

EXHIBIT 1

EXHIBIT 1

FILED

Electronically

01-17-2014:10:29:40 AM

Joey Orduna Hastings

Clerk of the Court

Transaction # 4264651

DA #13-177350

DAS 13-5736

1 CODE 1800
2 Richard A. Gammick
3 #001510
4 P.O. Box 11130
5 Reno, NV 89520
6 (775) 328-3200
7 Attorney for State of Nevada

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

12 * * *

13 THE STATE OF NEVADA,

14 Plaintiff,

Case No.: CR14-0058

15 v.

Dept. No.: D01

16 NORMAN DEMETRIUS DUPREE,
17 also known as
18 ERIC LASHAWN PICKETT,

19 Defendant.
20 _____/

21 INFORMATION

22 RICHARD A. GAMMICK, District Attorney within and for the
23 County of Washoe, State of Nevada, in the name and by the authority
24 of the State of Nevada, informs the above entitled Court that NORMAN
25 DEMETRIUS DUPREE also known as ERIC LASHAWN PICKETT, the defendant
26 above named, has committed the crime of:

POSSESSION OF A CONTROLLED SUBSTANCE FOR THE PURPOSE OF
SALE, a violation of NRS 453.337, a felony, (F810) in the manner
following:

That the said defendant on the 18th day of September A.D.,
2013 or thereabout, and before the filing of this Information, at and

1 within the County of Washoe, State of Nevada, did willfully,
2 unlawfully and knowingly have in his possession and under his
3 dominion and control a Schedule I controlled substance: cocaine, for
4 the purpose of and with the intent to sell said controlled substance.
5

6 All of which is contrary to the form of the Statute in such
7 case made and provided, and against the peace and dignity of the
8 State of Nevada.
9

10 RICHARD A. GAMMICK
11 District Attorney
Washoe County, Nevada
12
13

14 By /s/ Zach Young
15 ZACH YOUNG
16 9227
Deputy District Attorney
17
18
19
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26

1 The following are the names and addresses of such witnesses
2 as are known to me at the time of the filing of the within
3 Information:
4

5 ERIC RAMOS, DEPARTMENT OF ALTERNATIVE SENTENCING
6

7 The party executing this document hereby affirms that this
8 document submitted for recording does not contain the social security
9 number of any person or persons pursuant to NRS 239B.230.

10 RICHARD A. GAMMICK
11 District Attorney
12 Washoe County, Nevada

13 By /s/ Zach Young
14 ZACH YOUNG
15 9227
16 Deputy District Attorney
17
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26

PCN: WCAS0001252C-DUPREE

EXHIBIT 2

EXHIBIT 2

RPC2013-7664

CR14-0058

RCR2013-074258

INTERNATIONAL FIDELITY INSURANCE COMPANY

ASSOCIATED BOND AND INSURANCE AGENCY, INC.

P.O. Box 9810

Calabasas, CA 91372-9810

Phone (818) 222-4999

Fax (818) 222-4498

Justin Bros. Bail Bonds

235 S. Sierra St.

Reno, Nevada 89501

(775) 337 9400

FILED

JAN 10 2014

JOEY HASTINGS, CLERK

By: *[Signature]*
DEPUTY CLERKJUSTICE

COURT

(Municipal, Justice, Judicial District)

RENO, WASHOE

(City, Township, County)

STATE OF NEVADA

State Of Nevada

vs.

Plaintiff

NORMAN DUPREE

Defendant

Bail Bond No. 1530K 151744Case No. 13-5736Booking No. 13-14785

(Power of Attorney with above Bond number must be attached. Bond is not valid if more than one (1) Power of Attorney has been attached)

An order having been made on the

18th

day of

SEPT., 20 13

by

JUSTICE OF THE PEACE

(Municipal Judge, Justice of the Peace District Judge)

RENO, WASHOE

, State of Nevada,

(of the City of Township of, in and for the County of)

that the defendant be held to answer (or for examination) upon a charge of

POSS SCH I, II, III, IVC/S, 1ST/2ND, SELL SCH I OR II C/S, 2ND

, upon which he/she has been duly admitted

to bail in the sum of

TWENTY FIVE THOUSAND AND NO/100

dollars.

Now we, INTERNATIONAL FIDELITY INSURANCE CO., New Jersey Corporation, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above named defendant will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render him/herself amenable to the orders and the process of the Court, and if convicted, shall appear for judgment and render him/herself in execution thereof, or if he/she fails to perform any of these conditions, that we will pay to the State of Nevada

the sum of \$

25,000 -

Defendant notified to appear:

Date: 10-16-13@ 9:30AM
PM

Approved by me this

19th

day of

September, 20 13

INTERNATIONAL FIDELITY
INSURANCE COMPANY
(A New Jersey Corporation)

BY *[Signature]*

ATTORNEY-IN-FACT

NOTE: This is an Appearance Bond and cannot be construed as a guarantee for failure to provide payments, back alimony payments, Fines, or Wage Law claims, nor can it be as a Bond on Appeal

Dupree, Norman D.

DC-990052687-005
CR14-0058
STATE VS. NORMAN
DEMETERIUS D. 4 Pages
District Court
01/10/2014 03:01 PM
BAIL
Washoe County

VERIFY FIRST - THIS DOCUMENT IS PRINTED IN BLUE, RED & BLACK INKS.

Only the original Power of Attorney
will bind this Surety.

POWER OF ATTORNEY 0215-0058
INTERNATIONAL FIDELITY INSURANCE COMPANY
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER NUMBER IS30K-151744

THIS POWER VOID IF NOT USED BY: March 31, 2014

POWER AMOUNT \$ 30,000

KNOW ALL MEN BY THESE PRESENTS, that INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, has constituted and appointed, and does hereby constitute and appoint, its true and lawful Attorney-in-Fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as fully and to all intents and purposes as if done by the regularly elected officers of said company at its home office in their own proper person, and the said company hereby ratifies and confirms all and whatsoever its said Attorney-in-Fact may lawfully do and perform in the premises by virtue of these presents.

THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED, THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF THIRTY THOUSAND*****

AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.

Authority of such Attorney-in-Fact is limited to the execution of appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearances. A separate Power of Attorney must be attached to each bond executed. Powers of Attorney must not be returned to Attorney-in-Fact, but should remain a permanent part of the court records.

Bond Amt \$ 25,000 - Date Executed 9-18-13

Defendant NORMAN DUPREE D.O.B. _____

Case # 13-5736 Appearance Date 10-16-13 9:30am

Offense POSS SCH I, II, III, IV c/s, 1st & 2nd, SEIZ SCH I or II c/s 2nd

Court County RJC, WASHOE

Court City RJC RENO Court State NV Div./Dept. _____

If rewrite, give orig. power # _____ ☐ Increase ☐ Decrease

Executing Agent Sharon A. Smith Signature/If applicable, add your COURT assigned Agent # _____

NOTICE: Stacking of Powers is strictly prohibited. No more than one power from this Surety may be used to post any one bail amount.

IN WITNESS WHEREOF, said INTERNATIONAL FIDELITY INSURANCE COMPANY, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its Chairman of the Board and attested by its Secretary, this 23rd day of March, 1998.

Fredrick Millerhoff, Chairman of the Board

Norman Komitz, Secretary



**NOT VALID FOR
IMMIGRATION**



01778552



Form# IFI.0100 (9/06)

ORIGINAL

EXHIBIT 3

EXHIBIT 3

DAS 13-5736

1 CODE 1300
2 Richard A. Gammick
3 #001510
4 P.O. Box 30083
5 Reno, NV 89520-3083
6 (775) 328-3200
7 Attorney for Plaintiff

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

10 * * *

11 THE STATE OF NEVADA,

12 Plaintiff,

Case No. CR14-0058

13 v.

Dept. No. 1

14 NORMAN DEMETRIUS DUPREE,
15 also known as
16 ERIC LASHAWN PICKETT,

17 Defendant.

18 BENCH WARRANT

19 STATE OF NEVADA
20 TO ANY SHERIFF, CONSTABLE, MARSHAL OR POLICEMAN IN THE STATE OF
21 NEVADA:

22 AN ORDER having heretofore been made by the Honorable
23 BERRY, Judge of the Second Judicial District Court of the State of
24 Nevada, commanding the attendance of the above-named defendant before
25 the above-entitled Court on the 18th day of March, 2014, at the hour
26 of 9:00 a.m., relating to an Arraignment concerning the crime of
POSSESSION OF A CONTROLLED SUBSTANCE FOR THE PURPOSE OF SALE, a
violation of NRS 453.337, a felony,, and the said defendant having
failed to appear pursuant to such order,

YOU ARE THEREFORE COMMANDED forthwith to arrest the above-named NORMAN DEMETRIUS DUPREE, also known as ERIC LASHAWN PICKETT and bring him before the Court; or, if this Court is not in session, that you deliver him into the custody of the Sheriff of Washoe County, Nevada, that he may be taken before this Court at such time as it be in session.

DATED this 21 day of MARCH, 2014.


DISTRICT JUDGE

The defendant, NORMAN DEMETRIUS DUPREE, also known as ERIC LASHAWN PICKETT, is to be admitted to bail in the amount of \$50,000.00 CASH ONLY.

Endorsed this 21st day of March 20 14

JOEY ORDUNA HASTINGS, Clerk

By ck
Deputy

DA # 13-177350

EXHIBIT 4

EXHIBIT 4

INTERNATIONAL FIDELITY
INSURANCE COMPANY

c/o ASSOCIATED BOND AND INSURANCE AGENCY, INC.

P. O. Box 9810

Calabasas, CA 91372-9810

phone (818) 222-4999

Fax (818) 222-4498

Justin Bros. Bail Bonds
808 E. Musser St.
Carson City, Nevada 89701
(775) 841 6400

CR14-0058

FILED

2nd JUDICIAL DISTRICT COURT
(Municipal, Justice, Judicial District)
Reno, Washoe
(City, Township, County)

MAY 16 2014

JOEY HASTINGS, CLERK
By: [Signature]
DEPUTY CLERK

STATE OF NEVADA

State Of Nevada

vs.

Plaintiff

NORMAN Dupree

Defendant

Bail Bond No. IS30K162345

Case No. CR14 0058

Booking No. _____

(Power of Attorney with above Bond number must be attached. Bond is not valid if more than one (1) Power of Attorney has been attached)

An order having been made on the

15th

day of

May

20 14

by

District Judge

(Municipal Judge, Justice of the Peace District Judge)

Reno, Washoe

(of the City or Township of, in and for the County of)

State of Nevada,

that the defendant be held to answer (or for examination) upon a charge of

3rd Sch 1 or li c/s 2nd

upon which he/she has been duly admitted

to bail in the sum of

twenty thousand and

dollars.

Now we, INTERNATIONAL FIDELITY INSURANCE CO., New Jersey Corporation, as Surety, duly authorized to transact business as Surety in the State of Nevada, hereby undertake that the above named defendant will appear and answer the charge above mentioned, in whatever court it may be prosecuted, and shall at all times render him/herself amenable to the orders and the process of the Court, and if convicted, shall appear for judgment and render him/herself in execution thereof, or if he/she fails to perform any of these conditions, that we will pay to the State of Nevada

the sum of \$

20,000.00

Defendant notified to appear: To be set

Date: _____

@ _____

AM
PM

Approved by me this _____ day of

_____, 20 _____

INTERNATIONAL FIDELITY
INSURANCE COMPANY
(A New Jersey Corporation)



BY

[Signature]

ATTORNEY-IN-FACT

NOTE: This is an Appearance Bond and cannot be construed as a guarantee for failure to provide payments, back alimony payments, Fines, or Wage Law claims, nor can it be as a Bond on Appeal

VERIFY FIRST - THIS DOCUMENT IS PRINTED IN BLUE, RED & BLACK INKS.

Only the original Power of Attorney
will bind this Surety.

POWER OF ATTORNEY
INTERNATIONAL FIDELITY INSURANCE COMPANY
P.O. BOX 9810, CALABASAS, CA 91372-9810 (800) 935-2245

POWER
NUMBER 1530K-162345

THIS POWER VOID IF NOT USED BY: October 31, 2014 CR14-0058 POWER AMOUNT \$ 30,000

KNOW ALL MEN BY THESE PRESENTS, that INTERNATIONAL FIDELITY INSURANCE COMPANY, a corporation duly organized and existing under the laws of the State of New Jersey, has constituted and appointed, and does hereby constitute and appoint, its true and lawful Attorney-in-Fact, with full power and authority to sign the company's name and affix its corporate seal to, and deliver on its behalf as surety, any and all obligations as herein provided, and the execution of such obligations in pursuance of these presents shall be as binding upon the company as fully and to all intents and purposes as if done by the regularly elected officers of said company at its home office in their own proper person; and the said company hereby ratifies and confirms all and whatsoever its said Attorney-in-Fact may lawfully do and perform in the premises by virtue of these presents.

THIS POWER OF ATTORNEY IS VOID IF ALTERED OR ERASED, THE OBLIGATION OF THE COMPANY SHALL NOT EXCEED THE SUM OF
THIRTY THOUSAND*****

AND MAY BE EXECUTED FOR RECOGNIZANCE ON CRIMINAL BAIL BONDS ONLY.

Authority of such Attorney-in-Fact is limited to the execution of appearance bonds and cannot be construed to guarantee defendant's future lawful conduct, adherence to travel limitation, fines, restitution, payments or penalties, or any other condition imposed by a court not specifically related to court appearances. A separate Power of Attorney must be attached to each bond executed. Powers of Attorney must not be returned to Attorney-in-Fact, but should remain a permanent part of the court records.

Bond Amt \$ 20,000.00 Date Executed 5/15/14

Defendant Norman Dupree D.O.B. _____

Case # CR14-0058 Appearance Date TO Be Set

Offense Bul Sch 1 OR li C/S jail

Court County JDCL, Washoe

Court City JDCL, Reno Court State NV Div./Dept. _____

If rewrite, give orig. power # 1530K ☐ Increase ☐ Decrease

Executing Agent Michael J. Gustin Signature applicable, add your COURT assigned Agent # _____

NOTICE: Stacking of Powers is strictly prohibited. No more than one power from this Surety may be used to post any one bail amount.

IN WITNESS WHEREOF, said INTERNATIONAL FIDELITY INSURANCE COMPANY, by virtue of authority conferred by its Board of Directors, has caused these presents to be sealed with its corporate seal, signed by its Chairman of the Board and attested by its Secretary, this 23rd day of March, 1998.

Francis Mitterhoff, Chairman of the Board

Norman Kovitz, Secretary



NOT VALID FOR
IMMIGRATION



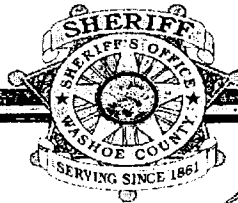
01904116

ORIGINAL

Form# IFI.0100 (9/06)

WASHOE COUNTY SHERIFF

2 JDC
\$20,000
Bond



Michael Haley
Sheriff

Dedicated Service in Partnership with our Community

CR14-0058

Washoe County Detention Facility

POSTED ON: 5/15/2014 @ 12:41:52AM

INMATE NAME: DUPREE, NORMAN

WC 1407 06

BOOKING NUMBER: 1407928

DOB: 6/29/1977

DRIVER'S LICENSE: ID 3200783043

OLS STATE: NV

BAIL RECEIPT # B141964 ARRESTING AGENCY / CASE #: BBS 130005736 DUPREE, NORMAN

NOC: 51093 CHARGE LITERAL: SELL SCH I OR II C/S Level: FELONY PCN: WCAS0001252C

COURT: 2JDC1 COURT CASE #: CR14-0058
75 COURT ST, RENO, NV 89520

COURT DATE/TIME: 6/14/2014 @ 08:30

Contact the courts or your attorney
for the next court date & time

WARRANT #: WARRANT AGENCY:

BAIL AMOUNT: \$ 20,000.00

POSTED BY: JUSTIN BROS BAIL BONDS
ADDRESS:

COURT BOND FEE: \$ 50.00 INT: 2 JDC

MICHAEL HALEY, SHERIFF CLERK: JC W2940

TOTAL BAIL POSTED: \$ 20,000.00

NOTICE: NRS 178.528: Disposition of the bail is up to the court in which this case is terminated.

This receipt must be presented to the court for any refund.

SIGNED: X Nicole Maxwell

EXHIBIT 5

EXHIBIT 5

1 **CODE 1850**

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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 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR14-0058

12 **NORMAN DEMETRIUS DUPREE,**

Dept. No. 1

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of Guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Norman Demetrius Dupree is guilty of the crime of Possession of a
20 Controlled Substance for the Purpose of Sale, a violation of NRS 453.337, a felony, as
21 charged in the Information, and that he be punished by imprisonment in the Nevada State
22 Prison for a minimum term of Eighteen (18) months to a maximum term of Forty-Eight
23 (48) months, with Ninety-Seven (97) days credit for time served.

24 It is further ordered that the Defendant shall pay the statutory Twenty-Five
25 Dollar (\$25.00) administrative assessment fee, the Sixty Dollar (\$60.00) chemical
26 analysis fee, the One Hundred Fifty Dollar (\$150.00) DNA testing fee, and submit to a
27 DNA analysis to determine the presence of genetic markers, if not previously ordered, the
28 Three Dollar (\$3.00) administrative assessment fee for obtaining a biological specimen

1 and conducting a genetic marker analysis, and attorney's fees are hereby waived by the
2 Court.

3 Any fine, fee or administrative assessment imposed upon the Defendant
4 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
5 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
6 assessments, collection efforts may be undertaken against him.

7 Dated this 6th day of February, 2015.

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10 Patrick Flanagan
11 DISTRICT JUDGE
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EXHIBIT 6

EXHIBIT 6

CHECK		DESCRIPTION	30344
NUMBER	DATE		AMOUNT
30344	07-APR-2015	Forfeiture of B-CR14-0058	25,000.00
			30344

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY

TOTAL

25,000.00

SECOND JUDICIAL DISTRICT COURT
WASHOE COUNTY
75 COURT STREET
RENO, NV 89501

BANK OF AMERICA
ACH R/T 122400724
94-72/1224 NV
51053

DATE 07-APR-2015

CHECK NO.

30344

AMOUNT OF

Twenty-Five Thousand & 00/100***** DOLLARS

PAY TO THE
ORDER OF

Nevada State Controller
Central Office
101 N. Carson Street
Suite 5
Carson City, NV 89701

\$

25,000.00

DISTRICT COURT TRUST ACCOUNT
VOID AFTER 180 DAYS

[Signature]
AUTHORIZED SIGNATURE

OR14-0058

⑈030344⑈ ⑆122400724⑆ 000470062548⑈

Nevada Real Party In Interest 019

1 **\$1295**

2
3
4
5 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
6 **IN AND FOR THE COUNTY OF WASHOE**
7

8 **THE STATE OF NEVADA,**

9 **Plaintiff,**

Case No. CR14-0058

10 **vs.**

Dept. No. 1

11 **NORMAN DEMETRIUS DUPREE,**

12 **Defendant.**
13
14

BAIL FORFEITURE JUDGMENT

15
16
17 Pursuant to an Order of Forfeiture in compliance with the provisions of NRS
18 178.508 and NRS 178.514, and all the requirements of said statutes having been
19 satisfied,

20 IT IS HEREBY ORDERED that judgment be entered for the State of Nevada and
21 against International Fidelity Insurance Company in the amount of TWENTY-FIVE
22 THOUSAND DOLLARS (\$25,000.00), Bond no. IS30K-151744.

23 Dated this 6th day of October, 2014.

24
25
26
27 
28 DISTRICT JUDGE

CERTIFICATE OF MAILING

Case No. CR14-0058

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 the 6th day of October, 2014, I electronically filed the Bail Forfeiture Judgment with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically via the ECF system:

Zach Young, Esq. for the State of Nevada

Division of Parole & Probation

Donald White, Esq. for Norman D. Dupree

Carl Hylin, Esq. for Norman D. Dupree

Richard Molezzo, Esq.

Travis Lucia, Esq. for the State of Nevada

Deposited in the Washoe County mailing system for postage and mailing:

Washoe County District Attorney's Office

Attn: Karen Hollister
(via inter-office mail)

Justin Brothers Bail Bonds

235 South Sierra Street

Reno, NV 89501

CMR: 7004 2510 0005 3647 6165

International Fidelity Insurance Company

1 Newark Center – 20th Floor, Bond Dept.

Newark, NJ 07102

CMR: 7004 2510 0005 3647 6172



Misty M. Best

Person/Organization Maintenance (CPAIDEN) (PROD)

NVCON Nevada State Controller

Address/Phone

Address

Addr. Type: MA Mailing Seq. # 1

Address: Central Office
101 N. Carson Street
Suite 5

City: Carson City State/Prov: NV ZIP/PC Code: 89701

County: Nation: Email:

Telephone

Phone Type: MA Area Code: 785 Phone Number: 8873332 Ex:

Maintenance

From: 14-JAN-2000 To: Inactive Confidential Address

Source: User: MBEST Activity Date: 13-FEB-2013

Docket Association Entry (CDADOCT) (PROD)

Case No: CR14-0058 STATE VS. NORMAN DEMETRIUS DUPREE (D1) 70 F

PAYRC 20-MAR-2015 11:32:56 DEPT

NEF 18-MAR-2015 11:32:56

Proof of Electronic Service

4127 18-MAR-2015 11:31:51

Supreme Ct Ord Dismiss Appeal

Text Reason Event Sentence

Docket Text

EXHIBIT 7

EXHIBIT 7

1 **CODE 1850**

2
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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

9 **STATE OF NEVADA,**

10 **Plaintiff,**

11 **vs.**

Case No. CR14-1957

12 **NORMAN DEMETRIUS DUPREE,**

Dept. No. 1

13 **Defendant.**
14 _____/

15 **JUDGMENT OF CONVICTION**

16 The Defendant, having entered a plea of Guilty, and no sufficient cause
17 being shown by Defendant as to why judgment should not be pronounced against him,
18 the Court rendered judgment as follows:

19 Norman Demetrius Dupree is guilty of the crime of Domestic Battery by
20 Strangulation, a violation of NRS 200.481(h) and NRS 200.485(2) and NRS 33.018, a
21 felony, as charged in the Information, and that he be punished by imprisonment in the
22 Nevada State Prison for a minimum term of Twenty-Four (24) months to a maximum term
23 of Sixty (60) months, to be served consecutively to the sentence imposed in Case No.
24 CR14-0058, with Zero (0) days credit for time served.

25 It is further ordered that the Defendant shall pay the statutory Twenty-Five
26 Dollar (\$25.00) administrative assessment fee, the Three Dollar (\$3.00) administrative
27 assessment fee for obtaining a biological specimen and conducting a genetic marker
28

1 analysis, the domestic violence fee in the amount of Thirty-Five Dollars (\$35.00), and
2 attorney's fees are hereby waived by the Court.

3 Any fine, fee or administrative assessment imposed upon the Defendant
4 today as reflected in this Judgment of Conviction constitutes a lien, as defined in Nevada
5 Revised Statutes (NRS 176.275). Should the Defendant not pay these fines, fees or
6 assessments, collection efforts may be undertaken against him.

7 Dated this 6th day of February, 2015.

8
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10 Patrick Flanagan
11 DISTRICT JUDGE
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IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JUSTIN, dba JUSTIN
BROS BAIL BONDS; and
INTERNATIONAL FIDELITY
INSURANCE COMPANY,

Electronically Filed
Jun 16 2015 09:28 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Petitioners,

vs.

Case No. 67786

THE SECOND JUDICIAL
DISTRICT COURT OF THE STATE
OF NEVADA, IN AND FOR THE
COUNTY OF WASHOE; AND THE
HONORABLE JANET BERRY,
DISTRICT JUDGE,

Respondents,

_____ /

THE STATE OF NEVADA,

Real Party in Interest.

_____ /

ANSWER TO PETITION FOR WRIT OF MANDAMUS

COMES NOW Real Party in Interest, the State of Nevada, by and through
counsel, Christopher J. Hicks, Washoe County District Attorney, and Keith G.
Munro, Washoe County Deputy District Attorney, and hereby answers the petition
for writ of mandamus, pursuant to this Court's order of May 20, 2015.

//

//

I. POINTS AND AUTHORITIES

STATEMENT OF THE CASE

Petitioners seek an extraordinary writ, “requiring Respondent to set aside the [bail] forfeiture judgment of October 6, 2014 and to exonerate Bond No. IS30K-151744 in the amount of \$25,000.00, posted by Justin Bros. Bail Bonds on behalf of International Fidelity Insurance Company, and to remit the \$25,000.00 which Petitioners paid under protest back to Petitioners.” *Petition for Writ of Mandamus* (hereinafter “Petition”) at 12.

On January 17, 2014, Norman Dupree (hereinafter “criminal defendant”) was charged with a felony in the Second Judicial District Court, Case No CR14-0058. *Exhibits to Answer to Petition for Writ of Mandamus* (hereinafter “Answer Ex.”) 1. Petitioners had posted Bond IS30K-151744 on behalf of the criminal defendant, which required Petitioners to produce the criminal defendant at all times ordered by the district court to answer this criminal charge. Answer Ex. 2.

On January 30, 2014, the criminal defendant appeared for his initial arraignment in Case No. CR14-0058. *Exhibit to Petition for Writ of Mandamus* (hereinafter “Ex.”) 6. During the hearing, the Court ordered the criminal defendant to be tested for drug use. Following a finding of cocaine and marijuana, the criminal defendant’s status was changed from bail to supervised bail and he was

ordered to be supervised by pretrial services. *Id.* The arraignment was continued to March 18, 2014. *Id.*

On January 31, the criminal defendant was remanded to custody based upon a pretrial supervision violation. Ex. 6 at 2. On February 3, 2014, the criminal defendant was released from custody on a \$20,000 bail bond posted by Bonafide Bail Bonds. *Id.*

On March 18, 2014, the criminal defendant failed to appear for his arraignment in Case No. CR14-0058 and a warrant was issued for his arrest. *Answer Ex. 3.* On the same day, a notice of intent to forfeit Bond IS30K-151744 was issued by the Clerk of the Court. *Ex. 2.* Prior to March 18, 2014, Petitioners had not filed a motion to exonerate Bond IS30K-151744. On March 19, 2014, the district court, Judge Berry presiding, ordered a forfeiture of the criminal defendant's bail 180 days from the date of the order. *Ex. 3.*

On May 14, 2014, Bonafide Bail Bonds delivered the criminal defendant to the Washoe County Sheriff. *Ex.6 at 2.* On May 16, 2014, Petitioners posted a second bail bond (Bond IS30K-162345) on behalf of the criminal defendant so he could be released from custody. *Answer Ex.4.* "Both IS30K-162345 and IS30K-151744 concern the same charges against the same defendant." *Petition at 7.* On May 27, 2014, a status hearing or arraignment was set for June 10, 2014. The

criminal defendant failed to appear on June 10, 2014 and again on July 24, 2014.

Ex. 6.

On August 22, 2014, a motion to exonerate Bond IS30K-151744 was filed by Petitioners. *Ex 4.* A statement of non-opposition to the motion to exonerate was submitted. *Ex 5.* On October 3, 2014, the motion to exonerate Bond IS30K-151744 was denied by Judge Berry. On October 6, 2014, Judge Berry entered a bail forfeiture judgment in the amount of \$25,000 for Bond IS30K-151744. *Ex. 7.*

On November 6, 2014, Petitioners arranged for the criminal defendant to turn himself in to custody. *Ex. 12.* On December 23, 2014, Judge Berry denied a motion to reconsider the decision denying bail exoneration. *Ex. 10.* An appeal of this decision was dismissed by the Nevada Supreme Court. *Petition* at 6-7.

On February 6, 2015, the criminal defendant, having previously entered a plea of guilty, was sentenced to the Nevada State Prison in Case No. CR14-0058. Answer *Ex. 5.* On that same day, the criminal defendant was also sentenced in the Second Judicial District Court for his felony conviction of the crime of Domestic Battery by Strangulation. Answer *Ex. 7.*

On March 10, 2015, a second motion to reconsider the order denying bail exoneration was denied. *Ex. 11 and 15.* On March 11, 2015, Petitioners paid \$25,000.00 to satisfy the bail bond forfeiture judgment. *Ex. 6.* The judgment paid

by Petitioners for the bail bond forfeiture has been sent to the Nevada State Controller. Answer *Ex.6*.

BACKGROUND

This extraordinary writ proceeding involves the forfeiture of a bail bond in district court. A district court, subject to the statutory provisions governing bail, determines whether a criminal defendant is admitted for release on bail. After granting bail, if a district court determines there has been a breach of a condition of bail, NRS 178.506 requires the court to declare a forfeiture of the bail, subject to the provisions of NRS 178.508 and 178.509.

NRS 178.508 sets forth the process and timelines for carrying out the declared bail forfeiture. NRS 178.509 establishes the guidelines for submitting and considering a motion to exonerate the declared bail forfeiture. If a bail forfeiture judgment is entered, NRS 178.512 establishes the guidelines for reviewing a motion to set aside a bail forfeiture judgment.

The Nevada Legislature intended to severely restrict the ability of a district court to exonerate the bail of a criminal defendant who has not returned to court to answer pending criminal charges. After a bail forfeiture judgement has been entered, the Nevada Legislature placed even greater restrictions on a district court's ability to set aside a forfeiture judgment. Mindful of these legislative directives and the district court rules of practice, Judge Berry was required to

consider the motions to exonerate and set aside and then make factual findings and legal conclusions with respect to those motions.

This extraordinary writ proceeding is a new and different legal proceeding with different legal issues and standards of review. A review of Judge Berry's orders reveals her factual findings and legal conclusions were legally accurate. Therefore, the decisions made by Judge Berry should be defended. This Court should not grant relief because there is not a sufficient legal basis to do so.

ARGUMENT

A. The Petition For Writ of Mandamus Is Untimely.

Money deposited in the state treasury can only be withdrawn pursuant to an appropriation bill passed by the Nevada Legislature and signed into law by the Governor. Art. 4, Section 19 of the Nevada Constitution ("No money shall be drawn from the treasury but in consequence of appropriations made by law"). NRS 178.518 requires bail forfeiture judgment monies be sent to the Nevada State Controller for deposit in the General Fund for distribution to the Fund for the Compensation of Victims of Crime and for funding and establishing specialty court programs.

Petitioners paid the bail forfeiture judgment entered against them. Those judgment proceeds left the court system when they were sent to the Nevada State Controller pursuant to NRS 178.518 for deposit into the State General Fund.

Answer Ex. 6. Petitioners have not sought relief from this Court in a timely fashion.

On March 18, 2014, a notice of intent to forfeit Bond IS30K-15744 was issued. By statute, a “bail bond is forfeited 180 days after the date on which the notice is mailed.” NRS 178.508(2). On September 15, 2014, the intended forfeiture ordered by Judge Berry took effect. Petitioners could have attempted to extend the deadline of forfeiture, but failed to do so. NRS 178.508(3). Petitioners then failed to obtain a stay of the bail forfeiture judgment entered on October 6, 2014.

After the bail forfeiture judgment was entered, Petitioners failed to set aside the bail forfeiture judgment. NRS 178.512. The statutorily imposed deadline for obtaining an order to set aside the forfeiture was 180 days. NRS 178.514(2)(“If the Office of the Court Administrator has not received an order setting aside a forfeiture within 180 days after the issuance of the order of forfeiture, the Court Administrator shall request that the court that ordered the forfeiture institute proceedings to enter a judgment of default with respect to the amount of the undertaking or money deposited instead of bail bond with the Court”).

Petitioners had 360 days to have Bond IS30K-15744 either exonerated or have the bail forfeiture judgment set aside. The Nevada Legislature established statutory deadlines for exonerating a bail bond and for setting aside the bail

forfeiture judgment for a reason. The Nevada Legislature must have intended for the opportunity to obtain relief to be closed once the judgment proceeds are forwarded to the Nevada State Controller. Therefore, this Court is procedurally time barred from proceeding with this case. *See* NRS 178.508, 178.509, 178.512, 178.514, 178.518 and NRS 178.522. Petitioners' omissions also render this case moot because this Court cannot provide effective relief to Petitioners. *Personhood Nev. v. Bristol*, 245 P.3d 572, 574 (Nev. 2010).

In considering whether to impose the identified procedural time bar, this Court should recognize there was a timeliness requirement when bail forfeiture cases were previously considered through an appeal. *See e.g. State v. Stu's Bail Bonds*, 115 Nev. 436, 991 P.3d 469 (1999) ("The District Court, Steven Kosach, J., granted surety's motion, and State appealed"). There was presumably a requirement of filing a timely notice of appeal.

This Court no longer handles bail forfeiture cases by appeal and now only considers these cases through an extraordinary writ proceeding. *Int'l Fid. Ins. Co. v. Blackjack Bonding*, 122 Nev. 39, 43, 126 P.3d 1133, 1134 (2006). Since the change in process, this Court has not considered whether there is a timeliness requirement for seeking extraordinary relief. It is unlikely the Nevada Legislature intended for there to be an open-ended process for challenging bail forfeiture decisions. Therefore, as is set forth above, the statutes establish a

timeliness requirement and this requirement should be enforced in this extraordinary proceeding.

B. The Petition for Writ of Mandamus Does Not Name the Proper Parties.

Petitioners seek to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station, or to control a manifest abuse of discretion. *See* NRS 34.160. As noted, the bail forfeiture judgment paid by Petitioners has been forwarded to the Nevada State Controller. *Answer Ex. 6.*

Petitioners are required to name the proper parties in this proceeding who can exonerate the bail forfeiture judgment and/or be ordered to return the \$25,000.00 judgment that has been paid. NRCP 19. NRCP 12(b)(6) provides for dismissal if the proper parties are not named under NRCP 19.

Judge Berry had the statutory duty to determine whether bail should be exonerated and whether a bail bond forfeiture judgment should be set aside. *See* NRS 178.506 to NRS 178.516. While Petitioners disagree with her legal conclusions, that is not presently a legal basis for her to be a party in this case. After the bail forfeiture judgment proceeds were forwarded to the Nevada State Controller, Petitioners have not presented any authority articulating how Judge Berry could now order the return of the \$25,000.00. No relief can be granted by this Court with respect to Judge Berry because she no longer has the judicial authority to set aside the bail forfeiture judgment. Her judicial role has been

completed as a matter of law. At this time, Judge Berry should be dismissed as a party from this case.

By its very nature, a writ of mandamus is directed to a person holding a specific office who is required to carry out a lawful duty. Assuming relief is appropriate, Petitioners needed to name a party who has the authority to set aside the bail forfeiture judgment and/or return the \$25,000.00. The individual who could return the \$25,000.00 may or may not be a state official. By only naming the State of Nevada, Petitioners fall far short of the requirement that they name a real party in interest who can provide the requested relief. NRCP 19; NRS 34.300; *State v. Eighth Judicial Dist. Court*, 97 Nev. 34, 623 P.2d 976 (1981)(applying civil rules to bail forfeiture proceedings).

The petition for writ of mandamus is legally deficient. Therefore, NRCP 12(b)(6) requires dismissal for failing to comply with NRCP 19.

C. The District Court Properly Forfeited Bond IS30K-151744.

The Nevada Legislature intended for there to be strict limitations in granting bail exonerations:

The legislative history shows that the original understanding of the “shall not” language was that it prevented courts from considering other reasons for exoneration. The “shall not” language was added by amendment in 1979. *See* 1979 Nev. Stat., ch. 649, §§ 2–3, at 1400–02. At a committee hearing on that amendment, Joe Reynolds, a representative of four surety companies, opposed the bill. He indicated that the bill would not allow the court to exonerate a bond unless certain very strict criteria were met. Hearing on A.B. 808 before the Assembly Commerce Comm., 60th Leg.

(Nev., May 4, 1979). Jay Macintosh, an insurance agent who worked with bail bonds, stated that the bill would make it more difficult to underwrite these kinds of policies because of the inability of the courts to set aside forfeiture in the event of just cause and other reasons. *Id.* Proponents of the bill understood the language as intended to remove courts' discretion because some bail bondsmen had made deals with some judges and not all bondsmen were being treated equally and fairly. *Id.* Proponents understood the proposed law as tightening up the present law because bail should be forfeited unless there are exonerating circumstances. *Id.*

All Star Bail Bond, Inc. v. Eighth Judicial District Courts, 326 P.3d 1107, 1110 (Nev. 2014).

A petition for a writ of mandamus is generally the appropriate vehicle for challenging an order entered in an ancillary bail bond proceeding. *Int'l Fid. Ins. Co. ex rel. Blackjack Bonding, Inc. v. State*, 122 Nev. 39, 41, 126 P.3d 1133, 1134 (2006). Mandamus will not lie to control a discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously. *Mineral Cnty v. State, Dep't of Conservation*, 117 Nev. 235, 243, 20 P.3d 800, 805 (2001).

Where a district court's decision in a bail bond proceeding is based on factual determinations, such findings will not be disturbed unless they are clearly erroneous and not based on substantial evidence. *Blackjack Bonding Inc.*, 122 Nev. at 42. While Petitioners cite several cases from other jurisdictions, whether the bail bond forfeiture in this case should be exonerated is governed by Nevada law. *Stu's Bail Bonds*, 115 Nev. at 438. Petitioners bear the burden of

demonstrating that relief is warranted. *Pan v. Dist. Ct.*, 120 Nev. 222, 228, 88 P.3d 840, 844 (2004).

A bail bond is a contract between the State and the surety of the accused. *All Star Bonding v. State*, 119 Nev. 47, 49, 63 P.3d 1124, 1125 (2003). Nevada's statutes governing bail bonds are incorporated into the agreement of the parties. *Id.* A court can set reasonable bail conditions before releasing a person on bail. *State v. Second Judicial District Court*, 121 Nev. 412, 419, 116 P.3d 834, 838 (2005). A court sets the amount of bail and can increase the amount of bail if necessary. NRS 178.498 and 178.499.

Under Nevada law, the court determines whether the conditions of a bail bond have been satisfied. If the court determines the conditions have not been satisfied, the court "shall declare" a breach of the conditions of the bond. NRS 178.506. If the court determines the conditions have been satisfied, the court shall exonerate the bond. NRS 178.522.

On March 18, 2014, the criminal defendant was scheduled to appear for his arraignment in Case No. CR14-0058. Petitioners had posted Bond IS30K-151744 to ensure his appearance. The criminal defendant failed to appear for his arraignment. In response, Judge Berry made a factual finding that Bond IS30K-151744 was in effect when she made the factual finding that the bond had been breached. Ex. 2 and 6. These factual findings are not clearly erroneous, and

should not be disturbed by this Court. These factual findings completely undermine any argument that Bond IS30K-151744 had been exonerated prior to March 18, 2014.

Petitioners are left to argue that Bond IS30K-151744 should have been exonerated prior to March 18, 2014. There is a substantial difference between whether a bond could or should have been exonerated and whether a bond had actually been exonerated by the court. Petitioners overlook the fact that the procedural mechanics of exonerating a bond had not occurred prior to March 18, 2014. Petitioners had not filed a motion to exonerate Bond IS30K-151744, and without having filed a motion to exonerate Bond IS30K-151744, the district court had not been afforded the opportunity to consider whether the conditions of bond had been satisfied. The criminal case pending against the criminal defendant had also not been completed.

Between January 30, 2014, when the criminal defendant test positive for drugs, and March 18, 2014, the only conceivable way the bond could have been exonerated would be if the bond was a self-exonerating bond. That of course is not plausible. The Nevada statutory framework governing bail does not even remotely allow for a criminal defendant and a Surety to decide when the conditions of a bond have been satisfied. Under Nevada law, the court where the charge is pending determines whether the conditions have been satisfied and the court is

directed how to proceed if the court determines the conditions have or have not been satisfied. Moreover, Petitioners essentially concede there is no such thing as a self-exonerating bond under Nevada law when then they acknowledge in their motion to exonerate that , “Exoneration refers to a court order that discharges a person from liability.” Ex. 4 at 4. Further, Petitioners would appear to have been operating outside of their licensure if they assert they issued a self-exonerating bond or participated in exonerating a bond without judicial involvement. *See* Chapter 697 of the Nevada Revised Statutes.

On March 18, 2014, when Judge Berry made a finding that a bond condition had been breached and the notice of intent to forfeit was issued, the landscape changed for Petitioners. Petitioners were procedurally barred from having Bond IS30K-151744 exonerated through NRS 178.522, which allows for exoneration when the conditions of a bail bond have been met. On March 18, 2014, after the finding of breach, NRS 178.506 directed the process to NRS 178.508 and 178.509. NRS 178.508 sets the duties for how a district court shall proceed as a result of the breach and directs the “bail bond is forfeited 180 days after the date on which the notice is mailed.”

NRS 178.509 sets the requirements for exonerating a bail bond that has been breached. Petitioners knew they had to meet the requirements of NRS 178.509 after Judge Berry declared a breach and a notice of intent to forfeit was issued.

Their actions confirm this. Petitioners filed a motion to exonerate Bond IS30K-151744. Within the motion, Petitioners state, “The decision to grant exoneration or discharge of a bond rests within the discretion of the trial judge” and for the legal basis supporting this argument, Petitioners cite NRS 178.509. Ex. 4 at 4.

NRS 178.509 provides as follows:

1. If the defendant fails to appear when the defendant’s presence in court is lawfully required, the court shall not exonerate the surety before the date of forfeiture prescribed in NRS 178.508 unless:

(a) The defendant appears before the court and the court, upon hearing the matter, determines that the defendant has presented a satisfactory excuse or that the surety did not in any way cause or aid the absence of the defendant;

or

(b) The surety submits an application for exoneration on the ground that the defendant is unable to appear because the defendant:

- (1) Is dead;
- (2) Is ill;
- (3) Is insane;
- (4) Is being detained by civil or military authorities; or
- (5) Has been deported,

and the court, upon hearing the matter, determines that one or more of the grounds described in this paragraph exist and that the surety did not in any way cause or aid the absence of the defendant.

2. If the requirements of subsection 1 are met, the court may exonerate the surety upon such terms as may be just.

The Nevada Supreme Court has determined that, if the requirements of NRS 178.509(1) are found to have been met, the decision to grant exoneration of a bail

bond still rests within the sound discretion of the district court. *Stu's Bail Bonds*, 115 Nev. at 471; NRS 178.509(2). Therefore, Petitioners are required to establish that Judge Berry manifestly abused her discretion with respect to NRS 178.509(2) when she denied the motion to exonerate Bond IS30K-151744.

Judge Berry did not manifestly abuse her discretion when she denied the motion to exonerate Bond IS30K-15744. *Ex. 6.* Judge Berry made factual findings to support her decision: 1) the criminal defendant had a positive test for “cocaine and marijuana” while on bail; 2) the criminal defendant “failed to appear for the March 18, 2014, arraignment”; 3) the criminal defendant “failed to appear on June 20, 2014”; 4) “Pursuant to the request of [the criminal defendant’s] counsel, a status hearing was scheduled for July 24, 2014, and [the criminal defendant] failed to appear”; 5) “[Petitioners] further indicate their company [had been] in contact with [the criminal defendant while he was in violation of a condition of his bail] , yet has failed to surrender the Defendant to the proper authorities”; and 6) The criminal defendant had not appeared in her court since January 30, 2014. *Ex. 6.*

These substantial findings should not be disturbed. Judge Berry determined the criminal defendant used drugs while on bail and had failed to appear on multiple occasions; Judge Berry also determined that Petitioners had been in contact with the criminal defendant while he was in violation of his bail and had

failed to produce him. This is substantial evidence to have relied upon to deny the motion to exonerate bail.

Petitioners do not argue that Judge Berry manifestly abused her discretion. Instead, they argue the bail bond was “exonerated by operation of law”. Petitioners allege Judge Berry “had no discretion and no legal authority to do anything but exonerate Bond IS30K-151744”. Petitioners allege Judge Berry “has the ministerial duty to set aside the forfeiture and the judgment based on the forfeiture”. Petitioners allege “the duty claimed is purely ministerial.” *Petition* at 6, 8, 9 and 10. In light of Petitioners’ lack of argument, this Court must not and cannot conclude Judge Berry manifestly abused her discretion when she denied the motion to exonerate bail.

Even if Petitioners are able to establish a manifest abuse of discretion on the part of Judge Berry with respect to NRS 178.508(2), they still have the burden of establishing either NRS 178.509(1)(a) or (1)(b). Petitioners cannot meet either of these requirements. Judge Berry factually determined that, “Defendant has not appeared before the Court since January 30, 2014.” Ex. 6 at 3. As a result, Petitioners obviously cannot establish the criminal defendant had reappeared in Judge Berry’s Court for a hearing to present a satisfactory excuse for his absence. Therefore, Petitioners have not met their burden of establishing this portion of NRS 178.509(1)(a).

NRS 178.509(1)(a) alternatively allows for a showing, “that the surety did not in any way cause or aide the absence of the defendant.” There is no evidence Petitioners intentionally caused or aided the criminal defendant from being absent and it is presumed they did not. But, this provision does not apply to only intentional acts as it uses the phrase “in any way.” The record before this Court does not support Petitioners ability to make this showing.

After criminal defendant failed to appear for his arraignment, a notice of intent to forfeit Bond IS30K-151744 was issued. Judge Berry made the factual finding that Petitioners, “knew or should have known that forfeiture was pending ...because the Court had already sent certified notices of forfeiture”. *Ex. 16* at 2-3. This factual finding by Judge Berry was not clearly erroneous, and should not be disturbed by this Court. Subsequently, on May 16, 2014, the criminal defendant was available to be produced. Petitioners were in contact with the criminal defendant and even posted a second bail bond on the criminal defendant’s behalf.

By posting a second bail bond, Petitioners aided the criminal defendant in continuing to be absent from Judge Berry’s court. Before posting the second bond, Petitioners should have alerted Judge Berry as to the criminal defendant’s whereabouts and sought to produce the criminal defendant to her court. Petitioners overlooked or failed to remember their promise to produce the criminal defendant

when he was ordered to be present in Judge Berry's court. Petitioners cannot make the showing required under this alternative portion of NRS 178.509(1)(a).

Petitioners make no argument that the requirements of NRS 178.509(1)(b) have been established. Petitioners have therefore waived their arguments with respect to this statutory provision. Moreover, Petitioners cannot establish that the criminal defendant was unable to appear because he was dead, ill, insane, being detained by civil or military authorities or had been deported. Therefore, the requirements of NRS 178.509(1)(b) cannot be established.

Judge Berry's decision to forfeit Bond IS30K-151744 was legally accurate and should not be disturbed. After the motion to exonerate was denied, a bail forfeiture judgment was entered. The landscape again changed for Petitioners when the bail forfeiture judgment was entered. If they continued to wish for relief, Petitioners needed to have the bail forfeiture judgment stayed and then sought extraordinary relief challenging the denial of their motion to exonerate or Petitioners needed to have the bail forfeiture judgment set aside.

Petitioners attempted to have the bail forfeiture judgment set aside. NRS 178.512 provides the requirements for setting aside a bail forfeiture judgment. Because a judgment has been entered, the requirements are more stringent than the requirements for NRS 178.509. In their petition, Petitioners blur the distinction between NRS 178.509 and 178.512. Petitioners make no argument with respect to

NRS 178.512 because they presumably wish to be judged under the more lenient standard set forth in NRS 178.509. This Court should not fall into their trap.

If Petitioners wished for their arguments to be considered pursuant to NRS 178.509, they needed to obtain a stay of the bail forfeiture judgment and also sought extraordinary relief. Petitioners did not do that. Therefore, when no stay of the bail forfeiture judgment was obtained and the judgment was paid, a procedural bar to having their arguments considered under NRS 178.509 came into effect. At best, this petition can be considered under NRS 178.512.

Petitioners cannot meet the more stringent requirements of NRS 178.512, which provides as follows:

1. The court shall not set aside a forfeiture unless:
 - (a) The surety submits an application to set it aside on the ground that the defendant:
 - (1) Has appeared before the court since the date of the forfeiture and has presented a satisfactory excuse for the defendant's absence;
 - (2) Was dead before the date of the forfeiture but the surety did not know and could not reasonably have known of the defendant's death before that date;
 - (3) Was unable to appear before the court before the date of the forfeiture because of the defendant's illness or insanity, but the surety did not know and could not reasonably have known of the illness or insanity before that date;
 - (4) Was unable to appear before the court before the date of the forfeiture because the defendant was being detained by civil or military authorities, but the surety did not know and could not

reasonably have known of the defendant's detention before that date;
or

(5) Was unable to appear before the court before the date of the forfeiture because the defendant was deported, but the surety did not know and could not reasonably have known of the defendant's deportation before that date,

and the court, upon hearing the matter, determines that one or more of the grounds described in this subsection exist and that the surety did not in any way cause or aid the absence of the defendant; and

(b) the court determines that justice does not require the enforcement of the forfeiture.

2. If the court sets aside a forfeiture pursuant to subsection 1 and the forfeiture includes any undertaking or money deposited instead of bail bond where the defendant has been charged with a gross misdemeanor or felony, the court shall make a written finding in support of setting aside the forfeiture. The court shall mail a copy of the order setting aside the forfeiture to the Office of Court Administrator immediately upon entry of the order.

As noted, Petitioners make no argument for meeting the requirements of NRS 178.512. The records reveals that NRS 178.512(1)(a) cannot be met because the criminal defendant did not appear before Judge Berry to present an excuse for his absence; the criminal defendant was not dead or prevented from appearing because of illness or insanity; the criminal defendant was not being detained by civil or military authorities; and, the criminal defendant was not deported. Moreover, as stated previously, before posting a second bail bond on behalf of the criminal defendant, Petitioners could have notified Judge Berry that the criminal defendant was in custody and requested he be produced to appear in her court.

Petitioners failed to do so because they had apparently forgotten or failed to remember they had agreed to produce the criminal defendant to appear in Judge Berry's court. Therefore, the requirements of NRS 178.512(1)(a) cannot be established.

NRS 178.512(1)(b) further prevents the court from setting aside a forfeiture unless the Court determines that justice does not require the enforcement of the forfeiture. This is an extremely high standard. The arguments previously presented with respect to NRS 178.509(2) apply here. Judge Berry determined the criminal defendant used drugs while on bail and had failed to appear on multiple occasions; Judge Berry also determined that Petitioners had been in contact with the criminal defendant while he was in violation of his bail and had failed to produce him. Moreover, Petitioners posted a second bail on behalf of the criminal defendant. These facts are a substantial reason to not set aside the bail forfeiture judgment. Justice does not prevent the enforcement of this bail forfeiture. Therefore, the requirements of NRS 178.512(2) cannot be established.

In closing, this is a new and different legal proceeding with different legal issues standards of review. This extraordinary writ should be decided based upon the law governing this proceeding. Judge Berry was not simply required to grant Petitioners motions. Rule 13 of the Rules of the District Courts of the State of Nevada. Legislative directives required Judge Berry to determine whether the

declared bail forfeiture should have been exonerated and whether the bail forfeiture judgment should be set aside. A review of Judge Berry's orders reveals her factual findings and legal conclusions were legally accurate. Therefore, these decisions should be defended in this proceeding. This Court should not grant relief because there is not a legally sufficient basis to overturn Judge Berry's rulings.

II. CONCLUSION

This Honorable Court should not disturb the decisions of Judge Berry. Her findings of fact and conclusions of law are correct. Moreover, there is a high burden for exonerating a bail bond. Petitioners have not met their burden with their legally deficient petition for writ of mandamus. Based on the foregoing, the State respectfully requests that the Court deny the petition for writ of mandamus.

Dated this 15th day of June, 2015.

CHRISTOPHER J. HICKS
District Attorney

By /s/ Keith G. Munro
KEITH G. MUNRO
Deputy District Attorney
Bar No. 5074
P.O. Box 11130
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(775) 337-5700

ATTORNEY FOR STATE OF NEVADA

CERTIFICATE OF SERVICE

Pursuant to NRAP 5(b), I certify that I am an employee of the Office of the District Attorney of Washoe County, over the age of 21 years, and not a party to nor interested in the within action. I certify that on this date, the foregoing was electronically filed with the Supreme Court of the State of Nevada by using the ECF System. Electronic service of the foregoing document shall be made in accordance with the Court's service list as follows:

Richard Cornell, Esq., for Petitioner

Robert L. Eisenberg, for Respondent

Adam Laxalt, Esq.

Terrence McCarthy, Deputy D.A.

I further certify that I served a true and correct copy of the foregoing document on:

The Honorable Janet Berry
Second Judicial District Court
75 Court Street
Reno, NV 89501

Dated this 15th day June, 2015.

/s/ C. Mendoza

C. Mendoza

INDEX OF REAL PARTY IN INTEREST ANSWER EXHIBITS

Exhibit 1	Information filed on January 17, 2014	3 pages
Exhibit 2	Bond IS30K-151744	2 pages
Exhibit 3	Bench Warrant filed March 21, 2014.....	2 pages
Exhibit 4	Bond IS30K-162345	3 pages
Exhibit 5	Judgment of Conviction in CR14-0058	2 pages
Exhibit 6	Bail Forfeiture Judgment & Payment	6 pages
Exhibit 7	Judgment of Conviction in CR14-1957	2 pages

INDEX OF REAL PARTY IN INTEREST ANSWER EXHIBITS