

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Electronically Filed
May 08 2015 03:52 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

CHARLES JOSEPH MAKI

Petitioner,

vs.

THE STATE OF NEVADA,
Respondent.

Sup. Ct. Case No. 67717

Case No. CR94-0345

Dept. 8

RECORD ON APPEAL

VOLUME 5 OF 8

DOCUMENTS

APPELLANT

Charles J Maki #42820
Warm Springs Correctional Center
P O Box 7007
Carson City, Nevada 89702

RESPONDENT

Washoe County District Attorney's
Office
Terrance McCarthy, Esq.
P O Box 11130
Reno, Nevada 89502-3083

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Case No. CR94-0345

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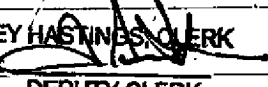
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IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

FILED

AUG - 2 2013

JOEY HASTINGS, CLERK
BY  DEPUTY CLERK

CHARLES JOSEPH MAKI
PETITIONER

V.

CASE # CR94-0345

STEVEN KOSACH HON. JUDGE ECT.

DEPT. 8

2ND JUDICIAL DIST. COURT DIST. 8

IN AND FOR THE COURT OF WASHOE
RESPONDER

REQUEST FOR SUBMISSION

COMES NOW PETITIONER, CHARLES JOSEPH MAKI,
APPEARING IN PROPER PERSONA, AND FILES THIS REQUEST FOR
SUBMISSION, IN THE ABOVE CASE NO. CR94-0345.

THIS REQUEST IS MADE PURSUANT TO N.R.S. 34.160,
N.R.S. 34.170, N.R.S. 34.190, WHERE AS, PETITIONER RESPECTFULLY
REQUEST THAT HIS MOTION FOR APPOINTMENT OF COUNSEL,
AFFIDAVIT IN SUPPORT OF THE MOTION FOR APPOINTMENT OF COUNSEL
PURSUANT TO N.R.S. 34.750 (A)(B)(C), BE SUBMITTED TO THE
APPROPRIATE HONORABLE JUDGE FOR REVIEW AND DECISION, ALSO PETITIONER
WRIT OF PROHIBITION/WRIT OF HABEAS CORPUS WITH ATTACHED EXHIBITS,
NOTICE OF APPEAL, DESIGNATION OF RECORDS ON APPEAL ALSO PURSUANT
TO N.R.S. 34.160, N.R.S. 34.170, N.R.S. 34.190, FOR REVIEW AND DECISION
AND TO BE FORWARDED TO THE NEVADA SUPREME COURT.

DATED THIS 01 DAY OF AUG 2003

Charles J. Maki

CHARLES J. MAKI

1 **Code 1310**

2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR94-0345
Dept. No. 8

11 **CHARLES JOSEPH MAKI,**

12 **Defendant.**

13 _____ /
14
15 **CASE APPEAL STATEMENT**

16 This case appeal statement is filed pursuant to N.R.A.C.P. 3(2).

17 1. This appeal is from an order entered by the Honorable Steven Kosach .

18 2. Appellant is Charles Joseph Maki. Appellant is representing himself in Proper
19 Person on appeal:

20 3. Appellant's address is:

21 Charles Joseph Maki #42820
22 Warm Springs Correctional Center
23 P O BOX 7000
24 Carson City, Nevada 89702

25 4. Respondent is the State of Nevada. Respondent is represented by: the Washoe
26 County District Attorney's Office

27 Terrance McCarthy, Esq.
28 P.O. Box 30083
Reno, NV 89520

5. Respondent's attorney is licensed to practice law in Nevada

6. Appellant was not represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was not granted leave to proceed in forma pauperis in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant's Notice of Appeal does not designate the Judgment, order or part thereof being appealed as required by N.R.A.C.P. 3 (C)(1)(B). It appears that Appellant is appealing the Judgment filed on April 12, 1994..
11. The case has been been the subject of a previous appeal to the Supreme Court Supreme Court No. 26049.
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 20th day of August 2013.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Annie Smith
Annie Smith
Deputy Clerk

1 **Code 1350**
2
3
4
5

6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

10 **vs.**

Case No. CR94-0345

11 **CHARLES JOSEPH MAKI,**

Dept. No. 8

12 **Defendant.**
13 _____/

14
15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of
17 Nevada, County of Washoe; that on the 20th day of August, 2013, I electronically filed the
18 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

21 Dated this 20th day of August, 2013
22

23 JOEY ORDUNA HASTINGS
24 CLERK OF THE COURT

25 By /s/ Annie Smith
26 Annie Smith
27 Deputy Clerk
28

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 08-20-2013:09:30:12
Clerk Accepted: 08-20-2013:09:30:45
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Case Appeal Statement
Certificate of Clerk
Filed By: Deputy Clerk ASmith
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-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

FILED

Electronically

08-26-2013:09:30:10 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 3949041

**IN THE SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845
District Court Case No. CR940345

CR94-0345
D8

RECEIPT FOR DOCUMENTS

TO: Charles Joseph Maki
Washoe County District Attorney
Joey Orduna Hastings, Washoe District Court Clerk ✓

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

08/21/2013 Appeal Filing fee waived. Criminal.

08/21/2013 Filed Notice of Appeal/Proper Person. Appeal docketed in the Supreme Court this day.

DATE: August 21, 2013

Tracie Lindeman, Clerk of Court
sw

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 08-26-2013:09:30:10
Clerk Accepted: 08-26-2013:09:34:40
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Court Receipt for Doc
Filed By: Deputy Clerk ASmith

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The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

FILED

Electronically

10-01-2013:03:38:28 PM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4035340

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63845

FILED

SEP 25 2013

CR94-0345
D8
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *A. Malone*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported order denying a petition for a writ of mandamus/prohibition. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

No decision, oral or written, had been made on the petition when appellant filed his appeal on August 2, 2013. Because appellant failed to designate an appealable order, we lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.

Gibbons, J.
Gibbons

Douglas, J.
Douglas

Saitta, J.
Saitta

cc: Hon. Lidia Stiglich
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk ✓

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 10-01-2013:15:38:28
Clerk Accepted: 10-01-2013:15:39:25
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Ct Ord Dismis Appeal
Filed By: Deputy Clerk ASmith

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

FILED

Electronically

11-05-2013:11:47:30 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4115061

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845

District Court Case No. CR940345

CR94 - 0345

D8

REMITTITUR

TO: Joey Orduna Hastings, Washoe 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: October 22, 2013

Tracie Lindeman, Clerk of Court

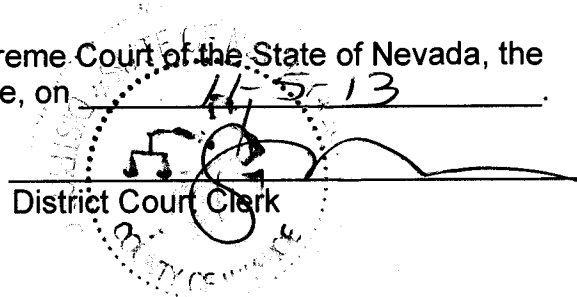
By: Rory Wunsch
Deputy Clerk

cc (without enclosures):

Hon. Lindi Stiglich
Charles Joseph Maki
Washoe County District Attorney
Attorney General/Carson City

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 11-5-13.


District Court Clerk

FILED

Electronically

11-05-2013:11:47:30 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4115061

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 63845
District Court Case No. CR940345

CR94-0345

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 this appeal DISMISSED."

Judgment, as quoted above, entered this 25th day of September, 2013.

IN WITNESS WHEREOF, I have subscribed
my name and affixed the seal of the Supreme
Court at my Office in Carson City, Nevada this
October 22, 2013.

Tracie Lindeman, Supreme Court Clerk

By: Rory Wunsch
Deputy Clerk



FILED

Electronically

11-05-2013:11:47:30 AM

Joey Orduna Hastings

Nevada State Court

Transaction # 4115061

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 63845

FILED

SEP 25 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a proper person appeal from a purported order denying a petition for a writ of mandamus/prohibition. Second Judicial District Court, Washoe County; Lidia Stiglich, Judge.

No decision, oral or written, had been made on the petition when appellant filed his appeal on August 2, 2013. Because appellant failed to designate an appealable order, we lack jurisdiction over this appeal, and we

ORDER this appeal DISMISSED.

Gilbons, J.
Gilbons

Douglas, J.
Douglas

Saitta, J.
Saitta

cc: Hon. Lidia Stiglich
Charles Joseph Maki
Attorney General/Carson City
Washoe County District Attorney
Washoe District Court Clerk

CERTIFIED COPY
This document is a full, true and correct copy of
the original on file and of record in my office.
DATE: OCTOBER 22ND, 2013
Supreme Court Clerk, State of Nevada
By [Signature] Deputy
FIAT JUSTITIA

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 11-05-2013:11:47:30
Clerk Accepted: 11-05-2013:11:48:46
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Supreme Court Remittitur
Supreme Ct Clk's Cert &Judg
Supreme Ct Ord Dismis Appeal
Filed By: Deputy Clerk SHambright
You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

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The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

ORIGINAL
COURT

1219

DC-9900052331-005
STATE VS CHARLES JOSEPH MAKI 5 Pages
District Court 12/30/2013 02:30 PM
Washoe County
NOC
1215
JVC

1 CHARLES MAKI # 42820

2 Warm Springs Correctional Center

3 3301 East Fifth Street- PO Box 7007

4 Carson City, Nevada, 89702

5
6 DEFENDANT, In Propria Persona

7
8
9
10 IN THE SECOND JUDICIAL DISTRICT COURT OF
11 THE STATE OF NEVADA IN AND OF THE
12 COUNTY OF WASHOE

13 CHARLES MAKI
14 PETITIONER

15 Vs.

16 STATE OF NEVADA
17 RESPONDENT

18 WARDEN SMITH

CASE No. CR94-0345

DEPT. No. - 8 -

Dkt. No. _____

19
20
21 MOTION FOR APPOINTMENT OF COUNSEL PURSUANT TO N.R.S. 34.750

22
23
24
25 Petitioner CHARLES MAKI, pursuant to NRS 34.750 (1) (2), request this Court
26 to appoint counsel to represent him in this habeas petition for the following reasons:

- 27 1. Plaintiff if not able to afford counsel, see the motion to proceed in forma pauperis and
28 affidavit in support filed with this Court.

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2. The issues involved in this case are complex.
3. The issues involved in this case will require investigation, which the petitioner cannot do while, confined in prison.
4. Petitioner has a very limited knowledge of the law.

DATED this 13th day of DECEMBER, 20 17.

Charles Mah
Sign Your Name Here
CHARLES MAH 92800
Print Your Name Here NDOC#
P.O. Box 7007
Warm Springs Correctional Center
Carson City, Nevada 89702

COUNT
COPY

IN THE SECOND JUDICIAL DISTRICT COURT
OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
PETITIONER

V.S.

STATE OF NEVADA
WARDEN SMITH
RESPONDENT

CASE NO: CR 94-0345

DEPT No: 8

MOTION FOR APPOINTMENT
OF COUNSEL.

COMES NOW, CHARLES MAKI, PETITIONER IN PRO, SE AND WITH
THE ASSISTANCE OF AN INMATE LIVING IN THE SAME UNIT,
TILL HE IS BEING TRANSFERRED OFF YARD, FOR HELPING INMATES
PER, THE ATTORNEY GENERAL'S OFFICE OF NEVADA.

THE PETITIONER HAS LITTLE KNOWLEDGE IN PREPARING THESE
PROCEEDINGS FOR THIS HONORABLE COURT. PETITIONER HAS -
COMPLETELY NO KNOWLEDGE OR UNDERSTANDING OF HOW TO
WRITE OR PREPARE ANY OF THESE PROCEEDINGS AND PLEADING
(WRIT OF HABEUS CORPUS) THAT HE IS NOW SUBMITTING BEFORE
BEFORE THIS HONORABLE COURT, PURSUANT TO N.R.S. 34.160; N.R.S.
34.170; NRS. 34.190; NRS 34.750 RULES OF CIVIL PROCEDURE
OF THE STATE OF NEVADA, NV.S. CT. BUT ASKS THIS HONORABLE
COURT TO GRANT APPOINTMENT OF COUNSEL, SO AS TO HOLD A -
COMPLETE INVESTIGATION AND HEARING TO DETERMINE WITH
EVIDENCE, TESTIMONY, D.N.A. TESTING, TO SHOW HOW INEFFECTIVE
ALL PREVIOUS ATTORNEYS WERE WHEN REPRESENTING THE

PETITIONER IN CASE NO: CR94-0345.. TO FIND OUT IF
IN FACT THERE HAS BEEN A FUNDAMENTAL MISCARriage
OF JUSTICE OVER THE PAST 19 YRS BY NOT ALLOWING ~~any~~
COMPETENT ATTORNEYS TO REPRESENT PETITIONER TO PROVE
HIS "FACTUAL-INNOCENCE" OF THE CRIME OF SEXUAL ASSAULT
AND LEWDNESS, THAT PETITIONER WAS CHARGED WITH AND CONVICTED

THIS MOTION FOR APPOINTMENT OF COUNSEL IS BASED
UPON THE FOLLOWING FACTS..

PETITIONER RESPECTFULLY SUBMITS THAT UPON REVIEW OF THE
ENTIRE CASE # CR94-0345 THIS HONORABLE COURT CAN/WILL
SEE THE MANY PROBLEMS IN THIS CASE SUPRA, AND IS LEGALLY
AT THIS PARTICULAR JUNCTURE IS SO CONVOLUTED BY ALL OF
THE LITIGATION BY PREVIOUS ATTORNEYS. PETITIONER STILL HAS
AFTER 19 YEARS TO DATE STILL MAINTAINS THAT HE'S "FACTUALLY
INNOCENT," OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS AS
RECORD CAN PROVE. PETITIONER HAS NO OTHER PLAIN OR SPEEDY
REMEDIES OTHER THAN TO BRING THIS HA'BEUS CORPUS INTO
THIS HONORABLE COURT OF THE 2ND JUDICIAL DISTRICT PURSUANT
TO N.R.S. 34.160; N.R.S. 34.170; NRS 34.190; NRS 34.750 TO
PRESENT FACTS AND ISSUES OF FACTUAL INNOCENCE, AS THERE IS
A CONSTITUTIONAL VIOLATION THAT HAS AND WILL CONTINUE TO -
RESULT IN PETITIONERS, NOT BEING ABLE TO SHOW OR PRESENT
EVIDENCE, TESTIMONY, WITNESSES, D.N.A. TESTING, RAPE KITS TO
SHOW THAT PETITIONER IS FACTUALLY INNOCENT OF THE CRIME
SHOWING THAT PETITIONER NEVER COMMITTED THIS CRIME OVER
19 YRS AGO SEE I.E., STATE VS. MITCHELL, 122 N.W.1269, 149
P.3RD 33 (2006)...

PETITIONER FURTHER SUBMITS TO THIS HONORABLE COURT THAT [THIS MOTION FOR APPOINTMENT OF COUNSEL] IS NOT ONLY TO ASSIST THE PETITIONER, BUT ALSO TO HELP ASSIST THIS - HONORABLE COURT IN BETTER UNDERSTANDING OF THIS - CONVOLUTED, COMPLEX, COMPLICATED CASE, PURSUANT TO N.R.S. 34.750(A)(B)(C); SEE C. F. MONTGOMERY V. PINCHAK, 249 F3d 492, AT 499 (3RD CIR 2002); FARMER V. HAAS, 990 F.2d 319, AT 322 (7TH CIR. 1993); BARNES V. EIGHTH JUDICIAL DISTRICT COURT OF STATE OF NEVADA, IN AND FOR CLARK COUNTY, 103 NU. 679, 748 P.2d 483 (1987); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 SUPREME COURT 594 (1972). THIS MOTION FOR APPOINTMENT OF COUNSEL MUST BE REVIEWED AND IF POSSIBLE RULED IN PETITIONER'S FAVOR. . . . AFTER 19 YRS OF LITIGATING WITH AND THRU INEFFECTIVE - ASSISTANCE OF COUNSEL AT (TRIAL) AND (ON DIRECT APPEAL) AND (POST CONVICTION) PROCEEDINGS TO NU.S. CT. ALONG WITH NO TYPE OF PHYSICAL EVIDENCE - FACTUAL EVIDENCE, NO RAPE KIT, NO D.N.A. TESTING, NO ONLY ONE WITNESS FROM OUT OF STATE TO TESTIFY IN BEHALF OF PETITIONER, NOT ANY OF THE MANY WHO WANTED TO COME TO COURT IN PETITIONER'S DEFENSE, TO PROVE HIS FACTUAL INNOCENCE OF SEXUAL ASSAULT/LEWDNESS, THIS IS A GRAVE FUNDAMENTAL MIS-CARRIAGE OF JUSTICE OVER THE LAST 19 YRS, BY NOT ALLOWING THE PETITIONER TO PROPERLY PRESENT HIS CASE, DO TO PRIOR (JAL). PETITIONER SUBMITS THAT WITH THIS MOTION FOR APPOINTMENT OF COUNSEL THERE'S MORE THAN SUFFICIENT FACTUAL EVIDENCE PER TO STATE V. MITCHELL, SUPRA. SHOWING PETITIONER'S FACTUAL INNOCENCE OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS.

DATE DECEMBER / DAY 13 / YEAR 2013

NAME CHARLES MAKI NDOC # 42820

SIGN CHARLES MAKI - #42820

COURT-ORIGINAL

39669

FILED

2013 DEC 30 PM 2:30

JOEY BERNARD MARCHES
CLERK OF THE COURT

BY: *[Signature]*

CR94-0345
STATE VS CHARLES JOSEPH MAKI 49 Pages
District Court 12/30/2013 02:30 PM
Washoe County
hnc

CHARLES MAKI # 42820

Warm Springs Correction Center

PO Box 7007

Carson City, Nevada, 89702

DEFENDANT, In Propria Persona

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI

Petitioner,

vs. STATE OF NEV.

WARDEN SMITH

Respondent

Case No.: CR 94-0345

Dept. No.: -8-

PETITION FOR WRIT OF HABEAS CORPUS POST-CONVICTION

INSTRUCTIONS:

- (1) This petition must be legibly handwritten or typewritten, signed by the petitioner and verified.
- (2) Additional pages are not permitted except where noted or with respect to the facts, which you rely upon to support your grounds for relief. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of separate memorandum.
- (3) If you want an attorney appointed, you must complete the Affidavit in Support of Request to Proceed in Forma Pauperis. You must have an authorized officer at the prison

complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution.

- (4) You must name as respondent the person by whom you are confined or restrained. If you are in a specific institution of the department of prisons, name the warden or head of the institution. If you are not in a specific institution of the department but within its custody, name the director of the department of prisons.
- (5) You must include all grounds or claims for relief, which you may have regarding your conviction or sentence. Failure to raise all grounds in this petition may preclude you from filing future petitions challenging your conviction and sentence.
- (6) You must allege specific fact supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege ineffective.
- (7) If your petition challenges the validity of your conviction or sentence, the original and one copy must be filed with the clerk of the district court for the county in which the conviction occurred. Petitions raising any other claims must be filed the clerk of the district court for the county in which you are incarcerated. One copy must be mailed to the respondent, one copy to the attorney general's office, and one copy to the district attorney of the county in which you were convicted or to the original prosecutor if you are challenging your original conviction or sentence. Copies must conform in all particulars to the original submitted for filing.

PETITION

1. Name of institution and county in which you are presently imprisoned or where and how you are presently restrained of your liberty: WARM SPRINGS CORR. CENTER, CARLON CITY NV. 89702
2. Name and location of court which entered the judgment of conviction under attack: 2ND JUDICIAL COURT DIST. 8 [JUDGE STEVEN KOSACHA]
3. Date of judgment of conviction: 5-17-1994

4. Case Number: CR94-0345

5. (a) Length of sentence: THREE-TEN TO LIFE'S ^{possibility of} plus 5x10 yrs PAROLE

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

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

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

7. Nature of offense involved in conviction being challenged: THREE SEXUAL ASSAULTS
with CHILD UNDER 14 - LEWDNESS 5 COUNTS with CHILD UNDER 14 yr OF AGE.

8. What was your plea? (Check One)

(a) Not Guilty X

(b) Guilty /

(c) Guilty but mentally ill /

(d) Nolo Contendere /

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

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

(a) Jury X

(b) Judge without jury: /

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

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

13. If you did appeal, answer the following:

(a) Name of court: NEVADA SUPREME COURT - DIRECT APPEAL

1 (b) Case Number or Citation: CR94-0345

2 (c) Result: DENIED

3 (d) Date of Result: 5-09-1996

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

5
6
7 14. If you did not appeal, explain briefly why you did not:

8 N/A

9
10 15. Other than a direct appeal from the judgment of conviction and sentence, have you previously
11 filed any petitions, applications or motions with respect to this judgment in any court, state or federal?

12 Yes X No _____

13 16. If your answer to Number "15" was "yes," give the following information:

14 (a) (1) Name of Court: NEVADA SUPREME COURT - U.S. DIST. COURT NV.

15 (2) Nature of proceeding: FIGHTING JUDGMENT OF CONVICTION

16
17
18 (3) Grounds raised: _____

19
20
21 (4) Did you receive an evidentiary hearing on your petition, application or motion?

22 Yes X No _____

23 (5) Result: _____

24 (6) Date of Result: 1997

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

27
28 (b) As to any second petition, application or motion, give the same information:

1 (1) Name of Court: _____
 2 (2) Nature of proceeding: N/A
 3 (3) Grounds raised: _____
 4 (4) Did you receive an evidentiary hearing on your petition, application or motion?
 5 Yes _____ No _____
 6 (5) Result: _____
 7 (6) Date of Result: _____
 8 (7) If known, citations of any written opinion or date of orders entered pursuant to
 9 each result: _____

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

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

14 (1) First petition, application or motion?
 15 Yes X No _____
 16 Citation or date of decision: 10-10-2000

17 (2) Second petition, application or motion?
 18 Yes _____ No _____
 19 Citation or date of decision: _____

20 (3) Third or subsequent petitions, applications or motions?
 21 Yes _____ No _____
 22 Citation or date of decision: _____

23 (e) If you did not appeal from the adverse action on any petition, application or motion, explain
 24 briefly why you did not. (You must relate specific facts in response to this question. Your response may
 25 be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed
 26 five handwritten or typewritten pages in length.) N/A

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

a. Which of the grounds is the same: N/A

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

c. Briefly explain why you are again raising these grounds. (You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) N/A

18. If any of the grounds listed in Numbers 23 (a), (b), (c) and (d), or listed on any additional pages you attached, were not previously presented in any other court, state or federal, list briefly what grounds were not so presented, and give your reasons for not presenting them. (You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) (E)

ATTORNEY NEVER ADDRESS GROUNDS OR FACTS (IAC) SUPREME COURT OF NV. NEVER MADE
DIVISION ON

19. Are you filing this petition more than 1 year following the filing of the judgment of conviction or the filing of a decision on direct appeal? If so, state briefly the reasons for the delay. You must relate specific facts in response to this question. Your response may be included on paper which is 8½ x 11 inches attached to the petition. Your response may not exceed five handwritten or typewritten pages in length.) (YES) THIS IS MY 2ND PETITION FOR WRIT OF HABEAS CORPUS, POST CONVICTION

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

If yes, state what court and the case number: N/A

21. Give the name of each attorney who represented you in the proceeding resulting in your conviction and on direct appeal: JANET C. SMUCK, ROBIN WRIGHT, DAVID HARDY,

JOSEPH PLATIER, KARLA BUTKO..

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

Yes _____ No X

If yes, specify where and when it is to be served, if you know: _____

N/A

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

(a) Ground One: PURSUANT TO 48 HR RULE: VIOLATION OF 4TH U.S.C.A. 48 HR CONSTITUTIONAL LAW SET BY THE UNITED STATES SUPREME COURT (1992-1994) IAC. IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(b) Ground Two: APPELLATE ATTORNEY (ROBIN WRIGHT) DIRECT APPEAL REFUSED TO ARGUE PHYSICAL/PSYCHOLOGICAL EXAMINATION. (IAC). DIRECT APPEAL, IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(c) Ground Three: RIGHT TO TESTIFY IN TRIAL (IAC). (JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS, DUE PROCESS/EQUAL PROTECTION. IN VIOLATION OF THE DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

(d) Ground Four: VERY LARGE COLOR FULL TATTOO IN PUBLIC AREA THAT ALLEGED VICTIM (SUMMER MENEZES) COULDN'T (I.O.) IN VIDEO TAPE WITH DETECTIVE, OR PREL. HEARING, YET DID I.O. TATTOO ON REBUTAL IN TRIAL BY D.A. (IAC). TRIAL, NO DIRECT APPEAL IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH U.S.C.A. (E) GROUND FIVE DIRECT APPEAL (IAC) COUNSEL REFUSED TO RAISE SERIOUS ISSUES ON DIRECT APPEAL. ~~REBUTAL~~ (ROBIN WRIGHT) IN VIOLATION OF DEFENDERS 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

23. (a) GROUND ONE: PURSUANT TO 48 HR RULE: VIOLATION OF 4TH USCA.

48 HR - CONSTITUTIONAL LAW, SET BY THE UNITED STATES SUPREME COURT (1992-1994)

IAC. IN VIOLATION OF DEFENDENT'S 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

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

PLEASE SEE: ATTACHED, GROUNDS AND FACTS

OF MEMORANDUM OF POINTS AND AUTHORITIES

J. H. H. H.

23. (b) GROUND TWO: Appellate - Direct Appeal Attorney (Robin Wright)
REFUSED TO ARGUE, PHYSICAL/PSYCHOLOGICAL EXAMINATION OF ALLEGED
VICTIMS. IAC. IN VIOLATION OF DEFENDENTS 5TH, 6TH, 14TH CONSTITUTIONAL
RIGHTS. / / / /

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

PLEASE SEE: ATTACHED, GROUNDS AND FACTS

OF MEMORANDUM OF POINTS AND AUTHORITIES.

T. H. H. H.

23. (c) GROUND THREE: THE RIGHT TO TESTIFY IN TRIAL JAC.

(JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS, DUE PROCESS/EQUAL
PROTECTION.. IN VIOLATION OF DEFENDERS 5TH 6TH AND 14TH USLA.

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

PLEASE SEE: ATTACHED GRAND AND

FACTS OF MEMORANDUM OF POINTS AND AUTHORITIES

THANK YOU

23. (d) GROUND FOUR: DEFENDERS, "VERY LARGE" COB OR FULL TATOO IN PUBLIC
AREA THAT ALLEGED VICTIM (SUMMER MENESS) COULD NOT T.O. IN VIDEO
TAPING WITH DETECTIVE, OR IN PRELIM. HEARING, BUT DID IN TRIAL ON RE-BUTAL
BY THE D.A. IAC. BY DIRECT APPEAL AND TRIAL CONSIDER VIOLATION OF 5-6-14 USLA.

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

PLEASE SEE: ATTACHED GROUNDS AND

FACTS OF MEMORANDUM OF POINTS AND

AUTHORITIES.

Thayer

23.(E) GROUND FIVE: DIRECT APPEAL JAC COUNSEL
(ROBIN WRIGHT) REFUSED TO RAISE SERIOUS ISSUES ON DIRECT APPEAL.
IN VIOLATION OF DEFENDENT'S 5TH, 6TH, 14TH CONSTITUTIONAL RIGHTS.

23.(E) SUPPORTING FACTS.

PLEASE SEE: ATTACHED GROUND AND
FACTS OR MEMORANDUM OF POINT AND
AUTHORITIES.

THANK YOU.

1
2
3 CONCLUSION

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

6 EXECUTED at WARM SPRINGS CORR. CENTER on the 13th day of
7 DECEMBER, 20 13.

9 Charles Maki
10 Sign Your Name Here

11 CHARLES MAKI
12 Print Your Name Here
13 Warm Springs Correctional Center
14 P.O. Box 7007
15 Carson City, NV 89702

14 Signature of Attorney (if any)
15
16 Attorney for Petitioner
17
18 Address Here

19 VERIFICATION

20 Under penalty of perjury, the undersigned declares that he is the petitioner named in the
21 foregoing petition and knows the contents thereof; that the pleading is true of his own knowledge,
22 except as to those matters stated on information and belief, and as to such matters he believes them
23 to be true.
24

25 Charles Maki 42820
26 Signature of Petitioner NDOC#

27
28 Attorney for Petitioner

CERTIFICATE OF SERVICE BY MAIL

I, CHARLES MALE, hereby certify, pursuant to NRCP 5(b), that on this _____ day of DECEMBER, 201 13, I mailed a true and correct copy of the foregoing "WRIT OF HABEAS CORPUS POST CONVICTION
RELIEF, APPOINTMENT OF COUNSEL" by placing it in the hands of the warm springs correctional center law library supervisor, First-class Postage, fully paid, and addressed as follows:

CLERK OF COURT
THE 2ND JUDICIAL DIST. CT.
IN AND FOR WASHOE COUNTY
75 COURT ST.
RENO NV 89501

DICK GAMICK DIST. ATTORNEY
2ND JUDICIAL DIST. CT.
75 COURT ST.
RENO NV. 89501

DATED THIS 13th DAY OF DEC., 201 13.

Charles Male

Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding WRIT OF

HABEAS CORPUS - POST CONVICTION / AFFIRMATION OF COUNSEL v. DIST. CT. (ORDER)
(Title of Document) TO EXHAUST ALL CLAIMS, POINTS AND AUTHORITIES.

filed in District Court Case number CR99-0345

☒ 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.

Charles M. Maki
Signature

12-13-2013
Date

Charles Maki
Print Name

IN PRO SE
Title

Court-Original

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6 UNITED STATES DISTRICT COURT
7 DISTRICT OF NEVADA
8

9 CHARLES JOSEPH MAKI,

10 *Petitioner,*

11 vs.

12 GEORGE GRIGAS, *et al.*

13 *Respondents.*
14

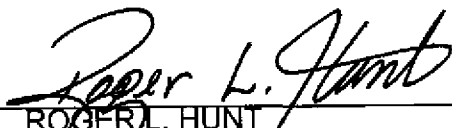
2:01-cv-00268-RLH-PAL

ORDER

15 Court mail has been returned from the last address given by petitioner with a notation
16 that petitioner no longer is at the institution. As petitioner has failed to comply with Local Rule
17 LSR 2-2, which requires him to immediately file a written notification of any change in
18 address, this action will be dismissed without prejudice.

19 IT THEREFORE IS ORDERED that this action is DISMISSED without prejudice. The
20 Clerk of Court shall enter final judgment accordingly.

21 DATED this 30th day of June, 2006.
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25 ROGER L. HUNT
26 United States District Judge
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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**
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12 CHARLES J. MAKI,

13 *Petitioner,*

14 vs.

15 GEORGE GRIGAS, *et al.*

16 *Respondents.*
17

2:01-cv-0268-RLH-PAL

ORDER

18 This habeas matter under 28 U.S.C. § 2254 comes before the Court on respondents'
19 motion (#72) to dismiss on the basis of lack of complete exhaustion as to all claims.
20

Background

21 Petitioner Charles Maki seeks to set aside his 1994 conviction, following a jury verdict,
22 for three counts of sexual assault on a child under the age of fourteen years and five counts
23 of lewdness with a child under the age of fourteen years. He was sentenced to three life
24 sentences with the possibility of parole and five ten year terms, with all such sentences and
25 terms to run consecutively. #25, Ex. 1.

Governing Law

26
27 Under 28 U.S.C. § 2254(b)(1)(A), a habeas petitioner first must exhaust his state court
28 remedies on a claim before presenting that claim to the federal courts. To satisfy this

42

EXHIBIT 73

1 exhaustion requirement, the claim must have been fairly presented to the state courts
 2 completely through to the highest court available, in this case the Supreme Court of Nevada.
 3 *E.g., Peterson v. Lampert*, 319 F.3d 1153, 1156 (9th Cir. 2003)(*en banc*); *Vang v. Nevada*, 329
 4 F.3d 1069, 1075 (9th Cir. 2003). In the state courts, the petitioner must refer to the specific
 5 federal constitutional guarantee and must also state the facts that entitle the petitioner to relief
 6 on the federal constitutional claim. *E.g., Shumway v. Payne*, 223 F.3d 983, 987 (9th Cir.
 7 2000). That is, fair presentation requires that the petitioner present the state courts with both
 8 the operative facts and the federal legal theory upon which his claim is based. *E.g., Kelly v.*
 9 *Small*, 315 F.3d 1063, 1066 (9th Cir. 2003). The exhaustion requirement accordingly insures
 10 that the state courts, as a matter of federal-state comity, will have the first opportunity to pass
 11 upon and correct alleged violations of federal constitutional guarantees. *See, e.g., Coleman*
 12 *v. Thompson*, 501 U.S. 722, 731, 111 S.Ct. 2546, 2554-55, 115 L.Ed.2d 640 (1991).

13 **Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g)**

14 Respondents contend that a number of ineffective assistance claims were not
 15 exhausted because petitioner failed to present the claims to the Supreme Court of Nevada
 16 on a counseled appeal from the denial of state post-conviction relief. Respondents contend
 17 that, *inter alia*, the following claims were not exhausted:

18 1. That he was denied effective assistance of counsel because:

19

20 b.) His trial counsel failed to allow him to testify;

21 c.) His trial counsel had a conflict of interest because she had a prior
 22 experience with sexual assault, with counsel telling him that she
 23 therefore did not want to represent him but would "go through the
 24 motions;"

25

26 e.) At sentencing, his counsel failed to discredit the testimony of a
 27 State witness and failed to present effective mitigating evidence;

28 ////

1 f.) His appellate counsel failed to raise specified errors on direct
2 appeal, including:

3 (1) a claim of error based on the trial court's decision
4 denying his request for a new attorney, based on
5 an alleged conflict of interest destroying their ability
6 to communicate;

7

8 (3) a claimed violation of N.R.S. 171.178.

9 g.) He was not arraigned within 72 hours of his arrest.

10 Petitioner responds that "there were many habeas corpus briefs filed by different
11 attorneys in Maki's behalf along with his own habeas corpus" and "[t]he present grounds have
12 all been before the Nevada Supreme Court and were taken from the briefs them selves [sic]."
13 #74, at 2. However, petitioner does not provide any specific record citations showing that any
14 of these claims were presented to the Supreme Court of Nevada in the briefs filed on appeal
15 from the denial of post-conviction relief. The Court has independently reviewed the appellate
16 briefs, and they do not contain any of the foregoing claims. See #54, Exhs. 57, 59 & 63.
17 Grounds 1(b), 1(c), 1(e), 1(f)(1), 1(f)(3) & 1(g) therefore are not exhausted.

18 **Ground 1(d)**

19 In Ground 1(d), petitioner alleges that his trial counsel failed to exploit, during direct
20 examination, the victims' alleged ignorance of a large multi-colored tattoo in Maki's pubic
21 area. Argument regarding this allegation was set forth within another claim in petitioner's
22 supplemental opening brief on appeal from the denial of post-conviction relief. See #53, Ex.
23 63, at 3. The Supreme Court of Nevada further treated the claim as one included within the
24 claims on appeal. See #53, Ex. 65, at 4. However, significantly, the state high court held on
25 the counseled appeal that "[i]t is . . . impossible to properly evaluate this claim because of
26 Maki's failure to include all relevant portions of the trial transcript." *Id.* Ground 1(d) therefore
27 was not fairly presented to the Supreme Court of Nevada on appeal from the denial of post-
28 conviction relief and the claim thus is not exhausted.

1 **Grounds 2(a) and 2(b)**

2 In its prior order (#71), the Court *sua sponte* questioned whether Grounds 2(a) and 2(b)
3 were completely exhausted. In these claims, petitioner alleges:

4

5 2. That he was denied effective assistance of appellate counsel because
6 his appellate counsel failed to raise on direct appeal:

7 a.) A claim of error based upon the state trial court's failure to
8 sanction the State or grant a continuance to allow the defense to
9 obtain expert psychological and psychiatric evidence to rebut late-
10 breaking physical examination evidence by the State;

11 b.) Substantially the same claim of error based on the trial court's
12 failure to sanction the State or grant a continuance to allow the
13 defense to have an expert review evidence revealed shortly
14 before trial that one of the victims had been subjected to more
15 physical abuse than she had reported against petitioner.

16 Respondents do not include Grounds 2(a) and 2(b) in the present motion to dismiss.
17 However, similar to its holding on Ground 1(d), the Supreme Court of Nevada held as follows
18 as to Grounds 2(a) and 2(b) on the counseled post-conviction appeal:

19 Again, Maki has failed to include pertinent documents in
20 the appendix on appeal. Maki has not included transcripts of the
21 proceedings concerning the State's disclosure of the report and
Maki's motion for the continuance. Thus, it is impossible to
determine whether the district court acted improperly.

22 #53, Ex. 65, at 6. It would appear to this Court that if claims were presented to the state high
23 court in such a defective manner that it was impossible for that court to review the claims, the
24 claims were not fairly presented. Petitioner therefore will be required to show cause why
25 Grounds 2(a) and 2(b) should not be found to be unexhausted.

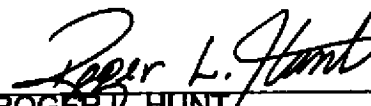
26 **Ground 3**

27 Respondents include Ground 3 in the present motion to dismiss, but the Court
28 dismissed this claim in its prior order as noncognizable in federal habeas. #71, at 12 & 13.

1 IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED
2 such that the Court finds that Grounds 1(b), 1(c), 1(d), 1(e), 1(f)(1), 1(f)(3) & 1(g) are not
3 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and
4 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire
5 petition, or seek other appropriate relief.

6 IT FURTHER IS ORDERED that, within twenty (20) days of entry of this order,
7 petitioner shall SHOW CAUSE in writing why Grounds 2(a) and 2(b) should not be found to
8 be unexhausted.

9 DATED this 12th day of June, 2006.

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13 ROGER L. HUNT
14 United States District Judge
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① [POINTS AND AUTHORITIES]

PURSUANT TO 48 HR RULE

VIOLATION OF 4TH U.S.C.I.A., 48 HR LAW SET BY THE
U.S.S.E.T. (1992-94) (IAC) IN VIOLATION OF THE
DEFENDENTS 5TH - 6TH - AND 14TH CONSTITUTIONAL RIGHTS.

HEABEUS-CORPUS

CASE # CR 94-0345

CHARLES J. MAKI - 42820

DEC. 13. 2013

Court
copy

*①

PURSUANT TO 48 HR RULE; VIOLATION OF 4th U.S.C.A.

48 HR. CONSTITUTIONAL LAW, SET BY THE U.S. S. CT. (1994)

(IAC) IN VIOLATION OF DEFENDENTS 5th 6th 14th CONST. RIGHTS.

- ① DEFENDENT WAS HELD IN CUSTODY IN COUNTY JAIL FROM [JAN 19-1994 TO JAN 24-1994] (5) FIVE DAYS, BEFORE HE WAS ALLOWED TO GO TO SEE A MAGISTRATE IN (PERSON) FOR HIS ARRANGEMENT (WITHOUT-COUNSEL) EVEN THOUGH HE HAD ENVOCKED HIS RIGHT TO COUNSEL DURING HIS INTEROGATION WITH POLICE, THIS VIOLATES THE 48 HR CONSTITUTIONAL LAW SET BY — [THE UNITED STATES SUPREME COURT], SEE: POWELL V. STATE, 338 P.2d 921 (1992). COUNSEL (ROBIN WRIGHT ON DIRECT APPEAL) "REFUSED" TO ARGUE THIS SERIOUS ISSUE AND VIOLATION OF DEFENDENTS CONSTITUTIONAL RIGHT, TELLING HIM NV. SUPREME COURT, DON'T RECOGNIZE THIS CONSTITUTIONAL RIGHT TO ANYONE IN CUSTODY. THIS CONSTITUTES (IAC).. / / / /
- ② THE UNITED STATES SUPREME COURT STATES: BASED ON MCLAGHLIN, WE HOLD THAT A (SUSPECT) MUST COME BEFORE A MAGISTRATE, WITHIN 48 HRS, INCLUDING NON JUDICIAL DAYS, FOR A PROBABLE — CAUSE DETERMINATION, CITED NRS 171.178, 171.178(3), 171.186: — POWELL V. NEVADA, 114 S. CT. (1994). THIS (CLEARLY MEANS DEFENDENT WAS TO STAND IN FRONT OF A MAGISTRATE IN PERSON WITHIN 48 HRS OF HIS ARREST,) NOT 5 DAYS LATER! / / / / /
- ⊗ THIS IS A CLEAR VIOLATION OF DEFENDENTS CONSTITUTIONAL RIGHTS.. ⊗
- ③ IN GERSTEIN V. PUGH 95 S. CT. 854 (1975) STATES: WHATEVER — PROCEDURE A STATE MAY ADOPT FOR MAKING A PRETRIAL DETERMINATION OF THE PROBABLE CAUSE FOR DETAINING AN ARRESTED PERSON PENDING FURTHER PROCEEDING'S IT MUST PROVIDE A FAIR AND RELIABLE DETERMINATION OF PROBABLE CAUSE AS A CONDITION FOR ANY (SIGNIFICANT) PRETRIAL RESTRAINT OF LIBERTY; SUCH A DETERMINATION MUST BE MADE BY A (JUDICIAL OFFICER)

- CONTINUED- ③ EITHER BEFORE OR PROMPTLY AFTER ARREST, U.S.C.A. #4. / /
- ④ IN GRIFFITH V. KENTUCKY, 107 S. CT. 708 (1987), STATES; CONSOLIDATION OF CASE'S, THE U.S. SUPREME COURT HELD [JUSTICE BLACKMAN HELD:] (1) NEW RULE FOR CONDUCT OF CRIMINAL PROSECUTION IS TO BE APPLIED "RETROACTIVELY" TO ALL CASES, (STATE) OR (FEDERAL), PENDING ON DIRECT REVIEW OR NOT YET FINAL. / / / / /
- ⑤ IN COUNTY OF RIVERSIDE V. MCLAUGHLIN, 111 S. CT. 1661 (1991) THE U.S. SUPREME COURT, [JUSTICE O'CONNOR] HELD THAT, A JURISDICTION THAT CHOOSES TO COMBINE A PROBABLE CAUSE DETERMINATION WITH OTHER PRETRIAL PROCEEDINGS MUST DO SO AS SOON AS IT IS - REASONABLY FEESABLE, [BUT IN-NO EVENT LATER THAN 48 HRS AFTER ARREST].... DEFENDENT WAS HELD FOR FIVE (5) DAYS. / / /
- ⑥ THE STATE BEARS THE BURDEN OF PROVING, ANY PRETRIAL DELAY, WAS NOT UN-REASONABLE: POWELL V. NEVADA 114 S. CT. 1280 (1994), MCLAUGHLIN... / / / / /
- ⑦ THE NEVADA SUPREME COURT RECOGNIZED AND MADE SPECIFIC THE PROBABLE CAUSE PROMPTNESS REQUIREMENT OF GERSTIEN V. PUGH, MCLAUGHLIN INSTRUCTED THAT ("A DELAY EXCEEDING 48 HRS") - [PRESUMPTIVELY VIOLATES] THE (4th) FOURTH AMENDMENT. /
- ⑧ IN THE DEFENDENT'S CASE (AS THE RECORD CAN/WILL CLEARLY SHOW) HE DID NOT HAVE HIS ARRANGMENT HEARING IN PERSON, BEFORE - - - A MAGISTRATE TILL (5) FIVE DAYS AFTER HIS ARREST (WITHAT COUNSEL) THIS IS A CLEAR VIOLATION OF DEFENDENTS 4th, 5th, 6th AND 14th - CONSTITUTIONAL RIGHTS, AS NOT ONLY DID ATTORNEY OF RECORD REFUSE TO ARGUE THIS VIOLATION BUT DEFENDENTS DIRECT APPEAL ALSO REFUSED TO ARGUE THIS 48 RULE- SET BY THE UNITED STATES SUPREME COURT.... DEFENDENT IS ENTITLED TO RELIEF.....

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② [POINTS AND AUTHORITIES]

APPELATE - DIRECT APPEAL ATTORNEY REFUSED TO ARGUE,
PHYSICAL/PSYCHOLOGICAL EXAMINATION,
(IAC) IN VIOLATION OF THE DEFENDENTS 5TH - 6TH - 14TH U.S.C.A RIGHTS.

HEABEUS - CORPUS

CASE # CR 94-0345

CHARLES J. MAKI - 42820

DEC. 13-2013

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APPELATE - DIRECT APPEAL ATTORNEY REFUSED
TO ARGUE, PHYSICAL/PSYCHOLOGICAL EXAMINATION.
(IAC) IN VIOLATION OF DEFENDENTS 5TH 6TH 14TH U.S.C.A.

- ① THE DEFENDENT, IN THIS CASE, THRU ARGUMENTS TO THE COURT MAKING RECORD AND GIVING RISE TO COURT APPOINTED (PUBLIC DEFENDER) COUNSEL - MS. JANET COBB SMUCK'S FAILED TO GAIN ANY MEDICAL, PHOTOS, REPORTS, OR EXAMINATIONS, NO D.N.A. TESTING OR EXAMINATIONS OF ALLEGED VICTIMS OF SEXUAL ASSAULT FROM THE PROSECUTION; BE IT PHYSICAL OR DOCUMENTED EVIDENCE SAID TO BE IN THE PROSECUTION'S POSSESSION NOT DISCLOSED TO THE DEFENSE FOR DISCOVERY, THE BURDEN OF SHOWING SUCH — MATERIALITY AND EXCULPATORY NATURE OF EVIDENCE WHICH IS NOT PROPERLY (I-D) OR PRESENTED BY THE PROSECUTION — [RESTS ON THE DEFENSE] AS STATED IN STATE V. HAUAS, SUPRA. 601 P.2d 1197 (1979) AND IN SPARKS V. STATE, 759, P.2d 180 (NV. 1988).
- ② THE GOVERNMENT'S FAILED TO ASSIST DEFENSE BY DISCLOSING ANY INFORMATION THAT MIGHT HAVE BEEN HELPFUL IN CONDUCTING CROSS EXAMINATION AMOUNTS TO A [CONSTITUTIONAL - VIOLATION], IF IT DEPRIVES THE DEFENDENT A FAIR TRIAL...
- ③ HAYES V. FARWELL, U.S. DIST. CT. 482 F.2d 1180 (2007) STATES: COUNSEL FOR DEFENDENT DID NOT PETITION THE COURT TO HAVE THESE ALLEGED VICTIMS UNDERGO AN INDEPENDENT PHYSICAL/PSYCHOLOGICAL EXAMINATION, WHICH WOULD'VE BEEN VERY IMPORTANT TO DEFENSE, CONSTITUTES [INEFFECTIVE ASSISTANCE OF COUNSEL].....
- ④ UNLESS COMPETENT EVIDENCE PRESENTS A COMPELLING REASON TO PROTECT THE ALLEGED VICTIM'S ITS (ERROR) TO DENY A DEFENDENT THE ASSISTANCE OF A DEFENSE..

⑤ THE COURT [DENIED] THE DEFENDENT THE RIGHT TO EXPERT TESTIMONY, TO REFUTE THE STATES EXPERT (MRS. KATHY C. PEEL) A SAINTS EXAMINER. SEE TT. P. 5 LINES 22-24, P. 8 LINES 18-19, PAGE 8 LINE 24. YET THE COURT ON PAGE 9 TT. LINE 1 STATES HOW IT WILL WANT TO HEAR WHAT THE STATES EXPERT WILL SAY... / / ALL READY THE DEFENDENT IS BEING PREJUDICED BY THE COURT... ..FOR PSYCHOLOGICAL EXAMINATION..

⑥ IN PRELIMINARY HEARING TRANSCRIPTS PAGE 33 LINES 22-24, THE ALLEGED VICTIM [DESIREE MENESE] WAS ASKED, HAVE YOU EVER SEEN A [MAN WITHOUT HIS CLOTHES ON] (A) YES, MY DAD!! — DESIREE, ALSO GOES ON TO STATE, HOW SHE TOOK SHOWER'S WITH HER DAD!! IN TT. P. 71 LINES 9-15 WHEN QUESTION'D IN TRIAL ON WITNESS STAND, (Q.) HAVE YOU EVER SEEN A MAN'S PENIS? (A) YES, MY DAD!! / [SHE NEVER SAYS THE DEFENDENT'S] / /

⑦ IN PRELIMINARY HEARING PAGE 30 LINES 14-15 COUNSEL SMUCK ASKS DESIREE, IF THE DEFENDENT EVER MADE HER TOUCH HIS PENIS (A) NO.. YET IN TRIAL, SHE TELLS A.D.A. DAN GRECO THAT THE DEFENDENT DID..

⑧ IN REGARDS TO [SUMMER MENESE] QUESTION'D BY A.D.A. DAN GRECO SEC. PRELIM. TRANS. PAGE 42 LINES 12-17, ON LINE 15; DISTRICT ATTORNEY GRECO, (SUMMER DID HIS PRIVATE EVER GO INSIDE YOUR PRIVATE (A) NO!) THIS CLEARLY SHOWS SUMMER STATING THE DEFENDENT NEVER SEXUALLY ASSAULTED SUMMER, (YET IN TRIAL, SHE TELLS D.A. GRECO DIFFERENTLY.) IN PRELIM. HEARING: D.A. GRECO ASKS SUMMER, DID HE EVER TOUCH HIS PRIVATE TO THE OUTSIDE OF YOUR PRIVATE; (A) NO! AGAIN SUMMER STATES DEFENDENT DID NOT COMMIT A LEWDNESS ACT WITH HER....

THESE ON THERE OWN SHOW HOW DEFENSE COUNSEL,

SHOULDVE ASKED THE COURT FOR A PSYCHOLOGICAL EXAMINATION

OF THE ALLEGED VICTIMS.. THIS CONSTITUTES (IM 783 / /

⑨ THE STATES EXPERT [KATHY C. PEELE] TESTIFIED IN REGARDS TO THE BEHAVIORAL PATTERNS OF THE ALLEGED VICTIMS ALONG WITH THE RESPONSES ASSOCIATED WITH THE ALLEGED VICTIMS OF CHILD SEXUAL ABUSE. / / / / / / / / /

⑩ THE COURTS HAVE RECOGNIZED THAT THIS TYPE OF TESTIMONY PUT THE CHILD BEHAVIORAL AND PSYCHOLOGICAL CHARACTERISTICS AT ISSUE, THUS REQUIRING THE DEFENSE TO HAVE ACCESS TO A PSYCHOLOGICAL EVALUATION, THE DEFENDENT, WAS DEPRIVED OF THIS RIGHT TO HAVE ACCESS TO THIS EVALUATION... / / / / /

...PHYSICAL - EXAMINATION...

⑪ THE STATES EXPERT [MS. PEELE, TESTIFIED IN TRIAL] [FOR THE STATE] IN REGARDS TO ALL THE PHYSICAL EXAMINATIONS, PHOTOS, TAKEN OF THE ALLEGED VICTIMS ECT. ALTHOUGH NO D.N.A., NO RAPE KITS, NO REAL "PHYSICAL EVIDENCE" WAS PRODUCED AT TRIAL. NO EVIDENCE EXISTED TO CORROBORATE THE ALLEGED VICTIMS ALLEGATIONS....

⑫ MS. PEELE, THE STATES EXPERT, (HEAD OF THE STATES EXAMINATION DIVISION FOR THE STATES CHILD SEXUAL ASSAULT DIVISION) SEE: TT. P. 109 LINES 6-14, P. 110 LINES 11-12, P. 111-112... SHE TESTIFIED IN TRIAL THAT, (DESIREE - MENESS), SHOWED "NO SIGNS OF SEXUAL ABUSE AT ALL," BUT THAT HER (DESIREE'S) HYMEN GREW BACK! SEE TT. P. 144 LINES 9-12, YET DESIREE IS NORMAL TT. PAGE 143 LINES 16-19.. THIS IS CONTRADICTORY TO WHAT DESIREE IS CLAIMING THE DEFENDENT SUPPOSEDLY DID...

⑬ IN (SUMMER MENESS) CASE, THE EXPERT FOR THE STATE OF NEVADA SAID, "QUOTE" - SUMMERS PHYSICAL EVIDENCE IS INCONSISTENT WITH HER ORAL TESTIMONY, SHE GAVE; (AGAIN THIS PROVES "NO EVIDENCE" AGAINST THE DEFENDENT! SEE: TT. PAGE 126 LINES 4-6, P. 127 LINES 7-15, PAGE 129 LINES 8-13, PAGE 143 LINES 16-19, PAGE 144 LINES 9-12, P. 144-145 AND PAGE 150 LINES 9-23. / / / / / 784 /

(14) COUNSEL OF RECORD (P.D.) JANET COBB SMUCK, STATED THE REASON SHE DIDNT MOTION THE COURT FOR A PHYSICAL OR PSYCHOLOGICAL EXAMINATION OF THE ALLEGED VICTIMS IS BECAUSE THE STATE WASNT GOING TO EMPLOY ONE, [THIS IS COMPLETELY FALSE]. / / / / /

(15) IN THE DEFENDENTS CASE, THE STATE DID EMPLOY AN EXPERT, ONE - (MS. KATHY C. PEELE). SEE: EVIDENTIARY MOTIONS TRANSCRIPTS OF THE PROCEEDINGS ON MARCH 11-1994 RENO NV. COUNSEL FOR THE DEFENSE ["MS. JANET COBB SMUCK"], ON PAGE 25 LINES 16 THRU 21 ASSISTANT DISTRICT ATTORNEY DHU GRECO; "QUOTE" —

YES YOUR HONOR, I THINK I MAY HAVE
AN ANSWER FOR YOU IN ONE SECOND.

YOUR HONOR, (I) HAVE AN ANSWER TO THAT,
SHE DID APPARENTLY SEE A [SAINTS -
- EXAMINER] WHICH IS THE NURSE
PRACTITIONER THAT EXAMINES CHILD

SEXUAL ASSAULT VICTIMS.....

"THEY ARE EXPERTS..."

(16) THE STATE CLEARLY ADMITS THE USE OF EXPERT TESTIMONY AND EXPERT EXAMINATION; EVEN THOUGH THE JUDGE IN DEFENDENTS CASE DENIED THE DEFENDED HIS RIGHT TO REFUTE THE STATES EXPERT TESTIMONY, SEE TT. P. 5 LINES 22-24, P. 8 LINES 18-19, PAGE 9 LINE 1. — THE COURT STATES ON RECORD HOW IT WANTS TO HEAR FROM THE STATES EXPERT THOUGH (KATHY C. PEELE).. (THIS IS PREJUDICIAL TO DEFENDED.)

(17) IT WAS "CLEAR ERROR" BY THE COURT TO DENY THE DEFENSE THE SAME PRIVILEGE AND EXCESS TO HAVE AN EXPERT TO TESTIFY OR TO EXAMINE THE STATES PHOTOS, OR ANY PHYSICAL EVIDENCE THAT THE STATE "REFUSED TO TURN OVER TILL (3) DAYS BEFORE TRIAL, 80 A.S. TO

CONTINUED - (1) REFUTE THE STATES EXPERT TESTIMONY IN TRIAL... / / /

.....CONCLUSION OF FACTS.....

IT WAS "CLEAR ERROR" TO HAVE DENIED THE DEFENDENT AN EXPERT
TO REFUTE THE STATES EXPERT (KATHY C. PEELE)'S TESTIMONY IN TRIAL,
IT WAS CLEARLY PREJUDICIAL AGAINST THE DEFENDENT WHO COULD
GET A FAIR TRIAL; ALONG WITH THE FACT THAT DEFENDENT'S OWN
COUNSEL OF RECORD (JANET COBB SMITH) REFUSED TO ASK FOR
A (PSYCHIATRIC EVALUATION) BASED ON THE MANY SERIOUS INCONSISTANT
STATEMENTS MADE BY THE (2) ALLEGED VICTIMS, ALONG WITH "NO"
PHYSICAL EVIDENCE, AS THE WHOLE RECORD WILL SHOW AND PROVE
CLEARLY, ALL TOGETHER, THIS CONSTITUTES A VIOLATION OF DEFENDENT

5TH - 6TH - 14TH CONSTITUTIONAL RIGHTS.

ALONG WITH A CLEAR GUT (IAC).....

... DEFENDENT IS ENTITLED TO A NEW TRIAL.....

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[POINTS AND AUTHORITIES]

THE RIGHT TO TESTIFY IN TRIAL - (JAC)

(JURISDICTIONAL ERROR) FAIR TRIAL/DUE PROCESS,

DUE PROCESS/EQUAL PROTECTION, IN VIOLATION OF THE
DEFENDENTS 5TH-6TH AND 14TH U.S.C.A. RIGHTS.

HEADERS - CORPUS

CASE # CR94-0345

CHARLES J. MAKI

42820

DEC. 13-2013

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COURT
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RIGHT TO TESTIFY IN TRIAL (J-K-C)

(JURISDICTIONAL-ERROR) FAIR TRIAL/ DUE PROCESS

DUE PROCESS/ EQUAL PROTECTION. IN VIOLATION,
OF THE 5TH-6TH AND 14TH U.S.C.A.

- ① THE DEFENDENT IN THIS CASE, HAD DEMONSTRATED HIS TRUE DESIRE TO TESTIFY ABOUT 1 1/2 - ONE AND A HALF MONTHS BEFORE HIS TRIAL, EVEN TO THE POINT OF WRITING TO THE JUDGE (HONORABLE STEVEN KOZACH) OF THE SITUATION (Opp. PAGE 6 - LINES 5-7). / / / / /
- ② A HEATED COMMOTION ENSUED BETWEEN THE DEFENDENT AND HIS TRIAL COUNSEL IN COURT DURING TRIAL, AND THE D.A. DAN GRECO, THEN ASKED THE JUDGE TO TO ASK DEFENDENT TO BE QUIET AND TO JUST WRITE NOTES. (DEFENDENT) THEN ABIDED AS BEST HE COULD WITH THE JUDGE'S STERN INSTRUCTIONS, (EVEN THOUGH COUNSEL TOLD DEFENDENT THAT HIS CASE WAS GOING WELL) (DEFENDENT STILL HAD WANTED TO TESTIFY, AS WAS HIS RIGHT). WHEN COUNSEL RESTED FOR THE DEFENSE, DEFENDENT SAID NOTHING, AS DEFENDENT THOUGHT THAT DEFENSE COUNSEL WOULD HAVE SAID SOMETHING TO THE COURT, AS TO HIM WISHING TO TESTIFY (J-K-C). / / / /
- ③ IN ROCK V. ARKANSAS, 483 U.S. 44, 107 S. CT. 2704, 97 L. ED 37 (1987) THE SUPREME COURT, DESCRIBED THE RIGHT OF A CRIMINAL DEFENDENT TO TESTIFY AT HIS OWN TRIAL AS BEING FUNDAMENTAL AND PERSONAL TO THE DEFENDENT. THE COURT ALSO STATES: EVEN MORE FUNDAMENTAL TO A PERSONAL DEFENSE OF THAN THE RIGHT OF SELF REPRESENTATION, WHICH WAS FOUND TO BE "NECESSARILY" IMPLIED BY THE STRUCTURE OF THE (6TH AMENDMENT)... IS AN ACCUSED'S RIGHT TO PRESENT HIS OWN VERSION OF THE EVENTS IN HIS OWN WORDS.
- ④ A DEFENDENT'S OPPORTUNITY TO CONDUCT HIS OWN DEFENSE BY CALLING A WITNESS IS INCOMPLETE IF HE DOESN'T PRESENT

- CONTINUED ④ HIMSELF AS A WITNESS (I.D.) / / / / /
- ⑤ IN UNITED STATES V. TEAQUE, 908 F.2d 761 (1990). THE COURT HELD: WE HOLD ONLY THAT WHEN, DESPITE ANY EFFORTS BY DEFENSE COUNSEL TO CONVINCE THE DEFENDENT THAT THE BEST STRATEGY IS TO REMAIN SILENT, THE DEFENDENT [DOES NOT PERSONALLY WAIVE THE RIGHT TO TESTIFY] AND IF DEFENSE COUNSEL FAILS TO ALLOW THE DEFENDENT TO TAKE THE STAND, THE DEFENDENT'S RIGHT TO TESTIFY HAS BEEN VIOLATED. (DEFENDENT'S COUNSEL, NEVER ADDRESSED THE COURT) IN ORDER TO ALLOW THE DEFENDENT TO STATE HIS DESIRE TO TESTIFY, WHICH CONSTITUTES A CLEAR VIOLATION (I-A-C) AND HIS FUNDAMENTAL RIGHT TO TESTIFY... / / / / /
- ⑥ THE RIGHT TO TESTIFY, IS A RIGHT THAT CAN NOT BE FORFEITED BY — DEFENDENT'S COUNSEL, BUT ONLY BY A KNOWING, VOLUNTARY, AND INTELLIGENT WAIVER BY THE DEFENDENT HIMSELF. THE RESULT IN DEFENDENT'S CASE IS DICTATED BY TEAQUE, AND UNITED STATES V. SCOTT, 909 F.2d 488 (1990). THE DEFENDENT'S CASE PRESENTS A CLEARER EXAMPLE OF A VIOLATION OF DEFENDENT'S RIGHT TO TESTIFY, THAN THAT PRESENTED IN TEAQUE.. DEFENDENT'S TRIAL ATTORNEY HAD RESTED WITHOUT CALLING HIM, BY DOING SO [DEFENSE COUNSEL ACTIVELY AND FORCEFULLY PREVENTED THE DEFENDENT FROM — TESTIFYING,] DESPITE HIS CLEARLY AND EXPRESSED DESIRE TO DO SO....
- ⑦ BY PREVIOUS THREATS FROM DEFENDENT'S COUNSEL, "STATEING THAT SHE WOULD NOT LET HIM TESTIFY" (OFF-RECORD) AND BEING ALREADY INSTRUCTED BY THE COURT (STERNLY) TO REMAIN SILENT, THIS LEFT THE DEFENDENT IN A POSITION WHERE HE FELT HE HAD NO CHOICE, WITH THE UNDERSTANDING TO REMAIN SILENT, YET ASSUMED HIS COUNSEL WOULD OR AT LEAST ADDRESSED THE COURT (I-A-C) IN HIS DEFENSE... /

- ⑧ THE DEFENDENT WAS DENIED A FAIR TRIAL, WHEN NOT PERMITTED TO TESTIFY ON HIS OWN BEHALF. DEFENDENT ASSERTS THAT HE NEVER WAIVED HIS RIGHT TO TESTIFY AND NEVER CONSENTED OR WAIVED A COUNSELL AS TO WHETHER HE WISHED TO TESTIFY.. / / / / / / /
- ⑨ DEFENDENT ASSERTS A [JURISDICTIONAL-- ERROR] WHEN THE JUDGE DENIED GIVING THE DEFENDENT AN OPPORTUNITY TO TESTIFY ON HIS OWN BEHALF.. DEFENDENT ASSERTS THAT NOWHERE IN TRIAL TRANSCRIPTS, WILL THE COURT FIND A KNOWING, INTELLIGENTLY, OR WAIVER OF THIS -- CONSTITUTIONAL RIGHT TO TESTIFY. THIS LACK OF WAIVER TO TESTIFY VIOLATED DEFENDENT'S 5TH U.S.C.A. RIGHT TO DUE PROCESS/ EQUAL PROTECTION, WHEN THE DEFENDENT TRULY DID WISH TO TESTIFY. [THIS "STRUCTURAL ERROR"], OF NOT COUNSELLING THE DEFENDENT CAN BE TOTALLY CONFIRMED BY REVIEW OF THE RECORD. / /
- ⑩ DEFENDENT WAS CLEARLY PREJUDICED, BY NOT BEING ABLE TO TESTIFY ON HIS OWN BEHALF, AND THE COURT (NEVER) KNOWINGLY AND -- INTELLIGENTLY ADVISING OR CONSTITUTIONALLY ADHERED RIGHT, OR ANY VOLUNTARY WAIVERING BY DEFENDENT.. / / / / / / /
- ⑪ DEFENDENT'S RIGHT TO TESTIFY WAS VIOLATED BY HIS ATTORNEY (I.A.C) AND ARGUEABLY BY THE JUDGE, AND THAT THIS VIOLATION WAS NOT HARMLESS; THIS WRIT OF HABEUS CORPUS PRESENTED BY THE DEFENDANT MUST ISSUE.. DEFENDENT'S CONSTITUTIONAL RIGHT TO TESTIFY WAS IN VIOLATION OF HIS 5TH - 6TH - 14TH CONSTITUTIONAL RIGHTS INCLUDING -- INEFFECTIVE ASSISTANCE OF COUNSEL AT TRIAL, ~~THE COURT~~ ~~THE COURT~~ ~~THE COURT~~ / / / /

... DEFENDENT REQUESTS

A NEW TRIAL

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POINTS AND AUTHORITIES

VERY LARGE COLOR FULL TATTOO IN DEFENDENTS PUBIC
AREA THAT ALLEGED VICTIM (SUMMER MENESS) COULD-
NOT (I.D.) IN VIDEO TAPING WITH DETECTIVE, OR IN PRELIMINARY
HEARING, BUT DID ON RE-BUTAL IN TRIAL BY A.D.A. DAN GRECO.
(IAC) BY TRIAL AND DIRECT APPEAL. IN VIOLATION OF DEFENDENTS
5TH-6TH-14TH CONSTITUTIONAL RIGHTS.

HEABEUS-CORPUS

CASE # CR94-0345

CHARLES J. MAKI

42820

DEC. 13-2013

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VERY LARGE COLORFULL TATOO IN PUBIC AREA THAT
ALLEGED VICTIM (SUMMER MENESS) COULD-NOT (I.D.)
IN VIDEO TAPING WITH DETECTIVE, OR PREL. HEARING TRIAL/
BT DID ON REBUTAL IN TRIAL BY D.A. GRECO. (IAC) DIRECT APPEAL.
VIOLATION OF 5-6-14 USCA.

- ① COUNSEL OF RECORD (JANET COBB SMUCK) WHO WAS MR. MAKI'S
COUNSEL, STATED: MR. MAKI TOLD ME ABOUT THE TATTOOS, ESPECIALLY
THE TATTOO AROUND HIS PUBIC AREA, IN PRELIM. HEARING. SEE P.E.T. P. 9461-2.
- ② DEFENDENT HAS A "VERY-LARGE" MULTI COLORED TATTOO IN HIS PUBIC
AREA, THIS TATTOO IS UN-MISTAKABLE. DEFENDENT HAD PHOTOS TAKEN
OF THIS TATTOO IMMEDIATELY AFTER HIS ARREST BECAUSE HE KNEW THE
GIRLS WOULD NOT BE ABLE TO (I.D.) IT. WHEN DEFENDENT'S ATTORNEY CROSS
EXAMINED THE GIRLS (IN TRIAL), SHE (ATTORNEY) "REFUSED TO SOLICIT"
ANY TESTIMONY ABOUT THE TATTOO, IN DEED COUNSEL EVEN REFUSED TO ASK
ABOUT DEFENDENT'S TATTOOS (SEE TT. PAGE 55-68, AND PAGE 87-93).....
- ③ THIS IS IMPORTANT BECAUSE BOTH OF THE ALLEGED VICTIMS (ESPECIALLY) -
(SUMMER) FAILED TO MENTION THE TATTOO AT THE PRELIMINARY HEARING ~~AND~~
EVEN [DETECTIVE STEIGHMIER] STATED IN THE PRELIMINARY HEARING ON
THE WITNESS STAND; QUOTE: (I) DID ASK THE GIRLS DURING MY INTERVIEW
WITH E/M AND (SUMMER) SAID MAKI HAD NO TATTOOS IN HIS PELVIC AREA.
SEE: PRELIMINARY TRANSCRIPTS, PAGE 73 LINES 23-25, AND PAGE 74 LINES 1-10,
ON PAGE 73. (Q) DETECTIVE, YOU ASKED A QUESTION ABOUT TATTOOS (A) P. 74
WHEN I ASKED (SUMMER) ON THE TAPE ABOUT THE TATTOOS, I ASKED THAT
QUESTION BECAUSE WHERE ONE OF THE MOST DISTINGUISHING THINGS THAT
A GIRL COULD REMEMBER WAS SOMETHING THAT WAS VERY UNUSUAL
IN THE PENIS AREA, AND SOMETIMES IT'S A (TATTOO) IN HIS PELVIC AREA...

- (4) (SUMMER) STATED IN THE TAPED INTERVIEW WITH DET. STEIGHOMIER THAT DEFENDENT HAD "NO-TATOO IN HIS PELVIC AREA," YET IN TRIAL ON REBUTAL BY D.A. DAN GRECO, SUMMER ALL THE SUDEN CLAIMS DEFENDENT HAS A TATOO IN HIS PELVIC AREA... THIS WAS DONE AFTER DEFENSE - ATTORNEY (JANET C. SMUCK)'S INVESTIGATOR WHO TOOK THE PHOTOS OF THE DEFENDENT, TESTIFIED ABOUT PHOTOGRAPHING THE TATOO'S. / / / /
- (5) DEFENDENT'S COUNSEL OF RECORD REFUSED TO EXPLOIT THE GIRL'S IGNORANCE OF THAT (ONE TATOO) IN DEFENDENT'S PELVIC AREA DURING THEIR DIRECT TESTIMONY OR ON REBUTAL; ACCORDINGLY DEFENDENT LOST HIS ONE GOOD OPPORTUNITY TO SHOW THE GIRLS WERE FABRICATING THEIR STORIES...
- (6) IN TRIAL (DESIREE) STATED SHE SEEN DEFENDENT NAKED (SEE TT. PAGE 66 LINES 1-4,) YET ON (TT. PAGE 191 LINES 1-8) D.A. DAN GRECO ASKS DESIREE, ABOUT TATOO'S ON DEFENDENT'S BODY, SHE STATES: SHE ONLY SEEN ONE (1) ON DEFENDENT'S STOMACH AND 1/2-HALF OF ONE ON HIS BACK (I.F) YOU LOOK AT DEFENSE EXHIBITS D-E-F, ALL PHOTOS TAKEN BY [MR. MICHAEL W. O. BRIAN, INVESTIGATOR FOR THE PUBLIC DEFENDER'S OFFICE] IN COUNTY JAIL, ON FEB-07-1994 TOOK NUMEROUS PHOTOS OF THE DEFENDENT, IT WILL SHOW A VERY-LARGE-VERY-COLOR FULL-VERY BRITE, TATOO IN DEFENDENT'S PELVIC AREA! ("WHICH CLEARLY") SHOWS THAT DESIREE WAS LYING, SHE NEVER SEEN THE DEFENDENT NAKED! -
- (7) DESIREE) SAID SHE HAD SEEN THE DEFENDENT NAKED IN TRIAL SEE: PAGE 61 LINES 1-4: IF THE DEFENDENT HAD BEEN THE PERSON WHO COMMITTED THESE OFFENSES, IT WOULD'VE BEEN "EXTREMELY" HARD FOR THE TATOO TO BE MISSED, [SEE DETECTIVE'S STATEMENT IN PRELIMINARY HEARING] PAGE 73 (Q). YOU ASKED A QUESTION ABOUT TATOO'S, SEE PAGE 74 LINES 1-10, FOR ANSWER; (A). I ASKED THAT QUESTION BECAUSE WHERE ONE OF THE MOST - DISTINGUISHING THINGS THAT A GIRL COULD REMEMBER WAS SOMETHING THAT WAS VERY UN-USUAL IN THE PELVIC AREA, SOMETIMES IT'S A TATOO.

CONTINUED - ⑦ [AND I LOOK SPECIFICALLY IN THAT AREA]... / / / /

⑧ THE DEFENDENTS TATOO IS VERY LARGE, VERY COLORFULL, AND VERY APPARENT AND THIS IS SOMETHING THE GIRLS WOULD'VE ZERO'D IN ON!!

...CONCLUSION OF FACTS...

DEFENDENTS COUNSLE IN TRIAL, "FAILED OR REFUSED" TO EXPLOIT THE GIRLS IGNORANCE ABOUT THE DEFENDENTS TATOO DURING HIS TRIAL, AND COUNSLE IS THE ONE WHO HAD THE PHOTOS TAKEN AT DEFENDENTS REQUEST TO SHOW/ PROVE HIS INNOCENTS, AFTER IT WAS PROVEN DURING THE PRELIMINARY TRIAL, NO ONE KNEW OF THIS TATOO; DEFENDENTS COUNSLE SHOULD'VE KNOWN IT WOULD'VE PROVEN DEFENDENTS INNOCENTS IN TRIAL, YET DID NOTHING TO HELP DEFEDENT, THIS CONSTITUTES (IAC). IF - COUNSLE WOULD'VE ARGUED OR EXPLOITED THE IGNORANCE OF THE GIRLS KNOWLEDGE OF THE TATOO, [THE JURY'S VERDICT WOULD'VE BEEN DIFFERENT]... / / / / / / / / / /

(A) AS TO THE COUNSLE ON DIRECT APPEAL (MS. ROBIN WRIGHT); WHO (IF) SHE WOULD'VE TAKEN THE PROPER TIME AND LOOKED AT THE RECORD LIKE A COMPETENT ATTORNEY WOULD, SHE WOULD'VE SEEN THIS SERIOUS ISSUE AND COULD'VE/ SHOULD'VE RAISED IT ON DIRECT APPEAL! DEFENDENT DID NOT GET A FAIR TRIAL NOR DID HE GET A FAIR DIRECT APPEAL, BOTH HIS COUNSLE OF RECORD (JANET SMUCK) AND DIRECT APPEAL COUNSLE (ROBIN WRIGHT) WERE TOTALLY - INEFFECTIVE IN THERE JOBS AS ATTORNEYS TO REPRESENT THE DEFENDENTS CONSTITUTIONAL RIGHTS. IN VIOLATION OF DEFENDENTS 5TH 6TH 14TH USCA RIGHTS.

(#) 5

POINTS AND AUTHORITIES

DIRECT APPEAL (JAL) COUNSEL, REFUSED TO RAISE
SERIOUS ISSUES ON DIRECT APPEAL. (ROBIN WRIGHT),
IN VIOLATION OF DEFENDERS, 5TH - 6TH 14TH U.S.C.A. RIGHTS.

HEABEUS - CORPUS

CASE # CR 94-0345

CHARLES J. MAKI

DEC. 13-2013

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DIRECT APPEAL (IAC) COUNSEL
REFUSED TO RAISE SERIOUS ISSUES
ON DIRECT APPEAL. (ROBIN WRIGHT),
IN VIOLATION OF DEFENDENTS, ^{THAT} 5, 6, 14 USCA RIGHTS.

APPELLATE COUNSEL) WAS INEFFECTIVE FOR FAILING TO RAISE
THE DENIAL OF THE DEFENSE AND/OR FAILING TO SANCTION THE
STATE FOR FAILING TO PROVIDE EXCULPATORY EVIDENCE TO THE
DEFENDENT IN A TIMELY MANNER... / / / /

① THE ACTIONS OF THE DISTRICT COURT AMOUNT TO AMANIFEST
ABUSE OF DISCRETION [SEE: SCOTT, A MINOR V. STATE] 113 NEU.
234, 931 P.2d 1370 (1997), [JOSEPH JOHN H, A MINOR V. STATE] 113
NEU. 621, 939 P.2d 1056 (1997) [SHERIFF V. ROY LAUCE, 110 NEU.]
334, 871 P.2d 359 (1994) [SHERIFF V. TERPSTRA, 111 NEU.] 860, 899
P.2d 548 (1995) (THE DISTRICT COURT HAD GOOD CAUSE TO CONTINUE
THE TRIAL IN ORDER TO LET DEFENDENTS TRIAL COUNSEL HAVE AN
OPPORTUNITY TO REBUT RECENTLY DISCLOSED EVIDENCE). THE
DENIAL OF THE MOTION TO CONTINUE WAS AN ABUSE OF DISCRETION
(TT. PAGE 8 LINES 18-19) (TT. PAGE 5 LINES 22-24) (TT. PAGE 6 LINES 1-12).

② APPELLATE COUNSEL] REFUSED TO RAISE ISSUE, THAT THE COURT
DENIED THE DEFENSE AN EXPERT, GIVEN THE FACT THAT DEFENSE
EVEN MADE ORAL MOTIONS, INCLUDING A MOTION TO COMPEL
DISCOVERY. (SEE: EVIDENTIARY HEARING TRANSCRIPTS MARCH-03-1999)

③ APPELLATE COUNSEL] REFUSED TO RAISE THIS ISSUE, (SEE: EVIDENTIARY
HEARING MOTIONS TRANSCRIPTS OF THE PROCEEDINGS (MARCH 11-1999;
RENO, NV. JANET COBB SMUCK, COUNSEL FOR THE DEFENDENT, -
ASSISTANT DISTRICT ATTORNEY DAN GRECO: WHO [CLEARLY
STATES] QUOTE: ON PAGE 25 LINES 16-21, YOUR HONOR, I

CONTINUED - ③

HAVE AN ANSWER FOR YOU, (SHE) DID SEE A SAINTS EXAMINER, WHICH IS THE NURSE PRACTITIONER THAT EXAMINES CHILD SEXUAL ASSAULT VICTIMS AND [THEY ARE EXPERTS] THE STATE - CLEARLY ADMITS THE USE OF EXPERT TESTIMONY AND EXAMINATION (SEE TP. P. 108 LINE 15 THRU TP. LINE 24) TO SEE MS. KATHY C. PELLE QUALIFICATIONS AS NOT ONLY THE HEAD OF SAINTS, BUT MUCH MORE, AND AGAIN THE DEFENSE HAD [NO-ONE] TO DEFEND ITS CASE. CLEARLY PREJUDICIAL]. / / / / / / /

④

APPELATE COUNSEL] REFUSED TO RAISE THE ISSUE, THAT THE TRIAL ATTORNEY AND ARGUABLY THE COURT, REFUSING TO ASK FOR A PSYCHIATRIC EVALUATION OF (DESIREE MENESE), PRIOR TO OR DURING TRIAL TO DETERMINE (IF) THE FATHER (GARY MENESE) HAD PRIOR SEXUAL CONTACT WITH DESIREE. (SEE PRELIM. TRANSCRIPTS P. 334.22-29) (Q). DESIREE HAVE YOU EVER SEEN A "MAN" WITHOUT HIS CLOTHES ON, - (A). YES. "MY DAD"! DESIREE ALSO STATES HOW SHE TOOK SHOWERS WITH HER DAD, (ON TP. PAGE 71 LINES 9-15) AGAIN DESIREE STATES, (Q). HAVE YOU EVER SEEN A MAN'S PENIS (A.) YES. "MY DADS"! AGAIN NEVER ABOUT THE DEFENDENT. THESE ARE HARD FACTS, THAT APPELATE COUNSEL SHOULD HAVE RAISED ON DIRECT APPEAL.

⑤

APPELATE COUNSEL] (REFUSED) TO RAISE THE ISSUE OF, HOW THE STATE PROSECUTION REFUSED OR FAILED TO TURN OVER EVIDENCE (PHOTOS OF ALLEGED VICTIMS UAGINAS) THAT WAS USED BY STATE'S EXPERT, AND WAS IN POSSESSION OF THE PROSECUTION TILL (3) DAYS BEFORE DEFENDENT'S TRIAL, (THIS IS A CLEAR BRADY VIOLATION). THE DEFENDENT'S 5TH AMENDMENT RIGHT TO DISCOVERY WAS VIOLATED WHEN PROSECUTOR'S PHOTOS OF ENLARGED HYMEN FROM COLOSCOPY WERE NOT GIVEN TO THE DEFENSE UNTIL A COUPLE DAYS BEFORE TRIAL; / / / / / / /

(5-A) THE DEFENDENTS] 5th U.S.C.A. RIGHTS TO DUE PROCESS AND HIS 14th U.S.C.A. RIGHTS TO DUE PROCESS/EQUAL PROTECTION WERE VIOLATED WHEN PROSECUTION did NOT ADHERE TO PROPERLY MADE REQUEST by the DEFENSE PER N.R.S. 174.235(1) AND N.R.S. 174.285 AS TO THE REQUESTED DISCOVERY AND TIME LIMIT ATTACHED...

(B) THE DEFENDENT] WAS PREJUDICED BY PROSECUTION'S DISCLOSURE OF EVIDENCE (PHOTO'S) A COUPLE OF DAYS BEFORE TRIAL AND WAS "DENIED" THE LEGAL OPPORTUNITY TO HAVE AN EXPERT TO ^{REVIEW} ~~REVIEW~~ THE EVIDENCE, AND "DENIED" AN OPPORTUNITY TO CALL ITS EXPERT TO IMPEACH THE (SAINTS) NURSE AS TO HER EXAMINATION AND FINDINGS [THIS ALL SHOULD'VE BEEN RAISED ON DIRECT APPEAL BY APPEAL COUNSEL.] DISCOVERY ISSUES ARE REVIEWED "DE NOVO".

(BRADY VIOLATION) SEE BRADY V. MARYLAND, 373 U.S. 83, 83 S. CT. 1199 (1963).

⑥ DIRECT APPEAL] COUNSEL, (ROBIN WRIGHT) REFUSED TO RAISE THE (ISSUE OF FACT), THAT THERE WAS ACTUAL AND PREJUDICIAL PERJURY BY THE STATES EXPERT WITNESS, KATHY C. PEELE - NURSE FOR SAINTS, WHO IN TRIAL TOLD THE JURY THAT THERE WAS NO SIGNS OF SEXUAL TRAUMA OR ABUSE ON DESIREE, SEE TT. P. 144 L. 3-4 TT. P. 144 LINES 9-12, PAGE 145-146. BUT TELLING THE JURY THAT A HYMEN WILL GROW BACK.. THIS IS TOTALLY FALSE, YET IT WAS ALLOWED EVEN BY THE COURT, (WHO SHOULD'VE KNOWN IT IS FALSE)...

⑦ DIRECT APPEAL] COUNSEL REFUSED TO RAISE A PROSECUTORIAL MISCONDUCT CLAIM, IN THAT DURING THE DEFENDENTS TRIAL A.D.A. DAN GRECO, (ON TT. P. 53 LINES 10-14,) IS ASKING DESIREE IF THE DEFENDENT EVER ASKED HER TO PUT HIS PENIS IN HER MOUTH, SHE (A.) YES. NOW THE QUESTION IS "HIGHLY-PREJUDICIAL" TO DEFENDENT, AS NOWHERE IN THE RECORD HAS THIS QUESTION EVER BEEN ADDRESSED!

(7-A) BUT, IF YOU LOOK IN THE [INTERROGATION-TRANSCRIPTS PAGE 14, LINES 31-33] DETECTIVE STEIGHMIER ASKS DEFENDER (Q). DID YOU PUT YOUR PENIS IN HER MOUTH (SPEAKING OF DESIRE) (A.) NO! AND ON PAGE 15 LINE 11, DETECTIVE STATES, I BELIEVE YOU, I KNOW WHAT HAPPENED AND THAT'S NOT ONE OF THEM... THIS CLEARLY SHOWS DEFENDENTS INNOCENTS OF THIS FALSE ALLEGATION MADE BY THE DISTRICT ATTORNEY DAN GRECO, WHO JUST INFLAMED THE JURY AND HAD HIS OWN WITNESS COMMIT PERJURY ON THE WITNESS STAND IN TRIAL, ALONG WITH PROSECUTORIAL MISCONDUCT, ALSO (IAC.) AS DEFENSE COUNSEL (JANET L. SMUCK) NEVER OBJECTED, TO THIS LINE OF QUESTIONING AND THIS SHOWS A CLEAR VIOLATION OF DEFENDENTS RIGHTS AND HIS RIGHT TO A FAIR TRIAL... / /

⑧ [DIRECT APPEAL] COUNSEL REFUSED TO RAISE THE ISSUE THAT (SUMMER MENESS) STATED THAT DEFENDENT [NEVER SEXUALLY ASSAULTED HER.] SEE: PRELIM. TRANS. PAGE 42 LINES 12-17, ON LINE 15, IT SAYS "QUOTE", SUMMER DID HIS PRIVATE EVER GO INSIDE YOUR PRIVATE IN DEC. (A.) NO! THIS QUESTION WAS ASKED BY D.A. GRECO...

⑨ [DIRECT APPEAL] COUNSEL REFUSED TO RAISE THE ISSUE THAT SUMMER ALSO STATED THAT THE DEFENDENT NEVER COMMITTED A LEWDNESS ACT WITH HER, SEE: PRELIMINARY HEARING TRANS. PAGE 46 LINE 3. ON PAGE 46 LINES 1-6, LINE 4 [D.A. GRECO ASKS SUMMER (Q) DID HE EVER TOUCH HIS PRIVATE TO THE OUTSIDE OF YOUR PRIVATE (A.) NO ON LINE 6.] [AGAIN CLAIMING THE DEFENDENTS INNOCENTS] / / / / /

(A) YET NEITHER TRIAL COUNSEL (JANET SMUCK) BROUGHT THIS UP DURING THE TRIAL PROCEEDINGS/ NOR DID APPELLATE COUNSEL (ROBIN WRIGHT) EVER BRING THESE SERIOUS ISSUES UP ON DIRECT APPEAL. THIS CLEARLY CONSTITUTES INEFFECTIVE ASSISTANCE OF COUNSEL, IN VIOLATION OF THE DEFENDENTS CONSTITUTIONAL RIGHT TO COMPETENT COUNSEL.

CONTINUED (9H) BOTH ATTORNEYS WERE DEFICIENT IN THERE PERFORMANCE AND PREJUDICED THE DEFENDENT'S CASE, SEE: STRICKLAND V. WASHINGTON 466 U.S. 668 (1984)

(10) APPELLATE COUNSEL] REFUSED TO RAISE THE ISSUE, THAT (LEGAL COUNSEL) WASN'T APPOINTED TO THE DEFENDENT IN A TIMELY MANNER IN THAT, (A) THE COURT ERROR'D IN NOT RULING THAT DEFENDENT'S RIGHT TO COUNSEL WERE VIOLATED AT ALL CRITICAL STAGES OF THE CRIMINAL PROCEEDINGS, AS DEFENDENT WAS NOT APPOINTED COUNSEL UNTILL (15) DAYS AFTER HIS ARREST, [EVEN THOUGH HE ASKED FOR COUNSEL] AT/DURING HIS TIME OF INTERROGATION, [MAKI THEN ENVOCKED HIS RIGHT FOR AN ATTORNEY, [App 312] (B). APPELLATE COUNSEL REFUSED TO RAISE, THE FACT OF THE (INCOMPLETE) RENDITION OF RIGHTS) WHICH OCCURED BY THE OFFICERS (App 312) DEFENDENT WAS NOT ADVISED THAT ANY STATEMENT HE MADE COULD BE USED AGAINST HIM, "PUR NIRMUDA." [SEE: CARTER V. STATE, 299 P.3d, 967, (2013) NEVADA.]

(11) DIRECT APPEAL] COUNSEL FAILED TO RAISE THE ISSUE'S, THAT THERE WAS ACTUAL CONFLICT OF INTEREST BETWEEN THE DEFENDENT AND HIS TRIAL ATTORNEY (JANET C. SMUCK), THE DEFENDENT AND HIS ATTORNEY OF RECORD WERE IN CONFLICT ON A NUMBER OF ISSUES, HER NOT GETTING WITNESSES TO TESTIFY FOR HIM [SEE: PAUL GRUBBS AFFIDAVIT] EXHIBIT ATTACHED, - INCLUDING HER CONSTANTLY TELLING DEFENDENT HE'S GUILTY PERIOD, FOR WEEKS PRIOR TO HIS TRIAL AND MORE. THESE ISSUES CUMULATIVELEY RESULTED IN UN-FAIR REPRESENTATION DURING ALL PROCEEDINGS..

(A) IT GOT SO BAD THE DEFENDENT, WROTE A LETTER TO [MR. MIKE SPECIO] PUBLIC DEFENDERS, HEAD MAN TO WASHOE LEGAL SERVICES, THE NEVADA STATE BAR ASSOC., AND EVEN FILED A REQUEST TO HAVE (ATTORNEY REMOVED) FROM HIS CASE TO THE COURT, BUT WAS DENIED BY THE (SIC) COURT ON (4-03-1994).

- (11-B) IT WENT DOWN HILL FAST IN LEGAL REPRESENTATION FOR THE DEFENDENT.
- (12) COUNSEL FOR DIRECT APPEAL) REFUSED TO RAISE THE ISSUE THAT TRIAL COUNSEL (P.D. JANET C. SMUCK) OFFERED BASICALLY NO - DEFENSE AT ALL, SEE: TRIAL TRANSCRIPTS/ SENTENCING TRANSCRIPTS
- (13) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE ISSUE, THAT TRIAL COUNSEL REFUSED TO PROPERLY INVESTIGATE ANY OF THE FACTS THAT PETITIONER GAVE TO COUNSEL PRIOR TO TRIAL, SUCH AS THAT PETITIONER NEVER CALLED [GARY MENESS], WHICH COULD BE VERIFIED BY PHONE BILLS/ RECORDS, OR THAT [GARY MENESS] HAD BEEN INVESTIGATED BY CHILD SERVICES (2) YEARS PRIOR TO DEFENDENT'S COMING TO NEVADA OR HIS ARREST, FOR ALLEGED LEWD ACTS WITH HIS (2) DAUGHTERS, - SEE: PLT, PAGE 33 LINE 22-24 AND TT. PAGE 71 LINES 9-15 ALONG WITH AFFIDAVIT OF MR. PAUL GRUBBS...
- (14) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE ISSUE, HOW COUNSEL OR THE COURT ERROR'D IN ALLOWING [MRS. COOMBS] TO TESTIFY THAT DEFENDENT SEXUALLY ABUSED HER 20 YRS. PRIOR IN ANOTHER STATE, -
- (A) AND NEVER BROUGHT UP THE FACTS THAT COUNSEL HAD DEFENDENT'S FBI RECORDS AND COULD PROVE [THE DEFENDENT WAS IN JAIL (8) STATES AWAY FOR (2) YEARS, PLUS WAS IN SERVICE (ARMY) AND IN JOB CORPS IN CHEROKEE N.C., INCLUDING A BOY'S SCHOOL IN TX.] ALL TOTAL 11 YRS. STRAIGHT.
- (B) DEFENDENT NEVER SEEN J. COOMBS OR THAT FAMILY FROM 12 YRS OLD TO 22 YRS OLD, AND DEFENDENT'S ATTORNEY HAD ALL RECORDS - YET REFUSED TO USE THEM.
- (15) DIRECT APPEAL COUNSEL) REFUSED TO RAISE THE FACT THAT DEFENDENT WAS "NOT" ARRANGED [IN PERSON] WITHIN THE 48 HR. RULE OF POWELL V. STATE, 338 P.2d 921 (1992), POWELL V. NEVADA, 114 S. CT (1994), PROBABLE CAUSE DETERMINATION CITED N.R.S. 171.178, 171.178(3), ~~171.186~~ 171.186; CONSTITUTIONAL LAW SET BY THE UNITED STATES -

(15-A) WHERE THE UNITED STATES SUPREME COURT STATES, QUOTE:
WE HOLD [A SUSPECT MUST COME IN PERSON
BEFORE A MAGISTRATE WITHIN 48 HRS
INCLUDING NON-JUDICIAL HOLIDAYS FOR
A PROBABLE CAUSE DETERMINATION..]

(16) THE DEFENDENT SUBMITTS THAT THE HONORABLE
NEVADA SUPREME COURT, WOULD HAVE RULED IN HIS
FAVOR ^{IF} THESE ISSUES OF FACT ^{HAD} BEEN PRESENTED
ON DIRECT APPEAL. [DEFENDANT ASKS FOR RETRIAL.]

First being duly sworn and under the penalty do hereby despose and state as follows:

1. That I am over the age of (21) twenty one years of age and am fully compentent to testify to the matters set forth herein, and that all statements are made of my own personal knowledge and belief.
2. That on January 19, 1994. and prior to that date I lived at 1015 Nevada street #5 Reno NV. 89504.
3. That I personally knew Charles Maki as he lived in the same appartment complex that I live in, and he lived in apartment Number 8.
4. That Mr. Maki and I worked on his truck on january 18 & 19 1994 that on January 19 1994 mr. Maki and I were drinking beer and two (2) plain clothes police men came up and arrested Mr. Maki, At least I believed that Mr. Maki was under arrest as the officers took him away Mr. Maki in my opinion was intoxicated as he and my self had been drinking beer all that day.
5. My step son John knows both of the girls that Mr. Maki is alleged to have sexually assaulted, as they were his playmates.
6. Mr. Maki contacted me after he had been arrested and asked me if I would be willing to come to court for him and testify in his behalf; I told Mr. Maki that I would be willing to testify in his behalf.
7. I could have offered testimony of Mr. Maki's caricture and how he acted around the alleged victims, as well as testamony concerning the girls, as well as there father and how he treated them.
8. I could of also offered testimony concerning the fact that the (2) two alleged victims were always left alone by there father.
9. That a Ms. Smuck left a card on my door and I attempted to contact her at the phonr number that she left but she never did return my calls, until right before Mr. Maki's trial.
10. I left messages for Ms. Smuck on several occasions that I was willing to testify for Mr. Maki and that I had vital information that would assist Mr. Maki and his defence.
11. I could of also testified that the alleged victims were baby sitted by a single male friend of there fathers and that it is my believe that he is the person that may have assulted the two victims the friend of the fathers was named francis, at least that is what I believe his name to be.
12. I finally contacted Ms. Smuck and she told me that Mr. Maki did not want nor need me to testify for him, as the state did

not have a case and that Mr. Maki would be found innocent..

13. To my personal knowledge Mr. Meneese has been investigated by the child welfare dept. and the Reno police dept. in 1992 for allegations of child abuse, Lewdness with a minor and possible sexual assault of his own children; This was due to Mr. Meneeses habbit of getting drunk and telling others of his habbit of taking showers with the girls and running around the house nude in front of the children.

14. Mr. Maki did watch Mr. Meneeses girls on occasion, as Mr. Meneeses would leave his girls with anybody that would watch them for him when he wanted to go out drinking and gambling.

15. on many occassions when I would go up-stairs to Chucks (Mr. Maki's) Apartment and I would notice that Mr. Meneeses girls were at home alone and this would be until late at night.

16. It was not uncommon for Mr Meneese to leave his girls at home alone and the girls would have boys over while there father was gone, either at work or drinking and gambling at the Gold dust west casino in Reno.

17. Mr. Meneese told me he would get back at Mr. Maki Because Mr. Meneeses ex-girl friend left him and moved in with chuck (Mr. Maki) next door, she stayed there from Nov. 1993 to Dec. 1993 until Mr. Meneese made to much trouble for her.

18. Mr. Meneese bragged a few times when he was drinking how he had beat the system and would never have to go to jail for the acts he did with his girls; I understand there was testimony by the girls of lewd acts by the father during Chucks (Mr. Maki's) preliminary hearing.

19. In December of 1993 Chuch and the down stairs tenant that lived in theApts. caught the younger of the alleged victims with a boy in the girls bed room doing a sexual act.

20. Mr. Maki and the tenant both told Mr. Meneese about the above stated incident and Mr. Meneese stated that is was no big deal that it has happend in the past.

21. I told Ms. Smuck of this too, and she stated that this information was not needed. I also gave her the names of the people next door that had personal knowledge of the incident stated in paragraph #19.

22. Mr. Maki told me to go out and find the people that had lived in the apartment complex because Ms. Smuck had told him (Mr. Maki) that nobody wanted to come and testify for him; I told chuck that this was not true, as I had given Ms. Smuck the names as well as information but Ms. Smuck stated that this information was not needed because the state did not have a case.

23. I don't understand Ms. Smucks Judgment, when she could have called many witnesses that lived in the same apartment complex

and know the people and fact of this case.

DATED THIS 29th DAY OF September, 1995

STATE OF NEVADA
County of White Pine

Paul Grubbs
Signature

SUBSCRIBED and SWORN to before me
this 29th day of September, 1995

John Huth

NOTARY PUBLIC



JOHN HUTH

NOTARY PUBLIC - STATE OF NEVADA
White Pine County - Nevada
APPT EXP. Dec. 3, 1995

STAMP

1 CODE: 3335
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 CHARLES MAKI,

10 Petitioner,

Case No. CR94-0345

11 vs.

Dept. No. 8

12 STATE OF NEVADA,
13

14 Respondent.
15 _____/

16 **ORDER GRANTING IN *FORMA PAUPERIS***

17 Petitioner is currently serving a sentence in a correctional institution.
18 Pursuant to Nevada Supreme Court's Order ADKT No. 411, a person will be deemed
19 indigent, who is unable, without substantial hardship to himself or his dependents, to
20 obtain competent qualified legal counsel on his own. Under this standard, a
21 presumption of substantial hardship attaches to those persons currently serving a
22 sentence in a correctional institution or housed in a mental health facility.

23 The Court further finds that pursuant to NRS 171.188, petitioner has
24 insufficient assets and/or income to proceed absent a grant of *forma pauperis* status.

25 IT IS HEREBY ORDERED, pursuant to NRS 171.188 petitioner is granted
26 leave to proceed in *forma pauperis*.

27 IT IS HEREBY FURTHER ORDERED that the Court allow petitioner to bring
28 such action without costs and file or issue any necessary writ, process, pleading or
paper without charge, with the exception of jury fees.

1 IT IS HEREBY FURTHER ORDERED that the Sheriff or any other appropriate
2 officer within the state make personal service of any necessary writ, process, pleading
3 or paper without charge for petitioner.

4 IT IS SO ORDERED.

5 Dated: January 7th, 2014.

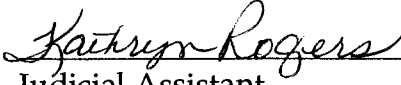
6 
7 District Court Judge

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CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court, and that on the 7th day of January, 2014, I deposited for mailing, first class postage pre-paid, at Reno, Nevada, a true and correct copy of the foregoing document addressed to:

Charles Maki, 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702


Judicial Assistant

1 **CODE 2715**
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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9 **CHARLES MAKI,**

10 **Petitioner,**

11 **vs.**

Case No. CR94-0345

12 **STATE OF NEVADA,**

Dept. No. 8

13 **Respondents.**
14 _____/

15
16 **ORDER GRANTING APPOINTMENT OF COUNSEL**

17 This matter comes before the Court after Petitioner was found indigent.
18 Pursuant to NRS 34.750, the Court finds good cause to appoint counsel to represent
19 the Petitioner.

20 Therefore, IT IS HEREBY ORDERED that the above-entitled matter is referred
21 to Robert Bell, Esq., Administrator of the Court Appointed Counsel, for the selection of
22 counsel to represent Petitioner in his pursuit of post-conviction relief.

23 Dated this 7th day of January, 2014.
24
25

26 
27 **DISTRICT JUDGE**
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Terrence P. McCarthy, Esq.
Robert C. Bell, Esq.

**Charles Maki, 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, NV 89702**

DATED this 7th day of January, 2014.

2

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 01-07-2014:16:56:07
Clerk Accepted: 01-07-2014:16:56:25
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Ord Proceed Forma Pauperis
Filed By: Judicial Asst. KRogers

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

ROBERT BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345
Judge: LIDIA STIGLICH
Official File Stamp: 01-07-2014:16:57:04
Clerk Accepted: 01-07-2014:16:58:13
Court: Second Judicial District Court - State of Nevada
Case Title: STATE VS CHARLES JOSEPH MAKI (D8)
Document(s) Submitted: Ord Appointing Counsel
Filed By: Judicial Asst. KRogers

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE MCCARTHY, ESQ.

ROBERT BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada electronic filing rules):

CHARLES MAKI

CHARLES MAKI

1 **Code : 2715**

2
3 **THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
4 **IN AND FOR THE COUNTY OF WASHOE**

5 * * *

6 CHARLES MAKI,

7 Petitioner,

Case No. : CR94-0345

8 vs.

Dept No. : 8

9 STATE OF NEVADA,

10 Respondent.
11 _____/

11 **RECOMMENDATION AND ORDER FOR APPOINTMENT OF COUNSEL**
12 **(POST CONVICTION)**

13 The Petitioner having been granted Forma Pauperis Status, and District Court
14 Judge Stiglich having determined that there is a basis for the appointment of
15 counsel and having referred the matter to the Administrator of the Court Appointed
16 Counsel for selection of counsel for the Petitioner, the Administrator of the Court
17 Appointed Counsel makes the following recommendation:

18 IT IS HEREBY RECOMMENDED that Robert Story, Esq., be appointed to
19 represent Petitioner on this Petition For Writ Of Habeas Corpus. Said Counsel is to be
20 paid pursuant to NRS 7.115 through NRS 7.165 by the State Public Defender in an
21 amount recommended by the Administrator and approved by the Court.

22 IT IS HEREBY FURTHER RECOMMENDED that Petitioner's counsel have ten (10)
23 days from the date of the Court's Order to designate what portions of the Court file
24 counsel requests be provided to him by the Clerk of the Court;

25 IT IS HEREBY FURTHER RECOMMENDED that, if the newly appointed attorney
26 is not an electronic filer with the Second Judicial District Court, the Clerk of the
27 Court shall provide a CD of all designations made by Petitioner's counsel within five
28 (5) days of the designation. If the newly appointed attorney is an electronic filer

1 with the Second Judicial District Court, the newly appointed attorney shall be
2 placed as the attorney of record in case number CR94-0345.

3 IT IS HEREBY FURTHER RECOMMENDED that Counsel have forty-five (45) days
4 from the date of the receipt of the record within which to supplement the Petition
5 For Writ Of Habeas Corpus or file a Notice indicating that the original Petition For
6 Writ Of Habeas Corpus shall stand as filed;

7 IT IS HEREBY FURTHER RECOMMENDED that the State of Nevada be ordered
8 to respond within forty-five (45) days from the date of filing and service by the
9 Petitioner of the Petition to Supplement or Notice Of Nonsupplementation;

10 IT IS HEREBY FURTHER RECOMMENDED that Counsel for Petitioner and the
11 State of Nevada be ordered to appear within fifteen (15) days of the final briefing
12 before the Administrative Assistant in Department 8, of the Second Judicial District
13 Court for the purpose of setting this case for hearing.

14 DATED this 28 day of Jan., 2014.

15 
16 ROBERT C. BELL, ESQ., ADMINISTRATOR,
COURT APPOINTED COUNSEL

17 Pursuant to the Nevada Supreme Court Order in ADKT 411, and the Second
18 Judicial District Court's Model Plan to address ADKT 411, good cause appearing
19 and in the interest of justice,

20 IT IS HEREBY ORDERED that the recommendations of the Administrator are
21 hereby confirmed, approved and adopted. Robert Story, Esq., shall be appointed
22 to represent Petitioner on his Petition For Writ Of Habeas Corpus.

23 DATED this 29th day of Jan., 2014.

24 
25 CHIEF DISTRICT JUDGE

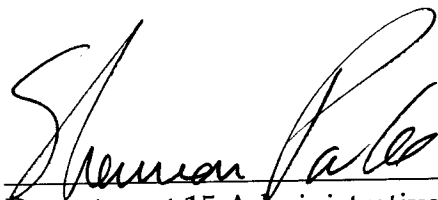
26
27 Signed without review pursuant to ADKT 411
28 Second Judicial District Court Indigency Report,
Dated May 1, 2008

CERTIFICATE OF SERVICE

I certify that I am an employee of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe; that on the 29 day of January, 2014, I deposited in the county mailing system for postage and mailing with the U.S. Postal Service in Reno, Nevada, a true copy of the foregoing addressed to:

Bob Bell
Via interoffice mail

Robert Story, Esq.
2450 Vassar St., #3b
Reno, NV 89509


Department 15 Administrative Assistant

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-01-29 10:51:45.86.

LIDIA STIGLICH - Notification received on 2014-01-29 10:51:45.813.

ROBERT BELL, ESQ. - Notification received on 2014-01-29 10:51:45.782.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

01-29-2014:10:49:44

Clerk Accepted:

01-29-2014:10:50:56

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Appointing Counsel

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES (D8) MAKI

CHARLES MAKI

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-10 12:43:28.243.

ROBERT STORY, ESQ. - Notification received on 2014-03-10 12:43:28.15.

ROBERT BELL, ESQ. - Notification received on 2014-03-10 12:43:28.181.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-10-2014:11:09:43

Clerk Accepted:

03-10-2014:12:42:45

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-26 08:30:03.007.

ROBERT STORY, ESQ. - Notification received on 2014-03-26 08:30:02.897.

ROBERT BELL, ESQ. - Notification received on 2014-03-26 08:30:02.944.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-26-2014:08:29:04

Clerk Accepted:

03-26-2014:08:29:32

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Sealed Order

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code: 2075
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI,

Petitioner,

Case No. CR 94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

MOTION FOR ENLARGEMENT OF TIME
IN WHICH TO PREPARE AND FILE THE SUPPLEMENTAL PETITION FOR WRIT OF
HABEAS CORPUS

Petitioner Charles Maki by and through his appointed counsel, applies to this Court for an order enlarging time within which to file the Supplemental Petition for Writ of Habeas Corpus by 90 days through June 30, 2014, for the following reasons: This is a 20 year old case with an extensive file – in both the state and federal courts – and with multiple prior attorneys. Indeed, appointed counsel has yet to obtain the entire file. Counsel then needs to meet with Petitioner in Warm Springs to discuss the case with Petitioner. If necessary, counsel will do other investigation, and then supplement petitioner's pro se petition for writ of habeas corpus.

Counsel does not bring this request to unnecessarily delay the proceedings in this case, but to address petitioner's claims of ineffective assistance of counsel and other claims.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Respectfully Submitted.

March 31, 2014.

STORY LAW GROUP

By: /s/ Robert W. Story
ROBERT W. STORY, ESQ.

Attorneys for Petitioner Charles Maki

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that this document was filed electronically with the Second Judicial District
3 Court on March 31, 2014. Electronic Service of the foregoing document shall be made in accordance
4 with the Master Service List as follows:

5 Terrence P. McCarthy
6 Chief Appellate Deputy
7 Washoe County District Attorney's Office
8 Attorneys for Respondents

9 I declare under penalty of perjury that the foregoing is true and correct.

10 Dated on June 3, 2013, at Reno, Nevada

11 /s/ Barbara A. Ancina
12 BARBARA A. ANCINA
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Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-03-31 12:15:34.86.

ROBERT STORY, ESQ. - Notification received on 2014-03-31 12:15:34.767.

ROBERT BELL, ESQ. - Notification received on 2014-03-31 12:15:34.798.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

03-31-2014:11:34:01

Clerk Accepted:

03-31-2014:12:15:04

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Mtn for Extension of Time

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code: 3860
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

Case No. CR94-0345

Dept. No. 8

REQUEST FOR SUBMISSION

Petitioner Charles Maki, by and through his appointed counsel, hereby moves to submit his Motion for Enlargement of Time in Which to Prepare and File The Supplemental Petition for Writ of Habeas Corpus, filed March 31, 2014, be submitted to the Court for decision.

Affirmation Pursuant to NRS 239B.030

The undersigned affirms that the preceding document does not contain the social security number of any person.

April 7, 2014.

STORY LAW GROUP

By: /s/ Robert W. Story

Attorneys for Petitioner Charles Maki

PROOF OF SERVICE

I hereby certify that this document was filed electronically with the Second Judicial District Court on April 7, 2014. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows;

Terrance P. McCarthy
Washoe County District Attorney's Office
One South Sierra Street
P.O. Box 30083
Reno, Nevada 89520 – 3083
STORY LAW GROUP

By: /s/ Robert W. Story .

Attorneys for Petitioner

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-07 14:27:34.831.

ROBERT STORY, ESQ. - Notification received on 2014-04-07 14:27:34.721.

ROBERT BELL, ESQ. - Notification received on 2014-04-07 14:27:34.768.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-07-2014:13:49:10

Clerk Accepted:

04-07-2014:14:26:58

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Request for Submission

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-14 11:49:28.13.

ROBERT STORY, ESQ. - Notification received on 2014-04-14 11:49:28.036.

ROBERT BELL, ESQ. - Notification received on 2014-04-14 11:49:28.068.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-14-2014:11:04:51

Clerk Accepted:

04-14-2014:11:48:54

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI,

Case No. CR94-0345

Petitioner,

Dept. No. 8

vs.

THE STATE OF NEVADA,

Respondent.

ORDER

Currently before the Court is Petitioner CHARLES MAKI's ("Petitioner")
Motion for Enlargement of Time in Which to Prepare and File the Supplemental
Petition for Writ of Habeas Corpus, filed March 31, 2014. No opposition was filed.
Petitioner requests more time to review the 20 year old file and meet with
Petitioner. The Court has reviewed the record in its entirety and finds no dilatory
motive on the part of Petitioner.

///

///

///

Accordingly, and good cause appearing, the Petitioner CHARLES MAKI's *Motion for Enlargement of Time in Which to Prepare and file the Supplemental Petition for Writ of Habeas Corpus* is **GRANTED**. Petitioner shall have until June 30, 2014 to file the Supplemental Petition for Writ of Habeas Corpus.

IT IS SO ORDERED.

DATED this 17th day of April, 2014.

Lidia S. Stiglich
LIDIA S. STIGLICH
District Judge

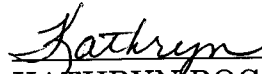
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 17th day of April, 2014, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Terrence McCarthy, Esq.

Robert Story, Esq.

I deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true copy of the attached document addressed to:


KATHRYN ROGERS
Judicial Assistant

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-17 16:29:03.438.

ROBERT STORY, ESQ. - Notification received on 2014-04-17 16:29:03.344.

ROBERT BELL, ESQ. - Notification received on 2014-04-17 16:29:03.376.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-17-2014:16:28:01

Clerk Accepted:

04-17-2014:16:28:33

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Granting Mtn

Filed By:

Judicial Asst. KRogers

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-04-29 10:04:01.714.

ROBERT STORY, ESQ. - Notification received on 2014-04-29 10:04:01.183.

ROBERT BELL, ESQ. - Notification received on 2014-04-29 10:04:01.277.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

04-29-2014:10:00:20

Clerk Accepted:

04-29-2014:10:03:01

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Sealed Order

Filed By:

Judicial Asst. SParke

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

Code: 2610
ROBERT W. STORY, ESQ., Bar No. 1268
STORY LAW GROUP
2450 Vassar Street, Suite 3B
Reno, Nevada 89502
Telephone: (775) 284-5510
Facsimile: (775) 996-4103

Attorneys for Petitioner Charles Maki

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CHARLES MAKI,

Petitioner,

Case No. CR 94-0345

vs.

Dept. No. 8

THE STATE OF NEVADA,

Respondent.

NOTICE TO COURT OF NO SUPPLEMENT

Petitioner Charles Maki, by and through his appointed counsel, provides notice to the Court and the Respondent that, upon thorough review of the records of the criminal proceedings together with legal research and other investigation, the Petition currently on file with the Court shall stand as filed and no supplement to that Petition shall be presented

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social

///

///

///

///

1 security number of any person.

2 Respectfully Submitted.

3 June 30, 2014.

4 STORY LAW GROUP

5
6 By: /s/ Robert W. Story
7 ROBERT W. STORY, ESQ.

8 Attorneys for Petitioner Charles Maki
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Terrence P. McCarthy
Chief Appellate Deputy
Washoe County District Attorney's Office
Attorneys for Respondents

Charles Maki
#42820
Warm Springs Correctional Center
P.O. Box 707
Carson City, NV 89702

Dated on June 3, 2013, at Reno, Nevada

/s/ Barbara A. Ancina
BARBARA A. ANCINA

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-06-30 12:14:06.221.

ROBERT STORY, ESQ. - Notification received on 2014-06-30 12:14:06.127.

ROBERT BELL, ESQ. - Notification received on 2014-06-30 12:14:06.158.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

06-30-2014:11:33:28

Clerk Accepted:

06-30-2014:12:13:37

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Notice

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

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If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE
8

9 CHARLES MAKI, Case No. CR94-0345
10 Petitioner, Dept. No. 8
11 vs.
12 THE STATE OF NEVADA,
13 Respondent.
14 _____/

15 **ORDER**

16 Currently before the Court is Petitioner CHARLES MAKI's ("Maki") *Petition*
17 *for Writ of Habeas Corpus Post-Conviction*, filed December 30, 2013.

18 **BACKGROUND**

19 On April 12, 1994, Maki was found guilty of multiple counts of the crimes of
20 sexual assault on a child under the age of fourteen years and lewdness with a child
21 under the age of fourteen years. Maki's appeal to the Nevada Supreme Court was
22 dismissed after the court concluded it lacked merit. On July 18, 1997, the Court
23 heard Maki's initial petition for post conviction relief and denied it. Maki filed a
24 writ of mandamus on August 2, 2013, and appealed the Court's purported dismissal
25 of the writ to the Nevada Supreme Court. The court determined no decision had
26 been made on the petition and dismissed the appeal.

27 Maki subsequently filed the *Petition* now before the Court and requested that
28 counsel be appointed. The Court granted that request: Maki was appointed counsel

1 who requested extra time to review the 20 year old file and meet with Petitioner.
2 On June 30, 2014, Maki's counsel filed notice with the Court that no supplement
3 would be filed.

4 LEGAL STANDARD

5 A petition for writ of habeas corpus for post-conviction relief must be filed
6 within 1 year from the entry of judgment. NRS 34.726(1). In order for a court to
7 accept an untimely petition, it must find good cause for delay, such as that delay is
8 not the petitioner's fault and dismissal would cause undue prejudice. *Id.* "In terms
9 of a procedural time-bar, an adequate allegation of good cause would sufficiently
10 explain why a petition was filed beyond the statutory time period." *Hathaway v.*
11 *Stat*, 119 Nev. 248, 252-53, 71 P.3d 503, 506 (2003) (per curiam).

12 If the petition is a second or successive petition challenging the validity
13 of a judgment of conviction or sentence and if it plainly appears from
14 the face of the petition . . . that the petitioner is not entitled to relief
15 based on any of the grounds set forth in subsection 2 of NRS 34.819,
the judge or justice shall enter an order for its summary dismissal

16 Nev. Rev. Stat. § 34.745(4).

17 NRS 34.810(2) states, "A second or successive petition must be dismissed . . .
18 if new and different grounds are alleged, [and] the judge or justice finds that the
19 failure of the petitioner to assert those grounds in a prior petition constituted an
20 abuse of the writ." Nev. Rev. Stat. § 34.810(2). Further, if a petition challenges a
21 judgment based on a jury verdict, any claim that could have been raised in a prior
22 proceeding is waived. Nev. Rev. Stat. § 34.810(1)(b).

23 DISCUSSION

24 Maki has not provided any explanation for the delay in his filing, let alone
25 provided an explanation that would amount to good cause for the delay. Maki was
26 convicted over twenty years ago. He timely appealed and the appeal was denied.
27 He was given counsel and a hearing to determine the merits of his petition for writ
28 of habeas corpus post conviction relief in 1997 and that petition was denied. The

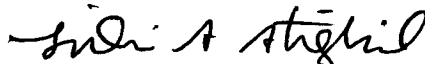
1 Court finds Maki's failure to assert the grounds in the instant *Petition* in his
2 original petition constitutes an abuse of the writ. Maki bears the burden of
3 pleading and proving specific facts to demonstrate good cause for his failure to
4 previously present the claims in his *Petition* as well as actual prejudice. Nev. Rev.
5 Stat. § 34.810(3). He has failed to satisfy this burden. The Court will not now
6 revisit Maki's twenty year old conviction absent any explanation for the delay in his
7 filing.

8 **CONCLUSION**

9 Accordingly, and good cause appearing, Petitioner CHARLES MAKI's
10 *Petition for Writ of Habeas Corpus Post-Conviction* is **DENIED**.

11 **IT IS SO ORDERED.**

12 **DATED** this 7th day of July, 2014.

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15 LIDIA S. STIGLICH
16 District Judge
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Terrence McCarthy, Esq.
Robert Story, Esq.

Charles Maki
#42820
Warm Springs Correctional Center
P.O. Box 707
Carson City, NV 89702

4

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-07 15:28:04.624.

ROBERT STORY, ESQ. - Notification received on 2014-07-07 15:28:04.53.

ROBERT BELL, ESQ. - Notification received on 2014-07-07 15:28:04.562.

******* IMPORTANT NOTICE - READ THIS INFORMATION *******
PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-07-2014:15:26:55

Clerk Accepted:

07-07-2014:15:27:34

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ord Dismiss Post Conviction

Filed By:

Judicial Asst. KRogers

You may review this filing by clicking on the following link to take you to your cases.

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The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

FILED

JUL 18 2014

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

COURT
copy

CHARLES MAKI, # 42820

Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Petitioner, In Proper Person

IN THE 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

WARDEN Smith ECT.

Plaintiff,

Vs.

Defendant,

CHARLES MAKI

Case No.: CR94-0345

NOTICE APPEAL

Please take notice that CHARLES MAKI, Defendant, and
in his proper person, hereby appeals to the Nevada State Supreme
Court, the judgment(s) in the above- entitled action(s) entered in
this Honorable Court on or about the 7th day of JULY,
20 14. This notice of Appeal is timely filed pursuant to
NRAP4(b).

DATED this 15 day of JULY, 20 14.

Respectfully Submitted,

CHARLES MAKI
DEFENDANT, In Propria Persona

CERTIFICATE OF MAILING

I, CHARLES m. m. m., certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

WASHOE COUNTY D.A. OFFICE
District Attorney
P.O. Box 11170 Reno NV.
89570

(Copy to)

CLERK OF COURT
75 COURT ST.
RENO, NV. 89501

(Copy to)

ROBERT STON for
2450 VASSAR ST. 3D
RENO NV. 89502

DATED this 15 day of July, 20 14

BY: Charles m. m. m.
 Appellant, In Proper Person

CR94-0345
STATE VS CHARLES JOSEPH MAKI 2 Pages
District Court
Washoe County
07/18/2014 08:00 AM
JUL 18 2014

FILED

JUL 18 2014

JOEY HASTINGS, CLERK
By: *[Signature]*
DEPUTY CLERK

CHARLES MAKI, # 42820
Warm Springs Correctional Center
P.O. Box 7007
Carson City, Nevada 89702
Appellant, In Proper Person

IN THE 2ND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

<u>CHARLES MAKI</u>	)	Case No. <u>CR94-0345</u>
Appellant,	)	
	)	Dept. No. <u>8</u>
Vs.	)	
	)	Dkt. No. <u>UNKNOWN</u>
<u>WARDEN SMITH ECT.</u>	)	
Respondant,	)	
	)	

DESIGNATION OF RECORD ON APPEAL

Please take notice that CHARLES MAKI, Appellant,
and in his proper person, hereby files this Designation of Record
on Appeal in the above entitled action, pursuant to NRAP 10(b); and
respectfully herein asks this Honorable Court to designate the
record on appeal, to be certified by the Clerk of the District
Court and transcribed to the Clerk of the Nevada State Supreme
Court: All motions, pleadings, judgments, and transcripts.

DATED this 15th day of JULY, 20 14.

Respectfully Submitted,

CHARLES MAKI
APPELLANT, In Propria Persona

WARM SPRINGS CORRECTIONAL CENTER Law Library

CERTIFICATE OF MAILING

I, Charles Mink, certify under the penalties of perjury, that service was made of this NOTICE OF APPEAL & DESIGNATION OF RECORD ON APPEAL, pursuant to NRCP 5(b), by placing same in the United States mail, postage prepaid and addressed as follows:

WASHOE COUNTY P.A.
District Attorney

P.O. Box 11130 Reno NV
89520

(Copy to)

CLERK OF COURT

75 COURT ST

RENO NV. 89501

(Copy to)

ROBERT STONY Esq.

2450 WASSAR ST. 3B

RENO NV. 89502

DATED this 15th day of July, 20 14

BY: Charles Mink
Appellant, In Proper Person

ORIGINAL
TO THE
COURT

CR94-0345
DC-09900058110-003
STATE VS CHARLES JOSEPH MAKI 24 Pages
District Court 07/18/2014 08:00 AM
Washoe County
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DATE...

CHARLES MAKI - 42820

JULY 08 2014

WARM SPRINGS CORR. CENTER

P.O. Box 7007

CARSON CITY, NV. 89702

FILED

JUL 18 2014

JOEY HASTINGS, CLERK

DEPT. 8 BY: [Signature] DEPUTY CLERK

CASE # CR94-0345

PETITIONER - IN PRO SE,

THOUGH DOES HAVE COURT

FED. CASE NO: CV-00201-RLH/PAC

APPOINTED COUNSEL, ROBERT STONE.

IN THE 2ND JUDICIAL DISTRICT COURT

OF NEVADA, IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI
PETITIONER

VS.

GREG, SMITH ET AL.
RESPONDENTS.

NOTICE TO COURT...

①

TO THE HONORABLE COURT, PLEASE TAKE NOTICE
IN REGARDS TO ALL THE PETITIONERS [PLEADING TO REVERSE
[ALLEGED TIME BARR] ALONG WITH ARGUMENT PART 1 AND 2.] ALSO
INCLOSED IS (EXHIBITS A-F-G-K), FOR THE COURT TO SEE, 12 PAGES
TOTAL, WITH CERTIFICATE OF SERVICE. ALL THE ABOVE STATED IS TO
SHOW AND PROVE TO THIS HONORABLE COURT HOW N.D.C.C. - NEVADA
DEPT. OF CORRECTIONS (LOVE LOCK CORR. CENTER) MAIL ROOM STAFF
HAD REFUSED TO SEND THE PETITIONER HIS LEGAL MAIL FROM
THE COURTS, SEE EXHIBIT A AND K... PETITIONER HAD KNOWN WAY
OF KNOWING THE COURTS WERE CORRESPONDING WITH HIM FOR
2 YRS, TILL PETITIONER FINALLY WROTE TO THE COURTS ASKING

855

CONTINUED

From page - 1.

ABOUT HIS CASE, ONLY TO FINALLY FIND OUT THAT PETITIONER WAS TOLD BY COURTS TO GO BACK DOWN TO LOWER COURTS (STATE) AND EXHAUST CERTAIN CLAIMS, AND THAT PETITIONER'S CASE WAS ALSO DISMISSED WITHOUT PREJUDICE. IN FEDERAL COURT (DISTRICT).

②

IN REGARD TO PETITIONER'S COURT APPOINTED ATTORNEY (ROBERT STORY) IN THE LETTER [FROM SAID ATTORNEY - TO THE PETITIONER] MR. STORY STATES HIS REFUSAL TO DO A SUPPLEMENTAL BRIEF IN PETITIONER'S BEHALF AND QUESTIONS THE COURT'S DECISION, OVER THIS ALLEGED TIME BARR SITUATION. AGAIN THIS HONORABLE SHOULD LOOK AT EXHIBITS A-F-G-K. SEE ROE V. FLORES-ORTEGA, 528 U.S. 470, 145, L.Ed 2d 985 (2000) WHICH STATES: AN ATTORNEY'S FAILURE TO FILE A APPEAL IN SPITE OF BEING INSTRUCTED TO DO SO, IS PER-SE INEFFECTIVE ASSISTANCE OF COUNSEL. ALSO IN: UNITED STATES V. SNITZ, 342 F.3d 1154, 1155-56 (10th CIR. 2003) STATES: A LAWYER WHO DISREGARDS SPECIFIC INSTRUCTIONS TO PERFECT A CRIMINAL APPEAL ACTS IN A MANNER THAT IS BOTH PROFESSIONALLY UN-REASONABLE AND PRESUMPTIVELY PREJUDICIAL.

- CONCLUSION -

PETITIONER ARGUES THAT HE SHOULD BE EXCUSED FROM THIS TIME BARR (PROCEDURAL DEFAULT) THAT HE CAN SHOW CAUSE FOR THE ACTUAL PREJUDICE ARISING FROM THE DEFAULT. PETITIONER WAS UN-ABLE TO KNOW WHAT THE COURT HAD ORDERED IN THIS MATTER AT HAND, ROBBING HIM OF THE ABILITY TO COMPLY WITH PROCEDURE, TERMS OR ANY SPECIFIC ORDER CONTAINED WITH THE ORDER, THE COURT'S ORDER DISMISSING [WITHOUT-PREJUDICE] AND BEING PAST THE TIME LIMIT TO FILE WAS BASED ON PETITIONER'S FAILURE TO RESPOND TO AN ORDER HE NEVER RECEIVED FROM THE COURTS... THIS WAS DUE COMPLETELY ON N.D.O.C. NOT COMPLYING 856th THERE

OWN AR⁵ RULE 750. (SEE EXHIBIT A INCOMING LEGAL MAIL.)
LINES 1 AND 2. SEE EXHIBITS A-F-G-K. / / /
PETITIONER IS SHOWING POSITIVE PROOF THRU THESE EXHIBITS, AND
ALONG WITH THE [PLEADING AND ARGUMENT ATTACHED] THAT
THE PRISON EMPLOYEES IN THE MAIL ROOM AT LOU LOCK CORR. CENTER
PREJUDICALLY INTERFERED, WITH PETITIONER LEGAL ACCESS TO THE
COURTS. THE PETITIONERS BACK # 42820 CAN TELL PRISON OFFICIALS
WHERE PRISONER IS ANY WHERE ANY PLACE IN THE U.S.A.
[SUCH A SHOWING OF INTERFERENCE BY PRISON OFFICIALS IS ONE OF THE
WAYS IN WHICH A TIME BAR MAY BE EXCUSED FOR A PROCEDURAL
DEFAULT. SEE: RONALD R. FRANCIS V. WARDEN 894 F.2d 353; (1990)
9th CIR. T. ALSO, MURRAY V. CARRIER, 477 U.S. 478, 488, 91 L. Ed
2d 397, 106 S. CT 2639 (1986); ORLEN EX REL. - AND SHERWOOD V. GLADDEN,
240 F.2d 910, 911-12 (9th CIR. 1957).

sign - charl mafi

sign - CHARLES MAFI - 42820

DATE July of 2014

ORIGINAL
TO THE
COURT

PAGE 1-3

CHARLES MAKI - 42820

DATE JULY 08 2014

WARM SPRINGS CORR. CENTER

P.O. Box 7007

CARSON CITY, NV. 89702

DEPT. NO. 8

PETITIONER IN PRO-SE,

CASE NO. CR94-0345

THOUGH DOES HAVE COURT

FED. CASE NO. CV-00201 RLH/pal

APPOINTED COUNSEL, MR. ROBERT STORJ.

IN THE 2ND JUDICIAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE.

CHARLES MAKI

(APPEAL)

"ALLEGED"

PETITIONER

PLEADING, TO REVERSE TIME BAR,

VS.

AS CASE WAS DISMISSED (WITHOUT) PREJUDICE.

GREG SMITH ET. AL

BUT DUE TO LOVELOCK CORR. CENTER'S MAIL ROOM

RESPONDENTS

STAFF "NOT" SENDING/FORWARDING INMATES LEGAL MAIL

FROM COURT TO HIM, CREATED THE ALLEGED TIME BAR.

...INTRODUCTION...

(1) MR. MAKI HAS NEVER BEEN GIVEN A FULL AND FAIR CHANCE
TO LITIGATE HIS CLAIMS, MAKI REMAINS ADAMANT THAT HE IS
[FACTUALLY - INNOCENT] OF THE CHARGES AGAINST HIM.

A) A CLAIM CANNOT BE BARRED ON THE GROUNDS THAT IT IS SUCCESSIVE
IF THE LITIGENT WAS NEVER GIVEN A FULL AND FAIR CHANCE
TO LITIGATE HIS CLAIMS. SEE: LIEBMAN V. HERTZ, [FEDERAL HE'DERS
CORPUS PRACTICE AND PROCEDURE], VOL. 2 P. 897 (2d ED. 1994), SANDERS V. U.S.,
373 U.S. 1 (1963) AT 7-8; ALSO FRANK V. MAGNUM, 237 U.S. 385 (1915).

PAGE - ONE

(2) PETITIONER'S TIME BARR SHOULD BE RECONSIDERED BY THIS HONORABLE COURT, AS IT WAS ORDERED BY FEDERAL COURT TO GO DOWN TO THE LOWER COURTS TO RESOLVE CERTAIN CLAIMS AS THIS HONORABLE COURT IS ALREADY AWARE OF. PETITIONER'S CASE WAS DISMISSED WITHOUT PREJUDICE. EVEN THOUGH THIS HONORABLE COURT HAS GRANTED PETITIONER'S HABEAS CORPUS AND HAS GRANTED HIM A COURT APPOINTED ATTORNEY, (A MR. ROBERT W. STORY) OF STORY LAW GROUP RENO, NV. PETITIONER'S ATTORNEY STATES THE COURT HAS MADE AN ERROR IN JUDGMENT GRANTING PETITIONER'S HABEAS CORPUS, AND WILL NOT FILE A SUPPLEMENT BRIEF IN PETITIONER'S BEHALF, AND HAS FILED SUCH WITH SAID COURT ON 6-30-2014...

A) "COUNSEL'S NON-STRATEGIC OR INADVERTENT FAILURE TO LITIGATE A CLAIM IN THE STATE OR FEDERAL COURTS VITIATES ANY OPPORTUNITIES THAT MAY OTHERWISE HAVE EXISTED FOR FULL AND FAIR LITIGATION".
Id AT 887 (CITING O'BERRY V. WAINWRIGHT, 546 F.2d 1204, 1213-14 (5TH CIR.)...

B) THE FULL AND FAIR HEARING REQUIREMENT IS DESIGNED TO ASSURE THAT WHEN "STATE ORGANS" HAVE NOT FUNCTIONED CORRECTLY, "GRAVE CONSTITUTIONAL ERRORS [DO NOT] GO FOREVER UN-CORRECTED".
TOWNSEND V. SAIN, 372 U.S. 293, 319 (1963)...

C) A PETITIONER WHO CANNOT SHOW CAUSE AND PREJUDICE MAY YET PRESENT HIS PROCEDURALLY DEFAULTED CLAIMS, IF HE CAN DEMONSTRATE A FUNDAMENTAL MISCARriage OF JUSTICE. SEE: WAINWRIGHT V. SYKES, 433 U.S. 72, 97 S. CT. 2497, 53 L. ED 2d 594 (1997)..
MURRAY V. CARRIER ~~impart~~ POLAND V. STEWARD 92 F.2d 881 (1996).
ALSO SEE: HOGAN V. WARREN, 109 NEUMON 952, 860 P.2d 710 (1993),
AND MCCLESKEY V. ZANT, 499 U.S. 467 (1991).

3) THE LACK OF AND POOR QUALITY OF EVIDENCE UTILIZED IN THE PETITIONER [3 1/2 HOUR TRIAL] (ALONG WITH INADEQUATE TRIAL COUNSEL,) THAT CONVICTED PETITIONER (NO D.N.A. NO ~~PHYSICAL~~ PHYSICAL EVIDENCE, NO MEDICAL EVIDENCE AT ALL) CAN-NOT / SHOULD-NOT BE ALLOWED TO UP HOLD HIS CONVICTION.

A) PETITIONER FEELS NOT ONLY THE STATE DISTRICT COURT, HONORABLE STEVEN KOSACK WHO DISMISSED THE 1ST HE'BEUS CORPUS WAS AN ABUSE OF DISCRETION AS RECORDS WOULD SHOW, BUT MORE SO HOW THE HONORABLE NEVADA SUPREME COURT UP HELD THE LOWER COURTS DECISION, WHEN THE COURT ADMITS IT [DID-NOT HAVE ALL OF THE PETITIONER'S RECORDS, TRIAL TRANSCRIPTS, OR POST CONVICTION, OR MOTIONS SUBMITTED BY PETITIONER'S COUNSEL,] EVEN THOUGH PETITIONER HAD 2 ATTORNEYS APPOINTED BY COURTS, AND IT WAS CLEARLY COURT CLERKS MISTAKES, COURT BLAMES IT ALL ON PETITIONER. SEE: ORDER OF AFFIRMANCE OCT-10-2000 PAGE 4 PARAGRAPH 2 AND 4, PAGE 6 BOTTOM PARAGRAPH 1 AND PAGE 7 WHERE THE NEVADA SUPREME COURT CLEARLY STATES HOW BOTH OF PETITIONER'S ATTORNEYS WERE ON [SEVERAL OCCASIONS, COUNSEL FAILED TO CITE OR TO RELEVANT PORTIONS OF THE APPENDIX AND DISCUSS HOW ISSUES WERE IN THE DISTRICT COURT, ETC.] IN OTHER WORDS BOTH OF PETITIONER'S ATTORNEYS WERE IN EFFECTIVE ASSISTANCE OF COUNSEL, BY THE COURTS OWN ADMISSION. PETITIONER THEN FILED APPEAL IN FEDERAL DISTRICT COURT. WHERE AS TOWARDS 4 1/2 YRS OF LITIGATING HIS CASE IT WAS FINALLY DISMISSED WITHOUT PREJUDICE AND WAS TO GO BACK DOWN TO LOWER COURTS TO RE-ARGUE UNFINISHED CLAIMS, BUT N.D.C. SENT PETITIONER'S LEGAL MAIL BACK TO COURTS 2 TIMES CLAIMING THEY DIDN'T KNOW WHERE HE WAS, AFTER 2 YRS PETITIONER FOUND OUT HE WAS TIME BARRED.

860
DATE July 08, 2014

ORIGINAL
TO THE
COURT

DATE

JULY-08-2019

(PETITIONER'S)

CASE WAS DISMISSED (WITHOUT) PREJUDICE, (IN 2006)

DUE TO LOVELOCK CORR. CENTER'S MAIL ROOM

FREE STAFF, "NOT" SENDING/FORWARDING INMATE

C. MAKI - 42820 LEGAL MAIL FROM COURT TO HIM.

STATE CR94-0345/ DEPT 8

I. ARGUMENT... FED. CASE # CV5-01-0268 RLH-PAL

NAME CHARLES MAKI - 42820

AT THE TIME PETITION WAS FILED, IN 2001 IN FED. CT. MAKI WAS INCARCERATED AT [HIGH DESERT - MAXIMUM] SECURITY PRISON, IN NV. BEFORE THE FED. COURT (DIST.) RENDER'D ITS JUDGMENT, MAKI WAS TRANSFER'D TO LOVELOCK CORR. CENTER, IN 2004, A MEDIUM/MAX PRISON; IN JAN 2006, INMATE MAKI WAS THEN TRANSFER'D TO INDIAN-SPRINGS MEDIUM PRISON. (FROM 3-30-2006 TO (5-23-2006) INMATE MAKI WAS STILL ARGUEING HIS CASE FROM INDIAN SPRINGS PRISON, SEE: CIVIL DOCKET SHEET PAGE # 6-7... THAT ON 6-13-2006 THE CLERK OF COURT, SENT A SHOW CAUSE ORDER # 75 TO LOVELOCK CORR. CENTER, EVEN THOUGH MAKI WAS AT INDIAN SPRINGS, AND ARGUEING HIS CASE FROM INDIAN SPRINGS; THAT THERE WAS AN IMPEDIEMENT EXTERNAL TO THE DEFENSE THAT DEMONSTRATE BY SHOWING THE FACTUAL AND LEGAL BASIS FOR MAKI'S CLAIM WAS NOT REASONABLY AVAILABLE THAT INTERFERENCE BY THE N.D.O.C. MAIL ROOM OFFICIALS MADE COMPLIANCE IN PRACTICABLE, SITE; PELLEGRINI V. STATE 34 p. 34 519, 537 (2001) MAKI WAS AGAIN TRANSFER'D BACK TO LOVELOCK CORR. CENTER IN SEPT 2006 AND NEVER HEARD FROM ANY COURT/ FEDERAL DIST. NOR RECEIVED ANY SUCH ORDER TO COMPLY - NOTHING AT ALL, AS N.D.O.C. NEVER FORWARDED HIS LEGAL MAIL TO HIM. PR. AR 750 SEE 864, BIT A.

UNTIL
~~MAK~~ [FEB. 2008] SEE DOCKET SHEET PAGE 7 # 79-80
I NEVER GOT ANY MAIL FROM THE FEDERAL COURT AND
DID NOT RECIEVE ANY ORDER DISMISSING ANY CASE
WITHOUT PREJUDICE. THE FEDERAL DISTRICT COURT
MAINTAINS (ITS) FEDERAL JURISDICTION, AND BECAUSE THE
JURISDICTION ATTACHES ON THE INITIAL FILING FOR HA'DEUS
CORPUS RELIEF, IT IS NOT DESTROYED BY A TRANSFER
OF THE PETITIONER, AND THE ACCOMPANYING OF CUSTODIAL
CHANGE. SEE; SANTILLANES V. U.S. PAROLE COMMISSION, 754
F.2d 887-88 (10th CIR. 1985); ACCORD SMITH V. CAMPBELL,
450 F.2d 829, 834 (9th CIR. 1971) INSERT FRANCIS V. RISON
894 F.2d 353 (9th CIR. 1990). MAKI ARGUES THAT HE
SHOULD BE EXCUSED FROM THE ALLEGED PROCEDURAL
DEFAULT. HE CONTENTS THAT HE CAN SHOW CAUSE FOR
THE ALLEGED BY PASS OF PROCEDURES AND ACTUAL PREJUDICE
ARISING FROM THE DEFAULT. MAKI FURTHER ARGUES, THAT
PRISON EMPLOYEES AT [LOVELOCK CORRECTIONAL CENTER]
INTERFERED WITH HIS ACCESS TO ADMINISTRATIVE [LEGAL]
REMEDIES. SUCH A SHOWING OF INTERFERENCE BY OFFICIALS,
[THE MIS HANDLING OF MAKI'S LEGAL MAIL], AS PER
AR 750, DESIGNATION/ FORWARDING OF LEGAL MAIL AND
AR 722; IS ONE OF THE WAYS IN WHICH A HA'DEUS PETITIONER
MAY BE EXCUSED FOR A PROCEDURAL DEFAULT. SEE:
OREGON EX REL SHERWOOD V. GLADDEN 240 F.2d 910,
911-12 (9th CIR. 1957); ALSO SEE MURRY V. CARRIER 106 S. CT.
2639 (1986) ALSO, PELLEGRINI V. STATE, 117 NEU. 860, 886,
34 P.3d 519, 537. (2001).

MAKI FURTHER STATES IT SHOULD BE NOTED THAT THE COURT HAS NOT PREVIOUSLY APPLIED A CAUSE AND PREJUDICE STANDARD TO A PROCEDURAL DEFAULT OF LEGAL REMEDIES. THE STANDARD HAS BEEN APPLIED, HOWEVER, TO A WIDE RANGE OF STATE PROCEDURAL DEFAULT. SEE: HUGHES V. IDAHO BOARD OF CORRECTIONS 800 F.2d 905, 908 (9th CIR 1986), CITED CASES; ALSO SEE SANCHEZ, 792 F.2d AT 697-99 (1986) (CAUSE AND PREJUDICE IN ADMINISTRATIVE PROCESS); FURTHER SEE FRANCIS V. RISON, WARDEN 894 F.2d 353 (1990).....

MAKI FURTHER ARGUES THAT [THE PRISON OFFICIALS HAVE A TIMELY OBLIGATION TO DELIVER INMATES LEGAL MAIL, AS PER AR 750 IN A TIMELY MANNER], [THE MISHANDLING OF MAKI'S LEGAL MAIL], CAUSED MAKI TO LOSE HIS APPEAL OF RIGHT, WHICH VIOLATES HIS 14th AMENDMENT. THERE [NEVER SHOULD BE A TIME WHERE N.D.O.C.] "DID NOT" KNOW WHERE MR. MAKI WAS, "YET THAT'S WHAT N.D.O.C. USED AS AN EXCUSE TO SEND MAKI'S LEGAL MAIL BACK TO THE FEDERAL DISTRICT COURT, (TWICE)..
MAKI'S RIGHT TO ACCESS TO THE COURTS WAS VIOLATED BECAUSE OF THE LOVELOCK CORRECTIONAL CENTER PRISON OFFICIALS "FAILURE" TO DELIVER AND FORWARD HIS LEGAL MAIL TO HIM. EVEN THOUGH THE PRISON OFFICIALS WILL STATE THAT THEY DID NOT INTENTIONALLY MISHANDLE DELIVERY OF MAKI'S LEGAL MAIL, THE RIGHT OF HIS APPEAL WAS UNJUSTLY AFFECTED JUST THE SAME, IN THAT MR. MAKI WAS PRECLUDED FROM THE CONTINUATION OF PURSUING HIS STATUTORY RIGHT OF APPEAL. THE RIGHT OF ACCESS TO ANY COURT IS FUNDAMENTAL, IT IS WELL ESTABLISHED THAT ALL PRISONERS HAVE A CONSTITUTIONAL RIGHT TO ACCESS TO THE COURTS....

THE UNITED STATES SUPREME COURT HAS FOUND A 14TH AMENDMENT VIOLATION, WHERE A PRISON OFFICIAL DID NOT SEND PAPERS (LEGAL) TO THE INMATE, WHICH RESULTED IN A PETITIONERS DISMISSAL OF HIS APPEAL OF RIGHT, BECAUSE HE COULD NOT FILE HIS APPEAL DOCUMENTS BEFORE THE FILING DEADLINE... STATES; HAVE AFFIRMATIVE OBLIGATIONS TO ASSURE THAT ALL PRISONERS HAVE A MEANINGFUL ACCESS TO THE COURTS, CONSISTANT WITH THEIR OTHER AFFIRMATIVE OBLIGATIONS, PRISON'S HAVE AN OBLIGATION [TO TIMELY MAIL/FORWARD COURT DOCUMENTS] WHEN THE PRISONER HAS BEEN DILIGENT AND PUNCTUAL IN SUBMITTING THEM TO PRISON OFFICIALS; MAKI HAS DONE THIS FROM DAY ONE, UN-TILL THE PRISON OFFICIALS REFUSED TO SEND/FORWARD HIM HIS LEGAL MAIL FROM THE FED. DIST. CT., THAT CAUSED HIS PROCEDURAL DEFAULT AND PREJUDICE TO HIM, SEE JOHN DORN V. BLAIN LAFLE WARDEN, 601 F.3d 439 (6TH CIR) 2010... AS PURSUANT TO FRANCIS V. RISON, 894 F.2d 353 (9TH CIR 1990), * STANDS FOR THE PROPOSITION THAT THE INDIVIDUAL TRANSFER FROM ONE INSTITUTION TO ANOTHER WILL ENTAIL THE U.S. DISTRICT COURT TO HAVE AND MAINTAIN SUBJECT MATTER JURISDICTION AS WELL AS FOR THE PURPOSES OF EXHAUSTION OF ADMINISTRATIVE/LEGAL REMEDIES. SEE THE APPLICABLE STANDARDS BELOW UPDATING FRANCIS V. RISON, SUPRA - 61 DBS V. THOMAS, 2010 U.S. DIST. LEXIS 122152 (2010); HERNANDEZ V. LAPPIN 2010 U.S. DIST. LEXIS 130752 (2010); MORALES V. DE BOO 2010 U.S. DIST. LEXIS 133346 (2010); SHACHABADI V. APKER 2010 U.S. DIST. LEXIS 139604 (2010); NAPOLEON V. YVES 2011 U.S. DIST. LEXIS 44355 (2011); ABPLANALP V. AOLER 2011 U.S. DIST. LEXIS 49195 (2011); VASQUEZ-MARIN V. BENO V, 2011 U.S. DIST. LEXIS 65754 (2011)...

II.

CASE # CV-5-01-0268 RLK

MARK ALLEN PINNELL V. BRIAN BELLEQUE, U.S. DIST. CT.
OF OREGON 638 F. Supp. 2d 1231; (2009)

* [CRIMINAL LAW AND PROCEDURE] [HADEUS CORPUS] [PROCEDURE]

[APPOINTMENT OF COUNSEL]... IN PART STATES; THE
U.S. DISTRICT COURT HAS GIVEN AS ONE EXAMPLE OF CAUSE
SOME INTERFERENCE BY OFFICIALS THAT MADE COMPLIANCE
WITH PROCEDURAL RULES IMPRACTICABLE. PRISON OFFICIALS
INTERFERENCE WITH A PETITIONER'S ACCESS TO ADMINISTRATIVE-
LEGAL REMEDIES CAN BE CAUSE FOR A PROCEDURAL DEFAULT.

"CONSTITUTIONALLY" INEFFECTIVE ASSISTANCE OF COUNSEL, HAS
ALSO BEEN CONSIDERED CAUSE FOR PROCEDURAL DEFAULT. (MAKI
FIRED HIS FED. PUBLIC DEFENDER) (FOR NOT DOING HER JOB
ALONG WITH SERIOUS CONFLICT OF INTEREST) SEE DOCKET # 59.

THE U.S. COURT OF APPEALS FOR THE 9TH CIRCUIT HAS CONCLUDED
THAT AN OMISSION COMMITTED BY AN ATTORNEY ACTING UNDER
A CONFLICT OF INTEREST MAY CONSTITUTE CAUSE TO EXCUSE
PROCEDURAL DEFAULT EVEN IN THE ABSENCE OF A 6TH AMEND.

VIOLATION. FINALLY, MAKI CONTENDS THAT - THAT NOT ONLY
IF HIS (FEDERAL PUBLIC DEFENDER) DID HER JOB MORE PROFESSIONAL
AND BY THE STANDARDS OF LAW - SEE, STRICKLAND V. WASHINGTON 466
U.S. 668, 670, 80 LEd 2d 674, 104 S.Ct. 2052 (1984), THAT HE WOULD

NOT HAVE FIRED HER, [AND THAT THE COURT SHOULD STILL REPLEAD SAID
COUNSEL WITH "CONFLICT FREE" NEW COUNSEL AS MAKI REQUESTED]

AND THE COURT DENIED; SEE DOCKET # 59-60-61-63, MR. MAKI
FEELS THIS WHOLE TIME BARR COULD BEEN COMPLETELY AVOIDER

FROM THE START.

SIGN CHAIRS MAKI

865

DATE JULY 04 14 CHARL MATA

AFFIDAVIT OF CHARLES MAKI # 42820

STATE OF NEVADA }
COUNTY OF CARSON CITY }

TO WHOM IT MAY CONCERN:

I) CHARLES MAKI THE UNDER SIGN DO HEARBY SWEAR THAT ALL OF THE FOLLOWING STATEMENTS AND DESCRIPTIONS OF EVENTS ARE TRUE, AND CORRECT OF MY OWN KNOWLEDGE, INFORMATION AND BELIEF AND TO THOSE I BELIEVE TO BE TRUE AND CORRECT...

(1) THAT CHARLES MAKI AFFIANT IN THIS AFFIDAVIT IS CURRENTLY INCARCERATED AT WARM SPRINGS CORRECTIONAL CENTER JULY 2014...

(2) I) CHARLES MAKI HAVE BEEN INCARCERATED SINCE MAY 1994 IN THE NEVADA DEPT. OF PRISONS.

(3) I) CHARLES MAKI WAS FROM 2004 TO JAN 2006 AT LOVELOCK CORR. CENTER.

(4) I) CHARLES MAKI WAS AT INDIAN SPRINGS PRISON (SDCC) FROM JAN 2006 TILL SEPT 2006.

* (5) I) CHARLES MAKI HAVE EXHIBIT A TO SHOW THE COURT, IN REGARDS TO PRISONS AR 722/750. PAGE 13 THAT WILL POSITIVELY PROVE THAT N.D.O.C NEVADA DEPT. OF CORRECTIONS/ LOVELOCK CORR. CENTER'S MAIL ROOM STAFF SHOULDVE SENT/ FORWARDED PETITIONERS LEGAL MAIL TO HIM INSTEAD OF SENDING IT BACK TO COURT [NOT ONCE, BUT TWICE], AS EXHIBIT K WILL PROVE. SEE EXHIBITS F-G TO BACK UP (PARAGRAPH 5) OF THIS AFFIDAVIT. ALL EXHIBITS ARE ATTACHED TO PLEADINGS AND ARGUMENT.

(6) I) CHARLES MAKI FEEL N.D.O.C./ LOVELOCK PRISON STAFF, IS AT FAULT FOR NOT ALLOWING ME TO HAVE EXCESS/ TO COMUNICATE WITH THE COURT AND BY DOING SO GOT ME IN THE CURRENT SITUATION I'M IN...

NEXT PAGE

AFFIDAVIT OF [CHARLES MAKI] CONT.

- (7) I) CHARLES MAKI FEEL THAT BECAUSE N.D.O.C / LOU LOCK PRISON'S STAFF REFUSED TO FOLLOW AR 7.22/750. PAGE 13 [EXHIBIT A] PROCEDURE OR POLICY (I) SHOULD NOT BE HELD ACCOUNTABLE FOR THE ALLEGED TIME BAR ECT.
- (8) I) CHARLES MAKI FEEL THAT AS AN INMATE WITH A BACK NUMBER 42820 THERE IS NO EXCUSE FOR LOU LOCK MAIL RM. STAFF TO NOT TO JUST PUNCH my NUMBER up ON Any COMPUTER IN A MATTER OF SECONDS, TO FIND OUT my CURRENT LOCATION, AS ITS DONE 100'S OF TIMES EVERY DAY THROUGH OUT THE PRISON SYSTEM... INSTEAD OF CREATING A SERIOUS LEGAL FATALITY BY JUST SENDING BACK my LEGAL MAIL TO COURTS STATING RE-TURN TO SENDER / ADDRESS UN-KNOWN SEE EXHIBIT K...
- (9) I) CHARLES MAKI HAVE NEVER RECEIVED A PROCEDURAL DEFAULT / YOUR TIME BAR'D FROM COURT, AS REQUIRED BY LAW...

DECLARATION UNDER PENALTY OF PERJURY.

I, THE UNDERSIGNED UNDERSTAND THAT A FALSE STATEMENT OR ANSWER TO ANY QUESTION IN THIS DECLARATION WILL SUBJECT ME TO PENALTIES OF PERJURY. (I) DECLARE UNDER THE PENALTY OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, THAT THE ABOVE INFORMATION IS ACCURATE, CORRECT AND TRUE TO THE BEST OF my KNOWLEDGE EXECUTED WITHIN THE TERMS OF N.R.S. 208.165 SEE 28 USC 1746 AND 18 USC 1621...

DAY MONTH JR
DATED THIS 08 OF JULY 2014

SIGN NAME Charles Maki # 42820

PRINT NAME CHARLES MAKI

[INDEX OF EXHIBITS]

EXHIBIT A

OF PAGES 1

EXHIBIT DESCRIPTION SHOWS N.D.O.C. LEGAL MAIL policy 722.02/AR 750

EXHIBIT F

OF PAGES 1

EXHIBIT DESCRIPTION LETTER TO PRISON MAIL ROOM / RESPONSE TO AR 750

EXHIBIT G

OF PAGES 1

EXHIBIT DESCRIPTION LETTER TO LAW LIBRARY / RESPONSE TO AR 750

EXHIBIT K

OF PAGES 1

EXHIBIT DESCRIPTION PETITIONERS RETURN LETTER TO COURTS / BY PRISON OFFICIALS

SIGN CHARLES MAKI-42820

SIGN CHARLES MAKI

DATE JULY 08-2014

EXHIBIT A-

EXHIBIT A

ORIGINAL
To the
Court

- A. The word "confidential" must be included on the face of the envelope or the mail will be processed as general correspondence.
 - B. Indigent or indigent at the moment legal mail may be scanned, but not read, prior to sealing the envelope.
 - C. If the mail is not legal in nature the mail will not be processed.
- 8. Mail addressed to the Governor, Attorney General, or Secretary of State will be inspected before the envelope is sealed, then initialed by the staff.
 - 9. Legal mail will not be held in the institution longer than 24 hours before transmittal, excluding weekends and holidays.
 - 10. All legal mail must be sent via the U.S. Postal Service unless ordered otherwise by the Court.
 - 11. There is no limit to the amount of legal postage an indigent inmate or indigent at the moment inmate may accumulate for legal postage.
 - A. This policy should extend only to the pursuit of civil rights, habeas corpus, or post-conviction litigation actions.
 - B. This policy shall extend only to first-class mail for all legal mail unless the Court requires certification.
 - C. Both indigent and indigent at the moment inmates must sign a brass slip to ensure the State is reimbursed once the funds are available.
 - 12. Locations served by the State Mailroom are to separate legal mail with a note that the legal mail is to be charged full rate and not pre-sort rate.

722.09 INCOMING LEGAL MAIL

- 1. Incoming legal mail must meet the address requirements of AR 750.
- 2. Legal mail received for inmates housed in other institution or facilities should be forwarded by way of the U.S. mail to the inmate.
 - A. Inter Departmental mail will not be used for this purpose.
- 3. Legal mail received for inmates who are no longer supervised by the Department will be immediately returned to sender or forwarded, provided an address is available.

Exhibit "A" Page 1 of 1

EXHIBIT - E

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
C Huck maki	42820	1A-8A	11-14-11

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER	☐ MEDICAL	☐ MENTAL HEALTH	☐ CANTEEN
☐ EDUCATION	☐ VISITING	☐ LAW LIBRARY	☐ DENTAL
☐ LAUNDRY	☐ PROPERTY ROOM	☒ OTHER <u>Love/lock mail Room..</u>	

5.) NAME OF INDIVIDUAL TO CONTACT: MAIL Room 9/6 OR FREE STAFF AT L.L.C.C.

6.) REQUEST: (PRINT BELOW) I WOULD LIKE TO KNOW WHATS YOUR, -
N.D.O.C. policy AND PROCEDURE FOR FORWARDING MY (LEGAL
MAIL) IF I GOT TO ANOTHER PRISON IN STATE OF NEVADA. -
- WHILE UNDER STATE JURISDICTION, OF N.D.O.C.!! AS PER AR 750,
AND AR 722...

Thank you

7.) INMATE SIGNATURE C Huck maki DOC # 42820

8.) RECEIVING STAFF SIGNATURE C/O WALKER DATE 11-14-11

9.) RESPONSE TO INMATE

All 1st Class mail is forwarded to you through the U.S. Post Office

10.) RESPONDING STAFF SIGNATURE Sgt. Chant DATE 11/17/11

Exhibit-F

EXHIBIT (F)

EXHIBIT-6

INMATE REQUEST FORM

1.) INMATE NAME	DOC #	2.) HOUSING UNIT	3.) DATE
Chuck maki	42820	1A8A	11-23-2011

4.) REQUEST FORM TO: (CHECK BOX)

☐ CASEWORKER	☐ MEDICAL	☒ LAW LIBRARY	☐ CANTEEN
☐ EDUCATION	☐ VISITING	☐ SHIFT COMMAND	☐ DENTAL
☐ LAUNDRY	☐ PROPERTY ROOM	☐ OTHER	

5.) NAME OF INDIVIDUAL TO CONTACT: Mrs. Fick, Law-Library Supervisor / Lovelock CORR. CEN.

6.) REQUEST: (PRINT BELOW) I would like to know IF (I) GET TRANSFERRED ANY TIME TO ANOTHER PRISON IN THE STATE OF NEVADA WHILE STILL UNDER NDOC-JURISDICTION, WHATS THE POLICIE/PROCEDURE UNDER [AR 250] [LEGAL MAIL] How do you [FORWARD] my LEGAL-MAIL TO ME BEING FROM my ATTORNEY OR COURTS, IF OR WHEN (I) GET TRANSFERRED TO ANOTHER STATE INSTITUTION - Including Jail...

THANK you For your TIME..

7.) INMATE SIGNATURE Chuck maki DOC # 42820

8.) RECEIVING STAFF SIGNATURE _____ DATE _____

9.) RESPONSE TO INMATE

Your mail is forward via USPS.

10.) RESPONDING STAFF SIGNATURE [Signature] DATE 11-28-11

Exhibit-G

EXIBIT-1C

DEFINITION
FILED STAMP
RETURN - COPY



LAS VEGAS NV 89101
15 JUN 2006 PM 3

RECEIVED
SERVED ON
PARTIES OF REC

2006 JUN 28 F 1:47

U.S. DISTRICT COURT
CLERK

BY: _____ DEPUTY

~~Charles Joseph Makin
Lovelock Correctional Center
P.O. Box 269
Lovelock, NV 89419~~

in Nv. Jail

██

CLERK, U.S. DISTRICT COURT
DISTRICT OF NEVADA
LLOYD D. GEORGE U.S. COURTHOUSE
333 LAS VEGAS BLVD. SO. - RM 1334
LAS VEGAS, NV 89101

OFFICIAL BUSINESS

RETURN TO SENDER
NEVADA DEPARTMENT OF PRISONS
REPOSED PAROLED
ADDRESSEE UNKNOWN
INMATE NUMBER REQUIRED
UNAUTHORIZED CORRESPONDENCE

Exhibit - K

COURTS
COPY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY THAT ALL SAID DOCUMENTS, INCLUDING
NOTICE TO THE COURT, - PLEADING TO REVERSE ALLEGED,
TIME BAR, ARGUMENT, - AFFIDAVIT OF CHARLES
MAKI, ALONG WITH EXHIBITS A-F-G-K.
ARE TRUE AND CORRECT, UNDER PENALTY OF PERJURY.

[COPY'S SENT TO:]

COUNT 75 COUNT ST.

RENO, NV. 87501

TO:

ROBERT STONG

2450 VASSAR ST. 35

RENO, NV. 87502

DATED JULY 08-2014

CHARLES MAKI 42820

CHARLES MAKI

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CARTS
copy

SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, NOTICE TO
(APPEAL) (PETITIONERS)
COUNT, PLEADING TO REVERSE TIME BARR, ARGUMENT, PETITIONERS
AFFIDAVIT, EXHIBITS A-F-G-K, CERTIFICATE OF SERVICE.
(Title of Document)

filed in case number: DEPT. 9 / CR 94-0345



Document does not contain the social security number of any person

-OR-



Document contains the social security number of a person as required by:



A specific state or federal law, to wit:

(State specific state or federal law)

-or-



For the administration of a public program

-or-



For an application for a federal or state grant

-or-



Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 08 2014

Charles Maki
(Signature)

CHARLES MAKI
(Print Name)

ROBERT STORRY
(Attorney for)

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-22 08:11:37.995.

ROBERT STORY, ESQ. - Notification received on 2014-07-22 08:11:37.901.

ROBERT BELL, ESQ. - Notification received on 2014-07-22 08:11:37.933.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-21-2014:15:50:34

Clerk Accepted:

07-22-2014:08:11:07

Court:

Second Judicial District Court - State of Nevada

Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Ex-Parte Application

- **Continuation

- **Continuation

Filed By:

Robert W. Story

You may review this filing by clicking on the following link to take you to your cases.

This notice was automatically generated by the courts auto-notification system.

-

If service is not required for this document (e.g., Minutes), please disregard the below language.

The following people were served electronically:

TERRENCE P. MCCARTHY, ESQ.

ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

The following people have not been served electronically and must be served by traditional means (see Nevada Electronic Filing Rules.):

CHARLES MAKI

1 **Code 1310**

2
3
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5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

7 **IN AND FOR THE COUNTY OF WASHOE**

8 **CHARLES MAKI,**

9 **Petitioner,**

Case No. CR94-0345

10 **vs.**

Dept. No. 8

11 **THE STATE OF NEVADA,**

12 **Respondent.**

13 _____ /
14 **CASE APPEAL STATEMENT**

15 This case appeal statement is filed pursuant to NRAP 3(2).

- 16 1. This appeal is from an order entered by the Honorable Judge Lidia Stiglich.
- 17 2. Appellant is Charles Maki. Appellant is representing himself in Proper Person on
- 18 appeal:
- 19 3. Appellant's address is:
- 20 Charles Maki #42820
- 21 Warm Springs Correctional Center
- 22 P.O. Box 7007
- 23 Carson City, Nevada 89702
- 24 4. Respondent is the State of Nevada. Respondent is represented by the Washoe
- 25 County District Attorney's Office:
- 26 Terrance McCarthy, Esq.
- 27 P.O. Box 11130
- 28 Reno, Nevada 89520
5. Respondent's attorney is licensed to practice law in Nevada.

6. Appellant was represented by appointed counsel in District Court.
7. Appellant is not represented by appointed counsel on appeal.
8. Appellant was granted leave to proceed in forma pauperis, filed January 7, 2014 in the District Court.
9. Proceeding commenced by the filing of an Information on February 10, 1994.
10. This is a criminal proceeding and the Appellant is appealing the Order filed July 7, 2014.
11. The case has been the subject of a previous appeal to the Supreme Court:
Supreme Court No: 63845
12. This case does not involve child custody or visitation.
13. This is not a civil case involving the possibility of a settlement.

Dated this 24th day of July, 2014.

JOEY ORDUNA HASTINGS
CLERK OF THE COURT

By: /s/ Yvonne Vilorio
Yvonne Vilorio
Deputy Clerk

1 **Code 1350**

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**

8 **CHARLES MAKI,**

9 **Petitioner,**

10 **vs.**

Case No. CR94-0345

11 **THE STATE OF NEVADA,**

Dept. No. 8

12 **Respondent.**
13 _____/

14
15 **CERTIFICATE OF CLERK AND TRANSMITTAL – NOTICE OF APPEAL**

16 I certify that I am an employee of the Second Judicial District Court of the State of
17 Nevada, County of Washoe; that on the 24th day of July, 2014, I electronically filed the
18 Notice of Appeal in the above entitled matter to the Nevada Supreme Court.

19 I further certify that the transmitted record is a true and correct copy of the original
20 pleadings on file with the Second Judicial District Court.

21 Dated this 24th day of July, 2014

22
23 **JOEY ORDUNA HASTINGS**
24 **CLERK OF THE COURT**

25 By /s/ Yvonne Vilorio
26 Yvonne Vilorio
27 Deputy Clerk
28

Return Of NEF

Recipients

TERRENCE MCCARTHY, ESQ. - Notification received on 2014-07-24 08:39:41.669.

ROBERT STORY, ESQ. - Notification received on 2014-07-24 08:39:41.17.

ROBERT BELL, ESQ. - Notification received on 2014-07-24 08:39:41.591.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

PROOF OF SERVICE OF ELECTRONIC FILING

-

A filing has been submitted to the court RE: CR94-0345

Judge:

HONORABLE LIDIA STIGLICH

Official File Stamp:

07-24-2014:08:38:35

Clerk Accepted:

07-24-2014:08:39:10

Court:

Second Judicial District Court - State of Nevada
Criminal

Case Title:

STATE VS CHARLES JOSEPH MAKI (D8)

Document(s) Submitted:

Case Appeal Statement
Certificate of Clerk

Filed By:

Deputy Clerk YViloria

You may review this filing by clicking on the following link to take you to your cases.

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ROBERT STORY, ESQ. for CHARLES (D8)
MAKI

ROBERT C. BELL, ESQ.

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CHARLES MAKI