP/LAC, FACILITY "C" LIBRARY

DATE 12-29-95

(LAUDATORY CHRONO)

GENERAL CHRONO

Q-68
187

During the Annual T.B. Skin Testing conducted here at OCI/IVB, Inmate BOSTON, D-03868, provided the IVB Medical/Clinic Department with essential assistance in ensuring that these test procedures were conducted as effectively and expeditiously as possible. His assistance consisted of typing and preparing any necessary documents/paperworks as instructed. His work conduct was good, and he was always helpful with any tasks (job related or otherwise). He is to be commended for his willingness to assist, helpfulness, attitude, and courteous demeanor to staff and fellow inmates.

Orig: Records/C-File
cc: Program Administrator
Correctional Counselor-I
Inmate

/s/ C. Jones, RN
C. JONES, RN
T.B. Coordinator
OCI/IVB, Medical Department

DATE 8-20-93

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON

D-03868

3A-102L

CDC-128-B (Rev. 4/74)

This document is to commend Inmate BOSTON, on his willingness to assist whenever required. While assigned as the IVB Visiting Officer, it sometimes became necessary to have documents, memos, etc., typed in order to continue efficiently maintaining the smooth operation of the Visiting Program. Inmate BOSTON was always helpful and willing to offer his assistance to ensure the smooth operation of Visiting. His attitude was always respectful, and he continuously maintained polite and courteous demeanor towards both staff and inmates. Whenever approached with a task (whether job related or not) BOSTON would always accept the task and complete it in a most expeditious manner. Inmate BOSTON is to be commended for his cooperation, attitude and willingness to apply himself wherever needed in a most effective manner.

Orig: Records/C-File
cc: Program Administrator
Correctional Counselor-I
Inmate

/s/ R. Walters
R. WALTERS,
Correctional Officer
OCI/IVB

DATE 8-22-93

(LAUDATORY CHRONO)

GENERAL CHRONO

NAME and NUMBER BOSTON

D-03868

3A-102L

CDC-128-B (Rev. 4/74)

During my tenure assigned as the IVB Clinic Control Officer (post. no. 525308), Inmate BOSTON, D-03868, 3A-102L was assigned as the IVB Clinic Clerk, and later the 2ND Watch Custody Clerk. Inmate BOSTON exhibited behavior and conduct which was above average. His work habits were exceptional, and he was always willing to extend an extra effort to ensure the smooth operation of whatever department he was assigned. BOSTON has always displayed a courteous demeanor towards both staff and inmates alike, while maintaining a consistently helpful attitude towards all matters whether job related or not. He is to be commended for his good work, attitude, and motivation to apply himself appropriately and adequately in all assigned tasks.

Orig: Records/C-File
cc: Program Administrator
Correctional Counselor-I
Inmate

/s/ E. Thorsland
E. THORSLAND,
Correctional Officer
CCI/IVB, Second Watch

(A-69)
138

WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTIONS

GRADE 1 - EXCEPTIONAL
2 - ABOVE AVERAGE
3 - SATISFACTORY
4 - BELOW AVERAGE
5 - UNSATISFACTORY

GRADE 1
2
2
1
1

A. DEMONSTRATED SKILL AND KNOWLEDGE
B. ATTITUDE TOWARD FELLOW INMATES AND WORKERS
C. ATTITUDE TOWARD SUPERVISORS AND STAFF
D. INTEREST IN ASSIGNED WORK
E. EFFORT DISPLAYED IN ASSIGNED WORK

1
2
2
1
2

F. TEAMWORK AND PARTICIPATION
G. LEARNING ABILITY
H. USE OF TOOLS AND EQUIPMENT
I. QUALITY OF WORK
J. QUANTITY OF WORK

1
2
2
1
2

PAY STATUS: FROM \$ TO \$
TO: JOB NO.
FROM: JOB NO.

TOTAL # Hours Assigned
TOTAL # Hours Worked:

INMATE ASSIGNED TO: JAN. 1993
INMATE'S INITIALS: 01-01-93 thru 03-31-93

RECOMMENDED FOR: ☐ REASSIGNMENT ☒ RETAIN ☐ PAY INCREASE ☐ PAY DECREASE

INMATE'S INITIALS: A.B.

COMMENTS OF WORKER REQUIRED, USE REVERSE SIDE

COMPLETES WORK QUICKLY AND FOLLOWS DIRECTIONS WELL.

LENGTH OF SUPERVISION: 3 Months

WORK DETAIL: Custody Clerk

ETHNICITY: Black

DATE: 04-21-93

INMATE'S NAME: T. Abernathy

INMATE'S NUMBER: D-03868

INMATE'S INSTITUTION: CCL-IVB

WORK SUPERVISOR'S REPORT

CDC-101

VALUE OF GRADES	1	2	3	4	5	(A)	(B)	(C)	(D)	(E)	(F)	(G)
Grade 1 means: Exceptional	1	2	3	4	5	Demonstrated skill and knowledge	Observed work habits	Attitude toward fellow inmates, state and job	Learning ability, alertness and perseverance	Quality of work	Quantity of work	Care and use of tools and equipment
Grade 2 means: Above average	1	2	3	4	5							
Grade 3 means: Acceptable	1	2	3	4	5							
Grade 4 means: Below average	1	2	3	4	5							
Grade 5 means: Unsatisfactory	1	2	3	4	5							

RECOMMEND FOR: ☐ Reassignment ☒ Retain ☐ Pay Increase ☐ Pay Decrease

Subject is assigned to: 2ND WATCH CUSTODY CLERK

Actual work consists of: Typing chronos, memos, reports, etc.

Length of supervision: SEVEN MONTHS

Explanations and remarks: Inmate BOSTON types, CDC-115's, I.E. reports, CDC-128's, chronos, memos, CDC-114D's, dicats, and various reports generated from the Custody Office. Inmate BOSTON is an exceptional worker, who works well with staff & inmates, and completes all tasks assigned quickly.

Submitted by: (Supervisor) T. ABERNATHY, C/O

Approved by: (Ind. Mgr. or Warden/Supl. Rep.)

Name: BOSTON, Andre' Number: D-03868 Work detail: Institution: CCL/IVB Date: 07/02/93

Q-70
139

I would like this informative chrono to document (1) that Mr. Boston has been the clerk responsible for Mental Health Service ducats at Unit IVB for the past six months, and (2) that in this capacity the ducating has gone superdly by any standard of excellence, and (3) that Mr. Boston consistently has shown courtesy, helpfulness, responsibility, and imperturbability under sometimes difficult clinic circumstances. He is affable and always has been willing to extend his effort to ensure smooth clinic operation.

~~He is to be commended for his good work, attitude, motivation, and accountability.~~

DATE Page 1 of 2

GENERAL CHRONO

NAME and NUMBER Boston D-03868

CDC-128-8 (Rev. 4/74)

cc: C-File
Med. File
CC-I
Inmate
Dr. Haskett

114
J. HASKETT, Ph.D.
Staff Psychologist

DATE October 28, 1992

GENERAL CHRONO

STATE OF CALIFORNIA
CDC 101

WORK SUPERVISOR'S REPORT

DEPARTMENT OF CORRECTION

GRADES	GRADE		GRADE	
1-Exceptional	1	A. Demonstrated Skill and Knowledge	1	F. Teamwork and Participation
2-Above Average	1	B. Attitude Toward Fellow Inmates and Workers	1	G. Learning Ability
3-Satisfactory	1	C. Attitude To Supervisors and Staff	1	H. Use of Tools and Equipment
4-Below Average	1	D. Interest in Assigned Work	1	I. Quality of Work
5-Unsatisfactory	1	E. Effort Displayed in Assigned Work	1	J. Quantity of Work

PAY STATUS: From \$ 0.12 To \$0.13 From Job No. ----- To Job No. CLLA.12

Total No. Hours Assigned Total No. Hours Worked Length of Supervision 5 months

SUBJECT ASSIGNED TO DATE ASSIGNED 10/25/92 ACTUAL WORK CONSISTS OF: Legal clerk assisting I/M's with legal work & library administrative duties. PERIOD COVERED BY REPORT: 10/31/92 - 11/29/92

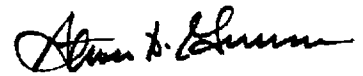
RECOMMEND FOR: () REASSIGNMENT () RETAIN () PAY INCREASE () PAY DECREASE INMATE'S INITIALS J.B.

COMMENTS (IF MORE SPACE IS REQUIRED, USE REVERSE SIDE) I/M Boston has demonstrated exceptional abilities in assisting inmates with their legal deadlines and works well with his peers and supervisor. He completes his work without supervision and is an valuable asset to the daily operations of the library. He is also trained in sign language if ever needed.

P. Haskett

WORK DETAIL

ETHNICITY



CLERK OF THE COURT

1 **PCR**
2 **MARTIN HART, ESQ.**
3 Nevada Bar No. 5984
4 The Law Offices of Martin Hart Law, LLC
5 229 South Las Vegas Blvd Ste 200
6 Las Vegas, Nevada 89101
7 (702) 380-4278
8 Attorney for Petitioner

**DISTRICT COURT
CLARK COUNTY, NEVADA**

7 ANDRE DUPREE BOSTON,
8
9 Petitioner,

CASE NO.: C084650
DEPT. NO.: VI
DOCKET NO.:

9 vs.

10 JAMES COX, DIRECTOR
11 NEVADA DEPARTMENT OF
CORRECTIONS.

02 / 11 / 13

12 Respondent.

8 : 30 AM

WRIT OF HABEAS CORPUS
(POST-CONVICTION)

15 COMES NOW PETITIONER, ANDRE DUPREE BOSTON, by and through his attorney
16 MARTIN D. HART, ESQ. of The Law Office of Martin Hart, LLC. and files the following Writ of
17 Habeas Corpus.

18 *This Addendum to the Supplemental Writ of Habeas Corpus only adds section C to the*
19 *previously filed Supplement to Writ of Habeas Corpus. The purpose of this addendum is to assist this*
20 *Court with the applicability of NRS 34.800(2) (in light of Graham) referred to in footnote 6 of the*
21 *Order Remanding filed February 3, 2012 by the Nevada Supreme Court. Petitioner recognized that*
22 *the section was unknowingly omitted from the original Supplement to Writ of Habeas Corpus filed on*
23 *November 27, 2012 and hereby files this instant addendum. All sections are the same, save the addition*
24 *of Section C. This addendum shall serve as an addition to any original Writ for Petition of Habeas*
25 *Corpus, filed by Petitioner, and shall supplement the arguments therein.*

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I. STATEMENT OF FACTS

Andre Dupree Boston (Boston) was found guilty of one count of burglary, one count of lewdness with a minor with the use of a deadly weapon, one count of assault with a deadly weapon, one count of battery with the intent to commit a crime with the use of a deadly weapon, one count of first-degree kidnaping with the use of a deadly weapon, six counts of sexual assault with the use of a deadly weapon, one count of robbery with the use of a deadly weapon and one count of attempting to dissuade a victim from reporting a crime with the use of a deadly weapon by a jury on September 15, 1988. A judgment of conviction was filed on November 7, 1988 and was sentenced to serve fourteen consecutive terms of life with the possibility of parole and consecutive terms totaling 92 years. On November 1, 1988 Boston filed an appeal which was dismissed by the Nevada Supreme Court on November 29, 1988. Boston then filed a Petition for Post Conviction Relief on October 22, 1990 which was denied by the District Court on December 18, 1990. Following an appeal of that decision the Nevada Supreme Court remanded the matter for an evidentiary hearing. Ultimately that petition was dismissed.

Boston filed a petition for post-conviction relief in proper person on January 5, 2011. This Court dismissed the petition on March 23, 2011. This dismissal was appealed by Boston on April 19, 2011 and the Nevada Supreme Court issued an order affirming in part and reversing in part remanding the issue related to Graham v. Florida. This writ is in response to the order remanding.

III. LEGAL ARGUMENT

A. THE SENTENCE IMPOSED IN THE JUDGMENT OF CONVICTION IS CONSTITUTIONALLY INVALID UNDER THE EIGHTH AMENDMENTS GUARANTEE OF PROTECTION FROM CRUEL AND UNUSUAL PUNISHMENT.

"The Constitution prohibits the imposition of a life without parole sentence on a juvenile offender who did not commit homicide. A State need not guarantee the offender eventual release, but if it imposes a sentence of life it must provide him or her some realistic opportunity to obtain release before the end of that term." Graham v. Florida, 130 S. Ct. 2011, 2034, 176 L. Ed. 2d 825, 850 (2010). The Eighth Amendment forbids States from making the judgment at sentencing that minor offenders

1 will never be fit to reenter society. Id. at 2030, 846. The Nevada Supreme Court in its order for remand
2 recognized that the issues presented below regarding the functional equivalent of life without parole
3 are “complex and novel”. See Supreme Court Order attached hereto as Exhibit “1”. Fortunately,
4 California has just recently dealt with this exact issue in People v. Caballero, 55 Cal. 4th 262 (2012).
5 The California Supreme Court was left to determine whether a 110-year-to-life sentence imposed on
6 a juvenile convicted of nonhomicide offenses contravened Graham’s mandate against cruel and unusual
7 punishment under the Eighth Amendment; to which they concluded it did. “The gist of Graham is not
8 only that life sentences for juveniles are unusual as a statistical matter, they are cruel as well because
9 ‘developments in psychology and brain science continue to show fundamental differences between
10 juvenile and adult minds.’” (Caballero, 55 Cal. 4th at ___, concurring opinion, citing Graham, supra,
11 560 U.S. at p. ___ [130 S.Ct. at p. 2026]).

12 Graham provides that “a juvenile offender who did not kill or intend to kill has a twice
13 diminished moral culpability. Age and the nature of the crime each bear on the analysis. As for the
14 punishment, life without parole is ‘the second most severe penalty permitted by law,’ Harmelin v.
15 Michigan, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115 L.Ed.2d 836, and is especially harsh for a juvenile
16 offender, who will on average serve more years and a greater percentage of his life in prison than an
17 adult offender, see, e.g., Roper v. Simmons (2005), 543 U.S. 551, at 572, 125 S.Ct. 1183. The United
18 States Supreme Court has relied on studies showing “developments in psychology and brain science
19 continue to show fundamental differences between juvenile and adult minds. For example, parts of the
20 brain involved in behavior control continue to mature through late adolescence. Juveniles are [also]
21 more capable of change than are adults, and their actions are less likely to be evidence of ‘irretrievably
22 depraved character’ than are the actions of adults.” (Graham, 560 U.S. at p. ___ [130 S.Ct. at p. 2026],
23 quoting Roper v. Simmons (2005), 543 U.S. 551.) And none of the legitimate goals of penal
24 sanctions—retribution, deterrence, incapacitation, and rehabilitation, see Ewing v. California, 538 U.S.
25 11, 25, 123 S.Ct. 1179, 155 L.Ed.2d 108—is adequate to justify life without parole for juvenile
26 nonhomicide offenders, see, e.g., Roper, 543 U.S., at 571, 573, 125 S.Ct. 1183.” Graham, 130 S.Ct.

1 2011 at 2016.

2 The Nevada Supreme Court calculated how long Boston would have to serve before he is
3 eligible for parole in footnote 7 of the order remanding the issue to this Court: "In the instant case, it
4 appears that appellant would have to serve a minimum of approximately 100 years before he will be
5 eligible for parole. 1977 Nev. Stat., ch. 598, § 1, at 1626 (NRS 200.366(2)(b)); 1973 Nev. Stat., ch 798,
6 § 6, at 1804-05 (NRS 200.320(2)); 1981 Nev. Stat., ch. 780, § 1, at 2050.(NRS 193.165); MRS
7 209.446(6); NRS 213.120(1)." Id. Using the Nevada Supreme Courts calculation Boston would be
8 eligible for parol when he is 121 years of age. The 10 year average for the mean dying age of inmates
9 at the Nevada Department of Corrections (NDOC) is 54.7 years of age. *See* Nevada Department of
10 Correction Fiscal Year 2010 Statistical Abstract, page 70, attached hereto as Exhibit "2". Based on the
11 statistics provided by NDOC, Boston would not be eligible for parole until 66 years *after* he is expected
12 to die. An evidentiary hearing is necessary to allow the NDOC to provide the person most
13 knowledgeable regarding the statistics of inmate deaths and what the life expectancy is of someone
14 similar to Boston. However, Boston asserts that it is within this Courts discretion to take judicial
15 notice that 121 years of age is well beyond any measure of current life expectancy.

16 The United States Supreme Court extended Graham's reasoning in Miller and "made it clear
17 that Graham's "flat ban" on life without parole sentences for juvenile offenders in nonhomicide cases
18 applies to their sentencing equation regardless of intent in the crime's commission, or how a sentencing
19 court structures the life without parole sentence." Caballero, 55 Cal. 4th 262, ___, citing Miller, 132
20 S.Ct. 2465, 2469. The Caballero Court determined "Graham's reasoning implicates any
21 life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to
22 nonhomicide offenses." Caballero, 55 Cal. 4th 262, ___ (2012), citing Miller, 567 U.S. ___ [132 S.Ct.
23 at p. 2465]. Miller therefore made it clear that Graham's "flat ban" on life without parole sentences
24 applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that
25 amounts to the *functional equivalent* of a life without parole sentence imposed in this case. People v.
26 Caballero, 55 Cal. 4th 262, (2012)(emphasis added).

The sentence imposed in the judgment of conviction is the functional equivalent of life without parole because Boston will not be eligible for parole until long after he is expected to die. In fact double the mean age. Under Graham, the State is required to impose a sentence that has some realistic expectation or opportunity to obtain release before the end of the term. Graham, 130 S.Ct. 2011 at 2034. Even if you consider the top end (outlier) of the range regarding years of age from the 2009 NDOC Statistical Abstract 73 years of age was the oldest inmate to die in 2009; Boston would expect to be dead for 48 years before he is eligible for parole. See Nevada Department of Correction Fiscal Year 2009 Statistical Abstract, page 42 attached hereto as Exhibit "3". Even using the United States Census Bureau life expectancy table for black males as a whole in the United States, Boston's Life expectancy is 70.9 years. See Life Expectancy Tables 104 and 105 attached hereto as Exhibit "4". There is no reasonable calculation available under the facts set out above that provides the opportunity of parole or release before Boston is expected to die.

Boston was sentenced to 14 terms of life with the possibility of parole each to be served consecutive to each other consecutive to an additional 92 years with that to be served consecutive to a sentence in California. It is clear that the Court's intention was to ensure Boston remained imprisoned for his natural life. A State...must impose a sentence that provides some meaningful opportunity for release based on demonstrated maturity and rehabilitation. Graham, 130 S. Ct. 2011 at 2017. Boston is exactly who the U.S. Supreme Court was considering by this statement. Boston has earned his GED, multiple college degrees, several certificates from the Federal Emergency Management Agency, 20 plus Certificates of Appreciation/Achievement, and a plethora of Accolades and Laudatory Documentation from Wardens and Staff. *See* Degrees, Diplomas, Certificates, Transcripts, Accolades, and Laudatory Documentation attached hereto as Exhibit "5". It is not very often that a Court is given the opportunity of hindsight in sentencing or re-sentencing, but Graham has afforded Boston and this Court that unique opportunity. This situation allows this Court to see and consider how rehabilitated Boston is after serving close to 30 years when reconsidering his sentence.

Despite his rehabilitation there is a complication regarding the time he has left to serve.

1 Unfortunately it appears as though Boston will only reach the average 10 year median age of death
2 (54.7 years old) with a little luck. Boston has been diagnosed with Stage III Sarcoidosis which has
3 damaged his lungs, kidneys, larynx and sinus region. Boston's lungs only operate at 50% capacity and
4 he requires the use of an oxygen machine at times. Fortunately it is currently in remission but could
5 flair at any given time.

6 In order to comport with the Eighth Amendment and Graham, Boston must receive a new
7 sentence that gives him a realistic opportunity for release.

8
9 **B. AN EVIDENTIARY HEARING IS NECESSARY TO ASSIST THIS COURT**

10 An evidentiary hearing is needed to calculate the life expectancy of a prisoner sentenced to term
11 of years constituting a de facto life without sentence. The hearing should also address the Nevada
12 Parole rates for crimes similar to those that Boston was convicted of. Without these two pieces of
13 information, it is impossible for the Court to define "realistic opportunity for release." It is believed
14 such information can be obtained through the testimony of employees from the Nevada Department of
15 Corrections.

16 An evidentiary hearing is also needed to present evidence of mitigating factors that reduce the
17 culpability of Boston. Such evidence is necessary to apply the reasoning of the decision in Graham and
18 Roper. Roper addresses scientific studies regarding juveniles, their development and ultimate
19 culpability. The Caballero Court gives some direction for what to do in the situation we face when
20 previous sentences run afoul of Graham.

21 Defendants who were sentenced for crimes they committed as juveniles
22 who seek to modify life without parole or equivalent defacto sentences
23 already imposed may file petitions for a writ of habeas corpus in the trial
24 court in order to allow the court to weigh the mitigating evidence in
25 determining the extent of incarceration required before parole hearings.
26 Because every case will be different, we will not provide trial courts
27 with a precise time frame for setting these future parole hearings in a
28 nonhomicide case. However, the sentence must not violate the
29 defendant's Eighth Amendment rights and must provide him or her a
30 "meaningful opportunity to obtain release based on demonstrated
31 maturity and rehabilitation" under Graham's mandate.

1 Caballero, 55 Cal. 4th 262, ___ (2012). When Boston is re-sentenced, the Court must use these
2 mitigating factors in the proceeding, thus correcting the failure of the Eighth Judicial District Court to
3 do so at Boston's original sentencing.

4 **C. THE STATE HAS NOT BEEN PREJUDICED UNDER ITS NRS 34.800(2) AND NRS**
5 **34.726 CLAIMS**

6 The State has claimed a presumption of prejudice under NRS 34.800(2). This is a rebuttable
7 presumption and Defendant offers that the State is not prejudiced. First and foremost the post
8 conviction relief sought here does not attack the veracity of the facts or the jury verdict. Even so the
9 State has available the record established at trial and all post conviction work. Despite the State's
10 claims that this is "ancient history" they appear to have a firm grasp of the case as evidenced in
11 Statement of the Case section of the State's Response and Motion to Dismiss that was filed on March
12 4, 2011. The Petitioner does not seek any relief that is outside that which is contemplated in Graham
13 and Caballero. Second, any prejudice to the State is far outweighed by that experienced by Petitioner
14 currently serving a sentence that is likely considered cruel and unusual punishment under the Eighth
15 Amendment.

16 Pursuant to Lozada v. State, 110 Nev. 349 (1994) laches should not apply. In Lozada, the Court
17 addressed concerns regarding procedural defaults and required prejudice in addition to ineffective
18 assistance of counsel issues.

19 The required showing of prejudice to establish a claim of ineffective
20 assistance of counsel is separate and distinct from the showing of
21 prejudice required to overcome a procedural default. The legislature
22 requires a showing of prejudice to excuse procedural defaults to prevent
23 the filing of successive petitions and to avoid abuse of post-conviction
24 remedies. In addition, requiring prejudice to excuse the filing of
25 untimely petitions helps to ensure that claims are raised before evidence
26 is lost or memories fade. Without such limitations on the availability of
27 post-conviction remedies, prisoners could petition for relief in perpetuity
28 and thus abuse post conviction remedies. In addition, merit less,
successive and un-timely petitions clog the court system and undermine
the finality of convictions. A showing of prejudice is thus essential to
prevent the filing of successive and merit less petitions for post-
conviction relief.


Id. at 358.

1 The instant petition is clearly not an attempt to abuse post-conviction remedies or to clog the
2 court system as contemplated in Lozada as shown by the good cause explained below.

3 In addition to the NRS 34.800(2) argument the State also argues the petition is time barred
4 pursuant to NRS 34.726; this is simply not the case. Any delay in filing this petition is a result of a
5 new rule of constitutional law after the Graham case. This delay is excused by cause and prejudice.
6 Specifically, the delay is attributable to a change in a substantive rule of law announced by the United
7 States Supreme Court on May 17, 2010 and modified on July 6, 2010. Graham v. Florida, supra. The
8 grounds raised in this petition were unavailable to Boston prior to the Supreme Court's decision.
9 Boston can also demonstrate good cause and prejudice to overcome any procedural default as a result
10 of the sentences he received and their clear violations of the Eighth and Fourteenth Amendment
11 prohibitions against cruel and unusual punishments. Boston can therefore demonstrate that the failure
12 to consider the claims presented in this petition on the merits would constitute a fundamental
13 miscarriage of justice, which is sufficient to overcome any purported procedural default.

14 WHEREFORE, petitioner respectfully submits that the current sentence is in violation of the
15 Eighth Amendment and not consistent with Graham. Based on the foregoing facts and legal arguments,
16 Petitioner Andre Dupree Boston respectfully requests that this Honorable Court conduct an evidentiary
17 hearing and apply the appropriate sentence.

18
19
20 DATED this 18 day of December, 2012.

21
22 
23 Martin Hart, Esq
24 Nevada Bar No. 005984
25 229 South Las Vegas Blvd., Ste. 201
26 Las Vegas, N89101
27 Attorney for Petitioner
28

1
2
3
4 **CERTIFICATE OF MAILING**

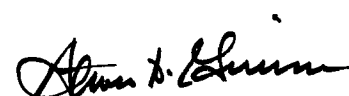
5 I hereby certify that on the 21st day of December, 2012, service of the foregoing
6 ADDENDUM TO PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) was made
7 this date by depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada
8 addressed as follows:

9 James Cox, Director
10 Nevada Department of Corrections
11 P.O. Box 7011
12 Carson City, Nevada 89702

13 Attorney General
14 Heroes' Memorial Building
15 Capitol Complex
16 Carson City, Nevada 89710

17 Steven B. Wolfson
18 Clark County District Attorney
19 200 South Lewis
20 Las Vegas, Nevada 89101

21
22
23
24
25
26
27
28 
Employee of Martin Hart



CLERK OF THE COURT

RSPN
STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar #001565
FRANK COUMOU
Chief Deputy District Attorney
Nevada Bar #004577
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANDRE D BOSTON,
#0920638

Defendant.

CASE NO: C084650

DEPT NO: VI

STATE'S RESPONSE TO DEFENDANT'S WRIT OF HABEAS
CORPUS (POST-CONVICTION)

DATE OF HEARING: FEBRUARY 11, 2013
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through FRANK COUMOU, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Response to Defendant's Writ of Habeas Corpus (Post-Conviction).

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

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 2, 1988, an Information was filed charging Andre Dupree Boston
4 ("Defendant"), as follows: Count 1: Burglary; Count 2: Lewdness with a minor with use of a
5 deadly weapon; Count 4: Assault with a deadly weapon; Count 5: Battery with intent to
6 commit a crime with use of a deadly weapon; Count 5: First degree kidnapping with use of a
7 deadly weapon; Counts 6-12: Sexual assault with use of a deadly weapon; Count 13:
8 Robbery with use of a deadly weapon; Count 14: Attempt dissuade victim or witness from
9 reporting a crime with use of a deadly weapon.

10 A jury trial commenced on September 12, 1988. On September 15, 1988, the jury
11 returned verdicts of guilty for counts 1-8, 10-14 as charged in the Information.

12 On October 20, 1988, Defendant was adjudged guilty of the offenses contained in the
13 Information and sentenced to imprisonment in the Nevada Department of Corrections as
14 follows: Count 1: Ten (10) years; Count 2: Ten (10) years, plus a consecutive sentence of ten
15 (10) years for use of a deadly weapon, sentence to run consecutive to count 1; Count 3: Six
16 (6) years, sentence to run consecutive to count 2; Count 4: Ten (10) years, plus a consecutive
17 sentence of ten (10) years for use of a deadly weapon, sentence to run to count 3: Count 5:
18 Life, plus a consecutive sentence of life for use of a deadly weapon, sentence to run
19 consecutive to count 4; Count 6: Life, plus a consecutive sentence of life for use of a deadly
20 weapon, sentence to run consecutive to count 5; Count 7: Life, plus a consecutive sentence
21 of life for use of a deadly weapon, sentence to run consecutive to count 6; Count 8: Life, plus
22 a consecutive sentence of life for use of a deadly weapon, sentence to run consecutive to
23 count 7; Count 10: Life, plus a consecutive sentence of life for use of a deadly weapon,
24 sentence to run consecutive to count 8; Count 11: Life, plus a consecutive sentence of life for
25 use of a deadly weapon, sentence to run consecutive to count 10; Count 12: Life, plus a
26 consecutive sentence of life for use of a deadly weapon, sentence to run consecutive to count
27 11; Count 13: Fifteen (15) years, plus a consecutive sentence of fifteen (15) years for use of
28 a deadly weapon, sentence to run consecutive to count 12; Count 14: Three (3) years, plus a

1 consecutive sentence of three (3) years for use of a deadly weapon, sentence to run
2 consecutive to count 13, with no credit for time served. A Judgment of Conviction was filed
3 on November 7, 1988.

4 Defendant filed a Notice of Appeal on November 1, 1988 (no. 19607). On October
5 24, 1989, after having reviewed Defendant's claims and finding them without merit the
6 Nevada Supreme Court filed an Order dismissing Defendant's appeal. Remittitur issued on
7 November 14, 1989.

8 On October 22, 1990, Defendant filed a Petition for Writ of Habeas Corpus. The State
9 filed a Response on November 28, 1990. On December 14, 1990, the district court denied
10 Defendant's Petition. A Findings of Fact, Conclusions of Law and Order and a Notice of
11 Entry of Order were filed on December 18, 1990.

12 Defendant filed a Notice of Appeal from the denial of his first Petition on January 11,
13 1991 (no. 21871). On September 30, 1991, the Nevada Supreme Court issued an order
14 remanding the case for an evidentiary hearing as to whether Defendant received ineffective
15 assistance of counsel because counsel failed to investigate an insanity defense. Remittitur
16 issued on October 22, 1991.

17 An evidentiary hearing was conducted on September 4, 1992. On October 14, 1993,
18 the district court again denied Defendant's Petition. A Findings of Fact, Conclusions of Law
19 and Order was filed on March 18, 1994. A Notice of Entry of Order was filed on March 21,
20 1994.

21 Defendant filed a Notice of Appeal from the denial of his Petition on July 25, 1994
22 (no. 26034). On October 7, 1994, the Nevada Supreme Court filed an Order dismissing
23 Defendant's appeal. Remittitur issued October 26, 1994.

24 Defendant filed a second Petition for Writ of Habeas Corpus on January 5, 2011. The
25 State filed a Response and Motion to Dismiss on March 4, 2011. On March 23, 2011, the
26 district court granted the State's Motion and dismissed Defendant's Petition as untimely,
27 successive and in violation of laches. A Findings of Fact, Conclusions of Law and Order was
28 filed on April 22, 2011. A Notice of Entry of Decision and Order was filed on May 31, 2011.

1 On April 19, 2011, Defendant filed a Notice of Appeal from the dismissal of his
2 second Petition (no. 58216). On February 3, 2012, the Nevada Supreme Court issued an
3 Order reversing the dismissal of Defendant's Petition and remanding the case for
4 appointment of counsel and to determine "whether Graham applies only to a sentence of life
5 without parole or whether Graham applies to a lengthy sentence structure that is the
6 functional equivalent of life without parole." Order Affirming in Part, Reversing in Part and
7 Remanding, February 3, 2012, p. 5. Remittitur issued on February 28, 2012.

8 On March 21, 2012, counsel was confirmed to represent Defendant in connection
9 with the instant Petition. A Supplemental Petition was filed on November 27, 2012. A
10 Second Supplemental Petition was filed on December 24, 2012. The State's Response
11 follows.

12 ARGUMENT

13 **DEFENDANT'S SENTENCE DOES NOT CATEGORICALLY VIOLATE THE** 14 **EIGHTH AMENDMENT OF THE UNITED STATES CONSTITUTION.**

15 Defendant contends his sentence violates the Eighth Amendment prohibition against
16 cruel and unusual punishment pursuant to Graham v. Florida, ___ U.S. ___, 130 S. Ct. 2011
17 (2010), because it is the functional equivalent of a sentence of life without parole. In
18 Graham, the United States Supreme Court found that sentencing juveniles to life without the
19 possibility of parole for a nonhomicide crime is categorically cruel and unusual. Graham,
20 130 S. Ct. at 2030. The Court analogized life without the possibility of parole to the death
21 penalty and, relying on Roper v. Simmons, 543 U.S. 551, 125 S. Ct. 1183 (2005), found such
22 punishment for juveniles categorically in violation of the Eighth Amendment. The Court
23 stated:

24 [L]ife without parole sentences share some characteristics with
25 death sentences that are shared by *no other sentences*. . . It
26 deprives the convict of the most basic liberties without giving
hope for restoration, except perhaps by executive clemency – the
remote possibility of which does not mitigate the harshness of
the sentence.

27 ///

28 ///

1 Id. at 2027 (emphasis added). Finding the death penalty and life without the possibility of
2 parole thus uniquely similar, the Court held that juveniles could not be sentenced to life
3 without the possibility of parole for nonhomicide offenses. Id. at 2030. The Court noted,
4 however, that:

5 [W]hile the Eighth Amendment forbids a State from imposing a
6 life without parole sentence on a juvenile nonhomicide offender,
7 it does not require the State to release that offender during his
8 natural life. Those who commit truly horrifying crimes as
juveniles may turn out to be irredeemable, and thus deserving of
incarceration for the duration of their lives.

9 Id. More recently, in Miller v. Alabama, ___ U.S. ___, 132 S. Ct. 2455, 2465 (2012), the
10 Court acknowledged that Graham's categorical ban applied *only* to juveniles being sentenced
11 to life without the possibility of parole for a nonhomicide offense. The Miller Court then
12 extended the reasoning of Graham to hold that mandatory sentences of life without parole for
13 juveniles convicted of homicide offenses also categorically violated the Eighth Amendment.

14 Defendant was a juvenile at the time he committed the various crimes he was
15 convicted of. He was sentenced to consecutive terms of imprisonment as noted above.
16 Subsequent to Graham, Defendant filed a Petition contending that his sentence violated the
17 Eighth Amendment's prohibition against cruel and unusual punishment. Defendant also
18 requested the appointment of counsel to assist in preparing his Petition. The district court
19 denied Defendant's request for counsel and dismissed Defendant's Petition as procedurally
20 barred. On appeal, the Supreme Court of Nevada reversed the district court's decision and
21 remanded for the appointment of counsel and for the district court to determine "whether
22 Graham applies only to a sentence of life without parole or whether Graham applies to a
23 lengthy sentence structure that is the functional equivalent of life without parole." Order
24 Affirming in Part, Reversing in Part and Remanding, 2/3/2012, p. 5.

25 Graham does not apply to Defendant's sentence. By its own terms, Graham only
26 prohibits a sentence of life without the possibility of parole for juveniles, and does not
27 preclude any other sentences of incarceration. Graham, 130 S. Ct. at 2030. Furthermore,
28 several federal and state courts, as well as the United States Supreme Court, have held that

1 Graham is to be narrowly interpreted and that it does not stand for the proposition that
2 lengthy term-of-year sentences for juveniles are unconstitutional. Miller, ___ U.S. at ___,
3 132 S. Ct. at 2465; Silva v. McDonald, 2012 WL 3656240 (C.D. Cal 2012) (Graham does
4 not prohibit a 40-years-to-life-with-possibility-of-parole sentence); State v. Kasic, 228 Ariz.
5 228, 232, 265 P.3d 410, 414 (2011) (Graham does not prohibit an aggregate sentence of
6 139.75 years for a juvenile); see also, Maxety v. Donat, 2012 WL 295632 (D. Nev. 2012)
7 (declining to extend Graham beyond life-without-parole sentences for juveniles convicted of
8 nonhomicide offenses). Here, Defendant has not been sentenced to life without parole for
9 any of the offenses he was convicted of. Thus, by the terms of Defendant's sentence,
10 Defendant is not sentenced to life without the possibility of parole and such sentence does
11 not implicate Graham.

12 The United States Court of Appeals for the Sixth Circuit recently addressed whether
13 Graham's holding applies to a juvenile who was sentenced to consecutive, fixed terms
14 totaling 89 years imprisonment. Bunch v. Smith, 685 F.3d 546 (2012). In Bunch, the Sixth
15 Circuit clearly decided that Graham's holding did not apply to consecutive fixed-term
16 sentences:

17 It is true that Bunch and Graham were both juvenile offenders
18 who did not commit homicide. But while Graham was sentenced
19 to life in prison for committing one nonhomicide offense, Bunch
20 was sentenced to consecutive, fixed-term sentences – the longest
21 of which was 10 years – for committing *multiple nonhomicide*
22 *offenses*. In Graham, the Court made it clear that 'the instant
23 *case concerns only those juvenile offenders sentenced to life*
24 *without parole solely for a nonhomicide offense*.' The Court
stressed that drawing a 'clear line' was 'necessary to prevent the
possibility that life without parole sentences will be imposed on
juvenile nonhomicide offenders who are not sufficiently culpable
to merit that punishment.'...*The Court's analysis in Graham*
supports this conclusion because the analysis did not encompass
consecutive, fixed-term sentences.

25 Id. at 551.

26 In the present case, just as in Bunch, Defendant's sentence was a consecutive, fixed-
27 term of years to life, not life without the possibility of parole. No language in Graham
28 suggests that the narrow holding would apply to the sentence imposed in the instant case. If

1 the Court had intended to broaden the class of offenders within the scope of its decision, it
2 would have stated that the case concerns any juvenile offender who receives the functional
3 equivalent of a life sentence without the possibility of parole for a non-homicide offense or
4 non-homicide offenses. In fact, the most compelling argument indicating that Graham should
5 not be, and was not intended to be, applied to the functional equivalent of a life without
6 parole sentence comes from Justice Alito's dissenting opinion: "Nothing in the Court's
7 opinion affects the imposition of a sentence to a term of years without the possibility of
8 parole. Indeed, petitioner conceded at oral argument that a sentence of as much as 40 years
9 without the possibility of parole 'probably' would be constitutional." Id. at 2058 (Alito, J.,
10 dissenting).

11 Furthermore, the Supreme Court has recognized that it is perfectly legitimate for a
12 juvenile to receive a sentence of life without parole for committing murder. Miller, 132 S.
13 Ct. at 2465. Thus, there is nothing inherently unconstitutional about imposing sentences of
14 life without parole on juvenile offenders. Rather, the constitutionality of such sentences
15 depends on the particular crime or crimes for which they are imposed. Chief Justice Robert's
16 concurrence echoes such. Although the Chief Justice's concurring opinion is not binding, the
17 Chief Justice aptly stated that the Graham holding was unnecessarily broad because the
18 particular conduct and circumstances at issue in the case were not serious enough to justify
19 Graham's sentence. See Graham 130 S Ct. at 2041 (Roberts, J., concurring in judgment).
20 Graham was 16 years old when he committed a burglary and the trial court sentenced him to
21 probation and withheld adjudication of guilt. Id. at 2018. Subsequently, Graham violated his
22 terms of probation and the trial court sentenced him to life in prison for the burglary. Id.
23 Because Florida had abolished its parole system, the life sentence left Graham no possibility
24 of release. Id.

25 It is apparent why the Supreme Court determined that Graham's sentence violated the
26 Eighth Amendment, considering that a 16-year-old who was sentenced on a burglary
27 (entering a structure with intent) was given no hope or possibility of standing before a parole
28 board. In contrast, Defendant was convicted of entering a home and molesting a child under

1 the age of fourteen at knifepoint before she called out for her mother and Defendant escaped.
2 Six weeks later, Defendant kidnapped his first victim's older sister at knife point as she was
3 walking to school and, over the course of several hours, robbed, battered, and repeatedly
4 threatened and sexually assaulted her. Reporter's Transcript, September 12, 1988, pp. 3-9.
5 Accordingly, Graham's sentence for only one felony conviction is a far cry in comparison to
6 Defendant's thirteen felony convictions with deadly weapon enhancements on twelve of
7 those convictions. The fact that Defendant committed multiple sexual assaults, battery,
8 robbery, burglary, kidnapping and lewdness with a child under the age of 14 and did so with
9 the use of a deadly weapon is the basis for his lengthy sentence. Because Graham is both
10 legally and factually inapposite to Defendant's case, this Court should dismiss Defendant's
11 Petition.

12 Furthermore, this court should decline to extend Graham. Some courts have extended
13 Graham to include term-of-year sentences that stretch beyond the natural-life expectancy of
14 a defendant. See People v. Caballero, 55 Cal. 4th 262, 268-69, 282 P.3d 291, 295 (2012);
15 Thomas v. State, 78 So.3d 644 (Fla. 2012). These courts have reasoned that, although
16 Graham solely examined sentences of life without the possibility of parole, the opinion
17 included language that such sentences did not provide a defendant a "meaningful
18 opportunity" to obtain release from prison prior to death. Graham, 130 S. Ct. at 2030.
19 However, such an extension ignores the fact that the United State Supreme Court has twice
20 had the opportunity to prohibit all sentences for juveniles likely to extend beyond the natural
21 life of a defendant and twice explicitly declined to do so. See Graham, 130 S. Ct. at 2058
22 (Alito, J., dissenting) ("[T]he Court holds only that 'for a juvenile offender who did not
23 commit homicide the Eighth Amendment forbids the sentence of *life without parole*.");
24 Miller, 132 S. Ct. at 2469. The United States Supreme Court specifically limited the scope of
25 its decision. The Court defined the class of offenders with which it was dealing thusly: "The
26 instant case concerns only those juvenile offenders sentenced to life without parole solely for
27 a nonhomicide offense." Id. at 2023. The Graham Court thus specifically and repeatedly
28 delineated a singular nonhomicide offense and its holding should not be further extended.

1 Such an extension also goes beyond the justifications underlying the Graham
2 decision. The Court justified its prohibition of life-without-parole sentences for juvenile
3 nonhomicide offenders based on the similarities between sentences of life without the
4 possibility of parole and the death penalty, similarities unshared by the death penalty and any
5 other punishment. Graham, 130 S. Ct. at 2030. While even lengthy term-of-years sentences
6 provide some hope of being released (however slight), capital punishment and life without
7 the possibility of parole carry the same guarantee that a defendant will never be released
8 from prison.

9 Additionally, the Graham Court premised its expansion of a new categorical rule on
10 “objective indicia of society’s standards, as expressed in legislative enactments and state
11 practice” to determine whether there was a national consensus against sentencing juveniles
12 to life without parole. Id. at 2022-2030. The Graham Court began its analysis of objective
13 indicia by comparing and compiling statistics regarding whether state legislatures have
14 passed laws allowing for the imposition of a sentence of life without parole on a juvenile.
15 The Court then examined “actual sentencing practices in jurisdictions where the sentence in
16 question is permitted by statute” to determine the number of juveniles currently serving
17 sentences of life without parole. Thereafter, the Graham Court determined that it must look
18 beyond historical conceptions to the evolving standards of decency and determine extreme
19 cruelty within the framework of the changing mores of society. Graham then justified its
20 expansion of cruel and unusual punishment because sentencing juveniles to life without
21 parole was “exceedingly rare. And it is fair to say that a national consensus has developed
22 against it.” Id. at 2026.

23 The State highlights this justification because “community consensus” and the
24 statistics analyzed specifically do not include lengthy term-of-year sentences that are the
25 functional equivalent of life without parole. Additionally, the statistics discussed and
26 analyzed do not include consecutive sentences which in the aggregate amount to the
27 functional equivalent of life without parole. Nor does Defendant offer such an analysis in the
28 instant Petition. Thus, Graham’s holding should not be expanded to include consecutive

1 fixed-term sentences because Graham specifically did not analyze such sentences when
2 determining evolving standards of a maturing society and the frequency with which state
3 courts issue such sentences. In fact, Justice Thomas pointed out in his dissenting opinion that
4 the majority opinion did not consider statistics or sentences involving juveniles sentenced to
5 lengthy term-of-years sentences (e.g., 70 or 80 years' imprisonment). Id. at 2052 (Thomas,
6 J., dissenting). The fact the Supreme Court did not consider such statistics and analysis in its
7 determination of whether to expand historical conceptions of the Eighth Amendment can
8 only lead to one conclusion – the Court did not intend for its decision to encompass lengthy
9 term-of-year sentences.

10 Additionally, Graham's Eighth Amendment evaluation contained a weighing process
11 and a determination on the relevant purposes and effects of penal sanctions. Interestingly, the
12 Graham Court spent several pages of its decision detailing proportionality in sentencing and
13 theories of criminal punishment. The Graham Court determined that neither retribution nor
14 deterrence justified the sentence imposed upon Graham. However, if Graham's holding were
15 expanded to include lengthy term-of-year sentences that are the functional equivalent of life
16 without parole, such would reduce deterrence. Juveniles would have an incentive to commit
17 as many crimes as possible before turning 18 years of age. Also, a juvenile defendant's
18 sentence would not take into consideration additional infliction of pain upon numerous
19 victims.

20 Defendant's instant argument is nothing more than a request for a "volume discount."
21 Juvenile defendants are not to be sentenced to life without parole for a nonhomicide
22 conviction. However, that holding does not require state courts to hand out coupons akin to
23 "buy one, get one free," or "buy one get 3, 4, 5, or 6 free." Defendant's argument taken to its
24 logical conclusion is that if a juvenile is going to commit one serious crime, that juvenile
25 should commit multiple serious crimes because he is guaranteed not to serve consecutive
26 sentences for multiple victims, dates, locations, or offenses. A cumulative sentence for
27 distinct crimes does not present a cognizable Eighth Amendment claim. Each of Defendant's
28 sentences were permissible individually because each included the possibility of parole

1 within the Defendant's lifetime. That Defendant was simultaneously convicted and
2 sentenced concerning various offenses does not warrant a reduction in the severity of
3 punishment for each individual crime.

4 Lastly, Defendant has appeared before a parole board as recently as January 17, 2013.
5 The very fact that Defendant has appeared before a parole board unequivocally distinguishes
6 this case from Graham. Defendant has had the opportunity to demonstrate his rehabilitation
7 and maturity. He has had the opportunity to demonstrate that his consecutive sentences
8 should be commuted to concurrent sentences. Defendant is not forced to rely on the rare
9 exception of executive clemency which was the only hope Graham had. Thus, Defendant's
10 sentence structure and his ability to hope for life outside of prison is different from that
11 implicated in Graham and no relief is warranted.

12 **DEFENDANT IS NOT ENTITLED TO AN EVIDENTIARY HEARING.**

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

- 15 1. The judge or justice, upon review of the return, answer and
16 all supporting documents which are filed, shall determine
17 whether an evidentiary hearing is required. A petitioner must
18 not be discharged or committed to the custody of a person other
19 than the respondent unless an evidentiary hearing is held.
- 20 2. If the judge or justice determines that the petitioner is not
entitled to relief and an evidentiary hearing is not required, he
shall dismiss the petition without a hearing.
3. If the judge or justice determines that an evidentiary hearing
is required, he shall grant the writ and shall set a date for the
hearing.

21 NRS 34.770. The Nevada Supreme Court has held that if a petition can be resolved without
22 expanding the record, then no evidentiary hearing is necessary. Marshall v. State, 110 Nev.
23 1328, 885 P.2d 603 (1994); Mann v. State, 118 Nev. 351, 356, 46 P.3d 1228, 1231 (2002). A
24 defendant is entitled to an evidentiary hearing if his petition is supported by specific factual
25 allegations, which, if true, would entitle him to relief unless the factual allegations are
26 repelled by the record. Marshall, 110 Nev. at 1331, 885 P.2d at 605; See also Hargrove v.
27 State, 100 Nev. 498, 503, 686 P.2d 222, 225 (1984) (1984) (holding that "[a] defendant
28 seeking post-conviction relief is not entitled to an evidentiary hearing on factual allegations

1 belied or repelled by the record”). “A claim is ‘belied’ when it is contradicted or proven to
2 be false by the record as it existed at the time the claim was made.” Mann, 118 Nev. at 354,
3 46 P.3d at 1230 (2002).

4 In this case, Defendant’s Petition was remanded for the appointment of counsel to
5 address the legal question whether Graham applies to sentences of life with the possibility of
6 parole such that the applicable procedural bars should be excused. As this is solely a legal
7 question, no expansion of the record is required and Defendant’s motion for an evidentiary
8 hearing should be denied.

9 Further, even if this court finds that Defendant’s current sentence violates Graham
10 and the Eighth Amendment, such a conclusion does not require an evidentiary hearing
11 wherein Defendant can present “evidence of mitigating factors that reduce the culpability” of
12 Defendant. If this court finds Defendant’s current sentence unconstitutional, the remedy is to
13 re-sentence him to the next harshest punishment. When a punishment has been ruled
14 unconstitutional by the United States Supreme Court, the normal course in Nevada has been
15 to automatically commute the sentence to the next most severe sentence without holding
16 another sentencing hearing. When the Court ruled in Furman v. Georgia, 408 U.S. 238, 92 S.
17 Ct. 2726 (1972), that the death penalty had been applied in violation of the Eighth and
18 Fourteenth Amendments, the Nevada Supreme Court considered the issue of whether a new
19 sentencing hearing was necessary for those on death row at the time. In Anderson v. State,
20 90 Nev. 385, 528 P.2d 1023 (1974), the Court reviewed the wealth of case law on the issue
21 and concluded that the district court judge was authorized to re-sentence the defendant to life
22 without the possibility of parole, it being the next most severe penalty which could have
23 been entered upon the conviction. See also Haynes v. State, 103 Nev. 309, 739 P.2d 497
24 (1987); Harvey v. State, 100 Nev. 340, 682 P.2d 1384 (1984); Smith v. State, 93 Nev. 82,
25 560 P.2d 158 (1977).

26 Further, the Nevada reaction to the decision in Roper v. Simmons, 543 U.S. 551, 125
27 S. Ct. 1183, provides a similar example. NRS 176.025 was amended in 2005 to reflect the
28 decision in Roper by changing the minimum age for which a person could be sentenced to

1 death from 16 to 18. The statutory notes of NRS 176.025 provide in part “a sentence of death
2 to which this act applies retroactively shall be deemed to be commuted to a sentence of life
3 without the possibility of parole on the effective date of this act. . . .” In reliance on this
4 statute, Michael Domingues, the only juvenile in Nevada on death row at the time of the
5 Roper decision, received an automatic commutation of his death sentence to life without the
6 possibility of parole in 94-C-117787. Therefore, an evidentiary hearing is not required as
7 determining the next most severe punishment for Defendant is also solely a legal issue.

8 Finally, the only additional evidence of mitigation required by Graham and Miller is a
9 consideration of the defendant’s youth. Miller, 132 S. Ct. at 2471; see also Graham, 130 S.
10 Ct. at 2026-27. Such a consideration occurred in this case at the original sentencing.
11 Transcript of Proceedings, October 20, 1988, pp. 5-6, 7. Thus, no evidentiary hearing is
12 needed.

13 **DEFENDANT FAILS TO OVERCOME THE PROCEDURAL BARS OF NRS 34.726**
14 **AND 34.800(2).**

15 Defendant fails to demonstrate prejudice necessary to overcome application of NRS
16 34.726. In order to establish prejudice under NRS 34.726, a defendant must show “not
17 merely that the errors of [the proceedings] created possibility of prejudice, but that they
18 worked to his actual and substantial disadvantage, in affecting the state proceedings with
19 error of constitutional dimensions.” Hogan v. Warden, 109 Nev. 952, 960, 860 P.2d 710,
20 716 (1993) (quoting United States v. Frady, 456 U.S. 152, 170, 102 S. Ct. 1584, 1596
21 (1982)). Here, Defendant cannot demonstrate any error, let alone error that worked to his
22 actual and substantial disadvantage, because Graham does not apply to lengthy term-of-year
23 sentences. Therefore, he was not prejudiced by such sentence and his Petition is untimely.

24 Defendant fails to overcome the presumption of prejudice to the State under NRS
25 34.800(2). In order to overcome such presumption, a defendant must demonstrate either a
26 fundamental miscarriage of justice or that the grounds for his petition could not have been
27 discovered prior to the prejudice suffered by the State. Again, because Graham does not
28 apply to Defendant’s sentence, he cannot demonstrate that such provides grounds for his

1 instant Petition and excuses the prejudice suffered by the State. Furthermore, because
2 Graham does not apply to Defendant, he cannot show that there has been a fundamental
3 miscarriage of justice such that a new penalty hearing is appropriate. Defendant's jury trial
4 occurred more than twenty-four years ago. At Defendant's sentencing, the State submitted
5 handwritten letters by the victims as well as their mother, handwritten notes by Defendant
6 found by his mother containing detailed fantasies of abducting and raping women, and a
7 report related to Defendant's stay in a psychiatric hospital describing Defendant as a "time
8 bomb ready to go off." Reporter's Transcript, 10/22/1988, pp. 3-5. The State would be
9 prejudiced in attempting to locate such information again and provide it at any re-sentencing.
10 Therefore, Defendant's Petition should be dismissed as procedurally barred.

11 CONCLUSION

12 Based on the foregoing, the State respectfully requests that Defendant's Petition be
13 DISMISSED.

14 DATED this 23rd day of January, 2013.

15 Respectfully submitted,

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

18
19 BY /s/ FRANK COUMOU
20 FRANK COUMOU
21 Chief Deputy District Attorney
22 Nevada Bar #004577
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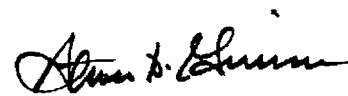
CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that service of State’s Response To Defendant’s Writ Of Habeas Corpus (Post-Conviction), was made this 23rd day of January, 2013, by facsimile transmission to:

MARTY HART, ESQ.
384-6006

BY: /s/ C. Cintola
C. Cintola
Employee of the District Attorney's Office

CB/FC/cc/L3


CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

ANDRE D. BOSTON,

Defendant.

88C084650

CASE NO. ~~C-84650~~

DEPT. VI

BEFORE THE HONORABLE ELISSA F. CADISH, DISTRICT COURT JUDGE
MARCH 4, 2013

***RECORDER'S TRANSCRIPT OF HEARING RE:
ARGUMENT***

APPEARANCES:

For the State:

PARKER P. BROOKS, ESQ.
Deputy District Attorney

For the Defendant:

MARTIN HART, ESQ.

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

1 MONDAY, MARCH 4, 2013 AT 9:01:06 A.M.

2
3 THE MARSHAL: Page 1, State of Nevada v. Boston, Andre Dupree.

4 THE COURT: All right. Go ahead and state appearances.

5 MR. HART: Attorney Martin Hart appearing for Mr. Boston.

6 MR. BROOKS: Good morning, Your Honor. Parker Brooks appearing for the
7 State.

8 THE COURT: Okay. So, Mr. Brooks knows that I was thinking about this
9 case last week because he happened to be in an elevator when we were talking
10 about prior cases not about my thoughts on the case just per se.

11 MR. HART: Okay.

12 THE COURT: But anyway, we were --

13 MR. HART: Thank you, Your Honor.

14 THE COURT: -- we have spent some time preparing for today's hearing
15 which is some interesting legal issues here.

16 MR. HART: Yes.

17 THE COURT: I guess, you know, at the outset -- and maybe it's just
18 assumed, but it didn't seem like either of you really addressed sort of as a threshold
19 issue whether Graham applies retroactively to Mr. Boston's case. So, why don't we
20 start there.

21 MR. HART: Your Honor, it was a change in law -- well, let's just cut to the
22 chase. I think the Supreme Court of Nevada wouldn't have issued it back if they
23 didn't think it was a high likelihood that it applied retroactively.

24 THE COURT: Perhaps.

25 MR. HART: I'm gonna just leave at that, Your Honor. I mean, it is a new area

1 of law, it is applied -- been applied retroactively in other courts; Florida, the Sixth
2 Circuit, etcetera, Your Honor. It has been addressed that way. I think that's the
3 easiest way --

4 THE COURT: Is the --

5 MR. HART: -- I mean --

6 THE COURT: -- State disputing the retroactive effect because it didn't appear
7 so in the briefing?

8 MR. BROOKS: Your Honor, I didn't raise the retroactive effect because does
9 Graham apply retroactively? It would be -- until -- it would be disingenuous for me to
10 sit here and try to make an argument that Graham doesn't apply retroactively.

11 THE COURT: Okay.

12 MR. BROOKS: It was a new law but I believe it fits under one of the two
13 exceptions for a new law --

14 THE COURT: Right. Okay.

15 MR. BROOKS: -- which would have been the first one which would be similar
16 --

17 THE COURT: Right.

18 MR. BROOKS: -- to the Penry analysis or the --

19 THE COURT: Okay.

20 MR. BROOKS: -- Atkins analysis.

21 THE COURT: Okay.

22 MR. BROOKS: It just falls squarely on that. So, I didn't raise it.

23 THE COURT: Good.

24 MR. BROOKS: Mr. Hart didn't but it would have --

25 THE COURT: Okay. That's fine. So, let's put that aside then for the

1 moment.

2 So, Mr. Hart, here's another question I have then.

3 MR. HART: Yeah.

4 THE COURT: With respect to --

5 MR. HART: Can I --

6 THE COURT: Yeah?

7 MR. HART: -- first address a couple of cases cited by the State? And I might
8 hit the questions you have real quick.

9 THE COURT: Okay.

10 MR. HART: Just so we know what the -- I mean --

11 THE COURT: Go ahead.

12 MR. HART: One is he cited to Maxie and -- which was a District of Nevada
13 case.

14 THE COURT: Yes.

15 MR. HART: That was actually a death penalty case originally. So, when they
16 put in the -- they decided not to extend it to life beyond -- without parole, sentences
17 for juveniles convicted of non-homicide cases, I really don't know how they got that
18 out of a death penalty case. Maybe I'm a little slow on the uptake but I don't think
19 I'm that slow.

20 As far as the Arizona case that they cited to, Kasic, of course when you
21 look it up there's a yellow flag because it's disagreed with, but more importantly that
22 case involved a series of crimes over a one year period where he was a juvenile on
23 part of them and he was an adult on part of them. And the -- it pointed out the fact
24 that the largest sentence he got on any one case was a fixed term of 15.75 years.

25 THE COURT: Right.

1 MR. HART: The same where they cite to Bunch v. Smith, they're all fixed
2 terms. And this one when you go through his judgment of conviction you see the
3 words life, life, life. I think I counted eight times, it might have been ten but they're
4 not fixed term sentences. So, I think that's a huge distinction between what has
5 been cited by the State in their arguments about aggregate sentences and this.
6 Also there's a question about this is an incident. This isn't multiple -- this isn't a
7 series of one year --

8 THE COURT: That was a question --

9 MR. HART: -- homicides --

10 THE COURT: -- I have.

11 MR. HART: -- or arsons.

12 THE COURT: Can you briefly tell me what this case was about?

13 THE HART: Which one? The Arizona one?

14 THE COURT: No, this one, Mr. Boston's.

15 MR. HART: Oh. It was a sexual assault, robbery, all involving one big, long
16 incident, Your Honor. I mean --

17 THE COURT: Okay. Because it looked like from your brief description there
18 had been one prior incident with a different victim.

19 MR. HART: That was out of California.

20 MR. BROOKS: Yes, Your Honor. It wasn't exactly one incident. Essentially
21 what this case was about was on October 1st 1983 Mr. Boston snuck into someone's
22 house. He snuck into a house and there was a twelve year old girl there. What he
23 did was he forced covers over her head, took a knife to her and then started to
24 fondle her. That was a twelve year old. About a month later he goes to that girl's
25 fifteen year old older sister, he kidnaps her as she's walking to school and throws

1 her behind some bushes. As he throws her behind some bushes he begins to
2 attempt to sexually assault her. He has a bandana around his face, he's wearing
3 cargo pants, he's holding the knife to her throat then he does sexually assault her in
4 various ways, he also makes certain comments. She's begging him and saying, you
5 know, "I'm a virgin, please don't do this". He says, "You're not gonna be after this".
6 Makes some comments about, you know, her vagina being a little too tight. He says
7 he's gonna cut it open with a knife to make it a little looser.

8 This goes on; she's tortured throughout the day, sodomized back and
9 forth. Then on December 2, 1983, so just a month after that, in California what
10 happens is a black male wearing a bandana, cargo pants, takes his knife and does
11 the same thing to a sixteen year old girl in California. Now, the --

12 MR. HART: Your Honor --

13 MR. BROOKS: -- California --

14 MR. HART: -- I don't think it necessarily applies to this case. It's --

15 THE COURT: Right. So that wasn't part of the charges here.

16 MR. BROOKS: Absolutely not, Your Honor, but it was in the bad acts motion
17 there and this is how we get him. I'm just giving you the factual background here.

18 THE COURT: Umm hmm.

19 MR. BROOKS: So, what happens is the California case seemed strikingly
20 familiar; same exact words, same exact situation, the same exact clean up. They go
21 they do DNA testing back and forth, they get him from California after he's been
22 convicted in and prison in California for that charge and bring him down here and
23 prosecute him on the two that I mentioned initially. So, that's what we have here.

24 THE COURT: Okay. So, the charges in this case though there were charges
25 that related to the incident with the twelve year old and then the bulk of the charges

1 though were related to that subsequent incident with the fifteen year old.

2 MR. BROOKS: Yes, Your Honor.

3 MR. HART: And for the record, all the lifes come out of that one.

4 THE COURT: Out of that one. Okay. Because that was one of the other --
5 the question I was about to ask you was about, you know, the fact that -- so,
6 Graham had, you know, a sentence of life without, non-homicide and the supreme
7 court says that's unconstitutional for life without for someone -- an offense
8 committed as a juvenile, non-homicide offense.

9 And -- so, even if that extends to the equivalent of life without -- in other
10 words, if I had, you know, a case where someone who is a minor gets sentenced,
11 okay, it's not life without but, you know, life with the possibility of parole after eighty
12 years. There you go, you know. Perhaps that would be the equivalent. Not -- that
13 would, you know, be one issue, but this is going further because I've got life with --
14 and because of the way it sentences -- the sentences don't say how many years
15 before they're eligible for parole. I don't know what that answer was on those --

16 MR. HART: It was --

17 THE COURT: -- lifes.

18 MR. HART: -- ten and ten.

19 THE COURT: Ten?

20 MR. HART: I believe it was ten and ten.

21 THE COURT: So, those lifes were -- so, five or ten. But -- so, the only way
22 that the argument is made in this case that this is a functional equivalent is by --
23 because they were all run consecutive and because when you stack them all up it
24 adds up to many years going beyond his life expectancy. I think we can agree
25 factually it goes beyond his life expectancy the way he was sentenced. Intentionally

1 --

2 MR. HART: Yes.

3 THE COURT: -- so by the Court apparently.

4 So, the question is does that change it because that's -- you know, part
5 of the argument the State made is that, you know, because it's multiple different
6 charges for, you know, different acts of sexual assault, different acts of kidnapping,
7 robbery, those different charges, you know, does that -- can you add those together
8 to talk about it being the equivalent of a life without when it's multiple different
9 charges? And obviously that means that they were, you know, separate acts that
10 could be charged separately without violating double jeopardy.

11 MR. HART: Okay. First of all, the way the sentencing structure used to work
12 prior to 1995 --

13 THE COURT: Yeah.

14 MR. HART: -- on the non-life cases basically he would have expired with
15 everything in there with the -- the first -- the first incident.

16 THE COURT: Sure.

17 MR. HART: We'd be -- I mean, we'd be --

18 THE COURT: Right. Right.

19 MR. HART: -- done there.

20 THE COURT: Right. So -- right. So, we're talking -- and the longest
21 sentences and the most significant ones relate to this --

22 MR. HART: Yeah.

23 THE COURT: -- the time period during which -- with this other victim, the
24 second victim.

25 MR. HART: And my argument is that, yeah, there was multiple acts but it's --

1 when you compare it to, like, the Arizona case cited that was eight different houses -
2 -

3 THE COURT: Right.

4 MR. HART: -- over a year.

5 THE COURT: Right.

6 MR. HART: That's not what we have here. Additionally, like I said, this is life
7 after life after -- and I'm sorry, I did miscount. I started adding up again, I think it
8 was twelve.

9 THE COURT: Yeah. It was a lot.

10 MR. HART: Yeah. But it's life after life after life.

11 This is --

12 THE COURT: Right. I mean -- and the supreme court's decision said
13 basically it's at least 100 years.

14 MR. HART: Yeah. Which like I said is the actuarial charts for prisoners is --
15 he's in trouble.

16 Your Honor --

17 THE COURT: And he's already been in now since -- when was he -- 1983 or
18 something?

19 MR. HART: '88.

20 MR. BROOKS: Yes, Your Honor. But remember this case was to run
21 consecutive to his California case, the facts I alluded to. So, he --

22 THE COURT: Got it.

23 MR. BROOKS: -- didn't start accruing credit for some time.

24 THE COURT: Okay.

25 MR. HART: Yeah. And like I said -- yeah, my argument, like I said, it's in the

1 reports, it's -- it's a very new and evolving area of case law, but everything I've read
2 and gone through is that they are looking at aggregate non-life sentences ending up
3 being functional lives where they're -- where they're ruling that Graham does not
4 apply. Here we have life sentences although parolable in theory that in their
5 aggregate pretty much make him dead man city.

6 Additionally -- and I know this is a legal issue, but when you look at the
7 attachments we've done -- in everything he has done while he has been in custody,
8 I think you go -- the heart of Graham is the fact that the young mind is impulsive,
9 crazy, stupid. He is a poster case for a change. He's getting degrees while he's in
10 prison, Your Honor.

11 If there's a chance for somebody to turn around this guy is -- like I said,
12 this is what you would dream about. I don't know how else to put it for somebody
13 making good use of their time while they're in prison and growing. Beyond a 17
14 year old we're looking at 24 years ago. Yeah, so 25 years ago, 24 and a half,
15 whatever you -- you know, a while ago.

16 THE COURT: When the trial was.

17 MR. HART: Yeah.

18 THE COURT: It's about 30 years since the offenses I guess if it was --

19 MR. HART: '88 --

20 THE COURT: -- '83.

21 MR. HART: -- so -- yeah. You're right. Yeah. No, you're right.

22 Yeah, I mean, heck, I'm just a tad different than I was at that time. I
23 think all of us are.

24 THE COURT: I don't think you were, you know, raping 13 year olds, but
25 anyway. I hope not anyway.

1 MR. HART: No, Your Honor. No. Thank you for asking.

2 But, Your Honor, like I said, this is -- he fits what Graham is all about
3 and that --

4 THE COURT: Right.

5 MR. HART: -- it's a young mind.

6 THE COURT: What were the sentencing -- I mean, do either of you even
7 know what the sentencing options were for sexual assault at that time?

8 MR. BROOKS: Your Honor -- well, first I believe for sexual assault it would
9 have been life and it would have been five to life I believe under sexual assault.
10 This was a sexual assault with a deadly weapon. He could have got life --

11 THE COURT: So, it was --

12 MR. BROOKS: -- without.

13 THE COURT: -- consecutive. Five to life.

14 MR. BROOKS: But he wasn't given life without, he was given life.

15 THE COURT: But was there a term of years --

16 MR. HART: It's an automatic --

17 THE COURT: -- option?

18 MR. BROOKS: I believe -- that I don't remember. I'm sorry, Your Honor.

19 MR. HART: And I will be --

20 THE COURT: Because, you know, ultimately we got a -- were getting ahead
21 of ourselves a bit to the question of what relief you're asking for because, you know,
22 looking at what the legal sentences were for the crimes at the time they were
23 committed.

24 MR. BROOKS: Your Honor, may I respond to the legal --

25 THE COURT: Yeah.

1 MR. BROOKS: -- argument?

2 THE COURT: Hold -- I promise I'm gonna --

3 MR. BROOKS: Oh --

4 THE COURT: -- hear from you.

5 MR. BROOKS: -- I didn't know if you were --

6 MR. HART: And what happens at that time was deadly weapon was an equal
7 and consecutive --

8 THE COURT: I know that.

9 MR. HART: -- so double (indecipherable).

10 THE COURT: So --

11 MR. HART: And I was thinking it was ten -- and he might have been right and
12 I might have --

13 THE COURT: It might have been five.

14 MR. HART: Might have been -- misread it and it wouldn't have been --

15 THE COURT: It was five -- a consecutive five --

16 MR. HART: Yeah.

17 THE COURT: -- for a deadly weapon --

18 MR. HART: It wouldn't have been --

19 THE COURT: -- on each of them.

20 MR. HART: -- the first time I made that mistake.

21 THE COURT: So that would be --

22 MR. HART: Sixty -- what are we --

23 THE COURT: I don't know. I'm not sure how the supreme court got to their
24 hundred calculation but I'm gonna --

25 MR. HART: Yeah.

1 THE COURT: -- trust them for the moment that if you add it all up it gets
2 there.

3 But ultimately, Mr. Hart, though the relief you're seeking is to have me
4 find that the sentence is unconstitutional in accordance with Graham and 8th
5 amendment and no re-sentence --

6 MR. HART: The opportunity for a re-sentencing.

7 THE COURT: And --

8 MR. HART: I mean --

9 THE COURT: What would be constitutional?

10 MR. HART: Your Honor, I -- what does it take to answer this? Because I
11 guess in theory we would have to look at the actuary charts and break down --

12 THE COURT: When is it --

13 MR. HART: -- the numbers.

14 THE COURT: -- the realistic opportunity for probation under the --

15 MR. HART: Yeah.

16 THE COURT: -- Graham language?

17 MR. HART: Before he dies. And in all candor, I don't -- because of the way
18 the judgment of conviction is written I'm -- I'm not prepared to answer -- I mean, you
19 know, I --

20 THE COURT: Okay. Well --

21 MR. HART: I think --

22 THE COURT: -- I mean --

23 MR. HART: -- and my gut feeling is this Court has the opportunity to impose
24 the life sentence on him regardless and he's still gonna have to go get paroled. So,
25 it's not gonna be an automatic welcome to the neighborhood, you're out of here no

1 matter what because we're -- we still gotta do the sentence to get paroled -- to get
2 there, and that's where were at, Your Honor. And I think it leaves the Court a lot of -
3 - a lot of options. Unless you want to go term of years and I'm fully behind that,
4 Your Honor, but it gives this Court the opportunity.

5 THE COURT: Right. So, some -- I guess what you're saying is, you know,
6 even with the lifes some could be run concurrent for example to shorten --

7 MR. HART: Yes.

8 THE COURT: -- it up.

9 All right. So, Mr. Brooks, yes. I just wanted to talk through all the
10 issues with him, I haven't ruled yet. So, go ahead.

11 MR. BROOKS: Your Honor, although I mentioned that Graham would be
12 retroactive I don't think this falls under Graham --

13 THE COURT: Right.

14 MR. BROOKS: -- so I would ask that the petition --

15 THE COURT: Right.

16 MR. BROOKS: -- be dismissed as to --

17 THE COURT: Clearly that's the issue.

18 MR. BROOKS: -- time barred.

19 THE COURT: Go ahead.

20 MR. BROOKS: Yes.

21 Graham stated that it concerned only the juvenile offender sentenced to
22 life without parole solely for a non-homicide offense. So, from that statement
23 holding four analytical factors can be discerned. One, the offender was a juvenile at
24 the time of the crime which is the case in this situation.

25 THE COURT: Right.

1 MR. BROOKS: Two, the sentence imposed was on a singular non-homicide
2 offense. That's not what we have in this situation. Three, the offender was
3 sentenced to life without parole. That's not what we have in this situation.

4 And what I would note is in that holding in Graham it says it does not
5 require the State to release the offender during his natural life. Some offenders --
6 some crimes are so irredeemable that they deserve incarceration for the duration of
7 their life. Mr. Hart mentioned that this was impulsive, crazy and stupid. I only
8 recited some of the facts from this case. Those are not the words that would come
9 to mind when looking at this and that's the words that came to mind when the
10 sentencing judge articulated the sentence. He had considered the juvenile aspect of
11 this; he had considered also the multiple victims. Bunch v. Smith is the only circuit
12 court of appeals that has ruled on this -- this -- the Sixth Circuit court. They had 89
13 years in prison. I understand we're talking about the, you know, was it 100? Is it
14 110? Is it 5 to life? Is it 10 to life? I'll concede that it's over his natural life
15 expectancy but not on one count.

16 THE COURT: Right.

17 MR. BROOKS: And Bunch had that same thing. And Bunch specifically held,
18 no, that's not what Graham held. Graham made it clear that the instant case
19 concerns only those juvenile offenders sentenced to life without parole solely for a
20 non-homicide offense. That's what Bunch stated. And Bunch said this aggregate
21 term of years, Graham does not apply to that.

22 If the Court had intended to broaden the class of offenders within the
23 scope of its decision it would have stated that and it would have been clear because
24 it was an issue that was raised, and here's how you know it was raised. Justice
25 Alito's dissenting opinion clearly states nothing in this Court's opinion affects the

1 imposition of a sentence to a term of years without the possibility of parole.

2 Indeed the Petitioner when you --

3 THE COURT: So, we're gonna rely on his dissent to tell us what the holding
4 means?

5 MR. BROOKS: No, Your Honor. And I know it doesn't hold any -- for you, but
6 what I'm saying is Justice -- when you look at Justice Alito's dissent, Justice
7 Thomas' dissent and Justice -- Chief Justice Roberts concurring you can tell they
8 specifically tolled the majority in this thing. Nothing in your holding applies to the
9 aggregate term of years or the dysfunctional equivalent or defacto, whatever the
10 wording would be. And in fact, just like you asked Mr. Hart, Justice Alito asked,
11 okay, what would be constitutional? And the Petitioner in that situation even
12 conceded, well, I suppose forty years would be constitutional in this particular
13 situation.

14 THE COURT: Umm hmm.

15 MR. BROOKS: Now, also with that though you have to remember Chief
16 Justice in his -- in his concurrent said: "Look, this is an overly broad opinion
17 because we don't need to go that far, life without parole just isn't necessary for
18 someone who only committed a burglary".

19 THE COURT: Right. He said it was --

20 MR. BROOKS: This is one offense.

21 THE COURT: -- just disproportionate to the offense there.

22 MR. BROOKS: And it was. Because you have to remember he was initially
23 just --

24 THE COURT: It was a burglary. Put on probation and he ends up with life
25 without.

1 MR. BROOKS: Yes. He was --

2 THE COURT: Yeah.

3 MR. BROOKS: -- initially just given a probationary term of three years with
4 twelve months incarceration as a term of the probation.

5 THE COURT: Right.

6 MR. BROOKS: He failed it and life was imposed. Florida had done away with
7 their parole statute and --

8 THE COURT: Right.

9 MR. BROOKS: -- so it was life without parole.

10 THE COURT: Right.

11 MR. BROOKS: That's clearly disproportionate to a burglary. That's not what
12 we have here.

13 THE COURT: Right. But -- but in spite of Justice Roberts -- Chief Justice
14 Roberts leaning that's not what the majority did, the majority made a broader ruling.

15 MR. BROOKS: Well, the majority only held it to a non-homicide singular
16 offense and -- well, life without. And you know that also because --

17 THE COURT: So, you think it would be constitutional if instead of life without
18 for a juvenile we said, okay, life with the possibility of parole after 80 years that
19 would be constitutional?

20 MR. BROOKS: That statute in and of itself by the legislature would never be
21 passed because that would be unconstitutional because it would be 80 to life, it
22 would be life without --

23 THE COURT: So -- so, it would be unconstitutional?

24 MR. BROOKS: For a singular non-homicide offense? I'll concede that.

25 THE COURT: Okay.

1 MR. BROOKS: But remember the -- remember the objective indicia of society
2 standards that were looked at by the majority. They looked at legislature's laws that
3 were passed. They compiled and compared statistics and they specifically never
4 analyzed the situation in front of us.

5 THE COURT: Right.

6 MR. BROOKS: They could have and they never did.

7 THE COURT: Right.

8 MR. BROOKS: And Justice Thomas -- now not just Alito, he says, "Hey, the
9 majority never considered a lengthy term of years in your analysis --

10 THE COURT: Right.

11 MR. BROOKS: -- and your opinion".

12 THE COURT: It wasn't before him.

13 MR. BROOKS: Also, along with the compiling and preparing of statistics, the
14 Court made a lengthy record with regard to retribution, deterrence and theories of
15 criminal responsibility.

16 THE COURT: Yes.

17 MR. BROOKS: If this Court were to hold as the Defendant is asking, it would
18 actually cut against deterrence and retribution because you would no longer be held
19 accountable for individual crimes and individual victims and also it would go against
20 deterrence because you're essentially offering a volume discount and saying if
21 you're a juvenile and you commit one horrendous, serious offense you can commit
22 two, three, four or five because you cannot be sentenced over a certain amount.
23 So, it actually -- it goes against deterrence and goes against retribution. And along
24 with this volume discount idea, remember the cumulative sentence is not a
25 distinctive cognizable claim for Eighth Amendment purposes, this is each individual

1 sentence was appropriate and was constitutional.

2 Along with that, Your Honor, I would note the concept of sentencing
3 packaging. Remember the Court in Wilson v. State. Wilson v. State was that
4 situation where a trial was held and essentially on appeal the Court struck through
5 your four counts. Well, those three or four counts had been run consecutive so now
6 it got sent back to Judge Leavitt for re-sentencing and when it did Judge Leavitt
7 wanted to further her intent that she had initially done and so tried to run other
8 counts that had been -- she tried to run them consecutive. The Court said no. The
9 State urged the concept of a packaged sentence, you know, a sentencing package
10 which is done under the federal system and under the package concept the Court's
11 treat penalties imposed on multiple counts as individual components of the single
12 comprehensive plan. The Nevada Supreme Court in 2007 rejected that idea and
13 basically said no, we don't have a sentencing package here in Nevada, that's a
14 federal concept. But in doing that --

15 THE COURT: Which case is that again?

16 MR. BROOKS: That's Wilson v. State 123 Nev. 587.

17 THE COURT: Okay. Go ahead.

18 MR. BROOKS: Now, in doing that the Nevada Supreme Court obviously was
19 focused on some double jeopardy ideas, but --

20 THE COURT: Right.

21 MR. BROOKS: -- also implicit in that is the concept that our Nevada Supreme
22 Court doesn't recognize a comprehensive plan, and if they don't recognize a
23 comprehensive plan then it's per count and per count -- this does not violate
24 Graham.

25 Also, Your Honor, I note -- as my final argument, basically the

1 pragmatic problem that all these courts are dealing with at this point in time.

2 THE COURT: Yeah.

3 MR. BROOKS: This Court shouldn't expand passed the supreme court's
4 specific ruling and limitations of Graham because, first, we have don't have -- we
5 have a limited record. We don't have the vast amounts of information and the
6 societal values, the penalogical justifications that that court was looking at. And
7 also, if -- if this Court were to determine that this is a defacto life then what -- at what
8 number does the 8th Amendment become implicated? Could the number vary
9 based on social economic factors, based on race, based on gender? Also, does the
10 number of crimes matter? How many victims do you tell I'm sorry, you know, I know
11 you were sexually assaulted at knife point but that one no longer counts?

12 So, based on all that if Graham wants to basically take this prism and
13 expand it then that court should do that but they didn't and so I would ask, Your
14 Honor --

15 THE COURT: But that court can't do that until cases come up with that
16 situation because --

17 MR. BROOKS: They could have --

18 THE COURT: -- they're only allowed to rule on the cases before them.

19 MR. BROOKS: They could have had a broader holding. And remember in
20 Miller the following one in 2011, there's nothing inherently unconstitutional about life
21 without. Although that was a homicide offense --

22 THE COURT: Right.

23 MR. BROOKS: -- they said you can't have the mandatory scheme.

24 THE COURT: It can't be mandatory. Right.

25 MR. BROOKS: Yes, you can't have a mandatory scheme but they didn't say

1 you couldn't do it for a homicide. So, there's nothing essentially inherently
2 unconstitutional and they could have expanded it.

3 THE COURT: So, in the -- in considering whether they -- life without was
4 constitutional for a homicide offense they could have decided on a term of years?

5 MR. BROOKS: No. In Graham and Miller if the court had wanted to they
6 could have said -- they could have basically made a broader ruling, not a singular
7 non-homicide offense, just a juvenile cannot be sentenced to life without but they
8 didn't do that. Or a juvenile could not be sentenced to the functional equivalent of
9 life without.

10 THE COURT: And so, what do we make of the -- the language in Graham
11 about that there has to be some realistic possibility or words to that effect of getting
12 --

13 MR. BROOKS: Of --

14 THE COURT: -- out?

15 MR. BROOKS: -- getting parole. Well, a couple of things. Number one, as I
16 articulated -- I'm not gonna keep going with the singular offense, however --

17 THE COURT: Okay. Right.

18 MR. BROOKS: -- also Mr. Hart has kind of shown all these documents and I
19 think that actually shows that he's been in front of the parole board; he has the
20 chance to show them. So, he -- it's not the same --

21 THE COURT: Right. But he'll be paroling on one -- let's -- if he does parole
22 on this sentence he just starts serving the next one and the next one and the next
23 one.

24 MR. BROOKS: Correct. But we know there's no truth in sentencing other
25 than the life without. Life without does mean life without in this state, but --

1 THE COURT: Right.

2 MR. BROOKS: -- there's always the possibility that a parole board could
3 commute sentences based on how well this person does and he at least gets the
4 chance to go in front of them whereas Graham would have never got in front of a
5 parole board. And that's the big difference, this Defendant gets a chance to show
6 look -- look what I've done.

7 THE COURT: So, the parole board can just choose to commute sentences
8 that the Court ordered to run consecutive?

9 MR. BROOKS: I mean, no they -- we know they do.

10 THE COURT: I mean -- I'm asking that as a serious question because that
11 would be --

12 MR. HART: And I --

13 THE COURT: -- news to me.

14 MR. HART: -- could answer that real quickly. No, they can't. And I'll give you
15 why I know. My mother-in-law was kidnapped and there's a kidnapping tale on him.
16 He was able to go to the pardons board when my mother went --

17 THE COURT: Right.

18 MR. HART: -- in and actually testified in front of the pardons board, my
19 mother-in-law, to have him released because she saw some change in him over the
20 eight years he was in there, but that was something that -- all they were able to do
21 was pardon -- or parole him from one sentence to the next to start. So, yes, you --
22 she was -- they were able to get --

23 THE COURT: Right. The pardons board is like the --

24 MR. BROOKS: Maybe I used the wrong --

25 THE COURT: -- governor and the, you know --

1 MR. HART: Yeah, I mean, it's a totally --

2 THE COURT: -- the AG --

3 MR. HART: -- different deal than this and this is --

4 THE COURT: Okay.

5 MR. HART: -- not what's --

6 THE COURT: Okay.

7 MR. HART: -- under Graham.

8 THE COURT: Well, I just wanted to be clear. I mean, I just --

9 MR. BROOKS: I may --

10 THE COURT: -- wanted to be sure --

11 MR. BROOKS: -- have used the wrong word.

12 THE COURT: -- I understood what the facts were. Okay.

13 Were you done? Sorry.

14 MR. BROOKS: Yes, Your Honor.

15 THE COURT: Okay. All right. Mr. Hart.

16 MR. HART: And my only response to this is -- as we go through and he
17 points to Miller after Graham, the way I read this interpretation is slowly but surely
18 the supreme court is figuring out, wow, you're under eighteen, we really should start
19 thinking about how long we're throwing people away for. To me it's a continuing of
20 limitations on lifetime sentences for juveniles. And I think it's -- I mean, we can talk
21 about the legal ramifications. I think there's -- and maybe I'm -- I'm looking at a
22 bigger picture here as to what the flow of the rulings have come down as. That's the
23 way I interpret it.

24 Again, I would point out -- we keep talking about the term of years,
25 aggregate. If you want to look at Nevada -- and this is a strange analogy but it's a

1 good analogy I believe. If you want to get habitual criminal treatment they have to
2 rise out of separate convictions from separate offenses.

3 THE COURT: Right.

4 MR. HART: This was tried as one case and although we were divided, I
5 mean, the great bulk of everything we're talking about here is --

6 THE COURT: One event.

7 MR. HART: -- it's one incident, I mean, it's -- it's not -- that's the way I look at
8 it. I mean, it's -- it didn't happen in thirty seconds, but it is one incident, Your Honor,
9 and that's where it applies. As far as constitutionality and where we're at, we've
10 also got our supreme court to decide as to the bulk package program and --for lack
11 of a better term. That's where we're at, Your Honor.

12 THE COURT: Right. I mean, on this constitutional issue it's really the U.S.
13 Supreme Court's ruling because they're more pertinent to the analysis on that issue
14 although clearly our Nevada Supreme Court was concerned enough about it to send
15 it back to me to address it.

16 So, I appreciate your arguments. I'm actually gonna take it under
17 advisement and get you a decision. I think I need -- I want to take a little more time
18 with it. It's an important enough issue with implications that I want to consider
19 before I make a ruling on it.

20 MR. HART: Would the Court be okay if I was -- and maybe -- one of us will
21 go across the state -- or across the street and see if we can pick up the historical
22 sentencing guidelines. I don't know how to deal with Westlaw anymore, they used
23 to have a great program where you could go back as to what was under --

24 THE COURT: I mean --

25 MR. HART: -- the statute.

1 THE COURT: -- if you could -- if you could kind of jointly figure out what the
2 actual sentencing options were at the time and what the parole eligibility is on the
3 charges that he was convicted of I would appreciate that factual information.

4 MR. HART: Okay. I do have old school books downstairs in the library, the
5 building we're in. So -- and I think they're -- I don't think they've been updated since
6 about '88 so they're probably about perfect.

7 THE COURT: Okay. Yeah, if you could get that to me I'd appreciate it. But, I
8 mean, I don't -- I don't think it'll take me long to get you a ruling but I want to just go
9 back through it again and decide what I want to do with this, but I appreciate your
10 arguments today.

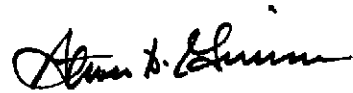
11 [Proceedings concluded at 9:32:32 a.m.]

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18 ATTEST: I do hereby certify that I have truly and correctly transcribed the
19 audio/video recording in the above-entitled case to the best of my ability.

20 
21 _____

22 NORMA RAMIREZ
23 Court Recorder
24 District Court Dept. XXII
25 702 671-0572



CLERK OF THE COURT

NEOJ

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ANDRE D. BOSTON,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent,

Case No: 88C084650
Dept No: VI

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on March 22, 2013, the court entered a decision or order in this matter, a true and correct copy of which is attached to this notice.

You may appeal to the Supreme Court from the decision or order of this court. If you wish to appeal, you must file a notice of appeal with the clerk of this court within thirty-three (33) days after the date this notice is mailed to you. This notice was mailed on April 3, 2013.

STEVEN D. GRIERSON, CLERK OF THE COURT



Heather Ungermann, Deputy Clerk

CERTIFICATE OF MAILING

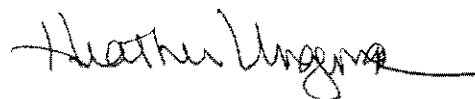
I hereby certify that on this 3 day of April 2013, I placed a copy of this Notice of Entry in:

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

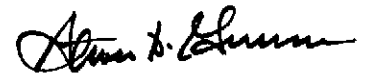
☒ The United States mail addressed as follows:

Andre D. Boston # 27846
P.O. Box 7000
Carson City, NV 89702

Martin Hart, Esq.
229 S. Las Vegas Blvd., Ste. 200
Las Vegas, NV 89101



Heather Ungermann, Deputy Clerk



CLERK OF THE COURT

**DISTRICT COURT
CLARK COUNTY, NEVADA**

* * * *

State of Nevada,
Plaintiff,
VS
Andre D. Boston,
Defendant.

CASE NO.: C084650

DEPARTMENT 6

**ORDER GRANTING IN PART AND DENYING
IN PART PETITION FOR WRIT OF HABEAS
CORPUS**

In 1988, Petitioner Andre Boston ("Boston"), a juvenile at the time he committed his offenses, was convicted of one count of burglary, one count of lewdness with a minor with the use of a deadly weapon, one count of assault with a deadly weapon, one count of battery with the intent to commit a crime with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon, six counts of sexual assault with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of attempting to dissuade a victim from reporting a crime with the use of a deadly weapon. The court sentenced Boston to serve fourteen consecutive terms of life with the possibility of parole and consecutive terms totaling 92 years. As the Nevada Supreme Court has noted, it appears that Boston would have to serve a minimum of approximately 100 years before he will be eligible for parole.

Boston filed the instant Petition in proper person on January 5, 2011. This Court dismissed the petition as procedurally barred and barred by laches. On appeal, the Nevada Supreme Court reversed and remanded to appoint counsel for Boston and consider whether the United States Supreme Court's decision in Graham v. Florida, 130 S. Ct. 2011 (2010) provides good cause for the filing of this untimely and successive petition and, if so, whether it provides a basis for relief herein.

RECEIVED

MAR 22 2013

DEPT 6

1 The Court has read and considered Boston's Petition for Writ of Habeas Corpus (Post
2 Conviction), State's Response and Motion to Dismiss Defendant's Petition, Boston's
3 Supplement to Writ of Habeas Corpus (Post-Conviction), Boston's Addendum to
4 Supplement, and the State's Response to Defendant's Writ of Habeas Corpus (Post-
5 Conviction). The Court held a hearing on March 4, 2013 at which Parker Brooks, Esq.
6 appeared and argued for the State and Martin Hart, Esq. appeared and argued for Boston.
7 This Court took the matter under advisement.

8 After full consideration of the papers and exhibits submitted by the parties, oral
9 arguments, and consideration of the legal authorities, the Court hereby grants the petition
10 and finds that Boston's cumulative sentences herein violate the Eighth Amendment of the
11 United States Constitution's prohibition of cruel and unusual punishments under the Graham
12 case.

13 In Graham, the United States Supreme Court, in a decision written by Justice
14 Anthony Kennedy, held that "for a juvenile offender who did not commit homicide the
15 Eighth Amendment forbids the sentence of life without parole. This clear line is necessary
16 to prevent the possibility that life without parole sentences will be imposed on juvenile
17 nonhomicide offenders who are not sufficiently culpable to merit that punishment. Because
18 '[t]he age of 18 is the point where society draws the line for many purposes between
19 childhood and adulthood,' those who were below that age when the offense was committed
20 may not be sentenced to life without parole for a non-homicide crime." 130 S. Ct. at 2030,
21 *quoting Roper v. Simmons*, 543 U.S. 551, 574, 125 S. Ct. 1183 (2005). The Court went on
22 to say, "A State is not required to guarantee eventual freedom to a juvenile offender
23 convicted of a nonhomicide crime. What the State must do, however, is give defendants like
24 Graham some meaningful opportunity to obtain release based on demonstrated maturity and
25 rehabilitation." Id. The Court found a national consensus against such sentences of life
26 without possibility of parole for juvenile nonhomicide offenders. Id. at 2023-2026. The
27 Court also relied and expanded on the analysis of the Roper Court to the effect that because
28 juveniles are immature, they are more vulnerable to outside influences, their brains are less

1 developed, they have more difficulty considering long-term consequences, and they have
2 less self-control, there is a greater possibility that a minor's character deficiencies may be
3 reformed with time. Id. at 2026-27. The Court also recognized the harshness of a life
4 without parole sentence for a juvenile because it will on average require serving more years
5 and a greater percentage of his life in prison than an adult offender. Id. at 2028. Moreover,
6 the Court found that the penological justifications for such a sentence—retribution,
7 deterrence, incapacitation, and rehabilitation—did not justify life without parole for juvenile
8 nonhomicide offenders. Id. at 2028-30.

9 In the instant case, Boston was convicted of heinous crimes he committed while a
10 juvenile. He was convicted of entering a home and molesting a child under the age of
11 fourteen at knifepoint. Six weeks later, he kidnapped the first victim's older sister at knife
12 point and, over the course of several hours, robbed, battered, and repeatedly threatened and
13 sexually assaulted her. He was convicted of thirteen felonies, with deadly weapon
14 enhancements on twelve of them. As the State points out, Boston was not sentenced to life
15 without parole for any of the charges of which he was convicted. However, based on the
16 information presented by Boston, the Court may take judicial notice that the imposition of
17 each of these sentences to run consecutively, with a minimum time to be served of more than
18 100 years, constitutes the functional equivalent of a sentence of life without parole.

19 Contrary to Graham's Constitutional mandate, Boston was not given "some
20 meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation."
21 Instead, similar to the sentencing court in Graham, the Court that sentenced Boston
22 apparently believed that there was nothing further that could be done for him and he would
23 always be a dangerous criminal who must be kept off the streets. "To justify life without
24 parole on the assumption that the juvenile offender forever will be a danger to society
25 requires the sentencer to make a judgment that the juvenile is incorrigible. The
26 characteristics of juveniles make that judgment questionable." Graham, 130 S. Ct. at 2029.
27 The Graham Court went on to say, "A life without parole sentence improperly denies the
28 juvenile offender a chance to demonstrate growth and maturity. Incapacitation cannot

1 override all other considerations, lest the Eighth Amendment's rule against disproportionate
2 sentences be a nullity." Id. The Court notes that, in this case, Boston has presented evidence
3 that, during the twenty-five years he has been in Nevada custody, he has earned his GED,
4 multiple college degrees, several certificates from the Federal Emergency Management
5 Agency, more than twenty Certificates of Appreciation or Achievement, and many accolades
6 and certificates of recognition from the prison staff.

7 While Boston here was sentenced to this lengthy period of incarceration for multiple
8 different offenses, rather than one single offense, all of the most serious charges relate to the
9 events with the second victim that all took place on one day when Boston was sixteen years
10 old. Under the circumstances, the Court finds that Graham's holding, and the reasons for it,
11 are equally applicable here.

12 In conclusion, the Court finds that the issuance of the Graham decision by the United
13 States Supreme Court provides good cause for the otherwise untimely and successive
14 petition filed by Boston herein, and that prejudice is demonstrated by Boston if he is unable
15 to raise the issues contained in the instant petition. Additionally, the State's assertion of
16 laches has been sufficiently rebutted by Boston as he did not delay an unreasonable amount
17 of time after issuance of Graham and it will not be unreasonably difficult for the State to
18 hold a new sentencing hearing which does not require an entirely new trial. The Court
19 further hereby grants the instant Petition in part and holds that the sentences imposed on
20 Boston herein are in violation of the Eighth Amendment because they do not provide a
21 meaningful opportunity to obtain release. Accordingly, the Court hereby sets aside those
22 sentences, and finds that Boston must be re-sentenced in accordance with the Eighth
23 Amendment's dictates. All other relief sought herein is denied. The Court is scheduling a
24 status hearing to discuss the scheduling and scope of Boston's new sentencing hearing for
25 April 10, 2013 at 8:30 am.

26 Dated this 22nd day of March, 2013


27 
28 ELISSA F. CADISH, DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I electronically served, mailed to the following proper persons, or placed a copy of this order in the attorney's folder in the Clerk's Office as follows:

Parker Brooks, Assistant District Attorney
Martin Hart, Esq.


Timothy D. Kelley
Judicial Executive Assistant


CLERK OF THE COURT

1 **NOAS**
2 STEVEN B. WOLFSON
3 Clark County District Attorney
4 Nevada Bar #001565
5 JONATHAN E. VANBOSKERCK
6 Chief Deputy District Attorney
7 Nevada Bar #006528
8 200 Lewis Street
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

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

9 THE STATE OF NEVADA,)

10 Plaintiff,)

11 v.)
12 ANDRE D. BOSTON,)
13 #0920638)

14 Defendant(s).)

Case No. 88C084650
Dept. No. VI

NOTICE OF APPEAL

15 TO: ANDRE D. BOSTON, Defendant; and

16 TO: MARTIN HART, ESQ. Attorney for Defendant and

17 TO: ELISSA F. CADISH, District Judge, Eighth Judicial District Court,
18 Dept. No. VI

19 NOTICE IS HEREBY GIVEN THAT THE STATE OF NEVADA, Plaintiff in the
20 above entitled matter, appeals to the Supreme Court of Nevada from the order the district
21 court filed on March 22, 2013, granting in part Defendant's Petition for Writ of Habeas
22 Corpus.

23 Dated this 3rd day of April, 2013.

24 STEVEN B. WOLFSON,
25 Clark County District Attorney

26 BY /s/ Jonathan E. VanBoskerck
27 JONATHAN E. VANBOSKERCK
28 Chief Deputy District Attorney
Nevada Bar #006528

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State of Nevada
Department of Corrections
OFFENDER LEGAL ORDERS

BOSTON, ANDRE DUPREE 27846

Next Parole Expiration Date(NPD):

RECOMMENDED RELEASE DATE:

C#	SENTENCE DATE	RETRO DATE	OFFENSE	DESCRIPTION	COUNT	SENTENCE SEQ	SENTENCE CONSECUTIVE		MINIMUM	MAXIMUM	LIFE	STATUS	STATUS DATE	PED	PEXD	MPD
							TO	FROM								
C# C84650	09/30/2010	09/30/2010	299	BURGLARY	1	1			Y M D	0Y 120M 0D		A				
C# C84650	10/20/1988	10/20/1988	143	ASSAULT W/ A DEADLY WEAPON	3	4	3		Y M D	0Y 72M 0D		P				
C# C84650	10/20/1988	10/20/1988	3458	USE OF DEADLY WEAPON	14	24	23		Y M D	0Y 36M 0D		P				
C# C84650	10/20/1988	10/20/1988	67	PREVENT/DISSUADE WITNESS	14	23	22		Y M D	0Y 36M 0D		P				
C# C84650	10/20/1988	10/20/1988	3458	REPORTING	13	22	21		Y M D	0Y 180M 0D		P				
C# C84650	10/20/1988	10/20/1988	120	USE OF DEADLY WEAPON	13	21	20		Y M D	0Y 180M 0D		P				
C# C84650	10/20/1988	10/20/1988	3458	ROBBERY	2	3	2		Y M D	0Y 120M 0D		P				
C# C84650	10/20/1988	10/20/1988	129	ENHANCEMENT	4	5	4		Y M D	0Y 120M 0D		P				
C# C84650	10/20/1988	10/20/1988	3458	USE OF DEADLY WEAPON	4	6	5		Y M D	0Y 120M 0D		P				
C# C84650	10/20/1988	10/20/1988	191	ENHANCEMENT	2	2	1		Y M D	0Y 120M 0D		P				
C# C84650	10/20/1988	10/20/1988	3458	ENHANCEMENT	8	14	13		Y M D	0Y 60M 0D	0Y 0M 0D	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	12	19	18		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	USE OF DEADLY WEAPON	12	20	19		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	ENHANCEMENT	11	18	17		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	6	9	8		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	ENHANCEMENT	5	8	7		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	107	KIDNAPPING I	5	7	6		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	8	13	12		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	ENHANCEMENT	6	10	9		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	USE OF DEADLY WEAPON	7	12	11		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	3458	ENHANCEMENT	10	16	15		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	11	17	16		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	7	11	10		0Y 60M 0D	0Y 0M 0D	LWP	P				
C# C84650	10/20/1988	10/20/1988	114	SEXUAL ASSAULT	10	15	14		0Y 60M 0D	0Y 0M 0D	LWP	P				

AA 000937

Report Name: NVROLO

Reference Name: NOTIS-RPT-OR-0068.11

Run Date: JAN-19-11 03:00 PM



State of Nevada
Department of Correction
OFFENDER LEGAL ORDERS

Sentence Statuses	
A	Active
D	Discharged
DCS	Discharge to Consecutive
DP	Paroled
J	Inactive
OT	Overturned
P	Pending
PTC	Parole to Consecutive
REACT	Reactivated
SUSP	Suspended

AA 000038

Report Name: NVRLO
Reference Name: NOTIS-RPT-OR-0068.11
Run Date: JAN-19-11 03:00 PM

#27846 - BOSTON, ANDRE

SENTENCE STRUCTURE

CT # SENTENCE CRIME

	Line 1	120	BURGLARY	
CS	11 2	120	LEWDNESS WITH A MINOR	
CS	3 2	120	UDW	
CS	4 3	72	ASSAULT/UDW	
CS	5 4	120	BATTERY W/INTENT TO COMMIT CRIME	
CS	6 4	120	UDW	
CS	7 5	60-LIFE	KIDNAP 1	
CS	8 5	60-LIFE	UDW	
CS	9 6	60-LIFE	SEXUAL ASSAULT	
CS	10 6	60-LIFE	UDW	
CS	11 7	60-LIFE	SEXUAL ASSAULT	
CS	12 7	60-LIFE	UDW	
CS	13 8	60-LIFE	SEXUAL ASSAULT	
CS	14 8	60-LIFE	UDW	
CS	15 10	60-LIFE	SEXUAL ASSAULT	
CS	16 10	60-LIFE	UDW	
CS	17 11	60-LIFE	SEXUAL ASSAULT	
CS	18 11	60-LIFE	UDW	
CS	19 12	60-LIFE	SEXUAL ASSAULT	
CS	20 12	60-LIFE	UDW	
CS	21 13	180	ROBBERY	
CS	22 13	180	UDW	
CS	23 14	36	ATT. DISSAUDE VICTIM FROM REPORTING CRIME	
CS	24 14	36	UDW	

Offense 10-1-83 & 11-14-83

Sentence 10-20-88

69
4548



San Diego County
SHERIFF'S DEPARTMENT

WAIVER OF EXTRADITION

FUGITIVE / EXTRADITION UNIT
330 W. Broadway, San Diego, CA 92101
(619) 531-3762

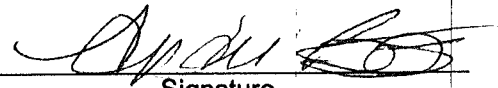
FILED
Clerk of the Superior Court
NOV 10 2010
By: Amy Helfers

I, Andre Boston, Freely admit that I am the person against whom criminal proceedings have been instituted in the County of Clark, State of Nevada, and further freely and voluntarily agree to return to the demanding State with the duly authorized agent(s) of the demanding State who may be appointed to accompany me.

By signing this waiver, I am not admitting any guilt whatsoever, I only volunteer to return to the demanding State to answer the charges lodged against me, to wit, 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, Sexual Assault with Use of a Deadly Weapon, Robbery with Use of a Deadly Weapon and Attempt Dissuade Victim or Witness from Reporting a Crime with Use of a Deadly Weapon.

I have been informed by the magistrate of my constitutional rights, and that I have a right to require the issuance and service of a Warrant of Rendition as provided under the California Penal Code.

November 9, 2010


Signature
Andre Boston

NO BAIL SET PER PENAL CODE SECTION 1555.1

RETURN TO THE FELONY ARRAIGNMENT DEPARTMENT ON 11/20/10 AT 830 IF
THE EXTRADITING AGENCY HAS NOT PICKED UP THE DEFENDANT.

Interpreter _____ oath on file / sworn. Language _____
(name)

Distribution: (5 Originals)
Governor's Office
Court File
Duly Authorized Agent of Demanding State
Sheriff's Office
Defendant

Pictures for JIM #400211098

Book #: 10783188 Name: Boston, Andre Desc: B Sex: M Age: 43 Hgt: 5' 10" Wgt: 197 FAC: 1 Area: 2 HicREL Cell: E Bed: 00

Classification: 5
Code:

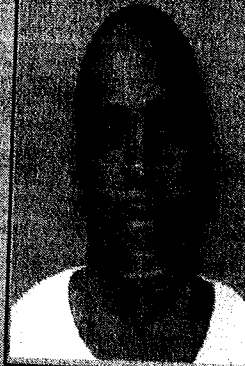
Hazards & Instructions: NO STRIKES

High Risk Indicators: ESCAPE RISK

Special Conditions: MEDICAL

Medical Instructions: NO SBDF

Admin Alert: ESCAPE RISK



PICTURE for Book #10783188

Enemy List

Last Name	First Name	Book #	FAC Area
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Active Gang List

Last Name	First Name	Book #	FAC Area	Gang
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Close

Initial Individual Correctional Program Plan

Inmate Name: Boston Andre NDOC#: 27846 11/19/10
Last First Initial Plan Date

1. EDUCATIONAL PROGRAMS: KITE EDUCATION TO ENROLL

☐ Literacy ☐ High School Diploma ☐ ESL ☐ GED

2. CAMP ELIGIBILITY:

☐ Camp Placement: ☐ AA/NA ☐ Education

3. SPECIAL NEEDS PROGRAMS:

☒ S.T.O.P. ☐ Youthful Offender ☐ Boot Camp

☐ Continue on psychotropic medication as prescribed.
Attend appointments with Mental Health as required.

4. DRUGS AND ALCOHOL TREATMENT PROGRAMS:

☐ ANCHOR Therapeutic Community Program ☐ OASIS Therapeutic Community Program ☐ General Population
AA/NA

5. PSYCHOEDUCATIONAL CORE CLASSES: KITE WHEN IN GENERAL POPULATION

☒ Commitment to Change ☒ Anger Management ☐ Addictions Prevention Education

☐ Other: _____ (merit credit approved)

☐ No programs recommended.

I hereby agree to pursue the above-described Individual Correctional Plan (ICP).

Your signature indicates that you have received a copy of the Prison Rape Elimination Act (PREA) of 2003 and references to related Administrative Regulations.

Andre Boston
Inmate Signature

Caseworker Signature

Revised 6/11/10

AA 000942

#27846

STATE OF NEVADA
DEPARTMENT OF CORRECTIONS

MEMORANDUM

To: Patti Strocchio
Central Trans

FROM: Paula G. Miller
Program Officer

SUBJECT: Boston, Andre
OUR: #27846
THEIR: #10783188

Arrived 11-18-10
DATE: November 10, 2010

The above named subject is currently housed in the San Diego Central Jail, CA. He has signed a Waiver of Extradition and we have until November 24, 2010 to take custody of him. This inmate will have to transfer to HDSP. He has scarred lungs and cannot breathe in a higher elevation.

11-18-10

Your Contact Lenice Lopez, Detective
Phone: (619) 531-3762
FAX: (619) 531-3743

Address: 1173 Front St.
San Diego, CA 92101

DESCRIPTION:

Sex: Male
Race: Black
Hgt/Wgt: 5'09"/170
Hair/Eyes: Black/Brown
DOB: 07/17/1967
SSN: 454-53-2634

Sentence: Currently serving 120 months for Burglary
Has 13 consecutive sentences to serve.

I have a signed Waiver. I will fax a copy to Wendy Livermore and to you.
The trip will be reimbursed

AA 000943

Paula Miller - Boston, Andre 27846

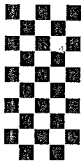
From: Patti Strocchio
To: Cole Morrow; Davena Abad; William Kuloloia
Date: 11/10/2010 2:03 PM
Subject: Boston, Andre 27846
CC: Paula Miller
Attachments: Patti Strocchio.vcf

On November 18th, 2010, Sgt. Kozloff and C/O Parkinson will travel to the San Diego Central Jail, 1173 Front St., in San Diego, California and pickup inmate Boston. This inmate has 13 consecutive Nevada sentences to serve. We have advised the South Transportation Officers to use caution with this inmate due to the type of crimes he has committed.

If you have any questions in regards to this trip, please contact the officers at 702-879-6625. Thanks.

*Patti Strocchio, AA III
Department of Corrections
Central Transportation
5500 Snyder Ave, Bldg. 18
Carson City, NV 89701
775-887-3358*

AA 000944



**SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT**

Fugitive/Extradition Unit

330 West Broadway

San Diego County, Ca. 92101

(619) 531-3762 Fax (619) 531-3743

ORI CA0370056

lenice.lopez@sdsheriff.org



November 10, 2010

To: Extraditions/Fugitives

Re: Boston, Andre Dupree # 10783188

Fax: 2 Pages

The above subject has signed a "Waiver of Extradition". He/She does not have any local matters and is ready for pick up. A copy of the waiver is included in this transmission. **Please take custody of this inmate by November 24, 2010.** Please notify me of your transportation arrangements.

If you have any medical questions or need a medical form completed, please fax the paperwork to the following appropriate location. Do not fax it to me. Please have the fugitives booking number on any inquiry.

Male inmates are located at: San Diego Central Jail
1173 Front St.
San Diego, CA. 92101
Inside Booking Phone # 619-615-2662
Attn: Medical Records
619-615-2454
619-615-2450 (fax)

Female inmates are located at: Las Colinas Detention Facility
9000 Cottonwood Ave.
Santee, CA 92071-3093
Attn: Medical Records
619-258-3206
619-258-3222 (fax)

Thank you,

Lenice Lopez, Detective

AA 000945

CIS 230228



San Diego County SHERIFF'S DEPARTMENT

WAIVER OF EXTRADITION

FUGITIVE / EXTRADITION UNIT
330 W. Broadway, San Diego, CA 92101
(619) 531-3762

FILED
Clerk of the Superior Court
NOV 10 2010
By: Amy Helfers

I, Andre Boston, Freely admit that I am the person against whom criminal proceedings have been instituted in the County of Clark, State of Nevada, and further freely and voluntarily agree to return to the demanding State with the duly authorized agent(s) of the demanding State who may be appointed to accompany me.

By signing this waiver, I am not admitting any guilt whatsoever, I only volunteer to return to the demanding State to answer the charges lodged against me, to wit, 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, Sexual Assault with Use of a Deadly Weapon, Robbery with Use of a Deadly Weapon and Attempt Dissuade Victim or Witness from Reporting a Crime with Use of a Deadly Weapon.

I have been informed by the magistrate of my constitutional rights, and that I have a right to require the issuance and service of a Warrant of Rendition as provided under the California Penal Code.

November 9, 2010

Andre Boston

Signature
Andre Boston

NO BAIL SET PER PENAL CODE SECTION 1555.1

RETURN TO THE FELONY ARRAIGNMENT DEPARTMENT ON 11/20/10 AT 830 IF THE EXTRADITING AGENCY HAS NOT PICKED UP THE DEFENDANT.

Interpreter _____ (name)	oath on file / sworn.	Language _____
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11-10-10

Richard S. Whitney

RICHARD S. WHITNEY

Distribution: (5 Originals)
Governor's Office
Court File
Duly Authorized Agent of Demanding State
Sheriff's Office
Defendant

Paula Miller - RE: #D-03868 - Boston, Andre

From: "Work, Valerie"
To: "Paula Miller"
Date: 3/23/2007 12:01 PM
Subject: RE: #D-03868 - Boston, Andre

Mr. Boston is at Correctional Training Facility 831-678-3951, his earliest projected parole date is 9/30/2010. Contact person is Pam Hudson at extension 4370. As always any dates are best confirmed through the institution. Isn't e-mail great!

From: Paula Miller [mailto:pgmiller@doc.nv.gov]
Sent: Friday, March 23, 2007 10:16 AM
To: Work, Valerie
Subject: #D-03868 - Boston, Andre

Okay, the next one I pulled is CA also. Can you give me his location, release date, and contact person. You were right about the release date on the last inmate. Thank you, Paula

AA 000947

Electronically Filed
Sep 16 2013 10:57 a.m.
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

4

MEMORANDUM OF POINTS AND AUTHORITIES

POINT I.

PETITIONER CONTENDS THAT HE RECEIVED A SENTENCE
WHICH IS THE FUNCTIONAL EQUIVALENT OF LIFE WITHOUT
PAROLE OF OFFENSES COMMITTED BEFORE THE AGE OF EIGHTEEN

Petitioner contends that the Information/Petition in this case charged him with having committed several felonies on October 1, 1983 and November 14, 1983. (See exhibit "C")

At the time of the commission of the offenses, petitioner whose birthday is July 17, 1967, was sixteen (16) years of age.

On October 30, 1984, petitioner on separate charges stemming from offenses in the State of California, was convicted by certified Guilty Plea and sentenced to a term of fifty (50) years with half time credit.

On or about September 12, 1988, approximately four years later, petitioner had a jury trial in the State of Nevada, County of Clark, case no. C-84650. (See exhibit "F")

On or about September 15, 1988, petitioner was found guilty of the offenses charged in the Information. (see exhibit "F")

On or about October 20, 1988, petitioner was sentenced upon the adjudication of the Jury Verdict to the following sentence: Fourteen (14) consecutive Life Sentences and a consecutive sentence of ninety two years. (See exhibit "E")

1 After the sentence was pronounced, the District
2 Attorney inquired as to whether the sentenced would run
3 concurrent or consecutive to the California sentence?
4 Defense Counsel attempted to argue in opposition of
5 consecutive sentencing and for concurrent sentencing.
6 The sentencing judge elected to impose "consecutive"
7 sentencing to the term already being served in California.
8 (See exhibit "F")

9 Petitioner contends that the sentence he received
10 in Nevada (fourteen [14] consecutive life sentences and
11 a consecutive sentence of ninety two [92] yrs) is in fact
12 a sentence of the function equivalent to Life Without
13 Parole. Petitioner bases this on the fact that his sentence
14 is "equal in quantity" to the sentence of "Life Without
15 Parole". Each life sentence, by its consecutive nature
16 would require petitioner to parole on each individual
17 life sentence, prior to the imposition of the next consecutive
18 life sentence. Even if petitioner only had to serve a
19 sentence of five (5) years per each individual life sentence,
20 the law would still require petitioner to be paroled
21 on the "Life" sentence before the next sentence began.
22 This process would have to be repeated approximately
23 fourteen times for a total of seventy [70] years. (Accordingly
24 if petitioner had to serve an average of ten (10) years
25 per "Life" sentence, the total for fourteen consecutive
26 life sentences would be one hundred and forty (140) years.)
27 Then once the consecutive Life sentences had been served,
28 petitioner would next have to begin serving the consecutive

1 sentence of ninety-two (92) years.

2 Furthermore, petitioner contends that to establish
3 the compounding effect of this sentence being one of
4 the "functional equivalent" of a Life Without Parole
5 sentence, the sentencing court imposed the Nevada sentences
6 to run all "consecutive" to the sentence in California.
7 When the issue of consecutive versus concurrent sentences
8 was addressed, defense counsel made the court fully aware
9 that petitioner was serving a sentence of fifty (50)
10 years with half time credit. Counsel also made the court
11 aware that petitioner would have to serve approximately
12 twenty-five (25) years straight in California. The sentencing
13 court "STILL" elected to impose "Consecutive" sentencing.
14 This decision was made despite the court being cognizant
15 that under such a sentence, petitioner would NEVER PAROLE
16 OR RETURN TO SOCIETY.

17 Petitioner contends that his sentence has been
18 fully imposed and meant to act as the "functional equivalent"
19 of a Life Without Parole sentence. Petitioner bases this
20 position on the following parallels:

21 a.) The sentence of Life Without Parole is one
22 that a court imposes to permanently ban a defendant from
23 society with there being NO OPPORTUNITY FOR PAROLE OR
24 A RETURN TO SOCIETY EVER.

25 b.) A sentence which requires a defendant to
26 serve fourteen (14) separate and consecutive life sentences
27 and be found suitable for parole on each sentence, before
28 serving a consecutive sentence of ninety two years, and

1 [emphasis added] AFTER, the defendant has served twenty-five
2 [25] plus years straight, acts as a Life Without Parole
3 sentence for all practical purposes without using the
4 terminology "Life Without Parole". Essentially, the defendant
5 is banned from society with no realistic opportunity
6 to parole or return to society.

7 Petitioner contends that his sentence is one
8 with the "Direct" collateral effect of the same consequences
9 that would exist if he had been sentenced with the technical
10 terminology- "Life Without Parole".

11 Thus it is contended that for all practical,
12 realistic, and reasonably legal purposes, the sentence
13 petitioner received "IS" the "FUNCTIONAL EQUIVALENT"
14 of a LIFE WITHOUT PAROLE sentence, and that under such
15 sentence he will NEVER realistically be released.

16 //

17 //

18 POINT II.

19 **PETITIONER CONTENDS THAT HIS SENTENCE IS ILLEGAL**
20 **AND VIOLATES ESTABLISHED STATE CASE LAW PRECEDENCE**

21 Petitioner contends that his sentence is illegal, in
22 that, it violates established state case law precedence
23 in Nevada. The state case law precedence was based fully
24 upon an analysis and consideration of the U.S. Constitution
25 Eighth Amendment prohibition against Cruel and Unusual
26 Punishment.

27 The Nevada Supreme Court in the case of Naovarath
28 v. State 799 P.2d 944 (Nev. 1989) dealt with a situation

1 where the court had to review the constitutionality of
2 a life sentence imposed on a thirteen (13) year old convicted
3 of murder. Applying the Eighth Amendment prohibition
4 against "Cruel and Unusual Punishment", the Nevada Court
5 concluded that Life Without Parole is a cruel and unusual
6 sentence for a child offender. The court stated in part:

7 "We do not question the right of society to some
8 retribution against a child murderer, but given
9 the undeniably lesser culpability of children
10 for their bad actions, their capacity for growth
11 and society's special obligation to children
12 almost anyone will be prompted to ask whether
13 [a juvenile] deserves the degree of retribution
14 represented by the hopelessness of a life sentence
15 without the possibility of parole, even for the
16 crime of murder. We conclude that ... life without
17 possibility of parole is excessive punishment
18 for this thirteen year old boy". Id at 948

19 The court in Naovarath "supra" undertook a close
20 examination of offender characteristics. Proportionality
21 analysis required consideration of the convict's age
22 and his likely mental state at the time of the crime.
23 Finding the sentence cruel and unusual, the court held
24 that "children are and should be judged by different
25 standards from those imposed upon mature adults."

26 In this case, petitioner, a sixteen year old
27 boy [when the offenses occurred] received a sentence
28 which is tantamount to the "FUNCTIONAL EQUIVALENT" of
a "LIFE WITHOUT POSSIBILITY OF PAROLE". There is no realistic
possibility or expectation that a boy who has already
served twenty-five (25) years plus straight for a prior
offense (committed in the same time frame) will be able
to "TECHNICALLY"- PAROLE fourteen separate times on consecutive
life sentences, and "THEN" serve the term requisite for

1 an additional ninety-two years. Thus it is clear that
2 the petitioner will "NEVER" be released, as a result
3 of offenses that occurred before he was eighteen (18)
4 years of age.

5 Furthermore, petitioner contends that relevant
6 factors have been ignored in this case namely:

7 a.) Petitioner was sixteen (16) years of age
8 at the time of the offense.

9 b.) Petitioner's characteristic and capability
10 to reform were never adequately considered.

11 c.) Petitioner did not commit the offense of
12 murder and yet his sentence is harsher than adults in
13 Nevada who commit FAR WORSE AND MORE HEINOUS OFFENSES.

14 Based on petitioner's age at the time of the
15 offense and the sentence he received, in due consideration
16 of the established state case law precedence set forth
17 in Naovarath v. State "supra", petitioner's sentence
18 is clearly illegal and must be rescinded.

19 //

20 //

21

22

POINT III.

23

**PETITIONER CONTENDS THAT HIS SENTENCE IS ILLEGAL
AND VIOLATES THE PROVISIONS OF THE EIGHTH
24 AMENDMENT TO THE U.S. CONSTITUTION**

25

26

27

28

Petitioner contends that his sentence violates
the Eighth Amendment of the U.S. Constitution.

The U.S. Constitution prohibits "Cruel and Unusual
Punishment" under the established provision of the Eighth

1 Amendment. This provision is applicable to the states
2 through the Due Process Clause of the Fourteenth Amendment
3 of the U.S. Constitution. as established in Robinson
4 V. California 370 U.S. 660, 675; see also Newman v. Alabama
5 559 F.2d 283, 287 (5th cir. 1997)- stating- "[i]t was
6 not until 1962 that the Supreme Court applied the Eighth
7 Amendment to the states through the Fourteenth Amendment.

8 Petitioner contends that under the Supreme Court
9 reasoning in Roper v. Simmons 543 U.S. 551, (2005)- a
10 Life Without Parole sentence constitutes "Cruel and Unusual
11 Punishment".

12 In this case, petitioner, a sixteen (16) year
13 old boy defendant with a mental history including
14 hospitalizations prior to the commission of any offense,
15 for poor impulse control, immaturity and lack of self
16 control (including a diagnosis of possible schizopernia)
17 was sentenced to a functional equivalent of Life Without
18 Parole for offenses committed before the age of eighteen.

19 In Roper "supra", the court held that the death
20 sentence for juveniles violates the Eighth and
21 Fourteenth Amendment. [id. at 578]. The court
22 reasoned that "evolving standard of decency
23 that marks the progress of a maturing society"
24 demonstrate that it is disproportionate to execute
25 a defendant for a murder committed while the
26 defendant is under the age of eighteen. [id at
27 561 quoting Trop v. Dulles 356 U.S. 86, 101 (1958)
28 (plurality opinion).] Even though many state
laws permitted the imposition of death sentences
on juveniles, the court exercised independent
judgement to determine whether such a penalty
is disproportionate. [id at 564] The court exercised
independent judgement by considering medical,
psychological and common experience which all
show that children under eighteen (18) years
of age are less culpable and amenable to rehabilitation
than adults. [id. at 568-76 The court examined
recent studies about brain development and psychology.]

1 The court concluded that a sentence cannot be
2 imposed on juveniles, if it implies that an offender
cannot be rehabilitated.

3 The court's reasoning in "Roper" applies with
4 equal force to Juvenile Life Without Parole because this
5 sentence, like a death sentence, implies that the juvenile
6 cannot be rehabilitated. In it's analysis, the court
7 considered precedents where juveniles were treated differently
8 than adults and took notice of the international covenants
9 in concluding that the Eighth Amendment forbids a juvenile
10 death penalty. [fn.¹_/]

11 In Roper, supra the court commented on the severity
12 of Juvenile Life Without Parole as follows: "it
13 is worth noting that the punishment of Life
14 Imprisonment Without the Possibility of Parole
15 is itself a severe sanction, in particular for
16 a young person." Roper 543 U.S. at 572 (emphasis
17 added) The thrust of the court's reasoning is
18 that juveniles are categorically different than
adults in the criminal law context, therefore
the courts must consider this categorical difference
during sentencing. Court should look at trends,
19 contexts and practices - nationally and
internationally. The consensus is against juvenile
life without parole nationally, as well as
internationally.

20 fnl.

21 - In November 1959, the United Nations General Assembly
22 adopted the Declaration on the Rights of the Child, which
23 recognized that "the child by reason of his physical
24 and mental immaturity, need special safeguard and care,
25 including appropriate legal protection, before as well
26 as after birth. (See The American Convention on Human
27 Rights, Series no. 36, p. 1, Organization of American
States, Official Record, OEA/Ser.L/V/II.23 signed by
the OAS on November 22, 1969, entered into force July
18, 1978, states in Article 19: "every minor child has
the right to the measures of protection required by his
condition as a minor on the part of the family, society
and the state.") The United States was one of the 78
members of the U.N. General Assembly, which voted unanimously
to adopt the Declaration.

28 Further, similar to the domestic goals of juvenile
justice, the International Covenant on Civil and Political
Rights, to which the United States is a party, specifically

1 acknowledged the need for special treatment of children
2 in the criminal justice system and emphasized the importance
3 of their rehabilitation. (United Nations International
4 Covenant for Civil and Political Rights, Art. 10 (3),
5 Dec. 16, 1966, 99 U.N.T.S. at 175.)

6 The Convention on the Rights of the Child (CRC)
7 is the "most widely and rapidly ratified human rights
8 treaty in history." The CRC was adopted on November 20,
9 1989 in New York. It is first international human rights
10 instrument to adopt common ethical and legal framework
11 for the treatment of incarcerated juveniles. Currently
12 191 out of 193 countries have ratified or accepted the
13 Convention. The United States and Somalia -(due solely
14 to Somalia's lack of recognized government and inability
15 to proceed with ratification) are the only two countries
16 in the world that have not ratified the CRC, although
17 both have signed it. (By signing the Convention, the
18 United States has signaled its intention to ratify,
19 but has yet to do so.) As a signatory to the CRC, the
20 United States may not take actions that would defeat
21 the Convention's object and purpose.

22 The CRC is clear, precise and unambiguous when
23 it comes to sentencing juveniles to Life Without Possibility
24 of Parole. Article 37(a) of the CRC provides that: "Neither
25 capital punishment nor life imprisonment without the
26 possibility of release shall be imposed for offenses
27 committed by persons below eighteen years of age." Further,
28 Article 40(1) of the CRC emphasizes that the primary
aim of juvenile justice is the rehabilitation and reintegration
of the child into society.

End of Footnote

In Roper, the court drew a bright line for juvenile
culpability at eighteen. The court after mentioning
that certain characteristics such as lack of
maturity, lower level of mental and emotional
development, and inability to make sound judgements
made juveniles less culpable for their crime,"
conclude[d] that the same reasoning applies to
all juvenile offenders under eighteen. (18)".
(Roper 543 U.S. at 571). Accordingly, sentencing
juveniles, who are less culpable for their crime,
to Life Without Parole, like adults who commit
similar offenses concludes that juveniles will
never be rehabilitated and such conclusions exceed
the bound of decency. The bounds the court created
in Roper are that juveniles are more amenable
to rehabilitation and it is impossible to determine
that juveniles are beyond redemption. [id. at
568-75]

Furthermore in the recent U.S. Supreme Court
decision of Graham v. Florida 560 U.S. ____ (2010), the

1 court held that for a juvenile offender who did not commit
2 homicide, the Eighth Amendment forbids the sentence of
3 Life Without Parole. In establishing this new legal doctrine
4 the court drew the line for a categorical rule that avoids
5 the common pitfalls and risks associated with the difficulties
6 of existing categorical rules to define Eighth Amendment
7 standards. The new rule under Graham avoids the risks
8 that as a result of the difficulties a court or jury
9 will erroneously conclude that a particular juvenile
10 is sufficiently culpable to deserve Life Without Parole
11 for a non homicide. The court addressed the principles
12 relative to the juvenile offenders age in consideration
13 with other factors [national consensus; community consensus;
14 juvenile culpability; severity of sentences; penological
15 justifications; retribution; deterrence; incapacitation
16 and rehabilitation.]

17 After careful and extensive consideration, the
18 court ultimately found in favor of the juvenile offender,
19 ruling essentially that a Life Without Parole sentence
20 for a non-homicide makes the judgement that a juvenile
21 is incorrigible. Yet "It is difficult even for expert
22 psychologists to differentiate between the juvenile offender
23 whose crime reflects unfortunate yet transient immaturity
24 and the rare juvenile offender whose crime reflects irreparable
25 corruption." quoting Roper, supra at 573. The court found
26 further that a Life Without Parole sentence improperly
27 denies the juvenile offender a chance to demonstrate
28 growth and maturity. The court acknowledged that developments

1 in psychology and brain science continue to show fundamental
2 differences between juvenile and adult minds. For example,
3 parts of the brain involved in behavior control to mature
4 through adolescence. The court found that the Constitution
5 prohibits the imposition of a Life Without Parole sentence
6 on a juvenile offender who did not commit homicide.

7 In the case at bar, petitioner who was a juvenile
8 offender was sentenced to a sentence which ensures that
9 he is never released from prison, (i.e. - a Life Without
10 Parole functional equivalent sentence for offense(s)
11 committed as a sixteen year old juvenile).

12 In Graham, supra, the court ultimately found
13 that because "[t]he age of 18 is the point where
14 society, draws, the line for many purposes between
15 childhood and adulthood," those who were below
16 that age when the offense was committed may not
17 be sentenced to Life Without Parole for a non-homicide.
18 Roper 543 U.S. at 547

16 Petitioner was sixteen at the time of the offenses
17 and accordingly cannot legally be sentenced in any manner
18 which will result in a Life Without Parole sentence,
19 such as would occur and exist with a sentence that consists
20 of fourteen (14) consecutive Life Sentences and an additional
21 consecutive term of ninety-two (92) years.

22 Lastly in Graham, supra, the court emphasized
23 that "the Constitution prohibits the imposition
24 of a Life Without Parole sentence on a juvenile
25 offender who did not commit homicide. A state
26 need not guarantee the offender eventual release,
27 but if it imposes a sentence of life, it must
28 provide him or her some realistic opportunity
to obtain release before the end of that term."

27 In petitioner's case, the fourteen (14) consecutive
28 Life Sentences and consecutive term of ninety-two (92)

1 years does not provide petitioner with any realistic
2 opportunity to obtain release before the end of his term.

3 Accordingly, petitioner's sentence violates the
4 Eighth Amendment to the Constitution and cannot stand.

5 //

6 //

7 POINT IV.

8 PETITIONER CONTENDS THAT HIS EXCESSIVE
9 SENTENCE WHICH IS THE FUNCTIONAL EQUIVALENT
10 OF JUVENILE LIFE WITHOUT PAROLE VIOLATES
11 THE PRINCIPLE OF REHABILITATION AND DID NOT
12 TAKE INTO ACCOUNT HIS MENTAL STATUS AS A
13 JUVENILE NOR HIS POTENTIAL FOR REFORM
14 AND REHABILITATION

15 Petitioner contends that it is established that
16 when it comes to juvenile offenders, the law must promote
17 rehabilitation. The sentence of Juvenile Life Without
18 Parole (OR THE FUNCTIONAL EQUIVALENT) frustrates this
19 goal. Life Imprisonment denies hope to the juvenile who
20 has the ability to improve their behavior and character.

21 The court in Atkins v. Virginia 536 U.S. 304,
22 302 (2002) reasoned that the "diminished ability
23 to understand and process information, to learn
24 from experience, to engage in logical reasoning,
25 or to control impulses" makes defendants less
26 morally culpable. Juveniles are somewhat analogous
27 to mentally retarded defendants (using the same
28 factors set out in Atkins) to the extent that
juveniles have lesser ability to understand and
process information, to learn from experience
(by their definition, their experiences are limited),
and children are often unable to engage in logical
reasoning, which is why they are excluded from
participating in many civil and political activities
granted to adults. Children do not have the ability
to control impulses as well as adults. The court
in Roper "supra" found that juveniles are more
susceptible to immature behavior, irresponsible
behavior, negative influences, peer pressure
and lack control over their immediate surroundings.
Due to the diminished culpability of juveniles,

1 the harsh Life Without Parole sentence does not
2 act to deter them from committing crime because,
3 categorically, they cannot comprehend the severity
4 of the sentence. It is a well established principle
5 that the combination of age, immaturity, and
6 inability to understand consequences of their
7 actions makes juvenile less culpable, juvenile
8 Life Without Parole sentences are completely
9 inconsistent with this principle. A majority
10 of people in the civilized world acknowledge
11 (or that at least do not violently disagree)
12 that children cannot fully appreciate or understand
13 spending the rest of their lives behind bars
14 for their criminality because they do not have
15 the same maturity, judgment or emotional development
16 as adults.

17 In this case, petitioner was not merely a sixteen
18 year old juvenile at the time of the offense(s), but
19 he was also a troubled teen who had a questionable mental
20 history. Petitioner at the age of 15 had been hospitalized
21 in two mental health facilities prior to the commission
22 of the offense(s). During the hospitalizations, "P"
23 was described by treating physicians as being a time
24 bomb and out of control teen with poor impulse control.
25 These factors further contribute to the fact that petitioner's
26 mental status and culpability should have been taken
27 into strong consideration, and should have been investigated.
28 Petitioner wasn't merely an immature juvenile, but was
further an immature juvenile with poor impulse control,
who had been hospitalized for his poor impulse control
concerns. The mere fact that petitioner had been hospitalized
demonstrates that he was acting under a more severe form
of diminished culpability than the average juvenile.
The fact that shortly after his discharge petitioner
ended up arrested for conduct similar to that which formed
the basis of his hospitalizations (poor impulse control)

1 shows that petitioner received far less than his day
2 in court, and that the court DID NOT IN ANY WAY take
3 into account his mental history.

4 In many cases, juvenile crimes are related to
5 temporary and changing characteristics of immaturity
6 and impulsivity. These characteristics should be taken
7 into consideration when courts deal with children, "IF"
8 (emphasis added) the best interests of the child is the
9 primary consideration. Rehabilitation focuses on the
10 best interests of the child. Rehabilitation, however,
11 is abandoned when a child is sentenced to Life Without
12 Parole because there is no chance of being released.

13 "Juveniles are more capable of change than are
14 adults and their actions are less likely to be
15 evidence of irretrievably depraved character"
16 than are the actions of adults. Roper, 543 U.S.
17 at 570. It remains true that "[f]rom a moral
standpoint it would be misguided to equate the
failings of a minor with those of an adult, for
a greater possibility exist that a minor's character
deficiencies will be reformed." Ibid.

18 In Graham, "supra" the court found that
19 "Graham's" sentence guarantees he will die in
20 prison without any meaningful opportunity to
21 obtain release, no matter what he might do to
22 demonstrate that the bad acts he committed as
23 a teenager are not representative of his true
24 character, even if he spends the next half a
century attempting to atone for his crime and
learns from his mistakes. The State has denied
him any chance to later demonstrate that he is
fit to rejoin society based solely on a nonhomicide
crime that he committed while he was a child
in the eyes of the law. This the Eighth Amendment
does not permit.

25 Petitioner's case is akin to "Graham's" in that,
26 petitioner's sentencing court issued a sentence which
27 guarantees petitioner will die in prison despite his
28 attempts to atone for his crimes. Petitioner has sought

1 to learn from his mistakes and to improve his moral character
2 by maturing, -developing a strong sense of self, identity,
3 and comprehending the difference between right and wrong.
4 The sentence petitioner received denied him any chance
5 to demonstrate he is fit to rejoin society.

6 Petitioner further contends that the court did
7 not take into account his potential for reform and
8 rehabilitation. Despite being in prison under an illegal
9 sentence of Life Without Parole (FUNCTIONAL EQUIVALENT)
10 with no hope of ever being released, petitioner "STILL"
11 availed himself of every opportunity to reform himself
12 and developed characteristics indicative of his emerging
13 maturity. Over the last 26 plus years that petitioner
14 has been incarcerated, he has applied himself and acquired
15 numerous accolades. Petitioner was disciplinary free
16 for approximately the last 13 years or so of his incarceration
17 as an indication of his ability to control his behavior.
18 Petitioner also acquired: A GED Certificate; a College
19 Degree (with honors); completed an entire Business curriculum;
20 was inducted into a National Honor Society; graduated
21 with honors from a Legal Assistant/Paralegal curriculum;
22 earned twenty-five minor certificates in independant
23 studies, and a major certificate in Professional Development
24 in Emergency Management from the Federal Emergency Management
25 Agency (F.E.M.A.); and further earned certificates in
26 Alternatives to Violence (Basic and Advanced), Anger
27 Management, Stress Management, The Impact-Victim Awareness
28 Program, Cage Your Rage, Parenting, Fatherhood, Entrepreneur

1 Salesmanships; Laubach Literacy Tutoring, Substance Abuse,
2 Decision Making & Problem Solving, Leadership & Influence,
3 Effective Communication and many more. Petitioner has
4 acquired approximately one hundred accolades throughout
5 the years, including a commendation from a Warden for
6 his positive role model and conflict resolution skills/efforts
7 between staff and prisoners. (See exhibit "Q")

8 This case presents factors that demonstrate,
9 petitioner has become the epitome of a troubled juvenile
10 who displayed the capacity for change and rehabilitation.
11 Petitioner accomplished all of his accolades despite
12 facing the prospect of living with a sentence that promotes
13 the antithesis of rehabilitation. Instead of being discouraged
14 from reforming himself, petitioner seized EVERY LIMITED
15 OPPORTUNITY AVAILABLE to find his own self redemption
16 and rehabilitation. Therefore, the court's refusal to
17 consider petitioner's potential for reform acted to compound
18 the already egregious nature of disregarding the petitioner's
19 juvenile culpability in this case.

20 /

21 //

POINT V.

PETITIONER CONTENTS THAT THE SUSPENSION OF HIS HABEAS
CORPUS PRIVILEGE FOR TWENTY-TWO YEARS VIOLATED HIS
CONSTITUTIONAL RIGHTS UNDER THE NEVADA
CONSTITUTION AND THE SIXTH AND FOURTEENTH U.S.
CONSTITUTIONAL AMENDMENT RIGHTS TO A SPEEDY TRIAL
DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAW

"No person shall be deprived of life, liberty
or property without due process of law." Constitution
of the State of Nevada, Article 1, sec. 8 (5)

The Sixth Amendment to the U.S. Constitution
states: "In all criminal prosecutions the accused
shall enjoy the right to a speedy and public
trial, by an impartial jury of the State and
district wherein the crime shall have been
committed, which district shall have been previously
ascertained by law, and to be informed of the
nature and cause of the accusations; to be
confronted with the witnesses against him,
to have compulsory process for obtaining witnesses
in his favor and to have the Assistance of
Counsel for his defense."

The Fourteenth Amendment to the U.S. Constitution,
section 1 states: "All persons born or naturalized
in the United States and subject to the jurisdiction
thereof, are citizens in the United States
and of the state wherein they reside. No state
shall make or enforce any law which shall abridge
the privilege or immunities of citizens of
the United States; nor shall any State deprive
any person of life, liberty or property, without
due process of law; nor deny to any person
within its jurisdiction the equal protection
of the law."

"Habeas Corpus proceedings are the proper mechanism
for a prisoner to challenge the 'legality or
duration' of confinement. [Citation omitted]
A civil rights action, in contrast, is the
proper method of challenging 'conditions of
confinement'. Babea x. Cox 931 F.2d 573 (9th
Cir. 1991)

The Writ of Habeas Corpus is the safeguard
of personal liberations and there is no higher
duty than to maintain it unimpaired." Peyton
v. Rowe 301 U.S. 54, 20 L.Ed. 2d. 426

"The purpose of federal habeas corpus review

1 is to ensure that individuals are not imprisoned
2 in violation of the U.S. Constitution." Herrera
3 v. Collins 506 U.S. 390; Barefoot v. Estelle
4 463 U.S. 809 (1983).

5 Nevada Revised Statute (NRS) § 34.360 states:"
6 Every person unlawfully committed, detained,
7 confined or restrained of his liberty, under
8 any, pretense whatever, may prosecute a writ
9 of habeas corpus to inquire into the cause
10 of such imprisonment or restraint."

11 Petitioner contends that under "the Habeas
12 Act of 1867" and the provisions of NRS. 34.360, he
13 had both a federal and state court right to pursue
14 a habeas corpus inquiry into the legality of his imprisonment
15 or restraint.

16 Furthermore petitioner asserts that the
17 interpretation of the Equal Protection Clause of the
18 Fourteenth Amendment to the U.S. Constitution means
19 that he has a right to be treated the same as other
20 similarly situated prisoners and that under the provisions
21 of the Supreme Court decision in Plyer v. Doe 457 U.S.
22 202 (1982), even illegal aliens have the constitutional
23 right to equal protection of the law.

24 In Plyer, "supra" the court stated its decision
25 concluding that: "The Fourteenth Amendment
26 provides that no state shall 'deprive any person
27 of life, liberty or property, without due process
28 of law; nor deny to any person within its
jurisdiction the equal protection of the laws'.
The court rejected the argument that undocumented
aliens, because of their immigration status,
are not persons within the jurisdiction of
the state, therefore have no right to equal
protection of the law. The court found that
an alien is surely a "person" in any ordinary
sense of that term. The court concluded that
Aliens, even aliens whose presence in this
country is unlawful, have long been recognized
as "persons" guaranteed due process of law
by the Fifth and Fourteenth Amendment. See
also Shaughnessy v. Mezei 345 U.S. 206, 212

1 (1953); Wong Wing v. United States 163 U.S.
2 228, 238, (1896); Yick Wo v. Hopkins 118 U.S.
3 356, 369 (1886)

4 Thus petitioner contends that equal protection
5 of the laws under the Fourteenth Amendment to the United
6 States Constitution is a clause that applies to all
7 "PERSONS" under the jurisdiction of the laws of the
8 United States, including aliens. However, petitioner,
9 who is clearly entitled to the protections afforded
10 by the Constitution, asserts in his case, not only
11 were his habeas corpus privileges suspended for twenty-two
12 years, but also that he was denied Due Process and
13 Equal Protection of Law as a result.

14 Article 1, sec. 9, cl. 2 of the Constitution
15 of the United States states as follows: SUSPENSION
16 OF HABEAS CORPUS- "The privilege of Writ of
17 Habeas Corpus shall not be suspended unless
18 in cases of rebellion or invasion, the public
19 safety may require it."

20 **A. SUSPENSION OF THE HABEAS CORPUS PRIVILEGE VIOLATING**
21 **EQUAL PROTECTION OF THE LAW-**

22 Petitioner contends that he was found guilty
23 by a jury verdict on October 20, 1988. After the conviction,
24 petitioner accordingly submitted his direct appeal
25 and a simultaneous Petition For Post Conviction Relief
26 to the Eighth Judicial District Court, Clark County,
27 Nevada. The Petition for Post Conviction Relief was
28 denied and petitioner subsequently submitted a Petition
for Writ of Habeas Corpus to the Nevada Supreme Court.
The Habeas Petition was submitted to address certain
matters which were not contained in the record on appeal,
namely denial of a fair trial and ineffective assistance
of counsel for numerous reasons including the failure

1 to raise evidence of a mental issue before the court.
2 Petitioner contends that essential to habeas review
3 is the ability to offer evidence outside the record
4 and that without a full habeas review these matters
5 would not appear or be appropriately considered.

6 The appeal proceeded to be heard by the court,
7 however, the Habeas Petition was denied by the Nevada
8 Supreme Court on December 27, 1988 citing a lack of
9 jurisdiction under the Nevada Constitution to consider
10 the Habeas Petition. Despite repeated attempts by petitioner
11 to explain that he would not be in the physical custody
12 of Nevada until 2010, the court indicated that the
13 habeas could not be heard until petitioner was in the
14 physical custody of Nevada. In essence petitioner was
15 placed in the position of having his habeas corpus
16 privilege suspended from 1988 until 2010, as the state
17 court would not be able to entertain the habeas petition
18 until 2010. Petitioner contends that the indirect suspension
19 of his privilege to file a habeas corpus to challenge
20 the legality of the restraint of his liberty rights
21 removed from him the habeas privilege that "all other
22 prisoners" including illegal and/or undocumented "aliens"
23 are and have been entitled to for the past twenty-two
24 years. Under the indicated circumstances, petitioner
25 has been denied equal protection of the laws.

26 As a prisoner in the United States, suffering
27 from a criminal conviction, petitioner was entitled
28 to be treated the same as all other prisoners who chose

1 to contest the legality of the restraint of their liberty
2 rights. The Habeas Act of 1867 makes habeas corpus
3 available to all persons in the United States choosing
4 to challenge the legality of their restraint. However,
5 in petitioner's case, the habeas review that all other
6 persons in the United States are entitled, was denied
7 to him through no fault of his own. Specifically, the
8 protection of a habeas review to challenge the confinement
9 as available to all persons in the United States was
10 denied to petitioner for twenty-two years. Based upon
11 this factor, petitioner contends that he was denied
12 equal protection of the law.

13 Petitioner further contends that to substantiate
14 his Equal Protection claim he points to the following
15 comparison for the "similarly situated" requirement
16 of the fourteenth amendment. Petitioner is similarly
17 situated with all persons and/or prisoners of both
18 genders, legal citizens or undocumented aliens who
19 are placed in a position where they have been subjected
20 to restraint of their liberty rights and/or period
21 of confinement and chose to challenge the legality
22 of the restraint via a habeas corpus review. If all
23 other persons in the United States have an entitlement
24 to have a prompt habeas review of their confinement,
25 then to subject petitioner to a different standard
26 of treatment denies him the equal protection of law
27 that he is entitled to.

28 Petitioner contends that the only constitutional

1 exception authorized when it comes to the suspension
2 of habeas corpus rights deals with a circumstances
3 where a case of rebellion or invasion arises and public
4 safety requires it. In this case, there was no rebellion,
5 nor invasion which arose to raise a public safety concern
6 where suspension of the writ of habeas corpus for "EVERY
7 PERSON" in the US, and not just the petitioner would
8 have been appropriate.

9 Petitioner further states that a suspension
10 clause violation does not arise unless a statutory
11 provision effectively prevents a petition from being
12 heard on the merits of his or her claims as long as
13 habeas petitioners have an opportunity to be heard
14 on the merits in some judicial forum.

15 "Finding no constitutional suspension of the
16 Great Writ when a substitute procedure is available
17 "which is neither inadequate nor ineffective
18 to test that legality of a person's detention."
19 Swain v. Pressley 430 U.S. 372, 17 S. Ct. 1224,
20 51 L.Ed.2d 411 (1997)

21 "Congress therefore must offer a "collateral
22 remedy which is neither inadequate nor ineffective
23 to test the legality of a person's detention".
24 Swain supra; The substitute remedy must offer
25 the same scope of review as a habeas proceeding.
26 Id at 381-82, 97 S. Ct. 1224.

27 B. SUSPENSION OF THE HABEAS CORPUS VIOLATING 28 DUE PROCESS OF LAW

"No person shall be deprived of life liberty
or property without due process of law." Constitution
of the State of Nevada , Article 1 sec. 8 (5).

The principles of "Procedural Due Process"
claims, deal with rights that have been taken away
because the proper procedure hasn't been followed.
With Substantive Due Process the right violated are

1 so important that the procedure really doesn't matter;
2 the right should never have been taken away.

3 Petitioner contends that the suspension of
4 his privilege to have a habeas review of the legality
5 of the restraint of his liberty rights denied him
6 his right to both procedural and substantive due process
7 of law.

8 1.) PROCEDURAL DUE PROCESS

9 Petitioner contends that to establish a Due
10 Process violation a two prong approach must be utilized
11 which requires demonstration of 1) Was there an actual
12 deprivation of life liberty, or property? and 2) Did
13 it occur without due process of law?

14 Petitioner contends that personal liberty is
15 guaranteed by implication in the constitutional recognition
16 to preserve the writ of habeas corpus. Habeas Corpus
17 is a determination by a judicial power of any question
18 of interference with personal liberty, such as when
19 an executive authority acts in violation of civil rights.
20 In such a proceeding, it must be determined whether
21 the interference with an individual's liberty is
22 valid. Therefore, the constitutional recognition of
23 the court's power to inquire into the question of unlawful
24 restraint is also a constitutional recognition of individual
25 liberty as a civil right. Thus the issue of personal
26 liberty as a civil right is well founded. Petitioner
27 now turns to whether the denial of this right was
28 without due process of law.

1 Petitioner contends that in this case, another
2 component to be addressed relative to the procedural
3 due process claims deals with the unreviewed issues
4 raised in the prior attempt to have the claims raised.
5 In the previous petition, the claims raised were that
6 Petitioner was denied effective assistance of counsel
7 and deprived the constitutional right to a fair trial.
8 These issues are germane to petitioner's due process
9 claim because the denial of the prior claims (as a
10 result of the suspension of the habeas corpus) left
11 the issues unaddressed and unreviewed for approximately
12 twenty-two years. These prior issues are relevant because
13 they directly deal with the challenge to the legality
14 of the restraint of personal liberty rights which were
15 never heard. The main crux of the petition was a claim
16 of ineffective assistance of counsel raised by several
17 components: a.) Trial Counsel failed to file any motions
18 for the sentencing hearing considering the errors committed
19 before, during and after trial. [e.g.- violation of
20 constitutional protection during a juvenile certification
21 hearing relative to age factors, time delay, and a
22 claim of insanity during the time frame of the alleged
23 crimes; failure to prepare for the case due to counsel's
24 appointment one day before preliminary examination
25 and not having the chance to investigate possible insanity;
26 counsel failing to address inappropriate and unfair
27 identification procedures; counsel failing to address
28 petitioner's jail garb on the day of the jury select;

1 counsel failing to contest untested witness testimony
2 from a case in another state; counsel's failure to
3 file a motion for mistrial/new trial; counsel failing
4 to object to consecutive sentencing.] By suspending
5 petitioner's habeas privilege, these claims were not
6 only never addressed, but petitioner has had to live
7 with the restraint of his personal liberty rights resulting
8 in a sentence tantamount to a Functional Equivalent
9 of Life Without Parole for offenses committed before
10 the age of eighteen without the right or opportunity
11 to habeas review.

12 At the very least, in the face of evidence
13 of petitioner's prior hospitalizations in two separate
14 mental health institutions, [as a juvenile and immediately
15 prior to the commission of the offense(s) indicating
16 a question of petitioner's mens rea], petitioner was
17 entitled to a prompt review of his mental issue as
18 it reflects on the legality of his restraint which
19 should have been provided by Habeas Corpus.

20 Habeas Corpus provides a prompt, speedy remedy
21 or adjudication of a prisoner's right to liberation
22 from illegal restraint. Preiser v. Rodriguez
23 411 U.S. 475, 36 L.Ed.2d 439.

24
25 The Writ of Habeas Corpus is the appropriate
26 remedy in which to raise the claim of ineffective
27 assistance of counsel. United States v. Cronic
28 80 L.Ed.2d 657.

//

2.) SUBSTANTIVE DUE PROCESS

Petitioner contends that the substantive component of the due process clause forbids "arbitrary infringement" of certain personal immunities that are implicit in the concept of ordered liberty or that shock the conscience.

"We have long recognized that the Amendment's Due Process Clause like its fifth amendment counterpart, guarantees more than fair process." The clause also includes a substantive component that provides heightened protection against governmental interference with certain fundamental rights and liberty interests. Washington v. Glucksberg 521 U.S. 702, 117 S.Ct. 2258 (1997); Trovel v. Granville 520 U.S. 57, 120 S.Ct. 2054; 147 L.Ed.2d 49 (2000)

In Glucksberg supra, the Supreme Court set forth 2 elements of the substantive due process analysis. First, the court noted we have regularly observed that the Due Process Clause specifically protects the fundamental rights and liberties which are 'deeply rooted in this nations history and tradition' and implicit in the concept of ordered liberty, "such that" neither liberty nor justice would exist if they were sacrificed. Second, we have required in substantive due process cases a "careful description" of the asserted fundamental liberty interests.

Furthermore in Glucksberg, the court found that the full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This liberty is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures and so on. It is a rational continuum which, broadspeaking includes a freedom from all substantial arbitrary impositions and purposeless restraints, and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state's need asserted to justify their abridgement.

To sustain a claim for violation of substantive due process government action must: (1) interfere

1 "with rights implicit in the concept of ordered
2 liberty." U.S. v. Salerno 481 U.S. 739, 746,
3 107 S.Ct. 2095, 95 L.Ed.2d 697 (1987) (2) "shock
4 the conscience" Rochin v. California 342 U.S.
5 165, 172, 72 S.Ct. 205, 96 L.Ed. 183 (1952);
6 or (3) be arbitrary in the constitutional
7 sense. Collins v. City of Harbor Height 503
8 U.S. 115, 129, 122 S.Ct. 1061, 117 L.Ed.2d
9 261. (1992)

10 "A plaintiff must establish that he has a 'legitimate
11 claim of entitlement' to the right being asserted.
12 Fallon Paiute-Shoshone Tribe v. City of Fallon
13 (D. Nev. 2001) 174 F. Supp. 2d 1096

14 The fundamental requirement of due process
15 is the opportunity to be heard at a meaningful
16 time and in a meaningful manner- quoting Armstrong
17 v. Manzo 380 U.S. 545, 552, 85 S. Ct. 1187,
18 14 L.Ed.2d 62 (1965)

19 To that extent petitioner asserts the following:

20 (1) Petitioner has a legitimate claim of entitlement
21 to the right of personal liberty as outlined in the
22 U.S. Constitutional Fourteenth Amendment. (2) Personal
23 Liberty is guaranteed by implication in the constitutional
24 recognition to preserve the writ of habeas corpus.
25 (3) The Writ of Habeas Corpus has a long established
26 historical and traditional root in the scheme of both
27 American and English Law (which the foundation and
28 principles of American Law derived from). In England
it was previously regarded as the legal protection
of the right to personal liberty. (4) Habeas Corpus
is a determination by a judicial power of any question
of interference with personal liberty, such as when
an executive authority acts in violation of civil rights.
In such proceeding, it must be determined whether the
interference with individual liberty is valid. Therefore,
the constitutional recognition of the court's power

1 to inquire into the question of unlawful restraint
2 is also a constitutional recognition of individual
3 liberty as a civil right. (5) Petitioner has a right
4 to have the opportunity to be heard at a meaningful
5 time and in a meaningful manner. The suspension of
6 petitioner's ability to test the legality of the restraint
7 of his personal liberty via habeas corpus pursuit for
8 twenty two years cannot possibly act as providing either
9 a hearing at a meaningful time or in a meaningful manner.

10 Based on these factors, petitioner asserts
11 that he has a personal liberty right protected by the
12 Constitution and enforced by the court's recognition
13 of habeas corpus to contest any encroachment upon this
14 right. To remove and/or suspend petitioner's habeas
15 corpus privilege acts to work arbitrarily and contradictorily
16 in the constitutional sense to this right. Habeas
17 Corpus is a right implicit in the core concept of ordered
18 liberty and the fundamentals of preserving personal
19 liberty without encroachment by governmental interference.
20 Furthermore, to remove or suspend the petitioner's
21 most fundamentally protected right/privilege to contest
22 any infringement of his personal liberty, and subject
23 him to continued illegal restraint without the ability
24 to contest this restraint acts to "shock the conscience"
25 and core element of due process of law where personal
26 liberty interests are involved.

27 Petitioner contends that his substantive due
28 process rights have been violated in this case and that

1 he is entitled to a reversal of his conviction accordingly.

2 //

3 //

4 POINT VI.

5
6 PETITIONER CONTENDS THAT HE WAS DENIED EFFECTIVE
7 ASSISTANCE OF COUNSEL BASED ON THE FAILURE
8 TO INVESTIGATE HIS MENTAL HEALTH HISTORY
9 AS A DEFENSE OR MITIGATION FACTORS AT SENTENCING

10 In McMann v. Richardson 397 U.S. 759,
11 771, n. 14, 90 S.Ct. 1441, 25 L.Ed.2d 763 (1970)-
12 the Supreme Court declared that the right
13 to counsel is the right to effective assistance
14 of counsel.

15 A criminal defendant is entitled to the effective
16 assistance of counsel at all critical stages
17 of the proceedings. Iowa v. Tovar 541 U.S.
18 77, 80-81, 124 S.Ct. 1379, 158 L.Ed.2d 204
19 (2004)- The Supreme Court has held that any
20 amount of actual jail time has sixth amendment
21 significance implicating the right to effective
22 assistance. Argersinger v. Hamlin 407 U.S.
23 25, 92 S.Ct. 2006, 32 L.Ed.2d 530 (1972). Thus
24 sentencing for even non-capital offenses implicates
25 the right to effective assistance of counsel.
26 see e.g. Glover v. U.S. 531 U.S. 198, 121 S.Ct.
27 696, 148 L.Ed.2d 604 (2001)

28 Petitioner contends that under clearly established
federal law a prisoner is entitled to reversal of a conviction
if he or she can demonstrate (1) that counsel's representation
fell below an objective standard of reasonable representation",
and (2) that he or she was thereby prejudiced. Strickland
v. Washington 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d
674 (1984) Counsel has a duty to make a reasonable
investigation or to make a reasonable decision that makes
a particular investigation unnecessary. In most any ineffective
assistance of counsel case, a particular decision not
to investigate must be directly assessed for reasonableness

1 in all of the circumstances..." Id at 691. Thus petitioner
2 must satisfy the first prong of Strickland by demonstrating
3 the defense counsel "unreasonably" failed to investigate
4 mitigating factors and/or other sentencing considerations
5 before the court sentenced petitioner.

6 At the time of the trial, counsel for petitioner
7 was well aware of the fact that: (1) Petitioner was 16
8 years of age when the offenses occurred. (2) Petitioner
9 had a mental health history including two prior
10 hospitalizations in mental health institutions prior
11 to his arrest. Counsel was aware of the mental health
12 factors, because they were inclusive as a factor in a
13 motion for speedy trial violation that petitioner composed
14 and counsel presented to the court immediately preceding
15 the start of the trial.

16 "The legal capacity to commit a crime is an
17 essential element of responsibility, and no
18 one can be held responsible for an act or even
19 be guilty of a crime unless he has sufficient
20 capacity, mental and otherwise to commit it."
21 Wells v. California 94 L.Ed. 510, 338 U.S.
22 836.

23 "Without a criminal intent, there is no crime
24 and without the mental capacity for it, there
25 can be no criminal intent." State v. Jensen
26 352 U.S. 948, 1 L.Ed.2d 241.

27 "One who suffers from insanity at the time
28 of the commission of the offense charged, cannot
in a legal sense entertain a criminal intent."
29 Fox v. State of Nevada 316 P.2d 924, 73 Nev.
30 241 and cannot be held criminally responsible
31 for his acts and statutes providing that insanity
32 shall be no defense to a criminal charge would
33 be invalid.

34 "As the term is used in connection with the
35 defense of insanity, by whatever test it may
36 be ascertained, may be said to be that the
37 degree or quantity of mental disorder which

1 relieves one of criminal responsibility of
2 his actions." citing "Sollars v. State of Nevada
3 316 P.2d 917, 73 Nev. 248.

4 "The term "mental irresponsibility" as used
5 alternatively with "insanity" in criminal statutes,
6 means something less than total or permanent
7 insanity." State v. Rio 230 P.2d 308.

8 Yet despite the cognizance, there is nothing
9 in the record to reflect that counsel conducted any
10 investigation into any relevant sentencing considerations
11 [i.e.- petitioner's age or mental health history to mitigate
12 the excessive and illegal sentence that he received.]
13 In fact there is no evidence whatsoever that counsel
14 conducted any investigation at all into the mental health
15 history. Moreover, counsel did not interview any of the
16 mental health expert witnesses from the institution where
17 petitioner was treated prior to the commission of the
18 offenses for his mental health issues and poor impulse
19 control. Most egregious, is that , counsel made no effort
20 to raise these issues [e.g. Petitioner's age, and prior
21 mental health hospitalization- before ever being charged
22 with a crime] at any point during the trial or sentencing,
23 despite having clear knowledge of the existence of the
24 issues.

25 The United States Supreme Court in the case
26 of Gardner v. Florida 430 U.S. 358, 51 L.Ed.2d
27 402 ruled that effective assistance of counsel
28 at sentencing, as at other stages, requires
zealous and not merely perfunctory of Pro Forma
representation.

"Counsel was ineffective in not obtaining and
presenting independent expert testimony and
independent medical evidence." Sanders v.
Ratelle 21 F.3d 1446, 1456 (9th Cir. 1994)

1 Remarkably it appears as though counsel undertook
2 no investigation at all into petitioner's background,
3 or the credibility of expert witnesses who could have
4 painted petitioner in a sympathetic light. Had counsel
5 undertaken an adequate investigation (or any investigation
6 at all) into petitioner's background and other mitigating
7 factors, it seems inconceivable that counsel would have
8 allowed petitioner to be sentenced to such an excessive
9 and illegal sentence for offenses committed before the
10 age of 18 without any evidence or raising available
11 mitigating factors. Likewise it is extremely unlikely
12 that a jury, aware of petitioner's age and history of
13 treatment in two mental health facilities as a juvenile
14 for mental issues and poor impulse control immediately
15 preceding the arrest for the offenses as mitigating factors
16 in this case, would have recommended to sentence petitioner
17 to such an extreme sentence. Most significantly, it is
18 extremely uncommon for a 16 year old to receive a Life
19 Without Parole [or the functional equivalent] sentence
20 as excessive punishment in violation of the Eighth Amendment's
21 prohibition against cruel and unusual punishment for
22 juveniles who commit even the crime of murder prior to
23 attaining 18 years of age.

24 In fact, in the year following the petitioner's
25 sentence, the Nevada Supreme Court decided and set state
26 law precedence in Naovarath v. State 779 P.2d 944 (Nev.
27 1989) which barred the sentence of Life Without Parole
28 for juveniles [who commit even the crime of murder prior

1 to the age of 18] as excessive punishment in violation
2 of the Eighth Amendment's prohibition against cruel and
3 unusual punishment.

4 In order to satisfy the first prong of Strickland,
5 petitioner bears the burden of demonstrating that in
6 light of the circumstances, the identified acts or omissions
7 were "outside the range of professionally competent
8 assistance." Id at 690. Petitioner has met this burden.
9 Counsel's failure to undertake "any investigation at
10 all" into [petitioner's mental health issues and age]
11 and failed to raise the significant mitigating factors
12 before petitioner received a sentence in violation of
13 the U.S. Constitution's Eighth Amendment cannot be explained
14 as a tactical decision where counsel raised literally
15 no mitigation factors.

16 As previously stated, there is almost no possibility
17 that a jury would have imposed a Life Without Parole
18 [functional equivalent] sentence in view of petitioner's
19 age, background and mental health history. For these
20 reasons, it is unlikely that petitioner would have been
21 subjected to an illegal sentence. But for counsel's failure
22 to investigate, petitioner would have been able to receive
23 a more constitutionally sound sentence.

24 This case is similar in nature to another recent
25 decision in the Federal Ninth Circuit. Petitioner hereby
26 presents that case in accordance with applicable Ninth
27 Circuit Rules. Pursuant to Ninth Circuit Rule 36 (c)(ii),
28 petitioner hereby makes a collateral showing of a court

1 decision in a case under the Ninth Circuit jurisdiction
2 with similar factors.

3 See Davis v. Del Papa 84 Fed. Appx 988 (D.
4 Nev. 2004) In that case Davis filed a Writ
5 of Habeas Corpus challenging his 1988 guilty
6 plea conviction and life sentence without parole
7 for First Degree murder. Moreover, Davis contended
8 that his defense counsel was ineffective for
failing to: (1) advise him of his right to
perfect an appeal on his behalf; (2) file pre
trial motions on his behalf prior to the entry
of his guilty pleas and (3) conduct an independent
investigation and/or prepare a meaningful defense.

9 Specifically Davis contended that his counsel
10 was aware that Davis's statement to the police
11 could not support a charge of first degree
12 felony murder and that there was no evidence
13 in the record that defense counsel conducted
14 any investigation into other relevant sentencing
15 considerations. Namely that there was no indication
16 that defense counsel: was aware of the fact
17 that Davis had no prior adult record; did any
18 investigation into the background of the victim
19 ; did not interview any witnesses to the crime;
20 and most egregiously may not have been aware
21 that Davis was only 16 years of age at the
22 time of the offense.

23 The court found that counsel undertook no
24 investigation at all into Davis' background,
25 the victim's background, or the credibility
26 of witnesses who could paint Davis in a sympathetic
27 light. Had defense counsel undertaken an adequate
28 investigation (or any investigation at all)
into Davis's age, background or other mitigating
factors, it seems inconceivable that defense
counsel would have advised Davis to accept
a sentence of Life Without Possibility of Parole.
The court also found most significantly, "it
is extremely uncommon for 16 year olds to
receive the death penalty. The court reversed
the conviction with directions for remand and
further proceedings.

29 Based upon the illustrated contentions as disclosed
30 above petitioner asserts that counsel was ineffective
31 and he has satisfied both prongs of an ineffective assistance
32 of counsel claim as required by Strickland "supra".

33 //

//

POINT VII.

PETITIONER CONTENTS THAT IT WAS PLAIN ERROR
FOR THE COURT NOT TO ADDRESS HIS CONSTITUTIONALLY
PROTECTED RIGHT TO SPEEDY TRIAL AND THAT FURTHER
CUMULATIVE ERRORS IN THIS CASE HAVE VIOLATED
HIS DUE PROCESS RIGHTS

Petitioner contends that in this case the denial of his speedy trial right was plain error and further that the cumulative error(s) in his case subjected him to a denial of due process and unfair proceedings.

Petitioner asserts that it was plain error to deny his speedy trial right at trial and cumulative error to deny him the opportunity to have his speedy trial claim heard for twenty-two (22) years.

Under the plain error standard "to secure reversal" a defendant must prove that (1) there was error. (2) The error was plain, and (3) the error affected substantial rights. U.S. v. Geston 29 F.3d 1130 [C.A. 9 (cal) 2002; U.S. v. Sanchez 176 F.3d 1214, 1219 (9th Cir. 1999) quoting U.S. v. Turman 122 F.3d 1167, 1170 (9th Cir. 1997) citing U.S. v. Olano 507 U.S. 725, 730-32, 113 S.Ct. 1774, 123 L.Ed.2d 508 (1993) "under this standard a conviction can be reversed only if viewed in the context of the entire trial, that impropriety seriously affected the fairness, integrity or public reputation of judicial proceedings or where failing to reverse a conviction would result in a miscarriage of justice". U.S. v. Tanh Huu Lan 251 F.3d 852, 861 (9th Cir. 2001)

PLAIN ERROR

Petitioner incorporates by reference at this point the procedural history of the case in this matter relative to the speedy trial factors.

Petitioner asserts that it is clear that the Sixth Amendment guarantees that "[i]n all criminal

1 prosecutions the accused shall enjoy the right to a speedy
2 trial. Such a right is fundamental and exist not just
3 to ensure "that all accused persons be treated according
4 to decent and fair proceedings", Barker v. Wingo 407
5 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1992), but also
6 because there is a societal interest in providing a speedy
7 trial which exists separate from and at times in opposition
8 to the interests of the accused". Id at 519, 92 S.Ct.
9 2182.

10 "In assessing the merits of the claimed violation
11 of the Sixth Amendment Speedy Trial Right,
12 courts are to conduct a balancing test involving
13 four separate factors: the length of the delay,
14 the defendant's assertion of the right and
15 the prejudice to the defendant. Barker Id
16 at 407 U.S. 529, 92 S.Ct. 2182. The court found
17 in that case - we must determine "whether [the]
18 delay before trial was uncommonly long, whether
19 the government or the criminal defendant is
20 more to blame for the delay, whether in due
21 course, the defendant asserted his right to
22 a speedy trial and whether he suffered prejudice
23 as the delay's result. Doggett v. U.S. 505
24 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520,
25 (1992). We regard none of the four factors
26 identified above as either a necessary or sufficient
27 condition to the finding of a deprivation of
28 the right to a speedy trial. Rather they are
related factors and must be considered together
with such other circumstances as may be relevant.
Barker 407 U.S. at 533, 92 S.Ct. 2182.

22 Turning to the first Barker criterion, "the
23 length of delay" petitioner asserts the following. Petitioner
24 was initially charged with the acts mentioned in the
25 information in 1983, and was actually arrested by officials
26 from Nevada in 1984 while in the custody of the California
27 Juvenile Hall- Los Angeles County. Petitioner was incarcerated
28 in California from Dec. 1983 until September 2010. Nevada

1 Prosecuting Officials made no discernible attempts to
2 secure petitioner's presence in Nevada to stand before
3 the court for the charges in the information until 1986
4 (three years later). When this attempt to extradite petitioner
5 was conducted, Nevada Officials (even after a two week
6 continuance to purportedly secure the necessary evidence)
7 failed to present any evidence to substantiate that petitioner
8 was the person wanted for the charges in the information.
9 The California Officials denied the Extradition Request
10 informing the Nevada Officials that they could resubmit
11 their request when they had the necessary evidence for
12 an extradition request. Nevada Officials made no attempt
13 to immediately secure the evidence necessary for the
14 extradition at all. Another two year period went by before
15 the Nevada Officials sought to extradite petitioner for
16 the charges. Despite being charged in 1983 and incarcerated,
17 with the Nevada Officials knowing petitioner's whereabouts
18 [in prison], petitioner was not taken to trial until
19 1988. Thus there was a substantial period of delay in
20 this case for petitioner to be brought to trial. The
21 delay in this case exceeded the threshold minimum for
22 a speedy trial.

23 In Doggett v. U.S. 505 U.S. 647, 112 S.Ct.
24 2686, 120 L.Ed2d 520 (1992) the court stated
25 "depending on the nature of the charges, the
26 lower courts have generally found post accusation
27 delay presumptively prejudice at least as it
28 approached one year. Id. at 652, n.1, 112 S.Ct.
2686. Notable in this circuit we have found
that a six month delay constitutes a "borderline
case". (see U.S. v Valentine 783 F.3d 1413,
1417 (9th Cir. 1986))

Turning to the second Barker criterion, "the

1 reason for the delay" petitioner addresses the following
2 points: (1) Petitioner was incarcerated from the time
3 he was initially charged by the State of Nevada. (2)
4 Nevada Officials filed/lodged a detainer hold on petitioner
5 in 1984. (3) Nevada Officials have known that petitioner
6 was and would be incarcerated in California for several
7 years. (See exhibit P) (4) Despite knowing his location,
8 Nevada Officials failed to secure petitioner's presence
9 in Nevada for the charges until several years later.
10 (5) Despite having a duty to prosecute the case and a
11 prior denial of the request for extradition in 1986,
12 the Nevada Officials waited until 1988, after petitioner
13 filed a Motion to Dismiss the charges for a speedy trial
14 violation before they sought to extradite him again.
15 Thus it is clear there was no real discernible nor logical
16 reason for officials to wait years before bringing a
17 defendant to stand for the charged offenses. The state
18 government did not conduct a reasonable diligent prosecution
19 regarding the extradition, despite knowing the petitioner's
20 whereabouts. The government and not the defendant has
21 the obligation to prosecute a case.

22 In Doggett , supra the court held that "we
23 should presume prejudice only if the defendant
is not responsible for the delay. (Id. at 1457)

24 Turning to the third Barker criterion, the
25 assertion of the right, petitioner points to the following:
26 Petitioner was a minor when initially charged with the
27 offenses. Petitioner had no knowledge of the need to
28 assert the right to speedy trial, as he did not really

1 comprehend what this right was. When petitioner did learn
2 what this right was years later, he did file a Motion
3 To Dismiss the charges for the violation of his right
4 to a Speedy Trial. The filing of this motion, clearly
5 indicates that there was an assertion of this right in
6 this case. It wasn't until petitioner filed this motion
7 that the prosecution fully pursued petitioner's extradition
8 and had him in Nevada shortly thereafter.

9 In Barker supra, the court found that "courts
10 are not to infer a waiver from the mere silence
11 on the part of a defendant in demanding a speedy
12 trial; rather such silence is [but] one of
the factors to be considered in an inquiry
into the deprivation of the rights.. (I.d at
528 , 92 S.Ct. 2182)

13 Turning to the fourth Barker criterion, the
14 petitioner asserts the following information. Petitioner
15 was prejudiced in this case as a result of his speedy
16 trial right violation in several ways. (a) Petitioner
17 was a minor when originally charged in this matter, and
18 did not appear before a court until he was a 22 year
19 old adult. His appearance in the Juvenile Court at 22,
20 was nothing more than a perfunctory appearance in view
21 of the fact that his adult age nullified his possible
22 qualification for consideration of treatment in the Juvenile
23 Court System. (b) Petitioner was a minor with a mental
24 health history (including hospitalizations as a minor
25 in two mental health facilities) prior to his arrest.
26 Accordingly, he was entitled to have an investigation
27 conducted for his possible credible mental defense for
28 the offenses. Due to the period/ passage of time before

1 petitioner was made to stand trial for the charges,
2 the expert witnesses who treated petitioner for his mental
3 health issues as a minor, were no longer available nor
4 called. (c) The passage of time prior to standing for
5 the charged offenses, left petitioner to stand before
6 the court with no real discernible defense and no witnesses
7 that could be called (except expert witnesses who were
8 unlocatable) and whom defense counsel failed to consider
9 due to so much lapsing time from the time of the offenses.
10 Accordingly, petitioner was prejudiced by the denial
11 of his speedy trial right.

12 "Actual prejudice can be shown in three ways,
13 oppressive pretrial incarceration, anxiety
14 and concern of the accused, and the possibility
15 that the accused's defense will be impaired.
16 U.S. v. Beamon 992 F.2d at 1009, 1014 (C.A.
17 9, Or. 1993) Of these the most serious is the
18 last because the inability of a defendant adequately
19 to prepare his case skews the fairness of the
20 entire system. Barker supra 407 U.S. at 352

21 //

22 CUMULATIVE ERROR

23 Petitioner asserts that it was cumulative
24 error to deny him the opportunity to present his speedy
25 trial right violation for twenty-two years and the suspension
26 of the habeas corpus privilege for this same time period.

27 As stated previously, petitioner initially
28 filed his Petition For Writ of Habeas Corpus with the
court in 1988. However, his petition was denied citing
jurisdictional reasons. This left petitioner without
the opportunity to have his speedy trial claim duly heard
and adjudicated by the court. To compound the already
egregious errors which occurred in this case, petitioner

1 is now forced to ask this court to consider a speedy
2 trial violation, twenty-two years after the fact. Petitioner
3 has had to live for twenty-six plus years with the fact
4 that his rights have been violated, his conviction may
5 be illegal and the anxiety of living with facing a functional
6 equivalent Juvenile Life Without Parole sentence for
7 offenses committed before eighteen (18) years of age.

8 Petitioner asserts that the compounding effect
9 of constitutional errors [including but not limited to]:
10 the ineffective assistance of counsel; failure to investigate
11 a mental health history; failure to raise a possible
12 mental health inquiry despite evidence and a history
13 [where no other defense was raised at all]; violation
14 of a speedy trial; suffering from an illegal sentence/cruel
15 and unusual punishment for twenty-two years and suspension
16 of habeas corpus rights for twenty two years, all have
17 such a cumulative effect on this case that it can be
18 considered nothing but manifestly unfair, and an erosion
19 of the fundamentals guaranteed by the due process of
20 law. The errors in this case are not only numerous but
21 also substantial and reversible in their own independent
22 realm. Together they present this case as one where a
23 breach of several constitutional protections has arisen
24 that undermines even the perception of any type of fairness
25 in the proceedings.

26 "The Supreme Court has clearly established
27 that the combined effect of multiple trial
28 court errors violates due process where it
renders the resulting criminal trial fundamentally
unfair. Chambers v. Mississippi 410 U.S. 284,
298, 93 S.Ct. 1938, 35 L.Ed.2d 297 (1973)-

1 combined effect of individual errors denied
2 [Chambers] a trial in accord with traditional
3 and fundamental standards of due process and
4 "deprived" [Chambers] a fair trial. The cumulative
5 effect of multiple errors can violate due process
6 when where no single error rises to the level
7 of a constitutional violation or would independently
8 warrant reversal. Chambers 410 U.S. at 290,
9 n. 3, see also Thomas 273 F.3d 1179 ["in analyzing
10 prejudice in a case in which it is a question
11 whether any "single" trial error examined
12 in isolation is sufficiently prejudicial to
13 warrant reversal, this court has recognized
14 the importance of considering "the cumulative
15 effect of multiple errors" and not simply conducting
16 a balkanized issue by issue harmless error
17 review.]

18 Under traditional due process principles, cumulative
19 errors warrant habeas relief only where the
20 errors have "so infected the trial with unfairness
21 as to make the resulting conviction a denial
22 of due process". Such "infection" occurs where
23 the combined effect of the error has a "substantial
24 and injurious" effect or influence on the jury's
25 verdict. Brecht v. Abrahamson 507 U.S. 619,
26 637, 38, 113 S.Ct. 1710, 123 L.Ed.2d 353. In
27 simpler terms, where the combined effect of
28 individually harmless errors renders a criminal
defense "far less persuasive" than it might
[otherwise] have been, "the resulting conviction
violates due process." Chambers supra id at
294.

18 In sum the Supreme Court has clearly established
19 that the combined effect of multiple trial
20 errors may give rise to a due process violation
21 if it renders a trial fundamentally unfair,
22 even where each error considered individually
23 would not require reversal. Donnelly v. Christoforo
24 416 U.S. 637, 643, 94 S.Ct. 1068, 40 L.Ed.2d
25 431 (1974) Chambers supra id at 290 n. 3,
26 298, 302-03, 93 S.Ct. 1038. Furthermore, the
27 cumulative nature of the challenged evidence
28 does not necessarily render its inclusion (or
exclusion) harmless. Rather the fundamental
question in determining whether the combined
effect of trial errors violated a defendant's
due process rights is whether the errors rendered
the criminal defense "far less persuasive"
and thereby had a "substantial and injurious"
effect or influence on the jury's verdict.
Brecht id at 507 U.S. at 637, 113 S.Ct. 1710.

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POINT VIII.

PETITIONER CONTENDS THAT HE WAS BEEN SUBJECTED TO
SEVERAL PENALTIES FROM HIS DETAINER
HOLD BY CALIFORNIA OFFICIALS ACTING AS AGENTS
FOR NEVADA PRISON OFFICIALS AND THAT ACCORDINGLY
THESE CONDITIONS HAVE IMPLEMENTED HIS SENTENCE
ENTITLING HIM TO CREDIT FOR TIME BEING SERVED
UNDER THE CONDITIONS

The protection afforded under the Interstate Agreement on Detainers are not based on constitutional rights or the preservation of a fair trial but are designed to facilitate a defendant's rehabilitation in prison and to avoid disruption caused when charges are outstanding against the prisoner in another jurisdiction. U.S. v. Black 609 F.2d 1330, 1334 (9th Cir. 1979), cert. denied 449 U.S. 847, 101 S.Ct. 132, 66 L.Ed.2d 56 (1980)

Petitioner contends that he has been subjected to a disruption of the rehabilitation in California solely as a result of the detainer lodged against him which is the basis of an illegal sentence to the functional equivalent of Life Without Parole for offenses committed before the age of eighteen.

In this case, petitioner has suffered from not only the prejudice associated with preparing a defense to the charges, but also in his status as a prisoner in the California Prison System.

Petitioner points to the following to support his position. Petitioner's detainer hold was lodged based upon the request of the Nevada Officials submission of a conviction in case number C-84650 for which he received the sentence of fourteen (14) consecutive life sentences and a consecutive term of ninety-two years, all consecutive to the California sentence of fifty (50) years with half time credit. (see exhibit E and K). The nature

1 of the detainer being the subject of multiple consecutive
2 life sentences placed petitioner in a higher security
3 observation level designated as "Close "B" Custody" pursuant
4 to California Code of Regulations, Title 15 § 3377.1
5 (see exhibit I) Based upon petitioner's half time credit,
6 and his disciplinary free conduct for over a decade,
7 he was entitled to be housed in a lower security level
8 prison, which would afford him more rehabilitation
9 opportunities than the higher security level. Petitioner
10 was placed in a Level II (medium security) Facility based
11 upon his good behavior. However, petitioner subsequently
12 transferred from the lower security level facility to
13 a higher security level. The "SOLE" reason for the transfer
14 to the higher higher security level was because petitioner
15 had the detainer hold against him as aforementioned.
16 (See exhibit J) To this extent, petitioner asserts that
17 because his sentence was the product of a violation of
18 established state case law precedent (i.e.- the functional
19 equivalent of a life Without Parole Sentence for offenses
20 committed before eighteen), he has been subject to the
21 actual imposition of penalties for the sentence in this
22 matter. Were it not for this illegal sentence, petitioner
23 would not have been subjected to the transfer and subsequent
24 disqualification of participation in rehabilitation efforts
25 he was entitled to. Essentially the hold for this illegal
26 sentence totally negated and overrode his positive and
27 disciplinary free conduct which had entitled him to placement
28 at a lower security facility.

1 Petitioner further asserts that even though
2 his sentence was supposed to be consecutive in nature,
3 the implementing of a transfer from a lower security
4 level based solely on the detainer hold, acted to activate
5 one of the sanctions associated with serving a criminal
6 sentence (i.e.- petitioners confinement and restraint
7 of his liberty interest to rehabilitation/re-entry opportunities
8 that are precluded in a high security level). The California
9 Department of Corrections and Rehabilitation, [acting
10 as an "AGENT" for the State of Nevada in imposing the
11 detainer hold, also] are the party who acted in implementing,
12 [as an "AGENT" on the behalf of the State of Nevada],
13 this transfer based on said hold. Consequently, the adverse
14 effects of petitioner's Nevada sentence, which should
15 have been consecutive in nature, have in fact been initiated
16 by the California Officials, acting as an "AGENT" for
17 Nevada in imposing a higher security placement. Accordingly,
18 it follows that since petitioner has been subjected by
19 California Officials acting as "AGENTS" for Nevada, to
20 an increase in his security level placement and a disruption
21 to his status as a disciplinary free prisoner meriting
22 placement in a lower security facility, this conduct
23 has acted to activate the imposition of penalties associated
24 with his sentence.

25 Based upon this petitioner asserts that he
26 is entitled to credit for time served during the period
27 of confinement that he has had to endure the hardship
28 of confinement at a higher security level. The placement

1 on Close "B" Custody by California Prison Officials (acting
2 as "AGENTS" for Nevada Prison Officials in implementing
3 said detainer hold) based SOLELY upon the detainer hold
4 and illegal sentence acted as the basis of the sanctions
5 he has had to unjustifiably contend with for twenty-six
6 plus years.

7 Petitioner should be awarded credit for time
8 served for the period of twenty-six years he has been
9 penalized for the illegal sentence that has formed the
10 basis of the detainer hold.

11 //

12 //

13 CONCLUSION

14 In conclusion, petitioner has demonstrated
15 that his conviction and subsequent sentence is illegal
16 and in violation of not only state case law precedence,
17 but also the state and federal constitution. The plain,
18 cumulative and constitutional errors in this case have
19 rendered the proceedings fundamentally unfair and void
20 of any symbolism of the principles of due process of
21 law he should have been afforded throughout his trial
22 process and post conviction proceedings Petitioner had
23 his speedy trial rights violated; was denied due process
24 of law; subjected to cruel and unusual punishment as
25 a result of his illegal sentence; subjected to a violation
26 of due process of law for twenty-two years by the suspensions
27 of his habeas corpus privileges; denied the effective
28 of counsel prior to, during and after trial; denied due

1 process regarding his mental health issue; subjected
2 to both plain and cumulative errors in his case that
3 resulted in manifestly unfair proceedings and subjected
4 to several penalties as a result of a twenty-two year
5 old detainer based upon an constitutionally invalid
6 sentence.

7
8
9 Accordingly, petitioner's rights should be
10 declared and his conviction reversed.

11
12 //

13 //

14
15 Date: January 3, 2011

/s/ Andre' Boston

Andre' Boston

Petitioner , Pro-Se

PRAYER FOR RELIEF

WHEREFORE, good cause having been shown petitioner hereby prays that this court grant the following relief:

1.) Issue an order to show cause in this matter directing the respondent to respond in this matter;

2.) Grant an evidentiary hearing in this matter to address the issues raised in the Petition For Writ of Habeas Corpus;

3.) Order the appointment of counsel to represent petitioner at the evidentiary hearing in this matter;

4.) Reverse the conviction and sentence in this matter;

5.) Remand the case for further proceedings in the interests of justice in this matter.

6.) Grant any order relief that this court deems just and appropriate.

Date: January 3, 2010

/s/ Andre' D. Boston

Andre' D. Boston
Petitioner, Pro-Se


CLERK OF THE COURT

RSPN
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
THOMAS CARROLL
Chief Deputy District Attorney
Nevada Bar #004232
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

ANDRE D. BOSTON,
#0920638

Defendant.

CASE NO: 88C084650

DEPT NO: VI

STATE'S RESPONSE AND MOTION TO DISMISS DEFENDANT'S PETITION FOR
WRIT OF HABEAS CORPUS (POST-CONVICTION)

DATE OF HEARING: 03/23/2011
TIME OF HEARING: 8:30 AM

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through
THOMAS CARROLL, Chief Deputy District Attorney, and hereby submits the attached
Points and Authorities in Response to Defendant's Petition for Writ of Habeas Corpus (Post-
Conviction).

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

///

///

1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On July 7, 1988¹, the State of Nevada (hereinafter “State”) filed a Criminal Complaint
4 charging Andre Boston (hereinafter “Defendant”) with the following: Burglary (Felony –
5 NRS 205.060); Lewdness with a Minor with use of a Deadly Weapon (Felony – NRS
6 201.230); Assault with a Deadly Weapon (Felony – NRS 200.471); Battery with Intent to
7 Commit a Crime with use of a Deadly Weapon (Felony – NRS 200.400, 193.165); First
8 Degree Kidnapping with use of a Deadly Weapon (Felony – NRS 200.310, 200.320,
9 193.165); 6 Counts - Sexual Assault with use of a Deadly Weapon (Felony – NRS 200.364,
10 200.366, 193.165); Robbery with use of a Deadly Weapon (Felony - NRS 200.380,
11 193.165); and Attempt to Dissuade Victim or Witness from Reporting a Crime with use of a
12 Deadly Weapon (Felony – NRS 199.305, 193.330, 193.165).

13 On July 7, 1988, the Juvenile Division of the Eighth Judicial District Court of the
14 State of Nevada certified Defendant to be tried as an adult. In doing so, the juvenile division
15 of the district court noted the nature and seriousness of offenses charged against Defendant
16 and the persistency and seriousness of Defendant’s past adjudications or admitted criminal
17 offenses.

18 On August 2, 1988, the State filed an Information charging Defendant with the
19 following: Count 1 – Burglary; Count 2 – Lewdness with a Minor with use of a Deadly
20 Weapon; Count 3 – Assault with a Deadly Weapon; Count 4 – Battery with Intent to Commit
21 a Crime with use of a Deadly Weapon; Count 5 – First Degree Kidnapping with use of a
22 Deadly Weapon; Counts 6 through 12 – Sexual Assault with use of a Deadly Weapon;
23 Count 13 – Robbery with use of a Deadly Weapon; Count 14 – Attempt Dissuade Victim or
24 Witness from Reporting a Crime with use of a Deadly Weapon.

25 On September 12, 1988, Defendant’s jury trial commenced. On September 15, 1988,
26 Defendant’s jury returned finding him guilty of Counts 1 – 8 and Counts 10-14.

27 _____
28 ¹ Due to the age of the present case, the dates included in the State’s Statement of the Facts reflect
those available through the limited case file uploaded onto microfiche.

1 On October 20, 1988, Defendant appeared for sentencing. The court sentenced
2 Defendant to the Nevada State Prison ("NSP") as follows: **Count 1** – TEN (10) years;
3 **Counts 2 and 4** – TEN (10) years plus a consecutive TEN (10) years for the use of a deadly
4 weapon; **Count 3** – SIX (6) years; **Counts 5-8 and 10-12** – LIFE with the possibility of
5 parole plus a consecutive term of LIFE with the possibility of parole for the use of a deadly
6 weapon; **Count 13** – FIFTEEN (15) years plus a consecutive term of FIFTEEN (15) years
7 for the use of a deadly weapon; and **Count 14** – THREE (3) years plus a consecutive term of
8 THREE (3) years for the use of a deadly weapon. Defendant's sentences between the counts
9 were to all run consecutively. In addition, the court ruled that Defendant's sentences in the
10 instant case would all run consecutively to the sentence imposed in his California case.² The
11 court granted Defendant zero (0) days credit for time served. Defendant's Judgment of
12 Conviction was filed on November 7, 1988. Defendant filed a Notice of Appeal on
13 November 1, 1988, alleging only insufficient evidence for his convictions. (Boston v. State,
14 SC Docket No 19607.) The Nevada Supreme Court dismissed Defendant's appeal on the
15 merits and Remittitur issued on November 14, 1989.

16 On December 21, 1988, Defendant filed a Pro Per Petition for Writ of Habeas Corpus
17 with the Nevada Supreme Court. On December 27, 1988, the Nevada Supreme Court issued
18 its Order denying Defendant's Petition for Writ of Habeas Corpus due to lack of
19 jurisdiction.³ (SC Docket No 19625). Remittitur issued on January 15, 1989.

20 On October 22, 1990, Defendant filed a Pro Per Petition for Post Conviction Relief
21 Pursuant to NRS 177.315 in which he alleged ineffective assistance of counsel. The State
22 filed its Response to Defendant's Petition On November 28, 1990. On December 18, 1990,
23 the district court issued its Order denying Defendant's Petition on the merits. Defendant
24 filed a Notice of Appeal on January 11, 1991. On September 30, 1991, the Nevada Supreme
25 Court remanded to the district court to hold an evidentiary hearing as to trial counsel's

26
27 ² Defendant was serving a sentence in the California State Prison for kidnapping, sexual assault and
assault in Case No. A-565679.

28 ³ As Defendant was in the custody of the California State Prison, the Nevada Supreme Court lacked
jurisdiction to issue a writ in his case.

1 decision not to pursue an insanity defense and whether or not that constituted ineffective
2 assistance of counsel. (Boston v. State, SC Docket No 21871). Remittitur issued on October
3 22, 1991.

4 The district court held the evidentiary hearing ordered by the Nevada Supreme Court
5 on September 4, 1992. During the evidentiary hearing, Defendant's trial counsel testified
6 that in preparing for trial, he considered an insanity defense; however, given Defendant's
7 insistence that he was not guilty and not the perpetrator of the crime, and Defendant's wish
8 to proceed with a defense of innocence, that he decided against the insanity defense.
9 Reporter's Transcript of Evidentiary Hearing, P. 12-13, Sept. 4, 1992. However, the district
10 court noted that this would not have been a valid defense as there was no indication from the
11 evidence that Defendant did not know the difference between right and wrong. Id. at 31.

12 On June 8, 1993, the Court noted that Defendant would not be able to come to
13 Nevada to participate in an evidentiary hearing until he was released from his incarceration
14 in California as every mechanism the State had attempted to compel Defendant's attendance
15 was unsuccessful. There is no indication in the record that Defendant was told that he could
16 not file for habeas relief since he was incarcerated in California. Rather, since there was no
17 mechanism by which the State could compel Defendant's presence at his evidentiary
18 hearing, the district court videotaped the hearing, allowed Defendant to view the videotape,
19 allowed Defendant to prepare an affidavit regarding the issues he wanted to present to the
20 Court, and then took the testimony, affidavits, and arguments of counsel under advisement.

21 On October 14, 1993, the court denied Defendant's Petition for Post Conviction
22 Relief on the merits. The Order denying Defendant's petition on the merits was filed on
23 March 18, 1994. Defendant filed a Notice of Appeal on July 25, 1994. (Boston v. State, SC
24 Docket No 26034). On October 7, 1994, the Nevada Supreme Court affirmed the district
25 court's denial of Defendant's Petition on the merits. Remittitur issued on October 26, 1994.

26 On January 5, 2011, Defendant filed a Motion for Permission to Extend the Page
27 Limit for a Separate Memorandum of Points and Authorities in Support of the Petition for
28 Writ of Habeas Corpus. The State filed its Opposition on January 14, 2011. The district

1 court denied Defendant motion on January 19, 2011, as moot.

2 Defendant filed the instant petition on January 5, 2011. The State's response is as
3 follows.

4 ARGUMENT

5 **I. DEFENDANT'S PETITION IS TIME BARRED**

6 Defendant's petition is time-barred. The mandatory provisions of NRS 34.726 state:

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

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

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

13 NRS 34.726(1) (emphasis added).

14 The one-year time bar is strictly construed. In Gonzales v. State, 118 Nev. 590, 593,
15 590 P.3d 901, 902 (2002), the Nevada Supreme Court rejected a habeas petition that was
16 filed two days late, pursuant to the "clear and unambiguous" mandatory provisions of NRS
17 34.726(1). Gonzales reiterated the importance of filing the petition with the district court
18 within the one year mandate, absent a showing of "good cause" for the delay in filing.
19 Gonzales, 118 Nev. at 593, 590 P.3d at 902.

20 Here, Defendant's Judgment of Conviction was filed on November 7, 1988. The
21 Nevada Supreme Court subsequently affirmed Defendant's conviction and Remittitur issued
22 on Tuesday, November 14, 1989. Consequently, Defendant had until Wednesday,
23 November 14, 1990, to file his post-conviction habeas petition. Defendant filed a pro per
24 Petition for Writ of Habeas Corpus with the Nevada Supreme Court on December 21, 1988.
25 On December 27, 1988, the Nevada Supreme Court issued its Order denying Defendant's
26 Petition for Writ of Habeas Corpus due to lack of jurisdiction and Remittitur issued on
27 January 15, 1989.

1 On October 22, 1990, Defendant filed a Pro Per Petition for Post Conviction Relief
2 Pursuant to NRS 177.315. The district court initially denied this petition without an
3 evidentiary hearing on December 18, 1990. However, the Nevada Supreme Court reversed
4 and remanded Defendant's case for an evidentiary hearing on the issue of trial counsel's
5 reasoning for not pursuing an insanity defense. Accordingly, the district court held the
6 evidentiary hearing on September 4, 1992. Following the evidentiary hearing, and after
7 reviewing affidavits provided by Defendant and counsel as well as arguments by counsel, the
8 district court denied Defendant's petition on the merits. The Order denying Defendant's
9 petition on the merits was filed on March 18, 1994. Defendant subsequently appealed and
10 the Nevada Supreme Court affirmed the denial of Defendant's petition on the merits on
11 October 7, 1994. Remittitur issued on October 26, 1994.

12 Defendant filed the instant petition on January 5, 2011, more than twenty (20) years
13 after the deadline to file a petition for post-conviction relief had passed. Defendant's
14 petition is clearly outside of the one-year time limitation and therefore his claims must be
15 dismissed. Gonzales, 118 Nev. at 593, 590 P.3d at 902.

16 II. APPLICATION OF PROCEDURAL BARS IS MANDATORY

17 The Nevada Supreme Court has specifically held that the district court has a duty to
18 consider whether the procedural bars apply to a post-conviction petition and not arbitrarily
19 disregard them. In State v. Eighth Judicial District Court, 121 Nev. 225, 112 P.3d 1070
20 (2005), the Nevada Supreme Court held as follows:

21 Given the untimely and successive nature of [defendant's]
22 petition, the district court ***had a duty imposed by law*** to consider
23 whether any or all of [defendant's] claims were barred under
24 NRS 34.726, NRS 34.810, NRS 34.800, or by the law of the case
... [and] the court's failure to make this determination here
constituted an arbitrary and unreasonable exercise of discretion.

25 121 Nev. at 234 (emphasis added); see also State v. Haberstroh, 119 Nev. 173, 180-
26 81, 69 P.3d 676, 681-82 (2003) (wherein the Nevada Supreme Court held that parties cannot
27 stipulate to waive, ignore or disregard the mandatory procedural default rules nor can they
28

empower a court to disregard them). Defendant is required to show good cause to overcome the procedural bars before his petition may be considered on the merits. Thus, a Defendant's petition will not be considered on the merits if it is subject to the procedural bars and no good cause is shown. Id.

III. DEFENDANT HAS NOT DEMONSTRATED GOOD CAUSE OR ACTUAL PREJUDICE SUFFICIENT TO OVERCOME THE ONE-YEAR TIME BAR

"In order to demonstrate good cause, a petitioner must show that an impediment external to the defense prevented him or her from complying with the state procedural default rules." Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003); citing Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 66, 769 P.2d 72, 41 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v. Director, 104 Nev. 656, 764 P.2d 1303 (1988). Such an external impediment could be "that the factual or legal basis for a claim was not reasonably available to counsel, or that 'some interference by officials' made compliance impracticable." Hathaway, 119 Nev. at 252, 71 P.3d at 506 (quoting Murray v. Carrier, 477 U.S. 478, 488, 106 S.Ct. 2639, 2645 (1986)). Clearly, any delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

Defendant claims that the reason he waited over twenty (20) was the district court told him he could not seek habeas relief until he was present in the State. This claim is unsupported by the record and is even belied by the record. There is no indication in the court's microfiche record that Defendant was told he could not seek habeas relief while incarcerated in California. In fact, the district court spent considerable time in the early 90s trying to compel Defendant's presence for an evidentiary hearing, then taped the hearing so Defendant could see it, allowed Defendant to prepare an affidavit in response to his trial counsel's claims, then considered and reviewed the testimony of counsel and Defendant's affidavit, all while he was incarcerated in California to try to resolve Defendant's petition,

1 Claims asserted in a petition for post-conviction relief must be supported with specific
2 factual allegations, which if true, would entitle the petitioner to relief. Hargrove v. State,
3 100 Nev. 498, 502, 686 P.2d 222, 225 (1984). “Bare” and “naked” allegations are not
4 sufficient, nor are those belied and repelled by the record. Id. Defendant’s claim is without
5 merit and should be dismissed.

6 **IV. DEFENDANT’S MOTION IS PRECLUDED BY LACHES AS PER NRS**
7 **34.800**

8 NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a] period
9 exceeding five years between the filing of a judgment of conviction, an order imposing a
10 sentence of imprisonment or a decision on direct appeal of a judgment of conviction and the
11 filing of a petition challenging the validity of a judgment of conviction....” The statute also
12 requires that the State plead laches in its motion to dismiss the petition. NRS 34.800. The
13 State pleads laches in the instant case.

14 The Nevada Supreme Court issued its Remittitur affirming Defendant’s conviction on
15 November 14, 1989. Since over twenty-one (21) years have elapsed between the Supreme
16 Court’s issuance of Remittitur and the filing of the instant petition, NRS 34.800 directly
17 applies in this case. NRS 34.800 was enacted to protect the State from having to go back
18 years later to re-prove matters that have become ancient history. There is a rebuttable
19 presumption of prejudice for this very reason and the doctrine of laches must be applied in
20 the instant matter. If courts required evidentiary hearings for long delayed petitions such as
21 in the instant matter, the State would have to call and find long lost witnesses whose once
22 vivid recollections have faded and re-gather evidence that in many cases has been lost or
23 destroyed because of the lengthy passage of time. Based on the State’s arguments above,
24 this Court should summarily deny the instant petition according to the doctrine of laches
25 pursuant to NRS 34.800, as the delay of more than twenty-one (21) years in filing is
26 unexcused.

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CONCLUSION

Based on the foregoing arguments, the State respectfully requests that Defendant's petition be dismissed.

DATED this 4th day of March, 2011.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Thomas Carroll
THOMAS CARROLL
Chief Deputy District Attorney
Nevada Bar #004232

CERTIFICATE OF MAILING

I hereby certify that service of the above and foregoing, was made this 4th day of March, 2011, by depositing a copy in the U.S. Mail, postage pre-paid, addressed to:

ANDRE D. BOSTON, BAC #27846
P.O. BOX 650 (HDSP)
INDIAN SPRINGS, NV 89070-0650

/s/ C. Bush
Secretary for the District Attorney's Office

cb/TC/ckb

ORIGINAL

5

ORDR

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
ROBERT STEPHENS
Deputy District Attorney
Nevada Bar #011286
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

APR 22 3 54 PM '11

Ann L. Blum
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

ANDRE D. BOSTON, #0920638

Defendant.

CASE NO: C084650

DEPT NO: VI

88C084650

FCL

Finding of Fact and Conclusions of Law
1371313



FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: 03/23/2011

TIME OF HEARING: 8:30 A.M.

THIS CAUSE having come on for hearing before the Honorable ELISSA F. CADISH, District Judge, on the 23rd day of March, 2011, the Petitioner not being present, proceeding in forma pauperis, the Respondent being represented by DAVID ROGER, District Attorney, by and through ROBERT STEPHENS, Deputy District Attorney, and the Court having considered the matter, including briefs, transcripts, no arguments of counsel, and documents on file herein, now therefore, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On July 7, 1988, the State of Nevada (hereinafter "State") filed a Criminal Complaint charging Andre Boston (hereinafter "Defendant") with the following: Burglary (Felony - NRS 205.060); Lewdness with a Minor with use of a Deadly Weapon (Felony -

1 NRS 201.230); Assault with a Deadly Weapon (Felony – NRS 200.471); Battery with Intent
2 to Commit a Crime with use of a Deadly Weapon (Felony – NRS 200.400, 193.165); First
3 Degree Kidnapping with use of a Deadly Weapon (Felony – NRS 200.310, 200.320,
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7 Deadly Weapon (Felony – NRS 199.305, 193.330, 193.165).

8 2. On July 7, 1988, the Juvenile Division of the Eighth Judicial District Court of
9 the State of Nevada certified Defendant to be tried as an adult. In doing so, the juvenile
10 division of the district court noted the nature and seriousness of offenses charged against
11 Defendant and the persistency and seriousness of Defendant's past adjudications or admitted
12 criminal offenses.

13 3. On August 2, 1988, the State filed an Information charging Defendant with the
14 following: Count 1 – Burglary; Count 2 – Lewdness with a Minor with use of a Deadly
15 Weapon; Count 3 – Assault with a Deadly Weapon; Count 4 – Battery with Intent to Commit
16 a Crime with use of a Deadly Weapon; Count 5 – First Degree Kidnapping with use of a
17 Deadly Weapon; Counts 6 through 12 – Sexual Assault with use of a Deadly Weapon;
18 Count 13 – Robbery with use of a Deadly Weapon; Count 14 – Attempt Dissuade Victim or
19 Witness from Reporting a Crime with use of a Deadly Weapon.

20 4. On September 12, 1988, Defendant's jury trial commenced. On September 15,
21 1988, Defendant's jury returned finding him guilty of Counts 1 – 8 and Counts 10-14.

22 5. On October 20, 1988, Defendant appeared for sentencing. The court sentenced
23 Defendant to the Nevada State Prison ("NSP") as follows: **Count 1** – TEN (10) years;
24 **Counts 2 and 4** – TEN (10) years plus a consecutive TEN (10) years for the use of a deadly
25 weapon; **Count 3** – SIX (6) years; **Counts 5-8 and 10-12** – LIFE with the possibility of
26 parole plus a consecutive term of LIFE with the possibility of parole for the use of a deadly
27 weapon; **Count 13** – FIFTEEN (15) years plus a consecutive term of FIFTEEN (15) years
28 for the use of a deadly weapon; and **Count 14** – THREE (3) years plus a consecutive term of

1 THREE (3) years for the use of a deadly weapon. Defendant's sentences between the counts
2 were to all run consecutively. In addition, the court ruled that Defendant's sentences in the
3 instant case would all run consecutively to the sentence imposed in his California case.¹ The
4 court granted Defendant zero (0) days credit for time served. Defendant's Judgment of
5 Conviction was filed on November 7, 1988. Defendant filed a Notice of Appeal on
6 November 1, 1988, alleging only insufficient evidence for his convictions. (Boston v. State,
7 SC Docket No 19607.) The Nevada Supreme Court dismissed Defendant's appeal on the
8 merits and Remittitur issued on November 14, 1989.

9 6. On December 21, 1988, Defendant filed a Pro Per Petition for Writ of Habeas
10 Corpus with the Nevada Supreme Court. On December 27, 1988, the Nevada Supreme
11 Court issued its Order denying Defendant's Petition for Writ of Habeas Corpus due to lack
12 of jurisdiction.² (SC Docket No 19625). Remittitur issued on January 15, 1989.

13 7. On October 22, 1990, Defendant filed a Pro Per Petition for Post Conviction
14 Relief Pursuant to NRS 177.315 in which he alleged ineffective assistance of counsel. The
15 State filed its Response to Defendant's Petition On November 28, 1990. On December 18,
16 1990, the district court issued its Order denying Defendant's Petition on the merits.
17 Defendant filed a Notice of Appeal on January 11, 1991. On September 30, 1991, the
18 Nevada Supreme Court remanded to the district court to hold an evidentiary hearing as to
19 trial counsel's decision not to pursue an insanity defense and whether or not that constituted
20 ineffective assistance of counsel. (Boston v. State, SC Docket No 21871). Remittitur issued
21 on October 22, 1991.

22 8. The district court held the evidentiary hearing ordered by the Nevada Supreme
23 Court on September 4, 1992. During the evidentiary hearing, Defendant's trial counsel
24 testified that in preparing for trial, he considered an insanity defense; however, given
25 Defendant's insistence that he was not guilty and not the perpetrator of the crime, and
26

27 ¹ Defendant was serving a sentence in the California State Prison for kidnapping, sexual assault and
28 assault in Case No. A-565679.

² As Defendant was in the custody of the California State Prison, the Nevada Supreme Court lacked jurisdiction to issue a writ in his case.

1 Defendant's wish to proceed with a defense of innocence, that he decided against the
2 insanity defense. Reporter's Transcript of Evidentiary Hearing, P. 12-13, Sept. 4, 1992.
3 However, the district court noted that this would not have been a valid defense as there was
4 no indication from the evidence that Defendant did not know the difference between right
5 and wrong. Id. at 31.

6 9. On June 8, 1993, the Court noted that Defendant would not be able to come to
7 Nevada to participate in an evidentiary hearing until he was released from his incarceration
8 in California as every mechanism the State had attempted to compel Defendant's attendance
9 was unsuccessful. There is no indication in the record that Defendant was told that he could
10 not file for habeas relief since he was incarcerated in California. Rather, since there was no
11 mechanism by which the State could compel Defendant's presence at his evidentiary
12 hearing, the district court videotaped the hearing, allowed Defendant to view the videotape,
13 allowed Defendant to prepare an affidavit regarding the issues he wanted to present to the
14 Court, and then took the testimony, affidavits, and arguments of counsel under advisement.

15 10. On October 14, 1993, the court denied Defendant's Petition for Post
16 Conviction Relief on the merits. The Order denying Defendant's petition on the merits was
17 filed on March 18, 1994. Defendant filed a Notice of Appeal on July 25, 1994. (Boston v.
18 State, SC Docket No 26034). On October 7, 1994, the Nevada Supreme Court affirmed the
19 district court's denial of Defendant's Petition on the merits. Remittitur issued on October
20 26, 1994.

21 11. On January 5, 2011, Defendant filed a Motion for Permission to Extend the
22 Page Limit for a Separate Memorandum of Points and Authorities in Support of the Petition
23 for Writ of Habeas Corpus. The State filed its Opposition on January 14, 2011. The district
24 court denied Defendant motion on January 19, 2011, as moot.

25 12. Defendant filed the instant Petition for Writ of Habeas Corpus on January 5,
26 2011. The State filed its response and motion to dismiss on March 4, 2011.

27 13. This Court held a hearing on Defendant's petition on March 23, 2011.
28 Defendant was not present and the Court entertained no argument from the State.

1 showing of "good cause" for the delay in filing. Id., at 593, 590 P.3d at 902. The one-year
2 time bar is therefore strictly construed.

3 3. NRS 34.810(1)(b)(2) reads in pertinent part:

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

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

7 (2) Raised in a direct appeal or a prior petition for a writ of habeas corpus or
8 post conviction relief. . . .

9 4. The Court further noted in Evans v. State, "A court must dismiss a habeas
10 petition if it presents claims that either were or could have been presented in an earlier
11 proceeding, unless the court finds both cause for failing to present the claims earlier or for
12 raising them again and actual prejudice to the petitioner." 117 Nev. 609, 646-47, 29 P.3d
13 498, 523 (2001).

14 5. The Nevada Supreme Court has found that "application of the statutory
15 procedural default rules to post-conviction habeas petitions is mandatory." State v. Eighth
16 Judicial Dist. Court ex rel. County of Clark (Riker), 121 Nev. 225, 231, 112 P.3d 1070,
17 1074 (2005) (citing State v. Haberstroh, 119 Nev. 173, 180, 69 P.3d 676, 681 (2003)).
18 "Habeas corpus petitions that are filed many years after conviction are an unreasonable
19 burden on the criminal justice system. The necessity for a workable system dictates that
20 there must exist a time when a criminal conviction is final." Riker, 121 Nev. at 231, 112 P.3d
21 at 1074 (quoting Groesbeck v. Warden, 100 Nev. 259, 261, 679 P.2d 1268, 1269 (1984)).

22 6. "In order to demonstrate good cause, a petitioner must show that an
23 impediment external to the defense prevented him or her from complying with the state
24 procedural default rules." Hathaway v. State, 119 Nev. 30, 71 P.3d 503, 506 (2003); citing
25 Pellegrini v. State, 117 Nev. 860, 886-87, 34 P.3d 519, 537 (2001); Lozada v. State, 110
26 Nev. 349, 353, 871 P.2d 944, 946 (1994); Passanisi v. Director, 105 Nev. 63, 769 P.2d 72
27 (1989); see also Crump v. Warden, 113 Nev. 293, 295, 934 P.2d 247, 252 (1997); Phelps v.
28 Director, 104 Nev. 656, 764 P.2d 1303 (1988).

7. Such an external impediment could be "that the factual or legal basis for a
claim was not reasonably available to counsel, or that 'some interference by officials' made

1 compliance impracticable.” Hathaway, 71 P.3d at 506; quoting Murray v. Carrier, 477 U.S.
2 478, 488, 106 S.Ct. 2639, 2645 (1986); see also Gonzales, 118 Nev. at 595, 53 P.3d at 904;
3 citing Harris v. Warden, 114 Nev. 956, 959-60 n. 4, 964 P.2d 785 n. 4 (1998). Clearly, any
4 delay in filing of the petition must not be the fault of the petitioner. NRS 34.726(1)(a).

5 8. In addition, to find good cause there must be a “substantial reason; one that
6 affords a legal excuse.” Hathaway, 71 P.3d at 506; quoting Colley v. State, 105 Nev. 235,
7 236, 773 P.2d 1229, 1230 (1989), quoting State v. Estencion, 625 P.2d 1040, 1042 (Haw.
8 1981). The lack of the assistance of counsel when preparing a petition, and even the failure
9 of trial counsel to forward a copy of the file to a petitioner, have been found to be non-
10 substantial, not constituting good cause. See Phelps v. Director Nevada Department of
11 Prisons, 104 Nev. 656, 660, 764 P.2d 1303 (1988); Hood v. State, 111 Nev. 335, 890 P.2d
12 797 (1995).

13 9. NRS 34.800 creates a rebuttable presumption of prejudice to the State if “[a]
14 period exceeding five years between the filing of a judgment of conviction, an order
15 imposing a sentence of imprisonment or a decision on direct appeal of a judgment of
16 conviction and the filing of a petition challenging the validity of a judgment of
17 conviction....” The statute also requires that the State plead laches in its motion to dismiss
18 the petition. NRS 34.800.

19 ...

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ORDER


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

DATED this 21 day of March, 2011.


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY


ROBERT STEPHENS
Deputy District Attorney
Nevada Bar #011286

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Andre' Boston 27846
Defendant In Proper Person
P.O. Box 650 H.D.S.P.
Indian Springs, Nevada 89018

FILED
APR 19 2011
Clerk of Court

DISTRICT COURT
CLARK COUNTY NEVADA

88C084650
NOASC
Notice of Appeal (criminal)
1362808


Andre' D. Boston,

Petitioner,

Case No. 88C084650

-v-

Dept.No. VI

The State of Nevada et. al.,

Docket

Respondents,

NOTICE OF APPEAL

Notice is hereby given that the Petitioner, Andre' D.
Boston, by and through himself in proper person, does now appeal
to the Supreme Court of the State of Nevada, the decision of the District
Court (Eighth Judicial District) denying Petitioner's Writ of
Habeas Corpus on March 23, 2011.

Dated this date, April 17, 2011.

** See attached additional
material fact sheet/exhibit.
Appeal Record info.

Respectfully Submitted,



In Proper Person

RECEIVED
APR 19 2011
CLERK OF THE COURT

PETITIONER/APPELLANT'S REQUEST FOR EXPANSION OF RECORD ON APPEAL

Case Name: Andre' Boston v. Anthony Scillia, et. al. (State of Nev.)
Case Number: C084650

Petitioner/Appellant Andre' Boston, hereby provides the court with this document pursuant to NRAP Rule 10 and request to expand the record on appeal with pertinent material facts to be considered with the appeal in this matter. This information is pertinent for the Nevada Supreme Court's consideration of the appeal in this matter. This information is required for preservation of the issue on appeal and may not be disclosed in the record on appeal. However, the Supreme Court in it's review of the denial for Post-Conviction Habeas Corpus needs to be aware of these facts and petitioner/appellant discloses this info. to make an adequate appellate record.

"It is the appellant's responsibility to make an adequate appellate record." Rules Civ. Proc. Rule 51; Rules App. Proc. Rule 10 (c) Carson Ready Mix, Inc. v. First Nat. Bank of Nevada 1981, 635 P.2d 276, 97 Nev. 474.

RELEVANT MATERIAL FACTORS

The District Court ruled on the Motion To Dismiss where the State pled "laches" without giving the petitioner/appellant the opportunity to respond to the allegations as outlined in N.R.S. §34.800 (2), despite notice that the petitioner intended to respond and a Motion For Enlargement of Time so that he could respond to the State's Motion To Dismiss and plea of "laches".

The District Court issued a ruling without giving the petitioner the chance to respond to the State's Motion To Dismiss within 15 days "after service" to a Motion by the State To Dismiss the action as outlined in N.R.S. §34.470(1) and 34.750(4).

- * The State certified serving the Motion To Dismiss on March 4, 2011
- * However, the Motion to Petitioner was not actually mailed until March 10, 2011, routed by the Post Office on March 11, 2011, and not physically received by the petitioner until March 15, 2011. (See exhibit A to this document) Therefore "service" was not effected until March 15, 2011.
- * The Petitioner mailed an Informal Notice of Intent To File An Answer to the State's Response, and a Notice/Motion For Enlargement of Time on March 13, 2011, after "NOT receiving the State's Motion To Dismiss" timely. The petitioner's documents were received by the court on March 17, 2011 and filed with the court on March 22, 2011.
- * Petitioner received the State's Motion To Dismiss on March 15, 2011 Six Days later he mailed in his Opposition to the Motion To Dismiss.
- * The District Court ruled on the Habeas Petition on March 23, 2011, denying the Petition without having read or considered the petitioner's Opposition to the Motion To Dismiss. Said Opposition demonstrated that there was "NO" Procedural violation, there was "GOOD CAUSE" for any delay, there was "ACTUAL PREJUDICE" AND A FUNDAMENTAL MISCARRIAGE OF JUSTICE IN PETITIONER'S CASE.

The District Court appointed an attorney (without notifying the petitioner) at the Habeas Hearing. Counsel was ineffective, in that, she did nothing at the hearing to act as an advocate for petitioner allowing the habeas petition to be denied without:

- a.) Requesting a continuance to review the case file that she had been assigned to represent petitioner in for the hearing.
- b.) Requesting an Enlargement of Time under N.R.S. § 34.750(3) to file/serve supplemental pleadings.
- c.) Ensuring that in view of the Notice of Intent To File An Answer/Motion For Enlargement of Time, petitioner's Answer was received and reviewed by the court prior to a ruling being made, as required by applicable statutes.
- d.) Ensuring that once the State pled "laches", petitioner would ~~be given the opportunity to respond to the Motion To Dismiss~~ as required by N.R.S. § 34.800(2)

Petitioner hereby notifies the District Court of the foregoing and indicated procedural errors in this case and request that this information be made a part of the record for consideration of the appeal in this case by the Nevada Supreme Court for appropriate consideration of the appeal in this matter.

Petitioner further requests the reincorporation of the claims raised in the initial petition for writ of habeas corpus to be considered by the Nevada Supreme Court.

Date: April 11, 2011

/s/ 
Andre' D. Boston
Petitioner/Appellant, Pro-Se/Per



DAVID ROGER, District Attorney
Office of the District Attorney
200 LEWIS AVENUE
P.O. BOX 552212
LAS VEGAS, NV 89155-2212

11A9

ANDRE D. BOSTON, BAC#27846
P.O. BOX 650 (HDSP)
INDIAN SPRINGS, NV 89070-0650

PRESTORIED
FIRST CLASS



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MAILED FROM ZIP CODE 89101

45 LRDFN11 89070



AA:000774

CERTIFICATE OF SERVICE BY MAILING

I, Andre' Boston, hereby certify, pursuant to NRCP 5(b), that on this 11
day of April, 20 11, I mailed a true and correct copy of the foregoing, "Notice of Appeal / Request to Expand Appeal Record"
by depositing it in the High Desert State Prison, Legal Library, First-Class Postage, fully prepaid,
addressed as follows:

DAVID ROGER
OFFICE OF THE DISTRICT ATTORNEY
200 LEWIS AVENUE
P.O. BOX 552212
LAS VEGAS, NV 89155-2212

DATED: this 11 day of April, 20 11.

Andre' Boston
Andre' Boston # 27846
/In Propria Persona
Post Office box 650 [HDSP]
Indian Springs, Nevada 89018
IN FORMA PAUPERIS:

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding _____

Notice of Appeal
(Title of Document)

_____ filed in District Court Case-number CD84650

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

-OR-

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

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

(State specific law)

-or-

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

Andre Bustin
Signature

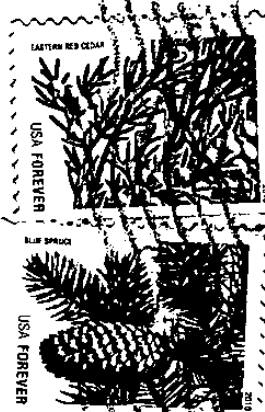
4/11/11
Date

Andre Bustin
Print Name

Petitioner/Appellant
Title

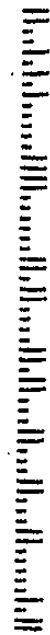
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Mare Boston
27846 H.D.S.P. 114/19
P.O. Box 658
Indian Springs, NV 89878

LOS VEGAS NV 89001
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STEVEN D. GRIFFIN
Clerk of the Court
205 Lewis Ave, 3rd Flr
Las Vegas, NV 89155-1165

8910136300



4/11/01

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DUPREE BOSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 58216
District Court Case No. C084650

FILED

MAR 02 2012

Tracie Lindeman
CLERK OF COURT

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Tracie Lindeman, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed, as follows:

"ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order."

Judgment, as quoted above, entered this 3rd day of February, 2012.

IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada this February 28, 2012.

Tracie Lindeman, Supreme Court Clerk

By: Tiffany Maccagno
Deputy Clerk



IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DUPREE BOSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58216

FILED

FEB 03 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In 1988, appellant, a juvenile at the time he committed his offenses, was convicted of one count of burglary, one count of lewdness with a minor with the use of a deadly weapon, one count of assault with a deadly weapon, one count of battery with the intent to commit a crime with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon, six counts of sexual assault with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of attempting to dissuade a victim from reporting a crime with the use of a deadly weapon. The district court sentenced appellant to

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

serve fourteen consecutive terms of life with the possibility of parole and consecutive terms totaling 92 years. This court dismissed the direct appeal. Boston v. State, Docket No. 19607 (Order Dismissing Appeal, October 24, 1989). The remittitur issued on November 14, 1989.

On December 21, 1988, appellant, while incarcerated in a California correctional facility, filed an original petition for a writ of habeas corpus in this court. This court denied the petition, noting that the Nevada Constitution did not authorize this court or the district court to issue a writ of habeas corpus on behalf of someone not actually held in custody in Nevada. Boston v. Attorney General, Docket No. 19625 (Order Denying Petition for a Writ of Habeas Corpus, December 27, 1988).

On October 22, 1990, appellant filed a petition for post-conviction relief pursuant to NRS 177.315. The district court denied the petition without conducting an evidentiary hearing. On appeal, this court entered an order of remand for the purpose of conducting an evidentiary hearing on appellant's claim that his counsel was ineffective for failing to investigate a defense of insanity. Boston v. State, Docket No. 21871 (Order of Remand, September 30, 1991). On remand, the district court was not able to conduct an evidentiary hearing in appellant's presence. Rather, the district court caused the evidentiary hearing to be videotaped, and provided appellant an opportunity to view the videotape and submit an affidavit regarding the issues that he wanted presented.² The district court again denied the petition. Appellant's appeal from this order was dismissed for lack of jurisdiction as the notice of appeal was untimely.

²Appellant was represented by counsel in the post-conviction proceedings.

Boston v. State, Docket No. 26034 (Order Dismissing Appeal, October 7, 1994).

On January 5, 2011, appellant filed a proper person post-conviction petition for a writ of habeas corpus.³ In his petition, appellant claimed that his trial counsel was ineffective for failing to investigate mitigating factors for sentencing and that his speedy trial rights were violated by the four-year delay in bringing him to trial.⁴ Appellant also claimed that the sentence structure amounted to cruel and unusual punishment because he received a sentence that was the functional equivalent of a life-without-parole sentence. Appellant relied, in part, on the recent decision in Graham v. Florida, 560 U.S. ___, 130 S. Ct. 2011 (2010), holding that the Constitution prohibits a sentence of life without parole for a juvenile offender who did not commit homicide.

In an attempt to demonstrate good cause for the petition as a whole, appellant argued that in 1988 this court informed him that he could not pursue habeas corpus relief while incarcerated in another state and that this excused his procedural defects. Further, it appears that appellant was relying upon the Graham decision as good cause for those claims relating to his sentence structure because those claims were not

³The petition was untimely filed pursuant to NRS 34.726(1) and a successive petition pursuant to NRS 34.810(1)(b)(2) and NRS 34.810(2).

⁴Appellant also claimed that the detainer Nevada placed on him during his period of incarceration in California caused him to lose opportunities for rehabilitation and affected his security level. Such claims challenge the conditions of confinement and are not permissible in a post-conviction petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

available previously. See Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265, 270 (2006) (recognizing that good cause may be established where the legal basis for a claim was not reasonably available).

The State filed a motion to dismiss the petition, arguing that the petition was procedurally barred and barred by laches.⁵ The district court rejected appellant's argument relating to the 1988 order because the district court found that the record contained no evidence of such an order. The district court did not address appellant's argument that Graham provided good cause to litigate his claims relating to the sentence structure. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate that the 1988 order provided good cause for the late and successive petition. However, we conclude that the district court erred in denying the petition without appointing counsel for the claims relating to Graham.

The district court incorrectly found that the 1988 order did not exist; a copy of the order is included in the record. Nevertheless, the district court did not err in determining that the 1988 order did not excuse the procedural defects in this case. While the statements in the 1988 order may explain the delay in timing because of the language employed regarding custody and habeas relief, the 1988 order did not provide good cause for filing a petition raising claims litigated in the 1990 petition for

⁵We note that there may be a discrepancy regarding the date the State mailed a copy of the motion to dismiss. Appellant's response to the motion to dismiss was received on the date set for hearing of the motion. For the reasons discussed below, any discrepancy did not cause prejudice in the instant case.

post-conviction relief on the merits or raising new claims that could have been raised in the 1992 petition for post-conviction relief. 1985 Nev. Stat., ch. 435, § 10, at 1232 (NRS 34.810(1)(b), (2), (3)). Thus, we affirm that portion of the district court's order rejecting a good cause argument based upon the 1988 order. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

The district court did not specifically address the good cause argument related to Graham.⁶ The applicability and scope of the decision in Graham—whether Graham applies only to a sentence of life without parole or whether Graham applies to a lengthy sentence structure that is the functional equivalent of life without parole—is complex and novel. Appellant is serving a severe sentence.⁷ Appellant requested the appointment of counsel in the prayer for relief in his petition and appellant has been previously determined to be indigent. Under these circumstances, the failure to appoint post-conviction counsel prevented a meaningful litigation of the Graham good cause argument. NRS 34.750(1). Thus, we reverse the district court's denial of this portion of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings. Accord

⁶We further note that the district court did not provide any specific discussion of the applicability of NRS 34.800(2) in light of Graham.

⁷In the instant case, it appears that appellant would have to serve a minimum of approximately 100 years before he will be eligible for parole. 1977 Nev. Stat., ch. 598, § 1, at 1626 (NRS 200.366(2)(b)); 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (NRS 200.320(2)); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165); NRS 209.446(6); NRS 213.120(1).

Rogers v. State, 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 88, December 29, 2011). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁸

Douglas, J.
Douglas

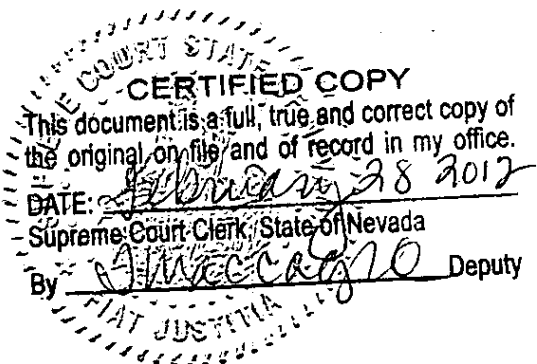
Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Andre Dupree Boston
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁸We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.





AA 000785

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DUPREE BOSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 58216
District Court Case No. C084650

REMITTITUR

TO: Steven Grierson, District Court Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and Opinion/Order.
Receipt for Remittitur.

DATE: February 28, 2012

Tracie Lindeman, Clerk of Court

By: Tiffany Maccagno
Deputy Clerk

cc (without enclosures):

Hon. Elissa F. Cadish, District Judge
Andre Dupree Boston
Attorney General/Carson City
Clark County District Attorney

RECEIPT FOR REMITTITUR

Received of Tracie Lindeman, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled cause, on MAR 02 2012.

HEATHER UNGERMANN

Deputy _____
District Court Clerk

PCR
MARTIN HART, ESQ.
Nevada Bar No. 5984
The Law Offices of Martin Hart Law, LLC
229 South Las Vegas Blvd Ste 200
Las Vegas, Nevada 89101
(702) 380-4278
Attorney for Petitioner

CASE NO.: C084650
DEPT. NO.: VI
DOCKET NO.:

Respondent.

COMES NOW PETITIONER, ANDRE DUPREE BOSTON, by and through his attorney MARTIN D. HART, ESQ. of The Law Office of Martin Hart, LLC. and files the following Writ of Habeas Corpus.

This Petition will focus on Graham issues as directed by the Nevada Supreme Court and this Court, this petition shall serve as an addition to any original Writ for Petition of Habeas Corpus, filed by Petitioner, and shall supplement the arguments therein.

Andre Dupree Boston (Boston) was found guilty of one count of burglary, one count of lewdness with a minor with the use of a deadly weapon, one count of assault with a deadly weapon, one count of battery with the intent to commit a crime with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon, six counts of sexual assault with the use of a deadly weapon, one count of robbery with the use of a deadly weapon and one count of attempting to dissuade

1 a victim from reporting a crime with the use of a deadly weapon by a jury on September 15, 1988. A
2 judgment of conviction was filed on November 7, 1988 and was sentenced to serve fourteen consecutive
3 terms of life with the possibility of parole and consecutive terms totaling 92 years. On November 1,
4 1988 Boston filed an appeal which was dismissed by the Nevada Supreme Court on November 29,
5 1988. Boston then filed a Petition for Post Conviction Relief on October 22, 1990 which was denied
6 by the District Court on December 18, 1990. Following an appeal of that decision the Nevada Supreme
7 Court remanded the matter for an evidentiary hearing. Ultimately that petition was dismissed.

8 Boston filed a petition for post-conviction relief in proper person on January 5, 2011. This
9 Court dismissed the petition on March 23, 2011. This dismissal was appealed by Boston on April 19,
10 2011 and the Nevada Supreme Court issued an order affirming in part and reversing in part remanding
11 the issue related to Graham v. Florida. This writ is in response to the order remanding.

12 III. LEGAL ARGUMENT

13 A. THE SENTENCE IMPOSED IN THE JUDGMENT OF CONVICTION IS 14 CONSTITUTIONALLY INVALID UNDER THE EIGHTH AMENDMENTS GUARANTEE OF PROTECTION FROM CRUEL AND UNUSUAL PUNISHMENT.

15 “The Constitution prohibits the imposition of a life without parole sentence on a juvenile
16 offender who did not commit homicide. A State need not guarantee the offender eventual release, but
17 if it imposes a sentence of life it must provide him or her some realistic opportunity to obtain release
18 before the end of that term.” Graham v. Florida, 130 S. Ct. 2011, 2034, 176 L. Ed. 2d 825, 850 (2010).
19 The Eighth Amendment forbids States from making the judgment at sentencing that minor offenders
20 will never be fit to reenter society. Id. at 2030, 846. The Nevada Supreme Court in its order for remand
21 recognized that the issues presented below regarding the functional equivalent of life without parole are
22 “complex and novel”. See Supreme Court Order attached hereto as Exhibit “1”. Fortunately, California
23 has just recently dealt with this exact issue in People v. Caballero, 55 Cal. 4th 262 (2012). The
24 California Supreme Court was left to determine whether a 110-year-to-life sentence imposed on a
25 juvenile convicted of nonhomicide offenses contravened Graham’s mandate against cruel and unusual
26 punishment under the Eighth Amendment; to which they concluded it did. “The gist of Graham is not

1 only that life sentences for juveniles are unusual as a statistical matter, they are cruel as well because
2 'developments in psychology and brain science continue to show fundamental differences between
3 juvenile and adult minds.'" (Caballero, 55 Cal. 4th at ___, concurring opinion, citing Graham, supra, 560
4 U.S. at p. ___ [130 S.Ct. at p. 2026]).

5 Graham provides that "a juvenile offender who did not kill or intend to kill has a twice
6 diminished moral culpability. Age and the nature of the crime each bear on the analysis. As for the
7 punishment, life without parole is 'the second most severe penalty permitted by law,' Harmelin v.
8 Michigan, 501 U.S. 957, 1001, 111 S.Ct. 2680, 115 L.Ed.2d 836, and is especially harsh for a juvenile
9 offender, who will on average serve more years and a greater percentage of his life in prison than an
10 adult offender, see, e.g., Roper v. Simmons (2005), 543 U.S. 551, at 572, 125 S.Ct. 1183. The United
11 States Supreme Court has relied on studies showing "developments in psychology and brain science
12 continue to show fundamental differences between juvenile and adult minds. For example, parts of the
13 brain involved in behavior control continue to mature through late adolescence. Juveniles are [also]
14 more capable of change than are adults, and their actions are less likely to be evidence of 'irretrievably
15 depraved character' than are the actions of adults." (Graham, 560 U.S. at p. ___ [130 S.Ct. at p. 2026],
16 quoting Roper v. Simmons (2005), 543 U.S. 551.) And none of the legitimate goals of penal
17 sanctions—retribution, deterrence, incapacitation, and rehabilitation, see Ewing v. California, 538 U.S.
18 11, 25, 123 S.Ct. 1179, 155 L.Ed.2d 108—is adequate to justify life without parole for juvenile
19 nonhomicide offenders, see, e.g., Roper, 543 U.S., at 571, 573, 125 S.Ct. 1183." Graham, 130 S.Ct.
20 2011 at 2016.

21 The Nevada Supreme Court calculated how long Boston would have to serve before he is
22 eligible for parole in footnote 7 of the order remanding the issue to this Court: "In the instant case, it
23 appears that appellant would have to serve a minimum of approximately 100 years before he will be
24 eligible for parole. 1977 Nev. Stat., ch. 598, § 1, at 1626 (NRS 200.366(2)(b)); 1973 Nev. Stat., ch 798,
25 § 6, at 1804-05 (NRS 200.320(2)); 1981 Nev. Stat., ch. 780, § 1, at 2050.(NRS 193.165); MRS
26 209.446(6); NRS 213.120(1)." Id. Using the Nevada Supreme Courts calculation Boston would be

1 eligible for parole when he is 121 years of age. The 10 year average for the mean dying age of inmates
2 at the Nevada Department of Corrections (NDOC) is 54.7 years of age. See Nevada Department of
3 Correction Fiscal Year 2010 Statistical Abstract, page 70, attached hereto as Exhibit "2". Based on the
4 statistics provided by NDOC, Boston would not be eligible for parole until 66 years *after* he is expected
5 to die. An evidentiary hearing is necessary to allow the NDOC to provide the person most
6 knowledgeable regarding the statistics of inmate deaths and what the life expectancy is of someone
7 similar to Boston. However, Boston asserts that it is within this Courts discretion to take judicial notice
8 that 121 years of age is well beyond any measure of current life expectancy.

9 The United States Supreme Court extended Graham's reasoning in Miller and "made it clear
10 that Graham's "flat ban" on life without parole sentences for juvenile offenders in nonhomicide cases
11 applies to their sentencing equation regardless of intent in the crime's commission, or how a sentencing
12 court structures the life without parole sentence." Caballero, 55 Cal. 4th 262, ___, citing Miller, 132
13 S.Ct. 2465, 2469. The Caballero Court determined "Graham's reasoning implicates any
14 life-without-parole sentence imposed on a juvenile, even as its categorical bar relates only to
15 nonhomicide offenses." Caballero, 55 Cal. 4th 262, ___ (2012), citing Miller, 567 U.S. ___ [132 S.Ct.
16 at p. 2465]. Miller therefore made it clear that Graham's "flat ban" on life without parole sentences
17 applies to all nonhomicide cases involving juvenile offenders, including the term-of-years sentence that
18 amounts to the *functional equivalent* of a life without parole sentence imposed in this case. People v.
19 Caballero, 55 Cal. 4th 262, (2012)(emphasis added).

20 The sentence imposed in the judgment of conviction is the functional equivalent of life without
21 parole because Boston will not be eligible for parole until long after he is expected to die. In fact double
22 the mean age. Under Graham, the State is required to impose a sentence that has some realistic
23 expectation or opportunity to obtain release before the end of the term. Graham, 130 S.Ct. 2011 at
24 2034. Even if you consider the top end (outlier) of the range regarding years of age from the 2009
25 NDOC Statistical Abstract 73 years of age was the oldest inmate to die in 2009; Boston would expect
26 to be dead for 48 years before he is eligible for parole. See Nevada Department of Correction Fiscal
27

1 Year 2009 Statistical Abstract, page 42 attached hereto as Exhibit "3". Even using the United States
2 Census Bureau life expectancy table for black males as a whole in the United States, Boston's Life
3 expectancy is 70.9 years. See Life Expectancy Tables 104 and 105 attached hereto as Exhibit "4".
4 There is no reasonable calculation available under the facts set out above that provides the opportunity
5 of parole or release before Boston is expected to die.

6 Boston was sentenced to 14 terms of life with the possibility of parole each to be served
7 consecutive to each other consecutive to an additional 92 years with that to be served consecutive to a
8 sentence in California. It is clear that the Court's intention was to ensure Boston remained imprisoned
9 for his natural life. "A State...must impose a sentence that provides some meaningful opportunity for
10 release based on demonstrated maturity and rehabilitation." Graham, 130 S. Ct. 2011 at 2017. Boston
11 is exactly who the U.S. Supreme Court was considering by this statement. Boston has earned his GED,
12 multiple college degrees, several certificates from the Federal Emergency Management Agency, 20 plus
13 Certificates of Appreciation/Achievement, and a plethora of Accolades and Laudatory Documentation
14 from Wardens and Staff. See Degrees, Diplomas, Certificates, Transcripts, Accolades, and Laudatory
15 Documentation attached hereto as Exhibit "5". It is not very often that a Court is given the opportunity
16 of hindsight in sentencing or re-sentencing, but Graham has afforded Boston and this Court that unique
17 opportunity. This situation allows this Court to see and consider how rehabilitated Boston is after
18 serving close to 30 years when reconsidering his sentence.

19 Despite his rehabilitation there is a complication regarding the time he has left to serve.
20 Unfortunately it appears as though Boston will only reach the average 10 year median age of death (54.7
21 years old) with a little luck. Boston has been diagnosed with Stage III Sarcoidosis which has damaged
22 his lungs, kidneys, larynx and sinus region. Boston's lungs only operate at 50% capacity and he
23 requires the use of an oxygen machine at times. Fortunately it is currently in remission but could flair
24 at any given time.

25 In order to comport with the Eighth Amendment and Graham, Boston must receive a new
26 sentence that gives him a realistic opportunity for release.

1 **B. AN EVIDENTIARY HEARING IS NECESSARY TO ASSIST THIS COURT**

2 If an evidentiary hearing is needed to calculate the life expectancy of a prisoner sentenced to
3 term of years constituting a de facto life without sentence. The hearing should also address the Nevada
4 Parole rates for crimes similar to those that Boston was convicted of. Without these two pieces of
5 information, it is impossible for the Court to define "realistic opportunity for release." It is believed
6 such information can be obtained through the testimony of employees from the Nevada Department of
7 Corrections if necessary.

8 An evidentiary hearing is also needed to present evidence of mitigating factors that reduce the
9 culpability of Boston. Such evidence is necessary to apply the reasoning of the decision in Graham and
10 Roper. Roper addresses scientific studies regarding juveniles, their development and ultimate
11 culpability. The Caballero Court gives some direction for what to do in the situation we face when
12 previous sentences run afoul of Graham.

13 Defendants who were sentenced for crimes they committed as juveniles
14 who seek to modify life without parole or equivalent defacto sentences
15 already imposed may file petitions for a writ of habeas corpus in the trial
16 court in order to allow the court to weigh the mitigating evidence in
17 determining the extent of incarceration required before parole hearings.
18 Because every case will be different, we will not provide trial courts
19 with a precise time frame for setting these future parole hearings in a
20 nonhomicide case. However, the sentence must not violate the
21 defendant's Eighth Amendment rights and must provide him or her a
22 "meaningful opportunity to obtain release based on demonstrated
23 maturity and rehabilitation" under Graham's mandate.

19 Caballero, 55 Cal. 4th 262, ____ (2012). When Boston is re-sentenced, the Court must use these
20 mitigating factors in the proceeding, thus correcting the failure of the Eighth Judicial District Court to
21 do so at Boston's original sentencing.

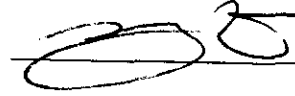
22 WHEREFORE, petitioner respectfully submits that the current sentence is in violation of the
23 Eighth Amendment and not consistent with Graham. Based upon the foregoing facts and legal
24 arguments, Petitioner Andre Dupree Boston respectfully requests that this Honorable Court conduct an

25 ///

26 ///

1 evidentiary hearing and apply an appropriate sentence.

2 DATED this 27th day of November, 2012.

3 
4 Martin Hart, Esq
5 Nevada Bar No. 005984
6 229 South Las Vegas Blvd., Ste. 201
7 Las Vegas, N89101
8 Attorney for Petitioner

8 **CERTIFICATE OF MAILING**

9 I hereby certify that on the 27 day of November, 2012, service of the foregoing
10 PETITION FOR WRIT OF HABEAS CORPUS (POST-CONVICTION) was made this date by
11 depositing a true copy of the same for mailing, first class mail, at Las Vegas, Nevada addressed as
12 follows:
13

14 James Cox, Director
15 Nevada Department of Corrections
16 P.O. Box 7011
17 Carson City, Nevada 89702

18 Attorney General
19 Heroes' Memorial Building
20 Capitol Complex
21 Carson City, Nevada 89710

22 Steven B. Wolfson
23 Clark County District Attorney
24 200 South Lewis
25 Las Vegas, Nevada 89101

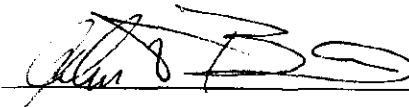
26 
27 Employee of Martin Hart
28

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDRE DUPREE BOSTON,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 58216

FILED

FEB 03 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *Angela*
DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order of the district court denying a post-conviction petition for a writ of habeas corpus.¹ Eighth Judicial District Court, Clark County; Elissa F. Cadish, Judge.

In 1988, appellant, a juvenile at the time he committed his offenses, was convicted of one count of burglary, one count of lewdness with a minor with the use of a deadly weapon, one count of assault with a deadly weapon, one count of battery with the intent to commit a crime with the use of a deadly weapon, one count of first-degree kidnapping with the use of a deadly weapon, six counts of sexual assault with the use of a deadly weapon, one count of robbery with the use of a deadly weapon, and one count of attempting to dissuade a victim from reporting a crime with the use of a deadly weapon. The district court sentenced appellant to

¹This appeal has been submitted for decision without oral argument, NRAP 34(f)(3), and we conclude that the record is sufficient for our review and briefing is unwarranted. See Luckett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

serve fourteen consecutive terms of life with the possibility of parole and consecutive terms totaling 92 years. This court dismissed the direct appeal. Boston v. State, Docket No. 19607 (Order Dismissing Appeal, October 24, 1989). The remittitur issued on November 14, 1989.

On December 21, 1988, appellant, while incarcerated in a California correctional facility, filed an original petition for a writ of habeas corpus in this court. This court denied the petition, noting that the Nevada Constitution did not authorize this court or the district court to issue a writ of habeas corpus on behalf of someone not actually held in custody in Nevada. Boston v. Attorney General, Docket No. 19625 (Order Denying Petition for a Writ of Habeas Corpus, December 27, 1988).

On October 22, 1990, appellant filed a petition for post-conviction relief pursuant to NRS 177.315. The district court denied the petition without conducting an evidentiary hearing. On appeal, this court entered an order of remand for the purpose of conducting an evidentiary hearing on appellant's claim that his counsel was ineffective for failing to investigate a defense of insanity. Boston v. State, Docket No. 21871 (Order of Remand, September 30, 1991). On remand, the district court was not able to conduct an evidentiary hearing in appellant's presence. Rather, the district court caused the evidentiary hearing to be videotaped, and provided appellant an opportunity to view the videotape and submit an affidavit regarding the issues that he wanted presented.² The district court again denied the petition. Appellant's appeal from this order was dismissed for lack of jurisdiction as the notice of appeal was untimely.

²Appellant was represented by counsel in the post-conviction proceedings.

Boston v. State, Docket No. 26034 (Order Dismissing Appeal, October 7, 1994).

On January 5, 2011, appellant filed a proper person post-conviction petition for a writ of habeas corpus.³ In his petition, appellant claimed that his trial counsel was ineffective for failing to investigate mitigating factors for sentencing and that his speedy trial rights were violated by the four-year delay in bringing him to trial.⁴ Appellant also claimed that the sentence structure amounted to cruel and unusual punishment because he received a sentence that was the functional equivalent of a life-without-parole sentence. Appellant relied, in part, on the recent decision in Graham v. Florida, 560 U.S. ___, 130 S. Ct. 2011 (2010), holding that the Constitution prohibits a sentence of life without parole for a juvenile offender who did not commit homicide.

In an attempt to demonstrate good cause for the petition as a whole, appellant argued that in 1988 this court informed him that he could not pursue habeas corpus relief while incarcerated in another state and that this excused his procedural defects. Further, it appears that appellant was relying upon the Graham decision as good cause for those claims relating to his sentence structure because those claims were not

³The petition was untimely filed pursuant to NRS 34.726(1) and a successive petition pursuant to NRS 34.810(1)(b)(2) and NRS 34.810(2).

⁴Appellant also claimed that the detainer Nevada placed on him during his period of incarceration in California caused him to lose opportunities for rehabilitation and affected his security level. Such claims challenge the conditions of confinement and are not permissible in a post-conviction petition for a writ of habeas corpus. See Bowen v. Warden, 100 Nev. 489, 686 P.2d 250 (1984).

available previously. See Bejarano v. State, 122 Nev. 1066, 1072, 146 P.3d 265, 270 (2006) (recognizing that good cause may be established where the legal basis for a claim was not reasonably available).

The State filed a motion to dismiss the petition, arguing that the petition was procedurally barred and barred by laches.⁵ The district court rejected appellant's argument relating to the 1988 order because the district court found that the record contained no evidence of such an order. The district court did not address appellant's argument that Graham provided good cause to litigate his claims relating to the sentence structure. Based upon our review of the record on appeal, we conclude that the district court did not err in determining that appellant failed to demonstrate that the 1988 order provided good cause for the late and successive petition. However, we conclude that the district court erred in denying the petition without appointing counsel for the claims relating to Graham.

The district court incorrectly found that the 1988 order did not exist; a copy of the order is included in the record. Nevertheless, the district court did not err in determining that the 1988 order did not excuse the procedural defects in this case. While the statements in the 1988 order may explain the delay in timing because of the language employed regarding custody and habeas relief, the 1988 order did not provide good cause for filing a petition raising claims litigated in the 1990 petition for

⁵We note that there may be a discrepancy regarding the date the State mailed a copy of the motion to dismiss. Appellant's response to the motion to dismiss was received on the date set for hearing of the motion. For the reasons discussed below, any discrepancy did not cause prejudice in the instant case.

post-conviction relief on the merits or raising new claims that could have been raised in the 1992 petition for post-conviction relief. 1985 Nev. Stat., ch. 435, § 10, at 1232 (NRS 34.810(1)(b), (2), (3)). Thus, we affirm that portion of the district court's order rejecting a good cause argument based upon the 1988 order. See Wyatt v. State, 86 Nev. 294, 298, 468 P.2d 338, 341 (1970) (holding that a correct result will not be reversed simply because it is based on the wrong reason).

The district court did not specifically address the good cause argument related to Graham.⁶ The applicability and scope of the decision in Graham—whether Graham applies only to a sentence of life without parole or whether Graham applies to a lengthy sentence structure that is the functional equivalent of life without parole—is complex and novel. Appellant is serving a severe sentence.⁷ Appellant requested the appointment of counsel in the prayer for relief in his petition and appellant has been previously determined to be indigent. Under these circumstances, the failure to appoint post-conviction counsel prevented a meaningful litigation of the Graham good cause argument. NRS 34.750(1). Thus, we reverse the district court's denial of this portion of appellant's petition and remand this matter for the appointment of counsel to assist appellant in the post-conviction proceedings. Accord


⁶We further note that the district court did not provide any specific discussion of the applicability of NRS 34.800(2) in light of Graham.

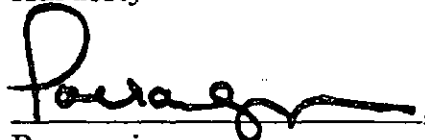
⁷In the instant case, it appears that appellant would have to serve a minimum of approximately 100 years before he will be eligible for parole. 1977 Nev. Stat., ch. 598, § 1, at 1626 (NRS 200.366(2)(b)); 1973 Nev. Stat., ch. 798, § 6, at 1804-05 (NRS 200.320(2)); 1981 Nev. Stat., ch. 780, § 1, at 2050 (NRS 193.165); NRS 209.446(6); NRS 213.120(1).

Rogers v. State, 127 Nev. ___, ___ P.3d ___ (Adv. Op. No. 88, December 29, 2011). Accordingly, we

ORDER the judgment of the district court AFFIRMED IN PART AND REVERSED IN PART AND REMAND this matter to the district court for proceedings consistent with this order.⁸

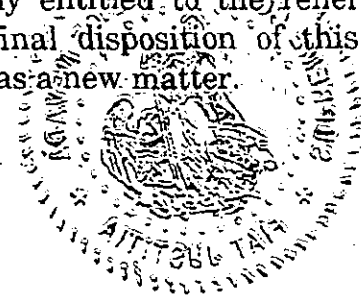
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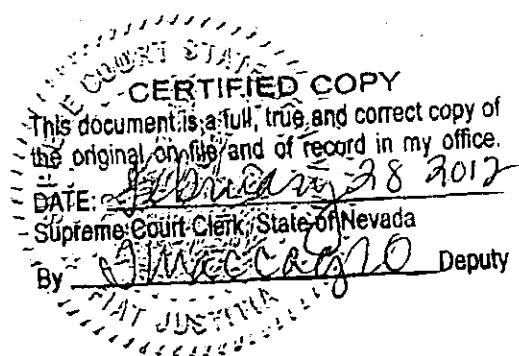
 J.
Hardesty

 J.
Parraguirre

cc: Hon. Elissa F. Cadish, District Judge
Andre Dupree Boston
Attorney General/Carson City
Clark County District Attorney
Eighth District Court Clerk

⁸We have considered all proper person documents filed or received in this matter. We conclude that appellant is only entitled to the relief described herein. This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter.





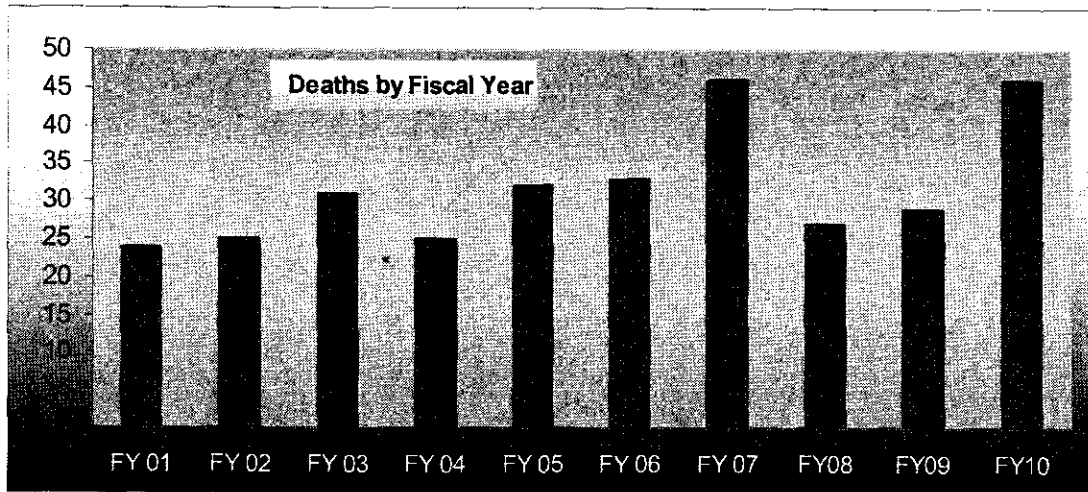
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EXHIBIT 2

Inmate Deaths

A small portion of offenders are lost every year due to death. From SFY- 2001 to SFY-2010, between 24 and 46 offenders passed away while incarcerated at the NDOC. Until Fiscal Year 2007, research staff tracked and published offender deaths along with their demographic information inclusive of their causes of death; however, confidentiality laws no longer permit such information to be accessible to the general public. The median dying age for the period SFY01 to SFY10 ranged from 50 to 58 years.

Exhibit #103



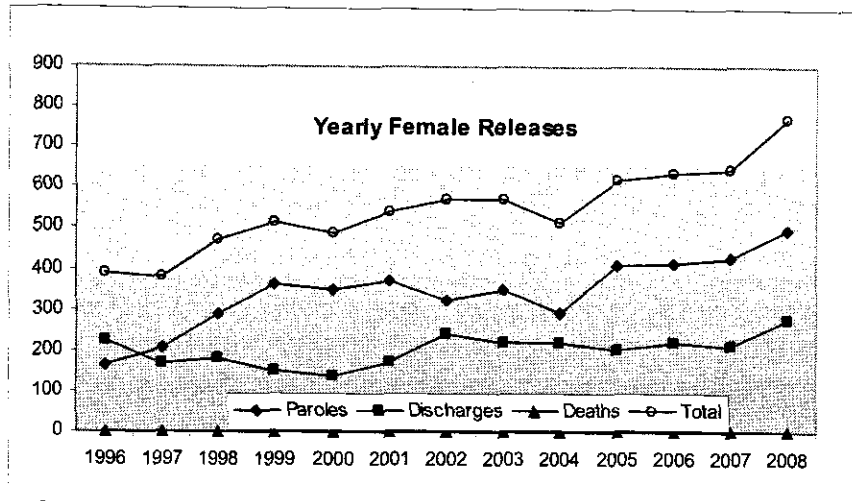
FY 07 and FY10 had the largest number of offender losses due to death.

Exhibit #104

FY	Deaths	% Change	Median Dying Age
FY 01	24		50
FY 02	25	4.17%	57
FY 03	31	24.00%	55
FY 04	25	-19.35%	55
FY 05	32	28.00%	56
FY 06	33	3.13%	52
FY 07	46	39.39%	52
FY 08	27	-41.30%	56
FY09	29	7.41%	58
FY10	46	68.97%	56
Avg	32	5.68%	54.7

EXHIBIT 3

Figure 43



Inmate Deaths

Offender deaths have ranged from 24 to 46 each year since Calendar Year 2001. Due to confidentiality laws, NDOC can no longer report causes of death. The median dying age of deceased inmates has not fluctuated much since 2001, with the median age being 57 in CY 2001 and 56 in CY 2009 and ranging between 26 and 73 years of age.

Figure 44

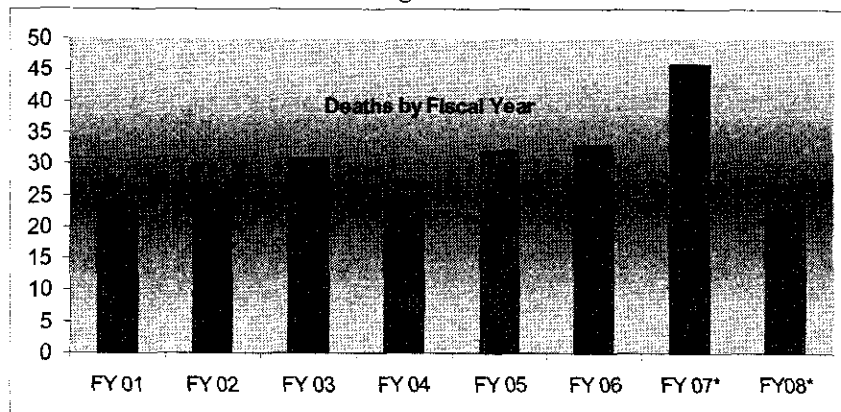


Table 28

FY	FY01	FY 02	FY 03	FY 04	FY 05	FY 06	FY 07	FY 08	FY09	Average
Deaths	24	25	31	25	32	33	46	27	29	30.22
% Change		4.17%	24.00%	19.35%	28.00%	3.13%	39.39%	41.30%	7.41%	5.68%

EXHIBIT 4

Table 104. Expectation of Life at Birth, 1970 to 2008, and Projections, 2010 to 2020

[In years. Excludes deaths of nonresidents of the United States. See Appendix III]

Year	Total			White			Black		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
1970.....	70.8	67.1	74.7	71.7	68.0	75.6	64.1	60.0	68.3
1980.....	73.7	70.0	77.4	74.4	70.7	78.1	68.1	63.8	72.5
1981.....	74.1	70.4	77.8	74.8	71.1	78.4	68.9	64.5	73.2
1982.....	74.5	70.8	78.1	75.1	71.5	78.7	69.4	65.1	73.6
1983.....	74.6	71.0	78.1	75.2	71.6	78.7	69.4	65.2	73.5
1984.....	74.7	71.1	78.2	75.3	71.8	78.7	69.5	65.3	73.6
1985.....	74.7	71.1	78.2	75.3	71.8	78.7	69.3	65.0	73.4
1986.....	74.7	71.2	78.2	75.4	71.9	78.8	69.1	64.8	73.4
1987.....	74.9	71.4	78.3	75.6	72.1	78.9	69.1	64.7	73.4
1988.....	74.9	71.4	78.3	75.6	72.2	78.9	68.9	64.4	73.2
1989.....	75.1	71.7	78.5	75.9	72.5	79.2	68.8	64.3	73.3
1990.....	75.4	71.8	78.8	76.1	72.7	79.4	69.1	64.5	73.6
1991.....	75.5	72.0	78.9	76.3	72.9	79.6	69.3	64.6	73.8
1992.....	75.8	72.3	79.1	76.5	73.2	79.8	69.6	65.0	73.9
1993.....	75.5	72.2	78.8	76.3	73.1	79.5	69.2	64.6	73.7
1994.....	75.7	72.4	79.0	76.5	73.3	79.6	69.5	64.9	73.9
1995.....	75.8	72.5	78.9	76.5	73.4	79.6	69.6	65.2	73.9
1996.....	76.1	73.1	79.1	76.8	73.9	79.7	70.2	66.1	74.2
1997.....	76.5	73.6	79.4	77.2	74.3	79.9	71.1	67.2	74.7
1998.....	76.7	73.8	79.5	77.3	74.5	80.0	71.3	67.6	74.8
1999.....	76.7	73.9	79.4	77.3	74.6	79.9	71.4	67.8	74.7
2000 ¹	76.8	74.1	79.3	77.3	74.7	79.9	71.8	68.2	75.1
2001 ¹	76.9	74.2	79.4	77.4	74.8	79.9	72.0	68.4	75.2
2002 ¹	76.9	74.3	79.5	77.4	74.9	79.9	72.1	68.6	75.4
2003 ^{1,2}	77.1	74.5	79.6	77.6	75.0	80.0	72.3	68.8	75.6
2004 ^{1,2}	77.5	74.9	79.9	77.9	75.4	80.4	72.8	69.3	76.0
2005 ^{1,2}	77.4	74.9	79.9	77.9	75.4	80.4	72.8	69.3	76.1
2006 ^{1,2}	77.7	75.1	80.2	78.2	75.7	80.6	73.2	69.7	76.5
2007 ^{1,2}	77.9	75.4	80.4	78.4	75.9	80.8	73.6	70.0	76.8
2008 ^{1,2,3}	78.0	75.5	80.5	78.4	75.9	80.8	74.3	70.9	77.4
Projections: ⁴									
2010.....	78.3	75.7	80.8	78.9	76.5	81.3	73.8	70.2	77.2
2015.....	78.9	76.4	81.4	79.5	77.1	81.8	75.0	71.4	78.2
2020.....	79.5	77.1	81.9	80.0	77.7	82.4	76.1	72.6	79.2

¹ Life expectancies for 2000–2008 were calculated using a revised methodology and may differ from those previously published. ² Multiple-race data were bridged to the single-race categories of the 1977 OMB standards for comparability with other reporting areas. ³ Data are preliminary. ⁴ Based on middle mortality assumptions; for details, see source: U.S. Census Bureau, "2008 National Population Projections," released August, 2008, <<http://www.census.gov/population/www/projections/2008projections.html>>.

Source: Except as noted, U.S. National Center for Health Statistics, National Vital Statistics Reports (NVSR), *Deaths: Preliminary Data for 2008*, Vol. 59, No. 2, December 2010.

Table 105. Life Expectancy by Sex, Age, and Race: 2008

[Average number of years of life remaining. Excludes deaths of nonresidents of the United States. Data are preliminary]

Age	Total ¹			White			Black		
	Total	Male	Female	Total	Male	Female	Total	Male	Female
0.....	78.0	75.5	80.5	78.4	75.9	80.8	74.3	70.9	77.4
1.....	77.6	75.1	80.0	77.8	75.4	80.2	74.3	71.0	77.4
5.....	73.7	71.2	76.1	73.9	71.5	76.3	70.5	67.1	73.5
10.....	68.7	66.2	71.1	68.9	66.5	71.3	65.5	62.2	68.5
15.....	63.8	61.3	66.1	64.0	61.6	66.3	60.6	57.2	63.6
20.....	58.9	56.5	61.2	59.2	56.8	61.4	55.8	52.6	58.7
25.....	54.2	51.9	56.4	54.4	52.2	56.6	51.1	48.0	53.9
30.....	49.4	47.2	51.5	49.6	47.5	51.7	46.5	43.5	49.1
35.....	44.7	42.6	46.7	44.9	42.8	46.9	41.8	39.0	44.3
40.....	40.0	37.9	41.9	40.2	38.1	42.1	37.3	34.5	39.6
45.....	35.4	33.4	37.2	35.6	33.6	37.4	32.8	30.1	35.1
50.....	31.0	29.0	32.7	31.1	29.2	32.8	28.6	26.0	30.8
55.....	26.7	24.9	28.3	26.8	25.0	28.3	24.6	22.2	26.7
60.....	22.6	20.9	24.0	22.6	21.0	24.0	20.9	18.7	22.7
65.....	18.7	17.2	19.9	18.7	17.3	19.9	17.5	15.5	18.9
70.....	15.0	13.7	16.0	15.0	13.7	16.0	14.3	12.6	15.4
75.....	11.7	10.6	12.5	11.6	10.6	12.4	11.3	10.0	12.2
80.....	8.8	7.9	9.4	8.8	7.9	9.3	8.8	7.8	9.5
85.....	6.5	5.8	6.8	6.4	5.7	6.8	6.8	6.0	7.1
90.....	4.6	4.1	4.8	4.5	4.1	4.8	5.1	4.6	5.3
95.....	3.2	2.9	3.3	3.2	2.9	3.3	3.8	3.5	3.8
100.....	2.3	2.1	2.3	2.2	2.0	2.2	2.8	2.6	2.8

¹ Includes races other than White and Black.

Source: U.S. National Center for Health Statistics, National Vital Statistics Reports (NVSR), *Deaths: Preliminary Data for 2008*, Vol. 59, No. 2, December 2010.

EXHIBIT 5

Q

E X H I B I T

" Q "

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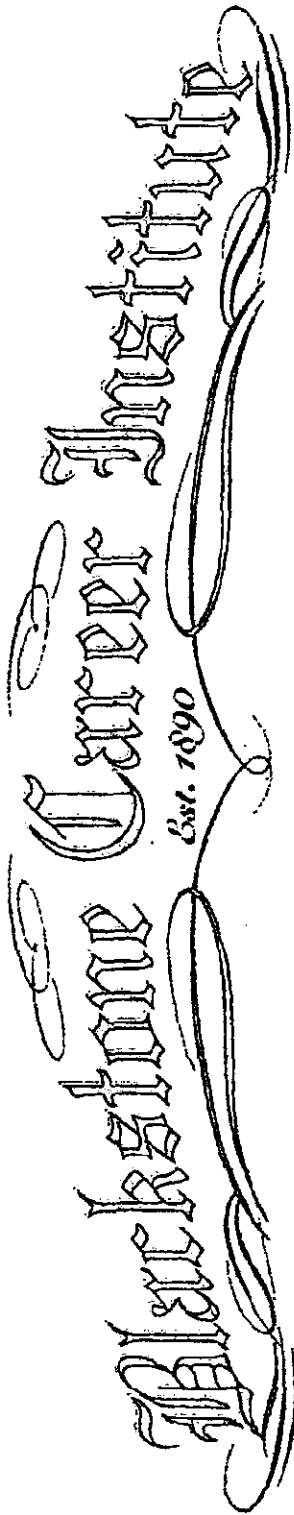
COLLEGE TRANSCRIPT

COLLEGE TRANSCRIPT

HONOR SOCIETY INFORMATION

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121

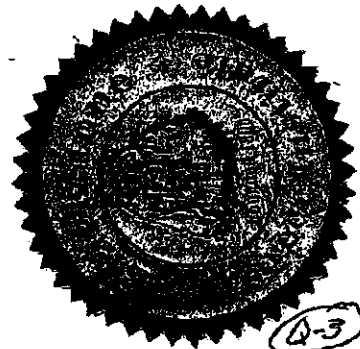


Confers this Diploma of
Legal Assistant/Paralegal
with Distinction upon
André Boston

*who has fulfilled all the requirements prescribed by the School and is entitled
to all of the honors, rights and privileges thereunto appertaining.*

In Testimony Whereof this recognition of achievement is

GIVEN this 5th day of January 2010



K. J. McElroy
President

Valerie S. Schuler B.S., M.Ed.
Director of Education

Q-3
122

Coastline Community College

Upon recommendation of the Faculty and
under authorization granted by the Board of Trustees
the Degree of

Associate in Arts

is hereby conferred upon

Andre D Boston

with all Rights, Benefits and Privileges appertaining there to
in evidence of the satisfactory completion of the program.

Given in the month of May, two thousand and eight.



Walter S. Howard

President, Board of Trustees

King George Curcio

President

(A-4)
123

Coastline Community College

Certificate of Completion

Awarded to

Andre D Boston

who has satisfactorily completed the program of prescribed courses in

General Business

Given in the month of May, two thousand and eight.



J. McGowan

Dean of Business

Erving J. H. Currier

President

(Q-5)
124



COASTLINE
COMMUNITY COLLEGE

714-241-6251

Gayle Berggren, Ph.D.

August 6, 2008

Mr. Andre' Boston
D-03868 L5-102L
PO Box 2210
Susanville, CA 96127-2210

Dear Mr. Boston:

I apologize for not recognizing your membership in Alpha Sigma Lambda Honor Society sooner. This is our first time trying to get the ASL Honor Society going, and it is a bit confusing. When we receive our supplies from the National ASL society, you will be receiving a membership card and lapel pin, with another welcome letter! I will enclose a welcome letter now, so you will have an early one, for your records.

I'm glad for your interest in joining Alpha Sigma Lambda.

Gayle Berggren, Ph.D.

Advisor,
Chi Gamma Theta Chapter
Alpha Sigma Lambda Honor Society

cc:

Dawn Boston

Q-6
125



COASTLINE
COMMUNITY COLLEGE

Gayle Berggren, Ph.D.
714-241-6251

Welcome to membership in Alpha Sigma Lambda!

Alpha Sigma Lambda is a nonprofit national honor society devoted to the advancement of scholarship and to the recognition of nontraditional students continuing their higher education. It was established in 1945 to honor superior scholarship and leadership in adult students. It is the oldest and the largest chapter-based honor society for full-and part-time adult students in the United States. It serves two and four-year public and private colleges and universities, with a focus on bringing honor to adult students.

Its motto is:

A "first in

Σ Scholarship and

Λ Leadership"

We are pleased to recognize your scholastic achievements, and that you have decided to join the Coastline chapter of Alpha Sigma Lambda.

Gayle Berggren, Ph. D.

Professor, Psychology
Advisor, Chi Gamma Theta Chapter
Alpha Sigma Lambda
(714) 241-6251

Q-7
126

Alpha Sigma Lambda

This is to certify that

Andre' Boston

has been duly elected and inducted to membership in

Chi Gamma Theta

Done on this 10th day of September, 2008 A.D.



Patricia Brown

National President

Gayle Beyersse Ph.D.

Chapter Councilor

First in Leadership and Scholarship

A National Honor Society for Adult Learners in Continuing Higher Education

Q-8
127

Your Membership is important to

- you
- your career
- your future



Alpha Sigma Lambda



ALPHA SIGMA LAMBDA
The Premier National Honor Society
for adult students in higher education

certifies that Andre Boston
of the Chi Gamma Theta chapter at
Coastline College
has been duly inducted as a lifetime member.
Angela Bergeron PhD
Alpha Chapter Sigma
First in Scholarship and Leadership

Q-9
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COASTLINE COLLEGE, 11460 WARNER AVENUE, FOUNTAIN VALLEY, CA 92708-2697

PAGE 1		STUDENT PERMANENT RECORD				Date High School Graduation	
NAME		Date of Birth		HIGH SCHOOL ATTENDED		MO. YR.	
STUDENT NUMBER		Mo. Day Year		MAJOR		ENTERED	
BOSTON, ANDRE D		07 17 1967		DIAMOND BAR HIGH SCHOOL		10/1984	
454-53-2634				LIBERAL ARTS		SPRG-02	
IGETC	COURSE NO.	COURSE TITLE	Units	Units	Grade	Grade Points	Code
*** SPRING 2003 ***							
4I	PSYCH100	INTRO TO PSYCHOLOGY	3.00	3.00	A	12.00	
		TERM GPA 4.00	3.00	3.00		12.00	
		CUM GPA 4.00	3.00	3.00		12.00	
*** SUMMER 2004 ***							
5B	BIOL 100	INTRODUCTION TO BIOLOGY	3.00	3.00	A	12.00	
		TERM GPA 4.00	3.00	3.00		12.00	
		CUM GPA 4.00	6.00	6.00		24.00	
*** FALL 2004 ***							
5A	GEOL 100	GENERAL GEOLOGY	3.00	3.00	A	12.00	
	HLTH 100	HEALTH	3.00	3.00	A	12.00	
		TERM GPA 4.00	6.00	6.00		24.00	
		CUM GPA 4.00	12.00	12.00		48.00	
*** SPRING 2005 ***							
4U	SOC 100	INTRO TO SOCIOLOGY	3.00	3.00	B	9.00	C
		TERM GPA 3.00	3.00	3.00		9.00	
		CUM GPA 3.80	15.00	15.00		57.00	
*** SUMMER 2005 ***							
	PHIL 115	LOGIC/CRITICAL THINKING			W		
		TERM GPA 0.00					
		CUM GPA 3.80	15.00	15.00		57.00	
*** FALL 2005 ***							
	COUN 105	SUCCESSING IN COLLEGE	3.00	3.00	A	12.00	C
	PHIL 115	LOGIC/CRITICAL THINKING	3.00	3.00	B	9.00	C
		TERM GPA 3.50	6.00	6.00		21.00	
		CUM GPA 3.71	21.00	21.00		78.00	

FEDERAL LAW PROHIBITS
ACCESS TO THIS RECORD
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WITHOUT THE WRITTEN
CONSENT OF THE STUDENT

(CONTINUED ON PAGE 2)

I CERTIFY THAT THIS IS A TRUE COPY OF THE PERMANENT RECORD (SEAL MUST BE AFFIXED)

DATE: 09/26/06 TIME: 9:24

RAISED SEAL NOT REQUIRED
This official college transcript is printed
on security paper and does not
require a raised seal.

Jennifer McDonald



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EAST COMMUNITY COLLEGE DISTRICT

COASTLINE COLLEGE, 11460 WARNER AVENUE, FOUNTAIN VALLEY, CA 92708-2597

Form 15-636-5-1

PAGE 2

STUDENT PERMANENT RECORD

NAME BOSTON, ANDRE D.		HIGH SCHOOL ATTENDED DIAMOND BAR HIGH SCHOOL		Data High School Graduation MO. 10/1984	
STUDENT NUMBER 454-53-2634		MAJOR LIBERAL ARTS		ENTERED SPRG-03	
Date of Birth Mo. Day Year 07 17 1967					

IGETC	COURSE NO.	COURSE TITLE	Units Attempted	Units Earned	Grade	Grade Point	Code
		*** SPRING 2006 ***					
4A	ANTHRD 100	CULTURAL ANTHROPOLOGY	3.00	3.00	A	12.00	C
6A	SPAN 180	ELEMENTARY SPANISH 1	5.00	5.00	B	15.00	
		TERM GPA 3.38	8.00	8.00		27.00	
		CUM GPA 3.62	22.00	29.00		105.00	
		*** SUMMER 2006 ***					
	BUS 120	PERSONAL FINANCIAL PLNG	3.00	3.00	A	12.00	C
		TERM GPA 4.00	3.00	3.00		12.00	
		CUM GPA 3.66	32.00	32.00		117.00	
		*** FALL 2006 ***					
	ENGL 099AB	COMPOSITION FUNDAMENTAL		3.00	CR		E
		TERM GPA 0.00		3.00			
		CUM GPA 3.66	32.00	35.00		117.00	
		*** WORK IN PROGRESS ***					
	COMM 100	INTRO MASS COMMUNICATN	3.00				
	SOC 110	MARRIAGE AND FAMILY	3.00				
		*** TOTALS ***					
	SINCE SUM 89	GPA 3.66	32.00	35.00		117.00	
	TOTAL	GPA 3.66	32.00	35.00		117.00	
		*** LAST ITEM ***					

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CODES: I-INTERSESSION COURSE

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Jennifer McDonald



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ACCREDITATION

APPROVALS

ACADEMIC CALENDAR

COURSE NUMBERING

GRADING

CODES

C - GRADE CHANGE

E - CREDIT BY EXAMINATION

R - REPEATED COURSE

UR - UNOFFICIAL REPEAT

HS - USED FOR HIGH SCHOOL CREDIT

ⓐ - ACADEMIC RENEWAL

INTERSESSION COURSE

ACADEMIC PROBATION AND DISQUALIFICATION

Students who do not maintain a satisfactory grade point average or course completion ratio are placed on probation and may become subject to dismissal.

ACADEMIC RENEWAL

Academic Renewal permits the alleviation of previously recorded substandard academic work which is not reflective of a student's present ability. See the College Catalog for Academic Renewal Policies and Procedures.

COURSE REPETITION

Only courses which fall into the following categories may be repeated.

- VERIFY FIRST TECHNOLOGIES**





COASTLINE
COMMUNITY COLLEGE

An Invitation to Join Alpha Sigma Lambda ΑΣΛ

11460 Warner Avenue
Fountain Valley, CA 92708-2597
(714) 546-7600
<http://coastline.edu>
President: Ding-Ja H. Currie, Ph.D.

Dear Coastline Student:

5-19-08

Congratulations on your success at Coastline College! Our records indicate that you may be eligible to apply for membership in *Alpha Sigma Lambda*, the largest adult nontraditional student honor society in the United States. ASL has served the adult student population for more than 60 years, serving two- and four-year public and private colleges and universities, with a focus on bringing honor to adult students.

What are the benefits and advantages of Alpha Sigma Lambda ΑΣΛ membership?

- It is the premier nationally recognized honor society for full- and part-time adult students.
- It motivates students to achieve academic and leadership excellence.
- It offers scholarship opportunities through ΑΣΛ Adult Educational Foundation.
- It makes available insignia items such as lapel pins, and honor cords to be worn at graduation.
- It provides an esprit de corps among nontraditional/adult students.
- It improves retention and motivation of adult students.
- It recognizes and honors the achievements of our adult students.
- It furthers career attainment by enabling students to list membership in an honor society on their job applications.

What are the Membership Requirements?

Membership is obtained through a local Alpha Sigma Lambda chapter and is open to students who:

- have an overall GPA of 3.2
- are matriculated and have completed at least 24 units of college coursework at Coastline with 12 units in liberal studies
- have received a written invitation to membership
- have paid the once-in-a lifetime registration fee of \$10

What do I Need to do to Join?

Please complete and return the attached *Alpha Sigma Lambda* application form to join the Coastline College *Alpha Sigma Lambda* Chapter known as Chi Gamma Theta.

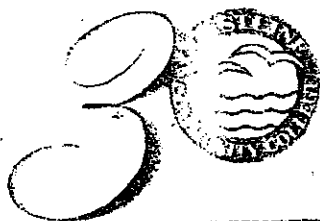
Gayle Berggren, Ph. D.

Professor, Psychology
Advisor, Chi Gamma Theta
(714) 241-6251

COAST COMMUNITY COLLEGE DISTRICT

Board of Trustees: Mary L. Hornbuckle, Walter G. Howald, Jim Moreno, Jerry Patterson, Armando R. Ruiz, and Paul Bunch, Student Trustee • Chancellor: Kenneth D. Yglesias, Ed.D.

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Three decades of

INNOVATIVE EDUCATION

Coastline Community College
11460 Warner Avenue
Fountain Valley, CA 92708-2597
(714) 546-7600
<http://coastline.edu>
President: Ding-Jo H. Corrie, Ph.D.

Dear Andre Boston

Your petition for graduation has been evaluated and the following condition prevails:

- ☒ You have met all requirements for the Associate in Arts degree and Certificate of Achievement.
- ☐ You will be eligible for the Associate in Arts degree and Certificate of Achievement at the end of this semester providing you complete the course(s) in which you are currently enrolled and maintain a "C" average.
- ☐ You will have met all the course requirements for the Associate in Arts degree and Certificate of Achievement upon completion of the course(s) in which you are currently enrolled. However, you are dangerously close to achieving less than a "C" average. You are encouraged to make every effort to obtain the highest grades you can in order to meet the 2.00 grade point average requirement.

I will be sending you Associate in Arts degree and Certificate of Achievement a few weeks after the end of the semester.

Graduation ceremonies will be held May 18, 2008 at which time the Associate in Arts degree and/or Certificate of Achievement will be conferred. Information will be mailed two months prior to the ceremony. If you have any questions, please call me at (714) 241-6325.

Sincerely,

Rachel Cervantes
Admissions & Records Technician

COAST COMMUNITY COLLEGE DISTRICT

President: Ding-Jo H. Corrie, Ph.D. Vice President: Armando R. Ruiz, Ed.D. Student Trustee: Chancellor: Kenneth G. Yates, Ed.D.

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STATE OF CALIFORNIA

NAME: BOSTON CDC #: D03868 HOUSING: B3-235L

Inmate BOSTON, CDC# D03868, has completed 6 units (Business 110, Business 150) in the Fall 2007 semester through Coastline Community College Distance Learning Program; a special extended education project at Pleasant Valley State Prison. His dedication to self-improvement and continued learning is to be commended.

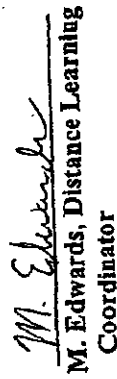
ORIGINAL: C-FILE

CC: CCI

STUDENT FILE

INMATE


J. Wynne, Principal


M. Edwards, Distance Learning
Coordinator

DATE: 04-10-08

PVSP/B FACILITY

LAUDATORY/INFORMATIONAL CHRONO

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