A COURTS COPY

NO. 67800

FILED

APR 14 2015

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

IN THE 2ND JUDICAL DISTRICT COURT OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CHARLES J. MAKI
PETITIONER
V.
STEVEN KOSACH HON. JUDGE ECT.
DEPT. 8 RESPONDENT.
IN WASHOE COUNTY

SUPREM COURT NO. [illegible]12
CASE NO: CR94-0345
DEPT. 8
DATE 4/8/2015

WRIT OF PROHIBITION / WRIT OF MANDAMUS

COMES NOW, CHARLES J. MAKI PETITIONER IN FORMA PAUPERIS, WITH THE ASSISTANCE OF INMATE WITH LEGAL KNOWLEDGE IN WRITING AND PREPARING THIS CAUSE OF ACTION & COMPLAINS OF RESPONDENT SUPRA, OF CONTINUEING IRREPARABLE INJURED BY THE CONDUCT OF THE RESPONDENT SUPRA UNLESS THIS HONORABLE NEVADA SUPREME COURT ORDERS THE 2ND JUDICAL DIST. COURT TO PREPARE CERTIFIED COPY'S OF CASE NO: CR94-0345 IN ITS INTIRITY FOR THIS HONORABLE NEVADA SUPREME COURT TO REVIEW AND ISSUE PROPER ORDER FOR THE 2nd JUDICAL DISTRICT COURT FOR THE PURPOSE OF FURTHER PROCEEDING'S:

JURISDICTION

RECEIVED
APR 13 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

THIS WRIT OF PROHIBITION / WRIT OF MANDAMUS ALLEDGED PETITIONER DUE PROCESS AND EQUAL PROTECTION OF HIS RIGHTS UNDER NEVADA AND THE UNITED STATES CONSTITUTION, OF THE 1ST, 4TH, 5TH, 6TH, 8TH, 9TH AND 14TH AMENDMENT WERE VIOLATED BY THE ACTIONS OF HERIN-

15-11245

ABOVE NAMED RESPONDENT SUPRA, BY NOT ALLOWING PETITIONER WITH EFFECTIVE COUNSLE OVER THE PAST 21 YRS TO PROVE HIS "FACTUAL-INNOCENCE", OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS THAT HE "NEVER COMMITTED".

JURISDICTION IN THIS WRIT OF PROHIBITION/WRIT OF MANDAMUS IS HERE BY INVOKED PURSUANT TO NRS 34.160; N.R.S. 34.170; NRS 34.190; AND NRS 34.570; NEVADA RULES OF CIVIL PROCEEDURE; NEVADA CONSTITUTION, ARTICLE NO. 6, SUBSECTION 6 ALSO BARNES V. EIGHTH JUDICAL DIST. COURT, FOR THE STATE OF NEV., IN AND FOR CLARK COUNTY, [redacted] 103 NV. 679, 748 P2d 483 (1987); MONTGOMERY V. PINCHAK, 294 F.3d 492, AT 499 (3RD CIR), (2002); FARMER V. HAAS 990 F2d 319, AT 322 (7TH CIR. 1993); PARHAN V. JOHNSON, 126 3d 454, AT 461 (3RD CIR. 1992); HAINES V. KERNER, 404 U.S. 519, AT 520-21, 92 S.CT. 594 (1972)....

..LEGAL AUTHORITY IN SUPPORT OF THIS PROCEEDING..

PLEADING FOR WRIT OF PROHIBITION/WRIT OF MANDAMUS IS THE RIGHT PROCEEDING TO BRING INTO THIS HONORABLE NEVADA SUPREME COURT.; FOR FURTHER BRIEFING, SHOW CAUSE HEARING WITH THE APPOINTMENT OF LEGAL COUNSLE PURSUANT TO N.R.S. 34.750 AND HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDYS AT LAW - TO RE-ADDRESS THE GRAVE FUNDAMENTAL MISCARRIAGE OF JUSTICE, PURSUANT TO STATE V. MITCHELL, 122 NEV. 1269, 149 P.3d 33 (2006).

PETITIONER REALLEGE AND INCORPERATES BY REFERENCE PETITIONERS MOTION FOR APPOINTMENT OF COUNSLE SHOWING SUFFICENT ENOUGH FACTUAL EVIDENCE TO OVERCOME ANY PROCEEDURAL BARR TO ANY UN-TIMELY OR SUCCESSIVE PETITION BY PETITIONER; SHOWING HIS [redacted] "FACTUAL INNOCENCE" OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS AND ILLEGAL CONVICTION

OF OVER 21 YRS AGO, MUST BE REVERSED AND RETURNED BACK TO THE 2ND JUDICAL DIST. COURT, WITH INSTRUCTIONS FROM THIS HONORABLE NEVADA SUPREME COURT TO ALLOW WITH AFFECTIVE COUNSLE TO PROVE HIS FACTUAL-INNOCENCE OF THE CRIME OF SEXUAL ASSAULT/LEWDNESS FOR WHICH HE WAS ARRESTED AND CONVICTED OF OVER 21 YRS AGO...

MATTER'S OUTSIDE OF THE RECORD..

(1) ON JAN. 19. 1994, 2 DETECTIVES CAME TO my PLACE while my SELF AND A couple FRIENDS OF MINE WERE DRINKING AND WORKING ON my TRUCK SINCE EARLY THAT MORNING. DETECTIVES TOLD ME I HAD TO GO TO POLICE STATION WITH E'm TO ANSWER QUESTIONS, [I FELT I HAD NO CHOICE!]

(2) ON JAN 24 1994 I FINALLY GOT my ARRAINGMENT WHERE I FINALLY MET my (P.D.) MS. JANET Cobb SMUCK, LIKE 15 MINUTES BEFORE COURT. THE FIRST thing SHE TELLS ME IS things ARE DONE HER WAY ONLY, AND I'VE NO SAY IN THE MATTERS.

(3) DURING our 10 MIN. OF GETTING to know EACH other (I) TRIED TO EXplain TO HER, WHAT I thought WAS THE REASON I WAS BROUGHT IN AND ARRESTED, SHE WASN'T INTERESTED AT ALL.

(4) IT STARTED, with MR GARY MENESS MY NEIGHBOR NEXT DOOR. THE ALLEGED VICTIMS (STEP-FATHER), IT STARTED Roughly (3-4) months prior TO my ARREST, MR MENESS WAS A DRINKING INDIVIDUAL who WORKED AT BOOM TOWN CASINO, A 21 DEALER. AT FIRST I THOUGHT HE WORKED LONG HOURS BECAUSE HIS 2 GIRLS WOULD COME HOME FROM SCHOOL AND BE BY THEMSELVES ALOT - OR GOTO THE COLLEGE BAR ACROSS THE ALLEY WAY, WERE THEY would GO OUT BACK IN THE FENCED YARD, till EITHER THIER DAD CAME HOME OR I'm GUESSING, TILL THE MANAGER TOLD E'm that THEY HAD TO LEAVE.

(5) MR. GARY MENNES AND myself WERE-NOT FRIENDS, JUST NEIGHBORS.
(I) ACTUALLY CALLED THE WELFARE DEPT. ON HIM (UN-IDENTIFIED) TO REPORT
HIS NEGLECT [AS I'VE KIDS OF my own]. THEY DID COME OUT TO SEE HIM.
FROM WHAT HE SAID TO ME (AFTER) WAS THEY JUST THOUGHT HIS APT.
WAS TOO DIRTY, [which is VERY TRUE], I) HAD HELPED HIM LOAD 10-12 LARGE
GARBAGE BAGS OF TRASH FROM HIS APT. INTO my TRUCK, TO THE DUMP.
(6) A DAY OR SO LATER WE SAT ON THE PORCH DRINKING BEER, THIS IS WHEN HE
TOLD ME, HE HAD A RUN IN with THE WELFARE DEPT. BACK IN 1992.
THAT APPARENTLY THE PEOPLE who LIVED IN THE SAME APT. I DID ABOUT
"(2) YRS PRIOR," CALLED THE WELFARE DEPT ON HIM FOR RUNNING AROUND
IN FRONT OF HIS (2) GIRLS without clothes ON," with HIS APT. DOOR OPEN..
AND THEN BRAGGED HOW HE BEAT THE SYSTEM TWICE NOW..
(7) HE DID ASK ME TO LOOK AFTER HIS (2) GIRLS ON OCCASION [AS I WAS WAITING
FOR A VERY LARGE LIFE CHANGING SETTLEMENT] FROM A LAWSUIT, AND SITS
Both AFTER I SPENT 3 months IN HOSPITAL - 8 months IN Body CAST, SO I
WAS AT HOME ALOT OF TIMES BETWEEN physical THERAPY.
(8) I) EVENTUALLY FOUND OUT THAT GARY-MENNES WOULD GO TO THE GOLD DUST WEST
CASINO AFTER WORK, DRINKING AND playing SLOTS. WHICH EXPLAINED WHY HE CAME
HOME SO LATE, (I'm TALKING 9-10 pm) AS THE GIRLS would BE HOME 3:30-4 pm.
(9) ONE DAY MR. MENNES TOLD me HE HAD A LADY FRIEND OF HIS IN WASHINGTON
STATE, (who WAS ALSO A 21 DEALER) WAS GOING TO COME DOWN TO LIVE with
HIM. HE LEFT, I BELIEVE TOOK THE (2) GIRLS TO THEIR moms IN CALIFORNIA
SOME PLACE. AFTER (3) DAYS LATER HE WAS BACK with THE GIRLS AND HIS
LADY FRIEND (GALE), DON'T KNOW HER LAST NAME DIDN'T CARE.. HE DID SEEM
A LITTLE OVER PROTECTIVE OF HER AT TIMES, though I REALLY DIDN'T CARE
AS I (WAS DATE-ING) A FEW WOMEN AT THE TIME!
(10) MR MENNES, WOULD GO TO WORK AND HIS LADY FRIEND (GALE) WOULD
STAY AT HOME ALOT, THE FIRST WEEK OR TWO. SHE HAD NO CAR OR JOB

AS YET. SO WE STARTED TO TALK AND GET TO KNOW EACH other, AS FRIENDS!
ABOUT THE 2ND/3RD WEEK SHE FINALLY GOT A JOB AT SIERRA SIDS CASINO,
AS A 21 DEALER, AND SOON AFTER GOT A CAR.
(11) ONE DAY (GALE) CAME OVER AFTER the GIRLS WENT TO SCHOOL AND GARY HAD
GONE TO WORK, SHE ASKED ME OUT to BRUNCH, I ACCEPTED.. LATER ON THAT
NIGHT I OVER HEARD them ARGUEING ABOUT SOMETHING, SO I took my SHEPERD OUT
FOR A WALK [AS I DID NIGHTLY]. AND GOT DOWN the DAY.
(12) THE NEXT DAY AFTER I GOT HOME, EVERYONE WAS GONE BUT HER, SHE TOLD
ME SHE COULDN'T LIVE with GARY ANYMORE, THAT the PLACE WAS A DUMP
AND IT SMELLED BAD, AND ASKED IF SHE COULD STAY with ME till SHE FOUND
A PLACE to LIVE. (I) TOLD HER ok! "I KNOW HOW BAD GARY'S APT WAS," AS
I'VE BEEN IN IT A FEW TIMES myself. [IN the GIRLS ROOM the CIELING HAD A
LEAK that RAN DOWN the WALL] AS I WAS A JOURNEYMAN ROOFER I SPOKE TO
the LAND LORD ON HIS BEHALF ABOUT IT.
(13) GALE MOVED IN - SHE DIDN'T HAVE ALOT.. ONCE GARY GOT HOME, HE OBVIOUSLY
SEEN HER AT my APT. BUT DID-NOT SAY ANYTHING FOR A COUPLE OF DAYS, TO ME
AT LEAST. [HE FINALLY DID COME OVER DRUNK] OR HAD BEEN DRINKING AND
ASKED WHY SHE WAS AT my PLACE? SHE NOTICED SHE ALSO BOUGHT ME SOME
ITEMS FOR the APT. along with SOME PERSONAL ITEMS FOR ME. "HE THREW
A FIT".. I KICKED HIM OUT OF my APT. THIS WAS NOV. 1993! SHE LEFT
A COUPLE OF WEEKS LATER.
(14) my SISTER JACKIE/ESTHER WOULD COME OVER A COUPLE DAYS/NIGHTS IN A
WEEK, SOME TIMES HER AND HER TWO GIRLS WOULD SPEND the NIGHT, SHE HAD
ALSO (MET GARY - MR. MENEES) A COUPLE OF TIMES. ON NEW YRS EVE 1993-94
my SISTER CAME OVER TO my APT. SHE AND HER BOY FRIEND HAD APPARENTLY
BROKE UP, FOR WHAT EVER REASON. SO WE HAD A FEW DRINKS, AT the APT.
(SHE LOOKED BEAUTIFUL) SHE HAD HER HAIR DONE AND A NEW DRESS FOR NEW YRS.
TO GO OUT with HER BOY FRIEND.

(15) GARY, CAME OVER AND SEEN my SISTER, AT FIRST HE WAS kool - NICE,
THEY MADE SMALL TALK, (HE) LEFT. AFTER AWHILE HE CAME BACK OVER
"BIT INTOXICATED", AND STARTED TALKIN, RUDELY To my SISTER, BUT SHE HANDLED
IT HERSELF. (AGAIN HE LEFT). JUST BEFORE NEW yrs. (12 pm) AS my SISTER
WAS SLEEPING ON my COUCH, GARY MENESS SHOWED up AGAIN DRUNK, AND
DEMANDING To HAVE SEX WITH my SISTER, BECAUSE HIS EX-GIRL FRIEND LEFT
HIM AND MOVED IN WITH ME, "So I PUNCHED HIM SQUARE IN HIS FACE"
HARD!, AND WOULD DO IT AGAIN TOO ... TOLD HIM HE WILL NOT DISRESPECT
my LITTLE SISTER LIKE THAT PERIOD!!" (SHE WAS OVER 21).. THEN
(16) "HE YELLED AT ME", THAT FIRST IT WAS HIS GIRL FRIEND, NOW HE is
BLAMEING ME CAUSE HE COULDN'T HAVE SEX WITH my SISTER. "AND
TELLS ME THAT PAY BACK IS A BITCH"! A couple OF WEEKS LATER 2
DETECTIVES CAME To my APT. AND TAKE ME AWAY, AS I WAS DRINKING
AND WORKING ON my TRUCK WITH A COUPLE OF FRIENDS.
* (17) SEE: [MR PAUL GRUBBS SWORN AFFIDAVIT.] EXHIBT NO: 3..

(18) I DID TELL my P.D. MS. SMUCK To CALL SOME PEOPLE OR To GO To SEE E'm.
I'VE KNOWN EACH OF THE FOLLOWING A LONG TIME (OR) I'VE DATED E'm months.
THE FOLLOWING PARAGRAPHS. [ARE CONVERSATIONS (I) HAD WITH EACH
WHILE IN JAIL,] TRYing To GET E'm To COME TESTIFY IN my BEHALF. ALL is
TAKEN FROM NOTES (I) MADE OF EACH CONVERSATION.
(A) MS. CARLA SCARPA I'VE KNOWN SINCE 1980 OR SO. KNEW HER EX HUSBAND
AND SON. * CARLA, I SPOKE To HER ON THE PHONE; SHE TOLD ME THAT
MS SMUCK AND HER INVESTIGATOR DID GOTO HER HOUSE, AT LEAST SHE ASSUMED
IT WAS THEM, AS they JUST SAT ACROSS THE STREET IN A MUSTANG CAR, FOR
ABOUT 20 MINUTES OR SO, THEN JUST DROVE AWAY.
(NOW) I ASKED MS. SMUCK ABOUT this! SHE TOLD ME THAT SHE WENT
To SEE CARLA AND THAT CARLA WAS DRUNK WHEN SHE OPENED THE DOOR.

"I) TOLD MS. SMUCK SHE IS A LIAR". I'VE NEVER SEEN CARLA EVEN HAVE A
DRINK, NOR DID SHE SMOKE!, IN ALL THE YEARS I'VE KNOWN HER...
(D) * 3 MS. GALE THOMAS | I KNEW GALE THRU my SISTER, WE DATED ABT 1 YR.
SHE WAS A KENO RUNNER AT EARLS SILVER CLUB IN SPARKS NV. (NOW)
MS. SMUCK TOLD ME SHE DID-NOT HAVE TIME TO GO SEE HER AT HER JOB,
IN THE DAY TIME, THAT IF GAIL WANTED TO TALK TO HER - TO CALL HER OFFICE..
[GAIL TOLD ME SHE TRIED CALLING NEMOURUS TIMES] AND FINALLY SAID
THE HELL WITH IT.
(C) X 9 MS. LINDA STALING | I MET LINDA AT WASHOE MEDICAL CENTER, SHE
WAS ONE OF my NURSES, WHILE I WAS HOSPITALIZED FOR 3 MONTHS. WE
DATED ABOUT 6-7 MONTHS TILL JUST A FEW DAYS TILL I WAS ARRESTED
AS A MATTER FACT. (SHE HAD 2 BOYS.) THEY WERE GOING BACK TO CALIFORNIA.
[I SPOKE TO LINDA ON THE PHONE]. SHE SAID THAT SMUCK DID COME SEE
HER, "BUT ACCORDING TO LINDA", SMUCK JUST MAINLY TALKED ABOUT HER
JOB AS A P.D. AND VERY LITTLE ABOUT THE DEFENDENT, (LINDA) SAID THAT
SHE WOULD COME TO COURT IN my BEHALF, BUT MS. SMUCK TOLD HER IT WAS
NOT REALLY NECESSARY AND LEFT. LINDA SAID SHE WAS UPSET AT HER..
(D) X 18 MR KEN DANIELS | I KNEW KEN SINCE ABOUT 1981, WE USED TO WORK FOR
LUCKY CONCRETE CO. TOGETHER, FOR ABOUT 17-18 MONTHS, THEN HE GOT MARRIED
WITH KIDS. FOR 2 YRS TILL I WAS ARRESTED WE SEEN EACH OTHER 2-3 TIMES
A WEEK, WENT OUT ON A COUPLE OUTINGS TOGETHER! [I SPOKE TO KEN ON PHONE]
HE SAID THAT MS. SMUCK'S INVESTIGATOR ACTUALLY LEFT HIS CARD ON HIS DOOR.
KEN SAID HE TRIED TO CALL 4-5 TIMES, FINALLY HE WENT DOWN TO SEE SMUCK
AT HER OFFICE, [KEN SAID, SMUCK, TOLD HIM HIS TESTIMONEY WAS NOT NEEDED].
KEN TOLD ME HE WAS GOING TO SHOW UP ANYWAY. AND HE DID!!
** (E) 26 MR. PAUL GRUBBS | HE WAS my DOWN STAIRS NEIGHBOR, [HIS SON WAS JOHN].
HE WAS WORKING ON my TRUCK WITH ME ON THE DAY OF my ARREST...
REFER: TO SWORN AFFIDAVIT OF MR PAUL GRUBBS, EXIBIT NO. 3.

(F) "NOW EVERYONE JUST MENTIONED SO FAR", WAS IN THE HALLWAY OUTSIDE THE
COURT ROOM ON THE DAY OF MY TRIAL. (I) TOLD MS SMUCK, IN SANTA COCKY
WAY, SEE I TOLD YA THEY WOULD COME! [SMUCK THEN TELLS ME THE
D.A WILL-NOT LET 'EM TESTIFY FOR ME]. [THAT SHE WOULD NOT BRING 'EM
IN PERIOD.] BUT, SHE DID LET MS. DANIEL JOHNSON TESTIFY, (I) HAVE NOT
SEEN HER IN ABOUT 5-6 YRS., BUT SHE CAME 400 MILES TO HELP ME IF
AT ALL POSSIBLE

→ (G) MY SISTER ESTHER/JACKIE | SHE SPOKE TO MS. SMUCK A COUPLE OF TIMES.
ONCE IN PERSON TO GIVE SMUCK MY HEARING AIDS (I'm LEGALLY DEAF) IN
BOTH EARS (SISTER BROUGHT 'EM TO ME IN JAIL). ESTHER WAS THE ONE WHO TOLD
ME THAT [MS. COOMBS] WAS COMING TO BE AT MY SENTENCING PHASE
3 WEEKS PRIOR! [SHE AS MY SELF TOLD MS. SMUCK 3 WEEK PRIOR!]
AFTER I SPOKE TO SMUCK IN REGARDS TO MS. COOMBS, I TOLD HER (I) WANTED
MR. MIKE FRIED WHO WAS IN JAIL IN RENO, (AND KNEW MS. COOMBS)
SUBPENAED TO TESTIFY ABOUT COOMBS LIEING WAYS. [MS. SMUCK REFUSED!]..
MS SMUCK WAS NOT LIKED BY MY SISTER AT ALL - NOR BY ANYONE ELSE..

(G.1) RIGHT BEFORE MY TRIAL DAY, MY SISTER HAD BROUGHT ME SOME NICE
CLOTHES FOR COURT, BUT MS. SMUCK REFUSED TO ALLOW ME TO HAVE 'EM.
INSTEAD I GOT CLOTHES FROM (?). I ENDED UP WITH A PAIR OF BROWN
CORDORY PANTS 2-3 INCHES TO SHORT, NO-BELT, A PAIR OF UGLY TENNIS SHOES
WAY TO BIG FOR ME, AND A BRITE PURPLE RAYON PUFFED SLEEVE SHIRT.
I WAS DRESSED OUT TO LOOK LIKE A DAM CLOWN OUT OF THE 70's, SMUCK DID
IT ON PURPOSE - TO MAKE ME LOOK RIDICULOUS IN FRONT OF THE JURY.

CONCLUSION

THEREFORE PETITIONER RESPECTFULLY SUBMITS THIS ENTIRE WRIT OF PROHIBITION / WRIT OF MANDAMUS, MOTION FOR APPOINTMENT OF COUNSEL WITH AFFIDAVIT IN SUPPORT AND ATTACHED EXIBITS WITH THE ASSISTANCE OF INMATE OF LEGAL KNOWLEDGE IN PREPARE(ING) THIS ENTIRE PLEADING TO BE REVIEWED BY THE NEVADA SUPREME COURT AND TO ORDER THE 2ND JUDICAL DISTRICT COURT TO PREPARE PETITIONERS ENTIRE CASE CR94-0345 AND TO HAVE IT FORWARDED TO NEVADA SUPREME COURT SO THAT THIS HONORABLE COURT CAN MAKE THIS RULING PURSUANT TO NRS 34.160; NRS 34.170; AND NRS 34.190 WHICH GIVES THE NEVADA SUPREME COURT JURISDICTION TO ENTERTAIN PETITIONER'S WRIT OF PROHIBITION/WRIT OF MANDAMUS ON APPEAL FROM THE PETITIONER'S 2ND JUDICAL DIST. COURT FOR A RULING.

DATED this DAY 8 OF ~~March~~ April 2015

RESPECT FULLY SUBMITTED

SIGN CHARLES J. MAKI

charles J. Maki

VERIFICATION

PETITIONER HAS READ completly the FOREGOING "motion For Appointment of counsle, AFFIDAVIT IN support of motion Appointing counsle, writ of prohibition/writ of mandamus, NOTICE of Appeal, DESIGNATION of RECORD on Appeal, AND motion To the court (DIST) IN DEGARDS To NO-ACCESS To CASE LAW THRU LAW-LIBRARY AT N.D.O.C. prison, DENYING ACCESS To COURT!" AND HEAR BY VERIFY(ING) THAT THE MATTER(S) AND ALLEGATIONS OF ALLEGED HERIN BY PETITIONER WITH THE [ASSISTANCE OF INMATE who HAS LEGAL KNOWLEDGE,] ARE TRUE AND CORRECT EXCEPT To those MATTER(S) AND ALLEGATION'S ON INFORMATION AND BELIEF, PETITIONERS BELIEFS THOSE MATTER'S AND ALLEGATIONS [redacted] THAT ARE OUTSIDE OF THE OFFICAL COURT RECORD CASE NO: CR94-0345 TO BE TRUE AND CORRECT..

PETITIONER FURTHER, CERTIFY'S UNDER THE PENALTY OF PERJURY, PURSUANT TO NRS 208.165 THAT ALL THE FOREGOING ABOVE HEREIN MENTIONED TO THE BEST OF THE PETITIONER'S MEMORY AFTER 21 YRS plus IS TRUE AND CORRECT..

EXECUTED IN CARSON CITY, NV. ON this DAY OF 8 / April / 2015

RESPECTFULLY-SUBMITTED.

SIGN CHARLES J. MAKI

Charles J. Maki

CERTIFICATE OF SERVICE BY MAIL.

PURSUANT TO N.R.C.P. RULE 5(B), PETITIONER HEREBY

CERTIFY's THAT HE IS THE ABOVE NAMED PETITIONER THAT HEREIN AND THAT ON this 8 DAY OF April 2015 PETITIONER DEPOSITED INTO THE UNIT MAIL BAG THRU UNIT C/O's HANDS AT WARM SPRINGS CORRECTIONAL CENTER, CARSON CITY NV. 89702, A TRUE AND CORRECT COPY's OF THE FOREGOING ("MOTION FOR APPOINTMENT OF COUNSEL, AFFIDAVIT IN SUPPORT OF MOTION APPOINTING COUNSEL, WRIT OF PROHIBITION/ WRIT OF MANDAMUS, NOTICE OF APPEAL, DESIGNATION OF RECORD ON APPEAL AND MOTION TO THE COURT (DIST.) IN REGARDS TO NO-ACCESS TO CASE LAW THRU LAW-LIBRARY AT N.D.O.C. PRISON, DENYING ACCESS TO COURT,") (ALL THE FOREGOING IN CASE NO. CR94-0395 ARE BEING APPEALED TO THE NEVADA SUPREME COURT), ADDRESSED TO the Following,

1) CLERK of COURT
75 COURT ST.
RENO, NV. 89501

2) DIST. ATTORNEY's OFFICES (X)
75 COURT ST.
RENO, NV. 89501

3) CLERK OF COURT (X)
NV. SUPREME COURT
201 S. CARSON ST. SUITE 201
CARSON CITY NV. 89701

SIGN CHARLES MAK:
chas mak

4) DATED

COURTS COPY

AFFIRMATION

PURSUANT TO NRS 239B.030

THE UNDERSIGN DOES HEREby AFFIRM THAT THE PROCEEDING DOCUMENTS / EXHIBITS 1-4, WRIT OF PROHIBITION / WRIT OF MANDAMUS, NOTICE OF APPEAL, MOTION FOR APPOINTMENT OF COUNSEL; AFFIDAVIT IN SUPPORT OF MOTION FOR COUNSLE, DESIGNATION OF RECORD, MOTION TO COURT FILED 3-20-2015 WITH ATTACHED EXHIBIT (A): REQUEST FOR SUBMISSION.

CASE No. 67717 NV. S. CT.

DIST CT. No. CR 94-0345

NO S.S. NO. OF Any person.

DATE April 8 2015

SIGN CHARLES MARKI

Charles Marki

COURTS COPY'S

EXIBIT'S 1-4

FOR WRIT OF PROHIBITION / WRIT OF MANDAMUS
MOTION FOR APPOINTMENT OF COUNSLE

CHARLES MAKI - 92820

CASE NO. 67717

DATE APRIL 08-2015

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

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

Supreme Court No. 30904
Consolidated with:

Counsel

Karla K. Butko, Verdi, NV, as counsel for Appellant

Attorney General Frankie Sue Del Papa/Carson City, Carson City, NV, as counsel for Respondent

Washoe County District Attorney Richard A. Gammick, Reno, NV \ Gary H. Hatlestad, Deputy District Attorney, Terrence P. McCarthy, Deputy District Attorney, as counsel for Respondent

Case Information

Panel: NNP00A **Panel Members:** Shearing/Agosti/Leavitt
Disqualifications:
Case Status: Closed **Category:** Criminal Appeal **Type:** Post-Conviction
Submitted: On Briefs **Date Submitted:** 05/28/98
Oral Argument:
Sett. Notice Issued: **Sett. Judge:** **Sett. Status:**
Related Supreme Court Cases:

District Court Case Information

Case Number: CR940345
Case Title: STATE VS. MAKI
Judicial District: Second **Division:** **County:** Washoe Co.
Sitting Judge: Steven R. Kosach
Replaced By:
Notice of Appeal Filed: 08/18/97 Appeal **Judgment Appealed From Filed:** 07/24/97

Docket Entries

Date	Docket Entries
08/20/97	Filing Fee waived: Criminal.
08/20/97	Filed Certified Copy of Notice of Appeal. Appeal docketed in the Supreme Court this day.
08/25/97	Received document from district court clerk. Copy of the district court order filed January 29, 1997. Mr. Hardy's motion to withdraw as counsel for petitioner is granted. Petitioner's motion for new counsel is also granted. Mr. Joseph Plater, Esq., is appointed to represent petitioner.
08/28/97	Filed Certified Copy of Notice of Appeal. (Second notice filed by proper person appellant from same judgment.)
08/29/97	Filed Certified Copy of Notice of Appeal. Filed on August 26, 1997 by attorney Joseph Plater.
10/03/97	Receipted for 8/28/97 entry and mailed docketing statement to counsel for appellant.

(2)

EXHIBIT-1-

Nevada Supreme Court Docket Sheet

Docket: 30904 MAKI (CHARLES) VS. STATE

10/08/97	Filed Order. Appellant shall within 10 days of the date of this order file and serve a docketing statement and a transcript request form or certificate of no transcript request, or show cause why sanctions should not be imposed upon counsel. Appellant shall have 100 days from the date of this order to file and serve an opening brief and appendix. Thereafter, briefing shall proceed in accordance with NRAP 31 (a)(1). We caution attorney Plater that failure to comply with this order in a timely manner may result in the imposition of sanctions against counsel.
10/21/97	Filed Docketing Statement.
10/27/97	Filed Request for Transcripts of Proceedings. Court reporter: Isolde Zihn.
01/22/98	Filed Motion and Order. That appellant shall have to and including February 17, 1998, to file the opening brief.
02/19/98	Filed Motion to Extend Time. To file opening brief.
02/25/98	Filed Clerk's Order. Granting the motion filed February 19, 1998. The opening brief shall be served and filed on or before March 3, 1998.
03/05/98	Filed Motion to Extend Time. To file opening brief.
03/09/98	Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief shall be served and filed on or before March 12, 1998.
03/16/98	Received Brief. Appellant's opening brief. (Mailed on: 3/12/98.)
03/16/98	Received Appendix. Appellant's appendix I and II. (Mailed on: 3/12/98.)
03/25/98	Filed Clerk's Order. Granting the motion filed March 5, 1998. The opening brief and appendix provisionally submitted on March 16, 1998, shall be filed, forthwith.
03/25/98	Filed Brief. Appellant's opening brief.
03/25/98	Filed Appendix. Appellant's appendix, Volume I and II.
03/27/98	Filed Order. Court reporter Zihn shall have 20 days from the date of this order to complete the requested transcript and to provide the clerk of this court with a certificate acknowledging delivery of the completed transcript and a certified copy of the transcript, or show cause why sanctions should not be imposed in accordance with NRAP 13(b).
04/09/98	Received Letter. From court reporter Isolde Zihn. She was not the reporter in this matter.
04/23/98	Filed Brief. Respondent's answering brief. (Mailed on: 4/22/98.)
05/05/98	Filed Order. Court reporter Zihn has responded to our March 27, 1998, order by way of letter. It appears that the transcript requested by appellant was completed on February 10, 1998, by court reporter Stephanie Koetting; however, a copy of the transcript was not filed in this court. Furthermore, it appears that appellant has improperly included the transcript in appellant's appendix. We decline to strike appellant's nonconforming appendix at this time, as it does not appear that appellant's error will hinder this court's review of this matter. We admonish appellant's counsel to be more mindful in the future to the procedures for prosecuting appeals as contained in the Nevada Rules of Appellate Procedure.
05/28/98	Filed Brief. Appellant's reply brief. (Mailed on: 5/27/98.)
05/28/98	Case submitted on briefs this day.
02/02/00	Filed Motion. To be relieved as counsel of record.

03/07/00	Filed Order. Of remand for designation of counsel. Appellant's counsel of record Joseph R. Plater has filed a motion to be relieved as counsel of record in this appeal. We grant the motion. We remand this matter to the district court for the limited purpose of securing new appellant counsel. If indigent, the district court shall have 30 days to appoint counsel for appellant. Otherwise, the district court shall order that, within 30 days appellant must retain counsel and counsel must enter an appearance in the district court. Within 5 days from the appointment or appearance of counsel, the district court clerk shall: (1) transmit to this court a copy of the district court's written or minute order; and (2) serve a copy of this order of remand on appellant's counsel. Thereafter, counsel shall have 10 days to enter an appearance with the clerk of this court. Within 15 days from the date on which counsel is required to enter an appearance in this court, counsel shall file a motion requesting permission to file a supplemental brief, if counsel deems supplemental briefing necessary.	
04/13/00	Filed Notice. Of appearance of counsel. Karla K. Butko appointed as counsel for appellant.	
04/17/00	Filed Notice. Amended notice of appearance of counsel. Karla K. Butko appointed as counsel for appellant. (Copy of order appointing counsel filed in district court on 3/20/00 attached.)	
06/14/00	Filed Motion to Extend Time. to File Appellant's Supplemental Opening Brief.	00-10134
06/14/00	Received Supplemental Brief.	00-10135
07/07/00	Filed Order Granting Motion We grant appellant's June 14, 2000, motion. The clerk of this court shall file the supplemental brief provisionally submitted with the motion on June 14, 2000. The State shall have 30 days from the date of this order within which to file a supplemental answering brief.	00-11584
07/07/00	Filed Supplemental Brief. Appellant's Supplemental Opening Brief.	00-10135
07/27/00	Filed Supplemental Brief. Respondent's Supplemental Answering Brief.	00-13069
10/10/00	Filed Order of Affirmance. Having concluded that Maki has not demonstrated error, " . . . we affirm the judgment of the district court." NNP00A-MS/DA/ML	00-17847
11/07/00	Issued Remittitur.	00-17948
11/07/00	Processing status update: Remittitur Issued/Case Closed.	
11/29/00	Filed Remittitur. Received by County Clerk on November 9, 2000.	00-17948

NOTE: FINAL PAGE OF ORDER

'00 NOV -9 A9:29

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHARLES JOSEPH MAKI,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 30904

FILED

OCT 10 2000

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a post-conviction petition for a writ of habeas corpus.

On May 17, 1994, appellant Charles Joseph Maki was convicted, pursuant to a jury verdict, of three counts of sexual assault of a child under age fourteen and five counts of lewdness with a child under age fourteen. Maki was sentenced to serve consecutive terms of life imprisonment with the possibility of parole, along with lesser terms of imprisonment. This court dismissed Maki's direct appeal. See Maki v. State, Docket No. 26049 (Order Dismissing Appeal, October 4, 1995).

On May 9, 1996, Maki filed a timely proper person post-conviction petition for a writ of habeas corpus in the district court. The district court appointed counsel, and counsel filed supplemental points and authorities in support of the petition. After holding an evidentiary hearing, the district court denied Maki's petition. This appeal followed.

Maki claims that he demonstrated that he received ineffective assistance of counsel and that the district court erred in denying him relief. To prevail on a claim of ineffective assistance of counsel, a defendant must demonstrate that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) counsel's deficient performance prejudiced the defense. See Strickland v. Washington, 466 U.S. 668 (1984); Kirksey v. State, 112 Nev. 980, 923 P.2d 1102

EXHIBIT 2

(3)

00-17847

(1996). We conclude that Maki has not shown that the district court erred in denying him relief on his claims. We will address each claim in turn.

Maki first argues that his trial counsel was ineffective for failing to request independent physical and psychological/psychiatric examinations of the two victims. However, the evidence adduced at the post-conviction hearing demonstrates that counsel acted reasonably in deciding not to request independent examinations.[1] Trial counsel testified that she did not request independent physical examinations of the victims, in part because she was satisfied with the examinations that had been performed and reported to the defense. Trial counsel cited several reasons why she did not request independent psychological or psychiatric examinations. Having reviewed the documents before this court, we conclude that the reasons cited by counsel are legitimate.

For example, one reason counsel cited was that she was informed that the State would not call an expert witness in psychiatry or psychology. Counsel also explained that she had not received any information that the victims had received counseling or been seen by a psychiatrist. These facts are relevant both to the reasonableness of counsel's decision and to the question of whether Maki would have been entitled to an examination upon request. See Keeney v. State, 109 Nev. 220, 224-26, 850 P.2d 311, 314-15 (1993). Maki has not shown that the State employed an expert witness in psychology or

[1]We note that the district court found trial counsel's testimony at the evidentiary hearing to be "more credible" than Maki's testimony, which the court characterized as "in large part incredible and unworthy of belief." We defer to these factual findings. See Riley v. State, 110 Nev. 638, 647, 878 P.2d 272, 278 (1994) (indicating that a district court's factual findings regarding claims of ineffective assistance of counsel are generally entitled to deference).

psychiatry.[2]

In ruling that counsel acted reasonably, we are cognizant of Maki's claims that the victims expressed uncertainty and made inconsistent statements about the relevant events prior to trial. However, we emphasize that the victims' allegations were at least partially corroborated by Maki's own incriminating admissions that he had engaged in sexual misconduct with the victims. An important factor in determining the need for independent psychological or psychiatric examinations is whether there is "little or no" corroborative evidence. See Keeney, 109 Nev. at 226, 850 P.2d at 315.

Accordingly, we conclude that Maki failed to overcome the "strong presumption that counsel's conduct [fell] within the wide range of reasonable professional assistance." See Strickland, 466 U.S. at 689. Maki has not demonstrated that counsel acted unreasonably, let alone that he would have been entitled to independent examinations of the victims had counsel requested such examinations. See Keeney, 109 Nev. at 224, 850 P.2d at 314 ("Generally, a psychological examination of a sexual assault victim should be permitted if the defendant has presented a compelling reason therefor.").

Additionally, Maki has another hurdle to overcome. To properly demonstrate prejudice he must show a reasonable probability that counsel's deficient performance affected the outcome of the proceedings. Maki argues, without citation to supporting authority, that prejudice should be presumed, given the amount of time that has passed and the difficulty of showing what independent examinations would have yielded. We reject

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[2]Maki notes that a nurse testified about behavioral problems that one of the victims was experiencing and the possible source of those problems. It also appears that the nurse concluded that this victim was sexually abused, although that finding appears to be primarily based on the physical examination. Maki has not shown that the nurse was qualified as an expert in psychology or psychiatry; nor could her testimony be reasonably viewed in this light.

this argument. Maki was required to show that such evaluations had a reasonable probability of affecting the outcome of the proceedings. He failed to do so.

Maki next claims that his counsel was ineffective, at trial, for failing to more effectively cross-examine the victims to reveal allegedly inconsistent and exculpatory prior statements. We question whether this issue was properly presented in the district court.[3] In post-conviction cases, this court will generally decline to review issues not properly raised in the district court. See Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995); Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991). Further, Maki has not included a complete copy of the trial transcript in the documents submitted to this court, or even the full portion of the transcript detailing the trial testimony of the victims. Accordingly, it is impossible to properly evaluate Maki's claim. Under these circumstances, the deficiency should be resolved against Maki. It is his responsibility to provide the materials necessary for appellate review. See Jacobs v. State, 91 Nev. 155, 158, 532 P.2d 1034, 1036 (1975).

Maki also argues that his counsel was ineffective for failing to properly cross-examine the victims on tattoos in Maki's genital area, which apparently extended downward from Maki's lower abdomen. It is similarly impossible to properly evaluate this claim because of Maki's failure to include all relevant portions of the trial transcript. We further note that the documents before this court, particularly the post-conviction evidentiary hearing transcript, reflect that trial

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[3]The issue of the victims' prior statements was discussed, and testimony adduced on this point, at the post-conviction evidentiary hearing. However, the discussion and testimony appear to have been related to Maki's claim that counsel should have requested independent examinations of the victims. At one point the State asked to "exclude everything [regarding the victims' inconsistencies] that was raised at trial, because by that point it was far too late to seek examination." Post-conviction counsel responded, "That's fine."

counsel did present pictures to the jury showing Maki's tattoos and that counsel argued this issue to the jury. Counsel indicated that an important point of the defense was that the victims would have mentioned the tattoos, on their own, had they observed Maki's genital area.

Maki also claims that his prior counsel was ineffective for failing to more effectively argue that certain statements made by Maki to police were erroneously admitted pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Because the Miranda issue was fully litigated in the district court and on direct appeal, Maki's claim is barred by the doctrine of the law of the case. See Hall v. State, 91 Nev. 314, 535 P.2d 797 (1975). Although Maki attempts to reformulate his argument in terms of ineffective assistance of counsel, this court has fully considered issues pursuant to Miranda, and this court reviewed the complete transcript of the police interview in resolving these issues.[4] Maki may not avoid the doctrine of the law of the case "by a more detailed and precisely focused argument subsequently made after reflection upon the previous proceedings." See Hall, 91 Nev. at 316, 535 P.2d at 799.

Maki next claims that trial and appellate counsel were ineffective for failing to raise issues of duplicative and redundant charges and sufficiency of the evidence. Maki specifically notes that at the preliminary hearing one of the victims testified that an incident involving digital penetration occurred at the same time as one of the incidents in which Maki placed his penis in her vagina. He contends that this constituted only one sexual assault and therefore counsel should have sought dismissal of the digital penetration charge.

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[4]This court held that Maki "was not 'in custody' before he was read his Miranda warnings" and that, after Maki was read the warnings and invoked his rights, police failed to scrupulously honor Maki's invocation of his right to remain silent. This court noted, however, that only one incriminating statement made after Maki invoked his rights was admitted at trial, and concluded that admission of this statement was harmless error.

The trial transcript and analysis of all the evidence in relation to all the charges are necessary to properly resolve this and Maki's even less specific contentions of insufficient evidence and other duplicative charges.[5] Again, it was Maki's responsibility to provide the materials necessary for our review as well as relevant authority and cogent argument.[6] See Maresca v. State, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); Jacobs, 91 Nev. at 158, 532 P.2d at 1036.

Maki next claims that appellate counsel was ineffective for failing to argue that the district court erred in failing to sanction the State or grant Maki a continuance, after the State disclosed evidence, shortly before trial, concerning physical examinations of the victims. Again, Maki has failed to include pertinent documents in the appendix on appeal. Maki has not included transcripts of the 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.

For the reasons cited above, and after further review

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[5]We are not persuaded by Maki's specific contention that counsel was ineffective for failing to challenge the charge of digital penetration prior to trial. A victim did testify that the incident of digital penetration occurred "[w]hen he was doing the same thing in our room," meaning "[w]hen he was putting his penis inside" of her. However, a reasonable reading of this victim's testimony does not necessarily suggest that the digital penetration occurred simultaneously with the other charged offense, but simply that the two incidents were part of the same molestation episode. We emphasize that the trial transcript could clarify the relationship between the act of digital penetration and the other offenses. We also note that the jury did not return guilty verdicts on each of the charges of sexual assault, and thus the question of prejudice is also speculative.

[6]We also note that Maki has failed to include specific citation to the appendix indicating how these claims were raised in the district court in the post-conviction proceedings. Indeed, Maki's argument on these claims in the supplemental opening brief is quite general and arguably insufficient to even state a valid claim.

of the briefs and appendix, we conclude that Maki has not shown that he is entitled to relief. In closing, however, we admonish Maki's former appellate counsel, Joseph R. Plater, and his current counsel, Karla K. Butko. On several occasions, counsel failed to cite to relevant portions of the appendix and discuss how issues were raised in the district court, discussed at the post-conviction evidentiary hearing (if applicable), and resolved by the district court. The critical issue to be resolved in a post-conviction appeal is whether the district court erred in denying the post-conviction petition. Counsel should not relegate to this court the task of parsing the record to resolve appellate claims. See NRAP 28.

Having concluded that Maki has not demonstrated error, we affirm the judgment of the district court.

It is so ORDERED.

Shearing, J.

Agosti, J.

Leavitt, J.

cc: Hon. Steven R. Kosach, District Judge
Attorney General
Washoe County District Attorney
Joseph R. Plater
Karla K. Butko
Washoe County Clerk

AFFIDAVIT

First being duly sworn and under the penality 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 beliefe 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

EXHIBIT-3

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 Grubb
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

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CHARLES J. MAKI,

Petitioner,

vs.

GEORGE GRIGAS, *et al.*

Respondents.

2:01-cv-0268-RLH-PAL

ORDER

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

Background

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

Governing Law

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

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

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

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

> 1. That he was denied effective assistance of counsel because:
>
> . . . .
>
> b.) His trial counsel failed to allow him to testify;
>
> c.) His trial counsel had a conflict of interest because she had a prior experience with sexual assault, with counsel telling him that she therefore did not want to represent him but would "go through the motions;"
>
> . . . .
>
> e.) At sentencing, his counsel failed to discredit the testimony of a State witness and failed to present effective mitigating evidence;

////

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

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

. . . .

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

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

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

Ground 1(d)

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

Grounds 2(a) and 2(b)

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

. . . .

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

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

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

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

> Again, Maki has failed to include pertinent documents in the appendix on appeal. Maki has not included transcripts of the 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.

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

Ground 3

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

IT THEREFORE IS ORDERED that respondents' motion (#72) to dismiss is GRANTED 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 exhausted. After completion of the *sua sponte* exhaustion inquiry as to Grounds 2(a) and 2(b), petitioner will be required to either dismiss the unexhausted claims, dismiss the entire petition, or seek other appropriate relief.

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

DATED this 12th day of June, 2006.

Roger L. Hunt

ROGER L. HUNT
United States District Judge

PLEASE make FILED STAMP copy RETURN FOR petitioner.

LETTER with the ENVELOPE with my APPEAL! IT will HELP prove All I've BEEN trying to say.

Also will you please make A copy of this LETTER AND ENVELOPE FRONT / BACK FOR me, AS I Don't TRUST E'M HERE. "I NEED A FILED STAMP copy please."

THANK you

FOR your TIME AND CONSIDERATION

Sincerely

[illegible] 42820
po Box 7007 WSCC
CARSON CITY NV. 89702

DATE 4-08-2015

CLERK OF NV. S. CT.

CARSON CITY, NV. 89701

CASE NO 67217

check mail 42820

DATE 4-08-2015

P.O. Box 7007 - WSCC

CARSON CITY NV. 89702

DEAR CLERK,

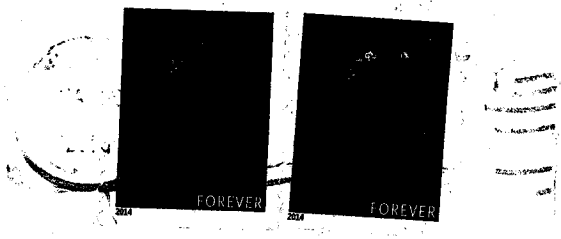
I NEED TO MAKE YOU/COURTS FULLY AWARE OF WHATS GOING ON HERE, WITH my LEGAL MAIL, FROM W.S.C.C. WARM SPRINGS CORR. CENTER,

I FILED A motion TO THE DISTRICT COURT IN REGARDS TO THE LAW-LIBRARY AT W.S.C.C. REFUSING TO GIVE ME CASE LAW AS I NEED IT. AND DENYING ME ACCESS TO THE COURTS, THE PRISON IS WELL AWARE OF my ACTION, AS I FILED A GRIEVANCE thru our SYSTEM.

BUT, I'm SENDING you THE ENVELOPE THAT THE COURT-CLERK SENT BACK TO ME; REASON: (I SENT OUT my MAIL ON 3-20-2015) ON ENVELOPE BACKSIDE, YOU'LL SEE OUT GOING MAIL 3-22-2015, BUT, (LOOK ON THE FRONT OF ENVELOPE) IT WENT TO THE MAIL DESK IN LAW LIBRARY (3-24-15) OPENED AND THEN STAPLED CLOSED, AND A WEEK LATER COURT RECIEVED IT. I HAVE THE motion IN my POSSESSION WORK YARD GETTING TO PROVE my STATEMENTS. PLEASE PUT this

RECEIVED
APR 13 2015
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
DEPUTY CLERK

CHARLES MAKI - 42820
PO BOX 7007 - CWSCC
CARSON CITY, NV. 89702



TO: 2ND JUDICAL DIST. COURT
WASHOE COUNTY - 75 COURT ST,
RENO, NEVADA 89501

LEGAL MAIL

RECEIVED
MAR 24 2015
MAIL DESK

-- CONFIDENTIAL --